

THE STATE OF NEW HAMPSHIRE
BEFORE THE
PUBLIC UTILITIES COMMISSION

PUBLIC SERVICE COMPANY OF NEW HAMPSHIRE d/b/a EVERSOURCE ENERGY
AND
CONSOLIDATED COMMUNICATIONS OF NORTHERN NEW ENGLAND COMPANY,
LLC
d/b/a CONSOLIDATED COMMUNICATIONS

Docket No. DE 21-XXX

Joint Petition to Approve Pole Asset Transfer

MOTION FOR PROTECTIVE ORDER AND CONFIDENTIAL TREATMENT

Public Service Company of New Hampshire d/b/a Eversource Energy (“Eversource” or the “Company”) and Consolidated Communications of Northern New England Company, LLC d/b/a Consolidated Communications (“Consolidated”) (together the “Parties”) hereby jointly request that the New Hampshire Public Utilities Commission (“Commission”) grant protection from public disclosure of certain confidential, sensitive, and proprietary information submitted in this docket pursuant to Puc 203.08 and RSA 91-A:5. Specifically, the Parties request that the Commission protect from public disclosure the Parties’ Settlement and Pole Asset Purchase Agreement (the “Agreement”), the contents of which also have been redacted in the Parties’ petition and supporting testimony, consisting of confidential commercial and financial information which should not be publicly disclosed.

As explained below, the Agreement contains confidential commercial and financial information, as well as settlement terms of disputed legal claims. In support of this motion, the Parties state as follows:

I. LEGAL STANDARD

Puc 203.08(a) states that the Commission shall, upon motion, “issue a protective order providing for the confidential treatment of one or more documents upon a finding that the document or documents are entitled to such treatment pursuant to RSA 91-A:5, or other applicable law.” The motion shall contain: “(1) [t]he documents, specific portions of documents, or a detailed description of the types of information for which confidentiality is sought; (2) [s]pecific reference to the statutory or common law support for confidentiality; and (3) [a] detailed statement of the harm that would result from disclosure and any other facts relevant to the request for confidential treatment.” Puc 203.08(b).

RSA 91-A:5, IV exempts certain governmental records from public disclosure, including “[r]ecords pertaining to internal personnel practices; confidential, commercial, or financial information . . . ; and other files whose disclosure would constitute invasion of privacy.” In determining whether documents are entitled to exemption pursuant to RSA 91-A:5, IV, the Commission applies a three-step analysis to determine whether information should be protected from public disclosure. *See Lambert v. Belknap County Convention*, 157 N.H. 375 (2008); *see also Public Service Company of New Hampshire*, Order No. 25,313 (December 30, 2011) at 11-12. The first step is to determine whether there is a privacy interest at stake that would be invaded by the disclosure. If such an interest is at stake, the second step is to determine whether there is a public interest in disclosure. The Commission has stated that disclosure should inform the public of the conduct and activities of its government; if the information does not serve that purpose, disclosure is not warranted. *Electric Distribution Utilities*, Order No. 25,811 (September 9, 2015) at 5. If both steps are met, the Commission balances the privacy interest with the public interest

to determine if disclosure is appropriate. *Public Service Company of New Hampshire*, Order 25,167 (November 9, 2010) at 3-4.

II. DESCRIPTION OF CONFIDENTIAL INFORMATION

Consistent with the Commission's requirements, the Parties have provided a copy of the Agreement in the underlying filing. See Direct Testimony of Lee G. Lajoie, at Attachment LGL-1 CONFIDENTIAL. The Agreement contains confidential commercial and financial information comprised of privately negotiated contract terms, conditions, and financial terms pertaining to the transfer of utility poles from Consolidated to Eversource. Furthermore, the Agreement also includes confidential information regarding the settlement of legal disputes between the Parties. To assist the Commission in its review of the asset transfer, the Parties have also included, and redacted, certain of the confidential terms from the Agreement in the petition and supporting testimonies of Lee G. Lajoie and Douglas P. Horton and Erica L. Menard, and in Attachment GPH/ELM-1 CONFIDENTIAL. None of the redacted information from the Agreement has been made public. In fact, the Parties entered into a Nondisclosure Agreement during their negotiations to ensure the protection of the confidential terms of the Agreement. The release of the confidential commercial and settlement information would be highly prejudicial to the Parties and to Eversource's customers, and detrimental to the business interests of both Parties.

As explained below, the Parties' privacy interest in protecting the confidential information contained in the Agreement substantially outweighs any public interest in disclosure.

III. DISCUSSION

The Parties have a strong privacy interest in maintaining the confidentiality of the confidential commercial and settlement terms in the Agreement.¹ The Agreement resulted from

¹ The Commission has previously protected commercially sensitive negotiated pricing information on the basis that the public's interest in disclosure is outweighed by the "substantial harm to the competitive positions" of the

confidential negotiations held between Eversource and Consolidated. A decision requiring the Parties to disclose the confidential negotiated pricing and other contract terms would put the Parties' potential future contracting parties on notice that their pricing information and other privately negotiated terms may be disclosed to the public in the Commission's review process. As a result, disclosure of this type of information would have a chilling effect on the Parties' ability to (1) attract contract partners without concern that the Commission may release private, confidential, and proprietary negotiated terms to their other contract counterparties; and (2) secure reasonable and attractive terms from contract partners for the benefit of New Hampshire customers. Therefore, if the Commission orders disclosure of the competitively sensitive terms of the Agreement, the Parties would likely experience substantial difficulty in negotiating successfully with potential future contract partners; particularly getting negotiating partners to offer and agree to favorable terms. This result would ultimately harm Eversource's customers, who ultimately bear the cost of service and materials acquired through negotiated contracts. For this reason, the Parties, and therefore Eversource's customers, have a strong privacy interest in the confidential terms from the Agreement.

Moreover, the negotiated settlement terms in the Agreement must remain confidential to preserve the Parties' future negotiating leverage. A lack of confidentiality in such negotiated terms may discourage future adverse claimants from making concessions in settlement negotiations or agreeing to specific provisions more favorable to the Parties because public knowledge of such

Company and its vendors, as well as the effect it would have on the Company's customers in higher costs. *Liberty Utilities Corp.*, Order No. 26,280 at 4-5 (August 1, 2019) (protecting negotiated pricing terms contained in gas supply contract); *Pennichuck East Utility, Inc.*, Order No. 26,222 (February 26, 2019) (protecting negotiated pricing and billing rates of utility's attorney); *Public Service Company of New Hampshire*, Order No. 26,057 (September 19, 2017) at 10 (protecting bid prices in responses to company's RFP).

negotiating precedent would increase other parties' bargaining leverage in future settlement negotiations.

Furthermore, Consolidated has engaged in similar transactions in other jurisdictions previously and may engage in similar transactions in the future. In prior transactions, the confidential nature of the same type of information was acknowledged and protected from disclosure. Should any of the terms of the Agreement be made available to the public, Consolidated would be placed at a competitive disadvantage vis-à-vis its ability to negotiate fees, pricing, and contractual terms with other parties in other locations. In the interest of protecting fruitful and meaningful negotiations in this transaction and potential future transactions, Consolidated has a strong privacy interest in protecting the terms of the Agreement.

With respect to the public interest, the Parties recognize that this transaction creates a financial impact upon Eversource's customers, including financial impacts where rate recovery is being requested by Eversource. To address the public interest of Eversource's customers, the petition and supporting testimony sets out the revenue requirement and rate information in a manner that allows the public to see and understand the relevant financial impacts of the transaction, without disclosing the redacted confidential information. Accordingly, there is already significant information provided about the actual financial terms at issue here and there is little additional value to be obtained from disclosing the specific terms of the Agreement. In balancing the Commission's privacy analysis, the Parties' privacy interests outweigh any public interest. In fact, the public interest is aligned with maintaining the confidentiality of the information to avoid the potential for competitive harm to the Parties and the resulting impact on Eversource's customers. Accordingly, disclosure of the information is not warranted.

IV. CONCLUSION

For the foregoing reasons, the Parties respectfully request that the Commission grant this motion for protective order.

Respectfully submitted,

**PUBLIC SERVICE COMPANY OF NEW
HAMPSHIRE D/B/A EVERSOURCE ENERGY,**
By its Attorneys,

/s/ Matthew J. Fossum
Matthew J. Fossum
Senior Regulatory Counsel
Eversource Energy Service Company o/b/o
Public Service Company of New Hampshire
d/b/a Eversource Energy
780 N. Commercial Street
Manchester, NH 03101
(603) 634-2961
Matthew.Fossum@eversource.com

/s/ Robert J. Humm
Robert J. Humm
Jameson Calitri
Keegan Werlin LLP
99 High Street, Suite 2900
Boston, MA 02110
(617) 951-1400
rhumm@keeganwerlin.com

**CONSOLIDATED COMMUNICATIONS OF
NORTHERN NEW ENGLAND COMPANY, LLC
D/B/A CONSOLIDATED COMMUNICATIONS**
By its Attorneys,

/s/ Patrick C. McHugh
Patrick C. McHugh
Consolidated Communications
770 Elm Street
Manchester, NH 02101
(603) 591-5465
Patrick.mchugh@consolidated.com

/s/ Sarah Davis
Sarah Davis
Consolidated Communications
5 Davis Farm Rd.
Portland, ME 04103
(207) 535-4188
Sarah.davis@consolidated.com

Dated: February 10, 2021

CERTIFICATE OF SERVICE

I hereby certify that, on the date written below, I caused the attached to be served pursuant to N.H. Code Admin. Rule Puc 203.11.

February 10, 2021
Date

/s/ Robert J. Humm
Robert J. Humm