

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 21-020

Joint Petition to Approve Settlement and Pole Asset Purchase Agreement

MOTION FOR PROTECTIVE ORDER AND CONFIDENTIAL TREATMENT

Public Service Company of New Hampshire d/b/a Eversource Energy (“Eversource” or the “Company”) hereby requests 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 Company requests that the Commission protect from public disclosure certain redacted information contained in Eversource’s supplemental response to Record Request 2 issued at the evidentiary hearing held in this matter on March 15, 2022 (the “Supplemental Response”). The Supplemental Response provides details from a confidential settlement agreement entered between the Company’s Connecticut affiliate (Connecticut Light & Power) and a joint pole owner in the affiliate’s Connecticut service territory. As detailed below, the confidential information provided in the Supplemental Response is subject to a confidentiality agreement between Connecticut Light & Power (“CL&P”) and Frontier Communications (“Frontier”). In addition, disclosure of this information would limit the Company or its affiliates’ ability to negotiate favorable agreements with other joint pole owners across its three-state jurisdiction.

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) The documents, specific portions of documents, or a detailed description of the types of information for which confidentiality is sought; (2) Specific 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 personnel . . . 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 if 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 if 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

The Supplemental Response contains confidential, commercial and financial information comprised of negotiated settlement terms pertaining to an agreement reached between CL&P and Frontier. The settlement agreement between CL&P and Frontier is not public, and any release of this information would be highly prejudicial and harmful to the Company, its affiliates, and the Company's customers. Release would be detrimental to the business interests of both the Company and CL&P.

As explained below in Section III, there is a privacy interest at stake in the information contained in the Agreement that would be invaded by public disclosure, and where the privacy interest substantially outweighs any public interest in disclosure. In addition, public disclosure of the confidential information contained in the Agreement is not necessary to inform the public of the conduct and activities of its government, and thus disclosure is not warranted. *See Electric Distribution Utilities*, Order No. 25,811 (September 9, 2015) at 5.

III. DISCUSSION

The Supplemental Response contains the terms of a negotiated settlement agreement, disclosure of which could harm the Company, its affiliate, and their respective customers. Further, the settlement agreement between Connecticut Light and Power and Frontier is subject to a confidentiality clause. If the Commission were to require the disclosure of this sensitive information, the Company and its affiliates would likely experience substantial difficulty in the future in negotiating successfully with potential settlement parties.

Settlement amounts and terms must remain confidential to preserve the Company's future negotiating leverage because a lack of confidentiality may discourage future adverse claimants from making concessions or agreeing to specific provisions more favorable to the Company because public knowledge of such precedent would increase the settling party's bargaining leverage in future negotiations. Additionally, if the settlement information contained in the Supplemental Response were disclosed it would put potential settlement parties on notice that any terms or amounts they may receive to settle their dispute may be disclosed to others. This would result in a chilling effect on the Company's ability to: (1) reach settlement agreements with adverse litigants who may fear that the Commission will ultimately release proprietary settlement amounts to the public; and (2) secure the lowest settlement amounts possible for the benefit of the Company's customers.

In balancing the Commission's privacy analysis, the privacy interest of the Company outweighs and are aligned with the public interest because if the negotiated settlement terms were disclosed the Company would have less leverage and bargaining power to settle with other parties in the future for a lower amount, which would ultimately harm the Company's customers.

The Commission should prevent the disclosure of the Parties negotiated legal settlement claims contained in the Supplemental Response under a similar analysis as the Commission's decision to protect negotiated pricing. Similar to negotiated pricing terms, the disclosure of the Company's negotiated settlement terms with other parties would result in a disadvantage in the Company's ability to effectively negotiate for the lowest amount with other parties, and would result in a higher cost of service for customers. Therefore, it is in the Company's interest and the public interest to prevent the Company's negotiated settlement information from being disclosed. Protection of the settlement agreement terms provided in the Supplemental Response is consistent

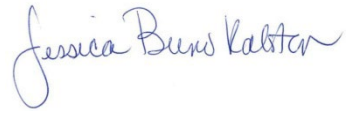
with the Commission's recent order in this proceeding that provided protective treatment to the settlement agreed to between the joint petitioners in this proceeding. Order No. 26,609, at 13. The Commission found that protective treatment of the settlement agreement terms was warranted because settling parties have a reasonable expectation that settlement terms will remain private and the disclosure of such terms could negatively impact the ability to fairly and effectively negotiate settlements going forward. *Id.* at 12-13. The same conclusion should be reached here.

IV. CONCLUSION

Based on the foregoing, Eversource has a privacy interest at stake that would be invaded by disclosure of the confidential information contained in the Supplemental Response. Protection of the confidential information in the Supplemental Response is aligned with the public's interest in preventing this information from disclosure, because public disclosure would harm the Company's ability to obtain favorable settlement terms thereby subjecting customers to a higher cost of service. Therefore, on balance, the harm that would result from public disclosure is substantially outweighed by the need for confidential treatment.

For the above reasons, the Parties respectfully requests that the Commission grant this motion for protective order with respect to the Supplemental Response.

**PUBLIC SERVICE COMPANY OF NEW
HAMPSHIRE d/b/a EVERSOURCE ENERGY**
By its Attorneys,



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CERTIFICATE OF SERVICE

I hereby certify that, on the date written below, I caused the service list in DE 21-020 to be served pursuant to N.H. Code Admin. Rule Puc 203.11.

Jessica Burns Kalster

April 15, 2022