

**THE STATE OF NEW HAMPSHIRE  
BEFORE THE  
PUBLIC UTILITIES COMMISSION**

**DE 21-030**

**MOTION FOR CONFIDENTIAL TREATMENT AND PROTECTIVE ORDER**

Unitil Energy Systems, Inc. (“UES” or the “Company”) respectfully requests that the New Hampshire Public Utilities Commission (the “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 information contained in attachments to discovery responses, as identified in Appendix A to this motion (the “Confidential Attachments”).

As explained below, the Confidential Attachments contain confidential commercial and financial information; proprietary vendor data and work product; and individual customer data and employee compensation information, the disclosure of which would constitute an invasion of privacy. In support of this motion, UES states as follows:

**I. LEGAL STANDARD**

1. 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.” In determining whether confidential, commercial, or financial information within the meaning of RSA 91-A:5, IV is exempt from public disclosure, the Commission applies a three-step balancing test to determine whether a document, or the information contained within it, falls within the scope of RSA 91-A:5, IV. *Northern Utilities, Inc.*, DG 17-

070, Order No. 26,129 (May 2, 2018) at 15 (citing *Liberty Utilities (EnergyNorth) Natural Gas Corp.*, Order No. 26,109 (March 5, 2018) at 23). First, the Commission inquires whether the information involves a privacy interest and then asks if there is a public interest in disclosure. *Id.* Next, the Commission balances those competing interests and decides whether disclosure is appropriate. *Id.* When the information involves a privacy interest, disclosure should inform the public of the conduct and activities of its government, but if the information does not serve that purpose, disclosure is not warranted. *Id.*

## **II. DESCRIPTION OF CONFIDENTIAL ATTACHMENTS**

2. Appendix A summarizes the documents and types of information contained in the documents for which the Company seeks confidential treatment, including the specific attachment numbers, witnesses, and the basis for confidentiality of each document. None of the Confidential Attachments is public, and any release of the information would be highly prejudicial and harmful to the Company, its employees, customers, and vendors. The Confidential Attachments are summarized as follows:

- a. The following Confidential Attachments contain confidential and commercially sensitive pricing terms:
  - i. Staff 2-55 Attachment 1 CONFIDENTIAL (pricing terms in 2021 PR and Crisis Communications Retainer Agreement with Matter Communications);
  - ii. Staff 2-55 Attachment 2 CONFIDENTIAL (pricing terms in 2021 Website Development and Maintenance Retainer Agreement with Matter Communications);
  - iii. Staff 2-55 Attachment 3 CONFIDENTIAL (pricing terms in 2021 Social Media Communications Retainer Agreement with Matter Communications);
  - iv. Staff 2-55 Attachment 4 CONFIDENTIAL (2021 Website Rebuild Proposal from Matter Communications); and
  - v. DOE 4-58 Attachment 1 Confidential (schedule showing negotiated debt issuance fee from Bank of America).

- b. The following Confidential Attachments contain confidential, individual customer data and information:
- i. Staff 2-56 Attachment 1 CONFIDENTIAL (historical billing and individual customer load and account information);
  - ii. Staff 2-57 Attachment 1 REDACTED (estimated revenue calculation containing individual customer load and account information);
  - iii. DOE 4-74 Attachment 1 CONFIDENTIAL (IRR model containing individual customer load and account information);
  - iv. Energy TS 2-07 Attachment 1 – Confidential (IRR model containing individual customer load and account information); and
  - v. Energy TS 2-08 Attachment 1 – Confidential (IRR model containing individual customer load and account information).
- c. The following Confidential Attachments contain proprietary, commercial publications of vendors, and proprietary models and work products of outside vendors:
- i. OCA 1-16 Att. 1 Confidential (Blue Chip Financial Forecasts commercial publication, subject to copyright);
  - ii. OCA 1-28 Att. 1 Confidential (Blue Chip Financial Forecasts commercial publication, subject to copyright);
  - iii. DOE 3-8 Attachment 1 Confidential- 2019 Willis Towers Watson’s Unital Corp. Employee Benefits Evaluation (presentation of Employee Benefits Valuation from Tower Watson containing confidential and proprietary survey data, analysis, and methodology);
  - iv. DOE 3-8 Attachment 2 Confidential- 2019 Willis Towers Watson’s Executive Compensation Market Assessment (presentation of Executive Compensation Market Assessment from Tower Watson containing confidential and proprietary survey data, analysis, and methodology);
  - v. DOE 3-8 Attachment 3 Confidential- 2019 Willis Towers Watson’s Non-Union Staff Market Compensation Assessment (presentation of Non-Union Staff Market Compensation Assessment from Tower Watson containing confidential and proprietary survey data, analysis, and methodology);
  - vi. DOE 3-8 Attachment 4 Confidential- 2019 Board of Director Assessment (presentation of Board of Directors compensation assessment from Tower Watson containing confidential and proprietary survey data, analysis, and methodology);
  - vii. DOE 4-12 Attachment 1 CONFIDENTIAL (SEI presentation containing proprietary data and methodologies);
  - viii. DOE 4-13 Att.1\_Value Line Growth Rates CONFIDENTIAL (proprietary commercial publication, subject to copyright);

- ix. DOE 4-15 Att.16\_RRA Alt Ratemaking Plans Tables CONFIDENTIAL (proprietary commercial publication, subject to copyright);
- x. DOE 4-33 Attachment 1 Confidential (proprietary commercial publication of Moody's, subject to copyright);
- xi. DOE 4-33 Attachment 2 Confidential (proprietary commercial publication of S&P, subject to copyright);
- xii. OCA 3-27 Attachment 1 Confidential (BV ACOS Filing Copy.xls) (proprietary ACOS model and workpapers of outside consultant);
- xiii. OCA 3-27 Attachment 2 Confidential (BV Database) (proprietary model and workpapers of outside consultant);
- xiv. OCA 3-27 Attachment 3 Confidential (BV MCOS Filing Copy) (proprietary MCOS model and workpapers of outside consultant);
- xv. OCA 3-27 Attachment 4 Confidential (HEO\_5 As Filed) (proprietary model and workpapers of outside consultant);
- xvi. OCA 3-27 Attachment 5 Confidential (HEO-3 As Filed) (proprietary model and workpapers of outside consultant); and
- xvii. OCA 3-27 Attachment 6 Confidential (HEO-6 As Filed) (proprietary model and workpapers of outside consultant).

d. The following Confidential Attachment contains private personnel information:

- i. DOE 3-10 (a) Attachment 3 CONFIDENTIAL (Collective Bargaining Agreement containing wage information for named individuals).

e. The following Confidential Attachments contain confidential, commercial and financial information based on non-public forward looking financial projections:

- i. DOE 4-03 Attachment 2\_Confidential (presentation made to Moody's in 2020 containing forward looking financial projections);
- ii. DOE 4-03 Attachment 3\_Confidential (presentation made to Moody's in 2021 containing forward looking financial projections);
- iii. DOE 4-03 Attachment 5\_Confidential (presentation made to S&P in 2020 containing forward looking financial projections);
- iv. DOE 4-03 Attachment 6\_Confidential (presentation made to S&P in 2021 containing forward looking financial projections); and
- v. DOE 4-03 Attachment 16\_Confidential (presentation made to investors containing forward looking financial projections).

As explained in Section III below, public disclosure would invade the privacy interests at stake in each of the Confidential Attachments, and the privacy interest substantially outweighs any public interest in disclosure. Moreover, public disclosure of the Confidential Attachments is not warranted because such disclosure is not necessary to inform the public of the conduct and

activities of its government. *See Electric Distribution Utilities*, Order No. 25,811 (Sept. 9, 2015) at 5.

### **III. DISCUSSION**

#### **A. Contract Pricing Terms**

3. The Confidential Attachments containing pricing terms are highly sensitive and confidential and the Company has a strong privacy interest at stake relative to those attachments. The Commission should grant the attachments protective treatment based on several factors, including factors that affect the business interests of the Company and its counterparties, and the interests of the Company's customers who ultimately bear the cost of services and materials procured through negotiated contracts.

4. If the Company were required to disclose competitively sensitive pricing terms in this docket, the Company would likely experience substantial difficulty in negotiating successfully with potential contract partners in the future; particularly in terms of getting potential vendors and negotiating partners to agree to favorable terms as compared to other customers of the contract partner. Simply put, pricing terms must remain confidential to preserve the Company's future negotiating leverage and its ability to function effectively in the market.

5. If the Commission required the Company to disclose pricing terms in this proceeding, it would put potential vendors and negotiating partners on notice that their pricing information and other negotiated terms may be disclosed to the public in the Commission's approval process, including to persons who are seeking to procure similar services from the vendor. As a result, the disclosure of this information would have a chilling effect on the Company's ability to: (1) attract contract partners who may fear that the Commission will ultimately release confidential

pricing data to their other customers; and (2) secure reasonable and attractive pricing from contract partners for the benefit of the Company's customers.

6. Additionally, the Commission should protect the Confidential Attachments containing pricing terms because such information is competitively sensitive, and its disclosure could harm the Company's vendors and consultants. Should this information be made available to the public, the Company's vendors and consultants would be placed at a competitive disadvantage vis-à-vis their competitors because such competitors would have information by which to base any future pricing for providing services to the Company. Moreover, disclosure of such information may place the Company's vendors and consultants at a competitive disadvantage with respect to their ability to negotiate fees for services with existing and potential clients. This result would disadvantage the Company to the extent that the Company's vendors and consultants determine in the future not to bid on the Company's requests for services because of the potential competitive disadvantages that may arise should they do so; which would deprive the Company of access to certain expertise necessary for Commission proceedings.

7. In balancing the Commission's privacy analysis, the privacy interest of the Company and its counterparties outweigh and are aligned with the public interest because if the negotiated terms and pricing information were disclosed, the Company would have difficulty procuring like services from vendors in the future at the lowest cost, which would ultimately harm the Company's customers.

8. The Commission has previously protected commercially sensitive pricing information on the basis that the public's interest in disclosure is outweighed by the "substantial harm to the competitive positions" of the Company and its vendors, as well as the effect it would have on the Company's customers in higher costs. *Pennichuck Water Works, Inc.*, Order No. 26,469 (April 8,

2021) at 6 (protecting hourly billing rate information); *Liberty Utilities Corp.*, Order No. 26,280 (Aug. 1, 2019) at 4-5 (protecting pricing terms contained in gas supply contract); *Public Service Company of New Hampshire*, Order No. 26,057 (Sept. 19, 2017) at 10 (protecting bid prices in responses to company's RFP). The same concerns attach to the information at issue here, and the Commission should follow its prior determinations and grant confidential treatment to the information in these attachments.

### **B. Individual Customer Data**

9. The identified attachments contain information about specific customers, including load and payment information for those customers. Staff 2-56 Attachment 1 CONFIDENTIAL also contains customer-specific account numbers. Such individual customer information and data constitutes confidential customer information protected from disclosure pursuant to RSA 363:37, 363:38, and RSA 91-A:5, IV. RSA 363:37 defines "individual customer data" to include "information that is collected as part of providing electric, natural gas, water, or related services to a customer that can identify, singly or in combination, that specific customer, including the name, address, account number, quantity, characteristics, or time of consumption by the customer." RSA 363:38 prohibits utilities from disclosing "individual customer data" without the customer's permission. RSA 91-A:5, IV more generally protects "confidential, commercial, or financial information," of which "individual customer data" is a subset.

10. In addition to the explicit statutory limitations identified above, the Commission's balancing test weighs in favor of protecting individual customer data. The customer has a strong privacy interest in protecting its account information and its current and potential future changes in load, which could reveal information about its plans or intentions for expansion or changes to its business activities. Moreover, in the case of commercial customers, where the identifying

information is linked to information about the commercial customers' payments, the disclosure of that information could harm their competitive positions and should be protected. *EnergyNorth Natural Gas, Inc.*, Order No. 25,208 (Mar. 23, 2011) at 5-6 (*citations omitted*). The public interest, on the other hand, is slight. Although the public may have some interest in the overall loads on the UES system and how those loads affect system planning and operation, those limited interests do not warrant the disclosure of information on specific customers and those customers' intentions. Also, there is little information about the activities of government to be gained from disclosure of the individual customer data at issue here. Given the high privacy interest and the low public interest, in combination with the clear statutory directives that protect confidential customer information discussed above, the Commission should grant confidential treatment of the identified information.

**C. Proprietary Data, Publications, Models, and Methodologies of Vendors**

11. The Commission should protect the Confidential Attachments containing the proprietary, commercial publications of vendors, and the proprietary data, models, and work papers of the Company's outside consultants and vendors from public disclosure.

12. The business models of the Company's consultants and vendors rely on providing their proprietary work products, studies, reports, and analyses only to entities that purchase it for a fee. Additionally, the methodology, formulae, and techniques underpinning their work are proprietary and confidential. If the Commission ordered dissemination of this proprietary information to the public, it would harm the business interest of the Company's consultants and vendors because individuals and entities who want access to this specific data and proprietary analysis would not need to pay to obtain access to it. As a result, the disclosure of this information would have a chilling effect on the Company's ability to attract necessary



consultants and to procure necessary data because those vendors may fear that the Commission will ultimately release proprietary work product, data, algorithms, methodology, and analysis that would undermine their businesses. This result would disadvantage the Company to the extent that the Company's consultants determine in the future not to bid on the Company's requests for services because of the potential competitive disadvantages that may arise should they do so; which would deprive the Company of access to certain expertise necessary for Commission proceedings.

13. As identified above and in Appendix A, several of the publications in the Confidential Attachments are also copyright protected and were provided to the Company without authority to share the information publicly. Therefore, if the Commission orders the public release of this information, it could violate the terms of the agreement with the publishers and harm the competitive interests of the publishers of the copyrighted materials.

14. Additionally, the Commission should protect the Confidential Attachments containing competitively sensitive and proprietary survey information in their entirety. The companies participating in the surveys provided information on the condition that it would be treated confidentially. If this information were disclosed to the public, companies may choose not to participate in future studies, thus limiting the number of participants and the value of the benchmarking data. Furthermore, if the Confidential Attachments consisting of proprietary survey data are disclosed to the general public, this could adversely impact the ability of the Company to procure such survey data and analysis in the future because the potential consultants will be on notice that their proprietary data and analysis could become public.

15. In the Commission's privacy analysis, the privacy interest of the Company and its vendors are aligned with the public interest because if the Company's vendors' proprietary work

product, data, surveys, and analyses were disclosed, the Company would have difficulty procuring these necessary services from vendors in the future. The Company's difficulty in procuring these services would ultimately harm the Company's customers due to increased cost to procure or develop these services through other limited means. For instance, the Company may receive fewer responses from consultants willing to provide such services or consultants may increase the amount charged to the Company to compensate for the risk of disclosure of their proprietary work product and analysis. This type of expertise and proprietary data must be obtained from outside consultants and vendors and it is critical to the rate case process. It would ultimately harm the Commission's processes if UES cannot procure these services or data. This type of information is necessary to enable the Commission to fully evaluate the Company's proposals. At the other end of the scale, the public's interest in disclosure of the proprietary, commercial publications of vendors, and the proprietary data, models, and work papers of the Company's outside consultants is slight because the information at issue has no bearing on the workings of government.

16. The Commission has protected third party proprietary information on the basis that the public interest is outweighed by such information that is sufficiently detailed that its disclosure would cause great economic harm and which was provided to the Company with the understanding that its confidentiality would be maintained. *Liberty Utilities Corp.*, Order No. 26,209 (Jan. 17, 2019) at 43-44; *Liberty Utilities (Granite State Electric) Corp.*, Order No. 26,005 at 15 (Apr. 12, 2017); *Abenaki Water Company*, Order No. 25,840 (Nov. 13, 2014) at 2-3; *see also Northern Utilities, Inc.*, DG 20-078, Order No. 26,385 at 11 (July 28, 2020) ("We are cognizant that the analyses and related documents are copyright protected and were provided to the Company without authority to share the information publicly. Consequently, public release of

the analyses could harm the Company's ability to obtain this type of information in the future, because it could violate the terms of its agreement with the publishers and would harm the competitive interests of the publishers of the copyrighted materials if such information were provided to the public free. Those factors make the interest in nondisclosure more substantial.”).

17. In summary, the Company's vendors and consultants would experience economic harm if their proprietary work product and analysis were disclosed to the public because their business models depend on providing their proprietary work product and analysis for a fee, which would be undermined if the public had free access to this same information. Additionally, the public would be harmed because service providers would be on notice that their information could be disclosed if they work with the Company and may choose not to provide the necessary service to the Company. This would result in limiting the Company's options for service providers and create a less competitive solicitation for these necessary services, which could increase the cost for customers.

#### **D. Employee Compensation Information**

18. The Commission should protect the private, confidential employee compensation information in the identified Confidential Attachment. The Company maintains the privacy of this information and disclosure would constitute an unwarranted invasion of personal privacy. Additionally, if the compensation information were produced publicly, Company personnel and third parties would have unfettered access to confidential compensation information, which would negatively impact the Company's ability to attract and retain employees.

19. In the Commission's privacy analysis, the privacy interests of the Company outweighs and are aligned with the public interest because if the Company's compensation information were disclosed, the Company would have less negotiating power to attract the highest quality

talent for the lowest amount, which would ultimately harm the Company's customers in the form of a greater cost of service. Additionally, the disclosure of Company employee compensation information would constitute an invasion of privacy of the Company's employees, which is the exact harm to be avoided in exempting information "whose disclosure would constitute invasion of privacy" in RSA 91-A:5, IV.

20. The Commission has previously protected employee compensation information because employees have a reasonable expectation of privacy with respect to this information and the Commission has found the public interest to be slight. *See EnergyNorth Natural Gas, Inc.*, Order No. 25,208 at 5 (Mar. 23, 2011) ("[W]e have noted that as to nonofficer employees, the disclosure of their information could cause harm by making it easier for other companies to recruit the employees away from the utility and potentially causing discord among individuals within the company."); *Pennichuck East Utilities Inc.*, Order No. 24,784 at 6 (Aug. 24, 2007) ("It is a longstanding practice of the Commission to grant confidential treatment to compensation data as to specific utility employees who are not officers."); *Northern Utilities, Inc.*, DG 01-182, Order No. 23,970 at 8-9 (May 10, 2002) (finding the benefits to the Company of non-disclosure of portions of employee compensation data not already made public outweigh the benefits to the public of disclosure.). Consistent with past precedent, the Commission should not permit disclosure of employee compensation information because employees have a reasonable expectation of privacy with respect to this information and the public interest is not sufficient to outweigh the interest in keeping this information confidential.

#### **E. Forward Looking Financial Information**

21. As with information that might invade privacy, RSA 91-A also exempts from disclosure "confidential, commercial, or financial information." RSA 91-A:5, IV.

22. The Commission should protect the Confidential Attachments containing non-public, forward-looking financial projections for several reasons. First, the Company maintains this non-public, forward-looking financial information as highly confidential and proprietary. The Company does not disclose the information publicly and considers it commercially sensitive and strategic, non-public business information. It would be highly prejudicial and harmful to the Company if this information were disclosed to the public, as well as to those who might look to use such information for their own gain. Any public disclosure of such information would be detrimental to the business interests of the Company in its service to customers and would allow unfair access to competitive information. Second, the manner in which the Company compiles and displays the information reflected in the composite financial forecasts and projections constitutes a trade secret and intellectual property of the Company.

23. Applying the Commission's balancing analysis, the privacy interests of the Company outweigh the public interest. If the Company's forward-looking financial forecasts were disclosed, it could injure UES's bargaining position when seeking new sources of capital, which would be a detriment of customers. Also, the Company may have difficulty negotiating for the procurement of necessary services, materials and supplies from vendors in the future at the lowest cost, which would ultimately harm the Company's customers through higher prices for service. Furthermore, the release of such information outside of annual and quarterly reporting cycles required by securities laws also has the potential to cause a detrimental impact to the Company. As such, any public interest in this information is substantially outweighed by the Company's privacy interest and the potential harm that would be caused by release of the information.

24. The Commission has previously found financial projections to be exempt from disclosure. *See, National Grid USA, et al.*, DG 11-040, Order No. 25,370 (May 30, 2012) at 45 (protecting forward-looking financial assumptions related to a potential future rate increase); *Northern Utilities, Inc.*, DG 12-031, Order No. 25,330 (Feb. 6, 2012) at 6 (granting motion for protective order covering pricing and cost information and financial analyses); *Northern Utilities, Inc.*, Order No. 25,289 (Nov. 18, 2011) at 3-4 (protecting internal financial projections developed by the utility); *Unitil Energy Systems, Inc.*, Order No. 25,074 (Feb. 19, 2010) at 3 (protecting UES's financing reports "[b]ecause disclosure could hamper UES' ability to effectively negotiate for new sources of capital, we conclude that UES has an interest in the confidentiality of the information."); *Unitil Corporation and Northern Utilities, Inc.*, Order 25,014 (Sept. 22, 2009) at 5-6, 13-14 (protecting confidential strategies, business analyses, and revenue forecasts); *Unitil Energy Systems, Inc.*, Order No. 24,284 (Feb. 20, 2004) (protecting projections of UES's future sources of capital and estimates of its capital structure).

#### **IV. CONCLUSION**

25. For the above reasons, UES requests that the Commission issue an order protecting the above-described information from public disclosure and prohibiting copying, duplication, dissemination or disclosure of it in any form.

WHEREFORE, UES respectfully requests that the Commission:

- A. Issue an appropriate order that exempts from public disclosure and otherwise protects as requested above the confidentiality of the above-described information designated confidential referenced above; and
- B. Grant such further relief as may be just and appropriate.

Respectfully Submitted,

UNITIL ENERGY SYSTEMS, INC.

By:



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Dated: February 28, 2022.

**CERTIFICATE OF SERVICE**

I hereby certify that on this 28<sup>th</sup> day of February 2022, a copy of the foregoing Motion was served to the parties in this docket.



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Matthew C. Campbell