

THE STATE OF NEW HAMPSHIRE  
BEFORE THE  
PUBLIC UTILITIES COMMISSION

PUBLIC SERVICE COMPANY OF NEW HAMPSHIRE d/b/a EVERSOURCE ENERGY

Docket No. DE 22-030

Petition for Approval of Third Step Adjustment

**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 response to Data Request TS 1-005, including the supplemental response; the Company’s response to Data Request TS 1-005 has been marked for identification as Exhibit 4<sup>1</sup> (the “Confidential Exhibit”).

The Confidential Exhibit provides confidential, competitive pricing information received in response to a request for proposals (“RFP”). The Confidential Exhibit also contains confidential and proprietary information regarding evaluation of the confidential bids received in response to the RFP. Disclosure of this information would limit the Company’s ability to negotiate favorable agreements with third-parties in the future.

**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

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<sup>1</sup> The redacted, public version of the information contained in Exhibit 4 was submitted as Exhibit 3.

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 Confidential Exhibit contains confidential pricing information from third-parties received in response to an RFP and confidential, commercial information setting forth the details of the Company's evaluation of the RFP responses. Protecting this information ensures that the Company is able to negotiate competitive pricing in future solicitations. Release would be detrimental to the business interests of the Company and its third-party vendors.

As explained below in Section III, there is a privacy interest at stake in the information contained in the Confidential Exhibit 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 Confidential Exhibit 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 Confidential Exhibit sets forth confidential pricing information received from third parties in response to an RFP, disclosure of which could harm the Company, its third-party vendors, and the Company's customers. If the Commission were to require the disclosure of this sensitive information, the Company would likely experience substantial difficulty in the future in negotiating successfully with potential vendors. The ability to successfully negotiate pricing is necessary to secure lower costs for customers.

Competitive contract terms, including pricing, must remain confidential to preserve the Company's future negotiating leverage because a lack of confidentiality may discourage future bidders from submitting their lowest bid. Additionally, if the Company's RFP evaluation process were discussed publicly, it would put potential bidders on notice that RFP responses may be disclosed. This would result in a chilling effect on the Company's ability to: (1) receive favorable

bids from third-parties who may fear that their pricing information will be made public; and (2) ensure that bidders are not “gaming” the RFP process to the detriment 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 contract terms and/or RFP evaluation process were disclosed the Company would have less leverage and bargaining power to engage in the competitive solicitation process in the future; this would ultimately harm the Company’s customers. Therefore, it is in the Company’s interest and the public interest to prevent the Company’s negotiated settlement information from being disclosed.

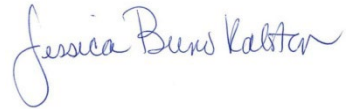
#### **IV. CONCLUSION**

Based on the foregoing, Eversource has a privacy interest at stake that would be invaded by disclosure of the confidential information contained in the Confidential Exhibit. Protection of the confidential information in the Confidential Exhibit 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 contract 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 Confidential Exhibit (i.e., Exhibit 4).

**PUBLIC SERVICE COMPANY OF NEW  
HAMPSHIRE d/b/a EVERSOURCE ENERGY**

By its Attorneys,

A handwritten signature in blue ink that reads "Jessica Buno Ralston". The signature is written in a cursive, flowing style.

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**CERTIFICATE OF SERVICE**

I hereby certify that, on the date written below, I caused the service list in DE 22-030 to be served pursuant to N.H. Code Admin. Rule Puc 203.11.

*Jessica Burns Kalster*

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September 6, 2022