

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

**DE 23-XXX**

**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 Schedule DTN-3 appended to the Testimony of Daniel T. Nawazelski.

As explained below, Schedule DTN-3 contains confidential and commercially sensitive pricing terms of UES’s vendors in support of the Company’s filing in DE 22-073. 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 SCHEDULE DTN-3**

2. Schedule DTN-3 compiles support for the Company's request to recover filing costs pursuant to RSA 374-G and Order No. 26,813, including invoices from vendors Daymark Energy Advisors and Price Waterhouse Cooper. The vendor pricing information contained in Schedule DTN-3 is not public, and any release of the information would be highly prejudicial and harmful to the Company and its vendors. 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 portions of Schedule DTN-3 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.

3. Schedule DTN-3 contains pricing terms that are competitively sensitive and confidential, and the Company has a strong privacy interest at stake relative to those attachments. The Commission should grant Schedule DTN-3 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 pricing terms in Schedule DTN-3 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. 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.

### **III. CONCLUSION**

9. 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:

A handwritten signature in black ink, appearing to read 'P. H. Taylor', with a long horizontal flourish extending to the right.

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Dated: June 16, 2023.

APPENDIX A

Docket No. DE 21-030 Confidential Information

**CERTIFICATE OF SERVICE**

I hereby certify that on this 16<sup>th</sup> day of June 2023, a copy of the foregoing Motion was served to the parties in this docket.

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Patrick H. Taylor