

STATE OF NEW HAMPSHIRE
BEFORE THE
PUBLIC UTILITIES COMMISSION

Docket No. DE 23-091

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

Petition for Adjustment of Stranded Cost Recovery Charge

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, competitively sensitive, and proprietary information submitted in this docket pursuant to N.H. Code Admin. Rule Puc 203.08 and RSA 91-A:5. In particular, the Company requests that the Commission protect from public disclosure certain energy production and pricing and purchase information contained in the responses and attachments to the Company’s responses to Record Requests RR-001 and RR-003 (the “Confidential Attachments”).

As explained below, the Confidential Attachments contain confidential commercial and financial information, subject to a contractual confidentiality provision protecting the disclosure of that information, and therefore the Company has a substantial privacy interest in avoiding such disclosure which outweighs any public interest that may exist, and therefore disclosure should be restricted. In support of this motion, Eversource states as follows:

I. LEGAL STANDARDS

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 must 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 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 then 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 ATTACHMENTS

During the hearing held in this proceeding on January 19, 2024, the Commission issued record requests for information regarding the historical and projected energy production of, and estimated future monthly payments to, the wood-fired electric generation facility owned by Berlin Station, LLC (the “Burgess Plant”), which is the subject of a long-term Amended and Restated Power Purchase Agreement with the Company (the “PPA”). The PPA was approved as being in the public interest by Order No. 25,213 (April 18, 2011) and Order No.

25,239 (June 23, 2011) issued in Docket No. DE 10-195. *See also* Order No. 26,333 (February 18, 2020) (approving first amendment to the PPA) and Order No. 26,705 (October 14, 2022) (approving second amendment to the PPA).

The Company's response to Record Request RR-001 contains certain historical energy production data for the Burgess Plant that is not otherwise publicly available, and the Company's response to Record Request RR-003 contains information regarding energy price adjustments and specific quarterly renewable energy certificate ("REC") purchase quantities. That information is commercially sensitive information that could have an impact on relevant competitive markets, including the markets for wood fuel, wholesale energy, and RECs. The information also comes within the scope of the express confidentiality provisions of PPA Section 26.1, which read as follows:

26.1 Confidentiality. The terms of this Agreement, and any other information exchanged by PSNH and Seller relating to this Agreement, shall not be disclosed to any person not employed or retained by the PSNH or Seller or their Affiliates, except to the extent disclosure is (1) required by law, required to be made to any governmental authority for obtaining any approval, permits and licenses, or making any filing in connection therewith, required by the Interconnection Agreement or delivered by Seller to ISO-NE or to any Person exercising authority over Seller or the Facility for the purpose of maintaining the safety or reliability of the electric system into which the Energy output is delivered, (2) reasonably deemed by the disclosing Party to be required to be disclosed in connection with a dispute between or among the Parties, or the defense of any litigation or dispute, or any financing related to the Facility, (3) otherwise permitted by consent of the other Party, which consent shall not be unreasonably withheld, (4) required to be made in connection with regulatory proceedings (including proceedings relating to FERC, the United States Securities and Exchange Commission or any other federal, state or provincial regulatory agency) or pursuant to the rules or regulations of any stock exchange to which a Party or any of its Affiliates are bound. In the event disclosure is made pursuant to this provision, the Parties shall use reasonable efforts to minimize the scope of any disclosure and have the recipients maintain the confidentiality of any documents or confidential information covered by this provision, including, if appropriate, seeking a protective order or similar mechanism in connection with any disclosure. This provision shall not apply to any information that was or is hereafter in the public domain (except as a result of a breach of this provision). The Parties specifically agree that any press release or other public statement that addresses specific commercial terms of this Agreement shall be mutually agreed upon and the text thereof approved by the Parties.

As explained below in Section III, there is a privacy interest at stake in each of the

Confidential Attachments that would be invaded by public disclosure, and that privacy interest substantially outweighs any public interest in disclosure, including the interest of the public in having access to information regarding the conduct and activities of its government.

Therefore, public disclosure is not warranted and confidential treatment should be granted.

See Electric Distribution Utilities, Order No. 25,811 (September 9, 2015) at 5.

III. DISCUSSION

The Confidential Attachments contain specific information regarding historical energy production from the Burgess Plant that is not otherwise publicly available, as well as specific information regarding contractual price adjustments under the PPA and the quantities of RECs purchased on a quarterly basis, as projected to be made under the PPA for future periods. That information is commercially sensitive and, if publicly known, could affect competitive outcomes in relevant markets, including the markets for biomass fuel, RECs, and wholesale power. The information is also covered by the express confidentiality provisions of the PPA quoted in Section II above. The Company and the Burgess Plant accordingly have strong privacy interests in such information, and disclosure of the confidential information could adversely affect them by virtue of its potential impact in competitive markets, which could also ultimately adversely affect customers should those markets become less competitive.

In addition, a decision requiring the Company to disclose such commercially sensitive and competitively impactful information could put other potential counterparties on notice that their confidential pricing and sales information and energy production levels may be disclosed to the public in the Commission's approval process, inconsistent with the provisions of an express contractual confidentiality section. And that could have an adverse impact on the Company's ability to enter into contracts covering similarly competitively sensitive subject matter as well as any contract where commercially sensitive information is involved.

The Company acknowledges that there may be some public interest in the commercially

sensitive information included in the Confidential Attachments; however, that interest is far outweighed by the potential competitive harm that may result from public disclosure and the interest in maintaining the integrity of the express confidentiality provision in a negotiated PPA that has been duly approved by the Commission as being in the public interest. And any possible public interest in accessing information in the Confidential Attachments is satisfied by the disclosure of the total amounts paid by the Company for its PPA expenses. Eversource only seeks confidential treatment of certain underlying details that reveal specific competitive energy output and negotiated contractual price adjustment terms and REC purchase quantities. Therefore, while the Company requests protective treatment for those details, the public would still have access to the total amounts paid and anticipated to be paid to the Burgess Plant in the context of the SCRC rate adjustment proceeding, as is in the public interest.

IV. CONCLUSION

Based on the foregoing, the Company and its PPA counterparty have privacy interests at stake that would be invaded by disclosure of certain information included in the Confidential Attachments. In addition, the disclosure of that information in the Confidential Attachments is not so necessary to inform the public of the conduct and activities of its government that the privacy interest is outweighed, and therefore disclosure is unwarranted and confidential treatment should be granted. *See Electric Distribution Utilities*, Order No. 25,811 (September 9, 2015) at 5. On balance, the potential harm that would result from public disclosure outweighs the public interest in such disclosure, justifying protection of the specified information from public disclosure.

For the foregoing reasons, the Company respectfully requests that the Commission grant this motion for protective order and confidential treatment.

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

Dated: January 23, 2024

By: /s/ **David K. Wiesner**
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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.

/s/ **David K. Wiesner**
David K. Wiesner

January 23, 2024

