

**STATE OF NEW HAMPSHIRE
PUBLIC UTILITIES COMMISSION**

DE 21-020

EVERSOURCE ENERGY AND CONSOLIDATED COMMUNICATIONS

Joint Petition to Approve Pole Asset Transfer

Order on Motion for Protective Order and Confidential Treatment

O R D E R N O. 26,622

April 29, 2022

This order grants the Motion for Protective Order and Confidential Treatment filed by Public Service Company of New Hampshire d/b/a Eversource Energy (“Eversource”) on April 18, 2022.

I. PROCEDURAL HISTORY

On February 10, 2021, Eversource and Consolidated Communications of Northern New England Company, LLC d/b/a Consolidated Communications (“Consolidated”), filed a petition (“Petition”) requesting that the Commission approve a transfer of interests in utility pole assets from Consolidated to Eversource pursuant to the terms of a Settlement and Pole Asset Purchase Agreement. In addition, the petition requested that the Commission approve Eversource’s use of its Regulatory Reconciliation Adjustment (RRA) mechanism to recover costs associated with its purchase of Consolidated’s interest in utility pole assets.

On March 15, 2022, the Commission held an evidentiary hearing in this docket at which the Commission, at the suggestion of the Department of Energy (“DOE”), made a number of record requests. The second of these requests (“Record Request 2”), pertained to Eversource’s company-wide vegetation management expenses and disputes, such as the one subject to its proposed settlement agreement

with Consolidated. In response to Record Request 2, Eversource filed a supplemental response on April 1, 2022, (“Exhibit 69”), a portion of which it redacted. Exhibit 69 generally describes a settlement that Eversource’s Connecticut affiliate reached with a telecommunications provider regarding vegetation management expenses.

Eversource then filed a motion for protective order and confidential treatment, seeking to prevent disclosure of the redacted portion of Exhibit 69. No objection was filed.

The petition, motions, objections, and other docket filings, other than any information for which confidential treatment is requested of or granted by the Commission, are posted to the Commission’s website at:

<https://www.puc.nh.gov/Regulatory/Docketbk/2021/21-020.html>.

II. POSITIONS OF THE PARTIES

A. Eversource

Eversource argues that the redacted portion of Exhibit 69 contains terms of a negotiated settlement, the disclosure of which would harm Eversource, its affiliate, and their customers. Specifically, it argues that the settlement agreement is subject to a confidentiality clause and that disclosure of this information would negatively impact Eversource and its affiliates’ ability to negotiate successful settlements in the future.

III. COMMISSION ANALYSIS

A. Right-to-Know Law Standard

As a general matter, the Right-to-Know Law provides members of the public with the right to inspect records in the possession of the Commission. *See* RSA 91-A:4, I. The Right-to-Know Law is interpreted by the New Hampshire Supreme Court “with a view toward disclosing the utmost information in order to best effectuate [the]

statutory and constitutional objective of facilitating access to public documents.”

Seacoast Newspapers, Inc. v. City of Portsmouth, 173 N.H. 325, 330 (2020).

“Accordingly, although the statute does not provide for unfettered access to public records,” its provisions are broadly construed in favor of disclosure and its exemptions are interpreted restrictively. *Id.* at 330-31.

“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 based upon the information submitted.” Puc 203.08(a). The exemption that is commonly implicated by motions for confidential treatment is contained in RSA 91-A:5, IV. As relevant here, that paragraph exempts “[r]ecords pertaining to . . . confidential, commercial, or financial information . . . and other files whose disclosure would constitute an invasion of privacy” from public disclosure. *See* RSA 91-A:5, IV. Determining whether the exemption for “confidential, commercial, or financial information” applies requires an “analysis of both whether the information sought is confidential, commercial, or financial information and whether disclosure would constitute an invasion of privacy.” *Union Leader Corp. v. Town of Salem*, 173 N.H. 345, 355 (2020) (“*Union Leader II*”), quoting *Union Leader Corp. v. N.H. Housing Fin. Auth.*, 142 N.H. 540, 552 (1997) (“*Union Leader I*”).

The New Hampshire Supreme Court has not adopted a discrete test to determine whether material is “confidential,” although the Court has found “the standard test employed by the federal courts” instructive. *Union Leader II*, 173 N.H. at 355. Under that standard, to establish that information is sufficiently “confidential” to justify nondisclosure, “the party resisting disclosure must prove that disclosure is likely: (1) to impair the [government]’s ability to obtain necessary information in the

future; or (2) to cause substantial harm to the competitive position of the person from whom the information was obtained.” *Id.* (quotation omitted).

Whether documents are “commercial or financial” depends on the character of the information sought. *Union Leader I*, 142 N.H. at 553. “Information is commercial if it relates to commerce.” *Id.* Thus, “information may qualify as commercial even if the provider’s . . . interest in gathering, processing, and reporting the information is noncommercial.” *Id.* (quotation omitted). “Conversely, not all information generated by a commercial entity is financial or commercial.” *Id.* (citation omitted).

Even if certain records are determined to be confidential, commercial, or financial information, “these categorical exemptions mean not that the information is *per se* exempt, but rather that it is sufficiently private that it must be balanced against the public’s interest in disclosure.” *Id.* Accordingly, whether the disclosure of “confidential, commercial, or financial information” results in an invasion of privacy involves a three-step analysis. *See Union Leader II*, 173 N.H. at 355.

First, we must evaluate whether there is a privacy interest at stake that would be invaded by the disclosure. *Id.* Second, we assess the public’s interest in disclosure. *Id.* Third, we balance the public interest in disclosure against the government’s interest in nondisclosure and the individual’s privacy interest in nondisclosure. *Id.* If no privacy interest is at stake, then the Right-to-Know Law mandates disclosure. *Id.* Further, “whether information is exempt from disclosure because it is private is judged by an objective standard and not by a party’s subjective expectations.” *Id.* The party resisting disclosure bears the burden of proving that the records should not be disclosed. *See Union Leader Corp. v. City of Nashua*, 141 N.H. 473, 476 (1996).

B. Analysis

Eversource seeks confidential treatment for redacted information relating to settlement terms of a disputed claim between its Connecticut affiliate and a telecommunications provider. Eversource contends that disclosure of that information will decrease its bargaining power and increase the bargaining leverage of other parties in future negotiations, thereby discouraging adverse claimants from making concessions in settlement negotiations or agreeing to certain provisions with Eversource and its affiliates.

The terms at issue bear directly on the settlement of claims between Eversource and a telecommunications provider regarding the sharing of costs related to vegetation management. These terms are, therefore, related to commerce. *See Union Leader I*, 142 N.H. at 553. Accordingly, we proceed to the three-part balancing test. *See Union Leader II*, 173 N.H. at 355.

We first evaluate whether there is a privacy interest at stake that would be invaded by the disclosure. *See id.* Eversource seeks to keep the terms of its affiliate's settlement confidential to protect its ability to effectively negotiate settlements and to avoid discouraging adverse claimants from making concessions or agreeing to certain terms in settling claims with it and its affiliates. The Commission recognizes that litigation is expensive and can damage business relationships, and therefore the ability to negotiate and settle claims fairly and effectively is important. The principle of favoring the settlement of litigation is well-established in New Hampshire and many other jurisdictions. *See G2003B, LLC v. Town of Weare*, 153 N.H. 725 at 728 (2006). Thus, Eversource's Connecticut affiliate's expectation that the settlement would remain private is objectively reasonable. *See Union Leader II*, 173 N.H. at 355 (stating that "whether information is exempt from disclosure because it is private is judged by

an objective standard and not by a party's subjective expectations.") Accordingly, Eversource has a heightened privacy interest in the terms of its affiliate's settlement of legal disputes.

We turn next to the public's interest in disclosure. *See id.* The public's interest in disclosure of the settlement terms is negligible in this case. The settlement at issue involves Eversource's out-of-state affiliate, an entity not subject to regulation by this Commission. The dispute in question does not pertain to the provision of public utilities to New Hampshire ratepayers, nor did its outcome have any direct impact on the rates they pay. Eversource provided this information purely to illustrate how its affiliates have handled situations similar to the one it faces in this Docket. Accordingly, the public has a nominal interest in the contents of the claims themselves and virtually no interest in how those claims were settled.

Last, we balance the public interest in disclosure against the government's interest in nondisclosure and the individual's privacy interest in nondisclosure. *See id.* Eversource and its affiliate have a notable privacy interest in the settlement terms because the terms were negotiated under an objectively reasonable expectation that they would remain private. Moreover, disclosure could negatively impact Eversource's and its affiliates' ability to fairly and effectively negotiate settlements going forward. Because the Commission is tasked with securing just and reasonable rates for ratepayers, it shares Eversource's interest in nondisclosure. By contrast, the public has little interest in the settlement terms because neither the claims themselves nor the way in which they were resolved have the potential to impact the public in any meaningful way.

Therefore, we conclude that Eversource's interest in nondisclosure of the terms upon which its Connecticut affiliate settled a legal dispute outweighs the public's

interest in knowing the terms of that settlement. Accordingly, Eversource's motion is GRANTED.

Based upon the foregoing, it is hereby

ORDERED, that Eversource's Motion for Protective Order and Confidential Treatment is GRANTED.

By order of the Public Utilities Commission of New Hampshire this twenty-ninth day of April, 2022.



Daniel C. Goldner
Chairman



Carleton B. Simpson
Commissioner

Service List - Docket Related

Docket#: 21-020

Printed: 4/29/2022

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