

STATE OF NEW HAMPSHIRE

BEFORE THE

PUBLIC UTILITIES COMMISSION

DE 16-241

EVERSOURCE ENERGY

**Petition for Approval of Gas Infrastructure Contract
with Algonquin Gas Transmission, LLC**

**TENNESSEE GAS PIPELINE COMPANY, L.L.C.'S RESPONSE
TO ALGONQUIN'S MOTION FOR PROTECTIVE ORDER AND CONFIDENTIAL
TREATMENT**

NOW COMES Tennessee Gas Pipeline Company, L.L.C. ("Tennessee"), by and through its undersigned attorneys, and, pursuant to N.H. Admin. Rule Puc 203.07(e), responds to the Motion for Protective Order and Confidential Treatment filed by Algonquin Gas Transmission, LLC ("Algonquin") in the above-captioned docket on March 9, 2016 by stating as follows:

1. On February 18, 2016 Eversource Energy filed with the New Hampshire Public Utilities Commission ("Commission") a Petition for Approval of Gas Infrastructure Contract Between Public Service Company of New Hampshire d/b/a Eversource Energy and Algonquin Gas Transmission, LLC ("Petition"). No Order of Notice has yet been issued in this docket.

2. Contemporaneously with its filing of the Petition, Eversource filed a Motion for Protective Order ("Eversource Motion") seeking confidential treatment of the following documents: Attachments EVER-JGD-2 [Confidential], EVER-JMS-4 [Confidential], EVER-JMS-5 [Confidential], EVER-JMS-6 [Confidential], EVER-JMS-7 [Confidential], EVER-JMS-8 [Confidential], EVER-CJG-1 [Confidential], and EVER-LBJ-2 [Confidential], and portions of the prefiled testimony of James G. Daly, James M. Stephens, Christopher J. Goulding and Lois B. Jones which discuss the above-referenced Attachments.

3. On February 29, 2016, Tennessee filed an Objection to Eversource's Motion. Tennessee agrees with Eversource that competitively sensitive pricing and rate data of Aglonquin, Tennessee and all others who bid in response to Eversource's October 23, 2015 RFP should be protected from disclosure to their competitors and to the public. However, Tennessee believes that it should have access to Sussex Economic Advisor's analysis, evaluation and comparison of any information specifically relating to Tennessee, including Sussex's quantitative evaluation of Tennessee's proposal. In addition, Tennessee does not agree that Sussex's analysis, evaluation and comparison of the competing RFP proposals on "qualitative" terms should be protected from disclosure to Tennessee. Tennessee's Objection specifically requests that the Commission order Eversource to make available to Tennessee for its use in this proceeding under the terms of an appropriate non-disclosure agreement the following information: a) all "quantitative" information specifically related to Tennessee and its NED Project; b) any work papers or other documents prepared by any person participating in the analysis, evaluation and comparison of the competing RFP proposals, with appropriate redactions of competitively sensitive information of competing parties; and c) any non-rate and non-contract term "qualitative" information used by Eversource and Sussex to evaluate the proposals. Tennessee Objection, p. 7.

5. On February 29, 2016, the Office of Consumer Advocate ("OCA") filed an Opposition to Eversource's Motion. The OCA's Opposition requests that the Commission deny Eversource's Motion. The OCA asserts that "at the very least the Commission should embark on a meticulous, line-by-line examination of precisely what information Eversource is seeking to shield here from public scrutiny and should exempt from disclosure only that information for

which Eversource can describe with particularity (as opposed to with generalities) a cognizable harm that disclosure would inevitably produce.” OCA Opposition, p. 11.

6. On March 4, 2016, Eversource filed a Motion for Leave to Reply and a Reply to OCA’s Opposition, urging the Commission to reject OCA’s Opposition and to issue a protective order preventing disclosure of the Confidential Attachments and related portions of the confidential testimony. Eversource Motion for Leave to Reply, p. 13.

7. On March 9, 2016, Algonquin filed a Motion for Protective Order and Confidential Treatment (“Algonquin’s Motion”). Algonquin’s Motion seeks protective treatment of the information relating specifically to Algonquin as well as information on the evaluation and analysis of that information contained in the Attachments and testimonies that Eversource has identified as confidential.

8. OCA filed an Opposition to Algonquin’s Motion on March 18, 2016. Among other things, OCA’s Opposition asserts that the public’s interest in disclosure of the information that Eversource and Algonquin seek to protect is extraordinarily high given that Algonquin and an affiliate of Eversource each hold a 40 percent interest in the Access Northeast (“ANE”) Project. OCA also alleges that “the ANE Project is clearly part of the long-term business strategy of Eversource’s ultimate parent company.” *Opposition of the Office of Consumer Advocate to Algonquin Gas Transmission LLC Motion for Protective Order and Confidential Treatment*, ¶ 20.

9. N.H. Code Admin. Rule Puc 203.07(e) requires that objections to motions must be filed within 10 days¹. This rule does not require that a person filing such an objection be a party. Although Tennessee has not yet filed for intervention in this docket, it intends to do so in

¹ Because the deadline for responding to Algonquin’s March 9, 2016 Motion fell on a Saturday (*i.e.*, March 19, 2016), this Response is timely under the Commission’s rules (N.H. Code Admin. Rule Puc 202.03 (b)) which extend the filing deadline to the following business day, *i.e.*, Monday, March 21, 2016.

compliance with whatever schedule the Commission designates in the Order of Notice.

Tennessee is filing this Response in a timely manner to preserve its rights and to present its position on document disclosure in this docket to assist the Commission.

10. For the reasons stated in Tennessee's Objection to Eversource's Motion, which Objection is hereby incorporated by reference in its entirety, Tennessee objects to Algonquin's Motion to the extent that it seeks to prevent Tennessee from obtaining access to information about Tennessee and to information concerning Sussex's evaluation of that information. Tennessee's request for access to any quantitative and qualitative analysis and work papers relating to Tennessee's proposal submitted in response to Eversource's RFP is necessary and appropriate to enable Tennessee to fully and meaningfully participate in this docket. Tennessee must have access to this information in order to verify that its proposal was evaluated correctly by Eversource and Sussex. There is no need to prevent the disclosure of this confidential information to its owner – Tennessee – and there is no basis to claim that providing this information to Tennessee would be an "invasion of privacy" for Eversource.

Similarly, to the extent Sussex's Eversource Landed Cost analysis contains information that is not proprietary to Algonquin, such as a project rate, it should be disclosed to Tennessee. Information relating to gas prices at particular points – and not to rates for the Access Northeast Project – is not confidential, commercial or financial information of any competitor to Tennessee and is important to conducting a thorough analysis of Eversource's selection process. Eversource's disclosure to Tennessee of Tennessee-related quantitative information, and information on Sussex's evaluation of trading data, proposed receipt and delivery points, index trading points, or liquidity assumptions at those points post-pipeline expansion projects, is not

confidential, and in the interest of transparency and permitting a thorough review of the Eversource RFP results, should not be withheld from Tennessee in this case.

For the reasons presented in OCA's Opposition to Algonquin's motion, the Commission Staff, Office of Consumer Advocate and all parties to this docket, including any bidders like Tennessee that were not awarded a capacity contract by Eversource, must be able to fully evaluate the process that led to awarding a contract to Algonquin in order to insure that all applicable affiliate transaction rules were followed.

11. In determining whether confidential, commercial or financial information within the meaning of RSA 91-A:5, IV is exempt from public disclosure, the Commission employs the analysis articulated in *Lambert v. Belknap County Convention*, 157 N.H. 375 (2008) and *Lamy v. N.H. Public Utilities Commission*, 152 N.H. 106 (2005). Under this analysis the Commission first determines "whether the information is confidential, commercial or financial information, *and* whether disclosure would constitute an invasion of privacy." *Unitil Energy Systems, Inc.*, DE 10-055, Order No. 25,214 (April 26, 2011), p. 35. If a privacy interest is implicated, the Commission then balances the asserted private confidential, commercial or financial interest against the public's interest in disclosure in order to determine if disclosure would inform the public of the government's conduct. *Id.* If it does not, then "disclosure is not warranted." *Id.*

12. Eversource claims in its Motion for Protective Order that its privacy interest lies in protecting "competitively sensitive pricing and rate data" so it will not be more difficult for the Company to negotiate in the future with potential contract partners. Algonquin's Motion argues that disclosure of this information could adversely affect Algonquin's business position because competitors would be able to adjust their pricing and contracting terms to the competitive disadvantage of Algonquin. *Algonquin Motion*, ¶ 16.

13. Although Tennessee agrees that competitively sensitive pricing and rate data of Algonquin, Tennessee, and all other participants in the Eversource RFP process should be protected from disclosure to their competitors and to the public², any additional information which Eversource and Algonquin seek to maintain confidential should not be shielded from public view. For example, Tennessee does not agree that Sussex Economic Advisor's analysis, evaluation and comparison of the competing RFP proposals on "qualitative" terms should be protected from disclosure to Tennessee. *See, e.g.*, Direct Testimony of James M. Stephens at 3, Tables 13, 14, 16, 17, 20, and EVER-JMS-5, 6, 7, 8. Tennessee submits that this type of information is neither "confidential, commercial, or financial information," nor would disclosure of this information constitute an "invasion of privacy." *Unitil Energy Systems*, Order No. 25,214, at 35. Part of the basis for Eversource's selection of the Access Northeast Project is the evaluation of "qualitative" evaluation criteria like: project sponsor financial condition; status of local, state, and federal approval processes; development and operating experience; supply risk; service flexibility; construction risk related to schedule; and potential capacity mitigation opportunities. *See* Stephens Testimony at Table 13. Information relating to the qualitative factors is based, not on any bidder's non-public, confidential information, but on seemingly interpreted publicly available information relating to each bidder's project and to the experience and financial condition of each bidder. Thus, it does not appear that there would be any harm to Eversource, or any other RFP bidder, that would outweigh the interest in transparency and disclosure.

² To be clear, Tennessee is not seeking access to any competitor's rate or contract. In addition, Tennessee supports both Eversource's and Algonquin's Motions to the extent that they seek to protect disclosure of Tennessee's rate, price or contract terms to Tennessee's competitors and to the public.

14. In this proceeding, the Commission will be faced with the momentous decision of whether to approve Eversource's proposed long-term contract for gas pipeline capacity. While there may be long-term benefits to New Hampshire consumers to such a contract, the Commission should exercise the utmost diligence in ensuring that Eversource's proposed solution provides the most benefits at the least possible cost. Although the Commission has explained the need for a "competitive evaluation and selection process undertaken by entities unaffiliated with the project sponsors,"³ Eversource is asking the Commission to approve its contract with its affiliate Algonquin based on an RFP process that Eversource conducted to select its affiliated project as the winning bidder. In further contradiction to the Commission's call for a "transparent" selection process, Eversource and its affiliate Algonquin are now resisting disclosure of Eversource's evaluation of the competing proposals, even on non-competitively sensitive "qualitative" factors, to show how Eversource decided to contract only with its affiliate Algonquin.

15. To ensure a robust determination of whether the contract evaluation process meets the Commission's standards and whether the result is in the public interest, the Commission should establish a process whereby all parties to the docket will have access to all relevant information (with the exception that parties who are competitors will not have access to each other's competitively sensitive or confidential information), under an appropriate non-disclosure agreement. The Commission has taken this approach of providing access to confidential information to parties in many other dockets. *See, e.g.,* DG 15-289, Order No. 25,868 (February 19, 2016) where the Commission ordered that a portion of information contained in a response to a data request be made public, provided for the remainder to be confidential, and said that to allow an intervenor "to participate fully in this docket" she could have access to the confidential

³ Order No. 25,860 at 5.

material provided she signed a non-disclosure agreement. *See also*, Order No. 25,332 (February 6, 2012) in DE 08-103 and DE 11-250, where the Commission determined that the identities of unsuccessful bidders and bid scores should be disclosed under the terms of a non-disclosure agreement. *See also*, Order No. 25,174 (November 24, 2010) in DE 10-195, where the Commission determined that pricing obtained by PSNH for RECs, energy and capacity products through competitive RFPs would be important market data for judging the reasonableness of the Laidlaw PPA.

16. To assist the Commission in deciding the confidentiality issues implicated by the pleadings filed thus far by Eversource, Tennessee, the OCA and Algonquin, Tennessee submits the attached spreadsheet which identifies the information to which Tennessee seeks access but which should otherwise be protected from disclosure to the public and Tennessee's competitors who participate in this docket.

17. To the extent that Eversource and Algonquin have requested confidential treatment of information other than that to which Tennessee seeks access, Tennessee assents to confidential treatment of that information for the time being. Because Tennessee does not presently know which portions of the redacted information it will receive, or exactly what that information consists of, Tennessee expressly reserves its rights to modify the positions articulated herein, and to seek rehearing under N.H. Admin. Rule Puc 203.08(i), and reconsideration under N.H. Admin. Rule Puc 203.08(k), of any confidentiality order issued by the Commission in this proceeding.

WHEREFORE, Tennessee respectfully requests that this honorable Commission:

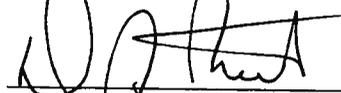
- A. Issue an order granting Tennessee access to the quantitative and qualitative information described herein and identified in the attached spreadsheet;

B. Issue an order protecting information about Tennessee's rates, prices and contract terms from public disclosure and from disclosure to other parties who are competitors of Tennessee; and

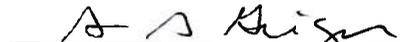
C. Grant such additional relief as it deems appropriate.

Respectfully submitted,

Tennessee Gas Pipeline Company, L.L.C.
By Its Attorneys
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Dated: March 21, 2016

Certificate of Service

I hereby certify that on this day of March, 2016, a copy of the within Response was sent to the Service List via electronic mail.

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Susan S. Geiger