

**STATE OF NEW HAMPSHIRE
BEFOR ETHE
PUBLIC UTILITIES COMMISSION**

DE 19-139

**Public Service Company of New Hampshire d/b/a Eversource Energy
2019 Least Cost Integrated Resource Plan**

**COMMISSION STAFF’S OBJECTION TO PORTIONS OF EVERSOURCE ENERGY’S
MOTION FOR PROTECTIVE ORDER AND CONFIDENTIAL TREATMENT
REGARDING ENERGY INFRASTRUCTURE INFORMATION**

On August 23, 2019, Public Service Company of New Hampshire d/b/a Eversource Energy (“Eversource”) filed a Motion for Protective Order and Confidential Treatment (“Motion”) regarding: (1) the names of certain employees below the manager level; and (2) certain Critical Energy Infrastructure Information (“CEII”), such as transformer ratings and loading levels listed within its 2019 Least Cost Integrated Resource Plan (“LCIRP”) and related attachments.¹ Following discussions during a September 25, 2019 prehearing conference and technical session, Eversource re-submitted the materials at issue in an October 2, 2019 filing, re-asserting its request for confidential treatment of the revised filing through an October 2, 2019 cover letter.² New Hampshire Public Utilities Commission Staff (“Staff”) hereby objects to Eversource’s request for confidential treatment of bulk substation status, transformer ratings, and transformer loading information. In support of its objection, Staff states as follows:

¹ Staff takes no position on the request for confidential treatment of identifying information related to certain employees below the manager level.

² Eversource’s re-submission and related cover-letter requesting confidential treatment were filed on October 2, 2019. Puc 203.07 requires objections to a motion to be filed within 10 days of the date on which the motion is filed unless the deadline falls on a day during which the Commission’s office is closed, in which case the event period runs until the end of the following business day. In this case, the next following business day is October 14, 2019. If the Commission finds that the re-submission of the document does not begin a re-tolling of Puc 203.07, then Staff requests a waiver of that rule under Puc 201.05.

1. On August 23, 2019, Eversource filed a petition for approval of its 2019 LCIRP with the Commission. Eversource’s filing includes numerous attachments examining the need for projected electric system investments and alternatives to those investments. Those attachments include “information on transformer ratings or loading information, and information about the status of bulk substations,” for which Eversource requests confidential treatment. Motion at 3.
2. Eversource’s primary justification for its request for confidential treatment of bulk substation status, transformer rating, and transformer loading information is that such information is protected from disclosure under federal law as CEII,³ suggesting that “FERC imposes a duty on those entities creating or maintaining CEII to protect that information from unauthorized disclosure.” Motion at 3 (citing 18 CFR § 388.113(h)).
3. Eversource’s claim that this class of information is covered by CEII is either mistaken, or it has repeatedly failed to protect that information from disclosure. An internet search for the information the Company asserts is CEII reveals several instances where the Company has either directly or indirectly disclosed that class of information, and in many cases, for exactly those transformers or substations at issue in the instant petition. For example, on an annual basis Eversource files a Local System Plan with ISO-New England’s Planning Advisory Committee that identifies bulk substation projects the

³ 18 CFR § 388.113(c)(2) defines CEII as “specific engineering, vulnerability, or detailed design information about proposed or existing critical infrastructure that: (i) Relates details about the production, generation, transportation, transmission, or distribution of energy; (ii) Could be useful to a person in planning an attack on critical infrastructure; (iii) Is exempt from mandatory disclosure under the Freedom of Information Act, 5 U.S.C. 552; and (iv) Does not simply give the general location of the critical infrastructure.” 16 U.S.C. § 824 limits the reach of FERC’s regulation of CEII only to that which is within its jurisdiction under the Federal Power Act. In characterizing certain equipment for which it requests confidential treatment as relating to the bulk electric system, and therefore within the jurisdiction of FERC, Eversource impliedly borrows from the [North American Electric Reliability Council Bulk Electric System Definition Reference Document](#), which defines bulk electric system as those facilities beyond a bright line of 100kV or higher.

Company is planning over the next five years, including the ratings of any transformers the Company is considering for replacement, and an identification of whether their replacement is necessitated by a projected overload condition.⁴ These are the same ratings the Company is seeking to classify as CEII in the instant petition. Similarly, Until's 2016 LCIRP contains extensive discussion of Eversource's Garvins and Oak Hill substation transformer loading and forecasted loading criteria violations.⁵ This is the same loading criteria information the Company is seeking to classify as CEII in the instant petition. In Connecticut, Eversource has released information relating to actual and projected peak demand of its Cos Cob bulk substation.⁶ The Commission should deny Eversource's request for confidential treatment of such information because that class of information and, in many instances, that specific information, has already been released into the public domain. *See Public Service Co. of N.H.*, Order No. 26,064 at 5 (October 17, 2017) (stating that decision to deny company's motion for confidential treatment was influenced by fact information could be easily derived from publicly known data).

4. Eversource also asserts that information relating to transformer loading or ratings is exempted from disclosure because “[p]rotecting from disclosure certain information

⁴ Eversource 2018 Local System Plan. (Identifying several projects including: (1) replacement of three 115/34.5-kV, 20 MVA transformers at Webster Substation with two 115/34.5-kV, 44.8 MVA transformers; and (2) Replacement of a 20 MVA transformer with 62.5 MVA transformer at Pemigewasset substation to address overload condition). Accessed October 13, 2019. Page 23-26. Available at: <https://www.eversource.com/content/docs/default-source/Transmission/local-system-plan.pdf>

⁵ See Generally, Until 2016 Least Cost Integrated Resource Plan. Appendices C-J. Available at: https://www.puc.nh.gov/Regulatory/Docketbk/2016/16-463/INITIAL%20FILING%20-%20PETITION/16-463_2016-04-19_UES_ATT_2016_LEAST_COST_INTEGRATED_RESOURCE_PLAN.PDF

⁶ Connecticut Siting Council. Docket No. 461. (April 11, 2016) Accessed October 13, 2019. Page 9. Available at: http://www.ct.gov/csc/lib/csc/pendingproceeds/docket_461/461eversourcepfof_withappendixa.pdf

about Eversource's electric system... is consistent with the requirements of Eversource's [physical security plan]." Under Puc 306.10, each electric utility is required to "develop, maintain and follow a written physical security plan designed to protect the utility's critical equipment and facilities from breaches of security." The Commission's requirement that the Company develop, maintain, and follow a written physical security plan does not control whether certain information relating to equipment or facilities within that plan should be confidential. Puc 306.10(a) defines critical equipment and facilities as "infrastructure without which the utility could not provide safe and reliable service to its customers." Such a definition of "critical equipment and facilities" could be construed to apply to nearly *all* utility assets and, if accepting Eversource's proffered interpretation of the rule, a broad swath of information relating to those assets could be bootstrapped into the realm of confidentiality simply through its inclusion in a utility's physical security plan.

5. Eversource also asserts that the records at issue fall within the emergency function exemption of New Hampshire's right-to-know law. RSA 91-A:5 RSA 91-A:5, VI exempts from disclosure "[r]ecords... relating to the preparation for and the carrying out of all emergency functions... developed by local or state safety officials that are directly intended to thwart a deliberate act that is intended to result in widespread or severe damage to property or widespread injury or loss of life." Within that context, the New Hampshire Supreme Court has prescribed a framework for what records held by the Commission should be exempt from disclosure under RSA 91-A:5, instructing agencies to narrowly interpret exemptions and apply a balancing test to determine whether "the asserted private, confidential, commercial or financial interest is outweighed by "the

public's interest in disclosure." *Union Leader Corporation v. New Hampshire Housing Finance Authority*, 142 N.H. 540, 552-533 (1997).

6. Staff disagrees with the Company that the information relating to transformer ratings, transformer loading, or the status of bulk substations falls within the emergency function exemption to RSA 91-A. As noted above, that class of information has been previously and regularly disclosed before this Commission and similar regulatory authorities in other jurisdictions. Further, Eversource's motion fails set forth any specific harm that might occur as a result of publishing such information, as required by Puc 203.08(b). The lack of a detailed statement of harm indicates that the information at issue is too far attenuated from potentially foreseeable sources of harm to outweigh the public's interest in disclosure.
7. Even if the Commission were to find a confidentiality interest relating to the emergency function of government, in the instant case, the public's interest in disclosure outweighs that interest. Substation transformer nameplate capacity, loading information, and status often form a significant portion of the evidentiary record relating to contentious discussions at the Commission regarding the prudence of capacity or reliability-related capital investments. In particular, such information may help non-intervening members of the public understand whether an investment or class of investments is justified, or to determine whether energy efficiency, demand response, or other distributed energy resources might serve as less-costly alternatives to that utility investment.
8. In addition, the public has a strong interest in disclosure of transformer nameplate capacity, loading information, and bulk substation status because the industry-wide trend has been toward more rather than less disclosure of that class of information. For

example, in the National Grid Rhode Island analogue to the above-cited Eversource Local System Plan, National Grid describes several bulk substation projects it plans to invest in over a period of five years.⁷ Those same bulk substations, their status, transformer nameplate capacities, and projected loading are all described in detail on Rhode Island’s system data portal.⁸ Similar portals have been adopted in other states, including California and New York.⁹ This level of system planning transparency, moreover, is foundational to the integrated distribution system planning envisioned in Staff’s January 2019 Recommendation on Grid Modernization.¹⁰ Attachment 1 to this Objection provides a screenshot of National Grid Rhode Island’s System Data Portal identifying this information.

9. Because bulk substation status, transformer ratings, and loading information are not deemed confidential information under federal law or Commission rules, and the Company has not articulated a detailed harm that outweighs the public’s strong interest in disclosure of such information, it should be available to the public and the Motion should be denied as to that information.

⁷ National Grid Rhode Island. Local System Plan. Pages 20-23. Accessed: October 14, 2019. Available at: https://www9.nationalgridus.com/oasis/non_html/pdf/National%20Grid%20Local%20System%20Plan%202018.pdf

⁸ National Grid Rhode Island. System Data Portal. Accessed: October 13, 2019. Available at: <https://ngrid.apps.esri.com/NGSysDataPortal/RI/index.html>. Similar portals have been adopted in California, New York, and elsewhere.

⁹ See, e.g., National Grid New York System Data Portal. Accessed: October 13, 2019. Available at: <https://ngrid.portal.esri.com/portal/home/signin.html?returnUrl=https%3A//ngrid.portal.esri.com/SystemDataPortal/NY/index.html>

¹⁰ New Hampshire Public Utilities Commission Staff Recommendation on Grid Modernization, at 61. (Describing NWA procurement best practices as including “provi[sion] of useful customer and system data.”) Available at: https://www.puc.nh.gov/Regulatory/Docketbk/2015/15-296/LETTERS-MEMOS-TARIFFS/15-296_2019-02-12_STAFF_REPORT_AND_RECOMMENDATION.PDF

WHEREFORE, for the reasons set forth herein, Staff respectfully requests that the Commission deny portions of Eversource's Motion for Protective Order and Confidential Treatment relating to information on bulk substation status, transformer ratings or loading information and require:

- 1) The public disclosure of the bulk substation transformer ratings and loading information at issue in this docket; and
- 2) The public disclosure of any bulk substation status information for which the Company has not provided a detailed harm that would flow from the release of that specific information.

Respectfully submitted,

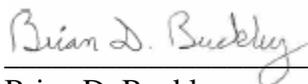
Staff of the Public Utilities Commission

By its Attorney,



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I hereby certify that, on October 14, 2019, a copy of this Objection has been hand delivered to the Commission and has been sent electronically to the Service List in this matter.



Brian D. Buckley