

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

Public Service Company of New Hampshire d/b/a Eversource Energy

**Docket No. DE 20-005
Audit of Divestiture-Related Costs**

MOTION FOR CONFIDENTIAL TREATMENT AND PROTECTIVE ORDER

Public Service Company of New Hampshire d/b/a Eversource Energy, (“PSNH” or the “Company”) respectfully requests, pursuant to N.H. Code Admin. Rules Puc § 203.08 and RSA 91-A:5,IV, that the New Hampshire Public Utilities Commission (“Commission”) grant protection from public disclosure of certain confidential and proprietary information provided by the Company in this docket. Specifically, PSNH requests that the Commission issue an order requiring confidential treatment for confidential, commercial, and financial information provided by the Company to the Commission Staff and OCA in the course of the discovery process, specifically: Audit 1-015, Staff 1-015, and Staff 1-046 (the “Confidential Information”). In support of this motion, the Company states the following:

1. The Commission issued an Order of Notice on January 22, 2020 opening the instant docket to determine the “full amount of prudently incurred stranded costs resulting from divestiture [of PSNH’s thermal and hydro generation assets]. . . as required by RSA Chapter 374-F, RSA Chapter 369-A, RSA Chapter 369-B, RSA 378:7, and RSA 378:28”. The Order of Notice was issued in response to a Motion for Commencement of Audit of Divestiture-Related Costs filed by PSNH on November 27, 2019 (“Audit Motion”) requesting Commission Staff conduct an audit required by Commission Order No. 26,099 (“Finance Order”) followed by an adjudication on the audit findings in order for the Commission to adjust the total amount of

divestiture-related costs recoverable through the Stranded Cost Recovery Charge. Finance Order at 56. The Audit Motion states PSNH actually incurred amounts totaling \$18,383,609 over that which was recovered through the issuance of Rate Reduction Bonds (“RRBs”) and is therefore seeking cost recovery for the unrecovered difference. Audit Motion at 6-7.

2. Over the course of the Staff audit and docket process, PSNH provided responses to a total of 132 audit and discovery requests issued by Staff. Among the responses to those requests, three contained confidential and proprietary information. Rather than seek confidential treatment for each response at the time of submittal, the Company provided the Confidential Information accompanied by written statements of intent to file a motion pursuant to Puc 203.08(d).
3. 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 shall 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).
4. 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 personnel . . . 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 at 5 (September 9, 2015). If both steps are met, the Commission balances the privacy interest with the public interest to determine if disclosure is appropriate. *Public Service Company of New Hampshire*, Order 25,167 at 3-4 (November 9, 2010).

5. The Confidential Information includes the following: RFP bid summaries and analyses of bid terms for selection of divestiture-related legal services, as well as cost allocation methodology for stranded O&M costs provided to Audit Staff on a confidential basis (Audit 1-015); internal corporate management documents and presentations for Divestiture Executive Committee meetings, Senior Team meetings and subsidiary board meetings all with detailed information about the auction process and key elements of top bidders, RFP analysis of the bidders for the Schiller Mercury Removal work, and a detailed update of the Schiller Mercury Removal work itself. (Staff 1-015); a copy of a contract and details relating thereto for the disposal of

gypsum created as a by-product of the Merrimack Scrubber between the Company and its contractor (Staff 1-046).

6. The Company has a substantial privacy interest in the Confidential Information as it contains commercially and financially sensitive materials of the Company and its contractors. The Company takes all reasonable measure to keep RFP bids, evaluations, contract award terms and proprietary contractor work product out of the public domain. The release of any of these types of information would seriously undermine the Company's negotiating position in the market in the future, which would in turn jeopardize the ability of the Company to ensure that customers are being served by the lowest-cost option from the widest possible array of contractors and service providers. The Commission has recognized this concern and has previously granted confidential treatment to information that, if disclosed, will put the moving party at a disadvantage in future negotiations. *See e.g., Abenaki Water Co. Inc.*, Order No. 25,945 at 7 (September 26, 2016); *National Grid plc, et al.*, Order No. 24,777 at 86 (July 12, 2007) ("If public disclosure of confidential, commercial or financial information would harm the competitive position of the person from whom the information was obtained, the balance would tend to tip in favor of non-disclosure"). Furthermore, the release of the confidential pricing information could result in contractors determining not to bid on the Company's future requests for proposals ("RFPs") because of the competitive disadvantages that might arise from potential public disclosure. *See, e.g., Liberty Utilities (Granite State Electric) Corp. d/b/a Liberty Utilities*, Order No. 26,209 at 43-44 (January 17, 2019) (finding that vendor pricing information provided to Liberty was confidential because, in part, the

vendor considered the information highly confidential and competitively sensitive).

7. The second criterion of the Commission's analysis is whether there is a public interest in disclosure. This motion seeks protection of only three of 132 responses to audit and discovery requests. Additionally Staff's final audit report, the Settlement Agreement between Staff and the Company, and Company testimony and attachments will all be submitted for the public record as exhibits for the hearing in this docket. Protecting the Confidential Information does not impinge upon the ability to fully understand the Company's divestiture-related costs and proposed Settlement Agreement and is not necessary to inform the public of the conduct and activities of its government.
8. As to the final requirement of the Commission's analysis, balancing the relevant public and private interests, there is strong potential that it would be commercially damaging to the Company, the various contractors mentioned in the Confidential Information, and unsuccessful bidders if the confidential and commercially sensitive information were disclosed in the public record. The substantial public interest in obtaining the lowest possible cost through competitive RFPs and a confidential negotiation process outweighs the relatively minimal interest in public disclosure of such limited information. Ruling in favor of this balance and granting this motion ultimately redounds benefits customers. *See EnergyNorth Natural Gas, Inc.*, Order No. 25,064 (January 15, 2010).
9. Based on the foregoing, PSNH affirms the existence of privacy interests at stake that would be invaded by disclosure of the Confidential Information. Conversely, given the substantial evidentiary record in this docket, the disclosure of the Confidential

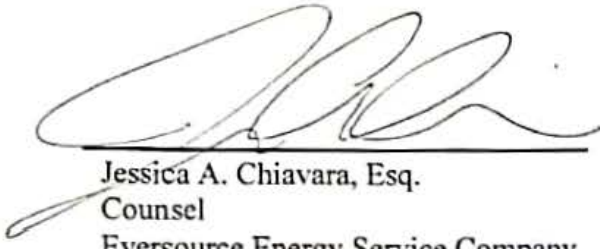
Information constitutes a relatively small subset of such record, such disclosure is not necessary to inform the public of the conduct and activities of its government and would not serve that purpose, and therefore disclosure is not warranted. *See Electric Distribution Utilities*, Order No. 25,811 at 5 (September 9, 2015). On balance, the harm that would result from public disclosure is substantially outweighed by the need for confidential treatment.

WHEREFORE, the Company respectfully requests that the Commission grant this Motion and issue an appropriate protective order.

Respectfully submitted this 10th day of November 2020.

PUBLIC SERVICE COMPANY OF NEW HAMPSHIRE d/b/a Eversource Energy

By its Attorney,

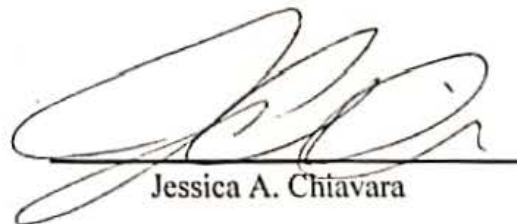


Jessica A. Chiavara, Esq.
Counsel
Eversource Energy Service Company
780 N. Commercial Street
Manchester, NH 03101
Cell: 315-313-3264
Jessica.chiavara@eversource.com

CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing document upon each person designated on the official service list in this proceeding.

Dated at Manchester, New Hampshire this 10th day of November 2020.



Jessica A. Chiavara