

**STATE OF NEW HAMPSHIRE
PUBLIC UTILITIES COMMISSION**

DE 19-139

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

Motion for Protective Order and Confidential Treatment

**Order Granting in Part and Denying in Part Eversource's
Motion for Confidential Treatment and Protective Order**

O R D E R N O. 26,350

April 22, 2020

This order grants a request by Eversource for confidential treatment of personnel information and bulk substation one-line diagrams and maps, and denies a request for confidential treatment of bulk substation transformer rating and loading information. The Commission also directs Eversource to file a revised request identifying the basis under which it seeks confidential treatment of bulk substation status information.

The motion and other docket filings, except any information for which confidential treatment is requested of or granted by the Commission, are posted on the Commission's website at <http://www.puc.state.nh.us/Regulatory/Docketbk/2019/19-139.html>.

I. PROCEDURAL HISTORY

On August 23, 2019, Public Service Company of New Hampshire d/b/a Eversource Energy (Eversource or the Company) filed with the Commission a petition for approval of its 2019 Least Cost Integrated Resource Plan (LCIRP). The Office of the Consumer Advocate (OCA) filed a participation letter on August 27. The petition included Eversource's 2019 LCIRP, multiple attachments, and a motion for confidential treatment and protective order relating to information within those attachments. At the September 25 prehearing conference,

both Commission Staff (Staff) and the OCA expressed reservations related to the confidential treatment requested. Eversource agreed to discuss an approach to resolve those reservations at the technical session that followed. Transcript of September 25, 2019 Hearing (Tr.) at 7-9, 12-14, 15.

On October 2, 2019, Eversource filed a revised copy of the attachments at issue with an accompanying cover letter requesting confidential treatment of the revised attachments. The revised attachments included certain information that had been removed entirely in the previously filed version, but made no further alterations to the document. In the cover letter accompanying its October 2 filing, Eversource claimed a good faith basis for removing the maps and one-line diagrams from Attachments I, L, M, N, and R, but “determined to resubmit the above-referenced Attachments with the material included.” October 2 Cover Letter at 1. Staff filed an objection to Eversource’s request for confidential treatment and protective order on October 14.

II. POSITIONS

A. Eversource

Eversource seeks confidential treatment of two types of information relating to: (1) system data, including “substation one-line diagrams or substation maps relating to bulk substations, as well as information on transformer rating or loading information, and information about the status of bulk substations;” and (2) personnel information including “the names of employees below the manager level.” Motion at ¶¶ 4, 7.

Eversource asserts that the bulk electric system data requires confidential treatment for three reasons. First, the Company asserts this information is protected from disclosure under federal law as Critical Energy Infrastructure Information (CEII). According to Eversource, the

Federal Energy Regulatory Commission (FERC) “imposes a duty on those entities creating or maintaining CEII to protect that information from unauthorized disclosure.” Motion at ¶¶ 3-4 (citing 18 CFR § 388.113(h)). Second, Eversource states that confidential treatment of the bulk electric system data would be consistent with the written physical security plan developed by Eversource pursuant to New Hampshire Code of Administrative Rules, Puc 306.10(a). Motion at ¶ 5. Third, Eversource claims that the emergency function exception to New Hampshire’s Right-to-Know law applies to this information. Motion at ¶ 6, (citing RSA 91-A:5, VI).

The Company asserts that the personnel data in the filing requires confidential treatment because the named personnel below the managerial level have a privacy interest at stake, and disclosure of those names “would do nothing to further any public interest in the activities of the Commission.” Motion at ¶ 7.

B. OCA

At the prehearing conference, the OCA opined that with respect to certain personnel information, “employees of Eversource do not have any privacy interest in the fact that they are employees of Eversource.” Tr. at 7-8. The OCA also asserted the right to receive and review an unredacted version of certain information that had been removed from Eversource’s initial confidential filing. Tr. at 8-9.

C. Staff

Staff argues Eversource is mistaken that transformer ratings, loading, and bulk substation information is CEII and protected from public disclosure under federal law.¹ Staff cites three situations in which bulk electric system data has either been previously, or is consistently, disclosed by the Company. Staff Objection at ¶ 3.

¹ Staff did not object to Eversource’s request for confidential treatment of bulk substation one-line diagrams or maps.

First, a presentation summarizing Eversource's Local System Plan is posted annually to the Planning Advisory Committee section of ISO New England's website.² In those publically available presentations, Eversource "identifies bulk substation projects the 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." Second, Unitil's 2016 LCIRP contains discussion of Eversource's Garvins and Oak Hill substation transformer loading and forecasted loading criteria violations. Third, Eversource has released information relating to actual and projected peak demand of its Cos Cob bulk substation.

Staff argues Eversource's physical security plan "does not control whether certain information relating to equipment or facilities within that plan should be confidential." Staff Objection at ¶ 4. Staff posits that such an interpretation of New Hampshire Code of Administrative Rules, Puc 306.10, would place broad swaths of information into the realm of confidentiality through inclusion in a physical security plan. *Id.*

Staff contends that Eversource's request for confidential treatment of this type of information pursuant to the emergency function exception of RSA 91-A should be rejected for two reasons. Staff Objection at ¶ 5-8. First, Staff disagrees that this information is covered by the emergency function exception because the Company has failed to provide a detailed statement of harm that might result from such disclosure, and because the Company has disclosed this same type of information elsewhere. Second, Staff believes that even if the emergency function exception were found to apply, the public's interest in disclosure outweighs the potential harm.

² See <https://www.iso-ne.com/committees/planning/planning-advisory/>.

Staff asserts that with respect to prudency reviews associated with capital investment, “substation transformer nameplate capacity, loading information, and status often form a significant portion of the evidentiary record.” Staff suggests disclosure of this type of information would help non-intervening members of the public understand whether an investment is justified or could instead be displaced by a less-costly alternative.

Staff also cites an industry-wide trend towards greater disclosure of such information in other jurisdictions, and Staff’s own recommendations for distribution system planning transparency included in its January 2019 Grid Modernization Recommendation as further evidence that the public’s interest in disclosure outweighs any potential harm that may result.

Staff took no position on the request for confidential treatment relating to certain employees below the manager level. Staff Objection at note 1.

III. COMMISSION ANALYSIS

Eversource moved for an order pursuant to the New Hampshire Code of Administrative Rules, Puc 203.08 to protect certain bulk electric system data including “substation one-line diagrams or substation maps relating to bulk substations, as well as information on transformer rating or loading information, and information about the status of bulk substations;” and personnel information including “the names of employees below the manager level.” Motion at ¶¶ 4, 7.

A. Bulk Electric System Data

Eversource asserts that the bulk electric system data relating to substation one-line diagrams and maps, transformer rating or loading information, and information about the status of bulk substations is CEII and as such is protected from disclosure under federal law. Second, according to Eversource, Puc 306.10(a) requires each utility to develop a written physical

security plan designed to protect the utility's critical equipment and facilities from breaches of security. Eversource claims that disclosure of the information would undermine the intent of Eversource's physical security plan and the Commission's rule. Eversource further argues that the information at issue would be exempt from disclosure under the emergency function exception included in RSA 91-A.

No party objected to Eversource's request for confidential treatment of bulk substation one-line diagrams or maps.

Bulk Electric System Data and CEII

Eversource asserts that the bulk electric system data at issue is CEII and exempt from mandatory disclosure under the Freedom of Information Act. According to Eversource, FERC "imposes a duty on those entities creating or maintaining CEII to protect that information from unauthorized disclosure." Motion at ¶ 3-4. We do not find that the information at issue is CEII.

FERC 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." 18 CFR § 388.113(c)(2). FERC imposes a duty on those entities creating or maintaining CEII to protect that information from unauthorized disclosure. 18 CFR § 388.113(h).

Review of the CEII regulations reveals a narrower application of the protection than suggested by Eversource. The scope of CEII protection under federal law is detailed in 18 CFR § 388.113(a), which states "This section governs the procedures for submitting, designating,

handling, sharing, and disseminating Critical Energy/Electric Infrastructure Information (CEII) *submitted to or generated by the [Federal Energy Regulatory] Commission*” (emphasis added). Similarly, the definition of CEII is limited to “information *generated by or provided to the [Federal Energy Regulatory] Commission... that is designated* as critical electric infrastructure information by the Commission or the Secretary of the Department of Energy pursuant to section 215(A)(d) of the Federal Power Act.” 18 CFR § 388.113(c)(1) (emphasis added). Eversource does not cite any instances where FERC has designated the information at issue to be CEII. The Company merely asserts that it “understands” the information at issue represents CEII and that the information “[i]n Eversource’s assessment... is entitled to protection under federal law.”

Because CEII protection applies only to information submitted to or generated by FERC that has been designated to be CEII, we cannot find on the record before us that any of the information at issue constitutes CEII that would be exempt from public disclosure.

Bulk Electric System Data and Puc 306.10

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.” 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.” It does not follow, however, that any and all information relating to critical equipment and facilities must be withheld from public view, and Eversource has not demonstrated that any of the information at issue would subject any of its critical equipment and facilities to physical security risk. We do not find inclusion of bulk electric system infrastructure within a utility’s physical security plan to be determinative of whether information related to that infrastructure should be exempt from public disclosure.

Bulk Electric System Data and RSA 91-A:5, VI

Eversource asserts that the bulk electric system data at issue falls within the emergency function exception of RSA 91-A, and is, therefore, exempt from disclosure. We disagree.

RSA 91-A:5, VI exempts from disclosure:

Records pertaining to matters relating to the preparation for and the carrying out of all emergency functions, including training to carry out such 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.

The party seeking protection of the information in question has the burden of proving that confidentiality and privacy interests outweigh the public's interest in disclosure. *Grafton County Attorney's Office v. Canner*, 169 N.H. 319, 322 (2016). Puc 203.08(b) requires a motion for confidential treatment to include, among other things, a "[s]pecific reference to the statutory or common law support for confidentiality" and a "detailed statement of the harm that would result from disclosure."

Eversource provided no explanation of how the data at issue relates to the carrying out of an emergency function beyond the unsupported assertion that "disclosure of those records would run directly counter to the exemption," identified in RSA 91-A:5, VI. Motion at ¶ 6. In light of Eversource's lack of support for its assertion that the bulk electric system data at issue relates to the preparation for and the carrying out of emergency functions, we find that it does not fall within the emergency function exception of 91-A.

Bulk Electric System Data and RSA 91-A:5, IV

In asserting that confidential treatment of the bulk electric system data at issue would be consistent with its physical security plan, the purpose of which is to protect the utility's critical equipment and facilities from breaches of security, Eversource alludes to risks of disclosure associated with system security. Motion at ¶ 5, citing Puc 306.10(a).

Under RSA 91-A:5, IV, records “pertaining to internal personnel practices; confidential, commercial, or financial information ... and other files whose disclosure would constitute invasion of privacy” are exempt from disclosure. In determining whether documents are entitled to an exemption from disclosure under RSA 91-A, 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 whether there is a privacy interest at stake. The second step is to determine whether there is a public interest in disclosure. If both a privacy interest and public interest are identified, the third step of the Commission’s analysis is to balance the asserted privacy interest with the public’s interest in disclosure.

The Commission has protected infrastructure information from disclosure pursuant to RSA 91-A:5, IV on security grounds when the information contained sufficient detail to constitute a security risk and that security risk outweighed the public’s interest in disclosure. For example, the Commission, in *Unitil Energy Systems, Inc.*, Order No. 24,677 (October 6, 2006), granted the company’s motion for confidential treatment of information regarding its electric distribution system that “disclose detailed information as to how the distribution system is designed and configured, revealing key components and their locations [including]... planning information as to how the system may be configured in the near future.” *Id.* at 14-15, 23.

In alluding to security risks associated with disclosure of the bulk electric system data at issue, Eversource has presented a cognizable interest in confidential treatment. We agree that disclosure of bulk substation one-line diagrams and maps, rating or loading information, and bulk substation status information could present security risks, but believe those risks will vary

based on the type of information at issue. We also recognize the public's interest in disclosure may vary according to the type of information for which Eversource has requested confidential treatment. In all cases, "informing the citizenry about the activities of their government," would form the basis for the public's interest in disclosure. *Union Leader Corp. v. City of Nashua*, 141 N.H. 473, 477 (1996). For some types of information, the public's interest in disclosure would be greater because that information would have greater bearing on whether the Commission is fulfilling its mission of ensuring that customers of regulated utilities receive safe, adequate, and reliable service at just and reasonable rates. Below we identify and balance the security risks associated with disclosure of the information types in the Eversource motion against the public's interest in disclosure of that information.

1. Bulk Substation One-line Diagrams and Maps

Bulk substation one-line diagrams and maps depict the electrical connectivity or specific locations of the physical infrastructure associated with the electric system including the configuration of wires and transformers, as well as other related information located at a bulk substation. *See*, Eversource Revised Attachment M, Page 5 of 7; *see also*, Eversource Revised Attachment R, Page 6 of 7. The number of customers fed by an asset on the bulk electric system, and accessible nature of bulk electric system assets located at an outdoor bulk substation, leaves this infrastructure uniquely vulnerable to security risks associated with a map of their configuration. On balance, the public's interest in disclosure of this information is minimal because substation configurations represented by maps and one-line diagrams are rarely an issue of contention before the Commission. Therefore, they are not essential for informing the citizenry about the activities of the Commission.

Based on the significant security risk associated with disclosure of bulk substation one-line diagrams and maps, and minimal public interest in disclosure, we grant Eversource's request for confidential treatment of that information.

2. Transformer Rating and Loading Information

A transformer is a device that transfers electricity from one circuit to another. Eversource does not specify what security risks may be associated with public disclosure of transformer rating and loading information, and we do not foresee material risks to security of the grid that would result from release of such information. Staff's objection cites several different instances in which Eversource and other utilities, in New Hampshire and elsewhere, regularly release information to the public relating to bulk electric system transformer rating or loading. Staff Objection at ¶ 3; *See also, Public Service Co. of N.H.*, Order No. 26,064 at 5 (October 17, 2017) (stating decision to deny company's motion for confidential treatment was influenced by the fact that information could be easily derived from publicly known data).

The need for transformer replacement based on loading and rating data is often a material point of contention when a utility requests recovery for its investments during a rate case. Staff Objection at ¶ 7. Staff suggests that such information may help 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.

We agree that public access to this information is essential for informing the citizenry about the activities of the Commission.

Based on the discussion above, we find that the public's interest in disclosure of transformer loading and rating information outweighs any identified security risk associated with

disclosure, and therefore, we deny Eversource's request for confidential treatment of that information.

3. Bulk Substation Status Information.

Eversource does not specify what it considers substation "status" information. Certain substation status information, such as an identified security vulnerability that relates to neighboring properties, may have a very high security risk associated with its disclosure. Other substation status information, such as age, asset condition, transformer names, substation locations, substation load shape, or the number of customers a substation serves, would have a much lower security risk associated with its disclosure. The public's interest in disclosure of each of these types of information may vary. Eversource's failure to specify which type of information it is seeking to protect as substation status information leaves the Commission unable to balance security risks associated with disclosure against the public's interest in disclosure.

Based on the discussion above, we direct the Company to file a revised request that: (1) identifies the type of substation status information for which it seeks confidential treatment; and (2) provides a detailed statement of harm associated with each type of substation status information, consistent with Puc 203.08(b)(3).

B. Personnel Information

Eversource argues that its non-management employees have a privacy interest in not having their names disclosed and that the public's interest in disclosure "is effectively non-existent." Motion at ¶ 7.

In this case, we find that the employees for which Eversource has sought protection have only a minimal privacy interest in not having their names disclosed to the public in this

proceeding. The purpose of RSA 91-A, however, is to ensure the public access to information that informs it about the conduct and activities of government agencies or “public bodies,” such as the Commission. *See Reid v. N.H. Attorney Gen.*, 169 N.H. 509, 532 (2016); RSA 91-A:1-a, VI (defining “public body”). Disclosure of information pursuant to RSA 91-A is not warranted when it “does not serve the purpose of informing the citizenry about the activities of their government.” *Union Leader Corp. v. City of Nashua*, 141 N.H. 473, 477 (1996). The personal identity of the employees at issue is entirely unrelated to our review of Eversource’s LCIRP and will not inform the public about the Commission’s regulatory activities. Consequently, we find that the public’s interest in disclosure is even more minimal than the privacy interests of Eversource’s employees. We therefore grant Eversource’s Motion for Confidential Treatment and Protective Order as it relates to the names of non-management personnel.

Based upon the foregoing, it is hereby

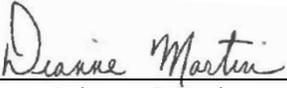
ORDERED, that Eversource’s Motion for Protective Order and Confidential Treatment is GRANTED as to its personnel data, bulk substation one-line diagrams and maps; and it is

FURTHER ORDERED, that Eversource’s Motion for Protective Order and Confidential Treatment is DENIED as to bulk transformer capacity rating and loading information; and it is

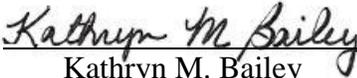
FURTHER ORDERED, that Eversource shall file a revised request identifying the basis under which it seeks confidential treatment of certain bulk substation status information unrelated to transformer capacity or loading; and it is

FURTHER ORDERED, that Eversource shall refile the documents at issue with redactions that are consistent with the findings above, as well as its revised request for confidential treatment of bulk substation status information within 30 days of this order.

By order of the Public Utilities Commission of New Hampshire this twenty-second day
of April, 2020.



Dianne Martin
Chairwoman

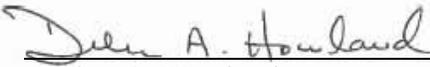


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Service List - Docket Related

Docket#: 19-139

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