

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

**PETITION FOR PERMANENT RATE
INCREASE**

**UNITIL ENERGY SYSTEMS, INC.
Petitioner**

DOCKET NO. DE 16-384

MOTION FOR CONFIDENTIAL TREATMENT AND PROTECTIVE ORDER

Unitil Energy Systems, Inc. (“UES” or the “Company”) respectfully requests that the New Hampshire Public Utilities Commission (the “Commission”) grant a protective order for certain confidential information contained in its Rate Case Expense Filing, consistent with RSA 91-A:5(IV) and N.H. Code of Admin. Rules, Puc 203.08. Specifically, UES requests that the Commission issue an order requiring confidential treatment for billing information for consultants and attorneys who performed work for UES in the above-captioned docket included in Pages 5 through 422 of the filing. One (1) redacted and seven (7) unedited Confidential versions of these documents are submitted herewith. In support of this Motion, UES states as follows:

1. In its Rate Case Expense Filing, UES seeks recovery for costs associated with the above-captioned docket, as well as its “Other Regulatory Expenses” pursuant to paragraph 2.8 of the Settlement Agreement on Permanent Distribution Rates, February 21, 2017. As part of this filing, UES has provided confidential information, subject to its right to seek a protective order from the Commission pursuant to N.H. Code of Admin. Rules 203.08. This confidential information is protected from public disclosure under the New Hampshire Right to Know Act, RSA 91-A, and includes hourly rates and other information which would permit elucidation of the “confidential, commercial or financial” information from UES’s consultants.

2. UES’s request for a protective order is consistent with the public disclosure requirements of New Hampshire’s Right to Know law. RSA 91-A. RSA 91-A:5(IV) expressly

exempts from the public disclosure requirements any records pertaining to “confidential, commercial or financial information.” RSA 91-A:5, IV; *Union Leader Corp. v. New Hampshire Housing Finance Authority*, 142 N.H. 540 (1997). Application of this exemption requires “analysis of both whether the information sought is confidential, commercial, or financial information, and whether disclosure would constitute an invasion of privacy.” *Unitil Corp. and Northern Utilities, Inc.*, DG 08-048, Order No. 25,014 (Sept. 22, 2009) at 2. The Commission’s rule on confidential treatment of public records, PUC 203.08, also recognizes that confidential commercial or financial information may be appropriately protected from public disclosure pursuant to an order of the Commission. The determination of whether to disclose confidential information involves a balancing of the public’s interest in full disclosure with the countervailing commercial or private interests for non-disclosure.

3. With respect to the commercial or private interests, UES’s consultants (for the provision of Cost of Equity testimony and support, lead-lag study, and for the accounting and marginal cost studies and rate design) for the above-captioned docket were hired via a competitive “Request for Proposal” (“RFP”) process. The other consultant, for rebuttal testimony in DE 16-576, though not obtained through an RFP, was retained through a negotiated process. Disclosure of the consultants’ contract and billing information would put them at a competitive disadvantage by divulging the rates they charged for work awarded either through the RFP or negotiation. It would also adversely affect the Company because in future dockets, consultants would be discouraged from working with the Company if doing so would result in release of confidential business information. The disclosure of the redacted information would, if disclosed, similarly discourage bidders from participating in the response to future RFPs, thereby harming the Company and, ultimately its customers. See *EnergyNorth Natural Gas, Inc.*, DG 08-009,

Order No. 25,064 (Jan. 15, 2010) at 11 (finding similar contentions to be “credible,” and concluding that National Grid “and its service providers have an interest in the confidentiality of the information”).

4. While the public has some interest in the billing information, *id.* at 12, that interest is balanced by the quality of the information which would be made public – the total amount paid by the company for the consultants’ efforts. Therefore, while the Company requests protective treatment for the components of the billing information (*e.g.*, hourly rates), the public would still have access to the total amount billed. *Id.* at 12 (“publically available versions of all the documents contain a good deal of information concerning the costs of the underlying engagements”). Furthermore, the public has an interest in UES’s ability to work with the best- and most cost-efficient consultants, and to require production of confidential billing information of the chosen consultants (provided in their engagement letters and invoices) would contradict this interest. *Id.* at 12 (“[D]isclosing the information may place the Company and its service providers at a disadvantage with respect to those with whom it would do business, ultimately causing harm to the Company’s ratepayers in future rate cases.”). Moreover, full disclosure of the confidential information is provided to the Commission Staff and the Office of Consumer Advocate, which allows the details of the billings to be subject to investigation and scrutiny.

5. The interest of UES in the confidentiality of the information for which protection is sought outweighs the interest of the public in disclosure in this case. *Unitil Energy Systems, Inc.*, DE 05-178, Order No. 24,742 (April 13, 2007) at 3-5.

WHEREFORE, UES respectfully requests that the Commission issue an order protecting the confidential information specified herein from public disclosure.

Respectfully Submitted,

UNITIL ENERGY SYSTEMS, INC.
By its Attorney,



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Dated: June 14, 2017

Certificate of Service

I hereby certify that on this 14th day of June, 2017, a copy of the foregoing Petition was either hand delivered or sent by U.S. or electronic mail to the Office of Consumer Advocate.



Gary Epler