

THE STATE OF NEW HAMPSHIRE
BEFORE THE
PUBLIC UTILITIES COMMISSION

PUBLIC SERVICE COMPANY OF NEW HAMPSHIRE D/B/A EVERSOURCE ENERGY

Docket No. DE 17-075

MOTION FOR PROTECTIVE ORDER AND CONFIDENTIAL TREATMENT

Public Service Company of New Hampshire d/b/a Eversource Energy (“Eversource” or the “Company”) hereby moves, pursuant to Puc 201.06, 201.07, 203.08 and RSA Chapter 91-A, the New Hampshire Public Utilities Commission (“Commission”) to grant protective treatment to certain confidential information provided in discovery in this docket. Specifically, Eversource seeks confidential treatment of the information contained within the response to Data Requests Staff 1-20 and 1-21 and OCA 1-1 and 2-1. Eversource seeks an appropriate protective order to keep the material in these responses from public disclosure. In support of this motion, Eversource states as follows:

1. In the May 1, 2017 testimony of Frederick White in the instant docket, Eversource identified that its reconciliation filing contained costs relating to a settlement and release reached in late 2016 between Eversource and one of its coal shippers for unused coal cargoes. The testimony described the 2007 transportation contract with the shipper, the efforts Eversource made to fulfill the contract over a period of years, the costs of the 2016 settlement as compared to the costs of attempting to fulfill the contract, and the efforts of Eversource to mitigate the costs in reaching the settlement and release.

2. In conducting discovery in this proceeding, and with particular reference to the issue identified above, the Commission Staff and the Office of Consumer Advocate (“OCA”) asked a series of questions. While Eversource responded to nearly all questions without making any

claims of confidentiality, Eversource did respond to four questions with information for which confidential treatment is now requested.¹ When responding to each question, Eversource stated that it was providing the information subject to a claim of confidentiality under Puc 201.06(a)(15), for which an initial motion is not required. In light of recent past experience, and out of an abundance of caution, however, Eversource has elected to file this motion to assure confidential treatment of the identified information.

3. Pursuant to RSA 91-A:5, IV, records that constitute confidential, commercial, or financial information are exempt from public disclosure. In determining whether documents are entitled to the exemption, 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 (September 9, 2015) at 5. 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 (November 9, 2010) at 3-4.

4. Each of the questions and answers that are the subject of this motion relate to the arrangement underlying the settlement and release in 2016. The underlying contract was entered

¹ Eversource notes that this motion does not pertain to the information provided in response to Data Request Technical Session 1-001 as the treatment of that information is subject to a still-pending motion of November 8, 2017 in this proceeding and is governed by a different legal standard.

into in 2007 for the purpose of shipping foreign-sourced cargoes of coal (which was purchased separately) for use at Merrimack and Schiller stations, which were then owned by Eversource. Eversource had been shipping foreign-sourced coal to New Hampshire for many years. This specific shipping contract was for the delivery of 22 cargoes over five years beginning in 2007. Each cargo was to be approximately 45,000 tons, for a total of 990,000 tons. At that time, Merrimack and Schiller stations burned approximately 1,600,000 tons of coal annually, of which approximately 875,000 tons was foreign-sourced. As the Commission has noted, the economic analyses available at that time indicated that a similar level of coal use would continue at those stations. *See e.g. Public Service Company of New Hampshire d/b/a Eversource Energy*, Order No. 25,920 (July 1, 2016) at 18-21. Due to market shifts, however, the amount of coal used at the stations decreased such that only 6 shipments were actually needed and delivered by the time the contract was to terminate in 2012. Through working with the shipping company, Eversource extended the contract and was able to take and use an additional 4 shipments through 2016. Recognizing that the then-impending divestiture of Eversource's generating facilities may affect the continuing viability of the shipping contract, the shipping company sought to terminate the contract and have Eversource pay for the as-yet unused 12 shipments. Through negotiation, a settlement was reached whereby Eversource agreed to accept 1 additional shipment, was forgiven for 2 shipments, and paid the shipping company for the other 9 unused shipments. The total payments for the 9 unused shipments was \$3,421,424.88.² In comparing that cost to the cost of equivalent generation, it would have been more expensive to burn the existing coal stock to make room to accept the 12 additional cargoes of coal required by the contract. The

² The settlement equates to approximately \$380,000 per shipment. Therefore, by having 2 shipments forgiven Eversource avoided approximately \$760,000 in costs through the settlement.

settlement of this contract to avoid excess costs to customers in the face of the potential costs of paying for the 12 unused cargoes is the basis for the discovery questions covered by this motion.

5. In Staff questions 1-20 and 1-21, the Commission Staff requested information about specific terms and conditions of the coal supply contract from which Eversource obtained the coal that was to be transported via the shipping contract. In response, Eversource identified relevant portions of the supply contract and described the operation of that contract. The information about the supply contract is entitled to confidential treatment.

6. As to the first factor, the privacy interest, Eversource has a privacy interest in fuel supply arrangements. The Commission's rules specifically provide that in routine proceedings (such as those pertaining to default service) fuel supply contracts and fuel and commodity pricing information are entitled to a presumption of confidentiality. *See* Puc 201.06(a)(15)g. and h. The Commission has extended these presumptions beyond routine proceedings when the same types of information are at issue. *See e.g., Liberty Utilities (EnergyNorth Natural Gas) Corp. d/b/a Liberty Utilities*, Order No. 25,861 (January 22, 2016) at 5. Furthermore, prior to the existence of the rule, the Commission had commonly granted confidential treatment to coal supply contract information; precisely the information in issue here. *See Public Service Company of New Hampshire*, Order No. 25,061 (December 31, 2009) at 27. As to the second factor, the public interest, the coal supply contract was terminated before 2016. Moreover, the coal supply contract is separate from the shipment contract, and is not in issue in this case. Therefore, the terms and conditions, or any other information in that contract, would not help inform the public of the activities of its government. Accordingly, the public interest is limited. In balancing these factors, the privacy interest outweighs the public interest. As noted, there is essentially no public interest at stake, while the Commission has established a history of finding

such contracts entitled to confidential treatment. Moreover, in light of the standing presumption in favor of confidentiality of such contracts, a finding that such a contract should not be confidential will undermine the ability of Eversource, or others, to negotiate and execute such contracts in the future. Utility counterparties will have essentially no assurance that any contract could be maintained as confidential, even when a rule presumes confidentiality, which would hamper contracting and ultimately harm customers. The responses to Staff 1-020 and 1-021 should be found to be confidential.

7. OCA question 1-001 requested a copy of the 2016 settlement and release that Eversource entered with the shipping company. In response, a copy of the document was provided. OCA question 2-001 requested a copy of the 2007 shipping contract itself and a copy was provided. Both documents are entitled to confidential treatment. With respect to the privacy interest, Eversource has a strong privacy interest in both documents. An express term of the shipping contract is that it is to be kept confidential. Maintaining the contract as confidential provides Eversource, and by extension its customers, with assurance that it will be able to freely negotiate with counter parties. The same is true for the settlement. Permitting public disclosure of the documents will impede Eversource's ability to enter into future arrangements and to assure its counterparties that they will be able to obtain and retain confidential treatment over matters they understand should be confidential. Such impediments will ultimately mean that Eversource may have fewer counterparties with which it can deal in the future.

8. As to the public interest, the shipping contract has now been fulfilled and the terms of that arrangement are not in issue in this case. Accordingly, it is of limited public interest. The release, and the payments and shipments called for in it, are in issue in this case, and therefore Eversource acknowledges that there is some public interest in that document. Eversource's

privacy interest in the shipping contract is greater than the public interest in disclosing a document that has no continuing force, and no impact on any cost to be borne by customers. There is a closer call with respect to the settlement, yet in Eversource's assessment the balance should be in favor of confidentiality. Through the testimony already submitted in this proceeding, as well as the instant motion, the Commission and the public are aware of the settlement, the costs and payments made by Eversource, the value of the settlement to customers as compared to the alternatives, and the general terms of the arrangement. The document itself provides no additional insights that would inform the public of the activities of government and, therefore, disclosure is not warranted.

WHEREFORE, Eversource respectfully requests that the Commission:

- A. Grant this Motion and issue an appropriate protective order; and
- B. Order such further relief as may be just and reasonable.

Respectfully submitted,

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

December 20, 2018

Date

By: 

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CERTIFICATE OF SERVICE

I hereby certify that, on the date written below, I caused the attached to be served pursuant to N.H. Code Admin. Rule Puc 203.11.

December 20, 2018

Date


Matthew J. Fossum