

STATE OF NEW HAMPSHIRE
BEFORE THE
PUBLIC UTILITIES COMMISSION

DE 16-241

EVERSOURCE ENERGY

**Petition for Approval of Gas Infrastructure Contract
with Algonquin Gas Transmission, LLC**

**OBJECTION TO MOTION FOR PROTECTIVE ORDER AND CONFIDENTIAL
TREATMENT REGARDING PROPOSED CONTRACT BETWEEN PUBLIC
SERVICE COMPANY OF NEW HAMPSHIRE D/B/A EVERSOURCE ENERGY
AND ALGONQUIN GAS TRANSMISSION, LLC**

NOW COMES Tennessee Gas Pipeline Company, L.L.C. (“Tennessee”), by and through its undersigned attorneys, and, pursuant to N.H. Admin. Rule Puc 203.07(e), respectfully objects to the Motion for Protective Order and Confidential Treatment Regarding Proposed Contract Between Public Service Company of New Hampshire d/b/a Eversource Energy and Algonquin Gas Transmission, LLC filed in the above-captioned docket on February 18, 2016 (“Motion for Protective Order”). In support of this Objection, Tennessee states as follows:

1. On February 18, 2016 Eversource Energy filed with the New Hampshire Public Utilities Commission (“Commission”) a Petition for Approval of Gas Infrastructure Contract Between Public Service Company of New Hampshire d/b/a Eversource Energy and Algonquin Gas Transmission, LLC (“Petition”). By secretarial letter dated February 19, 2016 the Commission acknowledged the filing and assigned a docket number for this filing. No Order of Notice has yet been issued in this docket.

2. At the same time that it filed the Petition, Eversource filed the Motion for Protective Order seeking confidential treatment of what it referred to as the “Confidential Attachments” and portions of the pre-filed testimony that contain references to “confidential information”. In the Motion for Protective Order, at 1, Eversource refers to the filing containing “confidential prices and other terms, as well as information on the valuation of the prices and terms.” Later in the Motion for Protective Order, at 2, Eversource says: “Accordingly, Eversource hereby requests that the prices, terms, and evaluation of the prices and terms in the Confidential Attachments, as well as the associated portions of the pre-filed testimony of James G. Daley, James M. Stephens and Christopher J. Goulding and Lois B. Jones discussing the same information, be protected from public disclosure.”

3. Pursuant to Commission rules, Admin. Rule Puc 203.07(e), objections to motions must be filed within 10 days. This rule does not require that a person filing such an objection be a party. In addition, Admin. Rule Puc 203.08 clearly recognizes the rights of any member of the public to be heard with regard to the granting of a motion for confidential treatment. Although Tennessee has not yet filed for intervention in this docket, it intends to do so in compliance with whatever schedule the Commission designates in the Order of Notice. Tennessee is filing this Objection in a timely manner to preserve its rights.

I. Tennessee’s Northeast Energy Direct Project and Participation in the Eversource RFP

4. Tennessee is the developer of the Northeast Energy Direct (“NED”) Project that would expand the interstate natural gas transmission facilities of Tennessee by adding new pipeline facilities on a route that passes through southern New Hampshire

and is generally co-located with an existing utility corridor. Tennessee has been safely operating a natural gas transmission pipeline in New Hampshire for over 50 years.

Tennessee is a party to the Precedent Agreement for service on the NED Project Market Path with Liberty Utilities (EnergyNorth Natural Gas) Corp. d/b/a Liberty Utilities that was approved by the Commission in Order No. 25,822 in docket DG 14-380; Tennessee is also a party to the Precedent Agreement for the Supply Path that is under review by the Commission in docket DG 15-494.

5. Tennessee was a bidder in the RFP process for resource alternatives for Massachusetts and Rhode Island, but not New Hampshire, which Mr. Daly describes on pages 43- 53 (Bates pages 63-73) of his prefiled testimony in this docket. That RFP was issued by Eversource, for its Massachusetts Electric Distribution Companies (“EDCs”), and by National Grid, for its Massachusetts and Rhode Island EDCs on October 23, 2015, to six pipeline companies serving the New England region and two LNG providers. The RFP did not solicit proposals for service to New Hampshire EDCs. Tennessee was one of those pipelines and in fact it finished as one of the top two proposals in the bid-evaluation process, though it ultimately was not chosen. Eversource chose to contract all of its EDC volumes on Algonquin’s Access Northeast Project, in which it is a partner with Spectra Energy.¹ An Eversource affiliate holds 40% of the Class B shares of Algonquin.²

¹ See *Spectra Energy and Northeast Utilities Announce New England Energy Reliability Solution, Partnership Creates Scalable Platform to Address Region’s Natural Gas Needs by Upgrading and Expanding Existing System*, Sept. 16, 2014, available at <http://www.spectraenergy.com/Newsroom/News-Archive/Spectra-Energy-and-Northeast-Utilities-Announce-New-England-Energy-Reliability-Solution/>.

² See *Algonquin Gas Transmission, LLC, Application for a Certificate of Public Convenience and Necessity for Atlantic Bridge Project at Exhibit D, FERC Docket No. CP16-9 (Oct. 22, 2015)*.

II. The Commission Has Stressed the Importance of Prudent Utility Expenditure and Cost Savings for Utility Customers in Evaluating EDC Proposals

6. In its September 15, 2015 Report in IR 15-124 (“Staff Report”) Staff concluded that the proposed NED Project and the Access Northeast Project were both cost effective projects that would enhance electric grid reliability by providing gas generators with access to firm gas supplies. Staff further noted, however, based on estimates of energy cost savings and pipeline costs that the benefit to cost ratio for the NED Project would range between 5.25 and 7.0, which was significantly better than the benefit to cost ratio of the Access Northeast Project of between 1.3 and 2.0. In that Report, Staff also estimated that the distribution surcharge on all New Hampshire electric customers would be approximately 3.3 mills per kWh for the NED Project as compared with 4.8 mills for the Access Northeast Project. Report pp. 5-6. Later in that Report, Staff said that “the procurement of pipeline capacity ‘is a fundamentally public decision’ that should not be delegated to EDCs and certainly not EDCs that have corporate relationships with project sponsors, and thus are likely to be burdened with conflicting interests.” Report at 46.

7. In Order No. 25,860 in IR 15-124 (January 19, 2016), the Commission’s order accepting the Staff Report and outlining the review process for any petitions for capacity acquisitions and associated competitive bidding, the Commission noted “there exists a strong policy preference against self-dealing in relations between New Hampshire EDCs and their unregulated affiliates.” Order at 4. The Order went on to note that “competitive bidding acquisition processes provide powerful benefits for ensuring prudence in utility expenditure and, by extension, cost savings for utility

customers, through the introduction of cost discipline, open participation by competitors, and choices in product acquisition.” Order at 4-5. The Commission also specifically agreed with the Staff Report’s identification of the benefits of a competitive bidding process “predicated on competitive evaluation and selection processes undertaken by entities unaffiliated with the project sponsors.” Order at 5. Given Eversource’s role in the Access Northeast Project and the role of Eversource EDCs in conducting the evaluation process that led to the choice of the Access Northeast Project solely (unlike National Grid who chose both the NED Project and Access Northeast Project to properly serve the region), there are serious questions about the efficacy of the process, the result of that process, whether it complies with Order No. 25,860, and ultimately whether it is in the public interest. Moreover, it must be emphasized that Eversource conducted an RFP for contracts subject to Massachusetts and Rhode Island regulation. It conducted no RFP for transportation capacity which would be subject to regulation by New Hampshire, and parties participating in the RFP were not notified that Eversource was soliciting proposals for service to New Hampshire EDCs.

8. The Commission Staff, Office of Consumer Advocate and all parties to this docket, including any bidders like Tennessee that were not chosen in that process, must be able to fully evaluate the process that was used by the Eversource EDCs. Accordingly, all of these parties will need to have access to any and all documents and workpapers associated with the analysis of different bids that was conducted during the evaluation process.

III. Certain Information in the Petition Should be Made Available to Tennessee Under a Non-Disclosure Agreement

9. In determining whether confidential, commercial or financial information within the meaning of RSA 91-A:5, IV is exempt from public disclosure, the Commission employs the analysis articulated in *Lambert v. Belknap County Convention*, 157 N.H. 375 (2008) and *Lamy v. N.H. Public Utilities Commission*, 152 N.H. 106 (2005). Under this analysis the Commission first determines “whether the information is confidential, commercial or financial information, ‘and whether disclosure would constitute an invasion of privacy.’” *Unitil Energy Systems, Inc.*, DE 10-055, Order No. 25,214 (April 26, 2011), p. 35. If a privacy interest is implicated, the Commission then balances the asserted private confidential, commercial or financial interest against the public’s interest in disclosure in order to determine if disclosure would inform the public of the government’s conduct. *Id.* If it does not, then “disclosure is not warranted.” *Id.*

10. Eversource claims in its Motion for Protective Order that its privacy interest lies in protecting “competitively sensitive pricing and rate data” so it will not be more difficult for the Company to negotiate in the future with potential contract partners. Tennessee agrees that competitively sensitive pricing and rate data of Algonquin Gas Transmission, LLC (“Algonquin”), Tennessee, and all other participants in the Eversource RFP process, should be protected from disclosure to their competitors and to the public. To be clear, Tennessee is not seeking access to any competitor’s rate or contract terms nor does Tennessee support such disclosure of its rate, price or contract terms to its competitors.

11. Tennessee, however, does not agree that Sussex Economic Advisor’s (“Sussex”) analysis, evaluation and comparison of any information specifically relating to Tennessee, including its quantitative evaluation of Tennessee’s proposal should be

protected from disclosure to Tennessee. Tennessee also does not agree that Sussex's analysis, evaluation and comparison of the competing RFP proposals on "qualitative" terms should be protected from disclosure to a party like Tennessee. Tennessee specifically requests that the Commission order Eversource to make available to Tennessee for its use in this proceeding under the terms of an appropriate non-disclosure agreement the following information: a) all "quantitative" information specifically related to Tennessee and its NED Project; b) any workpapers or other documents prepared by any person participating in the analysis, evaluation and comparison of the competing RFP proposals, with appropriate redactions of competitively sensitive information of competing parties; and c) any non-rate and non-contract term "qualitative" information used by Eversource and Sussex to evaluate the proposals.³

12. With respect to Tennessee's request for access to any quantitative analysis and work papers relating to Tennessee's proposal, providing this information to Tennessee is necessary so that Tennessee can verify that its proposal was evaluated correctly by Eversource and Sussex in the RFP process. There is no need to prevent the disclosure of this confidential information to its owner – Tennessee – and there is no basis to claim that providing this information to Tennessee would be an "invasion of privacy" for Eversource. The same goes for information relating to Sussex's "Landed Cost" analysis. To the extent Sussex's Eversource Landed Cost analysis lists information that is not proprietary to Algonquin, such as a project rate, it should be disclosed to

³ The information should also include all "quantitative" information as filed by Eversource and its representatives related specifically to Tennessee, whether in textual, tabular, or graphical form. Tennessee is also requesting access to "Landed Cost" information relating to Algonquin and Tennessee in Tables 11 and 12, and Exhibit EVER-JMS-4. The "qualitative" information would include, inter alia, any analysis or evaluation referred to in the Direct Testimony of James M. Stephens relating to the Qualitative Evaluation Criteria A, B, C, D, F, G, and H, listed in Table 13; and the discussion of these Criteria in Tables 14, 16, 17, and 20; and Exhibits EVER-JMS-5, 6, 7, and 8.

Tennessee. Information relating to gas prices at particular points – and not to rates for the Access Northeast Project – is not confidential, commercial or financial information of any competitor to Tennessee and is important to conducting a thorough analysis of Eversource’s selection process. Eversource’s disclosure of Tennessee-related quantitative information, and information on Sussex’s evaluation of trading data, proposed receipt and delivery points, index trading points, or liquidity assumptions at those points post-pipeline expansion projects, is not confidential, and in the interest of transparency and permitting a thorough review of the Eversource RFP results, should not be withheld from Tennessee in this case.

13. Further, Tennessee does not agree that Sussex Economic Advisor’s analysis, evaluation and comparison of the competing RFP proposals on “qualitative” terms should be protected from disclosure to a party like Tennessee. *See, e.g.,* Direct Testimony of James M. Stephens at 3, Tables 13, 14, 16, 17, 20, and EVER-JMS-5, 6, 7, 8. Tennessee submits that the information it requests is neither “confidential, commercial, or financial information,” nor would disclosure of this information to Tennessee constitute an “invasion of privacy.” *Unitil Energy Systems*, Order No. 25,214, at 35. Part of the basis for Eversource’s selection of the Access Northeast Project is the evaluation of “qualitative” evaluation criteria like: project sponsor financial condition; status of local, state, and federal approval processes; development and operating experience; supply risk; service flexibility; construction risk related to schedule; and potential capacity mitigation opportunities. *See* Stephens Testimony at Table 13. Information relating to the qualitative factors is based, not on any bidder’s non-public, confidential information, but on seemingly interpreted publicly available information

relating to each bidder's project and to the experience and financial condition of each bidder. Thus, it does not appear that there would be any harm to Eversource, or any other RFP bidder, that would outweigh the interest in transparency and disclosure to Tennessee.

14. To ensure a robust determination of whether the evaluation process meets the Commission's standards and whether the result is in the public interest, the Commission should establish a process whereby all parties to the docket will have access to all relevant information, under an appropriate non-disclosure agreement. The Commission has taken this approach of providing access to confidential information to parties in many other dockets. *See, e.g.*, the recent order in DG 15-289, Order No. 25,868 (February 19, 2016) where the Commission ordered that a portion of information contained in a response to a data request be made public, provided for the remainder to be confidential, and said that to allow an intervenor "to participate fully in this docket" she could have access to the confidential material provided she signed a non-disclosure agreement. *See also*, Order No. 25,332 (February 6, 2012) in DE 08-103 and DE 11-250, where the Commission determined that the identities of unsuccessful bidders and bid scores should be disclosed under the terms of a non-disclosure agreement. *See also*, Order No. 25,174 (November 24, 2010) in DE 10-195, where the Commission determined that pricing obtained by PSNH for RECs, energy and capacity products through competitive RFPs would be important market data for judging the reasonableness of the Laidlaw PPA.

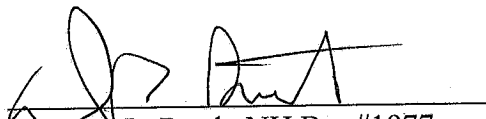
WHEREFORE, Tennessee respectfully requests that this honorable Commission:

A. Issue an order consistent with the terms outlined above; and

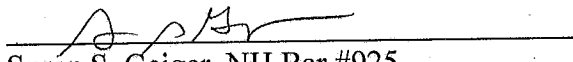
B. Grant such additional relief as it deems appropriate.

Respectfully submitted,

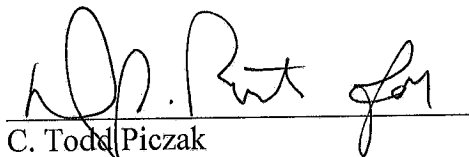
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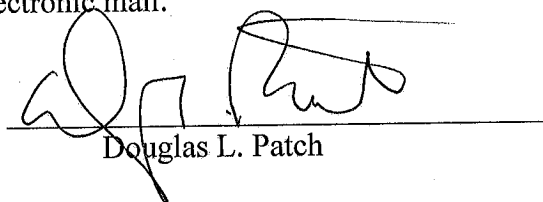


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Dated: February 29, 2016

Certificate of Service

I hereby certify that on this 29th day of February, 2016, a copy of the within Objection was sent to the Service List via electronic mail.



Douglas L. Patch