

**BEFORE THE NEW HAMPSHIRE  
PUBLIC UTILITIES COMMISSION**

EVERSOURCE ENERGY - PETITION FOR :  
APPROVAL OF GAS INFRASTRUCTURE : DOCKET NO. DE 16-241  
CONTRACT WITH ALGONQUIN GAS :  
TRANSMISSION, LLC :

**ALGONQUIN GAS TRANSMISSION, LLC  
MOTION FOR PROTECTIVE ORDER AND CONFIDENTIAL TREATMENT**

Pursuant to New Hampshire Revised Statutes Annotated (“RSA”) 91-A:5 and New Hampshire Code of Administrative Rules (“Puc”) § 203.08(b), Algonquin Gas Transmission, LLC (“Algonquin”) hereby respectfully requests that the New Hampshire Public Utilities Commission (“Commission”) issue a protective order for certain confidential, commercial, and financial information contained in the Public Service Company of New Hampshire d/b/a Eversource Energy’s (“Eversource”) Petition for Approval of Gas Infrastructure Contract Between Eversource and Algonquin (“Petition”) in the above-referenced docket. Specifically, Algonquin is requesting confidential treatment for the redacted information contained in the Petition that pertains to Algonquin, including without limitation, confidential pricing and Precedent Agreement terms, as well as information on the evaluation and analysis of this information, contained in EVER-JGD-2 [CONFIDENTIAL], EVER-JMS-4 [CONFIDENTIAL], EVER-JMS-5 [CONFIDENTIAL], EVER-JMS-6 [CONFIDENTIAL], EVER-JMS-7 [CONFIDENTIAL], EVER-JMS-8 [CONFIDENTIAL], EVER-CJG-1 [CONFIDENTIAL], EVER-LBJ-2 [CONFIDENTIAL] and the associated portions of the pre-filed testimony of James G. Daly, James M. Stephens, and Christopher J. Goulding and Lois B. Jones (collectively, the “Confidential Information”). Consistent with the Commission’s regulations, the Confidential Information was provided to the Commission as part of Eversource’s Petition. In support of this motion, Algonquin states as follows:

## INTRODUCTION

1. On February 18, 2016, Eversource filed its Petition, which included confidential information that was redacted from the public filing, along with a Motion for Confidential Treatment (“Eversource Motion”).

2. The Eversource Motion sought confidential treatment of, inter alia, confidential information that pertains to Algonquin, including without limitation, confidential pricing and Precedent Agreement terms, as well as information on the evaluation and analysis of that information.

3. On February 29, 2016, the Office of Consumer Advocate (“OCA”) filed an opposition to the Eversource Motion (“OCA Opposition”) and Tennessee Gas Pipeline Company, LLC (“TGP”) filed an objection to the Eversource Motion (“TGP Objection”).

4. In its opposition, the OCA asserts that Eversource does not have a privacy interest in the Confidential Information because “Eversource will have few if any occasions to negotiate similar deals in the future.”<sup>1</sup> However, the OCA also admits that “[t]he same, of course, cannot be said of Algonquin.”<sup>2</sup> Nevertheless, the OCA dismisses this potential harm because “Algonquin is not a party to the motion.”<sup>3</sup>

5. In order to remedy the OCA’s alleged deficiency in the Eversource Motion, Algonquin now hereby submits its own Motion for Protective Order and Confidential Treatment.

## STANDARD OF REVIEW

6. Puc § 203.08(a) provides that the Commission “shall upon motion issue a protective order providing for the confidential treatment of one or more documents upon a

---

<sup>1</sup> OCA Opposition, at 4.

<sup>2</sup> *Id.* at n.1

<sup>3</sup> *Id.*

finding that the document or documents are entitled to such treatment pursuant to RSA 91-A:5, or other applicable law . . . .”

7. RSA Chapter 91-A is commonly referred to as the “Right-to-Know Law.” The Right-to-Know Law provides each citizen with the right to inspect government records in the possession of the Commission. However, under RSA 91-A:5, certain government records are exempt from disclosure. In particular, RSA 91-A:5, IV exempts records pertaining to confidential, commercial or financial information from public disclosure.

8. The New Hampshire Supreme Court has addressed the requirements of the Right-to-Know Law on several occasions. Most recently, the court found that “[t]he Right-to-Know Law does *not* guarantee the public an unfettered right of access to all governmental workings, as evidenced by the statutory exceptions and exemptions.”<sup>4</sup>

9. Puc § 203.08(b) requires that a motion for confidential treatment include:

- [i] the documents, specific portions of documents, or a detailed description of the types of information for which confidentiality is sought;
- [ii] specific reference to the statutory or common law support for confidentiality; and
- [iii] a detailed statement of the harm that would result from disclosure and any other facts relevant to the request for confidential treatment.

10. The New Hampshire Supreme Court and the Commission apply a three-step balancing test to determine whether information will be granted protective treatment as confidential information.<sup>5</sup>

---

<sup>4</sup> *Professional Firefighters of New Hampshire v. Local Government Center, Inc.*, 159 N.H. 699 (2010) (emphasis added); see also *Goode v. New Hampshire Office of Legislative Budget 5 Assistant*, 148 N.H. 551, 553 (2002); *Brent v. Paquette*, 132 N.H. 415, 426, (1989) (“[T]he Right-to-Know Law guarantees every citizen the right to inspect all public records *except* as otherwise prohibited by statute or RSA 91-A:5.” (quotation omitted) (emphasis added)).

<sup>5</sup> *Lambert v. Belknap County Convention*, 157 N.H. 375, 382 (2008); Order No. 25,117 (June 18, 2010), at 7.

11. Under this test, the Commission first inquires whether the information involves a privacy interest and then asks if there is a public interest in disclosure. Finally, the NHPUC balances those competing interests and decides whether disclosure is appropriate.<sup>6</sup>

12. When applying this test, the Commission has considered the fact that bidders offered confidential information to the utility with the understanding that such information would be maintained as confidential and that suppliers would be reluctant to participate in future solicitations if confidential information was disclosed; thereby, possibly increasing rates to customers.<sup>7</sup>

13. The Commission has also held that “[i]f 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 nondisclosure.”<sup>8</sup>

14. Recently, after applying the three-part balancing test in its review of a local natural gas distribution company’s petition for approval of a precedent agreement with TGP, the Commission ruled that pricing and delivery information was confidential because the privacy interest outweighed the public interest.<sup>9</sup>

#### **MOTION**

15. Algonquin’s confidential information was provided to Eversource in response to an October 23, 2015 Request for Proposals (“RFP”) with the understanding that such information would be maintained as confidential based, in part, upon the Commission’s practice of protecting

---

<sup>6</sup> Order No. 25,117 (June 18, 2010), at 7-8.

<sup>7</sup> See Order No. 25,338 (Mar. 27, 2012), at 8-9.

<sup>8</sup> Order No. 24,777 (July 12, 2007), at 86.

<sup>9</sup> See Order No. 25,861 (Jan. 22, 2016), at 4-6.

similar types of information.<sup>10</sup> In fact, the Confidential Information is similar to information filed by utilities and routinely kept confidential by the Commission's rules.<sup>11</sup>

16. The Confidential Information includes competitively sensitive pricing data, delivery information and contract terms, the public disclosure of which could adversely affect Algonquin's business position. For instance, should the Confidential Information become publicly available, it would reveal information about Algonquin's pricing and contracting strategies to its competitors. Based on this information, competitors could then adjust their pricing and contracting terms to the competitive disadvantage of Algonquin.

17. As the Commission is aware, other New England states intend to conduct RFPs for natural gas capacity contracts.<sup>12</sup> If the Confidential Information is disclosed, it will reveal information about Algonquin's pricing and contracting strategy as it relates specifically to the Access Northeast Project ("ANE Project"). As a result, Algonquin's competitors will receive a distinct advantage in responding to the RFPs in other states because they will have access to information about Algonquin's response strategy. However, Algonquin will not have access to its competitors' strategies. Thus, Algonquin has a clear and distinct privacy interest in the Confidential Information.

18. Because the ANE Project is a regional solution, if disclosure of the Confidential Information impedes the ability of the ANE Project to obtain contracts in other New England states, it could also adversely impact the public interest.<sup>13</sup> Public disclosure of the Confidential

---

<sup>10</sup> *See, e.g.*, Order No. 25,861 (Jan. 22, 2016).

<sup>11</sup> *See, e.g.*, N.H. Code of Admin. Rules Puc 201 .06(a)(26)(b) (protecting "pricing and delivery special terms of [gas] supply agreements").

<sup>12</sup> *See, e.g.*, Connecticut Public Act 15-107 (authorizing the Connecticut Department of Energy and Environmental Protection to conduct such an RFP).

<sup>13</sup> *See* Petition, at 13 (noting that approval of similar agreements in other states will also be necessary).

Information could also have a chilling effect on future solicitations conducted by New Hampshire utilities generally because those who might have otherwise responded to such solicitations will not do so in order to avoid disclosing confidential commercial information; thereby, possibly increasing rates to customers.<sup>14</sup> The OCA attempts to minimize this risk by arguing that this solicitation is unique.<sup>15</sup> However, solicitations for natural gas pipeline capacity are *not* unique.<sup>16</sup> Thus, there is also a public interest in protecting the Confidential Information from disclosure. Moreover, by permitting OCA access to the information subject to an obligation of confidentiality,<sup>17</sup> the Commission can ensure that the OCA's responsibility to represent the interest of residential utility customers and the public interest is protected.<sup>18</sup>

19. Because the disclosure of the Confidential Information would harm Algonquin's competitive position in the natural gas market and ability to negotiate successfully in the future with potential contract partners<sup>19</sup> and have a "chilling effect" on future responses to RFPs conducted by New Hampshire utilities, there is both a private and public interest in protecting the Confidential Information from public disclosure.<sup>20</sup> This substantial interest far outweighs the public interest in disclosure, which would only serve to harm Algonquin and New Hampshire ratepayers. Accordingly, Algonquin requests that the Commission issue a protective order

---

<sup>14</sup> See Order No. 25,338 (Mar. 27, 2012), at 8-9.

<sup>15</sup> OCA Opposition, at 4.

<sup>16</sup> See, e.g., Docket DG 15-494, *Liberty Utilities (EnergyNorth Natural Gas) Corp. d/b/a Liberty Utilities Petition for Approval of Supply Path Precedent Agreement with Tennessee Gas Pipeline Company, LLC*.

<sup>17</sup> RSA 363:28, VI (requiring the OCA to maintain the confidentiality of information).

<sup>18</sup> See RSA 363:28; see also Order No. 24,802 (Nov. 2, 2007), at 5.

<sup>19</sup> See OCA Opposition, at 4, n. 1 (conceding that Algonquin is subject to such potential harm from the disclosure of the Confidential Information).

<sup>20</sup> Cf. Order No. 25,758 (Jan. 21, 2015), at 5 (concluding that "disclosure of this non-publically-disseminated [bid] information could result in financial harm to PEU, the contractors it does business with, or its customers . . .").

restricting disclosure of the Confidential Information to the Commission and the OCA. Such restrictions will ensure that the Confidential Information is adequately protected while still enabling the public's interest in a full examination of relevant information in the docket to be satisfied.

20. Should the Commission determine that a broader disclosure is necessary (which Algonquin disputes given its substantial privacy interest in the Confidential Information), Algonquin requests that, consistent with precedent,<sup>21</sup> the Commission restrict disclosure of the Confidential Information to the Commission and, subject to the signing of a confidentiality and non-disclosure agreement, non-competitor parties. In its objection, TGP requests that the Commission also provide it access to certain information for which Eversource has sought protective treatment, including information included in the "Landed Cost Analysis" from Sussex Energy Advisors. To the extent that information concerns Algonquin or the ANE Project, the Commission should deny TGP access to the information because disclosure of the Confidential Information to competitors, just like full disclosure to the public, would give a significant competitive advantage to Algonquin's competitors and impose a significant competitive disadvantage on Algonquin.

### CONCLUSION

For all of the foregoing reasons, Algonquin respectfully requests that the Commission grant this motion and issue an order that would restrict disclosure of the Confidential Information to the Commission and the OCA.

---

<sup>21</sup> See, e.g., Order No. 25,234 (June 14, 2011), at 9-11.

Dated: March 9, 2016

Respectfully submitted,  
ALGONQUIN GAS TRANSMISSION, LLC

By: 

Joey Lee Miranda  
Robinson & Cole LLP  
280 Trumbull Street  
Hartford, CT 06103-3597  
Tel. No.: (860) 275-8200  
Fax No.: (860) 275-8299  
E-mail: [jmiranda@rc.com](mailto:jmiranda@rc.com)

Jennifer R. Rinker  
Algonquin Gas Transmission, LLC  
5400 Westheimer Court  
Houston, Texas 77056  
Phone: (713) 627-5221  
Fax: (713) 386-3044  
E-mail: [jrinker@spectraenergy.com](mailto:jrinker@spectraenergy.com)

Its Attorneys

**CERTIFICATE OF SERVICE**

I hereby certify that a copy of this Motion for Protective Order and Confidential Treatment has this day been sent via electronic mail or first class mail to all persons on the service list.

  
Joey Lee Miranda

Dated: March 9, 2016