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NHPUC 11DEC'17PM12:41

December 8, 2017

Debra A. Howland, Executive Director
New Hampshire Public Utilities Commission
21 South Fruit Street, Suite 10
Concord, NH 03301-2429

sent via e-mail and U.S. Mail

**Re: Complaint of Ensconce Data Technologies, LLC against Eversource
Eversource File No. G20161994**

Dear Ms. Howland:

This letter responds to Eversource's letter of November 20, 2017. EDT's complaint centers on Eversource's refusal to negotiate in good faith, and delegating its authority to Michael Busby, the employee in charge of the team that botched the cutover causing EDT's damages. This reply addresses two principal issues. First, Eversource fails to address its actions that prompted EDT's complaint. Second, Eversource attempts to manufacture an information disclosure issue where none exists.

Actions prompting complaint.

In its answer, Eversource does not address the actions that prompted EDT's complaint. Before EDT's complaint, Eversource settled with 100 Market, the property owner, for its damages, but contended it could not have damaged EDT's equipment. Eversource contended, *inter alia*, that the cutover would not cause a brownout and that EDT could have avoided brownout damages by using surge protectors. That required EDT, at significant expense, to retain an expert to dispel those contentions. Brownouts, and the ineffectiveness of surge protectors in under-voltage events, are basic principles that should not have required an expert report for Eversource to adjust the claim.

Having dispelled Eversource's contentions, EDT requested a conference between its expert and Eversource's engineering department. Eversource initially responded that it would discuss the matter with its legal department. Eversource then failed to respond. After a series of prompts, Eversource told the undersigned that the decision rests with Michael Busby, the engineer in charge of the team that botched the cutover.

Eversource inaccurately presents this dispute as involving a simple disagreement. Eversource, with its significant electrical knowledge and resources, required EDT to prove the obvious. Once EDT did so, Eversource refused to discuss the matter. Ultimately, Eversource

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delegated its decision making to the employee whose team caused the damage. That same Eversource employee had told EDT and 100 Market employees that Eversource's insurance would pay for the damages caused by the cutover. See EDT's Letter (Nov. 6, 2017), Exhibit 1. EDT complains because Eversource raised issues, EDT answered with expert analysis citing solid resources, and now Eversource refuses to discuss the issues that it raised. Worse, Eversource delegated the matter to the engineer in charge of the team that botched the cutover.

Damages

Eversource is repeating the runaround tactic by arguing that EDT has not properly documented its damages. Eversource representatives saw the machines during a visit to the building; they observed that the machines do not function. EDT has supplied Eversource a detailed estimate to manufacture replacement machines. Eversource, which is versed in adjusting claims, argues that "the equipment could be repaired for low cost, rather than replaced by new equipment at full cost." Eversource's Letter (Nov. 20, 2017) at 2. One would expect Eversource to make some effort to inspect the machines before reaching that conclusion. However, Eversource refuses to inspect or assess them. Given Eversource's refusal to acknowledge or discuss EDT's expert opinion on causation, it is unlikely that Eversource would consider an expert forensic review commissioned by EDT.

Eversource's argument also ignores the type of damaged equipment. EDT's machines are complex, custom-designed and custom-engineered computers. Their value—and their manufacturing cost—is principally derived from the complex, custom motherboards. It is axiomatic that motherboards are extremely difficult, if not impossible, to repair. Even with simple consumer computers, such as laptop computers, the motherboards should be replaced, not repaired.

Despite the near impossibility of Eversource's demand that EDT isolate which components are destroyed, EDT contacted an engineering firm to develop a plan to test the custom machines. That plan and quote, attached as Exhibit 6,¹ contemplates 400 hours to investigate and evaluate the damage, at a cost of \$66,000.00. That investigation is just to diagnose the issues, not repair them. That means, Eversource is demanding that EDT spend \$66,000.00 in the hopes that Eversource will then adjust the claim. Eversource makes that demand without making any effort to assess the damaged equipment.

Eversource is, once again, demanding that EDT retain an expert to prove the obvious: in this case, that the machines are not working and that the motherboards are likely damaged. It is

¹ EDT's letter of November 6, 2017, included Exhibits 1-5. EDT continues that numbering with this letter.

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unconscionable for Eversource to demand that EDT commission a \$66,000.00, 400-hour project when Eversource has failed to meaningfully respond to EDT's causation opinion or assess the damaged equipment. EDT should not be required to lose a further \$66,000.00 to prove something that Eversource will ignore.

Conclusion

The State trusts Eversource with great responsibility and autonomy. To keep that trust, the State should expect Eversource to act fairly with its customers. Here, Eversource is acting unfairly by requiring EDT to pay for expensive reports without making any effort to assess either the information provided to-date or inspect the damaged equipment. The unfairness is demonstrated by Eversource delegating its authority to the manager in charge of the team that caused the damage.

EDT asks the PUC to review this matter and require Eversource to negotiate in good faith. Should the PUC discuss the matter at a meeting or hearing, EDT asks for notice so that it may attend and answer any questions that you or the Commissioners may have.

Thank you for your attention to this matter.

Sincerely,



Jacob J.B. Marvelley

JJM/rlm

Enclosures

cc: Matthew Fossum, Esq.
Enskonce Data Technologies, LLC