

STATE OF NEW HAMPSHIRE
BEFORE THE
PUBLIC UTILITIES COMMISSION

Docket No. DE 18-142

Enel X North America, Inc.

Petition for Approval of Use of Live, Online Reverse Auction in Electric Procurement

MOTION FOR PROTECTIVE ORDER AND CONFIDENTIAL TREATMENT

NOW COMES, Enel X North America, Inc. (“Enel X”), in accordance with N.H. Admin. Rule Puc 203.08 and RSA 91-A:5, hereby moves the New Hampshire Public Utilities Commission (the “Commission”) to issue a protective order and grant confidential treatment and protect from public disclosure certain proprietary information provided by Enel X in response to two data requests from Public Service Company of New Hampshire d/b/a Eversource Energy (“Eversource”) which Enel X has attached to its supplemental testimony. In support of its motion, Enel X states as follows:

1. Enel X is a foreign (Delaware) corporation registered to do business in New Hampshire. Enel X is not regulated by the Commission. Enel X is a subsidiary of Enel, a multinational power company and a leading integrated player in the global power, gas, and renewables markets. Enel X partners with enterprises and utilities to reduce costs, manage risks, increase sustainability, and maximize the value of emerging energy technologies through customized energy management strategies. Pursuant to the settlement agreement approved in Order No. 26,092, dated December 29, 2017 in Docket No. DE 17-113, Enel X filed a petition in this proceeding to investigate the use of live, online reverse auctions in electric procurement.
2. Enel X deems some of the information provided in discovery in this proceeding to be confidential. In particular, Enel X provided information that it believes falls within the RSA 91-A:5, IV which protects from public disclosure records “pertaining to ... confidential,

commercial, or financial information ... and other files whose disclosure would constitute invasion of privacy.” This information appears as Enel X’s response to Eversource 1-13 and Eversource 1-20 which Enel X has attached to is supplemental testimony. In response to Eversource 1-13, Enel X has divulged details of its scope of services and pricing for those services. In response to Eversource 1-20, Enel X divulged quantitative indicators on how it is able to run successful auctions that it deems to be proprietary. Enel X does not make this information public because release of this information to the public would cause competitive harm to Enel X and competitors would know Enel X’s pricing information and how Enel X is able to conduct its auctions with a 99% success rate.

3. Other confidential material has been provided in discovery and to the extent Staff or any other party to this proceeding seeks to enter the information into the record, Enel X reserves its right to amend this motion to include that information.

4. Pursuant to N.H. Admin. Rule Puc 203.08(a), “the commission shall upon motion issue a protective order providing for the confidential treatment of one or more documents upon a finding that the document or documents are entitled to such treatment pursuant to RSA 91-A:5, or other applicable law....”

5. The Commission employs a multi-part analysis to determine whether certain information qualifies for confidential treatment: (1) whether the information sought is confidential, commercial, or financial information; and (2) whether disclosure of that information would constitute an invasion of privacy. *EnergyNorth Natural Gas, Inc. d/b/a National Grid NH*, DG 10-017, Order No. 25,208 at 7-8 (March 23, 2011). An invasion of privacy analysis, in turn, requires an evaluation of three factors: (1) whether there is a privacy interest at stake that would be invaded by disclosure; (2) whether there is a public interest in

disclosure; and (3) a balance of the public's interest in disclosure and the interests in nondisclosure. *Lamy v. N.H. Pub. Util. Comm'n*, 152 N.H. 106, 109 (2005).

6. Enel X has a clear privacy interests in the information it has provided in these data responses. Any public interest in disclosure of commercially sensitive information of an unregulated entity is outweighed by the privacy and business interests of Enel X. Given Enel X's substantial interest in protecting its competitive advantage and keeping its pricing and strategic information confidential, the lack of a substantial public interest in disclosure, Enel X believes it has established the requirements for confidential treatment under Puc 203.08.

7. Additionally, because the Commission has previously protected this category of competitively sensitive, confidential, commercial, and financial information, Enel X respectfully requests that the Commission extend protective treatment to Enel X's similar proprietary information. See, e.g., *Electric Distribution Utilities*, Docket No. IR 15-124, Order No. 25,811 (Sept. 9, 2015); *Unitil Energy Systems*, Docket No. DE 10-055, Order No. 25,214 (Apr. 26, 2011); *EnergyNorth Natural Gas*, Docket No. DG 10-051, Order No. 25,094 (Apr. 29, 2010); and *Investigation of Utility Billing Practices*, Docket No. DM 03-176, Order No. 24,222 (Oct. 24, 2003).

8. Pursuant to N.H. Admin. Rule Puc 203.08(f), Enel X is providing the Commission with seven confidential copies of the attachment to the supplemental testimony. The information sought to be protected is grey-shaded and "confidential" is noted on the affected pages. Enel X is also providing one redacted, public copy that contains blacked-out information and "redacted" on the affected pages.

9. Based on the foregoing, Enel X requests that the Commission issue a protective order granting this motion and protecting from public disclosure the confidential proprietary information identified in this motion.

WHEREFORE, Enel X North America, Inc. respectfully requests the Commission:

- A. Grant this Motion for Protective Order and Confidential Treatment; and
- B. Grant such other relief as is just and equitable.

Respectfully submitted,

ENEL X NORTH AMERICA, INC.

By Its Attorney

Date: November 22, 2019



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CERTIFICATE OF SERVICE

I hereby certify that a copy of this motion has been forwarded by electronic means to the Docket-Related Service List posted on the Commission's web site for Docket No. DE 18-142.

Date: November 22, 2019



Marcia A. Brown, Esq.