

THE STATE OF NEW HAMPSHIRE
BEFORE THE
PUBLIC UTILITIES COMMISSION

PUBLIC SERVICE COMPANY OF NEW HAMPSHIRE d/b/a EVERSOURCE ENERGY

Docket No. DE 19-057

MOTION FOR PROTECTIVE ORDER AND CONFIDENTIAL TREATMENT

Public Service Company of New Hampshire d/b/a Eversource Energy (“Eversource” or the “Company”) hereby requests that the New Hampshire Public Utilities Commission (“Commission”) grant protection from public disclosure of certain confidential, sensitive and proprietary information submitted in this docket pursuant to Puc 203.08 and RSA 91-A:5. Specifically, the Company requests that the Commission protect from public disclosure certain information contained in attachments to discovery responses, as identified in Appendix A to this motion (the “Confidential Attachments”).¹

As explained below, the Confidential Attachments contain confidential commercial and financial information; non-public electric system data and critical infrastructure information; proprietary vendor data and work product; and employee personnel information the disclosure of which would constitute an invasion of privacy. In support of this motion, Eversource states as follows:

I. LEGAL STANDARD

Puc 203.08(a) states that 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

¹ Certain information in the Company’s initial filing of May 28, 2019 was addressed by a motion for confidential treatment filed on the same date. That motion is awaiting a Commission ruling.

law.” The motion is to contain: “(1) The documents, specific portions of documents, or a detailed description of the types of information for which confidentiality is sought; (2) Specific reference to the statutory or common law support for confidentiality; and (3) A detailed statement of the harm that would result from disclosure and any other facts relevant to the request for confidential treatment.” Puc 203.08(b).

RSA 91-A:5, IV exempts certain governmental records from public disclosure, including “[r]ecords pertaining to internal personnel practices; confidential, commercial, or financial information . . . ; and personnel . . . and other files whose disclosure would constitute invasion of privacy.” In determining whether documents are entitled to exemption pursuant to RSA 91-A:5, IV, 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.

In addition, Puc 306.10(a) defines critical equipment and facilities as “infrastructure without which the utility could not provide safe and reliable service to its customers.” Under Puc 306.10(a), each electric utility is required to “develop, maintain and follow a written physical

security plan designed to protect the utility’s critical equipment and facilities from breaches of security.” Puc 306.10(a). Further, the Commission has protected infrastructure information from disclosure pursuant to RSA 91-A:5 on security grounds when the information contained sufficient detail to constitute a security risk and that security risk outweighed the public’s interest in disclosure. *Public Service Company of New Hampshire*, Order 26,350 (April 22, 2020) at 9 (*citing Unitil Energy Systems, Inc.*, Order No. 24,677 (Oct. 6, 2006) at 14-15, 23, granting motion for confidential treatment of information regarding the electric distribution system that “disclose[s] detailed information as to how the distribution system is designed and configured, revealing key components and their locations [including]... planning information as to how the system may be configured in the near future”).

II. DESCRIPTION OF CONFIDENTIAL ATTACHMENTS

Appendix A describes the documents and types of information contained in the documents for which confidentiality is sought, including the specific attachment numbers, witnesses, and the basis for confidentiality for each document. As shown in Appendix A, the Confidential Attachments contain several categories of confidential and proprietary information:

- confidential, commercial and financial information comprised of: (i) negotiated contract pricing terms; (ii) non-public forward-looking financial projections; (iii) bank account numbers; (iv) proprietary vendor data and analytical models constituting trade secrets; and (v) merger transaction costs;
- non-public, system planning and load data posing a security risk and/or critical energy infrastructure information (“CEII”) pertaining to the Company’s electric system;
- legal claim and negotiated settlement documents; and

- private employee personnel information.

None of the Confidential Attachments are public, and any release of information would be highly prejudicial and harmful to the Company, its employees, customers, and vendors. Release would be detrimental to the business interests of the Company and its vendors, would violate the privacy interests of the Company's employees, and would pose system security and vulnerability risks affecting service to customers. The Confidential Attachments are summarized as follows:

- A. The following attachments listed in Appendix A contain confidential, commercial and financial information based on negotiated contract pricing terms:
 - i. Attachment OCA 7-037 (negotiated contract pricing terms associated with the Company's fee free program);
 - ii. Attachments STAFF 10-010 D and STAFF 10-010 G (negotiated contract pricing terms associated with meter equipment and services);
 - iii. Attachments STAFF 12-027 B, STAFF 12-027 C and Attachments OCA 6-010 B through OCA 6-010 C (negotiated contract pricing terms and evaluation of competitive market proposals contained in vendor bids and responses to Company requests for proposals for rate case support);
 - iv. Attachments OCA 6-076 A through OCA 6-076 C, Attachment OCA 6-078 and Attachment OCA 6-079 (negotiated contract pricing terms for payment processor services);
 - v. Attachment OCA 7-043 and Attachment OCA 7-043-SP01 (negotiated contract pricing terms for insurance coverage prices);
 - vi. Attachments OCA 8-004 B through OCA 8-004 E (negotiated contract pricing terms regarding vendor bid prices and responses to Company requests for proposals for capital projects);
 - vii. Attachment OCA 8-034 B (negotiated contract pricing terms for vendor prices and bank account numbers in invoices for IT services); and
 - viii. Attachments TS 2-046 A through TS 2-046 T (negotiated contract pricing terms and bank account numbers in invoices for advertising costs).

- B. The following attachments listed in Appendix A contain confidential, commercial and financial information based on non-public forward-looking financial projections:
- i. Attachments STAFF 4-005 A, page 18 of 23² (forward-looking financial projections in presentations given to rating agencies and investment firms);
 - ii. Attachment STAFF 4-011 (forward-looking financial projections associated with forecasted equity infusions and dividend payments); and
 - iii. Attachments OCA 7-019 A through OCA 7-019 C (forward-looking financial projections used to develop internal Company performance scorecard metrics);
- C. The following attachments listed in Appendix A contain confidential, commercial and financial information that include vendor invoices containing bank account numbers:
- i. Attachment STAFF 5-030 A, Attachment STAFF 5-031, Attachment OCA-8-034 B and Attachments TS-2-046 A through TS-2-046 T (vendor invoices containing bank account numbers); and
 - ii. Attachment OCA 7-043 and Attachment OCA 7-043-SP01 (insurance provider invoices containing bank account numbers).
- D. The following attachments listed in Appendix A contain confidential, commercial and financial information that includes proprietary commercial and vendor data and analytical models developed and used by the Company's consultants for commercial purposes:
- i. Attachment STAFF 4-017 F and Attachment STAFF 4-019 G (proprietary return on equity models);
 - ii. Attachment STAFF 10-013 B and Attachment STAFF 10-013 C (proprietary customer satisfaction survey results compiled by J.D. Power);

² When initially submitted, Eversource had a good faith basis for seeking confidential treatment of information on Attachments Staff 4-005A through Staff 4-005 D. Given the passage of time, however, only the information on page 18 of 23 of Attachment Staff 4-005A requires confidential treatment.

- iii. Attachment STAFF 12-012-SP01 B (proprietary reliability survey report compiled by Edison Electric Institute);
 - iv. Attachment TS 2-028 (proprietary executive compensation survey report compiled by Pay Governance);
 - v. Attachments OCA 1-001 AEB-2 through OCA 1-001 AEB-13 (proprietary return on equity models and data);
 - vi. Attachment OCA 1-001 MCOSS-1, Attachment OCA 1-001 ACOSS-2 PROFORMA, Attachment OCA 1-001 ACOSS-3 PER BOOKS, Attachments OCA 2-051 A through OCA 2-051 I, Attachment OCA 2-051 A (Revised), Attachments OCA 2-052 A through OCA 2-052 L, Attachment OCA 2-056, Attachment OCA 8-043, Attachment TS 2-072, Attachments OCA-TS 3-001 A through OCA-TS 3-001 B, Attachment OCA-TS 3-001 F and Attachment OCA-TS 3-001 G (proprietary marginal cost of service study and allocated cost of service study models and consultant data); and
 - vii. Attachments OCA 1-006 C through OCA 1-006 D, Attachment OCA 1-006-SP01 and Attachments OCA 1-019 A through OCA 1-019 F and Attachment TS 2-028 (proprietary compensation survey and analysis compiled by commercial service providers).
- E. The following attachment listed in Appendix A contains confidential, commercial and financial information that includes competitive merger costs:
- i. Attachment STAFF 12-023 (competitive bid pricing related to merger costs that are considered confidential and proprietary).
- F. The following attachments listed in Appendix A contain non-public system planning, load data and/or critical energy infrastructure information pertaining to the Company's electric system:
- i. Attachments STAFF 10-028 A, OCA 6-093 B, OCA 6-094 B, OCA 6-095 B, and OCA 6-098 B (project authorization forms and area planning studies containing maps and diagrams depicting infrastructure components and system composition);
 - ii. Attachments STAFF 10-028 B, OCA 6-093 A, OCA 6-094 A, OCA 6-095 A, OCA 6-096, OCA 6-097, and OCA 6-098 A (project authorization forms containing information on infrastructure components, system composition and strategy for addressing load and reliability);

- iii. Attachments STAFF 11-003 and STAFF 11-004 (list of expansion projects containing information on infrastructure components and site-specific system composition to address changes in different areas loads);
 - iv. Attachments STAFF 11-008, OCA 2-056, OCA 2-061, OCA 2-062, OCA-TS 3-001 A, OCA-TS 3-001 B, OCA-TS 3-001 F, and OCA-TS 3-001 G (MCOSS supporting workpapers containing underlying information on peak load); and
 - v. Attachment OCA 6-105 D and Attachments OCA 7-007 A through OCA 7-007 D (internal capital plan and internal emails containing the internal capital plan supporting MCOSS including information on infrastructure components and site-specific system composition).
- G. The following attachment listed in Appendix A contains legal claim and negotiated settlement documents:
- i. Attachment STAFF 16-011 (G&W Letter.28; G&W Letter.29; G&W Signed Response.8; G&W Warranty Breach Notice).
- H. The following attachments listed in Appendix A contain private employee personnel information:
- i. Attachments OCA 7-018 A through OCA 7-018 C (employee specific goals and compensation information including individual employee identifying information); and
 - ii. Attachment TS 2-027 (employee specific severance packages including individual employee identifying information).
- I. The following attachment listed in Appendix A contains confidential information pertaining to an Eversource customer:
- i. Attachment Staff 16-015 (growth forecast noting specific customer load information).

As explained below in Section III, there is a privacy interest at stake in each of the Confidential Attachments that would be invaded by public disclosure, and where the privacy interest substantially outweighs any public interest in disclosure. In addition, public disclosure of the Confidential Attachments is not necessary to inform the public of the conduct and activities of

its government, and thus disclosure is not warranted. *See Electric Distribution Utilities*, Order No. 25,811 (September 9, 2015) at 5.

III. DISCUSSION

A. Negotiated Contract Pricing Terms

The Confidential Attachments containing negotiated contract pricing terms are highly sensitive and confidential in nature and the Company has a strong privacy interest at stake relative to those attachments. There are several factors that support a finding that these attachments should be granted protective treatment, including factors that affect the business interests of the Company and its counterparties, and the interests of the Company's customers who ultimately bear the cost of services and materials procured through negotiated contracts. The negotiated pricing, contract and engagement terms included in these attachments were the result of competitive bid processes and negotiations between the Company and the contract counterparties. If the Company were required to disclose these competitively sensitive terms in this docket, the Company would likely experience substantial difficulty in the future in negotiating successfully with potential contract partners; particularly in terms of getting potential vendors and negotiating partners to agree to a favorable terms as compared to other customers of the contract partner.

A decision requiring the Company to disclose negotiated pricing, contract and engagement terms in this proceeding would put potential vendors and negotiating partners on notice that their pricing information and other negotiated terms may be disclosed to the public in the Commission's approval process, including to persons who are seeking to procure similar services from the vendor. As a result, the disclosure of this information would have a chilling effect on the Company's ability to: (1) attract contract partners who may fear that the Commission will

ultimately release proprietary pricing data to their other customers; and (2) secure reasonable and attractive pricing from contract partners for the benefit of the Company's customers.

Additionally, the Confidential Attachments containing negotiated pricing terms should be protected by the Commission and remain confidential because such information is competitively sensitive, and its disclosure could harm the Company's vendors and consultants. Should this information be made available to the public, the Company's vendors and consultants would be placed at a competitive disadvantage vis-à-vis their competitors because such competitors would have information by which to base any future bids for providing services to the Company. Moreover, disclosure of such information may place the Company's vendors and consultants at a competitive disadvantage with respect to their ability to negotiate fees for services with existing and potential clients. This result would disadvantage the Company to the extent that the Company's vendors and consultants determine in the future not to bid on the Company's requests for services because of the potential competitive disadvantages that may arise should they do so; which would deprive the Company of access to certain expertise necessary for Commission proceedings. In balancing the Commission's privacy analysis, the privacy interest of the Company and its counterparties outweigh and are aligned with the public interest because if the negotiated terms and pricing information were disclosed the Company would have difficulty procuring like services from vendors in the future at the lowest cost, which would ultimately harm the Company's customers.

The Commission has previously protected commercially sensitive negotiated pricing information on the basis that the public's interest in disclosure is outweighed by the "substantial harm to the competitive positions" of the Company and its vendors, as well as the effect it would have on the Company's customers in higher costs. *Liberty Utilities Corp.*, Order No. 26,280

(August 1, 2019) at 4-5 (protecting negotiated pricing terms contained in gas supply contract); *Pennichuck East Utility, Inc.*, Order No. 26,222 (February 26, 2019) (protecting negotiated pricing and billing rates of utility's attorney); *Public Service Company of New Hampshire*, Order No. 26,057 (September 19, 2017) at 10 (protecting bid prices in responses to company's RFP). The same concerns attach to the information in issue here, and the Commission should follow its prior determinations and grant confidential treatment to the information in these attachments.

B. Non-Public Forward-Looking Financial Projections

The Confidential Attachments containing non-public forward-looking financial projections should be protected by the Commission and remain confidential for several reasons. First, the information constitutes non-public, forward-looking financial information that is maintained by the Company as highly confidential and proprietary, and is not disclosed publicly. The Company's financial data and forward-looking financial projections, and the basis for these data and projections, are considered proprietary, commercially sensitive and strategic non-public business information. It would be highly prejudicial and harmful to the Company if this information were to be revealed to investors or potential investors, as well as those who might look to use such information for their own gain. Any public disclosure of such information would be detrimental to the business interests of the Company in its service to customers and would allow unfair access to competitive information.

Second, the manner in which the Company assimilates and displays the information reflected in the composite financial forecasts and projections constitutes a trade secret and intellectual property of the Company. If publicly disclosed, these forecasts and forward-looking financial information would provide competitively sensitive information to other parties, such as marketers and suppliers, with whom the Company directly competes for materials and supplies, or

with whom the Company must negotiate, to procure commodities, materials and supplies. The Company does not disclose this information publicly and treats the information as proprietary within the Company. The Company's impaired negotiating ability would result in the Company having difficulty procuring materials, services and supplies at the lowest cost, which would ultimately harm the Company's customers.

In the Commission's analysis, the privacy interests of the Company outweigh the public interest. If the Company's forward-looking financial forecasts were disclosed, the Company would have difficulty negotiating for the procurement of necessary services, materials and supplies from vendors in the future at the lowest cost, which would ultimately harm the Company's customers through higher prices for service. In addition, release of such information outside of annual and quarterly reporting cycles required by securities laws also has the potential to cause a detrimental impact to the Company. As such, any public interest in this information is substantially outweighed by the Company's privacy interest and the potential harm that would be caused by release of the information.

C. Bank Account Information

The Confidential Attachments containing bank account information and routing numbers should be protected by the Commission and remain confidential. Public release of the bank account information contained in these attachments could damage the business position of the affected entities by subjecting them to potential fraud, theft, and other abuses. The Company takes all reasonable measures to keep its bank account information and that of its vendors out of the public domain. As such, this information is not available in any other public forum, and disclosure of such information would constitute an unwarranted invasion of personal privacy, and is the type of disclosure warranting prevention pursuant to RSA 91-A:5, IV.

In the Commission's privacy analysis, the privacy interest of the Company outweighs the public interest because if the Company's and/or its vendors' banking and financial information were disclosed the Company and its vendors would be exposed to potential fraud. Additionally, the public interest is *di minimis* in disclosing the Company and its vendors' confidential account numbers and banking information because this information does not inform the public of the conduct and activities of the Commission.

The Commission has previously prevented the disclosure of financial information when it could result in a competitive disadvantage to the party associated with the information. *Northern Utilities, Inc.*, Order No. 26,107 (February 28, 2018) at 6-7 (protecting pricing, cost, production and financial analysis relating to company's contract counterparty). The disclosure of financial information, including bank account numbers, would cause competitive harm to the Company and its counterparties because it would expose them to potential financial fraud and should be protected.

D. Proprietary Vendor Data and Analytical Models

The Confidential Attachments containing the proprietary work products, studies, and surveys developed and compiled by the Company's outside consultants should be protected from public disclosure by the Commission. The business models of the Company's consultants rely on providing their proprietary work products, studies, survey data and analysis only to entities that purchase it for a fee. If these data were disclosed to the general public, then it would harm the business interest of the Company's consultants and vendors because individuals and entities who want access to this specific data and proprietary analysis would not need to pay to obtain access to it. As a result, the disclosure of this information would have a chilling effect on the Company's ability to attract necessary consultants who may fear that the Commission will ultimately release

proprietary work product, data and analysis that would undermine their businesses. This result would disadvantage the Company to the extent that the Company's consultants determine in the future not to bid on the Company's requests for services because of the potential competitive disadvantages that may arise should they do so; which would deprive the Company of access to certain expertise necessary for Commission proceedings.

Additionally, the Confidential Attachments containing competitively sensitive and proprietary survey information should be protected in their entirety as well. These attachments consist of proprietary survey information that was compiled separately by entities that require confidential treatment as a condition of survey participation and is provided only to participating companies on the condition of confidentiality. These entities provided this competitively sensitive survey information and analysis to the Company on the condition that the information, findings, and analysis would remain confidential. If the identities of the survey participants were disclosed publicly, it would violate the terms of the Company's participation and would harm its ability to participate in or have access to future studies. Additionally, if there is a risk of public disclosure, companies may choose not to participate in future studies, thus limiting the number of participants and the value of the benchmarking data. Furthermore, if the Confidential Attachments consisting of proprietary survey and study data are disclosed to the general public, this could also adversely impact the ability of the Company to procure such survey data in the future because the potential consultants will be on notice that their proprietary data provided to the Company could become public.

In the Commission's privacy analysis, the privacy interest of the Company and its consultants are aligned with the public interest because if the Company's consultants' proprietary work product, data, survey and analysis were disclosed the Company would have difficulty

procuring these necessary services from consultants in the future. The Company's difficulty in procuring these services would ultimately harm the Company's customers due to increased cost to procure or develop these services through other limited means. For instance, the Company may receive less responses from consultants willing to provide such services or consultants may increase the amount charged to the Company to compensate for the risk of disclosure of their proprietary work product and analysis. This type of expertise and proprietary data is critical to the rate case process and must be obtained from outside consultants and vendors. It would ultimately harm the Commission's processes if Eversource was not able to procure these services or data. This type of information is needed to enable the Commission to evaluate the Company's proposals.

The Commission has protected third party proprietary information on the basis the public interest is outweighed by such information that is sufficiently detailed that its disclosure would cause great economic harm and which was provided to the Company under an understanding that its confidentiality would be maintained. *Liberty Utilities Corp.*, Order No. 26,209 (January 17, 2019) at 43-44. The Company's vendors and consultants would experience great economic harm if their proprietary work product and analysis were disclosed to the public because their business models depend on providing their proprietary work product and analysis for a fee, which would be undermined if the public had free access to this same information. Additionally, the public would also be harmed because service providers would be on notice that their information could be disclosed if they work with the Company and may choose not to provide the necessary service to the Company. This would result in limiting the Company's options for service providers and create a less competitive solicitation for these necessary services, which could increase the cost for customers.

E. Merger Costs

Attachment Staff 12-023 contains responses from potential outside consultants and service providers in response to the requests for proposals (“RFPs”) related to the merger of NSTAR with Northeast Utilities. The merger costs contained in Attachment Staff 12-023 include fees for several merger related service costs including: banker fees, legal fees, registration fees, consulting fees, system integration costs as well as other merger transition costs. This proprietary and confidential information, including proposed pricing terms, was provided by consultants and service providers with the expectation that such information would remain confidential and would not be shared or disseminated. Disclosure of the confidential RFP responses contained in Attachment Staff 12-023 to the public would place these consultants and service providers at a competitive disadvantage vis-à-vis their respective competitors because such competitors would have information by which to base any future bids for providing services.

Moreover, disclosure of such information may place the Company’s existing and potential consultants and service providers at a competitive disadvantage with respect to their existing and potential clients with respect to proposing services and negotiating fees for those services. This result would disadvantage the Company to the extent that outside consultants and service providers determine in the future not to bid on the Company’s requests for services because of the potential competitive disadvantages that may arise should they do so. This result would deprive the Company of access to certain services and expertise necessary for Company projects. Furthermore, since the information in issue was provided to the Company’s parent and affiliate companies, the disclosure of the information would also disclose the private information of those entities and the same types of competitive harm identified for the Company would occur for those entities. Thus, disclosure here would result in harms extending beyond New Hampshire.

In balancing the Commission's privacy analysis, the privacy interest of the Company and its service providers outweigh and are aligned with the public interest because if these consultants and service providers' responses were disclosed the Company (and its affiliates) would have difficulty procuring like services in the future at the lowest cost, which would ultimately harm the Company's customers.

The Commission has protected the pricing and billing rates of service providers and consultants as well as the competitive bids made in response to a company's RFP. *See Pennichuck East Utility, Inc.*, Order No. 26,222 (February 26, 2019) (protecting negotiated pricing and billing rates of utility's attorney); *Public Service Company of New Hampshire*, Order No. 26,057 (September 19, 2017) at 10 (protecting bid prices in responses to company's RFP).

F. Non-Public System Planning, Load Data and Energy Infrastructure Information Posing a Security Risk

The Confidential Attachments containing non-public system planning and infrastructure information posing a significant security risk should be protected from public disclosure because they provide detailed information on how the distribution system is designed, configured and operates, as well as key system components at specific locations. *Public Service Company of New Hampshire*, Order No. 26,350 at 9 (citing *Unitil Energy Systems Inc.*, Order No 24,677 (October 6, 2006)). The system and infrastructure information contained in these attachments provide site specific detailed information on system components and configurations without which the Company would be unable to provide safe and reliable service. These attachments include information and load management strategy and data, as well as maps and diagrams detailing the distribution system, specific substation and transformer sites, and asset conditions. If this information were disclosed, it would present a security risk because it would allow a nefarious party with sufficiently detailed information to jeopardize public safety by enabling the party to

hinder or thwart the operation of the Company's facilities or otherwise disrupt the Company's ability to provide safe and reliable service to customers.

Additionally, the relevant Confidential Attachments contain information on the status of various substations at different locations throughout the service area. These Confidential Attachments describe the configuration of the substations, the loads served, switching details, strategies on how to serve specific loads, and other like information. This information should be protected because its disclosure could be used to destroy or damage critical equipment as well as impede the recovery from any damage. *Public Service Company of New Hampshire*, Order 26,370 (June 22, 2020) at 3-4. Therefore, the release of this information presents a substantial security risk to safe and reliable service. Furthermore, the public's interest is minimal because the specific location and configuration of the Company's substations and the Company's load serving strategies are not factors that would be pertinent to public participation in a cost recovery proceeding.³ *Id.*

To the best of the Company's knowledge, the confidential information in these attachments is not customarily available in the public domain in the context of the operation of the Company's facilities. Additionally, disclosing this information would violate the Company's policy of keeping certain information confidential in compliance with Puc 306.10(a). In the Commission's privacy analysis, the privacy interest of the Company outweighs and is aligned with the public interest because if the Company's critical infrastructure information were disclosed the Company's

³ For clarity, consistent with Order Nos. 26,350, 26,370, and 26,371, Eversource does not claim that transformer rating or loading information shown on the attachments is confidential. Rather it is the information in the identified attachments that describes or shows the configuration, status, and condition of the relevant facilities, as well as information on switching or load management strategies. Information generally describing projects or project costs is not confidential except to the extent it may reveal vendor pricing information.

safe and reliable operation of the distribution system could be compromised, putting the public safety at risk.

The Commission has protected similar system information that is sufficiently detailed to present a security risk that outweighs the public interest in disclosure. *Public Service Company of New Hampshire*, Order No. 26,350 (April 22, 2020) at 9 (citing *Unitil Energy Systems, Inc.*, Order No. 24,677 (October 6, 2006) at 14-15, 23 (granting the company’s motion for confidential treatment of information regarding its electric distribution system that “disclose detailed information as to how the distribution system is designed and configured, revealing key components and their locations [including]... planning information as to how the system may be configured in the near future”). Depending on the type of information, the public’s interest in disclosure may carry greater weight. *Public Service Company of New Hampshire*, Order No. 26,350 at 10. The public interest, however, is not sufficient to outweigh the interest in keeping the information confidential.

Relatedly, Eversource notes that the Commission has concluded that bulk substation one-line diagrams and maps depicting the electrical connectivity or specific electric system infrastructure locations including the configuration of wires and transformers, as well as other related information located at a bulk substation are confidential, as well as Critical Energy Infrastructure Information, and are not essential for informing the public about the activities of the Commission and present a significant security risk, which therefore warrant protection from public disclosure. *Public Service Company of New Hampshire*, Order No. 26,350 at 10-11. Accordingly, any such information on the described attachments should be kept confidential for the reasons identified by the Commission in Order No. 26,350.

G. Legal Claims and Settlements

The Company is seeking protective treatment of the Confidential Attachments that contain certain negotiated terms and amounts associated with or derived from the terms of legal settlements the Company has negotiated with outside parties. These attachments contain proprietary and confidential amounts derived from negotiated settlement terms which, if disclosed publicly, could harm the Company and its customers. Further, as part of certain settlements, the Company is required to maintain the terms of the settlements as confidential. If the Commission were to require the disclosure of this sensitive data, the Company would likely experience substantial difficulty in the future in negotiating successfully with potential settlement parties.

Settlement amounts must remain confidential to preserve the Company's future negotiating leverage because a lack of confidentiality may discourage future adverse claimants from making concessions or agreeing to specific provisions more favorable to the Company because public knowledge of such precedent would increase the settling party's bargaining leverage in future negotiations. Additionally, if the settlement information contained in these attachments were disclosed it would put potential settlement parties on notice that any terms or amounts they may receive to settle their dispute may be disclosed to others. This would result in a chilling effect on the Company's ability to: (1) reach settlement agreements with adverse litigants who may fear that the Commission will ultimately release proprietary settlement amounts to the public; and (2) secure the lowest settlement amounts possible for the benefit of the Company's customers. Additionally, disclosure of the information may result in the Company being in breach of confidentiality requirements of the settlements, which could subject the Company to future additional claims. In balancing the Commission's privacy analysis, the privacy interest of the Company outweighs and are aligned with the public interest because if the negotiated settlement terms were disclosed the

Company would less leverage and bargaining power to settle with other parties in the future for a lowest amount, which would ultimately harm the Company's customers.

The Commission should prevent the disclosure of the Company's negotiated legal settlement claims under a similar analysis as the Commission's decision to protect negotiated pricing. Similar to negotiated pricing terms, the disclosure of the Company's negotiated settlement terms with other parties would result in a disadvantage in the Company's ability to effectively negotiate for the lowest amount with other parties, and would result in a higher cost of service for customers. Therefore, it is in the Company's interest and the public interest to prevent the Company's negotiated settlement information from being disclosed.

H. Private Employee Personnel Information

The Company seeks to protect confidential individual employee identifying information including employee names, salary, titles and severance information that are produced in the Confidential Attachments. The detailed nature of this information would allow the identification of the affected current and prior employees and their compensation information. Public release of this information would reveal personal information of the effected present and prior employees and could be detrimental to the affected parties in their work environment. As such, this information is not generally made available to the public in any forum, and disclosure of such information would constitute an unwarranted invasion of personal privacy. Additionally, if the compensation information contained in these attachments is produced publicly, Company personnel and third parties would have unfettered access to confidential salary information, which would negatively impact the Company's ability to attract and retain employees. Disclosure of the salary range information provided in these attachments would expose to the public a range of salaries for specific positions within the Company, which would be detrimental to its ability to

negotiate compensation with potential employees, and could adversely impact its ability to attract and retain qualified applicants.

In the Commission’s privacy analysis, the privacy interests of the Company outweighs and are aligned with the public interest because if the Company’s compensation and severance information were disclosed the Company would have less negotiating power to attract the highest quality talent for the lowest amount, which would ultimately harm the Company’s customers in the form of a greater cost of service. Additionally, the disclosure of Company employee names, titles, salary and severance information would constitute an invasion of privacy of the Company’s present and past employees, which is the exact harm to be avoided in exempting information “whose disclosure would constitute invasion of privacy” in RSA 91-A:5, IV. Given the sensitive and competitive nature of the confidential employee identifying information, coupled with the public interest, the Company seeks an order of the Commission preventing the public disclosure of the attachments listed in Appendix A containing employee names, salary, titles and severance information.

The Commission has previously prevented the disclosure of employee names when the disclosure of such information “does not serve the purpose of informing the citizenry about the activities of their government.” *Public Service Company of New Hampshire*, Order No. 26,350 at 13 (April 22, 2020) (citing *Union Leader Corp. v. City of Nashua*, 141 N.H. 473, 477 (1996)). The disclosure of individual employee names does not serve to inform the public about the Commission’s regulatory activities regarding the Company, and therefore, the public’s interest in disclosure of employee names is more minimal than the privacy interests of the individual employees. *Public Service Company of New Hampshire*, Order No. 26,350 (April 22, 2020) at 13.

I. Specific Customer Load Information

The identified attachment contains information on a specific customer and a projected load from that customer. Consistent with RSA 363:37 and :38, Eversource has an obligation to protect “individual customer data,” which includes information on the “quantity, characteristics, or time of consumption by the customer.” Beyond that explicit requirement, the Commission’s balancing test weighs in favor of protecting the information. First, there is a strong privacy interest on the part of the customer in protecting information about its potential future changes in load which could reveal information about its plans or intentions for expansions or changes in its business activities. Further, the public interest is slight. Although the public may have some interest in the overall loads on the Eversource system and how those loads affect system planning and operation, those limited interests do not warrant the disclosure of information on specific customers and those customers’ intentions. Given the high privacy interest and the low public interest, the Commission should grant confidential treatment of the identified information.

IV. CONCLUSION

Based on the foregoing, the Company, its vendors and employees have privacy interests at stake that would be invaded by disclosure of information in the Confidential Attachments. In addition, given the substantial evidentiary record in this docket, the disclosure of the Confidential Attachments, which constitute a relatively small subset of such record, is not necessary to inform the public of the conduct and activities of its government and would not serve that purpose, and therefore disclosure is not warranted. *See Electric Distribution Utilities*, Order No. 25,811 (September 9, 2015) at 5. On balance, the harm that would result from public disclosure is substantially outweighed by the need for confidential treatment.

For the above reasons, the Company respectfully requests that the Commission grant this motion for protective order.

**PUBLIC SERVICE COMPANY OF NEW
HAMPSHIRE d/b/a EVERSOURCE ENERGY**



By: _____

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Dated: August 5, 2020

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.



Matthew J. Fossum

August 5, 2020