

**STATE OF NEW HAMPSHIRE
BEFORE THE
PUBLIC UTILITIES COMMISSION**

**Public Service Company of New Hampshire d/b/a Eversource Energy
and Unitil Energy Systems, Inc. and Northern Utilities, Inc.**

**Docket No. DE 19-197
Development of a Statewide, Multi-Use Online Energy Data Platform**

MOTION FOR CONFIDENTIAL TREATMENT AND PROTECTIVE ORDER

Public Service Company of New Hampshire d/b/a Eversource Energy, (“Eversource”) and Unitil Energy Systems, Inc. and Northern Utilities, Inc. (“Unitil”) (together “Eversource and Unitil” or the “Companies”), respectfully request, pursuant to N.H. Code Admin. Rules Puc § 203.08 and RSA 91-A:5,IV, that the New Hampshire Public Utilities Commission (“Commission”) grant protection from public disclosure of certain confidential and proprietary information provided by the Companies in this docket. Specifically, the Companies request that the Commission issue an order requiring confidential treatment for confidential, commercial and financial information provided by the Companies to the Commission Staff (“Staff”), the Office of the Consumer Advocate (“OCA”), and the settling parties to Docket No. DE 19-197, specifically the cost estimates within the document pre-marked exhibit 17A submitted for hearing on the instant docket on May 5, 2021 (the “Confidential Information”). In support of this motion, the Companies state the following:

1. The Commission issued an Order of Notice on December 13, 2019 opening the instant docket according to SB 284-FN (2019), which “requires the Commission to open an adjudicative proceeding within 90 days of its effective date to determine how the energy data platform will be developed, implemented, and maintained, and

whether the costs of doing so are reasonable and in the public interest.” (Order of Notice at 1).

2. During the course of settlement negotiations, and to advance progress of all parties signing the settlement agreement, the utilities, including Eversource and Unitil, were asked to conduct a high-level, order-of-magnitude estimate for the “back-end integration” portion of the platform—the portion where the utilities work with their internal systems to make the data available and exportable to the platform itself. Eversource and Unitil provided these estimates; Liberty abstained due to the pending implementation of a new billing system that will have extensive overlap with its back-end integration for the platform, rendering even such a high-level estimate meaningless at this time. Staff also requested that Eversource provide an equally high-level estimate for the construction of the platform itself, which Eversource provided under the assumption that such construction would be done entirely in-house and custom, as opposed to any portion being contracted out or using “off-the-shelf” elements.
3. The estimate figures, while they provide a “cost universe” within which platform costs may be informed, do not purport to do anything more than potential establish outer, high-level estimates, as more thorough and granular estimates would be required to produce numbers that could be sufficiently relied upon as an actual estimate of platform costs. To highlight this fact, exhibit 17A contains caveats of the possible implications of the estimates, and describes estimate assumptions, cost considerations, and the processes—including multiple requests for proposals (“RFP”s)—through which a sufficiently reliable estimate could, and will be,

ascertained upon approval of the proposed settlement agreement in the instant docket. Nonetheless both Eversource and Unitil have provided cost ranges for their respective companies to conduct the back-end integration work for the platform with the above considerations taken into account.

4. 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 law.” The motion shall 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).
5. RSA 91-A:5, IV exempts certain governmental records from public disclosure, including “[r]ecords pertaining to . . . confidential, commercial, or financial information.” 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 at 5 (September 9, 2015). 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 at 3-4 (November 9, 2010).

6. The Confidential Information includes cost ranges for certain portions of work to create the platform, a substantial percentage of which will be bid out through the RFP process described in exhibit 17A.
7. The Companies have a substantial privacy interest in the Confidential Information as it contains commercially and financially sensitive information provided by Eversource and Unitil that could directly influence and affect the future bidding on the work estimated by contractors responding to the RFP. The Companies take all reasonable measures to keep RFP bids, contract award terms and proprietary contractor work product out of the public domain. In this case, the Companies are seeking to keep the aforementioned items from being biased due to the very preliminary numbers provided in the Confidential Information. The release of this information would seriously undermine the Companies' negotiating position in the market for this work and the attendant RFP processes, which would in turn jeopardize the ability of the Companies to ensure that customers are being served by the lowest-cost option from the widest possible array of contractors and service providers offering the most competitive bids without the prejudice of the Confidential Information. The Commission has recognized similarly related concerns and has

previously granted confidential treatment to information that, if disclosed, will put the moving party at a disadvantage in future negotiations. *See e.g., Abenaki Water Co. Inc.*, Order No. 25,945 at 7 (September 26, 2016); *National Grid plc, et al.*, Order No. 24,777 at 86 (July 12, 2007) (“If 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 non-disclosure”). The release of the Confidential Information could result in contractors adjusting their bid responses to the Companies’ RFPs for platform work, creating direct competitive disadvantages from public disclosure of the Confidential Information.

8. The second criterion of the Commission’s analysis is whether there is a public interest in disclosure. While the public may have some interest in understanding the estimates developed by the Companies, this motion seeks protection of only the number range of the estimates, and not the assumptions or cost factors used in ascertaining the estimates; nor does it include the process through which formal estimates will be received and selected. The Confidential Information does not represent actual costs to customers, and is only a starting place to begin the estimate process in earnest. Ultimately, it is the responses to any RFPs that will establish the universe of costs to consider, not the preliminary and high-level estimates and, therefore, any public interest in the specific estimates covered by this motion is diminished. Protecting the Confidential Information does not impinge upon the ability to fully understand the processes through which actual costs will be reached, and the work and work product those costs will entail. Put another way, the

Confidential Information in exhibit 17A, while it may have minimal public interest, is not necessary in this case to inform the public of the conduct and activities of its government.

9. As to the final requirement of the Commission's analysis, balancing the relevant public and private interests, there is strong potential that it would be commercially damaging to both Eversource and Unitil by biasing the various contractors exposed to the Confidential Information, and consequently to the possible detriment to both Companies' customers. The substantial public interest in obtaining the lowest possible cost through competitive RFPs and a confidential negotiation process outweighs the relatively minimal interest in public disclosure of such limited preliminary cost estimate information. Ruling in favor of this balance and granting this motion ultimately redounds benefits to customers. *See EnergyNorth Natural Gas, Inc.*, Order No. 25,064 (January 15, 2010).
10. Based on the foregoing, Eversource and Unitil affirm the existence of privacy interests at stake that would be invaded by disclosure of the Confidential Information. Conversely, given the substantial evidentiary record in this docket, and the disclosure of the Confidential Information constitutes an extremely small element of that record, such disclosure 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 at 5 (September 9, 2015). On balance, the harm that would result from public disclosure is substantially outweighed by the need for confidential treatment.

WHEREFORE, the Companies respectfully request that the Commission grant this Motion and issue an appropriate protective order.

Respectfully submitted this 3rd day of May 2021.

**PUBLIC SERVICE COMPANY OF NEW HAMPSHIRE d/b/a Eversource Energy and
UNITIL ENERGY SYSTEMS, INC. AND NORTHERN UTILITIES, INC.**

By Eversource's Attorney,

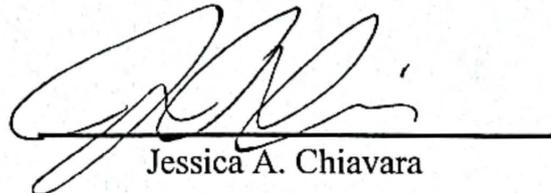


Jessica A. Chiavara, Esq.
Counsel
Eversource Energy Service Company
o/b/o Unitil Energy Systems, Inc. and Northern
Utilities, Inc.
780 N. Commercial Street
Manchester, NH 03101
Cell: 315-313-3264
Jessica.chiavara@eversource.com

CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing document upon each person designated on the official service list in this proceeding.

Dated at Manchester, New Hampshire this 3rd day of May 2021.



Jessica A. Chiavara