

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

Public Service Company of New Hampshire d/b/a Eversource Energy

**Docket No. DE 20-092
2021-2023 Triennial Energy Efficiency Plan**

MOTION FOR CONFIDENTIAL TREATMENT AND PROTECTIVE ORDER

Public Service Company of New Hampshire d/b/a Eversource Energy, (“Eversource” or the “Company”) respectfully requests, 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 information provided by the Company in this docket. Specifically, Eversource requests that the Commission issue an order requiring confidential treatment for confidential, commercial, and financial information, as well as individually identifiable customer information, provided by the Company to the Commission Staff and the Office of the Consumer Advocate (“OCA”) in the course of the discovery process, specifically: Staff 1-008, Staff 3-017, Staff 3-018, and TS 1-008 (the “Confidential Information”). In support of this motion, the Company states the following:

1. The Commission established an inclusive process for implementing New Hampshire’s Energy Efficiency Resource Standard (“EERS”) in Order No. 25,932 (August 2, 2016) (the “Planning Order”), requiring the state’s electric and natural gas utilities, as administrators of the programs offered to the public to meet the EERS, to “prepare the triennial EERS plans in collaboration with stakeholders and the EESE Board as Advisory Council.” Planning Order at 10-11. In Docket No. DE 17-136, the Commission approved the first triennial plan with an implementation period of

the EERS for years 2018-2020. See Order No. 26,095 (January 2, 2018). The 2018-2020 Plan was updated for each of the years 2019 and 2020.

2. On December 31, 2018, the Commission adopted the 2019 update plan with Order No. 26,207, which included a number of recommendations for the 2021-2023 triennial period (the “2021-2023 Plan”) including a filing deadline for a proposed plan of July 1, 2020. The Commission granted an extension for filing the 2021-2023 Plan by issuing an Order *nisi* opening the instant docket for consideration of the 2021-2023 Plan, and extended the filing deadline to September 1, 2020. Order No. 26,375 (June 30, 2020).
3. Discovery commenced once the 2021-2023 Plan was filed on September 1, and took place throughout the months of September and October, during which Eversource responded to 163 requests from Staff. Among the responses to those requests, four contained confidential and proprietary information. Rather than seek confidential treatment for each response at the time of submittal, the Company provided the Confidential Information accompanied by written statements of intent to file a motion pursuant to Puc 203.08(d).
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 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 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 the following: a copy of an existing vendor contract (Staff 1-008); lists of customers for a demand reduction program that includes Personally Identifiable Information (“PII”) (Staff 3-017); responses to an RFP by competitive bidders (Staff 3-018); and RFP pricing for Eversource’s CEI

program (TS 1-008).

7. The Company has a substantial privacy interest in the Confidential Information as it contains commercially, financially, and personally sensitive materials of the Company, its contractors and its customers. The Company takes all reasonable measures to keep RFP bids, pricing, evaluations, and vendor contracts out of the public domain. The release of any of these types of information would seriously undermine the Company's negotiating position in the market in the future, which would in turn jeopardize the ability of the Company to ensure that customers are being served by the lowest-cost option from the widest possible array of contractors and service providers. The Commission has recognized this concern 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"). Furthermore, the release of the confidential pricing information could result in contractors determining not to bid on the Company's future requests for proposals ("RFPs") because of the competitive disadvantages that might arise from potential public disclosure. *See, e.g., Liberty Utilities (Granite State Electric) Corp. d/b/a Liberty Utilities*, Order No. 26,209 at 43-44 (January 17, 2019) (finding that vendor pricing information provided to Liberty was confidential because, in part, the vendor considered the information highly confidential and competitively sensitive).

8. In regards to the PII of its customers as provided in the response to Staff 3-017, Eversource has an obligation pursuant to RSA 363:38 as a service provider to not “share, disclose, or otherwise make accessible to any third party a customer's individual customer data” to ensure the protection of such information. The confidential attachment STAFF 3-017 B is a list of Eversource customers either enrolled or waitlisted for an energy demand reduction program. As the attachment is comprised of individual customer information, and not aggregated or anonymized in any way, it should be protected as confidential information.
9. The second criterion of the Commission’s analysis is whether there is a public interest in disclosure. This motion seeks protection of only four of 163 responses to Staff discovery requests. Additionally there is a substantial amount of discovery being entered exhibits for the hearing in this docket, which thoroughly documents the stakeholder process leading up to the 2021-2023 Plan filing, as well as the administrative process that ensued from that filing. Protecting the Confidential Information does not impinge upon the ability to fully understand the 2021-2023 Plan, the EERS planning process, or the proposed settlement agreement for the docket and is not necessary to inform the public of the conduct and activities of its government. The Confidential Information has been limited only to that information that would constitute a violation of the various privacy interests discussed herein.
10. 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 the Company, the various contractors mentioned in the Confidential Information, and unsuccessful bidders if the confidential and commercially sensitive

information were disclosed in the public record. 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 information. Ruling in favor of this balance and granting this motion ultimately redounds to the benefit of customers. *See EnergyNorth Natural Gas, Inc.*, Order No. 25,064 (January 15, 2010).

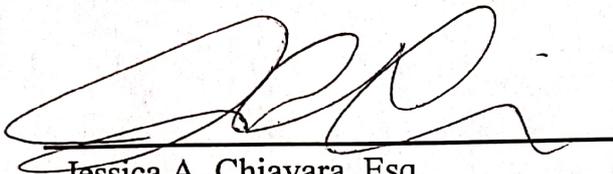
11. Based on the foregoing, Eversource affirms the existence of privacy interests at stake that would be invaded by disclosure of the Confidential Information. Conversely, the Confidential Information constitutes a relatively small subset of the record for this docket, and therefore such disclosure is 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 Company respectfully requests that the Commission grant this Motion and issue an appropriate protective order.

Respectfully submitted this 9th day of December 2020.

PUBLIC SERVICE COMPANY OF NEW HAMPSHIRE d/b/a Eversource Energy

By its Attorney,

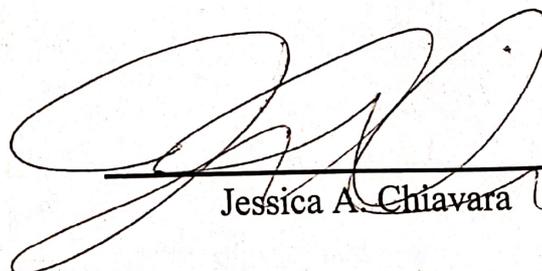


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CERTIFICATE OF SERVICE

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 9th day of December 2020.



Jessica A. Chiavara