

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

DG 22-_____

MOTION FOR CONFIDENTIAL TREATMENT AND PROTECTIVE ORDER

Unitil Energy Systems, Inc. (“Unitil” or the “Company”) respectfully requests that the New Hampshire Public Utilities Commission (the “Commission”) grant protection from public disclosure of certain confidential information submitted as part of the initial filing in this docket pursuant to Puc 203.08 and RSA 91-A:5. Specifically, the Company requests the Commission protect from public disclosure certain confidential, proprietary, and commercially sensitive information contained in the following exhibits: Exhibit JSD-1; Exhibit JSD-4(a); Exhibit JSD-4(b); Exhibit JSD-5; Exhibit JSD-7; Exhibit FDGP-1, and Exhibit FDGP-2 (each a “Confidential Attachment” and collectively the “Confidential Attachments”). Appendix A summarizes the specific types of confidential information in each Confidential Attachment.

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 law.” In determining whether confidential, commercial, or financial information within the meaning of RSA 91-A:5, IV is exempt from public disclosure, the Commission applies a three-step balancing test to determine whether a document, or the information contained within it, falls within the scope of RSA 91-A:5, IV. *Northern Utilities, Inc.*, DG 17-070, Order No. 26,129 (May 2, 2018) at 15 (*citing Liberty Utilities (EnergyNorth) Natural Gas Corp.*, Order No. 26,109 (March 5, 2018) at 23). First, the Commission inquires whether the

information involves a privacy interest and then asks if there is a public interest in disclosure. *Id.* Next, the Commission balances those competing interests and decides whether disclosure is appropriate. *Id.* When the information involves a privacy interest, disclosure should inform the public of the conduct and activities of its government, but if the information does not serve that purpose, disclosure is not warranted. *Id.*

II. DISCUSSION

Concurrent with this Motion, Unutil has filed a petition requesting, among other things, that the Commission find the Company's proposed 4.99 megawatt photovoltaic generating facility is in the public interest (the "Kingston Solar Project" or the "Project"). The Company is seeking the Commission's approval of the Kingston Solar Project pursuant to New Hampshire Revised Statutes Annotated ("RSA") 374-G. RSA 374-G requires project proponents to provide an analysis of the costs and benefits of their proposal. Accordingly, the Company has prepared analyses of the costs and benefits of the Project, which rely upon cost estimates, billing rates, pricing information provided by several third party vendors. The Company's filing also contains a confidential and proprietary price quote for renewable energy certificates ("RECs") provided by a third party vendor.

The cost estimates and billing rates have been provided by third-party vendors in response to Requests for Proposals ("RFPs") and the negotiated pricing information is set forth in agreements between third-parties and the Company. The REC price quote in Exhibit FDGP-1 was provided by a third-party broker.

RSA 91-A:5(IV) expressly exempts from the public disclosure requirements any records pertaining to "confidential, commercial or financial information." RSA 91-A:5, IV; *Union Leader Corp. v. New Hampshire Housing Finance Authority*, 142 N.H. 540 (1997). Application

of this exemption requires “analysis of both whether the information sought is confidential, commercial, or financial information, and whether disclosure would constitute an invasion of privacy.” *Unitil Corp. and Northern Utilities, Inc.*, DG 08-048, Order No. 25,014 at 2 (Sept. 22, 2009). The Commission’s rule on confidential treatment of public records, PUC 203.08, also recognizes that confidential commercial or financial information may be appropriately protected from public disclosure pursuant to an order of the Commission. The determination of whether to disclose confidential information involves a balancing of the public’s interest in full disclosure with the countervailing commercial or private interests for non-disclosure. For the reasons set forth below, the Commission should find the countervailing commercial interests for non-disclosure outweigh the public’s interest in full disclosure.

a. Cost Estimates, Billing Rates, and Pricing Information

Disclosure of the cost estimates, billing rates, and negotiated pricing information (and information that can be used to derive this information) provided by third-party vendors would put them at a competitive disadvantage by revealing the commercial rates they charge for materials and services on a competitive basis. It also would adversely affect the Company and its customers because third-party vendors would be discouraged from responding to the Company’s RFPs and negotiating with the Company if doing so would result in the release of confidential business information. This could have the effect of increasing costs to the Company, and ultimately to customers, if the Company cannot procure or negotiate for cost-effective products and services because it cannot assure confidential, protective treatment of confidential pricing information. *See Granite State Electric Company*, DE 12-023 (Mar. 27, 2021) at 9 (finding that disclosing bidder price information would likely impede the utility company’s ability to engage suppliers in competitive bidding in the future, which would, in turn, make it more difficult to

obtain its supply needs at competitive prices and might thereby increase rates to customers).

For example, in this case, the Company is conducting a multistage RFP process to procure the services of a contractor to design and construct the Kingston Solar Project. The cost estimates for labor and materials in the Company's filing rely, in large part, on cost estimates provided in response to a Preliminary (Stage I) RFP. If the cost estimates provided in response to that Preliminary RFP were made public, it could unduly influence the responses to the Final RFP for the Project by other bidders. Moreover, it could dissuade contractors from bidding on the Project, which would result in a less robust solicitation.

The Company is providing redacted versions of the Confidential Attachments for the public record. Therefore, although the Company is requesting protective treatment for the cost estimates, billing rates, and negotiated pricing information for individual components of the Project, the public will still have access to information about total costs and bill impacts. *See EnergyNorth Natural Gas, Inc.*, Order No. 25,064 at (Jan. 15, 2010) at 12 (“publically available versions of all the documents contain a good deal of information concerning the costs of the underlying engagements”).

The Commission has historically treated pricing information from vendors and potential vendors as confidential. *See e.g., Abenaki Water Co. Inc.*, Order No. 25,945 (Sept. 26, 2016) at 7 (protecting billing rates because it could damage competitive positions to the detriment of ratepayers); *Electric and Gas Utilities*, Order No. 25,189 (Dec. 30, 2010) at 20 (finding “that the harm of public disclosure of the competitive energy efficiency labor and materials pricing and commercially sensitive contract terms outweighs the benefits of disclosure.”); *Unitil Energy Systems, Inc.*, Order No. 25,303 (April 13, 2007) at 8 (finding that disclosing information provided in response to an RFP, including pricing information, would likely

hamper Unitil's ability to engage suppliers in competitive bidding in the future, which would, in turn, make it more difficult to meet its needs at competitive prices and might thereby increase rates to customers); *Unitil Energy Systems, Inc.*, Order No. 24,742 (April 13, 2007) at 3-5 (finding that billing rate information is properly treated as confidential.); *National Grid plc, et al.*, Order No. 24,777 (July 12, 2007) at 86 ("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."). For example, in DE 17-189, the Commission granted protective treatment for pricing information that is similar to information the Company seeks to protect in this proceeding. In DE 17-189, Liberty Utilities (Granite State Electric) Corp. d/b/a Liberty Utilities ("Liberty") sought protection for proposed pricing for various components of systems, software, and other services submitted by Sunrun, Inc. ("Sunrun") as part of an informal RFP response. *Liberty*, Order No. 26,209 (Jan. 17, 2019) at 44. The Commission found that although the public may have some interest in disclosure of Sunrun's pricing information, the public interest was outweighed by the interests of Sunrun, in maintaining the confidentiality of this proprietary, commercially sensitive, and non-public information. *Id.* The same logic applies to the Confidential Attachments and there is no reason for the Commission to depart from its long-established precedent in this proceeding.

b. REC Price Quote

Exhibit FDGP-1 contains a recent REC price quote from a price sheet provided to the Company by a third-party REC broker. The price sheet is copyright protected.

The REC price information has commercial value to the third-party REC broker. If the REC price was disclosed in this proceeding it would impair the commercial value of that

information because parties would have free and unrestricted access to that information. Thus, the REC broker plainly has a privacy interest in this information.

The Commission has previously determined that the public's interest in copyrighted, proprietary and confidential information was not as weighty as the countervailing interest in non-disclosure:

We are cognizant that the analyses and related documents are copyright protected and were provided to the Company without authority to share the information publicly. Consequently, public release of the analyses could harm the Company's ability to obtain this type of information in the future, because it could violate the terms of its agreement with the publishers and would harm the competitive interests of the publishers of the copyrighted materials if such information were provided to the public for free. Those factors make the interest in nondisclosure more substantial.

Northern Utilities, Inc., DG 20-078, Order No. 26,385 (July 28, 2020) at 11.

The Commission should reach the same conclusion in this case. Disclosure of the REC price quote would not provide the public with information about the conduct or activities of the Commission or other parts of the New Hampshire State or local government. Accordingly, disclosure is not warranted.

In summary, on balance, the substantial interest in obtaining cost-effective products and services from third-party vendors significantly outweighs the interest in public disclosure. Accordingly, a ruling in favor of this balance and granting this motion is in the best interest of customers. *See EnergyNorth Natural Gas, Inc.*, Order No. 25,064 (Jan. 15, 2010) at 12 (finding that disclosure of billing rate information may place the Company and its service providers at a disadvantage with respect to those with whom it would do business, ultimately causing harm to the Company's ratepayers in future rate cases).

III. CONCLUSION

For the above reasons, Unitil requests that the Commission issue an order protecting the above-described information from public disclosure and prohibiting copying, duplication, dissemination or disclosure of it in any form. The Company further requests that the protective order extend to any discovery, testimony, argument and briefing relative to the confidential information.



WHEREFORE, Unitil respectfully requests that the Commission:

- A. Issue an appropriate order that exempts from public disclosure and otherwise protects as requested above the confidentiality of the above-described information designated confidential; and
- B. Grant such further relief as may be just and appropriate.

Respectfully Submitted,

UNITIL ENERGY SYSTEMS, INC.

By:

Patrick H. Taylor
Matthew C. Campbell
Unitil Service Corp
6 Liberty Lane West
Hampton, NH 03842
603-773-6544
603-773-653
taylorp@unitil.com
campbellm@unitil.com

Dated: October 31, 2022.

CERTIFICATE OF SERVICE

I hereby certify that on this 31st day of October, 2022, a copy of the foregoing Motion was electronically delivered to the New Hampshire Department of Energy and Office of the Consumer Advocate.

A handwritten signature in black ink that reads "Matthew Campbell". The signature is written in a cursive style with a large initial "M".

Matthew C. Campbell

APPENDIX A
SUMMARY OF CONFIDENTIAL INFORMATION IN
THE CONFIDENTIAL ATTACHMENTS

Exhibit Number	Description of Exhibit	Description of Confidential Information
Exh. FDGP-1	Joint Testimony of Andre J. Francoeur, Todd R. Diggins, Christopher J. Goulding, and Jeffrey M. Pentz	<ul style="list-style-type: none"> • Estimated O&M cost provided in response to Preliminary RFP • REC quote provided by REC broker
Exh. FDGP-2	Benefit-Cost Analysis Model	<ul style="list-style-type: none"> • Estimated capital costs for facility construction provided in response to Preliminary RFP and information that can be used to derive these costs • Cost for Site Due Diligence, Design and Permitting provided by the winning bidder • Price for contingent purchase of real estate and information that can be used to derive the purchase price • Estimated replacement cost for inverter provided in response to Preliminary RFP • Price for appraisal services • Estimated O&M cost provided in response to Preliminary RFP • REC quote provided by REC broker
Exh. JSD-1	Testimony of Jacob S. Dusling	<ul style="list-style-type: none"> • Price for contingent purchase of real estate and information that can be used to derive the purchase price • Estimated capital costs for facility construction provided in response to Preliminary RFP • Estimated costs and unit pricing to perform Site Evaluation and Permitting Scope of Work • Price for appraisal services • Estimated O&M costs provided in response to Preliminary RFP
Exh. JSD-4(a)	Response to Site Evaluation & Permitting RFP	<ul style="list-style-type: none"> • Estimated costs and unit pricing to perform Site Evaluation and Permitting Scope of Work
Exh. JSD-4(b)	Updated Pricing to Perform Site Evaluation & Permitting RFP	<ul style="list-style-type: none"> • Estimated costs and unit pricing to perform Site Evaluation and Permitting Scope of Work
Exh. JSD-5	Purchase and Sale Agreement	<ul style="list-style-type: none"> • Price for contingent purchase of real estate and amount placed in escrow
Exh. JSD-7	Agreement for Appraisal Services	<ul style="list-style-type: none"> • Price for appraisal services