STATE OF CONNECTICUT
PUBLIC UTILITIES REGULATORY AUTHORITY

APPLICATION OF THE CONNECTICUT LIGHT AND POWER COMPANY D/B/A EVERSOURCE ENERGY TO AMEND ITS RATE SCHEDULES	:	**DOCKET NO. 26-05-10**
	:	**SEPTEMBER 16, 2026**

REPLY OF ALLCO FINANCE LIMITED IN SUPPORT OF MOTION NO. 40 (MOTION TO COMPEL PRODUCTION OF THE TWO WITHHELD INTERNAL AUDIT REPORTS)

I. INTRODUCTION AND SUMMARY

Allco Finance Limited ("Allco") submits this reply in support of Motion No. 40. The Company's September 14 Objection is most notable for what it concedes. By the Objection's own account, the two withheld documents are assessments by the Internal Audit Department — the corporate function whose ordinary work is exactly this — of the Company's operational "alignment of procurement practices with regulatory expectations" and of "the process the Company's affiliates use to report and settle energy loads" in ISO-New England. Objection at 4-5. One was commissioned after the Authority found procurement violations in the Company's rate-adjustment docket and imposed a return-on-equity penalty on its affiliate Yankee Gas for "imprudent record management and procurement practices"; its admitted purpose was "to improve certain aspects of Eversource's responsiveness" in this rate case and future dockets. *Id*. at 3-4. The other, by the Objection's own words, "provided the foundation for legal advice in connection with modifications and improvements to the load settlement system, processes and controls." *Id.* at 5-6. These are compliance and operations-improvement documents — the ordinary-course work of a ratepayer-funded audit function — bearing directly on prudence questions the Authority must decide in this case. Routing them through the Legal Department and stamping them privileged does not change what they are. The Motion should be granted; at minimum, the Authority should conduct the *in camera* review that the United States Supreme Court has described as "a smaller intrusion upon the confidentiality of the attorney-client relationship than is public disclosure." *United States v. Zolin*, 491 U.S. 554, 572 (1989) (citation omitted).

II. THE OBJECTION'S OWN ACCOUNT DEFEATS THE ATTORNEY-CLIENT PRIVILEGE CLAIM.

The privilege protects "the confidential giving of professional advice by an attorney acting in the capacity of a legal advisor" and "the giving of information to the lawyer to enable counsel to give sound and informed advice"; it does not protect facts, and it does not protect business or compliance work re-labeled as legal strategy. *Olson v. Accessory Controls & Equipment Corp.*, 254 Conn. 145, 157 (2000) (internal quotation marks omitted); *Shew v. Freedom of Information Commission*, 245 Conn. 149, 158-59 (1998). The third *Shew* element — that the communication "relate to the legal advice sought" — is where the Objection fails, and it fails on its own narrative. The Procurement Report's subject is whether the Company's procurement documentation practices meet the standards the Authority has ordered it to meet: that documentation be "clear, unambiguous, and maintained in a verifiable manner." Objection at 3. Assessing whether operations conform to a regulator's directives is the definitional task of an internal audit department; it is compliance work the Company was obligated to undertake regardless of any lawyer's involvement. The Objection concedes the business purpose in terms: the report was commissioned "to improve certain aspects of Eversource's responsiveness" and to develop "the Eversource Procurement Department's preparedness." *Id.* at 3, 8. Improving procurement practices is management; it is not legal advice.

The Load Settlement Report fares no better. The Objection states that the report "provided the foundation for legal advice in connection with modifications and improvements to the load settlement system, processes and controls." Objection at 5-6. System modifications and process improvements are operations. A factual audit of how affiliates report load to ISO-New England does not become a privileged communication because its addressee line names the Legal Department. The privilege attaches to confidential communications, not to underlying facts or to the audit function itself — were it otherwise, a company could immunize every operational review from regulatory scrutiny by the simple expedient of a routing instruction. The Authority's own baseline is the opposite: privilege claims require "more than conclusory language, generalized allegations or mere arguments of counsel." Procedural Order Regarding Protected Materials (July

10, 2026) at 2, quoting *New Haven v. Freedom of Information Commission*, 205 Conn. 767, 776 (1988). Three affidavits reciting that counsel "requested" and "directed" the reports supply labels, not the required showing: the privilege "is both narrowly applied and strictly construed," the burden of establishing it "rests with the party invoking it," and — as the Company itself acknowledges — whether a communication is privileged is a question of law. *Harrington v. Freedom of Information Commission*, 323 Conn. 1, 12-13 (2016); Objection at 7.

The context makes the point concrete. In response to OCC-307's request for all internal audit reports completed in 2024, 2025, and 2026, the Company produced more than sixty Internal Audit reports without any claim of privilege. The only two reports withheld are the two addressing subjects on which the Authority has made adverse findings and on which prudence is squarely contested in this case. An audit function does not lose its character for exactly two engagements. The far likelier explanation — and the one the Objection's candid "legal strategy to improve . . . responsiveness" phrasing supports — is that these two reports were routed through counsel because of what they were expected to find.

III. ANY PRIVILEGE WAS WAIVED BY DISSEMINATION — AN ARGUMENT THE OBJECTION NEVER ANSWERS.

The Motion argued that any privilege that ever attached to the reports was waived by their dissemination. The privilege does not protect communications made in the presence of, or made available to, third parties: "[s]tatements made in the presence of a third party are usually not privileged because there is then no reasonable expectation of confidentiality." *State v. Burak*, 201 Conn. 517, 526 (1986) (quoting *State v. Cascone*, 195 Conn. 183, 186 (1985)). In the corporate context the privilege survives only where the communication "is not disseminated beyond those persons who, because of the corporate structure, *need to know* its contents" — copying employees who have no need to know the claimed legal advice waives it. Motion at 2-3 (emphasis added) (quoting *Feinberg v. T. Rowe Price Grp., Inc.*, 2019 U.S. Dist. LEXIS 217544, at *5-6 (D. Md. 2019), and citing *SmithKline Beecham Corp. v. Apotex Corp.*, 232 F.R.D. 467, 476 (E.D. Pa. 2005), and *Walsh v. CSG Partners, LLC*, 544 F. Supp. 3d 389, 391 (S.D.N.Y. 2021)). Courts

"construe the privilege narrowly because it renders relevant information undiscoverable," and the asserting party bears the burden of establishing its essential elements — maintained confidentiality included. *United States v. Mejia*, 655 F.3d 126, 132 (2d Cir. 2011) (citation omitted); see *Exp.-Imp. Bank of the U.S. v. Asia Pulp & Paper Co.*, 232 F.R.D. 103, 114 (S.D.N.Y. 2005) (the privilege "stands in derogation of the public's 'right to every man's evidence'") (quoting *In re Horowitz*, 482 F.2d 72, 81 (2d Cir. 1973)). The Objection's privilege and work-product sections never engage this argument. Their entire treatment of confidentiality is one unsworn sentence: "These reports have not been released outside the Company to any third parties." Objection at 9. Who received the reports *inside* the enterprise — the question the Motion actually raised — goes unaddressed.

The only record response is a single qualified sentence in the Smith affidavit: "To the best of my knowledge, neither of the Privileged Reports was communicated to any third party (other than the Company's outside counsel) outside of Eversource or internally to those without a need to know." Smith Aff. ¶ 4. That sentence concedes more than it refutes. It speaks "[t]o the best of my knowledge," not from a review of distribution records. It acknowledges dissemination beyond the two reports' addressee lines — to outside counsel and, by its own terms, to an internal circle of persons deemed to have a "need to know" — while identifying none of them: not the recipients, not their roles, not why any recipient's function required access to claimed legal advice. "Need to know" is the legal conclusion in dispute; reciting it is exactly the "conclusory language" the Authority's baseline rejects. Procedural Order Regarding Protected Materials (July 10, 2026) at 2, quoting *New Haven*, 205 Conn. at 776. And the affidavit's universe is "Eversource" — the multi-state enterprise — not the applicant: all three affiants are personnel of Eversource Energy Service Company, "an affiliate of" CL&P, Smith Aff. ¶ 1; MacKay Aff. ¶ 1; Pace Aff. ¶ 1, and the Load Settlement Report by the Objection's own account examines the load-settlement processes the Company's affiliates use in three states. Objection at 4-5. And neither Pace nor MacKay make any assertions that neither of the Privileged Reports was communicated to any third party outside of Eversource or internally to those without a need to know.

An unidentified distribution across separate corporate entities is precisely where waiver lives. Because every element of the privilege is the Company's to prove, its election to stand on one qualified sentence from one person who would have no knowledge of everyone that received the reports is itself reason to overrule the claims; at minimum it confirms the need for the *in camera* review and the particularized showing the Motion requested — "each recipient, and the full distribution." Motion at 1.

IV. THE PRIVILEGE DOES NOT PROTECT FACTS — AND AN "ASSESSMENT OF THE LOAD SETTLEMENT PROCESS" IS FACTS.

The Connecticut Supreme Court has noted that the "rules of discovery are designed to make a trial less a game of blind man's bluff and more a fair contest with the basic issues and facts disclosed to the fullest practicable extent." (Internal quotation marks omitted.) *Wexler v. DeMaio,* 280 Conn. 168, 188–89 (2006), quoting *United States v. Proctor & Gamble Co*., 356 U.S. 677, 682, 78 S.Ct. 983, 2 L.Ed.2d 1077 (1956). Connecticut has adopted a liberal approach to discovery. *See Tianti, ex rel. Gluck v. William Raveis Real Estate, Inc*. 231 Conn. 690, 701 n.12 (1995) (this jurisdiction has liberal discovery doctrines).

Even where a privileged communication exists, the facts inside it remain discoverable. "The privilege only protects disclosure of communications; it does not protect disclosure of the underlying facts by those who communicated with the attorney." *Upjohn Co. v. United States*, 449 U.S. 383, 395 (1981). As the rule *Upjohn* adopted puts it: "the protection of the privilege extends only to communications and not to facts. A fact is one thing and a communication concerning that fact is an entirely different thing." *Id.* at 395-96 (quoting *Philadelphia v. Westinghouse Electric Corp.*, 205 F. Supp. 830, 831 (E.D. Pa. 1962)) (internal quotation marks omitted; emphasis in original omitted). *Accord, Morganti Grp., Inc. v. Stamford Phase Four JV, LLC*, No. HHDCV186117069S, 2021 Conn. Super. LEXIS 2031, *11 (Super. Ct. Dec. 7, 2021). *See also*, *e.g., Kowalonek v. Bryant Lane*, CV 960324942S, 2000 Conn. Super. LEXIS 957, *9 (Super. Ct. Apr. 11, 2000) ("The attorney-client privilege] does not protect against discovery of underlying

facts from their source merely because those facts have been communicated to an attorney,") (Internal quotation marks and citation omitted.)

The MacKay affidavit describes the Load Settlement Report in exactly those terms. Mr. MacKay states that he asked Internal Audit to "undertake . . . a privileged and confidential assessment of the load settlement process and generate a report for me." MacKay Aff. ¶ 5. An "assessment of the load settlement process" is a compilation of facts: what the process is, how load data is gathered and submitted to ISO-New England, and where the process succeeds or fails. Those facts existed before any lawyer asked about them, and they exist independently of anything counsel later advised. The affidavit's phrasing — commissioning a "privileged and confidential assessment" — has it backwards: privilege is a legal conclusion that attaches, if at all, to communications made for the purpose of legal advice; it is not a designation that can be stamped in advance *on facts an audit team has yet to gather*. What the Legal Department did *with* the auditors' findings may involve advice; what the auditors *found* about the load settlement process *is fact.* The same is true of the Procurement Report: an audit of the operational "alignment of procurement practices with regulatory expectations," Objection at 4, is an inventory of what those practices are. At minimum, then, even if discrete advisory passages were protected, the factual content of both reports is discoverable — the remedy would be targeted redaction, not wholesale withholding — and in all events the Company cannot refuse to disclose the underlying facts in response to the parties' discovery, the confirmation the Motion expressly requested. Motion at 1.

V. THE WORK-PRODUCT CLAIM FAILS ON THE OBJECTION'S OWN TIMELINE AND PURPOSES.

Work product protects materials prepared "in anticipation of litigation" — materials that would not have been created in essentially similar form but for the prospect of litigation. *Ullmann v. State*, 230 Conn. 698, 714-15 (1994); *United States v. Adlman*, 134 F.3d 1194, 1202-03 (2d Cir. 1998). The Procurement Report flunks that test twice over. *First*, the "litigation" anticipated is this rate case and the 2026 RAM docket — proceedings in which the Company is the *applicant*, bearing the burden of proving its own prudence. Objection at 4, 8. A document prepared to help an

applicant assemble and improve its affirmative case is case preparation, not adversarial work product; it is also a cost that is unrecoverable as case preparation. On the Company's theory, every internal document touching prudence in every rate case would be immune from the very regulator charged with deciding prudence. *Second*, the report would have been created regardless: the Authority *ordered* the Company to fix its procurement recordkeeping, warning that failure to improve "may be indicative of inefficient and imprudent management." Objection at 3. A compliance assessment undertaken in response to a regulatory directive is the paradigm of a document prepared in the ordinary course of a regulated business — the category the Company's own authority places outside the doctrine. *Carrier Corp. v. Home Ins. Co.*, 1992 WL 139778, at *6 (Conn. Super. Ct. June 12, 1992).

As to the Load Settlement Report, the FERC complaint supplies at most a dual purpose — and the Objection itself states the other purpose: the report "provided the foundation for . . . modifications and improvements to the load settlement system, processes and controls." Objection at 5-6. Where the Company's affiliates' load-reporting accuracy is simultaneously at issue in this docket — the Company's proposed AMI program includes an entire Load Settlement build, and its own delay sensitivities and cost estimates for that build are in the record — the Company cannot deploy load-settlement facts affirmatively while shielding its only contemporaneous internal assessment of that process. A privilege used as both sword and shield is waived as to the subject matter deployed.

"[T]he work product doctrine most strongly protects the mental processes of the attorney, providing a privileged area in which to analyze and prepare a client's case as opposed to documents which consist of factual materials and analyses of facts." *Hill v. Northland Cas. Co*., No. CV156056488S, 2015 Conn. Super. LEXIS 2482, *8 (Super. Ct. Sep. 25, 2015); *Amica Mut. Ins. Co. v. Fasarella Pro Painting & Design, LLC*, No. FSTCV106003636S, 2011 Conn. Super. LEXIS 1910, *17 (Super. Ct. July 21, 2011) (to the same effect).

Allco also has the "substantial need" the Company says the Motion ignores. Conn. Practice Book § 13-3(a). The reports are the only contemporaneous internal assessments of two subjects on

which the Authority must make prudence findings; their content — what the Company's own auditors found about its practices during the very period at issue — cannot be recreated by interrogatory answers drafted by counsel or by cross-examination of witnesses who will characterize the reports from memory. That is the undue hardship: the substantial equivalent of an auditor's written findings does not exist outside the findings themselves.

VI. THE THRESHOLD FOR *IN CAMERA* REVIEW IS SATISFIED — LARGELY BY THE OBJECTION ITSELF.

The Company demands a "threshold showing" for *in camera* review and then supplies it. The Company frames the required showing as a "meaningful threshold showing" that the privilege claims "are invalid," Objection at 12 — a framing drawn from *Olson*'s adoption of *Zolin*'s standard: "a factual basis adequate to support a good faith belief by a reasonable person" that in camera review of the materials "may reveal evidence" defeating the claimed protection. *Olson*, 254 Conn. at 183-84 (quoting *Zolin*, 491 U.S. at 572) (internal quotation marks omitted). The showing here comes from the Objection's four corners: non-lawyer auditors; operational subject matter; an admitted business-improvement purpose; commissioning that followed adverse regulatory findings; proceedings in which the "anticipated litigation" is the Company's own rate application; and sixty-plus indistinguishable reports produced without objection. *ShareAmerica* — the Company's own citation — accepted affidavits "at least where the party seeking disclosure has had the opportunity to take discovery concerning its opponent's claims of privilege." *ShareAmerica, Inc. v. Ernst & Young*, 1998 WL 90731, at *3 (Conn. Super. Ct. Feb. 20, 1998). Allco has had no such discovery; the affidavits arrived with the Objection. And *Zolin* teaches that *in camera* review exists precisely for this posture — it is the lesser intrusion, available on a lesser showing, so that privilege claims are tested rather than taken on faith. 491 U.S. at 572. The Authority's Procedural Order contemplates exactly this: privilege determinations on a per-document, substantiated basis — not category labels backed by affidavits from the claimants themselves.

VII. THE "PREMATURE" ARGUMENT IGNORES THIS RECORD.

The Objection asserts that Allco "has not cited to any examples of the Company refusing to respond to an Allco discovery request." The record is otherwise. Allco's requests for the general-ledger and invoice-level substantiation of the Company's charges — made in correspondence in January and June 2025 and renewed in Set One — have produced summary tables and successive extensions of time; the Company's responses to the OCC on the same audit subject arrived relevance-redacted without any ruling authorizing the redactions; and the Company has now sought extensions on the Allco Set Two interrogatories directed to its internal legal-function costs. Nor does "discovery through December" answer anything: the Authority's audit sessions are October 13-15, intervenor testimony is due October 21, and the prudence issues the reports address will be tried on that schedule. Discovery that matures after testimony is due is not a substitute for the documents now.

VIII. IN THE ALTERNATIVE: ADVERSE INFERENCE AND PRECLUSION.

If the Authority permits the reports to be withheld, the consequences of that choice should rest on the party that made it. The Company bears the burden of proof on prudence. It should not be permitted to offer testimony or argument that its procurement practices have improved, or that its load-settlement process is accurate and well-controlled, while withholding its own auditors' contemporaneous assessments of those very subjects. Allco accordingly requests, in the alternative, that the Authority (1) preclude the Company from relying on any claimed improvement in procurement practices or on the integrity of its load-settlement process, and (2) draw an adverse inference that the withheld reports' findings would not support the Company's position on those subjects.

CONCLUSION

The Authority should grant Motion No. 40 and order the two reports produced, under the protective agreement if the Company so requests; in the alternative, conduct an *in camera* review;

and in the further alternative, enter the preclusion and adverse-inference relief described in Section VI.

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CERTIFICATION

This is to certify that on this day, the foregoing document was filed with the Public Utilities Regulatory Authority, and copies were served upon each person designated on the Authority's official service list in this proceeding in accordance with R.C.S.A. § 16-1-15.

/s/ Thomas Melone
Thomas Melone