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 OCTOBER 13, 2026

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

I. PURPOSE OF THIS SUBMISSION

Allco Finance Limited ("Allco") filed its Reply in support of Motion No. 40 on September 16, 2026 (the "Reply"). The Reply argued, among other things, that any privilege in the two withheld Internal Audit reports — the Privileged Load Settlement Report (final January 7, 2026) and the Privileged Procurement Report (final June 4, 2026) (together, the "Withheld Reports") — was waived by dissemination to persons with no need to know (Reply § III); that the Company's only record response on that question was one qualified sentence in the Smith affidavit (*id*.); that the Objection's own authority permits reliance on affidavits only "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), and that Allco had not yet had that discovery (Reply § VI). It has now. The Company answered Allco's Set Seven interrogatories (ALLCO-065 through ALLCO-073), each directed to the Withheld Reports, on October 8 and 9, 2026. Allco submits this supplemental reply to place those answers before the Authority. They do not establish either protection; they undercut both, and they show that the affidavit on which the Company rests its confidentiality claim is inaccurate.

II. WHAT THE SET SEVEN RESPONSES ESTABLISH

First, the Load Settlement Report was commissioned before any litigation existed. The Company states that the request from the Legal Department was made "via a meeting discussion" on April 25, 2025 and that the engagement memorandum issued on May 19, 2025 (ALLCO-065). The only litigation the Company identifies as the "pending litigation in question" is the complaint of BP Energy Retail Company LLC at the Federal Energy Regulatory Commission, Docket No. EL26-5-000, which the Company itself dates October 14, 2025 —

nearly six months after the audit was requested and five months after its scope was fixed (ALLCO-068(a)). That complaint, moreover, concerns load "solely in Massachusetts" assigned by Eversource Energy and NSTAR Electric Company; the Company is not a respondent. Asked to "identify the specific litigation, proceeding, or claim that the Company contends was anticipated at the time the report was commissioned, and state when and how the Company contends that anticipation arose," the Company identified nothing pending or threatened as of April 2025. Work product protects a document "created because of anticipated litigation" that "would not have been prepared in substantially similar form but for the prospect of that litigation," and withholds protection from documents "prepared in the ordinary course of business or that would have been created in essentially similar form irrespective of the litigation." *United States v. Adlman*, 134 F.3d 1194, 1202 (2d Cir. 1998); *see Ullmann v. State*, 230 Conn. 698, 714–15 (1994). A complaint filed six months after the audit was commissioned cannot have been the reason it was prepared. The Reply's observation that the FERC complaint "supplies at most a dual purpose" (Reply § V) understated the point: on the Company's own chronology it supplied no purpose at all.

Second, the Procurement Report's "anticipated litigation" is, as the Reply anticipated (§ V), this rate case and the 2026 rate-adjustment docket — proceedings the Company itself initiated and in which it bears the burden of proving prudence. The Company now says so in terms: counsel "reasonably expected that procurement practices would be the subject of further litigation before PURA in the contested 2026 RAM proceeding in Docket No. 26-01-03 and the contested rate case in this docket," and the report was commissioned so that Legal "could provide advice and recommendations regarding alignment with regulatory expectations" (ALLCO-068(a)). Advice on "alignment with regulatory expectations" is compliance advice to an applicant preparing its own case — the ordinary-course category that *Carrier Corp. v. Home Ins. Co*., 1992 WL 139778, at *6 (Conn. Super. Ct. June 12, 1992), places outside the doctrine.

Third, the work was ordinary internal-audit work performed by non-lawyers on business records. The Load Settlement engagement was performed by "one member of the Eversource Internal Audit Department reporting to the Audit Manager"; the Procurement engagement by two (ALLCO-071). The auditors obtained "[p]olicies and procedures," "[r]eports, and supporting data, that support the load settlement process," "[a]ccess privileges to key data," and "[d]ocumentation to support ISO billings and payments," and, for procurement, "a sample of

contracts and supporting documentation" (ALLCO-070). The persons consulted were eight employees of Energy Supply, four of Information Technology, one of Regulatory, and two of Procurement; two attorneys were among those "discussed with" on each engagement (ALLCO-071). Nothing in that description distinguishes these engagements from the Load Settlement Process Audit of May 12, 2023 (Report 23-18), the Metering and Load Management Review of June 23, 2020 (Report 20-25), or the Procurement Compliance Audit of August 6, 2025 (Report 25-27) — audits of the same subjects, by the same department, over which no privilege has been asserted (ALLCO-069). Allco asked the Company to "state every fact that the Company contends distinguishes" the Withheld Reports from those audits. The Company stated none (ALLCO-069). The facts those auditors gathered are, as the Reply showed (§ IV), discoverable whatever the status of the report that records them; asked to state the facts ascertained in the Procurement assessment, the Company restated its privilege position and gave none (ALLCO-072).

Fourth — and this is the answer to the Smith affidavit — the Load Settlement Report was distributed as a management report, and one copy went outside the enterprise. The Smith affidavit stated, "[t]o the best of my knowledge," that neither report "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; Reply § III. The Company's own interrogatory answer now shows that statement to be incorrect. The final Load Settlement Report was issued on January 7, 2026 to three attorneys in the Legal Department and to seventeen persons outside it: three employees of Electric Supply, six Executive Vice Presidents, two employees of Customer Operations, three employees of Information Technology, the Vice President of Accounting, and "two individuals from the Company's external auditing firm"; on January 12, 2026 it went to the Chairman, President and Chief Executive Officer, "his assistant," and the Executive Vice Presidents (ALLCO-066). The external auditing firm is a third party outside Eversource. The independent auditor "assumes a public responsibility transcending any employment relationship with the client," owes "ultimate allegiance to the corporation's creditors and stockholders, as well as to the investing public," and performs a "public watchdog" function that "demands that the accountant maintain total independence from the client at all times." *United States v. Arthur Young & Co*., 465 U.S. 805, 817–18 (1984). "Generally [the voluntary] disclosure of confidential communications or attorney work product to a third party . .

. constitutes a waiver of [the] privilege as to those items." *Harp v. King*, 266 Conn. 747, 767 (2003) (internal quotation marks omitted) (holding, under the moderate approach, that an inadvertent misfiling did not waive; the distribution here was deliberate). Nor can the Company have it both ways: if its independent auditors needed the Load Settlement Report to audit the Company's financial statements, the report was a business document put to a business use; if they did not need it, its delivery to them was a disclosure with no justification at all. *See Export-Import Bank of the U.S. v. Asia Pulp & Paper Co*., 232 F.R.D. 103, 113–14 (S.D.N.Y. 2005) (communications shared with an outside financial consultant not privileged where the company failed to prove he was the functional equivalent of an employee).

The internal distribution fares no better. Confidentiality is the fourth *Shew* element, and the party asserting the privilege bears the burden of proving each element by a fair preponderance of the evidence. *Blumenthal v. Kimber Mfg., Inc*., 265 Conn. 1, 10–11 (2003); *Shew v. Freedom of Information Commission*, 245 Conn. 149, 159 (1998). The need-to-know formulation the Reply invoked (§ III) originates in *Diversified Industries, Inc. v. Meredith*, 572 F.2d 596, 609 (8th Cir. 1978) (en banc): the privilege attaches only if "the communication is not disseminated beyond those persons who, because of the corporate structure, need to know its contents," "the corporation has the burden of showing" as much, and "the mere receipt of routine reports by the corporation's counsel will not make the communication privileged . . . because the communication will have been made available to those who do not need to know." *Blumenthal* did not decide whether distribution to employees with no role in the legal advice defeats confidentiality — it reserved the question of which employees constitute the corporate client, 265 Conn. at 15 n.8, 16 n.9 — but what it did decide points the same way: the privilege was sustained there for an e-mail sent to three executives precisely because the "exclusivity and limited number of distributees signifies that the . . . e-mail was intended to be confidential." *Id.* at 15–16. Twenty distributees, spanning six Executive Vice Presidents, three operating departments, the accounting function, an executive assistant, and the outside auditors, is the opposite of exclusivity. *Upjohn* protects what employees with relevant information tell counsel; it does not make every executive who receives counsel's finished product a necessary recipient, and seniority is not need.

The Company cannot cure this by silence. ALLCO-066 asked it to state, for each recipient, "the specific job function that is contended to have required that person's access to the

report's contents" — the very showing the Motion requested ("each recipient, and the full distribution," Motion at 1) and the Smith affidavit assumed. The Company declined to do so for a single recipient: it supplied head-counts by department, no names, no titles, no functions, and a response that closes with the author's arithmetic ("1+3= 4, Final report 3+3+6+2+3+1+2= 20"). The burden of establishing confidentiality is the Company's, and the question that would have allowed it to carry that burden was put to it directly. Its refusal to answer supports the inference that no need-to-know justification exists for the executive assistant, the six Executive Vice Presidents, the operating and accounting personnel, or the outside auditors — and, independently, leaves the fourth *Shew* element unproven. Asked whether an access log exists for the repositories in which the reports are kept, the Company likewise did not answer; what it did disclose is that the reports sit in the Internal Audit Department's shared drive, SharePoint site, and AutoAudit work-paper system alongside the department's other audits, and in the Executive Risk Management group's drive and SharePoint site (ALLCO-067) — the repositories of an audit function, not of a law department.

Fifth, the Company's accounts of the reports' purpose cannot both be true. In its Objection, the Company told the Authority that the Load Settlement 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. Asked in ALLCO-073 to identify every modification or improvement to the load settlement system and every change to procurement practices adopted since January 1, 2026, the Company described several of each and then stated that "[n]one of these process improvements were in connection with, or as a result of, either of the Withheld Reports." Either the report was the foundation for operational improvements — a business purpose that defeats the privilege — or it was not, in which case the Objection's stated purpose was inaccurate. If there were other modifications, the Company was asked to identify "every" one and identified none. Asked whether either report "has been used in connection with any remediation, process improvement, or 'responsiveness' initiative," the Company answered only "[p]lease refer to the Company's response to subpart (a)" (ALLCO-068(b), (c)). And to the extent the Company intends to rely on the integrity of its load-settlement process or the improvement of its procurement practices in this docket while withholding its own auditors' assessments, Connecticut's at-issue doctrine supplies the consequence: a party that will not waive "should be prevented from using the privileged information to establish the elements

of the case." *Metropolitan Life Ins. Co. v. Aetna Casualty & Surety Co*., 249 Conn. 36, 53 (1999) (quoting *Remington Arms Co. v. Liberty Mutual Ins. Co*., 142 F.R.D. 408, 415 (D. Del. 1992)) — the alternative relief the Reply requested (§ VIII).

III. THE THRESHOLD FOR *IN CAMERA* REVIEW IS NOW SATISFIED TWICE OVER

The Reply showed that the Objection's own account satisfied the standard the Company itself invoked — a "meaningful threshold showing," Objection at 12, drawn from *Olson*'s adoption, in the crime-fraud context, of *Zolin*'s "factual basis adequate to support a good faith belief by a reasonable person" that *in camera* review "may reveal evidence" defeating the claimed protection. *Olson v. Accessory Controls & Equipment Corp*., 254 Conn. 145, 183–84 (2000) (quoting *United States v. Zolin*, 491 U.S. 554, 572 (1989)) (internal quotation marks omitted). That standard applies *a fortiori* where the question is not whether a privilege was abused but whether it ever attached. The Set Seven responses add a commissioning date that precedes the only litigation identified; a distribution list of twenty that includes the outside auditors and the Chief Executive Officer's assistant; a sworn statement of non-disclosure that the Company's own answer contradicts; an admission that the operating changes made since January 2026 had nothing to do with the reports; a refusal to identify a single fact distinguishing these two audits from the Company's produced audits of the same subjects; and a refusal to state the facts the Procurement assessment found. The discovery the Objection said Allco had not taken has been taken. If affidavits could carry the Company's burden before it, they cannot carry it after it.

IV. RELIEF REQUESTED

Allco respectfully requests that the Authority (1) grant Motion No. 40 and order the Withheld Reports produced, under the protective agreement if the Company so requests; (2) in the alternative, order the reports submitted for *in camera* review together with the May 19, 2025 engagement memorandum for the Load Settlement engagement and the corresponding engagement memorandum for the Procurement engagement (ALLCO-065), which the Company has neither produced nor logged; (3) order the Company to produce the Load Settlement Process Audit (Report 23-18, May 12, 2023) and the Metering and Load Management Review (Report 20-25, June 23, 2020), which the Company acknowledges exist, over which it claims no privilege, and which it has withheld only because the OCC's request was limited to 2024 forward

(ALLCO-069 n.(a)); and (4) in the further alternative, enter the preclusion and adverse-inference relief described in Section VIII of the Reply.

ALLCO FINANCE LIMITED

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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