STATE OF CONNECTICUT
PUBLIC UTILITIES REGULATORY AUTHORITY

APPLICATION OF THE CONNECTICUT	:	**DOCKET NO. 26-05-10**
LIGHT AND POWER COMPANY D/B/A	:	
EVERSOURCE ENERGY TO AMEND	:	**SEPTEMBER 2, 2026**
ITS RATE SCHEDULES	:	

MOTION OF ALLCO FINANCE LIMITED TO COMPEL PRODUCTION OF TWO WITHHELD INTERNAL AUDIT REPORTS OR, IN THE ALTERNATIVE, FOR IN CAMERA REVIEW AND A PRIVILEGE SHOWING

Pursuant to the Authority's Rules of Practice, Regs. Conn. State Agencies § 16-1-1 et seq., and the Authority's August 19, 2026 ruling granting Allco Finance Limited ("Allco") full intervenor status, Allco respectfully moves for an order (1) overruling the claims of attorney-client privilege and work-product protection asserted in The Connecticut Light and Power Company d/b/a Eversource Energy's ("Company") response to interrogatory OCC-307 and compelling production of the two internal audit reports withheld there; or, in the alternative, (2) directing the Company to submit both reports to the Authority for *in camera* review together with a particularized showing — identifying who directed each report's preparation and when, for what purpose, each recipient, and the full distribution — sufficient to carry the Company's burden of establishing every element of the privileges it asserts; and (3) confirming in either event that the Company may not withhold the facts underlying the reports in response to the parties' discovery.

I. BACKGROUND

In response to OCC-307, which requested all internal audit reports relating to the Company completed in 2024 through 2026, the Company produced an inventory of more than fifty audits — including its routine procurement-related audits: the Purchasing Card Program audit (24-06), the Engineering Vendor Compliance Reviews (24-09 and 26-19), the Procurement Compliance Audit (25-27), the Revenew Vendor Contract audit (26-02), and the Supplier Relationship audit (26-06). It withheld exactly two reports, in the following terms:

> In addition, as part of the attorney-client privileged work product that was developed for this contested rate case proceeding and the contested revenue

> adjustment mechanism proceeding, the Eversource Energy Internal Audit Department was directed to perform an audit of the procurement organization that was completed on June 4, 2026. The Privileged Report was issued from R. S. Smith, Vice President-Internal Audit & Security, to Vincent Pace, Assistant General Counsel. The Privileged Report is exempt from disclosure under the attorney-client work product privilege and the attorney client communication privilege. Further, there is a report dated January 7, 2026 concerning the process Eversource uses in three states to report and settle energy loads in the ISO-New England load settlement system. That report issued by R. S. Smith, Vice President-Internal Audit & Security and M. M. Carlson, Manager, to the Eversource Legal Department is exempt from disclosure under the attorney-client work product privilege and the attorney client communication privilege. The report is also not relevant to the examination of the Company's request to adjust distribution rates in this docket.

Both reports bear directly on issues in this proceeding that Allco (among others) is litigating. The procurement audit concerns the very organization whose costs — including law firms and other vendors engaged without competitive bidding — the Company asks ratepayers to bear, and whose prudence the Company bears the burden of proving. The load-settlement report concerns the process by which the Company reports load to ISO-New England — the process that determines the coincident-peak billing determinants driving the Regional Network Service, Local Network Service, and Transmission Adjustment Charge amounts, capacity obligations, and standard service procurement quantities for which Connecticut customers pay, and the subject of interrogatories Allco is serving in this docket.

II. THE COMPANY BEARS THE BURDEN, AND ITS OWN DESCRIPTION DOES NOT CARRY IT

The attorney-client privilege protects communications "made in confidence for the purpose of seeking legal advice," and requires the party asserting it to establish that (1) the attorney was acting in a professional capacity, (2) the communication was made to the attorney by the client's employees or officials, (3) the communication relates to legal advice sought from the attorney, and (4) the communication was made in confidence. *Shew v. Freedom of Information Commission*, 245 Conn. 149 (1998). Because the privilege operates in derogation of the search for truth, it is strictly construed, and the burden of establishing each element rests on its proponent. A report channeled through counsel is privileged only where the communication is tied to the rendering of legal advice, *Olson v. Accessory Controls & Equipment Corp.*, 254 Conn. 145, 168-69 (2000) — a document does not become privileged because it is addressed to a lawyer or stamped

"privileged." The work-product doctrine protects materials prepared in anticipation of litigation or a contested proceeding; it does not protect documents that would have been prepared in essentially similar form in the ordinary course of business. And neither doctrine ever protects the underlying facts. *Upjohn Co. v. United States*, 449 U.S. 383, 395-96 (1981).

The attorney-client privilege does not protect communications made in the presence of or made available to third parties. *State v. Burak*, 201 Conn. 517, 526, 518 A.2d 639 (1986). Including an employee on the email who does not "need to know" the contents constitutes a waiver of the privilege. "In the corporate context, the attorney-client privilege is applicable if 'the communication is not disseminated beyond those persons who, because of the corporate structure*, need to know its contents*.'" *Feinberg v. T. Rowe Price Grp., Inc*., 2019 U.S. Dist. LEXIS 217544, *5-6 (D. Md. 2019) quoting *Krueger v. Ameriprise Fin., Inc., LLC*, 2014 U.S. Dist. LEXIS 197161, 2014 WL 12597432, at *10 (D. Minn. May 7, 2014) (emphasis added), and also citing *SmithKline Corp. v. Apotex Corp*., 232 F.R.D. 467, 476 (E.D. Pa. 2005) (recognizing attorney-client privilege may be waived in the corporate context "if the communications are disclosed to employees who did not need access to them"). There is no basis for concluding that all people copied on the emails needed to know the contents of the alleged attorney's communication. Therefore, the privilege has been waived as to those communications. The privilege is construed narrowly because it blocks the discovery of relevant information. *United States v. Mejia*, 655 F.3d 126, 132 (2d Cir. 2011). The party asserting the privilege bears the burden of establishing privilege. *Mejia*, 655 F.3d at 132. "The attorney-client privilege should not be expanded without considerable caution because the privilege 'stands in derogation of the public's "right to every man's evidence."'" *Exp.-Imp. Bank of the U.S. v. Asia Pulp & Paper Co., Ltd*., 232 F.R.D. 103, 114 (S.D.N.Y. 2005) (quoting *In re Horowitz*, 482 F.2d 72, 81 (2d Cir. 1973) (quoting 8 Wigmore, Evidence § 2192 (McNaughton rev. 1961), at 70)). "Communications between an attorney and someone who is not their client generally are not protected by the privilege. Similarly, the privilege generally is deemed to have been waived if communications between attorney and client are shared with a third party." *Walsh v. CSG Partners, LLC*, 544 F.

Supp. 3d 389, 391 (S.D.N.Y. 2021) (holding communications involving investment bank, investment bank's ESOP clients, and those clients' legal counsel were not protected by attorney-client privilege).

III. THE JANUARY 7, 2026 LOAD-SETTLEMENT REPORT MUST BE PRODUCED.

The Company's own description defeats its claims. *First*, the report was "issued . . . to the Eversource Legal Department" — not to any identified attorney acting in a professional capacity, not to obtain legal advice, and not, so far as the response discloses, in confidence. Nothing in the Company's description establishes a single *Shew* element; and the direction of flow — an audit department *issuing* a completed operational report to a legal department — is a distribution, not a client's request for advice. *Second*, the response identifies no litigation or contested proceeding for which the report was prepared, and it could not: the report is dated January 7, 2026, months before the Company's Notice of Intent (May 20, 2026) and its Application (July 14, 2026), and the Company conspicuously does not claim — as it does for the procurement audit — that this report was "developed for" any proceeding. *Third*, the subject matter — "the process Eversource uses in three states to report and settle energy loads in the ISO-New England load settlement system" — is a description of a market-facing business operation, precisely the kind of compliance review that internal audit departments perform in the ordinary course.

The Company's fallback — that the report "is not relevant to the examination of the Company's request to adjust distribution rates" — is untenable. How the Company reports load to ISO-New England determines the transmission and capacity charges its Connecticut customers pay and the standard service quantities it procures; the Application itself puts customer bill impacts and affordability squarely at issue (Exhibit CLP-ELP-1 at 17-31); the Company proposes revenue decoupling and rate adjustment mechanisms that turn on reported load; and discovery in the Authority's contested cases is not confined to documents a respondent unilaterally deems pertinent. A party may not withhold a responsive document by pronouncing it irrelevant to its own application.

IV. THE JUNE 4, 2026 PROCUREMENT AUDIT MUST BE PRODUCED.

First, auditing procurement is what the Eversource internal audit function does in the ordinary course of business: the Company produced six routine procurement-related audits from the same 2024–2026 inventory. The June 4, 2026 audit is the same department examining the same subject; the only apparent differences are the label and the addressee. Under *Olson*, addressing this year's installment to the Assistant General Counsel does not transform a recurring operational review into legal advice, and the Company's selective production — routine procurement audits disclosed, the one completed during this rate case withheld — invites scrutiny of the label rather than deference to it.

Second, the Company's characterization of the audit as "developed for this contested rate case proceeding" creates a dilemma it cannot escape. If the audit truly was developed for this proceeding, then it was developed in support of an application on which the Company bears the burden of proving the prudence of its procurement-driven costs — costs that are already the subject of extensive discovery in this docket concerning the Company's non-competitive engagements. A party cannot place the reasonableness of its procurement function at issue by seeking hundreds of millions of dollars of cost recovery while suppressing its own contemporaneous evaluation of that very function; that is the implied-waiver scenario Connecticut law forecloses. *See Metropolitan Life Ins. Co. v. Aetna Casualty & Surety Co.*, 249 Conn. 36, 52-53 (1999) (privilege impliedly waived where its holder places the protected material at issue such that its contents are integral to the outcome). If, on the other hand, the audit was the ordinary periodic review of the procurement organization, the work-product claim fails at the threshold. The Authority need not accept either characterization on faith: *in camera* review will show which it is.

Third, the Authority should note what the Company's description concedes: a report "developed for this contested rate case proceeding" is, by definition, a cost of this rate proceeding. Conn. Gen. Stat. § 16-243p(b) bars the Company from recovering through rates its direct or indirect costs associated with this proceeding, including associated employee salaries. The

Company's privilege claim is thus intertwined with a cost-recovery question on which the parties are entitled to discovery in any event.

V. AT A MINIMUM: IN CAMERA REVIEW, A PARTICULARIZED SHOWING, AND THE FACTS.

If the Authority is not prepared to order production on the present record, the appropriate course is to require the Company to carry its burden: submission of both reports for *in camera* review, together with a particularized showing identifying, for each report, (a) who directed its preparation, when, and in what words; (b) the purpose for which it was commissioned; (c) each attorney, if any, for whom it was prepared and the legal advice sought; (d) every recipient and the complete distribution, including any dissemination beyond counsel; and (e) whether any facts, data, or findings from the report were used in preparing any exhibit, schedule, or discovery response in this docket. Dissemination beyond those necessary to the rendering of legal advice defeats confidentiality; use of the reports' contents in the Company's affirmative case waives the protections entirely.

Finally, whatever the disposition of the documents, the Authority should confirm that the Company may not refuse to answer discovery about the underlying facts — what its procurement organization and load-settlement processes actually are and do, what data the auditors examined, and what corrective actions followed — because no privilege protects facts. *Upjohn*, 449 U.S. at 395-96.

VI. RELIEF REQUESTED

Allco respectfully requests that the Authority: (1) overrule the privilege and work-product claims asserted in the Company's response to OCC-307 and order production of the June 4, 2026 procurement-organization audit and the January 7, 2026 load-settlement report (subject, if the Authority deems it appropriate, to the protective order in this docket); (2) in the alternative, order the Company to submit both reports for *in camera* review together with the particularized showing described above, within ten days; and (3) in either event, order that the Company may not withhold,

on privilege or work-product grounds, the facts underlying either report in responding to the parties' discovery.

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