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May 13, 2026

Public Utilities Regulatory Authority
Ten Franklin Square
New Britain, Connecticut 06051

Re: Docket No. 26-08-08: Non-Wires Solutions Process Cycle 2

Dear Commissioners:

The Office of Consumer Counsel ("OCC") respectfully files this comment on Motion No. 7 filed by Eversource Energy. OCC takes no position at present on whether the particular engineering schematics at issue should be filed confidentially. OCC would appreciate a greater understanding of the material and Eversource's concerns before taking a position and either of the solutions Eversource proposed in the Motion might offer such an understanding.

OCC does have concerns, however, with certain statements Eversource made in the Motion regarding the interaction of the Freedom of Information Act ("FOIA") and confidential material. Eversource states that "neither the FOIA found at Conn. Gen. Stat. § 1-200 *et seq.* nor PURA's Rules of Practice found at Conn. Agencies Regs. § 16-1-1 *et seq.* include provisions requiring the proponent of confidential information to provide redacted versions of confidential documents." Motion No. 7, p. 3. It then appears that Eversource argues that it has been "obliging" the Public Utilities Regulatory Authority ("Authority") for years by abiding by confidentiality practices that impact only the Authority and not Eversource. *Id*. Eversource's use of the term "generally oblige" implies Eversource assumes it has the discretion to unilaterally cease this practice at any time. *Id*.

To the contrary, it appears that the Authority has been obliging Eversource and other parties for years by permitting them to file materially confidentially. The Authority's Rules of Practice (Conn. Agencies Regs. § 16-1-1 *et seq*.) do not address confidential filings. Instead, the Authority has granted motions for protective order by citing to FOIA, but Eversource is correct that FOIA applies to government agencies, not private businesses. The result of that does not appear to work in Eversource's favor.

First, if FOIA does not apply to Eversource, then Eversource must find an independent legal ground on which to assert its claims for protective orders. It has not done so in the present case and a review of motions in a variety of dockets indicates neither Eversource nor most other parties assert any legal ground for confidentiality outside of FOIA. Second, as Connecticut courts

have found, there is no legal bar to disclosure under FOIA and state agencies have no "duty to withhold records where exemptions apply." *GR Vending CT, LLC v. Dept. of Consumer Protection*, HHD-CV-19-6109300-S, 2019 WL 5858038, p. *7 (Conn. Super. Ct. October 22, 2019). In the *GR Vending* case, the company opposed the Department of Consumer Protection ("DCP") releasing information the company believed would violate the Connecticut Uniform Trade Secrets Act. *Id*. The Court found that, generally, if a statute does not specifically prohibit disclosure of records under FOIA, then the presumption is that FOIA favors disclosure. *Id*. at *6. There, the Court permitted DCP to release possible trade secrets over the company's protest because the information was within DCP's possession and therefore DCP had the discretion to determine what it would release.

As the Court explained, "Under the FOIA, exemptions are permissive, not mandatory. Public agencies, therefore, retain the right to determine whether and when to assert an exemption…" *Id*. at *7. Applying this logic to Authority dockets, if a member of the public submitted a FOIA request for material Eversource filed confidentially, then it would be the Authority's choice, not Eversource's, to determine what is confidential and what is not.[1] Further, if Eversource submitted large filings confidentially to the Authority that were not wholly confidential, then it would be the Authority's prerogative to determine the portions for which it might assert a FOIA exemption. More importantly, the Authority, not Eversource, would be required to redact the voluminous filing before providing it in response to the FOIA request.[2]

It seems to OCC that a more reasonable approach would be to proceed as indicated by Connecticut Practice Book § 11-20A. This section states, "Except as otherwise provided by law, there shall be a presumption that documents filed with the court shall be available to the public." Section 11-20A(a). The Section then allows, "Upon written motion of any party, or upon its own motion, the judicial authority may order that files, affidavits, documents, or other materials on file or lodged with the court or in connection with a court proceeding be sealed or their disclosure limited only if the judicial authority concludes that such order is necessary to preserve an interest which is determined to override the public's interest in viewing such materials." *Id*. at 11-20A(b). Importantly, "[A]ny such order *shall be no broader than necessary* to protect such overriding interest." *Id*. (emphasis added). Applying the Practice Book to Authority proceedings, the Authority could allow parties to file motions for protective orders and, if granted, the party must file a public version redacting only the confidential material and file a confidential version without redactions. This has been the Authority's practice for years.

Eversource asserts that the Authority "presumes that documents filed with it by utilities or other entities become public records once filed." Motion No. 7, p. 3. OCC posits that this is not a presumption; it is a fact. "Except as otherwise provided by any federal law or state statute, all

[1] It appears Eversource would have to try to assert a "reverse-FOIA" action under the Uniform Administrative Procedure Act to prevent the Authority from disclosing something Eversource believed it had a legal right to protect. As noted, courts have interpreted such legal rights quite narrowly, and it is likely an inefficient use of resources for Eversource to continually file "reverse-FOIA" actions.

[2] Using Docket No. 25-12-13 as an example, if a member of the public requested all of the invoices and substantiation that Eversource initially filed with its application, presumably the Authority would be unable to assert a valid legal exemption for the entire filing. The Freedom of Information Commission likely would require the Authority to redact the portions for which it claimed a FOIA exemption. Since the material in the Authority's possession is unredacted, the Authority would have to undertake the task of redacting the entirety of the filing.

records maintained or kept on file by any public agency, whether or not such records are required by any law or by any rule or regulation, shall be public records and every person shall have the right to" inspect and copy such records. General Statutes § 1-210(a). Conn. Agencies Regs. § 16-1-34 sets forth the items contained in the record in a contested proceeding, and these include "all written evidence of any kind" as well as interrogatory responses and a variety of other filings that must be "maintained by the Authority in the custody of the executive secretary." Further, the Authority states in every notice of proceeding that it "operates with the strong presumption that all documents filed with it are public records." Notice of Proceeding dated January 23, 2026. Eversource is a regulated entity and as such must accept that it provides information to its regulator that is then part of a public record and accessible by the public, unless it meets the burden of demonstrating protective treatment is justified.

Connecticut law "favors the open conduct of government." *Drumm v. Freedom of Information Comm'n*, 348 Conn. 565, 581 (2024). Ratepayers benefit from fully understanding the Authority's proceedings and part of that understanding comes from being able to read and review what parties file in proceedings. Both Eversource and the Authority (and OCC) are accountable to the ratepayers of Connecticut. Accountability flourishes in the light. Proceedings in which large volumes of information are deemed "confidential" do not benefit the public's understanding or parties' accountability.

As stated at the outset, OCC currently takes no position on the material at issue in this Motion. OCC understands Eversource's concerns regarding public safety and is willing to take a second look before disseminating any material that might put the public or the grid at risk. OCC believes, however, that it is important to understand that Eversource's broader, generalized argument regarding FOIA and public records is incorrect. The information Eversource files with the Authority is in the public record, material in the public record is presumed to be publicly available unless a narrow exception applies, and as a regulated entity Eversource should be prepared to redact only the confidential material from any filing and file the remainder publicly.

OCC thanks the Authority for considering this comment.

Respectfully submitted,
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CERTIFICATE OF SERVICE

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

Dated at New Britain, Connecticut this 13th day of May, 2026.

/s/Kimberly White
Commissioner of the Superior Court