

**STATE OF NEW HAMPSHIRE PUBLIC UTILITIES COMMISSION  
INTER-DEPARTMENT MEMORANDUM**

Date: February 9, 2018

**TO:** Commissioners

**FROM:** F. Anne Ross, Hearing Examiner

**RE:** DE 17-075 Public Service Company of New Hampshire  
d/b/a Eversource (Eversource or Company)  
Annual Reconciliation of Energy Service and Stranded Cost for 2016

**HEARING EXAMINER'S REPORT**

At your request, I conducted an in camera review of a legal memorandum supplied to the Company and dated August 6, 2010 (Memo). The Memo contained a discussion of contracts for coal shipments from South America and advice concerning maritime law.

On January 11, 2018, the Commission issued a secretarial letter instructing the Company to supply an unredacted letter to the undersigned for an in cameral review. Eversource did so by letter of January 16, 2018, addressed to the Commission's General Counsel.

**Recommendations:**

1. I conclude, with the exception of three paragraphs on pages 2 and 4 of the Memo, that the redacted Memo provides a reasonably thorough basis for exploring Eversource's prudence with regard to the contract of affreightment (COA) with CSL International (CSL). I do not find that, for purposes of this docket, the parties have any need for access to the unredacted portions of the Memo, dealing with a separate matter.
2. I recommend that Eversource do a more limited redaction of paragraphs 3, and 5 on page 2 in order to show the legal reasoning and facts applicable to the CSL COA. Likewise on page 4, I ask that Eversource provide a more limited redaction of paragraph 6 to provide a description of a pertinent contract provision contained in the CSL COA.
3. I recommend that the Commission allow the parties further discovery regarding the CSL COA.
4. I recommend that the Commission defer ruling on the pending motion for confidential treatment until hearing in this docket.

## Summary of Review


I received both a redacted and unredacted copy of the Memo from Matthew Fossum, Esq. representing Eversource in this docket. The Memo is a 19 page document dated August 6, 2010, from James H. Power, Esq. of the law firm of Holland & Knight, New York, NY.

Based upon my review of the Eversource filing and attached testimony in this docket, Eversource's request for recovery of a payment in excess of \$3 million made to a shipper in South America has placed the prudence of that payment at issue in this docket. Further, by using legal advice it received as a basis for accepting a settlement and making a payment, Eversource has placed the legal advice it received concerning that contract at issue in this case. I surmise, without reviewing any of the discovery in the case, that the contract at issue is with a shipper named CSL International.

Given that the undisclosed portions of the Memo do not involve CSL, I do not find that Eversource has waived its attorney client privilege regarding advice on those other matters. Based on the filings at this point, the Company has not placed matters concerning other parties, or the legal advice it received on those matters, at issue. The fact that those matters may involve legal principles and analyses that are similar to those applicable to the CSL COA does not place them at issue in this docket. Further, based on my review of the Memo, I do not find the redacted portions, with the exception of the 3 paragraphs where I have requested more limited redactions, to provide any information needed to understand or analyze the advice given on the CSL COA.

Because, the Memo was prepared eight years ago when many material facts were not known to the law firm providing the legal advice, the parties will need to conduct discovery to develop an understanding of whether Eversource's actions were consistent with the preliminary legal advice contained in the Memo.

With regard to decisions concerning the ultimate disposition of this material, I recommend that the Commission defer a final decision on the confidentiality of these materials until discovery is complete and the matter is ready for hearing. Under Commission rules the material will be maintained as confidential until a final decision is made. *See* N.H. Code of Admin. R. Puc 203.08(c). I will hold the unredacted Memo in a secure place and will not share it with others until instructed to return it to the Company's legal counsel.

By   
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F. Anne Ross, Hearing Examiner