

**THE STATE OF NEW HAMPSHIRE
SITE EVALUATION COMMITTEE**

Joint Application of Northern Pass Transmission, LLC and Public Service Company of New Hampshire d/b/a Eversource Energy for a Certificate of Site and Facility for the Construction of a New High Voltage Transmission Line in New Hampshire

Docket No. 2015-06

**MUNICIPAL GROUPS 1 SOUTH, 2, 3 SOUTH AND 3 NORTH'S
OBJECTION TO MOTION FOR REHEARING DENYING CONFIDENTIAL
TREATMENT OF BUSINESS DIRECTORY**

Municipal Intervenor Groups 1 South, 2, 3 South and 3 North (collectively “the Referenced Municipal Groups”) object to the Applicants’ Motion for Rehearing Denying Confidential Treatment of the Business Directory, stating as follows:

1. On June 30, 2017, the Applicants filed a Motion for Protective Order and Confidential Treatment of the Business Directory. The Applicants’ Motion was denied on August 16, 2017. The Applicants have now filed a motion for rehearing, to which the Referenced Municipal Groups object.

2. As explained by the Subcommittee in its previous orders, the rules governing a motion for rehearing require the moving party to:

- (1) Identify each error of fact, error of reasoning, or error of law which the moving party wishes to have reconsidered;
- (2) Describe how each error causes the committee’s order or decision to be unlawful, unjust or unreasonable;
- (3) State concisely the factual findings, reasoning or legal conclusion proposed by the moving party; and
- (4) Include any argument or memorandum of law the moving party wishes to file.

See N.H. Code Admin. Rules Site 202.29.

3. Motions for rehearing must specify “all grounds for rehearing, and the commission may grant such rehearing if in its opinion good reason for the rehearing is stated in

the motion.” *Id.* “The purpose of a rehearing is to direct attention to matters said to have been overlooked or mistakenly conceived in the original decision, and thus invite reconsideration upon the record to which that decision rested.” *Dumais v. State of New Hampshire Pers. Comm.*, 118 N.H. 309, 311 (1978) (internal quotations omitted). A motion for rehearing must be denied where no “good reason” or “good cause” has been demonstrated. *See O’Loughlin v. N.H. Pers. Comm.*, 117 N.H. 999, 1004 (1977); *see also In re Gas Service, Inc.*, 121 N.H. 797, 801 (1981). The Applicants have failed to articulate any “good reason” or “good cause” for the rehearing to be granted.

4. The Applicants assert that the order is “mistakenly conceived insofar it is premised on the understanding that the information contained therein is generally available to the public and that Applicants have disseminated the information in the Business Directory to numerous business owners.” Motion for Rehearing at ¶8 (quotations omitted). The Applicants contend that the Business Directory has not been publicly disseminated and that Northern Pass Transmission, LLC has “no intention of making the Directory public until it begins construction of the Northern Pass line.” *Id.* They further argue that “the premise of widespread dissemination, which led to the conclusion that business owners can have no reasonable expectation of privacy, is an error of fact.” *Id.*

5. With respect to the above-referenced arguments, it should be noted that during the trial, Samuel Johnson, the Senior Project Manager at Burns & McDonnell Engineering Company, testified that the Business Directory has between 200 and 300 businesses, and that the directory has already been provided to its contractors. Transcript, Day 12 (AM, June 2, 2017), 115-16. Mr. Johnson further testified that “that list is available and we’ll continue to grow it. And any time somebody registers, we’ll provide that to our contractor.” *Id.* As such, while there

may not have been specific testimony that the Business Directory has been disseminated to numerous business owners, there is certainly testimony that the directory is already being provided to contractors and that it is updated as new businesses join the list.

6. Even more importantly, as previously discussed in the objection filed by the Referenced Municipal Groups, there is also no legal or factual basis for the argument that the “privacy interests” of business owners needs to be protected. There is no objective basis to support the argument that a business would consider the disclosure of the business directory to be an invasion of privacy under RSA 91-A:5, IV. The determination of whether information is exempt from disclosure because it is private is judged by an objective standard and not by a party’s subjective expectations. *Lamy v. N.H. Pub. Utils. Comm’n*, 152 N.H. 106, 109 (2005) (holding that list of businesses who had testing performed by utility company as a result of voltage complaints was not confidential because there was no privacy interest at stake).

7. There is no objective basis for the statement that the businesses on the list might believe they have a “privacy interest” that needs to be protected. Motion for Rehearing at ¶9. The Northern Pass website which invites businesses to join the directory indicates that the business directory will be provided to “thousands of workers,” and that the directory will be “easily accessible to them.” See Northern Pass website at <http://www.northernpass.us/business-directory.htm>.¹ The website also includes videos from business owners who state that they believe that the Northern Pass construction activities will support their businesses. *Id.* The website and videos do not suggest that the identification of a business that has chosen to be listed in the business directory will be maintained as confidential for any period of time and/or that the business might be unnecessarily subjected to “adverse financial or commercial impacts.” There

¹ Excerpts were submitted as Exhibit A to Municipal Intervenor Groups 1 South, 2, 3 South and 3 North Objection to the Applicants’ Motion for Protective Order and Confidential Treatment of the Business Directory.

is no privacy interest at stake to support a determination that the business directory should be deemed confidential until the proposed construction commences, and, therefore, the right-to-know law mandates disclosure. *Lamy*, 152 N.H. at 109.

8. The Applicants concern about the fear of “harassment” to groups and individuals who support the project also contradicts public statements made by Northern Pass Transmission, LLC, that there is broad public support for the proposed transmission line. For example, in the response to the proposal for the Massachusetts Clean Energy solicitation, there does not appear to be any reference to alleged harassment of parties who support the new transmission line, and instead Northern Pass Transmission, LLC asserted that it has “*significant support* from New Hampshire Governor, labor and business organizations.” Exhibit 1 (emphasis added). The response to the proposal also included a list of New Hampshire business leaders who support the proposed transmission. *Id.* Similarly, in a public statement discussing the Massachusetts Clean Energy solicitation, the Applicants argued that it has “*strong support* from many of New Hampshire’s business leaders, labor organizations and elected officials.” Exhibit 2 (emphasis added). The Applicants should not be permitted to argue that there is broad public support and identify businesses in certain forums, and then alternatively argue that the identification of businesses must remain hidden from the view of the public in this proceeding.

9. Finally, even assuming that there is a privacy interest at stake, which is disputed, the public interest in disclosure outweighs the privacy interest in nondisclosure. As the New Hampshire Supreme Court recently explained in the context of court proceedings,

The courts of New Hampshire have always considered their records to be public, absent some overriding consideration or special circumstance. Such access is critical to ensure that court proceedings are conducted fairly and impartially, and that the judicial process is open and accountable. There is a presumption that court records are public and the burden of proof rests with the party seeking closure or nondisclosure of court records to demonstrate with specificity that there

is some overriding consideration or special circumstance, that is, a sufficiently compelling interest which outweighs the public's right of access to those records.

State v. Kibby, ___ N.H. ___, 2017 WL 3482910 at *2 (August 15, 2017) (brackets, citations and quotations omitted) (emphasis added).² While the cases involving court proceedings are based on the part 1, article 8 of the New Hampshire Constitution, the same constitutional considerations apply to adjudicative hearings conducted by administrative agencies. Indeed, the Public Utility Commission has recognized that the right-to-know law is the New Hampshire legislature's response to that constitutional provision. *See Re New England Telephone and Telegraph Company d/b/a NYNEX*, 80 N.H. PUC 437, DR 95-069, Order No. 21, 731 (July 10, 1995).

10. The Applicants have proffered testimony during the trial that the disruption to businesses will be mitigated during construction because workers will be patronizing local businesses, and they have relied upon the Business Directory to support those statements. *See, e.g.*, Transcript, Day 12 (AM, June 2, 2017), Pages 105-08, 114-116; Transcript, Day 15 (PM, June 13, 2017), Page 102. This is a public proceeding and under the right-to-know law, all documents should be deemed public unless there is an overriding special circumstance. Here, the opportunity for public comment is a critical part of the proceeding, and it is only appropriate that the Business Directory be submitted as a public document in order to allow the general public to have an opportunity to evaluate and comment on the claim that disruptions to businesses will be mitigated because of the alleged patronization of businesses listed in the Directory.

² For the convenience of the Subcommittee, a copy is attached as Exhibit 3.

WHEREFORE, the Referenced Municipal Groups respectfully request that the Site Evaluation Committee:

- a. Deny Applicants' Motion for Rehearing Denying Confidential Treatment of the Business Directory; and
- b. Grant such further relief as it deems appropriate.

Respectfully submitted,

TOWNS OF NEW HAMPTON, LITTLETON,
DEERFIELD, PEMBROKE, and ASHLAND
WATER & SEWER DEPARTMENT

By and through its attorneys,

MITCHELL MUNICIPAL GROUP, P.A.

Dated: August 18, 2017

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TOWNS OF BETHLEHEM, BRISTOL, EASTON,
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By and through their attorneys,

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Dated: August 18, 2017

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CITY OF CONCORD

Dated: August 18, 2017

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CERTIFICATE OF SERVICE

I hereby certify that on this date, a copy of the foregoing was sent by electronic mail to persons named on the Service List of this docket.

Dated: August 18, 2017

By: /s/ Steven Whitley
Steven M. Whitley, Esq., Bar #17833

EXHIBIT 1

**PUBLIC VERSION
REDACTED**

1

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NORTHERN PASS:

The most **Advanced**
and **Comprehensive**
Energy Solution
for New England

NORTHERN PASS AT A GLANCE



Proven project partners

- **Eversource:** New England's largest energy delivery company and experienced transmission developer and operator
- **Hydro-Québec:** Operators of a vast fleet of clean hydropower generation and transmission facilities and longtime energy supplier to New England



New, clean power supply will lower costs and improve reliability

- 1,090 MW of firm clean energy from Québec hydropower facilities delivered year-round
- New transmission line connects New England to abundant renewable energy resources
- Improves fuel diversity in the region



Clean energy to help Massachusetts achieve Global Warming Solutions Act goals

- Up to 9.4 TWhs of clean, renewable hydroelectricity annually



Shovel-ready; power to flow in 2020

- 2020 in-service date
- Construction contracts in place, and U.S. and Canadian permits expected in 2017
- Approval secured to interconnect to ISO-NE system



Project support in New Hampshire

- 80% of transmission lines co-located along existing transmission rights-of-way or underground in public roads
- Positive community outreach plan with significant support from New Hampshire Governor, and labor and business organizations



Employment and economic benefits

- Hundreds of jobs during construction
- Priority hiring of New Hampshire and Massachusetts workers through a labor agreement with IBEW Locals 104 and 490
- \$10 million committed over 20 years to support Massachusetts low-income energy programs and services
- \$200 million Forward NH Fund supporting investments in clean energy innovation, economic development and community betterment

NH Business Leaders Supporting the Northern Pass

Paul Markwardt, VP/Deputy General Manager, BAE Systems Electronic Systems, Nashua, NH
Jeremy Hitchcock, CEO/Chairman, Dyn, Manchester, NH
Andy Crews, President, AutoFair Companies, Manchester, NH
Tom Boucher, CEO/Owner, Great NH Restaurants, Inc, Manchester, NH
Marian Noronha, President, TURBOCAM International, Barrington, NH
John Morison, Chairman & CEO, Hitchiner Manufacturing, Milford, NH
Richard Verney, Chairman and CEO, Monadnock Paper Mills, Bennington, NH
David Glendon, President & CEO Sprague Operating Resources, Portsmouth, NH
Don Welch, President, Globe Manufacturing, Pittsfield, NH
Jim Teetzel, President, Wilcox Industries, Newington, NH
Paul & Anna Grace Holloway, Holloway Motor Cars, Greenland, NH
Tom Sullivan, Vice President of Operations, Sturm Ruger, Newport, NH
Susan Siegel, VP Corporate Communications Albany International Corp., Rochester, NH
Tim Dining, President, Sealite USA LLC, Tilton, NH
Robert Getchell, Getchell Professional Association, Nashua, NH
Dennis Reed, Wilderness Trailer Sales, Franklin, NH
Rick Lepene, PE Granite State Septic Designs, Tilton, NH
Bryan Rineer Logging & Excavating, Thornton, NH
Michael Kelley, Kel-Log, Inc., Milan, NH
Donald Leveille, Owner, Leveille Trucking Inc., Shelburne, NH
Kevin Henderson, First New England Real Estate, Sunapee, NH
Daniel Mills, President, GI Plastek, Wolfeboro, NH
Chet Homer, Owner, Shawnee Peak Ski Resort, Portsmouth, NH
Suzanne Bresette, Bresette & Company, Portsmouth, NH
Thomas Farrelly, Executive Director, Cushman & Wakefield, Manchester, NH
Tom Colgan, Wagner Forest Management, Ltd. and Prime Timber Company LLC
Jim Aberg, Franklin Business and Industrial Development, Franklin, NH
Robert Ouellet, Owner, Errol General Store, Errol, NH
Clark Lindley, CEO, Agricultural Insurance Management Services, Bow, NH
Kedar Gupta, CEO, ARC Energy, Nashua, NH
Linda Fanaras, Millinium Agency, Manchester, NH
Douglas Lang, President, Lang Trucking, Milan, NH
Mike Gagne, Gagne Trucking, Milan, NH
Jonathan Lane, Lane Equipment Rentals, LLC, Errol, NH
Clifford Lane, SB Lane Reality, Errol, NH
Peter Cook, Concord Litho Graphics, Concord, NH
Gary Garfield, Principal Engineer, AECOM, Manchester, NH
Tony Giunta, Senior Client Manager, Noblis Engineering, Concord, NH
Bruno Halle, Halle Wood Industries, Milan, NH
John Halle, President and CEO, Cate Street Capital, Inc., Exeter, NH
Thomas Hartley, President, Hartley Transportation, Concord, NH
Randy Paquette, RP Forestry, Colebrook, NH
Pat Gagne, Gagne & Sons Logging, Dummer, NH
Henri Fine, President, Uni-Cast, Londonderry, NH
Lucas Champagne, LJRC Transport, W. Stewartstown, NH
Anthony Bammarito, Manager, Property and Asset Management, Elliot Health System, Manchester, NH
R. Sean O'Kane, Winward Strategies, Portsmouth, NH

EXHIBIT 2



(/content)



EVERSOURCE AND HYDRO-QUÉBEC OFFER TWO PROPOSALS TO CLEAN ENERGY SOLICITATION

27 CORPORATE NEWS

JUL

[northern pass \(https://www.eversource.com/Content/nh/about/news-room/connecticut/new-hampshire-news\)](https://www.eversource.com/Content/nh/about/news-room/connecticut/new-hampshire-news)

Proposals will offer substantial environmental and economic benefits to consumers in New Hampshire, Massachusetts and New England

MANCHESTER, N.H. (July 27, 2017) – Eversource and Hydro-Québec (HQ) today submitted [two comprehensive proposals \(http://www.northernpass.us/ma-clean-energy-bid.htm\)](http://www.northernpass.us/ma-clean-energy-bid.htm) in response to the Massachusetts Clean Energy solicitation. Both proposals would use the Northern Pass Transmission project (NPT) to deliver significant amounts of clean energy to the New England grid, interconnecting in New Hampshire. The solicitation is the result of a law passed last year by the Massachusetts Legislature to provide for new sources of clean energy for decades into the future. The two proposals are a 100 percent hydropower option and a hydropower and onshore wind combination option, and both highlight NPT's advanced project development and Eversource's extensive experience in building and operating the transmission grid in the region.

"Northern Pass is the most mature and comprehensive solution to meet the region's clean energy goals and will help provide stability over the price and supply of the energy for years to come," said Lee Olivier, Executive Vice President of Strategy and Business Development at Eversource Energy. "As New England's largest utility, we are uniquely positioned to deliver on that promise. We are excited to begin delivering the substantial benefits of this project to consumers throughout the region."

The Northern Pass transmission line begins at the Canadian border in Pittsburg, New Hampshire and extends 192 miles to Deerfield, New Hampshire where it connects to the New England grid. More than 80 percent of the line will be located along existing transmission corridors or buried along roadways to eliminate potential view impacts in the White Mountain National Forest area. NPT will provide a robust, new interconnection path between the Québec and New England electric systems, and will be controlled by the regional system operator, ISO-NE.

Northern Pass will soon be a shovel-ready project with all major state and federal permits expected in 2017. Moreover, all major contractor and equipment contracts are fully executed to begin construction early in 2018. The majority of the project's construction will take place in 2018 and 2019. A project labor agreement has been executed and is expected to generate thousands of jobs during peak construction for both Granite State and Bay State workers. Northern Pass will be substantially complete by the third quarter of 2020, and following testing, the line will be in service by the end of 2020—prior to the critical 2020–2021 winter period.

Clean Energy Solutions

The 100 percent hydropower option included in the Northern Pass bid would deliver 1,090 megawatts of clean hydroelectric energy and the associated environmental attributes from HQ's existing resources. A second option would combine predominantly [firm hydropower from HQ \(http://news.hydroquebec.com/en/\)](http://news.hydroquebec.com/en/) with new wind generation located in Québec, provided by a partnership of wind developers, Gaz Métro and Boralex. The wind power will be backed by hydropower and includes Class I Renewable Energy Certificates (RECs). Both options guarantee a firm delivery of 1,090 megawatts of clean energy year round, including winter and summer days when demand for energy is greatest.

Achieving Environmental Benefits and Reducing Costs

Northern Pass will be capable of providing up to 9.4 terawatt hours of clean energy that the Massachusetts legislation requires on an annual basis while helping the Bay State attain the clean energy goals required by its Global Warming Solutions Act. The project will also reduce wholesale energy costs, diversify the region's energy mix, and help fill the gap created by the retirement of older generating plants. Further, Northern Pass will help reduce reliance on natural gas-fired sources, particularly during the winter months when the gas pipeline system into New England is constrained.

Enabling Enhanced Economic and Community Betterment

In an effort to provide additional benefits, Northern Pass has finalized an agreement with leading Massachusetts low-income advocates, including Action for Boston Community Development, Action, Inc., and the National Consumer Law Center, that commits \$10 million in funding to support low-income energy programs and services for Massachusetts low-income customers over 20 years.

As the host state for the Northern Pass project, New Hampshire will receive new property tax revenues and additional benefits to promote community betterment and economic development. **The project enjoys strong support from many of New Hampshire's business leaders, labor organizations and elected officials.**

In summary, Northern Pass will help stabilize regional energy prices, provide a firm supply of clean energy, lower greenhouse gas emission, and provide hundreds of new jobs and additional economic benefits for Massachusetts residents. With approval of state and federal permits expected by the end of 2017, all major construction and supplier contracts fully executed, the Northern Pass proposal is the most advanced and comprehensive energy solution for Massachusetts.

[Clean Energy Bid Summary \(http://www.northernpass.us/ma-clean-energy-bid.htm\)](http://www.northernpass.us/ma-clean-energy-bid.htm)

Eversource (NYSE: ES) transmits and delivers electricity and natural gas to more than 3.6 million electric and natural gas customers in Connecticut, Massachusetts and New Hampshire. Recognized as the top U.S. utility for its energy efficiency programs by the sustainability advocacy organization Ceres, Eversource harnesses the commitment of its approximately 8,000 employees across three states to build a single, united company around the mission of safely delivering reliable energy and superior customer service. For more information, please visit [our website \(http://www.eversource.com\)](http://www.eversource.com) and follow us on Twitter [@EversourceCorp](https://twitter.com/EversourceCorp) (<http://twitter.com/EversourceCorp>) and Facebook (facebook.com/EversourceEnergy (<http://facebook.com/EversourceEnergy>)).

The Northern Pass is a 192-mile electric transmission line project that will bring to New England 1,090 megawatts of clean hydropower. This reliable and affordable source of power will also bring a wide range of benefits to the region, including millions of dollars in energy cost savings and a significant reduction in carbon emissions. To learn more about Northern Pass, go to www.northernpass.us (<http://www.northernpass.us>).

CONTACT:

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Pay My Bill
(/psnh/customer/Pay/OneTimeDirectDebit.aspx)

Report/Check Outages
(/Content/nh/residential/outages/report-an-outage)

EXHIBIT 3

2017 WL 3482910

Only the Westlaw citation is currently available.

NOTICE: THIS OPINION HAS NOT BEEN
RELEASED FOR PUBLICATION IN THE
PERMANENT LAW REPORTS. UNTIL RELEASED,
IT IS SUBJECT TO REVISION OR WITHDRAWAL.

Supreme Court of New Hampshire.

The STATE of New Hampshire

v.

Nathaniel KIBBY

No. 2016-0318

|
Argued: April 19, 2017

|
Opinion Issued: August 15, 2017

Belknap

Attorneys and Law Firms

[Joseph A. Foster](#), attorney general ([Geoffrey W.R. Ward](#), assistant attorney general, on the brief and orally), for the State.

[David M. Rothstein](#), deputy director public defender, of Concord, on the brief and orally, for the defendant.

Opinion

[DALIANIS](#), C.J.

*1 The defendant, Nathaniel Kibby, appeals an order of the Superior Court ([Smukler](#), J.) unsealing pleadings, hearings and letters related to the status of counsel and unsealing motions for services other than counsel that he filed ex parte during the pendency of his case. We affirm.

I

The relevant facts follow. The defendant was indicted on more than 150 charges including kidnapping, criminal threatening, witness tampering, second degree assault, criminal use of an electronic defense weapon, felonious use of a firearm, indecent exposure, falsifying physical evidence, sale of a controlled drug, aggravated felonious

sexual assault, and felonious sexual assault.

According to the State, at a March 17, 2016 chambers conference, the defense raised an issue of status of counsel and requested that the court hold a closed, ex parte hearing on the matter. The State avers that the trial court informed the parties that it had received two letters from the defendant relevant to the status of counsel issue in the previous two days, that it had not sent the letters to the State, and that the letters were sealed in the court's file. However, according to the State, the court stated that it would entertain a motion to unseal the letters and the record of the ex parte hearing. On March 29, the defendant sent a third letter to the trial court.

On April 6, the State moved to unseal the letters and the record of the ex parte hearing. The defendant objected. The State avers that on April 12, the trial court held a closed, ex parte hearing and, thereafter, it notified the State that, on April 15, it had issued an ex parte sealed order on the status of counsel. On April 19, the State supplemented its earlier motion to unseal, requesting that the trial court "also unseal its April 15, 2016 Order on status of counsel and any underlying pleadings, communications or hearing records."

On May 10, the State requested that the trial court address its motion to unseal. On May 13 and on May 14, the defendant sent additional letters to the court. On May 23, the trial court ordered that "[t]he issue of whether the letters already submitted will be maintained as ex parte communications [would] be considered in the context of the pending argument on the state's motion to unseal," and that "[t]he defendant is placed on notice that any further communications made directly from him to the court will be immediately disclosed to all parties without further notice or opportunity for hearing."

On May 26, the defendant pleaded guilty to seven indictments. Following a plea colloquy, the trial court accepted the pleas and imposed sentence in accordance with the negotiated disposition. The State entered nolle prosequis on the remaining indictments.

On May 31, the trial court ordered:

1. Effective June 14, 2016, the record, all pleadings filed and all orders issued involving the defendant's correspondence with the court, including the correspondence itself, shall be UNSEALED, unless the court, upon motion, issues a contrary order before the effective date. Effective June 14, 2016, the record, all pleadings filed, the defendant's correspondence with

the court, and all orders issued involving defense counsel's motion to withdraw shall be UNSEALED, unless the court, upon motion, issues a contrary order before the effective date. The unsealing of the subject documents necessarily requires that the state be provided with copies, which renders moot the state's motion to unseal.

*2 2. Effective June 14, 2016, all remaining pleadings filed and all remaining orders issued on an ex parte basis shall be served on all non-filing parties, unless the court, upon motion, issues a contrary order before the effective date. Effective June 24, 2016, all ex parte pleadings and the orders issued in response thereto shall be UNSEALED, unless the court, upon motion, issues a contrary order before the effective date.

The trial court reasoned that "the rationale in support of the adjudication of issues on an ex parte basis no longer appear[ed] to apply" because the pleas resolved all pending criminal issues involving the defendant.

The defendant moved to reconsider. The court granted his motion as to providing notice of its May 31 order to counsel appointed for a witness, and denied the motion in all other respects. This appeal followed, and we granted the defendant's motion to stay the trial court's order pending resolution of the appeal.

II

The defendant first argues that the trial court erred "when it ordered, sua sponte, the release of sealed pleadings, hearings and letters relating to the status of counsel." As to the letters, the defendant asserts that the trial court's order is erroneously "based on the premise that [he] either had no attorney-client privilege with respect to the information he put before the court, or that he waived the privilege by sharing the information with the court." As to the pleadings and hearings, the defendant argues that even if they "do not include privileged statements, they include content that is so closely associated as to be privileged."

"The courts of New Hampshire have always considered their records to be public, absent some overriding consideration or special circumstance." Petition of Keene Sentinel, 136 N.H. 121, 126, 612 A.2d 911 (1992) (quotation and brackets omitted). "Such access is critical to ensure that court proceedings are conducted fairly and impartially, and that the judicial process is open and accountable." Petition of Union Leader Corp., 147 N.H. 603, 604, 809 A.2d 752 (2002) (citations omitted).

"[T]here is a presumption that court records are public and the burden of proof rests with the party seeking closure or nondisclosure of court records to demonstrate with specificity that there is some overriding consideration or special circumstance, that is, a sufficiently compelling interest which outweighs the public's right of access to those records." Petition of Keene Sentinel, 136 N.H. at 128, 612 A.2d 911. "Where no special circumstances exist, however, those things which are filed in court in connection with a pending case are accessible to the public." Petition of Union Leader Corp., 147 N.H. at 604, 809 A.2d 752 (quotation omitted).

We require trial courts to employ the following process to balance the public's interest in access to court documents against any competing interest. First, "the party opposing disclosure of the document [must] demonstrate that there is a sufficiently compelling reason that would justify preventing public access to that document." Associated Press v. State of N.H., 153 N.H. 120, 136, 888 A.2d 1236 (2005). Second, "the court [must] determine that no reasonable alternative to nondisclosure exists and use the least restrictive means available to accomplish the purposes sought to be achieved." Id.; see Petition of Keene Sentinel, 136 N.H. at 129–30, 612 A.2d 911.

The defendant argues that, in this case, the attorney-client privilege is a "compelling interest" that outweighs unsealing the records. "[T]he attorney-client privilege is an evidentiary rule allowing the attorney or client to withhold information shared in the course of the attorney-client relationship." Ettinger v. Town of Madison Planning Bd., 162 N.H. 785, 789, 35 A.3d 562 (2011); see N.H. R. Ev. 502(b). "A communication is 'confidential' if it is not intended to be disclosed to third persons other than those to whom disclosure is made in furtherance of the rendition of professional legal services to the client or those reasonably necessary for the transmission of the communication." Prof. Fire Fighters of N.H. v. N.H. Local Gov't Ctr., 163 N.H. 613, 615, 44 A.3d 542 (2012) (quotation omitted). New Hampshire Rule of Evidence 502 essentially codifies the common law attorney-client privilege. Petition of Stompor, 165 N.H. 735, 738, 82 A.3d 1278 (2013). That rule provides that "[a] client has a privilege to refuse to disclose and to prevent any other person from disclosing confidential communications made for the purpose of facilitating the rendition of professional legal services to the client, including communications between the client and his lawyer." Id. at 738, 82 A.3d 1278 (quotation omitted); see N.H. R. Ev. 502(b).

*3 The defendant asserts that the letters he sent to the trial

court “contain information covered by the attorney-client privilege,” because four of them “raised general issues about counsel’s representation,” and one letter “related specifically to the issue that was the subject of counsel’s pleadings and two hearings.” However, the defendant has the burden of justifying the confidentiality of every document sought to be sealed, and he cannot prevail upon his claim to keep the letters sealed merely by asserting a general claim that the record contains privileged attorney-client communications. See [Petition of Keene Sentinel](#), 136 N.H. at 129, 612 A.2d 911; cf. [Hampton Police Assoc. v. Town of Hampton](#), 162 N.H. 7, 16, 20 A.3d 994 (2011) (explaining that, in the context of the Right-to-Know Law, a “blanket assertion” of the attorney-client privilege “is generally extremely disfavored, and ordinarily the privilege must be raised as to each record so that the court can rule with specificity” on the application of the privilege to particular statements (quotation omitted)). Rather, the privacy interests asserted must be “articulated with specificity.” [Petition of Keene Sentinel](#), 136 N.H. at 129, 612 A.2d 911. We conclude that the defendant has failed, as a matter of law, to meet his burden of demonstrating with specificity that the letters contain privileged communications sufficient to justify maintaining them under seal.

Regarding the pleadings and hearings on the status of counsel issue, the defendant argues that “they include content that is so closely associated [with privileged statements] as to be privileged.” However, the trial court expressly found that the record does not contain the communications and the defendant does not contend that this finding was erroneous. As the trial court explained, it “appointed conflict counsel to represent ... the defendant with respect to defense counsel’s motion to withdraw[;] [t]hus, no unauthorized attorney client communications are part of the court record and, consequently, none will be disclosed by the order.”

The defendant next argues that the trial court erred when it ordered “the release of sealed motions for services other than counsel and related orders.” (Capitalization omitted.) See [RSA 604-A:6 \(Supp. 2016\)](#) (“[i]n any case in which appointed counsel seeks funds for services other than counsel ..., the application for such funds may be filed with the court on an ex parte basis and may, upon the

request of appointed counsel, be sealed until the conclusion of the representation”). The trial court unsealed the motions, reasoning that, because the case had concluded, “the concerns justifying sealing the records—primarily avoiding compromising the theory of a defense—have dissipated and no longer outweigh the public’s right of access,” particularly given that [RSA 604-A:6](#) motions “involve expenditures of public funds.”

The defendant agrees that the motions and orders are “judicial documents,” that they “relate to how the trial court administered the services other than counsel statute, which is a core judicial function,” and that “the level of public interest in these documents may be high.” He contends, however, that the trial court unsustainably exercised its discretion when it unsealed the motions because his “equal protection rights” constitute a “sufficiently compelling interest” to overcome the public’s right of access to such documents.

We assume without deciding that the defendant is correct that the statute “neither mandates nor creates a presumption that the documents be unsealed” after the case concludes, and that the trial court must balance the public’s right of access to the documents against other compelling interests. Nonetheless, because the defendant concedes that unsealing the documents will not compromise his defense and that he seeks a ruling on this issue only for “future cases,” we hold that he has failed, as a matter of law, to meet his burden of demonstrating with specificity a compelling interest in this case to justify maintaining the motions under seal. See [Petition of Keene Sentinel](#), 136 N.H. at 129, 612 A.2d 911.

Affirmed.

HICKS, LYNN, and BASSETT, JJ., concurred.

All Citations

--- A.3d ----, 2017 WL 3482910