

**STATE OF NEW HAMPSHIRE
SITE EVALUATION COMMITTEE**

Docket No. 2015-06

**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**

October 25, 2017

**ORDER DENYING APPLICANT'S MOTION FOR REHEARING
(Confidentiality of Business Directory)**

This Order denies the Applicant's Motion for Rehearing of the Order Denying Confidential Treatment of the Business Directory.

I. Background

On June 30, 2017, the Applicant sent correspondence to the Administrator of the Committee enclosing a copy of the Business Directory requested by the Subcommittee, and contemporaneously filed a Motion for a Protective Order and Confidential Treatment. On July 17, 2017, the Presiding Officer denied the Motion.

On August 16, 2017, the Applicant filed a Motion for Rehearing of the Order. The Forest Society; Municipal Groups 1 South, 2, 3 South and 3 North; Grafton County Commissioners; Pemigewasset River Local Advisory Committee; Deerfield Abutters; Whitefield to Bethlehem Abutters; Stark and Northumberland Abutters; and Southern Non-Abutters objected. Municipal Groups 1 South, 2, 3 South and 3 North and the Forest Society filed objections. The Coos County Business and Employers Group filed a concurrence with the Applicant's Motion.

II. Standard of Review

N.H. CODE ADMIN. RULES Site 202.29 provides that a motion for rehearing shall:

- (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.

A request for a rehearing may be made by "any party to the action or proceeding before the commission, or any person directly affected thereby." RSA 541:3. 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.* Any motion for rehearing "shall set forth fully every ground upon which it is claimed that the decision or order complained of is unlawful or unreasonable." RSA 541:4.

"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 rehearing may be granted upon a finding of "good reason." See RSA 541:3. 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).

III. Position of the Parties

A. Applicant

The Applicant maintains that the Business Directory is exempt from the disclosure under RSA 91-A. Specifically, the Applicant argues that the Business Directory contains confidential, commercial, or financial information, the disclosure of which would constitute an invasion of

privacy of the named business owners. The Applicant argues that because it retained an outside consultant to develop the Business Directory at its own expense and for its own purposes, the Business Directory constitutes proprietary commercial information of the Applicant.

The Applicant argues that the Order relies on an incorrect premise that the information in the Business Directory is generally available to the public and that the Applicant has “disseminated the information in the Business Directory to numerous business owners.” The Applicant asserts that the Business Directory has not been publicly disseminated and that it has no intention of making it public until it begins construction of the Project. The Applicant complains about the potential harassment of Project supporters and cites, for example, the comments of Representative Richardson at the Public Comment session on June 15, 2017, wherein Rep. Richardson stated that supporters of the Project are afraid to speak out and noted that, at earlier public hearings, speakers in support of the Project were booed and heckled. Rep. Richardson also indicated that in Colebrook, small businesses were threatened with boycott if they supported the Project; and in Lancaster, a contractor was denied work based on his support of the Project.

The Applicant also argues that granting confidential treatment of the Business Directory will not preclude consideration of its contents in these proceedings. The Applicant submits that the Business Directory should be afforded similar treatment to other confidential documents in this docket and made accessible to only those parties who have executed confidentiality agreements. The Applicant acknowledges that the list will be widely disseminated during the construction period and agrees there would be no reasonable expectation of privacy at that time. The Applicant argues that the Business Directory should be afforded confidential treatment on a time-limited basis until the Subcommittee issues its final decision in this proceeding.

B. Coos County Business and Employers Group

The Coos County Business and Employers Group (CCBEG) concurs with the Applicant's position. Specifically, the CCBEG expresses its understanding that businesses in the North Country, and others south of the notches, have faced scorn, vilification, threats, and have lost business based on the mere appearance of any level of support for the Project. The CCBEG contends that given the already fragile existence of many businesses in the region, confidential treatment of the Business Directory is a legitimate privacy and business interest that should be protected.

C. Forest Society

The Forest Society argues that the Applicant failed to satisfy the standard for rehearing and that the Applicant's substantive arguments regarding the assumptions underlying the Presiding Officer's Order lack merit. The Forest Society asserts that businesses participated in the Business Directory understanding that the information they provided would be disseminated broadly.

The Forest Society argues that CCBEG's concurrence demonstrates no error of fact, law, or reasoning warranting rehearing. Specifically, the Forest Society argues that although the CCBEG reiterates concerns regarding scorn and vilification faced by businesses that took part in the Business Directory, the concurrence articulates no privacy interest warranting exemption from disclosure.

D. Municipal Groups

Municipal Groups 1 South, 2, 3 South and 3 North (Municipalities) argue that the Applicant has failed to articulate any good cause or good reason for rehearing. The Municipalities note that during hearings held in this docket, Samuel Johnson, the Senior Project

Manager at Burns & McDonnell Engineering Company, testified that the Business Directory lists between 200 and 300 businesses, that the directory has been provided to its contractors, that the list will continue to grow, and that anytime someone registers, it will be provided to the Applicant's contractors. The Municipalities reiterate their argument there is no privacy interest warranting exemption from disclosure. They assert that even if a privacy interest were at stake, the public interest in disclosure would outweigh such an interest. The Municipalities argue that the purported fear of harassment to supporters of the Project is contradictory to the Applicant's assertion that there is broad public support for the Project.

IV. Analysis

The Applicant's Motion for Rehearing does not state good cause for rehearing. The Applicant's assertion that the Order was premised on a mistake of fact, even if correct, does not warrant rehearing. While the Applicant argues that the Order mistakenly concluded that the Business Directory has been provided to numerous business owners, the Applicant ignores the Presiding Officer's findings that there is no privacy interest in the Business Directory, and even if a privacy interest were at stake, the public interest in disclosure would outweigh the privacy interest. The Applicant failed to demonstrate that the information within the Business Directory constitutes confidential, commercial, or financial information the disclosure of which would constitute an invasion of privacy. The Applicant also failed to demonstrate that it has any privacy interest in the information within the Business Directory that warrants protection, and has similarly identified no privacy interest at stake for the business owners. The Applicant has disseminated the information within the Business Directory to its contractors, has solicited businesses to include in the directory citing that it will be provided to hundreds of workers who may bring business to the business owners, and advertised the potential benefits of inclusion in

the directory to local businesses. There can be no reasonable expectation of privacy by the Applicant or the business owners under these circumstances. The Applicant's Motion for Rehearing is denied.

SO ORDERED this twenty-fifth day of October, 2017.

A handwritten signature in black ink, appearing to read 'M. Honigberg', is written above a horizontal line.

Martin P. Honigberg, Presiding Officer
Site Evaluation Committee