

**STATE OF NEW HAMPSHIRE
SITE EVALUATION COMMITTEE**

Corrected Docket No. 2021-05

**Application of New Hampshire Transmission LLC Petition for an Exemption, for a
Declaratory Ruling that this Project is not a Sizeable Addition, or for Expedited
Review**

September 8, 2022

**ORDER ON MOTION FOR PROTECTIVE ORDER AND
CONFIDENTIAL TREATMENT**

This Order denies, in part and grants, in part, a Motion for Protective Order and Confidential Treatment filed by New Hampshire Transmission LLC (Petitioner).

I. Background

On April 1, 2022, the Petitioner filed a Petition for an Exemption, for a Declaratory Ruling that this Project is not a Sizeable Addition, or for Expedited Review with the Site Evaluation Committee (Committee). The Petitioner is a regulated public utility company in New Hampshire and is the owner and operator of the Electric Transmission Substation in Seabrook, New Hampshire (Seabrook Substation). The Petitioner seeks to install and construct two 50 MV AR capacitors and three 345 kV circuit breakers near Seabrook Substation (Project). The Project is proposed to be constructed within the confines of an existing parking lot at Seabrook Substation. The capacitor banks will need to be interconnected to an adjacent 345kV Eversource Line 363 electric transmission line via transmission tap conductors (lines) and structures built and owned by Eversource as part of the Project. The tap line will exceed 200 kilovolts and is therefore an energy facility that triggers the jurisdiction of the Site Evaluation Committee for the State of New Hampshire (Committee). *See* RSA 162-H:2, VII(e).

The Project, if permitted, will be constructed on a parking lot within the Seabrook

Substation site that is approximately two acres.

No person has moved to intervene in this proceeding and there has been no public comment pertaining to the Motion for Protective Order and Confidential Treatment.

II. Petitioner's Motion for Protective Order and Confidential Treatment

Along with the Petition, the Petitioner filed a Motion for Protective Order and Confidential Treatment (Motion). In the Motion, the Petitioner requests the Subcommittee to prohibit disclosure of certain documents and that the Subcommittee treat the documents confidentially. The Petitioner seeks to protect the following documents:

1. Petitioner's pro forma balance sheet.
2. The System Impact Study prepared for the Project.
3. Reports to and correspondence with the New Hampshire Natural Heritage Bureau regarding the locations and status of rare and endangered species, and natural communities.

In support of its Motion, Petitioner argues that its pro forma financial statement is exempt from RSA chapter 91-A. Petitioner cites to prior cases in which the Committee has issued protective orders prohibiting public disclosure of *pro forma* financial statements like the one filed in this docket. The pro forma financial statements are contained in Appendix 10 of the Application that accompanied the Petition.

Petitioner seeks to prohibit disclosure of its System Impact Study (SIS). Petitioner asserts that public safety requires the SIS to be confidential because it is akin to Critical Energy Infrastructure Information (CEII). The study is contained in Appendix 6 of the Application that accompanied the Petition. Petitioner claims that the SIS meets the definition of CEII under 18 CFR § 388.113.

Petitioner seeks to prohibit disclosure of reports to and correspondence with the New Hampshire Natural Heritage Bureau that contain information related to the status,

location and distribution of rare, threatened, and endangered wildlife species, native plants, and natural communities. This information is included in Appendices 4 and 13(B) of the Application accompanying the Petition. The Petitioner cites to prior orders of the Committee and RSA 217-A:2, to support the request for confidential treatment. The Petitioner asserts that confidential treatment is necessary to protect the disturbance, taking or abuse of rare, threatened, or endangered wildlife species, native plants, and natural communities.

III. Standard of Review

Documents filed in support of a petition for exemption, an application for a certificate of site and facility, or any motion filed with the Committee are public records as defined by the New Hampshire Right to Know law, RSA chapter 91-A. The Committee often receives requests to issue protective orders to limit public disclosure of filed documents. Even when no party objects to the request, the agency must make an independent judgment as to whether the request should be granted. When considering such requests, a state agency must undertake a three-step analysis to determine whether information should be exempt from public disclosure under RSA 91-A:5, IV. *See Lambert v. Belknap County*, 157 N.H. 375, 382-383 (2008); *Lamy v. Pub. Utils. Comm'n.*, 152 N.H. 106, 109 (2005).

The first prong of the RSA 91-A analysis is to determine if the Applicant has identified a privacy interest. *Lambert*, 157 N.H. at 382. If a privacy interest is invoked, then the agency must assess whether there is a public interest in disclosure. *Id.* Disclosure should inform the public of the activities and conduct of the government. *Id.* at 383. If disclosure does not serve that purpose, then disclosure is not required. *Id.* Finally, when there is a public interest in disclosure, that interest is balanced against any privacy interests in nondisclosure. *Id.*

IV. Analysis

A. Appendix 10 – Pro Forma Financial Information

The Petitioner argues that the pro forma financial statement filed in Appendix 10 of the Application accompanying the Petition is exempt from disclosure under RSA 91-A:5, IV. RSA 91-A:5, IV specifically exempts “confidential, commercial, or financial information.” The Petitioner correctly asserts that in prior cases the Committee has issued protective orders prohibiting public disclosure of pro forma financial documents similar to that contained in Appendix 10. The pro forma statement includes information regarding the Petitioner’s current financial status and details of how the Petitioner’s financing of the Project will affect its overall financial health. In prior cases however, the movant was not a regulated public utility company. The Petitioner is a regulated public utility company which may be required to file financial information with the Public Utilities Commission (PUC) and the Federal Energy Regulatory Commission. As recently as November 5, 2020, the Petitioner publicly filed pro forma financial statements with the PUC that are far more detailed than the limited pro forma balance sheet filed in this matter. *See* PUC Docket No. 18-171, Petition for Approval of Financing Related to Seabrook Substation, Pro forma Financial Statements attached to Petition for Extension of Financing Authorization Period. As a regulated public utility, the Petitioner must provide detailed financial information to regulating agencies. Unlike the competitive energy producers specified in the dockets cited by the Petitioner, the Petitioner will not be at a competitive disadvantage if the pro forma financial information is released. The public’s interest in the financial condition of a company granted public utility status is greater than the public interest in a competitive electricity generator. Any privacy interest that the Petitioner claims in

the limited pro forma financial statement in this case is far outweighed by the public's interest in disclosure. The Petitioner's request for a protective order and confidential treatment of the pro forma financial statement in Appendix 10 is denied. Appendix 10 shall be returned to the Petitioner unless the Petitioner notifies the Administrator it wishes for the document to remain in the record.

B. Appendix 6 – System Impact Study

The Petitioner next seeks protective treatment for the System Impact Study prepared for the Independent System Operator, ISO-NE. RSA 91-A:5 exempts "confidential information." The SIS meets the definition of confidential information. The SIS contains steady state analysis, voltage analysis, and stability analysis of the proposed project on the transmission system. The Petitioner analogizes this information to CEII. CEII is defined as information that relates details about the production, generation, transportation, transmission, or distribution of energy which could be useful to a person in planning an attack on critical infrastructure. By definition, CEII must be more detailed than simply giving the general location of the infrastructure. *See generally* 18 CFR § 388.113. Under federal law CEII is confidential information. Neither New Hampshire statutes nor the Committee's administrative rules address CEII. However, public safety is one of the primary considerations that must be considered by the Committee. *See* RSA 162-H:1.

Both the public interest and Petitioner's private interest in protecting information about the safety and stability of the proposed project and its impact on the transmission system is high. Public disclosure of the details of the SIS could put critical energy infrastructure at risk and endanger the lives and safety of the public. Disclosure of the details of the SIS would do little to inform the public of the actions and conduct of the government. Under this circumstance the balance supports

protecting the confidential information from public disclosure. The motion for protective order regarding the SIS is granted.

C. Appendices 4 and 13(B) – Natural Heritage Bureau Reports and Correspondence

The Petitioner also seeks to protect information related to the status, location, and distribution of rare, threatened, and endangered wildlife species, native plants, and natural communities. As part of the Petition, Petitioner submitted its application for an NHDES Shoreland Impact Permit and reports to and correspondence with the New Hampshire Natural Heritage Bureau. *See* Appendices 4 and 13(B) attached to the Application accompanying the Petition. These documents identify and address the location of endangered species, native plants, and natural and exemplary communities within the study area.

Data regarding the status, location, and distribution of rare, threatened, and endangered native plants, animal species and natural communities is confidential information that should be exempt from public disclosure under RSA 91-A:5. Rare, threatened, and endangered native plants, as well as natural communities, are protected by several statutes. *See* RSA 217-A:2; RSA 212-A:3; and RSA 212-B:2. The State recognizes that said resources are “in jeopardy” and require protection by the State. *See Id.* Considering the importance ascribed to rare, threatened, and endangered native plants and natural communities by the New Hampshire General Court, and the need to protect such resources, documentation identifying said resources, and their location qualifies as confidential information under RSA 91-A:5. The disclosure of rare, threatened, and endangered native plants and natural communities is exempt under RSA chapter 91-A. The public benefit of disclosing information relating to the status, location, and distribution of the rare, threatened, and endangered native plants and natural communities is slight and may lead to

damage to and the loss of rare natural resources. Disclosure of this information would be detrimental to the public interest in protecting said resources. The information in Appendices 4 and 13(B) attached to the Application accompanying the Petition is exempt from disclosure and will not be disclosed or provided to the public. The portion of the Motion seeking a protective order and confidential treatment of Appendices 4 and 13(B) is granted.

V. Conclusion and Order

The Motion for Protective Order and Confidential Treatment is granted in part and denied in part:

1. The request for a protective order and confidential treatment for the pro forma financial statement contained in Appendix 10 of the Application accompanying the Petition is denied. The document shall be returned to the Petitioner.
2. The request for a protective order and confidential treatment of the System Impact Study in Appendix 6 of the Application accompanying the Petition is granted.
3. The request for a protective order and confidential treatment of the reports and correspondence with the Natural Heritage Bureau contained in Appendices 4 and 13(B) of the Application accompanying the Petition is granted.
4. Should an adjudicative hearing be scheduled, any party or intervenor may seek reconsideration or modification of this Order upon a showing of good cause.

So ordered this 8th day of September 2022.



Kerry D. Barnsley
Presiding Officer