

**STATE OF NEW HAMPSHIRE
SITE EVALUATION COMMITTEE**

Docket No. 2006-01

Re: Community Energy, Inc. and Lempster Wind, L.L.C. Application for Certificate of Site and Facility for the Lempster Mountain Wind Power Project, Lempster, Sullivan County, New Hampshire.

**Order Granting Applicant's Motion For
Protective Order/Confidential Treatment**

On August 28, 2006, Community Energy, Inc. and Lempster Wind, LLC (collectively referred to as Applicant) filed an Application for Certificate of Site and Facility to develop and construct a wind powered electric generation facility in Lempster, New Hampshire (Application). Along with its Application, the Applicant filed a Motion for Protective Order/Confidential Treatment. The motion seeks a protective order and confidential treatment of certain information contained in Appendix 1 and Appendix 17 of the Application. The Motion also seeks an order governing the handling of confidential and proprietary documents that may be filed in this docket in the future.

R.S.A. 162-H: 8, VI, requires an application for a certificate of site and facility to contain a statement of assets and liabilities of the applicant and other relevant financial information. In response to this requirement, the Applicant provided un-redacted financial information about its parent company, Iberdrola, S.A., in Appendix 1 of its Application. The Application also included un-redacted commercial and technical specifications in Appendix 17. The Applicant claims that this information is commercially sensitive and should not be publicly disclosed. The Applicant's motion seeks confidential treatment of the appendices and also seeks to establish a process by which other parties to this proceeding may obtain access to the information for the purpose of participating in the process. The Applicant also suggests that the proposed process should apply to any future filings which may be designated as confidential or proprietary.

New Hampshire law provides that "records pertaining to internal personnel practices; confidential, commercial, or financial information; . . . and other files whose disclosure would constitute an invasion of privacy" are exempt from the disclosure provisions of the Right To Know Law. R.S.A. 91-A: 5, VI. The terms "commercial" or "financial" encompass information such as business sales statistics, research data, technical designs, overhead and operating costs, and information on financial condition. *Union Leader Corp. v. New Hampshire Housing Finance Authority*, 142 N.H. 540 (1997). Information is considered commercial if it relates to commerce but may also qualify as commercial even if the provider's interest in gathering, processing, and reporting the information is non-commercial. *Union Leader Corp. v. New*

Hampshire Housing Finance Authority, 142 N.H. 540, 553 (1997) citing *American Airlines, Inc. v. National Meditation Board*, 588 F. 2d. 863 (2nd Cir. 1978).

The information for which the Applicant seeks protection falls within the exemptions listed in R.S.A. 91-A:5. The information contained in Appendix 1 is financial information of a commercial nature. Public disclosure of this information would serve no significant public interest; especially considering that Community Energy, Inc. is a merchant company and the Lempster Wind Project is not required to file this type of financial information with the Public Utilities Commission. R.S.A. 162-A: 2-4. Furthermore, public disclosure of this information may have a negative competitive impact, a circumstance, in this case, which outweighs any public interest that may be found.

Similarly, the information contained in Appendix 17 of the Application also qualifies for exemption under R.S.A. 91-A: 5. This information contains technical and electrical engineering information submitted in connection with an application for an inter-connection system impact study. Such information relates to commerce in that it encompasses research data and technical designs which are explicitly included exemptions listed in R.S.A. 91-A: 5.

Accordingly, a protective order is appropriate for the un-redacted versions of Appendix 1 and Appendix 17 of the Application. This information shall therefore be marked confidential. One copy shall be filed with the Committee and maintained in a secure file separate from the public records of the proceedings in this matter.

If a party desires to view the confidential information, said party will execute a protective agreement in the form set forth in Appendix A, and forward true copies of the agreement to the Applicant and the Committee. Only parties authorized by the Committee, after receipt of the executed protective agreement, shall be afforded access to the confidential information. The parties shall not make any copies of such information or use the information for purposes other than the preparation for, and conduct of, the proceedings in this docket.


Unless otherwise ordered, the Parties shall not reference the confidential information during public proceedings in this docket or at any time in public. Upon completion of this proceeding and any resulting appeals, the Parties shall destroy any notes referencing the confidential information and return all confidential information to the Applicant. Within sixty days thereafter each party shall certify to the Applicant that said notes have been destroyed and all confidential information returned. The rights of the Parties under this order are not assignable and may not be transferred in any manner.

Unless otherwise ordered, any future requests for a protective order, which are subsequently granted by the Committee, will be handled with the same procedures detailed above.

IT IS HEREBY ORDERED that, consistent with RSA 91-A, confidential treatment shall be accorded as described herein.

By **ORDER** of the Site Evaluation Committee, this seventeenth day of October, 2006.

New Hampshire Site Evaluation Committee

A handwritten signature in black ink, appearing to read "Thomas B. Getz", written over a horizontal line.

Thomas B. Getz, Esq., Vice Chairman
Presiding Officer

EXHIBIT A

THE STATE OF NEW HAMPSHIRE
SITE EVALUATION COMMITTEE

Docket No. 2006-01

CONFIDENTIALITY AGREEMENT

I, _____, hereby certify that I am party to the above-captioned proceeding and in connection with my interests therein, I request to be given access to the following Confidential Information maintained by the Site Evaluation Committee: _____ . I further certify that I have read the Site Evaluation Committee's protective order issued in the above-captioned matter, understand it and agree to be bound by it. I understand that this Exhibit A does not authorize my access to the above Confidential Information until I have signed and delivered it to counsel for Community Energy, Inc. and Lempster Wind, LLC and until it has been provided to the Site Evaluation Committee by said counsel.

Dated: _____

Signature of Party to Docket No. 2006-001