

**STATE OF NEW HAMPSHIRE  
SITE EVALUATION COMMITTEE**

**DOCKET NO. 2008-01**

**JOINT APPLICATION OF NEWINGTON ENERGY, LLC ("NEL") AND  
NORTH AMERICAN ENERGY ALLIANCE, LLC ("NAEA") FOR APPROVAL OF  
TRANSFER OF MEMBERSHIP INTERESTS IN NEL**

**Order on Assented-To Motion for Protective Order and Confidential Treatment for  
the Financial Report Filed by Co-Applicant North American Energy Alliance, LLC  
("NAEA") on behalf of Industry Funds Management (Nominees) Limited (NAEA's  
Ultimate Parent)**

On or about April 1, 2008, Co-Applicant, North American Energy Alliance, LLC ("NAEA"), filed an Assented-to Motion for Protective Order and Confidential Treatment with respect to a certain financial report titled "IFM Infrastructure Funds' Audited Special Purpose Financial Report for the Financial Year ending June 30, 2007" ("Report"). NAEA filed the Report with Counsel for the Site Evaluation Committee (the "Committee") on behalf of its ultimate parent, Industry Funds Management (Nominees) Limited ("IFM"). The Report was filed pursuant to a request by the Committee for further financial information about IFM. The Motion seeks protective treatment of the Report. NAEA asserts that the entire Report contains confidential information that is highly sensitive. The information is not disclosed to anyone outside IFM's corporate affiliates, their representatives and certain Australian regulators.

The Right to Know Law provides each citizen with the right to inspect all public records in the possession of the Committee. See RSA 91-A: 4, I. The statute contains an exemption, invoked here, for "confidential, commercial or financial information." RSA 91-A: 5, IV. 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, 553 (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 Mediation Board*, 588 F. 2d. 863 (2<sup>d</sup> Cir., 1978). In most cases, a balancing test is used to determine whether confidential treatment should be granted. See e.g., *Union Leader Corp. v. New Hampshire Housing Finance Authority*, 142 N.H. 540, 553-554 (1997). Our proposed rule, Site 202.20, is designed to facilitate the implementation of the statute as it has been interpreted by the courts.

We note that no parties have objected to the motion for confidential treatment and that the information for which such treatment is sought is similar to information for which the Committee has granted confidential treatment in the past. In this case release of the information contained in the Report could create a competitive disadvantage to IFM and its affiliates. Conversely, public disclosure of this information would shed little light on how the Committee discharges its responsibilities in proceedings, such as this, for the transfer of a Certificate of Site and Facility.

In balancing the interests for and against public disclosure of the information for which confidential treatment is sought we find, on the basis of the record in this docket, that the interests of IFM in non-disclosure outweigh the public's interest in obtaining access to the information. NAEA's motion for confidential treatment of the Report is hereby GRANTED. The Report shall remain confidential and part of the record in this proceeding. The Committee and its staff shall have access to the Report. The Report shall not be released to the public.

By Order of the Site Evaluation Committee this 9<sup>th</sup> day of April, 2008:



Thomas Burack, Chairman  
New Hampshire Site Evaluation Committee