

August 15, 2017

Ms. Pamela G. Monroe, Administrator
NH Site Evaluation Committee
21 South Fruit Street, Suite 10
Concord, NH 03301-2429

Re: Seacoast Reliability Project -- Docket No. 2015-04
Submittal of Historical Resources Forms and Effects Tables

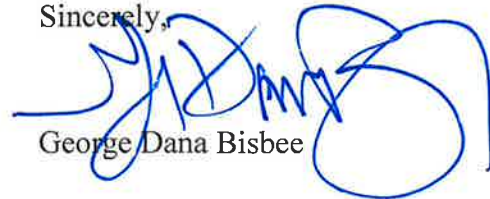
Dear Ms. Monroe:

On behalf of the Applicant Public Service Company of New Hampshire d/b/a Eversource Energy ("Eversource"), we are submitting herewith various documents related to the Applicant's survey and analysis of above-ground historic and archeological resources. We are submitting two paper and ten electronic copies of these documents for the Subcommittee, and electronic copies to the towns and to Counsel for the Public. This submittal includes three historical resources inventory forms, Determination of Eligibility sheets from the New Hampshire Division of Historical Resources (NHDHR), effects tables for the eleven properties requested by NHDHR, and a Phase I-B archaeological survey.

The Phase I-B report contains confidential information regarding the location of archaeological sites under RSA 227-C:11. Therefore, we are filing contemporaneously with this submittal a Motion for Protective Order and Confidential Treatment requesting confidential treatment of the Phase I-B report.

Thank you for your consideration of this information and of the Motion for Protective Order and Confidential Treatment. Please let us know if you have any questions.

Sincerely,



George Dana Bisbee

cc: Distribution List
Town of Madbury
Town of Durham, c/o Douglas L. Patch
Town of Newington, c/o John Ratigan
City of Portsmouth
Christopher G. Aslin, Counsel for the Public
Edna Feighner, DHR (w/o enclosures)
Nadine Miller, DHR (w/o enclosures)

**THE STATE OF NEW HAMPSHIRE
SITE EVALUATION COMMITTEE
SEC DOCKET NO. 2015-04**

**APPLICATION FOR A CERTIFICATE OF SITE AND FACILITY BY PUBLIC
SERVICE COMPANY OF NEW HAMPSHIRE D/B/A EVERSROUCE ENERGY FOR A
NEW 115 KV TRANSMISSION LINE FROM MADBURY SUBSTATION TO
PORTSMOUTH SUBSTATION**

**APPLICANT'S MOTION FOR PROTECTIVE ORDER
AND CONFIDENTIAL TREATMENT**

NOW COMES Public Service Company of New Hampshire d/b/a Eversource Energy (the "Applicant") by and through its attorneys, Devine, Millimet & Branch, Professional Association, and respectfully request that the Site Evaluation Committee ("SEC" or "Committee") issue a protective order, to preserve the confidentiality of information relating to archaeological resources data. In support of their Motion, the Applicant states as follows:

1. On April 12, 2016, the Applicant filed an Application for a Certificate of Site and Facility ("Application") with the SEC. Contemporaneously with the Application, the Applicant filed a Motion for Protective Order and Confidential Treatment requesting confidential treatment of, among other information, certain documents containing sensitive archeological resources data. Applicant's Motion for Protective Order and Confidential Treatment, Docket 2015-04, at 2 ("Applicant's Motion"). The Applicant also requested that additional confidential materials containing archaeological information be afforded confidential treatment. Applicant's Motion at 10.

2. On December 22, 2016, the Committee issued its Order on Motion for Protective Order and Confidential Treatment (the "Order"). The Committee granted the Applicant's request for confidential treatment of certain archeology documents but denied the Applicant's request for confidential treatment of additional documents. Order at 4, 7-8. The Committee ordered that the Applicant seek an order for protective treatment when it determines that documents in the future will require protection. Order at 8.

3. The Applicant is now submitting for the Committee's review additional archaeological resources data in the form of a Phase I-B Archaeological Survey (the "Phase I-B Survey") and, pursuant to the Order, seeks a protective order and confidential treatment of that document.

4. Governmental records, as defined by RSA 91-A:1-a, are generally made available for public inspection pursuant to the Access to Governmental Records and Meetings Statute (a.k.a. the Right-to-Know Law). *See* RSA 91-A:4; *see also* N.H. Admin Rule Site 104.01. There are certain exemptions, however, from the requirement that public agencies or public bodies produce government records. One such exemption applies to "confidential, commercial, or financial information . . . and other files whose disclosure would constitute invasion of privacy." RSA 91-A:5. The Applicant respectfully requests that pursuant to RSA 91-A:5 the Committee issue a protective order and treat as confidential the Phase I-B Survey. *See also* Site 104.01(b) (presiding officer or chairman may protect documents that are exempt from disclosure pursuant to RSA 91-A:5).

5. RSA 162-H:16, IV(c) requires that an application for a Certificate of Site and Facility must, *inter alia*, demonstrate that the project will not have an unreasonable adverse effect on historic sites. Similarly, N.H. Admin. Rule Site 301.03(c)(5) requires an applicant to identify "natural, historic, cultural, and other resources at or within the site." *See also* Site 301.06 (requiring additional information on historic sites including the identification of areas of potential archaeological sensitivity located within the area of potential effects).

6. Pursuant to the foregoing requirements, and in connection with its Application for a Certificate of Site and Facility, the Applicant is providing additional archaeological survey data. However, pursuant to New Hampshire's Historic Preservation Act, all information that may identify the location of archaeological sites must remain confidential and the disclosure of such information is exempt from RSA 91-A.

7. New Hampshire's Historic Preservation Act specifically provides that:

Information which may identify the location of any archaeological site on state land, or under state waters, shall be treated with confidentiality so as to protect the resource from unauthorized field investigations and vandalism. Toward this end, state agencies.

departments, commissions, institutions and political subdivisions, permittees and private landowners with preservation and conservation agreements shall consult with the commissioner before any disclosure of information to insure that the disclosure would not create a risk to the historic resource or that it is done in a manner to minimize the risk. Such information is exempt from all laws providing rights to public access. Disclosure for the public record for tax assessment, transfer, sale or other consideration of the property shall receive careful consideration to minimize the risk to the resource.

RSA 227-C:11.

8. In conjunction with RSA 91-A:5, IV, which specifically provides that records pertaining to confidential information are exempt from the public disclosure requirements of the Right-to-Know Law, RSA 227-C:11 mandates that information that identifies the location of archaeological sites remain confidential. Therefore, such information should not be disclosed to the general public during the SEC proceedings.¹

9. Confidential treatment of archaeological sites discovered within or adjacent to the project area is warranted to protect the sensitive nature of those sites and is in the public interest. In this case, granting access to the location of an archaeological site will not further any public purpose, but instead, will result in a risk of harm to the archaeological resource. Such a request is reasonable given the nature of the sites and the potential for damage to them. The Applicant, therefore, requests that the information regarding archaeological resources contained in the Phase I-B Survey be maintained confidentially.

10. The Phase I-B Survey submitted herewith has been marked confidential. The Applicant may make this information available to the parties subject to a Protective Order. In light of the foregoing, the Applicant respectfully requests that the Committee order that the above-mentioned Phase I-B Survey be maintained confidentially by the parties, and that a protective order be issued requiring this information to remain confidential.

11. The Applicant respectfully requests the Committee issue a protective order identical to the protective order described in Section IV of the Order issued by the Committee on December 22, 2016,

¹ Federal law has a substantially similar provision under the federal Freedom of Information Act ("FOIA") that protects archaeological sites. Under FOIA, "information concerning the nature and location of any archaeological resource for which the excavation or removal requires a permit or other permission under this Act or under any other provision of Federal law may not be made available to the public under [FOIA]." 16 U.S.C. § 470hh(a).

including the requirement that any party to the proceeding seeking access to the Phase I-B Survey execute a protective agreement in the form set forth and attached to the Order.

12. In addition to any provisions included in the order by the Committee, in order to minimize the risk of inappropriate disclosure of the Applicant's protected confidential information, the Applicant respectfully requests that the Committee's Protective Order: (1) specify that the Applicant is not required to provide confidential information via electronic mail to the Parties, other than to Counsel for the Public; and (2) specify that if Parties, other than Counsel for the Public, are to be afforded access to the protected information, such access shall occur by viewing the confidential information at the Committee's offices.

[Remainder of page intentionally left blank]

WHEREFORE, the Applicant respectfully requests that this Committee:

- A. Grant the Applicant's request that the Phase I-B Survey remain confidential;
- B. Issue a protective order as requested herein that preserves the confidentiality of the Phase I-B Survey; and
- C. Grant such further relief as it deems appropriate.

Respectfully Submitted,

Public Service Company of New Hampshire d/b/a
Eversource Energy (the "Applicant")

By its attorneys,

DEVINE, MILLIMET & BRANCH,
PROFESSIONAL ASSOCIATION

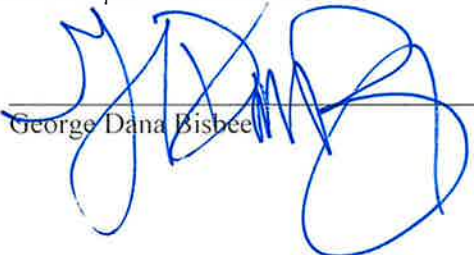
Dated: August 15, 2017

By: 

George Dana Bisbee, Esq. Bar No. 557
111 Amherst Street
Manchester, NH 03101

Certificate of Service

I hereby certify that on the 15th of August, 2017, an original and one copy of the foregoing Motion was delivered by UPS Ground to the New Hampshire Site Evaluation Committee.


George Dana Bisbee