

**STATE OF NEW HAMPSHIRE
SITE EVALUATION COMMITTEE**

Docket No. 2015-04

**Application of Public Service Company of New Hampshire
d/b/a Eversource Energy for Certificate of Site and Facility**

December 4, 2017

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

This Order grants the Applicant's Motion for Protective Order and Confidential Treatment of archaeological resources data submitted in the form of a Phase I-B Archaeological Survey.

I. Background

Contemporaneously with the Application filed in this docket, the Applicant filed a Motion for Protective Order and Confidential Treatment requesting, among others, confidential treatment of archeological resources data (information contained in Appendices 8, 9 and 33). On Order granting the Motion was issued on December 22, 2016.

On August 15, 2017, the Applicant filed a Motion for a Protective Order and Confidential Treatment of a Phase 1-B Archeological Survey (Phase 1-B Survey).

II. Standard of Review

A state agency must undertake a three step analysis to determine whether information should be exempt from public disclosure under the Right to Know law, 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 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.*

III. Analysis

The Applicant asserts that the Phase 1-B Survey contains information regarding archeological resources data and archeological sites within or adjacent to the Project area and that the information is confidential and should not be disclosed to the members of the general public under this provision of the RSA 227-C:11, the New Hampshire Historic Preservation Act:

[i]nformation which may identify the location of any archeological 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.

The Applicant also argues that the archeological resource data is exempted from RSA 91-A, the New Hampshire “Right to Know” statute, and agrees to disclose documentation and information identifying archeological resources to the parties that sign a confidentiality agreement.

RSA 227-C:11, exempts archeological resource information “from all laws providing rights to public access.” The statute also provides that state agencies, institutions, political subdivisions, permittees, and private landowners should consult with the Commissioner of the Department of Natural and Cultural Affairs before any disclosure of such information. *Id.* The purpose of this consultation is 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.” *Id.* Information regarding archeological resources is similarly protected under federal law. *See* 16 U.S.C. §470hh (a).

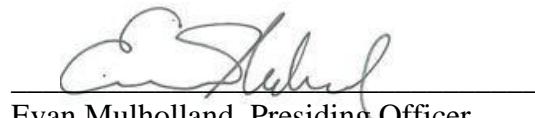
The Right-to-Know act also exempts information from public disclosure that is “confidential,

commercial or financial.” *See* RSA 91-A:5. Data regarding archeological sites is confidential information that should be exempt from public disclosure under RSA 91-A:5. Archeological sites are protected by statute. *See* RSA 227-C. Archeological sites are considered among the “most important environmental assets of the state.” RSA 227-C:1-a. The statute recognizes that social and economic development threatens such assets and recognizes the need for protection. *Id.* Understanding the importance ascribed to archeological resources by the Legislature and the need to protect such resources, archeological data qualifies as confidential information under RSA 91-A:5.

The public benefit of disclosing the archeological information in the Phase 1-B Survey is minimal and disclosure would be detrimental to the public interest in protecting archeological resources. Therefore, the Phase 1-B Survey is exempt from disclosure under the exemption established in RSA 91-A:5, IV.

The Applicant’s Motion for Protective Order and Confidential Treatment is granted. The Phase 1-B Survey shall be treated as confidential and shall not be disclosed to the general public. If any party to this docket seeks disclosure of the Phase 1-B Survey, they shall follow the procedures in the Order issued on December 22, 2016. The Applicant shall not provide the Phase 1-B Survey to the parties in this docket, other than to the Counsel for the Public. The parties that receive access to the Phase 1-B Survey shall review the records at the Committee’s office.

SO ORDERED this fourth day December, 2017.



Evan Mulholland, Presiding Officer
Site Evaluation Committee