

**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**

**August 7, 2018**

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

This order grants the Applicant's Supplemental Motion for Protective Order and Confidential Treatment.

**I. BACKGROUND**

Contemporaneously with the Application filed in this docket, the Applicant filed a Motion for Protective Order and Confidential Treatment requesting, among other things, confidential treatment of archeological resources data in Appendices 8, 9 and 33. On December 22, 2016, an order was issued granting the Applicant's request.

On August 15, 2017, the Applicant filed a Motion for Protective Order and Confidential Treatment of a Phase I-B Archeological Survey. On December 4, 2017, an order was issued granting the Applicant's request.

On June 11, 2018, the Applicant filed a Supplemental Motion for Protective Order and Confidential Treatment of four additional archeological reports that were submitted.

**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 following documents contain archeological information that should be protected and should not be disclosed to the members of the general public: (a) a Phase I-B Supplemental Survey (May 2017); (b) a Phase I-A Off Corridor Survey (January 2018); (c) a Desk Review of the Cheney Pit Laydown Yard (February 2018); and (d) a Desk Review of the Laydown Yard, Durham (June 2018). The Applicant argues these documents should be treated as confidential under this provision of RSA 227-C:11, the 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. The Applicant agrees to disclose the information 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 Resources before disclosing 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 statute also exempts information from public disclosure that is “confidential, commercial or financial.” *See* RSA 91-A:5. 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 I-B Supplemental Survey, the Phase I-A Off Corridor Survey, the Desk Review of the Cheney Pit Laydown Yard, and the Desk Review of the Laydown Yard, Durham is minimal and disclosure would be detrimental to the public interest in protecting archeological resources. Therefore, these documents are exempt from disclosure under the exemption provisions of the Right to Know law. RSA 91-A:5, IV. The Applicant’s Supplemental Motion for Protective Order and Confidential Treatment is granted.

If any party to this docket seeks disclosure of the reports, they shall follow the procedures in the Order issued on December 22, 2016. The Applicant shall not provide the Phase I-B

Survey to the parties in this docket, other than to Counsel for the Public. The parties that receive access to the Phase I-B Supplemental Survey shall review the records at the office of the Committee.

SO ORDERED this seventh day August, 2018.



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Patricia M. Weathersby, Presiding Officer  
Site Evaluation Committee