

**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**

November 9, 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

On April 12, 2016, Public Service Company of New Hampshire d/b/a Eversource Energy applied for a Certificate of Site and Facility (Application) with the Site Evaluation Committee (Committee). The Application seeks the issuance of a Certificate of Site and Facility approving the siting, construction, and operation of a new 115kV electric transmission line between existing substations in Madbury and Portsmouth (Project).

Contemporaneously with the Application, a Motion for Protective Order and Confidential Treatment was filed by the Applicant, requesting confidential treatment of archeological resources data in Appendices 8, 9 and 33. The Applicant's request was granted on December 22, 2016.

On August 15, 2017, the Applicant moved for a Protective Order and Confidential Treatment of a Phase 1-B Archeological Survey (Phase 1-B Survey). The Applicant's request was granted on December 4, 2017.

On June 11, 2018, the Applicant filed a Supplemental Motion for Protective Treatment.

The Applicant's request was granted on August 7, 2018.

On October 2, 2018, the Applicant filed a Motion for Protective Order and Confidential Treatment of a Desk Review Archeological Sites on Abutting Properties Off-Corridor Locations in Lee, Madbury and Durham, NH (September 2018) and a Phase I-B Supplemental Archeological Survey, Seacoast Reliability Project, Durham Point Road, Durham, NH (Addendum June 2018).

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 AND FINDINGS

The Applicant asserts that the referenced documents contain archeological information that should be protected and should not be disclosed to the members of the general public: (a) Desk Review Archeological Sites on Abutting Properties Off-Corridor Locations in Lee, Madbury, and Durham, NH (September, 2018); and (ii) a Phase I-B Supplemental Archeological Survey, Seacoast Reliability Project, Durham Point Road, Durham, NH (Addendum June 2018).

The Applicant argues these documents should be treated as confidential under the

following 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.

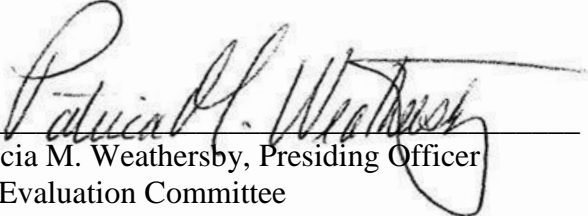
RSA 227-C:11, exempts archeological resource information “from all laws providing rights to public access.” The statute also provides that state agencies, institutions, political subdivisions, permittees and private landowners should consult with the Commissioner of the Department of Cultural Affairs 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 act 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 Desk Review Archeological Sites on Abutting Properties Off-Corridor Locations in Lee, Madbury and Durham and in the Phase I-B Supplemental Archeological Survey, Seacoast Reliability Project, Durham Point Road, Durham is slight and disclosure would be detrimental to the public interest in protecting archeological resources. Therefore, these documents are exempt from disclosure under the Right to Know law. RSA 91-A:5, IV. The Applicant's 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 on the Applicant's Motion for Protective Order and Confidential Treatment dated December 22, 2016. The Applicant shall not provide copies of the reports to the parties in this docket, other than to Counsel for the Public. The parties that receive access to these reports under the procedure in the December 22, 2016 Order shall review the documents at the Committee's office.

SO ORDERED this ninth day November, 2018.



Patricia M. Weathersby, Presiding Officer
Site Evaluation Committee