

**STATE OF NEW HAMPSHIRE
SITE EVALUATION COMMITTEE**

Docket No. 2015-05

**Re: Joint Application of New England Power Company
d/b/a National Grid and Public Service Company of New Hampshire
d/b/a Eversource Energy for a Certificate of Site and Facility**

November 19, 2015

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

Background

On August 5, 2015, New England Power Company d/b/a National Grid (NEP) and Public Service Company of New Hampshire (PSNH) d/b/a Eversource Energy (collectively Applicant) filed a joint application 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 (Certificate) approving the siting, construction and operation for a new 345 kV electric transmission line (Project). The proposed transmission line will be constructed in an existing developed transmission line corridor between NEP's Tewksbury 22A Substation in Tewksbury, Massachusetts and PSNH's Scobie Pond 345 kV Substation in Londonderry, New Hampshire. The pre-existing transmission line corridor traverses the towns of Pelham and Hudson in Hillsborough County, and Windham and Londonderry, in Rockingham County.

The Applicant also filed a Motion for Protective Order and Confidential Treatment (Motion). The Motion seeks a protective order and confidential treatment for archeological resource data, critical energy infrastructure information (CEII) and other confidential infrastructure information. The archeological information sought to be protected is contained in Appendix AM of the Application. The CEII and other confidential infrastructure information

sought to be protected is contained in Appendix R to the Application, Drawings No. S 3124-P0010 Sheets 1 and 2.

Archeological Resource Data

In support of the Motion as it pertains to archeological resource data the Applicant relies on RSA 227-C:11 which exempts archeological resource information “from all laws providing rights to public access.” The Applicant also argues that the archeological resource data is exempted from RSA 91-A, the New Hampshire “Right to Know” statute.

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 any disclosure of such information. *Id.* The purpose of 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 the nature and location of archeological resources is similarly protected under federal law. *See*, 16 USC § 470hh (a). The archeological data sought to be protected is contained in Appendix AM of the Application.

The Right to Know act also exempts information from public disclosure that is “confidential, commercial or financial” information. *See* RSA 91-A:5. Data regarding archeological sites appears to be 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 to be 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 it follows that such archeological data qualify as confidential information under RSA 91-A:5. However a determination that information is “confidential” does not end the analysis.

A state agency must undertake a three step analysis to determine whether information should be exempt from public disclosure pursuant to the Right-to-Know law, RSA 91-A: 5, IV. The first prong of the analysis is to determine if the Applicant has identified a privacy interest. If a privacy interest is invoked then the agency must assess whether there is a public interest in disclosure. Disclosure should inform the public of the activities and conduct of the government. If disclosure does not serve that purpose then disclosure is not required. Finally, when there is a public interest in disclosure, that interest is balanced against any privacy interests in non-disclosure. *See Lambert v. Belknap County*, 157 NH 375 (2008); *Lamy v. Public Utilities Commission*, 152 NH 106 (2005). In this case the public benefit of disclosing the archeological information in Appendix AM is slight and in fact disclosure would be detrimental to the public interest in protecting archeological resources. Therefore Appendix AM is exempted from disclosure under the exemption provisions of the Right to Know law. RSA 91-A: 5, IV.

The Motion is granted as to archeological resources and Appendix AM will not be disclosed or made available to the public. Nonetheless, Appendix AM will be available for review by Subcommittee members. If any party to this docket seeks disclosure of Appendix AM they may file a motion setting forth the reason for the requested disclosure and follow the procedures set forth below.

Critical Energy Infrastructure Information

In the Motion the Applicant identifies critical energy infrastructure information (CEII) as information defined as CEII by 18 CFR §388.113:

specific engineering, vulnerability, or detailed design information about proposed or existing critical infrastructure that:

- (i) Relates details about the production, generation, transportation, transmission, or distribution of energy;
- (ii) Could be useful to a person in planning an attack on critical infrastructure;
- (iii) Is exempt from mandatory disclosure under the Freedom of Information Act, 5 U.S.C. 552; and
- (iv) Does not simply give the general location of the critical infrastructure.

The Applicant asserts that CEII is routinely considered to be “confidential, commercially sensitive and proprietary.” In this case the Applicant points out that New Hampshire Code of Administrative Rules Site, 301.03 (h)(1) requires an Applicant to provide reasonable detail about the type and size of each major part of the proposed facility and that New Hampshire Code of Administrative Rules Site 301.03(g)(10) requires information regarding a project’s impact on system stability and reliability. Appendix R contains drawings that are consistent with these requirements but are also confidential.

The Applicant has made a good faith effort to limit the CEII for which it seeks a protective order. The motion is limited to Appendix R, Drawings No. S 3124-P0010 Sheets 1 and 2. The drawings and related information appear to be information that fits within the definition of CEII because it provides specific details about the Applicant’s energy infrastructure including

the precise location of key facilities within the electric transmission and distribution system. The disclosure of CEII creates a risk to public safety. Vandalism, sabotage, or terrorist attacks on CEII can cause catastrophic harm to the general public. The Applicant has good reason to deem CEII to be confidential information under the Right to Know law.

The risk of damage from vandalism, sabotage or terrorist acts out-weighs any interest the public may have in disclosure of the specific information contained in Appendix R. *See Lambert v. Belknap County, supra*. Disclosure of CEII will do little if anything to inform the public about the conduct of government, however, such disclosure could bring catastrophic harm to the public. The CEII contained in Appendix R is exempt from the Right to Know law and we will treat it as confidential information as set forth below.

Treatment of Confidential Information

Appendix AM and Appendix R, Drawings Nos. S 3124-P0010 Sheets 1 and 2 shall be treated as confidential documents and shall not be disclosed to the public. They shall remain redacted in the public domain. Nonetheless, the confidential information contained in the appendices will be available for review by the members of the Subcommittee at the offices of the Site Evaluation Committee on an *in-camera* basis without participation by parties to the proceeding. Subcommittee members are not required to sign a confidentiality agreement.

If a party to these proceedings seeks access to Appendix AM or Appendix R, Drawings No. S 3124-P0010, Sheets 1 and 2, they must file a motion identifying the reason for such access and execute a protective agreement in the form set forth and attached hereto. A true copy of the motion and confidentiality agreement shall also be forwarded to the Applicant. Only Parties authorized by the presiding officer, after receipt of the executed confidentiality agreement, shall

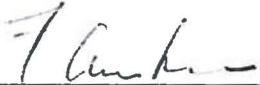
be afforded access to the confidential information. The parties shall not make any copies of such information or use the information for purposes other than the preparation for, and conduct of, the proceedings in this docket.

Unless otherwise ordered, the parties shall not reference the confidential information during public proceedings in this docket or at any time in public. Upon completion of this proceeding and any resulting appeals, the parties shall destroy any notes referencing the confidential information and return all confidential information to the Applicants. Within sixty days thereafter each party shall certify to the Applicants, with a copy to the Administrator of the Committee that said notes have been destroyed and all confidential information returned. The rights of the parties under this order are not assignable and may not be transferred in any manner.

Unless otherwise ordered, any future requests for a protective order, which are subsequently granted by the Committee, will be handled with the same procedures detailed above.

If a party, other than Counsel for the Public, is granted authority to review the confidential material then such review shall occur at the offices of the Site Evaluation Committee during normal business hours. Copies of the confidential materials shall not be made available to any party to the proceeding, except Counsel for the Public, without an explicit order from the presiding officer.

So ordered this nineteenth day of November 2015;



F. Anne Ross
Site Evaluation Committee
Presiding Officer