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VIA HAND-DELIVERY

December 31, 2015

New Hampshire Site Evaluation Committee
Pamela G. Monroe, Administrator
21 South Fruit Street, Suite 10
Concord, NH 03301

**Re: SEC Docket No. 2015-05: Public Service Company of New Hampshire d/b/a
Eversource Energy and New England Power Company d/b/a National Grid: Joint
Application for a Certificate of Site and Facility for the Merrimack Valley
Reliability Project**

Dear Ms. Monroe:

Enclosed for filing in the above-referenced Docket, please find an original and one copy of
Applicants' Second Partially-Contested Motion for Protective Order and Confidential Treatment.

Please contact me directly should you have any questions.

Sincerely,

A handwritten signature in black ink, appearing to read "Barry Needleman", with a large, stylized flourish above it.

Barry Needleman

BN:slb
Enclosure

cc: Distribution List

McLane Middleton, Professional Association
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THE STATE OF NEW HAMPSHIRE

SITE EVALUATION COMMITTEE

SEC DOCKET NO. 2015-05

**JOINT APPLICATION OF NEW ENGLAND POWER COMPANY
D/B/A NATIONAL GRID &
PUBLIC SERVICE COMPANY OF NEW HAMPSHIRE
D/B/A EVERSOURCE ENERGY
FOR A CERTIFICATE OF SITE AND FACILITY**

**APPLICANTS' SECOND PARTIALLY-CONTESTED MOTION FOR PROTECTIVE
ORDER AND CONFIDENTIAL TREATMENT**

NOW COME New England Power Company d/b/a National Grid and Public Service Company of New Hampshire d/b/a Eversource Energy (the "Applicants") by and through their attorneys, McLane Middleton, 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 the status, location, and distribution of rare, threatened and endangered native plants and animal species and natural communities.¹ In support of their Motion, the Applicants state as follows:

1. 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. As part of Supplement Number 2 to the Joint Application for a Certificate of Site

¹ This information includes but is not limited to, information relating to all plant and animal species and natural communities on or adjacent to the Project site. A natural community is defined as "a recurring assemblage of plants and animals found in a particular physical environment." RSA 217-A:3. XI.

and Facility, the Applicants respectfully request that the Committee issue a protective order and that the Committee treat sensitive natural resource information as confidential pursuant to RSA 91-A:5. *See also* Site 104.01(b) (presiding officer or chairman may protect documents that are exempt from disclosure pursuant to RSA 91-A:5).

2. The Applicants seek a protective order and confidential treatment of materials relating to New Hampshire's rare, threatened, and endangered native plants, animal species and natural communities that are being submitted in conjunction with Supplement Number 2 to the Joint Application in SEC Docket No. 2015-05. 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 the natural environment. Similarly, N.H. Admin. Rule Site 301.03(c) requires an applicant to identify "natural and other resources at or within or adjacent to the site," which typically includes the identification of native plants, animals and natural communities. Site 301.03(i) also requires an applicant to include information "regarding the effects of the facility on, and plan for mitigation of any effects" on the natural resources in the application.

3. Pursuant to the foregoing requirements, and in connection with their Joint Application for a Certificate of Site and Facility, the Applicants have already included the required information regarding natural resources data and natural resource sites within or adjacent to the Project area in their application.

4. The Applicants now submit additional information that includes, maps, survey results, and other material relating to the location and type of rare, threatened, and endangered native plant and animal species and natural communities. *See* Appendix F-1 (MVRP Rare Plant Surveys—2015 Results – Mitigation Recommendations; MVRP Rare Plant Surveys – 2016

Survey Protocols; MVRP – Black Racer Collector Permit, Turtle Survey Results and other Observed Rare Species Observations; and MVRP Northern Long-eared Bat Acoustic Survey Report). Based on the importance of protecting and preserving New Hampshire’s rare, threatened, and endangered native plant and animal species and natural communities, the Applicants assert that this newly provided information should be exempt from RSA 91-A.

5. First, the Applicants assert that producing information about the type and location of sensitive native plant species could negatively affect those resources. In addition, producing such information stands in stark contrast to the legislative intent of the New Hampshire Native Plant Protection Act of 1987:

Because there are no laws protecting any of our native plants, every year hundreds of our native plants are dug up and removed without permission from public and private property. Many of these are taken out-of-state and sold for profit. Therefore, the legislature finds and declares that ... For human needs and enjoyment, the interests of science, and the economy of the state, native plants and natural communities throughout this state should be protected and conserved; and that native plant numbers should be maintained and enhanced to insure their perpetuation as viable components of their ecosystems for the benefit of the people of New Hampshire. Native species of plants within this state and the nation that are endangered, threatened, or otherwise reduced in number or may become so because of loss, modification, or severe curtailment of their habitats, or because of exploitation for commercial, scientific, educational, or private use, should be accorded protection as necessary to maintain and enhance their numbers.

RSA 217-A:2.

6. Second, Applicants assert that producing information about the type and location of sensitive animal species could negatively affect those resources. Producing such information stands in stark contrast to the legislative intent embodied in the Endangered Species Conservation Act. RSA 212-A:3, I provides that “[s]pecies of wildlife normally occurring within this state which may be found to be in jeopardy should be accorded such protection as is necessary to maintain and enhance their numbers.” Moreover, The Endangered Species

Conservation Act declares that the State “should assist in the protection of species of wildlife which are determined to be threatened or endangered elsewhere pursuant to the endangered species act by prohibiting the taking, possession, transportation or sale of endangered species and by carefully regulating such activities with regard to threatened species.” RSA 212-A:3, II.

7. Producing information relating to the type and location of threatened and endangered animal species also stands in contrast to the legislative intent embodied in the Nongame Species Management Act. RSA 212-B:2 provides that “Native wildlife constitutes an invaluable natural resource with ecological, scientific, educational, historical, recreational, economic, and aesthetic values to the citizens of New Hampshire It shall be the policy of the state to maintain and manage this resource for future generations.”

8. Based on the importance of protecting and preserving New Hampshire’s threatened and endangered animal species as set forth in RSA 212-A and RSA 212-B:2, the Applicants assert that information being provided in Supplement Number 2 should be exempt from RSA 91-A.

9. Disclosure of such information could result in the intentional disturbance, taking, removal or abuse of rare, threatened, or endangered native plants, animals or natural communities. The benefits of non-disclosure to the general public largely outweigh any public interest in obtaining these documents. Therefore, in furtherance of the legislative intent expressed in RSA 217-A, RSA 212-A and RSA 212-B, the Applicants request that information relating to rare, threatened or endangered plants, animals and natural communities contained in Appendix F-1 of the Supplement Number 2, be treated as confidential.

10. All of the above-described information contained in Supplement Number 2 is submitted herewith to the Committee and has been marked confidential. All other parties are

receiving a redacted copy. The Applicants will make this information available to the parties subject to a Protective Order.

11. In light of the foregoing, the Applicants respectfully request that the Committee order that the above-mentioned information within Supplement Number 2 be maintained confidentially by the parties, and that a protective order be issued requiring this information to remain confidential. The Applicants respectfully request that the Committee issue an order consistent with terms and conditions contained in the prior Committee order protecting similar types of information. *See Order Granting Applicant's Motion for Protective Order and Confidential Treatment, Joint Application of NEP and PSNH, Docket 2015-05 (Nov. 19, 2015).*

12. To the extent the Applicants are required to submit additional confidential materials or documents relating to native species and natural communities or any other confidential natural resource information, the Applicants respectfully request that the Committee afford similar treatment to such information.

13. Finally, to the extent the Applicants offer any confidential evidence at any hearing before the Committee, the Applicants respectfully request the SEC to afford similar protection to such documents that are deemed confidential. *See Site 202.24(d).*

14. Pursuant to N.H. Admin. Rule Site 202.14(d), the Applicants have sought concurrence from Counsel for the Public and Intervenor Margaret Huard. Counsel for the Public takes no position on the motion. Ms. Huard objects to the motion.

WHEREFORE, the Applicants respectfully request that this Committee:

- A. Grant the Applicants' request that the materials identified in Supplement Number 2 be treated as confidential;
- B. Issue a protective order, similar to those issued in prior SEC Dockets, that preserves the confidentiality of the documents identified in Supplement Number 2; and
- C. Grant such further relief as it deems appropriate.

Respectfully Submitted,

New England Power Company and

Public Service Company of New Hampshire

By its attorneys,

McLANE MIDDLETON
PROFESSIONAL ASSOCIATION

Dated: December 31, 2015

By: 

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Certificate of Service

I hereby certify that on the 31th of December, 2015, an original and one copy of the foregoing Motion was hand-delivered to the New Hampshire Site Evaluation Committee and an electronic copy was served upon the SEC Distribution List.


Barry Needleman