

October 19, 2015

Martin P. Honigberg, Chairman
New Hampshire Site Evaluation Committee
21 South Fruit Street, Suite 10
Concord, NH 03301-2429


**Re: New Hampshire Site Evaluation Committee Docket No. 2015-06
Joint Application of Northern Pass Transmission LLC and Public Service Company
of New Hampshire d/b/a Eversource Energy for a Certificate of Site and Facility for
Construction of a New High Voltage Transmission Line in New Hampshire**

Dear Chairman Honigberg:

Enclosed for filing with the New Hampshire Site Evaluation Committee (the "Committee"), in the above-captioned matter, please find an original and 18 copies of an Appearance for the Applicants. Additionally, please find an original and 18 copies of the Applicants' Unassented-to Motion for Protective Order and Confidential Treatment.

If you have any questions regarding these materials, please contact me.

Very truly yours,


Barry Needleman

BN:rs3

THE STATE OF NEW HAMPSHIRE

SITE EVALUATION COMMITTEE

SEC DOCKET NO. 2015-06

**JOINT APPLICATION OF NORTHERN PASS TRANSMISSION LLC &
PUBLIC SERVICE COMPANY OF NEW HAMPSHIRE
D/B/A EVERSOURCE ENERGY
FOR A CERTIFICATE OF SITE AND FACILITY**

**APPLICANTS' UNASSENTED-TO MOTION FOR PROTECTIVE ORDER AND
CONFIDENTIAL TREATMENT**

NOW COME Northern Pass Transmission LLC (“NPT”) and Public Service Company of New Hampshire d/b/a Eversource Energy (collectively, 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 the following information: (1) archaeological resources data; (2) information on the status, location, and distribution of native plant and animal species and natural communities,¹ and (3) proprietary and confidential business information relating to the assessment of economic impacts and benefits of the proposed Project. 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,

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.

or financial information . . . and other files whose disclosure would constitute invasion of privacy.” RSA 91-A:5. As part of their Application for a Certificate of Site and Facility, the Applicants respectfully request that the Committee issue a protective order and that the Committee treat the above-described 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).

Archaeological Data and Sites

2. The Applicants seek a protective order and confidential treatment for sensitive archaeological resources data. 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 historic sites. Similarly, N.H. Admin. Rule Site 301.03(c) requires an applicant to identify “other resources within or adjacent to the site,” which typically include the identification of archaeological sites. 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 historic resources in the application.

3. Pursuant to the foregoing requirements, and in connection with their Application for a Certificate of Site and Facility, the Applicants have included the required information regarding archaeological resources data and archaeological sites within or adjacent to the Project area. However, under New Hampshire’s Historic Preservation Act, all information that may identify the location of archaeological sites must remain confidential and the disclosure of such information is exempt from RSA 91-A.

4. New Hampshire’s Historic Preservation Act specifically provides that:
Information which may identify the location of any archaeological 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.

RSA 227-C:11.

5. In conjunction with RSA 91-A:5, IV, which specifically provides that records pertaining to confidential information are exempt from the public disclosure requirements of the Right-to-Know Law, RSA 227-C:11 mandates that information that identifies the location of archaeological sites remain confidential. Therefore, the Applicants believe such information should not be disclosed to the general public during the SEC proceedings.²

6. Confidential treatment of archaeological sites discovered within or adjacent to the Project Area is warranted to protect the sensitive nature of those sites and is in the public interest. In this case, granting access to the location of an archaeological site will not further any public purpose but instead, will result in a risk of harm to such archaeological resources. The Applicants, therefore, request that the information regarding archaeological resources, contained in Appendices 19-30, be treated as confidential.

Native Plant and Animal Species and Natural communities

7. Applicants seek a protective order and confidential treatment of materials relating to New Hampshire's native plants, animals and natural communities. RSA 162-H:16, IV (c) requires that an application for a Certificate of Site and Facility, must *inter alia*, demonstrate that

² Federal law has a substantially similar provision under the federal Freedom of Information Act ("FOIA") that protects archaeological sites. Under FOIA, "information concerning the nature and location of any archaeological resource for which the excavation or removal requires a permit or other permission under this Act or under any other provision of Federal law may not be made available to the public under [FOIA]." 16 U.S.C. § 470hh(a).

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 and natural communities. Site 301.03(i) also requires an applicant include information “regarding the effects of the facility on, and plan for mitigation of any effects” on the natural resources in the application.

8. Pursuant to the foregoing requirements, and in connection with their Application for a Certificate of Site and Facility, the Applicants have included the required information regarding natural resources data and natural resource sites within or adjacent to the Project Area. This information includes maps, surveys and other material relating to the location and type of native plant and animal species and natural communities. Based on the importance of protecting and preserving New Hampshire’s native species and natural communities, the Applicants assert that this information should be exempt from RSA 91-A.

9. Producing information about the type and location of sensitive native 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 is necessary to maintain and enhance their numbers.

RSA 217-A:2.

10. Disclosure of such information could result in the intentional disturbance or removal of native plants and 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:2, the Applicants request that information relating to natural resources, included in all of the appendices to the Report contained in Appendix 35 as well as page 333 of Appendix 36, be treated as confidential.

Confidential and Proprietary Business Information

11. Julia Frayer of London Economics International, LLC's ("LEI") filed a report and pre-filed in support of the Application. That information relates to the Project's economic benefits. With respect to that material, NPT seeks a protective order for the following proprietary and confidential business information: LEI's proprietary modeling suite and other proprietary models used in assessing the economic effects of the proposed Northern Pass Transmission Project ("Project"); confidential and proprietary business assumptions related to that analysis; and, confidential and proprietary analysis and conclusions that may be used to inform the NPT bidding strategy in the Tri-State Clean Energy RFP process.³ As stated above, RSA 91-A:5, V provides, in relevant part, that records pertaining to "confidential, commercial, or financial information" are exempt from public disclosure.

12. "The terms 'commercial or financial' encompass information such as 'business sales statistics, research data, technical designs, overhead and operating costs, and information

³ Connecticut, Massachusetts, and Rhode Island are preparing to issue a request for proposals for Clean Energy and Transmission (referred to as the "Tri-State Clean Energy RFP" or "Clean Energy RFP") in order to identify projects that will advance the clean energy goals of those three states. Northern Pass Transmission LLC expects to participate in this competitive bid process. The comprehensive economic analysis performed by London Economics, Inc and the accompanying Pre-filed Testimony of Julia Frayer includes proprietary and commercially sensitive economic modeling and assumptions that, if made public, could create a competitive disadvantage for Northern Pass Transmission LLC with regard to any bid that it may submit into the Clean Energy RFP process. The issuance of the Clean Energy RFP is expected soon, with awards to be made in early to mid -2016.

on financial condition”. See *Union Leader Corp. v. New Hampshire Housing Finance Authority*, 142 N.H. 540, 553 (1997).

13. The SEC has routinely recognized that confidential treatment should be granted to competitively sensitive or proprietary information under the 91-A:5 exemption for “confidential, commercial, or financial information.” See, e.g., *Order on Pending Motions and Further Procedural Order*, Application of Groton Wind, LLC, NH SEC Docket 2010-01 (Dec. 14, 2010) (granting confidential treatment for financial statements and the applicant’s capacity factor profile); *Order on Partially Assented-to Motion for Protective Order and Confidential Treatment for Certain Confidential, Commercial, and Financial Documents*, Application of Laidlaw Berlin BioPower, LLC, NH SEC Docket 2009-02 (June 9, 2010) (granting confidential treatment for business plans and financial models because disclosure of the information could negatively affect the applicant’s competitive position in the renewable energy market); *Order Granting Applicant’s Motion for Protective Order and Approving Procedure for Treatment of Confidential, Commercial, or Financial Information*, Application of Granite Reliable Power, NH SEC, Docket 2008-04 (Nov. 4, 2008) (granting confidential treatment for commercially sensitive and proprietary financial information to avoid an adverse effect upon the applicant’s ability to successfully negotiate commercial transactions in the electric generation market).⁴

14. Requests for confidential treatment and protective orders in an SEC proceeding must meet the requirements the Supreme Court set forth in *Lambert v. Belknap County Convention*, 157 N.H. 375, 382 (2008) and *Lamy v. New Hampshire Public Utilities Commission*, 152 N.H. 106 (2005). Those cases require a three-step analysis to determine

⁴ The NH Public Utilities Commission has also routinely recognized that confidential treatment should be granted to competitively sensitive or proprietary information under the 91-A:5 exemption. See e.g., *Northern Utilities, Inc.*, DG 10-034, Order No. 25,085 at 9; *Unitil Corp. and Northern Utilities, Inc.*, DG 08-048, Order No. 25,014 at 6 (Sept. 22, 2009).

whether information should be exempt from public disclosure pursuant to the Right-to-Know law, RSA 91-A: 5, IV; *Order on Unassented-To Motion for Protective Order and Confidential Treatment*, Application of Antrim Wind, NH SEC Docket 2012-01 (June. 4, 2012). When engaging in the three-step analysis, the SEC must consider whether (1) the Applicants have identified a privacy interest; (2) whether there is a public interest in disclosure; and (3) finally, if there is a public interest in disclosure, that interest is balanced against any privacy interests in non-disclosure. *Id.*

15. As part of LEI's analysis, LEI used the NPT's proprietary and confidential business information, including overhead, operating costs, information on financial condition and operating assumptions ("NPT Assumptions"), to run certain models through LEI's proprietary economic modeling suite. The NPT Assumptions that LEI used, as well as its own proprietary methodologies and calculations, constitute confidential, commercially sensitive business information. In addition, the NPT Assumptions and LEI's analysis, include competitive information used to inform NPT's bidding strategy in the Clean Energy RFP Process, the release of which would create a competitive disadvantage for NPT if that information became public at this time. As discussed above, the SEC has historically granted protective treatment for this type of information. See e.g., *Order Granting Applicant's Motion for Protective Order*, Application of Granite Reliable Power, NH SEC, Docket 2008-04 (Nov. 4, 2008).⁵

16. Here, NPT has a privacy interest in protecting LEI's proprietary business models, NPT's Assumptions and certain portions of LEI's analysis. The disclosure of this information would adversely affect both LEI's ability to continue to compete in the market and NPT's ability to compete against other projects submitted into the Clean Energy RFP process. Indeed, providing information related to the Applicants' bidding strategy in the Clean Energy RFP

⁵ See also *City of Nashua*, DW 04-048, Order No., 24,583 at 3 (Jan. 27, 2006) (NHPUC granting similar request).

process would undoubtedly provide an advantage to NPT's competitors, as well as competitors' suppliers, and vendors. NPT's bid information is particularly important because the Clean Energy RFP has not been officially released and NPT has not yet submitted its confidential bid.⁶ Publication of this information would most certainly provide an unfair advantage to NPT's competitors and create a potential severe disadvantage for NPT.

17. The Applicant seeks to protect the above-described information contained in the Pre-filed Testimony of Julia Frayer⁷ and the LEI report titled *Cost Benefit and Local Economic Impact Analysis of the Proposed Northern Pass Transmission Project* ("LEI Report").⁸ To the extent that there is a public interest in disclosure of all or part of this proprietary business information relating to various economic benefits of the Project, such disclosure does not outweigh either LEI's interest in keeping its competitively sensitive business methodologies and calculations confidential or NPT's interest in protecting the NPT Assumptions and bidding strategies. For these reasons, the Committee should grant confidential treatment to LEI's confidential business information contained in the Pre-filed Testimony of Julia Frayer⁹ and in the LEI Report.¹⁰

18. Further, NPT believes that as the Clean Energy RFP process develops and concludes, portions of the information that NPT now seeks to protect may no longer be confidential. As such information becomes public, NPT will notify the Committee.

19. Upon leave of the Committee, NPT will submit proposed redacted versions of both documents Appendix 43 and the Frayer Testimony.

⁶ The Clean Energy RFP is expected to be issued at any time. Upon issuance, interested parties will have 75 days within which to submit responsive bids.

⁷ See Joint Application of Northern Pass Transmission LLC & Public Service Company of New Hampshire d/b/a Eversource Energy for a Certificate of Site and Facility, Vol. II, No. 22.

⁸ See Appendix 43 of the Application.

⁹ See fn. 8.

¹⁰ See fn. 9.

Protective Order

20. All of the above-described information has been marked confidential. The archaeological information is only contained in the one complete paper copy of the Application being submitted to the SEC and the paper copy being provided to DHR. A single copy of the natural resource information and the company confidential information has been submitted – that material is contained in the complete paper copy of the Application submitted to the SEC. The Applicants respectfully request that the Committee issue an order consistent with terms and conditions contained in prior Committee orders protecting similar types of information.

21. Pursuant to N.H. Admin. Rule Site 202.14(d), the Applicants must seek concurrence. At the time of the filing of this Motion, there are no other Parties from whom the Applicants could seek assent.

WHEREFORE, the Applicants respectfully request that this Committee:

- A. Grant the Applicants' request that the materials identified in Appendix 19-30, in Appendices 35, 36 and 43 and the Pre-filed Testimony of Julia Frayer 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 Appendix 19-30, portions of Appendices 35, 36, and 43 and the Pre-filed Testimony of Julia Frayer;
- C. Authorize the Applicants to submit proposed redacted versions of the Pre-filed Testimony of Julia Frayer and Appendix 43; and
- D. Grant such further relief as it deems appropriate.

Respectfully Submitted,

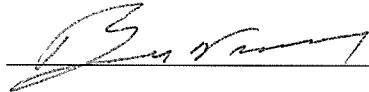
Northern Pass Transmission LLC and

Public Service Company of New Hampshire

By its attorneys,

McLANE MIDDLETON,
PROFESSIONAL ASSOCIATION

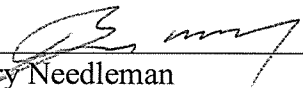
Dated: October 19, 2015

By:  _____

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Certificate of Service

I hereby certify that on the 19th day of October, 2015, an original and 18 copies of the foregoing Motion was hand-delivered to the New Hampshire Site Evaluation Committee.

 _____
Barry Needleman

STATE OF NEW HAMPSHIRE
SITE EVALUATION COMMITTEE

Docket No. 2015-06

**APPLICATION OF NORTHERN PASS TRANSMISSION LLC
AND PUBLIC SERVICE COMPANY OF NEW HAMPSHIRE D/B/A EVERSOURCE
ENERGY FOR A CERTIFICATE OF SITE AND FACILITY TO CONSTRUCT A NEW
HIGH VOLTAGE TRANSMISSION LINE AND RELATED FACILITIES IN NEW
HAMPSHIRE**

APPEARANCES

Pursuant to Site 202.04, please enter the appearances of Barry Needleman, Jeremy Walker, Adam Dumville, Rebecca Walkley, Thomas Getz, George Dana Bisbee, Christopher Allwarden, and Elizabeth Maldonado in connection with the above-captioned Application.

Barry Needleman, Jeremy Walker, Adam Dumville, Rebecca Walkley, Thomas Getz, George Dana Bisbee, and Christopher Allwarden are attorneys licensed to practice law in the State of New Hampshire. Elizabeth Maldonado is an attorney licensed to practice law in the States of Connecticut, Colorado and Wyoming.

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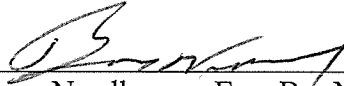
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Respectfully submitted,


McLANE MIDDLETON,
PROFESSIONAL ASSOCIATION

Dated: October 19, 2015

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Certificate of Service

I hereby certify that on the 19th of October, 2015, an original and 18 copies of the foregoing Appearance was hand-delivered to the New Hampshire Site Evaluation Committee.


Barry Needleman