

April 7, 2016

VIA HAND-DELIVERY AND EMAIL

Pamela G. Monroe, Administrator
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 Ms. Monroe:

Enclosed for filing in the above-captioned matter with the New Hampshire Site Evaluation Committee is the **Objection of the Society for the Protection of New Hampshire Forests to Applicants' Unassented-to Motion for Protective Order and Confidential Treatment.**

Copies of this letter and its enclosure have this date been forwarded via email to all parties on the Distribution List.

If you have any questions or concerns, please do not hesitate to contact us.

Very truly yours,



Nicole M. Manteau
Office Manager

/nmm

Enclosure

cc: Distribution List (Rev. 3/30/2016) via email
Client



STATE OF 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

**OBJECTION OF THE SOCIETY FOR THE PROTECTION OF NEW HAMPSHIRE
FORESTS TO APPLICANTS' UNASSENTED-TO MOTION FOR PROTECTIVE
ORDER AND CONFIDENTIAL TREATMENT**

The Society for the Protection of New Hampshire Forests (the “Forest Society”), by and through its attorneys, BCM Environmental & Land Law, PLLC, objects to the Applicants’ Unassented–to Motion for Protective Order and Confidential Treatment (“Motion”) because the public benefits of the disclosure of redacted business information outweigh the competitive interests of the Applicants. Without this information, no other party or the public can meaningfully evaluate the Applicants’ statements of the purported benefits of the Project, which will work a deprivation of a meaningful opportunity to probe and test the Applicants’ claim that issuance of a certificate will serve the public interest pursuant to RSA 162-H:16, IV(e).

I. Overview of the Applicants’ Motion

1. On October 19, 2015, the Applicants filed their Motion seeking a protective order to preserve the confidentiality of (1) archaeological resources data; (2) information on the status, location, and distribution of native plant and natural communities; and (3) purported proprietary and confidential business information regarding its assessment of economic benefits of the proposed project.

2. With regard to the business information, the Motion referred to a report by London Economics International, LLC (LEI) and pre-filed testimony of Julia Frayer of LEI.

3. Specifically, the Motion requests a protective order for the following three categories of information: first, “LEI’s proprietary modeling suite and other proprietary models used in assessing the economic effects of the proposed [Project]”; second, “confidential and proprietary business assumptions related to that analysis”; and third, “confidential and proprietary analysis and conclusions that may be used to inform NPT’s bidding strategy in the Tri-State Clean Energy RFP process.”

4. On March 28, 2016, the Applicants filed redacted versions of Ms. Frayer’s testimony and the LEI report, accompanied by a letter that expands upon and modifies their Motion.

5. With regard to the first category of information, the Applicants clarify that neither the Frayer testimony nor the LEI report contain LEI’s proprietary business models.

6. With regard to the Motion’s second category of information—“confidential and proprietary business assumptions”—the Applicants’ March 28 letter appears to state that these “assumptions” are largely contained in LEI’s report at Appendix C and are “Detailed Assumptions for wholesale power market simulations, as well as [information related to and references to these assumptions].”

7. The Motion’s third category of information relates to the Clean Energy RFP process. The Applicants expect that they will release the unredacted information “within the next several months.”

II. The Applicable Legal Standard

8. The Applicants’ assert that the purported proprietary and confidential business information should be protected from disclosure pursuant to the exemption in RSA 91-A:5 for “confidential, commercial, or financial information.”

9. As the LEI information does appear to be commercial or financial in nature, the Applicants must satisfy the following three-part test set forth in Lambert v. Belknap County Convention for the information to be (or remain) withheld from the public: (1) determine whether the Applicants have a privacy interest that would be invaded by disclosure; (2) assess the public's interest in disclosure; and (3) balance the public interest in disclosure against the government's interest in nondisclosure and the individual's privacy interest in nondisclosure. 157 N.H. 375, 382 (2008).

III. The Asserted Privacy Interests

10. The Applicants cite two separate privacy interests; a privacy interest of LEI and a privacy interest of the Applicants. See Motion at ¶ 16.

11. As for LEI, the Motion states that disclosure of LEI's proprietary business models "would adversely affect . . . LEI's ability to compete in the market." Id. This is not an issue, as the Forest Society does not herein seek LEI's proprietary business models such as the algorithms of the software coding, the owner's manuals, or the econometric formulae used in LEI's software.

12. The asserted privacy right of the Applicants is based solely on "NPT's ability to compete against other projects submitted into the Clean Energy RFP process." Id. When they filed their Motion in October 2015, the Applicants focused on timing of the RFP process and stressed that "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." Id. The Applicants further stated: "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." Id. at n.6.

13. Based on the Applicants' own statement of need argued in their Motion, whatever privacy interest the Applicants may have had in October 2015 no longer exists, as all of the time-sensitive events urged by the Applicants as critical to its Motion have now passed: (1) according to the Clean Energy RFP website, the RFP was issued on November 12, 2015, less than a month after the Applicants filed their Motion; (2) the Applicants have submitted their bid; and (3) the 75-day response period ended on January 28, 2016. See <http://cleanenergyrfp.com/timeline>.

IV. The Public's Interest in Disclosure

14. The Applicants do not even acknowledge that there is a public interest in the disclosure of this "information relating to various economic benefits of the Project." Motion at ¶ 17. That there is a public interest in the purported benefits of the proposed Project is beyond doubt. The entire purpose of this SEC proceeding is to balance the adverse impacts of any given proposed project with the potential benefits. RSA 162-H:1.

15. The LEI report and the Frayer testimony are the cornerstones of the Applicants' argument as to the potential benefits of the Project. The LEI Report—Appendix 43—is virtually the only section of the Application in which potential benefits are presented, as opposed to the majority of the Application that attempts to minimize the adverse impacts. The LEI report and the Frayer testimony are the only documents to purportedly support the benefits that the Applicants have discussed at the recent SEC county public information sessions and public hearings. Indeed, at the public information hearings, Eversource President William Quinlan encouraged the public to read the LEI report to learn the "benefits" about which he was speaking, until he was informed that the Applicants had not released the LEI report to the public. See Transcripts of Public Information Sessions January 13, 2016 (Londonderry) and January 14, 2016 (Laconia).

16. The interests of the public in the disclosure of the supposed benefits of the Project are significantly greater than in other SEC dockets because of the sheer magnitude of the proposed Project. If built, the Project would exist in 31 New Hampshire towns and cities, only one of which publicly supports the Project. More than 150 people and entities have sought intervention. The number of affected entities demonstrates that the statewide impacts of this Project far exceed the impacts posed by other projects in recent SEC history.

17. The Applicants have chosen what information to redact. In their March 28, 2016 letter to the Subcommittee, the Applicants state that they have “narrowed their request for protection” from what they initially intended to redact. Whether the Applicants initially intended to redact even more information is irrelevant to the fact that the redacted version omits information necessary for intervenors and the public to test the merits of the purported benefits of the Project.

18. LEI uses an input/output model to calculate local economic benefits. See LEI Report at App. E. The LEI report states that “the largest economic benefits [of the Project] stem from the reduced retail costs of electricity.” LEI Report at 20. LEI further states that “[h]ouseholds (residential consumers) would be able to spend the money they save from lower retail costs of electricity on other goods and services, which will stimulate the economy and lead to an expansion of GDP and employment.” Id. at 78.

19. In order to estimate this possible reduction in retail electric rates, LEI models possible projected future wholesale energy market prices, though the inputs used to calculate these wholesale prices appear to be redacted.

20. Additional inputs also appear to be redacted. For example, LEI converts wholesale cost projections to retail household savings and uses these savings as an input in the

REMI model. See id. at 127 (“[T]o properly evaluate the impact of NPT on New England’s retail consumers, LEI converted the wholesale energy price impacts into a retail impact figure.”).

However, it is unclear how these mathematics of conversion from wholesale to retail occur.

21. Thus, the inputs that LEI used to determine wholesale prices as well as the projected retail-household-savings inputs appear to be redacted, though such information is not proprietary.

22. Without the redacted inputs, there is no way to check the accuracy of the methodologies used and, hence, the local benefits the Applicants claim. Full disclosure would allow the public to model the different sectors affected and to make an apples-to-apples comparison of local economic benefits. Without these inputs, there is no level field for discussion of the outputs claimed by LEI’s process.

23. Additionally with regard to public interest, “[d]isclosure of the requested information should inform the public about the conduct and activities of their government.” Lambert v. Belknap County Convention, 157 N.H. at 383. Currently, only the Subcommittee and Counsel for the Public—both of which are governmental entities—have unredacted versions of the Frayer testimony and the LEI report. See Applicants’ March 28, 2016 Letter at 1.

IV. The Public’s Interest in Disclosure Outweighs the Applicants’ Interest

24. As stated above, the Applicants’ privacy interest, if any, has severely diminished since the Applicants filed their Motion last October because the RFP deadlines cited by the Applicants have passed. Whatever remaining privacy interest the Applicants may have is far outweighed by the benefit of allowing the public and the intervenors to evaluate the information on which the Applicants base their statements of the benefits of the Project.

25. The Applicants have already performed a balancing test between public disclosure or potentially compromising its competitiveness among other New England utilities to build a for-profit, non-reliability project that would provide the vast majority of its energy to other New England states while keeping all of the adverse impacts in New Hampshire. The Applicants chose to protect their competitiveness rather than allow New Hampshire to fully evaluate the Northern Pass proposal.

26. The Applicants made this business decision when they decided not to include the Frayer testimony and the LEI report with their Application, and the Applicants have already benefitted from this unilateral decision because the testimony and report have already been removed from public dialogue for more than five months. Even if the Applicants voluntarily submit the entire unredacted documents in “the next several months” as proposed in their March 28 letter, the utility of these documents to the public will diminish even further.

27. It should not be lost on the Subcommittee that while the Applicants demand that the Subcommittee finish deliberations of its Application within one year, their objective of not providing the unredacted LEI documents for at least several more months would result in the documents not being available to other parties or the public for the majority of the one-year time period. This would effectively prevent LEI’s conclusions from undergoing meaningful critique.

28. As a candidate for public office surrenders much privacy by entering the public spotlight, the Applicants’ proposal to build a 192-mile project through 31 municipalities amounts to a voluntary act by the Applicants to enter the public spotlight. See Lambert v. Belknap County Convention, 157 N.H. at 385.

29. Finally, when only the Applicants, the Subcommittee, and Counsel for the Public have access to the unredacted versions of documents that are the only documents to support the

Applicants' assertion of Project benefits, the public is kept in the dark, which is contrary to the spirit of the Right-to-Know law and the SEC process. Disclosure of this information would greatly serve to inform the public of the workings of government.

30. As an alternative to denying the Applicants' Motion, the Forest Society requests that the Subcommittee not permit the Frayer testimony or the LEI report to be used by the Applicants at the adjudicative hearing or admitted as evidence in this proceeding. The Applicants should not be permitted, without consequences, to run the clock on the disclosure of important evidence.

V. Archaeological and Plant and Animal Data

31. Undersigned counsel has spoken with counsel for the Applicants regarding the disclosure of archaeological and plant and animal data. It is anticipated that the Forest Society and the Applicants will reach an agreement allowing the Forest Society to obtain this information upon request, subject to conditions that the Subcommittee may impose. On this basis, the Forest Society does not object to confidential treatment of this information, but reserves the right to do so should the Forest Society ultimately not gain access to this information.

WHEREFORE, the Forest Society respectfully requests that the Subcommittee:

- A. Deny the Applicants' Unassented-to Motion for Protective Order and Confidential Treatment in part, as it relates to the Frayer testimony and the LEI report; or
- B. Disallow the testimony of Ms. Frayer and the entering into evidence of the LEI report; and
- C. Grant such further relief as it deems appropriate.

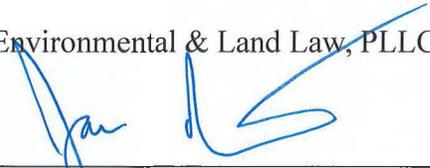
Respectfully Submitted,

**SOCIETY FOR THE PROTECTION OF
NEW HAMPSHIRE FORESTS**

By its Attorneys,

BCM Environmental & Land Law, PLLC

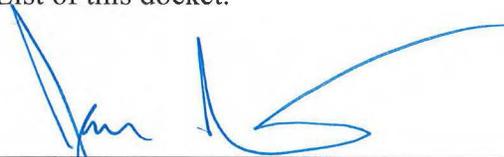
Date: April 7, 2016

By: 

Amy Manzelli, Esq. (17128)
Jason Reimers, Esq. (17309)
3 Maple Street
Concord, NH 03301
(603) 225-2585
manzelli@nhlandlaw.com
reimers@nhlandlaw.com

CERTIFICATE OF SERVICE

I hereby certify that on this day, April 7, 2016, a copy of the foregoing Objection of the Society for the Protection of New Hampshire Forests to Applicants' Motion was sent by electronic mail to persons named on the Service List of this docket.



Jason Reimers, Esq.