

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' FURTHER MOTION FOR  
CONFIDENTIAL TREATMENT**

The Society for the Protection of New Hampshire Forests (the "Forest Society"), by and through its attorneys, BCM Environmental & Land Law, PLLC, respectfully objects to the Applicants' Further Motion for Confidential Treatment, as follows:

1. The Applicants seek continued, indefinite confidential treatment of information redacted from Julia Frayer's pre-filed testimony and the "Cost-Benefit and Local Economic Impact Analysis of the Proposed Northern Pass Project" prepared by London Economics International LLC ("LEI report").

Background

2. The Applicants first sought confidential treatment of this information in a Motion for Protective Order and Confidential Treatment on October 19, 2015, the same day that the Applicants filed their Application for a Certificate of Site and Facility (the "Application").

3. The Applicants did not include even redacted versions of the Frayer testimony and LEI report in the Application; it was not until March 28, 2016, after all public information sessions and public hearings had concluded, that the Applicants provided redacted versions to parties other than Counsel for the Public.

4. The sole reason offered by the Applicants in their October 19, 2015 Motion to keep portions of the Frayer testimony and LEI report confidential was the Applicants'

participation in the Clean Energy RFP, stating “that, if made public, [it] 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.” October 19, 2015 Motion at 5 n.3.

5. When the Applicants finally submitted redacted versions of the Frayer testimony and LEI report on March 28, 2016, the Applicants stated that their “request for protective treatment is time limited” until the completion of the Clean Energy RFP, stating their belief “that public disclosure of the redacted portions of the Report and Testimony will be appropriate within the next several months.” March 28, 2016 Letter at 2–3.

6. The Subcommittee granted the Applicants’ request for protective treatment of the Frayer Testimony and LEI report, “but only on a limited basis.” May 25, 2016 Order at 11–12.

7. The Subcommittee further ordered that upon completion of the Clean Energy RFP process, the Applicants shall disclose the unredacted portions of the Frayer testimony and LEI report “or file a further motion seeking confidential treatment of said documents.” Id. at 12.

#### Legal Standard

8. The Subcommittee must weigh the Applicants’ privacy interest against the public interest in disclosure. See Lambert v. Belknap County Convention, 157 N.H. 375, 382 (2008) (describing the balancing test).

9. A motion for a protective order should be denied when the balance tips in favor of the public’s interest in disclosure. See Union Leader v. N.H. Housing Fin. Auth., 142 N.H. 540, 556 (1997).

#### The Balance Tips in Favor of Disclosure

10. RSA 162-H places great value on the public interest and public participation. See, e.g., RSA 162-H:1 (stating that it is in the “public interest” to maintain the balance between

impacts and benefits of proposed projects and “that all entities planning to construct facilities in the state be required to provide *full and complete disclosure to the public of such plans*”) (emphasis added); RSA 162-H:10 (requiring multiple public information sessions and public hearings, and requiring the subcommittee to “consider and weigh” all public comment received up until the closing of the record);<sup>1</sup> and RSA 162-H:16, IV(e) (requiring the Subcommittee to determine whether a proposed project “will serve the public interest”).

11. The Applicants knew this when they filed their application to construct a 192-mile transmission line unprecedented in size and scope through New Hampshire.

12. The Applicants have successfully kept as much of the Frayer testimony and LEI report from parties and the public for as long as it possibly could, yet the Frayer testimony and LEI report are the primary—if not only—evidence in the Application presenting the purported financial benefits of the Project.

13. Without an order from the Subcommittee, the Applicants kept the entire Frayer testimony and LEI report from the parties and the public from October 19, 2015 until March 28, 2016—despite the fact that not all of the testimony and report are confidential in nature, and all the while arguing that the docket must be resolved within one year of filing the Application.

14. When the Applicants initially sought confidentiality until the resolution of the Clean Energy RFP, it appears that the Applicants assumed that the Northern Pass project would be selected in the RFP.

15. Now that the Clean Energy RFP is completed, and the Northern Pass project was not selected, the privacy interest of the Applicants has greatly diminished.

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<sup>1</sup> In response to questions at public information sessions, Eversource President William Quinlan encouraged the public to read the LEI report to learn about the benefits touted by the Applicants, apparently unaware that the LEI report had been unilaterally withheld by the Applicants. See Transcripts of Public Information Sessions January 13, 2016 (Londonderry) and January 14, 2016 (Laconia).

16. If the “confidential” information is as sensitive to the Applicants’ business competitiveness as they argue, they would have known this long ago before continually indicating that the need for confidential treatment would disappear when the Clean Energy RFP process was completed, and it would have been unreasonable for the Applicants to assume that the Northern Pass project would be chosen. The Applicants never indicated that the need for confidentiality would disappear only if they were chosen in the Clean Energy RFP.

17. Now, the Applicants want to extend confidentiality indefinitely, and at least until April 2017. Moreover, if the Northern Pass project is not selected in the Massachusetts RFP, nothing would prevent the Applicants from seeking another extension of confidentiality.

18. In their Further Motion, the Applicants do not even acknowledge or address the interests of the public in the disclosure of this information, instead asserting that “no party to the proceeding will be prejudiced” by continued confidentiality because many intervenors have entered into confidentiality agreements with the Applicants. Further Motion at ¶ 4.

19. As discussed above, the legislature has emphasized the public’s participation in SEC dockets and to “full and complete disclosure” of an applicant’s plans. RSA 162-H:10.

20. To be meaningful, this “full and complete disclosure” must occur well before the eve of adjudicative hearings, during the hearings, or after the hearings.

21. As for intervenors who have signed confidentiality agreements, working within the confines of the confidentiality agreements is unnecessarily limiting in ways that strain the Forest Society’s due process rights. It limits the people with whom the “confidential” information may be shared and makes the sharing process cumbersome. It prohibits the Forest Society from discussing the information with anyone who has not signed a confidentiality agreement.

22. In sum, as the SEC process enters its second year and the public is still without the information that purports to support the economic benefits of the Northern Pass project to the State of New Hampshire and the 30+ impacted municipalities, and as intervenors continue to be burdened to treat this information confidentiality, the Applicants' Further Motion should be denied. The time has come that the balance now tips in favor of the public's interest in disclosure. See Union Leader v. N.H. Housing Fin. Auth., 142 N.H. at 556.

WHEREFORE, the Forest Society respectfully requests that the Subcommittee:

- A. Deny the Applicants' Further Motion for Confidential Treatment; and
- B. Grant such further relief as is just and appropriate.

Respectfully Submitted,

The Society for the Protection of  
New Hampshire Forests

By its Attorneys,

BCM Environmental & Land Law, PLLC

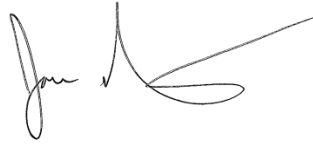


Date: November 7, 2016

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**CERTIFICATE OF SERVICE**

I hereby certify that on this day, November 7, 2016, a copy of the foregoing motion was sent by electronic mail or U.S. Mail, postage prepaid, to persons named on the Service List of this docket.

A handwritten signature in black ink, appearing to read 'Jason Reimers', with a long horizontal stroke extending to the right.

By: \_\_\_\_\_  
Jason Reimers