

April 6, 2017

**Via Electronic Mail & Hand Delivery**

Pamela Monroe, Administrator  
New Hampshire Site Evaluation Committee  
21 South Fruit Street, Suite 10  
Concord, NH 03301-2429

**Re: 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 (the "Applicants") for a Certificate of  
Site and Facility  
Motion for Protective Order – Underground Alternatives**

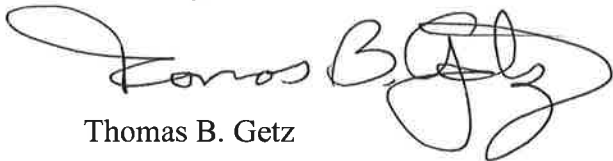
Dear Ms. Monroe:

Enclosed for filing in the above-captioned docket, please find an original and one copy of a Motion For Protective Order And Confidential Treatment-Evaluation Of Underground Alternatives. We have also enclosed one hard copy and a thumb drive containing the confidential grayed-out version of the report.

An un-redacted version of the report was provided on July 28, 2016 as part of discovery to parties who had signed an Agreement for Protective Treatment. A redacted version of the report was attached to the supplemental testimony of Mr. Bowes filed on March 24, 2017.

Please contact me directly should you have any questions.

Sincerely,

  
Thomas B. Getz

TBG:slb

cc: SEC Distribution List

Enclosure

**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**

**MOTION FOR PROTECTIVE ORDER AND CONFIDENTIAL TREATMENT  
EVALUATION OF UNDERGROUND ALTERNATIVES**

NOW COME Northern Pass Transmission LLC 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 proprietary and confidential business information relating to the evaluation of underground alternatives for 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, or financial information . . . and other files whose disclosure would constitute invasion of privacy.” RSA 91-A:5. 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).

2. The Applicants seek a protective order and confidential treatment for proprietary business information as it relates to the evaluation of the cost to underground portions of the proposed Project. Specifically, the Applicants seek a protective order for business confidential information contained in Appendix B of the report, titled “An Evaluation of All UG Alternatives for the Northern Pass Transmission Project,” which includes a pricing summary, and business confidential information contained in Appendix C of the same report, which provides an itemized breakdown of the elements of the overall cost prepared by the Applicants’ contractor. 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.

3. “The terms ‘commercial or financial’ encompass information such as ‘business sales statistics, research data, technical designs, overhead and operating costs, and information on financial condition.” See *Union Leader Corp. v. New Hampshire Housing Finance Authority*, 142 N.H. 540, 553 (1997).

4. 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).<sup>1</sup>

5. Requests for confidential treatment and protective orders in an SEC proceeding must meet the requirements as set forth by the Supreme Court 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), which requires 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. *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.*

6. As discussed above, the SEC has historically, and earlier in this proceeding, granted protective treatment for business confidential 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).<sup>2</sup> See also, *Order on Motion for Protective Order and Confidential Treatment* (May 25, 2016), which, among other things, protected certain

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<sup>1</sup> 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).

<sup>2</sup> See also *City of Nashua*, DW 04-048, Order No., 24,583 at 3 (Jan. 27, 2006) (NHPUC granting similar request).

confidential business information in a report titled “Cost-Benefit and Local Economic Impact Analysis of the Proposed Northern Pass Transmission Project.”

7. The Applicants have a privacy interest in protecting the proprietary and financial business information that underlies the cost estimates for underground construction provided in Table 1 of the report. Disclosure of this information will not provide the public with information that is necessary or beneficial and would only serve to negatively impact the Applicants’ as well as the Applicants’ contractors ability to compete in their respective markets. Publication of the information contained in Appendix B of the report would provide an unfair advantage to the Applicants’ competitors and would unfairly disadvantage the Applicants in the upcoming Massachusetts RFP process without providing any meaningful or useful information to members of the public. Further, the information contained in Appendix C would result in an unfair advantage to competitors to the Applicants’ contractors.

8. The Applicant seeks to protect a very limited amount of information from the report. To the extent that there is a public interest in disclosure of this proprietary business information, it is not significant enough to outweigh the interest in keeping competitively sensitive business methodologies and calculations confidential.

9. The Applicants respectfully request that the Committee issue a protective order consistent with the terms and conditions contained in prior Committee orders protecting similar types of information.

10. The Society for the Protection of New Hampshire Forests and the Environmental NGOs object to the Motion, while Municipal Group 2 and McKenna’s Purchase take no position. No further responses were received to the Applicants’ request for positions.

WHEREFORE, the Applicants respectfully request that this Committee:

- A. Grant the Applicants' request that the materials identified above be treated as confidential;
- B. Issue a protective order as requested herein; and
- C. Grant such further relief as it deems appropriate.

Respectfully submitted,

Northern Pass Transmission LLC and  
Public Service Company of New Hampshire d/b/a  
Eversource Energy  
By Its Attorneys,

McLANE MIDDLETON,  
PROFESSIONAL ASSOCIATION

Dated: April 6, 2017

By: 

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Certificate of Service

I hereby certify that on the 6th of April, 2017, 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.

  
Thomas B. Getz