

**THE STATE OF NEW HAMPSHIRE
SITE EVALUATION COMMITTEE**

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 the Construction of a New High Voltage Transmission Line in New Hampshire

Docket No. 2015-06

**MUNICIPAL GROUPS 1 SOUTH, 2, 3 SOUTH AND 3 NORTH'S OBJECTION TO
MOTION FOR PROTECTIVE ORDER AND CONFIDENTIAL TREATMENT
BUSINESS DIRECTORY**

Municipal Intervenor Groups 1 South, 2, 3 South and 3 North (collectively “the Referenced Municipal Groups”) object to the Applicants’ Motion for Protective Order and Confidential Treatment of the Business Directory, stating as follows:

1. During the hearings, on a number of occasions, the Applicants have indicated that potential disruptions to local businesses during construction could be mitigated because workers may be patronizing local businesses. Transcript, Day 12 (AM, June 2, 2017), Pages 105-08; Transcript, Day 15 (PM, June 13, 2017), Page 102. Among other things, the Applicants have stated that it created a business directory that will “boost” the local economy. Transcript, Day 12 (AM, June 2, 2017), Pages 105-08; Applicants Exhibit 144. The Applicants have stated that the business directory will be given to “each of the hundreds of workers who will be in and around the towns along the proposed Northern Pass route during construction” and that the Northern Pass construction workers may patronize the businesses contained in the directory. Exhibit 144.

2. During the trial, Samuel Johnson, the Senior Project Manager at Burns & McDonnell Engineering Company, voluntarily offered without prompting to provide a copy of the business directory to the Site Evaluation Committee. Transcript, Day 12 (AM, June 2, 2017), Page 114-115 (“So, we do have any ongoing business list, which we can provide to you, if

you're interested in that as well').¹ Mr. Johnson further represented that the business directory has between 200 and 300 businesses, and that the directory has been already provided to the contractors. *Id.* at 115-16. He further explained that, as the businesses on the list continue to grow, the updated information is provided to the contractor. *Id.*

3. The Applicants now request to keep the business directory confidential based on the assertion that it contains “confidential, commercial or financial information, the disclosure of which would constitute an invasion of privacy of the businesses that comprise the Business Directory.” Motion at Page 1, ¶1. That request should be rejected because there is no legal or factual basis for the argument that the business directory should be considered a confidential document.

4. The business directory does not contain “confidential, commercial or financial information” that is protected by RSA 91-A:5, IV. As discussed above, the Applicants have stated that the business directory was created to encourage workers to patronize the businesses that are listed in the directory. The directory has already been disseminated to contractors, and there is no information that the directory has been marked as confidential and/or that the “hundreds of contractors” to whom the business directory is disseminated will be obligated to execute confidentiality agreements to ensure that the list of businesses is not shared to the general public. The business directory is not a trade secret, and there is also nothing confidential about the commercial or financial information contained in the list. *See, e.g., Mortgage Specialists v. Davey*, 153 N.H. 764, 768-772 (2006) (for information to be a trade secret, the information must be subject to reasonable efforts to maintain its secrecy).

¹ Mr. Johnson later also reminded the Site Evaluation Committee that the Business Directory would be included in the set of documents that he would be providing. *Id.* at Pages 127-28.

5. There is also no objective basis to support the argument that a business would consider the disclosure of the business directory to be an invasion of privacy under RSA 91-A:5, IV. The determination of whether information is exempt from disclosure because it is private is judged by an objective standard and not by a party's subjective expectations. *Lamy v. N.H. Pub. Utils. Comm'n*, 152 N.H. 106, 109 (2005) (holding that list of businesses who had testing performed by utility company as a result of voltage complaints was not confidential because there was no privacy interest at stake).

6. Here, the Northern Pass website which invites businesses to join the directory indicates that Northern Pass will be providing the business directory to "thousands of workers," and that the directory will be "easily accessible to them." See Northern Pass website at <http://www.northernpass.us/business-directory.htm> (excerpts at Exhibit A). The website also includes videos from business owners who state that they believe that the Northern Pass construction activities will support their businesses. *Id.* It appears that these videos were included on the website to encourage other businesses to consider supporting the Northern Pass project, and the videos do not suggest that the identification of a business that has chosen to be listed in the business directory will be maintained as confidential and/or that the business might be unnecessarily subjected to "adverse financial or commercial impacts." There is no privacy interest at stake to support a determination that the business directory should be deemed confidential, and, therefore, the Right-to-Know law mandates disclosure. *Lamy*, 152 N.H. at 109.

7. Even assuming that there is a privacy interest at stake, which is disputed, the public interest in disclosure outweighs the privacy interest in nondisclosure. The Applicants have proffered testimony during the trial that the disruption to businesses will be mitigated

during construction because workers will be patronizing local businesses, and they have relied upon the business directory to support those statements. *See, e.g.*, Transcript, Day 12 (AM, June 2, 2017), Pages 105-08, 114-116; Transcript, Day 15 (PM, June 13, 2017), Page 102. It is only appropriate that all parties to the proceeding (including municipalities) and the general public have an opportunity to evaluate those statements by reviewing the directory in order to determine the type, location and amount of businesses listed in the directory.

WHEREFORE, the Referenced Municipal Groups respectfully request that the Site Evaluation Committee:

- a. Deny Applicants' Motion for Protective Order and Confidential Treatment of the Business Directory; and
- b. Grant such further relief as it deems appropriate.

Respectfully submitted,

TOWNS OF NEW HAMPTON, LITTLETON,
DEERFIELD, PEMBROKE, and ASHLAND
WATER & SEWER DEPARTMENT

By and through its attorneys,

MITCHELL MUNICIPAL GROUP, P.A.

Dated: July 10, 2017

By: /s/ Steven Whitley
Steven M. Whitley, Esq., Bar #17833
25 Beacon Street East
Laconia, New Hampshire 03246
Telephone: (603) 524-3885
steven@mitchellmunigroup.com

TOWNS OF BETHLEHEM, BRISTOL, EASTON,
FRANCONIA, NORTHUMBERLAND,
PLYMOUTH, SUGAR HILL and WHITEFIELD

By and through their attorneys,

GARDNER, FULTON & WAUGH, PLLC

Dated: July 10, 2017

By: /s/ C. Christine Fillmore
C. Christine Fillmore, Esq., Bar #13851
Gardner, Fulton & Waugh, PLLC
78 Bank Street
Lebanon, NH 03766-1727
Tel. (603) 448-2221
Fax (603) 448-5949
cfillmore@townandcitylaw.com

CITY OF CONCORD

Dated: July 10, 2017

By: /s/ Danielle L. Pacik
Danielle L. Pacik, Esq., Bar #14924
Deputy City Solicitor
41 Green Street
Concord, New Hampshire 03301
Telephone: (603) 225-8505
dpacik@concordnh.gov

CERTIFICATE OF SERVICE

I hereby certify that on this date, a copy of the foregoing was sent by electronic mail to persons named on the Service List of this docket.

Dated: July 10, 2017

By: /s/ Steven Whitley
Steven M. Whitley, Esq., Bar #17833

EXHIBIT A



(<http://www.northernpass.us/index.htm>)



Home (<http://www.northernpass.us/index.htm>) > Get Involved (<http://www.northernpass.us/get-involved.htm>) > Business Directory

Join the Northern Pass Business Directory

The proposed Northern Pass Transmission Project will employ thousands of workers who will be spending time and resources in or near the 31 towns along the proposed 192-mile route during construction. Northern Pass will provide a business directory to each one of these workers. Add your business to this directory to be easily accessible to them.

Who Benefits?

Businesses like local restaurants, lodging, hardware stores, gas stations, convenience stores, and other services. These businesses could see a significant economic boost from Northern Pass' crews during this time. Next door in Maine, we've seen a transmission line project similar to Northern Pass, called the Maine Power Reliability Program (MPRP), deliver major economic benefits for local communities and businesses. During MPRP's construction, the project contributed an estimated \$436 million to Maine's Gross Domestic Product.

Many local New Hampshire business owners have experienced the economic stimulus of other major construction projects in the state. Hear their perspectives in these videos (<http://www.northernpass.us/multimedia.htm>):

Rita Dube (<https://www.youtube.com/watch?v=gtyhiM6xBQE>)

Scott Labnon (<https://www.youtube.com/watch?v=qP5M0kKvHN0&list=UU9DbRB3MI1mPGggcEhsv1xw>)

Landon Placey (<https://www.youtube.com/watch?v=9PyctxuVE7M>)

Your Business

Business owners who wish to be included in a Northern Pass Project Business Directory can sign up here:

Name*

Company*

Position at Business*

Business Address*

Street Address

Address Line 2

City

State / Province / Region

Postal / Zip Code

Phone*

Email*

Type of Service (check all that apply)

- Restaurant
- Hardware Store
- Convenience Store
-

- Gas Station
- Lodging
- Other

Are you willing to show your support in other ways for the Northern Pass Project?

- Yes

CAPTCHA

 Change Image

Required Fields*

Submit

[Show Your Support \(http://www.northernpass.us/show-your-support.htm\)](http://www.northernpass.us/show-your-support.htm)

[Support for Energy Solutions \(http://www.northernpass.us/support-for-energy-solutions.htm\)](http://www.northernpass.us/support-for-energy-solutions.htm)

[Business Directory \(http://www.northernpass.us/business-directory.htm\)](http://www.northernpass.us/business-directory.htm)

[Supplier Registration \(http://www.northernpass.us/supplier-registration.htm\)](http://www.northernpass.us/supplier-registration.htm)

[Job Registration \(http://www.northernpass.us/job-registration.htm\)](http://www.northernpass.us/job-registration.htm)

What's happening in your town

select your town ▼

[Show Your Support \(http://www.northernpass.us/show-your-support.htm\)](http://www.northernpass.us/show-your-support.htm)

[Download the State Filing Documents \(http://www.northernpass.us/siting-application.htm\)](http://www.northernpass.us/siting-application.htm)