

MCLANE
MIDDLETON

THOMAS B. GETZ
Direct Dial: 603.230.4403
Email: thomas.getz@mclane.com
Admitted in NH
11 South Main Street, Suite 500
Concord, NH 03301
T 603.226.0400
F 603.230.4448

August 16, 2017

Via Electronic Mail & Hand Delivery

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

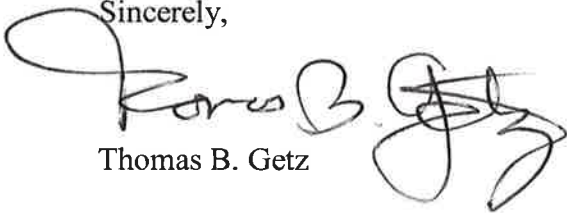
**Re: Site Evaluation Committee Docket No. 2015-06
Joint Application of Northern Pass Transmission LLC and Public Service Company
of New Hampshire d/b/a Eversource Energy (the "Applicants") for a Certificate of
Site and Facility
Motion for Rehearing
Order Denying Confidential Treatment of Business Directory**

Dear Ms. Monroe:

Enclosed for filing in the above-captioned docket, please find an original and one copy of a Motion for Rehearing Order Denying Confidential Treatment of Business Directory.

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**

DOCKET NO. 2015-06

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

MOTION FOR REHEARING
ORDER DENYING CONFIDENTIAL TREATMENT OF BUSINESS DIRECTORY

NOW COME Northern Pass Transmission LLC (“NPT”) and Public Service Company of New Hampshire d/b/a Eversource Energy (“PSNH”) (collectively, the “Applicants”), by and through their attorneys, McLane Middleton, Professional Association, and respectfully request rehearing of the July 17, 2017 Order Denying Applicants’ Motion for Protective Order and Confidential Treatment of Business Directory (“Business Directory Order”). As explained below, the Applicants seek confidential treatment of the Business Directory based upon (i) the fact that the Business Directory constitutes a “trade secret” pursuant to New Hampshire law and (ii) the privacy interests of the business owners listed therein.

I. BACKGROUND

1. On June 30, 2017, the Applicants filed a motion seeking confidential treatment of a document containing the identities of businesses that had registered to be included in a directory that would be provided to NPT contractors during the construction period (“Business Directory”).

2. Counsel for the Public (“CFP”), the Society for the Protection of New Hampshire Forests (“SPNHF”), and the Municipal Groups each submitted objections on July 10, 2017. Among other things, SPNHF argued, at p. 4 of its motion, that business owners listed in the directory would not have a sufficient privacy interest even if they were “perceived as supporting

Northern Pass by participating in this Directory, and may in turn face retribution from customers or members of the public opposed to Northern Pass.” SPNHF also argued that any such fear of retribution would not be “true or well-founded.”

3. The Presiding Officer concluded at p. 6 of the Business Directory Order that the public interest in disclosing the Business Directory outweighed any privacy interest in non-disclosure. Among other things, he determined that there was no reasonable expectation of privacy by the business owners.

II. DISCUSSION

A. Standard of Review

4. A motion for rehearing must (1) identify each error of fact, error of reasoning, or error of law which the moving party wishes to have reconsidered, (2) describe how each error causes the committee’s order or decision to be unlawful, unjust or unreasonable, and (3) state concisely the factual findings, reasoning or legal conclusion proposed by the moving party. Site 202.29 (d).

5. The purpose of rehearing “is to direct attention to matters that have been overlooked or mistakenly conceived in the original decision ...” *Dumais v. State*, 118 N.H. 309, 311 (1978) (internal quotations omitted). A rehearing may be granted when the Committee finds “good reason” or “good cause” has been demonstrated. *See O’Loughlin v. NH Pers. Comm.*, 17 N.H. 999, 1004 (1977); *Appeal of Gas Service, Inc.*, 121 N.H. 797, 801 (1981). “A successful motion for rehearing must do more than merely restate prior arguments and ask for a different outcome.” *Public Service Co. of N.H.*, Order No. 25,676 at 3 (June 12, 2014); *see also Freedom Energy Logistics*, Order No 25,810 at 4 (Sept. 8, 2015).

B. The Business Directory is Exempt from Disclosure Under NH Law

6. 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, IV.

7. The Applicants maintain that the Business Directory constitutes such “confidential, commercial . . . information” and is therefore, exempt from public disclosure under New Hampshire law. Specifically, Applicants retained an outside consultant to develop the Directory at NPT’s expense and for its own business purposes. Thus, the Business Directory constitutes proprietary commercial information of the Applicants.

C. The Business Directory is not Public and has not been Publicly Disseminated

8. The Business Directory Order is mistakenly conceived insofar as it is premised on the understanding that the information contained therein is generally available to the public and that Applicants have “disseminated the information in the Business Directory to numerous business owners.” In fact, the Business Directory has not been publicly disseminated and NPT has no intention of making the Directory public until it begins construction of the Northern Pass line. Thus, the premise of widespread dissemination, which led to the conclusion that the business owners can have no reasonable expectation of privacy, is an error of fact.

9. The Applicants’ primary objective here is to protect the privacy interests of the business owners. The Applicants are aware of concerns about harassment of parties who support

the Project. See, for instance, the comments of Rep. Richardson at the Public Comment session on June 15, 2017, who stated: “Most supporters are afraid to speak out. At earlier public hearings, speakers were booed. They were heckled when they spoke in favor. In Colebrook, small businesses were threatened with boycott if they supported Northern Pass. In Lancaster, a contractor was denied work based on his support for Northern Pass.” See, Transcript at pp. 7-8. As a result, the Applicants believe that the public interest in disclosure of the Business Directory is outweighed in the short term by the interests of business owners in non-disclosure and that making the Business Directory public at this time will not inform the public about the SEC’s activities.

D. The Granting of this Motion will not preclude consideration of the Business Directory in these proceedings

10. The Committee has granted confidential treatment to other evidentiary information submitted by the Applicants in this proceeding. Such confidential treatment does not generally preclude consideration of confidential information, as it is examined in confidential session by parties who have signed a confidentiality agreement provided for in the protective order. To the extent necessary, the Business Directory can and should be afforded similar treatment.

11. As noted above, the Applicants do not intend that the Business Directory be treated as confidential indefinitely. Clearly, as the Business Directory Order observes, the list will be widely disseminated during the construction period and the Applicants agree that there would be no reasonable expectation of privacy at that time. To clarify, the Applicants only seek confidential treatment on a time-limited basis, i.e., until the Subcommittee issues its final decision in this proceeding.

12. The following parties object to the Applicants' Motion: the Society for the Protection of New Hampshire Forests; Municipal Groups 1 South, 2, 3 South and 3 North; Grafton County Commissioners; the Pemigewasset River Local Advisory Committee; Deerfield Abutters; Whitefield to Bethlehem Abutters; Dummer, Stark and Northumberland Abutters; and Southern Non-Abutters. The IBEW concurs with the Motion.

13. In conclusion, the Applicants ask that the Presiding Officer grant confidential treatment to the Business Directory until such time as the Subcommittee issues a decision in this proceeding.

WHEREFORE, the Applicants respectfully request that the Presiding Officer:

- A. Grant rehearing as requested herein; and
- B. 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

By: 

Barry Needleman, Bar No. 9446
Thomas Getz, Bar No. 923
Adam Dumville, Bar No. 20715
11 South Main Street, Suite 500
Concord, NH 03301
(603) 226-0400
barry.needleman@mclane.com
thomas.getz@mclane.com
adam.dumville@mclane.com

Dated: August 16, 2017

Certificate of Service

I hereby certify that on the 16th day of August, 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 SEC Distribution List.


Thomas B. Getz