

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' MOTION FOR REHEARING  
ORDER DENYING CONFIDENTIAL TREATMENT OF BUSINESS DIRECTORY**

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

1. The Applicants filed a Motion for Protective Order and Confidential Treatment of Business Directory on June 30, 2017.
2. The Presiding Officer denied Applicants' Motion by an Order dated July 17, 2017.
3. Applicants filed this Motion for Rehearing on August 16, 2017.
4. A party may apply for a rehearing by "specifying in the motion all grounds for rehearing," RSA 541:3, and "set[ing] forth fully every ground upon which it is claimed that the decision or order complained of is unlawful and unreasonable." RSA 541:4.
5. The SEC rules further provide that a motion for rehearing shall: "(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; (3) State concisely the factual findings, reasoning or legal conclusion proposed by the moving party; and, (4) Include any argument or memorandum of law the moving party wishes to file." N.H. CODE ADMIN. R. ANN. Site 202.29(d).

6. The Applicants have failed to satisfy this standard. The Presiding Officer should deny the Motion for Rehearing for the following reasons.

7. Aside from rephrasing arguments made in their original Motion,<sup>1</sup> responses to which the Forest Society hereby incorporates but will not repeat in this Objection, Applicants argue a rehearing is necessary because the Order is premised on mistaken facts. Specifically, Applicants' claim that the Order is premised on the mistaken facts that "the information contained [in the Business Directory] is generally available to the public and that Applicants "have 'disseminated the information in the Business Directory to numerous business owners.'" Motion for Rehearing, ¶ 8 (Aug. 16, 2017) (quoting the Order). They further argue that the Business Directory has not and will not be publically disseminated until (if) construction begins, and the Presiding Officer's mistaken statement that it has been disseminated led to his erroneous conclusion that the business owners can have no reasonable expectation of privacy. *Id.*

8. This argument is meritless.

9. Although the Business Directory may not have been shared with numerous business owners, it has been shared with contractors. Transcript for Hearing Day 12, June 2, 2017, Morning Session, at 115-16 (Samuel Johnson testified that the Business Directory has already been provided to contractors).

10. Even if it was inaccurate for the Presiding Officer to state that the Business Directory has been disseminated to numerous business owners, this was but one fact supporting the Presiding Officer's conclusion.

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<sup>1</sup> "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 (July 12, 2014).

11. The Presiding Officer's Order lists several circumstances supporting the conclusion that there can be no reasonable expectation of privacy by either the Applicants or the business owners included in the Business Directory.

12. Aside from his statement that "the Applicant has disseminated the information in the Business Directory to numerous business owners," the Presiding Officer also notes that the Applicants solicited businesses to be included in the Business Directory with the promise that the Business Directory would be provided to hundreds of workers. So, even if the Applicants have not shared the information in the Business Directory with numerous business owners at this present time, the Presiding Officer's conclusion is still supported by the facts the Applicants do intend to share it with hundreds of workers and did promise the business owners that their information would be widely disseminated. Based on these circumstances, the Presiding Officer correctly determined that neither the Applicants nor the business owners have a reasonable expectation of privacy in the Business Directory.

13. The Coos County Business and Employers Group's ("CCBEG") concurrence filed August 28, 2017, also fails to show that the decision is unlawful or unreasonable.

14. In this Concurrence, CCBEG's counsel alleges that CCBEG told them that businesses in the North County, as well as businesses south of the notches, have faced "scorn, vilification, threats and even lost business based on the mere appearance of any level of support for the Northern Pass Project." Coos County Business and Employers Group's Concurrence with Applicant's Motion for Rehearing Order Denying Confidential Treatment of Business Directory, ¶ 2 (Aug. 28, 2017).

15. The Presiding Officer should give little weight to these unsubstantiated claims. The concurrence contains no specific information regarding the nature, extent, and timing of the supposed scorn, vilification, threats, and lost business. It does not allege that those businesses

that have faced such scorn are the ones that have agreed to be included in the Business Directory or have publically announced their support for the Project. The Concurrence also fails to articulate how the businesses had any reasonable expectation of privacy in the information they chose to include in a directory that they were told was going to be distributed. Also, although the standard applicable here is an objective one, the Concurrence does not even state that these businesses subjectively thought that their information would be confidential. And lastly, it is an unavoidable reality that businesses that chose to support or associate with a controversial project may face public backlash for their voluntary support. The purpose of the right-to-know laws will not be served by protecting the unreasonable and unsubstantiated privacy expectations and concerns of an undisclosed number of private businesses.

16. Furthermore, the Presiding Officer concluded that “even if there were a privacy interest in non-disclosure, that interest would be outweighed by the public interest in disclosure.” Therefore, the mistaken fact is inconsequential.

17. Beyond these alleged mistaken facts, Applicants have insufficiently identified any errors of fact, reasoning, or law in regards to the Presiding Officer’s determination that disclosure is in the public interest.

18. Applicants emphasize that the Business Directory will not be confidential forever. *Id.* ¶ 11. This is irrelevant. And to the extent Applicants emphasize this point to argue that the Order mistakenly concluded that there was a public interest in disclosure, this argument is unpersuasive.

19. As the hearing is ongoing, the parties in this docket and members of the public have a present interest in viewing all information that the Applicants and/or the Applicants’ witnesses have relied or reference in their testimony. This is particularly true in this proceeding, where public comment is still ongoing and must be considered by the SEC.

20. In short, absent a compelling, special circumstance, New Hampshire's right-to-know law favors disclosure. The Presiding Officer did not err in concluding no such special circumstances exist to warrant confidential treatment of the Business Directory.

**WHEREFORE**, the Forest Society respectfully requests that the Presiding Officer:


- A. Deny Applicants' Motion for Rehearing Order Denying Confidential Treatment of Business Directory; and
- B. Grant such further relief as he deems appropriate.

Respectfully Submitted,

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

By its Attorneys,  
BCM Environmental & Land Law, PLLC

Date: August 28, 2017

By:   
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Amy Manzelli, Esq. (17128)  
Jason Reimers, Esq. (17309)  
Elizabeth A. Boepple, Esq. (20218)  
Stephen W. Wagner, Esq. (268362)  
3 Maple Street  
Concord, NH 03301  
(603) 225-2585  
[manzelli@nhlandlaw.com](mailto:manzelli@nhlandlaw.com)

**CERTIFICATE OF SERVICE**

I hereby certify that on this day, August 28, 2017, a copy of the foregoing Objection was sent by electronic mail to persons named on the Service List of this docket.

  
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Amy Manzelli, Esq.