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January 22, 2018

**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 of Order Denying Applicants' Motion for Protective Order  
and Confidential Treatment**

Dear Ms. Monroe:

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

Please contact me should you have any questions or concerns.

Sincerely,

Thomas B. Getz

TBG:slb

cc: SEC Distribution List

Enclosure

**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 REHEARING OF ORDER DENYING APPLICANTS' MOTION  
FOR PROTECTIVE ORDER AND CONFIDENTIAL TREATMENT**

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 submit this Motion for Rehearing of the Presiding Officer’s December 22, 2017 Order Denying Applicant’s Motion for Protective Order and Confidential Treatment (“Motion for Rehearing”).

**I. Background**

1. On April 26, 2017, the Applicants filed a Motion for Protective Order and Confidential Treatment (“Confidentiality Motion”) in which the Applicants sought “to protect a very limited amount of information” contained in the report titled “An Evaluation of All UG Alternatives for the Northern Pass Transmission project.” Confidentiality Motion at 4. This limited information includes a pricing summary and itemized information detailing the overall cost prepared by the Applicants’ contractor.

2. On December 22, 2017, the Presiding Officer issued an Order Denying Applicant’s Motion for Protective Order and Confidential Treatment (“Order”) in which the Presiding Officer determined, among other things, that the Motion failed to demonstrate that the Applicants’ “alleged privacy interest outweighs the public interest in disclosure.” Order at 4. The Presiding Officer found that the Applicant did not sufficiently explain “what confidential

business interests or competitively sensitive information are at stake, nor how disclosure would invade the Applicant's privacy interest." *Id.* Finally, the Order states that the Applicants "make bare assertions regarding the potential impact of disclosure, concluding that disclosure would negatively impact the Applicant and its contractors' ability to compete in their respective markets and would unfairly disadvantage the Applicant in the upcoming Massachusetts RFP process." *Id.* The Applicants seek rehearing on the basis that the Order is inconsistent with prior rulings granting confidential treatment of comparable information, and thus amounts to an error of reasoning. The Applicants also seek rehearing on the basis that the Order undervalues the significance of the competitive and proprietary interests at stake and, therefore, misapplies the three-step analysis required to determine whether information should be exempt from public disclosure pursuant to the Right-to-Know law, RSA 91-A:5, IV.

## **II. Discussion**

3. The Applicants sought a protective order and confidential treatment for confidential business information including a pricing summary as well as a highly detailed itemization of Project cost components related to the cost of the underground segments of the Project. Confidentiality Motion at 2. The Applicants and their contractors have a privacy interest in protecting this confidential information. First, the Applicants, and by association their contractors, are competing in a highly competitive solicitation for the procurement of clean power in Massachusetts (the MA RFP"). Disclosure of the information the Applicants seek to protect can be used by NPT's competitors to secure a competitive advantage over NPT and its contractors in the MA RFP and future competitive solicitations.

4. The Presiding Officer determined that the Applicants' stated privacy interest "is too attenuated to warrant exclusion from disclosure" and that the "Applicant does not explain what confidential business interests or competitively sensitive information are at stake." Order at

3-4. However, the Presiding Officer goes on to note that the stated competitive interest alleged by the Applicants is that “disclosure would negatively impact the Applicants and its contractors’ ability to compete in their respective markets and would unfairly disadvantage the Applicant in the upcoming Massachusetts RFP process.” *Id.* at 4. Project costs and constituent pricing are core components of any competitive market. Therefore, it stands to reason that access to a competitor’s detailed project pricing information would benefit other competitors in the market. Importantly, detailed cost information of the sort the Applicants seek to protect is of no use to the public outside of this proceeding. Therefore, the public interest in disclosure of such confidential information is limited, and certainly does not inform the public of the activities and conduct of the government.

5. In addition, the information the Applicants seek to protect is similar to the class of information the Presiding Officer has previously determined should be exempt from public disclosure due to the competitive interest of the Applicants. For example, on October 19, 2015, the Applicants filed a Motion for Protective Order and Confidential treatment in which the Applicants requested that the SEC treat as confidential “all analysis and conclusions that may be used to inform the Applicant bidding strategy in the Tri-State Clean Energy RFP process.” *Motion for Protective Order and Confidential Treatment*, Docket No. 2015-06, (October 19, 2015), p. 5. Such information included “competitive information used to inform NPT’s bidding strategy in the Clean Energy RFP Process.” *Id.* at 7. The Applicants took the position that the information should be protected because its disclosure would “adversely affect both LEI’s ability to continue to compete in the market and NPT’s ability to compete against other projects submitted into the Clean Energy RFP process.” *Id.*

6. In granting confidential treatment for this information, the Presiding Officer ruled that the Applicants’ “interest in protecting said limited information is substantial, since the

Applicant is involved in bidding in the Tri-State Clean Energy RFP and disclosure of the information the Applicant seeks to protect may expose the Applicant's bidding strategy, may provide an unfair advantage to the Applicant's competitors, and may ultimately jeopardize the Applicant's ability to be awarded the bid." *Order on Motion for Protective Order and Confidential Treatment*, Docket No. 2015-06, (May 25, 2016), p. 11. The current information the Applicants seek to protect is similar in nature. Indeed, disclosure of this information will reveal information that NPT and its contractors' competitors will be able to use in responding to competitive solicitations as well as procuring competitive contracts in the normal course.

7. Given the competitive nature of the information the Applicants seek to protect, the Presiding Officer erred in determining that the public's interest in disclosure outweighs the Applicants' interest in protecting this information.

### **III. Conclusion**

8. 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.*, 117 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).

14. The Applicants have demonstrated good reason for rehearing. The Order found that the Applicants failed to demonstrate that the Applicants' privacy interest outweighs the public interest in disclosure. In fact, the Applicants privacy interest is substantial in that disclosure risks jeopardizing the Applicants' competitive position in the market. Conversely,

there is no public interest in disclosure and it does not inform the public of the activities and conduct of government. Therefore, the Applicants ask that the Presiding Officer find that the Applicants' interest in protecting this limited information outweighs the public's interest in disclosure.

WHEREFORE, the Applicants respectfully request that the Presiding Officer:

- A. Grant rehearing as requested herein; and
- B. Grant such further relief as is deemed just and appropriate.

Respectfully submitted,

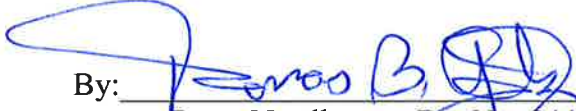
Northern Pass Transmission LLC and Public  
Service Company of New Hampshire d/b/a  
Eversource Energy

By Its Attorneys,

McLANE MIDDLETON,  
PROFESSIONAL ASSOCIATION

Dated: January 22, 2018

By:



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Certificate of Service

I hereby certify that on the 22<sup>nd</sup> of January, 2018, 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 Distribution List.



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Thomas B. Getz