

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

The Society for the Protection of New Hampshire Forests (the "Forest Society"), by and through its attorneys, BCM Environmental & Land Law, PLLC, respectfully requests that the Presiding Officer of the Site Evaluation Committee (the "SEC") deny the Motion of Northern Pass Transmission, LLC and Public Service Company of New Hampshire d/b/a Eversource Energy (collectively, the "Applicant") for Rehearing of Order Denying Applicants' Motion for Protective Order and Confidential Treatment (the "Motion for Rehearing"). The Forest Society states as follows in support of its Objection:

1. Applicant's filed a Motion for Protective Order and Confidential Treatment Evaluation of Underground Alternatives on April 6, 2017 (the "Motion for Protective Order"). The Forest Society objected.

2. In the Motion, Applicant claimed a privacy interest in the purportedly propriety information of its contractors' pricing summaries and itemizations of overall costs concerning underground alternatives.

3. On December 22, 2017, the Presiding Officer denied the Applicant's Motion for Protective Order, correctly concluding that the Applicant's purported privacy interest is too

attenuated to warrant exclusion from disclosure per RSA 91-A:5. *Order Denying Applicant's Motion for Protective Order and Confidential Treatment*, at 3-4 (Dec. 22, 2017). It further noted that Applicant failed to explain what confidential business interests or competitively sensitive information is at stake or how disclosure would invade the Applicant's privacy interest. *Id.* It concluded Applicant offered nothing more than bare assertions concerning potential impacts to its and its contractors' ability to compete in the Mass RFP and other similar processes. *Id.* Finally, it held that Applicant failed to demonstrate the privacy interest outweighed the public interest in disclosure. *Id.*

4. A party may apply for 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. RULES, Site 202.29(d).

6. The purpose of the motion for 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) (quotation marks omitted).

7. The Applicant has failed to satisfy this standard. The Presiding Officer should deny the Motion for Rehearing for the following reasons.

8. First, the record in this matter already closed on December 22, 2017, and “no other evidence, testimony, exhibits, or arguments shall be allowed into the record,” except in limited circumstances not applicable here. N.H. CODE ADMIN. Rules, Site 202.26.

9. Second, in its Motion for Rehearing, Applicant does nothing more than repeat arguments already made in its original Motion for Protective Order and ask for a different outcome. It identifies no mistake of fact or error of law. Rather, it alleges the Presiding Officer committed an error of reasoning and undervalued the purported privacy interest.

10. Specifically, Applicant argues the Presiding Officer committed an error of reasoning when it ignored prior rulings in this docket that granted confidential treatment of comparable information and when it undervalued the significance of the competitive and proprietary interests at stake and, therefore, misapplied the three-step analysis required to determine if information should be excluded from disclosure. *Motion for Rehearing*, at 2.

11. The portion of the prior ruling Applicant cites, *Order on Motion for Protective Order and Confidential Treatment*, at 11 (May 25, 2016), granted confidential treatment of a very limited portion of information in Ms. Julia Frayer’s report that included documents relating to the “assumptions of wholesale power market simulations and related information contained in discussions of ‘stress tests’ conducted by Ms. Frayer.” This information is far more specific and potentially proprietary than the pricing summary and itemized costs at issue here. The former clearly contains analysis and results of tests whereas the latter is little more than a breakdown of anticipated costs. Because the order concerns dissimilar information contained in completely different reports, the Presiding Officer was not bound by it and did not err in its decision on the Motion for Protective Order.

12. Moreover, Applicant’s argument that this will impinge its ability to compete in the Mass RFP is now moot because Applicant was awarded the Mass RFP.

13. Further, Applicant has not corrected its original flaw: it has still not explained how a pricing summary is proprietary business information that will negatively impact its competitiveness in the Mass RFP or similar processes.

14. As to Applicant's claim that the Presiding Officer erred in its balance of the purported privacy interest and the public interest in disclosure, Applicant has done nothing more than to reassert its prior arguments. This is not a sufficient basis for granting a rehearing.

15. In short, the Presiding Officer committed no error of reasoning and should deny the Motion for Rehearing.

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


- A. Deny Applicant's Motion for Rehearing of Order Denying Applicants' Motion for Protective Order and Confidential Treatment; and
- B. Grant such further relief as deemed appropriate.

Respectfully Submitted,

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

By its Attorneys,
BCM Environmental & Land Law, PLLC

Date: February 1, 2018

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CERTIFICATE OF SERVICE

I hereby certify that on this day, February 1, 2018, a copy of the foregoing Objection was sent by electronic mail to persons named on the Service List of this docket.



Amy Manzelli, Esq.