

**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**

December 13, 2016

**ORDER ON APPLICANT'S FURTHER MOTION FOR
CONFIDENTIAL TREATMENT**

I. Background

On October 19, 2015, Northern Pass Transmission LLC and Public Service Company of New Hampshire d/b/a Eversource Energy (collectively Applicant) submitted an Application to the New Hampshire Site Evaluation Committee (Committee) for a Certificate of Site and Facility (Application) to construct a 192-mile transmission line. The transmission line is proposed to have a capacity rating of up to 1,090 MW, and to run through New Hampshire from the Canadian border in Pittsburg to Deerfield.

On May 25, 2016, the Presiding Officer issued an Order on Motion for Protective Order and Confidential Treatment (Confidentiality Order) that granted, on a temporary basis, the Applicant's request to protect certain information redacted from the pre-filed testimony of Julia Frayer and the report titled, "Cost-Benefit and Local Economic Impact Analysis of the Proposed Northern Pass Project," prepared by London Economics International LLC (LEI Report). The Confidentiality Order required the Applicant to "advise the Subcommittee when the Tri-State Clean Energy RFP bid and award process has concluded and ... either disclose the unredacted versions of Ms. Frayer's pre-filed testimony and ... [the LEI Report], or file a further motion seeking confidential treatment of said documents." Confidentiality Order, p. 12.

On October 28, 2016, the Applicant filed its Further Motion for Confidential Treatment. The International Brotherhood of Electrical Workers assents to the Applicant's Motion. The Society for the Protection of New Hampshire Forests (Forest Society), the NGO Intervenors, and Municipal Group 3 (South) objected.

II. Standard

A state agency must undertake a three step analysis to determine whether information should be exempt from public disclosure pursuant to the Right to Know law, RSA 91-A:5, IV. *See Lambert v. Belknap County*, 157 N.H. 375, 382-383 (2008); *Lamy v. Pub. Utils. Comm'n*, 152 N.H. 106, 109 (2005). The first prong of the analysis is to determine if the Applicant has identified a privacy interest. *Lambert*, 157 N.H. at 382. If a privacy interest is invoked then the agency must assess whether there is a public interest in disclosure. *Id.* Disclosure should inform the public of the activities and conduct of the government. *Id.* at 383. If disclosure does not serve that purpose then disclosure is not required. *Id.* Finally, when there is a public interest in disclosure, that interest is balanced against any privacy interests in non-disclosure. *Id.*

III. Positions of the Parties

A. Applicant

The Applicant requests further confidential treatment of the redacted portions of Ms. Frayer's pre-filed testimony and the LEI Report. Through its Further Motion for Confidential Treatment, the Applicant advised the Subcommittee that on October 24, 2016, the Applicant was notified that the Project was not chosen as part of the Tri-State Clean Energy RFP process. The Applicant states that it intends to take part in the RFP process that will be conducted in Massachusetts pursuant to House Bill No. 4568 (H. 4568), *An Act Relative to Energy Diversity*, which was enacted August 8, 2016 (Massachusetts RFP process). The

Applicant advises that pursuant to H. 4568, Massachusetts electric distribution companies must enter into long term contracts for clean energy generation, including 1,200 MW of hydropower or other renewable sources, no later than April 1, 2017. The Applicant requests that the pre-filed testimony of Ms. Frayer, the LEI Report, and all discovery and other materials associated with those documents, be maintained as confidential for the same reasons set forth in the Confidentiality Order. Specifically, the Applicant is requesting continued protection because it will be involved in a competitive bidding process. The Applicant argues that “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.” Confidentiality Order, p. 11.

The Applicant submits that no parties will be prejudiced by continued treatment of the redacted portions of Ms. Frayer’s testimony and the LEI Report as confidential. The Applicant notes that it has entered into confidentiality agreements with every party that has expressed an interest in doing so and has routinely provided confidential materials to the covered parties. The Applicant indicates that, at present, sixteen groups have signed confidentiality agreements and nine groups have not. Finally, the Applicant notes that its October 21, 2016, Motion for Clarification and/or Rehearing of Order(s) Requiring Production of Documents Related to the Clean Energy RFP is pending.¹ The Applicant argues that documents related to the Clean Energy RFP process would only be relevant to this proceeding in the event that the Project were a winning bidder, and that since the Project was not selected, such documents are not relevant and need not be produced through discovery.

¹ The Applicant’s Motion for Clarification and/or Rehearing of Order(s) Requiring Production of Documents Related to the Clean Energy RFP is addressed by a separate order being issued today.

B. Forest Society

The Forest Society objects to further confidential treatment of information redacted from Ms. Frayer's pre-filed testimony and the LEI Report. The Forest Society argues that in balancing the public interest in disclosure against any privacy interests in non-disclosure, the balance tips in favor of disclosure. The Forest Society notes that RSA 162-H places great value on public interest and public participation, and that the Applicant has thus far successfully kept as much of Ms. Frayer's testimony and the LEI Report from the parties and the public as it possibly could. The Forest Society submits that Ms. Frayer's testimony and the LEI Report are the primary, if not only, evidence in the Application presenting the purported financial benefits of the Project. The Forest Society submits that with the Clean Energy RFP completed and the Project not selected, the Applicant's privacy interest has greatly diminished and that full and complete disclosure must occur "well before the eve of adjudicative hearings, during the hearings, or after the hearings." Objection, p. 4.

The Forest Society expresses its concern that if confidential treatment is extended and the Project is not chosen as a result of the Massachusetts RFP process, the Applicant may again seek an extension of confidential treatment. The Forest Society argues that, for intervenors who have signed confidentiality agreements, working within the confines of the confidentiality agreements, is unnecessarily limiting in ways that strain the Forest Society's due process rights. The Forest Society notes that operating within the restrictions of a confidentiality agreement limits the people with whom the "confidential" information may be shared, makes the sharing process cumbersome, and prohibits the Forest Society from discussing the information with anyone that has not signed a confidentiality agreement.

IV. Analysis

The Presiding Officer's decision to temporarily grant confidential treatment to the redacted portions of Ms. Frayer's pre-filed testimony and the LEI Report in the May 25, 2016, Confidentiality Order was premised, in large part, on the Applicant's substantial interest in protecting competitively sensitive information. As noted in the Confidentiality Order, the Applicant was involved in bidding in the Tri-State Clean Energy RFP and disclosure of the information the Applicant sought to protect may have exposed the Applicant's bidding strategy, may have provided an unfair advantage to the Applicant's competitors, and may ultimately have jeopardized the Applicant's ability to be awarded the bid. Those same principles warrant an extension of confidential treatment during the Massachusetts RFP process.

That said, the public interest in obtaining Ms. Frayer's pre-filed testimony and the LEI Report is indisputable and significant, as the Applicant cites Ms. Frayer's pre-filed testimony and the LEI Report in support of the assertion that the Project will have a positive impact on the environment and economy of the State. The Applicant has noted that it has routinely provided confidential materials to those parties that have entered into confidentiality agreements, and such materials have been ordered to be provided to those parties pursuant to the Order on Applicant's Motion for Clarification and/or Rehearing of Order(s) Requiring Production of Documents Related to the Clean Energy RFP addressed in a separate order being issued today.

Therefore, the Applicant's request is granted in part and denied in part. The Applicant's request to further protect the redacted information in Ms. Frayer's pre-filed testimony and the LEI Report from public disclosure is granted on a temporary basis. The Applicant must provide such information to parties that have entered into confidentiality agreements with the Applicant. The Applicant shall advise the Subcommittee when the Massachusetts RFP process has

concluded. At that time, the Applicant shall either disclose the unredacted versions of Ms. Frayer's pre-filed testimony and the LEI Report, or file a further motion seeking confidential treatment of the information.

This Order shall supersede all prior orders on this issue.

SO ORDERED this thirteenth day of December, 2016.



Martin P. Honigberg, Presiding Officer
NH Site Evaluation Committee