

**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**

August 10, 2017

**ORDER ON APPLICANT'S MOTION FOR PROTECTIVE ORDER AND
CONFIDENTIAL TREATMENT OF RENEWABLE PROPERTIES, INC., AND
BAYROOT LLC GROUND LEASE AGREEMENT**

This Order grants the Applicant's Motion for Protective Order and Confidential Treatment of Renewable Properties, Inc., and Bayroot LLC Ground Lease Agreement.

I. Background

On June 20, 2017, the Applicant filed a Motion for Protective Order and Confidential Treatment of the Ground Lease Agreement between Renewable Properties, Inc., and Bayroot LLC. The Applicant seeks an order regarding the Ground Lease Agreement with Bayroot LLC (Bayroot). The Deerfield Abutters; Non-Abutters Stark to Bethlehem, Municipal Group 2, and Whitefield-Bethlehem Abutters oppose the Motion. The Cities of Berlin and Franklin do not object.

II. Standard of Review

A state agency must undertake a three step analysis to determine whether information should be exempt from public disclosure under 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 nondisclosure. *Id.*

III. Discussion and Findings

The Applicant argues the Lease contains confidential, commercial or financial information and is exempt from disclosure. Specifically, the Applicant requests confidential treatment of, and a protective order for, proprietary business information as it relates to specific confidential terms of the Lease and confidential financial information relating to the Lease payments from Renewable Properties, Inc., to Bayroot. By way of example, the Applicant notes that Article III of the Lease sets forth the initial Lease term payments and additional payments based on other contingencies. The Applicant contends it has a privacy interest in protecting the confidential commercial and financial business information that underlie the terms of the Lease, including the payment structure. The Applicant asserts that disclosure will not provide the public with necessary or beneficial information, may negatively affect the Applicant, and may unnecessarily subject Bayroot and its affiliates to other adverse business impacts. The Applicant argues that, if there is a public interest in disclosure of the proprietary business information in the Lease, it does not outweigh the interest in protecting competitively sensitive commercial or financial information. The Applicant submits that it has provided a copy of the Lease to all parties in this docket that have signed confidentiality agreements consistent with the Order on Motions to Compel dated September 22, 2016.

New Hampshire's Right to Know Law provides that governmental records, as defined in RSA 91-A:1-a, are generally made available for public inspection. RSA 91-A:4. Certain information and/or records are exempt, including "confidential, commercial, or financial

information ... and other files whose disclosure would constitute invasion of privacy.”

RSA 91 A:5, IV. The Applicant contends that the information in the Lease falls within this exemption.

The Applicant has demonstrated that the information in the Lease constitutes confidential, commercial, or financial information, the disclosure of which would constitute an invasion of privacy. The public interest in disclosing the terms of the Lease is minimal, and the Applicant has provided the Lease to the parties in this docket that signed confidentiality agreements. Any interest in public disclosure is outweighed by the privacy interests of the Applicant, Renewable Properties, Inc., and Bayroot. Under these circumstances, disclosure is not warranted.

The Applicant’s Motion is granted consistent with the terms of the prior protective orders issued in this docket. *See* Order on Motion for Protective Order and Confidential Treatment (May 25, 2016); Order on Motion for Rehearing (Order on Motion for Protective and Confidential Treatment) (July 28, 2016); Order on Joint Motion for Protective Order and Confidential Treatment (March 13, 2017); Order Granting Applicant’s Motion for Protective Order and Confidential Treatment Regarding Certain Exhibits (June 30, 2017).

SO ORDERED this tenth day of August, 2017.



Martin P. Honigberg, Presiding Officer
Site Evaluation Committee