

**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 4, 2017

**ORDER ON APPLICANT'S SUPPLEMENTAL MOTION FOR
PROTECTIVE ORDER AND CONFIDENTIAL TREATMENT
REGARDING CERTAIN EXHIBITS ON HISTORIC SITES**

This Order grants the Applicant's Supplemental Motion for Protective Order and Confidential Treatment Regarding Certain Exhibits on Historic Sites (Motion).

I. Background

On April 24, 2017, the Applicant filed a Motion for Protective Order and Confidential Treatment Regarding Certain Exhibits, seeking a protective order and confidential treatment of the Applicant's Exhibits 108, 109, 110, 112, 119, and 124 containing information related to: (1) archeological reports; (2) historic sites; and (3) native plants, animals, and natural communities.

On June 30, 2017 an Order was issued granting the motion.

On July 21, 2017, the Applicant, without objection, filed a Supplemental Motion for Protective Order and Confidential Treatment Regarding Certain Exhibits on Historic Sites.

II. Standard of Review

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. Analysis

In the initial Motion, the Applicant requested a protective order for confidential treatment of, among other things, certain exhibits regarding historic sites that were produced pursuant to the ongoing consultation process under Section 106 the Historic Preservation Act of 1966, and listed in Applicant's Exhibit List as Exhibits 108, 109, 110, 112, and 119. The Applicant argued that the U.S. Department of Energy (DOE), the agency responsible for carrying out the Section 106 process for the Project, issued confidential/sensitive information guidance for the consulting parties to the Section 106 process that precludes distribution of work product documents and communications arising out of that process to non-consulting parties. The Order established the process for allowing the parties access to the exhibits while maintaining confidentiality.

The Applicant now seeks to extend that same confidential and protective treatment to additional documents submitted in this docket. Specifically, the Applicant seeks confidential treatment and a protective order for materials contained within the following: Applicant's Exhibits 109a, 110a, 112a, and 113a which are updates to, and contain similar types of confidential information as, Exhibits 109, 110, and 112, respectively; and Applicant's Exhibit 182, a Cultural Landscape Report that was produced during the Section 106 process. The Applicant also requests that additional Section 106 consulting party documents, which will be

completed and provided in this docket– consisting of above ground resource inventory forms, cultural landscape reports, and effect tables for those properties – be treated in the same fashion.

The Applicant’s request for an order consistent with the terms and conditions contained in the prior Order, allowing parties access to the confidential materials in the same manner as consulting parties are allowed access in the Section 106 process, is reasonable. The information contained in the Applicant’s Exhibits 109a, 110a, 112a, 113a, and 182, as well as future documents provided in this docket relating to the Section 106 process, are to be afforded confidential treatment and a protective order consistent with the conditions set forth in the Order issued on June 30, 2017. If any party to this docket seeks disclosure of these exhibits, they may follow the procedures set forth in that Order.

SO ORDERED this fourth day of December, 2017.



Martin P. Honigberg, Presiding Officer
Site Evaluation Committee