

**1STATE 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 22, 2017

**ORDER DENYING APPLICANT’S MOTION FOR PROTECTIVE ORDER
AND CONFIDENTIAL TREATMENT**

This Order denies the Applicant’s Motion for Protective Order and Confidential Treatment Evaluation of Underground Alternatives.

I. Background

On April 6, 2017, the Applicant filed a Motion for Protective Order and Confidential Treatment Evaluation of Underground Alternatives. The Society for the Protection of New Hampshire Forests and the Environmental NGOs object.

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 and Findings

The Applicant requests confidential treatment of, and a protective order for, alleged proprietary and confidential business information relating to the evaluation of underground alternatives for the proposed Project. Specifically, the Applicant argues that Appendix B of the report, titled: “An Evaluation of All UG Alternatives for the Northern Pass Transmission Project,” includes a pricing summary, and Appendix C of the same report, providing an itemized breakdown of the elements of the overall cost prepared by the Applicant’s contractor contains confidential business information.

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. The Applicant contends that “the terms ‘commercial or financial’ encompass information such as business sales statistics, research data, technical designs, overhead and operating costs, and information on financial condition.” Applicant’s Motion for Protective Order and Confidential Treatment, p. 2 (quoting *Union Leader Corp. v. New Hampshire Housing Finance Authority*, 142 N.H. 540, 553 (1997)).

The Applicant argues that it has a privacy interest in protecting the proprietary and financial business information that underlies the cost estimates for underground construction provided in Table 1 of its report and that disclosure of this information will not provide the public with information that is necessary or beneficial and would only serve to negatively impact the Applicant as well as the ability of the Applicant’s contractors to compete in their respective markets. The Applicant argues that publication of the information contained in Appendix B of

the report would provide an unfair advantage to the Applicant's competitors and would unfairly disadvantage the Applicant in the upcoming Massachusetts RFP process without providing any meaningful or useful information to members of the public. The Applicant also asserts that disclosure of the information contained in Appendix C would result in an unfair advantage to competitors of the Applicant's contractor. The Applicant submits that it seeks to protect a very limited amount of information from the report and to the extent that there is a public interest in disclosure of this proprietary business information, it is not significant enough to outweigh the interest in keeping competitively sensitive business methodologies and calculations confidential.

To warrant exemption from public disclosure, the Applicant must first identify a privacy interest at stake that would be invaded by disclosure. *See Lambert*, 157 N.H. at 382-83; *Lamy*, 152 N.H. at 109. If no privacy interest is at stake, the Right-to-Know Law mandates disclosure. *Id.* at 383. If a privacy interest is invoked, then the Presiding Officer 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.* If the information 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.* The New Hampshire Supreme Court has explained that, to advance the purposes of the Right-to-Know Law, provisions favoring disclosure are construed broadly, while exemptions are narrowly construed. *Lambert*, 157 N.H. at 379 (citations omitted); *Lamy*, 152 N.H. at 108.

The Applicant's purported privacy interest is too attenuated to warrant exclusion from disclosure pursuant to RSA 91-A:5. The Applicant asserts a privacy interest in the purportedly proprietary information of their contractors. The Applicant specifically seeks to exempt from disclosure pricing summaries and itemizations of overall cost prepared by the Applicant's

contractors. While the Applicant argues that “business confidential information” is contained in the documents sought to be excluded from the public, the Applicant does not explain what confidential business interests or competitively sensitive information are at stake, nor how disclosure would invade the Applicant’s privacy interest. Rather, the Applicant makes 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.

The Motion fails to demonstrate that the Applicant’s alleged a privacy interest outweighs the public interest in disclosure. The Applicant’s Motion for Protective Order and Confidential Treatment is denied.

SO ORDERED this twenty-second day of December, 2017.



Martin P. Honigberg, Presiding Officer
Site Evaluation Committee