

**STATE OF NEW HAMPSHIRE
SITE EVALUATION COMMITTEE**

Docket No. 2019-02

Application of Chinook Solar, LLC for a Certificate of Site and Facility

May 8, 2020

**ORDER ON MOTION FOR PROTECTIVE ORDER AND CONFIDENTIAL
TREATMENT AND SUPPLEMENTAL MOTION
FOR PROTECTIVE ORDER AND CONFIDENTIAL TREATMENT**

This Order grants a Motion for Protective Order and Confidential Treatment and a Supplemental Motion for Protective Order and Confidential Treatment filed by Chinook Solar, LLC.

I. Background

On October 18, 2019, Chinook Solar, LLC (Chinook) filed an Application for a Certificate of Site and Facility (Application) with the Site Evaluation Committee (Committee) seeking to site, construct and operate a 30-megawatt (MW) solar energy generation facility and associated civil and electrical infrastructure in Fitzwilliam in Cheshire County. The proposed Project will be located on approximately 513 acres south of NH State Route 119, east of NH State Route 12, and west of Fullam Hill Road.

Chinook filed a Motion for Protective Order and Confidential Treatment (Motion) with its Application. On February 20, 2020, Chinook filed a Supplemental Motion for Protective Order and Confidential Treatment (Supplemental Motion). No objections were filed.

II. Position of the Petitioner

In its Motion, Chinook seeks a protective order prohibiting public disclosure of the following appendices included in the Application: Appendix 12B; and Appendices 14A and 14C. Chinook claims that Appendix 12B contains sensitive financial information including a *pro*

forma balance sheet for Chinook as of August 31, 2019. Appendices 14A and 14C contain Phase IA and Phase IB archeological reports, respectively.

In support of its Motion, Chinook argues that Appendix 12B contains confidential financial information that is exempt from disclosure under RSA 91-A:5, IV. Chinook also argues that in prior cases, the Committee has issued protective orders prohibiting public disclosure of *pro forma* financial statements similar to that contained in Appendix 12B. Similarly, Chinook argues that RSA 227-C:11, contains a provision requiring the confidential treatment of the location of archeological sites and that the Committee has long recognized the need to keep this information confidential.

In its Supplemental Motion, Chinook explained that it discovered that pages 56 and 57 of the Application and Appendix 15C, contain information related to the status, location and distribution of rare, threatened and endangered wildlife species, native plants and natural communities. Chinook submitted redacted versions of pages 56 and 57 of the Application, and Appendix 15C with the Supplemental Motion. Chinook cites RSA 217-A:2, RSA 212-A:3, and RSA 212-B:2, as supporting the redaction of the information to protect the disturbance, taking or abuse of rare, threatened or endangered wildlife species, native plants and natural communities.

III. Standard of Review

Documents filed in support of an application for a certificate of site and facility are public records as defined by the New Hampshire Right to Know law, RSA 91-A. In various dockets, the Site Evaluation Committee has received requests to issue a protective order to limit public disclosure of filed documents. Even when no party objects to the request, the agency must make an independent judgment as to whether the request should be granted. When considering such requests, a state agency must undertake a three-step analysis to determine whether information

should be exempt from public disclosure under 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).

IV. Analysis

The first prong of the RSA 91-A 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.*

First, Chinook argues that Appendix 12B contains confidential financial information that is exempt from disclosure under RSA 91-A:5, IV. RSA 91-A:5, IV specifically exempts “confidential, commercial, or financial information.”

The pro forma financial documents include information about internal and external financing, as well as the nature and duration of debt anticipated to be incurred to construct and operate the proposed facility. Such confidential financial data has routinely been found to establish a privacy interest and fall within the exemption to RSA 91-A:5, IV. Chinook correctly notes that in prior cases the Committee has issued protective orders prohibiting public disclosure of pro forma financial documents similar to that contained in Appendix 12-B. RSA 91-A:5, IV.¹

The public interest in disclosure of the specific confidential financial information contained in the pro forma statement is minimal. As provided in the Application, Chinook is an indirect subsidiary of NextEra Energy Resources, LLC which itself is a subsidiary of NextEra Energy, Inc., a publicly traded company whose financial records are publicly reported and from

¹ Going forward, such requests should include the RSA 91-A analysis and not merely reference prior orders.

which the overall financial status of NextEra Energy as a whole can be determined. However, the public disclosure of the financial information contained in Appendix 12B could reveal details that could put Chinook at a competitive disadvantage. The privacy interest of Chinook in non-disclosure outweighs any interest the public may have in disclosure of the contents of Appendix 12B. Accordingly, the Motion is granted as to Appendix 12B.

Second, Chinook argues that under RSA 227, the New Hampshire Historic Preservation Act, all information that may identify the location of archeological sites must remain confidential and the disclosure of such information is exempt from RSA 91-A. Chinook's consultant prepared the Phase IA and Phase IB archeological assessments. Portions of the assessments identify locations in New Hampshire where sensitive archeological resources are located.

In addition to RSA 91-A:5, which provides that records pertaining to confidential information are exempt from public disclosure, RSA 227-C:11, exempts information identifying the location of archeological sites "from all laws providing rights to public access." Information regarding archeological resources is similarly protected under federal law.

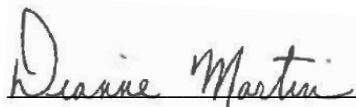
See 16 U.S.C. § 470hh(a).

Archeological sites are considered among the "most important environmental assets of the state." RSA 227-C:1-a. The statute recognizes that social and economic development threatens such assets and recognizes the need for protection. *Id.* Understanding the importance ascribed to archeological resources by the legislature and the need to protect such resources, archeological data qualifies as confidential information under RSA 91-A:5, IV. Any public benefit of disclosing the archeological information in the Phase IA and Phase IB reports is minimal and disclosure would be detrimental to the public interest in protecting archeological

resources. Accordingly, the Motion is granted as to all information contained in the Phase IA and Phase IB archeological assessments.

Lastly, the Supplemental Motion seeks redaction of information that discloses the location of rare threatened and endangered species, plants and natural communities. RSA 217-A, the Native Plant Protection Act; RSA 212-A, the Endangered Species Conservation Act; and RSA 212-B, the Nongame Species Management Act, set out State policy that rare, endangered and threatened species, plants, and natural communities should be protected and that the State must assist in protecting these resources. As with archeological resources, the State has an important interest in protecting natural resources that are rare, threatened or endangered. The public benefit of disclosing the information regarding the location of such resources on Pages 56 and 57 of the Application and Appendix 15C is minimal and disclosure would be detrimental to the public interest in protecting these natural resources. Accordingly, the Supplemental Motion is granted for the redacted portions of Pages 56 and 57 of the Application and Appendix 15C.

SO ORDERED this eighth day of May 2020.



Dianne Martin, Presiding Officer
Site Evaluation Committee