

**STATE OF NEW HAMPSHIRE  
SITE EVALUATION COMMITTEE**

**Docket No. 2019-03**

**Antrim Level LLC  
Petition for Declaratory Ruling or, in the Alternative,  
Motion for Expedited Approval of Change in Ownership Structure**

**November 7, 2019**

**ORDER ON MOTION FOR PROTECTIVE ORDER**

This Order grants a Motion for Protective Order filed by Antrim Level LLC.

**I. Background**

On September 17, 2019, Antrim Level LLC filed a petition for declaratory ruling requesting that the Site Evaluation Committee (Committee) rule that a tax equity financing arrangement between Antrim Level and Citicorp North America, Inc. (Citi) does not require the Committee's approval. In the alternative, the Petitioner requested that the Committee approve the corporate restructuring required for the tax equity financing arrangement.

On October 17, 2019, the Petitioners filed a Motion for Protective Order. No objections were filed.

**II. Position of the Petitioner**

Antrim Level seeks a protective order and confidential treatment for the Equity Capital Contribution Agreement ("Agreement") and argues that the Agreement contains confidential, financial, and commercially sensitive proprietary information. Antrim Level claims that its privacy interest in nondisclosure of the Agreement is high because public disclosure of this information would place Antrim Level, TransAlta, and other contracting parties at a competitive disadvantage. Antrim Level claims that the public interest in disclosure of the Agreement is low as compared to the privacy interest in non-disclosure because the Agreement pertains to a limited transaction; the Intervenors in this docket

can review and address the Agreement subject to the requirements of the protective order; and the public interest in obtaining the information will be satisfied by providing the Agreement to Counsel for the Public.

## **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. Analysis**

The Agreement contains confidential, financial, and commercially sensitive proprietary information. The Petitioner's privacy interest in protecting the Agreement is high where public disclosure of the Agreement may place Antrim Level, TransAlta and their contracting parties at a competitive disadvantage. Public interest in disclosure of the Agreement is limited and will be satisfied by disclosure to the Intervenors and Counsel for the Public subject to a protective order. The privacy interest in nondisclosure of the Agreement outweighs the general public interest in its disclosure. The Petitioner's Motion for Protective Order is granted.

## **IV. Treatment of Confidential Information**

The Agreement shall be treated as confidential subject to this Order and shall not be disclosed to the public.

The Agreement will be available for review by the members of the Subcommittee without the need to sign a confidentiality agreement.

The Agreement will be available for review by Counsel for the Public and its expert, if any, without the need to sign a confidentiality agreement. Counsel for the Public and its expert, if any, shall treat the Agreement with confidentiality.


Any party seeking access to the Agreement must execute a confidentiality agreement in the form attached.

The parties shall not make any copies of the Agreement or use the information for purposes other than in the preparation for, and participation in, the proceedings in this docket.

Unless otherwise ordered, the parties shall not reference the Agreement during public proceedings in this docket or at any time in public. Upon completion of this proceeding and any resulting appeals, the parties shall destroy any notes referencing the Agreement. Within sixty days thereafter, each party shall certify to Antrim Level's counsel that said notes have been destroyed. The rights of the parties under this Order are not assignable and may not be transferred in any manner.

Individual members of Antrim Board of Selectmen, and the Antrim Residents may review the Agreement at either the Antrim Town Hall or at the offices of McLane Middleton, PA in Concord, New Hampshire, upon execution of the confidentiality agreement and shall comply with confidentiality requirements in this Order.

SO ORDERED this seventh day of November, 2019.

  
Kathryn M. Bailey, Presiding Officer  
Site Evaluation Committee

**EXHIBIT A**

**STATE OF NEW HAMPSHIRE  
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**Confidentiality Agreement**

I, \_\_\_\_\_, hereby certify that I am a Party to the above-captioned proceeding and in connection with my interests therein, I request access to the Equity Capital Contribution Agreement filed in this docket.

I further certify that I have read the Protective Order issued by the Presiding Officer in the above-captioned matter, understand it, and agree to be bound by it. I understand that this Exhibit A does not authorize my access to the above cited confidential information until I have signed and delivered this agreement to the Administrator of the Site Evaluation Committee.

Date: \_\_\_\_\_

\_\_\_\_\_  
Signature of Party