



THOMAS B. GETZ
Direct Dial: 603.230.4403
Email: thomas.getz@mclane.com
Admitted in NH
11 South Main Street, Suite 500
Concord, NH 03301
T 603.226.0400
F 603.230.4448

October 17, 2019

Pamela G. Monroe, Administrator
New Hampshire Site Evaluation Committee
21 South Fruit Street, Suite 10
Concord, NH 03301-2429

**Re: Docket No. 2019-03, Antrim Level LLC
Motion for Protective Order**

Dear Ms. Monroe:

Enclosed for filing please find a Motion for Protective Order for the 637-page Equity Capital Contribution Agreement referenced in the testimony of Brent Ward on behalf of Antrim Level LLC in the above-captioned proceeding. Because of the size and sensitivity of the document, enclosed is one hard copy and a thumb drive labelled confidential.

Please call me with any questions or concerns.

Sincerely,

A handwritten signature in blue ink that reads "Thomas B. Getz". The signature is stylized and cursive.

Thomas B. Getz

TBG:slb

cc: Service List

**THE STATE OF NEW HAMPSHIRE
SITE EVALUATION COMMITTEE**

SEC DOCKET NO. 2019-03

ANTRIM LEVEL LLC

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

Motion for Protective Order

Antrim Level LLC (“Antrim Level”), by and through its attorneys, McLane Middleton, Professional Association, respectfully requests that the Site Evaluation Committee (“SEC” or “Committee”) issue an order, pursuant to RSA 91-A:5, to protect confidential, commercial, and financial information comprising the Equity Capital Contribution Agreement (“ECCA”) referred to in the testimony of Brent Ward, Managing Director & Treasurer, TransAlta Corporation. In support of the Motion, Antrim Level states as follows.

1. Antrim Level seeks a protective order and confidential treatment for proprietary information, the disclosure of which would constitute an invasion of the privacy of the parties to the ECCA, namely, Bobcat Equity Holdings, LLC, TransAlta Holdings U.S. Inc, Bobcat Holdco, LLC, and Citicorp North America, Inc. (“Citicorp”). Among other things, the ECCA sets forth the terms and conditions under which Citicorp will invest in a renewable energy project by means of a tax equity financing, as well as the terms and conditions under which TransAlta will enter into such financing. The 637-page ECCA also includes an Amended and Restated Operating Agreement and numerous schedules and annexes.

2. Public disclosure of the terms and conditions set forth in the ECCA will affect the competitive positions of both TransAlta and Citicorp and put them at a disadvantage in the renewable energy marketplace with respect to potential future transactions. The ECCA contains

sensitive, proprietary information relative to the level of capital contributions, the allocation of capital accounts, the distribution of cash flow, the relative rights and responsibilities of the parties, administrative and tax matters, and other confidential contractual matters.

3. Governmental records, as defined by RSA 91-A:1-a, are generally made available for public inspection pursuant to the Access to Governmental Records and Meetings Statute (a.k.a. the Right-to-Know Law). See RSA 91-A:4 and N.H. Admin Rule Site 104.01. Pursuant to RSA 91-A:5, however, there are certain exemptions from the requirement that public agencies or public bodies produce government records, including “confidential, commercial, or financial information . . . and other files whose disclosure would constitute invasion of privacy.” Moreover, Site 104.01(b) provides that the presiding officer may protect documents that are exempt from disclosure pursuant to RSA 91-A:5.

4. Requests for confidential treatment in an SEC proceeding must meet the requirements as set forth by the New Hampshire Supreme Court in *Lambert v. Belknap County Convention*, 157 N.H. 375, 382 (2008) and *Lamy v. New Hampshire Public Utilities Commission*, 152 N.H. 106 (2005), which require 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 *Order on Unassented-To Motion for Protective Order and Confidential Treatment*, Application of Antrim Wind, SEC Docket No. 2012-01 (June 4, 2012). When engaging in the three-step analysis, the SEC must: (1) consider whether the applicant has identified a privacy interest; (2) whether there is a public interest in disclosure; and, (3) if there is a public interest in disclosure, balance that interest against any privacy interests in non-disclosure. *Id.*

5. The SEC has routinely recognized that confidential treatment should be granted to competitively sensitive or proprietary information under the RSA 91-A:5 exemption for “confidential, commercial, or financial information.” See, e.g., *Order on Pending Motions and Further Procedural Order, Application of Groton Wind, LLC*, NH SEC Docket 2010-01 (Dec. 14, 2010) (granting confidential treatment for financial statements and the applicant’s capacity factor profile).

6. Here Antrim Level has identified privacy interests that both it and Citicorp have in protecting the ECCA consistent with rulings the SEC has made with respect to confidential financial documents in prior Antrim proceedings.

A. In Docket No. 2012-01, *Application of Antrim Wind Energy, LLC for a Certificate of Site and Facility for a Renewable Energy Facility*, the SEC concluded that Antrim Wind Energy, LLC (“AWE”) (predecessor to Antrim Level) had “identified a *bona fide* privacy interest in its financial information” including its balance sheet and financial statements. *Order on Unassented-to Motion for Protective Order and Confidential Treatment*, p. 3 (June 4, 2012). The SEC also concluded that disclosure of the financial information “will do little to inform the public of the conduct or activities of the government.” *Id.* The SEC therefore granted protective treatment, finding that AWE’s privacy interest outweighed any public interest in disclosure.

B. In Docket No. 2015-02, *Application of Antrim Wind Energy, LLC for a Certificate of Site and Facility*, the SEC protected, among other things, AWE’s agreements with financing institutions, letters of interest from tax equity providers, and a *pro forma* financial statement, finding that disclosure would put AWE in “an unfavorable

competitive position.” *Order on Motion for Protective Order and Confidential Treatment*, p. 7 (July 6, 2016).

C. In Docket No. 2018-03, *Joint Petition of Walden Green Energy Northeast Wind LLC, Walden Antrim LLC, and Antrim Level LL for Approval of the Transfer of Membership Interests in Antrim Wind Energy LLC* (“Transfer Proceeding”), the SEC, protected confidential information, including an inter-company contribution agreement and funding commitments, concluding that the privacy interest in protecting confidential information is “high where public disclosure of the information may place Antrim Level, TransAlta and their contracting parties at a competitive disadvantage.” *Order on Motion for Protective Order and Confidential Treatment*, p. 3 (November 30, 2018). The SEC also concluded that the public interest in disclosure was limited and would be “satisfied by disclosure to the Intervenors and Counsel for the Public.” *Id.* Finally, the SEC found that the “private interest in nondisclosure...outweighs the public interest in...disclosure.” *Id.*

7. In summary, disclosure of the ECCA would unnecessarily subject Antrim Level and Citicorp to adverse financial or commercial impacts but will not provide the public with information that is necessary or beneficial, and, to the extent that there is any public interest in disclosure of the ECCA, it is not significant enough to outweigh the interest in protecting it.

8. Antrim Level therefore asks that the Presiding Officer issue a protective order consistent with the terms and conditions contained in prior orders, in particular, the Protective Order in the Transfer Proceeding at p. 4. Accordingly, Antrim Level agrees that the ECCA be available to Counsel for the Public and its expert, The Brattle Group, without the need to sign a confidentiality agreement. In addition, any party granted intervention with full rights of

participation pursuant to RSA 541-A:31 will be able to review the ECCA after they sign the non-disclosure agreement (“NDA”) provided as Attachment A.

WHEREFORE, the Applicants respectfully request that the Presiding Officer:

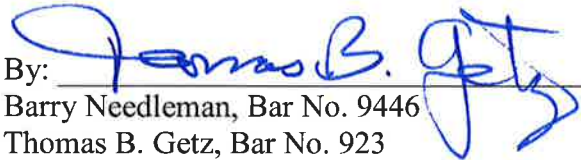
- A. Grant the Antrim Level’s request that the ECCA be treated as confidential;
- B. Issue a protective order as requested herein; and
- C. Grant such further relief as deemed appropriate.

Respectfully submitted,

Antrim Level LLC
By Its Attorneys,

McLANE MIDDLETON,
PROFESSIONAL ASSOCIATION

Dated: October 17, 2019

By: 
 Barry Needleman, Bar No. 9446
 Thomas B. Getz, Bar No. 923
 11 South Main Street, Suite 500
 Concord, NH 03301
 (603) 226-0400
 barry.needleman@mclane.com
 thomas.getz@mclane.com

Certificate of Service

I hereby certify that on the 17th of October, 2019, an original and one copy of the foregoing Motion was hand-delivered to the New Hampshire Site Evaluation Committee and an electronic copy was served upon the SEC Distribution List.


 Thomas B. Getz

SEC Docket No. 2019-03

Antrim Level LLC

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

Non-Disclosure Agreement

In order to preserve the confidentiality of the Equity Capital Contribution Agreement (“ECCA”) executed among Bobcat Equity Holdings, LLC, TransAlta Holdings U.S. Inc., Bobcat Holdco, LLC, and Citicorp North America, Inc., it is hereby agreed that any party that has been permitted by the SEC to intervene in the above-captioned proceeding, an “Intervenor” and, collectively, the “Intervenors,” may only receive Confidential Information pursuant to the terms of this Non-Disclosure Agreement (“NDA”):

1. All Confidential Information disclosed or provided in connection with the above-referenced matter (the “Matter”) shall be subject to this Confidentiality Agreement.
2. “Confidential Information” means any trade secret and/or confidential, private, business, financial, security, and/or proprietary information, regardless of the form or medium in which it is communicated, whether in written, graphic, electronic, or other format, including, without limitation, financial data, contracts, reports, memoranda, summaries, notes, extracts, compilations of any kind that contain or are derived from Confidential Information. Confidential Information does not include information that: (a) was in the public domain at the time it was communicated or disclosed in this Matter; (b) was already lawfully in the recipient’s possession prior to the disclosure in this Matter as confirmed by written record, and not the subject of this NDA; or (c) lawfully enters the public domain through no violation of this NDA.

3. “Disclose” or “Disclosure” of Confidential Information shall mean the transmission or communication of Confidential Information (or any document or material that contains, embodies, refers to or is based upon Confidential Information), directly or indirectly, in whole or in part, verbally or in writing, whether disclosure occurs through conversation, report, opinion, reference, discussion or other means.

4. Prior to Disclosure of a document containing Confidential Information, the document shall be marked as “Confidential.” All documents so marked or designated as Confidential shall be subject to this NDA unless otherwise agreed in writing.

5. No Confidential Information shall be Disclosed except as expressly authorized by this NDA. All persons receiving Confidential Information shall maintain the Confidential Information in strict confidence in order to prevent its Disclosure.

6. Confidential Information shall be used only for the purposes of the Matter and shall not be used for any other purpose whatsoever.

7. In the event that an Intervenor wishes to reference Confidential Information in pre-filed testimony, exhibits, or in any other filing or testimony in this Matter, it shall not do so publicly. An Intervenor who wishes to reference Confidential Information in pre-filed testimony, exhibits, or in any filing or testimony in this Matter shall assent to any motion filed by Antrim Level LLC with the New Hampshire Site Evaluation Committee for a Protective Order with respect to that Confidential Information. Further, an Intervenor who wishes to reference Confidential Information in pre-filed testimony, exhibits, or in any filing in this Matter shall segregate therefrom and file under seal any parts that reference Confidential Information.

8. Confidential Information shall be made available only to the following persons, in

the manner specified below and under the conditions that follow. An attorney engaged by an Intervenor in connection with this Matter to the extent necessary to facilitate his or her work in connection with this Matter, if he or she has filed an appearance in this Matter and executed this NDA, may receive one paper copy of Confidential Information but shall not share or provide a copy to any other person. The Antrim Town Administrator and members of the Board of Selectmen, if they separately sign this NDA, will be provided one paper copy of Confidential Information and shall not share or provide a copy to any other person. Other Intervenors, if they sign this NDA, may review the Confidential Information at the offices of McLane Middleton in Concord, New Hampshire, but shall not be permitted to copy, photograph, or otherwise record the Confidential Information.

9. The Antrim Town Administrator may discuss the Confidential Information with the Board of Selectmen. Except for confidential communications between the Town and its legal counsel, the Town shall not accept or incorporate Confidential Information into any governmental records or public records maintained by the Town. All documents containing un-redacted Confidential Information subject to this NDA shall not be considered governmental records or public records under RSA 91-A, provided, however, to the extent that un-redacted Confidential Information could be considered governmental or public records under RSA 91-A, such Confidential Information shall be deemed exempt from public disclosure as “confidential, commercial or financial information” under RSA 91-A: 5, IV.

10. As a condition precedent to receipt of Confidential Information, each person to whom Confidential Information is Disclosed pursuant to this NDA shall be required to read this Confidentiality Agreement and agree, in writing, to be bound by its terms and conditions prior to being given access to Confidential Information.

11. Upon a final determination of the Matter, any counsel or experts to whom Confidential Information has been disclosed pursuant to this NDA shall, within thirty (30) days thereafter, assemble and return to the undersigned counsel for Antrim Level LLC all Confidential Information, and shall certify that any electronic documents containing Confidential Information have been permanently deleted.

12. Upon a final determination of this Matter, any individual Intervenor to whom access to Confidential Information is provided pursuant to the terms of this NDA shall destroy any notes referencing or relating to the Confidential Information and shall, within thirty (30) days after a final determination of this Matter, certify to Antrim Level that they have done so.

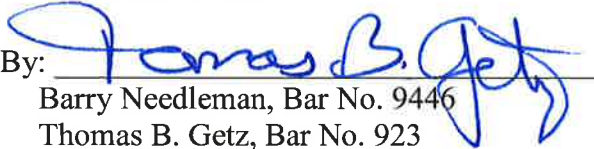
13. This NDA may be signed in counterparts, shall be governed by New Hampshire law, and shall be binding after the conclusion of the Matter.

ANTRIM LEVEL LLC

By its Attorneys,

MCLANE MIDDLETON, PROFESSIONAL
ASSOCIATION

Dated: October 17, 2019

By: 
Barry Needleman, Bar No. 9446
Thomas B. Getz, Bar No. 923
11 South Main Street, Suite 500
Concord, NH 03301
(603) 226-0400
barry.needleman@mclane.com
thomas.getz@mclane.com

TOWN OF ANTRIM

Dated: October ____, 2019

By: _____
Donna Hanson, Administrator
Town of Antrim
66 Main Street
PO Box 517
Antrim, NH 03440

Dated: October ____, 2019

By: _____
John Robertson, Chair, Selectboard

Dated: October ____, 2019

By: _____
Bob Edwards, Member, Selectboard

Dated: October _____, 2019

By: _____
Mike Genest, Member, Selectboard

OTHER SIGNATORIES AS APPLICABLE

Dated: October _____, 2019

By: _____

Dated: October _____, 2019

By: _____

Dated: October _____, 2019

By: _____