

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

DOCKET NO. SEC 2024-__

PORTLAND NATURAL GAS TRANSMISSION SYSTEM

Joint Petition to Change Ownership

PETITIONERS' MOTION FOR PROTECTIVE ORDER

AND CONFIDENTIAL TREATMENT

North Haven Infrastructure Partners III (AIV-B) SCSp, an affiliate of Morgan Stanley Infrastructure Inc. (“NHIP III”) and BlackRock Global Infrastructure Fund IV, SCSp, an affiliate of BlackRock Financial Management, Inc. (“BGIF IV,” together with NHIP III, the “Buyers”), TC Pipelines, LP, a Delaware limited partnership (“TCP”) and Northern New England Investment Company, Inc., a Vermont corporation (“NNEIC,” together with TCP, the “Sellers”) (Buyers and Sellers are collectively the “Petitioners”), by and through their undersigned attorneys, request that the Site Evaluation Committee (“SEC” or “Committee”) issue a protective order to preserve the confidentiality of certain information. In support of this Motion, the Petitioners state as follows:

I. INTRODUCTION

As set forth in the Joint Petition to Change Ownership (“Petition”), Petitioners are requesting approval of the proposed change of upstream partnership interests in Portland Natural Gas Transmission System (“PNGTS”). In support of the Petition, the Petitioners are submitting documents that contain “confidential, commercial, or financial information . . . whose disclosure would constitute invasion of privacy.” *See* RSA 91-A:5, IV. This information is protected from public disclosure pursuant to the Access to Governmental Records and Meetings Statute, more commonly referred to as the Right-to-Know Law, RSA 91-A. The Petitioners request that the

SEC issue a protective order and grant confidential treatment to (1) the Statements of Assets and Liabilities (Attachments 4 and 5 to the Petition), (2) the Transition Services Agreement (“TSA”) (Attachment 7 to the Petition), and (3) certain confidential, non-public financial information contained in the unredacted Pre-Filed Testimonies of Daniel Sailors and Mark Saxe.

II. LEGAL STANDARD

Governmental records are generally made available for public inspection. *See* RSA 91-A:4. There are, however, certain exemptions. One such exemption, referenced above, applies to “confidential, commercial, or financial information . . . and other files whose disclosure would constitute invasion of privacy.” RSA 91-A:5; *see also* N.H. Admin Rule Site 104.01(b) (authorizing the presiding officer or chairman of the SEC to protect documents that are exempt from disclosure pursuant to RSA 91-A:5).

In determining whether information should be deemed exempt from public disclosure, the SEC utilizes a three-step analysis. *Lambert v. Belknap County*, 157 N.H. 375, 382-83 (2008); *see also* *Lamy v. Pub. Utils. Comm’n*, 152 N.H. 106, 109 (2005). First, the SEC applies an objective standard to assess whether there is a privacy interest at stake that would be compromised by disclosure. *Lambert*, 157 N.H. at 382. Second, the SEC determines whether there is a public interest in disclosure. *Id.* at 383. In making that assessment, the SEC considers whether disclosure will inform the public of the activities and conduct of the government. *Id.* If disclosure does not serve that purpose, then disclosure is not required. *Id.* Third, even where the SEC finds there is a public interest in disclosure, that public interest must be balanced against the privacy interests in non-disclosure. *Id.*

III. ARGUMENT

A. Statements of Assets and Liabilities

The Buyers' respective Statements of Assets and Liabilities contain sensitive and confidential financial information that is not publicly available. Disclosure of such information would harm the Buyers by providing their competitors, vendors, and suppliers with access to this information, thereby placing Buyers at a substantial disadvantage in the marketplace.

The SEC has previously ruled that "information contained in *pro forma* financial statements is clearly financial information as contemplated by RSA 91-A:5, IV." Docket No. 2010-03, *Order on Assented-To Motion for Protective Order and Confidential Treatment*, January 19, 2011, at 2. The SEC has also found that a *pro forma* is highly confidential and could negatively affect the competitive interests of the Applicant if disclosed in public or to competitors, vendors, or suppliers." Docket No. 2012-01, *Order on Outstanding Motions*, August 22, 2012 at 4. In Docket No. 2021-03, regarding disclosure of a *pro forma*, the SEC found that "the privacy interest of the Joint Petitioners in non-disclosure outweighs any interest the public may have in disclosure of the unredacted *Pro Forma* Financial Statement"

B. Transition Service Agreement ("TSA")

The TSA governs the respective services and obligations of the Buyers and Sellers following closing of the transaction to ensure continuity in the operation and management of the PNGTS facilities. The TSA is a confidential private contract containing sensitive financial and commercial information. The ability of the Petitioners, and other similarly-situated parties, to do business in a highly competitive environment would be compromised by disclosure of such information and, moreover, disclosure may also provide an unfair advantage to competitors of the Petitioners who would otherwise not have access to these types of private contracts.

Conversely, there is no discernible public interest in the disclosure of the confidential terms of the TSA because the information contained therein will not “inform the public of the activities and conduct of the government.” *Lambert*, 157 N.H. at 382. The SEC can make the necessary findings here about the technical and managerial capability of the Buyers without compromising the confidentiality of the TSA. Any limited interest the public may have in the knowing the contents of the TSA in that context is far outweighed by the harm such disclosure would cause to the Petitioners.

Maintaining the confidentiality of the TSA would be consistent with prior SEC practice. For example, the SEC held that an Operation and Maintenance Agreement and Administrative Services Agreement relating to the transfer of membership interests in a wind energy facility should be treated as confidential, finding that the documents are “confidential, commercial, or [contain] financial information that is exempt from the provisions of RSA Chapter 91-A.” *See* Docket No. 2021-03, *Order Granting, In Part, and Denying, In Part, Joint Petitioners’ Motion for Protective Order and Confidential Treatment*, July 26, 2021 at 6. There, the SEC found that that there was a “substantial” privacy interest in keeping confidential the “financial and operational details of a private entity and the commercial terms governing the sale and operation of an energy facility,” whereas the interest of the public in disclosure is “slight.” *Id.* at 5. The SEC concluded that “disclosure of the financial and commercially sensitive information would objectively harm the Joint Petitioners’ competitive interests and negotiating positions with competitors, vendors, and suppliers.” *Id.*

C. Unredacted Pre-Filed Testimonies of Daniel Sailors and Mark Saxe

The Pre-Filed Testimonies of Daniel Sailors and Mark Saxe contain confidential non-public financial information relating to Buyers’ investment strategies and structure that is

considered exempt from disclosure. *See* RSA 91-A:5 (exempting “confidential, commercial, or financial information . . . and other files whose disclosure would constitute invasion of privacy”). For the same reasons set forth in Section III, A, Petitioners request confidential treatment of the unredacted versions of the Pre-Filed Testimony of Daniel Sailors and Mark Saxe.

IV. CONCLUSION

The Petitioners have a compelling interest in maintaining the confidentiality of the TSA and the Statements of Assets and Liabilities as well as the sensitive financial information in the Sailors and Saxe testimonies. Those interests outweigh any interest in public disclosure.

WHEREFORE, the Petitioners respectfully ask that the Committee:

- A. Grant Petitioners’ request that these materials be treated as confidential;
- B. Issue a protective order that preserves the confidential treatment of these materials; and
- C. Grant such additional relief as the Committee deems just and appropriate.

Respectfully Submitted,

**North Haven Infrastructure Partners III (AIV-B) SCSp
& BlackRock Global Infrastructure Fund IV, SCSp**

By Their Attorneys,

McLANE MIDDLETON
PROFESSIONAL ASSOCIATION

Dated: March 26, 2024

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Dated: March 22, 2024

By: _____

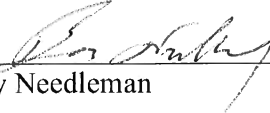
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Certificate of Service

I hereby certify that the foregoing Motion was electronically filed with the New Hampshire Site Evaluation Committee on March 26, 2024, and one hard copy will be hand delivered to the New Hampshire Site Evaluation Committee.



Barry Needleman