

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

SEC DOCKET NO. 2024-__

**Joint Petition of Berlin Station, LLC and North Country Generation Holdings LLC for
Administrative Approval of a Change in Ownership or the Transfer of a Certificate of Site
and Facility Issued to Berlin Station, LLC to North Country Generation Holdings LLC**

**JOINT PETITIONERS' MOTION FOR PROTECTIVE ORDER AND
CONFIDENTIAL TREATMENT**

Berlin Station, LLC (“Berlin Station”) and North Country Generation Holdings LLC (“North Country”) (collectively, “Joint Petitioners”), respectfully request that the New Hampshire Site Evaluation Committee (the “Committee”) issue a protective order to preserve the confidentiality of the information described below, which has been submitted with the above-referenced Joint Petition. In support of this Motion, Joint Petitioners state as follows:

I. INTRODUCTION

1. Joint Petitioners filed simultaneously herewith their Joint Petition for Administrative Approval of a Change in Ownership or the Transfer of a Certificate of Site and Facility Issued to Berlin Station, LLC to North Country Generation Holdings LLC (the “Joint Petition”). As set forth in the Joint Petition, Joint Petitioners are requesting administrative approval for a transfer of ownership to North Country of Berlin Station and Burgess BioPower LLC (“Burgess”), or substantially all of their assets. In support of the Joint Petition, Joint Petitioners are submitting certain 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.

2. In this Motion, Joint Petitioners are requesting the Committee grant a protective order that provides confidential treatment pursuant to RSA 91-A for the following documents containing sensitive and confidential financial information that were submitted with the Joint Petition: (1) North Country's *Pro Forma* Statements of Assets and Liabilities, which are attached to the Joint Petition as Attachment 9, and; (2) certain portions of the Pre-Filed Testimony of RJ Arsenault in Attachment 5 that contain confidential financial information (collectively, "the Confidential Information").

3. These documents contain confidential, commercial, or financial information, and thus are exempt from public disclosure under New Hampshire's Right-to-Know Law. RSA 91-A:5, IV.

4. Joint Petitioners have submitted these CONFIDENTIAL documents under separate cover to the Committee. Those CONFIDENTIAL documents should not be placed on the public docket. By its nature, North Country's *Pro Forma* Statements of Assets and Liabilities is in its entirety Confidential Information. The Pre-Filed Testimony of RJ Arsenault contains only a limited reference to Confidential Information, and Joint Petitioners have included REDACTED versions of that document with its Joint Petition that can be placed on the public docket.

II. LEGAL STANDARD

5. The Committee has the authority pursuant to RSA 91-A:5, IV to protect the Confidential Information from public disclosure. Although governmental records as defined by RSA 91-A:1-a are generally made available for public inspection pursuant to RSA 91-

A:4, the statute includes exemptions from public disclosure of records pertaining to confidential, commercial, or financial information, and other files whose disclosure would constitute an invasion of privacy. *See* RSA 91-A:5, IV; N.H. Admin. R. Site 104.01(b) (Committee records are available for public inspection upon a determination by the presiding officer or Chairperson that such requested documents are not exempt from disclosure pursuant to RSA 91-A:5).

6. When assessing a request for confidential treatment, the Committee applies the three-step analysis articulated by the New Hampshire Supreme Court in *Lambert v. Belknap County*, 157 N.H. 375, 382-383 (2008) to determine whether information should be exempt from public disclosure under RSA 91-A:5, IV. *See Order on Motion for Protective Order and Confidential Treatment and Supplemental Motion for Protective Order and Confidential Treatment*, SEC Docket No. 2019-02 (May 8, 2020) at 2-3 (“*Chinook Solar Confidentiality Order*”); *see also Lamy v. Pub. Utils. Comm’n*, 152 N.H. 106, 109 (2005).

7. The first prong of the Committee’s analysis is to determine if the petitioner has identified a privacy interest. *Lambert*, 157 N.H. at 382. If a privacy interest is invoked, then the Committee must determine whether there is a public interest in disclosure. *Id.* Disclosure should inform the public of the activities and conduct of the government; if it does not serve that purpose, disclosure is not required. *Id.* at 383. Lastly, even if the Committee determines that there is a public interest in disclosure, that interest must be balanced against any privacy interests in nondisclosure. *Id.*

III. ARGUMENT

8. The Confidential Information clearly satisfies the first prong of the three-part *Lambert* test. The power and related markets are intensely competitive, and market

participants, such as Joint Petitioners, safeguard this type of information to ensure that it is not disclosed to the public or to other market participants for many reasons, including to preserve their negotiating positions in future commercial transactions. Here, North Country's *Pro Forma* Statements of Assets and Liabilities contain sensitive and confidential financial information that is not publicly available. The unredacted Pre-Filed Testimony of RJ Arsenault makes direct reference to certain information from North Country's *Pro Forma* Statements of Assets and Liabilities. Disclosure of such information would harm the North Country by providing its competitors, vendors, and suppliers with access to this information, thereby placing North Country at a substantial disadvantage in the marketplace. Accordingly, Joint Petitioners have identified a legitimate privacy interest with respect to the Confidential Information.

9. Regarding the second prong of the analysis, there is little, if any, public interest in disclosure of the Confidential Information, as such disclosure will not inform the public of the Committee's conduct. The Committee's review and consideration in this proceeding is limited to determining whether Joint Petitioner North Country possesses the financial, technical, and managerial capability to own and operate a 75 megawatt wood biomass generating facility located in Berlin, New Hampshire (the "Facility") in continuing compliance with the terms and conditions of its Certificate. *See Decision and Order Approving Transfer of Membership Interests in Granite Reliable Power, LLC With Conditions*, SEC Docket No. 2021-03, at 4-5 (Aug. 17, 2021). Public disclosure of the Confidential Information, which contains commercially sensitive information relating to, among other things, confidential information regarding the financial condition of North Country, will reveal nothing about the Committee's determination of North Country's

financial, technical, or managerial capabilities. Thus, there is no public interest in disclosing the Confidential Information.

10. Even if a public interest in disclosing the Confidential Information arguably existed, which it does not, that interest would be outweighed by the harm to Joint Petitioners that would result from disclosure. Disclosing the Confidential Information to the public, including competitors, vendors, or suppliers, would place Joint Petitioner North Country at a distinct competitive disadvantage and would negatively affect North Country's competitive interests. Therefore, the privacy interests in nondisclosure greatly outweigh what little, if any, public interest in disclosure may exist.

11. Granting this motion for protective treatment of the Confidential Information would be consistent with Committee precedent. The Committee has expressly recognized that the confidential data contained in a *pro forma* financial statement "has routinely been found to establish a privacy interest and fall within the exemption to RSA 91-A:5, IV." See *Chinook Solar Confidentiality Order* at 3. The Committee 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." *Order on Outstanding Motions*, SEC Docket No. 2012-01, at 4 (Aug. 22, 2012). The Committee has also found, regarding disclosure of a *pro forma*, 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. . . ." *Order on Assented-To Motion for Protective Order and Confidential Treatment*, SEC Docket No. 2010-03, at 2 (Jan. 19, 2011).

12. For the foregoing reasons, the Confidential Information meets the three-part standard for protective treatment, and the Joint Petitioners respectfully request that the Committee grant this motion.

IV. RELIEF REQUESTED

WHEREFORE, Joint Petitioners respectfully request the Committee:

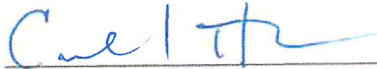
- A. Grant this Motion for Protective Order and Confidential Treatment; and
- B. Grant such other and further relief as may be just and equitable.

Respectfully submitted,

Berlin Station, LLC

By Its Attorneys,

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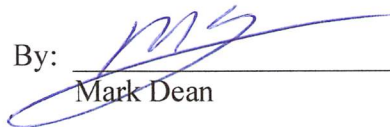


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Dated: April 10, 2024

Certificate of Service

I hereby certify that a copy of the foregoing Motion was electronically filed with the New Hampshire Site Evaluation Committee on April 10, 2024, and one hard copy will be hand delivered to the New Hampshire Site Evaluation Committee.

By: 

Mark Dean