

**THE STATE OF NEW HAMPSHIRE
BEFORE THE
NEW HAMPSHIRE PUBLIC UTILITIES COMMISSION**

DOCKET NO. DE 24-___

**PORTLAND NATURAL GAS TRANSMISSION SYSTEM
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 Public Utilities Commission (“PUC” or “Commission”), pursuant to N.H. Admin Rule Puc 203.08 and RSA 91-A:5, IV, issue a protective order to preserve the confidentiality of certain information that has been submitted with the above-captioned Petition. In support of this Motion, the Petitioners state as follows:

I. INTRODUCTION

As set forth in the Petition to Transfer Partnership Interests (“Petition”), Petitioners are requesting approval of the proposed change of upstream ownership interests in the Portland Natural Gas Transmission System (“PNGTS”). In support of the Petition, as required by Puc 202.01 (c), the Petitioners are submitting “a copy of the document memorializing the transaction” (*i.e.*, the Purchase and Sale Agreement (“PSA”)), a contract that is “confidential, commercial, or financial information . . . whose disclosure would constitute invasion of privacy.”

RSA 91-A:5, IV. Petitioners are also submitting the Pre-Filed Testimonies of Daniel Sailors and Mark Saxe that are being filed concurrently in support of Petitioners' Joint Petition to Change Ownership with the New Hampshire Site Evaluation Committee (SEC"). The PSA and the unredacted versions of the Pre-Filed Testimony contain information that 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 Commission issue a protective order and grant confidential treatment to these materials.

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 Puc 203.08(a) (requiring that the Commission issue a protective order providing for the confidential treatment of documents entitled to confidential treatment pursuant to RSA 91-A:5).

In determining whether information should be deemed exempt from public disclosure, the Commission 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 Commission 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 Commission determines whether there is a public interest in disclosure. *Id.* at 383. In making that assessment, the Commission 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 Commission 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. Purchase and Sale Agreement

The PSA is a highly confidential private contract containing the complete terms and conditions of a transaction among private entities. The PSA was the result of lengthy confidential negotiations between the Petitioners and comprises commercially sensitive information, including the financial details of the transaction and the commercial terms governing the purchase and sale of membership interests in an energy facility. The PSA is not a public document and terms of the PSA expressly require that the Petitioners treat the agreement, and its terms, as confidential. 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. Disclosure of such confidential information may place the Petitioners at a competitive disadvantage in negotiating the terms of transactions in the future. Therefore, there should be no reasonable dispute that the Petitioners have a clear privacy interest at stake that would be compromised by disclosure.

Moreover, there is no discernible public interest in disclosure of the PSA. That is, disclosure of the PSA, or the information contained in the PSA, will not “inform the public of the activities and conduct of the government.” *Lambert*, 157 N.H. at 382. Rather, the PSA includes the terms and conditions of how the membership interests in the PNGTS facilities will transfer from Sellers to Buyers, information that relates to the Commission’s review in this matter but does not necessarily inform the public about the activities and conduct of the Commission.

Moreover, to the extent the PSA has any relevance to the Commission's findings, the Commission can make the necessary findings without compromising the confidentiality of the PSA.

Finally, any limited interest the public may have in knowing the contents of the PSA, in that context, is far outweighed by the harm such disclosure would cause. *See Re National Grid plc*, 92 NHPUC 279, 326 (2007) (NHPUC holdings that “[i]f public disclosure of confidential, commercial or financial information would harm the competitive position of the person from whom the information was obtained, the balance would tend to tip in favor of non-disclosure”).

Maintaining the confidentiality of the PSA would be consistent with both PUC and New Hampshire Site Evaluation Committee (“SEC”) practice. *See* SEC 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.*

B. Testimonies of Daniel Sailors and Mark Saxe

The Pre-Filed Testimonies of Daniel Sailors and Mark Saxe, filed with the SEC, contain confidential non-public financial information relating to the 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 as set forth in Section II, *A supra*, Petitioners

request confidential treatment of the unredacted versions of the Pre-Filed Testimony of Daniel Sailors and Mark Saxe provided as Attachment F-1.

IV. CONCLUSION

The Petitioners have a compelling interest in maintaining the confidentiality of the PSA. That interest outweighs any limited interest in public disclosure.

WHEREFORE, the Petitioners respectfully ask that the Commission:

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

Respectfully Submitted,

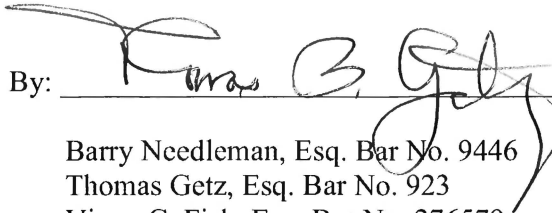
**North Haven Infrastructure Partners III (AIV-B) SCSp
& BlackRock Global Infrastructure Fund IV, SCSp**

By Their Attorneys,

McLANE MIDDLETON
PROFESSIONAL ASSOCIATION

Dated: March 26, 2024

By: _____


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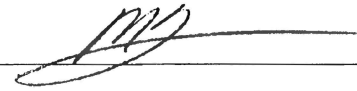
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Dated: March 22, 2024

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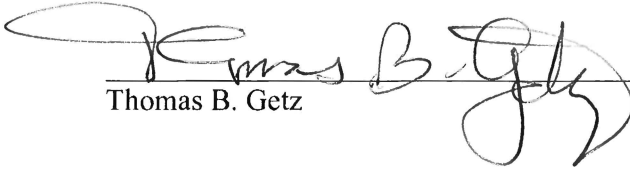
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Certificate of Service

I hereby certify that the foregoing Motion was electronically filed with the New Hampshire Public Utilities Commission on March 26, 2024.


Thomas B. Getz