

STATE OF CONNECTICUT
CONNECTICUT SITING COUNCIL

IN RE: :
 :
APPLICATION OF NTE CONNECTICUT, LLC : DOCKET NO. 470B
FOR A CERTIFICATE OF ENVIRONMENTAL :
COMPATIBILITY AND PUBLIC NEED FOR :
THE CONSTRUCTION, MAINTENANCE AND :
OPERATION OF AN ELECTRIC POWER :
GENERATING FACILITY OFF LAKE ROAD, :
KILLINGLY, CONNECTICUT : MARCH 28, 2019

MOTION FOR PROTECTIVE ORDER

NTE Connecticut, LLC (“NTE”), as the applicant in Docket No. 470B, respectfully requests that the Connecticut Siting Council (“Council”) issue a Protective Order pursuant to Connecticut General Statutes section 1-210(b)(5), with respect to copies of third-party agreements provided in response to the Council’s Interrogatory No. 43, dated March 20, 2019 (the “Third-Party Agreements”), submitted to the Council in connection with the above-referenced proceeding.

The Connecticut Freedom of Information Act (“FOIA”)¹ provides for public access to records of governmental bodies. “Although the act embodies a public policy in favor of disclosure, that presumption is subject to *clear limits* within which [businesses] may claim an exemption.”² For instance, FOIA exempts the following from public disclosure:

(A) Trade secrets, which . . . are defined as information, including formulas, patterns, compilations, programs, devices, methods, techniques, processes, drawings, cost data, [or] customer lists, . . . that (i) derive independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, other persons who can

¹ Conn. Gen. Stat. § 1-200 *et seq.*

² *Univ. of Conn. v. Freedom of Info. Comm’n*, 303 Conn. 724, 737 (2012) (emphasis added).

obtain economic value from their disclosure or use, and (ii) are the subject of efforts that are reasonable under the circumstances to maintain secrecy; and

(B) Commercial or financial information given in confidence, not required by statute.³

When considering trade secret exemption claims pursuant to FOIA, the Connecticut Supreme Court has considered the Connecticut Uniform Trade Secrets Act (“CUTSA”)⁴ because “[o]nce the information is ordered disclosed under the Freedom of Information Act, it no longer meets the secrecy requirements of a trade secret [under CUTSA]”⁵ The Connecticut Supreme Court has found that one of the primary purposes of CUTSA is to encourage businesses to invest resources in invention and discovering more efficient methods of doing business.⁶ CUTSA “accomplishes this end by providing that only those persons who have invested their resources in a business may profit from the use or disclosure of the resulting inventions and business methods.”⁷ Otherwise, a business’s “ability to recoup costs and reap the financial benefits for such efforts would be seriously undermined if any member of the public could obtain such information”⁸

In determining whether information qualifies as a trade secret, the following factors should be considered: (a) the extent to which the information is known outside the company; (b) the extent to which it is known by employees and others involved in the company; (c) the extent of measures taken by a company to guard the confidentiality of the information; (d) the value of the information to the company and to its competitors; (e) the amount of effort or money

³ Conn. Gen. Stat. § 1-210(b)(5).

⁴ Conn. Gen. Stat. § 35-50 *et seq.*

⁵ *Univ. of Conn.*, 303 Conn. at 736 (citation omitted).

⁶ *See Lydall, Inc. v. Ruschmeyer*, 282 Conn. 209, 233 (2007).

⁷ *Lydall*, 282 Conn. at 233-34 (citations omitted).

expended by the company in developing the information; and (f) the ease or difficulty with which the information could be properly acquired or duplicated by others.⁹

Pursuant to this standard, NTE filed redacted copies¹⁰ of the following Third-Party Agreements with the Council in Docket No. 470B on March 28, 2019.

- Attachment 1(A). Option Agreement dated March 4, 2016, between Geoffrey A. Sorrow, Gerald T. Erwin and Annarita D. Erwin and NTE Connecticut, LLC.
- Attachment 1(B). Preliminary Engineering Agreement between Yankee Gas Services Company d/b/a Eversource Energy and NTE Connecticut, LLC dated October 21, 2016.
- Attachment 1(C). Amendment to Preliminary Engineering Agreement dated October 17, 2017.
- Attachment 1(D). Second Amendment to Preliminary Engineering Agreement dated March 26, 2019.
- Attachment 1(F). Two (2) Customers Refundable Advance Payment Agreements between Connecticut Water Company and NTE Connecticut, LLC, both dated October 31, 2017 for improvements along Lake Road and Route 12.
- Attachment 1(I). Base Contract for the Sale and Purchase of Natural Gas between Emera Energy Services, Inc. and NTE Connecticut, LLC executed by NTE on July 18, 2016, and Option to Renew dated January 3, 2017, redacted in their entirety and submitted subject to Protective Order only.

⁸ *Univ. of Conn.*, 303 Conn. at 736.

⁹ *Town & Country House & Homes Service, Inc. v. Evans*, 150 Conn. 314, 319 (1963).

¹⁰ As noted below, Attachment 1(I) was redacted in its entirety.

The redacted provisions relate to project-specific terms and conditions, pricing information, and other financial information (“Confidential Information”). NTE is willing to submit unredacted copies of the Third-Party Agreements to the Council and its staff and, subject to the Council’s approval of a Protective Order and upon execution of the Non-Disclosure Agreement, to Mary Calorio, Town Manager, as representative for the Town of Killingly (“Town”), Carl Stopper, as consultant for the Town, counsel for Not Another Power Plant (“NAPP”), Robert Fagan, as economic consultant for NAPP, counsel for Connecticut Fund for the Environment (“CFE”), counsel for the Sierra Club, and counsel for Wyndham Land Trust, Inc.

As reflected in the attached affidavit of Timothy Eves of NTE, the information for which NTE seeks protected treatment is commercially valuable, confidential and proprietary, market-sensitive information that constitutes trade secrets within the meaning of Connecticut General Statutes §1-210(b)(5). The information is not generally known to the public and has economic and competitive value to NTE. NTE has heretofore used best efforts to maintain the Confidential Information as secret in order to avoid the harm that would result if it were to become publicly available. The Council has historically granted protected treatment of similar filings.

WHEREFORE, NTE respectfully requests that the Council grant the request for protected treatment consistent with the attached Protective Order for the Third-Party Agreements, which would limit disclosure of the Confidential Information to the Council and its staff and, upon execution of the Non-Disclosure Agreement, Mary Calorio, Town Manager, as representative for the Town, Carl Stopper, as consultant for the Town, counsel for NAPP, Robert Fagan, as economic consultant for NAPP, counsel for CFE, counsel for the Sierra Club, and counsel for Wyndham Land Trust, Inc.

Respectfully submitted,
NTE CONNECTICUT, LLC

By  _____

Kenneth C. Baldwin, Esq.

James P. Ray, Esq.

Robinson & Cole LLP

280 Trumbull Street

Hartford, CT 06103-3597

Its Attorneys

CERTIFICATION OF SERVICE

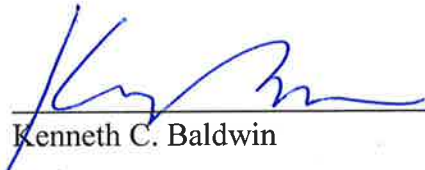
I hereby certify that on this 28th day of March, 2019, a copy of the foregoing was sent via electronic mail to the following:

Mary Mintel Miller, Esq.
Reid and Riege, P.C.
One Financial Plaza, 21st Floor
Hartford, CT 06103
mmiller@rllawpc.com

Mary Calorio, Town Manager
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Katherine Fiedler, Esq.
Connecticut Fund for the Environment
900 Chapel Street
Upper Mezzanine
New Haven, CT 06510
kfiedler@ctenvironment.org



Kenneth C. Baldwin

AFFIDAVIT

STATE OF CONNECTICUT

)

) ss. HARTFORD

COUNTY OF HARTFORD

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Timothy Eves, being duly sworn, deposes and states that:

1. I am over the age of eighteen and understand the obligation of making a statement under oath.

2. I am the Vice President of NTE Connecticut, LLC (“NTE”).

3. I am familiar with NTE’s March 28, 2019 responses to Interrogatories (Set Two) filed by the Connecticut Siting Council (“Council”) on March 20, 2019, in Docket No. 470B (the “Responses to Interrogatories”).

4. Redacted copies of certain contracts and agreements submitted in the Responses to Interrogatories, Question No. 43 were filed with the Council and sent to the parties and intervenors of record on or about March 28, 2019.

5. The redacted provisions relate to project-specific terms and conditions, pricing information, and other trade secrets and proprietary financial information regarding third-party agreements into which NTE has entered (“Confidential Information”).

6. The Confidential Information is commercially valuable, confidential, proprietary and market-sensitive information that constitutes trade secrets.

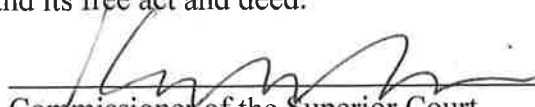
7. The Confidential Information is not generally known to the public and has economic and competitive value to NTE.

8. NTE has heretofore used best efforts to maintain the Confidential Information as secret in order to avoid the harm that would result if the information were to become publicly available.



Timothy Eves, Vice President
NTE Connecticut, LLC

The foregoing instrument was acknowledged before me this 28th day of March, 2019 by Timothy Eves, Vice President of NTE Connecticut, LLC, a Delaware limited liability company, on behalf of the company, as his and its free act and deed.



Commissioner of the Superior Court