

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

DOCKET NO. DE 24-050

PORTLAND NATURAL GAS TRANSMISSION SYSTEM

**PETITIONERS' SUPPLEMENTAL 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, submit this supplemental 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 was filed in support of Petitioners’ Joint Petition to Change Ownership with the New Hampshire Site Evaluation Committee (“SEC”) and that has been requested in discovery by the New Hampshire Department of Energy (“DOE”).

In support of this Motion, the Petitioners state as follows:

1. On March 26, 2024 the Petitioners filed a Motion for Protective Order and Confidential Treatment seeking to protect certain confidential information concurrently filed with the Petition to Transfer Partnership Interests (“Petition”). In particular, Petitioners requested confidential treatment of the Purchase and Sale Agreement (“PSA”) (PUC Attachment B) in its entirety and unredacted versions of the Pre-Filed Testimonies of Daniel Sailors and

Mark Saxe (PUC Attachment F-1) that were filed concurrently in support of Petitioners' Joint Petition to Change Ownership with the SEC. Petitioners requested confidential treatment of these documents because they contain "confidential, commercial, or financial information . . . whose disclosure would constitute invasion of privacy" pursuant to the Access to Governmental Records and Meetings Statute, more commonly referred to as the Right-to-Know Law. RSA 91-A:5, IV.

2. For the reasons set forth below, and for the reasons set forth in Petitioners' March 26th motion, Petitioners now seek confidential treatment of additional documents that were filed confidentially in support of the Petitioners' Joint Petition before the SEC that have been requested in discovery by the Department of Energy ("DOE") in this proceeding. The Petitioners request confidential treatment of the Buyers' Statements of Assets and Liabilities (SEC Attachments 4 and 5) and Transition Services Agreement ("TSA") (SEC Attachment 7) because they contain information that is protected from public disclosure. The Petitioners request that the Commission issue a protective order and grant confidential treatment to these materials in their entirety, consistent with the Petitioners' request to the SEC.

Statements of Assets and Liabilities

3. 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.

4. 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”

Transition Service Agreement (“TSA”)

5. 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.

6. 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 v. Belknap County*, 157 N.H. 375, 382 (2008). The PUC can make its 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.

7. 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.*

8. The Petitioners request that the PUC treat the TSA in its entirety as confidential consistent with the practice of the SEC concerning similar contracting agreements.

WHEREFORE, the Petitioners respectfully ask that the Commission:

- A. Grant Petitioners’ supplemental request to treat the TSA and statements of assets and liabilities as confidential;
- B. Issue a protective order that preserves the confidential treatment of the TSA and statements of assets and liabilities; 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: April 5, 2024

By:  _____

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By Their Attorneys,

BERNSTEIN, SHUR, SAWYER & NELSON, P.A.

Dated: April 5, 2024

By:  _____

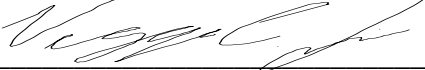
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Certificate of Service

I hereby certify that the foregoing Motion was electronically filed with the New Hampshire Public Utilities Commission and the Service List on April 8, 2024.



Viggo Fish