

STATE OF CONNECTICUT
CONNECTICUT SITING COUNCIL

IN RE: :
 :
 APPLICATION OF NTE CONNECTICUT, LLC : DOCKET NO. 470
 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 : OCTOBER 27, 2016

MOTION FOR PROTECTIVE ORDER

NTE Connecticut, LLC (“NTE”), as the applicant in Docket No. 470, and PA Consulting (“PA”), NTE’s consultant, respectfully request that the Connecticut Siting Council (“Council”) issue a Protective Order pursuant to Connecticut General Statutes section 1-210(b)(5), with respect to certain responses to Not Another Power Plant’s Interrogatories, dated October 20, 2016 (the “Responses to Interrogatories”), 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 a redacted copy of the Responses to Interrogatories with the Council in Docket No. 470 on October 27, 2016. The redacted provisions relate to input assumptions and data, and the resulting findings and data of PA's analyses contained in the Responses to Interrogatories Nos. 1, 3, 4, 5, 8, 10, and 11 ("Confidential Information"). NTE and PA are willing to submit an unredacted copy of the Responses to Interrogatories 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 Sean Hendricks, Town Manager, as representative for the Town of Killingly ("Town"), Carl Stopper, as consultant for the Town, counsel for Not Another Power Plant ("NAPP"), and Robert Fagan, as economic consultant for NAPP, parties to the above-referenced docket.

As reflected in the attached affidavits of Mark Mirabito of NTE and Ethan Paterno of PA, the information for which NTE and PA seek 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 and PA. NTE and PA have 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

⁸ *Univ. of Conn.*, 303 Conn. at 736.

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

protected treatment consistent with the attached Protective Order for the Responses to Interrogatories, which would limit disclosure of the Confidential Information to the Council and its staff and, upon execution of the Non-Disclosure Agreement, Sean Hendricks, Town Manager, as representative for the Town, Carl Stopper, as consultant for the Town, counsel for NAPP, and Robert Fagan, as economic consultant for NAPP.

Respectfully submitted,
NTE CONNECTICUT, LLC

By 
Kenneth C. Baldwin, Esq.
Earl W. Phillips, Jr., Esq.
Robinson & Cole LLP
280 Trumbull Street
Hartford, CT 06103-3597
Its Attorneys

CERTIFICATION OF SERVICE

I hereby certify that on this 27th day of October, 2016, a copy of the foregoing was sent via first class mail, postage prepaid, to the following:

John Bashaw, Esq.
Mary Intel Miller, Esq.
Reid and Riege, P.C.
One Financial Plaza, 21st Floor
Hartford, CT 06103
jbashawfilrrlawpc.com
mmiller@rrlawpc.com

Sean Hendricks, Town Manager
Town of Killingly
172 Main Street
Killingly, CT 06239
shendricks@killinglyct.org



Kenneth C. Baldwin

AFFIDAVIT

STATE OF Florida

COUNTY OF ST. Johns

)
) ss. St. Augustine
)

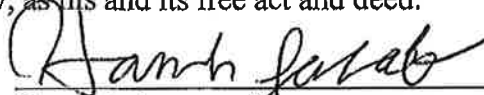
MARK MIRABITO, being duly sworn, deposes and states that:

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 responses to Interrogatories filed by Not Another Power Plant ("NAPP"), dated October 20, 2016 (the "Responses to Interrogatories"), for which PA Consulting ("PA") assisted in the preparation.
4. A redacted copy of the Responses to Interrogatories was filed with the Council and sent to NAPP and the Town of Killingly on or about October 27, 2016.
5. The redacted provisions relate to input assumptions and data, and the resulting findings and data of PA's analyses contained in the Responses to Interrogatories Nos. 1, 3, 4, 5, 8, 10, and 11 ("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 and PA.
8. NTE and PA have 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.



Mark Mirabito, Vice President
NTE Connecticut, LLC

The foregoing instrument was acknowledged before me this 27th day of October, 2016 by Mark Mirabito, 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
Notary Public
My Commission Expires:



AFFIDAVIT

STATE OF COLORADO)
) ss. DENVER
COUNTY OF DENVER)

ETHAN PATERNO, 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 Managing Consultant at PA Consulting Group, Inc. ("PA").
3. I am familiar with NTE Connecticut, LLC's ("NTE") responses to Interrogatories filed by Not Another Power Plant ("NAPP"), dated October 20, 2016 (the "Responses to Interrogatories").
4. A redacted copy of the Responses to Interrogatories was filed with the Council and sent to NAPP and the Town of Killingly on or about October 27, 2016.
5. The redacted provisions relate to input assumptions and data, and the resulting findings and data of PA's analyses contained in the Responses to Interrogatories Nos. 1, 3, 4, 5, 8, 10 and 11 ("Confidential Information").
6. The Confidential Information is commercially valuable, confidential, proprietary and market-sensitive information that constitutes trade secrets.
7. NTE and PA have 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.



Ethan Paterno, Managing Consultant
PA Consulting Group, Inc.

The foregoing instrument was acknowledged before me this 27th day of October, 2016 by Ethan Paterno, Managing Consultant at PA Consulting Group, Inc., a New Jersey corporation, on behalf of the company, as his and its free act and deed.

JAN CRESPO
NOTARY PUBLIC
STATE OF COLORADO
NOTARY ID 20164025583
MY COMMISSION EXPIRES JULY 06, 2020


Commissioner of the Superior Court
Notary Public
My Commission Expires: 07/06/2020