

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

PROTECTIVE ORDER

WHEREAS, NTE Connecticut, LLC (“NTE”) is willing to submit unredacted copies of third-party agreements in response to the Connecticut Siting Council’s (“Council”) Interrogatory No. 43, dated March 20, 2019 (the “Third-Party Agreements”), to the Council in connection with the above-captioned matter;

WHEREAS, NTE considers the project-specific terms and conditions, pricing information, and other financial information contained in the Third-Party Agreements to be confidential, market-sensitive and proprietary information that NTE has, prior to this point, used its best efforts to keep secret (“Confidential Information”);

WHEREAS, NTE has indicated its willingness to provide the Confidential Information to the Council and to the Town of Killingly (“Town”), Not Another Power Plant (“NAPP”), Connecticut Fund for the Environment (“CFE”), the Sierra Club and Wyndham Land Trust, Inc., parties to the above-referenced docket, subject to a Protective Order;

NOW, THEREFORE, it is hereby ordered, that the following procedure is adopted for the protection of the Confidential Information:

1. The Confidential Information shall be governed by the terms of this Protective Order (“Order”). This Order is applicable to all such Confidential Information, whether in the form of documents, data, testimony, studies or otherwise.

2. All Confidential Information shall be subject to this Order and shall be given solely to the Council and its staff and to 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. (the “Recipients”), upon their execution of the attached Non-Disclosure Agreement (“NDA”) (*See Exhibit A*). It is understood and agreed that said information is confidential, market-sensitive and proprietary in nature, and shall in no event be disclosed to any other person, entity, corporation or association, and shall neither be used nor discussed except for the purposes of this proceeding. All persons in receipt of any Confidential Information pursuant to this Order shall maintain a written log of all individuals granted access to the Confidential Information.

3. Confidential Information shall be marked as such and delivered in a sealed envelope to the Council, its staff, and signatories of the NDA.

4. All Recipients shall be bound by the terms of this Order.

5. In the event that the Confidential Information is to be used in any manner in any proceeding or hearing before the Council, such proceeding or hearing shall not be held before, nor any record of it made available, to any person or entity not a signatory of the Order or the NDA. Presence at such proceeding or hearing shall be limited to the Council, its staff, and signatories of the NDA, as well as representatives of NTE. No record shall be disclosed or communication made of the information at any time to any person or entity. Any transcript or

other recording of the Confidential Information shall be placed in sealed envelopes or containers and a statement in the following form placed on such envelope or container:

CONFIDENTIAL INFORMATION

This envelope is not to be opened nor the contents thereof to be displayed or revealed except pursuant to the Protective Order issued in Docket No. 470B.

6. No copies shall be made of the Confidential Information unless expressly ordered by the Council.

7. Nothing herein shall be construed as a final determination that any of the Confidential Information will be admissible as substantive evidence in this proceeding or at any hearing or trial. Moreover, nothing herein shall be considered a waiver of any party's right to assert at a later date that the material is or is not proprietary or privileged. A party seeking to change the terms of the Order shall by motion give every other party five (5) business days' prior written notice. No information protected by the Order shall be made public until the Council rules on any such motion to change the terms of the Order. Confidential Information otherwise properly discovered, even though also subject to the terms of the Order, shall not be considered protected by the Order.

8. No Recipient shall use or disclose the Confidential Information for purposes of business or competition, or for any other purpose, other than the purpose of preparation for and conduct of this proceeding, and then solely as contemplated herein, and shall in good faith take all reasonable precautions to keep the Confidential Information secure in accordance with the purposes and intent of this Order.

9. All copies of such Confidential Information shall be returned to NTE no later than thirty (30) days after the expiration of all appeal periods applicable to the final decision rendered

in this proceeding.

CONNECTICUT SITING COUNCIL

By: _____

Dated: _____, 2019

REVIEWED AND ACKNOWLEDGED:

The undersigned hereby acknowledges that he or she has reviewed this Protective Order and hereby agrees to abide by the terms thereof in exchange for receipt of the Confidential Information from NTE.

THE TOWN OF KILLINGLY

By: _____
 Its _____

Dated _____, 2019

REVIEWED AND ACKNOWLEDGED:

The undersigned hereby acknowledges that he or she has reviewed this Protective Order and hereby agrees to abide by the terms thereof in exchange for receipt of the Confidential Information from NTE.

CARL STOPPER, AS CONSULTANT FOR THE TOWN OF
KILLINGLY

By: _____

Dated _____, 2019

REVIEWED AND ACKNOWLEDGED:

The undersigned hereby acknowledges that he or she has reviewed this Protective Order and hereby agrees to abide by the terms thereof in exchange for receipt of the Confidential Information from NTE.

NOT ANOTHER POWER PLANT

By: _____
Its Attorney

Dated _____, 2019

REVIEWED AND ACKNOWLEDGED:

The undersigned hereby acknowledges that he or she has reviewed this Protective Order and hereby agrees to abide by the terms thereof in exchange for receipt of the Confidential Information from NTE.

ROBERT FAGAN, AS ECONOMIC CONSULTANT FOR NOT ANOTHER POWER PLANT

By: _____
Robert Fagan

Dated _____, 2019

REVIEWED AND ACKNOWLEDGED:

The undersigned hereby acknowledges that he or she has reviewed this Protective Order and hereby agrees to abide by the terms thereof in exchange for receipt of the Confidential Information from NTE.

CONNECTICUT FUND FOR THE ENVIRONMENT

By: _____
Its Attorney

Dated _____, 2019

REVIEWED AND ACKNOWLEDGED:

The undersigned hereby acknowledges that he or she has reviewed this Protective Order and hereby agrees to abide by the terms thereof in exchange for receipt of the Confidential Information from NTE.

SIERRA CLUB

By: _____
Its Attorney

Dated _____, 2019

EXHIBIT A

DOCKET NO. 470B NON-DISCLOSURE AGREEMENT

NTE Connecticut, LLC (“Company”) agrees to make available 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, counsel for the Sierra Club, and counsel for Wyndham Land Trust, Inc. (each a “Recipient” and, jointly, “Recipients”) commercially valuable, confidential, proprietary and market-sensitive information filed with the Connecticut Siting Council (“Council”) in response to the Council’s Interrogatory No. 43, dated March 20, 2019, issued in Docket No. 470B (the “Confidential Information”) subject to the restrictions stated herein.

1. Any information provided to Recipients and labeled “Confidential Information” by the Company shall be Confidential Information subject to this Non-Disclosure Agreement (“NDA”).

2. Each Recipient, by signing this NDA, acknowledges that the Confidential Information is received in confidence.

3. The Confidential Information shall not be used or disclosed by any Recipient except in accordance with the terms contained herein and in the Company’s Motion for Protective Order and the corresponding Protective Order issued in Docket No. 470B.

4. A Recipient may not be an investor in any business or entity engaged in the electric energy business. The undersigned Recipient acknowledges that disclosure of Confidential Information to a business or entity engaged in the electric energy business or use of such information for the benefit of such business or entity could adversely affect the Company. By executing this NDA, each Recipient certifies that he/she meets the requirements of this paragraph. The Company retains the right to limit disclosure of the Confidential Information to individuals other than Council members and staff of the Council to a review of the information at the Company’s offices. In that event, no Recipient shall be entitled to make copies or otherwise duplicate the Confidential Information.

5. The following conditions shall apply to each Recipient:

a. Each Recipient will receive one (1) Company numbered, controlled copy of the Confidential Information. The Recipient shall not make any copies thereof or provide the Confidential Information to any individual or entity except one who has executed and delivered this NDA to the Company.

b. The Recipient shall maintain a log of all persons granted access to the Confidential Information.

c. The Recipient, by signing this NDA, acknowledges that he/she may not in any manner disclose the Confidential Information to any person, and that he/she may not use the Confidential Information for the benefit of any person except in this proceeding and in accordance with the terms of the Protective Order.

d. The Recipient acknowledges that any violation of this NDA may subject the Recipient to legal action for violation hereof. Additionally, any Recipient who is an attorney acknowledges his/her ethical obligations under the Rules of Professional Conduct to abide by this NDA and to handle properly confidential information that is subject to a protective order.

e. Within thirty (30) days after the expiration of all appeal periods applicable to the final decision rendered in this proceeding, each Recipient shall return the Confidential Information to the Company.

NTE CONNECTICUT, LLC

**RECIPIENT:
MARY CALORIO, TOWN MANAGER, AS
REPRESENTATIVE FOR THE TOWN OF
KILLINGLY**

By: _____

By: _____

Dated: _____

Dated: _____

NTE CONNECTICUT, LLC

**RECIPIENT:
CARL STOPPER, AS CONSULTANT FOR
THE TOWN OF KILLINGLY**

By: _____

By: _____

Dated: _____

Dated: _____

NTE CONNECTICUT, LLC

**RECIPIENT:
COUNSEL FOR NOT ANOTHER POWER
PLANT**

By: _____

By: _____

Dated: _____

Dated: _____

NTE CONNECTICUT, LLC

**RECIPIENT:
ROBERT FAGAN, AS ECONOMIC
CONSULTANT FOR NOT ANOTHER
POWER PLANT**

By: _____

By: _____

Dated: _____

Dated: _____

NTE CONNECTICUT, LLC

**RECIPIENT:
COUNSEL FOR CONNECTICUT FUND FOR
THE ENVIRONMENT**

By: _____

By: _____

Dated: _____

Dated: _____

NTE CONNECTICUT, LLC

**RECIPIENT:
COUNSEL FOR SIERRA CLUB**

By: _____

By: _____

Dated: _____

Dated: _____

NTE CONNECTICUT, LLC

**RECIPIENT:
COUNSEL FOR WYNDHAM LAND TRUST,
INC.**

By: _____

By: _____

Dated: _____

Dated: _____