

**GSCP VI Edgemarc Holdings, L.L.C. v ETC
Northeast Pipeline, LLC**

2022 NY Slip Op 31653(U)

May 20, 2022

Supreme Court, New York County

Docket Number: Index No. 652906/2019

Judge: Joel M. Cohen

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This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK
 COUNTY OF NEW YORK: COMMERCIAL DIVISION PART 03M

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<p>GSCP VI EDGEMARC HOLDINGS, L.L.C., GSCP VI PARALLEL EDGEMARC HOLDINGS, L.L.C., WSEP AND BRIDGE 2012 EDGEMARC HOLDINGS, L.L.C., EM HOLDCO LLC</p> <p style="text-align: center;">Plaintiffs,</p> <p style="text-align: center;">- v -</p> <p style="text-align: center;">ETC NORTHEAST PIPELINE, LLC,</p> <p style="text-align: center;">Defendant.</p>	<p>INDEX NO. <u>652906/2019</u></p> <p>MOTION DATE <u>N/A</u></p> <p>MOTION SEQ. NO. <u>015</u></p> <p style="text-align: center;">DECISION + ORDER ON MOTION</p>
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HON. JOEL M. COHEN:

The following e-filed documents, listed by NYSCEF document number (Motion 015) 238, 239, 240, 241, 242, 243, 244, 245, 246, 247, 248, 249, 250, 251, 252, 253, 254, 255, 256, 257, 261, 262, 267 were read on this motion to SEAL.

Defendant ETC Northeast Pipeline, LLC (“ETC”) moves for an order sealing and/or redacting the parties’ joint Rule 14 letter (NYSCEF 224) and exhibits 2-8 (NYSCEF 226–232) attached thereto. Plaintiff Ontario Teachers’ Pension Plan Board (the “Equity Owners”) opposes the motion. For the following reasons, ETC’s motion to seal is **granted in part**.

Pursuant to § 216.1(a) of the Uniform Rules for Trial Courts, this Court may seal a filing “upon a written finding of good cause, which shall specify the grounds thereof. In determining whether good cause has been shown, the court shall consider the interests of the public as well as of the parties” (22 NYCRR § 216.1[a]).

The Appellate Division has emphasized that “there is a broad presumption that the public is entitled to access to judicial proceedings and court records” (*Mosallem v Berenson*, 76 AD3d 345, 348 [1st Dept 2010]). “Since the right [of public access to court proceedings] is of

constitutional dimension, any order denying access must be *narrowly tailored to serve compelling objectives*, such as a need for secrecy that outweighs the public's right to access” (*Danco Labs., Ltd. v Chemical Works of Gedeon Richter, Ltd.*, 274 AD2d 1, 6 [1st Dept 2000] [emphasis added]; *see also, e.g. Gryphon Dom. VI, LLC v APP Intern. Fin. Co., B.V.*, 28 AD3d 322, 324 [1st Dept 2006]). “Furthermore, because confidentiality is the exception and not the rule, ‘the party seeking to seal court records has the burden to demonstrate compelling circumstances to justify restricting public access’” (*Maxim, Inc. v Feifer*, 145 AD3d 516, 517 [1st Dept 2016] [citations omitted]).

The Court has reviewed the documents which ETC proposes to be sealed and/or redacted and finds the following:

The Court finds good cause to seal Exhibits 3, 7, and 8. Exhibits 7 (NYSCEF 231, 254) and 8 (NYSCEF 232, 256) comport with the applicable sealing standards as laid out in *Mosallem*, 76 AD3d at 348-50, and its progeny, in that they contain sensitive and confidential information about the location, engineering, and construction of the pipeline at issue in this case. Exhibit 3 (NYSCEF 227, 246) contains confidential non-party information (*Mancheski v Gabelli Group Capital Partners*, 39 AD3d 499, 502 [2d Dept 2007] [“disclosure could impinge on the privacy rights of third parties who clearly are not litigants herein”]).

Although the Court has previously rejected Defendant’s assertion of privilege over Exhibits 4-6 (NYSCEF 228-230; 248, 250, 252) which pertain to investigative reports authored by ETC’s consulting experts, the Court will allow these documents, as well as the parties’ Rule 14 letter, to remain under seal and/or redacted pending the First Department’s ruling (*see* Appellate Case No. 2021-03955). The parties are directed to advise the Court when the First

Department ruling is issued and provide their positions as to how that ruling impacts the propriety of the continued sealing of these documents.

Finally, the Court does not find good cause to seal Exhibit 2 (NYSCEF 226, 244) as it has previously been publicly filed in this litigation (*see* NYSCEF 124).

Accordingly, it is:

ORDERED that Motion Sequence Number 015 is **granted in part**; and it is further

ORDERED that the County Clerk shall maintain NYSCEF Document Numbers 242, 244, 246, 248, 250, 252, 254, and 256 in their current, redacted form; it is further

ORDERED that the County Clerk shall maintain NYSCEF Document Numbers 227, 228, 229, 230, 231, 232, 241, 243, 245, 247, 249, 251, 253, and 255 under seal, so that the documents may only be accessible by the parties, their counsel, and authorized court personnel; it is further

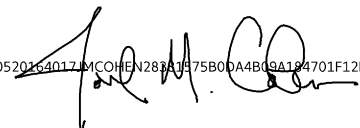
ORDERED that future submissions, made by any party, that contain subject matter that the court has authorized to be sealed by this Order may be filed in redacted form on NYSCEF, provided that an unredacted copy of any redacted document is contemporaneously filed under seal; and it is further

ORDERED that Defendant's motion is otherwise **denied**, and the parties shall within three business days file an unsealed copy of NYSCEF 226/244; it is further

ORDERED that nothing in this Order shall be construed as authorizing the sealing or redactions of any documents or evidence to be offered at trial.

This constitutes the decision and order of the Court.

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5/20/2022
DATE

JOEL M. COHEN, J.S.C.

CHECK ONE:

CASE DISPOSED

GRANTED

SETTLE ORDER

INCLUDES TRANSFER/REASSIGN

DENIED

NON-FINAL DISPOSITION

GRANTED IN PART

SUBMIT ORDER

FIDUCIARY APPOINTMENT

OTHER

REFERENCE

APPLICATION:

CHECK IF APPROPRIATE: