

**STATE OF NEW HAMPSHIRE SITE EVALUATION COMMITTEE
SEC DOCKET NO. 2015-06**

**JOINT APPLICATION OF NORTHERN PASS TRANSMISSION LLC &
PUBLIC SERVICE COMPANY OF NEW HAMPSHIRE D/B/A EVERSOURCE
ENERGY FOR A CERTIFICATE OF SITE AND FACILITY**

Deerfield Abutters Motion to Compel

Pursuant to Site 202.12, the Deerfield Abutters, Intervenor in this Action, filed data requests, identifying with specificity the information or materials sought from the Applicants. The Deerfield Abutters file this Motion to Compel, asking that the Hearing Officer order Applicants to fully respond to DA Data Requests 1-1 and 1-2. The Deerfield Abutters have attempted in good faith to resolve this discovery dispute with the Applicants. Unfortunately our efforts were unsuccessful so we have no option except to file this Motion to Compel pursuant to Rule 202.12 (k).

Background

1. The focus of this Motion to Compel is Deerfield Abutters' Data Requests DA 1-1 and DA 1-2, which state:

“DA 1-1. Please produce all information, documents, and communications in your possession relating in any way to the Applicants' (or any individual or entity acting on their behalf) purchase of properties within one-quarter mile of the proposed Transmission Line and alternate NPT routes, from years 2010 until the present date.”

“DA 1-2. State the specific reason(s) for the acquisition or purchase and whether the acquisition or purchase of each property would be considered an “arm's length” transaction as defined and used in the Chalmers Report.

2. Applicants filed their Response with accompanying documents uploaded to Sharefile.

In **Response DA 1-1**, Applicants stated: “The Applicants object to this request as it is overbroad, and seeks information not relevant to the proceeding and therefore is not reasonably calculated to lead to the discovery of admissible evidence. Additionally, some of the documents requested are confidential business information.

Notwithstanding the objection, please see the documents uploaded to the ShareFile Site in response to this request.”

In **Response DA 1-2**, Applicants stated: “In addition to being used to locate the new transmission line, the properties will be used for conservation, economic development and tourism. The Eversource purchases were “arm's length” transactions as the term is used in James Chalmers' Pre-Filed Testimony on Page 4.”

3. On August 9, 2016, the Deerfield Abutters filed their Reply, asking Applicants to more fully answer multiple Data Requests. (The Deerfield Abutters asked for and received an extension of time to reply to Applicant's Response.) In their Reply, the Deerfield Abutters stated:

“Deerfield Abutters Reply. DA 1-1. Response from Applicant is incomplete and lacking the documents in their possession relating in any way to the Applicants' (or any individual or entity acting on their behalf) purchase of properties within one-quarter mile of the proposed transmission line and alternate NPT routes, from years 2010 until the present date. This information is relevant to the proceeding. A copy of the deed corresponding to the property purchase and the appraisal performed for each property purchased is the specific information requested. DA believes that there were more properties purchased/acquired than listed in the Applicants' response.”

“Deerfield Abutters Reply. DA 1-2. Response from Applicant is incomplete as DA request that the specific reason for the acquisition or purchase be identified for each property listed in DA 1-1 Applicants' response. Please answer specifically, matching a reason with each property. Applicants' response was general in nature.”

4. On Friday, August 12, 2016, Spokesperson for the Deerfield Abutters and counsel for the Applicants spoke via telephone to discuss the **nineteen** Responses that the Deerfield Abutters had identified in their Reply. The parties were able to resolve all but **three** matters. The two remaining disputed Responses, which were discussed at length, were DA 1-1 and 1-2.

5. After the conversation, Applicants' counsel forwarded two emails that contained additional information relating to DA 1-2. On August 12, 2016, via email, Applicants' counsel stated: “For **DA 1-2**. I confirmed that there is nothing else in the Applicants' care, custody or control beyond what was provided in response to your question.”

6. On August 13, 2016, via email, Applicants' counsel sent a second email regarding Applicant's Response **DA 1-2**:

“All properties were purchased to support the Project objectives of having a secure route, and of having sufficient land to offer for mitigation, recreational and economic development purposes. The properties needed for the route are self-apparent based on their location, and the properties that will be dedicated for mitigation and other purposes are identified in the *Natural Resource Mitigation Plan*. See Appendix 32 of the Application. Please refer specifically to Section 5.3.2 “Preservation Parcel Descriptions” for those parcels that are included in the mitigation plan.”

7. As to DA 1-1, in the August 12 email, Applicants' counsel stated: “I am still working on following-up on your comment to **DA 1-1**. I hope to have answers to you over the weekend or on Monday morning.” As of the filing of this Motion, the Deerfield Abutters had not received any additional information from Applicants' counsel.

8. In an attempt to resolve the discovery dispute, the Deerfield Abutters spoke with Applicants' counsel again today, August 15, 2016. The parties reached agreement on one issue but were unable to reach agreement regarding DA 1-1 and 1-2.

9. One other item is the issue of "confidential business information. As noted above, in DA 1-1, Applicants noted that "... some of the documents requested are confidential business information." The Deerfield Abutters have asked Applicants to identify the documents it claimed are confidential. During the August 12, 2016 phone conversation between the parties, the subject was raised. Applicants' counsel indicated that it was producing a privilege log and intends to produce it prior to the technical session. The Deerfield Abutters state such documents should be identified as soon as possible and reserve the right to compel production of these documents, as the documents are needed by the Deerfield Abutters at the technical sessions.

Argument

10. The Deerfield Abutters are seeking information that goes directly to the heart of one of the major factors considered by the SEC in this action. Pursuant to RSA 162-H:16, IV, the SEC shall determine whether the site and facility will not unduly interfere with the orderly development of the region. As part of this process, under Site 301.09 "Effects on Orderly Development of Region", the Application must include the "(b) The economy of the region, including an assessment of: ... (4) The effect of the proposed facility on real estate values in the affected communities; (5) The effect of the proposed facility on tourism and recreation;"

11. Applicants have filed the expert testimony of Mr. Chalmers to address the topic of real estate values. See Applicants' Volume 46, referred to as the "Chalmers Report". As part of the discovery process and after their review of this testimony, the Deerfield Abutters filed Data Requests (DA 1-1 to 1-4) that are tailored to obtain information on the impact of the Project on real estate values.

12. The Deerfield Abutters contend that the Applicants' real estate experts have utilized sales activity along the Right of Way (ROW) in case studies in the Chalmers Report. Accordingly, the Deerfield Abutters seek detailed information of Applicants' purchase of properties within one-quarter mile of the proposed Transmission Line and alternate NPT routes. Applicants' Response to DA 1-1 fails to identify any documents for properties along the alternate route and provided only 25 deeds for the proposed transmission line.

13. Since the announcement of the NPT project, Applicants have made numerous real estate purchases and or acquisitions for a variety of reasons, but of primary importance, to secure a route for the Project. These property transfers, as evidenced by deeds, along with appraisals for the purchases, provide a rich data base of value for properties along an existing or proposed ROW and hence the reason for the request in DA 1-1.

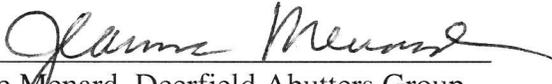
14. A thorough examination of all sales activity along the route is relevant to our intervenor group's preparation for technical sessions with the Applicants' experts. Vacant land, parcels with residential, commercial, recreational, or other uses, purchases for conservation mitigation, distressed properties due to the expansion of the ROW, or other scenarios offered by the Applicants, is relevant to the topic of the effects of this project on NH real estate values. Thus the Deerfield Abutters are seeking a complete list along both routes and all documents in support of this request.

15. The Deerfield Abutters further contend that, in DA1-2, Applicants have failed to provide a specific reason for the acquisition or purchase of the properties. Applicants' Responses to DA 1-2 were unreasonable as they indicate we should "assume" the reason why each parcel was acquired. Assumptions place our concerns at risk in the SEC proceedings, as we would like to be presented with facts surrounding issues of real estate values.

16. The Deerfield Abutters have attempted in good faith to resolve this discovery dispute with the Applicants.

Wherefore, the Deerfield Abutters file this Motion to Compel, asking that the Hearing Officer order Applicants to fully respond to DA Data Requests 1-1 and 1-2 and supply all documents in support of their complete Responses. The Deerfield Abutters also ask for an Order that Applicants identify the documents it claimed are confidential as soon as possible and the intervenor group reserves the right to compel production of these documents, as the documents are needed by the Deerfield Abutters at the technical sessions.

Respectfully Submitted,
Deerfield Abutters Group

By:  Date: August 15, 2016
Jeanne Menard, Deerfield Abutters Group

I certify that a copy of the foregoing Motion to Compel have been forwarded via e-mail to persons named on the Discovery List of this Docket.

By:  Date: August 15, 2016
Jeanne Menard, Deerfield Abutters Group