

THE 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

**OBJECTION OF THE SOCIETY FOR THE PROTECTION OF NEW HAMPSHIRE  
FORESTS TO APPLICANTS' MOTION TO COMPEL  
RESPONSES TO TECHNICAL SESSION DATA REQUESTS**

The Society for the Protection of New Hampshire Forests (the "Forest Society"), by and through its attorneys, BCM Environmental & Land Law, PLLC, respectfully requests that the SEC deny Northern Pass Transmission LLC's and Public Service Company of New Hampshire d/b/a Eversource Energy's (collectively the "Applicants") Motion to Compel the Forest Society to produce information responsive to Data Requests #1, #2, #3, and #4<sup>1</sup> that the Applicants propounded on the Forest Society at the January 19, 2017, Technical Session in regards to the testimony of Jane Difley ("Ms. Difley").<sup>2</sup> In support of this Objection, the Forest Society states as follows:

A. *The Subcommittee Has Already Decided this Matter*

1. On February 8, 2017, the Subcommittee issued an Order denying the Applicants' Motion to Compel the Forest Society's production of "internal and external documents and communications," specifically including the minutes of two Forest Society Board of Trustees meetings at which the Forest Society's position on the Northern Pass was voted

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<sup>1</sup> Applicants made a total of six data requests in regards to Ms. Difley. Although Applicants "move to compel the SPNHF to produce documents sought by data requests made during the technical session," their Motion discusses only the first four of those six objections. Therefore, the Forest Society understands the Applicants' Motion to Compel to be limited to only those four objections discussed in the Motion.

<sup>2</sup> The Administrator issued the requests in her January 23, 2017, Technical Session Memorandum.

on. Order Denying Applicant’s Motion to Compel Response to Data Request 1-2 Propounded on the Forest Society 2 (Feb. 8, 2017) [hereinafter Order].

2. In denying the Motion to Compel, the Subcommittee held that the Applicants did not explain how the internal documents “pertain to issues before the Subcommittee,” that the Forest Society’s positions are set out in pre-filed testimony, and that the Applicants can question the Forest Society’s witnesses at technical sessions and at the adjudicative hearing. *Id.* at 5.
3. Now, the Applicants seek to compel internal Forest Society documents pertaining to the Forest Society’s Policy Committee and to the Forest Society’s past consideration of the impacts of other energy projects on Forest Society resources.
4. The Order is dispositive of the current Motion to Compel, as these internal communications—at least to the extent that Data Requests #1 and #2 seek documents concerning the proposed Northern Pass—are included in the data request that was denied in the Order.
5. With regard to Data Requests #3 and #4, although those seek information not related to Northern Pass, they seek internal documents and communications that are irrelevant for the same reasons discussed in the Order, as well as additional reasons discussed herein.

B. *Objections Based on Relevance*

6. The Subcommittee stated in its Order that the Applicants failed to show how the internal documents and communications “pertain to the issues of the Subcommittee.” Order at 5. The Subcommittee was not persuaded by the Applicants’ argument that they needed the documents in order to better understand the Forest Society’s positions.

7. With regard to the Motion to Compel at issue now, the Applicants have not articulated any additional compelling basis.
8. The Forest Society objects to each of the four data requests because each “seeks information that is not relevant to the proceeding as it is not relevant to whether the Applicants can satisfy the criteria of RSA 162-H:16, IV and, therefore, is not reasonably calculated to lead to the discovery of admissible evidence.” *See* Applicants’ Motion to Compel Responses to Technical Session Data Requests, Attachment A [hereinafter Motion to Compel].
9. Applicants continue to argue that the documents and communications sought will help the Applicants and the Subcommittee better understand the Forest Society’s positions on the Northern Pass Project and other energy projects, and understand the Forest Society’s decision-making process in arriving at said positions. Motion to Compel at ¶¶ 7-8, 10, 12-13.
10. With regard to Data Requests #1 and #2 seeking Policy Committee consideration of the proposed Northern Pass, Applicants also argue that this information is relevant because it relates to one of the purposes of Ms. Difley’s pre-filed testimony. As stated in Ms. Difley’s pre-filed direct testimony, the purpose of her testimony “is to provide background on the Forest Society’s mission and history, and to offer some context to the reasons why we have intervened in this docket.” Difley Pre-Filed Direct Testimony at 3-4.
11. The Applicants assert that “SPNHF cannot submit testimony testifying on the basis for its opposition to the Project and then claim that the same information is not relevant.” Motion to Compel at ¶ 7. The Applicants are mistaken. Ms. Difley’s testimony is

relevant, but the Forest Society's internal documents and communications are not relevant.

12. The Applicants present as a revelation "that an internal Policy Committee made the initial decision to oppose Northern Pass." Motion to Compel at 4. However, the Subcommittee has already determined that documents related to the Forest Society's Board of Trustees' consideration of the Northern Pass do not "pertain to the issues before the Subcommittee." Order at 5. The Policy Committee documents are no different and also do not bear on whether the Applicants can satisfy the criteria of RSA 162-H:16.
13. Ms. Difley's discussion at the technical session of the role of the Policy Committee exemplifies the purpose of technical sessions and underscores the Subcommittee's reasoning in the Order that the Applicants have the opportunity to question Ms. Difley at technical sessions and at the adjudicative hearing. Order at 5. The fact that Ms. Difley discussed the decision-making process of the Policy Committee and the Board of Trustees at the technical session does not make the Forest Society's internal documents relevant to the criteria of RSA 162-H:16. Such a determination would be contrary to the Order.
14. Data Requests #3 and #4 seek information regarding the Forest Society's consideration of energy projects other than the Northern Pass. For the same reasoning as in the Order, the requested internal communications and documents are not relevant to the issues before the Subcommittee.
15. The information requested by Data Requests #3 and #4 are also not calculated to lead to the discovery of admissible information because they do not even pertain to the

Northern Pass proposal. The Applicants have not articulated any compelling explanation of how the Forest Society's consideration of a prior energy facility before the SEC is at all relevant to whether the Applicant can satisfy the criteria of RSA 162-H:16 with regard to their Northern Pass proposal.

16. The Applicants argue as follows: "Data Request No. 4 seeks information regarding how SPNHF determines if proposed projects will impact its conservation easements. This information is necessary to help Applicants understand SPNHF's position on the project and its testimony that the Project will directly impact its conserved land." Motion to Compel at 5-6.
17. With regard to the Northern Pass proposal, there is no question that the Northern Pass would directly impact Forest Society properties and properties on which the Forest Society owns conservation easements. The Forest Society's prior discussions of the potential impact of proposed wind facilities, for example, will not shed any light on the impacts of the Northern Pass over, through, and under Forest Society property holdings. The expected impacts are discussed in the testimony of the Forest Society witnesses, and the Applicants "will have an opportunity to question the Forest Society witnesses" about the impacts. Order at 5.
18. Applicants also repeat their assertions that the information sought by the data requests is relevant because it will assist in cross-examination and assessing the credibility of the Forest Society's witnesses. Motion to Compel at ¶ 13.
19. The Subcommittee's Order is clear that those assertions alone are not sufficiently relevant to prove that internal communications of a non-profit intervenor are discoverable; the Applicants' burden is to set forth legal arguments and facts that

explain how these internal communications “pertain to the issues before the Subcommittee.” Order at 5.

20. In sum, the Order is dispositive of the present Motion to Compel in regards to Forest Society’s objections that the four data requests seek information that is not relevant and, thereby, not discoverable.<sup>3</sup>

C. *Objections Based on Privilege*

21. Finally, in regards to Data Request # 4 only, the Applicants contend that they cannot evaluate the Forest Society’s claim that the information sought is privileged because the Forest Society has not produced a privilege log.

22. Because the internal documents and communications sought by this data request are not relevant and, therefore, not discoverable, it is needless for the Forest Society to produce a privilege log. It would be an undue burden on the Forest Society to prepare a log of non-discoverable documents.

23. Further, the Applicants do not need a privilege log to articulate a reason for why the internal communications regarding a non-profit intervenor’s decision to engage in an adjudicative process are not privileged material. Applicants have provided no such reason.

**WHEREFORE**, the Forest Society respectfully asks that the Subcommittee deny the Applicants’ Motion to Compel and grant such other and further relief as may be reasonable and just.

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<sup>3</sup> The Forest Society also stresses that a determination that the internal communications of a non-applicant are relevant to whether an applicant can satisfy the requirements of RSA 162-H would chill the participation of non-profit organizations in SEC cases and significantly impair their ability to communicate within their organizations.

Respectfully Submitted,

**SOCIETY FOR THE PROTECTION OF  
NEW HAMPSHIRE FORESTS**

By its Attorneys,

BCM Environmental & Land Law, PLLC



Date: February 21, 2017

By: \_\_\_\_\_

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**CERTIFICATE OF SERVICE**

I hereby certify that on this day, February 21, 2017, a copy of the foregoing Objection was sent by electronic mail to persons named on the Service List of this docket.



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Jason Reimers