

**THE STATE OF NEW HAMPSHIRE  
SITE EVALUATION COMMITTEE**

Joint Application of Northern Pass Transmission, LLC and Public Service Company of New Hampshire d/b/a Eversource Energy for a Certificate of Site and Facility for the Construction of a New High Voltage Transmission Line in New Hampshire

Docket No. 2015-06

**ASHLAND WATER & SEWER DEPARTMENT'S EXPEDITED MOTION TO  
COMPEL DISCLOSURE OF ENGINEERING STUDY**

The Ashland Water & Sewer Department (“Department”) of Municipal Group 3 North<sup>1</sup> submit this expedited motion to compel disclosure of certain information requested by data request, and in support thereof state as follows:

1. The Department moves to compel disclosure of all analyses, work papers, studies, and action in consideration for the Project, including any work papers on mitigating the impact of the Project near and around the Ashland sewer lagoons, water treatment facility, and the Pemigewasset River, as requested by Municipal Group 3 North’s Data Requests 1-14 & 1-15. The Department recently learned that Applicants have completed initial engineering analysis or findings, action consideration, and/or work papers regarding the Project’s impact on Department water treatment facilities and sewer lagoons. The Applicants have refused to provide those materials, however, despite the fact that the Department needs to prepare for the upcoming testimony of the Applicants’ construction panel.

2. Such information is unquestionably within the scope of discovery, within the scope of the construction panel’s expertise, relevant to the Department’s rationale for intervention in this proceeding, and therefore critical to the Department’s ability to meaningfully participate. Applicants’ construction panel is currently set to appear before the SEC from May 1<sup>st</sup>-4<sup>th</sup>, and so the Department moves the Presiding Officer to make an expedited ruling on this

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<sup>1</sup> Municipal Group 3 North includes the Towns of Holderness, Ashland, New Hampton, and Bristol.

request so that the Department may have this information to question the construction panel if necessary.

3. Site 202.12(k) authorizes motions to compel within 10 days of the earliest of Applicants' response or the deadline for providing same. In addition, Site 202.12(m) obligates Applicants to "reasonably and promptly amend or supplement the response" when the Applicants obtain information which it would have been required to provide if available at the time of the request. See Site 202.12(k). The within motion is consistent with the timeframe to move to compel as the Department only recently became aware that Applicants possessed information responsive to the below data requests and also only recently became aware that the Applicants are refusing to provide that information unless the Department executes an agreement to access the project ROW over Department property. In addition, at the time of the Applicants' data request response, no work had been done to date and so the Department did not have a basis to object or move to compel. The Applicants' position is unreasonable and is inconsistent with Applicants' duty to supplement its data requests responses.

4. By way of background, Applicants intend to install the HVDC line and eleven (11) towers across town-owned land on which sits the Department's well field and wastewater treatment facility. Both of these facilities are critical to the town's infrastructure and public health, as well as the town's economic development due to the large supply of water that could be attractive to industrial or commercial users. See Department's January 28, 2016 Petition to Intervene. Both facilities are also quite fragile and could be easily damaged from the construction, operation, or maintenance of the line assuming it is approved. See id. The town's water supply is fed from an aquifer that runs under the well field located on this property and there are two town wells located on the property in the designated well protection area. Id.

5. The Department is particularly concerned about the septage lagoons at the treatment facility because they are lined with clay, and the Department suspects they may have already been partially damaged during dredging of the Pemi River in the 1990's, which is why the Department installed several test wells in the areas where the proposed towers are to be located. See id. More specifically, heavy equipment, excavation, and construction of the proposed foundations (including temporary pads) and towers in sandy soil so close to the lagoons could potentially cause new cracking of the clay lining and additional leakage of the lagoons or make the existing cracking and leakage worse. See id.

6. To better understand how Applicants intended to address these concerns and ensure that no new or additional damage would occur, Municipal Group 3 North propounded data requests to the Applicants addressing these issues:

“MG3N 1-14 Please provide all analyses, work papers, studies, and action consideration for the Project passing by and past the Ashland sewer lagoons and the Pemigewasset River. Please include all information acquired by You and all analysis and mitigation that explains why the Project will not dewater the lagoons, contaminate the soil, and destabilize the existing ground and existing dikes.”

“MG3N 1-15 Please provide all studies, analyses, calculations and work papers on mitigating the impact of the Project bypassing the Ashland lagoons and the Pemigewasset River to assure that the property of Ashland Water and Sewer District is not impacted by the Project.”

These requests covered “all analyses, work papers, studies, and action consideration,...all information acquired by [the Applicant]...[and] all studies, analyses, calculations and work papers on mitigating the impact...,” and is broad enough to encompass responsive information before it is in a final report or study. Applicants did not object to either of these data requests and have waived the right to do so at this time.

7. On or about July 8, 2016, Applicants responded to the data requests:

“The Applicants have met with representatives of the Ashland Water and Sewer on April 27, 2016 to ascertain their concerns and share the Project's construction plans on Ashland Water & Sewer property. As a result of these consultations, the Applicants have retained an independent engineering firm to perform mutually agreed upon engineering studies for work on the Ashland Water & Sewer site. The studies include an assessment of the initial condition of the lagoons, post project assessment and impact of construction activities around the lagoons. *The study will be completed prior to construction and shared with Ashland Water & Sewer.* The results of these studies will be utilized to create a specific construction plan for the Ashland site.” July 8, 2016 Response to Municipal Group 3 North 1-14, attached as Exhibit A (emphasis added).<sup>2</sup>

In response, the Applicants also uploaded to the Sharefile site minutes of an April 27, 2016 meeting between Applicants and the Department, and which minutes appear to have been prepared by the Applicants. See April 27, 2016 Minutes, attached as Exhibit B. Applicants’ data request response to MG3N 1-14 restated its earlier commitment to the Department: to address these concerns, Applicants offered to retain a third party engineering firm to examine these issues, and would provide the results of that work to the Department for its own internal review and use.

8. Upon information and belief, Applicants retained Nobis Engineering to perform this work, and Nobis and/or Eversource/NPT gathered information and data at the Department property for the purpose of performing the agreed upon analysis of potential impact. The Department understands that Applicants now possess information that is responsive to the above data requests based on this initial data collection.

9. Applicants have taken the position that it will not provide the information promised in the data request response until and unless the Department enters into a site access agreement that would, in part, allow NPT/Eversource to access the ROW on Department property to construct, operate, and maintain the line, and would also provide access to the ROW on an isolated private piece of property across the Squam River in the neighboring town of New

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<sup>2</sup> Applicant’s response to MG3N 1-15 was “[p]lease see the Applicants’ Response to MG3N 1-14 above.”

Hampton. Applicants contend that this *quid pro quo* arrangement was known and agreed to by the Department, yet Applicants admit it was never reduced to writing and failed identify any o evidence of the purported “mutual understanding” between Applicants, the Department and/or their attorneys of these terms. The conditions upon which Applicants would provide this information responsive to the above data requests are mentioned nowhere in the data request response themselves or in the minutes of the Applicants’ meeting with the Department. See e.g. Exhibits A & B.

10. The Department’s ability to meaningfully participate in the upcoming construction panel is significantly hampered by the Applicants’ refusal to provide any responsive information it may possess that speaks to the potential impact of the Project on the water supply and sewage lagoons. The primary basis for the Department’s intervention in this docket was to ensure that the construction, operation, and maintenance of the line so close to the treatment facility and lagoons did not harm the town’s water supply and cause leakage from the lagoons. See generally Department’s Petition to Intervene, see also, infra, paragraphs 4 & 5. The most logical Applicant witnesses to address those concerns will sit on the construction panel in one week. The Department requires information responsive to the data requests to evaluate whether and to what extent Applicants intend to address, evaluate, minimize, or avoid potential impacts to the town’s water supply and sewage lagoons. This information is therefore critical to the Department’s ability to protect its interest in this docket and to adequately prepare to question the construction panel. The Applicants’ position that the Department’s right to review these documents is now linked to an obligation to allow access over town property for construction of the line is inconsistent with the discovery rules set forth by the Site Evaluation Committee.

11. The Department and Applicants have attempted to resolve this dispute to no end.

12. The Applicants were contacted and do not assent to the within motion.

13. The following parties were contacted and assent: Abutting Property Owners, Bethlehem to Plymouth; Grafton County Commissioners; SPNHF, NGO Group, PRLAC, NAPO-SB, Municipal Group 3 South, Deerfield Abutters; all other parties did not respond prior to filing.

WHEREFORE, it is respectfully requested that the Site Evaluation Committee:

- A. Order Applicants to immediately provide to the Department any information responsive to the data requests that it or its consultants or Nobis Engineering may possess; and
- B. Grant such other and further relief as may be just.

Respectfully submitted,

**MUNICIPAL GROUP 3 NORTH**

ASHLAND WATER & SEWER DEPARTMENT

By and through its attorneys,

MITCHELL MUNICIPAL GROUP, P.A.

Dated: April 24, 2017

By:       /s/ Steven Whitley        
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**CERTIFICATE OF SERVICE**

I hereby certify that on this date a copy of the foregoing was sent by electronic mail to persons named on the Service List of this docket.

Dated: April 24, 2017

By:       /s/ Steven Whitley        
Steven M. Whitley, Esq.

**MG3N 1-14** Please provide all analyses, work papers, studies, and action consideration for the Project passing by and past the Ashland sewer lagoons and the Pemigewasset River. Please include all information acquired by You and all analysis and mitigation that explains why the Project will not de-water the lagoons, contaminate the soil, and destabilize the existing ground and existing dikes.

**Response:** The Applicants have met with representatives of the Ashland Water and Sewer on April 27, 2016 to ascertain their concerns and share the Project's construction plans on Ashland Water & Sewer property. As a result of these consultations, the Applicants have retained an independent engineering firm to perform mutually agreed upon engineering studies for work on the Ashland Water & Sewer site. The studies include an assessment of the initial condition of the lagoons, post project assessment and impact of construction activities around the lagoons. The study will be completed prior to construction and shared with Ashland Water & Sewer. The results of these studies will be utilized to create a specific construction plan for the Ashland site.

Please also see the meeting minutes with the Town of Ashland Water & Sewer Commission on April 27, 2016 which have been uploaded to the ShareFile Site in response to this request.

## **Town of Ashland Water & Sewer Commission – 4/27/16 @ 10:00 am @ 6 Collins Street, Ashland**

Attendees;

### Northern Pass Representatives

Barry Needleman, Attorney (McLane Middleton)  
Jim Jiottis, Project Manager (Eversource)  
Jim Wagner, Public Involvement Specialist (Burns & McDonnell)

### Ashland Water & Sewer Commission (W&S)

Eli Badger – Chairperson & Commissioner  
Alan Cilley – Commissioner  
David Toth – Commissioner

Others Present; Tony Giunta - Nobis Engineering

### **Introductions;**

Eli Badger started the meeting by expressing interest in talking with Northern Pass representatives about the proposed construction plans. Eli referred to the “voluminous SEC Wetland material and permit application” stating it would be much easier to just talk to NP representatives rather than review all the pages. Eli said the W&S Commission was encouraged by others to file intervenor status not knowing what that actually meant.

Eli emphasized one of their key roles as the Commission is to protect the Water & Sewer facility from any adverse impact from the Northern Pass project. The W&S Commission wants NP representatives to listen to their concerns and begin an ongoing dialogue throughout the project.

The Commissioners showed the aerial map of the Waste Water Treatment plant (aeration lagoons, clarifiers, and well) providing perspective of the proposed location of structures. Eli stated the lagoons are clay lined, built in the late 1960's.

Jim Jiottis introduced the Northern Pass team, described their roles and reviewed the agenda for the meeting.

- Legal Review
- Review of the Project in Ashland
- Security Questions
- Review of Ashland questions
- Near Term Field Work
- Contacts
- Schedule Follow Up Meeting



## **Barry Needleman**

### ➤ Legal Review

Barry Needleman stated the expressed interest on behalf of Ashland S & W is appropriate. Barry said some want to stop the project however for the Ashland S & W Commission, at some point hopefully will no longer need to be interveners. Eli understood and stated they needed to be at the table with Northern Pass. Barry said much of the topics to be discussed were not connected to the SEC however the sooner discussions take place with Northern Pass the better.

## **Jim Jiottis**

### ➤ Review of the Project

Since the Commissioners were very interested in the structure footings, Jim provided an overview of the structure foundations by showing a diagram. Jim explained the foundation being of grillage design requiring a six foot hole, one for each leg (4 holes). Eli said the soil is all sand so Jim stressed that geotechnical work would have to be done. David Toth used a cross section diagram of the soil to show the relationship of an esker to the surface. An esker (Wikipedia) is a long, winding ridge of stratified sand and gravel which occur in glaciated regions of North America.

Jim reviewed the proposed Northern Pass transmission line locations and lattice design, all on the western side of the existing ROW, away from the lagoons. The Commissioners were worried of the "50' x 50' concrete pads" constructed around the base of the structure foundations. Jim said that was not the case for pads, for the NP project, the pad is gravel or in the case of wetlands, swamp mats that have permeable backing. The mats would be removed once construction was completed. Eli asked about the transportation of the lattice to the site (100' trailers), Jim stated pieces would be brought in for assembly. Jim said the NPT construction team would coordinate with the Water & Sewer group regarding work on the property and the movement of equipment onto the site. They would work to not create any interference to the water & sewer facilities operation

Petroleum spills were another concern by the Commissioners. Jim said the Northern Pass Construction Contractors will be fueling their equipment offsite. There would be a proactive mobile equipment check list followed and spill control program adhered to. The storage of mobile equipment would also be offsite. Only structures and associated parts would be staged on an acceptable "on-site location" within the existing ROW. Access to the site was discussed, the Commissioners stated it will not be coordinated without the team. Offered to work with the Commissioners to establish specific work practices when the crews are doing work above the aquifer.

### ➤ Security

The Commission feels the water supply and lagoons are very vulnerable to outside breach of security. The town has State and Federal guidelines to follow as a public utility. Jim said Eversource also has to answer to Federal agencies, namely FERC and NERC and follows set processes and procedures. For example, flying the line via helicopter looking for damages and field work in the existing ROW. Adding another line will not change security processes. Jim stated all gates on access roads would be

constructed and coordinated with the town and could be monitored. Northern Pass would work with principal property owners and work around Ashland's daily tasks, mutually coordinated. Commissioners stressed the need to set up common processes. Offered to coordinate the installation of gates with Ashland Water & Sewer and that the gates could be left in place after construction.

Commissioners want Northern Pass to have an Emergency Plan that outlines contacts. They are in the process of updating their plan. Jim offered to have the NPT construction team coordinate their emergency plan with Ashland's plan, specifically sharing key contact personnel.

#### ➤ Ashland Questions

Jim stated the discussions in the beginning covered many of their submitted questions.

Eli wanted to discuss the monitoring equipment. There are two monitoring stations for the test wells that have transmitters located on the top of two towers. The Commission wants to make sure the any electrical fields emitted by the DC lines will not interfere with the signals. Jim said he would need to know more about the electronics however the EMF fields should not interfere especially if the monitoring equipment is outside of the ROW. Eli emphasized that descriptive words like "should not, probably not" are not good enough, uncertain phrases leaving doubt are not acceptable.

Commissioners want to review all the drawings/files for the construction process. They want to know all about the equipment being used and why and understand everything the construction team is doing. Eli wants to "work out an appropriate plan" and to have an outside engineer (neutral expertise) monitoring the project.

Commissioners offered to provide NPT with whatever data they had to facilitate our designs and review. This included providing updated maps of the facilities, specifically showing test wells in the ROW.

Dave Toth mentioned there is an increase in concentration of sodium chloride (NaCl) in the groundwater (esker). They believe that road salt from Interstate 93 has been leaching into the ground for years. Dave repeated comments by others in town that compared the interaction of the DC EMF and sodium chloride as a salt/water battery. The Commission is concerned any construction may alter the ground surface thus altering the flow of "run-off", negatively impacting the groundwater. They suggested baseline data base be developed for reference.

Jim told the Commission the next meeting will include the General Contractor – PAR who will address many of the construction questions.

Eli discussed the unfortunate "down turn" in Ashland's economic health over the last 20 years. With the shutdown of the mills, there is not much left to help Ashland. The unlimited supply of natural fresh ground water and waste water treatment underutilization (12% is being used) offers much for prospective businesses to locate there. Eli is concerned the towers could limit any expansion for increased treatment. Also mentioned was the installation of solar panels in the treatment area. The Commission wants to plan for the future and make the town sustainable. Jim mentioned the Forward NH Fund may be of help and would get more information for the Commission. Jim also offered to review their expansion plans or ideas to insure NPT does not limit future work by Ashland.

Eli expressed concern about having the necessary information to report to the town that Northern Pass has done its homework and will not damage the facility. He strongly suggested a report by a third party be done to verify no harm by NPT. He stated he cannot present a report authored by Eversource or NPT as it would not be trusted. He is willing to make our case that we will not harm the facility, but needs third party information to back him up.

### **Jim Wagner**

#### ➤ Near Term Field Work

Jim W. provided the Ashland Water & Sewer Commission a review of the archaeological field work and geotechnical survey/sample boring activities scheduled for the year. Jim stated the communication process of contacting the town administrator and the local law enforcement continues to be followed. Jim said he and Sarah also followed up with the landowner (Carol Currier) who had questions at the Ashland town Board of Selectman meeting held last fall.

#### ➤ Contacts

Jim Jiottis will be the contact for the Construction Project.

#### ➤ Follow Up Meeting

Jim Jiottis will schedule the next meeting.

### **Facility Tour**

After the formal meeting was over, the group decided a site tour of the Water & Sewer facility would be most beneficial. Attendees: the Commission, Tony Giunta, wastewater treatment plant operator, Jim Jiottis and Jim Wagner.

At the facility, Eli pointed out the access road that should be used and location of sample wells. Jim J. said one benefit could be to improve the access road. A concern of the clay lining fracturing due to vibration from heavy equipment and other construction processes was brought up. Tony mentioned there is a way of measuring the vibrations currently to establish a base line in preparation for the construction period. There was also discussion about improving the access road through the ROW to provide a second entrance onto the municipal well site. Currently, Ashland has an easement over private property to access the site.

During the site visit, the Water & Sewer personnel again expressed their concerns that the system not be damaged during construction, but also stressed their willingness to work with us. All their comments and concerns were expressed professionally and sincerely, the crew clearly has a lot of pride in their facility.