

**STATE OF NEW HAMPSHIRE  
SITE EVALUATION COMMITTEE**

**Docket No. 2015-06**

**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**

**October 28, 2016**

**ORDER ON APPLICANT'S MOTION FOR REHEARING  
(Order on NEPGA's Motion to Compel)**

**I. Background**

On October 19, 2015, Northern Pass Transmission LLC and Public Service Company of New Hampshire d/b/a Eversource Energy (collectively Applicant) submitted an Application to the New Hampshire Site Evaluation Committee (Committee) for a Certificate of Site and Facility (Application) to construct a 192-mile transmission line. The transmission line is proposed to have a capacity rating of up to 1,090 MW, and to run through New Hampshire from the Canadian border in Pittsburg to Deerfield.

In accordance with various procedural orders, discovery through data requests has been taking place. Unsatisfied with certain of the Applicant's responses, New England Power Generators Association (NEPGA) filed a Motion to Compel and Postpone Technical Session on September 6, 2016. Grafton County Commissioners, Society for the Protection of New Hampshire Forests (Forest Society), Deerfield Abutters Group, Ashland Water and Sewer, and Municipal Group 2 concurred in NEPGA's Motion to Compel. Through its Motion to Compel, NEPGA requested *inter alia* that, LEI and its expert witness, Julia Frayer, re-run its models with different inputs to provide a re-calculation of market benefits.

The Applicant filed an Objection to NEPGA's Motion to Compel and Postpone Technical Session on September 16, 2016.

NEPGA's request that LEI be compelled to re-calculate its analysis was granted by Order dated September 22, 2016.

The Applicant filed a Motion for Rehearing of Order on NEPGA's Motion to Compel, Motion to Disallow Further Participation, and Motion to Stay on October 6, 2016.

NEPGA objected to the Motion for Rehearing on October 17, 2016. Counsel for the Public filed a Response to the Applicant's Motion for Rehearing on October 17, 2016. The Forest Society filed its Joinder in NEPGA's Objection on October 17, 2016. Municipal Groups 1 (South), 2, 3 (North) and 3 (South) filed their Notice of Joinder in NEPGA's Objection to Motion for Rehearing on October 21, 2016.

## **II. Positions of the Parties**

### **A. Applicant**

The Applicant argues that re-running the LEI models is not a trivial exercise as suggested by NEPGA's data requests. The Applicant seeks rehearing on the basis that this matter has been mistakenly conceived, that such an exercise does not constitute discovery, and that the ruling conflicts with other decisions contained within the Order on Motions to Compel dated September 22, 2016. The Applicant further seeks rehearing as to the matter of production of an un-redacted copy of the Power Purchase Agreement (PPA) between PSNH & Hydro Renewable Energy, Inc. (HRE), and rehearing as to the issue of NEPGA's participation in matter.

NEPGA's Data Request 2-7 asked for re-calculation of wholesale market benefits based on the Energy Information Administration's 2016 forecast of natural gas prices.

Data Request 2-8 stated that the Forward Capacity Auction (FCA) 10 clearing price was lower than estimated in the LEI Report and asked whether, combined with the change to demand curves for FCA 11, wholesale capacity market benefits will be lower than estimated. The September 22, 2016, Order on NEPGA's Motion to Compel directed the Applicant to provide a response using the different inputs provided by NEPGA. The September 22, 2016, Order on Requests to Amend Procedural Schedule (Scheduling Order) directed the Applicant to file supplemental responses to NEPGA's data requests by October 7, 2106. The Applicant states that compliance with this directive will take approximately three weeks and cost approximately \$50,000, not including any re-modeling of local economic benefits that would flow from the re-calculation of market benefits. The Applicant argues that it is therefore unable to re-calculate market savings to meet the deadline set in the Scheduling Order.

The Applicant notes that re-calculation of savings is a complex task, and that re-calculation utilizing only certain new inputs would yield unreliable, distorted, and inaccurate results. The Applicant suggests that a more systematic and comprehensive update than that requested by NEPGA would require even more substantial effort, likely in the range of \$100,000 or more in professional fees associated with the computation and analysis. The Applicant notes that it intends to undertake such an effort for filing in this proceeding in the first quarter of 2017. The Applicant suggests that this would be more informative than the re-calculation of market savings requested by NEPGA, which the Applicant argues would not be representative or realistic.

The Applicant next argues that requiring re-calculation of market impacts exceeds the scope of discovery. The Applicant argues that the purpose of discovery is to enable a party to adequately prepare for hearing by providing access to facts in the care, custody, or control of

another party. The Applicant submits that NEPGA's requests seek to utilize discovery as a means to have evidence created for it at the Applicant's cost, which its own witness should be providing. The Applicant points to the Presiding Officer's September 22, 2016 Order on Motions to Compel for support, noting that the Presiding Officer had denied certain data requests made by the Forest Society with respect to LEI economic analysis, and finding that, with the inputs and outputs, along with the description of the modeling approach and assumptions used, the Forest Society should be able to test the data using its own modeling approach and assumptions.

The Applicant further argues that NEPGA misconstrues the Applicant's obligation to update its testimony. The Applicant notes that it must prove its case by a preponderance of the evidence, Site 202.19(a), and prove facts sufficient for the SEC to make the findings required by RSA 162- H:16, in accordance with Site 202.19(b). The Applicant argues that the LEI Report reflected information available at the time of filing, used pricing information reflecting then-current commodity prices, and was premised on the operative ISO market rules, which is entirely consistent with the requirements of pre-filed testimony. The Applicant notes that it is incumbent upon the Applicant to determine whether, in accordance with the procedural order, to undertake a comprehensive update of market benefits, and it is up to the other parties to make their own case by either providing their own evidence or challenging the Applicant's evidence. Nevertheless, the Applicant states that it intends to have LEI and Ms. Frayer update the analysis of market benefits for filing in this docket, but will require additional time to do so.

The Applicant next argues that NEPGA was provided Intervenor status only on a limited basis and that the purpose of such intervention no longer exists. Specifically, the Applicant argues that now that the Public Utilities Commission "has opened a proceeding to review the

PPA, and separately established a mechanism for treating PPA and other similar costs in a manner that insulates them from competitive markets, the reasoning for allowing NEPGA's limited intervention no longer obtains." Motion for Rehearing, p. 8. The Applicant argues that if NEPGA wishes to challenge whether the PPA is in the public interest, it may seek recourse at the PUC. Further, the Applicant notes that "inasmuch as there is no basis for concluding that the PPA will affect the electricity generation market, the predicate for NEPGA's participation in this proceeding is negated." Motion for Rehearing, p. 8.

The Applicant argues that the PPA is relevant to this proceeding only insofar as it provides benefits, but the PUC will examine the terms of the PPA and determine whether it is in the public interest. The Applicant is concerned that broad dissemination of an un-redacted copy of the PPA to any party other than Counsel for the Public, even if subject to a confidentiality agreement, will put HRE at substantial economic risk in competitive markets. The Applicant also notes that the PPA is of limited relevance to the instant proceeding because the operative terms of the agreement, including pricing, are beyond the scope of the SEC's inquiry and authority. The Applicant suggests that the value in producing un-redacted versions of the PPA to all parties who have signed a confidentiality agreement is low, while the potential harm to the Applicant and HRE is high if the operative terms and pricing were to be disclosed by any of the parties who would have access. The Applicant suggests that, at a minimum, a strict protective order, with significant monetary penalties for intentional or unintentional disclosure would be in order. The Applicant therefore asks the Presiding Officer to grant rehearing of the PPA finding with respect to NEPGA, and the contemporaneous finding at page 52 of the Order on Motions to Compel with respect to Municipal Group 3 (North)'s Data Request 32.

The Applicant ultimately requests: (i) rehearing on the matters outlined herein; (2) that NEPGA be disallowed from further participation; and (iii) a stay of: the Order on NEPGA's Motion to Compel; the Order on Motions to Compel as it pertains to production of the PPA; and the Order on Requests to Amend Procedural Schedule to the extent it requires supplemental responses to NEPGA's data requests by October 7, 2016.<sup>1</sup>

B. NEPGA

NEPGA argues that the Applicant's request for rehearing should be denied. NEPGA submits that the Applicant failed to seek a stay, suspension or modification of the September 22, 2016, Order until one day prior to the deadline for compliance, and that such failure appears to be an attempt to cause undue delay in the discovery process to disadvantage NEPGA's participation in this proceeding. NEPGA further argues that the Applicant's request for rehearing attempts to rehash prior arguments and fails to meet the standard for rehearing. NEPGA suggests that where the LEI outputs and Ms. Frayer's testimony are based on proprietary modeling, the Presiding Officer was well within his discretion in compelling the Applicant to produce the information responsive to NEPGA's data requests. NEPGA additionally notes that the Applicant cannot seek an extension of its own discovery deadlines yet expect that other parties should be bound by deadlines premised on the Applicant's discovery deadlines.

NEPGA additionally argues that the Applicant should be required to produce the PPA immediately, as it is readily available and NEPGA, as well as other parties, has signed a confidentiality agreement.

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<sup>1</sup> The Applicant's request for a stay is addressed in the Order on Requests to Amend Procedural Schedule dated October 26, 2016.

With respect to the Applicant's request for rehearing regarding NEPGA's participation in this docket, NEPGA argues that the request is untimely and should be denied. NEPGA further argues that the Applicant failed to identify how the Presiding Officer's Order overlooked any fact warranting rehearing. NEPGA argues that the Applicant has also mischaracterized the basis of its limited intervention by failing to indicate that NEPGA's intervention includes the impact of the Project on New England's wholesale energy and capacity markets.

NEPGA asserts that the PUC's review of the PPA is not a substitute for the Site Evaluation Committee's review of the Project and the PPA, and that the commencement of the PUC proceeding, does not change the Committee's reasoning for granting NEPGA intervention rights in this proceeding.

C. Counsel for the Public

Counsel for the Public concurs in part with Applicant's request for a stay of the order requiring the Applicant to perform a limited update of the LEI analysis. Counsel for the Public also agrees with the Applicant that a systematic and comprehensive update of the LEI analysis is preferable and should be performed. Counsel for the Public argues that the Applicant should be required to provide an update of the LEI analysis as market and structural changes will likely have an impact on the estimated energy and capacity market benefits of the Project, and the procedural schedule should be amended to allow parties to file their direct testimony in response to this substitution of the Applicant's direct testimony.<sup>2</sup> Counsel for the Public recommends that the Applicant's updated analysis include the implications of: the results of the most recent Forward Capacity Auction (FCA 10), including the fact that it attracted significantly more new

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<sup>2</sup> Requests regarding amendment to the procedural schedule are addressed in the Order on Requests to Amend Procedural Order dated October 26, 2016.

generation than anticipated by LEI; ISO-NE's forecast of future demands decreasing significantly between the 2015 Capacity, Energy, Loads and Transmission (CELT) report used by LEI and the 2016 CELT report now available; new ISO-NE rules used to determine prices in future auctions; and changes to energy market conditions because of these capacity related developments as well as changes in natural gas prices. Counsel for the Public notes that the Applicant has not explained why such updated information cannot be provided until the first quarter of 2017, and Counsel for the Public believes it can be completed in no more than two months or so. Counsel for the Public requests that the Applicant be required to submit the updated LEI analysis and accompanying testimony no later than December 31, 2016.

Counsel for the Public objects to the Applicant's request to exclude NEPGA from further participation, and submits that NEPGA should be allowed to participate in the docket because it has an interest in exploring the Project's impacts on existing generating facilities, including those that are located in New Hampshire, noting that NEPGA's intervention has never been limited to the impact of the PPA on energy markets.

Counsel for the Public takes no position on the request to compel an un-redacted copy of the PPA.



### **III. Standard**

Pursuant to RSA 541:3:

Within 30 days after any order or decision has been made by the commission, any party to the action or proceeding before the commission, or any person directly affected thereby, may apply for a rehearing in respect to any matter determined in the action or proceeding, or covered or included in the order, specifying in the motion all grounds for rehearing, and the commission may grant such rehearing if in its opinion good reason for the rehearing is stated in the motion.

A motion for rehearing shall:

- (1) Identify each error of fact, error of reasoning, or error of law which the moving party wishes to have reconsidered;
- (2) Describe how each error causes the committee's order or decision to be unlawful, unjust or unreasonable;
- (3) State concisely the factual findings, reasoning or legal conclusion proposed by the moving party; and
- (4) Include any argument or memorandum of law the moving party wishes to file.

N.H. CODE ADMIN. RULES, Site 202.29.

### **IV. Analysis and Findings**

The Applicant has demonstrated good reason for rehearing with respect to NEPGA's requests for re-calculation of market savings. The necessary analysis is more complex than the request by NEPGA, and re-calculation of accurate and reliable figures will require the Applicant to expend more time and resources than originally anticipated. The Applicant has agreed to undertake a comprehensive re-calculation of market analysis and argues that it needs additional time to do so. Requiring the Applicant to provide the necessary analysis in an unworkable timeframe would be unreasonable. The Applicant shall be permitted additional time to update its model and the testimony of Julia Frayer. The Applicant shall supplement its responses to

NEPGA's requests pertaining to the re-calculation of market benefits by February 15, 2017, in accordance with the Order on Requests to Amend Procedural Order dated October 26, 2016.

With respect to the Applicant's request for rehearing on the matter of disallowing NEPGA's further participation in this docket, the Applicant has failed to state good reason for rehearing. The scope of NEPGA's intervention status includes the impact of the Project on New England's wholesale energy and capacity markets, and the purpose of NEPGA's intervention remains relevant to this docket. The Applicant's request that NEPGA be disallowed from further participation is denied.

The Applicant further fails to state good reason for rehearing on the matter of production of un-redacted copies of the PPA. The Applicant fails to identify any error of fact, reasoning, or law warranting rehearing and does not identify how such error causes the order to be unlawful, unjust or unreasonable. The Applicant has expressed concerns that parties will fail to comply with the terms of their respective confidentiality agreements. The parties are reminded that they are bound by the terms of their confidentiality agreements. The Applicant's request for rehearing with respect to production of the PPA is denied. The request for a protective order with respect to the PPA is denied.

SO ORDERED this twenty-eighth day of October, 2016.



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Martin P. Honigberg, Presiding Officer  
NH Site Evaluation Committee