

**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**

December 13, 2016

**ORDER ON APPLICANT'S MOTION FOR CLARIFICATION AND/OR REHEARING
OF ORDER(S) REQUIRING PRODUCTION OF DOCUMENTS
RELATED TO THE CLEAN ENERGY RFP**

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.

On May 25, 2016, the Presiding Officer issued an Order on Motion for Protective Order and Confidential Treatment (Confidentiality Order) that granted, on a temporary basis, the Applicant's request to protect certain information redacted from the pre-filed testimony of Julia Frayer and the report titled, "Cost-Benefit and Local Economic Impact Analysis of the Proposed Northern Pass Project," prepared by London Economics International LLC (LEI Report). The Confidentiality Order required the Applicant to "advise the Subcommittee when the Tri-State Clean Energy RFP bid and award process has concluded and ... either disclose the unredacted versions of Ms. Frayer's pre-filed testimony and ... [the LEI Report], or file a further motion seeking confidential treatment of said documents." Confidentiality Order, p. 12.

On June 23, 2016, the Presiding Officer issued an Order on Pending Motions and Procedural Order, which denied the New England Power Generator's (NEPGA) request to extend the deadline for NEPGA's data requests on the basis that it was not ripe until the Clean Energy RFP process was completed.

On September 22, 2016, the Presiding Officer issued an Order on Motions to Compel addressing, among other things, the Society for the Protection of New Hampshire Forest's (Forest Society) Data Request No. 26, which sought information regarding the Canadian portion of the Project (September 22 Order). The September 22 Order granted the Forest Society's request to compel the Applicant to produce additional responsive documents, "subject to those provisions set forth in the Order on Motion for Protective Order and Confidential Treatment dated May 25, 2016, requiring disclosure upon completion of the Clean Energy RFP process."

On October 4, 2016, the Presiding Officer addressed the Forest Society's motions to compel the production of certain documents produced to Counsel for the Public and referred to as "highly confidential" documents, including Data Request No. 1-26, which sought production of agreements between Northern Pass Transmission, LLC and Hydro Renewable Energy, Inc., or Hydro Quebec; and Data Request 1-27, which sought documents related to financing of the Project. The Order issued on October 4 stated, in part, that the Forest Society and Municipal Group 3 (South)'s "request that the Applicant be compelled to produce responsive documents and information produced only to Counsel for the Public is granted subject to the terms of the intervenors' confidentiality agreements with the Applicant."

On October 21, 2016, the Applicant filed its Contested Motion for Clarification and/or Rehearing of Order(s) Requiring Production of Documents Related to the Clean Energy RFP. IBEW assents to the Motion. The following parties objected:

- NGO Intervenors
- Forest Society
- NEPGA
- Town of Bridgewater
- Town of New Hampton
- Town of Woodstock
- Town of Littleton
- Town of Deerfield
- Town of Pembroke
- Ashland Water & Sewer

The Forest Society and Municipal Group 3 (South)¹ submitted their Joint Objection to Applicant's Motions for Extension of Time to Supplement Responses and for Clarification and/or Rehearing of Order(s)² on October 27, 2016.

II. 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

¹ Although the Town of Canterbury is part of Municipal Group 3 (South), it is not a party to the Objection.

² The Applicant's request for extension of time to supplement responses is addressed in a separate Order.

- (4) Include any argument or memorandum of law the moving party wishes to file.

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

III. Positions of the Parties

A. Applicant

The Applicant seeks clarification and rehearing of: (1) the September 22, 2016, Order on Motions to Compel; and (2) the October 4, 2016 Order on Forest Society and Municipal Group 3 (South)'s Motion to Compel Documents Withheld, insofar as they might be interpreted to require production of documents related to the Tri-State Clean Energy RFP process. Specifically, the Applicant asks the Presiding Officer to clarify that it is not required to produce the Delivery Performance Agreement (DPA) dated January 22, 2016; the Amended and Restated Transmission Service Agreement (Amended TSA) dated January 22, 2016; and Section 5.2 of Eversource Energy's Proposal to the Tri-State Clean Energy RFP (Section 5.2).

The Applicant argues that the DPA, the Amended TSA, and Section 5.2, are not relevant to this proceeding and need not be produced unless the Applicant prevails in the Clean Energy RFP process. The Applicant notes, by way of explanation, that the DPA governs the rights and obligations of NPT and Hydro Renewable Energy, Inc. (HRE) in the event that NPT wins the bid for the Clean Energy RFP, and Section 5.2 is a confidential portion of Eversource Energy's actual proposal to the Clean Energy RFP. The Applicant suggests that, in accordance with the September 22 Order, disclosure, to the extent relevant, would be required no sooner than the completion of the Clean Energy RFP process. The Applicant expresses concerns that the Orders issued on September 22 and October 4 could be interpreted to conflict with respect to the status of the documents related to the Clean Energy RFP process, and may conflate issues of confidentiality and the scope of discovery. The Applicant argues that it appears that the Order

issued on October 4, either did not intend to cover the Clean Energy RFP process documents, or that it mistakenly conceived or overlooked the issue in granting the motion, warranting rehearing. The Applicant argues that requiring the production of documents that are not relevant to this proceeding exceeds the scope of proper discovery and would be unlawful, unjust, or unreasonable. The Applicant requests that the Presiding Officer clarify or reconsider the matter and find that the Applicant is not required to produce the DPA, the Amended TSA, and Section 5.2, unless and until, NPT prevails in the Clean Energy RFP process.³

B. Forest Society

The Forest Society and Municipal Group 3 (South) object to the Applicant's Motion for Clarification and/or Rehearing. In support, the Forest Society and Municipal Group 3 (South) cite the Order issued on October 4, requiring the Applicant to provide supplemental responses to certain data requests within ten days following the issuance of the Order. The Forest Society and Municipal Group 3 (South) note that the Applicant did not produce the requested documents, but instead filed a Motion for Extension of Time and Motion for Rehearing. The Forest Society and Municipal Group 3 (South) argue that there is no basis for withholding the documents from Intervenor who have signed confidentiality agreements and are relying upon the responses and documents in order to meaningfully participate in these proceedings. The Forest Society and Municipal Group 3 (South) further argue that since the Applicant is no longer competing for the Tri-State Clean Energy RFP, there is no reason they should not produce the documents related to that process.

³ On October 28, 2016, the Applicant filed its Further Motion for Confidential Treatment wherein the Applicant advised the Subcommittee that the Project was not chosen as a result of the Clean Energy RFP process and that it would be participating in a Massachusetts RFP process. Through its Further Motion for Confidential Treatment, the Applicant requests an extension of the confidential treatment with respect to redacted portions of Ms. Frayer's pre-filed testimony and the LEI Report during the Massachusetts RFP Process. That request was addressed in a separate order issued today.

IV. Analysis

The Applicant has noted potential inconsistencies between prior orders in this docket with respect to the Applicant's obligation to produce the DPA, Amended TSA, and Section 5.2. This Order is intended to clarify any perceived inconsistencies between prior orders and shall supersede such orders. In accordance with the Order on Applicant's Further Motion for Confidential Treatment, the Applicant is not required to produce unredacted copies of Ms. Frayer's pre-filed testimony and the LEI Report to public. The documents, however, must be provided to parties that have entered into confidentiality agreements with the Applicant. The Applicant shall advise the Subcommittee when the Massachusetts RFP process has concluded and shall either disclose the unredacted versions of Ms. Frayer's pre-filed testimony and the LEI Report at that time, or file a further motion seeking confidential treatment of said documents and information.

SO ORDERED this thirteenth day of December, 2016.



Martin P. Honigberg, Presiding Officer
NH Site Evaluation Committee