

**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**

June 30, 2017

**ORDER DENYING FOREST SOCIETY'S EXPEDITED
MOTION TO COMPEL**

This Order denies the Expedited Motion to Compel filed by the Society for the Protection of New Hampshire Forests (Forest Society).

I. Background

Under various procedural orders, the parties have been engaged in technical sessions and discovery. On February 14, 2017, the Forest Society filed a Motion to Compel the response of Dixville Capital, LLC and Balsams Resort Holdings, LLC (The Balsams), to a data request propounded at a technical session held on January 19, 2017. The Balsams objected on February 24, 2017. On March 10, 2017, the Presiding Officer issued an Order denying the Forest Society's Motion to Compel.

On June 14, 2017, the Forest Society filed an Expedited Motion to Compel arguing that circumstances have changed so the Presiding Officer should change his prior ruling.

The Applicant and The Balsams filed objections to the Expedited Motion to Compel on June 23, 2017.

II. Standard

Motions to compel responses to data requests shall:

- (1) Be made pursuant to N.H. Code of Admin. Rules Site 202.14;

(2) Be made within 10 days of receiving the applicable response or objection, or the deadline for providing the response, whichever is sooner;

(3) Specify the basis of the motion; and

(4) Certify that the movant has made a good-faith effort to resolve the dispute informally.

N.H. Code Admin. Rules, Site 202.12(k).

RSA 162-H:10, IV provides:

The site evaluation committee shall require from the applicant whatever information it deems necessary to assist in the conduct of the hearings, and any investigation or studies it may undertake, and in the determination of the terms and conditions of any certificate under consideration.

RSA 162-H:10, IV.

III. Position of the Parties

A. Forest Society

The Forest Society requests production of all documents and information relevant to the now final Work Force Study (Study) by PolEcon Research. The Study was prepared for the Balsams Resort. The Forest Society argues that circumstances underlying the Presiding Officer's March 10th Order have changed, because the Study is now complete and the Applicant is actively using it to promote the Northern Pass Project (Project). According to the Forest Society, the Forward New Hampshire Fund (Fund), is a material issue in this docket because it is referenced in the Application and in the pre-filed testimony of William Quinlan as evidence the Project is in the public interest. Specifically, the Forest Society points out that two loan advances from the Fund to the Balsams Resort have been promoted as benefits of the Project; and that the Applicant's April 2017 Forward NH Plan Newsletter references results of the Study. The Forest Society argues that, because the Study is being utilized by Applicant, the Applicant's

witnesses, and Project proponents to support their position that the Project will benefit the State and the public interest, it is necessary that the Study be produced.

B. The Balsams

The Balsams argues that the Study is not relevant to these proceedings. Specifically, according to the Balsams, the Applicant is not relying on the Study, the Study is not an exhibit in these proceedings, and the Applicant does not even possess the Study as it belongs to the Balsams and is not currently a public document. The Balsams contends that the Presiding Officer's Order denying the Forest Society's Motion to Compel was not premised on the fact that it was, at that time, not yet complete, but rather on the finding that the Study is not relevant and not reasonably calculated to lead to the discovery of admissible evidence. The Balsams notes that the Presiding Officer denied the Forest Society's first Motion to Compel outright and did not leave the door open for filing a later Motion upon completion of the Study. The Balsams argues that completion of the Study does not affect the Presiding Officer's prior Order as the fact remains that Mr. Otten filed his testimony and gave remarks well before the Study was completed and his conclusions, therefore, could not have been based on the Study. The Balsams also argues that the Forest Society has failed to explain how the Study could create "bias" in Mr. Otten. Finally, the Balsams argues that the Forward NH Plan Newsletter to which the Forest Society points is not in evidence in these proceedings.

C. Applicant

The Applicant argues that the Forest Society miscasts the rationale underlying the Presiding Officer's ruling on the Motion to Compel. The Applicant argues that, while the Presiding Officer indicated that the Study was not yet complete and therefore could not have been relied upon by Mr. Otten, the Presiding Officer determined that the information sought was not relevant to determining whether the Project is in the public interest. The Applicant argues

that the status of the Study does not affect the Presiding Officer's ultimate decision. The Applicant argues that the Forest Society is inaccurate in its assertion that the Applicant is relying on the Study to support a claim that the Project will be in the public interest and bring benefits to the State of New Hampshire. The Applicant notes that the Forest Society, in making such an argument, relies on the Forward NH Plan Newsletter; while, according to the Applicant, the newsletter merely recites limited information derived from a press release issued by the Balsams. The Applicant contends that it relies on the testimony of Julia Frayer regarding the employment benefits resulting from the Project, it does not rely on the Study as part of its Application, and it does not possess the Study. The Applicant notes that the Forest Society's data request sought production of the Study upon finalization, that request was denied, and the Forest Society failed to move for Rehearing of the ruling. The Applicant finally argues that the Study has not been introduced into evidence by either the Balsams or the Applicant, and that the Forest Society has not articulated how the information relates to a determination that the Project serves the public interest.

IV. Analysis

Through its data request, the Forest Society had requested that, "[u]pon finalization, [the Balsams] provide the Study that the Balsams [undertook] regarding the existing and future labor force in the North Country." *See* Forest Society's Motion to Compel (Feb. 14, 2017), p. 1. In the Motion to Compel, the Forest Society argued that the requested information would be useful in assessing the credibility of Mr. Otten's testimony and would illuminate the relationship between the \$2 million loan and the determination that issuing a certificate of site and facility will serve the public interest. In denying the Forest Society's request for an Order compelling production of documents and information related to its January 19th data request, the Presiding Officer not only noted that the Study was not yet complete, but also found that the "[i]nformation

sought by the Forest Society is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence in this docket.” Order Denying Forest Society’s Motion to Compel (March 10, 2017), p. 3. The Presiding Officer found that the Forest Society had failed to articulate how the requested information may relate to a determination of public interest in this docket. Here, the Forest Society has once again failed to demonstrate how the information sought relates to the Subcommittee’s determination of public interest. Simply because the Study is now complete does not make it relevant to these proceedings nor warrant compelling its production.

The Forest Society’s Expedited Motion to Compel is denied.

SO ORDERED this thirtieth day of June, 2017 by the Site Evaluation Subcommittee:



Martin P. Honigberg, Presiding Officer
Site Evaluation Committee