

**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**

January 11, 2018

**ORDER ON COUNSEL FOR THE PUBLIC'S MOTION TO STRIKE LONDON
ECONOMICS INTERNATIONAL'S MEMORANDUM**

This Order denies Counsel for the Public's motion to strike London Economics International's memorandum.

I. Background

Julia Frayer is a principal in the firm of London Economics International (LEI). The Applicant retained Ms. Frayer as an expert witness. Counsel for the Public retained Sam Newell and Jurgen Weiss from The Brattle Group (Brattle) as its experts. LEI and Brattle each filed testimony and reports with the Subcommittee. The parties and the Subcommittee cross-examined Ms. Frayer, Mr. Newell, and Mr. Weiss. During the cross-examination of Brattle, the Subcommittee made a data request seeking an explanation of the differences between the calculations that LEI and Brattle used to predict the effect of the minimum offer price rule (MOPR) on the Applicant's project in the forward capacity auction market. Commissioner Bailey made the data request orally:

Mr. Chairman, or perhaps Attorney Iacopino, I really would like them to figure out what the difference between their analysis and LEI's analysis on the MOPR is. Is that a record request? Do they need to work with Ms. Frayer? What's the best way to get that information on the record, do you think?

Transcript Day 53, October 27, 2017, Morning Session, p. 80.

Following Commissioner Bailey's request, there was substantial discussion regarding the best way to obtain the information. In the course of that discussion, it was suggested that Brattle might not have access to information it would need to explain the differences and that Brattle and LEI might have to work cooperatively to illustrate the differences in their analyses. *See* Transcript Day 53, October 27, 2017, Morning Session, pp. 80-83.

On November 1, 2017, Counsel for the Public filed a memorandum from Brattle purporting to explain the differences in the MOPR calculation estimated by LEI and Brattle. On November 29, 2017, the Applicant filed a memorandum from LEI also purporting to explain the differences. Counsel for the Public filed a Motion to Strike the memorandum filed by the Applicant and the Applicant objected.

II. Analysis

Counsel for the Public argues that the Applicant's filing is procedurally improper and constitutes improper new testimony. Counsel for the Public argues that the LEI memorandum should be excluded because it is repetitious and because he has not had the opportunity to cross-examine LEI on the new testimony.

The Applicant responds that a fair reading of the data request from the Subcommittee anticipated that LEI and Brattle would cooperate in preparing a response that identified the differences in their analysis. The Applicant states that neither Counsel for the Public nor Brattle communicated with Ms. Frayer or the Applicant prior to filing the memorandum from Brattle and that the Applicant then filed the response from LEI. The Applicant argues that striking the response from LEI would violate its due-process rights and allow only one party the opportunity to share its view on how to reconcile the difference in the analyses.

The calculation of the MOPR is an esoteric matter. The data request was simple and clear in that it sought to understand the differences between the analysis provided by LEI and Brattle. The Subcommittee already has reports and testimony from LEI and Brattle that address their respective calculation of the MOPR. The Subcommittee appreciates that both of the parties attempted to respond to the data request in order to explain the differences. Striking the LEI memorandum would deprive the Subcommittee of potentially relevant information that would otherwise be admissible pursuant to RSA 541-A:33, II and N.H. CODE ADMIN. RULES Site 202.24.

During the course of this proceeding, both Brattle and LEI had an adequate opportunity to explain the differences in their respective analysis and the parties had an extensive opportunity to cross-examine the witnesses and the opportunity to delve into the differences between the MOPR calculations. Neither party has been deprived of due process.

No party is prejudiced by the presence of the two filings. The motion to strike is denied.
SO ORDERED this eleventh day of January, 2018.



Martin P. Horngberg, Presiding Officer
Site Evaluation Committee