

**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

**MOTION TO COMPEL RESPONSES TO DATA REQUESTS PROPOUNDED BY
MUNICIPAL GROUP 3 (SOUTH)**

The City of Concord, by and through the Office of the City Solicitor, and the Town of Deerfield, by and through the Mitchell Municipal Group, with the assent of the Towns of Canterbury and Pembroke, *pro se*, collectively (“Municipal Group 3 South”), respectfully move to compel responses to data requests in accordance with N.H. Admin. R. Site 202.12(k) and 202.14, stating as follows:

1. On May 31, 2016, Municipal Group 3 South propounded its first set of data requests. On July 6, 2016, Municipal Group 3 received the Applicants’ responses to those data requests. However, those responses were not complete. *See* Exhibit A. The Applicants and representatives of several of the governmental entities and non-governmental entities met on July 26, 2016 to discuss discovery-related issues and some of the incomplete responses. The Applicants sent an email on August 11, 2016 indicating that it would not be providing internal communications relating to the Northern Pass project on the basis that it believes that those documents are not relevant or material to the SEC proceeding. *See* Exhibit B. It is apparent that any effort to obtain such documents will be unsuccessful.

2. N.H. Admin. R. Site 202.12(b) entitles parties to the proceeding to serve data requests, “which may consist of a written interrogatory or request for production of documents.” N.H. Admin. R. Site 202.12(l) further provides that the presiding officer shall authorize “any

other discovery method permissible in civil judicial proceedings before a state court, when such discovery is necessary to enable the parties to acquire evidence admissible in a proceeding.”

3. In New Hampshire, “the basic assumption [is] that the orderly dispatch of judicial business is accomplished more efficiently where every plaintiff and every defendant is given adequate opportunity to properly prepare his case before trial,” and tribunals are therefore empowered to compel discovery responses. *Durocher’s Ice Cream, Inc. v. Peirce Const. Co.*, 106 N.H. 293, 295 (1965) (internal quotation omitted).

4. The fact that this case involves an administrative proceeding before the Site Evaluation Committee does not modify the Applicants’ obligations to provide the requested information and documents. As legal counsel for the Applicants have acknowledged in another case, the standard for discovery before the Site Evaluation Committee is similar to civil litigation, and the ability to obtain documents should be broadly construed. *See* Exhibit C. In that case, New Hampshire Rule of Evidence 401 was referenced to address what type of evidence would be relevant. *Id.* New Hampshire Rule of Evidence 401 defines “relevant evidence” as “evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence.”

5. Here, the responses to the data requests are incomplete for a number of reasons. As an initial matter, the responses do not identify the individuals who provided the responsive information. Instruction 7 in the Data Requests specifically requested that, for each response, Applicants “Identify the person who provided the responses and who will be responsible for testimony concerning each request. Also for each response, Identify each individual who

supplied any Information in response to the question.”¹ Each of the data request responses should be supplemented to provide such information. The obligation to identify the individual who provided the response is further addressed by other parties seeking to compel that information, and their legal arguments are incorporated by reference herein. In addition, Municipal Group 3 South incorporates by reference legal arguments from other parties seeking to compel with respect to data requests propounded to date.

6. Applicants’ responses are also globally incomplete because the Applicant has not provided internal communications relative to the data requests. Applicants’ counsel has stated that the “Applicants did not produce certain internal communications because such communications are not relevant or material to the SEC’s determination as to whether the Application meets the specific findings required for issuance of a Certificate.” *See* Exhibit B. However, the scope of discovery in this proceeding is, as noted in paragraph 4 above, broad enough to encompass evidence affecting any fact of “consequence.” The data requests seek information regarding the impacts of the Project, and each is relevant to the determination of whether the Applicants have met the standards in RSA 162-H:16, IV(a), (b), (c), and/or (d). The Applicants should be required to produce all information, documents and communications responsive to the requests.

7. Many of the data request responses are also incomplete. The following sets forth the specific data requests that need to be supplemented:

(a) Data Request 3:

Please provide the estimated cost per foot to bury the line in Canterbury, Concord, Deerfield and Pembroke, including each of the specific unit costs used in developing the cost estimates, such as but not limited to, ledge excavation and removal, earth excavation, directional drilling, wetlands crossings, etc. In your

¹ Please note that Municipal Groups 1 South, 2, 3 North, and 3 South included identical Instructions with their data requests.

response, include all supporting documentation including any bids or estimates received for the burial alternative.

The response to this data request is incomplete because the Applicants failed to provide internal communications relative to bids and estimates for the burial. These internal communications are not privileged and discoverable. Further, several of the parties within this intervenor group have signed confidentiality agreements with the Applicant and should consequently be provided with any and all documents responsive to this request that Applicant believes are confidential in nature.

- (b) Data Request 4: Please identify any technical and engineering concerns or problems that You claim exist with regard to burial along the preferred route in Canterbury, Concord, Deerfield and Pembroke and produce all documents and information upon which you base those concerns.

The response to this data request is incomplete because the Applicants failed to provide any internal communications relative to technical and engineering concerns or problems that it claims exists with regard to burial. In the event that the Applicants refuse to provide such documents, it should be foreclosed from making any arguments that the burial is not technically feasible and/or would create significantly more environmental impacts.

- (c) Data Request 6: Please produce a copy of all documents, written obligations, information and communications between the Applicants and any other person or entity that evidence, discuss, or relate to permission from any owner of any interest in real property located along, under, above, or within the Project to construct the Project or to perform investigative studies, including identification of the landowner, date of contracts, result, and nature of permission sought.

These documents should be provided to all parties who have signed a confidentiality agreement. Moreover, Municipal Group 3 South are not requesting these responsive documents be disclosed to the general public, but rather, to the members of the group as parties to the SEC proceeding.

- (c) Data Request 9: Please provide the existing audible noise levels for both fair and foul weather for the current lines and substations in Canterbury, Concord,

Deerfield and Pembroke along the proposed route. Please attach all documents and data that relate to your answer.

The response to this data request is incomplete because the Applicants failed to provide internal communications relative to the request for information on audible noise levels.

- (d) Data Request 10: Please provide all photographic simulations and videos of the proposed route in Canterbury, Concord, Deerfield and Pembroke that You prepared or were prepared for You regardless of whether the photographs or simulations were submitted to the New Hampshire Site Evaluation Committee and/or the United States Department of Energy.

All photo simulations and videos should be provided, regardless of whether they were submitted as part of the application. The Applicants' logic for nondisclosure – which is that those additional photographs and videos are not relevant because were not included in the application -- would permit it to prevent disclosure of numerous portions of their expert files that are relevant as data and materials considered by the expert. Those types of documents are not generally precluded from discovery under either state or federal rules of evidence. See, e.g., RSA 515:29-b and FRCP 26. The intervenors are entitled to review any testifying expert's entire file concerning this matter, including photographic simulations that were prepared by the expert but not submitted to the federal and state agencies overseeing this project. The Applicants have also failed to provide any basis for denying the request for videos.

- (e) Data Request 11: Please produce copies of all Documents, Information, and Communications that evidence, discuss or relate to noise During the Project that the proposed Project may generate, including without limitation: the method of calculating noise; baseline or existing conditions noise; steps that You propose to take to mitigate noise levels; and sound attenuation methods You considered and those You selected.

The response to this data request is incomplete because the Applicants failed to provide internal communications relative to the request for information on noise resulting from the project.

Further, the response is nonresponsive because it generally references various possible mitigation

options but does not indicate precisely which mitigation steps the Applicants intend to take proposes, as stated in the request.

- (f) Data Request 14: Please provide the projected audible noise levels for both fair and foul weather related to both the construction and operation of the substation and lines in Deerfield, and identify any and all steps that You propose to take to mitigate noise levels, including, but not limited to, the use of buffers and noise dampening materials indicating the residual noise levels anticipated from the mitigation measures, and steps taken to reduce current ambient noise from Deerfield substation. Attach all documents that relate to or support your answer.

This response is nonresponsive because it merely notes various possible mitigation options, yet does not indicate precisely what mitigation steps the Applicants propose, as sought in the request.

- (i) Data Request 15: Please identify and provide construction and plan details for any roads that You propose to use to access the substation in Deerfield. In your answer, list the large or heavy equipment that will be transported to the substation in Deerfield, and state whether You intend to make any improvements and/or widening of the roads to provide sufficient access to the substation.

The response is nonresponsive as it does not identify the roads that Applicant intends to use. It is impossible for the intervenors to evaluate the potential impact to their respective communities and environmentally sensitive areas therein without this specificity.

- (j) Data Request 16: Please provide any documents, plans, or studies, prepared by You or on your behalf, regarding the potential for future expansion of the Deerfield substation or other utility structures in Deerfield. Your response should include but not be limited to the 10 and 20 year system expansion studies prepared by PSNH for its continued transmission service and distribution service including growth, areas of growth, regions of growth, transmission expansion and reliability, transmission reliability costs, and any other anticipated transmission system planning and improvements. Please provide those portions of the system expansion and improvements which are either in Deerfield or will impact Deerfield.

The response is incomplete as it does not include FERC Form 716 System Plan. Please provide a complete response by including this form.

- (k) Data Request 17: In the Town of Deerfield, please provide all data, specifications, information, work sheets, analyses, and work papers regarding the construction of the new Deerfield substation, its layout, and its ambient noise levels at 10% to 100% of operating capacity, noise levels being measured at the fence of the substation.

This response is incomplete and nonresponsive as it fails to provide the ambient noise levels at 10% to 100% of operating capacity as requested.

- (l) Data Request 18: Please provide the existing noise levels of the existing Deerfield substation at 10% to 100% of capacity and the cumulative noise levels between the existing substation and the new substation when combined.

This response is incomplete and nonresponsive as it fails to provide the existing noise levels at 10% to 100% of capacity and the cumulative noise levels between the existing and new substations when combined, as requested.

- (m) Data Request 20: Please describe and produce copies of all Documents, Information and Communications that evidence, discuss or relate to federal, state and local lobbying efforts in connection with the Project, including without limitation, identification of all individuals and/or entities who have provided lobbying services; contracts and agreements with lobbyists; amount of compensation paid and to be paid to them.

This data request sought documents and information relative to federal, state and local lobbying efforts. The information relative to the amount of money spent on lobbying efforts is discoverable because it relates to the overall cost of the project, and is relevant to the “financial commitments the applicant has obtained or made in support of the construction and operation of the proposed facility.” N.H. Admin. R. 301.13(4). It also relates to the Applicants’ claim that the complete burial of the project might make it uneconomic. This information is also relevant

because it will reveal whether the project will serve the public interest, and whether there is public support for the project.

- (o) Data Request 21: Please describe all public relations and media efforts in connection with the Project, including without limitation, identification of all individuals and/or entities who have provided public relations, and provide all Documents, Information and Communications that evidence, discuss or relate to such public relations, including without limitation, contracts, invoices and agreements with individuals and entities, amount of compensation paid and to be paid to them, and including all media, public relations, advertising, and related communications and outreach.

The Applicants have not provided contracts, invoices and agreement with public relations and media firms based on their argument that such information and documents are not relevant to the proceeding. That argument should be rejected. The Applicants included information relative to public outreach in their application, which is addressed in the Pre-Filed Testimony of Samuel Johnson and the NPT Project Outreach Summary. It is apparent from this submission that the Applicants acknowledge that public outreach and public relations is relevant to its application. Moreover, similar to Data Request 20, information relative to public relations and media efforts is discoverable because it relates to the overall cost of the project.

- (p) Data Request 22: State with specificity how costs identified in the two previous questions are accounted for in the overall budget of the Project.

This data request sought the costs associated with lobbying and public relations. The Applicants responded by stating that it invested \$177.62 as of December 31, 2015. This response is insufficient because it does not provide a breakdown of the costs referenced in Data Requests 21 and 22.

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

- A. Grant the motion to compel;
- B. Require the Applicants to provide the requested information and documents ; and
- C. Grant such other and further relief as may be just.

Respectfully submitted,

CITY OF CONCORD

Dated: August 15, 2016

By: 

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TOWN OF DEERFIELD

By and through their attorneys,
MITCHELL MUNICIPAL GROUP, P.A.

Dated: August 15, 2016

By: 

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CERTIFICATE OF SERVICE

I hereby certify that on this 15th day of August 2016, a copy of the foregoing was sent by electronic mail to persons named on the Service List of this docket.

Dated: August 15, 2016

By: 

Steven M. Whitley

STATE OF NEW HAMPSHIRE
SITE EVALUATION COMMITTEE

SEC DOCKET NO. 2015-06

**JOINT APPLICATION OF NORTHERN PASS TRANSMISSION LLC &
PUBLIC SERVICE COMPANY OF NEW HAMPSHIRE
D/B/A EVERSOURCE ENERGY
FOR A CERTIFICATE OF SITE AND FACILITY**

**APPLICANTS' RESPONSES TO MUNICIPAL GROUP 3 SOUTH CONSISTING OF
CANTERBURY, CONCORD, DEERFIELD AND PEMBROKE'S DATA REQUESTS
AND INTERROGATORIES – SET 1**

Preliminary Statement and General Objections

The responses provided were prepared by Northern Pass Transmission LLC and Public Service Company of New Hampshire d/b/a Eversource Energy (the "Applicants"). All responses contained herein are subject to the following general objections.

The Applicants object to each data request to the extent the data request seeks information that is irrelevant to the Site Evaluation Committee's determination of whether issuance of a Certificate will serve the objectives of RSA 162-H and is therefore not reasonably calculated to lead to the discovery of admissible evidence. The Applicants further object to each data request to the extent that the data request is vague and/or ambiguous, overbroad and unduly burdensome, or seeks information that is not within the Applicants' possession custody or control; calls for attorney-client privilege and/or work product privilege protected information; seeks business confidential information and/or information that is either fully contained in the Application or information that is in the public domain and equally available to Municipal Group 3 South and the Applicants.

To the extent any data or document request herein seeks to obtain prior drafts, notes, or edits of any expert or consultant report, drawings, diagrams, photosimulations, or any other information contained in the Application, pre-filed testimony, and attached appendices, the Applicants object as the request is unduly burdensome, duplicative, irrelevant and not likely to lead to admissible evidence, and/or is attorney/client privileged or protected as work-product pursuant to state and federal law. *See* RSA 541-A:33 (stating that the "presiding officer may exclude irrelevant, immaterial or unduly repetitious evidence" and providing that "[a]gencies shall give effect to the rules of privilege recognized by law"); RSA 516:29-b (requiring a witness retained or specifically employed to provide expert testimony to only disclose "the facts or data considered by the witness in forming the opinions"), which was recently amended to remove the requirement that an expert disclose such "other information" and to make the New Hampshire expert disclosure law consistent with recent amendments to Fed. R. Civ. Pro. 26, which explicitly protects prior draft reports from experts. *See also* Fed. R. Civ. Pro. Rule 26(b)(4)(B)

(protecting drafts of any report or disclosure required under the general witness disclosure rules regardless of the form in which the draft is recorded).

To the extent any data or document request herein seeks Critical Energy Infrastructure Information (“CEII”), the Applicants object as this information is not discoverable. *See* RSA 91-A:5, IV (exempting production of “confidential, commercial, or financial information” from the Public Right to Know Law). *See also* 18 C.F.R. § 388.11 (CEII means “specific engineering, vulnerability, or detailed design information about proposed or existing critical infrastructure that: (i) Relates details about the production, generation, transportation, transmission, or distribution of energy; (ii) Could be useful to a person in planning an attack on critical infrastructure; (iii) Is exempt from mandatory disclosure under the Freedom of Information Act, 5 U.S.C. 552; and (iv) Does not simply give the general location of the critical infrastructure”).¹ The Applicants are not in a position to disclose information that is deemed CEII. Any person seeking such CEII is required to sign a non-disclosure agreement consistent with the applicable requirements of ISO-NE, NERC and any other relevant standards. Should any party enter into the required non-disclosure agreement, the Applicants will provide copies of the requested CEII information if the requesting party demonstrates a required need to obtain such information.

If NPT inadvertently produces or discloses a document or information to another party (the “Receiving Party,” which term is intended to include all parties receiving such disclosure) that is allegedly privileged or otherwise immune from discovery, once it learns of the inadvertent production, NPT will so advise the Receiving Party in writing, state and substantiate the basis for the alleged privilege or immunity, and request that the item or items of information be returned. If these conditions are met in a timely manner, the Receiving Party will return such inadvertently produced item or items of information and all copies thereof within ten (10) calendar days of the written request and shall refrain from utilizing said items in any manner or form. Inadvertent production of documents or information that is allegedly privileged or otherwise immune from discovery shall not automatically constitute a waiver of any privilege or immunity.

To the extent that any data or document request herein seeks to obtain information that is protected as confidential pursuant to the Committee’s May 25, 2016 Order on Motion for Protective Order and Confidential Treatment, or otherwise qualifies for protective treatment pursuant to PSA 91-A:5, the Applicants object to production unless a party has complied with the requirements of an SEC order or agreement for protective treatment governing confidential documents in this proceeding. To the extent that a Data Response refers to a document that has been afforded confidential treatment or otherwise provides information in response to any data or

¹ Confidential infrastructure information includes, but is not limited to, CEII information, critical infrastructure information as defined by the Department of Homeland Security (“DHS”), including any Protected Critical Infrastructure Information (“PCII”), to the extent certified as such by the DHS, pursuant to the Critical Information Act of 2002 (See Final Rule at 6 C.F.R. Part 29, Sept. 1, 2006); Confidential information regarding critical assets and critical cyber assets, which are subject to the North American Electric Reliability Council (“NERC”) Critical Infrastructure Protection (“CIP”) standards (CIP-002 through CIP-009) pertaining to the reliability and availability of the Bulk Electric System in North America (“Confidential CIP”); any other infrastructure information designated by an Applicant as proprietary and confidential, whether furnished before or after the date hereof, whether oral, written or recorded/electronic, and regardless of the manner in which it is furnished; and all reports, summaries, compilations, analyses, notes or other information which contain the foregoing information.

document request relating to materials that are protected as confidential, the Applicants do so without waiving the confidentiality of the respective documents.

Responses

MG3S 1-1 Please identify the current height of each existing structure that is proposed to be relocated in Canterbury, Concord, Deerfield and Pembroke along the Proposed Route. In responding, please identify the structures using the structure numbers as identified in NPT Project Maps, Preliminary Design, October 2015.

Response: Please see the document uploaded to the ShareFile Site in response to this request.

MG3S 1-2 Please identify by latitude and longitude (1) the current location of each existing structure along the Proposed Route in Canterbury, Concord, Deerfield and Pembroke that is proposed to be relocated; and (2) the proposed location of all relocated and new structures. In responding, please identify the structures by using the structure numbers as identified in NPT Project Maps, Preliminary Design, October 2015.

Response: Please see the documents uploaded to the ShareFile Site in response to this request.

MG3S 1-3 Please provide the estimated cost per foot to bury the line in Canterbury, Concord, Deerfield and Pembroke, including each of the specific unit costs used in developing the cost estimates, such as but not limited to, ledge excavation and removal, earth excavation, directional drilling, wetlands crossings, etc. In your response, include all supporting documentation including any bids or estimates received for the burial alternative.

Response: The Applicants object to this question to the extent it asks the Applicants to develop information or data that is not currently in their care, custody or control. The Applicants further object to this data request to the extent it seeks to obtain confidential, commercial and financial information or communications. *See* RSA 91-A:5, IV (exempting production of “confidential, commercial, or financial information” from the Public Right to Know Law).

Notwithstanding the objection, the Applicants answers as follows:

The Project is overhead through Canterbury, Concord, Deerfield and Pembroke. The Applicants have not developed the requested cost estimate to bury the line in those Towns. The Applicants have developed a generic per mile underground cost described in the Evaluation of All Underground Routes that could be applied to existing roadways, though that cost analysis is based on general in-road construction. Detailed cost estimates have been prepared regarding this route and are confidential in nature. The Applicants are providing a redacted copy of “An Evaluation of All UG Alternatives for the Northern Pass Transmission Project” dated 5-31-16. This Evaluation has been uploaded to the ShareFile Site in response to this request..

To the extent the request calls for confidential information, the Applicants will make this confidential information available as requested as soon as the requesting party complies with the requirements of the SEC order governing confidential documents in this proceeding.

Also, as discussed further in MG3S 1-4 below, the Applicants do not have the necessary easements or other land rights to bury the line in the existing ROW in the Towns of Canterbury, Deerfield and Pembroke and the City of Concord.

MG3S 1-4 Please identify any technical and engineering concerns or problems that You claim exist with regard to burial along the preferred route in Canterbury, Concord, Deerfield and Pembroke and produce all documents and information upon which you base those concerns.

Response: Along the preferred route through the towns of Canterbury, Concord, Deerfield, and Pembroke, the Applicants have easements and other legal rights to construct electric transmission lines and other related facilities above ground. The Applicants do not have the necessary land rights or legal rights to construct the project underground through its preferred route. Based on that fact alone, the Applicants cannot construct the Project underground. For copies of the Applicants' easements along the Project route, please see the NH PUC Docket DE 15-464, Tab 7 ("Eversource Energy Letter Submitting Single Paper Copy of Property Deeds" and related attachments dated December 7, 2015). Please also see Applicants' Response to Counsel for the Public's Data Request CFP 1-3, which requested a copy of all deeds, leases, easements, right-of-way agreements and other documents that evidence Applicants' right to construct the Project.

Moreover, the Applicants have not conducted any field reconnaissance or engineering field work (survey, geotechnical investigation, etc.) in the ROW that would be necessary to assess the technical feasibility of burying the line in the existing ROW in the event that it had the necessary property rights to do so.

Finally, constructing the entire Project underground in the existing ROW would also create significantly more environmental impacts than the preferred route.

MG3S 1-5 Please describe all contacts, communications or any other steps that You have taken to obtain or attempt to obtain permission to bury the line on any property, easement or right of way in Canterbury, Concord, Deerfield and Pembroke, including the name of the landowner and the date of the contact and the result. Provide copies of any documents related to the contact.

Response: The Applicants have not had any contacts or communications with landowners seeking permission to bury the Project underground through the towns of Canterbury, Concord, Deerfield, and Pembroke. Therefore, the Applicants do not have any documents related to such contacts.

MG3S 1-6 Please produce a copy of all documents, written obligations, information and communications between the Applicants and any other person or entity that evidence, discuss, or relate to permission from any owner of any interest in real property located along, under, above, or within the Project to construct the Project or to perform investigative studies, including identification of the landowner, date of contracts, result, and nature of permission sought.

Response: The Applicants object to this request as it seeks communications with individual private landowners along the Project route. The Applicants have committed to treating all such communications as private between the Applicants and those individual property owners. The Applicants are not in a position to disclose such communications to the general public. Please see the Applicants' Response to Counsel for the Public's Data Request CFP 1-1 and the Supplement CFP 1-1 as well as all documents uploaded to the ShareFile Site in response to that request. If the requesting party would like to narrow the results contained in CFP 1-1, the Applicants are willing to assist.

MG3S 1-7 Please identify the locations of all roads in Canterbury, Concord, Deerfield and Pembroke that You intend to use to access the construction sites for the lines and describe any work including vegetation removal needed, grading, widening or other expansion of the roads that will be done on those road to provide vehicle and construction equipment access.

Response: Please see the Application: Appendix 47 - NHDES Project Wetland Maps, which identifies the proposed on-ROW access roads and necessary vegetation clearing. Canterbury, Concord and Pembroke are shown on sheets 564-636, and Deerfield is shown on sheets 650-689. In general, access roads are described in John Kayser's Pre-Filed Testimony starting on Page 19.

The Applicants will develop traffic plans for the contractors' use of public roads in Canterbury, Concord, Deerfield and Pembroke for access to the right-of-way closer to construction and will finalize the plans after review and consultation with the towns and the City of Concord. The Applicants will develop these traffic management and traffic control plans as laydown areas and temporary storage areas are acquired. Traffic plans are described in more detail in John Kayser's Pre-Filed Testimony starting on Page 33 and in the Pre-Filed Testimony of Lynn Farrington starting on Page 2.

MG3S 1-8 Please identify the location of each temporary storage area and staging area (including construction lay-down areas) that is proposed to be used during construction in Canterbury, Concord, Deerfield and Pembroke, and provide information regarding the specific use and activity for each area including vegetation removal needed, grading needed, acreage of staging yard to be used, vehicle entrance/exit locations and a verification letter from landowners indicating their understanding of the intended area and providing permission for such use.

Response: Laydown and staging areas will be determined prior to construction. It is anticipated that the Deerfield Substation site will be one area used for temporary storage. The contractor and Northern Pass will be identifying and procuring additional areas in roughly the next year and throughout the Project on an as needed basis. In general, laydown areas and temporary storage areas are described in John Kayser's Pre-Filed Testimony starting on Page 15. In addition, crane pads (or construction pads) are located on the ROW at every structure and are identified in the Application: Appendix 47 - Project Wetland Maps and Appendix 6c - NHDES Alteration of Terrain Plans. Crane pads are also described in John Kayser's Pre-Filed Testimony starting on Page 21.

MG3S 1-9 Please provide the existing audible noise levels for both fair and foul weather for the current lines and substations in Canterbury, Concord, Deerfield and Pembroke along the proposed route. Please attach all documents and data that relate to your answer.

Response: Sound Report 1 in Appendix 39 of the Application provides the results of sound monitoring conducted in the vicinity of the proposed transmission line. Measurement Locations 1 (Deerfield), 2 and 2 CM (Pembroke), 3 and 4 (Concord), and 5 (Canterbury) are located within the subject area. Table A-6 of Appendix 38 of the Application provides calculations of the median audible noise levels produced by the existing transmission lines at the edge of the right-of-way (ROW), for fair and foul weather conditions, as well as within the ROW, for Line Segments S1-19 and S1-20 (Deerfield area), S1-11 thru S1-19 (Pembroke area), S1-3 thru S1-11 (Concord area) and S1-1 and S1-2 (Canterbury area). Sound Report 3 in Appendix 39 of the Application provides the results of sound monitoring conducted in the vicinity of the Deerfield Substation.

MG3S 1-10 Please provide all photographic simulations and videos of the proposed route in Canterbury, Concord, Deerfield and Pembroke that You prepared or were prepared for You regardless of whether the photographs or simulations were submitted to the New Hampshire Site Evaluation Committee and/or the United States Department of Energy.

Response: To the extent any data or document request herein seeks to obtain prior drafts, notes, or edits of any expert or consultant report, drawings, diagrams, photosimulations, or any other information contained in the Application, pre-filed testimony, and attached appendices, the Applicants object as the request is unduly burdensome, duplicative, not likely to lead to admissible evidence, and is protected as work-product pursuant to state and federal law. *See* RSA 541-A:33 (stating that the “presiding officer may exclude irrelevant, immaterial or unduly repetitious evidence” and providing that “[a]gencies shall give effect to the rules of privilege recognized by law”); RSA 515:29-b (requiring a witness to only disclose “the facts or data considered by the witness in forming the opinions”), which was recently amended to remove the requirement that an expert disclose such “other information” and to make the New Hampshire expert disclosure law consistent with recent amendments to Fed. R. Civ. Pro. 26, which explicitly protects prior draft reports from experts). *See also* Fed. R. Civ. Pro. Rule 26(b)(4)(B) (protecting drafts of any report or disclosure required under the general witness disclosure rules regardless of the form in which the draft is recorded).

See Visual Impact Assessment for the Northern Pass Project (“VIA”), Appendix 17. Please also see the Applicants Supplement, submitted to the SEC on February 26, 2016 in response to the New SEC Rules, Attachment 8 - Sample of Private Property Photosimulations, and Supplement Attachment 9 - Photosimulations of Leaf-Off Conditions.

MG3S 1-11 Please produce copies of all Documents, Information, and Communications that evidence, discuss or relate to noise During the Project that the proposed Project may generate, including without limitation: the method of calculating noise; baseline or existing conditions noise; steps that You propose to take to mitigate noise levels; and sound attenuation methods You considered and those You selected.

Response: Documentation and information pertaining to noise including the results of baseline surveys, sound impact assessment, calculation methods, and mitigation options are included in the Application: Appendices 38 and 39.

MG3S 1-12 Produce Documents, Information and Communications that evidence, discuss or relate to the costs of the Project as compared to the costs of the TDI Clean Power Link project.

Response: The Applicants object to this data request as it seeks to obtain confidential business information. *See* RSA 91-A:5, IV (exempting production of “confidential, commercial, or financial information” from the Public Right to Know Law). The terms ‘commercial or financial’ encompass information such as ‘business sales statistics, research data, technical designs, overhead and operating costs, and information on financial condition.’” *See Union Leader Corp. v. New Hampshire Housing Finance Authority*, 142 N.H. 540, 553 (1997). The SEC has routinely recognized that confidential treatment should be granted to competitively sensitive or proprietary information under the 91-A:5 exemption for “confidential, commercial, or financial information.” *See, e.g., Order on Partially Assented-to Motion for Protective Order and Confidential Treatment for Certain Confidential, Commercial, and Financial Documents, Application of Laidlaw Berlin BioPower, LLC*, NH SEC Docket 2009-02 (June 9, 2010) (granting confidential treatment for business plans and financial models because disclosure of the information could negatively affect the applicant’s competitive position in the renewable energy market); *Application of Antrim Wind, Order on Outstanding Motions*, Docket 2012-01, 4 (August 22, 2012) (denying motion to compel the production of information that “is highly confidential and could negatively affect the competitive interests of the Applicant.”).

Notwithstanding the objection, the Applicants answer as follows:

In connection with the development of its proposal to the Clean Energy RFP (the public version of which is available at <https://cleanenergyrfp.com/>), NPT analyzed the Project against several potential competitors, including TDI Clean Power Link. That analysis used public information to the extent available and includes proprietary methodologies for making certain assessments and projecting potential outcomes. In addition to potentially compromising the pending evaluation of NPT’s proposal by the RFP evaluation team, the disclosure of that analysis would include commercially sensitive and proprietary business information of NPT; accordingly, that analysis will not be provided at this time. NPT notes that TDI Clean Power Link did not submit a proposal in response to the Clean Energy RFP.

MG3S 1-13 Produce Documents, Information and Communications that evidence, discuss or relate to a route for the Northern Pass Project that would or could have included siting all or part of the U.S. portion of the transmission line outside of New Hampshire.

Response: The Applicants object to this question as it seeks information not relevant to the proceeding and therefore is not reasonably calculated to lead to the discovery of admissible evidence. RSA 162-H:7, V(b) requires the Applicant to “identify both the applicant's preferred choice and other alternatives it considers available for the site and configuration of each major part of the proposed facility and the reasons for the applicant's preferred choice.” The Applicants have done that. See Application Section 301.03(h)(2) . Other hypothetical alternatives are not subject to consideration under RSA 162-H:7 (application requirements for a certificate) or 162-H:16 (findings required for issuance of a certificate) and therefore are not relevant. See also *Decision Granting Certificate of Site and Facility with Conditions*, Application of Laidlaw Berlin BioPower, LLC, NH SEC Docket 2009-02 (Nov.8, 2010) at 36–40 (finding that RSA 162-H does not require the subcommittee to review all “available alternatives” and does not require consideration of every possible alternative).

Notwithstanding the objection, please see the Alternatives Analysis conducted by the United States Department of Energy (“US DOE”) which is fully articulated in the Draft Environmental Impact Statement.

MG3S 1-14 Please provide the projected audible noise levels for both fair and foul weather related to both the construction and operation of the substation and lines in Deerfield, and identify any and all steps that You propose to take to mitigate noise levels, including, but not limited to, the use of buffers and noise dampening materials indicating the residual noise levels anticipated from the mitigation measures, and steps taken to reduce current ambient noise from Deerfield substation. Attach all documents that relate to or support your answer.

Response: The maximum continuous sound level produced by the operation of all new equipment associated with the additions at the Deerfield Substation will be designed to not exceed 29 dBA at any existing occupied residential receptor property when measured within the boundaries of the receptor property. Noise mitigation options include, but are not limited to equipment selection, equipment placement, sound barrier walls, and sound enclosures. See, Sound Report 3 in Appendix 39 of the Application.

The median audible noise levels due to the lines in fair and foul weather calculated for line segments in Deerfield (S1-19 and S1-20) can be found in Table A-6 of Appendix 38 of the Application. Noise mitigation options include, but are not limited to, line design and line placement. See, Appendix 38 of the Application. There are no plans to reduce the current ambient noise from Deerfield Substation.

Sound Report 5 in Appendix 39 of the Application provides a thorough discussion of sound produced by the construction of overhead transmission lines and the additions at the Deerfield Substation.

MG3S 1-15 Please identify and provide construction and plan details for any roads that You propose to use to access the substation in Deerfield. In your answer, list the large or heavy equipment that will be transported to the substation in Deerfield, and state whether You intend to make any improvements and/or widening of the roads to provide sufficient access to the substation.

Response: Specific details on the roads that will be used will be developed prior to construction as is typically the case with transmission projects of this scope. It is likely that Nottingham Road and Cate Road will be used to access the Deerfield Substation site. The Project does not intend to make any modification to these existing roads; however, those details have not been determined at this time. For additional information on access roads and traffic control please see the Applicants' Response to MG3S 1-7 above, John Kayser's Pre-Filed Testimony starting on Page 19, and Lynn Farrington's Pre-Filed Testimony starting on Page 2.

Specific details on vehicles and equipment used for construction have not been identified at this time; however, the Applicants will use typical vehicles for activities involving clearing, access road installation, site development, overhead transmission construction, substation construction and restoration. The work at the substation will require, but is not limited to, transportation and installation of the SVC, capacitor banks, and circuit breakers.

MG3S 1-16 Please provide any documents, plans, or studies, prepared by You or on your behalf, regarding the potential for future expansion of the Deerfield substation or other utility structures in Deerfield. Your response should include but not be limited to the 10 and 20 year system expansion studies prepared by PSNH for its continued transmission service and distribution service including growth, areas of growth, regions of growth, transmission expansion and reliability, transmission reliability costs, and any other anticipated transmission system planning and improvements. Please provide those portions of the system expansion and improvements which are either in Deerfield or will impact Deerfield.

Response: The responsibility for transmission planning within New England falls under ISO-NE. To meet its requirements, ISO-NE publishes a Regional System Plan and Local System Plan which looks to the electrical system needs for the next 10 years. The documents uploaded to the ShareFile Site in response to this request demonstrate that there are no projects planned, other than NPT, which will expand the Deerfield Substation or result in new line facilities.

MG3S 1-17 In the Town of Deerfield, please provide all data, specifications, information, work sheets, analyses, and work papers regarding the construction of the new Deerfield substation, its layout, and its ambient noise levels at 10% to 100% of operating capacity, noise levels being measured at the fence of the substation.

Response: The Site Development Plans and Stormwater Management Plans for the additions at Deerfield Substation are provided in Appendix 6d of the Application. Estimates for sound levels at the fence line have not been calculated. The additions to the Deerfield Substation will be designed such that the maximum continuous sound level produced by the operation of all new equipment for the expected capacity range will not exceed 29 dBA at any existing occupied residential receptor property when measured within the boundaries of the receptor property. See the Application: Appendix 39, Sound Report 3.

MG3S 1-18 Please provide the existing noise levels of the existing Deerfield substation at 10% to 100% of capacity and the cumulative noise levels between the existing substation and the new substation when combined.

Response: Direct measurements of sound produced by the existing Deerfield Substation were not performed for this Project. Instead, to place Project-related sound in context, a comprehensive sound monitoring program was conducted in the vicinity of the Deerfield Substation. Sound Report 3 in Appendix 39 of the Application provides the results of the baseline sound survey. The program involved a combination of both continuous and intermittent measurements, and was conducted during both cold and warm weather seasons.

The results of this monitoring indicated that typically the lowest ambient sound levels occurred during the cold weather season with an average lowest daily background sound level (L90 1-hour) of 24 dBA. The additions to the Deerfield Substation will be designed such that the maximum continuous sound level produced by the operation of all new equipment for the expected capacity range will not exceed 29 dBA at any existing occupied residential receptor property when measured within the boundaries of the receptor property. The cumulative noise impact of the existing substation with the proposed additions to the Deerfield Substation (devoid of other sources of background sound) is not expected to exceed 30 dBA within the boundaries of any existing occupied residential property.

MG3S 1-19 Please state whether the existing tree buffer identified on Exhibit A (in the red circled area), further identified at the southwesterly most corner of Tax Map 113, Block 2, Lot 19, will be removed by You during the Project.

Response: The Applicants do not plan to remove the entire tree buffer identified on Exhibit A. However, some vegetation clearing in the ROW is required. The proposed area of vegetation clearing in this area is shown in the Application: Appendix 47 - NHDES Project Wetland Maps on Sheet 606.

MG3S 1-20 Please describe and produce copies of all Documents, Information and Communications that evidence, discuss or relate to federal, state and local lobbying efforts in connection with the Project, including without limitation, identification of all individuals and/or entities who have provided lobbying services; contracts and agreements with lobbyists; amount of compensation paid and to be paid to them.

Response: The Applicants object to this data request as it seeks information that is not relevant to the proceeding and therefore is not likely to lead to the discovery of admissible evidence. RSA 162-H and the SEC regulations specify the criteria the Applicants must meet in order to receive a Certificate of Site and Facility for the Proposed Project and the information requested is not required pursuant to the regulations. The Applicants further object to the extent this request seeks documents that are business confidential in nature. Moreover, the Applicants object to this question to the extent that it seeks information that is on record with the New Hampshire Secretary of State and therefore in the public domain.

Notwithstanding these objections, Applicants answer as follows:

Information relating to lobbying efforts and related compensation can be found on the New Hampshire Secretary of State website, at <http://sos.nh.gov/lobby.aspx>.

MG3S 1-21 Please describe all public relations and media efforts in connection with the Project, including without limitation, identification of all individuals and/or entities who have provided public relations, and provide all Documents, Information and Communications that evidence, discuss or relate to such public relations, including without limitation, contracts, invoices and agreements with individuals and entities, amount of compensation paid and to be paid to them, and including all media, public relations, advertising, and related communications and outreach.

Response: The Applicants object to this data request as it seeks information that is not relevant to the proceeding and not likely to lead to the discovery of admissible evidence. RSA 162-H and the SEC regulations specify the criteria the Applicants must meet in order to receive a Certificate of Site and Facility for the Proposed Project and the information requested is not required pursuant to the regulations. The Applicants further object to the extent it requests documents that are business confidential in nature. Moreover, the Applicants object to this question to the extent that it seeks information that is on record with the New Hampshire Secretary of State and therefore in the public domain.

All public relations and media efforts in connection with the Project are in the public domain and publically available. In addition, for further information regarding public outreach measures taken by the Applicants, please see the Application: Appendix 42 - NPT Project Outreach Summary, and the Pre-Filed Testimony of Samuel Johnson.

MG3S 1-22 State with specificity how costs identified in the two previous questions are accounted for in the overall budget of the Project.

Response: The Applicants object to this request as it seeks information not relevant to the proceeding and therefore is not reasonably calculated to lead to the discovery of admissible evidence. RSA 162-H and the SEC regulations specify the criteria the Applicants must meet in order to receive a Certificate of Site and Facility for the Proposed Project. This question has no bearing on that criteria. The Applicants further object to the extent it requests documents that are business confidential in nature. Moreover, the Applicants object to this question to the extent that it seeks information that is on record with the New Hampshire Secretary of State and is therefore in the public domain.

All public relations and media efforts in connection with the Project are in the public domain and publically available. In addition, for further information regarding public outreach measures taken by the Applicants, please see the Application: Appendix 42 - NPT Project Outreach Summary, and the Pre-Filed Testimony of Samuel Johnson at Pages 3 to 14.

Notwithstanding the above objection, the Applicants answer as follows:

As of December 31, 2015, NPT has invested \$177.62 million in the Northern Pass Project. The categories of expenses are as follows: (a) labor, which includes project oversight, management, and overheads; (b) communications, which includes all community outreach, advertising, and public relations; (c) engineering, which includes all technical support for filings, project design, and system impact studies; (d) environmental, which includes all field data collection, preparation of analyses, and development of applications; (e) legal, which includes support for permitting; (f) real estate, which includes field survey, mapping, and property purchase and management activities; and (g) other payments such as filing fees; insurance; and, carrying costs.

MG3S 1-23 Produce all Documents, Information and Communications that evidence, discuss or relate to the Clean Energy RFP, including a copy of the Clean Energy RFP, and describe the present status of the Clean Energy RFP, including, but not limited to, whether it has been or will be selected and the impact or the potential impact of the Clean Energy RFP on the project costs, including both capital costs and operating and maintenance costs.

Response: The Applicants object to this data request to the extent it seeks to obtain confidential, commercial and financial information or communications. *See* RSA 91-A:5, IV (exempting production of “confidential, commercial, or financial information” from the Public Right to Know Law). *See, e.g.,* Application of Laidlaw Berlin BioPower, LLC, *Order on Partially Assented-to Motion for Protective Order and Confidential Treatment for Certain Confidential, Commercial, and Financial Documents*, NH SEC Docket 2009-02 (June 9, 2010) (granting confidential treatment for business plans and financial models because disclosure of the information could negatively affect the applicant’s competitive position in the renewable energy market); Application of Antrim Wind Energy, LLC, *Order on Outstanding Motions*, Docket 2012-01, 4 (August 22, 2012) (denying motion to compel the production of information that “is highly confidential and could negatively affect the competitive interests of the Applicant.”).

Notwithstanding the objection, the Applicants answer as follows:

A copy of the Clean Energy RFP can be found at <https://cleanenergyrfp.com/>. That website also includes information regarding the Clean Energy RFP, including bids submitted in response to the solicitation and the evaluation process. For example, the following update was posted on May 20, 2016:

“The Evaluation Team is currently in the Evaluation Phase of the process which is expected to last until 7/26/16.”

The Clean Energy RFP website includes the public version of the Northern Pass proposal to enter into a delivery commitment arrangement.

The Clean Energy RFP will not result in an increase in capital costs and operating and maintenance costs of the Project. The remaining details of the Northern Pass proposal, including the requested documents, are confidential, and disclosure would compromise the integrity of the evaluation process and significantly harm the Project. Accordingly, only the public version of the Northern Pass proposal is available at this time.

MG3S 1-24 Please describe specifically what percentage of transmissions project costs were allocated to the three states of Connecticut, Massachusetts, and Rhode Island in the LEI Report and how the allocation of those project costs affects the economic analyses concerning the impact on energy costs in New Hampshire for the duration of the 11 year modeling period.

Response: Assuming the Project was selected as a winning bid in the New England Clean Energy RFP solicitation jointly issued by Connecticut, Massachusetts, and Rhode Island, the costs of the transmission projects were allocated by each state's relative share of peak demand based on ISO-NE's CELT 2015 forecast data. The relative share was 34.2%, 56.3% and 9.5% respectively for Connecticut, Massachusetts, and Rhode Island. However, these transmission costs will not affect the economic analyses for New Hampshire, as New Hampshire retail consumers are not participating in the three state RFP. Please see Section 5 of the LEI Report for the description of the economic analyses (job and GDP impacts).

MG3S 1-25 Please identify and produce all Documents, Information, and Communications that describe any planning horizons NPT uses for transmission lines beyond the 10 year time span.

Response: The Independent System Operator - New England (ISO-NE) has overall responsibility for transmission planning within New England. Annually, the ISO-NE publishes a Regional System Plan ("RSP") and Local System Plan ("LSP") which identifies the transmission system upgrades to forecast electrical system needs for the next 10 years.

The ISO-NE Regional System Plan may be accessed through ISO-NE's website: <http://www.iso-ne.com/system-planning/system-plans-studies/rsp>. The file names are:

1. FINAL RSP 16 Project List - June 2016
2. FINAL RSP 16 Asset Conditions List - June 2016

The Local System Plan for Eversource may be accessed through the Eversource website: <https://www.eversource.com/Content/ct-c/about/major-projects-infrastructure/transmission-rates-tariffs-interconnections/ferc-order-890-posting-and-676-e-requirements>

The file can be found under Schedule 21 called the " Local System Plan." Please note, New Hampshire Projects are shown on Pages 22-24.

MG3S 1-26 Please identify and produce all Documents, Information, and Communications that describe how the Project fits into longer range planning of expected future extreme weather events.

Response: The Applicants object to this question as the phrases “longer range planning” and “expected future extreme weather events” are vague and ambiguous.

Notwithstanding the objection, the Applicants answer as follows:

The Northern Pass Transmission Project will provide a new 1090 MW source of clean hydro energy that will provide additional diversity to the New England electrical grid. In the case of severe regional weather events when certain generation sources are constrained (like extreme cold weather where gas fired generation can be curtailed due to lack of fuel), or affected by coastal flood damage, or when other transmission lines are taken out of service, the Project will provide an additional baseload source of power.

Contingency planning is performed to ensure a robust transmission system that can withstand the loss of multiple elements, i.e., generators or transmission lines, during peak load periods. ISO-NE procedures to approve the interconnection of a project with the New England electric system requires comprehensive studies which analyze the effects of the project on the system after it is in service. The studies look at numerous contingencies, which include loss of the project itself along with how the project reacts to loss of other system elements across the region. The purpose is to identify the additional system upgrades, if any, required to ensure the transmission system can withstand these contingencies and continue to maintain reliability after the project is in service. Loss of these elements are what might be experienced during a severe weather event. The criteria for these studies can be found within the following ISO-NE documents:

ISO New England Planning Procedure NO. 5-6 Scope of Interconnection Studies for Generation and Elective Transmission Upgrades http://www.iso-ne.com/static-assets/documents/rules_proceeds/isonne_plan/pp05_6/pp5_6.pdf
ISO New England Transmission Planning Technical Guide http://www.iso-ne.com/static-assets/documents/2016/03/planning_technical_guide_3_2_16.pdf

The Project is also designed to meet all requirements of the National Electric Safety Code, which has been the controlling design documentation since the early 1900's (First Edition in 1915). The Code is re-issued every five years to incorporate changes that are approved as part of a committee process. The Code requires the Project use various weather conditions and overload factors on the design loads used as part of the structure design.

MG3S 1-27 Please identify and produce all Documents, Information, and Communications that describe whether NPT will provide a performance bond, letter of credit, or other financial mechanism to cover any costs to mitigate or correct outstanding post construction oversights, including successful revegetation with native, non-invasive species, water quality impacts, erosion or sedimentation, for at least 3 to 5 growing seasons.

Response: NH RSA 162-H does not require the Applicants to provide a performance bond, letter of credit, or other financial mechanism to construct the project. Therefore, the Applicants do not anticipate providing a bond, letter of credit, or financial mechanism during construction. Nevertheless, the Applicants expect that various permits/approvals they are seeking in this process will cover the issues identified in the question and the Applicants will fully comply with all such permits and approvals.

Pacik, Danielle

From: Getz, Thomas <Thomas.Getz@MCLANE.com>
Sent: Thursday, August 11, 2016 12:00 PM
To: Jason Reimers; Amy Manzelli; Pacik, Danielle; cfillmore@townandcitylaw.com; steven@mittchellmunigroup.com; Carol Holohan (cholahan@nepga.org); Susan Arnold (SArnold@outdoors.org); William L. Plouffe (WPlouffe@dwmlaw.com) (WPlouffe@dwmlaw.com); Melissa E. Birchard (mbirchard@clf.org); lsaffo@co.grafton.nh.us
Cc: marvin.bellis@eversource.com; Needleman, Barry
Subject: Discovery Follow-Up Meeting

All,
The meeting with representatives of Group 2 (governmental entities and non-governmental organizations), on July 26, 2016, was very helpful in identifying and resolving a number of discovery related issues and we are hopeful that the information we shared at the time, and the steps we have taken subsequent to the meeting, have been useful as well. The Applicants remain committed to working with intervenor groups to assist in the sharing of information relevant to the subject of this proceeding, and we trust that this e-mail addresses the issues raised at the meeting. Following is some additional explanation regarding technical issues and the Applicants' position on the scope of production in this proceeding.

Technical Issues Accessing Documents Produced

Representatives for particular groups reported that some individuals were having difficulty accessing the documents produced by Applicants on the ShareFile site because of the volume of documents produced. The Applicants had organized the documents in two different ways to accommodate the needs of the different parties involved. For convenience, one zip file was provided for each set of data requests, and those zip files contain all of Applicant's written responses and documents produced in response to each respective set of data requests. Due to the size of each production, Applicants also separated out and provided the individual .pdf documents for each specific data request.

We understand that some group members still had difficulty accessing documents due to the lack of adequate broadband capability. In light of those issues, the Applicants prepared and provided flash drives for Group 2 parties to copy for their members. Each flash drive included non-confidential responses and documents produced by the Applicants. The volume of documents requested and produced is extraordinary, and the Applicants have been willing to take all reasonable steps to accommodate the needs of those accessing the documents. We trust that the flash drives have resolved this issue.

Some group representatives also noted that when documents produced were in native format, they could not access those documents. As we discussed at the meeting, the receiving parties would need to obtain the appropriate software licenses to access documents that are produced in native format. We understand that some group members were not able to identify the software needed based on the names of the files. Accordingly, we provided a list identifying the software that is necessary to access each file type to all parties to the proceeding.

Request for Further Documents

Some group representatives questioned whether the Applicants' production was sufficient or whether it contained all of the Applicants' communications related to the Project. In response, we point out that the Applicants have undertaken an extraordinary effort to carefully gather, sort, review and produce all relevant,

material and non-privileged documents in this proceeding. Indeed, nearly 80,000 pages, including confidential information, have been produced to date in response to Data Requests. This does not reflect, however, the multiple Excel spreadsheets that were provided in native format, and would likely have added thousands of additional pages. Furthermore, this is in addition to the approximately 27,400 pages that were produced by way of the Application and its supporting appendices, as well as the nearly 1,000 pages of Additional Information submitted in February and other material provided in July to comply with the SEC's new rules.

Due to the volume of documents produced, the Applicants also prepared and provided an Excel spreadsheet to facilitate review of the documents produced. The spreadsheet is searchable and sortable, so that the receiving parties can search for e-mails to particular persons, and sort e-mails by date and filename.

It is important to point out that an adjudicative hearing pursuant to RSA 162-H and the Site Evaluation Committee ("SEC") rules is not the equivalent of civil litigation pursuant to state or federal rules. RSA 541-A:33, II makes clear, for instance, that the technical rules of evidence do not apply in administrative proceedings such as this. Moreover, Site 202.19 places the burden of proof on the Applicants, and the SEC must determine whether the Applicants have submitted a sufficient record to establish that the application meets the various criteria for a Certificate of Site and Facility. Accordingly, the SEC's focus is on the application submitted, and the documents supporting the Application. Documents and communications discussing other routes considered, or other information ultimately not submitted as part of the application are irrelevant and immaterial, and the Applicants therefore did not produce that information.

Some representatives suggest that the Applicants should have produced more internal communications relating to the Northern Pass Project. By way of the Application and responses to the numerous data requests, the Applicants have made a good faith effort to produce all relevant and material documents, and many of these included various communications by the Applicants. Indeed, thousands of pages include or relate to communications by NPT personnel, or communications by NPT consultants to various third parties. By way of example only, NPT produced the following categories of documents in response to particular data requests:

- Communications, including e-mail communications, by the Applicants and their consultants with various federal and state government agencies regarding the proposed route for the transmission line. This includes communications with all state and federal agencies, with the exception of DRED for which there were no responsive communications. (See, e.g., Responses to CFP 1 and Supplement to CFP 1);
- Communications, including e-mail communications, by the Applicants and their consultants with various federal and state government agencies regarding the proposed route for the transmission line through the White Mountain National Forest. (See e.g., Response to CFP 5);
- Communications between Normandeau Associates and NH DES regarding applications for wetlands alteration of terrain and shoreland permitting. (See, e.g., Response to MG1S No. 22);
- Communications between the Applicants and NH DES regarding the proposed Project. (See, e.g., Response to MG1S No. 23); and
- Communications between the Applicants and NH DHR regarding the SEC review process for the Project. (See, e.g., Response to HIS No. 18).

The Applicants did not produce certain internal communications because such communications are not relevant or material to the SEC's determination as to whether the Application meets the specific findings required for issuance of a Certificate. What is relevant and material to the SEC's findings are the Application, the supporting materials, and the communications by the Applicants and their consultants to various governmental

agencies and third parties. In sum, the SEC bases its decision on the information submitted in support of the Application, not the Applicants' internal communications regarding the Project.

Moreover, to the extent that there is any likelihood that the internal communications might lead to the production of admissible evidence, any such prospect is substantially outweighed by the undue burden that would be imposed on the Applicants if they were required to gather, sort, review and produce those e-mails. The Applicants have devoted significant time and effort to carefully gather, review and produce relevant communications without simply "dumping" irrelevant and immaterial documents and communications in response to the hundreds of data requests received. The added burden of requiring Applicants to review, sort and produce perhaps thousands of pages of purely internal communications that are completely irrelevant or immaterial to the SEC's determination would impose an unreasonable and undue burden on the Applicants and would not further the SEC's review of the Project as proposed.

We would be happy to discuss any of this with you further, and the Applicants will continue to work with the intervenors to reasonably and efficiently share all information relevant to the proposed Project.

Thanks

Tom



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VIA ELECTRONIC MAIL

May 17, 2016

New Hampshire Site Evaluation Committee
Pamela G. Monroe, Administrator
21 South Fruit Street, Suite 10
Concord, NH 03301

**Re: SEC Docket No. 2015-05: Public Service Company of New Hampshire d/b/a
Eversource Energy and New England Power Company d/b/a National Grid: Joint
Application for a Certificate of Site and Facility for the Merrimack Valley
Reliability Project**

Dear Ms. Monroe:

Enclosed for filing in the above-captioned docket, please find the Applicants' Motion to Compel Intervenor Huard's Response to Data Requests 5, 6 and 7 From the May 5, 2016 Technical Session.

Please contact me directly should you have any questions.

Sincerely,



Barry Needleman

BN:slb
Enclosure

cc: Distribution List

McLane Middleton, Professional Association
Manchester, Concord, Portsmouth, NH | Woburn, Boston, MA

McLane.com

THE STATE OF NEW HAMPSHIRE

SITE EVALUATION COMMITTEE

SEC DOCKET NO. 2015-05

**JOINT APPLICATION OF NEW ENGLAND POWER COMPANY
D/B/A NATIONAL GRID &
PUBLIC SERVICE COMPANY OF NEW HAMPSHIRE
D/B/A EVERSOURCE ENERGY
FOR A CERTIFICATE OF SITE AND FACILITY**

**APPLICANTS' MOTION TO COMPEL INTERVENOR HUARD'S RESPONSE TO
DATA REQUESTS 5, 6 AND 7 FROM THE MAY 5, 2016 TECHNICAL SESSION**

NOW COME New England Power Company d/b/a National Grid ("NEP") and Public Service Company of New Hampshire d/b/a Eversource Energy ("PSNH") (collectively the "Applicants") by and through their attorneys, McLane Middleton, Professional Association, and move to compel Intervenor Margaret Huard to respond to the Applicants' data requests from the May 5, 2016 Technical Session or in the alternative, to strike references in her testimony regarding allegations of shock and personal injury associated with exposure to transmission lines. In support of their Motion to Compel, the Applicants state as follows:

1. In Ms. Huard's pre-filed testimony, Ms. Huard has made certain allegations about the Applicants and has alleged that she sustained injuries from existing transmission lines in the same right-of-way where the Project is proposed. More specifically, Ms. Huard has alleged that she sustained a shock in January 2016 while directly under transmission wires "strong enough to cause simultaneous symptoms that often precedes cardiac arrest; chest pain, leg pain, shortness of breath, dizziness, and heart palpitations." *See* Amended Pre-Filed Testimony of Margaret Huard, at p. 5 (April 25, 2016).

2. The Applicants' requested that Ms. Huard produce any documentation that supports these allegations. In response, on May 2, 2016 Ms. Huard filed a Motion for Restrictive

Treatment of Medical Records. The Applicants opposed, in part. By Order dated May 6, 2016, the Presiding Officer ruled that “[t]he Applicant is entitled to receive Ms. Huard’s medical records to verify Ms. Huard’s allegations.” Order Granting In Part, Denying In Part, Motion for Restrictive Treatment of Medical Records, at 2.

3. The day before this ruling, on May 5, 2016, a technical session was held in the above-referenced docket for the parties to inquire of Ms. Huard regarding her pre-filed testimony, including her shock allegations. During that session, Ms. Huard produced one document and the Applicants requested that Ms. Huard provide any additional documentation that supports the claims in her pre-filed testimony.

4. Ms. Huard also indicated that she had communications with the Hudson Fire Department regarding the Project and about a January 2016 incident where Ms. Huard also stated that she had exchanged e-mails with other third-parties regarding the January 2016 incident.

5. At the Technical Session, the Applicants requested copies of all communications regarding the incident described in ¶ 1 of this Motion. During the technical session, Ms. Huard agreed to provide these documents and did not object. *See* Memorandum from Pamela Monroe Re: Technical Session Data Requests, NH SEC Docket 2015-05, May 6, 2016. (“Ms. Huard did not object to any of the requests made by the Applicant.”).

6. Ms. Huard was given until May 12, 2016 to respond to the data requests.

7. On May 12, 2016, Ms. Huard filed three separate motions to object to the requests made by the Applicants at the technical session. Ms. Huard alleges that the requests are “unduly invasive,” “arbitrary, repetitious request for information,” and/or are “confidential communications” as they were sent to the “fire chief in his role protecting the public health of the Hudson community.” *See* Motion to Object, Data Request 5 and 6. Ms. Huard also objects to

providing copies of email correspondences with other members of the community regarding the January 2016 incident. *See* Motion to Object, Data Request 7.

8. The Applicants respectfully request that the SEC compel Ms. Huard to comply with Data Requests 5, 6 and 7.

9. Ms. Huard has specifically and repeatedly alleged that she sustained a shock from an electric transmission line, both in her pre-filed testimony and at the technical session. Ms. Huard's opposition to the Project rests in part on these allegations. Any documents or e-mail correspondence relating to the incident are without a doubt relevant in this matter and are admissible. *Cf.* N.H. Rule Evid. 401 ("Relevant evidence' means evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probably that in would be without the evidence."). The Applicants are unaware of any confidentiality that could possibly attach to communications between Ms. Huard and the Fire Chief. More importantly, Ms. Huard has voluntarily put this issue before the Committee herself. Ms. Huard cannot make these allegations without providing the Applicants a full and fair opportunity to examine any evidence that relate to the allegations. The Applicants are entitled to obtain and examine any and all documents that pertain to the alleged January 2016 incident. Ms. Huard should not be allowed to make such allegations and then object to providing copies of all records relating to the incident.

10. Alternatively, if the subject information is not provided, the Applicants respectfully request that the Presiding Officer strike from the record any and all references made by Ms. Huard that relate to allegations of electric shock and any alleged health effects sustained therefrom.

11. The Applicants certify that they made a good-faith effort to resolve this dispute informally at the technical session. In fact, as mentioned above, Ms. Huard agreed at that time to provide the responses to these data requests.

WHEREFORE, the Applicants respectfully request that the Presiding Officer:

- A. Compel Intervenor Huard to provide responses to Data Requests 5, 6 and 7 from the May 5, 2016 technical session;
- B. In the alternative, strike from the record any and all references made by Ms. Huard that relate to allegations of electric shock and any alleged health effects sustained therefrom; and
- C. Grant such further relief as requested herein and as deemed appropriate.

Respectfully Submitted,

New England Power Company and

Public Service Company of New Hampshire

By its attorneys,

McLANE MIDDLETON
PROFESSIONAL ASSOCIATION

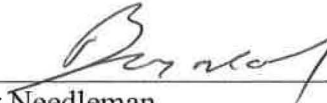
Dated: May 17, 2016

By: 

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Certificate of Service

I hereby certify that on the 17th day of May, 2016 this Motion was sent electronically to the New Hampshire Site Evaluation Committee and an electronic copy was served upon the SEC Distribution List.



Barry Needleman