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August 25, 2016

**Via Electronic Mail & Hand Delivery**

Pamela Monroe, Administrator  
New Hampshire Site Evaluation Committee  
21 South Fruit Street, Suite 10  
Concord, NH 03301-2429

**Re: 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 (the "Applicants") for a Certificate of  
Site and Facility  
Objection to Certain Motions to Compel**

Dear Ms. Monroe:

Enclosed for filing in the above-captioned docket, please find an original and one copy of the Applicants' Response And Objection To Certain Motions To Compel.

Please contact me directly should you have any questions.

Sincerely,

A handwritten signature in blue ink, appearing to read "Thomas B. Getz".

Thomas B. Getz

TBG:slb

cc: SEC Distribution List

Enclosure

**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' RESPONSE AND OBJECTION TO CERTAIN MOTIONS TO COMPEL**

NOW COME Northern Pass Transmission LLC ("NPT") 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 respectfully submit this Objection to Certain Motions to Compel in the above-captioned proceeding.

**I. BACKGROUND**

1. On October 19, 2015, the Applicants filed an application with the New Hampshire Site Evaluation Committee ("SEC" or the "Committee") for a Certificate of Site and Facility to construct a 1,090 MW transmission line to transport hydro-electric energy from Quebec to New Hampshire.

2. Between June 13, 2016 and July 27, 2016, the Applicants provided timely responses to nearly 1,000 data requests from the various parties in this proceeding.<sup>1</sup> This effort included the production of nearly 80,000 pages of documents and responses to data requests.

3. By August 15, 2016, thirteen parties filed motions to compel responses to data requests with the Committee, excluding the Grafton County Commissioners ("GCC") and the

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<sup>1</sup> The Applicants are currently in the process of responding to additional data requests propounded by the parties on confidential materials and decommissioning. In addition, while responding to the data requests propounded in the SEC proceeding, the Applicants concurrently responded to requests for more information from the New Hampshire Department of Environmental Services as well as data requests from the New Hampshire Public Utilities Commission Staff.

Counsel for the Public (“CFP”) . On August 16, 2016, GCC filed a pleading they referred to as a supplement to their August 15, 2016 motion to order further responses and extend deadlines; the so-called supplement is a late-filed motion to compel responses. CFP filed a motion on August 15, 2016, to compel further responses and for other relief, that is, amend the procedural schedule. The CFP and GCC motions with respect to the procedural schedule are addressed in a separate objection.

4. However, as discussed more fully below, eight of the intervenor groups who filed a motion to compel failed to make a good-faith effort to resolve the alleged dispute informally, contrary to the Committee’s rules.

## **II. LEGAL STANDARD**

5. Pursuant to N.H. Code Admin. R., Site 202.12(k), motions to compel responses to data requests must (1) be made pursuant to 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. *See* Site 202.12(k).

## **III. PRELIMINARY MATTERS**

6. More than half of the parties failed to comply with the Committee’s rules regarding motions to compel, ignoring the requirement to make a good-faith effort to resolve a discovery dispute informally prior to filing a motion to compel. Site 202.12(k), expressly requires that a movant certify that it has made such a good faith effort.<sup>2</sup>

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<sup>2</sup>The following groups did not seek to informally resolve their alleged discovery disputes prior to filing their motion to compel: Municipal Group 1 South, Municipal Group 2, Municipal Group 3 North, Municipal Group 3 South, Grafton County Commissioners, the Pemigewasset River Local Advisory Council, Non-Abutter Group 2, and Abutter Group 1.

7. Since filing their responses to data requests, and prior to the deadline for motions to compel, the Applicants worked informally in an attempt to resolve discovery disputes with those parties that made the good faith effort required by the rules. Furthermore, following the deadlines for responding to data requests, the Applicants contacted a number of parties in an effort to informally resolve issues raised in their motions to compel and some successful resolutions were achieved. To that end, the Applicants are continuing to work with the Municipal Groups in particular in the hopes of resolving additional issues.

8. Prior to the deadline for motions to compel, the Applicants informally provided additional information and worked with parties, including, the Society for the Protection of New Hampshire Forests (“SPNHF”), the Environmental Non-Governmental Organizations (“NGOs”), the New England Power Generators Association (“NEPGA”), Deerfield Abutters, Non-Abutters Group 1, and Non-Abutters Group 4, to identify pertinent materials in the Application and in other data requests.<sup>3</sup>

9. As for the parties that failed to make a good faith effort, they had sufficient time to work with the Applicants to address their issues, especially in light of the extensions granted by the Committee. On July 18, 2016, SPNHF filed a motion to extend the deadline for filing motions to compel from July 18, 2016 to August 1, 2016; the Applicants assented and the SEC granted the motion. *See Partially Assented-To Motion of the Society for the Protection of New Hampshire Forests to Extend Deadline*, at 2. Subsequently, on July 27, 2016, after receiving inquiries from a number of parties seeking additional time to file motions to compel, the Applicants notified the Committee that they agreed to further extend the deadline for motions to

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<sup>3</sup> Specifically, after working with the spokesperson, for the Deerfield Abutters, Non-Abutters Group 1, and Non-Abutters Group 4, the parties were able to limit their discovery disputes to filing a motion to compel on only four data requests. The Applicants have also been and will continue to work with the Bilodeau Abutters to resolve any discovery issues informally.

compel for *all parties* until August 15, 2016. On August 2, 2016, the Committee extended the deadline until August 15, 2016. By twice extending the deadline, the Committee added as much as an additional month for some parties to resolve issues, who, nevertheless, did not comply with the SEC's rules.

10. Also, as a general matter, many of the motions to compel are simply argumentative and seek follow-up information properly addressed at technical sessions. If the rules had been followed, many of the motions now before the Committee could have been reduced significantly or eliminated altogether.

#### **IV. COMMON DISPUTES**

11. A number of motions to compel make common complaints. In an effort to consolidate this Response and Objection, the Applicants respond to the common disputes before addressing the specific disputes raised by each individual party. Many of the motions seek information that does not yet exist, is not in the care custody or control of the Applicants, or will be developed at a later date. Moreover, many requests seek follow-up information that is more appropriately addressed at the technical sessions.

##### **A. Internal Communications**

12. In many of the data requests, parties requested that the Applicants produce all documents and communications relating to the individual requests. The Applicants produced relevant and responsive documents, excluding only privileged documents and communications. Many of the documents were communications between the Applicants, or the Applicants' consultants, and the various state and federal agencies involved in the permitting of the Proposed Project.

13. In response to those data requests, the Applicants did not produce all internal communications because such communications are not relevant or material to the Committee's evaluation of the Application, nor would they lead to evidence admissible in the final adjudicatory hearing before the Committee. Nevertheless, many of the parties seek production of all of the Applicants' internal communications.

14. R.S.A. § 162-H:10, IV provides the touchstone for determining whether certain information or a class of information should be compelled through discovery:

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. (Emphasis supplied.)

The Application in this proceeding contained over 27,000 pages of materials, including pre-filed testimony of various witnesses testifying in support of the Application. The Committee deemed the Application complete by its December 18, 2015 *Order Accepting Application*. The Committee must now consider all relevant information to determine if the Application meets the requirements for a certificate as delineated in RSA § 162-H:16 (IV).

15. Pursuant to Site 202.12, the parties may serve data requests, and Counsel for the Public and the intervenors collectively have propounded nearly 1,000 data requests. In response, Applicants have devoted extraordinary time and effort to produce all relevant and material documents, including communications between the Applicants, or the Applicants' consultants, and various federal and state agencies. In total, Applicants have produced nearly 80,000 pages of documents and responses to data requests, in addition to the Application and all of its supporting appendices of materials.

16. The parties' further demand for all internal communications of the Applicants goes beyond the scope of allowable discovery in this proceeding. Discovery is governed by RSA

541-A:33, II and Site 202.12. RSA 541-A:33, II provides that irrelevant, immaterial or unduly repetitive evidence may be excluded. *See* RSA 541-A:33, II. Site 202.12(l) provides that the Presiding Officer “shall authorize other forms of discovery...when such discovery is *necessary to enable the parties to acquire evidence admissible in a proceeding.*” Site 202.12(l) (emphasis supplied).

17. An adjudicative proceeding pursuant to RSA 162-H and the SEC rules are 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 delineated in RSA 162-H:16, IV. Accordingly, the SEC’s focus is on the application submitted, and the documents supporting the Application.

18. A number of motions to compel quote language from the New Hampshire Supreme Court’s decision in *Durocher’s Ice Cream, Inc. v. Peirce Const. Co* as authority for equating administrative litigation to civil litigation. They note that “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.” *Durocher’s Ice Cream, Inc. v. Peirce Const. Co.*, 106 N.H. 293, 295 (1965). The quoted language is a fair maxim as far as it goes, but it does not go far enough. Pertinent questions concern the scope of an adequate opportunity to properly prepare, and whether an administrative hearing is the equivalent of a trial. As explained herein, the parties have been provided adequate

discovery to prepare for an SEC administrative hearing, and an SEC administrative hearing is not the same as a trial.

19. The New Hampshire Public Utilities Commission, in Docket No. DW 04-048, *City of Nashua*, Order No. 24,667 (September 22, 2006) recognized, at p.4, that “[i]n the context of administrative proceedings, due process is a ‘flexible’ concept” citing *Mathews v. Eldridge*, 424 U.S. 319 (1976) and *Appeal of Office of Consumer Advocate*, 148 NH 134 (2002). In *Mathews*, moreover, the U.S. Supreme Court observed, in determining what level of process is due in an administrative proceeding, that:

The ultimate balance involves a determination as to when, under our constitutional system, judicial-type procedures must be imposed upon administrative action to assure fairness. We reiterate the wise admonishment of Mr. Justice Frankfurter that differences in the origin and function of administrative agencies “preclude wholesale transplantation of the rules of procedure, trial and review which have evolved from the history and experience of courts.” 424 U.S. 348

20. In the various motions to compel, the parties fail to specify how the Applicants’ internal communications will be admissible, or why they are necessary to the SEC’s determination. By way of example, Municipal Group 2 states that 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).” Motion to Compel, ¶ 6. But as the SEC has held, “A blanket assertion of need without specifics does not satisfy either Site 202.12(a) or R.S.A. 541-A:33.” *Order on Outstanding Motions*, Docket No. 2012-01, 11 (Aug. 22, 2012).

21. What is discoverable here, and necessary for the SEC’s determination, is the Application, its supporting materials, and the communications by the Applicants and their consultants to various governmental agencies and third parties. The internal communications of the Applicants are irrelevant and immaterial to the SEC’s determination, hence inadmissible,



and, therefore, beyond the scope of discovery. Data requests must “relate to information and documents concerning” and “assist the Subcommittee in undertaking its obligation to determine” one of the five determinations listed in R.S.A. § 162-H:16 (IV). Id. at 2; *See also Id.* at 3 (denying motion to compel irrelevant information related to Applicant’s preliminary discussions and negotiations regarding an off-take agreement) and Id. at 9-10 (denying motion to compel information related to Applicant’s efforts to obtain different FAA requirements regarding the lighting of turbines).

22. Likewise, in Docket No. 2015-01, the SEC denied certain intervenors’ motions to compel particular communications relating to the Applicant’s public relations. *See Request of SEA-3, Inc. for Exemption, Order on Pending Motions*, Docket No. 2015-01, 10 (Nov. 4, 2015). The SEC explained: “Extended litigation over the public relations campaigns of the parties, in this case, will not assist the Subcommittee in applying the statutory factors required for a determination to grant or deny the petition for exemption. The information sought by the motions to compel is therefore not necessary to enable the parties to acquire admissible evidence.” Id.

23. Moreover, to the extent that there is any minimal relevance to the internal communications, such relevance is substantially outweighed by the undue burden that would be required to produce such communications. The Applicants have devoted significant time and effort to carefully gather, review and produce relevant communications without simply “dumping” irrelevant documents and communications in response to the hundreds of data requests received. The added burden of requiring the Applicants to review, sort and produce on the order of hundreds of thousands of pages of purely internal communications, which are irrelevant and immaterial to the SEC’s determination, would impose an unreasonable and undue

burden on the Applicants, would not further the intervenors' review of the Project as proposed, and would serve only to delay the proceeding. *See* Request of SEA-3, Inc. for Exemption, *Order on Pending Motions*, Docket No. 2015-01, 10 (Nov. 4, 2015), (denying motion to compel and noting that "further discovery regarding this issue will unduly delay the prompt and orderly conduct of this proceeding.").

**B. Identifying the Sponsor of Each Data Request**

24. Many motions seek to compel the Applicants to: "Identify the individuals who provided the responses and who will be responsible for testimony concerning each request" and to "Identify each individual who supplied any Information in response to the question." The motions argue that the data requests include "Instructions" that the Applicants must abide by.

25. The Committee's rules do not authorize parties issuing data requests to create binding instructions for responding to data requests, nor do the rules require a responder to comply with such instructions. When responding to data and document requests, it is the Applicant who responds to a certain question, not specific individuals. Indeed, past practice before the Committee has not required a responder to identify those individuals who supplied information in response to a question.

26. This issue was raised at the July 26, 2016 meeting by certain intervenors. The Applicants explained that a majority of the data responses involve the production of documents, or clearly relate to a specific topic (i.e., construction, financial capability, environmental issues) or individual witness's testimony. Therefore, in most cases it is obvious who will answer questions about a certain topic at the technical sessions or at the final hearing.

27. Moreover, at the meeting, the Applicants offered to work with individual intervenors to address their concerns where it was not readily apparent who would answer follow-up questions at the technical session of final hearings.

28. As a matter of fact, the Applicants were able to informally resolve this issue with other parties, including, NEPGA, Deerfield Abutters, Non-Abutters Group 1, and Non-Abutters Group 4. Again, had parties contacted the Applicants about specific instances, their issues could have been resolved without taking the Committee's time.

29. The Applicants again offer their assistance in identifying those individuals who will be available to answer follow-up questions at the technical sessions and the final hearings for those questions where the witness may not be clearly identifiable.

### **C. LIDAR, PLS-CADD and GIS Data**

30. Multiple motions seek to compel the Applicants to produce data such as LiDAR as well as the software programs used to access this data. Alternatively, certain motions request that the data be converted to a file type that is compatible with ArcGIS. The Applicants produced an extensive amount of LiDAR, PLS-CADD and other forms of GIS data in response to data requests specifically requesting such data. Specifically, the Applicants produced all LiDAR data regarding the proposed route. The Applicants produced this data in the format in which it is kept in the usual course of business. The software necessary to access this data is PLS-CADD, which is the standard software used in the industry. Converting this data to other formats diminishes the functionality and use of the data. To the extent that parties request the software necessary to access certain data types, the Applicants object. Licenses to use PLS-CADD software may be purchased from Power Line Systems, Inc. The Applicants are not at liberty to provide this

software to parties in this proceeding. Doing so would violate Power Line Systems, Inc. licensing agreements.

## **V. SPECIFIC DISPUTES**

31. In addition to the common disputes, multiple parties included specific disputes in their respective motions to compel. The Applicants address each dispute below.

### **A. Society for the Protection of New Hampshire Forests (SPNHF)**

32. As an initial matter, a number of SPNHF's issues involve common disputes, including (1) identifying the responder to each data request and (2) producing documents in native format.<sup>4</sup> The Applicants incorporate their prior statements on these matter herein.

33. Prior to the filing of SPNHF's motion to compel, the Applicants worked with SPNHF to resolve a number of disputes regarding the Applicants' responses to SPNHF's data requests. As SPNHF points out in its motion, a number of issues were resolved successfully.

### **Use of General Objections**

34. SPNHF begins from an unfounded assumption that the Applicants have withheld certain information based on general objections included in the "Preliminary Statement and General Objections" at the beginning of the responses to SPNHF's data requests. The Applicants include this section only for purposes of communicating their position regarding certain issues of import in SEC discovery proceedings. To be clear, the Applicants have not withheld any documents based solely on these general objections. To the extent the Applicants withheld documents, the basis for doing so was articulated in the response to each particular data request in accordance with N.H. Admin. R. Site 202.12(i)(2).

### **Instructions and Definitions**

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<sup>4</sup> The discussion under "Preliminary Matters" primarily addresses LIDAR, PLS-Cadd and other GIS data, however, the Applicants' position applies to the documents at issue here as well.

35. SPNHF next claims that the Applicants failed to follow the “instructions” SPNHF provided in responding to its data requests. In particular, SPNHF claims that the Applicants failed to timely object to SPNHF’s requests based on claims of ambiguity and have thereby waived any right to object based on such claim. The Applicants disagree.

36. As the Applicants discuss above, they are under no obligation to abide by “instructions” provided by each party. In addition, SPNHF argues that by virtue of its instructions, the burden of identifying “with specificity the information or materials being sought,” shifts to the Applicants. *See* Site 202.12(c). The Applicants reject this characterization and maintain that the burden to provide clear and unambiguous data requests rests with the propounder of such data requests.

37. Notwithstanding the above, to the extent that the Applicants found a data request to be vague and/or ambiguous, the Applicants nevertheless made a good faith effort to provide a complete response. Therefore, the timeframe for objecting articulated in Site 202.12(i)(1) does not apply. Site 202.12(i)(1) contemplates those instances in which a party objects to a data request outright, i.e., the party withholds a response entirely. There was no instance in responding to SPNHF’s data requests where the Applicants objected based on vagueness and/or ambiguity and did not make a good faith effort to provide a complete response.

38. SPNHF also asserts that the Applicants failed to provide a privilege log. Throughout the discovery process, the Applicants have indicated that they will provide a privilege log following the completion of their responses to all data requests. The Applicants continue to respond to data requests based on confidential materials and decommissioning. Therefore, providing a privilege log prior to completing those responses would be premature.

Nevertheless, the Applicants intend to provide a privilege log to the parties by September 2, 2016.

39. SPNHF next argues that the Applicants did not identify the responders to each data request. The Applicants incorporate their statements in Section III. B. above.

40. SPNHF then argues that the Applicants did not produce certain data in a usable format, which it interprets to mean that the Applicants should be required to produce data in “...the form that will most likely enable the requester to use the [information].” The Applicants disagree. Although the rules governing SEC proceedings are silent as to the format of documents produced during discovery, a useful analogy is provided by the Superior Court rules governing civil litigation in New Hampshire, which speak to the burden for the production of documents. In particular, N.H. Super. Ct. R. 24(b)(3) states “A party who produces documents for inspection *shall* produce them as they are kept in the usual course of business...” N.H. Super. Ct. R. 24(b)(3) [emphasis supplied]. The Applicants have done this. There is no requirement that the Applicants alter the format of documents. A further discussion of the formatting of specific documents is included below.

41. SPNHF also contends that the Applicants did not provide what SPNHF calls a data dictionary. The Applicants are under no obligation to produce such a data dictionary. The Applicants did, however, provide an index to all parties in this proceeding on July 27, 2016, which identified, to the extent practicable given the extensive amount of data produced, the file extension, the file type and any software required to access files. *See* Letter from Applicant Explaining Data Responses, July 27, 2016. The Applicants note, however, that much of this information is easily accessible by performing basic internet searches.

42. Next, SPNHF argues that the Applicants are required to provide access to the software needed to access certain data that SPNHF or other parties specifically requested. As the Applicants have repeatedly explained, they are not at liberty to provide (1) software that is proprietary to other companies, (2) software that requires the purchasing of a license from an outside vendor, or (3) software that must be purchased outright from an outside vendor.

43. Finally, SPNHF at ¶ 43 states: “In response to the Forest Society’s 27 data requests, the Applicants provided zero emails and zero correspondences involving any person or entity affiliated with the Applicants.” Only three of SPNHF’s data requests, however, requested that the Applicants produce communications. The Applicants did not produce communications with regard to the three data requests because there were no responsive and/or relevant communications to produce.

#### RSA 91-A, Right-to-Know

44. SPNHF argues that the Applicants improperly invoked RSA 91-A for purposes of withholding confidential information. As the Applicants understand it, SPNHF is arguing, first, that RSA 91-A does not apply to discovery, and, second, that the Applicants misinterpret SEC precedent. The Applicants disagree on both counts.

45. The Right-to-Know Law applies to “[a]ny board or commission of any state agency or authority.” RSA 91-A:1-a, VI (c) (2008). The New Hampshire Supreme Court described a three-step analysis to determine whether information is exempt from public disclosure pursuant to RSA 91-A:5, IV. *See generally Lamy v. New Hampshire Public Utilities Commission*, 152, N.H. 106 (2005). It is common practice for state courts, agencies and other governmental bodies to apply RSA 91-A to determine the discoverability of certain documents. *See Valley Green Natural Gas, LLC Petition for Franchise Approval, Order on Motion to*

*Compel*, Docket No. DG 15-155 (Feb. 17, 206) (Applying the New Hampshire Supreme Court’s three-step balancing test to determine whether information requested during discovery falls within the scope of 91-A:5, IV.) Indeed, the SEC has routinely applied RSA 91-A analysis in determining the confidentiality of materials during various phases of SEC proceedings including documents requested during discovery. *See Application of Groton Wind, LLC, Order on Pending Motions and Further Procedural Order*, Docket No. 2010-01, 2 (December 14, 2010) (Applying three-step balancing analysis to determine whether the financial statements of non-public held companies should be treated as confidential); *see also Application of Laidlaw Berlin BioPower, 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*, Docket 2009-02, 16 (June 9, 2010) (Applying 91-A analysis in finding that certain confidential documents may be provided only to counsel for the public); *see also Application of Antrim Wind Energy, LLC, Order on Outstanding Motions*, Docket 2012-01, 4 (Aug. 22, 2012) (Applying 91-A analysis in finding that certain highly confidential information should be provided solely to counsel for the public). There is no material difference between data requests propounded during a technical session and the data requests propounded by SPNHF to date. Indeed, Site 202.12(1) provides that the presiding officer “[s]hall authorize other forms of discovery, including technical sessions...” Site 202.12(1).

46. The Applicants disagree with SPNHF’s legal analysis. At ¶61 SPNHF states: “Under prior orders cited by the Applicants, no SEC precedent invokes RSA 91-A to withhold confidential information during discovery from an intervenor that is already party to a confidentiality agreement...” SPNHF Motion at ¶61. As discussed above, the Committee applied RSA 91-A and granted confidential treatment for business plans and financial models



requested at technical sessions. The Committee ordered that this information be provided solely to Counsel for the Public and ordered that the information “[s]hall not be further disclosed without further order of the Subcommittee.” *See Order on Partially Assented-to Motion for Protective Order and Confidential Treatment for Certain Confidential, Commercial, and Financial Documents, Application of Laidlaw Berlin BioPower, supra* at 3. Similarly, in the Antrim docket, the Committee found that disclosure of certain “highly confidential” materials could negatively affect the competitive interests of the Applicant if disclosed in public, or to competitors, vendors, or suppliers. For that reason, the Committee ordered that the Applicant provide the information solely to counsel for the public. *See Order on Outstanding Motions, supra* at 4. In both of these dockets the SEC applied RSA 91-A analysis in finding that certain materials were confidential and withheld disclosure to parties other than counsel for the public.

47. SPNHF asks that the Applicants be compelled to produce confidential documents in response to SPNHF data requests 1, 20 and 21. SPNHF 1 requested that the Applicants:

Produce Communications, Documents and Information that evidence, discuss or relate to ISO-NE acceptance from the proposed Project 1,090 MW of capacity into the Forward capacity Market, including terms and conditions it may impose on shippers, shippers that may qualify, and whether the 1,090 MW would be unmitigated.

The Applicants objected “insofar as it seeks to obtain confidential business information” for the purposes of preserving their objection only. The Applicants do not have communications, documents and information responsive to this request.

48. SPNHF 20 requested, in relevant part, that the Applicants provide documentation that breaks down the \$1.6 billion capital cost of the project as well as the cost of AC upgrades. The Applicants provided this information to SPNHF after SPNHF entered into an Agreement for Protective Treatment with the Applicants. As the Applicants explained in their response to

SPNHF: “Because of the structure of the contractual arrangements that resulted from the competitive bid process, the requested detailed cost information is not available; however, that type of information will be developed during the construction phase.” Therefore, there are no further responsive documents to this request.

49. SPNHF 21 requested, in relevant part, the Applicants:

[p]rovide copies of all communications, presentations, Proposed Plan Applications submitted to ISO-NE pursuant to Section I.3.9 of the ISO-NE Tariff, memos, letters, meeting minutes, emails or any other form of communication with ISO-NE, the Planning Advisory Committee and/or NEPOOL Committees regarding the estimated cost of NPT...

As the Applicants explained in their response, NPT has not communicated with ISO-NE or NEPOOL regarding the estimated \$1.6 billion project cost. The Applicants explained that “[N]PT has included its own estimate of costs associated with the expected ISO-NE (I.3.9) upgrades and those are included in the estimated Project cost of \$1.6 billion.” This document was provided to SPNHF subject to compliance with the terms of the Agreement for Protective Treatment entered into by the parties. To the extent SPNHF now seeks additional information, the Applicants reincorporate their objection that such information is not relevant to the proceeding and therefore is not reasonably calculated to lead to the “discovery of evidence admissible in a proceeding. *See* Site 202.12(I).

#### Report of London Economics International

50. The Applicants object to the stated premise for SPNHF’s requests regarding LEI’s data and analyses, i.e., that it needs the requested information to “*replicate* LEI’s conclusions as to the Project’s benefits.” SPNHF Motion at 12. The Applicants have provided all responsive information in response to SPNHF’s requests regarding LEI’s data. SPNHF cites no authority that would compel the Applicants, or their experts, to reveal proprietary information. To the

extent SPNHF seeks to test LEI's analysis, SPNHF has the data, viz., inputs and outputs, it needs to do this. To the extent SPNHF has questions regarding the data provided to it, SPNHF can ask such questions at the Technical Session.

51. SPNHF's first specific contention with regard to LEI data is that the Applicants did not produce data about economic conclusions in response to request numbers 7 through 10. The Applicants disagree. First, to the extent that the Applicants or LEI have relevant information responsive to each request, such information is included in the LEI Report. In such cases, the Applicants directed SPNHF to the specific sections of the LEI Report that provide this information. However, in certain instances SPNHF's request either misstated the manner in which analyses were conducted or asked for information regarding analyses that LEI did not perform. In such instances, the Applicants provided an explanation in their response.

52. In addition, SPNHF contends that "the Applicants have declined to provide critical information explaining exactly the manner in which LEI calculated its benefits." SPNHF Motion at 14. As the Applicants explained to counsel for SPNHF, and further explain below, the specific information that SPNHF requested, which is listed on pages 14 and 15 of SPNHF's motion, is not applicable to LEI's analysis.

53. Fundamentally, SPNHF's request seeks access to LEI's modelling, which it developed at great expense, and which is not necessary for SPNHF's expert witness to analyze the LEI Report. SPNHF argues that "the Applicants should be required to disclose, precisely, how LEI arrived at its conclusions about the purported benefits of the Project." *See* SPNHF Motion at 15. The Applicants have done this. The Applicants have provided all inputs and outputs used in LEI's analysis. The inputs and outputs are the critical component for purposes of understanding LEI's analysis.

54. As stated throughout the LEI Report, three models were used to evaluate the wholesale market impacts and local economic benefits: (1) POOLMod, (2) FCA Simulator, and (3) REMI PI<sup>+</sup>. As is common in the industry, both POOLMod and FCA Simulator were built by, and are proprietary to, LEI. As the Applicants explained in their response to SPNHF's requests, detailed descriptions of how these models work is included in the LEI Report. To the extent SPNHF seeks the information necessary to "verify or analyze the Applicants' outputs", the LEI Report and the inputs and outputs comprise the necessary information. In addition, REMI PI<sup>+</sup> is a well-documented model that is developed by Regional Economic Models, Inc., and is described in Section 12 of the LEI Report.

55. SPNHF next argues that the response and data provided in response to SPNHF request 7 are not responsive. Specifically, SPNHF objects to the content and format of the data provided.<sup>5</sup> Regarding the content of the data, SPNHF's objection is difficult to understand. The documents in question comprise roughly 215 pages of data detailing the inputs and outputs LEI used in its analysis. Each separate input and output is appropriately and accurately labeled and the data is clearly legible. The Applicants went through a substantial effort to produce this data in a readable and useable format. Furthermore, upon the request of counsel for SPNHF, counsel for the Applicants provided the specific Bates ranges and corresponding title/label for each input and output provided. To be clear, SPNHF specifically requested "all input and output data" LEI used in its analysis. For SPNHF to now claim that this is insufficient because they do not have the resources to manage this data is not a basis for filing a motion to compel. As the Applicants

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<sup>5</sup> SPNHF specifically states as follows: "the content (or lack thereof) and formatting of what the Applicants have produced generally prevent the Forest Society and its consultant from doing the following: (1) copying and pasting any of the data, which is critical given the magnitude of the data; (2) ensuring LEI's basic math and reference functions are correct; (3) determining the source of certain inputs; (4) verifying corrupted cell problems in earlier-produced data has been appropriately and with structural data integrity; (5) testing, replicating, and assessing: the Applicants' input selection methodology and other possible as yet unknown methodologies using REMI or any other econometric statistical and/or simulation software program; and the appropriateness of the analytical processes to the forecasting tasks performed."

stated previously, the data was provided in the format in which it was kept in the usual course of business. To the extent SPNHF requests this data in electronic format, the Applicants are willing to provide this data in either a protected excel workbook or as a series of electronic PDF documents.

56. With regard to the same data request, SPNHF states that it seeks to understand the inputs that LEI used in its analyses, the outputs, and the analytical processes employed by LEI to arrive at its conclusions. With regard to the latter point, the Applicants, in their response, directed SPNHF to Appendix C of the LEI Report. Appendix C, titled “Detailed Assumptions for Wholesale Power Market Simulations,” which provides detailed information on the modelling approach and assumptions used in such modelling. This information, in addition to the extensive amount of data provided, comprises the relevant responsive information that the Applicants possess or are capable of providing. To the extent that SPNHF has additional questions regarding LEI’s modelling or analysis, SPNHF can request clarification at the Technical Sessions.

57. Another SPNHF area of contention is with regard to an Excel workbook that the Applicants provided in response to SPNHF data request 11.<sup>6</sup> SPNHF claims the following: (1) the Excel workbook was provided in .xls format; (2) the workbook is in a “protected” format; (3) the Applicants did not provide separate databases containing detailed information about NPT’s revenue requirement; (4) the data in the Excel workbook still need to be verified for source and accuracy; and (5) the workbook does not include references in the “To Remi” worksheet. *See* SPNHF Motion at 18-19. The Applicants address each concern in kind below.

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<sup>6</sup> Due to the volume of information included in this workbook, the document is likely responsive, either in part or in whole, to a number of SPNHF’s data requests. However, the Applicants provided it directly in response to SPNHF request 11.

58. To SPNHF's first point, the workbook in question was provided in the format in which the Applicants received it from LEI, which is the format in which it is kept in the usual course of business.

59. To SPNHF's second point, the Applicants provided the workbook in a "protected" format in order to preserve the integrity of the data enclosed while presenting the data in an intelligible format. The workbook in question is extensive, comprising 16 separate sheets and containing an enormous amount of data. As the Applicants explained to SPNHF, confidential materials such as this workbook would typically be provided in hard copy for examination subject to compliance with the terms of the Agreement for Protective Treatment entered into by the parties. However, due to the voluminous amount of data in the workbook, presenting it in hard copy would make the data indiscernible. Therefore, the Applicants provided it electronically as a protected workbook. This enables each party to view the data and navigate throughout the workbook without the ability to manipulate or in any way alter or compromise the underlying document or its contents. Additionally, due to the nature of Excel documents it is impossible for the Applicants to mark the document as confidential or provide the document with a Bates number. Therefore, the only way for the Applicants to ensure that the document remains intact, in its original form, is to provide it as a protected workbook.

60. To SPNHF's third point, SPNHF argues that the Applicants failed to provide two databases containing details of NPT's revenue requirement.<sup>7</sup> SPNHF contends that the failure to provide these databases corrupted certain cells within the workbook. This assertion is not accurate. When SPNHF first brought this issue to the Applicants' attention, the Applicants worked with SPNHF to resolve the issue. By way of explanation, a number of cells in the original workbook showed error messages. The Applicants brought this to the attention of LEI,

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<sup>7</sup> SPNHF's claim that there are five withheld databases referenced by the Applicants' counsel is untrue.

who explained that the error messages were the result of the Applicants having redacted two databases that contained detailed and highly confidential business information regarding NPT's revenue requirement. To resolve the issue, the Applicants asked LEI to provide the same workbook with the sheets containing revenue requirement information included but hidden so that the data linkages were preserved. All of the data responsive to this request is included in the workbook provided to SPNHF.

61. Regarding the same redacted workbook sheets, SPNHF states: "The Applicants' assertion that the linked workbooks or databases are being withheld because they are irrelevant lacks merit...As noted, the legal standard in discovery is not whether the requested information is relevant but whether it is reasonably calculated to lead to the discovery of admissible evidence."<sup>8</sup> SPNHF Motion at 19. For purposes of clarification, the information regarding NPT's revenue requirement was redacted because it is irrelevant for the purposes of responding to this particular request. SPNHF did not request such information and should not now be permitted to argue that this information should be disclosed.

62. The workbook in question was provided in response to SPNHF 11, which requests the Applicants produce a sector-by-sector breakdown of the inputs and outputs used in REMI PI+ relating to projected local, statewide, and/or regional economic benefits. *See* SPNHF Motion, Exhibit B at 13. The Applicants have done this. Indeed, the Applicants have provided SPNHF with far more data than it requested. The data responsive to SPNHF's request is entirely encapsulated on the first sheet of the workbook entitled "To REMI." The remaining 15 sheets include data that was not specifically requested.

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<sup>8</sup> The Applicants disagree with this characterization of the standard for the scope of discovery. As the Applicants discuss above, the appropriate standard is whether the information is necessary to enable the parties to acquire evidence admissible in a proceeding pursuant to Site 202.12(l).

63. To SPNHF's fourth point, which appears to be more of a statement than a request, the Applicants note that SPNHF is free to use the data included in the workbook as it sees fit, subject to the Agreement for Protective Treatment.

64. To SPNHF's fifth point, the Applicants maintain that they provided all of the data responsive to the request. The request asked for all inputs and outputs used in REMI. The Applicants have provided this data. The data used for purposes of REMI are included in the "To Remi" tab and has been verified to be complete. SPNHF should not be permitted to now ask for more.

#### Proprietary Data

65. SPNHF's final dispute with regard to the LEI data regards the software that LEI uses to conduct its analysis of economic benefits. Specifically, SPNHF requested POOLMod, FCA Simulator and REMI PI+. As explained previously, both POOLMod and FCA Simulator are proprietary to LEI. POOLMod relies on key inputs that have been developed and refined by LEI over several years, such as plant specific information. Both POOLMod and FCA Simulator are integral to LEI's competitive position in the industry. REMI PI+ is a product of Regional Economic Models, Inc. and is available for SPNHF to purchase from that entity. Neither the Applicants nor LEI is at liberty to provide this software.

66. As authority for its request, SPNHF cites Application of Antrim Wind, *supra*, at 17, but the circumstances there do not apply here. In the Antrim docket, the information at issue was data used in determining a sound modeling and noise impact assessment. The Committee determined that the sound data was the type of commercial information normally proprietary to the manufacturer of the machinery, in accord with the analysis set forth in *Lamy v. New Hampshire Public Utilities Commission*, 152 NH 106 (2005). Ultimately, the Committee found



that the interests of the turbine manufacturer and the Applicant outweighed the limited public interest in disclosure of the data but permitted its disclosure subject to a confidentiality agreement.

67. In the present case, however, SPNHF is asking for proprietary software developed by LEI, integral to its business model and competitive position in the market. Release of this software would unnecessarily jeopardize LEI's competitive position, and not provide anything necessary to the Committee's determinations. In any event, LEI's privacy interest in this software outweighs the public interest in disclosure. Moreover, SPNHF's plea for access to the proprietary model, basically so that its expert witness may "replicate" LEI's economic analysis, exceeds the bounds of discoverable documents as explained herein.

68. SPNHF's argument that because the Committee ordered production of specific commercial, proprietary information in a prior docket is unavailing as a proposition that must apply equally in all cases. As the Applicants have discussed previously, SPNHF has the relevant inputs and other data that LEI used to conduct its analysis. SPNHF's expert witness may use this data within the bounds of the Agreement for Protective Treatment to analyze the conclusions of the LEI report.

#### Other Types of Information

69. SPNHF requests clarification regarding the Applicants' response to SPNHF 13, in which it asked for transcripts of case study interviews. The Applicants originally responded that: "There are no transcripts of the interviews." The Applicants seek to clarify that they did not produce the transcripts because they do not exist.

70. SPNHF 17 and 18 sought "raw data" associated with two publications used in the Chalmers Report. As the Applicants explained in their response, the raw data files are the

property of NorthWestern Energy and can only be released with its permission. SPNHF argues that it is the responsibility of the Applicants to seek such permission from NorthWestern Energy. SPNHF also claims “The Applicants failure to provide a contact person at NorthWestern Energy makes it all but impossible for the Forest Society to obtain its permission to release the raw data.” SPNHF Motion at 26. The Applicants disagree. Nevertheless, the Applicants have provided SPNHF a contact person at NorthWestern Energy.

71. SPNHF next requests that the Applicants be compelled to produce an un-redacted version of the Applicants Clean Energy RFP Proposal. The Applicants object. The Clean Energy RFP contains highly confidential material that is irrelevant and immaterial for purposes of discovery. Specifically, the Clean Energy RFP includes information that, if released, would damage the Applicants’ competitive position in the Tri-State Clean Energy RFP process. In addition, the proposal submitted in response to the Clean Energy RFP is irrelevant for purposes of this proceeding.

72. The remainder of SPNHF’s motion asks for information or materials in response to the data requests propounded by other parties in this proceeding. In support of its motion, SPNHF states: “The SEC urged intervenors to work together on data requests, and many intervenors worked together to streamline the data-request process and prevent duplication of data requests...Site 202.12(k) does not prevent a party from moving to compel on data requests.” SPNHF Motion at 27. SPNHF concludes: “It is entirely reasonable that the Forest Society move to compel on data requested by another party that is of significance to other intervenors including the Forest Society.” Id. The Applicants object.

73. SPNHF’s argument goes against established principles of statutory interpretation. *See State Employees’ Association of New Hampshire v. State*, 161 N.H. 730, 738 (2011) (“We

first look to the language of the statute itself, and, if possible, construe that language according to its plain and ordinary meaning. We interpret legislative intent from the statute as written and will not consider what the legislature might have said or add language that the legislature did not see fit to include.”). SPNHF’s approach ignores the transactional nature of the relationship between the propounder of a request and the responder that forms the basis for the SEC’s discovery rule, Site 202.12 , which goes to objections, informally resolving disputes, and, ultimately, motions to compel. A third party should not be permitted to compel discovery where the propounder for all intents and purposes may be satisfied with the response.

74. Furthermore, Site 202.12(d) provides “the total number of data requests served by each person or group...shall not exceed 50...” Site 202.12(d). To permit a party to request additional information based on the data requests propounded by another party to this proceeding is contrary to the requirement that each party be limited to 50. SPNHF’s request should be denied.

75. To the extent that the Committee permits SPNHF’s request to compel discovery requested by other parties in this proceeding, the Applicants object to each specific request in kind.

76. MG1N 21. SPNHF requests that the Applicants be compelled to produce all photosimulations in its or its expert’s possession that were not included in the Application. The Applicants object to the motion to compel draft photosimulations not 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 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 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).

77. MG1N 22. SPNHF requests the SEC order the Applicants to produce information, including email and fieldwork notes...regarding visual simulations that have not been included in the Application, as well as a log of withheld documents, if any. The Applicants object to the motion to compel to the extent it seeks prior drafts, draft photosimulations, draft reports, drawings, diagrams, or any other draft information not 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 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 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).

78. Additionally, the Applicants renew their objection to the motion to compel to the extent it seeks internal communications. Notwithstanding, the Applicants have fully responded to this data request and do not have additional responsive documents or information in their care, custody or control. The Applicants will provide any additional responsive information as it becomes available. The intervenor group may elect to ask follow-up questions on this topic at the technical sessions.

#### **B. NGOs**

79. Prior to the filing of the NGOs' motion to compel, the Applicants worked with the NGOs to resolve a number of disputes. As the NGOs point out in their motion, many of these issues were resolved successfully and the Applicants appreciate the NGOs' efforts in achieving this result. Therefore, the NGOs' motion addresses only those disputes for which a resolution could not be reached prior to the deadline for filing motions to compel responses to data requests.

80. The remaining disputes include (1) identifying the responder to each data request, (2) producing internal communications and (3) producing documents in native format such as LIDAR, PLS-Cadd and GIS data. Additionally, a number of disputes involve issues previously discussed in response to SPNHF's Motion to Compel. Specifically, the request to provide a privilege log, which the Applicants discuss above and the NGOs' dispute regarding the general objections, which the Applicants discuss in Section IV. above. The Applicants incorporate their prior statements on these matter herein.

#### **C. Pemigewasset River Local Advisory Committee**

81. The Applicants incorporate their initial statements contained in Section III. The spokesperson did not make a good faith effort to resolve specific discovery issues. Moreover, most of these requests are argumentative and fail to state with specificity how the Applicants' responses to the data requests are "not responsive." Therefore, their specific requests should be denied.<sup>9</sup> The intervenor group may ask follow-up questions at the technical sessions.

82. PRLAC 2. The Applicants object to the extent it seeks to have the Applicants develop additional information, reports, or other documents not currently within the Applicants' care, custody, or control. Notwithstanding the objection, the Applicants have fully responded to this data request and do not have additional responsive documents or information in their care, custody or control.

83. PRLAC 7. The Applicants object to the extent it seeks to have the Applicants develop additional information, reports, or other documents that are not currently within the Applicants' care, custody, or control. Notwithstanding the objection, the Applicants have fully responded to this data request and do not have additional responsive documents or information in their care, custody or control.

84. PRLAC 9 and 19. The Applicants object to the extent it seeks to have the Applicants develop additional information, reports, or other documents that are not currently within the Applicants' care, custody, or control. Notwithstanding the objection, the Applicants have fully responded to this data request and do not have additional responsive documents or

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<sup>9</sup> The Applicants reached out to PRLAC on August 18, 2016 to discuss their motions to compel. While the group did not indicate a willingness to withdraw their motions to compel, the Applicants are continuing to work with intervenor group to address some of their concerns and comments informally. However, as noted in the Applicants' Objections to this motion to compel, all of the requests in this group's motion to compel are essentially argumentative and/or seek follow-up information that is more appropriate for the technical sessions. The Applicants fully responded to their initial data requests.

information in their care, custody or control. Moreover, the Wetlands Plan Sheets, Application, Appendix 47, already fully depict the information sought.

85. PRLAC 12, 14 and 26. The Applicants have fully responded and do not have additional responsive documents or information in their care, custody or control.

**D. Grafton County Commissioners**

86. As an initial matter, the Grafton County Commissioners' motion to compel, which it termed a supplement, was untimely. Their motion failed to meet the required filing deadline of August 15, 2016 as set by the Committee's Order dated August 2, 2016, and therefore, should be denied.

87. The Applicants also incorporate their initial statements as they pertain specifically to the Grafton County Commissioners. The Grafton County Commissioners did not make a good-faith effort to resolve specific discovery issues. Nonetheless, the Applicants are willing to work with each party to address any perceived discovery issue.

88. GCC 23. The Applicants object to the extent it seeks to have the Applicants develop additional information, reports, or other documents that are not currently within the Applicants' care, custody, or control. The Applicants also incorporate by reference their initial objections to this data request. The Applicants also object to the extent the data requests seek confidential information including confidential contracts and bid information. The Applicants have provided this information to Counsel for the Public and broader disclosure of this information would place the Applicants and its contractors at a competitive disadvantage. *See Application of Antrim Wind Energy, LLC, Order on Outstanding Motions*, Docket 2012-01, 4 (Aug. 22, 2012) (Applying 91-A analysis in finding that certain highly confidential information should be provided solely to counsel for the public); *Application of Laidlaw Berlin BioPower*,

*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, Docket 2009-02, 16 (June 9, 2010).*

89. Notwithstanding these objections, the Applicants have fully responded to this data request and do not have additional responsive documents or information in their care, custody or control. Specifically, the requested detailed cost information is not available; however, that type of information will be developed during the construction phase. The Applicants have provided additional confidential cost data in response to Counsel for the Public Expert Assisted data requests. *See e.g.*, Confidential Documents provided in Applicants Response to Counsel for the Public EXP 1-12. The Applicants will provide any additional responsive information should it become available.

90. GCC 24. The Applicants object to the extent it seeks to have the Applicants develop additional information, reports, or other documents that are not currently within the Applicants' care, custody, or control. Notwithstanding these objections, the Applicants have fully responded to this data request and do not have additional responsive documents or information in their care, custody or control. The Applicants also refer the Grafton County Commissioners to the Transmission Service Agreement, Application, Appendix 16.

91. GCC 25. The Applicants object to the extent it seeks to have the Applicants develop additional information, reports, or other documents that are not currently within the Applicants' care, custody, or control. The Applicants also incorporate by reference their initial objections to this data request. Notwithstanding these objections, the Applicants have fully responded to this data request and do not have additional responsive documents or information in their care, custody or control. The Applicants have provided additional confidential cost data in



response to Counsel for the Public Expert Assisted data requests. *See e.g.*, Confidential Documents provided in Applicants Response to Counsel for the Public EXP 1-12. The Applicants will provide any additional responsive information should it become available.

92. GCC 26. The Applicants object to the extent it seeks to have the Applicants develop additional information, reports, or other documents that are not currently within the Applicants' care, custody, or control. Notwithstanding the objection, the Applicants have fully responded to this data request and do not have additional responsive documents or information in their care, custody or control. The intervenor group may ask follow-up questions on this topic at the technical sessions. With respect to "FERC accounting rule 350" see GCC 30.

93. GCC 27. The Applicants object to the extent it seeks to have the Applicants develop additional information, reports, or other documents that are not currently within the Applicants' care, custody, or control. 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 evidence admissible in this proceeding. The Applicants have provided the requested information. Please also refer to the Applicants Supplement to Deerfield Abutters #1, uploaded to the ShareFile Site, which includes all of the parcels of Property purchased by the Applicants to support the Project. The Intervenor Group should also review the responsive documents that have been provided in the New Hampshire Public Utilities Commission Proceeding, Docket DE 15-464.

94. GCC 28. The Applicants object to the extent it seeks to have the Applicants develop additional information, reports, or other documents that are not currently within the Applicants' care, custody, or control. The Applicants' further object to the motion to compel on the grounds that it calls for the review, compilation, or production of publicly available

documents that could be obtained by the requesting party, including on a public website.

Notwithstanding these objections, the Applicants have fully responded to this data request and do not have additional responsive documents or information in their care, custody or control. Also, as previously stated all responsive documents have been provided in the New Hampshire Public Utilities Commission Proceeding, Docket DE 15-464.

95. GCC 29. The Applicants object to the extent it seeks to have the Applicants develop additional information, reports, or other documents that are not currently within the Applicants' care, custody, or control. Notwithstanding these objections, the Applicants have fully responded to this data request and do not have additional responsive documents or information in their care, custody or control. Specifically, please refer to the un-redacted white paper titled "An Evaluation of All UG Alternatives for the Northern Pass Transmission Project," which has been provided pursuant to a Confidentially Agreement.

96. GCC 30. The Applicants object to the extent it seeks to have the Applicants develop additional information, reports, or other documents that are not currently within the Applicants' care, custody, or control. Notwithstanding these objections, the Applicants have fully responded and do not have additional responsive documents or information in their care, custody or control. Specifically, please refer to the Underground White Paper, which has been provided pursuant to a Confidentially Agreement. With regard to the referenced "FERC accounting rule 350," GCC misstates the requirements imposed by this rule. FERC requires all utilities to report data in a uniform chart of accounts. 350 refers to the accounting chart of accounts classification for "Land and Land Rights." While there is no formalized reporting to FERC regarding this specific classification, reporting of this classification would be no more detailed than the information the Applicants have already provided.

97. GCC 31. The Applicants object to the extent it seeks to have the Applicants develop additional information, reports, or other documents that are not currently within the Applicants' care, custody, or control. Notwithstanding the objection, the Applicants have fully responded to this data request and do not have additional responsive documents or information in their care, custody or control. The Applicants will provide any additional responsive information should it become available. Please also refer to the ABB Technical Proposal for Underground System uploaded to the ShareFile Site in response to CFP EXP 1-5.

98. GCC 32 and 33. The Applicants object to the extent it seeks to have the Applicants develop additional information, reports, or other documents that are not currently within the Applicants' care, custody, or control. Notwithstanding the objection, the Applicants have fully responded to this data request and do not have additional responsive documents or information in their care, custody or control.

#### **E. Municipal Groups**

99. The Applicants incorporate their initial statements as they pertain specifically to each group of Municipal Intervenor in Sections III and IV. None of these municipal groups made a good-faith effort to resolve their specific discovery issues as they pertain to individual questions. Moreover, most, if not all, of these requests fail to state with specificity how the Applicants' responses to the data requests are "not responsive." As a result of these infractions, all of their specific requests should be denied. However, the Applicants are willing to continue to work with each municipality to address any perceived discovery issue.

#### **Municipal Group 1 South**

100. MG1S 2. The Applicants object to the extent it seeks to have the Applicants develop additional information, reports, or other documents that are not currently within the Applicants' care, custody, or control. Notwithstanding the objection, the Applicants have fully

responded to this data request and do not have additional responsive documents or information in their care, custody or control. The intervenor group may elect to ask follow-up questions on this topic at the technical sessions.

101. MG1S 9. The Applicants object to the motion to compel to the extent it seeks internal communications. The Applicants further object to the extent it seeks to have the Applicants develop additional information, reports, or other documents that are not currently within the Applicants' care, custody, or control. Notwithstanding the objection, the Applicants have fully responded to this data request and do not have additional responsive documents or information in their care, custody or control. The intervenor group may elect to ask follow-up questions on this topic at the technical sessions. The Applicants also further object to the intervenor's request to stay the proceeding pursuant to the Grafton County Commissioner's Motion. As is typical for large-scale projects of this nature, the Applicants have submitted an Application including a 30% design. As fully described in numerous data requests, the Applicants are currently conducting geotechnical investigations and utility and ground surveys which will help refine the overall project design and that the requested documents may be developed prior to construction. The Applicants will provide any additional responsive information as it becomes available.

102. MG1S 20. The Applicants object to the extent it seeks to have the Applicants develop additional information, reports, or other documents that are not currently within the Applicants' care, custody, or control. The Applicants also incorporate by reference their initial objections to this data request. The Applicants also object to the extent the data requests seek confidential information including confidential contracts and bid information. The Applicants have provided this information to Counsel for the Public and broader disclosure of this

information would place the Applicants and its contractors at a competitive disadvantage. *See Application of Antrim Wind Energy, LLC, Order on Outstanding Motions*, Docket 2012-01, 4 (Aug. 22, 2012) (Applying 91-A analysis in finding that certain highly confidential information should be provided solely to counsel for the public); *Application of Laidlaw Berlin BioPower, 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*, Docket 2009-02, 16 (June 9, 2010).

103. MG1S 26. The Applicants object to the extent it seeks to have the Applicants develop additional information, reports, or other documents that are not currently within the Applicants' care, custody, or control. Notwithstanding the objection, the Applicants have fully responded to this data request and do not have additional responsive documents or information in their care, custody or control. The intervenor group may elect to ask follow-up questions on this topic at the technical sessions.

104. MG1S 27. The Applicants object to the extent it seeks to have the Applicants develop additional information, reports, or other documents that are not currently within the Applicants' care, custody, or control. Notwithstanding the objection, the Applicants have fully responded to this data request and do not have additional responsive documents or information in their care, custody or control. The intervenor group may elect to ask follow-up questions on this topic at the technical sessions.

105. MG1S 28. The Applicants object to the extent it seeks to have the Applicants develop additional information, reports, or other documents that are not currently within the Applicants' care, custody, or control. The Applicants further object to this question on the grounds that it calls for the review, compilation, or production of publicly available documents

that could be obtained by the requesting party in a less burdensome manner, including on a public website. *See* N.H. PUC Dockets 15-460 through 15-463. Notwithstanding the objection, the Applicants have fully responded to this data request and do not have additional responsive documents or information in their care, custody or control.

106. MG1S 29–34. 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 evidence admissible in this proceeding. 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, at 36–40 (Nov.8, 2010) (finding that RSA 162-H does not require the subcommittee to review all “available alternatives” and does not require consideration of every possible alternative); *Order on Motion to Add Stop*, Application of Public Service Company of New Hampshire, NH SEC Docket 2015-04, at 3 (July 29, 2016) (denying request to add a stop for a site inspection because the Applicant did not have the necessary property rights to construct the Project and finding that a view along an alternative route that was not included in the Application would not assist the Subcommittee in reaching a determination in the proceeding). To the extent any of these data requests seek communications between the Applicants and State or federal agencies, those have been provided. Moreover, any additional information regarding use of I-93 would be a matter of

public record and accessible from those State or federal agencies in a response to a request pursuant to the Right-to-Know Law, NH RSA Ch. 91-A, or the Freedom of Information Act, 5 U.S.C. § 552. Lastly, the Applicants have fully responded to these data requests and do not have additional responsive documents or information in their care, custody or control. Please also refer to the unredacted white paper titled “An Evaluation of All UG Alternatives for the Northern Pass Transmission Project.”

107. MG1S 36. 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 evidence admissible in this proceeding. 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); *Order on Motion to Add Stop*, Application of Public Service Company of New Hampshire, NH SEC Docket 2015-04, at 3 (July 29, 2016) (denying request to add a stop for a site inspection because the Applicant did not have the necessary property rights to construct the Project and finding that a view along an alternative route that was not included in the Application would not assist the Subcommittee in reaching a determination in the proceeding). Notwithstanding the objection,

the Applicants have fully responded to the data request and provided a report titled “Review of Potential Route Along the Existing HVDC Transmission Corridor Through Vermont and New Hampshire.”

#### Municipal Group 2

108. MG2 3.<sup>10</sup> The Applicants have fully responded to this data request and do not have additional responsive documents or information in their care, custody or control. The intervenor group may elect to ask follow-up questions on this topic at the technical sessions.

109. MG2 10. The Applicants have fully responded to this data request and do not have additional responsive documents or information in their care, custody or control. The intervenor group may elect to ask follow-up questions on this topic at the technical sessions.

110. MG2 11. The Applicants object to the motion to compel to the extent it seeks internal communications. The Applicants have fully responded to this data request and do not have additional responsive documents or information in their care, custody or control.

111. MG2 17. The Applicants have fully responded to this data request and do not have additional responsive documents or information in their care, custody or control. The Applicants further state that the construction of underground facilities is commonplace. As is typical, after construction, the Applicants will provide the “as-built” drawings to municipalities which clearly evidences the location of the Project. Experienced underground utility contractors are proficient in navigating and avoiding existing underground utilities in the right-of-way.

112. MG2 21. The Applicants object to the extent it seeks to have the Applicants develop additional information, reports, or other documents that are not currently within the Applicants’ care, custody, or control. Notwithstanding the objection, the Applicants have fully

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<sup>10</sup> The Motion to Compel references a “Data Request 1.” However, the corresponding question is actually MG2 #3, not MG2 #1.



responded to this data request and do not have additional responsive documents or information in their care, custody or control. As clearly described in the Applicants response to this data request, the Applicants are currently conducting geotechnical investigations and utility and ground surveys which will help refine the overall project design and that the requested documents may be developed prior to construction. The Applicants will provide any additional responsive information as it becomes available. Moreover, the intervenor group may elect to ask follow-up questions on this topic at the technical sessions.

113. MG2 22. The Applicants object to this data request to the extent it seeks to obtain confidential, commercial and financial information or communications. Moreover, 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 evidence admissible in this proceeding. Notwithstanding the objections, the Applicants have fully responded to the data request and provided the intervenor group with description of the contractors selected for this Project. The Applicants have also provided all confidential bid information and pricing information to Counsel for the Public for their review and analysis. Wider disclosure of this information would place the Applicants and its selected contractors at a competitive advantage. *See Application of Antrim Wind Energy, LLC, Order on Outstanding Motions*, Docket 2012-01, 4 (Aug. 22, 2012) (Applying 91-A analysis in finding that certain highly confidential information should be provided solely to counsel for the public); *Application of Laidlaw Berlin BioPower, 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*, Docket 2009-02, 16 (June 9, 2010).

114. MG2 23. The Applicants object to the extent it seeks to have the Applicants develop additional information, reports, or other documents that are not currently within the Applicants' care, custody, or control. Notwithstanding the objection, the Applicants have fully responded to this data request and do not have additional responsive documents or information in their care, custody or control. The Applicants also refer the intervenor group to the Northern Pass Project Change Request Form found at Bates Stamp pages NPT\_DIS 058782 to NPT\_DIS 058798, provided as part of the Applicants' Responses to Counsel for the Public Expert Assisted Data Request 1-127.

Municipal Group 3 North

115. MG3N 4. The Applicants object to the motion to compel to the extent it seeks internal communications. Notwithstanding the objection, the Applicants have fully responded to this data request and do not have additional responsive documents or information in their care, custody or control.

116. MG3N 6. The Applicants object to the motion to compel to the extent it seeks internal communications. Notwithstanding the objection, the Applicants have fully responded to this data request and do not have additional responsive documents or information in their care, custody or control.

117. MG3N 12, 14 – 15. The Applicants object to the motion to compel to the extent it seeks internal communications. The Applicants also object to the extent it seeks to have the Applicants develop additional information, reports, or other documents that are not currently within the Applicants' care, custody, or control. Notwithstanding the objection, the Applicants have fully responded to this data request and do not have additional responsive documents or information in their care, custody or control. As clearly described in the Applicants response to

this data request, the requested documents will be developed over the next year and prior to construction. The Applicants will provide any additional responsive information as it becomes available. The Applicants remain willing to enter into stipulations with each of the host municipalities regarding the information sought in this data request.

118. MG3N 16. The Applicants object to the extent it seeks to have the Applicants develop additional information, reports, or other documents that are not currently within the Applicants' care, custody, or control. Notwithstanding the objection, the Applicants have fully responded to this data request and do not have additional responsive documents or information in their care, custody or control.

119. MG3N 17. The Applicants object to the extent it seeks to have the Applicants develop additional information, reports, or other documents that are not currently within the Applicants' care, custody, or control. Notwithstanding the objection, the Applicants have fully responded to this data request and do not have additional responsive documents or information in their care, custody or control.

120. MG3N 18 – 19. The Applicants object to these motions to compel to the extent they seek internal communications. The Applicants also object to the extent they seek to have the Applicants develop additional information, reports, or other documents that are not currently within the Applicants' care, custody, or control. Notwithstanding the objection, the Applicants have fully responded to these data requests and do not have additional responsive documents or information in their care, custody or control. As clearly described in the Applicants response to these data requests, the requested documents will be developed over the next year and prior to construction. The Applicants will provide any additional responsive information as it becomes available.

121. MG3N 20. The Applicants' object to this motion to compel on the grounds that it calls for the review, compilation, or production of publicly available documents that could be obtained by the requesting party, including on a public website.

122. MG3N 21. The Applicants' object to the motion to compel because the Applicants have fully responded to this data request and do not have additional responsive documents or information in their care, custody or control.

123. MG3N 22. The Applicants object to the extent it seeks to have the Applicants develop additional information, reports, or other documents that are not currently within the Applicants' care, custody, or control. The Applicants further object to this question on the grounds that it calls for the review, compilation, or production of publicly available documents that could be obtained by the requesting party in a less burdensome manner, including on a public website. Notwithstanding the objection, the Applicants have fully responded to this data request and do not have additional responsive documents or information in their care, custody or control.

124. MG3N 23. The Applicants' object to the motion to compel because the Applicants have fully responded to this data request and do not have additional responsive documents or information in their care, custody or control.

125. MG3N 24 – 25. The Applicants object to these motions to compel as they present an incomplete hypothetical and, therefore, call for speculation. The Applicants also object to the extent the questions misstate facts included in the Application. Moreover, the Applicants object to the questions as they require the Applicants to develop additional data that is not presently in the care, custody, or control of the Applicants. Notwithstanding the objections, the Applicants have fully responded to these data requests and do not have additional responsive documents or

information in their care, custody or control. The intervenor group may elect to ask follow-up questions on this topic at the technical sessions.

126. MG3N 26. The Applicants object to the extent it seeks to have the Applicants develop additional information, reports, or other documents that are not currently within the Applicants' care, custody, or control. Notwithstanding the objection, the Applicants have fully responded to this data request and do not have additional responsive documents or information in their care, custody or control.

127. MG3N 27. The Applicants object to the extent it seeks to have the Applicants develop additional information, reports, or other documents that are not currently within the Applicants' care, custody, or control. Notwithstanding the objection, the Applicants have fully responded to this data request and do not have additional responsive documents or information in their care, custody or control. The Applicants will provide any additional responsive information should it become available.

128. MG3N 28. The Applicants have fully responded to this data request.

129. MG3N 29. The Applicants have fully responded to this data request.

130. MG3N 30. The Applicants' object to the motion on the grounds that it calls for the review, compilation, or production of publicly available documents that could be obtained by the requesting party, including on a public website. Notwithstanding the objection, the Applicants have fully responded to this data request.

131. MG3N 31. The Applicants object to the extent it seeks to have the Applicants develop additional information, reports, or other documents that are not currently within the Applicants' care, custody, or control. Notwithstanding the objection, the Applicants have fully

responded to this data request and do not have additional responsive documents or information in their care, custody or control.

132. MG3N 32. The Applicants have provided a redacted copy of the Power Purchase Agreement (“PPA”). The Applicants object to providing an un-redacted copy of the PPA as the request seeks to obtain confidential, commercial and financial information or communications. The Applicants have provided an un-redacted copy to Counsel for the Public. Broader disclosure of this information would place the Applicants at a competitive disadvantage. *See Application of Antrim Wind Energy, LLC, Order on Outstanding Motions*, Docket 2012-01, 4 (Aug. 22, 2012) (Applying 91-A analysis in finding that certain highly confidential information should be provided solely to counsel for the public); *Application of Laidlaw Berlin BioPower, 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*, Docket 2009-02, 16 (June 9, 2010). Moreover, the PPA is subject to a separate administrative proceeding and approval at the New Hampshire Public Utilities Commission, namely, the Petition of Public Service Company of New Hampshire d/b/a Eversource Energy’s Petition for Approval of a Power Purchase Agreement with Hydro Renewable Energy, Inc., Docket DE 16-693. The PPA is also the subject of a separate motion for confidential treatment at the PUC. The Applicants incorporate by reference all of their arguments and positions contained in their Motion for Confidential Treatment Pursuant to RSA Chapter 91-A and N.H. Code Admin. Rules Puc § 203.08, in Docket DE 16-693.

133. MG3N 33. The Applicants have fully responded to this data request and do not have additional responsive documents or information in their care, custody or control.

134. MG3N 34. The Applicants object to the extent it seeks to have the Applicants develop additional information, reports, or other documents that are not currently within the Applicants' care, custody, or control. Notwithstanding the objection, the Applicants have fully responded to this data request and do not have additional responsive documents or information in their care, custody or control. The Applicants will provide any additional responsive information should it become available. In addition, the Applicants provide the following information included in response to Non-Abutters Group 1 NA1 1-10:

The Project will be conducting geotechnical investigations and utility and ground survey on public rights of way which will help refine the overall project design including determining the exact alignment in relation to roads, sidewalks and buildings. Part of this engineering survey will also determine the location of existing underground utilities such as water, sewer, storm, gas, electrical, etc. where applicable. If a private land owner wishes to provide the location of dug wells and connector lines, NPT will work with the land owner to receive such information and subsequently work with the landowner to avoid potential impacts.

NPT will avoid and protect existing utility infrastructure and mitigate potential impacts during the construction process. If, despite these efforts, a property owner believes it has been damaged, please see the Applicants' Response to Grafton County's Data Request GCC-1-20 for a description of the claim process. Please see the Pre-Filed Testimony of Samuel Johnson for additional information on Project outreach. Please see the Pre-Filed Testimony of John Kayser on Pages 10 and 11 and the Application at Section (i), pages 68 and 84, for a description of blasting procedures associated with construction.

#### Municipal Group 3 South

135. MG3S 3. The Applicants object to the motion to compel to the extent it seeks internal communications. The Applicants further object to the extent it seeks to have the Applicants develop additional information, reports, or other documents that are not currently within the Applicants' care, custody, or control. Notwithstanding the objections, the Applicants have fully responded to this data request and do not have additional responsive documents or information in their care, custody or control. The Applicants have provided this intervenor group

with the requested confidential documents. *See e.g.*, Documents contained in Applicants Response to Counsel for the Public EXP 1-12. More specifically, The Applicants have generated average costs per mile for both the total length of the underground portion of the Project and the total length of the overhead portion of the Project. The Applicants have not separately calculated the specific cost per foot of the Project in the towns of Canterbury, Concord, Deerfield, and Pembroke. Therefore, this information is unavailable and not in the Applicants' care, custody or control.

136. MG3S 4. The request seeks information not relevant to this proceeding inasmuch as it concerns an alternative not available pursuant to RSA 162-H:7, V (b.). The Applicants further object to the motion to the extent it seeks internal communications. The Applicants object to the extent it seeks to have the Applicants develop additional information, reports, or other documents that are not currently within the Applicants' care, custody, or control.

Notwithstanding the objections, the Applicants have fully responded to this data request and do not have additional responsive documents or information in their care, custody or control. The Applicants also object to Municipal Group 3 North's request to foreclose the Applicants from providing further information evidencing the fact that burial is not feasible and/or would create significantly more environmental impacts. The Applicants have consistently made clear that they do not have the necessary land rights to complete additional burial in these intervenor towns. Moreover, the Applicants have not conducted any field reconnaissance or engineering field work to determine in fact whether additional burial is technically feasible. Finally, the relief sought would deprive the Applicants of due process.

137. MG3S 6. The Applicants object to this motion to compel as it seeks private communications with individual 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 private communications to the general public. Notwithstanding the objection, the Applicants have provided numerous public communications from the Applicants to landowners in response to this data request as well as to the Applicants' Response to Counsel for the Public's Data Request CFP 1-1 and the Supplement CFP 1-1.

138. MG3S 9. The Applicants object to the motion to compel to the extent it seeks internal communications. Notwithstanding the objection, the Applicants have fully responded to this data request and do not have additional responsive documents or information in their care, custody or control. All existing audible noise levels and related documents are contained in the Application, in Appendix 39.

139. MG3S 10. The Applicants object to the motion to compel to the extent it seeks prior drafts, draft photosimulations, draft reports, drawings, diagrams, or any other draft information not 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 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 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). The Applicants do not have any videos in their care, custody, or control.

140. MG3S 11. The Applicants object to the motion to compel to the extent it seeks internal communications. Notwithstanding the objection, the Applicants have fully responded to this data request and do not have additional responsive documents or information in their care, custody or control. The Applicants will provide any additional responsive information as it becomes available. The intervenor group may elect to ask follow-up questions on this topic at the technical sessions.

141. MG3S 14. The Applicants have fully responded to this data request and do not have additional responsive documents or information in their care, custody or control. The Applicants will provide any additional responsive information as it becomes available. The intervenor group may elect to ask follow-up questions on this topic at the technical sessions.

142. MG3S 15. The Applicants object to the extent it seeks to have the Applicants develop additional information, reports, or other documents that are not currently within the Applicants' care, custody, or control. Notwithstanding the objection, the Applicants have fully responded to this data request and do not have additional responsive documents or information in their care, custody or control. As clearly described in the Applicants response to this data request, the requested documents may be developed prior to construction. The Applicants will provide any additional responsive information as it becomes available.

143. MG3S 16. The Applicants have fully responded to this data request and do not have additional responsive documents or information in their care, custody or control. The

Applicants are unaware of any “FERC Form 716 System Plan.” Should the municipal group be referring to the FERC-715 Annual Transmission Planning and Evaluation Report, the report contains Critical Energy Infrastructure Information. Therefore, the Applicants would 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”).<sup>11</sup> 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. As previously stated, 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.

144. MG3S 17. The Applicants object to the extent it seeks to have the Applicants develop additional information, reports, or other documents that are not currently within the Applicants’ care, custody, or control. Notwithstanding the objection, the Applicants have fully

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<sup>11</sup> 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.

responded to this data request and do not have additional responsive documents or information in their care, custody or control. The substation will be designed so that the maximum continuous sound level produced by the operation of all new equipment for the expected capacity range (between 10% and 100% of operating capacity) will not exceed 29 dBA at any existing occupied residential receptor property when measured within the boundaries of the receptor property.

145. MG3S 18. The Applicants object to the extent it seeks to have the Applicants develop additional information, reports, or other documents that are not currently within the Applicants' care, custody, or control. Notwithstanding the objection, the Applicants have fully responded to this data request and do not have additional responsive documents or information in their care, custody or control.

146. MG3S 20. 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 evidence admissible in this proceeding. 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. *See Request of SEA-3, Inc. for Exemption, Order on Pending Motions*, Docket No. 2015-01, (Nov. 4, 2015) ("Extended litigation over the public relations campaigns of the parties, in this case, will not assist the Subcommittee in applying the statutory factors required for a determination to grant or deny the petition for exemption. The information sought by the motions to compel is therefore not necessary to enable the parties to acquire admissible evidence."). 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, the Applicants have fully complied with the data request by referring the requested to publically available information that can be found on the New Hampshire Secretary of State website, at <http://sos.nh.gov/lobby.aspx>. All information sought by this data request can be located on the Secretary of State's website.

147. MG3S 21. The Applicants incorporate their response and objections to MG3S 20. The requested information is irrelevant to any requirements that the Applicants' must prove to receive a Certificate of Site and Facility. Notwithstanding the objection, the Applicants have fully responded to this data request. All public relations and media efforts in connection with the Project are in the public domain and publically available. *See also* Request of SEA-3, Inc. for Exemption, *Order on Pending Motions*, Docket No. 2015-01, (Nov. 4, 2015) ("Extended litigation over the public relations campaigns of the parties, in this case, will not assist the Subcommittee in applying the statutory factors required for a determination to grant or deny the petition for exemption. The information sought by the motions to compel is therefore not necessary to enable the parties to acquire admissible evidence.").

148. MG3S 22. The Applicants incorporate their response and objections to MG3S #20 and 21. The requested information is irrelevant to any requirements that the Applicants' must prove to receive a Certificate of Site and Facility. Notwithstanding the objection, the Applicants have fully responded to this data request. Further, the Applicants do not have any additional information that breaks down costs as requested by the data request.

**F. Abutters Group 1**

149. The Applicants incorporate their initial statements contained in Sections III. and IV. The spokesperson for Abutters Group 1 did not make any effort to resolve their specific discovery issues as they pertain to individual questions. Moreover, all of these requests are

simply argumentative or seek information that is not in the care, custody, or control of the Applicants at this time. Therefore, all of their specific requests should be denied. However, the Applicants are willing to continue to work with each municipality to address any perceived discovery issue.<sup>12</sup>

150. A1 1, 3, 4, 11, 12, 13, 14, 15, 16, 18. The Applicants have fully responded to each and every one of these data requests and do not have additional responsive documents or information in their care, custody or control. Specifically, all of the requested follow-up information is not available; however, much of the requested information will be developed during the detailed design phase and prior to construction. The Applicants will provide any additional responsive information to these data requests should it become available. Moreover, the motion to compel on all of these data requests is simply argumentative. The intervenor group may elect to ask follow-up questions on this topic at the technical sessions.<sup>13</sup>

**G. Non Abutters Group 1**

151. Following the deadlines for responding to data requests, the spokesperson for Non-Abutter Group 1, contacted the Applicants to discuss certain issues with the Applicants' responses or the documents produced. The Applicants worked with the spokesperson for Non-Abutter Group 1 in an effort to informally resolve any such issues. The Applicants were originally provided with a list of 16 follow-up questions and requests for additional information. The parties were successful in resolving all but two requests. Those two requests are now the subject of a motion to compel, which the Non-Abutter Group 1 filed on August 15, 2016.

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<sup>12</sup> The Applicants reached out to Abutter Group 1 on August 19, 2016 to discuss their motion to compel. The spokesperson for the group indicated that they understood many of their motions to compel were ripe for questions at the technical sessions; however, their spokesperson indicated that they wanted their comments on the record and that they would not withdraw any of their motions to compel.

<sup>13</sup> Indeed, the Motion to compel clearly indicates that most of these questions "might easily be answered by . . . communication with the Applicants' construction engineers." This is exactly the purpose of the upcoming technical sessions.

152. The intervenor group seeks confidential business information, namely, documents or agreements between the Applicants and Wagner Forestry Management or Bayroot, LLC, and documents or agreements between the Applicants and Leslie B. Otten, Dixville Capital, LLC, and Balsams Resort Holdings, LLC. Disclosure of any and all documents or agreements would place these parties at a competitive advantage. Moreover, all documents or agreements remain in the care, custody, and control of separate 3<sup>rd</sup> parties such that the Applicants are not in a position to disclose the requested information without their explicit written consent.

153. NA-1 16. The Applicants renew their objection 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 evidence admissible in this proceeding. The Applicants also object to this request as it calls for confidential information. *See* RSA 91-A:5, IV (exempting production of “confidential, commercial, or financial information” from the Public Right to Know Law). Specifically, the lease requested in this data request contains competitive and confidential business information. Broader disclosure of this information would risk placing NPT, Wagner Forestry Management, and Bayroot, LLC at a competitive disadvantage and would not serve the public interest. Moreover, the information sought pertains to a third party in this docket, namely Bayroot LLC. The Applicants are not in a position to disclose such information as it relates to third parties. Moreover, the Applicants have already responded to this question in the Applicants’ Response to Counsel for the Public’s Data Request CFP 1-3 and have provided the Notice of Lease Pursuant to RSA 477:7-a, recorded in the Coos County Registry of Deeds at Book 1364, Page 40456.

154. NA-1 19. The Applicants renew their objection 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 evidence admissible in this proceeding. The Applicants also object to this request as it calls for confidential information. *See* RSA 91-A:5, IV (exempting production of “confidential, commercial, or financial information” from the Public Right to Know Law). The disclosure of any of the requested information in this data request contains competitive and confidential business information. Broader disclosure of this information would risk placing NPT, Leslie B. Otten, Dixville Capital, LLC and Balsams Resort Holdings, LLC at a competitive disadvantage and would not serve the public interest. Moreover, the information sought pertains to 3rd parties in this docket, namely Leslie B. Otten, Dixville Capital, LLC, and Balsams Resort Holdings, LLC. As originally stated, the Applicants are not opposed to providing this information, subject to it being treated confidentially, and subject to third parties agreeing to provide such information to parties to this proceeding. Finally, any and all documents relating to NA-1 19 are covered by a confidentiality agreement executed between Balsams Resort Holdings, LLC and Northern Pass Transmission LLC. Therefore, unless both parties agree to provide the documents, the Applicants are not in a position to provide this information.

#### **H. Non Abutters Group 2**

155. The Applicants incorporate their initial statements contained in Sections III. and IV. The spokesperson for Non-Abutters Group 2 did not make any effort to resolve their specific discovery issues as they pertain to individual questions. Moreover, most, if not all, of these requests fail to state with specificity how the Applicants’ responses to the data requests are “not responsive.” Therefore, all of their specific requests should be denied. However, the Applicants are willing to continue to work with each municipality to address any perceived discovery issue.<sup>14</sup>

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<sup>14</sup> The Applicants reached out to Non-Abutter Group 2 on August 16, 2016 to discuss their motion to compel. While the group did not indicate a willingness to withdraw their motions to compel, the Applicants are continuing to work



156. This group also fails to appreciate that numerous intervenor groups asked substantially similar questions that when read in their entirety, fully answer each question asked. The Applicants also further incorporate their initial statements contained in Sections III. and IV. to the extent that the Committee's rules do not authorize the propounder of data requests to create specific instructions for responding to data requests.

157. To the extent the group complains that 22 out of 36 data requests are "non-compliant," the Applicants object and state that the Applicants have fully responded to this data request and do not have additional responsive documents or information in their care, custody or control. The moving party has failed to identify with any specify how the Applicants' responses are "non-compliant." The Applicants fully incorporate by reference its response and objections to the following: NA2 1-4; NA2 1-5; NA2 1-6; NA2 1-10; NA2 1-12; NA2 1-13; NA2 1-14; NA2 1-15; NA2 1-16; NA2 1-17; NA2 1-18; NA2 1-19; NA2 1-20; NA2 1-21; NA2 1-22; NA2 1-24; NA2 1-28; NA2 1-31; NA2 1-32; NA2 1-34; and NA2 1-35.

158. NA2 1-3. The Applicants object to the extent it seeks to have the Applicants develop additional information, reports, or other documents that are not currently within the Applicants' care, custody, or control. Notwithstanding the objection, the Applicants have fully responded to this data request and do not have additional responsive documents or information in their care, custody or control. As clearly described in the Applicants response to this data request, the Applicants are currently conducting geotechnical investigations and utility and ground surveys which will help refine the overall project design and that the requested documents may be developed prior to construction. The Applicants will provide any additional

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with intervenor group to address some of their concerns and comments informally. However, as noted in the Applicants' Objections to this motion to compel, all of the requests in this group's motion to compel are essentially argumentative and /or seek follow-up information that is more appropriate for the technical sessions. The Applicants fully responded to their initial data requests.

responsive information as it becomes available. Moreover, the intervenor group may elect to ask follow-up questions on this topic at the technical sessions.

159. NA2 1-9. The Applicants object to the extent it seeks to have the Applicants develop additional information, reports, or other documents that are not currently within the Applicants' care, custody, or control. Notwithstanding the objection, the Applicants have fully responded to this data request and do not have additional responsive documents or information in their care, custody or control. The response provides all information in the Applicants' care, custody, and control relating to HVTL constructions discussed in the Chalmers Report. Importantly, the SEC does not have the authority to grant any requested relief to this motion to compel. Furthermore, the Intervenor Group alleges an inability to hire a qualified MAI real estate appraiser for its purposes, which they theorize is somehow the result of a conspiracy in "restraint of trade" by the Applicants. There is no basis for the allegation and the Applicants therefore object.

160. NA2 1-34. The Applicants object to the extent it seeks to have the Applicants develop additional information, reports, or other documents that are not currently within the Applicants' care, custody, or control. Notwithstanding the objection, the Applicants have fully responded to this data request and do not have additional responsive documents or information in their care, custody or control. The motion to compel is simply argumentative and seeks follow-up information that can be addressed at technical sessions.

161. NA2 1-33. The Applicants have fully responded to this data request and do not have additional responsive documents or information in their care, custody or control.

162. NA2 1-35. The Applicants object to this motion to compel as it contains inaccurate legal statements. The Applicants fully complied with the SEC's rules and regulations

relating to its visual assessment as well as the standards and criteria used to identify historic resources. The visual impact assessment included as part of the Application considered and analyzed all historic sites with a scenic component out to 10 miles on either side of the transmission line as required by the rules. Moreover, the motion to compel is simply argumentative and seeks follow-up information that can be addressed at technical sessions.

### **I. Deerfield Abutters**

163. Following the deadlines for responding to data requests, the spokesperson for the Deerfield Abutters, contacted the Applicants to discuss certain issues with the Applicants' responses or the documents produced. The Applicants worked with the spokesperson for the Deerfield Abutters in an effort to informally resolve any such issues. The Applicants were originally provided with a list of 19 follow-up questions and requests for additional information. The parties were resolved<sup>0</sup> all but two requests. Those two requests are now the subject of a motion to compel, which the Deerfield Abutters filed on August 15, 2016.

164. DA 1-1. The Applicants object to the motion to compel. The Applicants initially provided copies of 25 deeds for properties that were purchased to support the Project. The Applicants have since supplemented its response, and have now provided a total of 61 deeds. The 61 deeds represent the pertinent and relevant documents that are in the Applicants' care custody and control. The deeds speak for themselves. As part of the follow-up to DA 1-1, the Deerfield Abutters have specifically sought "appraisals" for each property. The original DA 1-1 request did not specifically call for any such appraisal, and therefore, the Applicants would object to providing such additional information. Moreover, the Applicants have not conducted an official appraisal by a licensed appraiser for any of the properties it purchased. Finally, even if the Applicants had conducted official appraisals, the purchase price of a property that was

required to construct the Project is not relevant and has no bearing on the Committee's assessment of the Project.

165. DA 1-2. The Applicants object to the motion to compel. The Applicants have answered this data request entirely and have nothing else in its care, custody, and control. This statement was previously provided to the Deerfield Abutters and further followed up with a specific reference to materials contained in the Application. On August 13, 2016, the Applicants informed the Deerfield Abutters via electronic mail that

All properties were purchased to support the Project objectives of having a secure route, and of having sufficient land to offer for mitigation, recreational and economic development purposes. The properties needed for the route are self-apparent based on their location, and the properties that will be dedicated for mitigation and other purposes are identified in the *Natural Resource Mitigation Plan*. See Appendix 32 of the Application. Please refer specifically to Section 5.3.2 "Preservation Parcel Descriptions" for those parcels that are included in the mitigation plan.

Therefore, the Applicants have answered this data request completely and do not have anything else to provide. Even if the Applicants had additional information, the specific "reason for the acquisition or purchase" is irrelevant to these proceedings.

WHEREFORE, the Applicants respectfully request that the Subcommittee:

- A. Deny the Motions; and
- B. Grant such further relief as is deemed just and appropriate.

Respectfully submitted,

Northern Pass Transmission LLC and  
Public Service Company of New Hampshire d/b/a  
Eversource Energy

By Its Attorneys,

McLANE MIDDLETON,  
PROFESSIONAL ASSOCIATION

Dated: August 25, 2016

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Certificate of Service

I hereby certify that on the 25<sup>th</sup> of August, 2016, an original and one copy of the foregoing Objection was hand-delivered to the New Hampshire Site Evaluation Committee and an electronic copy was served upon the SEC Distribution List.

  
Thomas B. Getz