

STATE OF NEW HAMPSHIRE  
SITE EVALUATION COMMITTEE

Docket No. 2015-06

Joint Application of Northern Pass Transmission, LLC  
and Public Service Company of New Hampshire  
d/b/a Eversource Energy for a Certificate of Site and Facility

**REPLY OF THE SOCIETY FOR THE PROTECTION OF NEW HAMPSHIRE  
FORESTS TO APPLICANTS' OBJECTIONS**

The Society for the Protection of New Hampshire Forests (the "Forest Society"), by and through its attorneys, BCM Environmental & Land Law, PLLC respectfully replies as follows to the Applicants' Objection to the joint Motion to Stay Technical Sessions and Request for Expedited Ruling and the joint Motion to Compel Production of Documents Withheld (these two motions collectively referred to as the "Motions") ("Objection"):

1. The Objection may lead to misunderstandings of important legal arguments and facts associated with the Motions. Accordingly, the Forest Society submits the following six points to clarify its positions.
2. First, the Applicants noted that "the technical sessions have been proceeding in a manner that suggests the parties have sufficient information to meaningfully participate in the technical sessions." To be clear, the Forest Society lacks sufficient information to participate in the technical sessions meaningfully. If it appears that the Forest Society has sufficient information to meaningfully participate, it is only because the Forest Society is making the best of the information it does have and is actively trying to promote the orderly conduct of the proceedings.

3. Of note, The Forest Society has participated in several technical sessions for which it previously requested postponement with no response from the SEC (construction, economic and wetland).

4. Second, Applicants' assertion that the materials sought would "needlessly delay the proceedings," and that the documents are "not relevant for purposes of this proceeding" are inconsistent with Applicants' prior assertion that it would not produce the requested documents because they were protected by the work-product and/or attorney-client privilege.

5. Providing the requested documents will enable the parties to meaningfully participate in this matter, in exercise of their due process rights. Enabling the exercise of due process rights is almost never "needless" and is certainly not "needleless" in this context.

6. Third, Applicants again claim irrelevancy to justify not producing to the parties subject to confidentiality agreements the remaining four documents that have been provided to Counsel for the Public ("CFP") but not to any other parties.

7. Relevancy is not the correct standard. The Forest Society reasserts its arguments with respect to the appropriate standard for discovery, including those stated in its April 7, 2016 Objection to Applicants' Unassented-to Motion for Protective Order and Confidential Treatment.

8. The documents the Applicants object to on the grounds of being irrelevant are precisely the kind of documents that can bear greatly on the allocation of responsibility and oversight which parties are entitled to know and which relate directly to the standards contained in RSA 162-H.

9. The Applicant states that certain contracts contain sensitive business confidential information and the release of such information could potentially jeopardize the competitive

interests of the companies involved. This is exactly why certain information is exchanged under protection of contractual and SEC-ordered confidentiality.

10. Fourth, Applicants argue that some of the withheld documents do “not contain information that will assist the Committee in determining whether the Applicant’s have a current right to the proposed site for the project.” Again, Applicants apply the wrong legal standard. Parties are entitled to broad information, so broad that some of it will inevitably not assist the SEC. But, if a party requests information and it is reasonably calculated to lead to the discovery of admissible evidence, Applicants should produce it. This is especially so when the Applicants have already produced the information to at least one party. Following production, it is then up to individual parties to determine what will ultimately be provided to the SEC during the adjudicative hearing.

11. Fifth, Applicants identification of the following documents for the first time in their Objection is entirely unreasonable and contrary to practice and legal requirements:

CFP Data Request Response 1-7: Requests for Proposals and Requests for Bids;

CFP Data Request Response 1-8: Bids Received; and

CFP Data Request Response 1-9: Contracts or Agreements entered into for Construction of any portion of the Transmissions Line,

none of which were included in the untimely Privilege Log of September 2, 2016.

12. Note that it is not possible for undersigned to describe these documents with any further specificity because the information above is the sum total of all the information the Applicants have provided to the Forest Society.

13. Lastly, the Objection speaks as if the Forest Society seeks only the documents the Applicants have provided to the CFP in response to data requests. To be clear, in its September

9, 2016 Motion to Compel Highly Confidential Documents, the Forest Society requested Applicants to produce all documents produced to CFP, including those listed on the September 2, 2016 Privilege Log, which they deemed “highly confidential” not merely documents and information produced in response to CFP’s data requests.

**WHEREFORE**, the Forest Society respectfully requests that the SEC:

- A. Grant the joint Motion to Stay Technical Sessions and Request for Expedited Ruling;
- B. Grant the joint Motion to Compel Production of Documents Withheld; and
- C. Grant such other and further relief as is just and equitable.

Respectfully Submitted,

**SOCIETY FOR THE PROTECTION OF  
NEW HAMPSHIRE FORESTS**

By its Attorneys,

BCM Environmental & Land Law, PLLC



Date: September 23, 2016

By: \_\_\_\_\_

Amy Manzelli, Esq. (17128)  
Jason Reimers, Esq. (17309)  
3 Maple Street  
Concord, NH 03301  
(603) 225-2585  
manzelli@nhlandlaw.com  
[reimers@nhlandlaw.com](mailto:reimers@nhlandlaw.com)

**CERTIFICATE OF SERVICE**

I hereby certify that on this day, September 23, 2016, a copy of the foregoing Reply was sent by electronic mail to persons named on the Service List of this docket.



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Amy Manzelli, Esq.