

The 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 to Construct a New Voltage Transmission Line and Related Facilities in New Hampshire

Motion to Compel Responses to Data Requests Directed to Applicants' Witness Julia Frayer

Motion

Interveners Kevin Spencer and Mark Lagasse dba Lagaspence Realty, I.L.C, move the Site Evaluation Committee for an Order compelling Applicants to fully respond to data requests TS2 2, TS 2 3 and TS 2 4 propounded to Applicants' witness Julia Frayer at the September 16, 2016 Technical Session.

Background of Data Requests

Julia Frayer, a partner and managing director in London Economics International (LEI) is the Applicants' witness for Project Economics and Market Benefits. Ms. Frayer has submitted pre-filed testimony and a report entitled Cost-Benefit and Local Economic Impact Analysis of the Proposed Northern Pass Transmission Project in support of the Joint Application.

On September 16, 2016, Ms. Frayer, appeared at a Technical Session. She was questioned about her retail electricity benefits opinion, the key component of her testimony and report.

At page 10 of her pre-filed testimony, Ms. Frayer explained how she measured retail electricity benefits. She opined that that New England retail customers are expected to "enjoy" \$577.7 million per annum of retail electricity cost savings while New Hampshire retail consumers are expected to receive \$79.9 million in retail electricity cost savings. She elaborated on these projections in her Analysis at Section 5.9 (Analysis, page 59) and Section 11 (Analysis, Appendix D, page 111).

During the Technical Session, Ms. Frayer was asked about the data she used to make her retail electricity cost savings calculations displayed in Appendix D of her Analysis. She explained that she used SEC 10ks, utility annual reports, utility commission filings, FERC quarterly reports and other material to create a data set of long term wholesale prices. She opined that from the data, a "hedge" rate could be derived as a percentage of load that may be exposed to wholesale market price changes. From this data, she calculated her retail cost savings arguing that retail cost savings are driven by lower wholesale energy and capacity prices.

The opaque Frayer argument must be carefully examined by the Site Evaluation Committee. It raises multiple questions that go to veracity of the Frayer testimony and Analysis:

1. What long term wholesale prices were selected as data points?
2. What documentation supports those prices?
3. Were the selections appropriately chosen by an objective metric or were the selections cherry picked to drive the outcome?
4. Once the data was selected, how were the calculations done to support Figures 69 and 70 of the Analysis, page 111.

These concerns provoked counsel for interveners Spencer and Lagasse to pose data requests 2 and 3 found at page 2 of the September 19, Memorandum, September 16-Project Economics and Market Benefits-Julia Frayer, prepared by SEC Administrator Pamela G. Monroe. (Exhibit 1 attached hereto).

The data requests were: “2. Provide the bibliography list of the source material contained in the Retail Electricity Cost Savings Report, Appendix D, on Page 111-113”; and, “3. Provide the excel spreadsheet that contain the calculations contained in the Retail Electricity Cost Savings Report, Appendix D, Figures 69 and 70.”

The Applicants’ responses were unacceptable.

The response regarding the documents used to establish the wholesale price question was a useless document dump. The Applicants’ response to the questions regarding the retail savings calculations was that the calculations were “confidential”. (Exhibit 2 attached hereto, pages 16-18).

Interveners remaining data request was directed to the question who decided what portions of her testimony and report should be redacted as “confidential”. The data request: “3. Provide Ms. Frayer’s “agenda/calendar,” demonstrating who from the Eversource team that she met with (and when) to discuss the redacted portion of her pre-filed testimony and he report.”¹

The Applicants’ response was unacceptable. Applicants argue that the requested information is not discoverable for lack of relevance and that it is attorney-client privileged and/or attorney-work product privileged. (Exhibit 2 attached hereto, page 19).

Interveners’ Efforts to Informally Resolve the Inadequacy of the Responses Failed

Interveners’ attorney worked to resolve the discovery with Applicants’ lawyers without the intervention of the Committee. (The email exchange between counsel is attached hereto as Exhibit 3).

¹ Interveners data request does not ask for the redacted “confidential” material itself, it asks who from Eversource made the decision to redact.

As a consequence of interveners' failed attempt to resolve the discovery at issue, there is no expectation that Applicants will assent to this motion.

Memorandum in Support of Motion

The Site Evaluation Committee Cannot Assess the Credibility of the Frayer Testimony and Analysis Without Examination of the Data and Calculations Underlying Her Retail Savings Projection

Applicants offer the Frayer testimony and report to persuade the Site Evaluation Committee (Committee) that the Committee can make the finding that the project is in the public interest as required by RSA 162-H:16, IV(c).

The Committee cannot make the public interest finding without a critical examination of the Frayer data and calculations. The key component of her work is that New Hampshire retail consumers will save almost \$80 million dollars if the project is approved.

That Frayer assertion must be tested by thorough discovery, examination of the supporting data and calculations. The data must be transparently displayed in the record of this proceeding and be subject to cross-examination in the merit hearing.

Applicants have blocked access to the data that Ms. Frayer asserts undergirds her opinion.

Diligent and probing discovery is the *sine qua non* of a fair and open RSA 162-H siting process, a process that imposes adjudicative responsibilities on the Committee. Site 103.01(c)(4). Site 202.01. Site 202.02.

Discovery is provided for in Site 202.12. Discovery must include any matter, not privileged, that is relevant to the subject matter involved necessary to address the complexity of the relevant issues. Site 202.12(d).

Applicants Response to the Data Request Asking for the Bibliography List Contained in the Retail Electricity Cost Savings Report in Appendix D of the Frayer Report Is a Useless Document Dump That Will Not Allow the Committee to Evaluate the Veracity of the Frayer Retail Savings Projection

Applicants, rather than providing good faith references to the actual documents their witness Frayer used to establish the long term wholesale base case data points which she used to calculate her retail savings projections, listed a multitude of documents, web sites and publications. Ms. Frayer may have used some of this price information, all of the price information, an average of the price information, the median of the price information, or she may have cherry picked the price information to direct the desired outcome. In any event, the Applicants' response is inadequate.

Applicants Claim That the Frayer Calculations About Retail Cost Savings Are Protected by the Attorney-Client Privilege Is Frivolous

Ms. Frayer Is Not a Client of Applicants or of Applicants' Attorneys Therefore the Privilege Does Not Apply

Intervenors posed a data request asking for the spread sheet demonstrating Ms. Frayer's calculations in the Retail Electricity Cost Savings Report, Appendix D, Figures 69 and 70. (Analysis, page 111). Applicants argue that the calculations are confidential, protected by attorney client privilege.

The attorney client privilege has no applicability whatever to the relationship between Applicants and their witness Julia Frayer.

Ms. Frayer is a witness offered by Applicants in support of their Joint Application. Ms. Frayer has no attorney-client relationship with Applicants or any of the lawyers representing applicants.

An attorney-client relationship exists in which a person is rendered professional services by a lawyer. Rule 502, New Hampshire Rules of Evidence. In Hampton Police Association, Inc. v. Town of Hampton, 162 NH 7 (2011), the Supreme Court, at page 15, described the privilege: "The common law rule that confidential communications between a client and an attorney are privileged and protected from enquiry is recognized and enforced in this jurisdiction." *Riddle Spring Realty Co. v. State*, 107 NH 271, 273, . . . The classic explication of the privilege is: "Where legal advice is . . . sought from a professional legal adviser in his capacity as such, the communication relating to that purpose, made in confidence by the client, are at his instance permanently protected from disclosure . . . unless the protection is waived by the client or his legal representatives" . . ." See also Rule 1.6 Rules of Professional Responsibility.

Applicants' refusal to disclose the Frayer calculations *based on a frivolous claim of privilege that is not supported by the facts or the law* raises substantial doubt about the veracity of the Frayer testimony and report.

Applicants' claim that the critical Frayer calculations about her retail cost savings testimony is protected by the attorney-client privilege is a transparent effort to shield that information from public disclosure. Disclosure of those calculations must be done and must be done on the record. The calculations must be carefully reviewed and be subjected to public scrutiny. The calculations must be subject to cross-examination before the Committee.

Applicants' Refusal to Disclose the Identities of the Eversource Energy Personnel That Met with Witness Frayer to Discuss the Redactions in Her Testimony and Report Is Also Based Upon the Claim of Attorney-Client Privilege

Ms. Frayer, at the September 16, 2016, Technical Session, testified that it was Eversource personnel who made the decisions to redact portions of her testimony and Analysis. She did not claim that she used proprietary methodologies to generate her conclusions. The intervenors' data request asks for the identities of the Eversource personnel who made the redaction decisions. Those Eversource decision makers are material witnesses in this case. The Committee cannot make a fact based finding that the project is in the public interest without hearing from the Eversource decision makers who

decided that the public was not entitled to know about the Frayer Modeling Inputs & Assumptions, (report, page 39-40), Carbon allowance prices (report, page 43), Energy market offers (report, pages 43-45), Demand-side assumptions (report page 45-46), the Wholesale capacity market price impact of NPT (report pages 51-53, the Wholesale energy price outlook and energy price impacts of NPT (report 53-55) and other important information.

The Applicants' claim that the identities of the Eversource personnel is protected by the attorney-client privilege is, as noted above, a frivolous claim.

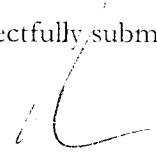
Wherefore

Intervenors respectfully request that the Committee order that:

1. That the documents used by Julia Frayer to create the Electricity Cost Savings Report, Appendix D on pages 111-113 of her Analysis be identified and produced;
2. That the spreadsheet containing the Frayer calculations contained in the Electricity Cost Savings Report, Appendix D, Figures 69 and 70 be produced;
3. That the identities of the Eversource personnel who decided upon the redactions in her testimony and report be disclosed; and,
4. Such other relief proper in the matter.

10/21/16

Respectfully submitted,



Arthur B. Cunningham

Attorney for Intervenors

PO Box 511, Hopkinton, NH 03229

603-746-2196 (O); 603-219-6991 (C)

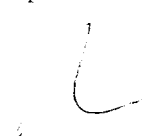
gilfavor@comcast.net

Bar # 18301

Certificate

I certify that this document was filed and served in accordance with the New Hampshire Site Evaluation Committee Rules

10/21/16



Arthur B. Cunningham

MEMORANDUM

APPLICATION OF NORTHERN PASS NORTHERN PASS TRANSMISSION, LLC
and PUBLIC SERVICE COMPANY OF NEW HAMPSHIRE
d/b/a EVERSOURCE ENERGY
Docket No. 2015-06

TO: All Parties

FROM: Pamela G. Monroe, Administrator

DATE: September 19, 2016

RE: Technical Session Data Requests

Technical sessions were held on September 15, September 16, 2016, in the above referenced docket. The purpose of the technical sessions is for the parties to inquire of the Applicant's witnesses their expertise, opinions, and pre-filed testimony. The parties that were present during all or part of the technical sessions on each day are listed on the sign-in sheets that are attached to this memorandum. Peter Roth, Counsel for the Public, was present each day. Mr. Roth's attorney, Eli Emerson was present on both days; and his attorney, Mr. Pappas was present on September 16.

At the conclusion of the technical sessions, the following data requests to the Applicant remain outstanding:

Sept. 15-Historical Resources Panel-Victoria Bunker and Cherilyn Widell

1. Provide a list of the energy projects, including all linear projects that Ms. Bunker has worked on during her career.
2. Provide a copy of the Powerpoint Presentation that Ms. Bunker presented at the DHR Modeling Resources Conference in March of 2016.
3. Provide a list of the specific areas of potential effect where Ms. Bunker consulted with Northern Pass and the project design changes that were made as a result of this consultation, if any. Include the specific recommendations that were made and whether they were accepted or rejected.
4. Provide the citation to the statute that contains the 25 foot buffer requirement for cemeteries.

5. Provide the scope of work that Ms. Bunker provided to Northern Pass for her engagement in the project.
6. Provide information regarding whether or not the archeological work that was done by Ms. Bunker in Deerfield in 2010, (referenced in Appendix 19, Deer-A-Victoria Bunker 2010, page 1-3), had anything to do with the Northern Pass project.
7. Provide Ms. Bunker's notes, if any exist, regarding consideration of the Toll Bridge in Bridgewater, and any analysis that was undertaken on it.
8. Provide Ms. Bunker's field notes from her work on the Northern Pass project.
9. Of the 194 properties identified during the historical resources assessment that had a sufficient visual relationship with the Northern Pass project, provide a list of those that were screened out due to the lack of integrity.
10. Provide the list of the properties that were determined to be significant (i.e. eligible for listing on the National Register), after the properties were screened out for lack of integrity.

Sept. 16-Project Economics and Market Benefits-Julia Frayer

1. Provide the documents that formed the basis of Ms. Frayer's market knowledge that went into her assumption that Hydro-Quebec would flow its power along the Northern Pass power line into ISO-NE.
2. Provide the bibliography list of the source material contained in the Retail Electricity Cost Savings Report, Appendix D, on Page 111-113.
3. Provide the excel spreadsheet that contain the calculations contained in the Retail Electricity Cost Savings Report, Appendix D, Figures 69 and 70.
4. Provide Ms. Frayer's "agenda/calendar," demonstrating who from the Eversource team that she met with (and when) to discuss the redacted portion of her pre-filed testimony and her report.
5. Provide to all of the parties both the updated spreadsheet of the LEI Labor and Wage data and the REMI RWB file that were provided to Counsel for the Public on 9/15/16.
6. Confirm the nature of any real estate related inputs into the model.
7. Provide information as to whether or not the O&M costs include irregular repairs (i.e. unpredictable sources such as storms).

8. Provide a narrative description that explains the spreadsheets referenced in data request number 5, above.

The foregoing shall be provided to all of the parties on or before September 29, 2016. Copies shall not be provided to the Committee. To the extent that the Applicant objects to providing the above referenced material, the requesting party must file a Motion to Compel with the Committee.

Any questions regarding this memorandum or the data requests made at the technical session should be directed to Pamela Monroe, Administrator.

September 19, 2016



Pamela G. Monroe
Administrator
NH Site Evaluation Committee
(603) 271-2435
pamela.monroe@sec.nh.gov

STATE OF NEW HAMPSHIRE
SITE EVALUATION COMMITTEE

SEC DOCKET NO. 2015-06

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

APPLICANTS' RESPONSES TO TECHNICAL SESSION DATA REQUESTS SET 2

Preliminary Statement and General Objections

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

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

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

EXHIBIT

7

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

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

To the extent that any data or document request herein seeks to obtain information that is protected as confidential pursuant to the Committee’s May 25, 2016 Order on Motion for Protective Order and Confidential Treatment, or otherwise qualifies for protective treatment pursuant to PSA 91-A:5, the Applicants object to production unless a party has complied with the requirements of an SEC order or agreement for protective treatment governing confidential documents in this proceeding. To the extent that a Data Response refers to a document that has been afforded confidential treatment or otherwise provides information in response to any data or document request relating to materials that are protected as confidential, the Applicants do so without waiving the confidentiality of the respective documents.

¹ Confidential infrastructure information includes, but is not limited to, CEII information, critical infrastructure information as defined by the Department of Homeland Security (“DHS”), including any Protected Critical Infrastructure Information (“PCI”), 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.

TS2 2 Provide the bibliography list of the source material contained in the Retail Electricity Cost Savings Report, Appendix D, on Page 111-113.

Response: LEI's research of long-term energy contracts involved gathering information from a variety of sources, including FERC, state regulatory commission dockets, as well as company financial reports, the industry trade press, and subscription-based third-party databases that collate such information:

- 1) EV Power – ABB Enhanced Database – Unit Power Purchase Contracts Dataset
- 2) EV Power – Wholesale Power Purchase & Exchanges Database
- 3) SNL Power Purchase Agreements (PPAs) Database
- 4) SNL News
- 5) S&P Global
- 6) Platts Megawatt Daily
- 7) FERC Electric Quarterly Reports (EQR) as of 2014. <<http://www.ferc.gov/docs-filing/eqr.asp>>
- 8) Company 10k filings, which can be downloaded and accessed for US companies on the following website - <https://www.sec.gov/edgar/searchedgar/companysearch.html>
- 9) Power Purchase Agreement for Lempster Mountain Wind Power:
<http://www.puc.state.nh.us/regulatory/CaseFile/2008/08-077/INITIAL%20FILING%20-%20PETITION/08-077%202008-05-29SWB-1%20Lempster%20PPA%20Agreement%20Executed%20Jan%202008%20-%20REDACTED.pdf>
- 10) Mass.gov, Energy and Environmental Affairs.
<<http://web1.env.state.ma.us/DPU/FileRoom/dockets/bynumber> >
Docket Number: 14-157, 13-148, 13-149, 14-155, 14-156, 13-146, 11-30, 14-158,
- 11) RI.gov Public Utilities Commission and Division of Public Utilities and Carriers.
Electric Events and Actions Archive
<<http://www.ripuc.org/eventsactions/orders/electric.html>>

Press Releases and Company Documents:

- 12) Ramona du Houx. "First Wind completes Blue Hill wind project and starts producing energy." *Maine Insights*. November 14th, 2012. <<http://maineinsights.com/first-wind-completes-blue-hill-wind-proj>>

- 13) Sarah B. Tracy. "Connecticut Selects Maine Wind Farm and Connecticut Solar Project for Long-Term Contracts for Energy and RECs." Pierce Atwood. September 20, 2013 < <http://www.pierceatwood.com/connecticut-selects-maine-wind-farm-and-connecticut-solar-project-for>>
- 14) Kelly Pickerel. "Ameresco Constructs 6-MW Solar Farm in Massachusetts." Ameresco. July 11, 2014. <<http://www.ameresco.com/news/ameresco-constructs-6-mw-solar-farm-massachusetts>>
- 15) "New Hampshire nod for Jericho." ReNews. < <http://renews.biz/78218/new-hampshire-nod-for-jericho/>>
- 16) "Power Plant of the Week - Bear Swamp Hydroelectric Power Station." Energy Tariff Experts. September 15, 2013. < <http://energytariffexperts.com/blog/2013/9/9/power-plant-of-the-week-bear-swamp-hydroelectric-power-station>>
- 17) "Mt. St. Mary's Solar Farm 1 (Franklin, MA)." Kearsarge Energy. < <http://www.kearsargeenergy.com/mt-st-marys-solar-farm-1/>>
- 18) "Spruce Mountain Wind Project." Energy New England. < http://www.energynewengland.com/News_SpruceMtnWind.aspx>
- 19) "14.9 Megawatts of Efficient Baseload Power." Dominion, Clean Energy Finance and Investment Authority, and FuelCell Energy. < <http://files.shareholder.com/downloads/FCEL/3011699670x0x660125/dbd0ff8d-c32b-4603-ac17-7ba249e173e3/05-03-13%20BFCP%20Spotlight.pdf>>
- 20) "Navigant Consulting Completes Sale of Bangor Hydro's Purchased Power Agreements." PR Newswire. Dec 06, 1999. < <http://www.prnewswire.com/news-releases/navigant-consulting-completes-sale-of-bangor-hydros-purchased-power-agreements-77455227.html>>
- 21) "Burlington Electricity Department's 2012 Integrated Resource Plan." < https://www.burlingtonelectric.com/sites/default/files/Documents/BED_Links/irp_chapter7.pdf>
- 22) "Green Mountain Power's 2011 Integrated Resource Plan." < <http://solaricommunication.com/documents/portfolio/Solari-GMP-IRP-2011.pdf>>
- 23) "2012 Resource Report for Village of Northfield Electric Department." < http://www.northfield-vt.gov/text/Electric_Department/2012_Resource_Report_for_Northfield.pdf>
- 24) "Stowe Electricity Department's 2011 Integrated Resource Plan." < http://www.stoweelectric.com/images/Documents/2011_STOWE_IRP_Feb-22-2012.pdf>

TS2 3 Provide the excel spreadsheet that contain the calculations contained in the Retail Electricity Cost Savings Report, Appendix D, Figures 69 and 70.

Response: The requested information is confidential in nature and is being provided subject to compliance with an executed Agreement for Protective Treatment.

TS2 4 Provide Ms. Frayer's "agenda/calendar," demonstrating who from the Eversource team that she met with (and when) to discuss the redacted portion of her pre-filed testimony and her report.

Response: The Applicants object to the question as it seeks information not relevant to the proceeding and therefore is not reasonably calculated to lead to the discovery of admissible evidence. The Applicants further object to the request on the grounds that the information sought is protected by the attorney client privilege and/or attorney work-product privilege. *See* RSA 541-A:33, II ("Agencies shall give effect to the rules of privilege recognized by law."). *See also* N.H. R. Evid. 502 (Lawyer-Client Privilege); N.H. R. Prof. Conduct 1.6 (Confidentiality of Information). The Applicants' and Ms. Frayer's decisions regarding which portions of her Pre-Filed Testimony and report should be redacted were based on discussions with legal counsel.

Arthur B. Cunningham

From: Dumville, Adam <Adam.Dumville@MCLANE.com>
Sent: Tuesday, October 4, 2016 4:14 PM
To: Arthur Cunningham
Cc: Needleman, Barry; Getz, Thomas
Subject: NPT - Follow-up to Frayer Technical Session [MCLANE--.FID1340229]

Art,

Please see the responses below:

1. What has been provided for TS 2 2 is an unresponsive document dump. Please specifically identify the documents Ms. Frayer used to make her calculations. Produce the documents so identified.

The data request is responsive; the follow-up specifically called for a bibliography.

2. Please provide the rationale that justifies claiming confidentiality for witness Frayers calculations in TS 2 3. Figures 69 and 70 are included in the public portion of the Report. My clients are entitled to discover how the Figures were developed.

All decisions regarding confidentiality were made with the advice of legal counsel. Therefore, any and all decisions and discussions regarding confidential documents and calculations are protected by attorney-client privilege. Please also refer to the Applicants' Motion for Protective Order and Confidential Treatment (Oct. 19, 2015); the Committee's Order on Motion for Protective Order and Confidential Treatment (May 25, 2016); the Committee's Order on Motion for Rehearing (Order on Motion for Protective and Confidential Treatment) (July 28, 2016).

3. Witness Frayer testified at the TS that it was an EE decision to treat portions of her testimony and Report as confidential. She made no claim that the material was developed via LEI proprietary methodology. EE has the burden of proof that the project is in the public interest. The EE claim of confidentiality in this docket is relevant to the proceeding in the most critical aspect of the proceeding. The TS 2 4 response that EE lawyers made the decision to redact the Frayer testimony is an effort to prevent the public from discovering the veracity of the Frayer testimony and Report and the integrity of the confidentiality claims. I consider the privilege tactic a ruse.

All decisions regarding confidentiality were made with the advice of legal counsel. Therefore, any and all decisions and discussions regarding confidential documents and calculations are protected by attorney-client privilege. Please also refer to the Applicants' Motion for Protective Order and Confidential Treatment (Oct. 19, 2015); the Committee's Order on Motion for Protective Order and Confidential Treatment (May 25, 2016); the Committee's Order on Motion for Rehearing (Order on Motion for Protective and Confidential Treatment) (July 28, 2016).

In order to properly frame a motion to compel that can be substantively evaluated on the record by the SEC, please provide me with a detailed privilege log. The log should identify the date of each communication with EE counsel, the name and contact information for counsel, the place of the communication, the manner of communication, eg, person to person, phone, email etc., and the subject of the communication with exact reference to the portion or portions of the testimony and Report so discussed.

All decisions regarding confidentiality were made with the advice of legal counsel. Therefore, any and all decisions and discussions regarding confidential documents and calculations are protected by attorney-client privilege. The Applicants previously provided a privilege log on September 2, 2016. The privilege log was uploaded to the Share File site on that date. To the extent you are seeking copies of those privileged documents, please refer to the SEC's order from today, October, 4, 2016 (denying motion to compel privilege documents as listed on the September 2, 2016 privilege log).

EXHIBIT 3