

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' OBJECTION TO MOTION TO COMPEL**

The Society for the Protection of New Hampshire Forests (the "Forest Society"), by and through its attorneys, BCM Environmental & Land Law, PLLC, respectfully replies to the Applicants' Objection (the "Objection") to the Motion to Compel (the "Motion") regarding issues raised with respect to the September 2, 2016, Privilege Log (the "Log").

1. The Applicants' Objection contains two main arguments. First, Applicants argue the Log satisfies the requirements of the September 22, 2016, Order on Motions to Compel because "it contains sufficient specificity for all parties to be put on notice of whether a document is covered by the Attorney-Client Privilege or Attorney Work-Product Doctrine." *Applicants' Objection to Motion to Compel Privilege Log* at ¶ 2.

2. In support, the Applicants describe the information submitted in the Log, such as who submitted it and who received it, and emphasize that the Applicants indicated in the letter accompanying the Log that it already submitted any un-privileged attachments. *Id.* at ¶¶ 9-10. Applicants then conclusively state that the Forest Society "incorrectly argues" the Log is insufficient because Applicants "provided the relevant un-privileged documents to all parties even if the e-mail correspondence was privileged." *Id.* at ¶ 11.

3. Neither the Applicants' description of the Log it sent nor the contents of the e-mail that accompanied it are in dispute. Repeating these undisputed facts does not address the pertinent point of the Forest Society's Motion: because the Log lacks keyed information, the Forest Society and other parties cannot reasonably and efficiently identify which attachments to the purported privileged e-mails were already provided and to whom they were provided.¹

4. In an apparent acknowledgment of the insufficient state of the Log, despite their immediately preceding argument to the contrary, the Applicants note in the conclusion section of their Objection that they are currently in the process of refining the Log to "include a column that identifies the specific documents and/or attachments that are attached to the e-mail communications where the Applicants assert a privilege," and that Forest Society should anticipate this on or before October 24, 2016. *Id.* at ¶ 12.

5. Although the Forest Society appreciates the Applicants' amenability, and will itself endeavor to continue in the same spirit, this promise addresses only one of the three reasons the Forest Society claims the Log is insufficient.

6. Furthermore, considering the tight schedule and impending deadlines, it is prejudicial to the Forest Society and other parties to have to wait until October 24, 2016, to be provided a sufficient Log when that Log was already very late when Applicants first provided it on September 2, 2016.

7. Second, Applicants argue that the Presiding Officer's October 4, 2016, Order on Forest Society and Municipal Group 3 (South)'s Motion to Compel Documents Withheld

¹ On October 7, 2016, in compliance with the September 22, 2016, Order on Motions to Compel, the Applicants submitted a second Privilege Log (the "Second Log"). This Second Log is similarly insufficient because it lacks the above-mentioned keyed information.

effectively resolved the issues raised by Forest Society in its Motion in regard to the Log and, therefore, this Motion is moot. *Id.* at ¶ 8.

8. In so arguing, the Applicants emphasize the Presiding Officer's characterization of the Log as extensive and consisting of 119 pages. *Id.* at ¶¶ 6, 8.

9. This characterization in no way renders the issues raised in Forest Society's Motion moot; a document's length is not dispositive of its sufficiency or usability.

10. The Applicants also emphasize the Order's statement that the "Forest Society and Municipal Group 3 (South) have not demonstrated that the documents listed in the privilege log were not rightfully withheld on the grounds of attorney-client privilege and the work-product doctrine." *Id.* at ¶ 8.

11. Without waiving its right to challenge this conclusion, the Forest Society argues that this conclusion does not moot the subjects of its Motion. For the reasons stated above and in its Motion, the Log in its current form is insufficient in that the Forest Society and other parties cannot use it to reasonably and efficiently identify what attachments have been provided or to evaluate the reasons for nondisclosure.

12. Lastly, to the extent Applicants' Objection implies that Forest Society requests the Committee order Applicants to produce a new privilege log, this is incorrect. The Forest Society requests the Committee issue an order compelling Applicants to provide a key to the Log or revise the Log.

WHEREFORE, the Forest Society respectfully requests that the Committee issue an order compelling Applicants to provide a key to the Log or revise the Log so that it sufficiently identifies what has been withheld, thereby enabling the Forest Society and other parties to

swiftly, efficiently, and accurately evaluate the claims of privilege, and for the Committee to grant such other and further relief as may be reasonable and just.

Respectfully Submitted,

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

By its Attorneys,

BCM Environmental & Land Law, PLLC



Date: October 19, 2016

By: _____

Amy Manzelli, Esq. (17128)
Jason Reimers, Esq. (17309)
Elizabeth A. Boepple, Esq. (20218)
3 Maple Street
Concord, NH 03301
(603) 225-2585
manzelli@nhlandlaw.com
reimers@nhlandlaw.com
boepple@nhlandlaw.com

CERTIFICATE OF SERVICE

I hereby certify that on this day, October 19, 2016, a copy of the foregoing Reply was sent by electronic mail to persons named on the Service List of this docket.



Amy Manzelli, Esq.