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October 21, 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: 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
Contested Motion for Clarification and/or Rehearing of Order(s)**

Dear Ms. Monroe:

Enclosed for filing in the above-captioned docket, please find a Contested Motion for Clarification and/or Rehearing of Order(s) Requiring Production of Documents Related to the Clean Energy RFP.

Please contact me directly should you have any questions.

Sincerely,



Viggo C. Fish

VCF: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**

**CONTESTED MOTION FOR CLARIFICATION AND/OR REHEARING
OF ORDER(S) REQUIRING PRODUCTION OF DOCUMENTS
RELATED TO THE CLEAN ENERGY RFP**

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 Motion for Rehearing of (1) the September 22, 2016 Order on Motions to Compel (“September 22nd Order”) and (2) the October 4, 2016 Order on Forest Society and Municipal Group 3 (South)’s Motion to Compel Documents Withheld (“October 4th Order”) insofar as they might be interpreted to require production of documents related to the Tri-State Clean Energy Request for Proposals (“Clean Energy RFP”) process. Specifically, the Applicants ask the Presiding Officer to clarify that they are not required to produce the Delivery Performance Agreement (“DPA”) dated January 22, 2016, the Amended and Restated Transmission Service Agreement (“Amended TSA”) dated January 22, 2016,¹ and Section 5.2 of Eversource Energy’s Proposal to the Tri-State Clean Energy RFP.

I. Background

1. On May 25, 2016, the Presiding Officer granted the Applicants’ request to treat portions of the pre-filed testimony and report of Julia Frayer, included with the Application filed

¹ The Applicants’ October 14, 2016 Motion for Extension of Time to Supplement Responses Pursuant to the October 4, 2016 Order did not identify the Amended TSA as a document for which it would seek rehearing, but the Amended TSA includes the DPA as an attachment, and it was a structural component of the Clean Energy RFP process bid package. It has therefore been included in this Motion for Rehearing.

in this proceeding on October 19, 2016, as confidential on a temporary basis. The Applicants had argued that disclosure of Ms. Frayer's report and testimony during the Clean Energy RFP process could provide an unfair advantage to competitors. The Presiding Officer ruled that the documents would be accorded confidential treatment until the conclusion of the Clean Energy RFP process, which is ongoing.

2. On June 23, 2016, the Presiding Officer issued an Order on Pending Motions and Procedural Order, in which he denied, at p. 8, the New England Power Generator's ("NEPGA") request to extend the procedural schedule until the results of the Clean Energy RFP process was completed. He found that although it was "conceivable that at some point, issues pertaining to the Clean Energy RFP may become relevant," that the issue was not yet ripe.

3. On September 22, 2016, the Presiding Officer issued an Order on Motions to Compel in this proceeding that, among other things, addressed the Society for the Protection of New Hampshire Forests' ("SPNHF") Data Request No. 26, which sought information regarding the costs of the Canadian portion of the Project. The Order, at p. 35, granted SPNHF's request to produce additional responsive documents, "subject to those provisions set forth in the Order on Motion for Protective Order and confidential Treatment dated May 25, 2016, requiring disclosure upon completion of the Clean Energy RFP process."

4. On October 4, 2016, the Presiding Officer addressed SPNHF's motions to compel the production of certain documents produced to Counsel for the Public ("CFP"), referred to as the "highly confidential" documents, including Data Request No. 1-26, which sought agreements between NPT and Hydro Renewable Energy, Inc. or Hydro Quebec, and Data Request No. 1-27, which sought documents related to financing the Project. Among other things, the October 4th Order, at p. 7, stated that SPNHF's and Municipal Group 3 South's "request that the Applicant be compelled to produce responsive documents and information

produced only to Counsel for the Public is granted subject to the terms of the intervenors' confidentiality agreements with the Applicant.”

II. Discussion

5. The Applicants seek to confirm that the three documents related to the Clean Energy RFP Process are excluded from discovery. Specifically, the Applicants believe that the DPA, the Amended TSA, which includes the DPA as an attachment, and Section 5.2 of Eversource Energy's Proposal to the Tri-State Clean Energy RFP (“Section 5.2”) are not relevant to this proceeding and need not be produced unless and until NPT prevails in the Clean Energy RFP process. By way of explanation, the DPA governs the rights and obligations of NPT and Hydro Renewable Energy Inc. (HRE) in the event that NPT wins the bid for the Clean Energy RFP. Section 5.2 is a confidential portion of Eversource Energy's actual proposal to the Clean Energy RFP. In accordance with the September 22, 2016 Order on Motions to Compel, disclosure, to the extent it were relevant, would be required no sooner than completion of the Clean Energy RFP process. Order on Motions to Compel, p. 35.

6. The Applicants are concerned that the September 22nd Order and the October 4th Order could be interpreted to conflict with respect to the status of documents related to the Clean Energy RFP process, and may conflate issues of confidentiality and the scope of discovery. In addition, it is possible that some confusion may have arisen because the designation of the so-called “highly confidential” documents and the corresponding objections to production originally occurred before parties had entered into confidentiality agreements.

7. Furthermore, as the Applicants noted in their September 19, 2016 Objection to Motion to Compel Production of Documents Withheld, they had provided 42 confidential documents to CFP, many of which were beyond the scope of discovery, and they had since provided all but four of those documents to parties that had signed confidentiality agreements.

The Applicants do not further object to providing the Option to Lease Agreement, dated October 14, 2015, which has, in fact, been provided to the parties.

8. The October 4th Order states, at p. 7, in discussing the “highly confidential” documents that: “Documents produced exclusively to Counsel for the Public were addressed in the Order on Motions to Compel dated September 22, 2016.” That does not, however, appear to be the case. The October 4th Order goes on to say: “In accordance with the Order on Motions to Compel, the documents provided to Counsel for the Public should not be withheld from those intervenors that have entered into confidentiality agreements with the Applicant.” As noted above, all but four of the universe of 42 documents had already been produced, and the Applicants no longer object with respect to one of the four, leaving the three documents related to the Clean Energy RFP process that are the subject of this motion.

9. The October 4th Order grants SPNHF’s and Municipal Group 3 South’s motion to compel production of the “highly confidential” documents earlier provided to CFP, limiting the Order to a specific list of data requests. At the same time, however, the October 4th Order seems to be saying that the issue had already been addressed in the September 22nd Order. The September 22nd Order did say in a half-dozen or so instances that, to the extent the Applicants had objected to production on the basis of confidentiality, the Applicants objection was overruled where the propounder had entered into a confidentiality agreement. See, for example, September 22nd Order at p. 17, which is an instance where circumstances had changed as discovery proceeded. But, more important, the September 22nd Order, as noted above, does not appear to address in any categorical way the status of confidential documents provided to CFP, although by that time the Applicants had been routinely providing confidential documents to parties as they signed confidentiality agreements. The September 22nd Order is pertinent, however, with respect to the treatment of documents related to the Clean Energy RFP process, where it appears

to be saying that such documents, at a minimum, need not be produced before the completion of the process, when they might become relevant.

III. Conclusion

10. The purpose of rehearing "is to direct attention to matters that have been overlooked or mistakenly conceived in the original decision . . ." *Damais v. State*, 118 N.H. 309, 311 (1978) (internal quotations omitted). A rehearing may be granted when the Committee finds "good reason" or "good cause" has been demonstrated. See *O'Loughlin v. NH Pers. Comm.*, 117 N.H. 999, 1004 (1977); *Appeal of Gas Service, Inc.*, 121 N.H. 797, 801 (1981). A successful motion for rehearing must do more than merely restate prior arguments and ask for a different outcome." *Public Service Co. of N.H.*, Order No. 25,676 at 3 (June 12, 2014); see also *Freedom Energy Logistics*, Order No. 25,810 at 4 (Sept. 8, 2015).

11. The Applicants have demonstrated good reason for rehearing. The original decision in the September 22nd Order addresses to some extent documents related to the Clean Energy RFP process but it does not appear to address the so-called "highly confidential" documents provided in the first round of discovery to CFP, as suggested in the October 4th Order. The October 4th Order, meanwhile, addresses SPNHF's and Municipal Group 3-South's motion in a general way, but focuses solely on the production of documents to all parties that have executed confidentiality agreements. Moreover, while the October 4th Order recites the arguments that the Applicants made about the Clean Energy RFP process, it does not address them in any way when granting the motion.

12. Reading the September 22nd Order and the October 4th Order together, it appears that the October 4th Order either did not intend to cover the Clean Energy RFP process documents or that it mistakenly conceived or overlooked the issue in granting the motion, amounting to an error of fact or reasoning. Requiring the production of documents that do not bear on this

proceeding would exceed the scope of proper discovery and therefore be unlawful, unjust or unreasonable. In any case, the Applicants ask that the Presiding Officer clarify or reconsider the matter, as appropriate, and find that the Applicants are not required to produce the DPA, the Amended TSA, and Section 5.2, unless and until NPT were to prevail in the Clean Energy RFP process.

13. The following party assents to the Motion:

- IBEW

14. The following parties object to the Motion:

- NGO Intervenors
- SPNHF
- NEPGA
- Town of Bridgewater
- Town of New Hampton
- Town of Woodstock
- Town of Littleton
- Town of Deerfield
- Town of Pembroke
- Ashland Water & Sewer

14. No other parties provided a position on the Motion.

WHEREFORE, the Applicants respectfully request that the Presiding Officer:

- A. Grant rehearing as requested herein; 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: October 21, 2016

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Certificate of Service

I hereby certify that on the 21st of October, 2016, an original and one copy of the foregoing Motion was hand-delivered to the New Hampshire Site Evaluation Committee and an electronic copy was served upon the Distribution List.

Victor C. Ji for Thomas Getz
Thomas B. Getz