



November 28, 2016

VIA FIRST CLASS MAIL AND EMAIL

Pamela G. 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 for a Certificate of Site and Facility for Construction of
a New High Voltage Transmission Line in New Hampshire**

Dear Ms. Monroe:

Enclosed for filing in the above-captioned matter with the New Hampshire Site Evaluation Committee are the following:

1. **Motion of the Society for the Protection of New Hampshire Forests for Rehearing on the Order on Motion to Compel Regarding Privilege Log; and**
2. **Motion of the Society for the Protection of New Hampshire Forests for Rehearing on Order on Motion to Compel Documents Produced Informally to Counsel for the Public.**

Copies of this letter and its enclosures have this date been forwarded via email to all parties on the Distribution List.

If you have any questions or concerns, please do not hesitate to contact us.

Very truly yours,

Nicole M. Manteau
Firm Administrator

Enclosures

cc: Distribution List (Rev. 11/18/2016) via email
Client



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

**MOTION OF THE SOCIETY FOR THE PROTECTION OF NEW HAMPSHIRE
FORESTS FOR REHEARING ON ORDER ON MOTION TO COMPEL DOCUMENTS
PRODUCED INFORMALLY TO COUNSEL FOR THE PUBLIC**

The Society for the Protection of New Hampshire Forests (the “Forest Society”), by and through its attorneys, BCM Environmental & Land Law, PLLC, moves to rehear the October 28, 2016 decision denying the Forest Society’s Motion to Compel Documents Produced Informally to Counsel for the Public (“Order”), and states as follows:

AUTHORITY FOR REHEARING

1. The Forest Society, as a party to this proceeding, may move for a rehearing of the October 28, 2016, Order. RSA 541:3; N.H. Code Admin. R. Ann. Site 202.29.
2. A motion for rehearing serves a two-fold purpose: first, it permits the reviewing authority to reconsider its decision, and second, it may be a requirement prior to filing an appeal to the New Hampshire Supreme Court. N.H. Code Admin. R. Ann. Site 202.29; N.H. Supreme Court Rule 10.
3. Based on the Administrative Procedures Act, the SEC’s Administrative Rules, and the Supreme Court Rules, to preserve all issues for appeal, the Forest Society files this Motion for Rehearing.

BACKGROUND

4. The Applicants applied to the Committee for a Certificate of Site and Facility to construct a 192-mile high-voltage transmission line, extending from the Canadian border at

Pittsburg, New Hampshire to a substation located in Deerfield, New Hampshire, commonly referred to as the Northern Pass Project.

5. On October 6, 2016, the Forest Society filed a Motion requesting that the Site Evaluation Committee (“SEC”) order the Applicants to produce to the Forest Society all documents produced to Counsel for the Public (“CFP”) that fit the following criteria: (a) not yet produced or ordered to be produced to the Forest Society; (b) produced by the Applicants to Counsel for the Public (“CFP”); and (c) not included in the privilege log the Applicants provided on September 2, 2016 (collectively referred to as “Informal Production to CFP”).

6. In their October 17, 2016 Objection to the Motion (“Objection”), the Applicants laid out a basis as to why the documents provided informally to Counsel for the Public (“CFP”) are not subject to discovery on procedural, substantive, and public policy grounds.

7. Applicants further argued in the Objection that the Forest Society’s Motion is defective because it is not in accordance with Site 202.12, which, contemplates a data request, a response or objection, and then a motion to compel and state the Forest Society filed a motion to compel that was not tied to any specific data request.

8. On October 28, 2016 the SEC denied the Forest Society’s Motion on the grounds that the Motion was overly broad, falls outside the scope of a motion to compel, and the request seeks to compel responses to informal requests, which are not subject to the rule on Motions to Compel. Site 201.12(k).

LEGAL STANDARDS

9. Pursuant to RSA 541:3, “any person directly affected” by an order or decision has the right to file a motion for rehearing.”

10. Site 202.29(c) allows such a party to submit a motion for rehearing within thirty days of the decision or order.

11. The Forest Society is directly affected by the SEC's October 28, 2016 Order, as the Forest Society's requested relief was denied.

12. Site 202.29(d) provides that

[a] motion for rehearing shall:

(1) Identify each error of fact, error of reasoning, or error of law which the moving party wishes to have reconsidered;

(2) Describe how each error causes the committee's order or decision to be unlawful, unjust or unreasonable; [and]

(3) State concisely the factual findings, reasoning or legal conclusion proposed by the moving party[.]

13. Also applicable to this Motion for Rehearing is Site 202.12 (m) which provides that:

When a party has provided a response to a data request, and prior to the issuance of a final order in the proceeding, the party shall have a duty to reasonably and promptly amend or supplement the response if the party obtains information which the party would have been required to provide in such response had the information been available to the party at the time the party served the response.

14. Further relevant to this Motion is Site 202.12 (l) which directs:

The presiding officer or any hearing officer designated by the presiding officer shall authorize other forms of discovery, including technical sessions, requests for admission of material facts, depositions, and any other discovery method permissible in civil judicial proceedings before a state court, *when such discovery is necessary to enable the parties to acquire evidence admissible in a proceeding.*

(emphasis added).

ANALYSIS

15. The Committee erred in its narrow view, albeit led there by Applicants, that the Forest Society's information request falls outside the scope of a Motion to Compel because the information sought had originally been provided to Counsel for the Public informally.

16. While Applicants originally provided the documents informally to CFP and not through formal data requests, when the production of the documents came to light during the technical session and the documents were being used to elicit further information from at least one of Applicants' experts, the disclosure and admission of the delivery to CFP of the documents then became the subject of a data request from the Forest Society.

17. Moreover, the fact that the documents were being used during a technical session to probe the Applicant expert's pre-filed testimony and gather relevant information, creates the presumption that the documents are relevant and subject to discovery pursuant to Site 202.12.

18. Despite learning about the extent of the documents produced informally to CFP after the data request during the technical session, the timing does not relieve the Applicant from the ongoing obligation to deliver supplemental documents, i.e., the balance of the documents produced informally and any other documents produced but not specifically disclosed.

19. The Forest Society's Motion to Compel was therefore not procedurally defective but rather made timely and in accordance with information properly sought via a Motion to Compel.

20. Further, the documents at issue are directly responsive to data requests the Forest Society and others propounded in May and June of this year. Learning of the existence of these documents at the technical session was the first that the Forest Society learned that the Applicants had withheld responsive documents without any notice. The Forest Society assumes that other parties similarly first-learned at the technical session that the Applicants had withheld responsive documents without notice.

21. The parties below take the following positions with respect to this request:

a. Concur

New England Power Generators Association, Inc.
Pemigewasset River Local Advisory Committee
Grafton County Commissioners
Non-Abutter Property Owners: Stark to Bethlehem
Abutters and Non-Abutters Pittsburg Clarksville- Stewartstown
Abutting Property Owners- Deerfield
Abutting Property Owners- Ashland to Allenstown
City of Concord
Town of Pembroke
Town of Deerfield

b. Take No Position

Counsel for the Public

The remainder of the parties did not respond to a request for their position.

WHEREFORE, the Forest Society respectfully request that the Committee:

- A. Grant this Motion;
- B. Expeditiously schedule a rehearing on the Order on Motion on Documents Produced Informally; and
- C. Grant such further relief as it deems appropriate.

Respectfully Submitted,

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

By its Attorneys,

BCM Environmental & Land Law, PLLC



Date: November 28, 2016

By: _____

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CERTIFICATE OF SERVICE

I hereby certify that on this day, November 28, 2016, a copy of the foregoing Motion was sent by electronic mail to persons named on the Service List of this docket.



Amy Manzelli, Esq.