



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 REGARDING PRIVILEGE LOG**

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 Regarding Privilege Log (“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, Eversource Energy and Northern Pass Transmission LLC, 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 September 28, 2016, the Forest Society filed a Motion to Compel Privilege Log (“Motion”) requesting that the SEC order the Applicants to produce to the Forest Society a privilege log containing a list of documents they were withholding on the basis of “Attorney-Client Privilege” and/or “Work Product Privilege.”

6. The Forest Society argued and reasserts here, that in its current form, it is not possible to sufficiently identify from the privilege log whether the attorney-client privilege or work-product doctrine are applicable.

7. In their October 11, 2016 Objection to the Motion (“Objection”), the Applicants assert they have satisfied the requirements of the September 22, 2016 Order on Motions to Compel by producing a Privilege Log on September 2, 2016, and Applicants further assert the October 4, 2016 Order on Motion to Compel Documents Withheld resolved the issues that were raised in the Motion and therefore it should be rendered moot.

8. On October 19, 2016 the Forest Society filed a Reply to the Objection to clarify its Motion to Compel.

9. On October 28, 2016 the SEC agreed that the Forest Society’s Motion was not moot but denied the Motion on the grounds that the Forest Society had not “demonstrated that the documents listed in the privilege log were wrongfully withheld on grounds of attorney-client privilege or work-product doctrine. Further, the Forest Society has not demonstrated that the privilege log is deficient in that it identifies what was withheld and states the reason for nondisclosure.” Order at p. 5.

## **LEGAL STANDARDS**

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

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

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

13. 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[.]

## **ANALYSIS**

14. The focus of the Committee’s Order strictly on the labeling of whether the documents referenced in the Applicants’ Production Log were withheld based upon Attorney /Client Privilege or the Work Product Doctrine misses the point of the Motion to Compel and is an error as a matter of law.

15. The ongoing and continuing deficiencies in the Applicants’ Production Log are the issue here and through those deficiencies create the inability for the Forest Society to adequately determine: 1) what documents have been produced; 2) which data requests

those documents were produced in response to; and 3) whether those documents are or should be protected by either of the declared protections.

16. As the Applicant continues to resist clarity in the ongoing discovery process, it is even more important that the Committee reconsider its denial of the Forest Society's Motion to Compel clearer and more detailed information in the Privilege Log.

17. As the Forest Society articulated in its motion, the fundamental ability to determine which document was previously provided continues to be evasive absent a key to the privilege log.

18. The Applicant is in the unique position of holding the knowledge of which documents were provided in response to which Intervenor's data request. Neither the Forest Society nor any of the Intervenors can determine that information without a laborious effort – hardly the efficient and orderly proceedings envisioned by the SEC rules.

19. A re-hearing will not prejudice the Applicant and will not slow down the proceeding but will allow a fairer opportunity for the Forest Society and other Intervenors to understand what information is or is not being provided through the Privilege Log.

20. 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-Abutting Property Owners- Stark to Bethlehem  
Abutters and Non-Abutters Pittsburg Clarksville Stewartstown  
Abutters- 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 requests that the Committee:

- A. Grant this Motion;
- B. Expeditiously schedule a rehearing on the Order on Motion to Compel Regarding Privilege Log; 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: \_\_\_\_\_

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](mailto:manzelli@nhlandlaw.com)

**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.

A handwritten signature in blue ink, appearing to read "Amy Manzelli". The signature is fluid and cursive, with the first name "Amy" and the last name "Manzelli" clearly distinguishable.

---

Amy Manzelli, Esq.