

**THE 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**

**OBJECTION OF THE SOCIETY FOR THE PROTECTION OF NEW HAMPSHIRE
FORESTS TO APPLICANTS' 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 requests that the SEC deny Northern Pass Transmission LLC's and Public Service Company of New Hampshire d/b/a Eversource Energy's (collectively the "Applicants") Motion to Compel the Forest Society to produce internal communications sought by data request 1-2 that was propounded on November 30, 2016. In support of this Objection, the Forest Society states as follows:

1. In regards to Applicants' data request 1-2, the Forest Society timely raised several objections.
 - a. First, the Forest Society objected to the request because it sought information that is not relevant to the proceeding, as the information is not relevant as to whether the Applicants can satisfy the criteria of RSA 162-H:16, and, therefore, the request is not reasonably calculated to lead to the discovery of admissible evidence.
 - b. Second, the Forest Society objected because the request is vague and ambiguous.
 - c. Third, the Forest Society objected because the request is overly broad and unduly burdensome.

- d. Fourth, the Forest Society objected to data request 1-2 in its specific response and in its general objections to the extent the request sought information protected by the attorney-client privilege or the work-product privilege.
2. In their Motion, the Applicants only address relevance and do not address the Forest Society's objections that the data request is vague, ambiguous, overly broad, or unduly burdensome or seeks privileged information. The Forest Society does not waive these objections and incorporates them herein by reference.
3. Applicants argue that the Subcommittee's September 22, 2016 *Order on Motions to Compel* ("*Order*") is dispositive on the issue of discoverability of internal communications and that the Applicants and the Forest Society have "the same rights and responsibilities" in this docket. *Motion to Compel* at ¶¶ 4, 5.
4. In the *Order*, the Subcommittee determined that the Applicants' internal communications were not categorically undiscoverable, stating that "[i]nternal communications, including drafts, that are within the scope of discovery, responsive to the requests, and not subject to a work product or attorney-client privilege are discoverable." *Order* at 9.
5. The *Order* does not state that internal communications of all parties are categorically discoverable or even that any internal communications of a non-applicant are relevant or discoverable. *See id.* Rather, it reasoned that the internal communications of the Applicants, who bear the burden of proof, are discoverable so long as those communications are "within the scope of discovery" and "not subject to a work product or attorney-client privilege." *Id.*
6. Here, the Applicants have not articulated how the internal communications of an intervenor are "within the scope of discovery," either as a general matter or as applied to

the Forest Society.

7. In their Motion to Compel, the Applicants make cursory assertions that having the Forest Society's internal communications "would lead to an understanding of the positions and assertions" made by the Forest Society in pre-filed testimony and in general, and that not having the information "may undermine the Applicants' ability to effectively cross-examine SPNHF's witnesses." *Motion to Compel* at ¶ 6.
8. The Applicants make no effort to explain *how* the Forest Society's internal communications going back to 2010 would help the Applicants better understand the Forest Society's positions and assertions in this docket. The Forest Society's positions and assertions are contained in pre-filed testimony and related reports. The Applicants may question the Forest Society's witnesses at technical sessions or at the adjudicative hearing if the Applicants are having difficulty understanding the Forest Society's positions and assertions.
9. The Applicants also make no effort to explain how the Forest Society's internal communications may prevent an effective cross-examination of Forest Society witnesses. The Applicants simply make the bald assertion. The witnesses will be available for questioning during technical sessions and will be subject to cross-examination on their testimony during the adjudicative hearing.
10. The Applicants' unsupported assertions of relevance are unavailing and do not establish that the internal communications of a non-profit intervenor are "within the scope of discovery" or relevant to the material issues that the Subcommittee must determine, which are whether the Applicants can satisfy the criteria of RSA 162-H:16. *See Order* at 9.
11. In particular, Applicants have not articulated an argument as to how communications

relating to the Forest Society Board of Trustees' vote in January 2011 to oppose the Northern Pass project as proposed and the Board's decision to update its positions in September 2013 are relevant and "within the scope of discovery." Moreover, these events occurred well before the Applicants filed the application for the currently proposed route that the Subcommittee is considering.

12. It appears that the Applicants rest their Motion to Compel on the premise that "[the Forest Society] is a full party to this proceeding with the same rights and responsibilities as the Applicants." *Motion to Compel* at ¶ 5.
13. This is a false premise: the Applicants and intervenors do not have the same rights and responsibilities. While it is true that both the Applicants and the Forest Society are full parties and their witnesses subject to cross-examination, an SEC docket differs from civil litigation, and the Applicants alone bear the burden of proof of satisfying the criteria of RSA 162-H:16.
14. The standard of discoverability may be the same for the Applicants and the Forest Society, *i.e.*, documents are discoverable if they are "within the scope of discovery" and not subject to privilege, but the Applicants have not even attempted to explain, beyond making conclusory assertions, how the Forest Society's internal communications during the lead-up to this SEC proceeding are "within the scope of discovery." Nothing in the internal communications of the Forest Society are relevant to the issues that the Subcommittee must decide, *i.e.*, whether the Applicant has satisfied RSA 162-H:16.
15. Finally, if the Subcommittee were to determine that the internal communications of a non-applicant without a burden of proof are relevant to whether an applicant can satisfy the requirements of RSA 162-H:16, this would chill the participation of non-profit

organizations in SEC cases as well as significantly impair their ability to openly communicate within the organizations.

WHEREFORE, the Forest Society respectfully asks that the Subcommittee deny the Applicants' Motion to Compel and 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



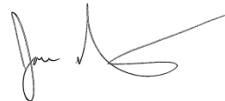
Date: January 19, 2017

By: _____

Amy Manzelli, Esq. (17128)
Jason Reimers, Esq. (17309)
Elizabeth 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, January 19, 2017, a copy of the foregoing Objection was sent by electronic mail to persons named on the Service List of this docket.



Jason Reimers