

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

**MOTION OF THE SOCIETY FOR THE PROTECTION  
OF NEW HAMPSHIRE FORESTS 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 order Dixville Capital, LLC and Balsams Resort Holdings, LLC (“The Balsams”) to produce to the Forest Society all documents and responses sought by the fifth data request propounded upon the Balsams at the January 19, 2017, technical session in which Leslie Otten (“Mr. Otten”) appeared on behalf of the Balsams (the “Data Request”). The Forest Society states as follows in support of its request:

1. On January 19, 2017, a data request was propounded upon the Balsams, requesting that “[u]pon finalization, [the Balsams] provide the study that the Balsams [undertook] regarding the existing and future labor force in the North Country.” Pamela G. Monroe, *Memorandum Re: January 19, 2017, Technical Session Data Requests 1* (Jan. 23, 2017).

2. The Balsams objected to this Data Request as follows: “Objection. This request seeks information that is not relevant or reasonably calculated to lead to the discovery of admissible evidence. It also seeks materials that do not exist. The referenced study relates to The Balsams, specifically, and not to the North Country, generally. Furthermore, the referenced study is not finalized. For these reasons, Dixville Capital and BRH do not respond to this data request.”

3. Whether particular evidence is “relevant” is a determination as to whether it is material to an issue in the case and has probative value of that issue. The question of relevance is a low bar in the context of discovery, which bar is perhaps even lower in administrative proceedings.

4. Pre-hearing discovery in the administrative setting is broad and liberal.

5. Under RSA 541-A:33, “[a]ny oral or documentary evidence may be received; but the presiding officer may exclude irrelevant, immaterial or unduly repetitious evidence.” Cross examination is mandated to provide the parties “a full and true disclosure of the facts.” RSA 541-A:33, IV.

6. Mr. Otten made representations in his pre-filed testimony and at the January 19, 2017, technical sessions that relied on and/or referenced a study that concluded or led the Balsams to make conclusions about the existing labor force in the North Country.

7. This study is relevant because it appears to be the basis of Mr. Otten’s testimony and conclusions about the existing and potential labor force of the North Country. Parties cannot fully weigh the credibility of Mr. Otten’s testimony without evaluating the study.<sup>1</sup>

8. This study is also relevant because the Applicants rely on the Forward NH Plan, including the \$2 million loan advanced from it to The Balsams to satisfy the Applicants’ burden of proof with respect to the standards set forth in RSA 162-H:16, IV, including regarding public interest.

9. Presumably, the study will illuminate the relationship between the \$2 million loan and the public interest standard pursuant to RSA 162-H:16, IV(e).

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<sup>1</sup> The Balsams argue that “[t]he referenced study relates to The Balsams, specifically, and not to the North Country, generally.” This argument does not at all negate the relevance of the study. The contents and quality of the study, be it about the North Country generally or only the Balsams, reflect on the credibility of the pre-filed testimony of the Balsams.

10. The fact the study is not yet complete is not a sufficient reason to object to its disclosure. If the Balsams rely on the study now, even though the study is incomplete, the current version of the study should also be available to all parties now.

11. Because of the liberal discovery standards, and the relevance of the study to a required statutory standard and to the credibility of the testimony that relies on it, the Forest Society respectfully requests that the presiding officer compel the answers and production sought by the Forest Society.

12. Pursuant to Site 202.12(k)(4), the Forest Society certifies that it has made a good-faith effort to resolve the dispute informally.

**WHEREFORE**, the Forest Society respectfully asks that the Committee compel Dixville Capital, LLC, and Balsams Resort Holdings, LLC, to produce the information requested 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: February 14, 2017

By: \_\_\_\_\_

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**CERTIFICATE OF SERVICE**

I hereby certify that on this day, February 14, 2017, a copy of the foregoing Motion was sent by electronic mail to persons named on the Service List of this docket.



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Amy Manzelli, Esq.