

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

**REPLY OF THE SOCIETY FOR THE PROTECTION OF NEW HAMPSHIRE
FORESTS TO APPLICANTS' OBJECTION TO MOTION TO EXCLUDE
STATEMENTS FROM TECHNICAL SESSIONS**

The Society for the Protection of New Hampshire Forests (the "Forest Society"), by and through its attorneys, BCM Environmental & Land Law, PLLC, respectfully replies to the Applicants' Objection (the "Objection") to the Forest Society's Motion to Exclude Statements from Technical Sessions (the "Motion").

1. The Forest Society submits this Reply to address Applicants' mischaracterization of the Forest Society's requested relief and to respond to arguments based on this mischaracterization.

2. In their Objection, Applicants correctly note that in its Order on Motions to Transcribe Technical Session, the Presiding Officer "explained that '[t]he dialog and information provided by the witnesses and experts at technical sessions is not designed and should not be used for impeachment.'" Applicants' Objection to Pre-Hearing Motion of the Society for the Protection of New Hampshire Forests to Exclude Statements from Technical Sessions, Docket No. 2015-06, ¶ 4 (Apr. 10, 2017) (hereinafter "Objection") (quoting Order on Motions to Transcribe Technical Session, Docket No. 2015-06, at 2 (Aug. 29, 2016)) (alterations in Objection).

3. Applicants then inaccurately summarize the Forest Society's position as contending that "because of the informal nature of technical sessions none of the information

learned during technical sessions should be used during adjudicatory hearings under any circumstances.” *Id.* ¶ 5.

4. This is not Forest Society’s requested relief. Forest Society’s Motion seeks to prohibit the introduction of verbal statements from the technical sessions for purposes of impeachment, which is exactly the type of behavior the above-referenced order sought to prevent.

5. Such a prohibition would not prevent parties from *relying* on the information learned; it would bar parties from *using* a statement to impeach a witness by asking the witness what the witness said at a technical session in order to point out, for example, an inconsistency in the witness’s testimony. Parties can still rely on what was learned at technical sessions to inform the questions asked of a witness at the adjudicatory hearings.

6. Applicants maintain that in requesting this relief the Forest Society has not “consider[ed] valid reasons that statements made, and information learned, during technical sessions should be allowed during adjudicatory hearings that would be impacted by its request.” *Id.* ¶ 6. However, in the remainder of their Objection, Applicants never provide such reasons for why statements should be introduced at the hearings, except for impeachment purposes.

7. In the conclusion of their Objection, Applicants make clear that the only reason they seek to use these statements at the adjudicatory hearings is for impeaching witnesses for inconsistent statements, stating:

It is entirely possible, for example, that a witness could say something in a technical session contrary to, or inconsistent with, his or her testimony. Although the technical session was not designed for impeachment, a questioning party simply seeking in good faith to understand the witness’s testimony could evoke a statement that is appropriate for exploration in the adjudicative hearings, even though that was not the original purpose of the questioning.

See Objection, ¶ 12.

8. Using these statements for impeachment purposes, a purpose clearly illustrated in the above excerpt, would eviscerate the purpose of the Order denying the request for an official transcription. If the parties had known that statements made during technical sessions would be used for impeachment, even if ostensibly obtained in good faith or the purpose of informal information sharing, they would have behaved differently and created exactly the type of legalistic atmosphere the Presiding Officer sought to avoid.

9. Finally, the Applicants' concern that an Order limiting use of technical session information would inhibit their ability to meet their burden of proof is equally unpersuasive. If the information they wish to introduce in the adjudicatory hearing is that critical to their case, then they can and should file it as supplemental testimony.

WHEREFORE, the Forest Society respectfully requests that the Committee:

- A. Exclude any use during the adjudicatory hearing of any statement made by witnesses during the technical sessions;
- B. 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: April 11, 2017

By: _____

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CERTIFICATE OF SERVICE

I hereby certify that on this day, April 11, 2017, a copy of the foregoing Reply was sent by electronic mail to persons named on the Service List of this docket.



Amy Manzelli, Esq.