

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 PRODUCTION OF LONDON ECONOMICS  
INTERNATIONAL, LLC'S ECONOMIC MODEL FROM THE APPLICANTS, OR,  
ALTERNATIVELY, MOTION TO STRIKE TESTIMONY**

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 April 12, 2017, decision denying Counsel for the Public’s (CFP) Motion to Compel Production of London Economics International, LLC's Economic Model from the Applicants, or, Alternatively, Motion to Strike Testimony. In support, the Forest Society states as follows:

**BACKGROUND**

1. On March 15, 2017, CFP filed a Motion to Compel Production of London Economics International, LLC's Economic Model from the Applicant, or, Alternatively, Motion to Strike Testimony (the “Motion”) requesting the SEC order the Applicants to produce to CFP the London Economic Model or in the alternative, strike Julia Frayer's Pre-filed Testimony and report and exclude her from any further testimony in these proceedings.

2. On March 17, 2017, The Forest Society filed a Notice of Joinder to the Motion.

3. Applicants objected to the Motion on March 20, 2017.

4. The April 12, 2017 Order denied CFP’s motion, stating that:

Counsel for the Public's request is similar to the request that was denied by the Presiding Officer in the September 22, 2016, Order on Motions to Compel.

The Applicant has represented that it has provided both the inputs and outputs employed in LEI's modeling as well as a description of the approach and the assumptions upon which the model relies in generating the results. With this information, Counsel for the Public's expert should be able to test the data utilizing its own modeling approach and assumptions and provide rebuttal expert testimony, and he will also have the opportunity to cross-examine Ms. Frayer.

Counsel for the Public's right to access information in this docket is not limitless. Revealing proprietary information and software is unnecessary.

Counsel for the Public has failed to indicate how the information provided by the Applicant is inadequate to allow his experts to analyze, scrutinize, and test the data with its own modeling approach and/or by testifying about any weaknesses perceived in LEI's inputs, output, or assumptions.

5. Based on the Administrative Procedures Act, the SEC's Administrative Rules, and the Supreme Court Rules, to preserve this issue for appeal, the Forest Society files this Motion for Rehearing.

#### **LEGAL STANDARD**

6. 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.

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

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

9. The Forest Society is directly affected by the SEC's April 12, 2017 Order, because the relief sought also by the Forest Society was denied.

10. A party may apply for a rehearing by “specifying in the motion all grounds for rehearing,” RSA 541:3, and “set[ing] forth fully every ground upon which it is claimed that the decision or order complained of is unlawful and unreasonable.” RSA 541:4.

11. The SEC rule on rehearing further 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; (3) State concisely the factual findings, reasoning or legal conclusion proposed by the moving party; and, (4) Include any argument or memorandum of law the moving party wishes to file.” N.H. CODE ADMIN. R. ANN. Site 202.29(d).

### **ANALYSIS**

12. On August 15, 2016 the Forest Society moved, in pertinent part, to compel production of the analytical processes employed by LEI to arrive at the conclusions contained in the Application filed in October of 2015, which would include LEI’s model and all of the inputs and outputs. The Chair denied that request.

13. Approximately a year and half later, LEI redid its analysis and provided updated materials to supplement the Application. CFP sought to obtain the model for the updated analysis. The Forest Society joined that request for the Applicants to produce the model used for the current analysis, and incorporates by reference all of the arguments set forth in the Motion.

14. Given the intervening months, it has become clear to the Forest Society that it remains unable to test the methodology and conclusions as to the Project’s benefits without having LEI’s model.

15. The Order notes that parties will be able to cross-examine Ms. Frayer. However, cross-examining Ms. Frayer about a model that has not been provided would not meet even

minimal due process rights, nor would it promote the orderly conduct of the hearing. Parties should not have to go into a final hearing on the merits asking questions about something which the Applicants have been allowed to keep secret.

16. Whether the Project's benefits outweigh the adverse impacts of the Project is at the heart of the SEC process. Not ordering the Applicants to produce LEI's model disables parties from being able to adequately explore with the SEC whether the Project's benefits outweigh its adverse impacts.

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

a. Concur:

Appalachian Mountain Club  
Conservation Law Foundation  
Ammonoosuc Conservation Trust  
New England Power Generators Association  
Grafton County Commissioners  
Town of Pittsburg  
Town of Clarksville  
Town of Stewartstown  
Town of Northumberland  
Town of Whitefield  
Town of Dalton  
Town of Bethlehem  
Town of Littleton  
Town of Holderness  
Ashland Water & Sewer  
Town of Bristol  
Town of New Hampton  
Town of Canterbury  
City of Concord  
Town of Deerfield  
Town of Sugar Hill  
Town of Franconia  
Town of Easton  
Town of Plymouth  
Deerfield Abutters  
Whitefield- Bethlehem Abutters  
Bethlehem-Plymouth Abutters  
Dummer, Stark, Northumberland Abutters

Ashland-Deerfield Non-Abutters

- b. 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 Motion; 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: May 12, 2017

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

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**CERTIFICATE OF SERVICE**

I hereby certify that on this day, May 12, 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.