

September 7, 2017

Via Electronic Mail & Hand Delivery

Pamela Monroe, Administrator
New Hampshire Site Evaluation Committee
21 South Fruit Street, Suite 10
Concord, NH 03301-2429

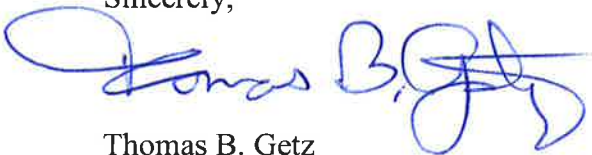
**Re: Site Evaluation Committee Docket No. 2015-06
Joint Application of Northern Pass Transmission LLC and Public Service Company
of New Hampshire d/b/a Eversource Energy (the "Applicants") for a Certificate of
Site and Facility
Objection to Joint Motion to Compel Applicant's Unredacted Bid Into The
Massachusetts Request for Proposals**

Dear Ms. Monroe:

Enclosed for filing in the above-captioned docket, please find an original and one copy of an
Objection to Joint Motion to Compel Applicant's Unredacted Bid Into The Massachusetts
Request for Proposals.

Please contact me directly should you have any questions.

Sincerely,



Thomas B. Getz

TBG:slb

cc: SEC Distribution List

Enclosure

**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 TO JOINT MOTION TO COMPEL APPLICANTS' UNREDACTED BID
INTO THE MASSACHUSETTS REQUEST FOR PROPOSALS**

NOW COME Northern Pass Transmission LLC (“NPT”) and Public Service Company of New Hampshire d/b/a Eversource Energy (“PSNH”) (collectively the “Applicants”), by and through their attorneys, McLane Middleton, Professional Association, and respectfully submit this Objection to the Joint Motion of the Society for the Protection of New Hampshire Forests (“SNPHF”) and NGO Intervenors (“NGOs”) (collectively, “Joint Movants”) to Compel Applicants’ Unredacted Bid Into the Massachusetts Request for Proposals (“Mass Bid”) (“Joint Motion”). As explained below, the Joint Movants fail to identify a discovery request that called for the production of the bid in the Tri-State Clean Energy RFP (“Tri-State Bid”). Furthermore, contrary to the assertions of the Joint Movants, no order of the SEC directed the Applicants to produce an un-redacted version of the Applicants’ Tri-State Bid. Accordingly, there is no basis for compelling the production of the Mass Bid.

I. Background

1. On May 31, 2016, SPNHF propounded Data Request 1-26:

“Please State the Basis for and explain how the costs for the Canadian portion of NPT will be collected from users of the NPT line.”

The Applicants responded:

“Please refer to Sections 6.6 and 9.2 of the Northern Pass proposal in responses to the Clean Energy RFP at <http://cleanenergyrfp.com>. In essence, for the Canadian portion,

under a Transmission Service Agreement, HQ Production has committed to the entire transmission capacity of the Québec Line for a sufficient number of years to assure full cost recovery by Hydro-Québec TransEnergie. HQ Production and Hydro-Québec TransEnergie are divisions of Hydro-Québec.”

2. On August 15, 2016, SPNHF filed a Motion to Compel Responses to Data Requests (“Motion to Compel”). It argued, with reference to SPNHF Data Request No. 26, that the two sections of the RFP cited in the Applicants’ response were redacted. SPNHF then went beyond the scope of its data request and asked that the SEC “order the Applicants to produce an unredacted version of their Clean Energy RFP proposal.” *See* Motion of the Society for the Protection of New Hampshire Forests to Compel Responses to Data Requests, (August 15, 2016) pp. 26-27. The Applicants objected on August 25, 2016. *See* Applicants’ Response and Objection to Certain Motions to Compel, (August 25, 2016), p. 25.

3. The Presiding Officer issued an Order on Motions to Compel on September 22, 2016 (“September Order”) and a related Order on Forest Society and Municipal Group 3 South’s Motion to Compel Documents Withheld on October 4, 2016 (“October Order”). Among other things, the September Order addressed SPNHF’s Data Request No. 26 regarding the costs of the Canadian portion of the Project, while the October Order addressed certain documents produced to Counsel for the Public (“CFP”), referred to as the “highly confidential” documents, including CFP Data Requests No. 1-26 and 1-27, which sought, respectively, agreements between NPT and Hydro Renewable Energy, Inc. or Hydro Québec, and documents related to financing the Project.

4. On October 21, 2016, the Applicants filed a motion for clarification regarding the September and October Orders. The Applicants asked for clarification insofar as the Orders:

“might be interpreted to require production of documents related to the Tri-State Clean Energy Request for Proposals (“Clean Energy RFP”) process. Specifically, the Applicants ask the Presiding Officer to clarify that they are not required to produce the Delivery Performance Agreements (“DPA”) dated January 22, 2016, the Amended and Restated Transmission Service Agreement (“Amended TSA”) dated January 22, 2016, and Section 5.2 of Eversource Energy’s Proposal to the Tri-State Clean Energy RFP.”

5. The Presiding Officer issued an Order on Applicant’s Motion for Clarification and/or Rehearing of Order(s) Requiring Production of Documents Related to the Clean Energy RFP (“Clarification Order”) on December 13, 2016. He stated:

“The Applicant has noted potential inconsistencies between prior orders in this docket with respect to the Applicant’s obligation to produce the DPA, Amended TSA, and Section 5.2. *This Order is intended to clarify any perceived inconsistencies between prior orders and shall supersede such orders.* In accordance with the Order on Applicants’ Further Motion for Confidential Treatment, the Applicant is not required to produce unredacted copies for Ms. Frayer’s pre-filed testimony and the LEI Report to [the] public. The documents, however, must be provided to parties that have entered into confidentiality agreements with the Applicant.” (Emphasis supplied.)

II. Discussion

6. The Joint Movants’ Motion to Compel production of the Mass Bid is deficient for two reasons. First, the Motion to Compel is not linked to a specific SPNHF or NGO data request for production of the Tri-State Bid. The data request relied on here, SPNHF 1-26, only asks how the costs on the Canadian side of the Project are collected. Accordingly, the Applicants have no obligation to produce the Mass Bid pursuant to Site 202.12 (m), which requires a party to “supplement the response if the party obtains information which the party would have been required to provide in such response had the information been available to the party at the time the party served the response.”

7. Second, the Presiding Officer unequivocally stated that the Clarification Order superseded the September Order and the October Order. Despite the Joint Movants’ attempt to suggest otherwise, the Applicants, in any event, do not read those Orders as having required the

production of an un-redacted version of the Tri-State Bid, although they were concerned at the time that those orders might encompass three specific documents that had been provided solely to CFP. As a consequence of the Clarification Order, the Applicants were required to produce the three specific documents, i.e., the DPA, the Amended TSA, and Section 5.2 of the Tri-State Bid, which were responsive to a CFP data request. As a further consequence of the Clarification Order, to the extent the prior orders could possibly have been interpreted to apply to the un-redacted Tri-State Bid, which the Applicants do not concede, the Presiding Officer made clear that such orders had been superseded.

III. Conclusion

8. The Joint Movants attempt to stitch together an argument to support an untimely request for an un-redacted version of the Applicants' Mass Bid, but the threads do not hold. First, neither SPNHF nor the NGOs point to a data request that either party made asking for production of the Tri-State Bid, let alone the Mass Bid. Second, the Presiding Officer never directed the Applicants to produce the Tri-State Bid and his Clarification Order, which superseded prior orders, limited the production of documents to the DPA, the Amended TSA, and Section 5.2 of the Clean Energy RFP. Accordingly, the Joint Movants are wrong when they contend that the Applicants were required to produce an un-redacted version of the Tri-State Bid and should now be required to produce the Mass Bid.

WHEREFORE, the Applicants respectfully request that the Presiding Officer:

- A. Deny the Joint Motion; and
- B. Grant such further relief as is deemed just and appropriate.

Respectfully submitted,

Northern Pass Transmission LLC and Public
Service Company of New Hampshire d/b/a
Eversource Energy

By Its Attorneys,

McLANE MIDDLETON,
PROFESSIONAL ASSOCIATION

Dated: September 7, 2017

By: 

Barry Needleman, Bar No. 9446
Thomas B. Getz, Bar No. 923
Adam Dumville, Bar No. 20715
11 South Main Street, Suite 500
Concord, NH 03301
(603) 226-0400
barry.needleman@mclane.com
thomas.getz@mclane.com
adam.dumville@mclane.com

Certificate of Service

I hereby certify that on the 7th of September, 2017, an original and one copy of the foregoing Objection was hand-delivered to the New Hampshire Site Evaluation Committee and an electronic copy was served upon the Distribution List.


Thomas B. Getz