

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

**REPLY OF THE SOCIETY FOR THE PROTECTION OF NEW HAMPSHIRE
FORESTS AND NGO INTERVENORS TO APPLICANTS' OBJECTION TO JOINT
MOTION TO COMPEL APPLICANTS' UNREDACTED BID INTO THE
MASSACHUSETTS REQUEST FOR PROPOSALS**

The Society for the Protection of New Hampshire Forests ("Forest Society"), by and through its attorneys, BCM Environmental & Land Law, PLLC, and the NGO Intervenor grouping, comprising Ammonoosuc Conservation Trust, Appalachian Mountain Club, and Conservation Law Foundation ("NGO Intervenor") (collectively the "Movants"), respectfully reply to the Applicants' Objection to Joint Motion to Compel Applicants' Unredacted Bid into the Massachusetts Request for Proposals ("Mass RFP"), stating as follows:

1. The Movants submit this Reply to address points raised in Applicants' Objection and, in doing so, clarify some facts and points made in the Joint Motion to Compel.
2. First, the Joint Motion to Compel does not rely exclusively on the Forest Society's May 31, 2016, data request.
3. The Mass RFP bids did not exist in May 2016. Movants filed the Motion to Compel the Mass RFP bids following Applicants' denial of the undersigned's email request to counsel for the Applicants. Joint Motion to Compel, at n.2; *see also* Exhibit A (emails).
4. Movants' Motion discusses the data request, motions, and orders to support Movants' position that the Mass RFP bids are relevant and the relief requested is consistent with past SEC orders concerning the Applicants' bid into the Tri-State RFP.

5. Second, Applicants incorrectly assert that the request exceeds the scope of the Forest Society's May 31, 2016, SPNHF 1-26 data request.

6. To the extent the validity of the pending Joint Motion to Compel depends on this data request, a point the Movants do not concede, the data request is far broader than Applicants suggest.

7. "State the Basis," as used in the Forest Society's data requests, is a defined term in the data requests. The definition provided in Forest Society's data requests is as follows:

"State the Basis" for an allegation, conclusion, position or answer means: (a) to Identify and specify the sources therefor, and (b) to Identify and specify all facts You have considered, and on which You rely or intend to rely, in support of the allegation, contention, conclusion, position or answer, and (c) to set forth and explain the nature and Application to the relevant facts of all pertinent legal theories upon which You rely for Your knowledge, Information and/or belief that there are good grounds to support such allegation, contention, conclusion, position or answer.

Exhibit B.

8. In turn "Identify" as used in the Forest Society's data requests, is also a defined term, as follows:

"Identify" or "Identity" when used in connection with: (1) a natural person means to state the person's name, employer and business address; (2) a corporation or other entity means to state the name of the entity, "d/b/a" designation if any, address of its principal place of business, and address of its principal place of business in New Hampshire; (3) a Document means to state a description, including name of author or source, date and addressee(s); (4) a Communication means to state a description, including participants, date and content of the Communication; and (5) a place means to state a description of a precise geographic location or address.

Exhibit B.

9. These definitions make clear that the data request is broad enough to support the Joint Motion to Compel and to require Applicants' to supplement their responses pursuant to Site 202.12(m).

10. Third, regardless of the scope of any of the Forest Society's data requests, the Mass RFP bids are relevant and, therefore, should be produced as soon as possible, preferably before the close of the Applicants' case-in-chief.

11. The bids are relevant in part because they may shed light on how Hydro-Quebec will utilize the Project's transmission capacity, which in turn relates to Applicants' claims that the Project will benefit the public. For instance, we understand that the bids indicate a potential plan to transmit 300 MW of wind over the proposed transmission line, which, as established by Counsel for the Public in its motion dated September 8, 2017, is inconsistent with prior statements made in this proceeding.¹ Facts contained within these bids may be relevant to impacts to ratepayers and the wholesale electric markets, factors that the Applicants have asserted bear on the purported benefits of the project,² and that the SEC is therefore likely to consider when evaluating whether the Project is in the public interest.

12. Due to the relevance to public benefits, it is unsurprising that the parties and members of the Subcommittee have expressed much interest in the Mass RFP over the course of the hearing, including during cross examination and questions from the Subcommittee. Now that the Northern Pass bids have been submitted in Massachusetts, and in light of the fact that the public versions of those bids are heavily redacted, the bids should be provided in full to the Committee and to any participant in this proceeding who has entered into a confidentiality agreement with the Applicants. Unredacted copies of the bids will aid in understanding both the Applicants' current intentions and the Project's potential impacts on New Hampshire.

¹ Counsel for the Public's Motion to Compel Unredacted Bids Submitted in Response to the Massachusetts Clean Energy Request for Proposals at 4.

² See, e.g., *id.*; Joint Application for a Certificate of Site and Facility at E-23 ("the provision of 1,090 MW of clean, competitively priced, renewable hydropower to customers in New Hampshire and the rest of New England is the most direct benefit of the Project...")


WHEREFORE, the Forest Society and NGO Intervenors respectfully ask that the Presiding Officer compel Applicants 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: September 18, 2017

By: 
Amy Manzelli, Esq. (17128)
Jason Reimers, Esq. (17309)
Elizabeth Boepple, Esq. (20218)
Stephen Wagner, Esq. (268362)
3 Maple Street
Concord, NH 03301
(603) 225-2585
manzelli@nhlandlaw.com

Date: September 18, 2017

NON-GOVERNMENTAL INTERVENORS

By: 
Melissa E. Birchard, Esq.
Designated Spokesperson for the
NGO Intervenors
Conservation Law Foundation
27 North Main Street
Concord, NH 03301
(603) 225-3060
mbirchard@clf.org

CERTIFICATE OF SERVICE

I hereby certify that on this day, September 18, 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.

EXHIBIT A

Amy Manzelli

From: Getz, Thomas <Thomas.Getz@MCLANE.com>
Sent: Wednesday, August 16, 2017 8:02 PM
To: Amy Manzelli
Subject: Re: MA RFP?
Attachments: image001.jpg; image002.jpg; image003.jpg

Amy,
You are correct.
Tom

Sent from my iPhone

On Aug 16, 2017, at 1:44 PM, Amy Manzelli <manzelli@nhlandlaw.com<mailto:manzelli@nhlandlaw.com>> wrote:

Thanks, Tom. Just make sure I correctly understand our clients' position. The Forest Society has requested that NP produce to the Forest Society, subject to our confidentiality agreement, NP's bids into the MA RFP and NP declines to do so, correct? If that's the case, we will probably file a motion next week for production of them.

Amy
<image001.jpg>

Amy Manzelli, Esq.
Offices in Concord, New Hampshire and Portland, Maine
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Phone 603.225.2585
Fax 603.225.2401
<image002.jpg>
<image003.jpg><<http://www.superlawyers.com/new-hampshire/lawyer/Amy-Manzelli/6c78831b-8774-4a38-9c8f-4abaf754dcda.html>>

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As required by federal regulations, we must inform you that any federal tax advice contained in this communication is not intended or written to be used, and it cannot be used, by any taxpayer for the purpose of avoiding tax penalties that may be imposed on the taxpayer.

From: Getz, Thomas [<mailto:Thomas.Getz@MCLANE.com>]
Sent: Tuesday, August 15, 2017 6:56 PM
To: Amy Manzelli
Subject: RE: MA RFP?

Amy,
I cannot find any record that we provided you an un-redacted version of the bid package in the Tri-State RFP and the somewhat convoluted history of SEC orders only seemed to require production of section 5.2, which had been a "highly confidential" document informally provided to CFP back when we were still working through the confidentiality agreements.

Consequently, there does not appear to be any obligation to produce the un-redacted bid packages for the Mass RFP and the Applicants would object to doing so.

If I'm missing something in the records or the orders, please let me know.

Thanks

Tom

From: Amy Manzelli [mailto:manzelli@nhlandlaw.com]

Sent: Tuesday, August 15, 2017 11:10 AM

To: Getz, Thomas

Subject: RE: MA RFP?

Thank you.

<image001.jpg>

Amy Manzelli, Esq.

Offices in Concord, New Hampshire and Portland, Maine

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<image002.jpg>

<image003.jpg><<http://www.superlawyers.com/new-hampshire/lawyer/Amy-Manzelli/6c78831b-8774-4a38-9c8f-4abaf754dcda.html>>

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From: Getz, Thomas [mailto:Thomas.Getz@MCLANE.com]

Sent: Tuesday, August 15, 2017 9:37 AM

To: Amy Manzelli

Subject: RE: MA RFP?

Amy,

I just got back early this morning and will follow up by the end of the day where we are on this.

I think I've sorted out what happened with the Tri-State but want to confirm that I understand it correctly.

Tom

From: Amy Manzelli [mailto:manzelli@nhlandlaw.com]

Sent: Friday, August 11, 2017 11:07 AM

To: Getz, Thomas

Cc: Needleman, Barry; Dumville, Adam; Elizabeth Boepple; Jason Reimers

Subject: Re: MA RFP?

Thanks. I hear you. I hadn't recalled the exact details either. Please let me hear from you by Monday. I'd like to file a motion, if needed, sooner rather than later.

[leaf.jpg]

Amy Manzelli, Esq.

BCM Environmental & Land Law, PLLC

3 Maple Street<x-apple-data-detectors://1/0>

Concord, NH 03301<x-apple-data-detectors://1/0>

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[bcm-logo-mso.png]

[Manzelli_SL-Badge_sm]<<http://www.superlawyers.com/new-hampshire/lawyer/Amy-Manzelli/6c78831b-8774-4a38-9c8f-4abaf754dcda.html>>

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On Aug 11, 2017, at 10:25 AM, Getz, Thomas <Thomas.Getz@MCLANE.com<mailto:Thomas.Getz@MCLANE.com>> wrote:

Amy,

Thanks for this--my memory definitely needs some refreshing about how these issues worked out. I'm in California at the moment and will be back in the office on Tuesday but I'll catch up with Adam and try to wend my way through it.

Thanks

Tom

Sent from my iPhone

On Aug 9, 2017, at 10:58 AM, Amy Manzelli <manzelli@nhlandlaw.com<mailto:manzelli@nhlandlaw.com>> wrote:

Tom,

You said this morning that you were having Adam look into this and would get back to me. I took some time today to refresh myself on the orders applicable to production of the Applicants' bids into the Tri-State Clean Energy RFP. My read of these and that after the Applicants vigorously objected, the Chair ordered the Applicants to produce the

unredacted bid, subject to the Applicants' confidentiality agreements made pursuant to the order re: confidential treatment. I've included links to these orders here. I hope that this helps expedite a decision to provide the bids as I have requested.

9/22/16 Order on motions to compel: https://www.nhsec.nh.gov/projects/2015-06/orders-notices/2015-06_2016-09-22_order_mtn_compel.pdf

10/4/16 Order on Forest Society motion to compel: https://www.nhsec.nh.gov/projects/2015-06/orders-notices/2015-06_2016-10-04_order_spnhf_mtn_compel_docs.pdf

12/13/16 Order on Applicants' Further Motion for Confidential Treatment: https://www.nhsec.nh.gov/projects/2015-06/orders-notices/2015-06_2016-12-13_order_app_confidential.pdf

Regards,
Amy

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-----Original Message-----

From: Getz, Thomas [<mailto:Thomas.Getz@MCLANE.com>]
Sent: Wednesday, August 9, 2017 7:20 AM
To: Amy Manzelli
Subject: Re: MA RFP?

Amy
Looking into this--we'll both be at PHC
Tom

Sent from my iPhone

On Aug 8, 2017, at 4:22 PM, Amy Manzelli
<manzelli@nhlandlaw.com<mailto:manzelli@nhlandlaw.com><mailto:manzelli@nhlandlaw.com>> wrote:

Tom,

I got Barry's out of office message. I assume you can get back to me while he is out?

Thanks,
Amy
<image001.jpg>

Amy Manzelli, Esq.
Offices in Concord, New Hampshire and Portland, Maine
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From: Amy Manzelli
Sent: Tuesday, August 08, 2017 11:50 AM
To: 'Needleman, Barry'
Cc: 'Getz, Thomas
(Thomas.Getz@MCLANE.com<mailto:Thomas.Getz@MCLANE.com><mailto:Thomas.Getz@MCLANE.com>); Elizabeth Boepple; Jason Reimers
Subject: MA RFP?

Hi Barry,

Would you please provide unredacted copies of both bid packages that the Northern Pass submitted for the MA RFP, pursuant to our confidentiality agreement, as you did with the Tri-State RFP?

Thank you,
Amy
<image001.jpg>

Amy Manzelli, Esq.

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Concord, NH 03301

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LinkedIn<<http://www.linkedin.com/company/bcm-environmental-&-land-law-llc>>

Phone 603.225.2585

Fax 603.225.2401

<image006.png>

<image005.jpg><<http://www.superlawyers.com/new-hampshire/lawyer/Amy-Manzelli/6c78831b-8774-4a38-9c8f-4abaf754dcda.html>>

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The information contained in this electronic message may be confidential, and the message is for the use of intended recipients only. If you are not an intended recipient, do not disseminate, copy, or disclose this communication or its contents. If you have received this communication in error, please immediately notify me by reply email or McLane Middleton at (603) 625-6464 and permanently delete this communication. If tax or other legal advice is contained in this email, please recognize that it may not reflect the level of analysis that would go into more formal advice or a formal legal opinion.

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Middleton at (603) 625-6464 and permanently delete this communication. If tax or other legal advice is contained in this email, please recognize that it may not reflect the level of analysis that would go into more formal advice or a formal legal opinion.

EXHIBIT B

**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

**FIRST DATA REQUESTS OF
THE SOCIETY FOR THE PROTECTION OF NEW HAMPSHIRE FORESTS**

The Society for the Protection of New Hampshire Forests (the "Forest Society") by and through its attorneys, BCM Environmental & Land Law, PLLC, respectfully serves the following First Data Requests on Northern Pass Transmission, LLC and Public Service Company of New Hampshire d/b/a Eversource Energy (collectively, the "Applicants") pursuant to N.H. Admin. R. Site 202.12 and the Temporary Procedural Schedule ordered April 22, 2016.

These First Data Requests are made without prejudice to the May 2, 2016 Motion of the Society for the Protection of New Hampshire Forests to Clarify Order the Temporary Procedural Schedule of April 22, 2016. The Forest Society specifically reserves the right to propound data requests subsequent to these First Data Requests if the SEC permits it to do so.

DEFINITIONS

As used in this First Data Request and in responses to this First Data Request, the following terms shall be defined as follows.

"Applicants" means Northern Pass Transmission, LLC and Public Service Company of New Hampshire d/b/a Eversource Energy and shall be liberally construed and shall include, but not be limited to, their subsidiaries, affiliates, attorneys or agents or any other person, who is or was acting or purporting to act on their behalf.

"Application" means the Joint Application for a Certificate of Site and Facility submitted by the Applicants on October 19, 2015 to the SEC and all supplemental Documents, Information, and/or Communications submitted by the Applicants after October 19, 2015.

"Chalmers Report" means the "Appendix 46: High Voltage Transmission Lines and Real Estate Markets in New Hampshire: A Research Report, prepared by Chalmers & Associates, LLC" and the "Pre-filed Direct Testimony of James Chalmers, Ph.D."

"Committee" or **"SEC"** means the New Hampshire Site Evaluation Committee and shall be liberally construed and shall include, but not be limited to, its attorneys or

agents or any other person, who is or was acting or purporting to act on its behalf, including the subcommittee appointed to act on the Application.

"Communication" means the act or fact of communicating, or transmitting Information, including telephone conversations, letters, emails, memoranda, or other writings, meetings, or any occasion of joint or mutual presence as well as transfer of any Document and Information from one person to another, or any other electronic communication of any type or form.

"Dimensions" means all spatial and surficial characteristics and without limitation includes height, width, depth, 3-D models, diameter, color, and surface materials, and shall be construed liberally such that where Dimensions vary, all specific Dimensions shall be provided rather than providing only an average or range.

"Document" is used in its broadest sense and means all original writings of any nature whatsoever and all non-identical copies and drafts thereof, in Your Possession, custody or control, regardless of where located, and without limitation the following items, whether printed or recorded or filmed or reproduced by any other mechanical or electrical process, or written or Produced by hand, including all originals, masters and copies, namely; agreements, contracts, memoranda of understanding, correspondence or Communications, including intra-company correspondence and Communications, e-mail, cablegrams, telefax and telegrams, reports, notes and memoranda, summaries and recordings of conversations, meetings and conferences, summaries, minutes and records of telephone conversations, meetings and conferences, summaries and recordings of conversations, manuals, publications, calendars, diaries, technical and engineering reports, data sheets and notebooks, photographs, audio and video tapes and discs, models and mockups, expert and consultant reports, drafts of originals with marginal comments or other markings that differentiate such copies from the original, and any other Information containing paper, writing or physical thing.

"During the Project" or the **"Period of the Project"** means during all phases of the proposed Project, including without limitation investigation, construction, operation, and decommissioning.

"Eversource" means Eversource Energy, a state regulated public utility, and shall be liberally construed and shall include, but not be limited to, its subsidiaries, affiliates, attorneys or agents or any other person, who is or was acting or purporting to act on its behalf.

"Forward NH Fund" means the Applicants' commitment to provide \$200 million of funds for use in New Hampshire as described in the Application.

"Forward NH Plan" means the overall initiative of the Applicants as described in the Application.

"Identify" or "Identity" when used in connection with: (1) a natural person means to state the person's name, employer and business address; (2) a corporation or other entity means to state the name of the entity, "d/b/a" designation if any, address of its principal place of business, and address of its principal place of business in New Hampshire; (3) a Document means to state a description, including name of author or source, date and addressee(s); (4) a Communication means to state a description, including participants, date and content of the Communication; and (5) a place means to state a description of a precise geographic location or address.

"Information" shall be expansively construed and means without limitation facts, data, opinions, images, impressions, concepts and formulae.

"Landowner" means owners of publicly and privately owned land, and all types of real estate interests (fee, easements, ROWs, etc.).

"LEI" or "LEI Report" means the "Appendix 43: Cost Benefit and Local Economic Impact Analysis of the Proposed Northern Pass Transmission Project, prepared by Julia Frayer, Eva Wang, Ryan Hakim, and Adnan Cheema" and the "Pre-filed Direct Testimony of Julia Frayer."

"NPT" means Northern Pass Transmission, LLC and shall be liberally construed and shall include, but not be limited to, its affiliates, attorneys or agents or any other person, who is or was acting or purporting to act on its behalf.

"Possession" means actual possession by You, actual possession by You with another, or constructive possession by You in that You are legally entitled or able to obtain actual possession.

"Produce" means to provide Documents, Information, and Communications subject to Your Possession, custody or control, unaltered and in their entirety (further instructions, infra). In the event that You are able to provide only part of the Document, Information, and/or Communication called for in any particular request, provide all relevant Documentation that You are able to provide and state the reason, if any, for the inability to provide the remainder.

"Project Structures" shall be expansively construed and means all objects that comprise the infrastructure of the proposed Project, including without limitation: conductors, poles; towers; wires; Transition Station, pull stations, converter stations, substations, and related equipment and appurtenances.

"Proposed Route" means the overhead and underground transmission corridors for the Transmission Line as shown on the Overhead USGS Map and Project Segment Maps contained in the Application.

"State the Basis" for an allegation, conclusion, position or answer means: (a) to Identify and specify the sources therefor, and (b) to Identify and specify all facts You

have considered, and on which You rely or intend to rely, in support of the allegation, contention, conclusion, position or answer, and (c) to set forth and explain the nature and Application to the relevant facts of all pertinent legal theories upon which You rely for Your knowledge, Information and/or belief that there are good grounds to support such allegation, contention, conclusion, position or answer.

"Transmission Line" or the **"Project"** means the construction of the 192- mile transmission line and related facilities that extend through New Hampshire from the Canadian border in Pittsburg, New Hampshire to Deerfield, New Hampshire as described in the Application.

"Transition Station" shall be expansively construed and means all aspects of the system through which the Transmission Line changes from underground to overhead or vice versa and includes without limitation equipment, fencing, access roads, and associated appurtenances, etc.

"Viewshed" means a predictive model of the area from which certain objects (e.g., transmission towers) may be visible, based on computer modeling techniques. In this context, a viewshed predicts the visibility of transmission infrastructure.

"You" and **"Your"** means the Applicants and the Applicants'.

"and" and **"or"** shall be construed either conjunctively or disjunctively so as to bring within the scope of the request any Documents, Information, and Communications that might otherwise be considered outside the scope.

Singular/Plural: Wherever appropriate, the singular form of a word shall be interpreted in the plural and vice versa so as to bring within the scope of the request any Documents, Information, and Communication that might otherwise be considered outside its scope.

Variations on Root Word: Wherever appropriate, root words shall be interpreted to include variable suffixes and prefixes of the root word so as to bring within the scope of the request any Documents, Information, and Communications that might otherwise be considered outside its scope. For example, the word "Communications" shall be interpreted to include the word "Communicate" if such an interpretation would bring within the scope of the request any Document, Information, and Communications that might be considered outside its scope if the word "Communications" was not interpreted to include the word "Communicate."

INSTRUCTIONS

1. Please answer these data requests under oath and return to BCM Environmental & Land Law, PLLC, as ordered by the SEC.