

**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**

June 23, 2016

**ORDER ON PENDING MOTIONS
AND
PROCEDURAL ORDER**

I. Background

On October 19, 2015, Northern Pass Transmission LLC and Public Service Company of New Hampshire d/b/a Eversource Energy (collectively Applicant) submitted an Application to the New Hampshire Site Evaluation Committee (Committee) for a Certificate of Site and Facility (Application) to construct a 192-mile transmission line. The transmission line, sometimes referred to herein as the Project, is proposed to have a capacity rating of up to 1,090 MW, and to run through New Hampshire from the Canadian border in Pittsburg to Deerfield.

On November 2, 2015, pursuant to RSA 162-H:4-a, the Chairman of the Committee appointed a Subcommittee (Subcommittee) to consider the Application.

On April 22, 2016, a temporary procedural schedule was issued in this docket. Following the issuance of the temporary procedural schedule, the Subcommittee received the following motions:

- Counsel for the Public's Partially Assented-To Motion to Partially Reconsider The April 22, 2016 Temporary Procedural Order;
- Motion filed by the Society for the Protection of New Hampshire Forests (Forest Society) to Clarify Order & Temporary Procedural Schedule of April 22, 2016;

- Ammonoosuc Conservation Trust, Appalachian Mountain Club, Conservation Law Foundation, and Sierra Club's Notice of Joinder in the Motion to Clarify Order and Temporary Procedural Schedule filed by the Forest Society;
- City of Concord, several Towns, and the Ashland Water and Sewer Department Notice of Joinder in the Motion to Clarify Order and Temporary Procedural Schedule filed by the Forest Society;
- Motion filed by New England Power Generator's Association's (NEPGA) Motion to Extend Time in Which to Propound Data Requests;
- Motion filed by Conservation Law Foundation, Appalachian Mountain Club, Sierra Club Chapter of New Hampshire and Ammonoosuc Conservation Trust to Exceed the Default Data Request Allotment Under Site 202.12;
- Motion filed by Kevin Spencer and Mark Lagasse d/b/a Lagaspence Realty to Fix Deadline to File Dispositive Motions Regarding Applicant's Claimed Right to Construct the Northern Pass on Easements; and
- The Deerfield Abutters Group of Intervenors' Motion to File Additional Data Request.

On March 21, May 11, and May 12, 2016, the Applicant filed objections to the motions to the pending motions.

On March 22, 2016, the parties participated in a prehearing conference. Following the prehearing conference, Counsel for the Public and the Forest Society each filed motions to suspend the statutory timeframes and deadlines. The Applicant objected to Counsel for the Public and the Forest Society's requests and urged the Subcommittee not to suspend the statutory deadlines. The Applicant further requested that the Subcommittee adopt the procedural schedule filed by the Applicant.

On May 19, 2016, the Subcommittee conducted a public hearing. During the public hearing, the Subcommittee granted in part and denied in part the motions to suspend the 365-day time frame set forth in RSA 162-H:7, IV-d. On June 15, 2016, the Subcommittee issued an Order granting in part and denying in part the motions to suspend that the timeframe, finding that the

final decision denying or granting the Applicant's request for site and facility should be issued by September 30, 2016. In the Order, the Subcommittee noted that RSA 162-H:4, V, provides the presiding officer with the authority to determine procedural schedules, discovery schedules, and other procedural matters.

This Order addresses the following issues raised by the parties: (i) requests to clarify the temporary procedural schedule; (ii) motions for additional data requests; (iii) a request to set a deadline for dispositive motions; and (iv) a procedural schedule.

II. Analysis and Findings

A. Counsel for the Public's Motion to Reconsider Temporary Procedural Order

Counsel for the Public requests that the Chair reconsider and amend the temporary procedural order. Counsel for the Public requests that the Chair allow Counsel for the Public to propound a second set of data requests that would address issues analyzed by Counsel for the Public's witnesses, 30 days after the Order approving the retention of said witnesses. Counsel for the Public argues that he can address some issues raised in this docket and prepare thorough and meaningful data requests addressing said issues only after his experts have the opportunity to conduct their analyses. Counsel for the Public asserts that he should be given an opportunity to submit additional data requests addressing issues analyzed by his experts 30 days after the Order authorizing retention of said experts.

The Applicant does not object to Counsel for the Public's request to propound additional data requests. The Applicant asserts, however, that the additional data requests should be propounded by June 13, 2016.

Evaluation of the Project requires analysis of a variety of complex issues that can be evaluated and addressed only with assistance of professional experts and consultants. Counsel

for the Public's request to propound a second round of data requests addressing the issues evaluated by his experts is reasonable. It is granted. Counsel for the Public's request to allow him to propound expert data requests within 30 days of Order authorizing retention of experts is reasonable. It is granted. Counsel for the Public shall propound data requests addressing the issues analyzed by his experts on or before June 28, 2016. The Applicant shall respond to Counsel for the Public's data requests on or before August 5, 2016.

A. The Forest Society's Motion to Clarify Temporary Procedural Schedule¹

The Forest Society asserts that it will not be able to prepare its data requests by May 20, 2016, and requests the Subcommittee to allow it to propound a second round of data requests upon the Applicant. The Forest Society argues that the Subcommittee ordered the Applicant to file supplemental documentation on May 19, 2016. The supplemental information was not provided by the Applicant prior to the deadline for data requests and, consequently, the Forest Society will be deprived of the opportunity to address this information in its data requests if the Subcommittee does not allow it to propound additional data requests. The Forest Society argues that it could not propound data requests that would address all issues associated with the claimed economic benefits of the Project and its impact on the natural environment and historic sites because it did not have access to confidential documents that addresses these issues. Finally, the Forest Society argues that it should be allowed to propound a second set of data requests addressing issues that will be reviewed by its experts. The Forest Society asserts that this set of data requests should be propounded after Counsel for the Public's second set of data requests.

¹ The following intervenors joined the Forest Society's request: (i) Town of Bridgewater; (ii) Town of Bristol; (iii) Town of Franconia; (iv) Town of Littleton; (v) Town of New Hampton; (vi) Town of Northumberland; (vii) Town of Sugar Hill; (viii) Town of Whitefield; (ix) Town of Woodstock; (x) City of Concord; (xi) Ashland Water & Sewer Department; (xii) Ammonoosuc Conservation Trust; (xiii) Appalachian Mountain Club; (xiv) Conservation Law Foundation; (xv) New Hampshire Sierra Club; and (xvi) Grafton County Commissioners. It is noted, however, that none of these parties requested second round of data requests for themselves.

The Forest Society requests that the Subcommittee allow it to propound a second set of data requests upon the Applicant within one month after the latest of the following: (i) the Subcommittee grants in full the Applicant's waiver request, or the Joint Applicant provides the information required as a result of the Subcommittee or Chair denying or only partially granting the request; (ii) the Subcommittee or Chair grants in full the Applicant's request for Protective Order and Confidential Treatment, or the Applicant provides the information required as a result of the Subcommittee or Chair denying or only partially granting the request; and (iii) the Subcommittee or Chair denies a request from the Counsel for the Public for additional time to propound another set of data requests until a period of time after Counsel for the Public has received an order approving retention of consultants, or the deadline for Counsel for the Public to propound another set of data requests has passed.

The Applicant objects to the Forest Society's request to allow a second set of data requests. The Applicant asserts that the Forest Society did not need the Subcommittee's approval to retain experts and, therefore, should have retained experts and formulated data requests before May 20, 2016. The Applicant acknowledges that the documentation that it seeks to protect from disclosure may be information that the Forest Society would seek by data request. The Applicant argues, however, that any data requests addressing the confidential information can be addressed by the Forest Society in a second round of data requests on or before June 13, 2016. Finally, as to the information subject to the Applicant's Motion to Waive, the Applicant asserts that any questions and issues associated with documentation subject to the Motion to Waive may be addressed during the technical sessions.

The Forest Society admitted, during the public hearing, that it has already retained its experts and that the experts were conducting their analysis months before the Applicant filed its

Application with the Subcommittee. The Forest Society's experts have already had ample opportunity to assist the Forest Society with data requests addressing the subject matter of their inquiry. In its decision on the Applicant's Motion to Waive, the Subcommittee requested only limited additional documentation – a decommissioning plan, property and assessor cards for properties abutting transmission line and documentation identifying structures, buildings and residences for the properties that abut transition stations, converter terminal, and substations. Such documentation may be addressed by the Forest Society during the technical sessions. Due to the Applicant's request for a protective order, the Forest Society, however, was deprived of the opportunity to review documentation that addresses issues that are at the center of the Subcommittee's inquiry – the effect of the Project on economy of the region and state, natural environment and historic sites. The Forest Society has the right to review the confidential documents through discovery and with appropriate safeguards. The Forest Society's request is granted in part and denied in part. The Forest Society may propound a second set of data requests addressing issues raised in confidential documents on or before July 8, 2016. The Applicant shall respond to said data requests on or before August 12, 2016.

B. NEPGA

NEPGA argues that it will not be able to develop and propound data requests by May 20, 2016. NEPGA moves the Subcommittee to allow it to propound its data requests at a later point in the proceedings. NEPGA argues that it was deprived of an opportunity to prepare data requests because: (i) it could not review supplemental documentation that the Subcommittee ordered the Applicant to provide as a result of a hearing on the Applicant's Motion to Waive; (ii) it did not have access to the confidential documentation; and (iii) the Applicant refused to disclose its Power Purchase Agreement. NEPGA further asserts that it will not be able to develop

its data requests until the results of the Clean Energy Request for Proposals (RFP) are announced and contracts filed. NEPGA requests that the Subcommittee extend the deadline for its data requests until the latest of the following events: (i) the Subcommittee or Chair grants in full the Applicant's waiver request, or the Applicant provides the information required as a result of the Subcommittee or Chair denying or only partially granting the request; (ii) the Subcommittee or Chair grants in full the Applicant's request for Protective Order and Confidential Treatment, or the Applicant provides the information required as a result of the Subcommittee or Chair denying or only partially granting the request; (iii) the Applicant releases the terms of its Power Purchase Agreement; and (iv) the results of the RFP are released and contracts are filed with the appropriate regulatory body for approval.

The Applicant argues that NEPGA should not be allowed to request relief in this docket because the Applicant will be appealing the order allowing NEPGA to intervene. The Applicant further asserts that it will be filing motions for protective treatment requesting the Subcommittee to preclude NEPGA from access to confidential documents.

The Subcommittee allowed NEPGA to intervene in this docket on a limited basis: (i) to address the public interest so far as it relates to economic impact on the competitive energy market; and (ii) to present information related to the Power Purchase Agreement, so far as it relates to the effect on the electric generation market. Supplemental documents that the Subcommittee ordered the Applicant to submit, *i.e.* decommissioning plan and property and assessor cards do not pertain to the issues NEPGA was authorized to address in this docket. Disclosure of such documentation does not affect NEPGA's ability to develop data requests on the issues on which it was granted intervenor status.

The Clean Energy RFP process does not warrant extension of the deadline for NEPGA's data requests. As of the date of this Order, the RFP process continues. It is conceivable that at some point, issues pertaining to the Clean Energy RFP process may become relevant. This issue is not yet ripe for the Subcommittee's review. NEPGA's request to allow data requests addressing the RFP upon its conclusion is denied, without prejudice.

NEPGA was deprived of the opportunity to review certain information contained in economic benefit analyses due to the Applicant's request to keep such information confidential. The economic benefits analysis is directly related to the interests raised by NEPGA in this docket. NEPGA's request is granted in part and denied in part. NEPGA shall propound a second set of data requests addressing issues raised in economic benefits report and associated pre-filed testimony on or before July 8, 2016. The Applicant shall respond to said data requests on or before August 12, 2016.

C. Motions for Additional Data Requests

Under the New Hampshire Code of Administrative Rule, Site 202.12(d), a person or group of persons may serve up to 50 data requests to a party. The presiding officer may increase the number of data requests "upon request of the person and a finding that the proposed number of data requests is necessary to address the complexity of relevant issues and would not adversely affect the conduct of the proceeding." *Id.*

Two motions to exceed data request limits have been filed: (i) Motion of Conservation Law Foundation, Appalachian Mountain Club, Sierra Club Chapter of New Hampshire and Ammonoosuc Conservation Trust to Exceed the Default Data Request; and (ii) the Deerfield Abutters Group of Intervenors' Motion to File Additional Data Request.

The Conservation Law Foundation, Appalachian Mountain Club, Sierra Club Chapter of New Hampshire and Ammonoosuc Conservation Trust (collectively NGOs) request that the Subcommittee allow them to serve 100 data requests upon the Applicant. The NGOs argue that their intervenor group consists of the intervenors with a variety of interests and rights that will be affected by the Project. The NGOs claim that: (i) the Conservation Law Foundation is concerned about the implications of the Project for the goal of a regional clean energy future; (ii) the Appalachian Mountain Club is concerned about the aesthetic impacts of the above-ground transmission lines on outdoor activities; (iii) the Sierra Club is concerned about community health impacts resulting from the generation of power in Canada; and (iv) the Ammonoosuc Conservation Trust is concerned about the aesthetic and land use impacts on a specific area of New Hampshire. The NGOs request that the Subcommittee allow them to propound 100 data requests upon the Applicant in order to address all these concerns.

The Deerfield Abutters Group requests that the Subcommittee allow them to propound an additional 42 data requests upon the Applicant. The Deerfield Abutters argue that their group consists of intervenors with variety of interests and concerns and, in order to fully address and explore said concerns, it should be allowed to propound an additional 42 requests upon the Applicant. Committee staff is aware of negotiations that have occurred between the Applicant and the Deerfield Abutters. It appears that the Applicant and the Deerfield Abutters have reached an agreement. Therefore, the motion to exceed the number of data requests filed by the Deerfield Abutters is denied without prejudice, to be refiled if the need arises. The Applicant and the Deerfield Abutters are commended on their efforts to resolve discovery issues in a cooperative fashion. All of the parties are encouraged to resolve discovery issues cooperatively.

The Applicant objects to the request made by the NGOs. The Applicant asserts that, apart from making general statement about impacted interests, the intervenors failed to identify specific facts that would demonstrate that these interests cannot be addressed in 50 data requests. In the spirit of cooperation, however, the Applicant agreed to accept additional 30 data requests from the NGOs. The NGO motion to exceed is granted to the extent that the NGOs may submit an additional 30 data requests.

D. Deadline for Dispositive Motions

Intervenors Mark Lagasse and Kevin Spencer d/b/a Lagaspence Realty, LLC filed a Motion advising the Subcommittee that they intend to file Motion to Dismiss disputing the Applicant's right to construct the Project within identified site and requesting the Subcommittee to include deadline for said Motion in the procedural schedule.

The parties have the right to file dispositive motions at any time during the proceedings. It is unnecessary to set a deadline for said motions. Mark Lagasse's and Kevin Spencer's Request to Fix Deadline to File Dispositive Motions Regarding Applicants' Claimed Right to Construct the Northern Pass on Easements is denied.

E. Applicant's Motion to Adopt Procedural Schedule

The Applicant filed a Motion to Adopt Procedural Schedule requesting that the Subcommittee adopt a procedural schedule that would result in the Subcommittee issuing its final decision on or before June 30, 2017. The Applicant argues that it is "feasible" for the Subcommittee to make its final decision on the Application by June 30, 2017.

On June 9, 2016, the Subcommittee received Counsel for the Public's Response to the Applicant's Motion to Adopt Procedural Schedule. Counsel for the Public argues that the Applicant, in effect, seeks reconsideration of the Subcommittee's decision to extend the time

frame and that the Presiding Officer is not authorized to issue orders on motions to reconsider the Subcommittee's decisions. Counsel for the Public also argues that the Applicant's motion can be treated as a motion for rehearing. Counsel for the Public concludes that the motion should be denied because the Applicant failed to raise any facts that would warrant a rehearing. Finally, Counsel for the Public argues that the schedule proposed by the Applicant is unworkable and is not in the public interest.

On June 8, 2016, the Subcommittee received an Objection to Applicant's Motion to Adopt Procedural schedule from Municipal Group 1 South,² Municipal Group 2,³ Municipal Group 3 North,⁴ Municipal Group 3 South,⁵ Society for the Protection of New Hampshire Forests, the Appalachian Mountain Club, the Conservation Law Foundation, the Sierra Club Chapter of New Hampshire and Ammonoosuc Conservation Trust (collectively "Intervenors"). The Intervenors argue that the Applicant's motion is procedurally defective. The Intervenors argue that the Applicant should have filed a motion for rehearing of the Subcommittee's decision to suspend the schedule. The Intervenors also argue that the Presiding Officer is not authorized to issue the procedural order requested by the Applicant. The Intervenors assert that the Subcommittee has already decided to suspend the procedural schedule and established the deadline for the final decision on September 30, 2016. They argue that the "Presiding Officer should not be permitted simply to substitute his judgment for that of the SEC." In the alternative, the Intervenors argue that the Applicant's motions, if treated as a motion for rehearing, should be denied because the Applicant failed to state "good reason" or "good cause" for rehearing.

² Towns of Northumberland, Whitefield, and Bethlehem.

³ Towns of Sugar Hill, Franconia, Easton, and Plymouth

⁴ Ashland Water and Sewer Division and towns of Bridgewater and New Hampton.

⁵ City of Concord and towns of Canterbury, Pembroke and Deerfield.

The Subcommittee also received a “RSA 162-H:4, V Motion,” that was filed by the International Brotherhood of Electrical Workers (IBEW). The IBEW argues that delaying adjudication of this matter is unreasonable and will have an adverse impact on the IBEW and its members. The IBEW requests that the Presiding Officer adopt the procedural schedule proposed by the Applicant in its May 31, 2016, Motion.

The Subcommittee authorized the Presiding Officer in this docket to issue a procedural schedule that would be consistent with the Subcommittee’s decision to suspend the statutory 365-day deadline until September 30, 2017. The Applicant’s Motion to Adopt Procedural Schedule is not a request to change the order suspending the timeframe. The motion seeks a procedural schedule within that timeframe. A procedural schedule for the balance of this proceeding is set forth below. The Applicant’s motion is granted in part and denied in part.

III. Discovery Schedule

The following discovery schedule shall apply.⁶

1. On or before May 13, 2016, Counsel for the Public shall file all motions pertaining to the employment of experts and/or consultants under RSA 162-H:10, V;
2. Counsel for the Public shall propound data requests upon the Applicants on or before May 13, 2016;
3. The Applicant shall respond to data requests propounded by Counsel for the Public on or before June 13, 2016;
4. Municipal Groups of Intervenors, City of Franklin and City of Berlin, Grafton County Commissioners, Non-Governmental Organizations Intervenors, Business and Organizations with Economic Interests Intervenors, Pemigewasset River Local Advisory Committee, and NEPGA shall propound data requests upon the Applicants on or before May 31, 2016;
5. The Applicant shall respond to data requests propounded by Municipal Groups of

⁶ Some of the deadlines below have already passed, but are included to provide a complete picture of the schedule from May of 2016.

- Intervenors, City of Franklin and City of Berlin, Grafton County Commissioners, Non-Governmental Organizations Intervenors, Business and Organizations with Economic Interests Intervenors, Pemigewasset River Local Advisory Committee, and NEPGA on or before July 8, 2016;
6. All other Intervenor Groups and individual Intervenors shall propound data requests upon the Applicants on or before June 7, 2016;
 7. The Applicant shall respond to data requests propounded by all other Intervenor Groups and individual Intervenors on or before July 15, 2016;
 8. Counsel for the Public shall propound data requests addressing the issues analyzed by experts upon the Applicant on or before June 28, 2016;
 9. The Applicant shall respond to Counsel for the Public's data requests addressing the issues analyzed by experts on or before August 5, 2016;
 10. The Forest Society shall propound data requests addressing issues raised in confidential documents upon the Applicant on or before July 8, 2016;
 11. The Applicant shall respond to the Forest Society's data requests addressing issues raised in confidential documents on or before August 12, 2016;
 12. NEPGA shall propound a second set of data requests addressing issues raised in economic benefits report and associated pre-filed testimony upon the Applicant on or before July 8, 2016;
 13. The Applicant shall respond to NEPGA's data requests addressing issues raised in the economic benefits report and associated pre-filed testimony on or before August 12, 2016;
 14. The Applicant shall file: (i) a decommissioning plan; (ii) tax and assessor cards for the properties abutting transmission line and extending beyond 100 feet; and (iii) documentation identifying buildings, structures and residences on properties abutting converter terminal, transitions stations, and converter terminal that extend beyond 100 feet, on or before July 22, 2016;
 15. Counsel for the Public and Intervenors shall propound data requests addressing: (i) a decommissioning plan; (ii) tax and assessor cards for the properties abutting transmission line and extending beyond 100 feet; and (iii) documentation identifying buildings, structures and residences on properties abutting converter terminal, transitions stations, and converter terminal that extend beyond 100 feet on or before August 5, 2016;

16. The Applicant shall respond to Counsel for the Public's and Intervenors' data requests addressing: (i) a decommissioning plan; (ii) tax and assessor cards for the properties abutting transmission line and extending beyond 100 feet; and (iii) documentation identifying buildings, structures and residences on properties abutting converter terminal, transitions stations, and converter terminal that extend beyond 100 feet on or before August 19, 2016;
17. Technical Sessions with the Applicant's witnesses shall be conducted between September 5, 2016 and September 30, 2016;
18. Counsel for the Public's and Intervenors' pre-filed testimony shall be filed on or before November 15, 2016;
19. The Applicant shall propound data requests upon Counsel for the Public and Intervenors on or before November 30, 2016;
20. Counsel for the Public and Intervenors shall respond to the Applicant's data requests on or before December 30, 2016;
21. Technical Sessions with Counsel for the Public's and Intervenors' witnesses shall be conducted between January 16, 2017 and February 15, 2017;
22. Supplemental pre-filed testimony from all parties shall be filed by March 15, 2017;
23. Pre-Hearing Motions and Statements of Stipulated Facts shall be filed on or before March 20, 2017; and
24. Final Pre-Hearing Conference shall be conducted on or before March 28 and March 29, 2017.

IV. Housekeeping Issues

In order to maintain the prompt and orderly conduct of the proceedings, the following rules shall apply. To the extent that this procedural order differs from the Committee's administrative rules, this Order shall apply. *See* N.H. Code of Admin. Rules Site 202.02(d), Site 202.12(a), and Site 202.12(i):

- A. All motions filed in this docket shall be filed electronically in .pdf format;
- B. Motions shall not be contained in the body of an e-mail, but an e-mail may be used as a transmittal letter;

- C. Data requests and data responses shall be distributed through a “sharefile” system in accordance with the letter from Thomas Getz, Esq., dated May 18, 2016, attached hereto;
- D. Parties filing motions shall make a good faith effort to determine whether other parties assent to, or oppose, the relief sought. The result of such efforts shall be reported in the body of the motion;
- E. The distribution lists provided by the Committee shall be used solely for the purpose of disseminating motions, objections and other pleadings. The distribution lists shall not be used to make public comments or for the purpose of communicating with the parties. If the lists are used for any other purpose, all e-mail addresses for the Subcommittee members and staff will be removed from the list;
- F. Public comments shall be forwarded to the Committee’s Administrator, Pamela Monroe. The Administrator shall arrange for posting of public comments to the website and for dissemination to Subcommittee members; and
- G. Failure to comply with this procedural order and/or the Committee’s rules may result in rejection of a filing and/or the denial of requested relief.

SO ORDERED this twenty-third day of June, 2016 by the Site Evaluation Subcommittee:



Martin P. Honigberg, Presiding Officer
Site Evaluation Committee