

**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**

**September 22, 2016**

**ORDER ON MOTIONS TO COMPEL**

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## **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 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.

In accordance with various procedural orders, discovery through data requests has been taking place. Unsatisfied with certain of the Applicant's responses, the following parties have filed Motions to Compel:

- Counsel for the Public<sup>1</sup>
- Grafton County Commissioners
- Clarksville-Stewartstown Non-Abutters
- Society for the Protection of New Hampshire Forests
- Municipal Group 1 (South)
- Municipal Group 2
- Municipal Group 3 (North)
- Municipal Group 3 (South)
- Ammonoosuc Conservation Trust, Appalachian Mountain Club, and Conservation Law Foundation (NGO Intervenors)
- Deerfield Abutters
- Abutters of Pittsburg, Clarksville, Stewartstown
- Pemigewasset River Local Advisory Committee (PRLAC)
- Non-Abutting Property Owners: Stark, Northumberland, Lancaster, Whitefield, Dalton, Bethlehem

The Applicant filed a Response and Objection to Certain Motions to Compel and an Objection to Counsel for the Public and Grafton County Commissioners Motions to

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<sup>1</sup> Counsel for the Public and the Grafton County Commissioners have also requested amendments to the Procedural Schedule. Those requests will be addressed in a separate Order.

Compel/Amend Procedural Schedule on August 25, and an Objection to the NGO Intervenors  
Second Motion to Compel on August 29, 2016.

## **II. Standard**

Motions to compel responses to data requests shall:

- (1) Be made pursuant to N.H. Code of Admin. Rules Site 202.14;
- (2) Be made within 10 days of receiving the applicable response or objection, or the deadline for providing the response, whichever is sooner;
- (3) Specify the basis of the motion; and
- (4) Certify that the movant has made a good-faith effort to resolve the dispute informally.

N.H. CODE ADMIN. RULES, Site 202.12(k).

RSA 162-H:10, IV provides:

The site evaluation committee shall require from the applicant whatever information it deems necessary to assist in the conduct of the hearings, and any investigation or studies it may undertake, and in the determination of the terms and conditions of any certificate under consideration.

N.H. RSA 162-H:10, IV.

## **III. Analysis**

This Order first addresses issues that are common to many of the motions to compel.

Specific issues raised by individual parties follow.

### **A. Common Issues**

Five issues are commonly raised within the motions to compel. The five common issues are:

1. The Applicant did not identify the individuals responsible for answering each of the data requests.
2. The Applicant did not provide responsive “internal documents” in its answers to data requests.

3. The Applicant provided data in a format that cannot be understood by the intervenors and which requires the purchase of expensive software.
4. The Applicant objects to data requests that require the Applicant to develop additional information, reports or other documents that are not currently within its care, custody or control.
5. The Applicant did not provide a privilege log.

**1. Identification of persons responsible for answering each data request**

Several intervenors complain that despite being requested to do so, the Applicant did not identify the individuals responsible for answering each data request. In its objection, the Applicant responds that the requesting parties do not have the authority to create “binding instructions” for the way in which data requests shall be answered. The Applicant also argues that responses to data requests derive from the Applicant and not any specific individual. The Applicant also claims that past committee practice does not require a responding party to identify the individuals who supplied information in response to a data request. The Applicant reports that this issue has been informally resolved with some of the parties.

For the most part, each of the parties submitting data requests asked the respondent, as part of their data requests, to identify the individuals who were responsible for or contributed to the response for each data request. There is no doubt, that in some cases, the identity of the person contributing to the answer will be obvious; but a request to identify individuals who provide information in response to a data request is neither unusual nor prohibited by Site Evaluation Committee practice. That this issue has never been litigated before the Committee is probably because it is a common component of interrogatory practice. While it is laudable that the Applicant has resolved the issue with some of the parties, it should not have arisen in the first place. The Applicant should have provided the identity of each person contributing to a response

to the data requests in its original answers. The requests to identify each personal who contributed to the answer to each data request are granted. The Applicant shall, forthwith, supplement its data responses and identify each individual who contributed to a response.

## **2. Internal documents and emails**

As part of their data requests, some of the parties have used broad definitions that would require the Applicant to provide “internal communications” such as internal memoranda and electronic correspondence. The Applicant generally objected to those requests. The Applicant explained its objection to requests for “internal communications” at a discovery conference with the municipal and non-governmental organizations on July 26, 2016,<sup>2</sup> and in its formal objection to the various motions to compel. The Applicant claims that it has provided all relevant and material information that is responsive to the various data requests. The Applicant also complains that this is an administrative proceeding in which due process is a “flexible concept.” The Applicant asserts that it has already provided 80,000 pages of information in response to data requests along with the 27,400 pages contained within the Application. The Applicant asserts that providing additional discovery in the nature of internal communications is overly broad and burdensome. The Applicant also claims that the internal communications are irrelevant and immaterial to the determinations which must be made by the site evaluation committee.

Many, but not all, of the requests made by the intervenors are overbroad in their definitions. For instance, the Society for Protection of New Hampshire Forests’ (SPNHF) definition of “Document” is:

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<sup>2</sup> Counsel for the Applicant followed up on the unrecorded discovery conference with an email repeating the objections raised at the conference.



Document is used in its broadest sense it 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 intracompany correspondence and Communications, email, cable grams, telefax in telegrams, reports, notes and memoranda, summaries and recordings of conversations, meetings and conferences, summaries and recordings of conversations, manuals, publications, calendars, diaries, technical and engineering reports, data sheets and notebooks, photographs, audio and videotapes in this, 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.

First Data Requests of the Society for the Protection of New Hampshire Forests at 2.<sup>3</sup> The SPNHF definition of the term “Document” is overbroad in that it contains instructions regarding locations, possession, and specific subject matter that go far beyond the definition of what constitutes a document or other means of preserving information in any normal sense.

On the other hand, the Applicant’s response, to the extent that it excludes internal communications is too narrow. Internal communications, including drafts, that are within the scope of discovery, responsive to the requests, and not subject to a work product or attorney-client privilege are discoverable. The fact that the Applicant has already produced a substantial amount of information does not make discoverable communications less discoverable.

Therefore, the Applicant shall conduct a good faith search for internal communications. To the extent a document contains attorney-client privileged material or is protected from disclosure for some other reason (e.g., it constitutes protected work product), the Applicant shall prepare a log sufficiently identifying the document and stating the reason for withholding the document (i.e., a “privilege log”).

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<sup>3</sup> The capitalization of other terms defined by the Forest Society is maintained in the quotation.

### **3. Format of data responses**

Several of the requesting parties complain that the Applicant has provided data to them in a format that is unusable without the purchase of expensive software. In addition, SPNHF complains that certain data was provided to them in a format that can be read by Excel, a standard spreadsheet program, but that the data was provided in a locked format, which cannot be manipulated by SPNHF's experts. The requesting parties claim that the Applicant has the burden to produce discovery in a form that is usable to the other parties. In making this assertion, they rely, by way of illustration, on New Hampshire Superior Court Rule 25, which pertains to the discovery of electronically stored information.

The Applicant responds to the motion by claiming that it has provided the data in the manner in which it is maintained in the usual course of business. Much of the data is in a PLS-CADD format. The Applicant claims that converting the data to another format would diminish the functionality and use of the data. The Applicant admits that proprietary software is necessary for the interpretation of the data in its native format. The Applicant has advised the parties that the proprietary software can be purchased from Powerline Systems Inc.

The parties did not provide sufficient information about this type of request to support a ruling. The requesting parties did not identify what software programs are available to them or the format that they would require the data to be converted to. Similarly, the Applicant has not indicated that the data cannot be converted, but only that its functionality would be diminished. It is possible that the diminished functionality would not be problematic for the requesting parties. Likewise, it is noted that all data, at one point or another, is in a non-computerized format before it is inputted into a computer program. Presumably, this is a dispute about

obtaining data that was used in the construction of the Application. There may be additional ways of identifying such data rather than providing it in a computerized format.

The motions to compel requesting data that is presently in an unusable form are held in abeyance. The parties to this dispute shall meet and confer to discuss the following: (1) the nature of the data; (2) the use to which the data will be put; (3) the various ways in which it may be converted into other formats regardless of functionality; (4) reports that might be generated from the data by the Applicant using the data and computer program in its possession; and (5) other matters which may resolve this dispute.

With respect to SPNHF's complaint about the Excel data, there appears to be no reason for the data to have been produced in a locked format. Accordingly, the Applicant shall provide the Excel data in an unlocked workbook.

#### **4. Requests requiring the creation of additional information**

Throughout its responses to the various data requests, the Applicant asserts that it has provided all relevant and material information that is responsive to the data requests. The Applicant goes on to object to the extent that the data request requires the Applicant to create additional information, reports, or documents that are not currently in its custody or control. The Applicant is correct in that it should not be required to create additional information, reports, or documents where it has already provided all of the relevant material information, reports and documents in its custody or control. However, the Applicant remains under a continuing duty to supplement the answers to data requests and, if additional responsive information, reports, or documents come into the care, custody or control of the Applicant, the material must be provided to the requesting parties.

## 5. Privilege Log

As described above, when the Applicant withholds a document (or something else) on the basis that it is subject to the attorney-client privilege, the work-product doctrine, critical energy infrastructure information (CEII), or any other reason, the Applicant shall produce a privilege log sufficiently identifying what has been withheld and stating the reason for nondisclosure. A privilege log should have been provided with the responses to each set of data requests. All parties in this docket shall provide a privilege log contemporaneously with answers to data requests. Having a privilege log in hand fosters a swifter resolution of discovery disputes.

### B. Counsel for the Public<sup>4</sup>

Counsel for the Public argues that the Applicant provided inadequate and incomplete responses to its Expert-Assisted Data Requests propounded on June 28, 2016. Counsel for the Public submits that the data requests included interrogatories specific to the proposed underground portions of the route. According to Counsel for the Public, the Applicant's response indicated that plans for the underground portion of the proposed transmission line are not yet developed. Counsel for the Public complains that the Applicant did not identify the exact alignment of the proposed transmission line.

Counsel for the Public's Expert-Assisted Data Requests sought, *inter alia*, the following information and documents:

- (a) The results of subsurface investigation along the underground portion of the route (Exp. 1-29);
- (b) The exact alignment of the underground portion of the route (Exp. 1-30);

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<sup>4</sup> On August 30, 2016, Municipal Groups 1 (South), 2, and 3 (North) filed a Notice of Joinder in Counsel for the Public's and the Grafton County Commissioners' Motions to Compel.

- (c) The exact location of 51 segments of the trenchless underground portions of the transmission line that will cross underneath rivers, streams, wetlands, and documents regarding these areas (Exp. 1-31 and 1-39);
- (d) The footprint and areas of disturbance for each area where trenchless underground drilling will occur (Exp. 1-37);
- (e) The areas and limits of disturbance for the installation of the buried transmission line along the proposed route (Exp. 1-51);
- (f) The identity of which side of the road the 60 miles of the underground transmission line will be placed or if the transmission line will be placed in the roadway itself (Exp. 1-52);
- (g) The designation and mapping of underground utilities that exist along the 60 miles of underground transmission line (Exp. 1-60);
- (h) The designation and mapping of underground utilities that the Applicant must relocate along the 60 miles of underground transmission line (Exp. 1-61);
- (i) The proposed staging areas to locate drilling equipment for the 51 areas of trenchless construction of the underground transmission line (Exp. 1-62);
- (j) The proposed elevations of the 51 trenchless crossings for the construction of underground transmission line (Exp. 1-63); and
- (k) The size and location of the expected areas where blasting may occur along the 60 miles of underground transmission line (Exp. 1-74).

Counsel for the Public notes that in response to the aforementioned data requests, the Applicant stated that it is currently conducting geotechnical investigations and utility and ground surveys along the underground route which will refine the Project's design and determine the transmission line's exact alignment in relation to roads, sidewalks and buildings. The surveys will also determine the locations of existing underground utilities. The Applicant noted that it expects the data requested by Counsel for the Public regarding the underground route located in Grafton County to be available by late summer or fall 2016, and the data for the underground route located in Coos County will follow.

Counsel for the Public argues that absent this information, Counsel for the Public, the intervenors, and the public at large cannot analyze and assess the proposed transmission line's impact, both permanent and construction-related, on: (a) homes, commercial buildings, and other structures; (b) town and county emergency services; (c) traffic; (d) local businesses; (e) rivers, streams and wetlands; and (f) scenic and historical resources. Counsel for Public argues that the impact of the proposed transmission line cannot be determined unless and until the Applicant identifies: (1) the exact location of the underground transmission line (whether on the left side, right side or in the roadway); (2) the existence of underground utilities; (3) staging areas for the 51 trenchless segments that require underground drilling; (4) the areas of disturbance; and (5) how the underground transmission line will cross under rivers, streams and wetlands. Counsel for the Public submits that it also needs information on other aspects of the proposed transmission line such as foundation plans and information regarding rebuilding portions of the Coos Loop. Counsel for the Public therefore seeks an Order compelling the Applicant to supplement its responses to Counsel for the Public's Expert-Assisted Data Requests, specifically Exp. 1-28 through Exp. 1-74.

The information sought is relevant to the Subcommittee's proceedings and discoverable. Accordingly, the information should be produced.

In addition, Counsel for the Public requests that the Applicant be compelled to amend its Application, including appropriate prefiled testimony, setting forth all locations of all underground portions of the proposed transmission line, as required under Site 301.03(c) and (g). That request is denied.

The Subcommittee has already determined that the Application contained sufficient information to satisfy the application requirements of each state agency having jurisdiction under

state or federal law to regulate any aspect of the construction or operation of the proposed facility. That more information becomes available as more work is done does not change that historical fact. To the extent that information within the Application is supplemented through responses to state agency requests or through discovery, the Subcommittee may consider such supplementation in deciding whether to grant the requested Certificate.

In summary, Counsel for the Public's Motion to Compel is granted in part and denied in part. Counsel for the Public's request that the Applicant be compelled to supplement its responses to Counsel for the Public's Expert-Assisted Data Requests, specifically Exp. 1-28 through Exp. 1-74, is granted. The Applicant shall supplement its response to Counsel for the Public's Expert-Assisted Data Requests in accordance with the Order on Requests to Amend Procedural Order. Counsel for the Public's request that the Applicant be compelled to file an amendment to the Application is denied.

**C. Grafton County Commissioners**

**1. Timing of Supplemental Responses; General Objections**

The Grafton County Commissioners, joined by the Clarksville-Stewartstown Non-Abutters, request that the Applicant be compelled to supplement responses to data requests propounded by the Grafton County Commissioners when the applicable information is known.<sup>5</sup> Specifically, the Grafton County Commissioners request that the Applicant be compelled to provide complete and detailed responses to the data requests propounded by all intervenors that could not be fully answered at this time due to pending site testing and surveys, within 30 days

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<sup>5</sup> The Grafton County Commissioners further request that the deadlines applicable to all intervenors be extended and adjusted until a reasonable time after meaningful answers to the data requests are received. That request is addressed by way of a separate Order on Requests to Amend Procedural Order.

after obtaining information from the completed testing. This request is similar to the request made by Counsel for the Public and granted in Section III, B above.

The Grafton County Commissioners' request is reasonable and the information sought is discoverable. The Grafton County Commissioners' request that the Applicant be compelled to provide complete and detailed responses to data requests propounded by all Intervenors that could not be fully answered due to pending site testing and surveys, is granted. The responses shall be provided in accordance with the Order on Requests to Amend Procedural Order.

In addition, the Grafton County Commissioners joined other parties in moving to compel the identity of responding individuals, provision of discovery in a usable format, and the production of internal communications. Each of those issues has been addressed and resolved in Section III, A, 1, 2, and 3 above.

The Grafton County Commissioners argue that the following specific data requests require supplementation of responses: 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, and 33. The Subcommittee will address each data request in turn:

## **2. Data Request 23**

Data Request 23 requests that the Applicant provide detailed cost estimates used and developed to provide the estimate of the above ground DC line in the northern, central, and southern portions of the Project; and to provide, in accordance with FERC accounting principles, the required estimated costs for site preparations, first clearing, access ways, laydown areas, environmental mitigation, foundations, soils work, grounding, and all other costs necessary to construct the overhead lines proposed for the Project and supporting the current town-to-town cost estimates. The Applicant objected to the request on the basis of confidentiality. Grafton County has entered into a confidentiality agreement with the Applicant for the provision and



protection of confidential information, but has not yet received any documents responsive to Data Request 23. The responsive information and documentation is not subject to a protective order. The objection on the grounds of confidentiality is overruled.

The requested information and documentation is relevant to the Applicant's financial ability to construct and operate the Project. Normally, the Grafton County Commissioner's request that the Applicant be compelled to provide the responsive information and documents pertaining to detailed cost estimates would be granted. However, the Applicant represents that it has already "fully responded to this data request." The Applicant objects to this request and claims that request requires the Applicant to "develop additional information, reports, or other documents that are not currently within the applicant's care, custody or control." See Objection p. 30. Specifically, the requested detailed cost information is not available; however, that type of information will be developed during the construction phase." See Objection p. 31.

The Grafton County Commissioner's request that the Applicant be compelled to provide additional responsive information and documents to Data Request 23 is granted to the extent that the responsive documents presently exist and have not been previously produced. The Applicant shall seasonably update its answer to the data request should the information become available. See NH CODE ADMIN. RULES, Site 202.12(m).

### **3. Data Request 24**

Data Request 24 requests that the Applicant "provide a detailed description (including all calculations, tables and charts used to determine the interest on construction, the timeframe of the interest, and the escalation factors used to escalate the cost estimates) from the date of unit cost selection to the date of completion for the entire Project." The Applicant provided only a summary of the results of its calculations and assumptions regarding cost escalation.

The Applicant objects to this request and claims that the request requires the Applicant to “develop additional information, reports, or other documents that are not currently within the Applicant’s care, custody or control.” Objection p. 31. The Applicant asserts that it does not have any additional responsive documents or information. *Id.*

The data request seeks information that is relevant and reasonably calculated to lead to the discovery of admissible evidence. The Grafton County Commissioner’s request that the Applicant be compelled to provide additional responsive information and documents to Data Request 24 is granted to the extent that such documents and information currently exist and have not been previously produced. The Applicant shall seasonably update its answer to the data request should additional information become available. See NH CODE ADMIN. RULES, Site 202.12(m).

#### **4. Data Request 25**

Data Request 25 requests that the Applicant provide “the current costs and remaining completion estimates for all permitting costs, engineering, legal, scientific and overhead costs, home office allocations, and all other support costs, both direct and indirect, for the permits being sought from all agencies, both state and federal for the Project to date.” Grafton County reports that the Applicant objected on grounds of relevance and confidentiality. The Applicant did provide a statement of the total amount spent and an estimate of the remaining estimated amount to be spent, but did not provide the level of detail requested in the data request.

The objection, to the extent that it is based on confidentiality, is overruled because Grafton County has executed a confidentiality agreement with the Applicant.

The Applicant also objects to this data request on the basis that the request requires the Applicant to “develop additional information, reports, or other documents that are not currently

within the Applicant’s care, custody or control.” Objection p. 31. The Applicant reports that it has fully responded to the data request and that it does not have any additional responsive documents or information.

The data request seeks information that is relevant or reasonably calculated to lead to the discovery of admissible evidence. The Grafton County Commissioner’s request that the Applicant be compelled to provide additional responsive information and documents to Data Request 25 is granted to the extent that such documents and information exist and have not been previously produced. The Applicant shall seasonably update its answer to the data request should the requested information become available. See NH CODE ADMIN. RULES, Site 202.12(m).

**5. Data Request 26**

Data Request 26 seeks production of a detailed description of all land and land right costs incurred to date and an estimate of remaining costs to complete the Project for its land and land acquisitions.

The Applicant objects to this request and claims that the request requires the Applicant to “develop additional information, reports, or other documents that are not currently within the Applicant’s care, custody or control.” See Objection p. 32. The Applicant also objected on relevancy grounds. The documents sought through Data Request 26 are relevant and reasonably calculated to lead to the discovery of admissible evidence concerning the financial and managerial capabilities of the Applicant, and the overall impact of the project on the economy and the public interest. The Grafton County Commissioners’ request that the Applicant be compelled to provide responsive information and documents to Data Request 26 is granted to the extent that the responsive documents presently exist and have not been previously produced.

The Applicant shall seasonably update its answer to the data request should the information become available. See NH CODE ADMIN. RULES, Site 202.12(m).

**6. Data Request 27**

Data Request 27 seeks information regarding all land and land rights held by PSNH, Properties, Inc., or any other subsidiary of PSNH or Eversource that are being sold to, rented to, or given to the Project from properties previously held by the company for future use, or properties purchased recently for the entire transmission line. The Applicant objected to this request and claims that the request requires the Applicant to “develop additional information, reports, or other documents that are not currently within the Applicant’s care, custody or control.” See Objection p. 32. The Applicant also objected on relevancy grounds. The documents requested are relevant to the Applicant’s ability to construct the Project and whether the Project will unduly interfere with the orderly development of the region. The Grafton County Commissioners’ request that the Applicant be compelled to provide additional responsive information and documents to Data Request 27 is granted to the extent that the responsive documents presently exist and have not been previously produced. The Applicant shall seasonably update its answer to the data request should the information become available. See NH CODE ADMIN. RULES, Site 202.12(m).

**7. Data Request 28**

Data Request 28 requests a table of rents being proposed for the Project’s use of property owned by Eversource or PSNH and any of its subsidiaries. The Applicant objected to this request and claims that the request requires the Applicant to “develop additional information, reports, or other documents that are not currently within the Applicant’s care, custody or control.” See Objection p. 32. The Applicant also objected on relevancy grounds. The

documents requested are discoverable because they are relevant and may lead to discovery of admissible evidence pertaining to the impact of the project on the local economy, the orderly development of the region, and the public interest. The Grafton County Commissioners' request that the Applicant be compelled to provide responsive information and documents to Data Request 28 is granted to the extent that the responsive documents presently exist and have not been previously produced. The Applicant shall seasonably update its answer to the data request should the information become available. See NH CODE ADMIN. RULES, Site 202.12(m).

#### **8. Data Request 29**

Data Request 29 seeks various cost estimates and corresponding documents from the Applicant. The Applicant objected to this request and claims that the request requires the Applicant to “develop additional information, reports, or other documents that are not currently within the Applicant’s care, custody or control.” See Objection p. 33. The Applicant further noted in its response that “the requested detailed cost information is not available; however, that type of information will be developed during the construction phase.” The Applicant also objected to Data Request 29 to the extent it sought to obtain confidential, commercial and financial information or communications. Grafton County has entered into a confidentiality agreement with the Applicant, but has not yet received responsive documents pursuant to the agreement. The objection on the grounds of confidentiality is overruled because Grafton County has executed a confidentiality agreement with the Applicant.

Data Request 29 requests, in part, detailed cost estimates, specifications, material quantities, material costs, labor costs, indirect construction costs, engineering overheads, and all owner’s costs used and developed to provide the estimate of the underground DC line in the north central part of the Project. The requested documents are relevant to issues before the

Subcommittee including the local economy and the orderly development of the region. The Grafton County Commissioners' request that the Applicant be compelled to provide responsive information and documents to this portion of Data Request 29 is granted to the extent that the responsive documents presently exist and have not been previously produced. The Applicant shall seasonably update its answer to the data request should the information become available. See NH CODE ADMIN. RULES, Site 202.12(m).

Data Request 29 further asks the Applicant to provide the estimates for the underground manholes, pull boxes, splice boxes, turning boxes, drilling access boxes, etc., that are anticipated and expected as part of the underground construction. The requested information is relevant to the Applicant's ability to construct the Project. As indicated in Section III, B, the Applicant is currently developing information which will be responsive to this request. The Grafton County Commissioners' request that the Applicant be compelled to provide responsive information and documents to this portion of Data Request 29 is granted to the extent that the responsive documents presently exist and have not been previously produced. To the extent that the information concerns the underground portions of the route, the Applicant shall respond in accordance with the Order on Motion to Amend Procedural Order.

Finally, Data Request 29 requests that the Applicant provide, in accordance with FERC accounting principles, the required estimated costs for site preparations, first clearing, access ways, laydown areas, environmental mitigation, foundations, soils work, grounding, etc., and all other costs necessary to construct the underground line proposed by the Project and supporting the current town-by-town estimates. The Applicant indicated in its response that it could not yet provide certain cost information but that it would be able to provide such information during the construction phase. The Applicant cannot provide information it does not yet have, but does

have a duty to supplement its responses as further responsive information becomes available. The Grafton County Commissioners' request that the Applicant be compelled to provide responsive information and documents to this portion of Data Request 29 is granted to the extent that the responsive documents presently exist and have not been previously produced. The Applicant shall seasonably update its answer to the data request should the information become available. See NH CODE ADMIN. RULES, Site 202.12(m).

**9. Data Request 30**

Data Request 30 seeks, under FERC accounting rule 350 and other FERC accounting rules, a detailed description of all land and land right costs incurred to date with an estimate of remaining land right acquisition costs to complete the Project. The Applicant objected to this request and claimed that the request requires the Applicant to “develop additional information, reports, or other documents that are not currently within the Applicant’s care, custody or control.” See Objection p. 33. The Applicant also objected on relevancy grounds. The cost of acquiring land rights for the Project is relevant and may lead to the discovery of relevant evidence. The cost of the Project is relevant to the local economy, the orderly development of the region, and the public interest. The Grafton County Commissioners' request that the Applicant be compelled to provide additional responsive documents and information to Data Request 30 is granted to the extent that the responsive documents presently exist and have not been previously produced. The Applicant shall seasonably update its answer to the data request should the information become available. See NH CODE ADMIN. RULES, Site 202.12(m).

**10. Data Request 31**

Data Request 31 requests information regarding the specifications of the underground cable being utilized in the upper central portion of the Project. This data request is similar to the

request by Counsel for the Public referenced in Section III, B above. In response, the Applicant notes that the alignment is preliminary in nature, that geotechnical investigations are being conducted, and that the final design will be developed over the next several months. The Applicant is currently developing information that will be responsive to this data request.

The Grafton County Commissioners' request that the Applicant be compelled to provide additional responsive documents and information to Data Request 31 is granted. The responsive material shall be provided in accordance with the Order on Motion to Amend Procedural Order.

**11. Data Request 32**

Data Request 32 seeks information pertaining to line losses of the Project at various levels of capacity. The Applicant objects to this request and claims that the request requires the Applicant to “develop additional information, reports, or other documents that are not currently within the Applicant’s care, custody or control.” See Objection p. 34. The requested information is relevant and reasonably calculated to lead to the discovery of admissible evidence pertaining to the relative impacts and benefits of the Project. The Grafton County Commissioners' request that the Applicant be compelled to produce additional responsive documents and information to Data Request 32 is granted to the extent that the responsive documents presently exist and have not been previously produced. The Applicant shall seasonably update its answer to the data request should the information become available. See NH CODE ADMIN. RULES, Site 202.12(m).

**12. Data Request 33**

Data Request 33 asks the Applicant to provide operating temperatures of the lines at various operating loads and BTU line loss calculations. The Applicant objects to this request and claims that the request requires the Applicant to “develop additional information, reports, or



other documents that are not currently within the Applicant's care, custody or control." See Objection p. 34. The requested information is relevant and may lead to the discovery of admissible evidence pertaining to the operation of the Project. The Grafton County Commissioners' request that the Applicant be compelled to produce additional responsive documents and information to Data Request 33 is granted to the extent that the responsive documents presently exist and have not been previously produced. The Applicant shall seasonably update its answer to the data request should the information become available. See NH CODE ADMIN. RULES, Site 202.12(m).

**D. Clarksville-Stewartstown Non-Abutters**

The Clarksville-Stewartstown Non-Abutters request that the Applicant be compelled to produce additional responsive documents and information to its Data Requests 16 and 19. The Applicant objected to several data requests, including Requests 16 and 19, on the basis of confidentiality. The Clarksville-Stewartstown Non-Abutters entered into a confidentiality agreement with the Applicant on July 27, 2016. Pursuant to the confidentiality agreement, the Applicant provided supplemental documents on August 4, 2016. The Clarksville-Stewartstown Non-Abutters submit that the Applicant did not provide responsive documents to Data Requests 16 and 19. The Applicant objects to the Clarksville-Stewartstown Non-Abutters' Motion.

**1. Data Request 16**

Data Request 16 seeks copies of documents that evidence, discuss, or relate to agreements between the Applicant and Wagner Forest Management or Bayroot, LLC, regarding the Project and its Proposed Route through property owned by Bayroot, LLC. A Notice of Lease was provided, but the underlying Lease Agreement was not produced as the Applicant argued that it was not relevant and contains competitive and confidential information. The Clarksville-

Stewartstown Non-Abutters have entered into a confidentiality agreement with the Applicant thereby obviating concerns of confidentiality. The requested documents are relevant to impacts of the Project on the surrounding area. The Clarksville-Stewartstown Non-Abutters' request that the Applicant be compelled to produce additional responsive documents to Data Request 16 is granted. The intervenors are reminded that the documents are subject to the terms of the confidentiality agreement and shall not be publically distributed or disclosed to any other person or party.

**2. Data Request 19**

Data Request 19 seeks documents pertaining to the Applicant donating or loaning funds to Les Otten or any entity or person associated with the development of the Balsams Resort properties in Coos County. The Applicant objected on grounds of relevancy and confidentiality. The requested information is simply not relevant or reasonably calculated to lead to the discovery of admissible evidence. The Clarksville-Stewartstown Non-Abutters request that the Applicant be compelled to produce additional responsive documents to Data Request 19 is denied.

**E. Society for the Protection of New Hampshire Forests**

**1. Use of General Objections**

The Society for Protection of New Hampshire Forests (SPNHF) first argues that the Applicant improperly utilized general objections and requests that the Subcommittee order the Applicant specify to which data request each of the general objections applies. General objections by definition apply to all data requests. The Subcommittee will not dictate the form

and substance of objections to discovery requests. SPNHF's request that the Applicant be compelled to provide specific objections to data requests is denied.

## **2. Waiver of Ambiguity Claims**

SPNHF next argues that the Applicant has waived any claim of ambiguity regarding data requests as SPNHF's data requests included instructions requiring the Applicant to notify SPNHF if it found any of the requests to be ambiguous. The Applicant did not do so. The onus to provide specific and unambiguous data requests rests with the requesting party. *See* N.H. Code of Admin.Rules Site 202.12(c). The rules require the requesting party to be specific and do not support the relief requested by SPNHF. In addition, the Applicant indicates in its objection that it made a good faith attempt to respond to each of the SPNHF requests. SPNHF's request for an order that the Applicant has waived its right to object on the basis of ambiguity is denied.

## **3. "Communications", "Documents" & "Information"**

SPNHF next argues that the Applicant should generally be compelled to produce "communications," "documents," and "information." This argument is similar to, if not the same as, issues addressed in Section III, A, 2. The Applicant shall provide internal communications consistent with Section III, A, 2 of this Order. Moreover, while the Applicant is not required to develop or create new information, compilations or documents that are not currently in its possession or control, as new information is developed, the Applicant is under a continuing duty to seasonably update its responses.

## **4. Data Requests 1, 20 & 21 & Right-to-Know**

SPNHF argues that the Applicant improperly withheld responsive documents from disclosure citing that they were confidential and exempt under RSA 91-A:5, IV, the Right-to-

Know Law. Specifically, SPNHF asks that the Applicant be compelled to produce confidential documents in response to SPNHF Data Requests 1, 20, and 21.

Data Request 1 requested that the Applicant produce communications, documents and information “that evidence, discuss or relate to ISO-NE acceptance from the proposed Project 1,090 MW of capacity into the Forward Capacity Market, including terms and conditions it may impose on shippers, shippers that may qualify, and whether the 1,090 MW would be unmitigated.” The Applicant stated that it objected insofar as the request seeks to obtain confidential business information for the purposes of preserving their objection only. The Applicant further stated that it does not have communications, documents, and information responsive to Data Request 1. SPNHF has entered into a confidentiality agreement with the Applicant thereby obviating concerns of confidentiality. SPNHF’s request that the Applicant be compelled to produce additional responsive information and documents to Data Request 1 is granted to the extent that the responsive documents presently exist and have not been previously produced. The Applicant shall seasonably update its answer to the data request should the information become available. See NH CODE ADMIN. RULES, Site 202.12(m).

Data Request 20 requested, in part, that the Applicant provide documentation that breaks down the \$1.6 billion capital cost of the Project as well as the cost of AC upgrades. The Applicant has stated that it provided this information to SPNHF after SPNHF entered into an Agreement for Protective Treatment with the Applicant. The Applicant further explained that there are no additional responsive documents to this request at this time. SPNHF acknowledges that the Applicant may have provided responsive documents to Data Request 20 which is being assessed by SPNHF’s experts. At this time, SPNHF is unsure whether the Applicant has complied with Data Request 20; and the Applicant indicates that it has complied. As the

requesting party, SPNHF has the obligation to demonstrate non-compliance. SPNHF has not demonstrated non-compliance. The motion to compel a response to Data Request 20 is denied.

Data Request 21 requested, in part, that the Applicant provide “copies of all communications, presentations, Proposed Plan Applications submitted to ISO-NE pursuant to Section I.3.9 of the ISO-NE Tariff, memos, letters, meeting minutes, emails or any other form of communications with ISO-NE, the Planning Advisory Committee and/or NEPOOL Committees regarding the estimated cost of NPT ....” The Applicant explained that it has not communicated with ISO-NE or NEPOOL regarding the estimated \$1.6 billion Project cost. The Applicant further explained that “[N]PT has included its own estimate of costs associated with the expected ISO-NE (I.3.9) upgrading. That information was provided to SPNHF under the terms of the Agreement for Protective Treatment.” See Objection p. 17. The Applicant asserts that it has provided the documentation within its care, custody and control. The Applicant has further stated that it has not communicated with ISO-NE or NEPOOL regarding the subject matter of the request and therefore has no further responsive documents or information. SPNHF’s motion to compel a response to Data Request 21 is denied.

In its motion to compel with respect to Data Request 1, 20 and 21, SPNHF made an extensive argument that confidentiality under RSA 91-A, the Right to Know Law, is improper and does not apply to discovery practice before the Committee. The Applicant objected and provided an extensive response. Having ruled on the requests to compel responses, there is no need to explore the application of and limits of the Right-to-Know law.<sup>6</sup>

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<sup>6</sup> As with all discovery between the parties, the responsive documents have not been filed with the Site Evaluation Committee or reviewed by the Subcommittee.

## **5. London Economics International – Data Requests 7-12**

SPNHF propounded several data requests seeking information about London Economics International's (LEI) economic analyses (data requests 7-12). The requests seek to understand the inputs that LEI used in its analyses, the outputs, and the analytical processes employed by LEI to arrive at its conclusions. SPNHF asserts that without the responsive information and documents it cannot test, replicate, or ensure the accuracy of LEI's methodology and conclusions. The Applicant stated that it has provided all responsive information in response to SPNHF's requests regarding LEI's data. The Applicant further argued that to the extent SPNHF seeks to test LEI's analysis, SPNHF has the data it needs to do this, and that to the extent SPNHF has questions regarding the data provided, those questions may be addressed at the Technical Session. In Data Request 7 through 10, SPNHF requested information pertaining to four specific areas of forecasting contained within the LEI report. The four areas are: (1) future wholesale energy prices influenced by the Project (1-7); (2) future household and commercial energy savings attributable by the Project (1-8); (3) retail economic benefits attributable to the Project (1-9); (4) economic benefits of the Project during construction (1-10). With respect to each specific data request, SPNHF sought production of the following information:

- i. "Simulation methodology used (e.g., Monte Carlo, varied distribution selection)";
- ii. "Analysis methodology used (e.g., frequent, Bayesian)";
- iii. "Prior assumptions, forecast and projection methodologies used (e.g., linear progression, averaging, neural networks)";
- iv. "Modeling methodology used";
- v. "Distribution assumptions for independent variable (e.g., normal, inverse gamma, etc.)";
- vi. "Random number seeds";

- vii. “Likelihood functions employed, if any”;
- viii. “Number of simulations”;
- ix. Simulation “outputs (including variance, standard errors; skewness; kurtosis; confidence intervals; goodness of model fit of all distributions of all simulated dependent variables; forecast results; r2 values; goodness of fit statistics; F statistics; t statistics; tests for heteroscedasticity; and, for scenarios, all scenario input and out used to make statements for the referenced time periods)”;
- x. NAICS codes.

The Applicant notified SPNHF that these items are “not applicable” as LEI did not use statistical analysis, but rather used three software modeling programs (POOLMod, FCA Simulator, and REMI PI+). SPNHF argues that all three modeling programs extensively utilize statistics and the outputs were derived using statistics. The Applicant referred SPNHF to specific sections of the LEI Report in its response. Those sections of the LEI report provide information explaining the modeling approach and assumptions used in the modeling and also contain information pertaining to the data used in the modeling. The Applicant submits that, fundamentally, SPNHF seeks access to LEI’s modeling, which it developed at great expense, and which is not necessary for SPNHF’s expert witness to analyze the LEI Report.

Based on the arguments, it appears that the Applicant has provided both the inputs and outputs established through LEI’s modeling. In addition, the Applicant has provided a description of the modeling approach and assumptions used. With that information, SPNHF should be able to test the data using its own modeling approach and assumption. Revealing proprietary modeling software is unnecessary. The motion to compel with respect to Data Requests 7-10 are denied.

SPNHF further requests that the Applicant be compelled to re-produce documents it provided in response to Data Request 7 in such a way as to include a full explanation of what they are as well as all of the inputs and outputs used therein; provide a data dictionary as well as more-detailed data outputs that include all the outputs, the distributional outputs, the outputs that were used by LEI, and the outputs discarded, as only select outputs are contained in the documents provided; and to make such production electronically. SPNHF's request that the Applicant be compelled to re-produce and supplement its response to Data Request 7 is granted. The information sought is a series of outputs generated by the LEI. The Applicant shall re-produce and supplement its response to Data Request 7.

SPNHF next argues that the Applicant has not produced reasonably sought data, leaving SPNHF unable to test the methods and inputs the Applicant consultants rely upon. SPNHF specifically requests that the Applicant be compelled to produce, pursuant to the confidentiality agreement between the parties, the Microsoft Excel Workbook responsive to Data Requests 7, 11, and 23 as follows: "(1) in the current version of Excel (.xlsx); (2) without corrupted cells; (3) not in 'protected' format; (4) with complete, active, and functioning links to data located in five separate databases concerning a detailed breakdown of NPT's revenue requirement (which may necessitate the production of those other databases); and (5) that includes (unstrips) all references in the 'To REMI' worksheet." The Applicant argues that it provided all relevant responsive information and documentation, and that SPNHF's requests that the Applicant be compelled to supplement seek information that was not originally requested, such as the Project's revenue requirement. SPNHF's request that the Applicant be compelled to re-produce the Microsoft Excel Workbook responsive to Data Requests 7, 11, and 23 is granted in part and denied in part. The request that the Applicant be compelled to produce Microsoft Excel Workbooks in the



current version of Excel is granted. The workbooks need not include data that was not originally requested (such as the Project's revenue report). SPNHF's remaining requests regarding Microsoft Excel Workbooks are denied. To the extent that removal of data not originally requested causes problems with the remaining portions of the workbook, the parties shall meet and confer about alternative methods of providing the data.

SPNHF further argues that the Applicant failed to provide any additional data with respect to Data Request 8 regarding future household and commercial energy savings. SPNHF requests that the Applicant be compelled to produce additional responsive information and/or documents to Data Request 8, and if such information/documentation is protected, to produce it subject to the parties' confidentiality agreement. SPNHF's request seeks input data. To the extent input data regarding future household and commercial energy savings has not been provided, the motion with respect to Data Request 8 is granted.

SPNHF next argues that the Applicant's responses to Data Requests 9 and 10 are insufficient as the Applicant only referred SPNHF back to sections of the LEI Report. The data sought by Requests 9 and 10 appear to be input data which is not proprietary and appears not to be the same as what is already in the referenced sections of the LEI Report. SPNHF's request that the Applicant be compelled to produce additional responsive information and/or documents to Data Requests 9 and 10 is granted.

SPNHF further requests that the Applicant be compelled to produce the three propriety models used by LEI to any party subject to a confidentiality agreement, which was requested through SPNHF's Data Request 12. The Applicant objected on grounds that the request seeks proprietary software developed by LEI, integral to its business model and competitive position in the market. The Applicant argues that release of this software could jeopardize LEI's

competitive position, and would not provide anything necessary to the Committee's determinations. The Applicant also argues that LEI's privacy interest in the software outweighs the public interest. The Applicant has provided relevant responsive data and documents and appears to have the better argument regarding the balancing of interests. SPNHF's request that the Applicant be compelled to produce the three propriety models used by LEI is denied.

## **6. Other Types of Information**

### *a. Transcripts*

SPNHF requests that the Applicant be compelled to provide transcripts of interviews pursuant to Data Request 13. The Applicant has indicated there are no transcripts. SPNHF's request that the Applicant be compelled to provide transcripts pursuant to Data Request 13 is denied.

### *b. Raw Data*

SPNHF requests that the Applicant be compelled to provide the raw data requested in Data Requests 17 and 18 associated with two publications used in the Chalmers Report. The Applicant has stated that the raw data files are the property of NorthWestern Energy and can only be released with its permission. The Applicant further notes that it has provided a contact person at NorthWestern Energy. The Applicant appears to have sufficiently answered this data request. SPNHF's request that the Applicant be compelled to provide the raw data requested in Data Requests 17 and 18 is denied.

### *c. Recoupment of Costs*

SPNHF's Data Request 26 seeks data related to the recoupment of costs of the Canadian portion of the Project. The Applicant referred SPNHF to two sections of its proposal in response to the Clean Energy RFP, which the Applicant stated is available at an identified website.

SPNHF states that the referenced sections of the Applicant's proposal are heavily redacted. The Applicant argues that the Clean Energy RFP includes information that, if released, would damage the Applicant's competitive position in the Tri-State Clean Energy RFP process and is irrelevant for purposes of this proceeding. SPNHF's request that the Applicant be compelled to produce additional responsive documents and/or information to Data Request 26 is granted, subject to those provisions set forth in the Order on Motion for Protective Order and Confidential Treatment dated May 25, 2016, requiring disclosure upon completion of the Clean Energy RFP process.

**7. Data Requests of Municipal Group 1 (North) # 21 & 22**

SPNHF next moves to compel the production of information responsive to data requests propounded by Municipal Group 1 (North). SPNHF did not propound those interrogatories and has no standing to compel further responses. SPNHF's requests that the Applicant be compelled to produce additional responsive documents and/or information to Municipal Group 1 (North)'s Data Request 21 and 22 are denied.

**8. Data Requests of other Parties**

SPNHF requests copies of responses and the data the Applicants provided to other parties in response to other parties' requests. The Applicant has been providing discovery through the use of a sharefile website available to all of the parties. It is the intent of this Order that responses be shared with all parties unless there is a specific order to the contrary.

**F. Municipal Group 1 (South)**

1. Identification of Individuals Responding to Data Requests. *See* Section III, A, 1 above.
2. Format of Data. *See* Section III, A, 3 above.

3. Internal Communications. *See* Section III, A, 2 above.

Municipal Group 1 (South) argues that the following specific data requests require supplementation of responses: 2, 9, 20, 26, 27, 28, 29, 30, 31, 32, 33, 34 and 36. The Subcommittee will address those data requests below:

**4, Data Request 2**

Data Request 2 seeks detailed information regarding potential roadbed failure, asphalt failure, differential settlement, differential frost heaving, the amount of heat energy released to the trench from the lines, cave-ins, both within and without traffic, truck cave-ins, or any other impact of continuous driving over the installed buried line in the buried portions of the Project. Municipal Group 1 (South) argues that the Applicant's response is incomplete because it contains only generalizations and unsupported assurances as opposed to the specific and detailed information requested. The Applicant objects to this request and claims that the request requires the Applicant to "develop additional information, reports, or other documents that are not currently within the Applicant's care, custody or control." *See* Objection p. 34.

Notwithstanding the objection, the Applicant stated that it has fully responded to the request and has no additional responsive documents or information in its care, custody or control. The Applicant provided general information in response to Data Request 2 noting that, for example, "Following construction of the Project, all roadways will be restored to at least their pre-construction condition, or better in some cases, and will meet NH DOT standards and guidelines, in a manner that does not impact the safe public use of the roadway after construction." Municipal Group 1 (South)'s request that the Applicant be compelled to provide additional responsive documents and information to Data Request 2 is granted to the extent that the responsive documents presently exist and have not been previously produced. The Applicant

shall seasonably update its answer to the data request should the information become available prior to the issuance of a final order in this docket. See NH CODE ADMIN. RULES, Site 202.12(m).

**5. Data Request 9**

Data Request 9 requests that the Applicant produce documents, information, and communications relating to boring and blasting of the Project, which was not provided in the Application. Municipal Group 1 (South) argues that the Applicant's response is inadequate because the Applicant noted that it is currently conducting additional geotechnical investigations and utility and ground surveys to support the design for the underground portion of the Project. Municipal Group 1 (South) further submits that if the Applicant does not have responsive information and documents readily available, the proceedings should be stayed pursuant to the request of the Grafton County Commissioners.<sup>7</sup> The Applicant objected to the request to the extent it seeks internal communications and to the extent it seeks to have the Applicant "develop additional information, reports, or other documents that are not currently within the Applicant's care, custody or control." See Objection p. 35. Notwithstanding these objections, the Applicant stated that it has fully complied with the request and currently has no additional responsive documents within its care, custody or control. Municipal Group 1 (South)'s request that the Applicant be compelled to provide additional responsive documents and information to Data Request 9 is granted to the extent that the responsive documents presently exist and have not been previously produced. With respect to responses that are dependent upon the current ongoing geotechnical surveys, the Applicant shall respond in accordance with the Order on Motion to Amend Procedural Order.

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<sup>7</sup> All requests for amendment or suspension of the Procedural Schedule are addressed by way of separate Order.

## **6. Data Request 20**

Data Request 20 asks the Applicant to identify all contractors for every aspect of the Project who have a verbal or written agreement, memorandum of understanding, or contract, or who have submitted a preliminary bid for the same with the Applicant or an affiliate of the Applicant for the Project. The Applicant objected on the grounds of confidentiality and relevance, arguing that the information sought contains confidential contracts and bid information. The Applicant also objected to the request to the extent it seeks to have the Applicant “develop additional information, reports, or other documents that are not currently within the Applicant’s care, custody or control.” See Objection p. 35. The Applicant noted that it has provided the requested information to Counsel for the Public and that broader disclosure would place the Applicant and its list of contractors at a competitive disadvantage. Municipal Group 1 (South) has entered into a confidentiality agreement with the Applicant thereby obviating concerns of confidentiality. Municipal Group 1 (South)’s request that the Applicant be compelled to provide additional responsive documents or information to Data Request 20 is granted.

## **7. Data Request 26**

Data Request 26 asks the Applicant to specify its Plans to provide independent inspections and construction observation services on municipal and state rights-of-way or adjacent thereto. The Applicant objected to the request to the extent it seeks to have the Applicant “develop additional information, reports, or other documents that are not currently within the Applicant’s care, custody or control.” See Objection p. 36. Notwithstanding this objection, the Applicant stated that it fully responded to the request and has no additional responsive documents or information in its care, custody or control. The information sought

through Data Request 26 is relevant and may lead to the discovery of admissible evidence. Municipal Group 1 (South)'s request that the Applicant be compelled to provide additional responsive documents and information to Data Request 26 is granted to the extent that the responsive documents presently exist and have not been previously produced. The Applicant shall seasonably update its answer to the data request should the information become available prior to the issuance of a final order in this docket. See NH CODE ADMIN. RULES, Site 202.12(m).

#### **8. Data Request 27**

Data Request 27 seeks detailed plans to perform pre-drilling, pre-blasting, and pre-construction surveys for all existing municipal infrastructure. The Applicant objected to the request to the extent it seeks to have the Applicant "develop additional information, reports, or other documents that are not currently within the Applicant's care, custody or control." See Objection p. 36. Notwithstanding this objection, the Applicant stated that it fully responded to the request and has no additional responsive documents or information in its care, custody or control. The information sought through Data Request 26 is relevant and may lead to the discovery of admissible evidence. Municipal Group 1 (South)'s request that the Applicant be compelled to provide additional responsive documents and information to Data Request 26 is granted to the extent that the responsive documents presently exist and have not been previously produced. The Applicant shall seasonably update its answer to the data request should the information become available prior to the issuance of a final order in this docket. See NH CODE ADMIN. RULES, Site 202.12(m).

**9. Data Request 28**

The parties report that the dispute regarding this Data Request has been resolved.

Municipal Group 1 (South) has withdrawn its motion to compel with regard to this Data Request.

**10. Data Requests 29-34**

Data Requests 29-34 seek documents and information regarding costs and feasibility of use of the Interstate 93 corridor for electric transmission. The Applicant objected to these requests on the grounds that they sought information that is not relevant to the proceeding and therefore is not likely to lead to the discovery of admissible evidence. Interstate 93 is not the proposed route for the Project. The requests seek information that does not pertain to the proposed route. The requested information is not relevant nor is it likely to lead to the discovery of admissible evidence. Municipal Group 1 (South)'s requests that the Applicant be compelled to produce additional responsive documents and information to Data Requests 29-34 are denied.

**11. Data Request 36**

Data Request 36 asks the Applicant to explain why the Hydro Quebec Phase 2 corridor is not the preferred route for the buried underground transmission line of the Project. The requests seeks information that does not pertain to the proposed route. The requested information is not relevant and not likely to lead to the discovery of admissible evidence. Municipal Group 1 (South)'s request that the Applicant be compelled to produce additional responsive documents and information to Data Request 36 is denied.

**G. Municipal Group 2**

Municipal Group 2 seeks an order compelling the Applicant to provide further responses to data requests propounded on the Applicant on May 31, 2016. Municipal Group 2 argues that the Applicant's responses were incomplete. The Applicant and representatives of several of the



governmental and non-governmental entities met on July 26, 2016, to discuss discovery-related issues and some of the Applicant's responses, which the Intervenors felt were incomplete. On August 11, 2016, the Applicant indicated that it would not be providing internal communications relating to the Project on the basis that those documents are not relevant or material to the proceeding.

1. Identification of Individuals Providing Responses to Data Requests. *See* Section III, A, 1 above.

2. Internal Communications. *See* Section III, A, 2 above.

**3. Data Request 1**

Municipal Group 2 has withdrawn its motion to compel with regard to this Data Request.

**4. Data Request 10**

Municipal Group 2's Data Request 10 asked the Applicant to "[i]dentify any new SEC filings anticipated that discuss, analyze or illustrate revised impacts due to changes in the Project." The Applicant responded, "[a]t this time, the Applicant[ ] do[es] not anticipate filing any additional information that would revise impacts due to changes in the Project. However, should changes be made to the Project during the siting process, the Applicant[ ] will submit information as necessary at that time." Municipal Group 2 argues that this response is inconsistent with the Applicant's response to other data requests in which the Applicant noted that it is currently conducting geotechnical investigations to determine the final locations of the Project and that this information is not yet available. Municipal Group 2 suggests that this response indicates that the Applicant does have reason to anticipate changes may be made to the Project that are likely to affect the impact of the Project, and thus the response is inadequate.

The Applicant has appropriately responded to the request and further indicated that it would submit further information as necessary should changes be made to the Project during the siting process. Municipal Group 2's request that the Applicant be compelled to supplement its response to Data Request 10 is denied.

**5. Data Request 11**

Data Request 11 requests that the Applicant provide “all Documents, Information and Communications that evidence, discuss or relate to [the Applicant’s] efforts to learn about the municipal master plans, land use ordinances, and land use regulations of each municipality along the proposed Project route, [the Applicant’s] efforts to avoid conflicts between the Project and such plans, ordinances and regulations, and [s]tate the [b]asis for your conclusion that the Application, as submitted, meets the statutory standard.” Municipal Group 2 states that the Applicant failed to provide internal communications relative to the Applicant’s efforts to learn about such local matters and attempts to avoid conflicts between the Project and such local matters, and simply referred back to portions of its Application, providing only one additional document. To the extent that Municipal Group 2 is seeking the Applicant’s internal communications, the motion is granted. See Section III, A, 2.

**6. Data Request 17**

Data Request 17 asks the Applicant to describe technical, practical and economic consequences during the Project as they relate to future maintenance of the Project, municipal infrastructure and resources along the buried portion of the route, including increased cost to work around the Project and relocate municipal infrastructure. The Data Request also asks the Applicant to identify limitations municipalities may face in providing future maintenance, repair, construction or removal of municipal buried or above-ground infrastructure, anticipated liability

on the part of the Applicant and plans to compensate municipalities and private owners for the increased expense of construction, operation and maintenance of infrastructure. In response, the Applicant stated that they “do not expect that the Project will increase any future maintenance costs relating to municipal infrastructure and other resources buried along the Project route ... do not expect that there will be any increased costs for municipalities to work around the Project or to relocate existing municipal infrastructure. Therefore the Applicant[ ] do[es] not anticipate the need to compensate municipalities and private owners for any potential increased expenses related to the construction, operation, and maintenance of the facility ....”

The Applicant’s response appears to be adequate at this stage in the proceedings. Should circumstances change, the Applicant is under obligation to timely supplement its responses. Municipal Group 2’s request that the Applicant be compelled to supplement its response to data request 17 is denied.

#### **7. Data Request 21**

Data Request 21 asks that the Application produce documents and information addressing impacts, consequences, and costs for the Project during all phases (construction, operation and decommissioning) relating to existing and future infrastructure. The Applicant objected to the extent the request would require the Applicant to “develop additional information, reports, or other documents that are not currently within the Applicant[’s] care, custody or control.” See Objection p. 39. Municipal Group 2 argues that this response misconstrues the request, which pertains to existing information, documents and communications. Municipal Group 2 further argues that to the extent the Applicant noted that it did not anticipate any increased costs for municipalities, the response is incomplete because the

Applicant did not provide information as to how this conclusion was reached with respect to buried portions of the Project and its interaction with underground municipal infrastructure.

The information sought through Data Request 21 is relevant and may lead to the discovery of admissible evidence. Municipal Group 2's request that the Applicant be compelled to provide additional responsive documents and information to Data Request 21 is granted to the extent that the responsive documents presently exist and have not been previously produced. The Applicant shall seasonably update its answer to the data request should the information become available. See NH CODE ADMIN. RULES, Site 202.12(m).

**8. Data Request 22**

Data Request 22 asks that the Applicant provide all correspondence, specifications, request for information and pricing, vendor pre-qualification, and any other communications with outside third-party vendors and contractors requesting pricing, planning, design, construction administration and operation construction proposals, engineering proposals, operation and maintenance proposals and any other services, equipment material or costs related to the construction and operation of the Project. The communication sought, such as communication with potential vendors, is not relevant. It is the result of those communications, *i.e.* the vendors chosen and the cost of their services, that may be relevant. Municipal Group 2's request that the Applicant be compelled to supplement its response to data request 22 is denied.

**9. Data Request 23**

Data Request 23 requests that the Applicant provide studies, cost estimates, work papers, and analyses related to decisions to build above-ground and below-ground electric transmission lines for every portion of the Project. The Applicant objects in part to the extent that the request seeks information that is not relevant and not reasonably calculated to lead to the discovery of

admissible evidence. This information is reasonably calculated to lead to the discovery of admissible evidence pertaining to the benefits and impacts of this Project. Municipal Group 2's request that the Applicant be compelled to provide additional responsive documents and information to Data Request 23 is granted to the extent that the responsive documents presently exist and have not been previously produced. The Applicant shall seasonably update its answer to the data request should the information become available. See NH CODE ADMIN. RULES, Site 202.12(m).

**H. Municipal Group 3 (North)**

1. Identification of Individuals Responding to Data Requests. *See* Section III, A, 1 above.
2. Internal Communication. *See* Section III, A, 2 above.

Municipal Group 3 (North) argues that the following specific data requests require supplementation of responses: 4, 6, 12, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, and 34. The Subcommittee will address these data request below:

**3. Data Requests 4 & 6**

Data Requests 4 and 6 seek documents, information, and communications pertaining to the placement of wildlife cameras in connection with the Project and mats to be used in connection with wetlands. Municipal Group 3 (North) argues that the Applicant's responses to Data Requests 4 and 6 are incomplete because the Applicant did not provide internal communications relative to the requests. The Applicant objected to the requests to the extent they seek internal communications. Internal communications must be produced as set forth in Section III, A, 2 above. The information sought through Data Requests 4 and 6 is relevant and may lead to the discovery of admissible evidence. Municipal Group 3 (North)'s request that the

Applicant be compelled to provide additional responsive documents and information to Data Requests 4 and 6 is granted to the extent that the responsive documents presently exist and have not been previously produced. The Applicant shall seasonably update its answer to the data requests should the information become available. See NH CODE ADMIN. RULES, Site 202.12(m).

**4. Data Requests 12, 14 & 15**

Municipal Group 3 (North) has withdrawn its motion to compel with regard to Data Request 12.

Data Requests 14 and 15 seek all analyses, work papers, studies and actions considered for the Project passing by and past the Ashland sewer lagoons and Pemigewasset River; and all studies, analyses, calculations and work papers on mitigating the impact of the Project bypassing the Ashland lagoons and Pemigewasset River to assure that the property of the Ashland Water and Sewer District is not impacted by the Project. The Applicant objects to these requests and claims that the requests require the Applicant to “develop additional information, reports, or other documents that are not currently within the Applicant’s care, custody or control.” See Objection p. 41. The Applicant further stated that it has fully responded to the requests at this time and noted that additional responsive documents and information will be developed over the next year and prior to construction. The information sought through Data Requests 14 and 15 is relevant and may lead to the discovery of admissible evidence. Municipal Group 3 (North)’s request that the Applicant be compelled to provide additional responsive documents and information to Data Requests 14 and 15 is granted to the extent that the responsive documents presently exist and have not been previously produced. The Applicant shall seasonably update

its answer to the data request should the information become available. See NH CODE ADMIN. RULES, Site 202.12(m).

**5. Data Requests 16 & 17**

Municipal Group 3 (North) has withdrawn its motion to compel with regard to these Data Requests.

**6. Data Requests 18 & 19**

Data Requests 18 and 19 request: (a) documents, calculations, maps and work papers which delineate all underground utilities in municipal and state rights-of-way, through which the proposed Project would co-utilize the public right-of-way width; and (b) a detailed list of all public utility municipal infrastructure and private infrastructure including above ground DC, below ground DC, and above ground AC. Municipal Group 3 (North) submits that the Applicant's responses are incomplete. The Applicant objects to these requests and claims that the requests require the Applicant to "develop additional information, reports, or other documents that are not currently within the Applicant's care, custody or control." See Objection p. 42. Notwithstanding this objection, the Applicant stated that it has fully responded to the data requests and that it has no additional responsive documents or information in its care, custody or control. The Applicant further noted that the requested information and documents would be developed over the next year and prior to construction. The Applicant has stated that it will provide any additional responsive information as it becomes available. The information sought through Data Requests 18 and 19 is relevant and may lead to the discovery of admissible evidence. Municipal Group 3 (North)'s request that the Applicant be compelled to provide additional responsive documents and information to Data Requests 18 and 19 is granted to the extent that the responsive documents presently exist and have not been previously produced.

The Applicant shall provide supplemental responses in accordance with the Order on Motions to Amend Procedural Order.

**7. Data Requests 20 & 21**

Municipal Group 3 (North) has withdrawn its motion to compel with regard to Data Request 20.

Data Request 21 asks the Applicant to provide: all documents, franchise agreements, laws, regulations, memoranda and NH PUC decisions which authorize the Applicant to construct 300,000 volt or higher underground direct buried electric utility transmission lines in municipal and/or state rights-of-way. In response to Data Request 21, the Applicant identified a number of sources that pertain to the legal authority of the Applicant to bury electric transmission lines in the state and municipal rights-of-way. The Applicant objects to the motion to compel and states that it has fully responded to the requests and has no additional responsive documents or information in its care, custody or control. The information sought through Data Request 21 is relevant and may lead to the discovery of admissible evidence. Municipal Group 3 (North)'s request that the Applicant be compelled to provide additional responsive documents and information to Data Request 21 is granted to the extent that the responsive documents presently exist and have not been previously produced.

The Applicant shall provide supplemental responses in accordance with the Order to Amend Procedural Order.

**8. Data Request 22**

The parties report that the dispute regarding this Data Request has been resolved. Municipal Group 3 (North) has withdrawn its motion to compel with regard to this Data Request.



**9. Data Request 23**

Data Request 23 asks the Applicant to provide detailed operating specifications, protocols, and requirements that are going to be put in place and in force during the Project for all phases of construction, which may or may not interfere with the buried line, including restrictions that will be placed on abutting landowners as well as municipal and state governments. The Applicant states that it has fully responded to the request and has no additional responsive documents or information in its care, custody or control. The information sought through Data Request 23 is relevant and may lead to the discovery of admissible evidence. Municipal Group 3 (North)'s request that the Applicant be compelled to provide additional responsive documents and information to Data Request 23 is granted to the extent that the responsive documents presently exist and have not been previously produced. The Applicant shall seasonably update its answer to the data request should the information become available. See NH CODE ADMIN. RULES, Site 202.12(m).

**10. Data Requests 24 & 25**

Municipal Group 3 (North) has withdrawn its motion to compel with regard to Data Request 24.

Data Request 25 asks the Applicant to provide information pertaining to maximum energy release of a direct circuit explosion at full capacity of the buried line if it should hypothetically occur, and all calculations, specifications and analyses performed by or on behalf of the Applicant to contain an explosion in the manholes and the underground trenches. The Applicant objects to these requests as they present an incomplete hypothetical scenario calling for speculation. The Applicant further objects to the extent that the question misstates facts included in the Application, and on the basis that the requests require the Applicant to develop

additional data that is not presently in its care, custody or control. Notwithstanding these objections, the Applicant stated that it has fully responded to the requests and has no additional responsive documents or information in its care, custody or control. The information sought through Data Request 25 is relevant and may lead to the discovery of admissible evidence. Municipal Group 3 (North)'s request that the Applicant be compelled to provide additional responsive documents and information to Data Request 25 is granted to the extent that the responsive documents presently exist and have not been previously produced. The Applicant shall seasonably update its answer to the data request should the information become available. See NH CODE ADMIN. RULES, Site 202.12(m).

**11. Data Requests 26 & 27**

Municipal Group 3 (North) has withdrawn its motion to compel with regard to these Data Requests.

**12. Data Requests 28 & 29**

Data Requests 28 and 29 ask the Applicant to: (a) describe, explain and state the basis for the Applicant's initial statements made to the public regarding the Project being a purely market derived and driven transmission line owned and financed by Hydro Quebec without costs to ratepayers within New England and New Hampshire; and (b) state the basis for the Applicant's decision to change the business model of the Project to a regulated model owned by Eversource. The Applicant stated that it has fully complied with these requests and Municipal Group 3 (North) has not demonstrated how the Applicant's responses are inadequate. The motion to compel is denied with respect to Data Requests 28 and 29.

### **13. Data Request 30**

Data Request 30 asks the Applicant to provide “all detailed work papers, analyses, requests, calculations, studies, correspondence, and decisions communicated by [the Applicant] or on [its] behalf to and from the FERC requesting rate treatment and rate setting for the Project on a proforma basis, including the NSTAR requests prior to NSTAR being purchased by Eversource[.]” The Applicant refers Municipal Group 3 (North) to FERC Docket No. ER 11-2388-00. The Applicant objected on the grounds that the request calls for review, compilation, or production of publicly available documents. Notwithstanding this objection, the Applicant stated that it has fully complied with the request. The information sought through Data Request 30 is relevant and may lead to the discovery of admissible evidence. Municipal Group 3 (North)’s request that the Applicant be compelled to provide additional responsive documents and information to Data Request 30 is granted to the extent that the responsive documents presently exist and have not been previously produced. The Applicant shall seasonably update its answer to the data request should the information become available. See NH CODE ADMIN. RULES, Site 202.12(m).

### **14. Data Request 31**

Data Request 31 seeks information regarding entities, owners, or other persons/entities with a beneficial relationship to the Applicant. The Applicant objected to the extent the request required the Applicant to develop additional information, reports, or other documents not currently in its care, custody or control. Notwithstanding this objection, the Applicant stated that it has fully complied with the request. The Applicant refers Municipal Group 3 (North) to the testimony of Michael Auseré and another document. Municipal Group 3 (North) does not explain how the Applicant’s response is inadequate. Municipal Group 3 (North)’s request that

the Applicant be compelled to produce additional responsive documents and information to Data Request 31 is denied.

**15. Data Request 32**

Data Request 32 requests the purchase power agreement (PPA) and corresponding documents for the Project, including any and all correspondence with New England ISO and what the Applicant anticipates for revenues as a result of participating the New England capacity market. The Applicant responded by providing a redacted copy of the PPA and objected to providing an un-redacted copy as the request seeks to obtain confidential, commercial, and financial communication or information. Municipal Group 3 (North)'s motion states only that an unredacted copy should be provided. The Applicant has provided an unredacted copy of the PPA to Counsel for the Public, and argues that broader disclosure of this information would place the Applicant at a competitive disadvantage, that the PPA is subject to separate administrative proceedings and approval at the New Hampshire Public Utilities Commission, and is subject to a separate Motion for confidential treatment at the PUC. Municipal Group 3 (North) has entered into a confidentiality agreement with the Applicant thereby obviating concerns of confidentiality. Municipal Group 3 (North)'s request that the Applicant provide an unredacted copy of the PPA is granted, subject to the terms of the confidentiality agreement between the Applicant and Municipal Group 3 (North).

**16. Data Request 33**

Data Request 33 seeks information regarding anticipated cost savings to the State of New Hampshire and the Project's anticipated impact on capacity pricing in the New England ISO as a result of construction and operation of the Project. The Applicant's response to the Data Request references the LEI Report. The Applicant stated that it has fully responded to the request and has

no additional responsive documents or information in its care, custody or control. The information sought through Data Request 33 is relevant and may lead to the discovery of admissible evidence. Municipal Group 3 (North)'s request that the Applicant be compelled to provide additional responsive documents and information to Data Request 33 is granted to the extent that the responsive documents presently exist and have not been previously produced. The Applicant shall seasonably update its answer to the data request should the information become available. See NH CODE ADMIN. RULES, Site 202.12(m).

#### **17. Data Request 34**

Data Request 34 asks the Applicant to provide identification of all private wells within 600' and all municipal wells within 2 miles of the center line of the electric transmission route and the potential impact and mitigation to assure no damage or contamination to the drinking water wells. The Applicant objects to this request and claims that the request requires the Applicant to "develop additional information, reports, or other documents that are not currently within the Applicant's care, custody or control." See Objection p. 46. Notwithstanding this objection, the Applicant stated that it has fully responded to the request and has no additional responsive documents or information in its care, custody or control. The Applicant further supplemented its response and stated that it will provide any additional responsive information should it become available. The risk that Project construction activities may have an unreasonable adverse effect on well water quality is an important issue for the Subcommittee to consider. The information sought through Data Request 34 is relevant and may lead to the discovery of admissible evidence. Municipal Group 3 (North)'s request that the Applicant be compelled to provide additional responsive documents and information to Data Request 34 is granted to the extent that the responsive documents presently exist and have not been previously

produced. The Applicant shall seasonably update its answer to the data request should the information become available. See NH CODE ADMIN. RULES, Site 202.12(m).

**I. Municipal Group 3 (South)**

1. Identification of Individual Responses to Data Request. See Section III, A, 1 above.

2. Internal Communications. See Section III, A, 2 above.

Municipal Group 3 (South) argues that the following specific data requests require supplementation of responses: 3, 4, 6, 9, 10, 11, 14, 15, 17, 18, 20, 21, and 22. The Subcommittee will address each data request in turn:

**3. Data Request 3**

Data Request 3 requests that the Applicant provide the estimated cost per foot to bury the line in Canterbury, Concord, Deerfield, and Pembroke and to produce supporting documentation. In response, the Applicant stated that it did not prepare a specific cost estimate to bury the Project in those four municipalities. However, the Applicant reported that it had developed a generic per mile underground cost and provided a redacted copy of that evaluation. The Applicant is willing to provide an unredacted copy once Municipal Group 3 (South) executes the confidentiality agreement. Municipal Group 3 (South)'s request that the Applicant be compelled to provide additional responsive documents and information requested within Data Request 3 is granted on the condition that Municipal Group 3 (South) executes the confidentiality agreement.

**4. Data Request 4**

Data Request 4 requests that the Applicant identify any technical and engineering concerns or problems that the Applicant claims exist with regard to burial along the preferred route in Canterbury, Concord, Deerfield, and Pembroke, and to produce documents and

information upon which the concerns are based. The Applicant did not provide internal communications relative to technical and engineering concerns or problems that it claims exist with regard to burial. The issue of internal communications is resolved in Section III, A, 2 above.

#### **5. Data Request 6**

Data Request 6 seeks copies of all documents, information and communications between the Applicant and any other person or entity regarding permission from any property owner located along, under, or within the Project to construct the Project or to perform investigative studies. Communications between the Applicant and landowners regarding permission to construct the Project or perform investigative studies are not relevant or reasonably calculated to lead to new evidence that is relevant to the Subcommittee's determination. While the results of such studies may be relevant, communication with landowners regarding such studies are not. The motion to compel a response to Data Request 6 is denied.

#### **6. Data Request 9**

Data Request 9 asks the Applicant to provide existing audible noise levels for both fair and foul weather for the current lines and substations in Canterbury, Concord, Deerfield, and Pembroke along the proposed route. Municipal Group 3 (South) argues that the Applicant's response is incomplete because the Applicant failed to provide internal communications relative to the request for information on audible noise levels. The issue regarding internal communications is resolved in Section III, A, 2 above.

#### **7. Data Request 10**

Data Request 10 seeks photographic simulations and videos of the proposed route in Canterbury, Concord, Deerfield, and Pembroke that the Applicant prepared or had prepared. The

Applicant responded that videos and photographs that were not produced with its Application are not relevant and constitute prior drafts of expert reports. If there are photo simulations that are responsive to the request but are being withheld as work-product, they should be identified and listed on a privilege log. Municipal Group 3 (South)'s request that the Applicant be compelled to provide additional responsive documents or information to Data Request 10 is granted. The Applicant shall either produce the responsive documents or information or produce a privilege log forthwith.

#### **8. Data Request 11**

Data Request 11 seeks copies of documents, information and communications that evidence, discuss or relate to noise during the Project which may be generated. Municipal Group 3 (South) first argues that the Applicant's response is incomplete because the Applicant did not provide internal communications related to the request. The issue of internal communications is addressed in Section III, A, 2 above.

Municipal Group 3 (South) also argues that the Applicant identifies mitigation options without indicating which mitigation steps it intends to take. Municipal Group 3 (South) has not demonstrated that the Applicant's response is inadequate. Municipal Group 3 (South)'s request that the Applicant be compelled to produce additional responsive documents and information requested within Data Request 11 is denied.

#### **9. Data Request 14**

Data Request 14 seeks projected audible noise levels for both fair and foul weather related to the construction and operation of the substation and lines in Deerfield and mitigation steps that the Applicant intends to take. Municipal Group 3 (South) argues that the Applicant's response is nonresponsive because it notes various possible mitigation options without



specifying which steps the Applicant proposes. Municipal Group 3 (South) has not demonstrated that the Applicant's response is inadequate. Municipal Group 3 (South)'s request that the Applicant be compelled to produce additional responsive documents and information requested within Data Request 14 is denied.

**10. Data Request 15**

Municipal Group 3 (South) has withdrawn its motion to compel with regard to this Data Request.

**11. Data Request 16**

Document Request 16 asks the Applicant to provide documents, plans, or studies prepared by the Applicant or on the Applicant's behalf regarding the potential for future expansion of the Deerfield substation or other utility structures in Deerfield. Municipal Group 3 (South) argues that the Applicant's response is incomplete because it does not include a FERC Form 716 System Plan. The Applicant's response was as follows:

The responsibility for transmission planning within New England falls under ISO-NE. To meet its requirements, ISO-NE publishes a Regional System Plan and Local System Plan which looks to the electrical system needs for the next 10 years. The documents uploaded to the ShareFile Site in response to this request demonstrate that there are no projects planned other than NPT, which will expand the Deerfield Substation or result in new line facilities.

The Applicant argues that it has fully responded to the data request and has no additional responsive documents or information in its care, custody or control. The Applicant submits that it is unaware of any "FERC 716 System Plan", and notes that if the Applicant is referring to FERC-715 Annual Transmission Planning and Evaluation Report, the report contains critical energy infrastructure information and the Applicant would object on the basis that the information is not discoverable. That answer appears to be complete. Municipal Group 3

(South)'s request that the Applicant be compelled to produce additional responsive documents and information requested within Data Request 16 is denied.

**12. Data Request 17**

Data Request 17 asks the Applicant to provide “all data, specifications, information, work sheets, analyses, and work papers regarding the construction of the new Deerfield substation, its layout, and its ambient noise levels at 10% to 100% of operating capacity, noise levels being measured at the fence of the substations.” The Applicant responded that “[e]stimates for sound levels at the fence line have not been calculated. The additions to the Deerfield Substation will be designed such that the maximum continuous sound level produced by the operation of all new equipment for the expected capacity range will not exceed 29 dBA at any existing occupied residential receptor property when measured within the boundaries of the receptor property.” The Applicant has provided the information within its care, custody or control, and identified which information it cannot provide. Municipal Group 3 (South) has not demonstrated that the response is incomplete or that relevant information has been withheld. Municipal Group 3 (South)'s request that the Applicant be compelled to produce additional responsive documents and information requested within Data Request 17 is denied.

**13. Data Request 18**

Data Request 18 asks the Applicant to provide existing noise levels of the existing Deerfield substation at 10% to 100% of capacity and the cumulative noise levels between the existing substation and the new substation when combined. The Applicant responded that direct measurements of sound produced by the existing Deerfield substation were not performed for the Project. The Applicant then provided information it had available regarding the sound levels and noted that the cumulative noise impact of the existing substation with the proposed additions to

the Deerfield substation is not expected to exceed 30 dBA within the boundaries of any existing occupied residential property. The Applicant has provided the information within its care, custody or control, and has identified which information it cannot provide. Municipal Group 3 (South) has not demonstrated that the response is inadequate or incomplete. Municipal Group 3 (South)'s request that the Applicant be compelled to produce additional responsive documents and information requested within Data Request 18 is denied.

**14. Data Requests 20-22**

Data Requests 20 through 22 seek information and documents relating to lobbying efforts in connection with the Project, media efforts in connection with the Project, and costs associated with such lobbying and media efforts. The requested documents are not relevant. Municipal Group 3 (South)'s requests that the Applicant be compelled to produce additional responsive documents and information requested within Data Requests 20-22 are denied.

**J. Ammonoosuc Conservation Trust, Appalachian Mountain Club, and Conservation Law Foundation (NGO Intervenors)**

1. Identity of Individuals Responding to Data Requests. *See* Section III, A, 1 above.
2. General Objection. *See* Section III, C, 1 above.
3. Privilege Log. *See* Section III, A, 5 above.

**4. Data Request 1-13**

NGO 1-13 requests that the Applicant state the basis for and produce documents, information, and communications that evidence, discuss, or relate to the projected savings to ratepayers and energy markets related to the Project. The Applicant referred the NGO Intervenors to the LEI Report for estimates of ratepayer savings. In their motion to compel, the NGO Intervenors argue that the Applicant posed no specific objection to NGO 1-13. Therefore, they claim that the information and documents requested should be provided. The Applicant's

objection failed to address the NGO Intervenors claim. The information sought through NGO 1-13 is relevant and may lead to the discovery of admissible evidence. The NGO Intervenors' request that the Applicant be compelled to provide additional responsive documents and information to NGO 1-13 is granted to the extent that the responsive documents presently exist and have not been previously produced. The Applicant shall seasonably update its answer to the data request should the information become available. See NH CODE ADMIN. RULES, Site 202.12(m).

#### **5. Data Request 1-23**

The NGO Intervenors argue that the Applicant failed to provide responsive data in response to DR 1-23 in an accessible format and that the software programs to open the documents provided are cost-prohibitive. That issue is addressed in Section III, A, 3 above.

On August 19, 2016, the NGO Intervenors filed their Second Motion to Compel, arguing that the Applicant failed to provide certain GIS information requested through DR 1-23. Specifically, the data request sought "copies of all of the GIS geodatabases, shapefiles, and raster data sets, including both spatial data and any associated attributable information or related tables, that were used in any part of the Application" including the right-of-way boundary, edge of corridor, and building structures (residential, commercial, and other). The NGO Intervenors request that the Applicant be required to produce the responsive information and documents in a readily accessible format. The Applicant objected to the NGO Intervenors' Second Motion to Compel on August 29, 2016, arguing that it believes the information provided to date is responsive to DR 1-23. The information sought through DR 1-23 is relevant and may lead to the discovery of admissible evidence. The NGO Intervenors' request that the Applicant be compelled to provide additional responsive documents and information to DR 1-23 is granted to

the extent that the responsive documents presently exist and have not been previously produced. The Applicant shall seasonably update its answer to the data request should the information become available prior to the issuance of a final order in this docket. See NH CODE ADMIN. RULES, Site 202.12(m). To the extent the responsive data is the same as referenced in Section III, A, 3 above, the NGO's shall participate in the conference to address disclosure methods.

**K. Deerfield Abutters**

The Deerfield Abutters request that the Applicant be compelled to provide additional responsive information and documents to their Data Requests DA 1-1 and DA 1-2. Upon receipt of the Applicant's responses to Data Requests DA 1-1 and 1-2, the Deerfield Abutters replied to the Applicant asking that it more fully answer DA 1-1 and 1-2. The Applicant responded with further information.

**1. Data Request 1-1**

DA 1-1 requests that the Applicant provide information, documents, and communications within its possession relating to the Applicant's purchase of properties within ¼ mile of the proposed transmission line and alternate NPT routes from 2010 to present. The Applicant objected to the request on the basis of its overbreadth and relevance. Notwithstanding its objections, the Applicant submits that it has provided 61 responsive deeds. The Deerfield Abutters replied to the Applicant's initial set of responsive documents, noting a request for appraisals performed for each property. The Applicant has stated that it has provided the pertinent and relevant documents within its care, custody and control, and that the Applicant has not conducted official appraisals of properties it purchased. The Applicant cannot produce appraisals that it does not have. The Deerfield Abutters request that the Applicant be compelled to produce additional responsive documents and information requested within DA 1-1 is denied.

## **2. Data Request 1-2**

DA 1-2 requests that the Applicant “state the specific reasons for the acquisition or purchase and whether the acquisition or purchase of each property would be considered an ‘arm’s length’ transaction as defined and used in the Chalmers Report.” The Applicant responded noting that in addition to being used to locate the new transmission line, the properties will be used for conservation, economic development, and tourism and that the purchases were “arm’s length” transactions as the term is used in James Chalmers’ Prefiled Testimony. When asked to supplement its responses, the Applicant noted that all properties were purchased to support the Project, and to have sufficient land to offer for mitigation, recreational, and economic development purposes. Further, the Applicant has confirmed that it has no further responsive information or documents within its care, custody, and control. The Deerfield Abutters request that the Applicant be compelled to produce additional responsive documents and information requested within DA 1-2 is denied.

### **L. Abutters for Pittsburg, Clarksville, Stewartstown**

The Abutting Property Owners of Pittsburg, Clarksville, and Stewartstown, (Pittsburg, Clarksville, Stewartstown Abutters), request an order compelling the Applicant to provide further responses and/or documents in response to their first set of data requests propounded on the Applicant. The Pittsburg, Clarksville, Stewartstown Abutters note that on July 15, 2016, the Applicant filed its responses and objections to their first set of data requests, objecting to several data requests on grounds of confidentiality, and indicating that it would produce certain (but not necessarily all) responsive documents, if the parties entered into a confidentiality agreement. On July 30, 2016, the spokesperson for the Pittsburg, Clarksville, and Stewartstown Abutters entered into a confidentiality agreement with the Applicant. On August 15, 2016, the deadline to file

motions to compel, the group received a list of confidential materials to be provided but which would not be received prior to the deadline for filing a motion to compel. The Pittsburg, Clarksville, Stewartstown Abutters therefore request that the Applicant be ordered to provide full and complete responses to the following data requests from their first set of data requests: A1 1-1, A1 1-3; A1 1-4; A1 1-12; A1 1-13; A1 1-14; A1 1-15; A1 1-16; A1 1-16.

The Pittsburg, Clarksville, and Stewartstown Abutters' Motion to Compel is denied without prejudice. The Applicant has expressed its intent to provide certain responsive documents, which will need to be reviewed by the Pittsburg, Clarksville, and Stewartstown Abutters to determine whether a Motion to Compel is necessary. The Pittsburg, Clarksville, and Stewartstown Abutters may file a Motion for Leave requesting permission to file another motion to compel further disclosures if necessary once they have reviewed the documents provided by the Applicant.

**M. Pemigewasset River Local Advisory Committee (PRLAC)**

The Pemigewasset River Local Advisory Committee (PRLAC) requests that the Applicant be compelled to provide additional responsive documents and information to the following of its Data Requests: PRLAC 1-2; PRLAC 1-7; PRLAC 1-9 and 1-19; PRLAC 1-12; PRLAC 1-14; and PRLAC 1-26.

**1. PRLAC 1-2**

PRLAC requests that the Applicant provide evidence and documents to substantiate its assertion that it is unlikely that the Project will have any effect on any water body that is over ¼ mile from the edge of the right-of-way. The Applicant adequately responded to the request. That PRLAC is dissatisfied with the Applicant's answer is not a basis to compel a further

response. PRLAC's request that the Applicant be compelled to supplement its response to PRLAC 1-2 is denied.

**2. PRLAC 1-7**

PRLAC 1-7 seeks information regarding the Applicant's intent to bring all crossings up to SWQPA standards from the reference line to 150'. The Applicant has provided the requested information in its supplemental responses. PRLAC's request that the Applicant be compelled to supplement its response to PRLAC 1-2 is denied.

**3. PRLAC 1-9 and 1-19**

PLRAC 1-9 and 1-19 request ask the Applicant to “[p]lease define further the specific criteria used to determine what are ‘temporary’ and ‘secondary’ wetland impacts within the watershed, including site-specific examples, photographs and location[,]” and request that the Applicant identify the total square footage of specified tree cutting proposed by town over the length of the Project. The Applicant referred PRLAC to the wetland technical report for the requested definitions and to the Application with respect to vegetation clearing and to Sheet Maps provided in the Wetlands Application to DES. The Applicant has stated that it has provided all responsive documents and information within its care, custody or control. The information sought through PRLAC 1-9 and 1-19 is relevant and may lead to the discovery of admissible evidence. PRLAC's request that the Applicant be compelled to provide additional responsive documents and information to PRLAC 1-9 and 1-19 is granted to the extent that the responsive documents presently exist and have not been previously produced. The Applicant shall seasonably update its answer to the data request should the information become available. See NH CODE ADMIN. RULES, Site 202.12(m).



**4. PRLAC 1-12, 1-14 & 1-26**

PLRAC 1-12, 1-14, and 1-26 request that the Applicant: (a) identify who will provide the independent environmental oversight during the construction and follow-up of the Project; (b) identify whether the Applicant will clearly and definitively state that NPT and any of its subcontractors and Eversource Energy and its subcontractors will not use herbicides; and (c) provide the guidelines and personnel that will be responsible for annual inspection and assessment of the right-of-way degradation post-construction. The Applicant appears to have appropriately responded to the requests and has stated that it has no additional responsive documents or information in its care, custody, or control. PRLAC's requests that the Applicant be compelled to supplement its response to PRLAC 1-12, 1-14 and 1-26 are denied.

**N. Non-Abutting Property Owners: Stark, Northumberland, Lancaster, Whitefield, Dalton, Bethlehem**

The Non-Abutting Property Owners: Stark, Northumberland, Lancaster, Whitefield, Dalton, Bethlehem (NAPO SB) complain about the responses to a number of the group's data requests. Some of those complaints relate to the substance of the Applicant's response. Some of the complaints relate to the fact that the Applicant has referred NAPO SB to the responses to similar data requests submitted by other parties. NAPO SB argues that each of its data requests must be answered in a manner that provides "substantive and detailed information" for every local resident within a 20 mile zone of visual impact (ZVI). Much of NAPO SB's motion is a complaint about the merits of the Project.

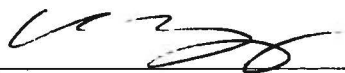
To the extent that NAPO SB requests an individual response for each local resident within a 20 mile ZVI, that request is denied as overly burdensome. The Applicant has provided a substantial amount of information from which NAPO SB should be able to draw its own conclusions regarding the effects on individual local residents.

To the extent that NAPO SB complains about being referred to other data responses, that request is denied. There is no reason for the Applicant to be required to reproduce and/or reprint each answer if the requesting party can be referred to a response made to another party.

NAPO SB's dissatisfaction with the substantive responses that it did receive is not a reason to grant a motion to compel. If the answers are substantively unsatisfactory, NAPO SB is free to raise those issues during the hearing and argue that a Certificate should not be granted to the Applicant.

To the extent that NAPO SB's requests related to ongoing underground geotechnical studies, additional responsive information will be provided in accordance with the Order on Motion to Amend Procedural Order.

SO ORDERED this 22nd day of September, 2016 by the Site Evaluation Subcommittee:

  
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Martin P. Honigberg, Chairman  
Presiding Officer