

**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 NEPGA'S MOTION TO COMPEL

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, New England Power Generators Association (NEPGA) filed a Motion to Compel and Postpone Technical Session¹ on September 6, 2016.² Grafton County Commissioners, Society for the Protection of New Hampshire Forests, Deerfield Abutters Group, Ashland Water and Sewer, and Municipal Group 2 concur in NEPGA's Motion to Compel.

The Applicant filed an Objection to NEPGA's Motion to Compel and Postpone Technical Session on September 16, 2016.

¹ NEPGA's request to postpone technical session is addressed in a separate Order.

² Several other parties previously filed Motions to Compel. Those Motions to Compel are addressed in the Order on Motions to Compel being issued separately today.

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

NEPGA argues that the Applicant's responses to certain data requests propounded by NEPGA in its second set of data requests are insufficient. Specifically, NEPGA argues that the following specific data requests require supplementation of responses: NEPGA 2-5, NEPGA 2-7, NEPGA 2-8 and NEPGA 2-14. The Applicant objects broadly that NEPGA's requests go beyond the scope of what NEPGA should be allowed to discover given the limited nature of NEPGA's intervention. The Applicant's more specific objections generally fall into two categories: (1) that the request seeks information not in the Applicant's possession; and (2) that the request seeks information that is protected from disclosure by RSA 91-A. The Subcommittee will address each data request in turn:

A. NEPGA 2-5

NEPGA 2-5 requests that the Applicant “show in detail the calculations used to develop Figure 7 (page 30) of [Julia] Frayer’s testimony.” NEPGA Motion to Compel p. 3. In response, the Applicant refers to an Appendix in the LEI Report. NEPGA argues that the referenced material is not fully responsive to the data request. Specifically, NEPGA asserts that the Applicant has failed to provide the calculation showing how it combined projected wholesale market benefits, along with annual project costs, and any other costs that consumers will need to pay for the energy that will be delivered on the Project to arrive at the retail cost impacts shown in Figure 7 of Ms. Frayer’s testimony. The Applicant submits that its response is sufficient.

The information sought through NEPPGA 2-5 is relevant to NEPGA’s intervention and reasonably calculated to lead to the discovery of admissible evidence, but the Applicant does not appear to have responded completely. NEPGA’s request that the Applicant be compelled to provide additional responsive information and documents to NEPGA 2-5 is granted.

B. NEPGA 2-7

NEPGA 2-7 requests that LEI recalculate the analysis regarding the purported savings of the Project, as it asserts that the present analysis is calculated on a “stale natural gas price forecast from 2015.” NEPGA Motion to Compel p. 4. Specifically, the data request seeks to have LEI recalculate those projected savings based on the Energy Information Administration’s 2016 Annual Energy Outlook’s natural gas price forecast to obtain what NEPGA argues is a more up-to-date savings calculation. The Applicant objected on the basis that the request would require the Applicant to “develop additional data that are not presently in the care, custody, or control of the Applicant[] and is not reasonably calculated to lead to admissible evidence.” NEPGA addresses the Applicant’s objection noting that NEPGA is not requesting additional

analysis or any change in variables, but rather that LEI insert a single, updated price forecast for natural gas into the existing economic model so that NEPGA has more current information regarding the Project's market impact. NEPGA argues that the Applicant should not be permitted to use outdated pricing that yields misleading and unrealistic savings projections.

Without agreeing with NEPGA's substantive argument that the Applicant's inputs are outdated and that NEPGA's inputs are somehow better, NEPGA 2-7 is relevant to NEPGA's intervention and reasonably calculated to lead to the discovery of admissible evidence. The motion to compel on NEPGA 2-7 is granted and the Applicant should provide a response using the different inputs provided by NEPGA.

C. NEPGA 2-8

NEPGA 2-8 seeks information regarding the new ISO- NE zonal and system demand curves approved by the Federal Energy Regulatory Commission (FERC) for effect in June 2016. NEPGA submits that the new demand curves will "dramatically change Forward Capacity Market Clearing Prices and the volume of resources that clear the auction beginning with Forward Capacity Auction 11 commencing in February 2017." NEPGA Motion to Compel p. 5. NEPGA argues that the new market design completely changes the economics of the Project and will affect the market impacts as well as the projected savings resulting from the Project. NEPGA submits that "[s]ince the analysis can only be calculated using LEI's 'proprietary modeling,' ... the Applicants are the sole party capable of producing that critical analysis and should be required to do so." NEPGA Motion to Compel p. 5. The Applicant objected on the basis that the request would require the Applicant to "develop additional data that are not presently in the care, custody, or control of the Applicant[] and is not reasonably calculated to lead to admissible evidence."

Without agreeing with NEPGA's substantive argument that the Applicant's inputs are outdated and that NEPGA's inputs are somehow better, NEPGA 2-8 is relevant to NEPGA's intervention and reasonably calculated to lead to the discovery of admissible evidence. The motion to compel on NEPGA 2-8 is granted and the Applicant should provide a response using the different inputs provided by NEPGA.

D. NEPGA 2-14

NEPGA 2-14 requests that the Applicant produce un-redacted versions of the purchase power agreement (PPA) between Public Service Co. of New Hampshire d/b/a/ Eversource Energy and Hydro Renewable Energy, Inc., as well as the un-redacted testimony of Eric Chung and James Daley filed in support of the PPA in a docket at the NH Public Utilities Commission by Eversource Energy.

The Applicant objects on two grounds. First, the Applicant claims that the information is confidential and protected from discovery based on RSA 91-A, New Hampshire's Right-to-Know law. Second, the Applicant argues that since the PPA is now the subject of another pending regulatory proceeding, the Applicant does not need to produce the PPA in this docket.

NEPGA has entered into a confidentiality agreement with the Applicant thereby obviating concerns of confidentiality. Further, simply because the PPA is the subject of a separate regulatory proceeding does not mean that its terms are not reasonably calculated to lead to the discovery of admissible evidence in this proceeding. NEPGA's request that the Applicant provide an un-redacted copy of the PPA is granted, subject to the terms of the confidentiality agreement between the Applicant and NEPGA.

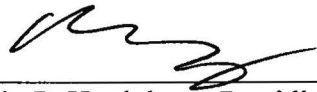
The relevance of the testimony of Eric Chung and James Daley filed in support of the PPA in a PUC proceeding is questionable. NEPGA has not demonstrated that this testimony is

reasonably calculated to lead to the discovery of admissible evidence in this proceeding.

NEPGA's request that the Applicant be compelled to provide an un-redacted copy of the testimony of Eric Chung and James Daley filed with the PUC in response to NEPGA 2-14 is denied.

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.

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

A handwritten signature in black ink, appearing to read 'M. Honigberg', is written over a horizontal line.

Martin P. Honigberg, Presiding Officer
Site Evaluation Committee