

**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 REQUESTS TO AMEND
PROCEDURAL ORDER**

I. Background

On June 23, 2016, a Procedural Order was issued in this docket. Pursuant to the Procedural Order, the parties propounded data requests upon the Applicant. Following the Applicant's response to the data requests, the parties filed numerous requests to compel the Applicant to provide supplemental answers to the data requests. In addition to – and partially because of – the motions to compel, the Subcommittee received the following motions containing requests to modify the discovery schedule:

- Counsel for the Public's Motion to Compel Further Responses to Expert-Assisted Data Requests and for Other Relief (August 15, 2016);
- Grafton County Commissioners' Motion and Supplement to Motion to Order Further Responses to Discovery Requests and Extend Intervenor Deadlines (August 15, 2016);
- Municipal Groups' 1, 2, and 3 and the Society for the Protection of New Hampshire Forests' Motion to Stay Technical Session and Request for Expedited Ruling (September 7, 2016);
- NEPGA's Motion to Postpone September 21, 2016, Technical Session (September 6, 2016); and
- The Society for the Protection of New Hampshire Forests' Joinder and Motion for Applicant to Amend and for Limited Postponements (September 2, 2016).

The Applicant objected to Counsel for the Public's and the Grafton County Commissioners' requests on August 25, 2016. The Applicant objected to the Society for the Protection of New Hampshire Forests' (Forest Society) Motion on September 8, 2016.

The Applicant further objected to the Motion to Stay filed by the Forest Society, Municipal Group 1 (South), Municipal Group 2, and Municipal Group 3 (South) on September 19, 2016.¹

On September 21, 2016, the Presiding Officer issued an Order granting a number of requests to compel answers to certain data requests.

This Order addresses motions to postpone the technical sessions and to modify the discovery schedule.

II. Analysis and Findings

Counsel for the Public asserts that his expert witnesses cannot complete their analysis and submit their pre-filed testimony without having an opportunity to review the Applicant's supplemental responses related to the underground portion of the Project. Counsel for the Public requests that the Subcommittee modify the procedural schedule so that it: (i) provides Counsel for the Public with the opportunity to conduct additional technical sessions for the purpose of examination of the Applicant's witnesses and experts on the issues related to the underground portion of the Project; (ii) provides an additional deadline for Counsel for the Public and the Intervenor's to submit pre-filed testimony addressing issues related to the underground portion of the Project; and (iii) provides an additional deadline for the Applicant's data requests concerning

¹ The Applicant's Objection further addresses the Forest Society and Municipal Group 3 (South)'s Motion to Compel Documents Withheld filed on September 9, 2016. The Motion to Compel Documents Withheld will be addressed by a separate Order.

the issues related to the underground portion of the Project; and (iv) provides an additional deadline for Counsel for the Public's responses to said data requests.

The Grafton County Commissioners request that the Subcommittee modify the discovery schedule so that it: (i) allows the Intervenors to submit their pre-filed testimony 60 days after the receipt of the Applicant's supplemental data requests; and (ii) grants the Intervenors leave to file additional motions to compel related to the supplemental answers within 10 days of receipt of the same.

The Municipal Groups and the Forest Society assert that the technical sessions should be postponed and that the procedural schedule should be modified so that the parties will be provided an opportunity to examine the Applicant's witnesses and experts after they receive the Applicant's responses to the pending data requests. They also argue that the discovery schedule should be modified so that they have the opportunity to address the results of the geotechnical investigations requested by the Department of Transportation and the additional information that will be submitted by the Applicant pursuant to the requests made by the Department of Environmental Services.

NEPGA requests that the Subcommittee postpone the September 21, technical session so that it will have an opportunity to review and address the Power Purchase Agreement and the results of the Clean Energy RFP prior to questioning the Applicant's witnesses.

The Forest Society additionally submits that the Applicant has not provided sufficient information to the NH Department of Environmental Services. The Forest Society argues that without the missing information, it cannot effectively: (a) conduct technical sessions on the Applicant's witnesses; (b) complete its analysis to submit pre-filed testimony; or (c) have its witnesses participate in the technical sessions with respect to wetlands or economic issues.

The Applicant objects to the requests to postpone the technical session and modify the procedural schedule. In support, the Applicant asserts that postponement and designation of additional discovery deadlines will cause undue delay in this docket. The Applicant further submits that although several parties have argued that technical sessions must be stayed or postponed due to pending Motions to Compel, this argument is without merit as the parties are not presently lacking sufficient information to meaningfully participate in the technical sessions.

Counsel for the Public, the Grafton County Commissioners, the Forest Society, the Municipal Groups, and NEPGA's requests to postpone and/or reschedule the technical sessions are denied. Counsel for the Public, the Grafton County Commissioners, the Forest Society, the Municipal Groups, and NEPGA's requests to modify the discovery schedule is granted. Counsel for the Public and the Intervenor identified limited discovery issues that they wish to address prior to the technical sessions. Consideration of these issues does not warrant postponement or cancellation of the currently scheduled technical sessions. Counsel for the Public and the Intervenor's request to address limited additional discovery issues may be addressed by providing the parties the opportunity to conduct additional discovery within the existing discovery schedule and by scheduling additional discovery deadlines for these issues.

Counsel for the Public and the Intervenor in this docket have a right to address, through meaningful discovery, supplemental responses that will be provided pursuant to the Order on Motions to Compel. Additional discovery will not cause undue delay because it will be conducted within the time-frames set forth by the Subcommittee. The request for leave to file additional motions to compel, however, is premature and cannot be granted at this time. Once the parties receive supplemental responses to the data requests, they may seek leave to file

additional motions to compel. Motions for leave, if any, will be granted or denied based on the arguments presented.

NEPGA's request to postpone the September 21, technical session until the issuance of the results of the Clean Energy RFP is denied. Indefinite postponement of the technical sessions is contrary to the purposes of RSA 162-H:1, that requires avoidance of undue delays in construction of new energy facilities. *See* RSA 162-H:1.


The Municipal Groups and the Forest Society's request to modify procedural schedule so that they can address the Applicant's responses to the Department of Environmental Services' requests is granted.

The discovery schedule is modified as follows:

1. Technical Sessions with the Applicant's witnesses shall be conducted between September 5, 2016 and September 30, 2016.
2. **The Applicant shall provide supplemental responses to data requests pursuant to the Order on Motions to Compel and Order on NEPGA's Motion to Compel on or before October 7, 2016;**
3. **The Applicant shall provide supplemental responses to data requests addressing the underground portion of the Project and the Applicant's responses to the Department of Environmental Services' requests on or before December 15, 2016;**
4. Counsel for the Public's and Intervenors' pre-filed testimony shall be filed on or before November 15, 2016.
5. The Applicant shall propound data requests upon Counsel for the Public and Intervenors on or before November 30, 2016.
6. **Counsel of the Public's and Intervenors' pre-filed testimony addressing issues related to: (i) the Applicant's production pursuant to the Order on Motion to Compel and Order on NEPGA's Motion to Compel; (ii) the underground portion of the Project; and (iii) the Applicant's response to the Department of Environmental Services' requests shall be filed on or before December 30, 2016.**

7. Counsel for the Public and Intervenors shall respond to the Applicant's data requests on or before December 30, 2016.
8. **The Applicant shall propound data requests addressing: (i) the Applicant's production pursuant to the Order on Motion to Compel and Order on NEPGA's Motion to Compel; (ii) the underground portion of the Project; and (iii) the Applicant's response to the Department of Environmental Services' requests upon Counsel for the Public and Intervenors on or before January 15, 2017.**
9. Technical Sessions with Counsel for the Public's and Intervenors' witnesses shall be conducted between January 16 and February 15, 2017.
10. **Counsel for the Public and Intervenors shall respond to data requests addressing issues: (i) the Applicant's production pursuant to the Order on Motion to Compel and Order on NEPGA's Motion to Compel; (ii) the underground portion of the Project; and (iii) the Applicant's response to the Department of Environmental Services' requests on or before February 15, 2017.**
11. **Technical Sessions with Applicant's, Counsel for the Public's and Intervenors' witnesses addressing issues related to: (i) the Applicant's production pursuant to the Order on Motion to Compel and Order on NEPGA's Motion to Compel; (ii) the underground portion of the Project; and (iii) the Applicant's response to the Department of Environmental Services' requests shall be conducted between February 20 and February 28, 2017.**
12. Supplemental pre-filed testimony from all parties shall be filed by March 15, 2017.
13. Pre-Hearing Motions and Statements of Stipulated Facts shall be filed on or before March 20, 2017.
14. Final Pre-Hearing Conference shall be conducted on or before March 28 and March 29, 2017.

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



Martin P. Honigberg, Presiding Officer
Site Evaluation Committee