

**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**

October 4, 2016

**ORDER ON FOREST SOCIETY AND MUNICIPAL GROUP 3 (SOUTH)'S MOTION
TO COMPEL DOCUMENTS WITHHELD**

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, several parties, including the Society for the Protection of New Hampshire Forests (Forest Society) and Municipal Group 3 (South) filed motions to compel.

The Applicant filed its Response and Objection to Certain Motions to Compel on August 25, 2016, addressing, among other things, the Forest Society's Motion to Compel and Municipal Group 3 (South)'s Motion to Compel.¹

¹ The Motions to Compel have been addressed in the Order on Motions to Compel, dated September 22, 2016.

On September 9, 2016, the Forest Society and Municipal Group 3 (South) filed a separate Motion to Compel Production of Documents Withheld.² The following parties concur with the Motion to Compel Production of Documents Withheld: Ammonoosuc Conservation Trust, Appalachian Mountain Club, Conservation Law Foundation, New England Power Generators Association, Inc., Pemigewasset River Local Advisory Committee, Town of Bridgewater, Town of New Hampton, Town of Littleton, Town of Ashland Water & Sewer, Town of Woodstock, Town of Deerfield, Grafton County Commissioners, Percy Summer Club, Abutting Property Owners: Deerfield, Abutting Property Owners: Bethlehem to Plymouth, Non-Abutting Property Owners: Ashland to Deerfield, and Non-Abutting Property Owners: Clarksville-Stewartstown.

On September 19, 2016, the Applicant filed its Objection to the Motion to Compel Production of Documents Withheld.³

On September 23, 2016, the Forest Society filed its Reply to the Applicant's Objection.

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).

² While the Towns of Pembroke and Canterbury are part of Municipal Group 3 (South), they are not movants in this Motion.

³ The Applicant's Objection also addressed Motions to Stay Technical Sessions and for Expedited Ruling. That portion of the Applicant's Objection has been addressed by the Order on Requests to Amend Procedural Order dated September 22, 2016.

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

The Forest Society and Municipal Group 3 (South) request an order compelling the Applicant to produce information and documents listed in a privilege log provided to them, and documents which the Applicant deemed “highly confidential,” and therefore only provided to Counsel for the Public. The Forest Society and Municipal Group 3 (South) indicate that the Applicant provided them with a privilege log containing a list of documents withheld from production on the basis of the attorney-client privilege and/or work-product doctrine. The Forest Society and Municipal Group 3 (South) further note that the Applicant indicated that certain documents and information would not be shared with parties other than Counsel for the Public because they are “highly confidential.” Those documents are as follows:

- CFP 1-1: All documents that relate to communications that NPT and the Applicants have had with governmental and private parties relating to the proposed route;
- CFP 1-2: Documents that show areas considered for the underground construction of the Transmission Line;
- CFP 1-3: All deeds, leases, easements, right-of-way agreements, or other documents that evidence, support or discuss NPT’s right to construct the Transmission Line on the Proposed Route;
- CFP 1-10: All documents which analyze, discuss or relate to the construction of the underground portions of the Transmission Line;
- CFP 1-12: All documents that analyze, discuss, or relate to the cost to construct underground any portion of the Transmission Line that Applicant’s propose to construct

above ground, including without limitation, the study performed by Burns and McDonnell;

- CFP 1-16: A copy of all budgets for the Project and the Forward NH Plan
- CFP 1-20: A copy of all agreements, memoranda of understanding, other written obligations and communications between Eversource and Hydro-Quebec regarding the Project;
- CFP 1-21: A copy of all agreements, memoranda of understanding, other written obligations and communications between Eversource and NPT regarding the Project;
- CFP 1-22: A copy of all agreements, memoranda of understanding, other written obligations and communications between Eversource and Hydro Renewable Energy, Inc. or Hydro Quebec regarding the Project;
- CFP 1-25: A copy of all agreements, memoranda of understanding, other written obligations and communications between NPT and Renewable Properties, Inc.;
- CFP 1-26: A copy of all agreements, memoranda of understanding, other written communications and obligations between NPT and Hydro Renewable Energy, Inc. or Hydro Quebec regarding the Project; and
- CFP 1-27: A copy of all documents that evidence, support, describe or relate to NPT's financing of the construction of the Transmission Line.

While the Forest Society and Municipal Group 3 (South)'s Motion to Compel Documents Withheld specifically mentioned CFP 1-1, CFP 1-2, CFP 1-3, CFP 1-10, CFP 1-12, CFP 1-16, CFP 1-20, CFP 1-21, CFP 1-22, CFP 1-25, CFP 1-26, and CFP 1-27, the Forest Society clarified in its Reply dated September 23, 2016, that they are in fact asking that the Applicant be compelled to produce all documents produced to Counsel for the Public, including those documents listed in the privilege log provided to them on September 2, 2016, and deemed to be "highly confidential."

The Forest Society and Municipal Group 3 (South) argue that the documents being requested are important for the intervenors to review in order to meaningfully participate in these proceedings. The Forest Society and Municipal Group 3 (South) also argue that there is no basis

for the documents to be withheld from intervenors who have signed confidentiality agreements, and that the Applicant has not provided any legal basis for withholding the documents or for claiming that they are “highly confidential.”

The Applicant notes that the majority of the documents sought by the Forest Society and Municipal Group 3 (South) through their Motion to Compel Documents Withheld have now been provided to those parties that have executed confidentiality agreements. The Applicant suggests that only four documents which have been produced to Counsel for the Public remain withheld from other intervenors on the basis of confidentiality: (1) Renewable Properties, Inc., and Northern Pass Transmission, LLC, Option to Lease Agreement, dated October 14, 2015; (2) Hydro Renewable Energy, Inc., and Northern Pass Transmission LLC Delivery Performance Agreement, dated as of January 22, 2016; (3) Northern Pass Transmission LLC and Hydro Renewable Energy, Inc., Amended and Restated Transmission Service Agreement, dated January 22, 2016; and (4) Section 5.2 of Eversource Energy’s Proposal to the Tri-State Clean Energy RFP.

The Applicant argues that the Option to Lease Agreement provided to Counsel for the Public in response to its data requests CRP 1-3 and CFP 1-25 is not relevant and that it has provided the Notice of Lease for the property at issue, which is the responsive document for purposes of demonstrating site control to satisfy the Applicant’s obligations under Site 301.03(c)(6).Applicant’s Objection p. 3. The Applicant also objects to providing the Hydro Renewable Energy, Inc., and Northern Pass Transmission LLC Delivery Performance Agreement (DPA) on grounds of relevance and notes that the DPA is part of the Applicant’s proposal to the Tri-State Energy RFP as part of their Application for a Certificate of Site and Facility and is therefore outside of the scope of discovery. The Applicant objects to providing

the Northern Pass Transmission LLC and Hydro Renewable Energy, Inc., Amended and Restated Transmission Service Agreement on grounds of relevance and because it is part of the Applicant's proposal to the Tri-State Energy RFP. The Applicant suggests that it does not claim any of the benefits associated with the Clean Energy RFP as part of its Application for a Certificate of Site and Facility, and therefore the documents are outside of the scope of discovery in this proceeding. The Applicant also objects to producing Section 5.2 of Eversource Energy's Proposal to the Tri-State Clean Energy RFP on grounds of relevance and that it exceeds the scope of discovery in this proceeding.


Although not specifically addressed by the Forest Society and Municipal Group 3 (South) in their Motion to Compel Documents Withheld, the Applicant further notes its objection to providing documents informally requested by counsel for the City of Concord that have been produced to Counsel for the Public under seal in response to CFP 1-7, 1-8, and 1-9. The Applicant objects to production of those documents on grounds of relevance. The requests sought copies of all: (1) requests for bids, (2) bids received, and (3) contracts or agreements entered into for construction of any portion of the transmission line. The Applicant argues in response to CFP 1-7 and 1-8, that it produced to Counsel for the Public solicitations for bids and resulting proposals associated with the competitive bidding process for securing the contractors of the proposed Project. The Applicant argues that such competitive bidding materials are not relevant to these proceedings. Further with respect to 1-9, the Applicant argues that while the qualifications and expertise of contractors is relevant, the specific terms of contracts between the companies and the Applicant are not relevant and contain sensitive and confidential business information and release of such information would jeopardize the competitive interests of the companies involved.

The Forest Society and Municipal Group 3 (South)'s request is two-fold. First, they seek an order compelling the Applicant to produce documents listed in a privilege log produced by the Applicant in response to data requests. Second, they seek an order compelling the Applicant to produce documents it has chosen not to produce on grounds that they are "highly confidential," and have been produced to Counsel for the Public. Documents produced exclusively to Counsel for the Public were addressed in the Order on Motions to Compel dated September 22, 2016. In accordance with the Order on Motions to Compel, the documents provided to Counsel for the Public should not be withheld from those intervenors that have entered into confidentiality agreements with the Applicant. The Forest Society and Municipal Group 3 (South)'s request that the Applicant be compelled to produce responsive documents and information produced only to Counsel for the Public is granted subject to the terms of the intervenors' confidentiality agreements with the Applicant. This Order is limited to those data requests outlined in the Forest Society and Municipal Group 3 (South)'s pleadings: CFP 1-1, CFP 1-2, CFP 1-3, CFP 1-7, CFP 1-8, CFP 1-9, CFP 1-10, CFP 1-12, CFP 1-16, CFP 1-20, CFP 1-21, CFP 1-22, CFP 1-25, CFP 1-26, and CFP 1-27. To the extent the Forest Society and Municipal Group 3 (South) broadly request "all documents" produced to Counsel for the Public, that request is denied. The Applicant shall supplement its responses within 10 days of this Order.

The Applicant provided an extensive privilege log, consisting of approximately 119 pages detailing documents being withheld on the basis of the attorney-client privilege and/or work-product doctrine. The documents listed in the privilege log include communications between counsel and experts. The Forest Society and Municipal Group 3 (South) have not demonstrated that the documents listed in the privilege log were not rightfully withheld on grounds of attorney-client privilege and the work-product doctrine. The Applicant will not be

compelled to produce privileged documents. The Forest Society and Municipal Group 3 (South)'s request that the Applicant be compelled to produce the documents listed in the privilege log is denied to the extent the documents were not produced on the basis of the attorney-client privilege and the work-product doctrine.

SO ORDERED this fourth day of October, 2016.



Martin Honigberg, Presiding Officer
Site Evaluation Committee