

**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 24, 2016

**ORDER ON MUNICIPAL GROUPS 1 SOUTH, 2, 3 SOUTH, 3 NORTH AND THE
SOCIETY FOR THE PROTECTION OF NEW HAMPSHIRE FORESTS'
MOTION TO COMPEL DEPOSITION OF JAMES A. MUNTZ**

I. Background

On August 5, 2016, a Technical Session Agenda was issued establishing dates when the Applicant's witnesses would be available for questioning. The Technical Session Agenda listed James A. Muntz, President of Transmission for Eversource Energy, as a witness, along with William Quinlan, for the September 21 technical session on the matters of "Project Route Selection, Forward NH Plan, NH-Specific Benefits, Clean Energy RFP, etc."

On September 15, 2016, the Applicant informed the Subcommittee that Mr. Muntz was withdrawing as a witness and that Kenneth Bowes and Mr. Quinlan would jointly adopt the pre-filed testimony of Mr. Muntz. The Applicant noted that both Mr. Bowes and Mr. Quinlan would appear and be available to answer questions at the technical session relating to the topics in Mr. Muntz's testimony. Subsequently, Mr. Bowes and Mr. Quinlan were rescheduled to be available for questioning at a technical session scheduled on October 11.

On September 29, 2016, Municipal Groups 1 South, 2, 3 South, and 3 North and the Society for the Protection of New Hampshire Forests (collectively referred to as Intervenor) filed a Motion to Compel Deposition of James A. Muntz (Motion to Compel Deposition). The following parties assent to the Motion to Compel Deposition: Counsel for the Public; NEPGA;

Kevin Spencer and Mark Lagasse d/b/a Lagaspence Realty, LLC; NGO Intervenor's Group; Clarksville-Stewartstown Non-Abutters Group; Deerfield Abutters Group; Pemigewasset River Local Advisory Committee; and Ashland to Allenstown Abutters Group.

On October 7, 2016, the Applicant objected to the Motion to Compel Deposition.

II. Standard

Pursuant to Site 202.12(l), "[t]he presiding officer or any hearing officer designated by the presiding officer shall authorize other forms of discovery, including technical sessions, requests for admission of material facts, depositions, and any other discovery method permissible in civil judicial proceedings before a state court, when such discovery is necessary to enable the parties to acquire evidence admissible in a proceeding." N.H. CODE ADMIN. RULES, Site 202.12(l).

III. Analysis

The Intervenor's argue that the substitution of Mr. Bowes and Mr. Quinlan for Mr. Muntz, deprives the parties of the opportunity to obtain admissible evidence from Mr. Muntz regarding his unique and integral involvement and decision making related to the Project. The Intervenor's argue that the pre-filed testimony of Mr. Muntz was presented to provide input to the Committee and to support the Application regarding "... the Project's inception and the route selection process, how the Project design was modified over time, the federal permitting process, and [the Applicant's] participation in the [Clean Energy RFP] ... [as well as] the Applicant's technical and managerial capability to construct and operate the Project." *See* Motion to Compel Deposition, p. 3 (citing Pre-Filed Testimony of Mr. Muntz, Volume II of the Application, p. 1, lines 23-27). The Intervenor's further note that Mr. Muntz executed the Application to the Site Evaluation Committee on behalf of Northern Pass Transmission, LLC. The Intervenor's argue

that Mr. Muntz is the individual responsible for all high-level decision making regarding the areas within the scope of his pre-filed testimony, such as final design and route selection. They claim that failing to include Mr. Muntz as a witness deprives the parties of the opportunity to question him on matters that he alone is able to discuss. Those matters include the factors he considered, the factors he chose not to consider, the weight and credibility he gave to each, the decision making process, and the ultimate high-level decisions that were made regarding the Project inception, route selection, route design, federal permitting, the Clean Energy RFP, and technical/managerial capability.

The Intervenor asserts that while Mr. Quinlan and Mr. Bowes are qualified to speak to their respective areas of expertise and support for the Application, they are incapable of speaking on behalf of Mr. Muntz as to his various thought processes and considerations in making high-level decisions for the Project, and that deposing Mr. Muntz is necessary in order to acquire evidence admissible in this proceeding. The Intervenor further notes that substituting Mr. Quinlan and Mr. Bowes for Mr. Muntz is unlike earlier substitutions in this docket, as Mr. Muntz is uniquely responsible for many of the most critical decisions affecting the Project, and is the only individual that can adequately speak to the evolution and decision making process.

The Intervenor seeks an order for a deposition of Mr. Muntz, to be scheduled within sixty days. In the alternative, they request that Mr. Muntz be ordered to appear at a technical session as a witness for the Applicant, and to answer questions regarding his involvement with the Project and his pre-filed testimony.

The Applicant argues that the Motion to Compel Deposition should be denied because the Intervenor has not demonstrated that the Committee's standard discovery procedures are

inadequate, have not demonstrated a substantial need to depose Mr. Muntz, and have not made a good faith effort to resolve discovery issues informally. The Applicant notes that Mr. Muntz has announced that he will be leaving Eversource Energy, effective October 31, 2016. The Applicant argues that the required findings in this proceeding do not rest on Mr. Muntz or the Applicant's decision-making, but on the Applicant's capabilities and the effects of the Project. The Applicant submits that while the Mr. Muntz' pre-filed testimony provides historical grounding for the Project and its associated benefits, his testimony does not reach any ultimate conclusions about findings that the Committee is required to make in order to issue a certificate of site and facility under RSA 162 H:16, IV. The Applicant argues that Mr. Quinlan and Mr. Bowes are more than adequate substitutes for Mr. Muntz, are broadly knowledgeable about the Project, and are intimately familiar with its development. The Applicant notes that both Mr. Quinlan and Mr. Bowes will be able to address questions relating to the topics of the Project's inception, route selection process, federal permitting process and the Applicant's participation in the Tri-State Clean Energy RFP. The Applicant submits that the personal thoughts and perceptions of a single company employee are irrelevant, and that the Intervenors have not demonstrated a substantial need for the information that would be the subject of Mr. Muntz' deposition. The Applicant suggests that the relevant inquiry here is whether the Applicant satisfies the requirements of RSA 162-H:16, IV, not the prudence underlying decision making.

The Applicant also notes that the Intervenors have failed to demonstrate why the existing discovery methods, *i.e.*, data requests, are inadequate, and that the Intervenors did not make an effort to resolve the alleged discovery dispute informally in accordance with the Site Evaluation Committee Rules.

The Intervenor has failed to demonstrate that a deposition of Mr. Muntz is necessary to enable the parties to acquire evidence admissible in this proceeding. Mr. Muntz has chosen to cease his employment with Eversource Energy, and will no longer be responsible for matters concerning the Application. The Applicant has provided two witnesses to substitute for Mr. Muntz. Those witnesses have adopted his pre-filed testimony, and the Applicant has notified the Parties and the Subcommittee that those witnesses will be available to address "all questions relating to the topics discussed in Mr. Muntz' testimony." Applicant's Objection, p. 2. A deposition of Mr. Muntz is unlikely to lead to the discovery of additional admissible evidence that is relevant to the matters before the Subcommittee. The Intervenor's request for a deposition of Mr. Muntz is denied. The request that Mr. Muntz appear as a witness at a technical session is also denied.

SO ORDERED this twenty-fourth day of October, 2016.



Martin P. Honigberg, Presiding Officer
NH Site Evaluation Committee