

**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 28, 2016

**ORDER DENYING LAGASPENCE REALTY'S MOTION TO COMPEL RESPONSES
TO DATA REQUESTS DIRECTED TO JULIA FRAYER**

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 run through New Hampshire from the Canadian border in Pittsburg to Deerfield.

A Technical Session was held on September 16, 2016, at which the Applicant's witness, Julia Frayer, discussed the Project economics and market benefits. At the Technical Session, Ms. Frayer was asked about information she used in calculating the energy cost savings presented in Appendix D of her report.

On October 6, 2016, Kevin Spencer and Mark Lagasse dba Lagaspence Realty, LLC (Lagaspence Realty), filed a Motion to Compel Responses to Data Requests Directed to Applicant's Witness Julia Frayer. On October 14, 2016, the Applicant filed an 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).

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.

III. Positions of the Parties

At the Technical Session, Ms. Frayer was asked about the information she used in calculating energy cost savings displayed in Appendix D of her Analysis. Thereafter, Lagaspence Reality, posed Data Requests 2, 3, and 4, and argues that Ms. Frayer should be compelled to provide supplemental responses to those requests.

Data Request 2 requests that Ms. Frayer “[p]rovide the bibliography list of the source material contained in the Retail Electricity Cost Savings Report, Appendix D, on Page 111-113.” Data Request 3 requests that the Ms. Frayer provide “the excel spreadsheet that contain[s] the calculations contained in the Retail Electricity Cost Savings Report, Appendix D, Figures 69 and

70.” Data Request 4¹ requests that Ms. Frayer provide her “‘agenda/calendar,’ demonstrating who from the Eversource team she met with (and when) to discuss the redacted portion of her pre-filed testimony and her report.” Lagaspence Realty argues that the Applicant’s responses were unacceptable and that in response to Data Request 2, it was provided with a “useless document dump” that will not allow the Committee to evaluate Ms. Frayer’s work. Lagaspence Realty acknowledges that in response to Data Request 2, the Applicant listed a multitude of documents, websites and publications, but notes that the Applicant did not provide good faith references to the actual documents Ms. Frayer used in her calculations.

With respect to Data Request 3, Lagaspence Realty submits that the Applicant objected to its request on grounds of confidentiality and attorney-client privilege. Lagaspence Realty argues that the attorney-client privilege has no applicability to the relationship between the Applicant and Ms. Frayer.

Lagaspence Realty sought, through Data Request 4, the identities of Eversource personnel who made decisions regarding redaction of Ms. Frayer’s report and testimony. The Applicant objected on the basis of relevance, attorney-client privilege, and the work-product doctrine. Lagaspence Realty argues that the Applicant’s invocation of attorney-client privilege in response to this request is frivolous.

Lagaspence Realty requests that the Applicant: (i) identify and produce the documents used by Ms. Frayer to create the Electricity Cost Savings Report, Appendix D, on pages 111-113 of her report; (ii) produce the spreadsheet containing the calculations contained in the Electricity

¹ Lagaspence Realty’s Motion labels this request as Data Request 3. A review of the data requests however reveals that this is in fact Data Request 4.

Cost Savings Report, Appendix D, Figures 69 and 70; and (iii) disclose the identities of Eversource personnel who made decisions regarding the redactions to her testimony and report.

The Applicant objects to Lagaspence Realty's request to compel responses to data requests directed to Ms. Frayer. The Applicant first states that the request is procedurally improper as Lagaspence Realty was grouped, pursuant to the March 18, 2016, Order on Petitions to Intervene with the Abutting Property Owners from Clarksville to Dalton, and the Order requires the group to designate a single spokesperson for the purposes of filing pleadings, conducting discovery and for examination at evidentiary hearings.² The Applicant argues that as Attorney Cunningham is not the designated spokesperson of the group and that the Motion should be denied.

The Applicant argues that Lagaspence Realty's substantive arguments are misguided. With respect to Data Request 2, the Applicant states that Lagaspence asked it to provide "the bibliography list of the source material contained in the Retail Electricity Cost Savings Report, Appendix D, on Page 111-113," and that it provided a comprehensive list of documents and other sources in bibliography format. The Applicant notes that the majority of the sources include links to the referenced documents. The Applicant submits that it explained that the list represents the sources LEI used for purposes of gathering information as part of its research of long-term energy contracts. The Applicant argues that Lagaspence Realty has not demonstrated that the response to this data request is inadequate.

The Applicant also states that Lagaspence Realty's assertion that it withheld certain confidential documents under a claim of attorney-client privilege is inaccurate. To the contrary, the Applicant states that it has only withheld the confidential documents at issue from those few

² The Applicant incorrectly references the Presiding Officer's Order on Petitions to Intervene, dated March 18, 2016. The Order that applies is the Subcommittee Order on Review of Intervention dated May 20, 2016, where Lagaspence Realty was grouped with Abutting Property Owners in Dummer, Stark, and Northumberland. The requirement that each group designate a spokesperson is consistent with both Orders.

parties who have not signed an Agreement for Protective Treatment. The Applicant notes the requested information has been provided to all parties who have entered into a Protective Agreement, and that it has discussed with Attorney Cunningham the need to sign a Protective Agreement, and that both and the spokesperson for the group have both declined. The Applicant will make the confidential documents available if a Protective Agreement is executed.

The Applicant objects to providing the identities of the Eversource personnel who worked with Ms. Frayer regarding the redaction of her report and testimony on the basis of relevance, attorney-client privilege, and the work-product doctrine.

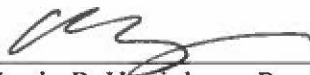
IV. Analysis

Lagaspence Realty has failed to indicate how the Applicant's responses to Data Requests 2, 3 and 4 are inadequate. With respect to Data Request 2, the Applicant has provided, in bibliography format, a comprehensive list of documents and other sources used, including links to the majority of the corresponding sources. Other than call it a "document dump" Lagaspence Realty fails to indicate how this response is inadequate. The fact that a large number of documents were provided in response to the inquiry does not render the disclosure to be inappropriate. With respect to Data Request 3, the Applicant states that it is willing to provide the requested confidential documents subject to the terms of a Protective Agreement, but Lagaspence Realty has chosen not to execute such an Agreement.

With respect to Lagaspence Realty's request in Data Request 4 that the Applicant be compelled to disclose the identities of the Eversource personnel responsible for redaction decisions, Lagaspence has not argued how or why the attorney-client privilege or work-product doctrine is inapplicable or why the information sought is in any way relevant or necessary in order to address issues pending before the Committee.

Lagaspence Realty's Motion to Compel the Applicant to provide supplemental responses to Data Requests 2, 3 and 4 is denied.

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



Martin P. Honigberg, Presiding Officer
NH Site Evaluation Committee