

**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 THE SOCIETY FOR THE PROTECTION OF NEW HAMPSHIRE
FORESTS MOTION TO COMPEL DOCUMENTS
PRODUCED INFORMALLY TO COUNSEL FOR THE PUBLIC**

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.

In accordance with various procedural orders, discovery through data requests has been ongoing. Several parties, including the Society for the Protection of New Hampshire Forests (Forest Society) filed motions to compel, to which the Applicant objected.

On September 22, 2016, an Order on Motions to Compel was issued addressing a number of matters, including those raised in the Forest Society's Motion to Compel.

On September 9, 2016, while its original Motion to Compel was still pending, the Forest Society and Municipal Group 3 (South) filed a Motion to Compel Production of Documents Withheld, seeking among other relief, an order compelling the Applicant to produce documents listed in a privilege log produced by the Applicant in response to data requests. The Applicant

objected, and the request for production of documents listed in the privilege log was denied by Order, dated October 4, 2016.

On September 28, 2016, the Forest Society filed its Motion to Compel with respect to the privilege log provided by the Applicant requesting that the Applicant provide a key to the privilege log or otherwise revise it to provide more detail.

The Applicant objected, and the Forest Society's Motion to Compel Privilege Log was denied by Order dated October 26, 2016.

On October 6, 2016, the Forest Society filed the instant Motion, which seeks an order compelling the production of "Documents Produced Informally to Counsel for the Public." The following parties concur in the Motion: New England Power Generators; Grafton County Commissioners; Pemigewasset River Local Advisory Committee; Town of Bethlehem; Town of Easton; Town of Franconia; Town of Plymouth; Town of Sugar Hill; Town of Littleton; Town of Ashland Water & Sewer; Town of Woodstock; Town of Deerfield; Town of Bridgewater; Town of New Hampton; Town of Canterbury; Town of Northumberland; Town of Pembroke; City of Concord; Susan Percy for Percy Summer Club¹; and Abutting Property Owners: Pittsburg-Clarksville-Stewartstown.

The Applicant filed an Objection on October 17 and the Forest Society filed a Supplement to its Motion on October 19.

II. Standard

Motions to compel responses to data requests shall:

- (1) Be made pursuant to N.H. Code of Admin. Rules Site 202.14;

¹ Ms. Percy is the spokesperson for the Abutting Property Owners: Dummer, Stark, and Northumberland.

(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

The Forest Society requests that the Applicant produce all documents that meet the following criteria: (a) those not yet produced or ordered to be produced to the Forest Society; (b) those produced by the Applicant to Counsel for the Public; and (c) those not included in the privilege log the Applicant provided on September 2, 2016 (the Informal Production).

The Joint Motion to Compel Production of Documents Withheld, filed on September 9, 2016, by the Forest Society and Municipal Group 3 (South), requested 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,” that were only provided to Counsel for the Public. In its Reply to the Applicants’ Objections dated September 23, 2016, the Forest Society clarified, that it was in fact asking that the Applicant produce all documents produced to Counsel for the Public, including those documents listed in the privilege log that was provided on September 2, 2016, and deemed to be “highly confidential.” The Forest Society wrote:

To be clear, in its September 9, 2016 Motion to Compel Highly Confidential Documents, the Forest Society requested Applicants to produce all documents produced to CFP, including those listed on the September 2, 2016 Privilege Log, which they deemed “highly confidential” not merely documents and information produced in response to CFP’s data requests.

Forest Society’s Reply to Applicant’s Objection dated September 23, 2016, p. 3-4.

Accordingly, the Presiding Officer’s Order addressed not only the request that the Applicant produce documents listed in the privilege log, but also the Forest Society’s requests that the Applicant produce documents it produced to Counsel for the Public in response to certain data requests and the Forest Society’s request for “all documents” produced to Counsel for the Public.

The Forest Society now argues that it “did not intend for the SEC to rule on the issue of whether the Applicant should be compelled to produce ‘all’ documents to the Forest Society.” Forest Society’s Motion to Compel Documents Produced Informally to Counsel for the Public dated October 6, 2016, p. 1-2. The Forest Society indicates that it is now requesting that the Committee order the Applicant to produce the documents from the Informal Production to the Forest Society and argues that it has been hindered in its intervention because the Applicant has not done so. The Forest Society highlights, by way of example, an occurrence at a Technical Session on October 5, 2016, when a consultant for Counsel for the Public began questioning Julia Frayer regarding a certain document which had only been produced to Counsel for the Public pursuant to an informal request. The Forest Society, upon learning of this document, requested a copy, the proceedings were paused to disseminate copies, and the questioning continued. The Forest Society argues that this type of hindrance is unnecessary and needlessly diminishes its due process rights. The Forest Society supplemented its Motion to include a list of documents provided to it by Counsel for the Public that represent those documents that the

Applicant has provided to Counsel for the Public pursuant to informal discovery. The Forest Society notes that the list may not be exhaustive and therefore requests that the Applicant be compelled to produce both the documents contained in the list and any other documents that Counsel for the Public may have inadvertently omitted from the list.

The Applicant objects to the Forest Society's request and argues that the documents provided informally to Counsel for the Public are not subject to discovery on procedural, substantive, and public policy grounds. The Applicant points out that the Presiding Officer denied the Forest Society's request for such documents in the Order issued on October 4, 2016, ruling on the Forest Society and Municipal Group 3 (South)'s Motion to Compel Documents Withheld.

The Applicant argues that the Forest Society's Motion is defective because it does not accord with Site 202.12, which, contemplates a data request, a response or objection, and then a motion to compel. The Applicant argues that here, the Forest Society filed a motion to compel that was not tied to any specific data request. The Applicant notes that the Forest Society does not make any allegation that the Applicant has failed to provide documents formally requested, but rather makes an untimely, catch-all data request through its Motion to Compel. The Applicant argues that as a substantive matter, the Forest Society had ample opportunity to pursue formal discovery by propounding data requests and filing proper motions to compel, and to pursue informal discovery through questioning in the Technical Sessions. The Applicant argues that there is no requirement in the Committee's rules or orders in this proceeding that would require production of the requested information to the Forest Society. The Applicant notes that the Forest Society's request is similar to its August 15, 2016 request to compel production of information responsive to data requests propounded by Municipal Group 1 (North), to which the


Presiding Officer found that the Forest Society had no standing to compel responses to data requests it did not propound. The Applicant further argues that the Forest Society's due process rights have not been diminished or hindered as the Applicant has complied with all formal discovery requests and made such responses available through ShareFile.

IV. Analysis

It remains unclear whether the Forest Society attempts to make a request which differs from the request addressed in the October 4, 2016, Order on Motion to Compel Documents Withheld. In either respect, the request is denied. The information and documentation sought by the Forest Society falls outside of the scope of a Motion to Compel. The request lacks specificity and broadly requests "all documents" informally provided to Counsel for the Public and seeks to compel responses to requests that the Forest Society did not propound, which the Forest Society does not have standing to compel. Finally, the request seeks to compel responses to informal requests, which are not subject to the rule on Motions to Compel. Site 201.12(k).

The Forest Society's Motion to Compel Documents Produced Informally to Counsel for the Public is denied.

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



Martin P. Honigberg, Presiding Officer
NH Site Evaluation Committee