

**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 ON REQUESTS TO AMEND
PROCEDURAL ORDER**

I. Background

On June 23, 2016, a Procedural Order was issued in this docket. On September 22, 2016, the Presiding Officer modified the Procedural Order.

Following the amendment of the procedural schedule, the Subcommittee received the following additional requests to further amend the procedural schedule:

- Motion for Rehearing of Order on NEPGA's Motion to Compel, Motion to Disallow Further Participation, and Motion to Stay (October 6, 2016)¹;
- Applicant's Motion for Extension of Time to Supplement Responses Pursuant to October 4, 2016 Order (October 14, 2016);
- Counsel for the Public's Motion to Amend Procedural Schedule (October 4, 2016);
- Joinder of the Society for the Protection of New Hampshire Forests in Motion to Amend Procedural Order of Counsel for the Public (October 7, 2016);
- Joinder of the Grafton County Commissioners in Counsel for the Public's Motion to Amend Procedural Order (October 10, 2016);
- Joinder of the Abutters' Group I, the Abutters of Pittsburg, Clarksville and Stewartstown, in Motion to Amend Procedural Order of Counsel for the Public (October 10, 2016);

¹ The requests for rehearing and disallowing further participation are addressed in the Order on Applicant's Motion for Rehearing (Order on NEPGA Motion to Compel) dated October 28, 2016.

- Joinder of the Abutting Property Owners Bethlehem to Plymouth Intervenor Group in Counsel for the Public's Motion to Amend Procedural Order (October 17, 2016);
- Joinder of Appalachian Mountain Club and NGO Intervenor in Counsel for the Public's Motion to Amend Procedural Order and Joinder by the Society for the Protection of New Hampshire Forests Together with Motion for Additional Relief (October 21, 2016);
- Partially Assented-To Motion of New England Power Generators Association, Inc., to Amend the Procedural Schedule (October 17, 2016); and
- Counsel for the Public's Request to Further Amend the Procedural Order (October 17, 2016).

The Applicant objected to Counsel for the Public's, the Society for the Protection of New Hampshire Forests' (Forest Society) and the Grafton County Commissioners' requests on October 14, 2016. Counsel for the Public replied to the Applicant's objection on October 18, 2016. The Subcommittee also received an objection to Counsel for the Public's request from the International Brotherhood of Electrical Workers (IBEW) and the Coos County Business and Employment Group (CCBEG) on October 14, 2016. The Applicant objected to Counsel for the Public's Further Request to Amend Procedural Schedule on October 25, 2016.

This Order addresses the above requests to modify the discovery schedule.

II. Analysis and Findings

A. Updated London Economics International Report and Power Purchase Agreement

The Applicant filed a request for rehearing on the Order on the New England Power Generator Association's (NEPGA) Motion to Compel and Order on Motions to Compel as they relate to production of an updated London Economics International (LEI) Report and the Power Purchase Agreement. In conjunction with this filing, the Applicant sought to amend the Procedural Order so that it does not require the Applicant to provide an updated LEI Report and Power Purchase Agreement on October 7, 2016. The Applicant's request for rehearing was

denied by the Order on Applicant's Motion for Rehearing (Order on NEPGA's Motion to Compel) on October 28, 2016. The Applicant is required to provide an updated LEI Report and the Power Purchase Agreement to the parties that executed Confidentiality Agreements. It is noted, however, that due to the Applicant's request for rehearing, the LEI Report and the Power Purchase Agreement were not provided in accordance with the Procedural Order. The Applicant has provided no reason why the Power Purchase Agreement cannot be provided in a timely manner. Therefore, the Applicant shall provide the Power Purchase Agreement to the parties that executed Confidentiality Agreements within 7 days of this Order.

As to the updated LEI Report, Counsel for the Public in his Further Request to Amend Procedural Schedule and the Applicant both assert that preparation of the LEI Report will require significant time because it will involve additional comprehensive modeling and analyses. Counsel for the Public moves that the Applicant be required to provide an updated LEI Report and Ms. Frayer's updated testimony on or before December 31, 2016. Counsel for the Public also asserts that the Procedural Order should be amended so that the parties are given an opportunity to conduct an additional technical session and file their pre-filed testimony and data requests addressing the LEI Report and Ms. Frayer's updated testimony following the filing of the LEI Report and Ms. Frayer's updated testimony. Counsel for the Public claims that his experts are not in a position to prepare and file their pre-filed testimony and reports without reviewing the updated LEI Report and Ms. Frayer's testimony.

NEPGA also asserts that it cannot file testimony without receiving the updated LEI Report and Power Purchase Agreement. NEPGA moves to modify the Procedural Order so that each deadline is postponed for 45 days following the Applicant's compliance with Orders on Motions to Compel.

Counsel for the Public and presumably other parties retained experts to provide independent opinions and analyses of the Project's impact on economy. For some opinions and analyses, the final LEI Report and any updated testimony from Ms. Frayer based on that report may be important. For others, however, the parties likely have sufficient information to have formed their own opinions, independent of Ms. Frayer's work. To date, the parties have had an extensive opportunity via technical sessions to discover all aspects of Ms. Frayer's testimony and her approach to modeling the energy market and economic benefits and impacts of the Project. The technical sessions with Ms. Frayer that have occurred so far provide a solid base from which experts for Counsel for the Public and the other parties can approach the formulation of their own testimony and there is no reason to delay the filing of all economic testimony. Counsel for the Public and NEPGA's request to modify Procedural Order so that it allows Counsel for the Public and NEPGA to file pre-filed testimony and reports prepared by their experts on economic issues following submittal of the updated LEI Report is denied to the extent that the experts wish to testify about energy market and economic benefits and impacts that are not based on Ms. Frayer's final testimony and report. Such testimony and reports shall be filed by December 30, 2016.

Opinions, reports and testimony based on LEI's final report and additional testimony from Ms. Frayer may be filed as supplemental testimony. Any such supplemental testimony must state specifically why each opinion offered could not have been provided by the end of 2016. Discovery associated with the filing of the updated LEI Report and Ms. Frayer's updated testimony may be addressed during technical sessions to be scheduled before the deadline for supplemental testimony. The Procedural Order shall be amended so that it allows for additional technical sessions addressing the updated LEI Report and Frayer testimony. These technical

sessions will be limited to the final LEI Report and Ms. Frayer's updated testimony. The parties have spent an extensive amount of time in technical sessions with Ms. Frayer. The supplemental technical sessions will be limited in scope. Therefore, as explained above, Counsel for the Public and NEPGA's request to modify the Procedural Order so that it allows for additional discovery associated with the updated LEI report is denied in part, and granted, in part.

B. Counsel for the Public's Motion to Amend Procedural Schedule (October 4, 2016) and Joinders

Counsel for the Public asserts that he needs additional time to prepare and file pre-filed testimony addressing: (i) market economic issues; (ii) local economic issues; (iii) natural resources; and (iv) aesthetics. Counsel for the Public requests modification of the procedural schedule so that it provides for additional deadlines for discovery addressing these issues, and extends deadlines for pre-hearing motions and statements of stipulated facts, supplemental pre-filed testimony and final pre-hearing conference by 12 days. In support, Counsel for the Public argues that his experts will not be able to prepare their pre-filed testimony within the deadlines currently provided due to the delays in the Applicant's response to Counsel for the Public's discovery requests and due to the complicated and comprehensive analyses that are required for evaluation of these issues.

The Forest Society, the Appalachian Mountain Club, and NGO Intervenors joined and incorporated by reference arguments and requests made by Counsel for the Public. They ask the Presiding Officer to grant similar relief as it relates to them.

The Applicant objects to the amendment of the Procedural Order. The Applicant asserts that the Procedural Order has already been amended in response to numerous requests to provide additional deadlines for additional discovery requests. The Applicant further asserts that it complied with numerous discovery requests, formal and informal, and it is up to date with

responding to the submitted requests. The Applicant argues that further modification of the Procedural Order will delay the resolution of the issues raised in this docket and will be contrary to RSA 162-H:1.

IBEW and CCBEG concur with the Applicant's Objection. IBEW and CCBEG further assert that modification and delaying of filing of supplemental pre-filed testimony, pre-hearing motions and statements of stipulated facts and final pre-hearing conference are not warranted where requests made by Counsel for the Public may be accommodated within the existing procedural schedule.

Counsel for the Public and the Intervenors' request to be allowed additional time to file pre-filed testimony addressing the topics listed above is reasonable. The extension of the deadlines requested by Counsel for Public and the Intervenors may be accomplished within the timeframes currently set forth by the Procedural Order and will not cause delay in administration of these proceedings. There is no reason at this time, however, to extend additional deadlines.

Therefore, Counsel for the Public and Intervenors' requests to amend the procedural schedule is granted in part, and denied, in part. The procedural schedule will be amended to allow for additional time for filing of pre-filed testimony addressing: (i) market economic issues; (ii) local economic issues; (iii) natural resources; and (iv) aesthetics. The requests to delay the deadlines for the final pre-hearing conference and filing of supplemental pre-filed testimony, pre-hearing motions and statements of stipulated facts are denied.

C. Applicant's Motion for Extension

The Applicant indicated that it would be filing a request for rehearing of the Presiding Officer's Order to provide: (i) the Hydro Renewable Energy, Inc. and Northern Pass Transmission LLC Delivery Performance Agreement dated January 22, 2016; and (ii)

Section 5.2 of Eversource Energy's Proposal to the Tri-State Clean Energy RFP. The Applicant filed its Contested Motion for Clarification and/or Rehearing of Order(s) Requiring Production of Documents Related to the Clean Energy RFP on October 25, 2016.² The Applicant requests that the Presiding Officer stay the Order that requires the Applicant to file these documents on or before October 14, 2016.

The Applicant's request is granted. Pending the resolution of the Applicant's Motion for Rehearing, the Applicant is not required to provide: (i) the Hydro Renewable Energy, Inc., and Northern Pass Transmission LLC Delivery Performance Agreement dated January 22, 2016; and (ii) Section 5.2 of Eversource Energy's Proposal to the Tri-State Clean Energy RFP.

D. Joinders to Motion to Amend Procedural Order

The Grafton County Commissioners, the Abutting Property Owners Bethlehem to Plymouth and the Abutting Property Owners Pittsburg, Clarksville and Stewartstown filed Joinders to Counsel for the Public's Motion to Amend Procedural Schedule. In their Joinders, however, the Intervenor seek independent and unrelated relief. Specifically, they ask the Presiding Officer to extend the deadline for filing of their pre-filed testimony. The Intervenor assert that they cannot submit their pre-filed testimony as currently scheduled because the Applicant failed to provide completed construction documents, plans showing the exact underground route, and geotechnical core-drilling reports.

The current Procedural Order allows the Intervenor to file pre-filed testimony addressing issues related to the underground portion of the Project and the Applicant's response to the Department of Environmental Services' requests on or before December 30, 2016. This deadline

² The Applicant's Contested Motion for Clarification and/or Rehearing of Order(s) Requiring Production of Documents Related to the Clean Energy RFP will be addressed by a separate Order.

was specifically set to allow the Intervenor to obtain and address documents related to the underground portion of the Project and geotechnical core-drilling reports prior to the filing of their pre-filed testimony. As to complete construction plans, it is unclear when 100% complete construction plans will be developed. Construction plans can be fluid documents that require changes at various times based on conditions encountered in the field. The Procedural Order cannot be modified so that it indefinitely postpones the filing of the Intervenor's pre-filed testimony pending submittal of 100% complete construction plans. Such delay is contrary to the goals and purposes set forth in RSA 162-H:1. The requests for relief contained in the Joinders filed by the Grafton County Commissioners, the Abutting Property Owners Bethlehem to Plymouth and the Abutting Property Owners Pittsburg, Clarksville and Stewartstown are denied. If changes to construction plans require a response, the Intervenor should seek leave to make an appropriate supplemental filing.

E. Discovery Schedule

The discovery schedule is modified as follows:

1. The Applicants 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.
2. **With the exception of pre-filed testimony addressing issues related to (i) market economic issues; (ii) local economic issues; (iii) natural resources; and (iv) aesthetics,** Counsel for the Public's and Intervenor's pre-filed testimony shall be filed on or before November 15, 2016.
3. **With the exception of data requests addressing issues related to: (i) market economic issues; (ii) local economic issues; (iii) natural resources; and (iv) aesthetics,** the Applicant shall propound data requests upon Counsel for the Public and Intervenor on or before November 30, 2016.
4. Counsel for the Public's and Intervenor's 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; (iii) the Applicant's response to the Department of Environmental Services'

requests; **(iv) market economic issues; (v) local economic issues; (vi) natural resources; and (vii) aesthetics** shall be filed on or before December 30, 2016.

5. On or before December 30, 2016, Counsel for the Public and Intervenors shall respond to the Applicant's data requests **propounded on or before November 30, 2016.**
6. 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; (iii) the Applicant's response to the Department of Environmental Services' requests; **(iv) market economic issues; (v) local economic issues; (vi) natural resources; and (vii) aesthetics** upon Counsel for the Public and Intervenors on or before January 15, 2017.
7. Technical Sessions with Counsel for the Public's and Intervenors' witnesses shall be conducted between January 16 and February 15, 2017.
8. 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; (iii) the Applicant's response to the Department of Environmental Services' requests; **(iv) market economic issues; (v) local economic issues; (vi) natural resources; and (vii) aesthetics** on or before February 15, 2017.
9. **Julia Frayer's updated report and testimony shall be provided on or before February 15, 2017.**
10. Technical Sessions with the 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; (iii) the Applicant's response to the Department of Environmental Services' requests; **(iv) market economic issues; (v) local economic issues; (vi) natural resources; and (vii) aesthetics** shall be conducted between February 20 and February 28, 2017.
11. **A Technical Session with Julia Frayer addressing Ms. Frayer's updated report shall be conducted between February 25 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. A Final Pre-Hearing Conference shall be conducted on or before March 28 and March 29, 2017.

The Applicant shall provide the Power Purchase Agreement to the parties that have executed the confidentiality agreement within seven (7) days of the date of this order.

SO ORDERED this twenty-eighth day of October, 2016 by the Site Evaluation
Subcommittee:



Martin P. Honigberg, Presiding Officer
NH Site Evaluation Committee