

**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**

January 11, 2017

**ORDER DENYING SOCIETY FOR THE PROTECTION OF NEW HAMPSHIRE
FORESTS MOTION FOR DEPOSITION OF
JAMES A. CHALMERS AND MITCH NICHOLS**

I. Background

On October 19, 2015, the Applicant submitted pre-filed testimony from James A. Chalmers and Mitch Nichols with its Application for a Certificate of Site and Facility.

Pursuant to the June 23, 2016, Order on Pending Motions and Procedural Order, and the Technical Session Agenda dated August 5, 2016, Mr. Chalmers and Mr. Nichols participated in technical sessions on September 19 and 21, 2016.

On November 18, 2016, the Society for the Protection of New Hampshire Forests (Forest Society) filed a Motion for Deposition of Mr. Chalmers and Mr. Nichols. The following parties concur with the Motion: Grafton County Commissioners; New England Power Generator's Association, Inc.; Ammonoosuc Conservation Trust; Appalachian Mountain Club; Conservation Law Foundation; Pemigewasset River Local Advisory Committee; Town of New Hampton; Town of Littleton; Town of Ashland Water & Sewer; Town of Woodstock; Town of Deerfield; Town of Bridgewater; Town of Pembroke; Town of Easton; Town of Franconia; Town of Plymouth; Town of Sugar Hill; Town of Woodstock; Town of Bethlehem; Town of Bristol; Town of Northumberland; and Town of Whitefield. The Cities of Berlin and Franklin take no position.

The Applicant objected on November 23, 2016.

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. Positions of the Parties

The Forest Society argues that the information presented by Mr. Chalmers and Mr. Nichols at the technical sessions lacked clarity and that the evidence to be admitted in the proceeding is therefore unclear and currently unavailable. The Forest Society submits that conducting brief depositions of each witness, during which the record may be read back to clarify their answers, will enhance the adjudicative process. Without such depositions, the Forest Society states that it is likely that a great amount of time will be spent at the adjudicative hearing to ferret out precise answers. The Forest Society requests that the Subcommittee exercise its authority pursuant to N.H. CODE ADMIN. RULES Site 202.12(l) or its subpoena power pursuant to RSA 365:10 and issue an order requiring the depositions of Mr. Chalmers and Mr. Nichols. The Forest Society submits that there will be no prejudice to any party in granting its request for and that no delay will result.

The Forest Society also argues that the information provided by Julia Frayer also lacked clarity; however, given that Ms. Frayer is expected to submit a revised analysis by February 15, 2017, it is premature to seek to depose her at this time. The Forest Society reserves it’s right to

seek a deposition of Ms. Frayer in the event that her revised analysis and any technical sessions or other discovery, do not clarify the information she has presented.

The Applicant argues that the Forest Society has not demonstrated that depositions are necessary and that standard discovery methods are inadequate. The Applicant notes that the New Hampshire Public Utilities Commission has construed the term “necessary” to impose a stringent standard on the movant seeking a deposition in an administrative proceeding to demonstrate that standard discovery procedures are inadequate. Applicant’s Objection, p. 2 (citing Order No. 25,566, NH PUC, *Investigation of Scrubber Costs and Cost Recovery, Public Service Company of New Hampshire*, Docket DE 11-250, at 3 (August 27, 2013) (Scrubber Order)). The Applicant submits that in order to “satisfy the ‘necessary’ standard, the party seeking the deposition must demonstrate a substantial need for the information that is the subject of the deponent’s testimony and that the party could not, without undue hardship, obtain the information by other means.” Applicant’s Objection, p. 2 (citing Scrubber Order). The Applicant argues that the Forest Society has failed to establish that the depositions of Mr. Chalmers and Mr. Nichols are necessary, that standard discovery methods to date have been inadequate, and that there is a substantial need for additional information that could not, without undue hardship, be obtained by other means.


The Applicant argues that the Forest Society seeks to revisit information provided by Mr. Chalmers and Mr. Nichols provided in technical sessions in an apparent attempt to transcribe that information and use it for impeachment purposes in contravention of the Order on Motions to Transcribe Technical Session issued on August 29, 2016, wherein the Presiding Officer stated that technical sessions “[are] not designed and should not be used for impeachment purposes.” The Applicant submits that the Forest Society’s request for depositions of Mr. Chalmers and

Mr. Nichols should be denied, as the Forest Society has failed to establish that depositions are necessary to enable the parties to acquire evidence admissible in this proceeding.

IV. Analysis

The Forest Society has failed to demonstrate that depositions of Mr. Chalmers and Mr. Nichols are necessary to enable the parties to acquire evidence admissible in this proceeding. Mr. Chalmers and Mr. Nichols participated in technical sessions, the Forest Society had the opportunity to question them, had an opportunity to review the testimony and exhibits provided by them, and was provided with information responding to data requests. The Forest Society has failed to specify the information provided by Mr. Chalmers and Mr. Nichols that it claims lacks clarity and requires clarification through depositions. The Forest Society's Motion to Depose Mr. Chalmers and Mr. Nichols is denied.

SO ORDERED this eleventh day of January, 2017.



Martin P. Honigberg, Presiding Officer
NH Site Evaluation Committee