

**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 12, 2017

**ORDER DENYING THE SOCIETY FOR PROTECTION OF NEW HAMPSHIRE
FORESTS MOTION FOR REHEARING ON ORDER DENYING 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 to run through New Hampshire from the Canadian border in Pittsburg to Deerfield.

In accordance with various procedural orders, discovery has been ongoing. On October 6, 2016, the Forest Society filed a Motion to Compel Documents Produced Informally to Counsel for the Public (Motion to Compel). The Applicant objected, and the Forest Society filed a Supplement to its Motion to Compel on October 19. The Forest Society's Motion to Compel was denied by Order dated October 28, 2016.

On November 28, 2016, the Forest Society filed a timely Motion for Rehearing. The following parties concur: New England Power Generators; Pemigewasset River Local Advisory Committee; Grafton County Commissioners; Non-Abutting Property Owners: Stark to

Bethlehem; Abutters and Non-Abutters Pittsburg Clarksville-Stewartstown; Deerfield Abutters; Abutting Property Owners: Ashland to Allenstown; City of Concord; Town of Pembroke; Town of Deerfield. Counsel for the Public takes no position.

The Applicant objected on December 6, 2016.

II. Standard

Pursuant to RSA 541:3:

Within 30 days after any order or decision has been made by the commission, any party to the action or proceeding before the commission, or any person directly affected thereby, may apply for a rehearing in respect to any matter determined in the action or proceeding, or covered or included in the order, specifying in the motion all grounds for rehearing, and the commission may grant such rehearing if in its opinion good reason for the rehearing is stated in the motion.

A motion for rehearing shall:

- (1) Identify each error of fact, error of reasoning, or error of law which the moving party wishes to have reconsidered;
- (2) Describe how each error causes the committee's order or decision to be unlawful, unjust or unreasonable;
- (3) State concisely the factual findings, reasoning or legal conclusion proposed by the moving party; and
- (4) Include any argument or memorandum of law the moving party wishes to file.

N.H. CODE ADMIN. RULES, Site 202.29.

III. Positions of the Parties

A. Forest Society

The Forest Society argues that the Presiding Officer erred in finding that its "information request" falls outside the scope of a Motion to Compel, because the information sought had originally been produced informally to Counsel for the Public. The Forest Society states that

while the information was originally provided informally to Counsel for the Public and not through formal data requests, once the production of documents came to the attention of the Forest Society, the disclosure of documents to Counsel for the Public then became the subject of a data request from the Forest Society. The Forest Society also argues that the fact that the documents were being used during a technical session to probe the Applicant's expert's pre-filed testimony and gather relevant information, creates the presumption that the documents are relevant and subject to discovery pursuant to N.H. CODE ADMIN. RULES Site 202.12. The Forest Society suggests that "[d]espite learning about the extent of the documents produced informally to CFP after the data request during the technical session, the timing does not relieve the Applicant from the ongoing obligation to deliver supplemental documents, *i.e.*, the balance of the documents produced informally and any other documents produced but not specifically disclosed." Motion for Rehearing, p. 4. The Forest Society submits that its Motion to Compel was not procedurally defective, but rather made timely and in accordance with information properly sought via a Motion to Compel, and that the documents at issue are directly responsive to data requests propounded by the Forest Society and others in May and June of this year. The Forest Society states that it first learned that the Applicant had withheld responsive documents without any notice during a technical session.

B. Applicant

The Applicant argues that the Forest Society's request is vague and unsubstantiated, fails to meet its legal burden, and should be denied. The Applicant notes that while the Forest Society references a data request made during a technical session and data requests propounded in May

and June of 2016, it does not specifically identify the requests.¹ The Applicant argues that the Forest Society's Motion for Rehearing does not successfully refute the Presiding Officer's determination that informal discovery is not within the scope of a motion to compel. The Applicant submits that the Forest Society merely raises the arguments it made previously, contends that the Presiding Officer erred, and asks for a different outcome. Alternatively, the Applicant submits that the Forest Society seems to suggest that documents provided informally to Counsel for the Public should, for other reasons, be provided to it because a document was: (1) mentioned in a technical session; (2) responsive to some early data request; or (3) a supplement response should be made. The Applicant argues that the Forest Society has provided no factual basis for these requests. The Applicant notes that, as a general matter, it agrees with the Forest Society's position that the Applicant is required to provide documents in these three categories, assuming no valid objection applies, but does not agree that there are applicable documents which fall within these three categories that have not been provided. The Applicant indicates that where a document produced informally to Counsel for the Public was responsive to a formal data request made by a party, the Applicant produced it in response to that data request. The Applicant submits, however, that a significant amount of information given to Counsel for the Public as part of informal discovery was not responsive to any formal data request. The Applicant argues that the Forest Society's analysis glides over the fundamental difference between a formal data request for a specific document and the general request for all documents produced to Counsel for the Public that was the subject of the Forest Society's Motion to

¹ The Applicant suggests that the Forest Society may be referring to data request no. 5 regarding the technical session of Julia Frayer on September 16, 2016, and indicates that if that is the case, the Applicant provided the requested spreadsheet to all parties on September 29, 2016.

Compel. The Applicant submits that the Motion fails to identify any error of fact, law, or reasoning or how such purported error causes the Order to unlawful, unjust, or unreasonable.

IV. Analysis

The Forest Society has not stated good reason for rehearing. The Forest Society has not demonstrated that the Presiding Officer's Order on the Motion to Compel resulted from any error of fact, reasoning, or law; nor do they demonstrate how any purported error causes the Order to be unlawful, unjust, or unreasonable. In denying the Motion to Compel, the Presiding Officer found that: (1) the Forest Society's request lacks specificity and broadly requests "all documents" informally provided to Counsel for the Public; (2) the request seeks to compel responses to requests that the Forest Society did not propound, which the Forest Society does not have standing to compel; and (3) the request seeks to compel responses to informal requests, which are not subject to the rule on motions to compel. The Forest Society's Motion fails to establish that the Presiding Officer's findings or reasoning were factually or legally flawed such that rehearing is warranted. The request for rehearing itself fails to identify any specific data request upon which documents or information should be compelled. The Forest Society's Motion for Rehearing is denied.

SO ORDERED this twelfth day of January, 2017.



Martin P. Honigberg, Presiding Officer
NH Site Evaluation Committee