

**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 18, 2017

**ORDER DENYING SOCIETY FOR PROTECTION OF NEW HAMPSHIRE FORESTS
MOTION FOR REHEARING ON ORDER DENYING MOTION TO COMPEL
PRIVILEGE LOG**

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 September 28, 2016, the Society for the Protection of New Hampshire Forests (Forest Society) filed a Motion to Compel a revised privilege log that was provided by the Applicant. The Applicant objected, and the Forest Society filed a Reply to the Objection 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 2, 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 Order denying the Motion to Compel resulted from an error of law in that the Order focused on whether the documents referenced in the log were labeled to indicate the basis of the privilege, rather than the perceived deficiencies with the log. The Forest Society also argues that in the privilege log's current form, it is not possible to

sufficiently identify whether the attorney-client privilege or work-product doctrine are applicable. The Forest Society submits that the ongoing and continuing deficiencies in the Applicant's log creates an inability for the Forest Society to adequately determine: (1) the documents that have been produced; (2) the data requests to which those documents were responsive; and (3) whether those documents are, or should be, protected by either the attorney-client privilege or the work-product doctrine. The Forest Society concludes that a more detailed log is needed, and that rehearing will not prejudice the Applicant or delay the proceedings in this docket, but will allow a fair opportunity to understand the information is or is not being provided through the privilege log.

B. Applicant

The Applicant argues that the Forest Society has failed to meet its legal burden and the request for rehearing should be denied. The Applicant argues that the Forest Society does not identify any error of fact, reasoning, or law warranting rehearing, and simply restates the arguments it previously made and asks for a different result. The Applicant also argues that the Forest Society overlooks that the Applicant, in an effort to make the privilege log more user friendly, added a column identifying specific documents attached to e-mails where a privilege was asserted, and updated the privilege log to identify: (1) all documents that were provided in response to data requests despite the claim of privilege; (2) the bates number for those documents; and (3) the data request for which those documents were provided.

IV. Analysis

The Forest Society has not demonstrated that the 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 did not demonstrate that the documents listed in the privilege log were not rightfully withheld on the grounds of attorney-client privilege or work-product doctrine; (2) the privilege log sufficiently identifies what has been withheld and states the reason for nondisclosure; and (3) the privilege log satisfies the requirements of the September 22, 2016 Order 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 would be warranted. The Forest Society's Motion for Rehearing is denied.

SO ORDERED this eighteenth day of January, 2017.



Martin P. Honigberg, Presiding Officer
NH Site Evaluation Committee