

**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 19, 2017

**ORDER DENYING IN PART AND GRANTING IN PART THE MOTION OF THE
SOCIETY FOR THE PROTECTION OF NEW HAMPSHIRE FORESTS TO COMPEL
RESPONSES TO DISCOVERY REQUEST TO DIXVILE CAPITAL, LLC AND
BALSMS RESORTS HOLDINGS, LLC**

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 January 6, 2017, the Society for the Protection of New Hampshire Forests (Forest Society) filed a Motion to Compel Dixville Capital, LLC and Balsams Resort Holdings, LLC (Balsams), intervenors in this matter, to provide answers and responsive documents to certain data requests. The Balsams filed a timely objection.

II. Positions of the Parties

The Forest Society seeks answers and documents responsive to the following questions:

- (a) Identify all payments made to Dixville Capital, Leslie Otten, or Balsams Resort Holdings by the Applicants or any person affiliated

with them specifying the date, the amount, and the purpose for each of such payments. Provide copies of all documents relating to such payments;

- (b) Identify any financial arrangements that have been discussed or committed to between Dixville Capital, Balsams Resort Holdings and the Applicants; and,
- (c) Whether future funding by the Applicants to Dixville Capital and/or Balsams Resort Holdings was conditioned upon Dixville Capital's or Balsams Resort Holdings support for the Project.

This is not the first time that such a request has been made in this docket. In September 2016, a similar discovery request was made to the Applicant by the Clarksville-Stewartstown Non-Abutters. That request was objected to and ultimately denied. The presiding officer found that information related to the advance commitment to the Balsams redevelopment project was “simply not relevant or reasonably calculated to lead to the discovery of admissible evidence.” *See Order on Motion to Compel*, September 22, 2016, p. 26.

The Balsams objects to the discovery requests citing the September 22, 2016 Order, and also argues that “the fact of the \$2 million investment in the Balsams redevelopment is a matter of public record. The confidential terms and conditions of that investment are not necessary for the Forest Society to make its suggested arguments.” The Balsams also points out that the terms and conditions of the advance commitment are confidential and should be protected from public disclosure because disclosure could place the Balsams at a competitive disadvantage in obtaining financing. The Balsams also objects to the discovery requests as they pertain to Les Otten personally, because he is not an intervenor in this matter.

III. Analysis

On November 15, 2016 the Balsams filed the testimony of Les Otten. That testimony does not reference the advance commitment from the Forward NH Fund, but is strongly supportive of the Project.

On December 30, 2016, Counsel for the Public filed the testimony of Thomas Kavet. Mr. Kavet and his company, Kavet Rockler, analyzed the local and regional economic impacts that may be associated with the Project. The Kavet Rockler study includes the Forward NH Fund in the analysis of the economic benefits of the project to the region. The testimony and analysis of the local and regional economic impacts of the Project submitted by the Applicant did not include the Forward NH Fund.

The Forest Society also argues that the fact that the Kavet Rockler analysis includes the Forward NH Fund in its calculation of economic benefits requires the Balsams to provide additional discovery on the details of the advance commitment. That argument is misplaced. Questions pertaining to Kavet Rockler's calculations of economic benefits should be addressed directly to Kavet Rockler. Notably, the Applicant does not include the Forward NH Fund in its testimony and analysis pertaining to the calculation of local and regional economic impacts.


During the course of public proceedings in this docket, the Balsams and the Applicant made public statements pertaining to the financing of the redevelopment of the Balsams Resort. At a public hearing on March 7, 2016, Les Otten, on behalf of the Balsams, announced that the Applicant was investing \$2 million in the Balsams redevelopment plan. *See* Transcript, March 7, 2016, p. 194-195. Later that month William Quinlan, on behalf of Eversource, confirmed that Northern Pass made a \$2 million "advance commitment" to the Balsams redevelopment project as part of the Forward NH Fund. *See* Transcript, March 16, 2016, p. 55-56. When asked about the fund, Mr. Quinlan responded that the Forward NH Fund had not yet been established and that the \$2 million advance commitment was made "in essence by Eversource and its shareholders." *Id.*

The existence of the \$2 million advance commitment from the Applicant to the Balsams is undisputed. The fact that the Balsams is a supporter of the project is also evident and

undisputed. Given these undisputed facts, the argument may be made, and the Subcommittee may consider, that the Balsams and its witnesses are biased in favor of the Project because of the advance commitment. With one exception, the details of the advance commitment, the manner in which it will be funded, the timing of the funding, and other details are superfluous. The commitment itself may establish a bias and a prejudice by the Balsams in favor of the Project. The one condition that may be relevant is whether the arrangement between the Applicant and the Balsams contains a specific *quid pro quo* provision that the Applicant will provide the investment only if the Balsams supports and/or continues to support the Project. That question is relevant and may be asked at the upcoming technical session and at the time of the adjudicative hearings.

The motion to compel the Balsams to provide details and documents about the advance commitment from the Forward NH Fund to the Balsams is denied with one exception. At the time of the technical sessions, the parties may inquire of Mr. Otten whether receipt of the advance commitment from the Forward NH Fund was conditioned upon the Balsams support or continuing support for the Project.

So Ordered this nineteenth day of January, 2017 by the Site Evaluation Committee:



Martin P. Honigberg, Chairman
Presiding Officer