

**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**

February 8, 2017

**ORDER DENYING APPLICANT'S MOTION TO COMPEL RESPONSE TO
DATA REQUEST 1-2 PROPOUNDED ON THE FOREST SOCIETY**

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 through data requests has been ongoing. On January 9, 2017, the Applicant filed a Motion to Compel the Society for the Protection of New Hampshire Forests (Forest Society) to produce documents previously requested.

The Forest Society objected on January 19, 2017.

II. Standard

In accordance with N.H. CODE ADMIN. RULES, Site 202.12(k), motions to compel responses to data requests shall:

- (1) Be made pursuant to Site 202.14;

- (2) Be made within 10 days of receiving the applicable response or objection, or the deadline for providing the response, whichever is sooner;
- (3) Specify the basis of the motion; and
- (4) Certify that the movant has made a good-faith effort to resolve the dispute informally.

III. Positions of the Parties

A. Applicant

The Applicant propounded data requests on the Forest Society on November 30, 2016.

Data Request 1-2 provides:

Please produce all internal and external documents and communications regarding NPT or the Project between and among members of SPNHF, including, but not limited to all documents and communications between the Forest Society Board of Trustees regarding NPT or the Project from the time when the initial Northern Pass project proposal was first announced in 2010 to present. Included in your response, please produce all documents and communications relating to the Forest Society Board of Trustees vote in January 2011 to “oppose the Northern Pass project as proposed” and the Board’s decision to update its position on the Project in September 2013.

The Applicant requests an order requiring that the Forest Society produce documents responsive to its Data Request 1-2. The Applicant notes that it is unclear whether the Forest Society objects categorically to the production of internal communications and documents, or whether it objects specifically to the substance of the documents requested. In either event, the Applicant moves to compel.

The Applicant notes that in the Order on Motions to Compel issued on September 22, 2016, the Presiding Officer ruled that “[i]nternal communications, including drafts, that are within the scope of discovery, responsive to the requests, and not subject to work product or attorney-client privilege are discoverable.” See Order on Motions to Compel,

September 22, 2106, p. 9. The Applicant claims that, in accordance with that Order, it produced thousands of internal communications. The Applicant argues that the Order is dispositive regarding discovery of internal communications.

With regard to the Forest Society's objection on the grounds of relevance, the Applicant submits that the Forest Society is a full party to this proceeding with the same rights and responsibilities as the Applicant, including being subject to cross-examination at final hearings. The Applicant notes that the Forest Society has made assertions regarding various components of the Application, the proposed route, and other aspects of the Project, including whether the Applicant satisfies the criteria of RSA 162-H:16, IV. The Applicant argues that the requested documents are therefore relevant and discoverable, and that denying the Applicant access to such information may undermine the Applicant's ability to effectively cross-examine the Forest Society's witnesses.

B. Forest Society

The Forest Society notes that, in response to Data Request 1-2, it raised several timely objections to the request including: that the information requested was not relevant; that the request was vague and ambiguous; and that the request was overly broad and unduly burdensome. The Forest Society further notes that it objected in its specific response, and in its general objections, to the extent the request seeks information protected by the attorney-client privilege and work-product doctrine. The Forest Society points out that the Applicant, through its Motion to Compel, only addressed the objection as to relevance and did not address the Forest Society's remaining objections.

The Forest Society disputes the Applicant's assertion that the Order on Motions to Compel, issued on September 22, 2016, is dispositive on the issue of discovery of internal

communications, that the Presiding Officer determined that the Applicant's internal communications were not categorically undiscoverable, and that the Order was premised on the notion that internal communications of the Applicant, who bears the burden of proof, are discoverable, so long as those communications are within the scope of discovery and not subject to a work-product or attorney-client privilege. The Forest Society argues that the Applicant has made no effort to explain how the Forest Society's internal communications going back to 2010, would help the Applicant in better understanding the Forest Society's positions and assertions in this docket, or how denying access to such documents may prevent an effective cross-examination. Specifically, the Forest Society argues that the Applicant has not articulated an argument as to how communications relating to the Forest Society's Board of Trustees vote to oppose the Northern Pass project as proposed in January 2011, and the Board's decision to update its position in September 2013, are relevant and within the scope of discovery. The Forest Society notes that these events took place well before the Applicant filed the Application for the currently proposed route, and that its positions are contained in its pre-filed testimony and related reports, and that the Applicant may question the Forest Society's witnesses regarding these matters at technical sessions and at the adjudicative hearing.

The Forest Society further suggests that although both the Applicant and the Forest Society are full parties to this docket, the Applicant alone bears the burden of satisfying the criteria of RSA 162-H:16. Finally, the Forest Society argues that if the Subcommittee were to determine that internal communications of a non-applicant, without a burden of proof, are relevant to whether an applicant can satisfy the requirements of RSA 162-H:16, there would be a chilling effect on the participation of non-profit organizations in SEC cases and on the ability of members to openly communicate within the organization.

IV. Analysis

The Applicant's Motion to Compel fails to set forth any facts or legal arguments that warrant an order compelling production. The Applicant's Motion is a general request and does not explain how internal documents or communications by members of the Forest Society from 2010 to the present, pertain to the issues before the Subcommittee. The Forest Society's positions regarding the Project are included in its pre-filed testimony, and the Applicant will have an opportunity to question the Forest Society's witnesses regarding these matters at technical sessions and at the adjudicative hearing. The Applicant's Motion to Compel is denied.

SO ORDERED this eighth day of February, 2017.



Martin Honigberg, Presiding Officer
NH Site Evaluation Committee