

**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**

March 10, 2017

**ORDER ON THE SOCIETY FOR THE PROTECTION OF NEW HAMPSHIRE
FORESTS' MOTION TO COMPEL**

This order denies a motion to compel filed by the Forest Society directed at the Balsams seeking production of a study regarding the labor force in the North Country.

I. Background

In accordance with various procedural orders, the parties have been engaged in technical sessions and discovery. On February 14, 2017, the Society for the Protection of New Hampshire Forests (Forest Society) filed a Motion to Compel the response of Dixville Capital, LLC and Balsams Resort Holdings, LLC (Balsams), to a data request propounded at a technical session held on January 19, 2017. The Balsams objected on February 24, 2017.

II. Standard

The N.H. CODE ADMIN. RULES, Site 202.12(k), provides that motions to compel responses to data requests shall:

- (1) Be made pursuant to N.H. Code of Admin. Rules 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. Forest Society

At a technical session on January 19, 2017, the Forest Society requested that the Balsams produce all information and documents responsive to the following data request: "Upon finalization, provide the study that the Balsams is undertaking regarding the existing and future labor force in the North Country." *Memorandum Re: January 19, 2017, Technical Session*, dated Jan. 23, 2017.

The Forest Society argues that pre-hearing discovery in the administrative setting is broad and liberal and encompasses the materials sought through the data requested propounded on the Balsams. The Forest Society notes that Leslie Otten made representations in his pre-filed testimony and at the January 19, 2017, technical session that relied on and/or references a study that concluded, or led the Balsams to make conclusions about, the existing labor force in the North County. The Forest Society argues that this study is relevant because it appears to be the basis of Mr. Otten's testimony and conclusions about the existing and potential labor force of the North County, and that it cannot fully weigh the credibility of Mr. Otten's testimony without evaluating the study. The Forest Society also submits that the study is relevant because the Applicant relies on the Forward NH Plan, including the \$2 million loan advanced from it to the Balsams, to satisfy the Applicant's burden of proof with respect to the standards set forth in RSA 162-H:16, IV, including the public interest. The Forest Society argues that the fact that the study is not yet complete is not a sufficient reason to object to its disclosure, and that if the Balsams relies on the study now, even though it is incomplete, the current version of the study relied upon should be available to all parties.

B. Balsams

As a preliminary matter, the Balsams clarifies that the data request at issue seeks a copy of the Balsams workforce study upon its completion, and that neither a draft nor a final version

of the workforce study has been completed to date and could not have been reviewed by Mr. Otten, as the Forest Society suggests. Contrary to the Forest Society's assertion, Mr. Otten did not mention the Balsams workforce study in his pre-filed testimony and he did not rely on the study in his remarks at the January 19, 2017, technical session. The Balsams argues that the workforce study, in either draft or final form, is not relevant to whether the Applicant satisfies the criteria of RSA 162-H:16, IV, and that the Forest Society has failed to meet its burden that the requested information and documents are relevant or may lead to the discovery of admissible evidence.

IV. Analysis

The information sought by the Forest Society is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence in this docket. The Forest Society seeks to compel documentation and information pertaining to a study that does not yet exist, based on its presumption that Mr. Otten relied on such information in making conclusions regarding the existing and potential labor force of the North Country. The Forest Society assumes that the information will be useful in assessing the credibility of Mr. Otten's testimony. That study, in either draft or final form, has not yet been completed, and Mr. Otten therefore could not have relied on it in making any conclusions relevant to this docket. While the Forest Society asserts that the information is relevant to illuminating the relationship between the \$2 million loan and the determination that the issuance of a certificate of site and facility will serve the public interest, the Forest Society fails to articulate how such information may be relevant to such a determination. The Forest Society's Motion to Compel is denied.

SO ORDERED this tenth day of March, 2017.



Martin P. Honigberg, Presiding Officer
Site Evaluation Committee