

**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 31, 2017

**ORDER ON APPLICANT'S MOTION TO CLARIFY USE OF
"FRIENDLY" EXAMINATION**

This order denies the Applicant's motion to limit "friendly" cross-examination during the adjudicative proceeding. This ruling does not preclude objections to unduly cumulative or repetitive questioning during the course of the hearing on the merits.

I. Background

On March 1, 2017, an Order on Pending Motions (Procedural Order) was issued in this docket. Pursuant to the Procedural Order, adjudicative hearings will begin on April 13, 2017.

On March 7, the Applicant filed a Motion to Clarify Use of "Friendly" Examination. The following objections and responses were received, all of which are resolved in this Order:

- Counsel for the Public's Objection to Applicant's Motion to Clarify Use of "Friendly" Examination, March 17, 2017;
- Objection of the Society for the Protection of New Hampshire Forests (Forest Society) To The Applicant's Motion to Clarify Use of "Friendly" Examination, filed March 17, 2017;
- Response to the Applicant's Motion to Clarify Use of "Friendly" Examination filed by Deerfield Abutters Group of Intervenors, filed March 16, 2017;
- Notice of Joinder to Objections Submitted by Counsel for the Public and the Society for the Protection of New Hampshire Forests Relative to the Applicant's Motion to Clarify Use of "Friendly" Examination filed by the City of Concord and the Towns of Bethlehem, Bristol, Easton, Franconia, Northumberland, Plymouth, Sugar Hill, Whitefield, New Hampton, Littleton, Deerfield, Pembroke and Ashland Water & Sewer District, filed March 22, 2017; and,

- The Grafton County Commissioner’s Notice of Joinder to the Objection of the Society for the Protection of New Hampshire Forests to the Applicant’s Motion to Clarify Use of “Friendly” Examination, March 17, 2017.

II. Positions of the Parties

A. Applicant

The Applicant seeks to clarify that intervenors are not permitted to conduct friendly cross examination of the Applicants or one another during the adjudicative hearings as a matter of right and defines “friendly” examination as questioning of a party that one does not oppose. The Applicant argues that the parties should be prohibited from conducting such examination. In support of its position, the Applicant cites RSA 541-A:32, III (b) and Site 202.11, as authority for the Presiding Officer to limit or exclude such examination to promote the prompt and orderly conduct of the proceeding. The Applicant requests that the Presiding Officer restrict “friendly” cross-examination to avoid immaterial or unduly repetitious testimony. The Applicant recognizes the special role of Counsel for the Public in this docket and does not request that the Presiding Officer restrict examination that will be conducted by Counsel for the Public.

B. Counsel for the Public

Counsel for the Public asserts that RSA 541-A:33, IV mandates that a party to an adjudicative proceeding “may conduct cross-examinations required for a full and true disclosure of the facts,” and that any restriction on cross-examination prior to the adjudicative hearing, without considering the nature and purpose of the examination, is premature and contrary to established practice. Counsel for the Public concludes that any concerns about interference with the prompt and orderly conduct of the proceedings can be addressed by the Presiding Officer during the course of the proceeding.

C. Forest Society

The Forest Society argues that neither the Administrative Procedure Act nor the Committee's rules authorize the limitation of cross-examination as sought by the Applicant. The Forest Society argues that the statute and the Committee's rules do not distinguish between "friendly" and "non-friendly" cross-examination and provides for broad cross-examination that ensures full and true disclosure of the facts by the parties. The Forest Society also argues that "friendly" cross-examination is commonly used in multi-party litigation and is limited only on a case-by-case basis upon determining that some particular inquiry is unduly repetitious. Finally, the Forest Society argues that a broad prohibition on "friendly" cross-examination without considering the purpose and/or nature of the questioning will prevent the parties from protecting the interests that formed the basis of their intervention and violate their due process rights.

D. Deerfield Abutters Group

The Deerfield Abutters Group of Intervenors assert that restriction of "friendly" examination will prevent them from protecting the interests that formed the basis of their intervention contrary to RSA 541-A:32, IV. Specifically, they claim that they relied on their belief that they could conduct examination of "friendly" witnesses to present their case and present relevant evidence. They argue that the Presiding Officer is capable of limiting the cross-examination in a way that protects the interests of justice and provides an orderly and prompt proceeding.

III. Analysis

RSA 541-A:33, IV allows a party to an adjudicative proceeding to conduct cross-examination required for a full and true disclosure of the facts. Site 202.11 provides that the Presiding Officer may limit the use of cross-examination to promote the prompt and orderly

conduct of the proceeding. The Presiding Officer cannot, as requested by the Applicant, make a prehearing determination that all friendly cross-examination will impede the prompt and orderly conduct of the proceeding. Such a determination must be made during the course of the proceeding.

In a proceeding like this one, with a large number of participants with similar positions, the possibility of testimony becoming unduly repetitive is real. We encourage the parties to bring to the Subcommittee's attention any cumulative, redundant lines of inquiry that add nothing new to the record. If such an objection is made during the adjudicative hearing, the party conducting the examination should expect to be asked to explain why its line of questioning should be allowed. A ruling will be made after considering the arguments of the parties as applied to each line of questioning and after considering the subject matter and purpose of the questioning.

For the reasons stated above, the Applicant's Motion is denied, without prejudice to the Applicant's or any other party's right to make an appropriate objection during the course of the hearing.

SO ORDERED this thirty-first day of March, 2017.



Martin P. Honigberg, Presiding Officer
Site Evaluation Committee