

**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**

April 6, 2017

ORDER ON TOWN OF EASTON'S MOTION TO COMPEL

This order denies a motion to compel information that was submitted to an administrative agency.

I. Background

On May 22, 2016, the NH Department of Transportation (DOT) filed a progress report in this docket pursuant to RSA 162-H:7, VI-b. Among other things, DOT stated that the Applicant was “continuing to progress on the design of the proposed route and will be submitting updated plans for NHDOT review.” On August 15, 2016, DOT asked that the deadline be suspended for issuing a final decision on its part of the Application as established in RSA 162-H:7, VI-c. On August 29, 2016, the Presiding Officer issued an order that extended DOT’s deadline for its decision until March 1, 2017.¹

In accordance with various procedural orders, discovery through data requests has been ongoing. Unsatisfied with the certain documents provided by the Applicant, on February 13, 2017, the Town of Easton filed a Motion to Compel the Applicant to provide such documents in either hard copy or reformatted design. The Applicant objected on February 23, 2017.

¹ The deadline for DOT to file its final report was extended until April 3, 2017. *See* Order on Agency Request to Suspend and Extended Reporting Deadline (Department of Transportation) issued on March 30, 2017.

II. Standard

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. Position of the Parties

A. Town of Easton

The Town of Easton moves to compel the Applicant to provide the underground Permit Packages that were submitted to DOT with a “fundamental and useable scale and to provide hard cop[ies] of relevant Permit Packages to any group spokesperson that requests them[.]” Motion to Compel, p. 1. Specifically, the Town of Easton requests that the Applicant provide a hard copy or reproduce the electronic copy of the Permit Package that was submitted to DOT in a functional and usable scale, and that without such hard copies or updated Permit Package, there is no way to know the easement widths and other relevant measurements. The Town of Easton argues that requiring the Town to print the maps on its own puts an undue financial and logistical burden on the Town for a process that is required by the Applicant, and that these documents are necessary for the Town to evaluate what is actually planned along State Routes 116 and 112 within the town limits. The Town of Easton argues that failing to provide usable maps violates SEC rules, NH statutes, and the NH and the United States Constitution.

B. Applicant

The Applicant argues that the Town of Easton's Motion to Compel is procedurally inadequate and substantively without merit. The Applicant argues that the Motion is procedurally improper for the following reasons: (1) the Motion does not identify a data request to which it is seeking a response; (2) N.H. Code Admin. Rules, Site 202.12 (k) provide that motions to compel data responses shall be made within 10 days of receiving a response; (3) assuming that the Town of Easton's request is valid, it is untimely filed; (4) the Presiding Officer has made clear that a party may only seek to compel its own data request (citing September 22, 2016, Order on Motions to Compel); and (5) the Motion does not constitute discovery as the Town of Easton has the requested information and now seeks to have it reproduced in a different format.

The Applicant argues that whether the format for the Permit Packages is acceptable is more properly raised with the DOT, and points out that DOT has not indicated that there is any issue with the formatting of the Permit Package. The Applicant further states that it has communicated to the Town of Easton's attorney methods for handling the information, either by interpolating distances on a computer screen or by downloading and printing particular pages of interest, and that it has provided the Town's attorney with a set of hardcopy drawings at 24" by 36" covering the Town of Easton.

The Applicant asserts that the drawings were prepared without a bar scale by the contractor, PAR Electric, which (according to the Applicant) is not unusual; and that PAR Electric, which will be responsible for the underground construction on the Project, is preparing revised drawings to reflect comments received from the DOT on the proposed design that will

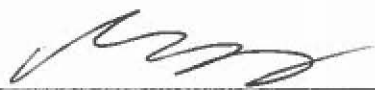
include a bar scale. The Applicant indicates that when the revised versions are submitted to DOT, they will also be distributed to the parties in this docket.

IV. Analysis

The Applicant has satisfied its obligation to provide supplemental responses addressing the underground portion of the Project pursuant to the Presiding Officer's September 22, 2016, Order. The information that is requested was provided by the Applicant to DOT in a format that is acceptable to the agency. While the Town of Easton argues that the scale used in the Permit Packages are unusable for its purposes, the Applicant has provided the Town of Easton with methods for handling the information, either by interpolating distances on a computer screen or by downloading and printing particular pages of interest. The Applicant also provided the Town's attorney with a set of hardcopy drawings at 24" by 36" covering the Town of Easton. While the Town of Easton's arguments properly assert a need to access and examine the information provided by the Applicant, the Town has failed to demonstrate how the information provided by the Applicant is insufficient to allow examination of such information.

The Town of Easton's Motion to Compel is denied.

SO ORDERED this sixth day of April, 2017.



Martin P. Honigberg, Presiding Officer
Site Evaluation Committee