

**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 12, 2017

ORDER ON APPLICANT'S MOTION TO COMPEL

This order grants a request for leave to reply and denies the Applicant's Motion to Compel.

I. Background

In accordance with various procedural orders, technical sessions and discovery through data requests has been taking place. Unsatisfied with certain responses of the Society for the Protection of New Hampshire Forests (Forest Society) to data requests propounded at a technical session held on January 19, 2017, the Applicant filed a Motion to Compel Technical Session Data Requests on February 8, 2016. The Forest Society objected on February 21, 2017.

On March 2, 2017, the Applicant filed a Motion for Leave to Reply and Reply to Objection to Motion to Compel Technical Session Data Requests.

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. Applicant

The Applicant moves to compel the Forest Society to produce documents sought by data requests No. 1, 2, 3, and 4 made during the technical session held on January 19, 2017. The Applicant argues that data requests No. 1 and 2 are narrowly tailored to seek information regarding the process by which the Forest Society decided to oppose the Project. Data request No. 1 seeks “information related to SPNHF Policy Committee meetings and its decisions, when it considered its position on the Northern Pass Project as the Project was configured in October 2010, June-July 2013, and August 2015.” Applicant’s Motion to Compel, p. 3 (citing Technical Session Memorandum, January 23, 2017). In an effort to more narrowly tailor data request No. 1, the Applicant seeks to revise the data request to substitute the words “any and all information” with “all analyses, reports, communications, correspondence, and other materials” and clarify that the request only seeks such information as it relates to the Northern Pass Project. Data request No. 2 seeks the “agenda and minutes of SPNHF Policy Committee meetings where it considered its position on the Northern Pass Project.” *Id.*

The Applicant notes that the President and Chief Executive Officer of the Forest Society, Jane Difley, has identified the purpose of her testimony in this docket “to provide background on the Forest Society’s mission and history, and to offer some context to the reasons why [it] [has] intervened in this docket.” Applicant’s Motion to Compel, p. 1 (citing Difley Pre-filed Testimony, p. 3-4). The Applicant submits that, as the stated purpose of Ms. Difley’s testimony is to provide context to the basis of the Forest Society’s intervention in this docket and opposition to the Project, it cannot now claim that the information is irrelevant and that it is

entitled to the requested information in order to understand the Forest Society's position with regard to the Project, its decision-making process for deciding to oppose the Project, and how the decision to oppose the Project relates to the Forest Society's overall mission, goals, and stated duty to defend conserved lands.

Data request 3 seeks the production of agendas and meeting minutes of the Forest Society Policy Committee meetings where it considered its position on energy projects, other than the Project at issue in this docket. The Applicant argues that the information sought is relevant as Ms. Difley testified that there are other instances where the Policy Committee has convened to discuss whether to take a position on energy projects and explained that the records of those meetings are contained in meeting minutes. The Applicant argues that data request No. 3 is directed at understanding how the Forest Society makes decisions on whether or not to oppose an energy project.

Data request No. 4 seeks information regarding how the Forest Society determines if proposed projects will impact its conservation easements and other resources. The Applicant reports that the Forest Society objected to the data request on grounds of relevance, attorney client privilege and work product privilege. The Applicant argues that the information is necessary to help the Applicant understand the Forest Society's position on the Project and its testimony that the Project will directly impact its conservation lands. The Applicant notes that while the Forest Society objected on grounds of privilege, it failed to provide a privilege log identifying the materials withheld. The Applicant argues that its four data requests at issue seek to discover information that would assist the Applicant, as well as the Committee, in understanding the assertions in the Forest Society's pre-filed testimony and supporting materials as they relate to its overall position on the Project. The Applicant argues that without the

requested information, its due process right to effectively cross-examine Ms. Difley will be compromised.

Through its March 2, 2017, Motion for Leave to Reply and Reply to Objection to Motion to Compel, the Applicant clarifies that the data requests propounded at the technical session on January 19, 2017, were a direct result of Ms. Difley's testimony, and are thus narrowly tailored to address information brought to light during that technical session, i.e., that an internal Policy Committee made the initial decision to oppose the Project.

B. Forest Society

The Forest Society argues that the February 8, 2017 Order Denying Applicant's Motion to Compel the Forest Society's production of internal and external documents and communications, including the minutes of Forest Society Board of Trustee meetings at which the Forest Society's position on the Project was voted on, is dispositive of the issues raised in the pending Motion to Compel. The Forest Society notes that in denying the Applicant's request to compel internal and external documents and communications, that: (1) the Applicant has not explained how the documents pertain to issues before the Subcommittee; (2) the Forest Society's positions are set forth in pre-filed testimony; and (3) the Applicant may question the Forest Society's witnesses at technical sessions and the adjudicative hearing. The Forest Society argues that data requests No. 1-4 seek internal documents pertaining to the Forest Society's Policy Committee and its past consideration of other energy impacts on Forest Society resources. The Forest Society argues further that the February 8, 2017, Order is dispositive of the current Motion to Compel as these communications are included in the data request which was denied in the Order, at least to the extent that data requests No. 1 and 2 seek documents concerning the proposed Northern Pass. With regard to data requests No. 3 and 4, the Forest Society argues that

although they seek information not related to the Project, they seek internal documents and communications that are irrelevant.

The Forest Society argues that the fact that Ms. Difley discussed the decision-making process of the Policy Committee and the Board of Trustees at a technical session does not make the Forest Society's internal documents relevant. The Forest Society argues that the Applicant has not articulated any compelling explanation as to how the Forest Society's consideration of a prior energy facility before the SEC is relevant to whether the Applicant can satisfy the criteria in RSA 162-H:16. The Forest Society also objects to producing a privilege log as it contends that the documents sought are not relevant and that creating a privilege log places an undue burden on the Forest Society.

IV. Analysis

The Applicant's Motion to Compel fails to set forth any facts or legal arguments that warrant an order compelling production of the documents and information sought through technical session data requests No. 1-4. The Applicant's Motion does not explain how the requested documents and information pertain to issues before the Subcommittee. Discussions between the Forest Society's board members do not tend to make any issue in dispute in this docket more or less likely. The Forest Society's position is included in its pre-filed testimony and the Applicant will have an opportunity to question the Forest Society's witnesses regarding these matters at the adjudicative hearing.

When the Forest Society objected to the data requests relying on privilege it should have provided a privilege log. As stated in the September 22, 2016, Order on Motions to Compel, all parties in this docket shall provide a privilege log contemporaneously with answers to data requests. Having a privilege log in hand fosters a swifter resolution of discovery disputes.

However, since this Motion to Compel is denied on broader grounds a privilege log is not required.

The Applicant's Motion for Leave to Reply causes no undue prejudice or delay in this docket as it was filed prior to the issuance of an order on the Motion to Compel. The Applicant's Motion for Leave to Reply is granted and was considered in the issuance of this Order and the Applicant's Motion to Compel is denied.

SO ORDERED this twelfth day of April, 2017.



Martin P. Honigberg, Presiding Officer
Site Evaluation Committee