

**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 27, 2017

**ORDER ON FOREST SOCIETY'S PRE-HEARING MOTION
TO EXCLUDE STATEMENTS FROM TECHNICAL SESSIONS**

This Order grants in part and denies in part the Forest Society's request to exclude the use of any statement made by witnesses at technical sessions.

I. Background

On March 29, 2017, the Society for the Protection of New Hampshire Forests (Forest Society) filed a Pre-Hearing Motion to Exclude Statements from Technical Sessions.

II. Analysis

Pursuant to N.H. CODE ADMIN. RULES, Site 202.12 (b) the primary form of discovery in matters before the Committee is written data requests. Data requests are often supplemented by technical sessions. *See* N.H. CODE ADMIN. RULES, Site 202.12 (l). Technical sessions are informal conferences where subject matter witnesses, consultants, and the parties engage in a structured discussion regarding matters that are relevant to the proceeding. In most cases formal data requests result from the technical session. If a dispute arises about production of information in response to a data request from a technical session, the dispute is resolved by motion practice.

In this docket there have been at least 37 technical sessions that, on average, lasted eight hours each.

Prior to commencing the technical sessions, the Applicant filed a motion seeking permission to transcribe the technical sessions. That motion was denied in an Order dated August 29, 2016 (Order). The Order denying motions to transcribe the technical sessions specifically stated:

Technical sessions present a form of informal discovery. Their purpose is for the parties and their experts to involve in mutual dialog in order to get a better understanding of their testimony. The dialogue and information provided by the witnesses and experts at technical sessions is not designed and should not be used for impeachment purposes.

See Order at p. 2.

Some parties audio-recorded all or portions of the technical sessions after obtaining the consent of those in the room. Those recordings were made solely for the purpose of assisting the parties in their preparation and to substitute for note-taking. The parties were advised that such recordings did not constitute an official record of any proceeding.

The Forest Society now claims that statements made during the technical sessions should not be used during the adjudicative hearing. The Forest Society is concerned that the informal recordings made by various parties may be used for impeachment purposes, and argues that any recordings made were informal, not subject to review, and non-verifiable. The Forest Society also complains that all parties did not have equal access to record technical sessions.

Technical sessions are a form of informal discovery. There was no formal record of the technical sessions. Statements made by the witnesses and experts at technical sessions are not designed to be used – and should not be used – for impeachment purposes. To that extent, the Forest Society is correct, but it would not be correct to issue the kind of blanket prohibition the Forest Society has requested. It is axiomatic that information learned as a result of technical sessions may be used by the parties to present their cases. To find otherwise would invalidate the purpose of technical sessions and would make them ineffective as a form of discovery.

The Forest Society's request to preclude the parties from using statements made during the technical sessions for impeachment purposes is granted as it is consistent with the Order. Recorded statements from the technical sessions are excluded as evidence in this proceeding and shall not be re-played during the course of the adjudicative hearing. Recorded statements from technical sessions shall not be used for purposes of impeachment.

This order should not be interpreted to prevent a party from referencing any information learned as a result of a technical session to form the basis of the examination of witnesses or, if appropriate, in argument. The Forest Society's request to exclude any statement made during the technical session is denied. Any party who believes recordings or information that was obtained from the technical sessions is being used improperly should make an appropriate objection at the time the information is offered. The Chair will address objections on the record.

SO ORDERED this twenty-seventh day of April, 2017.



Martin P. Honigberg, Presiding Officer
Site Evaluation Committee