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VIA ELECTRONIC MAIL

June 10, 2016

New Hampshire Site Evaluation Committee
Pamela G. Monroe, Administrator
21 South Fruit Street, Suite 10
Concord, NH 03301

**Re: SEC Docket No. 2015-05: Public Service Company of New Hampshire d/b/a
Eversource Energy and New England Power Company d/b/a National Grid: Joint
Application for a Certificate of Site and Facility for the Merrimack Valley
Reliability Project**

Dear Ms. Monroe:

Enclosed for filing in the above-captioned docket, please find the Applicants' Motion to Strike.

Please contact me directly should you have any questions.

Sincerely,


Barry Needleman

BN:slb
Enclosure

cc: Distribution List

McLane Middleton, Professional Association
Manchester, Concord, Portsmouth, NH | Woburn, MA

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THE STATE OF NEW HAMPSHIRE

SITE EVALUATION COMMITTEE

SEC DOCKET NO. 2015-05

**JOINT APPLICATION OF NEW ENGLAND POWER COMPANY
D/B/A NATIONAL GRID &
PUBLIC SERVICE COMPANY OF NEW HAMPSHIRE
D/B/A EVERSOURCE ENERGY
FOR A CERTIFICATE OF SITE AND FACILITY**

APPLICANTS' MOTION TO STRIKE

NOW COME New England Power Company d/b/a National Grid (“NEP”) and Public Service Company of New Hampshire d/b/a Eversource Energy (“PSNH”) (collectively the “Applicants”) by and through their attorneys, McLane Middleton, Professional Association, and move to strike certain allegations made by Intervenor Margaret Huard in her pre-filed testimony dated March 2, 2016, and Ms. Huard’s amended pre-filed testimony dated April 25, 2016. In support of their Motion to Strike, the Applicants state as follows:

1. Ms. Huard has made certain allegations in the above referenced docket, on more than one occasion, regarding shock and personal injury associated with exposure to transmission lines in both her original pre-filed testimony and amended pre-filed testimony. *See e.g.* Amended Pre-Filed Testimony of Margaret Huard, at p. 5 (April 25, 2016) (alleging that she sustained a shock in January 2016 while directly under transmission wires “strong enough to cause simultaneous symptoms that often precedes cardiac arrest; chest pain, leg pain, shortness of breath, dizziness, and heart palpitations”).

2. At the Technical Session of Ms. Huard on May 5, 2016, the Applicants requested that Ms. Huard produce any documents that support these allegations. Ms. Huard produced a single document at the Technical Session and also indicated that she had communications with

the Hudson Fire Department “regularly” by e-mail regarding the Project and about the January 2016 incident and was “sure the fire chief responded.” Tr. Tech. Session of Huard, at 61:16 and 63:7-8. When asked if she had those emails, Ms. Huard responded “I do” and volunteered that she “can check my emails.” *Id.* at 61:21 and 62:21-22. Ms. Huard also stated that she exchanged e-mails with other third-parties regarding the January 2016 incident. The Applicants requested copies of all communications regarding this incident. Ms. Huard agreed to provide these documents and did not object. *See* Memorandum from Pamela Monroe Re: Technical Session Data Requests, NH SEC Docket 2015-05, May 6, 2016. (“Ms. Huard did not object to any of the requests made by the Applicant.”).

3. Following the Technical Session, Ms. Huard filed numerous motions, including three objections to the materials sought by the Applicants. The Applicants moved to compel Ms. Huard to provide the information sought at the Technical Session. In the alternative, should the subject information not be provided, the Applicants requested that the Presiding Officer strike from the record any and all references made by Ms. Huard that relate to allegations of electric shock and any alleged health effects sustained therefrom. *See* Applicants’ Motion to Compel ¶ 10.

4. The Presiding Officer subsequently granted the Applicants’ Motion to Compel. The Order required Ms. Huard to provide the Applicants with the following documents: “(i) any and all e-mails between Ms. Huard and the Hudson Fire Department regarding Ms. Huard’s concerns about the Project; (ii) any and all e-mails between Ms. Huard and the Hudson Fire Department regarding the January, 2016 incident alleged in Ms. Huard’s pre-filed testimony; and (iii) any and all e-mails between Ms. Huard and any third party regarding the January, 2016

incident alleged in Ms. Huard's pre-filed testimony." See Order on Pending Motions at 4 (June 1, 2016).

5. To date, Ms. Huard has not complied with the SEC's Order on Pending Motions and has not provided any of the documents listed in ¶ 4(i)–(iii) above.

6. Indeed, Ms. Huard even filed a Motion to Reconsider, to which the Applicants objected, stating that she would "not comply with any further ORDER" until after numerous demands and conditions that are unfounded by the SEC's rules or unsubstantiated by the record are met. See Intervenor Huard's Motion to Reconsider Order on Pending Motions, June 2, 2016.

7. Based on Ms. Huard's refusal to comply with the SEC's Order, Ms. Huard should be precluded from presenting any testimony or allegations about the alleged shock incident that occurred in January 2016. See e.g., *Public Service Company of New Hampshire*, Order on PSNH's Motion to Rescind TransCanada's Intervenor Status, Order No. 25,687, NH PUC DE 11-250 at 5 (July 2, 2014) ("In the event that [the sponsor of the testimony] fails to provide responses to associated data requests where the motion to compel has been granted, the related testimony shall be stricken from the record.").

8. If the Presiding Officer is not inclined to strike the testimony, the Applicants respectfully request that an adverse inference be applied to Ms. Huard's testimony, namely that the documents and information that Ms. Huard refused to provide pursuant to the Order on Pending Motions would have been adverse to Ms. Huard's positions as described in her pre-filed testimony should they have been produced. See *id.* at 4–8, 11–12 (allowing an adverse inference where a party withholds relevant evidence). See also *Astro-Med, Inc. v. Nihon Kohden America, Inc.*, 591 F.3d 1 (1st Cir. 2009) (allowing an adverse inference instruction when a witness testified to the existence of documents on the witness stand which had not been produced for trial

and specifically stating that “An adverse inference instruction may be allowed when a party fails to produce a document that exists or should exist and is within its control.... The failure of a party to produce available evidence that would help decide an issue may justify an inference that the evidence would have been unfavorable to the party to whom it is available.”).

WHEREFORE, the Applicants respectfully request that the Presiding Officer:

- A. Strike from the record any and all references made by Ms. Huard that relate to the January 2016 alleged shock incident; and
- B. Grant such further relief as requested herein and as deemed appropriate.

Respectfully Submitted,

New England Power Company and

Public Service Company of New Hampshire

By its attorneys,

McLANE MIDDLETON
PROFESSIONAL ASSOCIATION

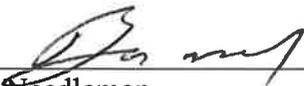
Dated: June 10, 2016

By:  _____

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Certificate of Service

I hereby certify that on the 10th day of June, 2016 this Motion was sent electronically to the New Hampshire Site Evaluation Committee and an electronic copy was served upon the SEC Distribution List.



Barry Needleman