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March 28, 2016

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

**Re: New Hampshire Site Evaluation Committee Docket No. 2015-06
Northern Pass Transmission Project Application**

Dear Ms. Monroe:

Enclosed for filing with the NH Site Evaluation Committee in connection with the above-referenced docket, please find the Towns of Bristol, Easton, Franconia, Northumberland, Sugar Hill, Whitefield, Bridgewater, Littleton, New Hampton and Woodstock's *Request of Ten Towns for SEC Review and Modification of Order on Petitions to Intervene*.

Copies of the enclosed document have been sent by e-mail today to each person listed on the SEC distribution list for this docket as of March 25, 2016. Thank you for your assistance with this matter.

Sincerely,



C. Christine Fillmore, Esq.

cc: Distribution List (e-mail)
Steven Whitley, Esq.

**THE STATE OF NEW HAMPSHIRE
SITE EVALUATION COMMITTEE**

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 for the Construction of a New High Voltage Transmission Line in New Hampshire

Docket No. 2015-06

**REQUEST OF TEN TOWNS FOR SEC REVIEW AND MODIFICATION OF
ORDER ON PETITIONS TO INTERVENE**

The Towns of Bristol, Easton, Franconia, Northumberland, Sugar Hill, Whitefield, Bridgewater, Littleton, New Hampton, and Woodstock (the “Towns”), by and through their attorneys, Gardner, Fulton & Waugh, PLLC, and the Mitchell Municipal Group, P.A., hereby respectfully submit this Request for SEC Review of Order on Petitions to Intervene in the above-noted docket, as follows:

INTRODUCTION

1. On October 19, 2015, Northern Pass Transmission, LLC and Public Service Company of New Hampshire d/b/a Eversource Energy (the “Applicants”) filed an application for a Certificate of Site and Facility with the Site Evaluation Committee, which appointed a subcommittee to review and decide upon the application (the “Committee”). The Towns filed Petitions to Intervene in this matter. On March 18, 2016, the Committee Chair issued an Order on Petitions to Intervene (the “Order”).

2. While the Order grants the Towns intervenor status, it includes several limitations on their participation to which the Towns respectfully object, and suggest that (a) each of the three municipal groups be permitted to appoint a steering committee for discovery and procedural pleadings, and (b) each municipality retain the ability to file substantive pleadings and examine witnesses while working cooperatively to reduce unnecessary duplication.

3. Pursuant to RSA 162-H:4, V, the Towns hereby request that the Committee review the Chair’s Order and modify it as explained below.

THE ORDER

4. The Order consolidates certain groups of municipalities as a single party for purposes of filing pleadings, conducting discovery, and examining witnesses at evidentiary hearings, as follows:

Group 1 (Northern Section) – Pittsburg, Clarksville, Stewartstown, Colebrook, Northumberland, Whitefield, Bethlehem and Littleton

Group 2 (Middle Section) – Sugar Hill, Franconia, Easton, Woodstock and Plymouth

Group 3 (Southern Section) – Holderness, Ashland, Bridgewater, New Hampton, Bristol, Canterbury, Concord, Pembroke and Deerfield

Order, Section II(B)(1)(a)(i), p. 8.

5. The Order states that “[e]ach of the governmental entities in each group may file separate testimony (if they choose). Each municipal group, however, must designate a single spokesperson for the purposes of filing pleadings, conducting discovery, and for examining witnesses at evidentiary hearings. This will assure the prompt and orderly conduct of the proceedings.” Order, Section II(B)(1)(a)(i), pp. 8-9.

TOWNS’ OBJECTIONS

6. The applicable statute and administrative rules permit certain limitations to be imposed upon an intervenor’s participation to promote the efficient and orderly process of the proceeding. RSA 541-A:32, III; N.H. Code Admin.R. Site 202.11(d).

7. The Towns recognize and appreciate that the Committee is faced with a daunting number of intervenors in a complex matter, and that some measures of efficiency will be

necessary and appropriate. The Towns further assure the Committee that they intend to act cooperatively with one another, other municipal intervenors, all parties and the Committee to avoid duplicative process and efforts wherever practicable. In addition, undersigned counsel for the Towns note that they are bound by the NH Rules of Professional Conduct to expedite matters consistent with the interests of the client, as well as to act with reasonable diligence and promptness in representing a client. NH R. Prof. Conduct 3.2, 1.3.

8. However, as currently configured, the limitations placed on the Towns exceed the statutory and regulatory parameters of the Chair's authority to impose such limits. Limitations "shall not be so extensive as to prevent such an intervenor from protecting the interest that formed the basis of the intervention." RSA 541-A:32, IV; Site 202.11(e). In at least two respects, the Order will unnecessarily and unfairly limit the Towns' ability to protect their interests.

A. Requirement to Act through a Single Spokesperson Unnecessarily and Unfairly Prevents the Towns from Protecting Their Interests.

9. First, the requirement that each of the three municipal groups select a single spokesperson for purposes of filing pleadings, conducting discovery and examining witnesses unduly prevents the Towns from protecting its interests. There are 5-9 municipalities in each group. Each municipality has interests and concerns that may not be shared by other municipalities in the group. For example, one town may be home to a vital tourist attraction that will be heavily impacted, while the other municipalities in the group may have no particular interest in it and may be unwilling to expend their limited time and money to pursue that interest. The procedural limitations that the Order places on the groups' participation do not provide the flexibility necessary for any single Town to protect its interests in a meaningful way by forcing it

to filter its discovery, witness examination, and filing of motions and pleadings through the group's designated spokesperson.

10. If each Town is required to submit to majority vote within the group and allow the spokesperson (who is likely to be from a different municipality) to file all pleadings on behalf of the group, and a single Town has no ability to file its own pleadings, that Town's ability to participate will be unfairly limited. For example, if the group decides not to object to a motion filed by the Applicant, but the Town objects, it will be prevented from filing its objection. This is diametrically opposed to the requirement that limitations on intervenors not "prevent such an intervenor from protecting the interest that formed the basis of the intervention."

11. Similarly, the requirement that each Town allow a single spokesperson from the group to conduct all discovery will unfairly limit each Town's ability to protect the interests that form the basis of its intervention. If, for example, a Town is extremely concerned about a particular issue and believes it is essential to obtain discovery from the Applicant, but the other municipalities in the group decide not to pursue it, that Town would be unfairly prohibited from obtaining such discovery.

12. The Towns also strenuously object to the requirement that a single spokesperson conduct all examination of witnesses for its group. If the group neglects or refuses to direct the spokesperson to ask particular questions or pursue particular subjects with a witness, but one Town believes such questioning is necessary to protect its interests, that Town would be powerless to act to protect that interest. This is an unnecessary and unfair restriction on the ability of host municipalities to participate in the process and protect their interests.

B. Requirement to Act through a Single Spokesperson Places Unnecessary and Unfair Restrictions on the Towns' Ability to Effectively Use Legal Counsel.

13. As stated by Attorney Michael J. Iacopino, Presiding Officer, at the prehearing conference on this docket held on March 22, 2016, the Committee encourages all intervening parties to retain legal counsel. See Transcript of March 22, 2016 Pre-Hearing Conference at ___. Municipalities have limited funds to spend; ever mindful that they are spending taxpayer dollars, the Towns have an obligation to weigh constantly the benefits of legal representation against the costs. Some of the municipalities which have been granted intervenor status have not retained legal counsel for this matter. The Towns have each chosen, at significant expense, to be represented by legal counsel in this matter, but have not all chosen the same attorneys to represent them. In this situation, the requirement that each group act through a single spokesperson creates unnecessary and problematic ethical issues regarding legal representation.

14. All New Hampshire attorneys are subject to the New Hampshire Rules of Professional Conduct. Those rules require each attorney to “act with commitment and dedication to the interests of the client and with zeal in advocacy upon the client’s behalf.” NH R. Prof. Conduct 1.3, Comment 1. A lawyer is required to abide by a client’s decisions concerning the objectives of representation. Rule 1.2(a). A lawyer is not allowed to give legal advice to an unrepresented person if the lawyer knows or reasonably believes that the interests of such a person are in conflict with the interests of their client. Rule 4.3 However, consider this scenario: Town A, represented by counsel, is in Group 1. If the group chooses a spokesperson who is not Town A’s counsel (and given the makeup of the groups, this is all but certain to occur in multiple instances), Town A’s counsel would be prevented from filing pleadings, obtaining discovery, and questioning witnesses on behalf of his/her client, even when the spokesperson’s decisions in this regard are contrary to the interests of his/her client. Conversely, should the group designate Town A’s attorney as the spokesperson, the attorney would not be able to act in that capacity in

any way that did not, in the client's opinion or the attorney's professional judgment, further the interest of Town A.

15. Furthermore, the economic realities of this proceeding are that, if an attorney for one of the Towns is appointed as the spokesperson for the group, that attorney will be forced to conduct discovery, file pleadings, and question witnesses on behalf of every member of the group, at no cost to the unrepresented members of that group. Effectively, the represented towns will be forced to subsidize the legal representation of the entire group, discouraging any party from formally obtaining the legal representation that the Committee encourages.

16. As currently configured, the Order would significantly limit an attorney's ability to represent his/her client in a manner that is in the best interest of that client, and thus prevent the attorney from adhering to the requirements of Rule 1.3. More importantly, it would limit the Towns' ability to obtain effective legal assistance. Undersigned counsel acknowledge that one way to alleviate these concerns would be for the towns in each group to execute a joint defense agreement authorizing one attorney or firm to represent them in this matter. However, the SEC has no authority to require such an agreement and undersigned counsel may not solicit for this arrangement in a way that runs afoul of the Rules of Professional Conduct. Given the significant expense of legal representation and the Towns' limited resources, the Towns respectfully submit that this situation actually *discourages* rather than encourages intervening municipalities to retain and use counsel effectively.

SUGGESTED MODIFICATIONS TO ORDER

17. The Towns understand and appreciate the Committee's commitment to an efficient and orderly process. However, the Towns respectfully suggest that the Order can be

modified in ways that will more fairly balance the rights of the parties while not unnecessarily sacrificing efficiency.

18. For purposes of conducting discovery and for procedural issues, the Towns propose that, rather than a single spokesperson, each of the three municipal groups be permitted to appoint a steering committee from among its members. The steering committee would direct discovery on behalf of the group and handle basic procedural issues, without placing the entire burden on one party or preventing any group member from participating. This would permit the group to appoint several people, some of whom may be counsel, to work cooperatively as a group to avoid duplicative discovery and respond promptly to procedural issues.

19. To more fairly preserve the rights of each municipal intervenor, the Towns respectfully suggest that each group be required to reasonably cooperate, communicate, and consider avoiding duplicative pleadings and examination of witnesses within the group, but that each municipality retain the ability to file its own substantive pleadings and examine witnesses to the extent that it is reasonably necessary to protect its interests. As issued, the Order would prohibit a group member from filing its own pleadings if the rest of the group decided not to, or if the single spokesperson refused to. Likewise, if the group or spokesperson decided not to question witnesses on a particular issue of importance to one member, that member would be unable to ask the question and protect its interest. These limitations will tie that member's hands and effectively deprive them of the ability to protect their interests in this matter. The Towns assure the Committee that they intend to coordinate with other similarly-situated municipalities on pleadings and examination of witnesses to avoid duplicative testimony that has already been introduced by other parties; such efficiency serves all intervening municipalities by avoiding unnecessary duplication of effort, cost, and time. The Towns also note that, should the Chair

determine at a later time that particular aspects of pleading and examination of witnesses require limitation beyond that outlined in this Request, it has the authority under Site 202.11(d) to impose limitations on intervention “at any subsequent time.”

20. The Towns respectfully submit that the Order seeks to impose limitations to prevent a problem that may not occur. The Towns intend to pursue procedural efficiency, if for no other reason than they simply cannot afford not to. However, the current limitations are so restrictive that they will deprive the Towns of the ability to effectively participate. By permitting steering committees to conduct discovery and file procedural pleadings, and permitting each municipality within a group to retain its ability to file substantive pleadings and examine witnesses, with the understanding that the Towns intend to cooperate fully with the other municipalities in their groups for maximum efficiency, the Committee can achieve procedural efficiency without unnecessarily sacrificing the due process rights of the parties.

21. Attached hereto as Exhibit A is a list of parties who assent, object, or take no position with respect to this Request. All other parties were contacted on March 25, 2016 but did not respond to the Towns’ request for assent.

WHEREFORE, the Towns respectfully request that the Committee:

- A. Review the Chair’s March 18, 2016 Order on Petitions to Intervene; and
- B. Modify the Order to permit each of the three municipal groups to appoint a steering committee to direct discovery and file procedural pleadings; and
- C. Modify the Order to permit each of the municipalities within such groups to retain the ability to file substantive pleadings and examine witnesses, with the understanding that such municipalities will cooperate to the extent reasonably practicable to avoid duplicative pleadings and examination of witnesses; and

D. Grant such other and further relief as may be just.

Respectfully submitted,
TOWN OF BRISTOL
TOWN OF EASTON
TOWN OF FRANCONIA
TOWN OF NORTHUMBERLAND
TOWN OF SUGAR HILL
TOWN OF WHITEFIELD

By and through their attorneys,
GARDNER, FULTON & WAUGH, PLLC

Dated: March 28, 2016

By:



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TOWN OF NEW HAMPTON
TOWN OF WOODSTOCK

By and through their attorneys,
MITCHELL MUNICIPAL GROUP, P.A.

Dated: March 28, 2016

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CERTIFICATE OF SERVICE

I hereby certify that on this 28th day of March, 2016, a copy of the foregoing was sent by electronic mail to persons named on the Service List of this docket.

Dated: March 28, 2016

By: C. Christine Fillmore
C. Christine Fillmore

EXHIBIT A

Assent:

Applicant (re: request for steering committee)

Bob Thibault

Society for the Protection of NH Forests

Concord (except that it wishes to conduct its own discovery as stated in its motion)

Object:

Applicant (re: everything except request for steering committee)

Take No Position:

City of Berlin

National Trust for Historic Preservation

NH Preservation Alliance

Sugar Hill Historical Museum

North Country Scenic Byways Council