

66 Cogswell Hill Road
Canterbury, NH 03224
March 28, 2016

BY HAND DELIVERY

Pamela A. Monroe, Administrator
NH Site Evaluation Committee
21 S. Fruit St., Suite 10
Concord, NH 03301

Re: SEC Docket No. 2015-06
Application of Northern Pass Transmission LLC and Eversource

Dear Ms. Monroe:

Enclosed for filing with the Site Evaluation Committee, please find the original signed copy of the "State Legislators' Request for Review and Reconsideration of Denial of Their Joint Petition to Intervene, Including Request for Late Intervention by Additional State Legislators."

Electronic copies are being sent today by e-mail to the Docket Service List.

Respectfully,



Rep. Howard Moffett
Merrimack District 9
Canterbury and Loudon

**STATE OF NEW HAMPSHIRE
BEFORE THE 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

**State Legislators' Request for Review and Reconsideration of Denial
Of Their Joint Petition to Intervene, Including Request for
Late Intervention by Additional State Legislators**

The undersigned New Hampshire state legislators ("State Legislators") hereby request the Site Evaluation Subcommittee acting in this docket ("Committee") to review and reconsider the March 18, 2016 denial of our Joint Petition to Intervene ("Intervention Petition"). In support of this request, we say:

1. The statutory test for intervention as of right in an administrative proceeding under the New Hampshire Administrative Procedure Act, RSA 541-A:32, I(b), is whether "[t]he petition states facts demonstrating that the petitioner's rights, duties, privileges, immunities, or other substantial interests may be affected by the proceeding....(emphasis added). The presiding officer must also find that "the interests of justice and the orderly and prompt conduct of the proceedings would not be impaired by allowing the intervention." RSA 541-A:32, I(c). Alternatively, the presiding officer may grant discretionary intervention upon finding that such intervention "would be in the interests of justice and would not impair the orderly and prompt conduct of the proceedings." RSA 541-A:32, II.
2. The State Legislators made three separate but related standing claims in their February 5 Intervention Petition: (i) We have an interest, which we contend is "substantial," in protecting one of New Hampshire's greatest assets, its natural beauty; (ii) Many of our constituents have expressed serious concerns about the Applicants' proposed Northern Pass project, insofar as most of it is proposed to be built above ground—and we contend that we have a duty under the New Hampshire Constitution to represent our constituents in pressing these concerns to the best of our ability; and finally, (iii) We have a further interest, which we believe is also "substantial," in the Committee's interpretation of the new "public interest" standard in RSA 162-H:16, IV(e).
3. The State Legislators (including the "Additional Signatories," who by this filing request leave to join the Intervention Petition out-of-time) have no interest in

delaying or causing disorder in the conduct of the proceedings, which we well understand will be a procedural challenge for the Committee. We take no position on any of the various parties' proposed procedural schedules, and will accept whatever schedule the Committee deems appropriate. We accept that our participation may be limited to the issues raised in the Intervention Petition. We do not object to being combined into a single group, to be represented by a single spokesperson on any given issue (and we so advised the Committee's counsel when he inquired at the time of our February 5 filing), and we do not expect to engage in extensive discovery, presentation of evidence, or cross-examination of witnesses. Our interests are broad rather than detailed or technical, but we believe they are "substantial" and we believe they should be part of the record in this docket.

4. The Applicants argue (in their March 18 Response and Objection to Certain Petitions to Intervene, para. 28, p. 11) that the interests we represent are not "substantial" enough to warrant intervention as of right—a contention with which we disagree¹—but they have made no objection to discretionary intervention, asking only that we be combined in a single group (to which we agree) and that we be combined with the "Individual Non-Abutters" (with which we do not agree, for reasons set forth below). State legislators have often petitioned to intervene in administrative proceedings under RSA 541-A, and have traditionally been granted intervenor status. (See, e.g., NHPUC Docket Nos. DE 14-238 [Eversource "Divestiture"] and DE 15-137 [Energy Efficiency Resource Standard]. To our knowledge they have never been accused of impairing the prompt and orderly conduct of the proceedings.
5. As noted in Paragraph 2 above, we have made three claims that we believe warrant intervention as of right in this docket. In denying our Intervention Petition, the Committee (or its presiding officer) apparently did not notice claim (iii), our interest in the Committee's interpretation of the new "public interest" standard incorporated in RSA 162-H:16, IV(e).² With respect to claim (iii), we would like to add the following:

¹ "Substantial" is defined in Black's Law Dictionary (Rev'd 4th Ed.) to mean: "Of real worth and importance; of considerable value; valuable" and "Something worth while as distinguished from something without value or merely nominal" (case citations omitted).

² RSA 162-H:16, IV(e), added during the 2014 legislative term, provides:

IV. After due consideration of all relevant information regarding the potential siting or routes of a proposed energy facility, including potential significant impacts and benefits, the site evaluation committee shall determine if issuance of a certificate will serve the objectives of this chapter. In order to issue a certificate, the committee shall find that:

- (e) Issuance of a certificate will serve the public interest.

- (a) First, we are not suggesting that the Committee should adopt our view of the “public interest,” as a substitute for its own. Under the statute, it is the Committee’s job, not ours, to determine whether the Applicants’ proposal is in the public interest—at least in the first instance, and subject to judicial review. Our interest, and we believe our duty, is to suggest and argue for the concerns we believe should be considered by the Committee in making its determination of what constitutes the public interest.
- (b) That said, we are troubled by the denial of our petition—because we believe we are asserting broad and substantial public interest concerns that the Committee should hear and consider. Our petition has apparently been denied on grounds that we have failed to assert interests that are “direct and substantial,” by which the Committee (or its presiding officer) appears to mean individual rights in private property or similar tangible private economic interests of individuals. But those are not our concern, nor do we believe the Committee’s concerns should be so limited. We are asserting more generalized—but no less “substantial”—interests that we believe are at stake in this docket. Without thorough consideration of competing views over these substantial but more generalized interests³, the Committee may

³ The Committee cannot determine what is in the public interest without weighing the project’s alleged benefits against its costs. But that will require a thorough and probing review of the benefits alleged by the Applicants, as well as the costs that the Applicants allege to be associated with several possible alternative designs for the project. As two examples, but only two:

(1) In 15 different public information sessions and public hearings since September 2015, the Applicants have introduced a PowerPoint presentation purporting to show as “fact” that the project would result in \$80 million dollars per year in reduced electric rates for New Hampshire ratepayers, and have claimed that this would reduce New Hampshire ratepayers’ retail electric rates by as much as 5%. The \$80 million figure is not fact, but an unsubstantiated assertion presented as fact. The Applicants’ chief executive officer finally acknowledged on March 16 in Deerfield, under questioning by a Committee member, that the \$80 million figure is based on a “complicated” model using a dynamic set of factors, any one of which, if inaccurate, might cause the result to vary such that the estimate itself would turn out to be inaccurate.

(2) In answers to public questions about the incremental cost to bury the entire Northern Pass line, the Applicants’ chief executive officer has confidently asserted at several recent public meetings that the cost of the project would be increased from \$1.6 billion to \$2.6 billion—or an incremental cost of \$1 billion—if the line were to be entirely buried. But when asked at the March 16 public hearing in Deerfield if the study on which this estimate is based would be made available to the Committee and the public, his response was that the study had been prepared by an Eversource engineering team in response to the Request for Proposal from Massachusetts, Connecticut and Rhode Island to provide transmission services for renewable energy to be imported from Canada, and that it included proprietary and confidential information which would have to be redacted before it could be made available to the Committee or the public.

As these two examples demonstrate, it will be important for the Committee to get the strongest possible competing analyses of these claims and other claims by the Applicants—but it is not clear to the State Legislators that either the individual intervenors or even some of the very respected group intervenors will be looking in depth at questions like these.

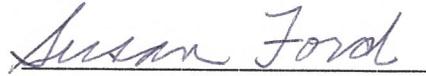
indeed strike a balance between the private property interests of many individual intervenors (e.g. abutters and non-abutters, as the Committee elects to define those terms) and groups (towns, business organizations, economic development groups, and Eversource shareholders)—but it will not be making a serious determination of whether issuance of a certificate for the Northern Pass project, as proposed, is in the public interest.

- (c) We respectfully suggest that while it may be appropriate for the Public Utilities Commission to balance the private economic interests of utility shareholders against the private economic interests of utility ratepayers in a rate-making proceeding, that is not the appropriate test for determining the public interest in a Site Evaluation Committee proceeding under revised RSA 162-H:16, IV(e).
- (d) The Applicants base much of their case on the alleged value of the Northern Pass project to the state as a whole; as elected representatives of many diverse communities within the state (including both towns through which the project would pass and those through which it would not pass), we believe we are qualified to join in a serious discussion about whether the Northern Pass project, as proposed, serves the “public interest.”
- (e) Denying our Intervention Petition (and thus removing from the discussion the voice of elected officials that speak for broader public interests rather than private economic ones) effectively narrows the issues that will be considered by the Committee in determining the public interest. That may simplify the proceeding—may even shorten it—but it will not discharge the Committee’s obligation to determine whether, and to what extent, and subject to what conditions, the Applicants’ proposal is in the public interest. Rather, it will yield a parched and shriveled record, replete with determinations about private economic interests but largely devoid of meaningful consideration of what may constitute the broader interest of the public.

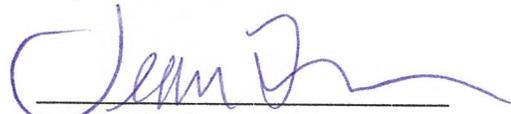
In conclusion, the State Legislators respectfully request the Committee to:

- A) Review and reconsider the denial of their Intervention Petition;
- B) Allow the Additional Signatories to join in the Intervention Petition;
- C) Grant the State Legislators full intervenor status as a single group, separate from any other party; and
- D) Allow a representative of the State Legislators to speak in support of this request.

Respectfully submitted on behalf of
the State Legislators⁴,



Rep. Susan Ford



Sen. Jeanie Forrester

Date: March 28, 2016

⁴ E-mails were sent to all 67 original State Legislators on March 23, and again on March 24, 2016, providing notice of intent to file this Request for Review and Reconsideration on March 28, 2016, and asking any State Legislator who desired to "opt out" to reply to that effect by Saturday, March 26, at noon. As of the filing date, no State Legislators have replied asking to opt out of this filing.

CERTIFICATE OF SERVICE

I hereby certify that on this 28th day of March, 2016, this Request for Review and Reconsideration was hand delivered to Pamela Monroe, Administrator of the New Hampshire Site Evaluation Committee, at 21 S. Fruit Street, Suite 10, Concord, New Hampshire, with electronic copies to the Service List for Docket 2015-06.

Howard M. Moffett
Rep. Howard Moffett

Additional Signatories⁵

Signature	Marjorie Porter	Hillsborough 1	3/23/16
	Print name	District	Date
Signature	Mary Heath	Hillsborough 14	3/23/16
	Print name	District	Date
Signature	Rebecca Brown	Grafton 2	3/23/16
	Print name	District	Date
Signature	Neal Kurk	Hillsborough 2	3/23/16
	Print name	District	Date
Signature	Marjorie Smith	Strafford 6	3/23/16
	Print name	District	Date
Signature	Suzanne Gottling	Sullivan 2	3/23/16
	Print name	District	Date
Signature	Timothy Horrigan	Strafford 6	3/23/16
	Print name	District	Date
Signature	Tom Sherman	Rockingham 24	3/23/16
	Print name	District	Date
Signature			
	Print name	District	Date
Signature			
	Print name	District	Date
Signature			
	Print name	District	Date

⁵ Original signatures of the above "Additional Signatories" have been filed with the SEC.

Additional Signatories

Hillsborough D1

County, Towns
Antrim, Hillsborough,
Windsor

Rep Wynnie A. Paly
Name MARJORIE PORTER

Hillsborough
District 14 Manchester
County, Towns

Rep Mary Heath
Name

GRAFTON
LYMAN, Lisbon, Sugar Hill
County, Towns Monroe, Franconia

Rep. Rebecca A. Brown
Name

Stratford
County, Towns

Rep Mayer Siner
Name

Rye, Newcastle
County, Towns

Rep Sherman
Name Rep. Tom Sherman

Hills. 2 Wrentham/Deering
heath/Kirk
County, Towns H

Neal M. Kirk
Name MK

Additional Signatories (2)

Sullivan, Sunapee

County, Towns

Suzanne Gottling

Name

Stratford Durham
+ Madbury

County, Towns

Timothy Horrigan

Name

County, Towns

Name

**Responses from Other Parties/Intervenors to
State Legislators' Request for Review and Reconsideration**

- A. Assenting: Lisa Wolford & Pamela Hanglin (Deerfield)
Rick Samson (Coos County Commissioner, District 3)
Jeanne Menard (Deerfield)
Laurence M Rappaport (NH State Representative, Coos District One)
Jon and Lori Levesque (Northern Abutters Group)
Ashland Conservation Commission (Walter Durack, Chair)
The following members of the Historic Preservation group:
National Trust for Historic Preservation, New Hampshire Preservation
Alliance, and the Sugar Hill Historical Museum
- B. Taking No Position:
Towns of Bristol, Easton, Franconia, Northumberland, Sugar Hill and Whitefield
(per C. Christine Fillmore, Gardner, Fulton & Waugh, PLLC)
City of Berlin (Christopher L. Boldt, Esq. Donahue, Tucker & Ciandella, PLLC)
- C. Objecting:
The applicant
- D. Not Responding:
All other parties/intervenors