

February 16, 2016

VIA HAND-DELIVERY AND EMAIL

Pamela G. Monroe, Administrator
New Hampshire Site Evaluation Committee
21 South Fruit Street, Suite 10
Concord, NH 03301-2429

**RE: 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 for Construction of a New High Voltage
Transmission Line in New Hampshire**

Dear Ms. Monroe:

Enclosed for filing in the above-captioned matter with the New Hampshire Site Evaluation Committee is the **Contested Motion for Due Process Upon Submission of Additional Information**.

Copies of this letter and its enclosure have this date been forwarded via email to all parties on the Distribution List.

If you have any questions or concerns, please do not hesitate to contact me.

Very truly yours,


Amy Manzelli, Esq.

/nmm

Enclosures

cc: Distribution List (Rev. 1/26/2016) via email
Client



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

CONTESTED MOTION
FOR DUE PROCESS UPON SUBMISSION OF ADDITIONAL INFORMATION

The Society for the Protection of New Hampshire Forests (the “Forest Society”), by and through its attorneys, BCM Environmental & Land Law, PLLC, requests that the SEC: (a) formally review additional information forthcoming from Northern Pass; (b) use the date of any acceptance to set future statutory deadlines; and (c) hold county-based public hearings well after the submission of the additional information, as follows:

I. Overview of Status of Pending Applications and New Rules

1. Recent amendments to the applicable administrative rules have caused certain applicants with pending requests to the SEC to file supplements to their original applications.

2. When new administrative rules became effective on December 15, 2015, they applied to all projects for which an adjudicatory hearing had not yet commenced. RSA 162-H:10, VII.

3. For some projects, the original applications likely could not contain sufficient information for the SEC to carry out the purposes of this chapter because the new rules had not yet become law.

4. In essence, some applications that may have been accepted prior to the new rules coming into effect were rendered incomplete when the new rules came into force.

5. The Joint Applicant (“Northern Pass”) is one such applicant in this relatively unusual situation.

6. The statute contemplates that such applicants “shall be afforded a reasonable opportunity to provide that information while the processing of the application continues.” RSA 162-H:10, VII.

7. Northern Pass intends to file with the SEC by March 15, 2016 additional information to comply with the new rules.

8. Significant factors point to the need to ensure that the public is afforded a meaningful opportunity to participate, including among many others: the wide-ranging geographic scope of the proposed project; the unusual circumstance of rules changing after an application has been submitted; the unprecedented magnitude of the application; the extensive interest of the public and other third parties; and the recent legislative changes to increase the public’s inclusion and confidence in the SEC process.

II. Review Supplemented Application Like Original Application

9. Following Northern Pass’s submission of additional information, the SEC should be afforded a reasonable opportunity to “expeditiously conduct a preliminary review to ascertain if the application contains sufficient information to carry out the purposes of” RSA 162-H, as that statute has been detailed in the new rules. RSA 162-H:7, III.

10. The SEC should make this determination within 60 days of Northern Pass filing the additional information. RSA 162-H:7, VI.

11. Presuming the application, as supplemented, suffices, the date the SEC makes that determination should then become the date of acceptance for purposes of calculating future statutory deadlines.

12. For example, the 365-day deadline to issue or deny a certificate would begin upon the date the SEC determines that the application, as supplemented, is sufficient.

13. This is a logical and appropriate way to handle the unique situation of the application requiring substantial and material additions because of the new rules and affords the SEC, the public, and others the amount of time prescribed by statute to move through the process required by RSA 162-H.

III. Public Hearing Schedule Should be Altered for Meaningful Public Participation

14. At the same time Northern Pass is preparing its additional information, the SEC has scheduled all but one of the five county-based public hearings required by RSA 162-H:10, I-c to occur before March 15, 2016 (3/1/16 Meredith; 3/7/16 Colebrook; 3/10/16 Concord; 3/14/16 Plymouth; 3/16/16 Deerfield).

15. Consequently, the public will not be afforded a meaningful opportunity to participate in any of these public hearings because the application will not be complete pursuant to current law until after the public hearings.¹

16. Exacerbating the problematic nature of the currently scheduled, county-based public hearings, two of the public hearings will be in conjunction with the U.S. Department of Energy.

17. This is troublesome in several ways, including that the legal standards each agency has to apply to the project are completely different, which is likely to cause significant confusion; combining two different proceedings may make the hearing so lengthy that members of the public are not able to remain long enough to provide their remarks or ask their questions; and the public may perceive that the SEC is disinterested in the public's participation.

¹ While it is acknowledged that one of the public hearings is scheduled to occur one day after Northern Pass submits additional information, one day is insufficient time to allow meaningful public participation in that hearing.

18. At least two possible solutions are available to solve this lack of opportunity for meaningful public participation.

19. As the first and best option in terms of efficiency, and conserving time and economic resources, the Forest Society respectfully requests that SEC postpone the current set of public hearings.

20. One way the SEC is authorized to postpone would be, as noted previously, that the 90-day deadline for holding the county-based public hearings set forth in RSA 162-H:10, I-c would not start until the SEC accepted the supplemented application.

21. Another way the SEC is authorized to postpone is that RSA 162-H:14 authorizes the SEC to alter the statutorily prescribed schedule when the SEC “deems it to be in the public interest.”

22. Providing the public with the time prescribed by the statute between the acceptance of an application and the county-based public hearings is certainly the kind of “public interest” the statute contemplates.

23. Either way, the appropriate time for the public hearings would be approximately 60 to 90 days following the SEC’s acceptance of the supplemented application, or in the event that the SEC does not engage in such a process of formal acceptance, 60 to 90 days following Northern Pass’s submission of the additional information.

24. Alternatively, in the absence of postponing the current set of public hearings, the Forest Society respectfully requests that the SEC exercise its authority to hold a second set of public hearings.

25. RSA 162-H:4, II authorizes the SEC to hold “such additional hearings as it deems necessary and appropriate.”

26. As in the scenario where the SEC postpones the current set of public hearings, the appropriate time for the public hearings would be approximately 60 to 90 days following the SEC's acceptance of the supplemented application, or in the event that the SEC does not engage in such a process of formal acceptance, 60 to 90 days following Northern Pass's submission of the additional information.

27. Counsel for the Public takes no position on this Motion. Counsel for the Applicant objects to this Motion.

WHEREFORE, the Forest Society respectfully requests that the Subcommittee:

- A. Conduct a preliminary review of the supplemented application to ascertain if the application contains sufficient information to carry out the purposes of RSA 162-H, as that statute has been detailed in the new rules; and
- B. If the SEC ascertains that the application contains sufficient information, use the date of that determination as the date of acceptance for purposes of calculating future statutory deadlines; and
- C. Postpone the current set of county-based hearings until 60 to 90 days following the SEC's acceptance of the supplemented application, or in the event that the SEC does not engage in such a process, 60 to 90 days following Northern Pass's submission of the additional information; or in the alternative;
- D. Schedule an additional set of county-based hearings to occur 60 to 90 days following the SEC's acceptance of the supplemented application, or in the event that the SEC does not engage in such a process, 60 to 90 days following Northern Pass's submission of the additional information; and
- E. Grant such further relief as it deems appropriate.

Respectfully Submitted,

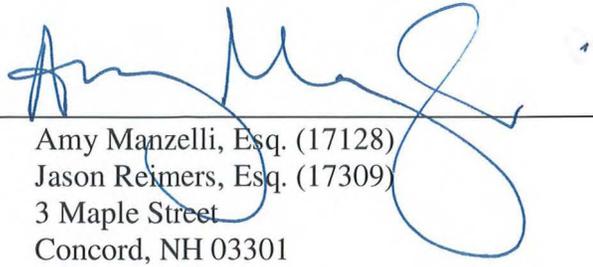
**SOCIETY FOR THE PROTECTION OF
NEW HAMPSHIRE FORESTS**

By its Attorneys,

BCM Environmental & Land Law, PLLC

Date: February 16, 2016

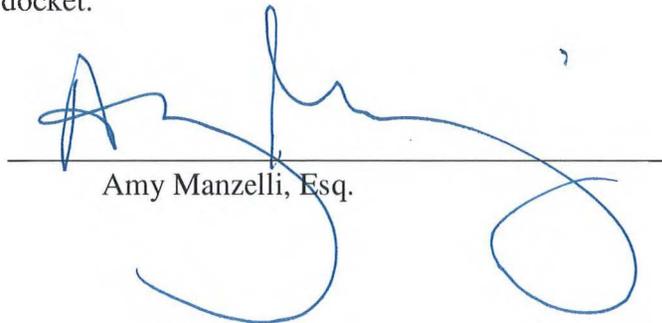
By:



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CERTIFICATE OF SERVICE

I hereby certify that on this day, February 16, 2016, a copy of the foregoing Contested Motion for Due Process Upon Submission of Additional Information was sent by electronic mail to persons named on the Service List of this docket.



Amy Manzelli, Esq.