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February 22, 2016

By E-Mail & U.S. Mail

Pamela G. Monroe, Administrator
New Hampshire Site Evaluation Committee
21 South Fruit Street, Suite 10
Concord, NH 03301-2429
pamela.monroe@sec.nh.gov

Re: 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

Dear Ms. Monroe:

Enclosed for filing in the above-captioned proceeding is Response of Counsel for the Public to *Motion of Conservation Law Foundation for Additional or Deferred Public Hearings and Contested Motion for Due Process Upon Submission of Additional Information* of The Society for the Protection of New Hampshire Forests.

Copies of this letter and its enclosure have been forwarded via e-mail to all parties on the Distribution List.

Thank you.

Sincerely,



Thomas J. Pappas

TJP/scm - 2308682_1

Enclosure

cc: Distribution List via e-mail

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

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

RESPONSE OF COUNSEL FOR THE PUBLIC TO *MOTION OF CONSERVATION LAW FOUNDATION FOR ADDITIONAL OR DEFERRED PUBLIC HEARINGS AND CONTESTED MOTION FOR DUE PROCESS UPON SUBMISSION OF ADDITIONAL INFORMATION OF THE SOCIETY FOR THE PROTECTION OF NEW HAMPSHIRE FORESTS*

Counsel for the Public, by his attorneys, the office of the Attorney General and Primmer Piper Eggleston & Cramer PC, hereby responds to the Unassented-to *Motion of Conservation Law Foundation for Additional or Deferred Public Hearings* and the Society for the Protection of New Hampshire Forests' *Contested Motion for Due Process Upon Submission of Additional Information* (the "Motions"). Counsel for the Public responds as follows:

1. On December 7, 2015, the Committee determined after public deliberation that the Joint Application was administratively complete pursuant to RSA 162-H:7, VI. A written order memorializing this decision was published December 18, 2015 (the "Completeness Order").

2. After the hearing but prior to the Completeness Order, new rules became effective on December 16, 2015. Among other things, the new rules required applicants to make certain additional disclosures in their application submittals.

3. Pursuant to RSA 162-H:10, VII, the new rules would apply to the Joint Applicants because the adjudicative hearing had not commenced. In addition, "if the rules require the submission of additional information by an applicant, such applicant shall be

afforded a reasonable opportunity to provide that information while the processing of the application continues.” *Id.*

4. On December 28, 2015, the Administrator informed counsel to the Joint Applicants that the new rules had been adopted and requested to be informed as to whether “any additional information is required in order to comply with the rules” and the amount of time needed to make the additional submittal.

5. On January 15, 2016, counsel for the Joint Applicants informed the Committee that there would be additional submittals and that they would be delivered by March 15, 2016.

6. Pursuant to RSA 162-H:10, 1-c, within 90 days after acceptance of the application, the Committee shall hold “at least one” public hearing in each county in which the facility will be located.

7. Pursuant to RSA 162-H:14, the Committee may suspend the proceedings and the time frame if it is “in the public interest” to do so.

8. During its deliberations on completeness, the Committee expressed an awareness of the new rules but did not express any view as to the effect of the new rules on the question of completeness or upon the schedule that would follow. *See* Transcript, 12/7/15, at pp. 22-23. The Completeness Order does not discuss the impact of the new rules or any additional submittals on these questions. Thus, the Committee did not account for the possibility of significant and substantial new information that may yet be forthcoming as required by the new rules.

9. It is not known to what extent the Joint Applicants will supplement their application. Moreover, it is not known at this time whether the information will be adequate

to comply with the new rules or whether the information would have affected the Committee's completeness determination.

10. Counsel for the Public informed the Committee by letter dated December 2, 2015, of a number of issues about which he had serious concerns regarding the completeness of the application. The new submittals also may raise new and significant issues and questions.

11. The ability of the public and the parties to participate *meaningfully* in the pre-adjudicative phase (a time *before* the many petitions for intervention will be ruled upon) is directly related to the quality and sufficiency of the information that is available to them. *See* Site 201.03(e) ("at each such public hearing, members of the public having an interest in the subject matter shall be provided with an opportunity to state their positions."). One of the central purposes of the process is, after all, "full and complete disclosure to the public" of the plans for the facility. RSA 162-H:1. *See Massachusetts v. Watt*, 716 F.2d 946, 951 (1st Cir. 1983) (Breyer, J.) (emphasizing the importance of timely information to effectuating public comment).

12. The statute presumes that 90 days before the pre-adjudicative public hearings are completed the application will be deemed complete. *See* RSA 162-H:10, I-c (hearings to be conducted within 90 days of acceptance of application); RSA 162-H:7, VI (Committee may reject application if it is incomplete or may accept it if complete). The Committee could have accepted the application conditionally on December 7, 2015, upon the understanding that it may not have complied with the new rules which were certain to take effect only a week or so later. *See* Transcript, 12/7/15, at pp. 22-23. Such would have enabled the Joint Applicants to make their additional submittals, *see* RSA 162-H:7, VI, after which the

Committee could have made a final determination of acceptance and completeness based upon all application materials and in accordance with the new rules.

13. By proceeding and allowing the Joint Applicants three additional months to bring the application into compliance with the new rules, while the clock runs on the timing of the pre-adjudicative hearings, the current schedule deprives the public and proposed intervenors of much of the presumptive 90 day period. The 90 day period serves dual purposes – it ensures that the pre-adjudicative phase is not indefinite thus protecting the applicant’s need for a resolution of the case without undue delay, and it guarantees a reasonable time during which the public, Counsel for the Public, and critically, the Committee members, can review the information, understand the project, and prepare to participate meaningfully in the pre-adjudicative phase hearings.

14. Under these circumstances, Counsel for the Public respectfully suggests that the public interest and the orderly and efficient conduct of the proceeding would best be served by a postponement of the pre-adjudicative hearings for the amount of time necessary to ensure that everyone in the process has as much of the full 90 day period after completeness as possible before those hearings are held (presumably 90 days from the date that the Joint Applicants make their additional submittals). *Accord* Site 202.16.¹

Wherefore, Counsel for the Public supports postponing the hearings or suspending the proceedings for a reasonable amount of time after the Joint Applicant’s supplemental materials are filed.

¹ Should the Joint Applicants make their submittals sooner, or should it be the case that the additional submittals are inconsequential, the Committee may adjust the additional time needed accordingly.

Respectfully submitted,

COUNSEL FOR THE PUBLIC,

By his attorneys,



Dated: February 22, 2015

By:

Peter C.L. Roth
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PRIMMER PIPER EGGLESTON & CRAMER PC,



Dated: February 22, 2016

By:

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing RESPONSE OF COUNSEL FOR THE PUBLIC TO *MOTION OF CONSERVATION LAW FOUNDATION FOR ADDITIONAL OR DEFERRED PUBLIC HEARINGS AND CONTESTED MOTION FOR DUE PROCESS UPON SUBMISSION OF ADDITIONAL INFORMATION* OF THE SOCIETY FOR THE PROTECTION OF NEW HAMPSHIRE FORESTS has this day been forwarded via e-mail to persons named on the Service List of this docket.

Dated: February 22, 2016



Thomas J. Pappas, Esq. (N.H. Bar No. 4111)