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**Via Hand-Delivery and Email**

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

August 15, 2016

**Re: 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, NH Site Evaluation Committee Docket No. 2015-06**

Dear Ms. Monroe:

Please find enclosed for filing in the above-referenced matter an original and eight (8) copies of NGO Intervenor's Motion to Compel Regarding Set 1 Data Requests.

Copies of this letter and the attached have this day been forwarded via email to all parties on the Distribution List.

Thank you for your attention. Please do not hesitate to contact the undersigned with any questions.

Sincerely,

Melissa E. Birchard

cc: Distribution List

**THE 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

**NGO INTERVENORS' MOTION TO COMPEL  
REGARDING SET 1 DATA REQUESTS**

Ammonoosuc Conservation Trust, Appalachian Mountain Club, and Conservation Law Foundation (collectively, the “NGO Intervenors”), pursuant to Site 202.12(k), submit this Motion to Compel Northern Pass Transmission LLC and Public Service Company of New Hampshire d/b/a Eversource Energy (collectively, the “Joint Applicants”) to produce certain data and information with regard to the NGO Intervenors’ first set of data requests. The NGO Intervenors state as follows.

**A. BACKGROUND AND RESERVATION OF RIGHT TO SUPPLEMENT**

1. In accordance with the procedural schedule, the NGO Intervenors propounded 54 initial data requests on the Joint Applicants on May 27, 2016.<sup>1</sup> The Joint Applicants provided responses on July 8, 2016. Many of those responses were substantially incomplete.

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<sup>1</sup> At that time, New Hampshire Sierra Club was a participant in the NGO Intervenor grouping and shared in the propounding of data requests. New Hampshire Sierra Club subsequently withdrew its motion to intervene in the proceeding and thus is no longer a participant in the NGO Intervenor grouping.

NGO Intervenors are a member of “Group 2” for purposes of discovery deadlines.

2. Consistent with Site 202.12(k), the NGO Intervenors have made a good faith effort to informally resolve this matter through communications with counsel for the Joint Applicants. These efforts have yielded only partial success, and in fact are still ongoing as of now, some five and a half weeks after the July 8 deadline.

3. On July 20, 2016, Melissa Birchard, together with Ken Kimball, on behalf of the NGO Intervenors, held a phone call with Thomas Getz, Counsel for Northern Pass, to identify and discuss deficiencies in the Joint Applicants' discovery responses. Mr. Getz indicated a likelihood that additional materials would be forthcoming.<sup>2</sup> . Subsequently, related conversations by phone, e-mail, and in-person took place over the following weeks, including a July 26, 2016 meeting among Group 2 intervenors, counsel for Northern Pass, Michael Iacopino, and Pamela Monroe as to certain deficiencies common among the Group 2 discovery responses, including indecipherable documents, missing items, and nonspecific claims of confidentiality or privilege.

4. On August 11, 2016, Mr. Getz provided by e-mail attachment a supplemental narrative response to the NGO Intervenors' initial data requests.<sup>3</sup> That narrative response indicated that additional responsive materials would be provided via the ShareFile site. Mr. Getz informed the NGO Intervenors that issues not specifically addressed in the supplemental narrative response would not be remedied. Also on August 11, Mr. Getz generically informed the Group 2 intervenors that the Joint Applicants declined to further respond to a number of Group 2 data requests on the basis of relevance or burden. As of Friday afternoon, August 12, 2016, a portion of the items that Mr. Getz informed the NGO Intervenors would be posted to the

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<sup>2</sup> Also on July 20, the NGO Intervenors provided to the Joint Applicants a written list enumerating these deficiencies.

<sup>3</sup> The August 11, 2016 e-mail from Thomas Getz to Group 2 is appended to this motion as Attachment A.

ShareFile site had been provided, while other items had yet to be made available. Having failed to resolve all discovery issues through repeated informal efforts over the past month, the NGO Intervenor file this motion to compel.

5. In light of the fact that communications are still ongoing with the Joint Applicants regarding certain responses to the NGO Intervenor's initial data requests, the NGO Intervenor would like to reserve the right to supplement this motion to compel on or before Friday, August 19, 2016. Counsel for Joint Applicants have indicated consent to a further extension of the deadline for NGO Intervenor's motions to compel as to those data requests still under discussion.<sup>4</sup>

**B. MOTION TO COMPEL**

6. The responses of Joint Applicants to date are deficient in the following respects and should be remedied.

7. The Joint Applicants have failed to state who authored, prepared, and/or sponsored each response to the NGO Intervenor's data requests.<sup>5</sup> This issue was raised at the July 26, 2016 Group 2 meeting but has not been remedied. Absent this information, the intervenors will be unable to address questions to the appropriate sponsoring witness at the upcoming technical sessions or at hearing. The NGO Intervenor respectfully request that the Committee direct the Joint Applicants to identify a sponsor for each discovery response.

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<sup>4</sup> While they acknowledged that a single motion would be more efficient, the Joint Applicants declined to consent to further extend the overall deadline applicable to the NGO Intervenor's motion to compel.

<sup>5</sup> NGO Intervenor DR Set 1 contained the following instruction:

For each response, please identify the person who provided the response and who will be responsible for testimony concerning each request. Also, for each response, identify each individual who supplied any information in response to the question.

8. The Joint Applicants' responses contain general objections, but it is unclear whether these general objections have been invoked as to any specific data request, and if so, whether any responsive documents have been withheld. The Joint Applicants should be required to invoke objections on a more specific basis that provides a reasonable basis for challenging or accepting such objections.

9. The Joint Applicants have failed to provide any log, such as a privilege log, that would enable the parties to have an intelligible discussion as to any documents that may have been withheld. In part as a result of this failure, in many cases it is unclear whether materials that the Joint Applicants believe to be confidential or privileged have been omitted from production, and if so what the basis for that claim of privilege may be. The Joint Applicants should be directed to state with a reasonable degree of specificity what has been omitted, and on what claimed basis.

10. The Joint Applicants have declined to provide communications such as e-mails in response to a number of data requests. Mr. Getz, in his August 11, 2016 general e-mail to Group 2 intervenors, indicated that further responsive communications such as e-mails would not be forthcoming for reasons including relevance and undue burden.<sup>6</sup> Having failed to lodge any specific objections within the timeframe provided by the rules of this Committee, any such objections should be deemed waived and the Joint Applicants should be directed to provide the requested responsive communications. Site 202.12(j). Going forward, the Joint Applicants should be directed to state with specificity the reasons for excluding any responsive materials

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<sup>6</sup> See Attachment A.

from production, so that such objections can be challenged or accepted on that basis. Site 202.12(i).

11. In particular, the Joint Applicants have failed to respond in full to NGO 1-13.

The data request, and the written response received, read as follows:

**NGO 1-13** Please state the basis for and produce copies of all documents, information and communications (including worksheets) that evidence, discuss or relate to projected savings to ratepayers and energy markets related to the Northern Pass project.

**Response:** A thorough discussion of how LEI estimates ratepayer savings, including listing of data sources and explanation of methodology, is included in Section 5 of the LEI Report.

Having received no specific objection to this request, the NGO Intervenors assume that the Joint Applicants have declined to provide any communications in response to NGO 1-13 for one of the reasons set forth in Mr. Getz's August 11, 2016 email.<sup>7</sup> To the extent the Joint Applicants object, they should have done so with specificity within the timeframe required. Site 202.12(i). To the extent that the Joint Applicants' generic objections may apply to NGO 1-13, the Joint Applicants nonetheless should be directed to provide all responsive items. The Joint Applicants lack any basis to claim that ratepayer impacts are not relevant, having made them a central issue of this proceeding. Given that they are a central issue of this proceeding, the Joint Applicants should be directed to provide all responsive materials. Such a task does not present an undue burden concerning a central issue as to which the Joint Applicants have made numerous assertions in their Application before this Committee.

12. In response to NGO Intervenors DR 1-23, the Joint Applicants have failed to provide data in an accessible format. Data request 1-23 requested GIS and LiDAR data. With

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<sup>7</sup> See Attachment A.

regard to the LiDAR data, the Joint Applicants produced data subject to a confidentiality agreement. The Joint Applicants provided the LiDAR information in \*.BAK file format but declined to state what software is required to open the files. Experts familiar with LiDAR were unable to open the files using standard LiDAR software. When the Joint Applicants provided a general document on July 27, 2016 listing file formats used by the Joint Applicants to provide documents, \*.BAK files were missing from the list. The Joint Applicants recently indicated that the files are only usable in PLS CADD, which is an engineering line design program. To the extent the data is in fact compatible with PLS-CADD, that software is prohibitively expensive to purchase in order to process and view the data. An internet search indicates that the standard edition of PLS-CADD costs \$9,500. However, there are multiple “transition” formats to which the Applicants could have exported the LiDAR data that would readily be imported/converted into ArcGIS, a standard software program for using LiDAR. The Applicants have refused to provide the LiDAR data in such a format.<sup>8</sup>

13. The Joint Applicants must prove that the proposed project will not have an unreasonable adverse effect on aesthetics under RSA 162-H:16, IV(c). The Joint Applicants used LiDAR in their assessment of visual impacts. In order for the NGO Intervenors, and other interested intervenors, to evaluate the Joint Applicants’ conclusions as to the visual impacts of the proposed project, it is essential that LiDAR data be provided in a usable format. The NGO Intervenors respectfully request that the Joint Applicants be compelled to provide the LiDAR data in a usable format that can be converted into ArcGIS or provide the PLS-CADD software. Instructions accompanying the NGO Intervenors data requests provided as follows: “In the

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<sup>8</sup> The use of PLS-CADD is representative of the impediments created by the Joint Applicants’ insistence that intervenors purchase specialized software or else forego examining the Applicants’ data. In this instance, alternatives to a \$9,500 program are readily available and should be used.

event that the document, information, and/or communication to be produced requires specialized software or other means to run it, we reserve the right to request copies of or access to such software or other means.” The NGO Intervenors hereby request copies of and access to the PLS-CADD software or the conversion of the LiDAR data into ArcGIS.

14. The NGO Intervenors additionally request that any broadly applicable relief granted to another party or parties to this proceeding, in connection with the discovery requests to date, including as to claims of confidentiality or other alleged bases for non-production, also be deemed applicable to the NGO Intervenors as appropriate.

WHEREFORE, for the reasons stated above, the NGO Intervenors respectfully request that the Site Evaluation Committee grant the NGO Intervenors’ Motion to Compel.

Respectfully submitted,



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Melissa E. Birchard  
Designated Spokesperson for the  
NGO Intervenors

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August 15, 2016

**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing has, on this 15th day of August, 2016, been sent by email to the service list in Docket No. 2015-06.



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Melissa E. Birchard

# **ATTACHMENT A**

## Melissa Birchard

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**From:** Getz, Thomas <Thomas.Getz@MCLANE.com>  
**Sent:** Thursday, August 11, 2016 12:00 PM  
**To:** Jason Reimers; Amy Manzelli; Pacik, Danielle; cfillmore@townandcitylaw.com; steven@mitchellmunigroup.com; Carol Holohan (cholahan@nepga.org); Susan Arnold (SArnold@outdoors.org); William L. Plouffe (WPlouffe@dwmlaw.com) (WPlouffe@dwmlaw.com); Melissa Birchard; Isaffo@co.grafton.nh.us  
**Cc:** marvin.bellis@eversource.com; Needleman, Barry  
**Subject:** Discovery Follow-Up Meeting

All,  
The meeting with representatives of Group 2 (governmental entities and non-governmental organizations), on July 26, 2016, was very helpful in identifying and resolving a number of discovery related issues and we are hopeful that the information we shared at the time, and the steps we have taken subsequent to the meeting, have been useful as well. The Applicants remain committed to working with intervenor groups to assist in the sharing of information relevant to the subject of this proceeding, and we trust that this e-mail addresses the issues raised at the meeting. Following is some additional explanation regarding technical issues and the Applicants' position on the scope of production in this proceeding.

### Technical Issues Accessing Documents Produced

Representatives for particular groups reported that some individuals were having difficulty accessing the documents produced by Applicants on the ShareFile site because of the volume of documents produced. The Applicants had organized the documents in two different ways to accommodate the needs of the different parties involved. For convenience, one zip file was provided for each set of data requests, and those zip files contain all of Applicant's written responses and documents produced in response to each respective set of data requests. Due to the size of each production, Applicants also separated out and provided the individual .pdf documents for each specific data request.

We understand that some group members still had difficulty accessing documents due to the lack of adequate broadband capability. In light of those issues, the Applicants prepared and provided flash drives for Group 2 parties to copy for their members. Each flash drive included non-confidential responses and documents produced by the Applicants. The volume of documents requested and produced is extraordinary, and the Applicants have been willing to take all reasonable steps to accommodate the needs of those accessing the documents. We trust that the flash drives have resolved this issue.

Some group representatives also noted that when documents produced were in native format, they could not access those documents. As we discussed at the meeting, the receiving parties would need to obtain the appropriate software licenses to access documents that are produced in native format. We understand that some group members were not able to identify the software needed based on the names of the files. Accordingly, we provided a list identifying the software that is necessary to access each file type to all parties to the proceeding.

### Request for Further Documents

Some group representatives questioned whether the Applicants' production was sufficient or whether it contained all of the Applicants' communications related to the Project. In response, we point out that the Applicants have undertaken an extraordinary effort to carefully gather, sort, review and produce all relevant,

material and non-privileged documents in this proceeding. Indeed, nearly 80,000 pages, including confidential information, have been produced to date in response to Data Requests. This does not reflect, however, the multiple Excel spreadsheets that were provided in native format, and would likely have added thousands of additional pages. Furthermore, this is in addition to the approximately 27,400 pages that were produced by way of the Application and its supporting appendices, as well as the nearly 1,000 pages of Additional Information submitted in February and other material provided in July to comply with the SEC's new rules.

Due to the volume of documents produced, the Applicants also prepared and provided an Excel spreadsheet to facilitate review of the documents produced. The spreadsheet is searchable and sortable, so that the receiving parties can search for e-mails to particular persons, and sort e-mails by date and filename.

It is important to point out that an adjudicative hearing pursuant to RSA 162-H and the Site Evaluation Committee ("SEC") rules is not the equivalent of civil litigation pursuant to state or federal rules. RSA 541-A:33, II makes clear, for instance, that the technical rules of evidence do not apply in administrative proceedings such as this. Moreover, Site 202.19 places the burden of proof on the Applicants, and the SEC must determine whether the Applicants have submitted a sufficient record to establish that the application meets the various criteria for a Certificate of Site and Facility. Accordingly, the SEC's focus is on the application submitted, and the documents supporting the Application. Documents and communications discussing other routes considered, or other information ultimately not submitted as part of the application are irrelevant and immaterial, and the Applicants therefore did not produce that information.

Some representatives suggest that the Applicants should have produced more internal communications relating to the Northern Pass Project. By way of the Application and responses to the numerous data requests, the Applicants have made a good faith effort to produce all relevant and material documents, and many of these included various communications by the Applicants. Indeed, thousands of pages include or relate to communications by NPT personnel, or communications by NPT consultants to various third parties. By way of example only, NPT produced the following categories of documents in response to particular data requests:

- Communications, including e-mail communications, by the Applicants and their consultants with various federal and state government agencies regarding the proposed route for the transmission line. This includes communications with all state and federal agencies, with the exception of DRED for which there were no responsive communications. (See, e.g., Responses to CFP 1 and Supplement to CFP 1);
- Communications, including e-mail communications, by the Applicants and their consultants with various federal and state government agencies regarding the proposed route for the transmission line through the White Mountain National Forest. (See e.g., Response to CFP 5);
- Communications between Normandeau Associates and NH DES regarding applications for wetlands alteration of terrain and shoreland permitting. (See, e.g., Response to MG1S No. 22);
- Communications between the Applicants and NH DES regarding the proposed Project. (See, e.g., Response to MG1S No. 23); and
- Communications between the Applicants and NH DHR regarding the SEC review process for the Project. (See, e.g., Response to HIS No. 18).

The Applicants did not produce certain internal communications because such communications are not relevant or material to the SEC's determination as to whether the Application meets the specific findings required for issuance of a Certificate. What is relevant and material to the SEC's findings are the Application, the supporting materials, and the communications by the Applicants and their consultants to various governmental

agencies and third parties. In sum, the SEC bases its decision on the information submitted in support of the Application, not the Applicants' internal communications regarding the Project.

Moreover, to the extent that there is any likelihood that the internal communications might lead to the production of admissible evidence, any such prospect is substantially outweighed by the undue burden that would be imposed on the Applicants if they were required to gather, sort, review and produce those e-mails. The Applicants have devoted significant time and effort to carefully gather, review and produce relevant communications without simply "dumping" irrelevant and immaterial documents and communications in response to the hundreds of data requests received. The added burden of requiring Applicants to review, sort and produce perhaps thousands of pages of purely internal communications that are completely irrelevant or immaterial to the SEC's determination would impose an unreasonable and undue burden on the Applicants and would not further the SEC's review of the Project as proposed.

We would be happy to discuss any of this with you further, and the Applicants will continue to work with the intervenors to reasonably and efficiently share all information relevant to the proposed Project.

Thanks

Tom



**Thomas B. Getz**

**Of Counsel**

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