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August 25, 2016

Via Electronic Mail & Hand Delivery

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

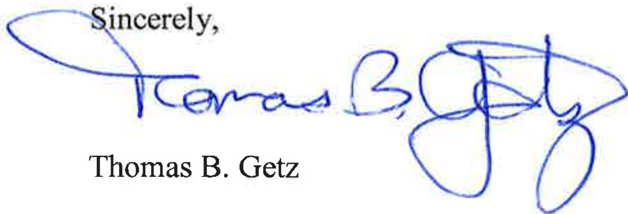
Re: New Hampshire Site Evaluation Committee Docket No. 2015-06
Joint Application of Northern Pass Transmission LLC and Public Service Company of New Hampshire d/b/a Eversource Energy (the "Applicants") for a Certificate of Site and Facility
Objection to Motions to Amend Procedural Schedule

Dear Ms. Monroe:

Enclosed for filing in the above-captioned docket, please find an original and one copy of an Objection to Counsel For Public and Grafton County Commissioners Motions to Compel/Amend Procedural Schedule.

Please contact me directly should you have any questions.

Sincerely,



Thomas B. Getz

TBG:slb

cc: SEC Distribution List

Enclosure

STATE OF NEW HAMPSHIRE
SITE EVALUATION COMMITTEE

SEC DOCKET NO. 2015-06

JOINT APPLICATION OF NORTHERN PASS TRANSMISSION LLC &
PUBLIC SERVICE COMPANY OF NEW HAMPSHIRE
D/B/A EVERSOURCE ENERGY
FOR A CERTIFICATE OF SITE AND FACILITY

OBJECTION TO COUNSEL FOR PUBLIC AND GRAFTON COUNTY COMMISSIONERS MOTIONS TO COMPEL/AMEND PROCEDURAL SCHEDULE

NOW COME Northern Pass Transmission LLC ("NPT") and Public Service Company of New Hampshire d/b/a Eversource Energy ("PSNH") (collectively the "Applicants"), by and through their attorneys, McLane Middleton, Professional Association, and respectfully submit this objection to the motions filed by the Counsel for the Public ("CFP") and the Grafton County Commissioners ("GCC"), which are styled as motions to compel further responses to discovery requests but which are, in fact, motions to amend, and further suspend, the procedural schedule. CFP and GCC seek an unprecedented interpretation of the Site Evaluation Committee ("SEC" or, in this case "Subcommittee") rules to require 100% final design and identification of the "exact alignment" or "exact path" of the proposed transmission line before the siting process would move to the next stage.

There is no precedent and, indeed, no legitimate basis for this request. The CFP and GCC fail to consider or ignore the fundamental role of the Department of Transportation ("DOT") in the SEC's integrated review of applications for the siting of energy facilities. The SEC deemed the application complete in December 2015 and an extensive discovery process is well underway consistent with past practice and current SEC Rules. Detailed information concerning the location of the proposed transmission line has been provided to the parties and

additional information will be made available as the permitting process moves forward. Any further delay or suspension of these proceedings is unnecessary and is counter to the SEC's obligation to avoid undue delay and resolve all issues in an integrated manner. The Applicants ask the SEC to deny the motions of the CFP and GCC, as further discussed below.

I. Factual Background

On October 19, 2015, Applicants filed their Joint Application for Certificate of Site and Facility ("Application") with the SEC. The Application contained over 27,000 pages and provided detailed information addressing all criteria to be considered by the SEC and other permitting agencies, including the location of the proposed transmission line. See Application, Volume I (g) and (h), and Volume IV. In addition, pursuant to the SEC's rules, Site 301.03 (d), the Applicants included as part of their Application, at Appendix 9, a copy of their petition to the DOT, which, among other things, seeks permission to cross under certain highways.

On November 13, 2015, the DOT issued correspondence to the SEC confirming that it had reviewed the Application and found the Application contained sufficient information to initiate its permitting process.

On December 18, 2015, the SEC issued its Order Accepting Application indicating, at p. 1, that it had determined in its deliberations on December 7, 2015, that "the Application contains sufficient information to satisfy the application requirements of each state agency having jurisdiction under state or federal law to regulate any aspect of the construction or operation of the proposed facility. See RSA 162-H:7, IV" and further stated, at p. 14, that "[o]ur review reveals that the Application and the additional materials filed to supplement the Application contain all of the components that are required to be filed with an Application under

RSA 162-H:7 and our administrative rules. See New Hampshire Code of Administrative Rules Site 301."

On June 23, 2016, the Subcommittee issued its Order on Pending Motions and Procedural Order ("Procedural Order"). Pursuant to the Procedural Order, the SEC's Administrator issued a Technical Session Agenda on August 5, 2016, which sets forth 12 days in September for inquiry of the Applicants' witnesses.

Among other things, the Procedural Order set forth deadlines for CFP and other parties to propound data requests and for the Applicants to respond. CFP was required to propound data requests addressing issues analyzed by its experts by June 28, 2016, which it did, and the Applicants were required to respond by August 5, 2016, which they did. As for GCC, as required by the Procedural Order, they propounded data requests by May 31, 2016, and the Applicants responded by July 8, 2016. Notably, the Applicants have responded to nearly 1,000 discovery requests from the parties to this proceeding, including the production of nearly 80,000 pages of documents and responses to data requests.

CFP filed its Motion to Compel Further Responses to Expert-Assisted Discovery Requests and for Other Relief on August 15, 2016. In its Motion, CFP proposes to extend the schedule and require the Applicants to file an amendment to the Application with supporting testimony after the final design and the "exact location" of the transmission line has been determined. Rather than addressing underground issues during the upcoming technical sessions, CFP proposes an extended schedule pursuant to which the Applicants would (1) file an amendment with testimony, (2) provide additional data responses, and (3) participate in a technical session. CFP, and other parties, would then (4) file testimony, (5) answer data requests, and (6) participate in a technical session, after which (7) all parties would file supplemental testimony.

This is more process than is due and would needlessly delay adjudicative hearings and a decision in this proceeding, and in future SEC proceedings. CFP is effectively asking the Subcommittee to further suspend the proceeding, from September 30, 2017, to, approximately, March 31, 2018.

GCC filed its Motion to Order Further Responses to Discovery and Extend Intervenor Deadlines on August 15, 2016. Similar to the argument raised by CFP, GCC argues that Applicants should be required to provide final design and be able to identify the "exact path" of underground facilities before the Intervenors are required to submit testimony and respond to discovery requests.

II. Discussion

A. The Motions to Compel are procedurally defective and should be denied.

To the extent that the motions are construed to be motions to compel, they are defective and should be denied. Site 202.12 (k) (2) provides that motions to compel data requests shall be made within 10 days of receiving a response and (k) (4) requires that a party certify that it made a good faith effort to resolve any dispute informally. CFP's deadline to file a motion to compel was August 15, 2016, by rule, and GCC's deadline was the same day by the Presiding Officer's order of August 2, 2016. While the motions were timely filed, both CFP and GCC failed to comply with the requirement to make a good faith effort to resolve their issues with the Applicants. No such effort was made and, consequently, the required certification was not given.

B. The Application has been deemed complete in accordance with applicable law and the SEC Rules.

As for the substance of its motion, CFP begins from the erroneous conclusion on p. 2 that "the Application is not complete and will not be complete until the Applicants identify the *exact alignment* of the 60 miles of the underground portion of the transmission line." (Emphasis

supplied.) CFP is patently incorrect. As noted above, on November 13, 2015, the DOT indicated that the Application contained sufficient information to initiate its permitting process. Subsequently, on December 18, 2015, the SEC determined that the Application contained "all of the components that are required to be filed with an Application under RSA 162-H:7 and our administrative rules." See Order Accepting Application, p.14.

CFP's charge of incompleteness, while striking, is wholly without merit and misses the point of the SEC process altogether. As explained below, CFP ignores the critical role of the DOT as part of the integrated review of energy facilities. CFP, furthermore, creates the "exact alignment" test out of whole cloth and offers no basis, citation, or precedent for it because, indeed, there is none.

C. Detailed information regarding the location of the proposed transmission line is already available to all Parties and further information will be provided as the DOT permitting process progresses.

As noted in the SEC's December 18, 2015 Order Accepting Application, at p 15, "[t]he Application and supplemental information provide detailed descriptions of the route." The CFP and GCC motions are premised on the faulty notion that the impacts of the underground portions of the Project cannot be assessed until the "exact" location of the underground portions are known. CFP and GCC ignore or are unaware of the fact that it is customary in the context of the longstanding and well-established DOT permitting process, to initiate the process at the 30% design stage, which provide a sufficient basis for identifying and addressing any significant impacts. In addition, 30% design detail is typically relied on for environmental reviews under the National Environmental Policy Act. As a matter of course, during and after the permitting process, design plans are further developed and finalized to meet the requirements of DOT in

order to ensure that a proposed crossing does not impact the safe, free and convenient use of the highway.

Moreover, the factual underpinning for the CFP assertion at p. 4 of its motion, that it cannot assess certain impacts now, is demonstrably untrue. As attested to by the DOT, there is sufficient information in the Application for the permitting process regarding the underground portions of the Project to move forward, including maps, reports and pre-filed testimony, that parties could productively pursue without postponing the upcoming technical sessions.

Furthermore, CFP's request that Applicants be required to amend the Application after DOT has completed its review and the final design has been completed could not be more inimical to the purpose for which the SEC was established. CFP's interpretation of the SEC rules would require a final decision from the DOT prior to the filing of an Application. That is not the integrated review that the Legislature created. It is also contrary to the DOT's permitting process, as well as RSA 162-H;7, VI-b, which contemplates that an agency having permitting authority may require additional data in order to make a final decision on its part of the Application. Finally, as a very recent and typical example of the DOT being accorded its proper role, in its deliberations in Docket 2016-06, Joint Application of New England Power Company d/b/a National Grid and Public Service Company of New Hampshire d/b/a Eversource Energy, the SEC determined to issue a Certificate, "subject to the condition that the Applicant obtain all necessary permits and approvals from the New Hampshire Department of Transportation." (Tr. p. 22, June 14, 2016)

The Applicants' final submission to DOT is due by mid-December, 2016 and will be filed concurrently with the SEC. In addition, the DOT has requested a suspension of its deadline to file a final report, until February 28, 2017, to complete its review and to "determine the conditions to be included within the Use and Occupancy Agreement, excavation permits, driveway

permits, crossing agreements and licenses." As is customary, DOT would therefore issue its final decision in advance of the SEC's adjudicative hearings[1] and all Parties will have the opportunity to provide supplemental testimony, if so desired, prior to the commencement of those hearings.

D. CPF's and GCC's requests serve no useful purpose and are counter to the SEC's obligation to avoid undue delay.

As noted above, the CFP proposal could add roughly six months to the proceeding. CFP mistakenly or disingenuously proposes more steps than are necessary or due in order to address the development of engineering design that typically occurs during and after the DOT permitting process and the SEC siting process itself. Because CFP does not take account of DOT's permitting role, they would have the Subcommittee initiate an additional, entirely separate, multi-step process that would commence with the issuance of the DOT decision.

Pursuant to the statutory timeframes in RSA 162-H:7, agency decisions are expected to be issued within 240 days of acceptance of an Application, and by SEC practice adjudicative hearings begin afterwards, with the goal of issuing a decision within 365 days of acceptance. As currently constituted, assuming the Subcommittee grants DOT's request, the DOT would issue its decision by February 28, 2017, and supplemental testimony would be due by March 15, 2017. Given that CFP and the other parties will have all the information that the Applicants submit to DOT in mid-December, the parties would then be able, to the extent they deem it necessary, to file supplemental testimony in March, 2017, after the DOT issues its final decision. This approach provides due process to all parties and is in full accord with the "twin purposes of avoiding undue delay and resolving all issues 'in an integrated fashion.'" See *Public Service Company of New Hampshire v. Town of Hampton*, 120 N.H. 68, 71 (Jan. 31, 1980).

[1] Pursuant to the Procedural Order, adjudicative hearings will begin subsequent to the final pre-hearing conference scheduled to occur by March 28 and 29, 2017.

III. Conclusion

The CFP and GCC provide no compelling reason and no precedent for modifying the procedural schedule as they propose. The Applicants have provided testimony commensurate with DOT requirements and their witnesses will be available at the technical sessions in September to address data responses and related follow-up inquiry. In the same manner that the Applicants have provided testimony about the underground portions of the route, witnesses for CFP and other parties, therefore, can provide comparable testimony in November, 2016. Additionally, the Applicants will provide final design level information to the DOT in December, 2016, which will be made available to all the Parties. After the DOT issues its final decision, which it anticipates by February 28, 2017, parties who seek to take a further position on the impact of the finalized design of the underground portions of the Project may do so in the supplemental testimony due in March, 2017.

WHEREFORE, the Applicants respectfully request that the Subcommittee:

A. Deny the Motions; and

B. Grant such further relief as is deemed just and appropriate.

Respectfully submitted,

Northern Pass Transmission LLC and Public Service Company of New Hampshire d/b/a Eversource Energy

By Its Attorneys,

McLANE MIDDLETON,
PROFESSIONAL ASSOCIATION

Dated: August 25, 2016

By:______________________________

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Certificate of Service

I hereby certify that on the 25th of August, 2016, an original and one copy of the foregoing Objection was hand-delivered to the New Hampshire Site Evaluation Committee and an electronic copy was served upon the Distribution List.

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Thomas B. Getz