

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

**JOINDER AND MOTION
OF THE SOCIETY FOR THE PROTECTION OF NEW HAMPSHIRE FORESTS
FOR APPLICANT TO AMEND AND FOR LIMITED POSTPONEMENTS**

The Society for the Protection of New Hampshire Forests (the “Forest Society”), by and through its attorneys, BCM Environmental & Land Law, PLLC: (1) joins in a portion of the Counsel For The Public’s Motion to Compel Further Responses to Expert-Assisted Data Requests and for Other Relief (“CFP Motion to Compel”); (2) requests that the Chair or Subcommittee of New Hampshire Site Evaluation Committee (“SEC”) order the Northern Pass Transmission, LLC and Public Service Company of New Hampshire d/b/a Eversource Energy (“Applicants”) to amend the portion of the Application concerning wetlands; and (3) requests certain adjustments to the procedural schedule to accommodate amending the Application, and related the Forest Society’s August 15, 2016 motion to compel. The Forest Society states as follows in detail and support of these requests:

I. BACKGROUND

1. As recounted in the CFP Motion to Compel, pertinent events in this matter include the following:
 - a. On 10/19/15, the Applicants submitted to the SEC a Joint Application for a Certificate of Site and Facility (“Application”) seeking to construct a 192-mile

electric transmission line to run through New Hampshire from the Canadian border in Pittsburg to Deerfield (the “Project”);

- b. On 11/2/15, the Chair appointed a Subcommittee;
- c. On 12/18/15, the SEC accepted the Application;
- d. By Order dated 6/15/16, the SEC suspended the timeframe and ordered that the SEC shall issue a Final Order and Decision denying or granting the Application by 9/30/17; and
- e. By Order dated 6/23/16, the SEC established a Procedural Schedule for this proceeding which, among other things, provided that: (i) Technical Sessions with Applicants’ witnesses shall be conducted between 9/5/16 and 9/30/16; (ii) Counsel for the Public and Intervenors shall file pre-filed testimony on or before 11/15/16; and (iii) Technical Sessions with Counsel for the Public’s and Intervenors’ witnesses shall be conducted between January 16, 2017 and February 15, 2017.

II. FOREST SOCIETY PARTIALLY JOINS CFP MOTION TO COMPEL

2. In its August 15, 2016 CFP Motion to Compel, the Counsel for the Public requested in part the following relief:

- a. Order the Applicants to amend the Application to identify the exact location of all underground portions of the proposed transmission line;
- b. Establish a deadline by which Counsel for the Public and Intervenors must file pre-filed testimony relating to the underground portions of the line by the equal number of days from August 5, 2016 to the date the Applicants fully

supplement their response to Counsel for the Public's Expert-Assisted Data Requests;

- c. Establish a deadline by which Applicants must serve data requests on Counsel for the Public and the deadline by which Counsel for the Public must respond, relating to the underground portions of the line by the equal number of days determined under [b] above; and
- d. Extend other portions of the Procedural Schedule as necessary.

3. The Forest Society joins in the foregoing requests, and incorporates herein these requests and the supporting arguments made by the Counsel for the Public.

4. To be clear, with respect to subparagraph c above, which speaks only to Counsel for the Public and not to Intervenors, the Forest Society hereby requests that the SEC establish a deadline by which Applicants must serve data requests on the Forest Society, if so desired, and the deadline by which the Forest Society must respond, relating to the underground portions of the line by the equal number of days determined per subparagraph b above.

5. In addition to the arguments set forth by the Counsel for the Public, it is important for the Forest Society to know specifically where the underground line is proposed to be located because some of the underground line is proposed to transverse property interests owned by the Forest Society.

**III. FOREST SOCIETY REQUESTS SEC ORDER APPLICANTS TO AMEND
WITH RESPECT TO WETLANDS**

a. Magnitude of Wetlands Impacts

6. The proposed Project, if approved, will cause colossal impacts to more than 800 wetlands across nearly the entire State of New Hampshire, at a scale of approximately 31,567 square feet per mile.

7. These impacts include over 141 acres (6,061,013 square feet) of wetland impacts which will occur in a pervasive manner, including direct impacts, temporary impacts, secondary impacts, and impacts to vernal pools.

8. The Applicants claim that 2.53 acres of the wetlands impacts will be permanent and 139.96 will be temporary or secondary. Additionally, over 42 acres of wetland impact will be to important, deep, very poorly drained, organic soils.

9. Twelve distinct and measurable wetland functions will be permanently impacted, including: groundwater recharge; floodflow; fish and shellfish habitat; sediment/toxicant retention; nutrient removal; production export; sediment/shoreline stabilization; wildlife habitat; recreation; uniqueness/heritage; visual quality aesthetics; and endangered species habitat.

10. The potential for overall environmental impact is also enormous, including 1,019 acres of ground disturbance, 382 acres overlying aquifers, 1,124 acres of disturbance in flood zones, 1,019 acres of wildlife habitat impacts, 882 acres of vegetated habitat impacts, 454 acres of land use conversion, and 227 acres of disturbance in farmland.

11. Given the massive magnitude of wetlands impacts, it is critical that the Applicants provide sufficient information: (a) for the N.H. Department of Environmental Services (“Department”) to make its final decision with respect to the “Application for State of New

Hampshire Department of Environmental Services Wetlands Permit For Major Dredge and Fill Project for the Northern Pass Transmission Project New Hampshire” filed as part of the Application (“Wetlands Application”); (b) for the SEC to make its determination to issue or deny the certificate, including subsection 162-H:16, IV(c) regarding whether the Project will have an unreasonable adverse effect on water quality and the natural environment; and (c) for the parties to exercise their due process rights to meaningfully participate in the process.

12. To date, the Applicants have not provided sufficient information.

b. Applicants Have Not Fully Responded to the Department’s Requests

13. Pursuant to RSA 162-H: 7, VI-b, the Department provided to the SEC the Department’s progress report on May 16, 2016.

14. The report was extensive, totaling 36 pages. In it, the Department asked for 30 items of further information. Some of those requests contained multiple subparts, including one question that raised 22 issues and another that raised seven. The Department also made nine separate comments and proposed 71 draft project-specific conditions.

15. Many of the issues the Department raised were serious. For example, the Department asked the Applicants to please “include in the wetland application any additional wetland impact areas where [change in use on forestry access roads and certain trails that will require additional permitting]” (request no. 7).

16. To date, the Applicants have not provided any response to the Department with respect to: (1) the request noted in the above paragraph regarding identifying where additional permitting will be required; and (2) requests which require for their response that the Applicants perform geotechnical borings and analysis.

17. Of the responses that the Applicant has made (five submissions dated 7/12/16, 7/15/16, 7/18/16, 7/28/16 and 8/11/16), the Applicants repeatedly note the incomplete nature of the information they provide and reference ongoing field work and analysis to complete the information.

18. As one example, in the Applicants response to the Department's request for 22 plan-specific questions about whether specific portions of the project fully avoided and minimized wetland impacts (request no. 9), for 14 of the 22 responses the Applicants provided, the Applicants note that they will make their final determination after the Applicants complete the "constructability walk down." See e.g., prefatory paragraph to the Applicants' Response to NH Department of Environmental Services Additional Data Requests Wetlands Bureau which appended to the Applicants response dated 7/28/16 ("The final design layout will depend on the constructability walk downs that will be conducted in 2017").

19. As another example, in the Applicants' 8/11/16 response to the Department's request for information about preservation parcels (request nos. 36 and 39), the Applicants did not include information about the Karner Blue Butterfly Site in Concord, which they stated they expect to do "in the near future, once agreements are reached with all parties." Nothing has been filed yet that is included on the SEC website for this matter.

20. As a final example, in their 8/11/16 response to the Department's request for more information with respect to change of use permitting associated with off-right-of-way access roads (ORARs) (request no. 7), the Applicants provided some information, only for the northern portion of the proposed route, and noted that for that portion of the route once "the list of those ORARs and culvert replacements determined to be necessary are finalized, detailed field measurements and channel analysis will then be conducted to support the design of new

crossings that meet the requirements of Env-Wt 900. The watershed analysis will begin immediately, and the detailed field survey (Phase 2) will take place in August and September of 2016, with permit applications submitted as soon as possible thereafter.” See Memo re: ORAR Stream Crossing Evaluation – Phase I, by Normandeau Associates, Inc., dated August 10, 2016, and attached to the Applicants 8/11/16 response.

21. In sum, the Applicants have yet to come close to adequately fulfilling the Department’s request for more information, and much of the information the Applicants have provided to the Department was provided to the parties on 8/31/16.

c. Applicant has not Fully Responded to Data Requests

22. Note also that the Applicants were not able to fully respond to some data requests because of incomplete information.

23. For example, the abutters’ group referred to by the Applicants as A4 (Bethlehem to Plymouth) asked in its data request 1-7 for aquifer information (“Please produce all maps, diagrams, and/or data in your possession regarding the aquifers that are intersected or transected by or located near the proposed buried Transmission Line along the affected State highways. Please produce all information identifying aquifer recharge areas, aquifer geographic limits and dimensions, aquifer flow directions and rates, water quality, hydrologic head at locations within the aquifer, wells within the aquifer, and the manner in which the Project will transect or intersect with the aquifer. Include in this answer all plans to protect aquifers and aquifer water quality, and to respond to any instances of aquifer contamination or other impact.”)

24. In response, the Applicants objected “to the question to the extent it requires the Applicants to develop additional data that is not presently in the care, custody, or control of the Applicants.”

25. Notwithstanding the objection, the Applicants provided the following: “The Project has reviewed publically available information regarding aquifers in the region. Please refer to the Applicants' response to Ashland to Deerfield Non-Abutting Owners Group 4’s Data Request NA4 1-14. The installation of the underground facilities are similar to the installation of a water or sewer line and are shallow in nature. For underground construction, it is anticipated that the final installation of the Project will not affect any aquifers in the area.”

26. The Applicants’ response to the referenced Ashland to Deerfield Non-Abutting Owners Group 4’s Data Request NA4 1-14 stated in pertinent part that “the Project is currently conducting geotechnical investigations and utility and ground survey which will help refine the overall project design including determining the exact alignment in relation to roads, sidewalks and buildings, as is typical for large scale transmission line projects of this nature.”

27. As another example, the A4 Abutters asked in data request 1-17 for information concerning blasting (“Please produce all information in your possession describing the locations where will blasting be carried out, and the extent of planned blasting at each location. Please produce plans for controlling and monitoring the nitrogen and other chemical contaminants released to the environment during blasting. Please produce plans for compensation of landowners whose aquifers become contaminated by blasting residue.”)

28. The Applicants responded in part that “The Project is still conducting its geotechnical analysis and is determining areas where blasting may occur. As such, blasting location details have yet to be identified.” The response went on to reference portions of the application and its response to another data request, not related blasting.

29. It is also important to note that many parties, including the Forest Society, refrained from propounding certain wetland-related data requests upon the Applicants because

the Department's 5/16/16 progress report asked for the same information. See Transcript SEC 2015-06, Hearing on Motions, 05-19-16/Day 2, page 174 lines 14 – 24 and page 175 line 1 (“Because the Department of Environmental Services’ letter that came just this morning, which many of us have not had a chance to read yet, would make -- would obviate many of the data requests we were planning to make. So, we would like an additional few days to cull through our data requests, remove the ones that would be duplicative of the information the Department of Environmental Services already asked for.”)

30. So, the Applicant not fully responding to the Departments’ requests amounts to the Applicant not providing sufficient information to the Forest Society and other intervenors.

31. To be clear, this pleading is not a request to compel further production in response to data requests. Rather, this request is for the Applicant to amend the Application as described herein, which the Forest Society believes will substantially meet both the data requests made by the parties and the data requests foregone in reliance upon the Department’s requests for more information.

d. The Forest Society’s Request for Amendment to the Application

32. Site 301.07 requires each application filed with the SEC to contain “information regarding the effects of, and plans for avoiding, minimizing, or mitigating potential adverse effects of, the proposed energy facility on ... water quality, and the natural environment.”

33. In particular, each application to the SEC is required to contain “information including the applications and permits filed pursuant to Site 301.03(d) regarding issues of water quality,” which includes the Wetland Application.

34. Given the current state of requests, submissions, and missing information described above, this docket does not currently contain the information Site 301.03(d) requires with respect to wetlands, and therefore the Applicants should file an amendment.

35. The wetlands amendment should include the following:

- a. The information described above that the Department requested in its 5/16/16 Progress report and that the Applicants cannot provide yet, such as details of ORARs, identification of new or amended permits as a result of change of use, responses which require geotechnical analysis, Karner Blue Butterfly Site, etc.
- b. The information described above that the Applicants have already provided to the Department in response to its 5/16/16 Progress report, including the Applicants' five submissions dated 7/12/16, 7/15/16, 7/18/16, 7/28/16 and 8/11/16;
- c. Copies of all permit applications and permit notices submitted to the Department in connection to this proposed project but which have not yet been submitted to the SEC and/or the parties.¹

36. As the Applicants have noted, the documents involved in this case now number over 100,000. Given this magnitude, it is unreasonable and prevents parties from meaningfully participating in exercise of their due process rights, for the information pertaining to wetlands to be so scattered amongst multiple submissions, so incomplete, so unavailable, and in several key respects, entirely absent.

37. Requiring an amendment that puts the information together in one submission to the SEC will go a long way towards enabling the prompt and orderly conduct of this proceeding and meaningful participation by the parties.

¹ For example, a 9/1/16 letter from the Department indicates that the Department has granted the Applicants' request to have three wetlands applications related to geotechnical borings reviewed in an expedited fashion. However, it does not appear that the SEC or the parties have received any copy of any such applications.

38. Accordingly, the Forest Society seeks an Order requiring the Applicants to file an amendment to the Wetland Application portion of the Application, including appropriate prefiled testimony, setting forth the information described in subsections 35(a) through 35(c) above, as required pursuant to Site 301.07.

IV. FOREST SOCIETY LACKS REQUISITE ECONOMIC DATA

39. As the Forest Society explained in its August 15 motion to compel, the Applicants have not produced a substantial amount of economic and financial information, including key data such as the inputs for the economic modeling performed by the Applicants' witness Julia Frayer.

40. In the Forest Society's motion to compel, the Forest Society seeks an order from the SEC that, in pertinent part: (1) orders that the Applicant has waived both any claim of ambiguity as a basis for not responding and its blanket objections; and orders the Applicant to produce: (2) a privilege and confidentiality log; (3) the identity of responder/s and author/s; (4) data in a usable form; (5) the data requested; (6) all data the Applicants have withheld based on its claims that RSA 91-A protects it from discovery, or that it is irrelevant, or that it is proprietary; (7) data about economic conclusions; (8) transcripts of consultant interviews; (9) raw data; (10) and an unredacted copy of the Clean Energy RFP.

41. As discussed with respect to wetlands, it is critical that the Applicants provide sufficient information pertaining to economics and finance for: (a) the SEC to make its determination with respect to RSA 162-H:16, including subsection (IV)(e) regarding whether the Project will serve the public interest; and (b) the parties to exercise their due process rights to meaningfully participate in the process.

V. THE FOREST SOCIETY REQUESTS POSTPONEMENTS & ADJUSTMENTS TO SCHEDULE

42. As a result of the missing wetlands and economic information, certain of the Forest Society's consultants and witnesses cannot complete their analysis of the Application.

a. Requested Adjustments to the Schedule

43. Under the current Procedural Schedule relevant technical sessions for the Applicants' witnesses are as follows:

- a. 9/12/16 continued to 9/14/16 if needed with respect to wetlands considerations associated with construction;
- b. 9/16/16 with respect to economic; and
- c. 9/20/16 continued to 9/22/16 if needed with respect to environmental.

44. Although other witnesses may be involved, it appears that the particular witnesses with which the Forest Society cannot proceed are as follows:

- a. 9/12/16 continued to 9/14/16: John Kayser
- b. 9/16/16: Julia Frayer
- c. 9/20/16 continued to 9/22/16 if needed: Jacob Tinus, Lee Carbonneau, and Dennis Magee.

45. Without the missing information, the Forest Society cannot effectively: (a) conduct the technical sessions on the Applicants' witnesses noted above; (b) complete its analysis to submit pre-filed testimony; or (c) have its witnesses participate in the technical sessions scheduled for January and February, with respect to wetlands or economic issues.

46. These technical sessions and the 11/15/16 pre-filed deadline should be extended until after the Applicants file an amendment with respect to wetlands, provide the wetland information requested in data requests, and provide the economic data.

47. The Forest Society proposes that the current Procedural Order be amended as follows:

- a. The Applicants are required to file one amendment to the Application, together with corresponding pre-filed testimony, setting forth all of the information requested by the Department;
- b. The Applicants' witnesses shall be available for technical sessions relating to wetlands beginning forty-five (45) days after (a) above;
- c. The SEC shall issue an order ruling on the Forest Society's motion to compel no later than October 7, 2016;
- d. To the extent that the SEC grants any part of the Forest Society's motion to compel, the Applicants' shall provide the data no later than November 7, 2016 and the Applicants' witnesses shall be available for technical sessions relating to economics beginning fifty-five (55) days after such production. (Note that 55 days is approximately the period of time between July 8, 2016, when the Applicants were due to respond to the Forest Society's data requests, and September 5, 2016, the earliest date on which the economic technical session could have occurred);
and
- e. The Forest Society shall file pre-filed testimony with respect to wetlands and economics within sixty (60) days after the respective technical sessions with the Applicants' witnesses for each issue have concluded.

a. Suggested Adjustments to the Schedule

48. For two reasons, the Forest Society believes it is premature to adjust any further aspects of the procedural order, including the deadlines for the Applicants to serve data requests upon the Forest Society, the Forest Society to respond to them, technical sessions for the Forest Society's witnesses, and supplemental pre-filed testimony.

49. First, given that these deadlines are set to begin in several months, it is possible that things will catch up so as to not necessitate any adjustment to these deadlines as they are currently set.

50. Second, at the same time, many issues are in progress in this matter which make it difficult to script or predict with certainty what adjustment, if any, would be reasonable.

51. Consequently, the Forest Society respectfully requests that the SEC order that it will not now adjust any aspect of the procedural schedule aside from those addressed herein, but may consider doing so in the future, either on its own or at the request of any party.

52. However, should the SEC wish to adjust these deadlines now, the Forest Society suggests the following:

- a. The Applicants shall serve any data requests on the Forest Society related to wetlands and economics within thirty (30) days after the Forest Society submits pre-filed testimony relating to those topics;
- b. The Forest Society shall respond to Applicants' data requests relating to underground portions of the line within thirty (30) days of receipt;
- c. The Forest Society's witnesses shall be available for technical sessions relating to wetlands and economics beginning forty-five (45) days after the Forest Society responds to data requests; and

- d. Any Supplemental pre-filed testimony from all parties shall be filed within thirty (30) days of the technical sessions with the Forest Society's witnesses relating to wetlands and economics.

53. The following parties take the following positions with respect to this request:

- Ammonoosuc Conservation Trust
- Appalachian Mountain Club
- Conservation Law Foundation
- New England Power Generators Association
- Pemigewasset River Local Advisory Committee
- Grafton County Commissioners Town of Bridgewater
- Town of New Hampton
- Town of Littleton
- Town of Ashland Water & Sewer
- Town of Woodstock
- Town of Deerfield
- Town of Bristol
- Town of Bethlehem
- Town of Easton
- Town of Franconia
- Town of Northumberland
- Town of Plymouth
- Town of Sugar Hill
- Town of Whitefield
- Town of Pittsburg
- Town of Clarksville
- Town of Stewartstown
- Susan Percy for Percy Summer Club
- Abutting Property Owners: Dalton, Whitefield, Bethlehem
- Abutting Property Owners: Pittsburg-Clarksville-Stewartstown
- Abutting Property Owners: Deerfield
- Counsel for the Public limited to Section II

a. Object

Applicants

b. Take No Position

Counsel for the Public for all sections other than Section II

Cities of Franklin and Berlin

The remainder of the parties did not respond to a request for their position.

WHEREFORE, the Forest Society respectfully requests that the SEC:

- A. Order the Applicants to amend the Application to provide the exact information requested by the Department;
- B. Postpone the technical sessions as noted herein;
- C. Establish new deadlines as noted herein;
- D. Adjust other portions of the Procedural Schedule as necessary; and
- E. Grant such other and further relief as is just and equitable.

Respectfully Submitted,

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

By its Attorneys,

BCM Environmental & Land Law, PLLC



Date: September 2, 2016

By: _____

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CERTIFICATE OF SERVICE

I hereby certify that on this day, September 2, 2016, a copy of the foregoing Motion was sent by electronic mail to persons named on the Service List of this docket.



Amy Manzelli, Esq.