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October 11, 2016

Via Electronic Mail

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

**Re: 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 Motion to Compel Privilege Log**

Dear Ms. Monroe:

Enclosed for filing in the above-captioned docket, please find the Applicants’ Objection to Motion to Compel Privilege Log.

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**

**APPLICANTS' OBJECTION TO MOTION
TO COMPEL PRIVILEGE LOG**

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 Motion of the Society for the Protection of New Hampshire Forests (“SPNHF”) Motion to Compel Privilege Log (“Motion Three”) filed on September 28, 2016, in the above-captioned proceeding. As explained below, there are several related timelines of pleadings that involve the privilege log.

The Applicants believe, as noted below, the Privilege Log provided on September 2, 2016 satisfies the requirements of the September 22, 2016 Order on Motions to Compel. Furthermore, the Applicants believe that the Presiding Officer’s October 4, 2016 Order on Forest Society and Municipal Group 3 (South)’s Motion to Compel Documents Withheld effectively resolved the issue raised here by SPNHF and renders Motion Three moot.

BACKGROUND

1. First, on August 15, 2016, various parties filed motions to compel, including, SPNHF. As part of its Motion to Compel (“Motion One”), SPNHF requested “that the SEC order that the Applicants provide a privilege and confidentiality log identifying all withheld information and documents with enough specificity for the Forest Society to assess the

Applicants' claim." SPNHF Motion to Compel at ¶ 5. The Applicants filed an objection to the various motions to compel on August 25, 2016.

2. On September 2, 2016, the Applicants submitted an approximately 120-page privilege log to all parties involved in the proceeding and uploaded it to ShareFile. The privilege log contains sufficient specificity for all parties to be put on notice of whether a document is covered by the Attorney-Client Privilege or Attorney Work-Product Doctrine.

3. On September 22, 2016, the Presiding Officer issued an Order on Motions to Compel. The Order on Motions to Compel required the Applicants to "produce a privilege log sufficiently identifying what has been withheld and stating the reason for non-disclosure" when the Applicants withhold a document on the basis that it "is subject to the attorney-client privilege, the work-product doctrine, critical energy infrastructure (CEII) or any other reason." Order on Motions to Compel at p. 12.

4. The Applicants subsequently submitted another privilege log on October 7, 2016, for those documents covered by the Attorney-Client Privilege or Attorney Work-Product Doctrine as part of the their production in response to the September 22, 2016 Order on Motions to Compel.

5. Second, on September 9, 2016, SPNHF and Municipal Group 3 South ("MG 3-S") filed a Motion to Compel Production of Documents Withheld as Highly Confidential ("Motion Two"). In Motion Two, SPNHF acknowledged that "the Applicants sent an email communication with an attached privilege log containing a list of documents they were withholding on the basis of attorney-client privilege and/or work product privilege ("Log")." Motion Two at ¶ 1. The Applicants objected on September 19, 2016, and, SPNHF and MG 3-S filed an unauthorized reply on September 23, 2016.

6. On October 4, 2016, the Presiding Officer issued an order addressing Motion Two, which granted in part and denied in part Motion Two. Importantly, in this order, the Presiding Officer observed that the Applicants had provided an extensive privilege log, as described further below.

7. Third, on September 28, 2016, SPNHF filed Motion Three, which argues, at p. 2, that “it is not possible to sufficiently identify whether the attorney- client privilege or the work product doctrine are applicable” from the privilege log in its current form. As explained below, the Applicants take the position that the privilege log sufficiently identifies what has been withheld and states the reason for nondisclosure, and therefore, satisfies the requirements of the September 22, 2016 Order.

DISCUSSION

8. The Presiding Officer’s October 4, 2016 Order found that:

The Applicant provided an *extensive* privilege log, consisting of approximately 119 pages detailing documents being withheld on the basis of the attorney-client privilege and/or work-product doctrine. The documents listed in the privilege log include communications between counsel and experts. The Forest Society and Municipal Group 3 (South) have not demonstrated that the documents listed in the privilege log were not rightfully withheld on grounds of attorney-client privilege and the work-product doctrine. (emphasis added.)

Importantly, after reviewing the privilege log, the Presiding Officer found that SPNHF had not demonstrated that the documents in the privilege log were not rightfully withheld. Inasmuch as the subject of Motion Three has been addressed, SPNHF’s motion is moot.

9. The Applicants have complied with the SEC’s order dated September 22, 2016 by compiling a “privilege log sufficiently identifying what has been withheld and stating the reason for nondisclosure.” The Applicants’ privilege log identifies the document number, the date sent, who drafted / sent the document, who received the document, who was copied on the document,

the subject of the document, the filename of the document, whether the document includes any attachments, and the privilege asserted.

10. The Applicants' made clear in the letter accompanying the filing of the September 2, 2016 privilege log, moreover, that the documents at issue were already provided.

Many of the listed documents are emails that contain one or more attachments. All attachments to privileged emails are recorded in the privilege log immediately following the email to which they are attached. These attachments are necessarily privileged because they are extensions of the underlying privileged email. However, when an attached document itself was not privileged, the document was produced provided that it was responsive to the request and was otherwise in the Applicants' possession. For example, while copies of meeting minutes with state and federal agencies attached to a privileged email were captured in the privilege log for purposes of tracking, all requested meeting minutes with such agencies were nevertheless produced. Therefore, no responsive non-privileged documents were withheld from production to the extent that the Applicants possessed such documents in final form.

See E-mail Correspondence from Attorney Viggo Fish to Spokesperson List (Sept. 2, 2016), Exhibit B to SPNHF's Motion to Compel.

11. SPNHF incorrectly argues that the privilege log is insufficient and that it fails to identify which documents were specifically provided in response to prior data requests and which documents were provided. The Applicants, however, provided the relevant un-privileged documents to all parties even if the e-mail correspondence was privileged.

CONCLUSION

12. As earlier indicated to SPNHF, the Applicants are currently in the process of refining the privilege log to include a column that identifies the specific documents and/or attachments that are attached to the e-mail communications where the Applicants assert a privilege. The Applicants anticipate providing such additional information on or before October 24, 2016. To the extent there are additional issues that SPNHF or other parties would like to

address regarding the privilege log, the Applicants' are amenable to discussing other potential refinements.

WHEREFORE, the Applicants respectfully request that the Site Evaluation Committee:

- A. Deny the Motion; 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: October 11, 2016

By: Adam Dumville

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Certificate of Service

I hereby certify that on the 11th of October, 2016, the aforementioned objection was served electronically upon the New Hampshire Site Evaluation Committee and an electronic copy was served upon the SEC Distribution List.

Adam Dumville for:
Thomas B. Getz