

# PRIMMER

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**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](mailto: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 Counsel for the Public's Response to Applicants' Motion for Rehearing of NEPGA's Motion to Compel, Motion to Disallow Further Participation and Motion to Stay, and Counsel for the Public's Request to Further Amend the Procedural Order.

Copies of the enclosure have been forwarded via e-mail to all parties listed on the attached Distribution List.

Thank you.

Sincerely,



Thomas J. Pappas

TJP/scm - 2573234\_1

Enclosure

cc: Peter C.L. Roth, Esq.  
Elijah J. Emerson, Esq.  
Distribution List via e-mail/U.S. Mail

**STATE OF NEW HAMPSHIRE  
SITE EVALUATION COMMITTEE**

**No. 20 15-06**

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

**COUNSEL FOR THE PUBLIC’S RESPONSE TO APPLICANTS’ MOTION FOR  
REHEARING OF NEPGA’S MOTION TO COMPEL, MOTION TO DISALLOW  
FURTHER PARTICIPATION AND MOTION TO STAY, AND COUNSEL FOR THE  
PUBLIC’S REQUEST TO FURTHER AMEND THE PROCEDURAL ORDER**

Counsel for the Public, by his attorneys, the Office of the Attorney General and Primmer Piper Eggleston & Cramer PC, hereby responds to the Applicants’ Motion for Rehearing of Order on the New England Power Generator Association’s (“NEPGA”) Motion to Compel, Motion Disallow Further Participation, and Motion to Stay (the “Motion”), and requests to further amend the procedural order. In support Counsel for the Public states as follows:

**A. Background.**

1. On October 19, 2015, Northern Pass Transmission, LLC and Public Service Company of New Hampshire d/b/a Eversource Energy (collectively, the “Applicants”), submitted a Joint Application for a Certificate of Site and Facility (the “Application”) to the New Hampshire Site Evaluation Committee (the “Committee” or “SEC”) to construct a 192-mile transmission line to run through New Hampshire from the Canadian border in Pittsburg to Deerfield (the “Project”). Along with the Application, the Applicants submitted the Pre-filed Testimony of Julia Frayer (the “Frayer Testimony”) and Appendix 43, *Cost-Benefit and Local Economic Impact Analysis of the Proposed Northern Pass Transmission Project* by London Economics International (the “LEI Report”).<sup>1</sup>

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<sup>1</sup> At the Technical Session on October 6, 2016, Ms. Frayer said that her work authorization for the LEI Report came in September 2015 and she completed her work by October 15, 2015.

2. On November 2, 2015, the Chairman of the Committee appointed a Subcommittee (the “Subcommittee”) to consider the Application. The Subcommittee accepted the Application on December 18, 2015.

3. On September 6, 2016, NEPGA filed a Motion to Compel that, among other things, requested that the SEC require the Applicants to rerun the analysis in the LEI Report (the “LEI Analysis”) using updated natural gas prices and to incorporate ISO-NE’s new demand curve for the Forward Capacity Market (“FCM”).

4. On September 22, 2016, the SEC granted NEPGA’s request to require the Applicants’ to update the LEI Analysis based on those two inputs. Pursuant to a separate Order on Motions to Amend Procedural Order also issued on September 22, 2016, the SEC set a deadline of October 7, 2016, for Applicants to file the updated LEI Analysis.

5. On October 4, 2016, Counsel for the Public filed a Motion to Amend the Procedural Order requesting that the pre-filed testimony of Counsel for the Public’s expert witnesses The Brattle Group and Kavet, Rockler & Associates, LLC be set for December 30, 2016, after the updated LEI Analysis and corresponding discovery would be completed. The grounds for this amendment, among other reasons, was that The Brattle Group and Kavet, Rockler & Associates would be responding to the LEI Analysis in their direct testimony and it would be inefficient to file that testimony in two parts (the first on the original deadline of November 15, 2016). This motion has not been ruled on as of the date of this response.

6. On October 6, 2016, the Applicants filed the Motion that requested the SEC to: (a) stay the order compelling the Applicants to update the LEI Analysis based on the two inputs; (b) stay the order requiring production of an unredacted Power Purchase Agreement (the “PPA”); and (c) disallow further participation by NEPGA.

**B. Stay of Order Compelling Applicants to Update LEI Analysis Based on Two Inputs.**

7. Counsel for the Public concurs in part with Applicants' request that the SEC's order requiring the Applicants to perform a limited update of the LEI Analysis should be stayed. Counsel for the Public also agrees with Applicants that a "systematic and comprehensive update"<sup>2</sup> of the LEI Analysis is preferable and should be performed. As the Applicants have argued in the Motion, a more comprehensive update of the LEI Analysis will "ensure that the Subcommittee will have the most up-to-date information available at the time of hearing."<sup>3</sup> Therefore, subject to the points discussed below, Applicants should be required to provide an update of the LEI Analysis and the procedural schedule should be amended to allow parties to file their direct testimony in response to this substitution of the Applicants' direct testimony.

8. The Frayer Testimony and the LEI Report were originally filed on October 19, 2015. Recent changes to market rules and various inputs to the LEI Analysis are sufficiently important that the Applicants should be required to alter not only isolated inputs but also any other aspects of their analysis that may be affected by those new inputs. Additionally, in the time since the testimony and report were filed, another annual ISO-NE auction under the FCM has taken place and those results are extremely relevant to the analysis of the Project.

9. It is likely that these market and structural changes will have a material impact on the estimated energy and capacity market benefits of the Project. Therefore, the Applicants should be required to update their assessment of the energy and capacity market impacts of the Project, taking into account whatever additional information and market rule changes they deem relevant for this assessment.

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<sup>2</sup> Motion at 3.

<sup>3</sup> Motion at 6.

10. In performing this updated analysis, Counsel for the Public highly recommends that the Applicants include the implications of: the results of the most recent Forward Capacity Auction (FCA #10), including the fact that it attracted significantly more new generation than anticipated by LEI; ISO-NE's forecast of future demand decreasing significantly between the 2015 Capacity, Energy, Loads, and Transmission ("CELT") report used by LEI and the 2016 CELT report now available; new ISO-NE rules used to determine prices in future auctions; and changes to energy market conditions because of these capacity-related developments as well as changes in natural gas prices.

11. Counsel for the Public believes that the Applicants should have flexibility in determining how to update their analysis based on current market developments. It is critical, however, that in providing this updated analysis, the Applicants should be required to identify clearly which assumptions (and/or) approaches were modified in its updated analysis relative to the previously filed report and testimony and explain why they were updated or changed.

12. In the Motion, the Applicants have indicated that a systematic and comprehensive updated analysis may not be filed until the end of March, 2017.<sup>4</sup> Under the current procedural schedule, that would mean that the Applicants' direct testimony on one of the most important issues in this docket may not be submitted until days before parties' supplemental testimony is due and just weeks before evidentiary hearings begin.

13. Although not a simple revision, the Applicants have not explained why the update should take so much longer than the original testimony and it is Counsel for the Public's belief that it could be completed in no more than two (2) months or so. The model and methodology for the LEI Analysis currently exist; this is not the case where the analysis must be started from the beginning. If the Applicants were to perform the update, which they are suggesting in their

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<sup>4</sup> Motion at 6.

Motion they would do regardless of whether the SEC ordered it, they should not be allowed to wait over half a year and submit it at the end of the docket schedule. There is sufficient time before the end of this current year (2016) for the Applicants to perform the update and file it with the SEC and the parties.

**C. Further Amendment to the Procedural Schedule.<sup>5</sup>**

14. The current procedural schedule has Counsel for the Public and the intervenors filing the majority of their direct pre-filed testimony on November 15, 2016, with some specific subject areas being addressed on December 30, 2016.

15. The Frayer Testimony and the LEI Report constitute the Applicants' direct evidence supporting the economic benefits of the Project. Any update to the testimony and report is a substitution of the Applicants' direct evidence. The Presiding Officer recognized this in his September 22 orders granting NEPGA's motion and altering the procedural schedule to allow Counsel for the Public and the intervenors to file their direct testimony addressing the limited update on December 30, 2016.

16. As the Applicants have described, they will perform a "systematic and comprehensive update" of the LEI Analysis. This is not the limited update as envisioned by the Presiding Officer when he previously altered the procedural schedule. It is a revision that will make the original testimony and report moot. Essentially all of the benefits described in the LEI Report stem from the claimed savings in the wholesale energy markets. It would be impossible

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<sup>5</sup> Counsel for the Public's Motion to Amend Procedural Schedule is pending. Rather than file a second Motion, it is more efficient to include a further amendment to the procedural schedule in this response since the basis for the further amendment relates to the economic issues raised by the Applicants' Motion for rehearing and NEPGA's underlying motion.

not to change the result of the entire LEI Report when performing the systematic and comprehensive update, and the Applicants acknowledge as much in their Motion.<sup>6</sup>

17. The SEC is required by its rules to amend the procedural schedule to provide that Counsel for the Public and the intervenors submit their direct evidence after the Applicants have filed their direct evidence. Pursuant to Site 202.20:

Unless otherwise determined by the presiding officer upon a finding that a different order would facilitate the conduct of the proceeding fairly and expeditiously, evidence shall be offered in the following order at any proceeding before the committee or subcommittee, as applicable:

- (a) The applicant or other party bearing the overall burden of proof;
- (b) Intervenors; and
- (c) Counsel for the public.

18. The procedural schedule in this docket, and virtually every other matter before the SEC, has had Counsel for the Public and the intervenors providing their direct evidence in response to the Applicants' direct evidence. To take the testimony out of sequence as the Applicants' Motion implies would depart from this standard of practice, be inefficient for the SEC and all the parties, and be unfair to those parties relying on the SEC's original procedural structure, and in effect shifts the burden of production.

19. Allowing Counsel for the Public's economic experts to file direct testimony after the Applicants file an updated analysis is also in the interest of the Applicants. Absent this sequence, direct testimony by the economic experts would have to be assessing the validity of the Applicants' initial economic analysis as filed, which, due to the factors described above, is likely both outdated and unreliable.

20. To avoid the unnecessary and costly effort to assess a report that would be superseded by such an updated analysis, and also to provide the necessary level of independent

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<sup>6</sup> Motion at 3-4.

review, Counsel for the Public proposes that direct testimony by his economic experts not be submitted until after the Applicants submit their updated analysis and replacement pre-filed direct testimony. Moreover, Counsel for the Public and the intervenors should be given an opportunity to propound data requests and conduct a technical session with Julia Frayer prior to the deadline to file their direct evidence on project economics.

21. Counsel for the Public has included a proposed revised schedule as **Exhibit A** that provides a schedule consistent with the requirements outlined above and that does not delay a final order on this project by an unreasonable amount of time.

**D. Further Participation by NEPGA.**

22. The Applicants argue that the SEC should disallow the further participation of NEPGA because “the justification for NEPGA’s intervention has been extinguished by virtue of the PUC’s actions in PSNH’s divestiture proceeding.”<sup>7</sup> The basis for this statement is that the “*raison d’etre* for allowing NEPGA’s limited intervention” was the effect of the PPA on the energy markets.<sup>8</sup>

23. Pursuant to the SEC’s May 20, 2016 order approving NEPGA’s intervention, NEPGA was granted limited intervention “(i) *to address the public interest so far as it relates to economic impacts on the competitive energy market*; and (ii) to present information related to the Power Purchase Agreement, so far as it relates to the effect on the electric generation market.”<sup>9</sup>

24. The SEC specifically granted intervention to NEPGA to address economic impacts on the energy markets and did not limit such participation to the PPA’s effect on those markets. Moreover, the SEC notes that NEPGA asserted that it “represents the interests of

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<sup>7</sup> Motion at 10.

<sup>8</sup> *Id.*

<sup>9</sup> Docket No. 2015-06, Subcommittee Order on Review of Interventions, May 20, 2016, at 25 (emphasis added).

existing power generating facilities and its members will be directly affected by the Project generally.”<sup>10</sup>

25. NEPGA should be allowed to participate in the docket because it has an interest in exploring the Project’s impacts on existing generating facilities, including those that are located in New Hampshire. The Applicants have asserted numerous times that the Project will not result in any retirements to existing generation facilities and NEPGA should be allowed to evaluate this claim. NEPGA’s intervention has never been limited to the impact of the PPA on energy markets. As such, Counsel for the Public objects to the Applicants’ request to exclude NEPGA from further participation.

**E. Motion to Compel Unredacted Version of Power Purchase Agreement.**

26. Counsel for the Public takes no position on this request.

WHEREFORE, Counsel for the Public respectfully requests that the SEC:

- A. Require the Applicants to perform a systematic and comprehensive update of the LEI Analysis;
- B. Require the Applicants to file the updated LEI Analysis with pre-filed testimony that identifies which assumptions (and/or) approaches were modified in their updated analysis relative to the previously filed report and testimony and explain why they were updated or changed;
- C. Require the Applicants to submit the updated LEI Analysis and accompanying testimony no later than December 31, 2016;
- D. Adopt the revised procedural schedule as proposed in Exhibit A;
- E. Deny the Applicants’ motion to disallow further participation by NEPGA; and
- F. Grant such other and further relief as is just and equitable.

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<sup>10</sup> *Id.*



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

**COUNSEL FOR THE PUBLIC'S  
PROPOSED PROCEDURAL SCHEDULING ORDER**

Counsel for the Public, by his attorneys, the office of the Attorney General and Primmer Piper Eggleston & Cramer PC, hereby proposes the following underlined modifications to the current procedural schedule for this proceeding:

1. Technical Sessions with the Applicants' witnesses shall be conducted between September 5, 2016 and ~~September-October~~ October 30, 2016.
2. **The Applicants shall provide supplemental responses to data requests pursuant to the Order on Motions to Compel and Order on NEPGA's Motion to Compel on or before October 7, 2016.**
3. **The Applicants shall provide supplemental responses to data requests addressing the underground portion of the Project and the Applicants' responses to the Department of Environmental Services' requests on or before December 15, 2016.**
4. Counsel for the Public's and Intervenors' pre-filed testimony shall be filed on or before November 15, 2016, **except as noted below.**
5. The Applicants shall propound data requests upon Counsel for the Public and Intervenors on or before November 30, 2016, **except as noted below.**
6. **Counsel for the Public's and Intervenors' pre-filed testimony addressing issues related to: ~~(i) the Applicants' production pursuant to the Order on Motion to Compel and Order on NEPGA's Motion to Compel; (ii) (i)~~ the underground portion of the Project; and ~~(iii)-(ii)~~ the Applicants' response to the Department of Environmental Services' requests shall be filed on or before December 30, 2016.**
7. **Counsel for the Public's pre-filed testimony addressing issues relating to (1) local economic issues; (iii) natural resources; and (ii) aesthetics shall be filed on or before December 30, 2016.**

8. The Applicants shall file their updated economic analysis and any related revised pre-filed testimony on or before December 30, 2016.
- 8.9. Counsel for the Public and Intervenors shall respond to the Applicants' data requests on or before December 30, 2016.
10. Counsel for the Public and Intervenors shall propound data requests on the Applicants' updated economic analysis and revised economic pre-filed testimony on or before January 16, 2017.
- 9.11. The Applicants shall propound data requests addressing: ~~(i) the Applicants' production pursuant to the Order on Motion to Compel and Order on NEPGA's Motion to Compel;~~ (ii)-(i) the underground portion of the Project; and ~~(iii)-(ii) the Applicants' response to the Department of Environmental Services' requests upon Counsel for the Public and Intervenors on or before January 16, 2017.~~**
- 10.12. The Applicants shall propound data requests upon Counsel for the Public addressing: (i) natural resources; and (ii) aesthetics shall be filed on or before January 16, 2017.
- 11.13. Technical Sessions with Counsel for the Public's and Intervenors' witnesses relating to overhead design, system stability, public health and safety, financial and historic resources shall be conducted between January 16 and February 15, 2017.
- 12.14. Counsel for the Public and Intervenors shall respond to data requests addressing issues: ~~(i) the Applicants' production pursuant to the Order on Motion to Compel and Order on NEPGA's Motion to Compel;~~ (ii) (i) the underground portion of the Project; and ~~(iii)-(ii) the Applicants' response to the Department of Environmental Services' requests on or before February 15, 2017.~~**
15. The Applicants shall respond to data requests on the Applicants' updated economic analysis and revised economic pre-filed testimony on or before February 15, 2017.
- 13.16. Counsel for the Public shall respond to data requests addressing issues relating to (i) natural resources; and (ii) aesthetics on or before February 15, 2017.
- 14.17. Technical Sessions with Applicants', Counsel for the Public's and Intervenors' witnesses addressing issues related to: ~~(i) the Applicants' production pursuant to the Order on Motion to Compel and Order on NEPGA's Motion to Compel;~~ (ii) (i) the underground portion of the Project; and ~~(iii)(ii) the Applicants' response to the Department of Environmental Services' requests shall be conducted between February 20 and February 28, 2017.~~**

15.18. Technical Session with Counsel for the Public's witnesses on (i) natural resources; and (ii) aesthetics shall be conducted between February 20 and March 6, 2017.

19. Technical Sessions with Applicants' economic witness (Julia Frayer) shall be conducted between March 6 and March 10, 2017.

20. Counsel for the Public's and Intervenors' pre-filed testimony addressing economic issues shall be filed on or before April 7, 2017.

21. The Applicants shall propound data requests upon Counsel for the Public and Intervenors on economic issues on or before April 17, 2017.

22. Counsel for the Public and Intervenors shall respond to the Applicants' data requests on economic issues on or before May 8, 2017.

23. Technical Sessions with Counsel for the Public's and Intervenors' economic witnesses shall be conducted between May 29 and June 2, 2017.

16.24. Supplemental pre-filed testimony from all parties shall be filed by ~~March 15, 2017~~ June 16, 2017.

17.25. Pre-Hearing Motions and Statements of Stipulated Facts shall be filed on or before ~~March 20, 2017~~ June 23, 2017.

18.26. Final Pre-Hearing Conference shall be conducted on or before ~~March 28~~ June 29 and ~~March 29, 2017~~ June 30, 2017.