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October 18, 2016

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

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 Counsel for the Public's Response to Applicants' Objection to Various Motions to Amend 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 - 2556765_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. 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 RESPONSE TO APPLICANTS’ OBJECTION TO
VARIOUS MOTIONS TO AMEND 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’ Objection Various Motions to Amend the Procedural Order (the “Objection”) and in support states as follows:¹

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”). 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.

¹ On October 4, 2016, Counsel for the Public filed a Motion to Amend Procedural Order (the “Motion to Amend”) seeking to amend the deadline for filing pre-filed testimony on aesthetics, natural resources and local economics. This Response addresses Applicants’ Objection to the Motion to Amend. Apart from the requests in the Motion to Amend, Counsel for the Public will address separately the Procedural Order regarding the Project’s claimed economic benefits in connection with the Applicants’ Motion for Rehearing relating to the Committee’s Order on NEPGA’s Motion to Compel and the Applicants’ intent to file a “systemic and comprehensive update” of the London Economics, Inc. (“LEI”) report on all claimed economic benefits of the Project.

2. In its order on December 18, 2015, the Subcommittee determined that “the Application contains sufficient information to carry out the purposes of RSA 162-H.” Order on Completeness dated December 18, 2015 (“Completeness Order”). The Subcommittee further noted that its review of the Application at that time “is a preliminary review.” Completeness Order at 12. It noted that “that this determination is not a determination that the Application deserves the issuance of a Certificate. It is merely a determination that the Application contains sufficient information for the Subcommittee to perform the comprehensive review required by RSA 162-H.” *Id.* at 14. In addition, during the Subcommittee’s deliberations on completeness the Subcommittee addressed the concerns voiced by many interested parties and echoed by several members of the Subcommittee that there was a good deal of information not apparent in the application that would be necessary to determine the merits by assuring the public on the record that there would be ample opportunity to obtain more information going forward.

3. On June 15, 2016, the SEC issued an order suspending the twelve (12) month statutory timeframe for resolving the Application. In suspending the timeframe, the SEC specifically stated that the Project was “unprecedented in both size and geographic scope.”² The SEC further stated:

The Subcommittee finds that the 365-day deadline should be suspended to ensure full and timely consideration of the environmental consequences of the Project and that the construction and operation of the Project is treated as a significant aspect of land-use planning in which all environmental, economic, and technical issues are resolved in an integrated fashion. *Considering the magnitude of the Project and the issues raised in this docket, it is in the public interest to suspend the 365-day deadline.*³

² Docket No. 2015-06, Order on Motions to Suspend, June 15, 2016 at 6.

³ *Id.* (emphasis added).

4. On October 4, 2016, Counsel for the Public filed the Motion to Amend citing the Applicants’ “delay in responding to the data requests and obtaining information necessary for certain of Counsel for the Public’s experts to complete their analyses.”⁴

5. On October 14, 2016, the Applicants filed the Objection.

B. Response to Applicants’ Objection.

6. Counsel for the Public disagrees with the implication in the Objection that it is somehow Counsel for the Public’s delay that has caused the need for the suspension of the timeframe in this docket. As was clearly stated in the June 15th Order, the suspension of the timeframe was based on the “unprecedented” size and scope of the Project. The Applicants’ focus on Counsel for the Public’s actions is a distraction from the specific grounds set forth in Counsel for the Public’s Motion to Amend, which the Applicants’ did not address in their Objection.⁵

7. On June 28, 2016, Counsel for the Public timely propounded his expert-assisted data requests on the Applicants. Question #76 in those data requests asked for the input to the REMI model that LEI used to run its local economics analysis. This is basic yet critical information that Counsel for the Public’s expert witnesses Kavet, Rockler & Associates, LLC (“KRA”) needed to conduct technical sessions and to evaluate the claimed economic benefits of the Project. Without it, Counsel for the Public is unable to provide the SEC with his objective analysis of the Project’s impacts. This is information that goes to the heart of the Applicants’

⁴ Docket No. 2015-06, Counsel for the Public’s Motion to Amend, October 4, 2016, at 8.

⁵ Applicants cite to recent SEC orders granting extensions of the deadline for Counsel for the Public and intervenors to submit pre-filed testimony. Objection at 4. However, the Applicants did not explain that all of the extensions have been granted because Applicants have either (a) failed to provide information in response to data requests and were compelled to do so by the SEC, or (b) they have introduced or will be introducing significant new information late in the process.

Project benefits case. Yet KRA still has not had access to this information. Applicants do not address this fact in their Objection.

8. At a recent technical session (September 22, 2016), Counsel for the Public was required to ask for information related to bats and bat habitats that was originally requested in its data requests #172 and #173. Again, this is information that is fundamental to Counsel for the Public's experts on natural resources to evaluate the Project's impacts on the environment. That information was finally provided on the same day that Applicants filed the Objection. Additionally, Counsel for the Public is still waiting for: (a) listing of all spatial or species distribution or habitat modeling exercises (EXP1-148); (b) reptile and amphibian spatial and location data (EXP1-150); and (c) hibernacula within five (5) miles of Project (EXP1-181). Applicants do not mention this fact in their Objection.

9. As part of informal requests propounded on June 21, 2016, Counsel for the Public's aesthetics experts, T.J. Boyle Associates, LLC ("TJBA"), requested digital detail model and digital surface model information. This information is necessary for TJBA to *begin* its review of the view shed mapping and the results of the visual impact analysis. Despite being promised this information "within weeks," Applicants did not provide this information until September 12, 2016. Applicants do not discuss this lack of responsiveness in the Objection. Moreover, the Applicants recently submitted over 300 new photo simulations of the Project, that are based on a different design, and which now must be analyzed by TJBA.

10. On October 6, 2016, the Applicants stated that LEI would be doing a "systematic and comprehensive update" of their report on the claimed economic benefits of the Project.⁶

⁶ Applicants' Motion for Rehearing of Order on the NEGPA's Motion to Compel, Motion to Allow Further Participation, and Motion to Stay at 3.

LEI's updated report will likely replace its previous report and pre-filed testimony and will require time for Counsel for the Public's experts to analyze.

11. These examples are only a few of the many instances where the Applicants have been extremely tardy in their responses to data requests or have not been responsive at all. Attached to its October 4 Motion to Amend, Counsel for the Public provided a detailed list of the information that had not yet (and still has not) been provided or was only recently provided (*See* Motion to Amend Exhibit A). Applicants do not dispute this in their Objection. In short, extensions of time have been granted previously and are now requested due to Applicants delay in providing necessary information or delay in providing new information.⁷

12. The Applicants' reliance on the fact that a voluminous application was filed in October of last year is beside the point. The Applicants have also submitted substantial amendments to the Application since then, have switched out witnesses, and have revealed significant areas where the design of the Project is far from complete. For example, as of the September technical sessions the Applicants' witnesses have stated that the design of underground portion of the Project is only 30% complete. As the Subcommittee noted in its Completeness Order and deliberations, the Application is only a threshold starting point and this process is where the merits of the Project are studied and, hopefully, understood.

13. The SEC should grant the Motion to Amend the Procedural Schedule because it is necessary to provide Counsel for the Public and his experts with sufficient time to prepare their

⁷ Reflecting the Applicants' own role in the need for the relief sought by Counsel for the Public and opposed by the Applicants, on the same day the Applicants filed the Objection to which Counsel for the Public is responding, the Applicants also requested an extension of the deadline to provide information responsive to a SEC order to compel. Moreover, the Objection was filed just days after the Applicants filed a motion to stay a different motion to compel in which the Applicants stated they were going to file a "systematic and comprehensive" update of the LEI analysis, the most important piece of economic evidence presented in the Application.

pre-filed evidence. The Applicants have had years to prepare for filing an application that is unprecedented in size and scope. They have not disputed the grounds for the Motion, their failure to provide timely responses to data requests. Counsel for the Public and the intervenors should not be hindered in their preparation of their pre-filed evidence by the Applicants' failure to meet the deadlines imposed on them by the SEC.

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

- A. Extend the deadline by which Counsel for the Public must file pre-filed testimony on (a) market economic issues; (b) local economic issues; (c) natural resources; and (d) aesthetics to December 30, 2016;
- B. Extend the deadline by which Applicants must serve data requests on Counsel for the Public and the deadline by which Counsel for the Public must respond, by the equal number of days;
- C. Extend other portions of the Procedural Schedule by an equal number of days and amend the Procedural Order as set forth in Exhibit B to Counsel for the Public's Motion to Amend; and
- D. Grant such other and further relief as is just and equitable.

Respectfully submitted,

COUNSEL FOR THE PUBLIC,

By his attorneys,



Dated: October 18, 2016

By:

Peter C.L. Roth, Senior Assistant Attorney General
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PRIMMER PIPER EGGLESTON & CRAMER PC,

Dated: October 18, 2016

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-and-

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing RESPONSE TO APPLICANTS' OBJECTION TO VARIOUS MOTIONS TO AMEND PROCEDURAL ORDER has this day been forwarded via e-mail to persons named on the attached Distribution List of this docket.

Dated: October 18, 2016

By: 
Thomas J. Pappas, Esq. (N.H. Bar No. 4111)