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MCLANE MIDDLETON

December 2, 2016

Via Electronic Mail & Hand Delivery

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

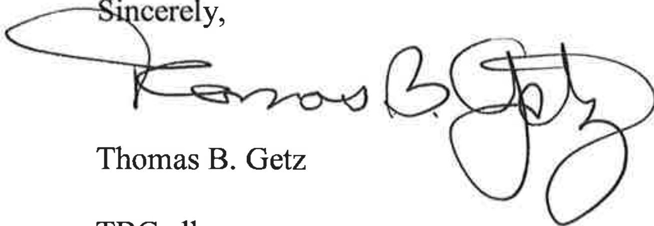
Re: Site Evaluation Committee Docket No. 2015-06
Joint Application of Northern Pass Transmission LLC and Public Service Company of New Hampshire d/b/a Eversource Energy (the "Applicants") for a Certificate of Site and Facility
Applicant's Objection to Motion for Rehearing Regarding James A. Muntz

Dear Ms. Monroe:

Enclosed for filing in the above-captioned docket, please find an original and one copy of Applicant's Objection to Motion for Rehearing Regarding Deposition of James A. Muntz.

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 FOR REHEARING REGARDING DEPOSITION OF JAMES A. MUNTZ

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 object to the Motion for Rehearing filed by Municipal Groups 1 South, 2, 3 South, 3 North, and the Society for Protection of New Hampshire Forests ("Movants") filed on November 23, 2016, regarding the October 24, 2016 Order denying the deposition of James A. Muntz. The Motion for Rehearing presents a new theory for requiring the deposition of Mr. Muntz based on his understanding of possible alternatives, which is not supported by the law or precedent in this case, and it fails to show that William J. Quinlan and Kenneth Bowes are not competent to adopt Mr. Muntz's testimony.

I. BACKGROUND

1. On September 29, 2016, the Movants submitted a motion requesting that the Site Evaluation Committee ("SEC" or in this case "Subcommittee") issue an order compelling the deposition of Mr. Muntz. The Movants argued, at p. 1 of their motion, that Mr. Muntz was a "unique and integral decision maker." They said, at p. 3, that they were deprived of the opportunity to question him about the factors he considered in making decisions about route selection, route design, etc. At p. 4 of the motion, the Movants contended that Messrs. Quinlan

and Bowes were not satisfactory substitutes for Mr. Muntz because they were "simply incapable of inserting themselves into the head of Mr. Muntz to speak for him and explain how he arrived at the various high-level decisions that he made for the Project."

2. The Applicants objected to the Movants' motion to compel on October 7, 2016, pointing out, among other things, that the standard for granting a deposition is a stringent one, requiring the Movants to demonstrate that the standard discovery procedures were inadequate and that a deposition was necessary. In addition, the Applicants noted that Mr. Muntz's personal thoughts and perceptions were not relevant to the findings that the Subcommittee must make under RSA 162-H:16, IV, which concern the Applicants' capabilities and the effects of the proposed Project.

3. Two days of technical sessions were scheduled, for October 11 and 13, 2016, regarding the topics outlined in Mr. Muntz's testimony. Messrs. Quinlan and Bowes substituted for Mr. Muntz because he had decided to cease his employment with Eversource. The technical session was completed in one day. The SEC's Administrator issued fourteen follow up data requests from the technical session on October 13, 2016, which the Applicants answered on October 24, 2016.

4. On October 24, 2016, the Presiding Officer denied the motion to compel. He found, at p. 5, that the Movants had failed to demonstrate that a deposition was necessary and that a "deposition of Mr. Muntz is unlikely to lead to the discovery of additional admissible evidence that is relevant to the matters before the Subcommittee."

II. ANALYSIS

5. In their Motion for Rehearing, the Movants assert errors of reasoning, fact and law that revert back to their underlying argument about Mr. Muntz's decision making. They also

shift their theory of the case and argue, at p. 5, that the information they seek is "the extent of the Applicants' consideration of alternatives." While the Movants acknowledge that the Legislature made amendments to RSA 162-H:7 and 16 concerning the consideration of alternatives, they would nullify the effect of those amendments under the novel theory that the Subcommittee, when considering whether the Project would have unreasonable adverse effects, should look at what alternatives the Applicants may have considered. Under this relativistic approach, effects would be unreasonably adverse if a less impactful alternative existed. Interestingly, the Movants do not extend their theory to its logical end, which would suggest that more impactful alternatives would also enter the analysis. As noted below, however, such an approach, from either side of the coin, is not defensible under the statutory scheme. Finally, they say that RSA 162-H:16, IV "allows other parties to introduce evidence regarding potential alternative routes," when it says no such thing.

6. The Movants, and others, continue to conceive the Project and the Subcommittee's review in an outdated way at odds with changes in the law over the last twenty years. Prior to the restructuring of the electric industry, when electric public utilities were vertically integrated, when the costs of projects were included in rates, and when public utilities had the right of eminent domain for all generation and transmission projects, it made sense that a public utility would have to demonstrate the need for a generation or transmission project and that an analysis of alternatives would be undertaken as part of the siting process. Those days, however, are gone.

7. The Applicants do not have the power of eminent domain and the costs of the Project will not be included in the rates of New Hampshire customers. Nevertheless, the Movants persist in trying to force the new competitive environment into the old regulated model, however

strained the logic becomes. The Movants ignore the reality that the Legislature enacted RSA Chapter 374-F in 1996 restructuring the electric industry. The result of moving to a restructured, competitive model is that, for legal and financial reasons, entities like the Applicants do not have the range of alternatives available to them that would have been the case under the old regulated model. The fact of the matter is that the Legislature has adapted the siting paradigm to accord with the transition from a regulated monopoly model to an open market model.

8. Key to the Movants' position is the supposition that any alternative, whether proposed by the Applicants or not, is relevant. It is through this approach that they seek to diminish the Legislature's repeal of language regarding the consideration of alternatives and elevate the substituted reference to relevant information in the preface to RSA 162-H:16, IV, while dismissing the import of the new provision in RSA 162-H:7, V (b), which makes clear the centrality of an applicant's preferred choice and the alternatives, if any, it considers available. This approach is fully consistent with the reality of the restructured electric industry in New Hampshire as described above.

9. Furthermore, the SEC has made clear in this proceeding that alternatives are not relevant. In the Presiding Officer's March 18, 2016 Order on Petitions to Intervene, at p. 30, he denied certain interventions stating that the "impact of past designs for the Project on existing properties cannot be a basis for current intervention in this docket....Prior route alignments are not before this Subcommittee" Correspondingly, in the Subcommittee's May 20, 2016 Order on Review of Intervention, at p. 26, it denied the participation of Ms. Pastoriza based on an alternative route. The Subcommittee found that the Applicants did not seek to site an alternative route and that, therefore, the Project subject to review in this proceeding did not affect her rights. Similarly, in the Presiding Officer's September 22, 2016 Order on Motions to Compel, at p. 40,

he denied motions to compel production of documents related to the use of Interstate 93 and the Hydro Quebec Phase 2 corridor as alternatives. In both cases, the Presiding Officer concluded that the requests did not seek information pertaining to the proposed route and he found that: "The requested information is not relevant nor is it likely to lead to the discovery of admissible evidence."

10. The Movants, at p. 5, also mischaracterize an exchange between counsel for the Society for the Protection of New Hampshire Forests ("SPNHF") and the Applicants in a technical session on September 22, 2016, as evidence that "the Applicants' attorney felt that Mr. Quinlan was not an equivalent stand-in for Mr. Muntz." The Movants assert that the panel was asked questions and that the panelists suggested that Mr. Quinlan be asked the questions instead, which is not what transpired. The question asked of the panel members by the SPNHF attorney concerned who they understood made the ultimate decisions for the Project. Some panel members said they did not know and some thought that it might be Mr. Quinlan. The Applicants' attorney simply clarified that Mr. Muntz, who was at the time the President of NPT, made the highest level decisions.

11. Finally, the Movants contend, at p. 3 of their Motion for Rehearing, that the October 11, 2016 technical session at which Messrs. Quinlan and Bowes appeared in order to answer questions about the subject matter of Mr. Muntz's testimony was inadequate, complaining generally that were only able to answer questions broadly. Their characterization, however, rests on their original position that Messrs. Quinlan and Bowes could not put themselves in Mr. Muntz's head, and their new position that what they seek from Mr. Muntz concerns the consideration of alternatives. As for the actual conduct of the technical sessions, the Movants had ample opportunity to inquire of Messrs. Quinlan and Bowes. In fact, two days

were scheduled but only one was used. Because the Movants have not shown that Messrs. Quinlan and Bowes are not qualified to adopt Mr. Muntz's testimony or that they were unable to satisfactorily respond to specific questions, and because they have not shown that the information they really want is admissible, they have not met the standard for granting rehearing.

III. CONCLUSION

12. The Movants do not provide a good reason for rehearing, or show that the Presiding Officer's decision was unlawful or unreasonable as required by RSA 541:3 and 4. They rely instead on a flawed argument, not previously made in support of their original request for a deposition, that information regarding alternative routes constitutes admissible evidence relevant to the criteria in RSA 162-H:16, IV. Inasmuch as the Presiding Officer has already determined that information concerning alternative routes in not relevant and not likely to lead to the discovery of admissible evidence, the Movants have failed to demonstrate that a deposition of Mr. Muntz is necessary to acquire admissible evidence. Furthermore, they have not shown that Messrs. Quinlan and Bowes cannot adequately substitute for Mr. Muntz and adopt his testimony. Accordingly, inasmuch as the Presiding Officer did not overlook or mistakenly conceive anything in his original decision, the Motion for Rehearing should be denied. See, *Dumais v. State*, 118 N.H. 309, 311 (1978).

WHEREFORE, the Applicants respectfully request that the Presiding Officer:

a. Deny Movants' Motion for Rehearing; and

b. Grant such further relief as it deems appropriate.

Respectfully submitted,

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

By Their Attorneys,
McLANE MIDDLETON,
PROFESSIONAL ASSOCIATION

Dated: December 2, 2016

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Certificate of Service

I hereby certify that on the 2nd day of December, 2016 the foregoing Objection was electronically served upon the SEC Distribution List and an original and one copy was hand delivered to the NH Site Evaluation Committee.

Thomas B. Getz