

**THE STATE OF NEW HAMPSHIRE  
SITE EVALUATION COMMITTEE**

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 for the Construction of a New High Voltage Transmission Line in New Hampshire

Docket No. 2015-06

**CITY OF CONCORD’S OBJECTION TO MOTION TO STRIKE  
CERTAIN PRE-FILED TESTIMONY**

The City of Concord, by and through its attorneys, the Office of the City Solicitor, objects to the Motion to Strike Certain Pre-Filed Testimony, stating as follows:

**I. BACKGROUND**

1. On December 2, 2016, Northern Pass Transmission LLC and Public Service Company of New Hampshire d/b/a Eversource Energy (collectively, the “Applicants”) filed a motion seeking to strike certain pre-filed testimony. The list of the pre-filed testimony that the Applicants sought to strike includes the pre-filed testimony of Peter Scott on behalf of Sabbow and Co., Inc. (“Sabbow”). Mr. Scott is General Counsel for Sabbow.

2. The City of Concord submitted the pre-filed testimony of Sabbow as one of its witnesses. Sabbow is the owner of a large property in the industrial zone in the City of Concord, and it manufactures precast concrete products. Sabbow has conducted its business in Concord at the site for twenty-five years. The proposed Northern Pass project runs directly through Sabbow’s property. *See* Exhibit A (photograph and alteration of terrain plan). The pre-filed testimony of Sabbow discusses its concerns relative to temporary and permanent impacts of the proposed Northern Pass Project on its property.

3. The Applicants argue that the pre-filed testimony of Sabbow should be stricken because Sabbow “is not a party to the proceeding, nor does Mr. Scott appear to be an official or agent of the City of Concord.” This argument is incorrect.

4. As an initial matter, the City of Concord is not limited to the submission of pre-filed testimony from officials or other agents of the municipality. It is permissible for the City of Concord to submit pre-filed testimony from a local industrial property owner to discuss the temporary and permanent impacts of the project. The Applicants have failed to reference any specific rules or cases to support their argument that the testimony of Sabbow should be stricken. The SEC must admit all documents and evidence “unless excluded by the presiding officer as irrelevant, immaterial, unduly repetition or legally privileged.” New Hampshire Admin. Rules, Site 202.24; *see also* RSA 541-A:33, II (“[a]ny oral or documentary evidence may be received; but the presiding officer may exclude irrelevant, immaterial or unduly repetitious evidence”). In interpreting those legal standards, the SEC has recognized that pre-filed testimony that is relevant to the issues in dispute in a docket should be admitted. Order on Pending Motions, Docket No. 2015-01 (November 4, 2015).

5. Moreover, there is no basis for the Applicants’ suggestion that the City of Concord has not always intended for Sabbow to be a witness. On Page 4, footnote 2 of the Applicants’ Motion to Strike, the Applicants state “Counsel for the City of Concord *now asserts* that Mr. Scott is a witness for the City.” (Emphasis added). The argument that the City of Concord “now asserts” that Sabbow is a witness for the City is absurd. The City of Concord was the party responsible for filing the pre-filed testimony of Sabbow. *See* Exhibit B (Email correspondence from the City of Concord dated November 15, 2016 submitting the pre-filed testimony of Sabbow). In the event that there was a question about whether Sabbow was a

witness for the City of Concord, the Applicants could have contacted the undersigned counsel to discuss.

6. Lastly, the argument that “it is not clear” how Sabbow’s pre-filed testimony is relevant to the City’s participation is also without merit. Under RSA 162-H:16, the SEC is required to make a finding that the facility “will not unduly interfere with the orderly development of the region with due consideration having been given to the views of municipal and regional planning commissions and municipal governing bodies.” It should be noted that New Hampshire Admin. R., Site 301.09 further addresses the requirements of orderly development, and it includes a requirement that the applicant provide an estimate of the effects of construction and operation of the facility on land use in the region.

7. In the application, the Applicants submitted the testimony of Robert Varney. Mr. Varney is the President of Normandeau Associates, Inc. His office prepared a report titled *Northern Pass Transmission Project, Review of Land Use and Local, Regional and State Planning, October 2015*, included as Appendix 41 of the SEC application. He asserts in the testimony that the Project will not have an adverse impact on land use and that it will not unduly interfere with the orderly development of the region.

8. The purpose of the submission of Sabbow’s testimony is to rebut Mr. Varney’s opinions. Without addressing the issues of whether Mr. Varney’s testimony and conclusions are appropriate subjects for expert testimony and/or the methodology utilized is reliable, which is disputed, there should be no dispute that the intervening municipalities are allowed to provide both general and specific information about the impacts of the proposed project.

9. Towards that end, the City of Concord submitted pre-filed testimony from several witnesses addressing whether the project unduly interferes with the orderly development of the

region. The submissions included the pre-filed testimony of Heather Shank, the City Planner. Ms. Shank discussed concerns about the construction of the proposed project, and in her testimony noted that at least one business owner has complaints about the location of a proposed pad in conflict with its operations. The City of Concord submitted the pre-filed from Sabbow to identify the specific concerns about the project, including the impact of the construction pads.

10. Based on the foregoing, it is unreasonable for the Applicants to state that “it is unclear” how the testimony of Sabbow is relevant to the City of Concord’s concerns. The SEC process is intended to provide an opportunity for the City of Concord to address concerns about the project, and to identify whether it is consistent with the land use laws of the municipality. The City of Concord is permitted to address the specific concerns that it has, and it is entirely appropriate to raise specific concerns through the filing of pre-filed testimony from witnesses who are not employees and/or agents of the City of Concord.

WHEREFORE, the City of Concord respectfully requests that the Site Evaluation Committee:

- A. Deny the Motion to Strike Certain Pre-Filed Testimony; and
- B. Grant such other and further relief as may be just.

Respectfully submitted,

CITY OF CONCORD

December 8, 2016

By:



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**CERTIFICATE OF SERVICE**

I hereby certify that on this 8th day of December 2016, a copy of the foregoing was sent by electronic mail to persons named on the Service List of this docket.

December 8, 2016

By: 

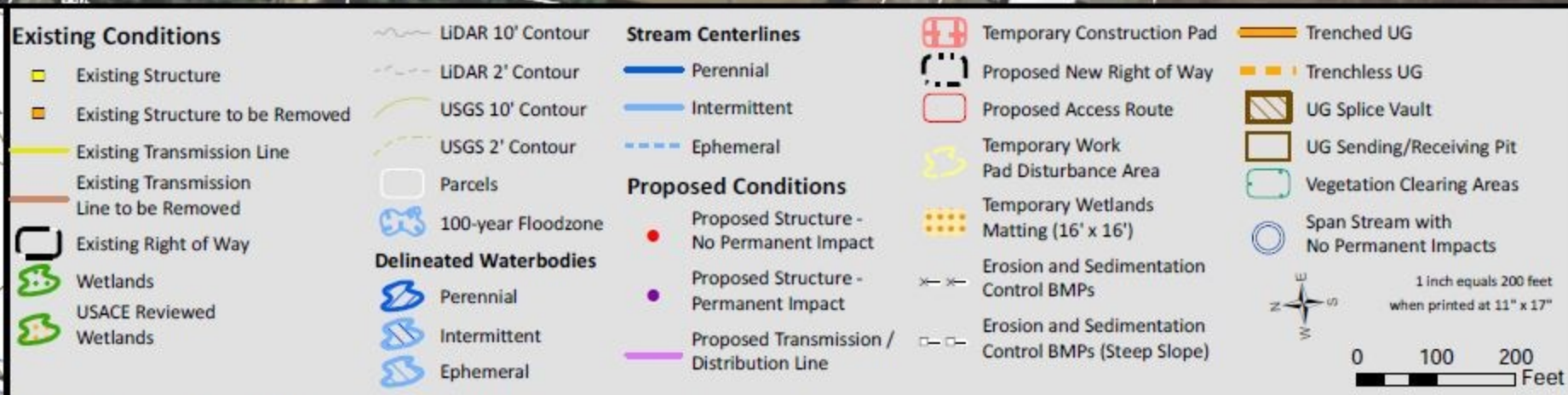
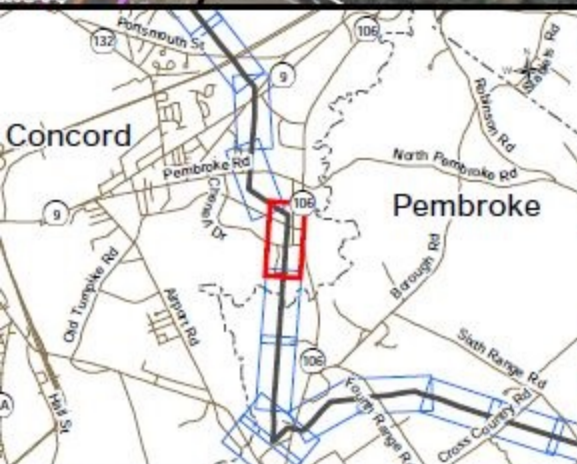
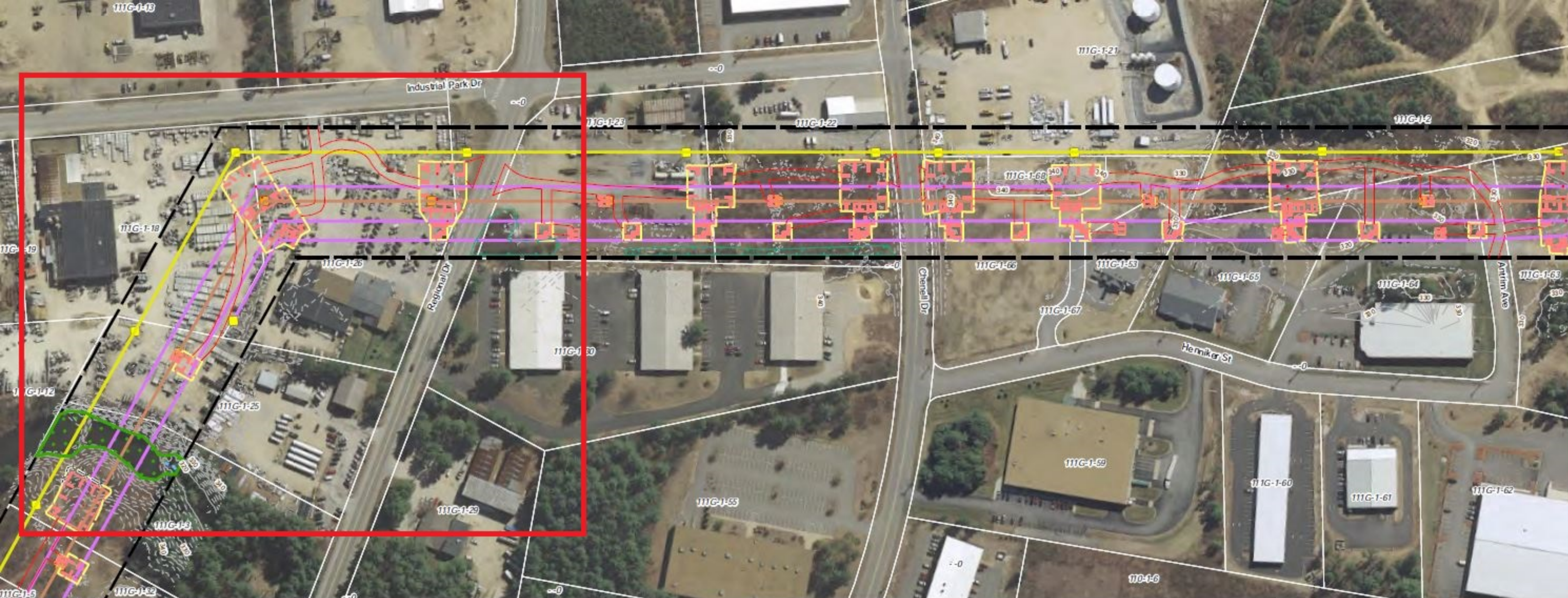
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Danielle L. Pacik, Deputy City Solicitor

# EXHIBIT A









**The Northern Pass Transmission Project**  
**NHDES Alteration of Terrain**  
**Permit Application Plans**  
**Sheet 310**

**THE NORTHERN PASS**

1 inch equals 200 feet  
when printed at 11" x 17"

0 100 200 Feet

10/9/2015



# EXHIBIT B

## Pacik, Danielle

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**From:** Diaz, Velinda  
**Sent:** Tuesday, November 15, 2016 1:19 PM  
**To:** 'Pamela.monroe@sec.nh.gov'  
**Subject:** Pre-Filed Testimony of Peter Scott - NH SEC Docket No. 2015-06  
**Attachments:** Sabbow and Co Prefiled Testimony - Peter Scott (City of Concord).pdf

Ms. Monroe:

Attached is the Pre-filed Testimony of Peter Scott on behalf of Sabbow and Co., Inc. for filing in the above-referenced docket.

The original will be hand-delivered to the SEC today.

A copy of the attached has been sent by e-mail to the SEC Distribution List.

Thank you,

*Velinda Díaz*

Legal Secretary  
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Solicitor's Office  
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