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February 8, 2017

Via Electronic Mail & Hand Delivery

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

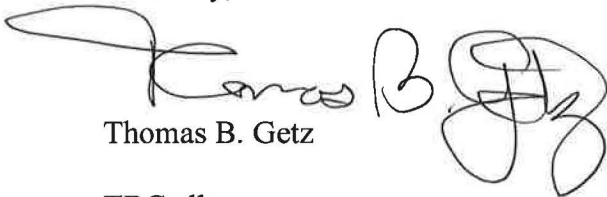
**Re: Site Evaluation Committee Docket No. 2015-06
Joint Application of Northern Pass Transmission LLC and Public Service Company
of New Hampshire d/b/a Eversource Energy (the "Applicants") for a Certificate of
Site and Facility
Motion to Compel Responses to Technical Session Data Requests**

Dear Ms. Monroe:

Enclosed for filing in the above-captioned docket, please find an original and one copy of a
Motion to Compel Responses to Technical Session Data Requests.

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**

MOTION TO COMPEL RESPONSES TO TECHNICAL SESSION DATA REQUESTS

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 move to compel the Society for the Protection of New Hampshire Forests (“SPNHF”) to produce documents sought by data requests made during the technical session held on January 19, 2017. The Administrator issued the requests on January 23, 2017, and SPNHF objected on February 3, 2017.

I. INTRODUCTION

1. Ms. Difley is the President and Chief Executive Officer of SPNHF. Ms. Difley appeared for the technical session administered on January 19, 2017 where she responded to certain questions regarding her pre-filed testimony. At this technical session, the Applicants made a number of data requests, which are memorialized in the Administrator’s Technical Session Memorandum.

2. Ms. Difley states that the purpose of her testimony is “to provide background on the Forest Society’s mission and history, and to offer some context to the reasons why [it] [has] intervened in this docket.” Pre-Filed Testimony at 3-4. On page 4 of her testimony, Ms. Difley states “[SPNHF] hold[s] conserved lands in the public trust. It is our duty to defend them against

those who would adversely affect the conservation values for which the conserved lands were protected.” Id., at 4.

3. On page 7 of her testimony, Ms. Difley includes the following prompt: “Why does the Forest Society oppose the Northern Pass project?” Id., at 7. In response, she discusses the process by which SPNHF makes decisions regarding energy projects proposed in New Hampshire. She testifies that “The Forest Society has a direct obligation to steward each of the individual lands in which we hold a real estate interest.” Id., at 8. She then provides the following testimony:

After extensive discussion, the Forest Society Board of Trustees first voted in January, 2011 to ‘oppose the Northern Pass project as proposed’ ... The Board felt it was our obligation to defend conserved lands, historic scenic landscapes, and the forest products economy, including wood for energy. The Board also chose this position to defend forests from fragmentation and to defend the public benefits New Hampshire forests provide to citizens and visitors in support of our tourist economy.

Id.

4. At the technical session on January 19, 2017, the Applicants questioned Ms. Difley regarding the process by which SPNHF went about deciding to oppose Northern Pass. Ms. Difley explained that SPNHF has an internal Policy Committee that reviews potential or proposed projects and makes recommendations to the Board of Trustees. In considering projects, Ms. Difley indicated that the Policy Committee does not have a written set of procedures for evaluating projects but that it looks at issues involved in the project that are of concern to SPNHF. Ms. Difley explained that the Board then convenes and votes on whether to adopt the Policy Committee’s recommendation.

5. On February 3, 2017, SPNHF provided a Response to the Applicants data requests which is attached hereto as Attachment A. In its Response SPNHF objected to Data Request Nos. 1, 2, 3 and 4 and produced no responsive documents.¹

II. DISCUSSION

6. The first two data requests made by the Applicants are narrowly tailored to seeking information regarding the process by which SPNHF decided to oppose the Project. Data Request No.1 seeks “information related to SPNHF Policy Committee meetings and its decisions, when it considered its position on the Northern Pass Project as the Project was configured in October 2010, Jun-Jul 2013, and August 2015.” Technical Session Memorandum, January 23, 2017, p. 2. Data Request No. 2 seeks the “agenda and minutes of SPNHF Policy Committee meetings where it considered its position on the Northern Pass Project.” Id.

7. SPNHF first objects that the information requested is not relevant. This objection is baseless. As explained above, Ms. Difley’s testimony discusses at length the basis for SPNHF’s opposition to the Project. Indeed, the subject is characterized as the *purpose of her testimony*. SPNHF cannot submit testimony testifying on the basis for its opposition to the Project and then claim that the same information is not relevant.

¹ Although different in one respect, both objections contain the following core objections:

The Forest Society objects to this data request because it seeks information that is not relevant to the proceeding as it is not relevant to whether the Applicants can satisfy the criteria of RSA 162-H:16, IV and, therefore, is not reasonably calculated to lead to the discovery of admissible evidence.

The Forest Society objects to this data request because it is duplicative of Applicants’ data request 1-2 propounded by the Applicants to the Forest Society that is currently the subject of Applicants’ Motion to Compel and the Forest Society’s Objection.

The Forest Society objects to this data request because it seeks information that is protected by the work-product privilege, the attorney-client privilege, and/or another applicable privilege.

The Forest Society reserves the right to raise additional objections to this data request.

8. The Applicants are entitled to the requested information in order to understand SPNHF's position with regard to the Project, its decision-making process for deciding to oppose the Project, and how the decision to oppose the Project relates to SPNHF's overall mission, goals and stated duty to defend conserved lands. SPNHF has been and continues to be an opponent to the Project. SPNHF is a full party to this proceeding with the same rights and responsibilities as the Applicants, including being subject to cross-examination at final hearings. Without the requested information, the Applicants' due process right to effectively cross-examine Ms. Difley will be compromised.

9. SPNHF also objects that Data Request Nos. 1 & 2 are duplicative of the Applicants' data request 1-2 that is currently the subject of the Applicants' Motion to Compel and SPNHF's Objection before the Committee. The Applicants disagree. The data requests at issue pertain to a narrower issue that SPNHF brought to light during the January 19, 2017 technical session, i.e., that an internal Policy Committee made the initial decision to oppose Northern Pass. Data Request No. 1 seeks information regarding the Policy Committee's decision(s) and Data Request No. 2 seeks the agenda and meeting minutes of meetings where the Policy Committee considered Northern Pass.

10. SPNHF also objected to Data Request No. 3 on the basis that it is not relevant. Data Request No. 3 seeks the production of agendas and meeting minutes for SPNHF Policy Committee meetings where the Policy Committee considered its position on energy projects other than Northern Pass. During the technical session Ms. Difley explained that there are other instances where the Policy Committee has convened to discuss whether or not to take a position on energy projects other than the Project. Ms. Difley explained that the records of these meetings

are contained in the meeting minutes. The Applicants' data request is directed at better understanding how SPNHF makes decisions on whether or not to oppose an energy project.

11. Finally, SPNHF objected to Data Request No. 4 for many of the same reasons discussed above. Namely, (1) the information requested is not relevant and (2) the data request is duplicative of data request 1-2 which is the subject of the Applicants' Motion to Compel. However, SPNHF also objects to the data request "to the extent [the] data requests seeks communications and reports regarding the proposed Northern Pass Project ... because it seeks information that is protected by the work-product privilege, the attorney-client privilege, and/or another applicable privilege." The intent of this objection is unclear to the Applicants. It appears that SPNHF is objecting on the basis that every single document covered by this data request is protected from disclosure. However, SPNHF did not produce a privilege log so the Applicants have no way of knowing.

12. The requested information is relevant because it helps the Applicants understand the assertions articulated in Ms. Difley's pre-filed testimony. Ms. Difley and Mr. Abbott both testify that the Project will "directly impact" thirteen of SPNHF's conservation easements. See Pre-Filed Testimony of Jane Difley at 7-8. As discussed above, Ms. Difley testifies that SPNHF has a duty to defend its conserved lands, which is a primary reason for its opposition to the Project. When asked how SPNHF determines whether a proposed project will impact SPNHF lands, Ms. Difley stated generally that it has to do with the scale of the proposed project. She then confirmed that there are reports, analysis and other communications related to the committee meetings where SPNHF considered the impact of other projects on its conservation easements. Data Request No. 4 seeks information regarding how SPNHF determines if proposed projects will impact its conservation easements. This information is necessary to help the

Applicants understand SPNHF's position on the Project and its testimony that the Project will directly impact its conserved lands.

III. CONCLUSION

13. The four data requests at issue seek to discover information that would assist the Applicants, as well as the Committee, in understanding the positions and assertions in SPNHF's pre-filed testimony and supporting materials as they relate to SPNHF's overall position on the Project. Moreover, such information is discoverable because it may assist the Committee in assessing the validity and merit of the witness' assertions. Finally, denying the Applicants access to such information would prejudice the Applicants' ability to effectively cross-examine SPNHF's witnesses.

14. Pursuant to Site 202.12(k)(4), the Applicants made a good-faith effort to resolve the dispute informally. The Applicants and SPNHF were unable to come to agreement on the issues discussed in this Motion. Nevertheless, the Applicants revised their request thusly: In Data Request No. 1, substitute "any and all information" with "all analyses, reports, communications, correspondence, and other materials." The Applicants further clarified that the request only seeks this information as it relates to the Northern Pass project.

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

- A. Issue an Order requiring SPNHF to produce documents responsive to Data Request Nos. 1, 2, 3 and 4; 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: February 8, 2017

By: 

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Certificate of Service

I hereby certify that on the 8th day of February, 2017, an original and one copy of the foregoing Motion was hand-delivered to the New Hampshire Site Evaluation Committee and an electronic copy was served upon the SEC Distribution List.


Thomas B. Getz

STATE OF NEW HAMPSHIRE
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 for a Certificate of Site and Facility

**THE SOCIETY FOR THE PROTECTION OF NEW HAMPSHIRE
FORESTS' RESPONSE TO APPLICANTS' DATA REQUESTS MADE TO
JANE DIFLEY AT THE JANUARY 19, 2017 TECHNICAL SESSION**

The Society for the Protection of New Hampshire Forests (the "Forest Society"), by and through its attorneys, BCM Environmental & Land Law, PLLC, responds and objects, pursuant to Site 202.12(i), to portions of Northern Pass Transmission LLC's and Public Service Company of New Hampshire d/b/a Eversource Energy's (collectively, the "Applicants") Data Requests made to Forest Society President and Forester Jane Difley at the January 19, 2017 technical session, and states as follows:

GENERAL OBJECTIONS

The Forest Society objects to each data request to the extent that the data request seeks information that is not within the Forest Society's possession, custody or control or seeks information that is in the public domain and equally available to the Forest Society and the Applicants.

DATA REQUESTS

1. Data Request #1 states as follows:

Provide any and all information related to the SPNHF Policy Committee meetings and its decisions, when it considered its position on the Northern Pass Project as the Project was configured in October 2010, June-July 2013, and August 2015.

Response:

The Forest Society objects to this data request because it seeks information that is not relevant to the proceeding as it is not relevant to whether the Applicants can satisfy the criteria of RSA 162-H:16, IV and, therefore, is not reasonably calculated to lead to the discovery of admissible evidence.

The Forest Society objects to this data request because it is overly broad and unduly burdensome to the extent that it seeks "any and all information" Additionally, the term "information" is

ambiguous and overly broad.

The Forest Society objects to this data request because it is duplicative of Applicants' data request 1-2 propounded by the Applicants to the Forest Society that is currently the subject of Applicants' Motion to Compel and the Forest Society's Objection.

The Forest Society objects to this data request because it seeks information that is protected by the work-product privilege, the attorney-client privilege, and/or another applicable privilege.

The Forest Society reserves the right to raise additional objections to this data request.

2. Data Request #2 states as follows:

Provide the agenda and minutes of SPNHF Policy Committee meetings where it considered its position on the Northern Pass Project.

Response:

The Forest Society objects to this data request because it seeks information that is not relevant to the proceeding as it is not relevant to whether the Applicants can satisfy the criteria of RSA 162-H:16, IV and, therefore, is not reasonably calculated to lead to the discovery of admissible evidence.

The Forest Society objects to this data request because it is duplicative of Applicants' data request 1-2 propounded by the Applicants to the Forest Society that is currently the subject of Applicants' Motion to Compel and the Forest Society's Objection.

The Forest Society objects to this data request because it seeks information that is protected by the work-product privilege, the attorney-client privilege, and/or another applicable privilege.

The Forest Society reserves the right to raise additional objections to this data request.

3. Data Request #3 states as follows:

Provide agendas and minutes for SPNHF Policy Committee meetings where it considered its position on energy projects other than Northern Pass, including: high voltage transmission line; renewable energy; and gas pipelines.

Response:

The Forest Society objects to this data request because it seeks information that is not relevant to the proceeding as it is not relevant to whether the Applicants can satisfy the criteria of RSA 162-H:16, IV and, therefore, is not reasonably calculated to lead to the discovery of admissible evidence.

The Forest Society reserves the right to raise additional objections to this data request.

4. Data Request #4 states as follows:

Provide all communications and reports created by SPNHF regarding proposed energy projects that it considered and the potential effects of those projects on SPNHF resources.

Response:

The Forest Society objects to this data request because it seeks information that is not relevant to the proceeding as it is not relevant to whether the Applicants can satisfy the criteria of RSA 162-H:16, IV and, therefore, is not reasonably calculated to lead to the discovery of admissible evidence.

To the extent this data request seeks communications and reports regarding the proposed Northern Pass Project, the Forest Society objects to this data request because it is duplicative of Applicants' data request 1-2 propounded by the Applicants to the Forest Society that is currently the subject of Applicants' Motion to Compel and the Forest Society's Objection.

To the extent this data request seeks communications and reports regarding the proposed Northern Pass Project, the Forest Society objects to this data request because it seeks information that is protected by the work-product privilege, the attorney-client privilege, and/or another applicable privilege.

The Forest Society reserves the right to raise additional objections to this data request.

5. Data Request #5 states as follows:

Provide a list of donations that were made by energy companies or power generators, and others, that were made for the specific purpose of opposing Northern Pass.

Response:

The Forest Society objects to this data request because it seeks information that is not relevant to the proceeding as it is not relevant to whether the Applicants can satisfy the criteria of RSA 162-H:16, IV and, therefore, is not reasonably calculated to lead to the discovery of admissible evidence.

The Forest Society understands this data request to seek a list of donations by energy companies, power generators, and the like, and does not interpret the phrase "and others" to refer to non-energy-market participants. To the extent that the phrase "and others" refers to non-energy-market participants, the Forest Society objects to this data request as being overly broad and unduly burdensome.

The Forest Society objects to this data request because it is duplicative of Applicants' general data

request #2 propounded by the Applicants to the Forest Society on January 13, 2017.

The Forest Society reserves the right to raise additional objections to this data request.

Notwithstanding the foregoing and without waiving the foregoing objections, the Forest Society has not received any donations from any energy company, power generator, or other energy-market participant made for the specific purpose of opposing Northern Pass.

6. Data Request #6 states as follows:

Review the SPNHF Forest Resources Plan's stated goals and objectives and provide any instances where the Plan is either consistent or inconsistent with the Northern Pass project.

Response:

The Forest Society objects to this data request because it seeks information that is not relevant to the proceeding as it is not relevant to whether the Applicants can satisfy the criteria of RSA 162-H:16, IV and, therefore, is not reasonably calculated to lead to the discovery of admissible evidence.

Notwithstanding and without waiving the foregoing objection, the Forest Society responds as follows:

The New Hampshire Forest Resources Plan is not a Forest Society document but rather a comprehensive guidance document prepared about every ten years by the State's Division of Forests and Lands (part of the Department of Resources and Economic Development) with input from many stakeholders. The plan guides public policy and management related to New Hampshire forests. The plan is used by state and federal policy-makers to prioritize appropriations of public funds available to advance forest health and the integrity of the forest economy in New Hampshire. The most recent plan was released 2010, and is available at:

<http://www.nhdf.org/library/pdf/Planning/NH%20Forest%20Resource%20Strategies%20Final.pdf>

The three core priorities in the 2010 plan are:

1. To conserve New Hampshire's working forest landscapes
2. To protect New Hampshire forests from harm
3. To enhance economic benefit from New Hampshire's Trees and Forests

The Northern Pass proposal --- particularly as it affects forest resources in the northern part of the state where the project would create an entirely new right of way for its facility through largely privately-owned forest land --- conflicts with the priorities of the 2010 forest resources plan in three principles ways.

First, the plan's priority to conserve the state's forested landscape places a high priority on avoidance of forest fragmentation – the breaking up of contiguous forest into smaller and smaller

blocks, interrupted by human development and/or conversion to other uses. Northern Pass would clearly have undesirable and avoidable adverse effects on the forest by clearing a new right of way through the northern forest. The benefits of unfragmented (contiguous) forest land are both ecological and economic.

Second, the plan's priority to enhance economic benefit from trees and forests not only focuses on the forest products economy but also the state's tourism economy. The plan details how the tourism economy and the forest products economy are mutually reinforcing, thereby critical to the well-being of people and forests. If built, Northern Pass would disrupt the visual integrity of the forested landscapes that help sustain the health of forests and the quality of life for New Hampshire residents and visitors.

Third, the plan cites permanent land protection as a basic tool in meeting all three of its core priorities. This is also the core work of the Society for the Protection of New Hampshire Forests. The extraordinary efforts of the U.S. Forest Service, the state, the Forest Society, many private landowners and many other conservation organizations to put this tool of permanent land conservation to work over the past century has resulted in substantial permanent protection of the forested landscape in New Hampshire, particularly in the northern three counties. Northern Pass is the kind of land use that unnecessarily disrupts New Hampshire forests and the century of land conservation work that has protected them.

Respectfully Submitted,

**SOCIETY FOR THE PROTECTION OF NEW
HAMPSHIRE FOREST**

By its Attorneys,
BCM Environmental & Land Law, PLLC



Date: February 3, 2017

By: _____

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CERTIFICATE OF SERVICE

I hereby certify that on this day, February 3, 2017, a copy of the foregoing Response was sent by electronic mail to persons named on the Discovery Service List of this docket.



Amy Manzelli, Esq.