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[mdavis@carolsoncapital.com](#)
Subject: NH SEC Docket No. 2015-06: Northern Pass Transmission LLC [MCLANE--FID1340229]
Date: Thursday, March 30, 2017 10:22:18 AM
Attachments: [image004.png](#)
[Obj to Motion for Expedited Order.PDF](#)
[Ltr to SEC enc objection to motion for expedited order.PDF](#)

Following up on the notice sent from Tom Getz on Tuesday, we have identified 2 additional emails

that were quarantined and not delivered to the service list last week. Accordingly, I am resending the email sent last Thursday, March 23rd with a cover letter and objection.

The original and one copy were hand delivered to the Committee on Thursday, March 23rd.

Thank you,
Stacey Burgess

From: Burgess, Stacey [mailto:Stacey.Burgess@MCLANE.com]
Sent: Thursday, March 23, 2017 2:51 PM
To: martin.honigberg@puc.nh.gov; craig.wright@des.nh.gov; kate.bailey@puc.nh.gov; christopher.way@dred.state.nh.us; woldenburg@dot.state.nh.us; weathersbylawpllc@gmail.com; rwhitaker@ccsnh.edu; pamela.monroe@sec.nh.gov; marissa.schuetz@sec.nh.gov; miacopino@brennanlenehan.com; idore@brennanlenehan.com; cmunroe@brennanlenehan.com; brian.buonamano@doj.nh.gov; Needleman, Barry; Walker, Jeremy; Dumville, Adam; Walkley, Rebecca; Getz, Thomas; dbisbee@devinemillimet.com; christopher.allwarden@eversource.com; marvin.bellis@eversource.com; elizabeth.maldonado@eversource.com; robert.clarke@eversource.com; peter.roth@doj.nh.gov; Maynard, Laura (Laura.Maynard@doj.nh.gov); Gagnon, Dawn; Frazier, Denise; russ.kelly@eversource.com; Fish, Viggo; tpappas@primmer.com; eemerson@primmer.com; smerrigan@primmer.com
Subject: NH SEC Docket No. 2015-06: Northern Pass Transmission LLC [MCLANE--FID1340229]

Attached for filing in the above-captioned docket, please find a cover letter and objection.

The original and one copy will be hand delivered to the Committee this afternoon.

Thank you,
Stacey Burgess



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would go into more formal advice or a formal legal opinion.

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March 23, 2017

NHPUC MAR23'17 PM 3:59

Via Electronic Mail & Hand Delivery

Pamela Monroe, Administrator
New Hampshire Site Evaluation Committee
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Concord, NH 03301-2429

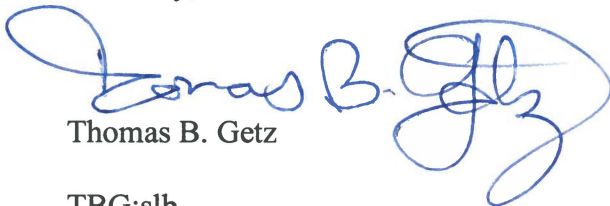
**Re: Site Evaluation Committee Docket No. 2015-06
Joint Application of Northern Pass Transmission LLC and Public Service Company
of New Hampshire d/b/a Eversource Energy (the "Applicants") for a Certificate of
Site and Facility
Objection to Motion for Expedited Order**

Dear Ms. Monroe:

Enclosed for filing in the above-captioned docket, please find an original and one copy of an
Objection To Motion For Expedited Order.

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**

OBJECTION TO MOTION FOR EXPEDITED ORDER

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, object to the motion filed on March 13, 2017, by the City of Concord and the Towns of Bethlehem, Bristol, Easton, Franconia, Northumberland, Plymouth, Sugar Hill, Whitefield, Bridgewater, New Hampton, Littleton, Deerfield, Pembroke and Ashland Water & Service District (“Munis”), which they call a Motion for Expedited Order Relative to Local Permits, Licenses and Ordinances (“Motion”).

I. Introduction

1. The Munis seek an expedited order “confirming” that Site Evaluation Committee (“SEC”) authority over the siting of electric transmission lines does not preempt local authority. The Munis’ Motion should be denied for three reasons. First, as explained below, the SEC process for review of an Application for a Certificate of Site and Facility expressly preempts local authority. Second, as a practical matter, the Expedited Motion is untimely inasmuch as the particular issues raised by the Munis will play out during the hearings. The Munis may express their views to the Subcommittee and/or stipulations or conditions may be submitted to the Subcommittee by the Applicants and the Munis, jointly or separately. Finally, the Munis offer

no basis for issuing an expedited order at this time regarding a position that was explicit in the Application filed seventeen months ago.

2. Importantly, the Munis “acknowledge and recognize that in the event that the Project is approved, they may not deny a permit or license merely because they disagree with the Project.” Motion at ¶ 13. At the same time, the Munis refer to the importance of having “oversight and knowledge of all infrastructure using and occupying the public right of way.” *Id.* at ¶ 11. In that regard, they give the example of the City of Concord’s use of crossing licenses “to keep track of poles and wires for taxation purposes.” *Id.* The Applicants are not opposed to such ministerial goals and are prepared to agree to appropriate stipulations or conditions. In fact, the Applicants are currently working with some municipalities on such matters and hope to engage with others. Thus, because the issues may be worked out during the course of the proceeding, as they typically are, that process should be allowed to continue rather than disrupt the orderly conduct of the hearings to address issues that may become moot.

II. Background

3. The Applicants filed an Application on October 19, 2015, for a 192-mile electric transmission line with associated facilities (“Northern Pass” or “Project”). Pursuant to Site 301.03 (d), the Application included a petition to the New Hampshire Department of Transportation for Aerial Road Crossings, Railroad Crossings, and Underground Installations in State-Maintained Public Highways. Application, Appendix 9. The Applicants also included comparable information relative to locally maintained highways. *Id.* Appendix 10. By the Application, Applicants requested permission to install the Project in local highways, noting that the SEC has exclusive authority to grant permission to an energy facility to utilize such highways. *Id.* Volume I, at 82-84.

4. On December 15, 2016, the Applicants filed revised design packages as part of DOT's permitting process including information on the underground portion of the Project and information relative to locally maintained highways. That design information was provided to all the parties to the SEC proceeding and was the subject of a technical session on February 21, 2017.

5. Having failed to establish a separate docket to address their claim that the Committee's authority under RSA Chapter 162-H does not preempt their authority to prevent or restrict construction of the Project, the Munis now seek an expedited ruling on that issue. They assert that the Committee's authority to issue a certificate under RSA Chapter 162-H does not "extend so far as to supplant the authority of a municipality to issue or not issue a permit or license for the utilization of municipally maintained highways" and that the New Hampshire Supreme Court decision in *Public Service Company of N.H. v. Hampton*, 120 N.H. 68 (1980), does not hold to the contrary. Motion at ¶ 15. While conceding that local permitting processes are ministerial in nature and do not allow them to deny a permit or license for the Project "merely because they disagree with [it]" (Motion at ¶13), they ask this Committee to decide *now, and in advance of the hearings*, that the Munis have authority over a number of issues, each of which might be used to interfere with, or arguably prevent, the construction of the Project for reasons other than the fact that they simply disagree with it. The decision requested by the Munis is unwarranted because the SEC process is designed, in part, to take into account municipal views and is designed to address each of the issues raised by the Munis through the hearing process. This is, in part, why the Munis sought to intervene in this docket, and is precisely why the Committee has allowed the Munis to participate.

III. Discussion

6. RSA 162-H:16, II provides that a certificate issued by the SEC “shall be conclusive on all questions of siting, land use, air and water quality.” This is a plain statement of the Legislature’s express preemption of any local authority over the three areas identified in the statute. Moreover, that section of the statute contemplates that the SEC will give “due consideration.....to the views of municipal and regional planning commissions and municipal governing bodies.” RSA 162-H:16, IV (b). If municipalities were free to impose restrictions on the construction of a project, subpart IV (b) would be unnecessary.

7. The Supreme Court’s decision in *Public Serv. Co. v. Hampton* confirms that the grant of a certificate by the SEC preempts local authority. When the Town of Hampton voted to require underground construction of electric transmission lines associated with the Seabrook Nuclear Plant, PSNH sought a declaratory judgment that the vote was void based on the preemptive effect of RSA 162-F, the predecessor to the current statute. The Supreme Court stated as follows:

A fair reading of RSA ch. 162-F reveals a legislative intent to achieve comprehensive review of power plants and facilities site selection. The statutory scheme envisions that all interests be considered and all regulatory agencies combine for the twin purposes of avoiding undue delay and resolving all issues “in an integrated fashion.” By specifically requiring consideration of the views of municipal planning commissions and legislative bodies, the legislature assured that their concerns would be considered in the comprehensive site evaluation. Thus, the committee protects the “public health and safety” of the residents of the various towns with respect to the siting of power plants and transmission lines falling under the statute.

Public Serv. Co. v. Hampton, 120 N.H. 68, 71-72 (1980) (citations omitted).

The Supreme Court was unequivocal in its finding that the powers of towns were preempted:

We regard it as inconceivable that the legislature, after setting up elaborate procedures and requiring consideration of every imaginable interest, intended to leave the regulation of transmission lines siting to the whim of individual towns. Towns are merely subdivisions of the State and have only such powers as are expressly or impliedly granted to them by the legislature.... Whatever power towns may have to regulate the location of transmission lines within their borders, that power cannot be exercised in a way that is inconsistent with State law.

Local regulation is repugnant to State law when it expressly contradicts a statute or is contrary to the legislative intent that underlies a statutory scheme. The action by the defendant towns in this case is repugnant to RSA ch. 162-F because it is contrary to the legislative intent that all matters regarding the construction of bulk power plants and transmission lines covered by the statute be determined in one integrated and coordinated procedure by the site evaluation committee, whose findings are conclusive. By enacting RSA ch. 162-F, the legislature has preempted any power that the defendant towns might have had with respect to transmission lines embraced by the statute, and the actions by the defendant towns with regard to transmission lines is of no effect.

Id. at 72. The Court's decision leaves no room for doubt.¹ Once a certificate is issued, towns have no authority to prevent or regulate the construction or siting of a project, period.² The

¹ The Munis attempt to distinguish the Court's decision on the basis that Hampton's actions were taken five years after the grant of the certificate and refer to the case as a "narrow holding inapposite of whether a utility is required by explicit state law to obtain a permit or license under RSA 231:161." Motion at ¶15. But the decision draws no distinction between attempts by towns to regulate five years or five days after the issuance of the certificate and makes no exception for certain forms of local regulation. The holding is clear. Any attempt to frame it as "narrow" is wishful thinking on the part of the Munis.

² The Munis' concession in paragraph 13 of their Motion that they cannot deny a permit or license "merely because they disagree with the Project" does not go far enough. Once a certificate is issued, it "shall be conclusive on all questions of siting, land use, air and water quality." RSA 162-H:16, II.

interests of towns are, however, protected in the proceedings before the SEC given the requirement, discussed above, for the SEC to give due consideration to municipal views.³

8. Despite the plain language of the Supreme Court, the Munis focus on the final clause of RSA 231:160, which states, “as provided in this subdivision and not otherwise,” to argue that SEC preemption does not extend to electric transmission lines that are placed in locally maintained highways. But this language has been in the statute since 1935, well before the Legislature established the SEC and its governing statutes, and well before the Supreme Court issued its decision in the *Hampton* case finding that the Legislature preempted any power that a town might have had with respect to a transmission line following the issuance of a certificate under RSA 162-H or its predecessor. See *State v. Moussa*, 164 N.H. 108, 129 (2012) (finding that “when a conflict exists between two statutes, the later statute will control, especially when the later statute deals with a subject in a specific way and the earlier enactment treats the subject in a general fashion”).⁴ Accordingly, their argument is unavailing.

9. Indeed, the SEC recently exercised its preemptive authority over the siting of electric transmission lines in Eversource Energy/New England Power—Merrimack Valley, SEC Docket No. 2015-05. In that case, the SEC approved the applicants’ request to install an electric transmission line across, over, or under 29 locally-maintained highways. See Decision and Order Granting Application (October 4, 2016) at 85-87.

³ On February 9, 2017, the House of Representatives of the Legislature deemed “inexpedient to legislate” HB 145, entitled “An Act requiring municipal approval for siting high voltage transmission lines” by a vote of 229 to 60. As Representative Rand stated in speaking against the bill: “High voltage electric transmission lines are by their nature projects of regional or state-wide impact. This bill would allow a single municipality to deny them site access. Even though the interests of individual municipalities should be given every consideration and accommodation within the SEC process, the interests of the region or state should prevail. A municipal veto should not be an option.” House Record, February 3, 2017.

⁴ See also *Prof'l Fire Fighters of Wolfeboro, IAFF Local 3078 v. Town of Wolfeboro*, 164 N.H. 18, 22 (2012) (“We generally assume that when the legislature enacts a provision, it has in mind previous enacted statutes relating to the same subject matter ... Thus, when interpreting two statutes that deal with a similar subject matter, we construe them so that they do not contradict each other and so that they will lead to reasonable results and effectuate the legislative purpose of the statutes”).

10. The Munis attempt to muddy the waters by characterizing the approval pursuant to RSA 231:160 as “predominantly a ministerial process” and not cumbersome. It may be the case that municipalities tend to apply a “light touch” when reviewing such requests, but that does not alter the fact that, when such a request is properly before a municipality, it is exercising permitting or regulatory authority and making a determination pursuant to RSA 231:168 whether the installation of an electric line interferes with the safe, free and convenient use of the highway for public travel. If such approval were entirely a ministerial process, or a consensual process, (both of which are discussed further below) it might be a different matter, but once a certificate is issued, it preempts any local authority, ministerial or otherwise. Consequently, the Applicants’ request to install the Project in locally maintained highways pursuant to RSA 231:160 is properly before the SEC, not the Munis.

11. As noted, RSA 162-H:16, IV (c) makes clear that the SEC will give due consideration to the views of municipalities as part of the findings it must make to issue a Certificate. Thus, each of the issues identified in Part B of the Motion can, and will, be addressed in the proceedings before this Committee. In addition, a common practice in SEC proceedings involves the execution of a consensual agreement between an applicant and a municipality concerning matters of the type raised by the Munis.⁵ Included as Attachment A is an example of a letter recently sent to municipalities along the Project route indicating the

⁵ See, e.g., SEC Docket No. 2010-01, Groton Wind, LLC, Exhibit App 32 – Agreement with the Town of Groton, Decision issued May 6, 2011, pp. 34-37; and SEC Docket 2015-02, Antrim Wind Energy, Inc., Exhibit App 17a – Agreement with the Town of Antrim, Decision issued March 17, 2017, pp. 92-100.

Applicants' interest in negotiating an agreement that would address concerns about the construction process.⁶

12. The Munis also say that “any suggestion that the municipalities would withhold permits or licenses...is entirely unfounded and should not be used as a basis for eliminating the requirement of receiving a local permit.” Motion at ¶ 13. But, the Applicants' position is not based on a prediction of whether a particular municipality would improperly withhold a permit.⁷ Rather, it is based on the preemptive effect of RSA Ch. 162-H, by which the Legislature eliminated any concern that a municipality *could* interfere with a project after the issuance of a certificate by making the siting and construction of transmission lines the exclusive province of the SEC.

13. Finally, granting the Munis' Expedited Motion will likely have the effect of extending the deadline for supplemental testimony and delaying the adjudicative hearings, which is entirely untimely and unjustified. Presumably all the concerns the Munis may have are reflected in the pre-filed testimony submitted to date. Certainly, the preemptive authority of the SEC has been recognized for well over 30 years, and one must assume, if for no other reason than an abundance of caution, that the Munis would have taken that into account in preparing their pre-filed testimony.

⁶ The Munis argue that the testimony of John Kayser should be read to mean that the Applicants concede that the SEC does not preempt local authority. Motion at ¶ 19. The import of Mr. Kayser's testimony is that the Applicants are prepared through agreements with municipalities and/or as conditions to a Certificate to comply with the typical substantive requirements contained in various local ordinances and regulations. Moreover, the Applicants have provided a draft of such an agreement to a number of municipalities to accomplish that result. The Applicants' position has been clear: they do not concede that the Munis have authority relative to the siting of an electric transmission line either with respect to RSA 231:160 or permits pertaining to blasting, noise, or traffic safety considerations, all of which are routinely addressed by the SEC (and preempted by RSA 162-H:16) when it issues a Certificate.

⁷ At the same time, however, it is the case that some municipalities continue to take measures to establish new ordinances or regulations aimed at the Project. For instance, the Town of Easton placed a number of warrant articles before the annual town meeting just last week addressing blasting and drilling that are related to the installation of the Project.

14. The Munis were given over a year from the date on which the Applicants filed their application with the SEC to prepare the pre-filed testimony due November 15, 2015, and were given over a year from the date the SEC accepted the Application to prepare pre-filed testimony that was due December 30, 2015. Now, some 37 years after *Hampton*, almost one and a half years after the application was filed, and on the eve of adjudicative hearings, the Munis appear to claim some disadvantage in their ability to adequately prepare pre-filed testimony, and to position themselves to claim the need for more time to add in supplemental testimony what was clearly capable of being included in the initial pre-filed testimony. This late effort runs contrary to any concept of orderly management of the proceeding, and should be rejected as such. The Applicants should not bear the brunt of the Munis' inattention or strategic delay, as the case may be.

IV. Conclusion

15. The legal status of SEC preemption is well established. Yet the Munis ask the SEC to issue an order "confirming" that the Applicants must obtain local permission under RSA 231:160 and comply with other local ordinances and regulations. This simply requests that the SEC ignore the law and depart from past practice. Such an order would not confirm anything. Instead it would be "contrary to the legislative intent that all matters regarding the construction of bulk power plants and transmission lines covered by the statute be determined in one integrated and coordinated procedure by the site evaluation committee whose findings are conclusive." *Public Serv. Co. v. Hampton, supra*, at 72.

WHEREFORE, the Applicants respectfully request that the Presiding Officer:

- a. Deny the Munis' Expedited Motion; and
- b. Grant such further relief as it deems appropriate.

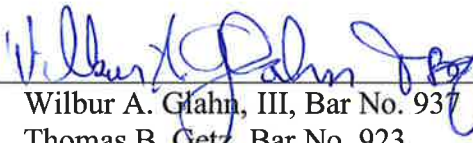
Respectfully submitted,

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

By Their Attorneys,

McLANE MIDDLETON,
PROFESSIONAL ASSOCIATION

Dated: March 23, 2017

By: 
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Certificate of Service

I hereby certify that on the 23rd day of March, 2017 the foregoing Objection was electronically served upon the SEC Distribution List and the original and one copy will be hand delivered to the Site Evaluation Committee.


Thomas B. Getz



ATTACHMENT A



March 14, 2017

Northern Pass Transmission, LLC.
P.O. Box 330
780 North Commercial Street
Manchester, NH 03105-0330

CERTIFIED MAIL

Board of Selectmen
Town of Deerfield
P.O. Box 159
Deerfield, NH 03037

Dear Selectmen,

We are about to commence the final hearings for the Northern Pass Transmission Project. It is customary at this point in the Site Evaluation Committee (SEC) process to reach out to communities along the proposed route to discuss the potential for a stipulation or Memorandum of Understanding (MOU) focused on avoiding and minimizing construction related impacts that may be a concern to local residents, business owners, and the community as a whole.

An MOU reflects our commitment to work with your community to minimize impact and disruptions to the public during the construction phase of the project. In addition, an MOU would confirm mutually-established expectations (e.g., property tax commitments) and can address numerous construction issues, such as work hours, use of town roads, traffic controls, location of equipment and material staging areas, lighting, disposal of construction debris, blasting, construction vehicles, liability insurance, environmental plans, site security, emergency response, and reports to the municipality. This list is not exclusive—if there are other issues that you would like to discuss, we are open to that as well.

The Applicants believe that such an MOU between the town and the Applicants can effectively address many of the concerns raised by the host communities in the SEC proceedings.

We have attached additional information on the construction MOU process that you might find useful.

Members of the Northern Pass team are available to have a working meeting with your designated point of contact to discuss the MOU and the concerns it is capable of addressing. Such a working meeting is often the best format for addressing the technical details associated with construction of a project of this type. Please contact us at 1-800-286-7305 with your availability for a meeting to explore the potential for an MOU with your community. If this is a good time for that, we will share with you the template MOU we have prepared that forms the basis for our discussions.

Thank you for taking the time to consider this information.

Sincerely,

A handwritten signature in dark ink, appearing to read 'Jerry Fortier', is written over a light blue horizontal line.

Jerry Fortier
Project Director - Transmission

Attachment: Northern Pass: Construction Phase Mitigation Measures/MOU Process

ATTACHMENT A

Northern Pass: Construction Phase Mitigation Measures

Northern Pass is committed to working together with your community to avoid and minimize construction related impacts and disruptions to local residents, business owners, and the community as a whole. As we prepare for the construction phase of the project, Northern Pass is looking for ways and ideas that will help to address community concerns and avoid inconvenience to the public.

Northern Pass is reaching out to communities along the proposed route to discuss their interest in entering a Memorandum of Understanding (MOU) with the project. A MOU with your community can detail our agreed-upon construction impact mitigation measures and address such issues as public information commitments, environmental and construction considerations unique to your community, communications protocols during construction, and property tax agreements.

The Applicants believe that such an MOU between the town and the Applicants can effectively address many of the concerns raised by the host communities in the SEC proceedings.

How will a MOU benefit my community?

A MOU is a signed agreement that formalizes our commitment to work with your community and confirms mutually-established expectations (e.g., property tax commitments) and can address numerous construction issues, such as matters of public health and safety, use of town roads, traffic controls, liability insurance, environmental plans, emergency response, and reports to the municipality. It is the product of good faith discussions between your community and Northern Pass to constructively identify and resolve specific local issues pertaining to the project.

If accepted, the MOU will eventually become enforceable conditions as part of the SEC decision and order.

Specific areas of understanding may include, but are not limited to:

- Community outreach and communications framework to be used during construction (e.g., construction schedules, contact for public inquiries and complaints, primary points of contact for Northern Pass and community).
- Construction practices (e.g., best practices; lighting; temporary storage, staging and laydown areas; locations where workers assemble before and after a shift; advance notice of expected construction activities and public travel impact).
- Construction vehicle operation (e.g., weight limits, road and driveway access, staging/idling limitations, approved hours for construction vehicle use, inventory of road conditions, proper markings at job sites, liability protection for road restoration).
- Work hour limitations that include minimizing impact on local traffic and businesses.
- Safety and public health issues (e.g., clearly visible warning signs and reflective objects around high-voltage and construction areas, emergency response plan and coordination, certificate of liability insurance coverage, documentation of any environmental or industrial incidents, compliance with state herbicide requirements for right-of-way maintenance).
- Site restoration responsibilities and proper disposal of construction debris/waste.
- Blasting plans, if applicable (e.g. safeguards to ensure building foundations, wells or other structures are not damaged by blasting; safe handling and transportation of blasting materials).
- Environmental considerations such as stormwater plans, wildlife protection, and sensitive areas.

This list is not exclusive—if there are other issues that you would like to discuss, we are open to that as well.

Construction will take place once Northern Pass has received all necessary federal and state approvals.