

STATE OF NEW HAMPSHIRE
SITE EVALUATION COMMITTEE
DOCKET NO. 2015-06
APPLICATION OF NORTHERN PASS TRANSMISSION, LLC
OBJECTION TO APPLICANTS' MOTION TO STRIKE
SUPPLEMENTAL PRE-FILED DIRECT TESTIMONY
OF STEPHAN T. NIX, ESQ, LLS
IN SUPPORT OF
COMBINED GROUP CLARKSVILLE-STEWARTSTOWN
BRAD AND DARYL THOMPSON ABUTTING INTERVENORS

April 4, 2016

Now Come, Bradley and Daryl Thompson, on behalf of the Combined Intervenors of Pittsburg, Clarksville and Stewartstown, Group I North, and request that the Applicants' Motion to Strike the Supplemental Pre-Filed Direct Testimony of Stephan T. Nix ("MTS") be denied. In support hereof the following is offered:

1. Northern Pass Transmission LLC and Public Service Company of New Hampshire d/b/a Eversource Energy (the "Applicants") state in ¶ 13 of the MTS:

The pre-filing of written testimony in administrative proceedings is grounded in principles of administrative efficiency and is intended to promote the orderly conduct of proceedings. Pre-filing saves time normally required for the direct examination of witnesses and experts during hearings, and obviates depositions and other burdensome forms of discovery. During the hearing, the witness is sworn, adopts the testimony, and is cross-examined on it.
Id. at 3. (Underline added).

2. In *Re: Application of Antrim Wind Energy, LLC, SEC docket 2015-02, Order on Motions to Strike, Sept. 19, 2016*, the SEC stated:

Supplemental testimony usually addresses matters that were not known before the filing of direct testimony or to address evidence, issues and arguments that arise during the discovery phase of the matter. However, there is no statute or rule that specifically defines or specifies the requirements for supplemental testimony. On the other hand, RSA 541-A: 33, II provides the foundation for the admissibility of evidence in administrative proceedings:

The rules of evidence shall not apply in adjudicative proceedings. Any oral or documentary evidence may be received; but the presiding officer may exclude irrelevant, immaterial or unduly repetitious evidence. Agencies shall give effect to the rules of privilege recognized by law. Objections to evidence

offered may be made and shall be noted in the record. Subject to the foregoing requirements any part of the evidence may be received in written form if the interests of the parties will not thereby be prejudiced substantially. RSA 541-A: 33, II.

The touchstone for admissibility in administrative proceedings is relevance and the avoidance of immaterial or unduly repetitious evidence. The motion to strike must be considered in the light of RSA 541-A: 33, II. *Id. at 4.* (underline added) (statutory quote in original).

1. In this matter, the Nix Supplemental Pre-Filed Testimony (“*Nix Supp.*”) is filed “to address evidence, issues and arguments that arise during the discovery phase of the matter” *Id.*; specifically issues raised by the Applicant’s counsel at the March 1, 2017 technical session. Further, *Nix Supp.* contains detailed factual evidence supporting the argument that the NP Plans are deficient as a matter of law and insufficient for the SEC to make a decision.¹
2. In addition, *Nix Supp.* is filed to “save[] time normally required for the direct examination of witnesses and experts during hearings, and obviate[] depositions and other burdensome forms of discovery.” *MTS, supra.*
3. At the March 1, 2017 technical session, counsel for the Applicant asked Mr. Nix to provide details regarding the deficiencies and conflicts in the Applicant’s right of way plans (https://www.nhsec.nh.gov/projects/2015-06/letter-memos-correspondance/dec-dot-response/2015-06_2016-11-30_dot_maps.pdf). (“Plans” or “NP Plans”). In way of answer, Mr. Nix offered a verbal page by page review of the NP Plans² to which counsel for the Applicant indicated that for efficiency purposes, a follow-up data request would be made.
4. A data request, dated March 3, 2017, was made. *See* https://www.nhsec.nh.gov/projects/2015-06/letter-memos-correspondance/2015-06_2017-03-03_tech_memo_march1.pdf.
5. The data request included requests to:
 1. Provide the plans for the properties that about the ROW that Mr. Nix reviewed on the Coos County Registry of Deeds website.

¹ Further supporting this argument, the *Antrim SEC* found: “The supplemental testimony of Richard Block may be relevant to the issues before the Subcommittee. ... Mr. Block makes a plausible argument that his supplemental testimony is in response to matters raised during the discovery phase of this docket after the filing of his original testimony. The request to strike the supplemental testimony of Richard Block is denied. ... The supplemental testimony of Barbara Berwick included certain attachments that may be relevant to the issues before the Subcommittee ... Ms. Berwick makes a plausible argument that her filing is responsive to some very broad questions asked of her and other intervenors during the technical sessions. The request to strike the supplemental testimony of Barbara Berwick is denied.” *Antrim at 4.*

² The NP Plans consist of a 95 sheet plan set.

2. Provide the specific locations where the plans conflict with the boundary alignment.
 3. Provide the specific locations where the lines 'jog" in the ROW.
 4. Provide the specific locations where the plans conflict with existing fences, walls, and structures.
 5. Provide the locations where the monuments and cemeteries conflict with the plans as noted on Page 7, Lines 8-15, of the pre-filed testimony.
6. Mr. Nix's December 30, 2016, ("*Nix 12/30/16*") pre-filed testimony included relevant statements of fact indicating that the NP Plans are deficient and do not meet the minimum standards required by law for the SEC to make its decision. *Nix 12/30/16 p. 3 et seq.*
 7. It is expected that at the adjudicative hearing that Mr. Nix's relevant direct examination will include a detailed review of the deficiencies on the NP Plans. Mr. Nix's relevant and detailed analysis of the NP Plans in the Supplemental Pre-Filed Testimony, consisting of approximately 100 tabled factual items of conflicting data related to the NP Plans, was pre-filed to "saves time normally required for the direct examination of witnesses and experts during hearings, and obviates depositions and other burdensome forms of discovery." *MTS* at 3.

Conclusion

Nix Supp. contained relevant evidence to the issues before the SEC and was pre-filed with the SEC in direct response to the Applicant's discovery requests and will save time and resources during the adjudicative hearings. The Applicant is not prejudiced by *Nix Supp.* as the Applicant will have the opportunity to cross examine Nix during the adjudicatory hearings.

For these reasons, Bradley and Daryl Thompson, on behalf of the Combined Intervenors of Pittsburg, Clarksville and Stewartstown, Group I North, request that the APPLICANT'S MOTION TO STRIKE be DENIED.

Respectfully submitted,
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