

**The 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 to Construct a New Voltage Transmission Line and  
Related Facilities in New Hampshire**

**Motion to Dismiss and Final Brief of the Dummer-Stark-Northumberland Group**

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**Motion to Dismiss Joint Application**

The Dummer-Stark-Northumberland Group moves to dismiss Applicants' Joint Application for the reason that the Joint Application and the evidence offered in support of the Joint Application is fatally deficient and will not support the public interest finding required by RSA 162-H:16 IV(e) for the following reasons:

1. The Applicants failed to join a necessary and indispensable party Hydro-Quebec (HQ). Applicants' decision to file this case without joinder of Hydro-Quebec (HQ) as an Applicant renders it impossible for the Site Evaluation Committee (SEC) to make the findings required

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by RSA 162-H:16, IV(a) that Applicants have adequate financial capability to assure construction and operation of the project.

2. The Applicants' failure to provide analysis of the project impacts on Public Service Company of New Hampshire (PSNH) rate payers in the event that the alternating current portion of the project is conveyed to PSNH in accordance with the Transmission Service Agreement (TSA).
3. The Applicants' failure to analyze whether the co-location of high voltage direct current transmission lines (HVDC) and high voltage alternating current transmission lines (HVAC) with a 24 inch high pressure gas pipeline rated at 1440 pounds per square inch (psi) in a 150 foot easement can be safely done.
4. The Applicants' failure to acquire the necessary legal rights to construct the project on the easements through Dummer, Stark and Northumberland as required by RSA 162-H:7 and Site 301.03(c)(b) a.<sup>1</sup>
5. The Applicants' failure to establish that the project will not have an unreasonable adverse effect on aesthetics, the environment, historic sites and public health and safety.

The Dummer-Stark-Northumberland Group moves to dismiss Applicants' Joint Application for the reason that the Joint Application is fatally deficient for want of a necessary and indispensable party.

Applicants' decision to file this case without joinder of Hydro-Quebec (HQ) as an Applicant renders it impossible for the Site Evaluation Committee (SEC) to make the findings required by RSA 162-H:16, IV(a) and RSA 162-H: IV(e).

### **Final Brief and Memorandum in Support of Motion to Dismiss**

#### **Status of Case**

Applicants Northern Pass Transmission LLC (NPT) and Public Service Company of New Hampshire (PSNH)<sup>2</sup> commenced this case on October 19, 2015, seeking a Certificate of Site and Facility for the Northern Pass. The Northern Pass a high voltage transmission project proposed to import electricity from Canada for sale into the New England wholesale market.

Joint Applicants represent that NPT will provide transmission service on the project to Hydro Renewable Energy Inc. (HRE), a United States subsidiary of Hydro-Quebec (HQ), in exchange for payment for the transmission services.

Joint Applicants represent that the HRE payments to NPT will allow NPT's parent company, Eversource Energy, to recover the costs to develop, construct, operate and maintain the project. (Pre-filed testimony of Michael J. Ausere, Applicants' Exhibit 7, page 2, lines 15-19).

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<sup>1</sup> The SEC does not have the jurisdiction to determine property rights. Property rights must be adjudicated by the courts. See SEC Order dated April 7, 2016, on Lagaspen Realty LLC Motion to Postpone.

<sup>2</sup> NPT and PSNH are wholly owned subsidiaries of Eversource Energy, "a Massachusetts business trust that has no employees." (William Quinlan testimony Day 2 AM, 04/14/17, p. 10, lines 13-16)

The critical legal relationship between Applicants and HRE is governed by the Transmission Service Agreement (TSA). (Ausere testimony, Applicants' Exhibit 7, page 3, lines 18-20). (DNA Exhibit 6). The FERC approved TSA termination date has, however, come and gone without any FERC approved extension or modification having been granted. (DNA Exhibit 6) The only thing left of the original TSA is a letter signed by HRE and Applicants on January 26, 2017 (the "Letter") in which the parties agree to modify the TSA at some point in the future based on the outcome of efforts to win the Massachusetts RFP or some other undefined future contingencies on "mutually agreed terms." (CFP Exhibit 16). This Letter is nothing more than an aspirational document in which HRE and Applicant state their hope and intent to agree on material terms of a new TSA at some point in the future before the end of 2020 based on the outcome of events that may or may not occur. The future terms that both parties may "mutually agree upon" are simply not knowable. This Letter, therefore, is not a contract. It is not enforceable. It is not based on a meeting of the minds where its essential terms are definite as required by New Hampshire law.<sup>3</sup>

The Applicants try to cure this gaping hole in their legal relationship with HQ and HRE by pointing to an unenforceable joint press release issued by HQ and Eversource Energy (App. Exhibit 83). For instance, in response to questions regarding the Applicants' financial relationship with HQ and HRE, William Quinlan stated:

"The single best document I could point you to is our joint press release."

(Quinlan cross-examination by A. Cunningham, Transcript Day 2 AM, 04/14/17, p. 43, lines 2-3.) When asked how the public could be assured that the Applicants' project would ever be built, Mr. Ausere responded:

"I think the most accurate statement that's out there came out in the joint press release we issued at the end of March, and I believe both of the CEOs in that statement stated their plans to proceed with the Project and it's not dependent on success in one RFP."

(Ausere cross-examination by A.R. Baker, Transcript Day 3 PM, p. 53, line 19 to p. 54, line 9.) Amazingly, the Applicants' representatives claim to have no idea whether or not an unsigned press release is legally enforceable for their alleged \$1.6 billion investment that may or may not be built. (Ausere declines to interpret the Letter by claiming, "Oh, I'm not a lawyer." Transcript Day 3 PM, 4/17/17, p. 55, line 11.)

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<sup>3</sup> A valid, enforceable contract requires offer, acceptance, consideration, and a meeting of the minds. Tsiatsios v. Tsiatsios, 140 N.H. 173, 178, 663 A.2d 1335 (1995). For a meeting of the minds to occur, the parties must assent to the same contractual terms. *Id.* That is, "[t]he parties must have the same understanding of the terms of the contract and must manifest an intention, supported by adequate consideration, to be bound by the contract." Fleet Bank–NH v. Christy's Table, 141 N.H. 285, 287-88, 681 A.2d 646 (1996). "Mere mental assent is not sufficient; a 'meeting of the minds' requires that the agreement be manifest," *id.*, based upon an objective standard, Tsiatsios, 140 N.H. at 178, 663 A.2d 1335. "Moreover, the terms of a contract must be definite in order to be enforceable." Syncom Indus. v. Wood, 155 N.H. 73, 82 (2006) (citing Behrens v. S.P. Constr. Co., 153 N.H. 498, 501 (2006)).



When Commissioner Bailey asked the Applicants' President Quinlan whether they would move forward with construction if they got their permits but did not win the Massachusetts RFP, he responded:

"I think we will, you know, discuss that with Hydro-Quebec and decide whether we're prepared to move into the construction phase."

(Transcript Day 2 PM 04/14/17, p. 74, lines 11-12.)

Thus, financial backing for the entire project is missing from this record. The Applicants are really asking this Committee to give HQ an unlimited option to proceed if it wants and on financial terms it specifies at some point in the future. This request is made for the profit motive of HQ and its subsidiary HRE. The Applicants of course hope that they will be cut in on the deal. There is nothing wrong with a profit motive on the part of a foreign government owned crown corporation and its U.S. based ally, but that motive may never provide the public benefit required by RSA 162-H:16. Neither HQ, nor its subsidiary HRE, is a party to the Joint Application for Certificate of Site and Facility or a party in this docket. There is no legally enforceable contract before this Committee. The Applicants have hopes based on press releases issued by a foreign company, but that won't deliver power over their proposed project; nor will it pay for the project.

The absence of HQ and its subsidiary HRE is fatal to the Application.

**Joint Applicants' Lack of Financial Capability in the Absence of Hydro Quebec As a Party to the Docket**

**RSA 162-H:7, V(e) and Site 301.04(1) -(5)) Require That Applicants Prove the Financial Capability to Construct and Operate the Project**

**Joint Applicants' Representation That NPT Has the Financial Capability to Construct and Operate the Project Is Wholly Dependent Upon HQ's Credit Worthiness and Financial Commitment to the Project<sup>4</sup>**

**The Absence of H-Q from the Docket Renders It Impossible for the SEC to Make the Required Findings**

Joint Applicants' witness Michael J. Ausere testified that the financial strength of Eversource Energy will ensure that NPT has adequate funds for the construction of the Northern Pass. (Ausere pre-filed testimony, page 2, lines 15-18, Applicants' Exhibit 7).

Mr. Ausere testified that the basis of NPT's financial capability is the TSA executed between NPT and HRE and the "financial strength of HRE's parent HQ". (Ausere pre-filed testimony, page 2, line 21, Applicants' Exhibit 7).<sup>5</sup>

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<sup>4</sup> The Eversource decision to not include H-Q as a party to the Joint Application and this docket should be of grave concern to the SEC on many levels, including H-Q's financial commitment to the project, the unknown costs of the project and HQ's ability to participate in the forward capacity market, the underpinning of Frayer public interest testimony.

Mr. Ausere's testimony did not include the financial documentation for HRE and its parent HQ required by Site 301.04(a)(1)-(4). Mr. Ausere failed to provide a description of HQ's experience financing energy facilities; a description of HQ's corporate structure; a description of HQ's financing plan; or current and proforma financial statements.

The absence of evidence that establishes HQ's creditworthiness and financial commitment to the project is a fatal omission in Joint Applicants' case.

The failure to provide the evidence required by RSA 162-H:7, V(e) and Site 301.04(1) -(5)) is compounded because HQ is not a party to this case. No HQ witness appeared before the SEC to be examined under oath about its financial resources or its financial commitment to the project.

The Site Evaluation Committee (SEC) cannot make the determination required by Site 301.13(a)(1)-(4) without evidence of HQ's financial resources and financial commitment to the project.<sup>6</sup>

**RSA 162-H:16, IV(a) and Site 301.13(a)(4) Require the SEC to Render a Finding That Applicants Have the Financial Capability to Operate the Project Based Upon Financial Commitments the Applicants Have Obtained from Others (HQ)**

NPT relies upon the now terminated TSA to support the requirement that it has obtained a financial commitment from HQ to operate the project. (Ausere testimony, page 2, lines 18-21, Applicants' Exhibit 7).

Even if the TSA was still in effect, it is riddled with exceptions and conditions. The TSA is legally inadequate to support the required SEC finding such a financial commitment from HQ.

The TSA, at paragraph 3.3.29(a), allows HQ subsidiary HRE to terminate the TSA prior to the construction phase for any reason including for disputes regarding the preliminary budget or the failure to execute term sheets for a construction project.

The TSA, at paragraph 3.3.6(a), allows HQ subsidiary HRE to terminate the TSA if the aggregate amount budgeted for the project costs exceeds the project cost detailed in the preliminary budget by 15%.

Multiple other provisions allow HQ subsidiary HRE to terminate the TSA including paragraph 4.3.1 owner (NPT) delay.

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<sup>5</sup> The sole support for this Ausere testimony is his Attachment J, Hydro-Quebec Credit Ratings and Outlook to his pre-filed testimony. The Fitch outlook for HQ is negative, S & P has not provided an outlook rating and Moody's rates the HQ outlook stable.

<sup>6</sup> Eversource Executive William Quinlan was asked on cross-examination about concerns expressed publicly about the project's rising costs and HQ's commitment to the project. Quinlan was asked if documents required by the TSA would be presented to the SEC to reassure the public about project costs. Quinlan responded that a joint press release was the "single best document" to reassure the public. (Quinlan cross-examination, day 2, AM, pages 40-44). Mr. Quinlan's representation that a press release is adequate is laughable.

HQ is not a party to this case nor did any HQ witness appear before the SEC to be examined under oath about whether it intends to proceed under the TSA in view of its termination rights regarding project costs.<sup>7</sup>

**RSA 162-H: 16, IV(e) and Site 301.03(h)(7) Require a Finding by the SEC That the Project Is in the Public Interest**

**The SEC Cannot Make the Required Finding in the Absence of HQ as a Party to this Case**

NPT relies upon the testimony of Julia Frayer of London Economics, LLC, (LEI) to establish that the project is in the public interest. Ms. Frayer opined that New Hampshire electricity customers would realize savings because the project would reduce wholesale energy costs (10% of the savings) and that HQ would enter the project into the ISO-New England forward capacity market auctions (90% of the savings).

The absence of HQ from the docket poses two problems fatal to the Frayer opinion regarding the public interest.

One, even if the TSA as modified by the Letter was enforceable, the TSA does not impose any legal obligation that HQ (or any HQ subsidiary) enter the project into the ISO-New England forward capacity auctions.<sup>8</sup>

Two, the Frayer forward capacity market savings calculations are suppositions and hypotheses rooted in hearsay beyond the reach of proper cross-examination.<sup>9</sup> Ms. Frayer's calculations are not based on first-hand information about the willingness or ability of HQ to successfully bid into the ISO-New England forward capacity market.

For example, ISO-New England rules require that an entrant into the forward capacity market submit a capital budgeting model and documentation that supports the entrant's offer into the auction. The documentation must ensure that the entrant is not entering the market below its costs and that buyers of capacity have not subsidized the new entry to suppress costs below competitive levels.

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<sup>7</sup> The sole information about project costs available to the SEC is Applicants' promotional representation that the project will cost \$1.6 billion. Applicants produced *no evidence* supporting the actual costs of the project. The actual costs are critical to the LEI and Brattle Group economics calculations

<sup>8</sup> Indeed, the TSA does not require HQ to transmit any electricity over the project. Article 7 of the TSA provides only that NPT shall make transmission capacity available to HQ for a price. No TSA provision requires HQ to transmit electricity.

<sup>9</sup> See, for example, the redirect examination of Brattle Group panel by CFP counsel Tom Pappas on Frayer, Supplemental Response, Figure 18. Table 18 is the worst kind of hearsay on the crucial FCM issue. (Transcript Day 53, AM session, pages 120-126). The table purports to show that HQP will have excess capacity to sell 1090 MW over the Northern Pass and meet the capacity requirement in the FCM. Witness Weiss questioned the integrity of the Table 18 documentation.

HQ, in order to qualify a bid into the market, must submit a complete capital budget model that matches the submitted offer floor price. The documentation must include energy and capacity forecasts. HQ's capital costs (including cost of capital), variable costs and fixed annual costs must be presented in detail. Third party reports supporting the model assumptions must be included. The model inputs used to support the project investment should be included together with the assumptions supported by internal financial and technical reports. Energy and ancillary revenues must be shown. The ISO-New England internal market monitor (IMM) will review all the materials for accuracy. The IMM cost workbook provides analysis of the HQ entire 12-month obligation and provides the minimum offer price for the project to supply capacity for the entire period. The workbook examines opportunity costs and supporting documentation such as power price forecasts, dispatch models and contracts.

The SEC cannot make a decision on HQ's willingness and ability to successfully enter the forward capacity market on the Frayer suppositions and hypotheses without direct testimony and documentation from HQ.

HQ is not a party to this case nor did any HQ witness appear before the SEC to be examined under oath about its willingness or ability to enter the project into the forward capacity market.

The failure of Applicants to join HQ as a party to this docket and make HQ witnesses available for sworn cross-examination in support of the Frayer forward capacity market analysis is a fatal flaw in Joint Applicants' presentation to the SEC.<sup>10</sup>

Applicants, without the Frayer alleged forward capacity market savings, cannot establish that the project is in the public interest.

Without such evidence, the SEC cannot make the finding that the project is in the public interest as required by RSA 162-H:16, IV(e).

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<sup>10</sup> SEC adjudicative hearings must be conducted in accordance with RSA 541-A. Site 202.21 requires that testimony shall be under oath and subject to cross-examination by the parties and the SEC. RSA 541-A:33, IV permits cross-examination for a full and true disclosure of the facts.

**Joint Applicants Failed to Provide Analysis of the Impacts Upon PSNH Ratepayers Should the Alternating Current (AC) Portion of the Project Be Conveyed to PSNH As Authorized by the TSA**

**Transfer of the Costs of the AC Portion of the Project to PSNH Ratepayers Is Not in the Public Interest**

NPT has the contractual authority under the TSA at Section 8.6, page 56, Transfer and Cost Recovery of AC Line (DNA Exhibit 6) to transfer the AC portion of the project to PSNH. This TSA provision will allow PSNH to lay off project costs onto PSNH rate payers.

Joint Applicants did not present evidence to the SEC of the consequences to PSNH ratepayers of the transfer of the AC line to PSNH.<sup>11</sup>

The failure of Applicants to address the impacts on PSNH rate payers of transfer of the AC portion of the project to PSNH is exacerbated by the public reports of friction between Applicants and HQ about project costs. (See Quinlan cross-examination, day 2, AM, pages 40-44). The TSA allows NPT to resolve project cost disputes with HQ at the expense of PSNH rate payers.<sup>12</sup>

The failure of Joint Applicants to present evidence to the SEC on the costs of the AC portion of the project presents an unknowable risk to PSNH ratepayers, a risk that is not in the public interest. RSA 162-H: 16, IV(e) and Site 301.03(h)(7).

The Joint Applicants' failure to analyze the rate impacts on PSNH ratepayers should the AC portion of the project be transferred to PSNH is fatal to the Joint Application.

**The SEC Cannot Make the Public Health and Safety Finding Required by RSA 162-H:16, IV(c) and Site 301.08(b) and Site 301.08(c)(1) -(4) for the Reason That Joint Applicants Failed to Provide Evidence That the Project Can Be Co-located in a 150-Foot Easement Occupied by a 24-Inch High Pressure Gas Pipeline Without Adverse Impacts on Public Health and Safety**

NPT proposes to construct 320+/- kV high voltage direct current (HVDC) transmission lines and 115 kV high voltage alternating current (HVAC) transmission lines in the 150-foot easement in Dummer, Stark and Northumberland. The easement occupied by a 24-inch 1440 psi high pressure gas pipeline owned by Portland Natural Gas Transmission System (PNGTS).

NPT has not done any engineering to establish the relationship of the project transmission lines to the existing pipeline and if the co-location can be done safely. (Transcript, day 10, AM, pages 22-46).

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<sup>11</sup> The CFP expert witness on project economics Brattle Group admitted on cross-examination that they did not analyze the impacts on PSNH ratepayers should the AC portion of the line be transferred to PSNH. (Transcript, day 53 AM, pages 125-130). The CFP witnesses also admitted they had no information on the costs of the AC portion of the project.

<sup>12</sup> The TSA language allowing NPT to transfer the AC portion of the project to PSNH highlights yet again the absence of HQ as a party to the case. HQ, if available for testimony and cross-examination, could have provided evidence of why the transfer language was in the TSA from its point of view.

NPT has not discussed the co-location with PNGTS. (Transcript, day 10, AM pages 32-33). NPT has not reviewed publicly available literature on the dangers of co-location such as the INGAA Foundation Inc. October 2015, Criteria for Pipelines Co-Existing with Electric Power Lines. (DNA Exhibit 62). (Transcript, day 10, AM, pages 34-38). Mr. Bradstreet of Applicants' construction panel testified that the fears raised regarding co-location in the INGAA study would be allayed by the study Applicants commissioned. (Transcript, day 10, AM, page 38).

The study produced by Applicants only exacerbated the co-location fear.

On June 30, 2017, Applicants produced a document entitled Northern Pass HVDC Preliminary Interference Assessment (Assessment) authored by Corrpro. (DNA Exhibit 65, Applicants' Exhibit 179). The Assessment dramatically describes the dangers of co-location but does not provide any analysis and engineering to ensure that the co-location can be safely done as part of the project.

NPT filed a motion with the SEC asking that the SEC accept the Corrpro Assessment as all that was necessary to satisfy RSA 162-H:16, IV(4)(c). Chairman Honigberg denied the NPT motion. The Chair's Order denying the NPT motion is consistent with Order No. 26,052 in PUC DE 15-464 in which the PUC, Martin Honigberg Chair, ruled, at page 5, that it is the SEC that has the authority to examine public safety as review of the Northern Pass project. Quoting from the Order: "...Pursuant to statute, to issue a certificate of site and facility, the SEC would have to find that the Northern Pass Project would not have an unreasonable effect on the public health and safety (among other criteria). RSA 162-H:16, IV(c)...".

**Applicants Did Not Timely Disclose nor Did the SEC Timely Delegate the Public Safety Concerns about the Co-location of High Voltage Electric Transmission Lines with High Pressure Gas Pipeline to an Agency with Expertise in Co-location<sup>13</sup>**

The SEC has not delegated the authority to review the safety aspects of the co-location of the high voltage transmission lines with the TNGTS high pressure pipeline to a state agency as required by RSA 162-H:4, III.<sup>14</sup> Had the SEC chosen to *timely* delegate such authority to an agency with pipeline and high voltage transmission co-location safety expertise, interveners such as Lagaspence Realty, LLC, Rod Beland, the Olson family and others situated proximate to the proposed co-location pipeline and high voltage transmission lines, could have challenged the safety of the project on the record before such agency and on the record in this case.

RSA 162:H:7, IV requires the applicants to provide sufficient information in the application to satisfy the application requirements of each agency having jurisdiction under state or federal law.

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<sup>13</sup> The SEC has in the past referred pipeline safety concerns to the NHPUC-Safety Division. (See SEC Docket No. 00-01). In that case, Tennessee Gas Pipeline had fully developed plans and specifications at the time of SEC referral. Applicants in the case at bar have no such plans.

<sup>14</sup> The SEC has, in the past, required expert evidence and review of pipeline construction plans and specifications for public safety compliance. See for example, DSF-85-155, EFEC 89-01, SEC 96-01, SEC 96-03 and SEC 2008-02. The author was unable to locate any SEC co-location case.



The SEC is required to *expeditiously* forward a copy of the application to the agency and the agency is required to conduct a preliminary review and report back to the SEC if the application includes adequate information for the agency to satisfy its regulatory responsibilities.

Applicants did not identify the co-location safety concerns in the application. The SEC did not delegate the safety concerns to an agency with safety expertise. The statutory deadlines imposed by RSA 162-H:VI-b and VI-c have expired.

Further, the SEC may not now, as a condition of a Certificate of Site and Facility, find that existing state or federal statutes or rules will provide adequate safety protections.<sup>15</sup> RSA 162-H:4, IV(a)-(d) requires that such determination be made within 60 days of the December 18, 2015, acceptance of the application. RSA 162-H:4 also requires that a public hearing be held on the matter to exempt the applicant from the approval and certificate provisions of RSA 162-H.

No such hearing has taken place.

### **Property Rights of Intervenorors to Be Preserved**

The DNA Intervenorors assert that the Applicants have failed to meet their burdens under RSA 162H for all the reasons previously specified and for the various reasons raised and briefed by other intervenors, including Council for the Public, the NGOs, the SPNHF, the various municipal groups in opposition to the Application, and other abutter and non-abutter groups. Those arguments are incorporated herein and made a part hereof.

DNA Intervenorors have also asserted that: (a) the Applicants have not acquired, and cannot acquire, the necessary legal rights for their proposed project to use over 500 separate properties, especially including their own, based on various easement deeds and eminent domain proceedings granted to PSNH more than 60 ago; and (b) that such private property disputes can only be resolved in the courts and not by the SEC. (See, DNA Ex. 7, PFT of Karen Spencer, p. 4; DNA Ex. 10, PFT of Rodrigue Beland, p. 3, line 15 to p. 5, line 9; and DNA Ex. 12 PFT of Eric Olson, adopted by Joshua Olson, p. 6, line 9 to p. 7, line 16.)

The DNA Intervenorors are not spending additional time briefing those claims because this Committee and the New Hampshire Public Utilities Commission (“PUC”) have both stated that they do not have jurisdiction to resolve personal property disputes. However, to avoid any possibility of ambiguity or misunderstandings about the scope of the Committee’s jurisdiction, the DNA Intervenorors respectfully request that the Committee’s final decision explicitly state on its face in **bold font** that the Committee’s decision and jurisdiction are limited. Specifically, the DNA Intervenorors request that the Committee decision state:

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<sup>15</sup> 49 CFR 192.5 requires that gas pipelines within 220 yards of buildings intended for human occupancy comply with Part 192-Transportation of Natural and Other Gas by Pipeline: Minimum Federal Safety Standards. See also Puc 506.02. The Percy Lodge is intended for multiple room occupancy by tourists and other guests. Percy Lodge is located within the 220 yard standard. (Karen Spencer testimony, page 56, day 48, PM).



**“The Committee does not have the authority to adjudicate property rights between private parties. The ultimate determination of property rights is left to the courts.”**

(Committee’s Order on Lagaspence Motion to Postpone and Grafton County Motion to Continue dated April 7, 2016, p. 2. It is also requested that the Committee’s final decision contain the same language used by the PUC on page 1 of its Order No. 26,001 (issued in Public Service Company of New Hampshire d/b/a Eversource Energy’s Petition to Lease Rights-of-Way to Northern Pass, LLC, docketed at PUC DE No. 15-464):

**“[This decision] should [not] be construed as determining any property rights among Eversource, NPT, and any of the owners of the properties that are subject to the easements.”**

### **Joint Applicants Failure to Analyze the Impacts on Aesthetics and Historic Sites**

#### **RSA 162-H16**

#### **Site: 301.05-Effects on Aesthetics**

**Site 301.05b(5)** requires an Applicant’s Visual Impact Assessment to include “an identification of all scenic resources within the area of potential visual impact...”

The Applicants’ Expert, Terrance DeWan, failed to completely assess “all scenic resources” in the Dummer, Stark and Northumberland locations despite an invitation to explore the Nash Stream Forest, and the Kauffmann Forest, with highly knowledgeable and competent guides. In fact, Mr DeWan states that even after recognizing a significant landmark was overlooked, he did not explore that area nor the areas of scenic interest and use that were pointed out to him. (Transcript Day 33, DeWan/Kimball page 41, lines 6-22) Mr. DeWan also failed to observe by water the proposed project crossing of the Upper Ammonoosuc River, also known as the Northern Forest Canoe Trail. (Transcript, Day 33 AM, DeWan, pages 12-16).

DeWan minimized the visual impact of the proposed transmission line in his report of the Dummer Pond Sporting Club despite the line being prominently visible along the entire ridge of Dummer Pond. Dummer Pond was found to have an “adverse impact” by the Preservation Company and New Hampshire Division of Historic Resources. The “adverse impact” on Dummer Pond Sporting Camps is significant as an example of the discrepancies and arbitrary findings demonstrated by the Applicants and their expert witnesses. Dummer Pond Sporting Camps is listed as one of the 12 areas significantly impacted by the proposed transmission line. (CFP011901)

In the expert opinion of Terrance DeWan, he remarks in his supplemental testimony that the Project will not have “an unreasonable adverse effect on aesthetics”.(Supplemental Joint Testimony of DeWan/Kimball, page 38 lines 24,25)

The Applicants have identified this one Historically Significant Sporting Camp, and its pond environs as meeting the criteria for Adverse Impact on a Historic Property. One adverse impact is enough to deny the Application under 301.05b.

**Site 301.05b(6)** requires an Applicants Visual Impact Assessment to include a characterization of the potential impacts of the proposed facility based on, among other things, (a) “The expectation of the typical viewer” and (g) “The duration and direction of the typical view of elements of the proposed facility.”

The Applicants’ expert, Terrance DeWan, identified the Upper Ammonoosuc River, which winds through Dummer, Stark and Northumberland, as having a “medium” overall visual impact. This river is part of the Northern Forest Canoe Trail which identifies the Upper Ammonoosuc as one of the “prettiest sections of river to paddle in between Lake Champlain and Maine”. (NFCT). DeWan went on to posit that the “Views of the proposed structures will create a noticeable but relatively short change to a scenic part of the river”. (Northern Pass Visual Impact Assessment (subarea) 1-93)

The Applicants’ experts have consistently downplayed the single and cumulative impact of the siting of visible towers through the Dummer, Stark and Northumberland Distribution Corridor by suggesting that because the experience moving through the proposed alteration to the ROW, is relatively short, the viewer is not adversely affected. (DNA-PSC Exhibit 101). When the proposed corridor significantly alters the expectation of the typical paddler, hiker, day tripper, home owner, the project should be denied in its entirety.

#### **301.14 Criteria Relative to Findings of Unreasonable Adverse Effects**

**(1) and (4)** Existing Character and the scale and scope of the change in the landscape from affected resources.

The Applicants assert that because they are using an existing Right of Way, there is no adverse impact or alteration in the landscape that changes the character. However, the existing ROW through the towns of Dummer, Stark and Northumberland have been established and maintained at approximately 110’ of the available 150’ easement since 1946. The Applicant proposes to clear the ROW to its full 150’ thereby dramatically altering the characteristic of the existing ROW. The proposed tower structures, both monopoles and lattice, are significantly taller than the existing 45” poles. The tree canopy will be opened significantly along the entire corridor. The Applicant has failed to include any photo simulations of an expanded ROW in their plans thus depriving the parties involved in evaluating the project from a true representation of Adverse Impacts under 301.14.

**(6) and (7)** Effectiveness of mitigation and minimizing measures.

The Applicant has not identified mitigation or minimization measures that would preserve the existing character of the ROW through Dummer, Stark and Northumberland. The Applicants should be denied their certificate for failing to meet the obligations of 301.14 in a comprehensive manner. (DNA-PSC Exhibit 101)

### **301.16 Criteria Relative to Finding of Public Interest**

9. The Applicants have failed to meet the test of understanding the concerns of the Public in this Docket.

Intervenor Susan E. Percy, invited Bill Quinlan, Ken Bowes, Sam Johnson, and Terry DeWan in person to review the significant impact of the proposed transmission line to the Nash Stream Forest, the Kauffmann Forest, the Percy Forest, and Christine Lake on the public use of this area. None of the four people identified reached out to Intervenor Susan E. Percy, nor did they follow up in any manner.

While members of the Percy Summer Club met with Eversource representatives to discuss concerns (DNA-PSC 51) no member of the Eversource group, nor any NP representative contacted members of the Percy Summer Club for follow up beyond a reply to the letter referenced above.

The Applicant has publicly stated in multiple press announcements that there has been significant outreach to the public. That has not been the experience of the Percy Summer Club.

### **Site102.23 Historic sites**

**RSA 227-C: “any building, structure, object, district, area, or site that is significant in the history, architecture, archeology or culture of this state, its communities, or the nation.”**

The Applicant presented Cultural Landscape Studies that have not been properly evaluated. However, with the limited understanding of the intent and review of the Cultural Landscape Studies, the Applicant has failed to demonstrate that the project will not have a significant impact on Cultural Landscapes from multiple perspectives. As a result of the Cultural Landscape Studies not being included in the project application, the Applicants were only able to make the records of the Cultural Landscape studies available just a mere 17 days before the close of record to be reviewed onsite. Both the Applicants Historic Expert and Counsel for the Public Historic Expert, were unable to define how the boundaries were established upon questioning. (Transcript of Widell, Day 29 Morning Session, page 118, lines 16-22; Transcript of O'Donnell, Day 53 Afternoon Session, page(s)93-94, lines 2-24 and 1-15)

The Cultural Landscape Studies are essential in understanding, evaluating and protecting the assets of New Hampshire and deserve greater review. On Day 53, the CFP Historic Expert testified that RSA 227-C which helped drive the development of the Cultural Landscape Studies, was “relevant to everyone in the State of New Hampshire” (Transcript of O'Donnell, Day 53, Afternoon Session, page 91, line(s) 2-12. It is further important to note that the CFP Expert notes that more information came forward than what was originally included in the Applicants application. (Transcript of O'Donnell, Day 53 Afternoon Session page 92, line(s) 7-11.

Without a complete application, the Project should be denied.

### **Joint Applicants' Failure to Analyze the Impacts on Wetlands**

**The Northern Pass Project, overhead or buried on or under the Jones' land, will have an UNREASONABLE EFFECT ON THE NATURAL ENVIRONMENT and WATER QUALITY of this critical wetland.**

**The Certificate of Site and Facility should be denied.**

- The Northern Pass Transmission Project cannot be built on the Public Service of New Hampshire (now Eversource) Right of Way over the land owned by Eric and Margaret Jones in Northumberland, New Hampshire WITHOUT an “unreasonable effect on the natural environment and water quality” of the wetland located on the property.
- The Northern Pass Transmission Project cannot be built on the Public Service of New Hampshire (now Eversource) Right of Way over the land owned by Eric and Margaret Jones in Northumberland, New Hampshire WITHOUT causing permanent alteration to the existing wetland and water flow, both within the Project right-of-way and to the entire wetland system and (within one mile) the Upper Ammonoosuc and the Connecticut rivers.
- The scaled drawing and supporting documentation submitted with the Jones Supplemental Pre-Filed Testimony clearly shows the construction activity will cover more than 90% of the sloping wetland within the Right of Way and cannot be performed WITHOUT an “unreasonable effect on the natural environment and water quality”.

**Both the New Hampshire Fish and Game Department and the U.S. Fish and Wildlife Service conclude that . . .**

“ The Jones property provides critical wildlife habitat and an important link between parts of the White Mountain National Forest. Approximately half of the property is mapped as Tier 1 – highest ranked habitat in the state by the Wildlife Action Plan. It contains northern hardwood-conifer, spruce-fir, and aspen forest types as well as beaver flowage, wet meadow, and swamp. These habitats likely support a large assemblage of wildlife including several species of conservation concern and perhaps some state-listed species as well. State listed species that would likely benefit from the permanent protection of this property include American marten (state threatened) and Canada lynx (state endangered) as well as northern long-eared bat (state threatened). Lynx and northern long-eared bats are also federally listed. Species of conservation concern that would likely benefit include American woodcock, Canada warbler, olive-sided flycatcher, ruffed grouse, rusty blackbird, wood turtle, and northern leopard frog, among many others. ”

**The Northumberland Conservation Committee** has reviewed the Northern Pass Transmission Project and offer the following observations.

“The transmission line will enter the town at the Stark town line and then go west and south crossing Lost Nation Road and Page Hill Road exiting the town at the Lancaster town line following an existing ROW. Most of this existing ROW is in wetlands. They have been delineated by NP only to the extent that they are within the ROW. These wetlands extend beyond their ROW and the impact of this project will also extend beyond the ROW. They have not detailed how they will mitigate these impacts within the town so we cannot comment on this aspect of the project and

submit that the application is incomplete without this information. We also believe that NP should address the impact of the project on wetlands beyond the ROW.

In 2006 the wetlands in the Town of Northumberland were mapped by Watershed To Wildlife, INC. One of the goals of this project was to provide to the town the background for the adoption of local ordinances and designation of Prime Wetlands. The town has not completed that part of this project at this time. There were six wetland complexes that were identified that would meet the qualifications for Prime Wetlands. Three of the six would be impacted by the NP project. The NP project enters the town at the Stark line in the Gun Club Wetland Complex (#4). This wetland is 296 acres in size within the town and also extends into the town of Stark. The ROW then crosses The Lost Nation Wetland Complex (#5) that is 176 acres in size. The third wetland that NP project crosses is the Page Hill Complex (#1). This wetland is the largest in the town at 1036 acres. It connects to an 1800 acre wetland in Lancaster that the NP project also crosses. **This wetland could be one the largest upland wetlands in NH at 2836 acres.** This is an extremely diverse wetland and should be considered an important natural resource for the town. In summary the NP project is crossing three wetlands that total over 1500 acres in the Town of Northumberland.

The existing transmission line was built a long time ago before we understood the importance of wetland to the ecology of the region. We would doubt if a transmission line could get permitted from scratch today that impacted that much wetland.”

**The DES original response to the Northern Pass Application included the following**

**“ WETLANDS BUREAU”**

Per Rule Env-Wt 302.04(a)(2) the applicant is required to demonstrate by plan and example that the proposed alternative is the one with the least impact to wetlands or surface waters. It is not clear how the proposed 32 mile new ROW in Coös County avoids surrounding wetlands on a landscape scale when the wetland impact plans only represent wetlands located within the ROW.

DES finds that the proposed 32 mile ROW in Coös County is not an alternative with the least impact to wetlands or surface waters.”

**Ultimately the DES inexplicably pre-approved the requested permits and mitigation Package with little avoidance and minimization and mostly mitigation which totally and completely allows NET LOSS OF WETLAND.**

**The U.S. Department of Energy**

**Draft** Environmental Impact Statement calls full burial in roadways (their Alternative 4A) the least damaging to New Hampshire's environment and shorter than the applicant's most current proposal.

**Section 404 of the Clean Water Act:**

The basic premise of the program is that no discharge of dredged or fill material may be permitted if:

- (1) a practicable alternative exists that is less damaging to the aquatic environment, or
- (2) the nation's waters would be significantly degraded.

In other words, **when you apply for a permit**, you must show that you have, to the extent practicable:

- Taken steps to **avoid** wetland impacts;
- **Minimized** potential impacts on wetlands; and
- Provided **compensation** for any remaining unavoidable impacts.

## **NEW HAMPSHIRE CODE OF ADMINISTRATIVE RULES**

### **3 Env-Wt 300-700**

(b) For nontidal wetlands, **need shall be demonstrated** by the applicant **prior to department approval** of any alteration of nontidal wetlands. The department shall place emphasis on preserving bogs and marshes. This priority shall be based on the rarity of those environments and the difficulty in restoration of value and function for those environments.

## **NOTICE OF FOREST PLAN AMENDMENT APPROVAL - Tongass National Forest Land and Resource Management Plan Amendment**

This Land and Resource Management Plan (Forest Plan) guides all natural resource management activities and establishes management direction for the Tongass National Forest.

### **Wetlands**

Minimize the destruction, loss, or degradation of wetlands, and preserve and enhance wetland functions and values.

**Avoid alteration of, or new construction on wetlands, wherever there is a practicable, environmentally preferred alternative.**

The Forest Plan Amendment was shaped by best available science, current laws, and public participation including participation of a cooperating agency (U.S. Fish and Wildlife Service); consultation with Alaska Native tribes and Alaska Native Corporations; advice and recommendations from the Tongass Advisory Committee, a Federal Advisory Committee established by the U. S. Department of Agriculture; and significant public contributions from nine open house meetings, nine subsistence hearings, and the **receipt of over 165,000 public comments**.

### **Impacts on Wetlands Conclusions:**

- All science based literature regarding wetlands and the agencies charged with protecting them recognize that wetlands are a coordinated system of streams, vernal pools, marshes and rivers.

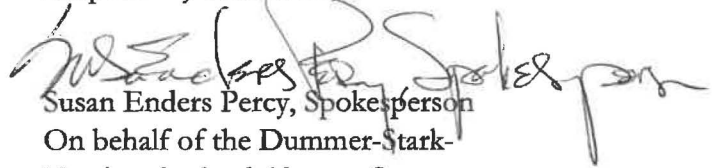
- Wetlands are vital to flood control, drinking and agricultural water recharge, and wildlife habitat.
- The Northern Pass Project will disturb, alter, damage and pollute thousands of wetland acres within the state and hundreds of wetland acres within the Jones property.
- No **effective** mitigation can be applied, even if Northern Pass was proposing any, given the federal and state edicts of **"No Net Loss of Wetland"**.
- The evidence presented shows, pursuant to **SEC rules and criteria for findings**, that the Northern Pass Project **will have an unreasonable adverse effect on water quality**.
- The evidence presented shows, pursuant to **SEC rules and criteria for findings**, that the Northern Pass Project **will have an unreasonable adverse effect on the natural environment**.
- ***Not-In-My-Backyard (NIMBY)** is philosophically defensible and logical and should not be ridiculed as an unworthy or Un-American viewpoint. People have been born, raised and lived where they are. This is their world and it is the only place where they have a real stake and a say in what happens.*
- ***If the Site Evaluation Committee denies this permit** the overwhelming majority of New Hampshire citizens will set aside their cynicism of government and what they consider Regulatory Capture and reward those who put the people ahead of business.*

#### Wherefore

The Dummer-Stark-Northumberland group respectfully requests that the Applicants' Joint Application for Certificate of Site and Facility be dismissed.

Dated: January 10, 2018

Respectfully Submitted,

  
Susan Enders Percy, Spokesperson  
On behalf of the Dummer-Stark-  
Northumberland Abutter Group

#### Certificate

I certify that this document was served in accordance with the New Hampshire Site Evaluation Committee Rules.

/s/Arthur B. Cunningham