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November 18, 2015

Via Electronic Mail & Hand Delivery

Ms. Pamela G. Monroe, Administrator
New Hampshire Site Evaluation Committee
21 South Fruit Street, Suite 10
Concord N.H. 03301-2429

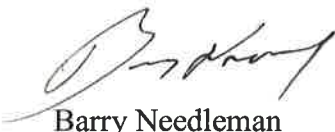
Re: NH Site Evaluation Committee Docket No. 2015-06: Joint Application of Northern Pass Transmission LLC (“NPT”) and Public Service Company of New Hampshire d/b/a Eversource Energy (“Eversource”) for a Certificate of Site and Facility for Construction of a New 1090 MW Transmission Line

Dear Ms. Monroe:

Enclosed for filing with the New Hampshire Site Evaluation Committee, in the above captioned matter, please find an original and one copy of the Applicants’ Response to Comments of New England Power Generators Association.

Please contact me should you have any questions.

Sincerely,



Barry Needleman

BN:slb
Enclosures

cc: SEC Distribution List

**THE 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**

**APPLICANTS' RESPONSE TO COMMENTS OF NEW ENGLAND POWER
GENERATORS ASSOCIATION**

NOW COME Northern Pass Transmission LLC and Public Service Company of New Hampshire d/b/a Eversource Energy (collectively the “Applicants”) by and through their attorneys, McLane Middleton, Professional Association, and respectfully submit this Response to comments from the New England Power Generators Association and state as follows:

I. Background

On November 10, 2015, the New England Power Generators Association (“NEPGA”) filed “comments” asking the Chairperson of the Site Evaluation Committee (“SEC”) to find incomplete the Joint Application of Northern Pass Transmission LLC (“NPT”) and Public Service Company of New Hampshire (“PSNH”) for a Certificate of Site and Facility.¹ NEPGA asserts that NPT and PSNH must demonstrate compliance with the Public Utilities Commission’s (“PUC”) affiliate transaction rules in order for the Application to the SEC to be deemed complete. In addition, NEPGA contends that NPT must further demonstrate its access to and control of its proposed right-of-way to support an SEC completeness determination. NEPGA’s so-called comments are substantively in error and procedurally out of place as further discussed below, and therefore do not merit consideration.

¹ The Chair of the SEC does not have the authority to determine an application incomplete. That prerogative is reserved to the Committee. *See* RSA 162-H:7. NEPGA refers to Site 301.05, which applied to renewable projects under RSA 162-H:6-a, a provision that the Legislature repealed in 2014.

II. Discussion

A. The Application meets the standard of review for Completeness.

RSA Chapter 162-H and Site 301.03 establish clear standards for determining whether an application is complete. Pursuant to RSA 162-H:7, VI, an application will be rejected when the SEC determines it administratively incomplete. The acceptance process was not intended to be an adjudicative process but a ministerial act where the pertinent agencies and the SEC expeditiously review a filing to see if there is sufficient information to proceed.

In SEC Docket No. 2013-02, *Application of Atlantic Wind*, the SEC, through its presiding officer, addressed motions filed during the pendency of the completeness review “purporting to argue or litigate the completeness” of the application. *See* Order Determining Application to be Incomplete at 14–16 (Jan. 13, 2014). The SEC determined that such motions were out of order and denied them. Among other things, the SEC explained that nothing in RSA Chapter 162-H or the Committee’s rules requires it to entertain litigation over completeness, and it observed that the timeframes allotted for review would make such litigation impossible.

B. The PUC’s Affiliate Conduct Rules have no bearing on the SEC’s completeness determination.

PSNH and NPT have executed a lease of certain PSNH right-of-way that PSNH has submitted to the PUC for approval under RSA 374:30, where all issues relevant to the lease will be considered. NEPGA’s arguments about the PUC’s affiliate transaction rules in relation to that lease have no bearing on whether the Application to the SEC is complete.² NPT and PSNH, moreover, contend that NEPGA’s interpretations of the PUC’s affiliate transaction rules are incorrect. In any event, such arguments do not belong before the SEC.

² Incidentally, NEPGA asserts no facts to suggest that NPT and PSNH have not complied with affiliate transaction rules, but simply takes the untenable position that a conclusive determination of such compliance must precede a completeness determination by the SEC.

NEPGA also appears to misunderstand Site 301.03 (d), which requires an applicant to include information about other required applications and permits from federal and state agencies with jurisdiction to regulate the construction and operation of the proposed project. The PUC's separate review of the PSNH lease concerns PSNH's ability as a regulated public utility to lease its property to NPT; it does not involve jurisdiction over NPT's rights under RSA 162-H:5 to construct or operate the proposed facility in the right-of-way.

C. NPT has fully complied with both existing and proposed SEC rules as they pertain to an indication of site control.

NEPGA mischaracterizes Site 301.03 (b) (6), which requires an applicant to indicate whether it is the "owner or lessee of the site or facility or has some legal or business relationship to it." NEPGA states its belief that it is premature for the SEC to "open this proceeding" until a threshold demonstration of some sort has been made.

The SEC discussed Site 301.03 (b) (6) in *Application of Atlantic Wind*. There it found an application incomplete because a large portion of the transmission line associated with the proposed project was outside the leased boundary area set forth in the site plans. The application was deemed incomplete for failing to identify the relationship of the applicant to that specific portion of land. The applicant was directed to identify its legal relationship to all parcels within the project site whether as owner, lessee, or by way of easement, or describe the progress toward obtaining such legal relationship.

The Applicants have fully complied with Site 301.03 (b) (6) by identifying, for example, those areas where NPT has option agreements for leasehold interests, where it has executed a lease with PSNH that is subject to PUC approval, where it has an agreement with a privately-owned railroad, and where the U. S. Army Corps of Engineers will issue an easement. The

Applicants have also identified those areas where crossing approvals are required from the PUC and the Department of Transportation (“DOT”). *See* Application, Volume I, pp. 6 and 7.

NEPGA makes a number of comments as well about the use of public highways in New Hampshire, i.e., that there are different types of highways and that they may have been laid out in different ways. NEPGA also argues that the application is incomplete because it does not include a comprehensive assessment of whether ornamental trees or stone walls would be adversely affected by underground construction. Any questions related to crossing over or under public highways in New Hampshire are properly before the SEC and DOT by virtue of the Application, which contains voluminous material about the potential effects of the construction of the project on highways and abutting resources and properties. *See e.g.*, Application, Volume X, Appendix 9.

Finally, NEPGA misapprehends the proposed new rules as they pertain to site control. Though those rules have not yet been adopted, the Applicants have, in fact, complied with their proposed requirements. NEPGA states that its “review of the newly-revised Rules has led us to conclude that NPT has no reasonable basis at this time for representing to the SEC that it has acquired or will acquire the necessary interests in PSNH’s rights-of-way to build the project if approved by the SEC.” Putting aside the fact that the new rules are not yet in place, and the State Constitution’s prohibition against retrospective laws (Article 23), NEPGA misconstrues those rules. Site 301.03 (c) (6) as proposed requires evidence that an applicant has a legal basis to acquire the right to construct and operate a facility on a site in the form of an easement, including an easement or application for an easement with a state agency. NPT has executed a lease with PSNH and that lease has been submitted to the PUC for approval, clearly complying with the proposed new rule.

III. Conclusion

WHEREFORE, notwithstanding NEPGA's captioning of its filing as a "comment," the Applicants respectfully request that the Committee: acknowledge that NEPGA's filing is an obvious attempt to work around the decision in *Application of Atlantic Wind* and is in reality a motion for a ruling per Site 102.10; deny NEPGA's motion; and make clear that all similar requests/comments/motions are out of order during the completeness review and shall not be considered either by the SEC or the permitting or other regulatory agencies reviewing the Application pursuant to RSA 162-H:7.

Respectfully Submitted,


Northern Pass Transmission LLC and
Public Service Company of New Hampshire

By its attorneys,

McLANE MIDDLETON
PROFESSIONAL ASSOCIATION

Dated: November 18, 2015

By: _____


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Certificate of Service

I hereby certify that on the 18th of November 2015, an original and one copy of the foregoing Motion was hand-delivered to the New Hampshire Site Evaluation Committee and an electronic copy was sent via e-mail to the individuals on the SEC distribution list.



Barry Needleman