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DEPARTMENT OF JUSTICE**

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December 2, 2015

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

Re: 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 – SEC Docket Number 2015-06.

Dear Ms. Monroe,

I write at this time to advise the Committee on a number of important issues that we observed in the recently filed Joint Application of Northern Pass Transmission LLC and Public Service Company of New Hampshire d/b/a Eversource Energy for a Certificate of Site and Facility (the “Application”). Counsel for the Public does not take a position on completeness, as this is an issue for consideration by the Committee without an adjudicative proceeding over the issue. We offer these comments and perspectives, with the public interest in mind, as an aid to the Committee as it makes that determination.

On October 19, 2015, Northern Pass Transmission LLC (“NPT”) and Public Service Company of New Hampshire d/b/a Eversource Energy (“PSNH”, and together as the “Applicants”) filed the Application with the Committee to construct the Northern Pass Transmission Project (the “Project”). The Project is a 192-mile high voltage transmission project that includes a 320 kV direct current (“DC”) transmission line, over sixty miles of which is to be built under public roadways, a 345 kV alternative current (“AC”) transmission line, a converter station in Franklin, NH, other associated equipment and the relocation of existing electric transmission and distribution lines. The Project is of unprecedented scope for New Hampshire and will have a lasting impact on its citizens and resources. There are dozens of communities in the state that will be impacted directly or indirectly by the construction, operation or maintenance of the Project. Because of this, the Committee’s task in reviewing the Project under limited timeframes will require complete and detailed information on the benefits and impacts of the Project.

A filing of this magnitude requires that the Applicants provide a certain threshold of evidence that would allow the Committee to proceed to the adjudicative proceeding from which the Committee can make the required statutory findings on benefits and impacts of the Project. This is sometimes called a *prima facie* case. In order to assure the Project meets the statutory standards and that Counsel for the Public and other busy state and federal agencies, landowners and advocacy groups are using time and resources as efficiently as possible, Counsel for the Public provides these comments and perspectives on whether the Applicants have met their *prima facie* burden.

Project Benefits

The Application and pre-filed testimony describe generalized benefits of the Project, both for New Hampshire and the broader region. The claimed benefits include lowering the cost of energy, providing low carbon, renewable power, creating jobs, increasing tax revenue and generally growing economic activity. The testimony provided publicly, however, gives little detail on how the cited benefits were calculated. The Applicants did submit the Pre-Filed Testimony of Julia Frayer and a report entitled *Cost-Benefit and Local Economic Impact Analysis of the Proposed Northern Pass Transmission Project* (Appendix 43 to the Application). The testimony and report were submitted to the Committee under seal with a Motion for Protective Order and Confidential Treatment. Neither the testimony nor the report is available to the public, or more specifically to the Counsel for the Public, to allow us to determine whether they contain sufficient information for the Counsel for the Public to exercise our statutory responsibilities or for the Committee to adequately evaluate the Project and its benefits and impacts. Moreover, as Counsel for the Public has not had an opportunity to review the testimony or the report, we cannot determine whether the information that is included within is accurate and withstands analytical scrutiny; although, understandably, this may be an issue for the adjudicative proceeding.

Counsel for the Public is charged with representing the public “in seeking to protect the quality of the environment and seeking to assure an adequate supply of energy.” R.S.A. 162-H:9, I. We cannot perform this task without (a) understanding the claimed benefits and (b) independently determining that the claimed benefits are likely to be realized. For example, the Project as designed will have long-term impacts on the aesthetics of some of New Hampshire’s most scenic areas. In order to determine whether the tradeoff between those impacts and the public benefits are acceptable, Counsel for the Public and the Committee must thoroughly understand those benefits. Additionally, to determine if the Project’s ability to deliver power from Quebec is “adequate” for the public, Counsel for the Public and the Committee need to be able to determine if the promised benefits are consistent with New Hampshire’s long-term energy goals. Without access to this key piece of testimony and the accompanying report, Counsel for the Public cannot say whether the Application contains the required threshold of information to satisfy the statutory criteria.

Decreased Energy Costs

Applicants repeatedly claim that both New Hampshire and the New England region will see a decrease in energy costs as a result of the Project. The publicly available version of the Application does not explain how the Applicants have calculated the stated benefits. The Project (and presumably the costs cited in the Application) contains only transmission assets. It does not, at least in the publicly available version, include generation components or an agreement to purchase power. If the savings are based on a pre-negotiated purchase power agreement ("PPA"), there is no explanation of any of the terms or conditions of that agreement. The Application materials do not even indicate whether such a PPA was provided with the non-public materials. The Applicants repeat that New Hampshire customers will pay no costs associated with the Project, but fail to explain if there are any delivery costs associated with the sale and purchase of the power that will flow over the lines. Without this information, Counsel for the Public cannot determine what type of power will be transmitted over the Project or how that power will result in reductions of power costs. The Committee should require the Applicants to provide the withheld testimony and report to Counsel for the Public and allow adequate time for us to review the testimony to determine whether it makes a *prima facie* case for the benefit of decreased energy costs.

Environmental Attributes

Additionally, the Applicants state that the power to be transmitted across New Hampshire is low-carbon emitting and renewable. The Application does not state, however, if there is an agreement on transferring the environmental attributes of the power, which would be required if any purchaser wanted to claim the environmental benefits of the power. The testimony provided does not demonstrate how NPT would guaranty that hydroelectric power would be used to supply power over the Project transmission lines or whether hydroelectric power from Hydro Quebec is considered "renewable" in any of the New England states. These are primary benefits of the Project that Applicants cite for which there is little information on how those benefits are calculated or whether they are based on sound assumptions. The Committee should require the Applicants to provide the Frayer testimony and report to Counsel for the Public and provide us with adequate time to review the testimony to determine whether it makes a *prima facie* case on the claimed benefit of the environmental attributes.¹

¹ Assuming that the Applicants can demonstrate there is a long-term commitment to have Canadian hydroelectric power flow across the lines, they have provided no discussion of the impacts of the hydroelectric development within Quebec. If Applicants feel it is appropriate for the Committee to consider regionalized benefits of the Project outside of New Hampshire, they do not likewise explain why impacts outside of New Hampshire should not be considered as well. These impacts could include the impacts of expanding the transmission grid in Quebec and the impacts of large hydroelectric projects in environmentally and culturally sensitive areas.

Alternatives

The central need for the Project is not well defined in the Application or the supporting documents. Notwithstanding this, other than alternative routes for the Project transmission lines, Counsel for the Public cannot determine if the Applicants considered any alternatives to address that need. These alternatives could be transmission-based, non-transmission based, or some combination of the two. For instance, the Application does not address whether there are other transmission components that could reduce or eliminate one or more components of the Project that would reduce the physical impacts of the Project on New Hampshire resources. Also, the Application does not address whether there are non-transmission alternatives (e.g., demand-side management, distributed generation) that could be implemented in New Hampshire or elsewhere in New England that would have reduced the impacts of the Project. As both of the Applicants are subsidiaries of a company that owns electric utility assets in Massachusetts and Connecticut, the parent company is in a good position to design and implement non-transmission alternatives that may decrease the need to build the Project as proposed. Regardless of the answers to these questions, there does not appear to be any discussion of a Project alternatives analysis.

Constructability

The Project as proposed by the Applicants is a complex linear development that will take years to construct. The Applicants have proposed to build portions of the transmission line in new cleared corridors, underground along rural public roads in high-elevation terrain, and in existing corridors that currently contain up to four transmission and distribution lines. Given this complexity, and the impact that construction will have on those that live near the sites of the proposed Project, there is insufficient information on the specific impacts of the Project's construction on the communities that will host the Project.

Underground Construction

The Applicants have provided detailed information on policies and procedures for how *generally* to build and operate a transmission line and the associated infrastructure. What the Application does not do, and what is critically important at this stage of the review process in order to determine whether the impacts are reasonable, is describe how construction will be performed and how it will impact specific areas where the Project is proposed. This is most obvious for the underground portions of the Project. For example, it is impossible to tell whether the Applicants have specifically analyzed how construction of the route between Bethlehem and Bridgewater will impact the hosting communities. Are there adequate alternative roads to accommodate traffic during construction? How will emergency services be impacted (e.g., will routes to hospitals be unavailable)? When will construction occur in certain locations? How specifically would road limitations be dealt with in bad weather?

The pre-filed testimony of Ms. Farrington indicates that certain sections of road could be closed for one to two weeks. This underground section will go through numerous downtown areas in the White Mountains region, one of the main tourist areas in New Hampshire. How long will construction be in those downtown areas and how will it impact business and other daily life? Will it deter tourists from visiting these communities? The Application lacks community specific information on the impact of building and maintaining this underground section. This is not something that should wait for post-Certificate design and approval as the communities involved deserve to weigh in on the impacts and the Committee needs to understand the full impact of the Project that it is approving.

Overhead Construction

In addition to the lack of information on constructing the underground sections of the Project, the Application lacks sufficient information to determine a *prima facie* case of feasibility of the overhead construction in locations where it is to be co-located with other transmission and distributions lines in an existing corridor. In order to locate the new line in the existing corridor, the existing lines need to be relocated and the support structures changed. The Application does not, however, provide information or analysis regarding any potential impacts to the reliability of the new or existing lines from placing them all within one right-of-way. Moreover, as the construction will cause outages to the customers that are served by the existing lines in those corridors, there is no specific description of how those outages will impact the customers. If the consequence of placing the Project transmission line in an existing corridor is a plan to relocate an existing transmission or distribution line (that is not under the jurisdiction of the Committee) to a new corridor, that plan has not been adequately explained.

Laydown and Staging Areas and Access Roads

Construction of the Project will require the use of laydown areas, staging areas and temporary access roads. The pre-filed testimony of Mr. Kayser indicates that laydown areas can be up to fifty acres. It also may require extending existing access roads in order to accommodate construction vehicles and delivery of construction materials, particularly at overhead/underground transition stations. Pre-filed Direct Testimony of John Kayser at 15. Yet the testimony does not describe how many laydown areas are needed or where they will be located. The pre-filed testimony of Mr. Kayser states that the information is not known at this time. Id. at 15-16. Thus, for an unknown portion of the land that will be impacted by construction, which could be significant given the potential size of each laydown site, the Application is silent. There is no discussion of the impact on wetlands, rare or endangered species, storm water or any other natural resources. To leave the review and identification of this information for post-Certificate review will result in the total impact of the Project being underestimated. The Committee should require the Applicants to provide more specific information on the number of laydown and staging areas, where they will be located and if they will have an unreasonable adverse impact on any affected natural resources.

Description of Project Infrastructure

The Application does not provide a written description or illustrated depiction of many of the major Project structures, including the overhead/underground transition stations, the components of the converter station and the substation expansions. This is inconsistent with past applications to the Committee and the information required to be provided with this Application related to transmission line structures by Site 301.03(h)(1). There is no way for Counsel for the Public to determine the size or design of the structures, how they will appear to the public or the area that they will occupy. As a result, Counsel for the Public would not be able to determine the Project's impacts on aesthetics and other resources. The Committee should require the Applicants to submit written descriptions and conceptual drawings of all major components of the Project.

Location of Residences and Other Structures

Pursuant to NEW HAMPSHIRE CODE OF ADMINISTRATIVE RULES Site 301.03(c)(3), the Application must provide "The location of residences, industrial buildings and improvements within or adjacent to the site." Although the Applicants have provided a location of such structures by indicating their presence on Project maps, the Application does not appear to provide a list of abutters that is cross-referenced to these maps. As the Committee stated in the *Atlantic Wind* order, "This is necessary for the Committee to understand the effects of the project on the development of the region and the environmental, health and safety impacts of the project and *adequately inform the public regarding the potential impacts of the Facility.*" *Application of Atlantic Wind*, Order Determining Application to be Incomplete at 13 (Jan. 13, 2014) (emphasis added). This is extremely important for Counsel for the Public as we need to be able to discuss specific project impacts with members of the public that are affected by the Project. The Committee should require the Applicants to submit a list of abutting structures, including names and contact information, that is cross-referenced to maps that show the locations of those structures.

ISO-NE System Stability and Reliability Report

The Applicants have included a report from ISO-NE that analyzes an earlier version of the Project's impact on the stability and reliability of the ISO-NE system. This report does not analyze the version of the Project that was actually filed with the Committee on October 19, 2015. As admitted in the pre-filed testimony of Mr. Bradstreet and Mr. Bentley, the Applicants cannot identify every component of the Project that is necessary for system stability and reliability until after ISO-NE has completed reviewing the proposed design and issued a report approving the design and identifying necessary upgrades. Pre-Filed Direct Testimony of Derrick Bradstreet at 12; Pre-Filed Direct Testimony of Bradley P. Bentley at 2-3. This uncertainty as to which components of the Project need to be built in order to assure stability and reliability could cause delays in the adjudicatory process. *Application of*

Atlantic Wind, Order Determining Application to be Incomplete at 11 (Jan. 13, 2014) (“Late filed reports and studies frustrate the discovery process, cause delays and undermine the orderly process of the proceeding and ultimately, the purpose of the statute.”). To the degree the Applicants have included components that are not ultimately required by ISO-NE, that will cause a waste of administrative resources in the review of unnecessary impacts to New Hampshire’s resources.

Impact to Historical Resources

On November 30, 2015, the New Hampshire Division for Historical Resources (“DHR”) filed a letter with the Committee stating that it did not consider the Application to be complete because (a) Phase 1A surveys have not been conducted for approximately 100 properties where Applicants have been denied access; (b) Phase 1B surveys have not been conducted on approximately 100 archeological sensitive areas identified in the Section 106 review; (c) study methodologies and results for above-ground historical properties are incomplete and inconsistent with state and federal guidance, and (d) the stakeholder parties have not entered into a Programmatic Agreement to address these unresolved areas. Without the information cited by DHR as necessary for its review and determination of the Project impacts, the Committee, the participating agencies and the parties will not be able to conduct the required analyses.

We hope that this information is helpful to you and the members of the Committee as you review the Application. Thank you for your kind courtesies and consideration.

Sincerely yours,

COUNSEL FOR THE PUBLIC

A handwritten signature in blue ink, appearing to read "Peter C.L. Roth", with a stylized flourish at the end.

Peter C.L. Roth
Senior Assistant Attorney General

cc: Service List