

**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 Review and Vacate the Order on Petitions to Intervene Grouping Interveners Kevin Spencer and Mark Lagasse dba Lagaspence Realty, LLC with Other Interveners Described at Page 14 of the Order as “Abutting Property Owners: Clarksville through Dalton”**

**Motion**

Interveners Mark Lagasse and Kevin Spencer dba Lagaspence Realty LLC, pursuant to Site 202.11(f), respectfully move the Site Evaluation Committee (SEC) to review and vacate the March 18, 2016, Order on Petitions to Intervene grouping them with the intervenor group described as “Abutting Property Owners: Clarksville through Dalton”. (Order, page 14).

The Order requiring the joinder of interveners with others is so burdensome that it will prevent them from protecting the interests which formed the basis of their intervention in violation of RSA 541-A:32, IV as detailed herein.

**Memorandum in Support of Motion**

**The Northern Pass Will Destroy the Aesthetics and Property Value of Interveners’ Property**

Interveners are developing their Stark, New Hampshire property. They are constructing a lodge and campsites. The lodge has a view of the beautiful Ammonoosuc River. The campsites will be located on the river with fishing, paddling and swimming access. This beautiful place and the significant funds and labor interveners have invested will be lost if the construction of the Northern Pass is permitted. The monstrous towers and overhead lines, visible above tree tops, will be an aesthetic disaster for these New Hampshire property owners, builders and investors.

**Applicants Public Service Company of New Hampshire (PSNH) and Northern Pass Transmission LLC (NPT) Do Not Own the Right to Construct the Northern Pass on the Easement Burdening Interveners Property**

The Applicants do not own the right to build the Northern Pass on the easement traversing interveners’ property. Applicants cannot prove, as required by law, that they owns the rights claimed.

RSA 162-H: 7 requires that a project developer own or have the right to acquire the property upon which it proposes to construct the project. See Site 301.03 (c) (1)-(2) and Site 301.03 (c) (6) a. Site 301.03(6) a. places the *burden of proof* of the project developer to produce:

“(E)vidence that the applicant has a current right, an option, or other legal basis to acquire the right, to construct, operate, and maintain the facility on, over, or under the site, in the form of: a. Ownership, ground lease, easement, or other contractual right or interest.”<sup>1</sup>

### **Interveners Have Retained an Attorney to Protect Their Vital Interests in the Docket at Bar**

#### **The Grouping of Interveners with Others Will Compromise Interveners’ Attorney’s Ethical Duty to Represent Them with Competence and Diligence**

The New Hampshire Rules of Professional Conduct requires an attorney to provide competent representation to a client. Rule 1.1. Competence.

Rule 1.1(e)(1)-(4) requires a lawyer to gather sufficient facts regarding a client’s problem; to formulate the material issues raised; develop a strategy for solving the client’s legal problem Professional Conduct Rule; and, to undertake actions on the client’s behalf in a timely and effective manner.

Rule 1.3. Diligence. Rule 1.3 requires a lawyer to act for his client with reasonable promptness and diligence.

The Rules of Professional Conduct will be compromised by the groupings set forth in the Order. Certainly, the rights and concerns of the other members of the group are serious and substantial, but the rights and concerns of those interveners may conflict with interveners Spencer and Lagasse’s rights and concerns. The others may, or may not, agree with the tactics and strategies developed by the attorney for Spencer and Lagasse. Communication amongst the group will be difficult and time consuming. That condition may lead to violations of Rule 1.1(e) 4 that requires timely and effective action by a lawyer.

The Applicants, in their Objection to interveners March 22, 2016, Request to Fix a Deadline to File Dispositive Motions Regarding Applicants Claimed Right to Construct the Northern Pass on Easements argued that Attorney Cunningham did not have the right to make filings in the SEC on behalf of interveners Spencer and Lagasse because each group must “designate a single spokesperson for the purposes of filing pleadings, conducting discovery and for examination at evidentiary hearings”. (Applicants’ Objection, page 1-2, paragraph 2). Applicants’ Reply goes on to say that “Upon information and belief, Group 2...has not designated a spokesperson”....and that because there is no designated spokesperson that Attorney Cunningham Request to Fix a Deadline for filing dispositive motions should be denied.(Applicants’ Objection, page 2, paragraph 3).

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<sup>1</sup> Interveners have filed a motion to dismiss applicants’ Petition asking NHPUC approval of a lease from PSNH to NPT in NHPUC docket DE 15-464 on the grounds that PSNH cannot lease rights to construct the Northern Pass on an easement that does not allow such a project. Interveners will file a motion to dismiss the instant docket on the same grounds unless applicants purchase rights to construct the Northern Pass on interveners’ property or obtain a judicial determination that the easement permits such construction.

Applicants' argument not only is an effort to deny interveners their right to counsel in this important proceeding it is a *perversion* of Site 202(d)(4). Rule 202(d)(4) was never intended to prevent parties with substantial interests at stake from being represented by an attorney.<sup>2</sup> Site 202(d)(4) was never intended to force interveners into a legal position that may be inimical to their vital interests.

Site 202(d)(4) was not adopted to allow contravention of RSA 541-A:32, IV which provides that intervention limitations shall not prevent interveners from protecting the interests which formed the basis of their intervention. Indeed, the SEC cannot fairly order groupings over the objections of interveners without on the record evidence based findings of fact that the interests of the parties are "substantially similar" and not so extensively limited that they cannot protect their interests.

### Wherefore

Interveners Spencer and Lagasse respectfully request that the March 18, 2016, Order consolidating them with others be vacated and that an Order issue granting interveners Spencer and Lagasse full individual intervention rights without the grouping that will prevent them from protecting the interests that formed the basis of their intervention.

Interveners request that the Order grant them the right to be represented by counsel; that they be permitted to file pleadings; conduct discovery; and, fully participate in the merit hearing, including the right to present evidence and testimony; call witnesses; and conduct cross-examination of witnesses.

Interveners request such other and further relief proper in the matter.

Respectfully submitted,

Arthur B. Cunningham

Attorney for Interveners

PO Box 511, Hopkinton, NH 03229

603-746-2196 (O); 603-219-6991 (C)

[gilfavor@comcast.net](mailto:gilfavor@comcast.net)

Bar # 18301

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<sup>2</sup> The applicants' argument that the attorney for interveners Spencer and Lagasse cannot file pleadings on their behalf because he is not a "designated spokesperson" is frivolous. The very notion that parties to this docket cannot be represented by counsel unless the attorney represents a group as a "designated spokesperson" is not a good faith argument supported by law. See Rules of Professional Conduct, Rule 3.1. Meritorious Claims and Contentions.

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

Arthur B. Cunningham