

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

**PRE-HEARING MEMORANDUM OF THE SOCIETY FOR THE PROTECTION OF
NEW HAMPSHIRE FORESTS TO IDENTIFY PRE-HEARING CONFERENCE ISSUES**

The Society for the Protection of New Hampshire Forests (the “Forest Society”), by and through its attorneys, BCM Environmental & Land Law, PLLC, submits this Memorandum to identify issues to address during the Track 1 Pre-Hearing Conference scheduled for April 4. This Memorandum is intended to assist the orderly process by raising for consideration and discussion the following issues during the Track 1 Pre-hearing Conference, and to be addressed in the report that will be issued afterwards. This memo does not seek to establish a comprehensive list of all issues. Also, the Forest Society notes that the resolution of issues for Track 1 should not be dispositive of those same issues with respect to Track 2 topics. In support, the Forest Society states as follows:

ISSUES

1. **Historic & Public Interest.** The SEC’s Order on Pending Motions dated March 1, 2017 (the “March 1 Order”) established a Two-Track Schedule for the topics NP must sufficiently address to obtain SEC approval for its massive project. However, the Order did not include two statutory standards: Historic Resources and Public Interest. The Forest Society assumes Historic Resources will be covered in Track 2 based on when this topic was covered during the Technical Session schedule. The Forest Society also assumes that Public Interest will be part of both tracks. But, given the extensive number of Parties, potential confusion in a

divided process and need for scheduling clarity, the Forest Society respectfully requests this issue be included in the Pre-Hearing Conference.

2. **Hearing & Deliberation Dates.** The March 1 Order addressed the start date for the Track 1 adjudicatory hearing (April 13, 2017) but did not set an end date. It also did not address whether any additional hearing dates would be added to those which were reserved in the SEC Revised Notice of Final Adjudicative Hearings dated December 20, 2016.¹ We note that the middle of May may have opened up for additional hearing days. To assist all Parties with their respective scheduling and assist in the orderly process, identifying both an end date for the conclusion of Track 1 Hearings and setting additional hearing dates and deliberation dates at the April 4 Pre-Hearing Conference would be helpful.

3. **Conclusion Time of Hearing Days.** Hearing days will begin at 9:00 a.m. What time will they end? A conclusion time of 4:30 p.m. seems appropriate for a number of reasons, including that parties are likely to need to prepare for the following day's hearing, some parties will have a great distance to travel, and everyone's need to have the ability to attend to other matters.

4. **Order of Witnesses.** The Forest Society presumes the order of each Party's witnesses will be established for each Track but that at all times, NP, as the Applicant with the burden of proof, will present its witnesses first. But, aside from that, the Forest Society requests that the Pre-Hearing Conference answer questions such as the following. Aside from the Applicant, will the order of witnesses be dictated by topic, or by Party? For example, if by topic, would it be most efficient for all of the Northern Pass witnesses to testify first on all topics in each Track, followed by all of Counsel for the Public's (CFP) witnesses on all topics in each

¹ The dates set forth included April 4, 5, 6, and 7, none of which will now be used for adjudicatory hearings given the April 13 start date set forth in the March 1 Order.

Track, and then all of intervenors' witnesses on all topics in each Track? Might that sequence and presentation be logical and orderly in Track 1 but not so with respect to Track 2?

5. **Multiple Appearances & Order of Inquiry.** Beyond the order of the Party's witnesses, whether witnesses testifying on topics in either one or both Tracks would be required to appear multiple times should also be addressed in this first Pre-Hearing Conference. It would likely be unreasonable, for example, to require a *pro se* party to appear multiple times if the sequence for all parties is determined to be topical. Attendant to the scheduling of the witnesses is also the order of questioning of each witness.

6. **Transmission of Exhibits.** The Memorandum to the Parties dated March 21, 2017 and Addendum to Memorandum to the Parties dated March 24, 2017 set forth dates for delivery of Witness Lists and Exhibit Lists for Track 1. The form of delivery of the Exhibits is described in multiple paper copies and single pdf electronic form. However, the size of certain exhibits makes these requirements unworkable and voluminous. For example, The Forest Society submitted a report by Dodson and Flinker as an Exhibit to Mr. Dodson's testimony that is 227 pages including detailed and data dense photographic simulations and spreadsheets. Creating a single pdf of this document is problematic and printing out sufficient copies for all parties is an expensive proposition. Some exhibits may need to be broken up into multiple pdf's. This should be permitted. Additionally, it could be more efficient to use jump drives (also known as thumb drives) or DVDs and if any Party wants a paper copy they can print their own from the digital.

7. **Impeachment Exhibits.** An additional issue to address with respect to the Exhibit Lists is the propriety of requiring advance identification of Impeachment Exhibits. The Forest Society expects there will be a discussion on this topic and will be prepared to state its position

during the Pre-Hearing Conference. But, in brief, the Forest Society is very concerned about the implicit contradictory nature and deviation from standard administrative and litigation practice of such a requirement. The very purpose of an impeachment exhibit is to raise the question of credibility, reliability or consistency of a testifying witness. Accordingly, pre-filing an exhibit pre-supposes that all Parties will know exactly what each witness will actually say when testifying. Even with pre-filed testimony, this is simply not a reasonable presumption.

8. **Hearing Room Technology.** With respect to the technology available in the hearing room, will there be one evidence presentation system that all Parties will be asked to utilize? What other technology in the hearing room may the Parties and their witnesses utilize for their respective presentations? It is apparent that there are workstations and screens set up in the hearing room. By whom and for what purpose will these be used?

9. **Illustrative Exhibits.** Clarification would also be helpful with respect to Exhibits for illustration purposes, i.e., whether and how that exhibit should be labeled. The Forest Society assumes illustrative exhibits should be marked as independent exhibits.

10. **Public Comment.** It would be helpful to discuss how and when the SEC will take public comment, for examples on a certain day of the week or a certain time during each day (it has been noted that public comment at the end of a hearing day may not be ideal).

11. **Certain Track 2 Issues.** While this a Track 1 Pre-Hearing Conference, because the Track 2 adjudicatory hearings will presumably begin close on the heels of the conclusion of Track 1 and occur during the early summer months, it would be helpful to discuss generally the schedule for Track 2 and witness availability, especially given the difficulty with scheduling certain of the experts during the technical sessions.

12. As stated above, this is not an exclusive list of issues, but will hopefully prove useful for assisting the discussion in the upcoming Pre-Hearing Conference.

Respectfully Submitted,

**SOCIETY FOR THE PROTECTION OF
NEW HAMPSHIRE FORESTS**

By its Attorneys,
BCM Environmental & Land Law, PLLC



Date: April 3, 2017

By: _____

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CERTIFICATE OF SERVICE

I hereby certify that on this day, April 3, 2017, a copy of the foregoing Memorandum was sent by electronic mail to persons named on the Service List of this docket.



Amy Manzelli, Esq.