

November 13, 2015

Via Electronic Mail & Hand Delivery

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 original and one copy of Applicants’ Response to Counsel for the Public’s Motion for Leave to Retain Primmer, Piper Eggleston & Cramer P.C. and for an Order Directing the Joint Applicants to Bear the Costs Thereof.

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 COUNSEL FOR THE PUBLIC'S MOTION FOR
LEAVE TO RETAIN PRIMMER, PIPER EGGLESTON & CRAMER P.C. AND FOR AN
ORDER DIRECTING THE JOINT APPLICANTS TO BEAR THE COSTS THEREOF**

NOW COME Northern Pass Transmission LLC and Public Service Company of New Hampshire d/b/a Eversource Energy (the "Applicants") by and through their attorneys, McLane Middleton, Professional Association, and respectfully submit this Response to Counsel for the Public's Motion for Leave to Retain Primmer, Piper Eggleston & Cramer P.C. (the "outside counsel") and for an Order Directing the Joint Applicants to Bear the Costs Thereof.

1. On November 6, 2015, Counsel for the Public filed a motion with the Site Evaluation Committee ("SEC") seeking permission to retain an outside law firm to provide legal counsel and litigation services pursuant to RSA 162-H:10, V. This type of request is unprecedented and the manner in which it is handled here will also likely set some precedent for other such future requests.

2. The Applicants recognize that this proceeding will be large and complex. Counsel for the Public will play an important role, and must have adequate resources to perform its functions. The Applicants believe they have an interest in Counsel for the Public having such resources so that this matter can be handled efficiently and without undue delay. The Applicants support of this Motion is, in fact, partly predicated on the expectation that assistance of outside counsel will contribute to the timely and orderly conduct of the forthcoming proceedings.

3. The Applicants believe that pursuant to RSA 162-H:22, III and V, outside counsel should be compensated from the SEC fund established by RSA 162-H:21. At the time of filing, and in accordance with RSA 162-H:8-a, the Applicants paid a \$626,000 filing fee, which by law, was deposited into the SEC fund. The SEC fund shall be used “to pay for compensation and reimbursements made under RSA 162-H:22 for energy facility proceeding time and expenses.” RSA 162-H:21, I. The New Hampshire Department of Justice (“NHDOJ”) is to be reimbursed for proceeding time and expenses incurred by the Counsel for the Public. RSA 162-H:22, III. Insofar as the Attorney General determines to use outside counsel in addition to or instead of one or more attorneys from his office to fulfill the role of Counsel for the Public, such costs are properly included as NHDOJ costs to be reimbursed from the SEC fund.

4. Assuming, *arguendo*, that the Applicants are required to pay the fees for outside counsel, the SEC must ensure there are adequate budget controls in place, effective oversight of outside counsel and that their work is consistent in scope with the Counsel for the Public’s statutory grant of authority.

Budgeting

5. Counsel for the Public submitted a proposal to the SEC as provided by outside counsel (the “Proposal”). The Applicants believe the Proposal lacks sufficient budget specificity. For example, it states that “it is impossible to predict how much time would be spent on this matter or what the associated costs would be.” Proposal, page 3. The Applicants recognize that budgeting in a matter like this can be challenging. Nevertheless, attorneys engaged in private practice routinely provide budgets for their clients, even in very complex matters. Clients demand such a budget, insist their attorneys adhere to the budget, and expect explanations for any exceedance of the budget.

6. The law firm that Counsel for the Public seeks to retain here is quite experienced and no doubt has prepared budgets like the one described above on many occasions. Given that the Applicants may have to bear the burden of these costs, and will have little or no ability to help manage the incurrence of expenses, it is of paramount importance that this engagement commence and proceed subject to careful budgeting.

7. Staffing is an issue closely related to budgeting. The Proposal identifies numerous attorneys and other professional personnel who may provide services to Counsel for the Public. It is not clear, however, whether Counsel for the Public will rely exclusively on outside counsel or to what extent Counsel for the Public will make use of the resources at the NHDOJ.

8. When clients engage outside counsel, the client typically helps manage costs by ensuring that where possible, legal work is first performed by in-house counsel. In this case, NHDOJ is essentially in-house counsel. NHDOJ has dozens of very able trial lawyers who would be capable of assisting with this matter. In fact, in other SEC dockets, there have been times when at least two NHDOJ attorneys served as Counsel of the Public. The Applicants believe that as a matter of fairness, NHDOJ should first ensure that it has staffed this case adequately to help control costs before turning to outside counsel to augment its efforts.

Oversight

9. The Applicants want to ensure that there is effective oversight of outside counsel's work in this matter. When clients engage outside firms, they carefully review the bills each month to ensure work is well targeted and being handled efficiently. Given that it is unlikely the Applicants will be permitted to exercise such oversight on these bills, it is

imperative that someone perform that function with the same level of scrutiny the Applicants would employ if permitted to do so.

10. The statute provides that the SEC must approve these charges. RSA 162-H:10, V. It necessarily follows that the SEC must exercise oversight here to ensure all charges are proper before they are approved. RSA 162-H:3, IX provides that the “chairperson [of the Committee] shall serve as chief executive of the committee and may . . . [p]erform administrative actions for the committee, as may a presiding officer.” By broadly referring to “administrative actions,” the Committee is granted authority and is charged with reviewing any and all invoices provided by consultants, legal counsel and other staff.¹ In the alternative, the statute gives the Committee authority to delegate such responsibilities to the administrator. RSA 162-H:3-a provides that “The administrator, or chairperson in the absence of an administrator, with committee approval, may engage additional technical, legal, or administrative support to fulfill the functions of the committee as necessary.” The Applicants would like to discuss with the Committee and Public Counsel how appropriate oversight can best be achieved in this case.

Scope

11. The statute grants Counsel for the Public authority “to represent the public in seeking to protect the quality of the environment and in seeking to assure an adequate supply of energy.” RSA 162-H:9. The Applicants have a substantial interest in ensuring that outside counsel recognizes this statutory grant of authority when conducting its work and that there will be adequate oversight of their efforts, both from Counsel for the Public and with respect to whoever may review their bills.

¹ See also RSA 162-H:22, IV (requiring any person or agency seeking compensation or reimbursement from the SEC fund to “keep detailed time and expense records which shall be submitted to the chairperson or administrator and used to determine the amount of compensation or reimbursement”).

WHEREFORE, the Applicants respectfully request that this Committee:

A. Allow the Applicants and Counsel for the Public time to discuss these issues in further detail so that they can be resolved to the satisfaction of the Applicants, Counsel for the Public and the SEC; and

B. Grant such further relief as it deems appropriate.

Respectfully Submitted,

Northern Pass Transmission LLC and

Public Service Company of New Hampshire

By its attorneys,

McLANE MIDDLETON
PROFESSIONAL ASSOCIATION

Dated: November 13, 2015


By:  _____

Barry Needleman, Esq. Bar No. 9446
Adam Dumville, Esq. Bar No. 20715
11 South Main Street, Suite 500
Concord, NH 03301
(603) 226-0400
barry.needleman@mclane.com
adam.dumville@mclane.com

Thomas B. Getz, Esq. Bar No. 923
Devine Millimet
111 Amherst Street
Manchester, NH 03101
(603) 669-1000
tgetz@devinemillimet.com

Certificate of Service

I hereby certify that on the 13th 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