

November 19, 2015

**VIA HAND-DELIVERY AND EMAIL**

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

**RE: 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 for Construction of a New High Voltage  
Transmission Line in New Hampshire**

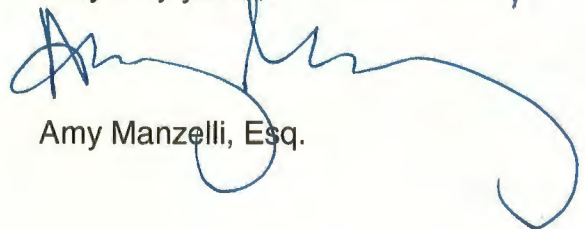
Dear Ms. Monroe:

Enclosed for filing in the above-captioned matter with the New Hampshire Site Evaluation Committee are the *Petition to Intervene of the Society for the Protection of New Hampshire Forests* and the *Contested Motion of the Society for the Protection of New Hampshire Forests to Determine Incomplete the Application of Northern Pass Transmission, LLC*.

Copies of this letter and its enclosures have this date been forwarded via email to all parties on the Distribution List.

If you have any questions or concerns, please do not hesitate to contact me.

Very truly yours,



Amy Manzelli, Esq.

/nmm

Enclosures

cc: Distribution List (as of 11-19-15) via email  
Client



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

**PETITION TO INTERVENE OF THE  
SOCIETY FOR THE PROTECTION OF NEW HAMPSHIRE FORESTS**

The Society for the Protection of New Hampshire Forests (the “Forest Society”), by and through its attorneys, BCM Environmental & Land Law, PLLC, respectfully petitions the New Hampshire Site Evaluation Committee (“SEC”) to intervene in the above-captioned proceedings pursuant to Site 202.11<sup>1</sup> and RSA 541-A:32, as follows:

1. On or about October 19, 2015, Northern Pass Transmission, LLC and Public Service Company of New Hampshire d/b/a Eversource Energy (collectively the Applicant is referred to as “Northern Pass”) filed the above-referenced joint application for a certificate of site and facility in connection with a 192-mile electric transmission line.

2. The Forest Society is a private, non-profit membership organization dedicated to protecting the state’s most important landscapes while promoting the wise use of its renewable natural resources.

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<sup>1</sup> It is understood that new administrative rules are in the process of becoming promulgated, and if promulgated before the adjudicative hearing of this matter has begun, those new rules may apply to this docket. However, because the new rules have not yet received the approval which would give them the full force and effect of law, this motion uses the current administrative rules.

3. The Forest Society is duty-bound to protect its private property rights: having acquired them as part of Conservation Easements, and/or through philanthropic contributions; in keeping with its nonprofit status; and finally, to fulfill its mission to “perpetuate the forests of New Hampshire through their wise use and their complete reservation in places of special scenic beauty.”

4. The Forest Society has over 10,000 members and holds property interests in over 191,000 acres throughout New Hampshire.

5. The Forest Society holds property interests in certain parcels of land included in the proposed Northern Pass route, including Conservation Easements that the Forest Society has a perpetual obligation to enforce and monitor to ensure the protection of conservation values, and fee-owned forest reservations which the Forest Society manages for natural resource protection, sustainable forestry, and public recreation.

6. The following properties are some of those in which the Forest Society owns the fee interest and are directly affected by the proposed Northern Pass route:

<b>From Northern Pass Application:</b>			
<b>Sheet Number</b>	<b>Property Owner Identification Number</b>	<b>Property Name</b>	<b>Town</b>
2 of 180	401.01, 400.01	Washburn Forest	Clarksville
43 of 180	12519, 12527	Kauffmann Forest	Stark
44 of 180	12528, 12541		
45 of 180	12547, 12548		
77 of 180	3215	The Rocks Estate	Bethlehem
78 of 180	3159, 3220		

7. The following properties are some of those in which the Forest Society owns a Conservation Easement interest and are directly affected by the Northern Pass route:

<b>From Northern Pass Application:</b>			
<b>Sheet Number</b>	<b>Property Owner Identification Number</b>	<b>Fee Owner Name</b>	<b>Town</b>
9 of 180	10649	McAllaster	Stewartstown
7 of 180	10644	Green Acre Woodlands	Stewartstown
11 of 180	10673	Lynne Placey	Stewartstown
11 of 180	10676	Brad & Daryl Thompson	Stewartstown
44 of 180	12535	Percy Summer Club	Stark
56 of 180	2293	Bartow & Baker, J. & Baker, L.	Lancaster
78 of 180	3160.01, 3221	Russell	Bethlehem
56 of 180	2294	Campan, E. & E.	Lancaster
79 of 180	3416	Hannah	Sugar Hill
88 of 180	3825, 3828	Daarvid	Easton
157 of 180	7995	Spear	Concord
179 of 180	9712	Menard	Deerfield
179 of 180	9714	Geddes Trust, Melinda L.	Deerfield

8. In addition to those properties directly affected by the proposed route, the Forest Society owns interests in several properties located in the vicinity of the project, including within the viewshed of the proposed project.

9. Amongst the standards the Applicant must satisfy pursuant to RSA 162-H:16, the project as proposed will specifically impact the Forest Society with respect to its real property rights, property values, sound, aesthetics, environment, economy, and other expected impacts of the project, and its members will be specifically impacted because of the proximity of the project to the Forest Society’s real property interests.

10. Site 202.11(a) provides that “[p]ersons seeking to intervene in a proceeding shall file petitions with the committee ....”

11. Site 202.11(b) provides as follows:

The presiding officer shall grant a petition to intervene if:

(1) The petition is submitted in writing to the presiding officer ...;

(2) The petition states facts demonstrating that the petitioner's rights, duties, privileges, immunities or other substantial interests might be affected by the proceeding or that the petitioner qualifies as an intervenor under any provision of law; and

(3) The presiding officer determines that the interests of justice and the orderly and prompt conduct of the proceedings would not be impaired by allowing the intervention.

See also RSA 541-A:32 (imposing identical standard by statute).

12. The Forest Society meets the requirements of Site 202.11(b) because it owns real property interests for the purpose of protecting some of the state's most important landscapes while promoting the wise use of its renewable natural resources, and those real property interests will be affected by Northern Pass, and because its members will be directly impacted.

**WHEREFORE**, the Society for the Protection of New Hampshire Forests respectfully requests that that the designated Chairperson grant this petition to intervene in the above-captioned proceeding.

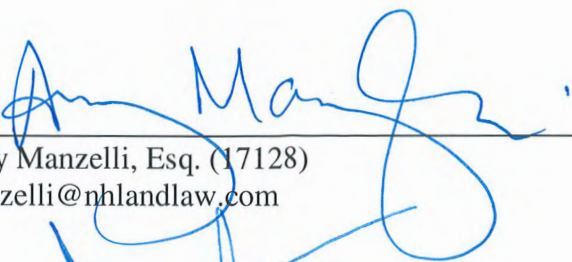
Respectfully Submitted,

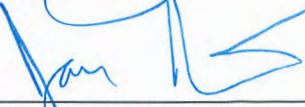
**SOCIETY FOR THE PROTECTION OF NEW  
HAMPSHIRE FORESTS**

By its Attorneys,

November 19, 2015

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**CERTIFICATE OF SERVICE**

I hereby certify that on this day, November 19, 2015, a copy of the foregoing motion was sent by electronic mail or U.S. Mail, postage prepaid, to persons named on the Service List of this docket.

By:   
Amy Manzelli, Esq.

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

**CONTESTED MOTION OF  
THE SOCIETY FOR THE PROTECTION OF NEW HAMPSHIRE FORESTS  
TO DETERMINE INCOMPLETE  
THE APPLICATION OF NORTHERN PASS TRANSMISSION, LLC**

The Society for the Protection of New Hampshire Forests (the “Forest Society”), by and through its attorneys, BCM Environmental & Land Law, PLLC, respectfully moves that the Chairperson of the New Hampshire Site Evaluation Committee (“SEC”) rule, pursuant to Site 301.04, that the joint application of Northern Pass Transmission, LLC and Public Service Company of New Hampshire d/b/a Eversource Energy (collectively the Applicant is referred to as “Northern Pass”) is incomplete.

The Forest Society states as follows in support of its motion:

**I. INTRODUCTION**

1. As discussed in more detail throughout this Motion, the Forest Society must act now to protect its private property rights, rights that it is duty-bound to protect: having acquired its rights as part of conservation easements, and/or through philanthropic contributions; in keeping with its nonprofit status; and finally, to fulfill its mission to “perpetuate the forests of New Hampshire through their wise use and their complete reservation in places of special scenic beauty.”

2. As such, the Forest Society asserts that the application is incomplete, primarily because Northern Pass has not, and cannot, prove adequate site control, but also because: (1) its applications to the Department of Environmental Services are incomplete; (2) the application lacks a Special Use Permit for the portion of the project through the White Mountain National Forest and lacks an application for a Special Use Permit for this proposed project; (3) alternatives are not considered enough; (4) the Applicant erroneously concludes that N.H. Department of Transportation may grant it use of real property owned by others; and (5) Northern Pass failed to notify three municipalities (Candia, Auburn, and Derry).

A. Full and Complete Disclosure is Necessary to Inform SEC and Public

3. “[A]ll entities planning to construct facilities in the state [are] required to provide full and complete disclosure to the public of such plans....” RSA 162-H:1.

4. The siting process pursuant to RSA 162-H:1 requires that part of the “full and complete disclosure to the public” include information that the Applicant has control of the full extent of the site, and details of the manner of such control. See RSA 162-H:7, IV (applications “shall contain sufficient information to satisfy the application requirements of each state agency having jurisdiction ... and shall include each agency’s completed application forms”); RSA 162-H:7, V(b) (applications “shall” “[i]dentify both the applicant’s preferred choice and other alternatives it considers available for the site and configuration of each major part of the proposed facility and the reasons for the applicant’s preferred choice”); Site 301.03(b)(6)<sup>1</sup> (applications “shall include” “whether the applicant is the owner or lessee of the site or facility or has some legal or business relationship to it”); Site 301.03(c)(2) (applications “shall contain”

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<sup>1</sup> It is understood that the new administrative rules are in the process of promulgation, and if promulgated before the adjudicative hearing of this matter has begun, those new rules may apply to this docket. However, because the new rules have not yet received the approval which would give them the full force and effect of law, this motion uses the current administrative rules.



“[s]ite acreage, shown on an attached property map and located by scale on a U.S. Geological Survey or GIS map”); Site 301.03(c)(3) (applications “shall contain” “location of residences, industrial buildings, and other structures and improvements within or adjacent to the site”); Site 301.03(d)(2) (applications “shall include information about other required applications and permits as follows:” “[d]ocumentation that demonstrates compliance with the application requirements of such agencies”).

5. The detailed information required by law 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 impact of the Facility.” Order Determining Application to be Incomplete, January 13, 2014, Atlantic Wind, LLC, Docket No. 2013-02, p. 13; see also RSA 162-H:16.

## **II. Application is Incomplete Because Northern Pass Lacks Property Rights**

6. Northern Pass’s claim that it is or will be the owner of the property comprising the Project is not sufficient evidence of site control under the applicable law.

7. An application and the supporting plans must demonstrate clearly the legal relationship of an applicant to the entire proposed project. See Order Determining Application to be Incomplete, January 13, 2014, Atlantic Wind, LLC, Docket No. 2013-02, p. 12; see also Site 301.03.

### **A. Inadequate Site Control Because Forest Society Owns Land**

8. In this case, Northern Pass has not, and cannot, satisfy its burden of proving adequate site control for those portions of the route where the Forest Society owns.

9. In particular, Northern Pass claims that it will have the right to extend a buried section of the transmission line fifty to seventy feet beneath the surface of the Route 3 right-of-way in Clarksville, immediately south of the Connecticut River, upon issuance of a license from the New Hampshire Department of Transportation.

10. However, the Forest Society owns the fee interest in the land located on both sides of that segment of Route 3 (the “Washburn Property”), which means that the Forest Society owns all the land under the road, including to the thread of the Connecticut River on the south side.

11. The proposed installation exceeds the scope of the public right-of-way in Route 3.

12. As a result, the proposed installation would constitute an unreasonable expansion of the scope of the existing public easement in Route 3, and would constitute an entirely different and additional servitude on the Forest Society’s land.

13. The Forest Society has not granted Northern Pass permission to excavate, permanently occupy, or otherwise use any of its property.

14. So, Northern Pass lacks adequate site control for this property, and therefore, the application is incomplete.

**B. Possible Inadequate Site Control Because Others Own Land**

15. For the same reasons discussed in the previous section (II.A.), Northern Pass also may lack site control for other properties, if any, burdened by a right-of-way—not only those in which the Forest Society has an ownership interest, but possibly also many others—the scope of which rights-of-way may also be exceeded by the proposed installation.

C. Inadequate Site Control Because Forest Society Owns Conservation Easements

16. In addition to its fee interest in the Washburn Property, the Forest Society owns Conservation Easements authorized by RSA 477:45-47 on a number of properties, as listed in its Petition to Intervene.

17. Municipal roads in Stewartstown, and elsewhere, are located on these properties protected by Forest Society-owned Conservation Easements.

18. Northern Pass proposes burying its transmission line through these properties protected by Forest Society-owned Conservation Easements.

19. Northern Pass's proposed use of the travelled right-of-way for the burial of transmission lines impacts the underlying fee interest owned by other landowners to the centerline of the road.

20. These fee interests are encumbered by Conservation Easements which are superior in time and title to the proposed use.

21. The Forest Society is legally obligated to enforce the terms of the Conservation Easements, which specifically prohibit, restrict, and limit the commercial activities and uses proposed by Northern Pass on and under the properties protected by the Conservation Easements.

22. The restrictions and limitations imposed by the Conservation Easements which prohibit the proposed use by Northern Pass implicate the private property rights of both the fee owner and the Conservation Easement owner, the Forest Society.

23. As such, Northern Pass lacks property rights where the Forest Society owns Conservation Easements, meaning the application is incomplete.

D. Possible Inadequate Site Control Because Others Own Conservation Easements

24. For the same reasons that Northern Pass’s proposed use violates Conservation Easements owned by the Forest Society, the proposed use may also violate Conservation Easements owned by other entities on the proposed route, if any.

25. Such Conservation Easements likely specifically also prohibit, restrict, and limit the activities and uses Northern Pass proposes on those properties protected by these Conservation Easements.

E. Inadequate Site Control Because Failure to Prove “Progress”

26. Given that Northern Pass has failed its burden to prove site control, Northern Pass “shall include in the Application a detailed description of the progress toward obtaining a legal relationship with the property.” See Order Determining Application to be Incomplete, January 13, 2014, Atlantic Wind, LLC, Docket No. 2013-02, p. 12.

27. The application is void of progress towards obtaining a legal relationship with the Forest Society’s property, including any alternative sites for the facility pursuant to Site 301.03(h)(2).

28. The application is similarly void of progress towards obtaining a legal relationship with the property of others included in the proposed route.

**III. THE SUPERIOR COURT IS THE ADJUDICATOR OF DISPUTED REAL PROPERTY RIGHTS**

29. Presumably, Northern Pass disputes the Forest Society’s assertion that Northern Pass does not have adequate site control over those portions of the proposed route in which the Forest Society has a private property ownership interest.

30. While the SEC process will undoubtedly and rightfully involve consideration of impacts to properties, the only appropriate venue for resolution of questions as to the ownership

of and legal right to use real property is the New Hampshire Superior Court, which has jurisdiction pursuant to RSA 491:7; 491:22; and 498:1.

31. Accordingly, concurrent with the filing of this Motion, the Forest Society has commenced a Declaratory Judgment action in Coos Superior Court seeking injunctive relief and an order that Northern Pass does not have the legal right to use the Forest Society's private property as Northern Pass claims in its application.

**IV. ADDITIONAL GROUNDS FOR DETERMINING APPLICATION INCOMPLETE**

32. Northern Pass's application is also incomplete in the following five distinct ways.

**A. Inadequate Site Control Because Required Special Use Permit & Application are Absent**

33. Northern Pass proposes to bury the transmission line along and under public roads primarily around and through the White Mountain National Forest, which requires a Special Use Permit from the United States Forest Service.

34. The materials submitted in Appendix 8, relating to such a Special Use Permit, do not in any way reflect the configuration of the proposed project that is the subject of the application, and were apparently prepared in 2011 through 2013 in connection with a prior iteration of the project that is materially and substantially distinct from the current proposal.

35. So, the application to the SEC contains no application for a Special Use Permit for the proposed project, and no Special Use Permit for the proposed project, rendering the application incomplete.

**B. Applications to N.H. Department of Environmental Services are Incomplete**

36. The Northern Pass has applied for permitting through the N.H. Department of Environmental Services ("DES") for wetlands, shoreland, and alteration of terrain impacts.

37. Each of those applications is incomplete because the Northern Pass could not meet its burden to prove adequate site control, which each of the programs requires independent of SEC's similar requirement. See Env-Wt 501.02(a)(1) (wetlands applications must include "[a] copy or tracing of a town tax map showing the property of the applicant [and] the location of the proposed project on the property"); Env-Wq 1503.08(1) (alteration of terrain application must include "proof that the applicant will have a legal right to undertake the project on the property if a permit is issued to the applicant"); Env-Wq 1406.07(a)(4) (shoreland application must include "documentation supporting the applicant's right to engage in the proposed activity on the property").

38. Additionally, the wetlands and shoreland applications are required to bear the signatures of all landowners, but they do not. See Env-Wt 101.06; 501 (wetlands); and Env-Wq. 1406.08 (shoreland).

39. Despite the Forest Society's ownership interests, Northern Pass has signed the applications as the sole landowner.

40. Because the Forest Society is one of the landowners, and because it has not signed any of the wetlands or shoreland applications, those applications are also incomplete.

41. The wetlands application is also incomplete for the following reasons, which omissions inaccurately depress the total area and magnitude of wetlands impact and prevent the application from being tested against regulatory requirements due to lack of specificity: (1) fails to address whether and/or how the proposed route is the least impacting alternative pursuant to Env-Wt 302.04; (2) lacks specific plans for restoring each impacted wetland; (3) fails to specify what GPS equipment was used for wetland mapping; (4) fails to identify which wetlands were mapped in the field and which were mapped with aerial photography; (5) fails to justify why

aerial photography was used for some locations instead of field mapping; and (6) fails to include all of the areas with potential for wetlands impact, including that it does not include all off right-of-way laydown areas or all off right-of-way access roads, and therefore the total area of temporary and permanent impacts is not included in the application.

42. DES reviewed the wetlands, shoreland, and alteration of terrain applications and determined them to be incomplete. See Letter from Rene Pelletier to Pamela Monroe dated November 12, 2015.

C. Incomplete Because Northern Pass Fails to Adequately Consider Alternatives

43. The application is also incomplete because it fails to adequately consider alternatives, including that it fails to consider the option of burying the entire line. See RSA 162-H:7, V(b) (“Identify both the applicant’s preferred choice and other alternatives it considers available for the site and configuration of each major part of the proposed facility and the reasons for the applicant's preferred choice”).

44. Outside of the SEC process, Northern Pass claims that full burial is too expensive, but it fails to provide any proof of such claim in connection with its application to the SEC.

45. Therefore, the SEC is without sufficient information to consider the proposed route in the context of alternatives, which makes the application incomplete.

D. Incomplete Because New Hampshire Department of Transportation Cannot Authorize Use of Private Property

46. Northern Pass erroneously relies on various state laws and a publication in support of its route, and as a result has failed to show it will have adequate site control.

47. First, Northern Pass claims that RSA 231:160, *et seq.* authorizes its proposed transmission line to be located under public highways and cross over highways at various locations.

48. Second, Northern Pass also claims that RSA 371:17 authorizes its proposed transmission line to cross over or under public waters and lands owned by the State.

49. Third, Northern Pass claims that the New Hampshire Department of Transportation (“DOT”) Utility Accommodation Manual (“Manual”) authorizes the proposed transmission line to cross certain lands.

50. While these relied-upon statutes and Manual have a role in Northern Pass’s application, none of them can be used to grant Northern Pass use of real property that is privately owned.

51. Specifically, nothing in RSA 371:17, RSA 231:160, *et seq.*, or the Manual authorizes DOT to grant to Northern Pass the use of real property owned by the Forest Society.

52. Indeed, the Excavation Permit Applications to DOT specifically state that “NHDOT cannot and does not hereby grant permission to enter upon or utilize any privately owned land.”

53. Here again, the application fails to provide the required showing of adequate site control.

#### E. Incomplete Because Three Municipalities Omitted

54. Lastly with respect to grounds for incompleteness, Northern Pass failed its requirement to “[d]ocument that written notification of the proposed project ... has been given to the appropriate governing body of each community in which the facility is proposed to be located.” RSA 162-H:7,V(f); Site 301.03(h)(7) (emphasis added).

55. As part of the Northern Pass project, certain upgrade work would be required on existing transmission lines in Raymond, Candia, Chester, Auburn and Londonderry so that regional grid reliability is not adversely impacted. See Volume XIX, Appendix 21 (Results of



Phase I-A Archeological Survey – AC System Transmission Line Upgrades (PSNH 373 Line): Deerfield, Candia, Raymond, Chester, Auburn, Derry and Londonderry, NH (2014); and Volume XX, Appendix 22 (Results of Phase I-A and Phase I-B Archeological Survey – Proposed Expansion of Deerfield Substation, Proposed Expansion of Scobie Pond Substation and AC System Transmission Line Upgrades (PSNH 373 Line): Deerfield, Candia, Raymond, Chester, Auburn, Derry and Londonderry, NH (2015).

56. Despite Candia, Auburn and Derry being involved in Northern Pass, Northern Pass did not include them in its list of municipalities to which it gave the legally-required notice. See Application Section h, p. 54–55.

57. While it is unclear from the application whether Northern Pass did in fact notify them and failed only to include them on the list, or whether it actually failed to provide them the legally-required notice, either is a failure to comply with RSA 162-H:7,V(f) and Site 301.03(h)(7), and makes the application incomplete.

#### V. **INCOMPLETE APPLICATIONS MAY NOT BE ACCEPTED**

58. The law is not the only reason to reject incomplete applications; the doctrine of judicial economy must be taken into account, and weighs strongly in favor of not accepting incomplete applications.

59. Should an applicant fail to satisfy its burden to show site control over the entire project area, the SEC cannot determine the application is complete and cannot accept the application pursuant to RSA 162-H. See Order Determining Application to be Incomplete, January 13, 2014, Atlantic Wind, LLC, Docket No. 2013-02, p. 17 (finding the application

incomplete, among other reasons, because it did not include “a clear identification of the legal relationship between the Applicant and the property proposed to comprise the Facility.”).

60. Should an agency with jurisdiction determine that the application contains insufficient information for the agency to make a completeness determination, as DES has, the SEC also cannot determine the application is complete and cannot accept the application pursuant to RSA 162-H. See Letter of Incompleteness, January 15, 2010, Laidlaw Berlin BioPower, LLC, Docket No. 2009-02; see also, Order Determining Application to be Incomplete, January 13, 2014, Atlantic Wind, LLC, Docket No. 2013-02, p. 8 (“The Application is deemed to be incomplete for failure to provide sufficient information to satisfy the application requirements of each state agency with jurisdiction.”).

61. Moreover, because the SEC cannot issue a certificate of site to any project for which an agency has denied its jurisdictional authority, and because DES cannot grant any permit in the absence of a complete application, the SEC should not waste judicial resources (or those of the public) by accepting the application as complete.

62. Because of the monumental magnitude required by the SEC considering the merits of Northern Pass’s application, the SEC should undertake such investment only after Northern Pass provides a complete application.

63. Until the lawsuit has been resolved with a final decision or until the final decision has been appealed and the final decision on appeal has been made, and only if the lawsuit has been resolved in favor of Northern Pass, might the SEC have sufficient information to make a determination as to whether the application is complete.

64. Until then, the SEC lacks information sufficient to determine the application complete, and therefore must find that it is incomplete.

## VI. NEW HAMPSHIRE LAW ALLOWS CHALLENGES TO COMPLETENESS

65. The SEC has previously stated that it is not required to “entertain litigation” during the initial completeness review. See Wild Meadows, LLC, Docket 2013-02.

66. The Order in that matter reasoned that: (1) the statute delegates the completeness review solely to the Committee and/or Chair of the Committee; (2) the strict time frames for determining completeness of the application “render fair litigation over completeness to be impossible;” and (3) because the time frames of the statute are based upon the date the application is determined to be complete, neither the statute nor the administrative rules “contemplate or require litigation over the completeness determination.”

67. The Forest Society respectfully asserts that nothing in the law prohibits a motion advocating a determination of incompleteness; to the contrary, New Hampshire law allows for challenges to completeness, and, as noted at the outset, the Forest Society is duty-bound to seek to protect its private property rights.

### A. The Administrative Rules Define “Motion” Broadly

68. The Administrative Rules define a “Motion” broadly as a “request made to the committee or the presiding officer after the commencement of a contested proceeding for an order or ruling directing some act to be done in favor of the party making the motion, including a statement of justification or reasons for the request.” Site 102.10.

69. Neither “commencement” nor “contested proceeding” is defined, but the plain language usage of these terms demonstrates that the filing of an application commences a contested proceeding.

70. While certain types of motions are expressly allowed, such as for continuance, declaratory judgment, intervention, etc., the definition is not limited to the motions expressly enumerated in the rules.

71. Rather, the definition contemplates a party being able to make a motion for “some act,” which would include a determination of incompleteness.

72. Other rules require certain administrivia, none of which seems to prevent the filing of a motion of this type. See Site 202.06 (requiring certain technicalities such as the size of the paper, inclusion of the docket number, etc.); see also Site 202.14 (generally requiring motions be made in writing).

73. So, while nothing in New Hampshire law requires this challenge, nothing prohibits it; to the contrary, the Administrative Rules allow it.

#### B. Lawmakers Contemplated the SEC Would Need to Deviate from Time Frames

74. To the extent that such a motion may make it difficult to comply with some statutory deadline, lawmakers contemplated the SEC needing to deviate from the statutory deadlines.

75. RSA 162-H:14 authorizes the SEC to temporarily suspend those time frames when such suspension is “in the public interest.”

76. Resolving a motion about whether an application contains sufficient information “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 impact of the Facility” is entirely within the public interest. See Order Determining Application to be Incomplete, January 13, 2014, Atlantic Wind, LLC, Docket No. 2013-02, p. 13.

77. As such, if the SEC could not resolve “litigation” about completeness before its 60-day deadline to make a determination about it, the SEC could suspend the 60-day time frame.

C. Land Use Matters Routinely Involve Challenges to Completeness

78. Analogy to the municipal land use process is appropriate, and instructive, because the SEC is essentially a statewide land use board that supercedes similar boards established at the municipal level.

79. In municipal land use, the completeness of any given request, be it for site plan approval, for a variance, etc., is routinely challenged. Municipal boards receiving those challenges accept them and then address the merits of the claims of the incompleteness.

80. These boards do this despite the fact that no law expressly authorizes such challenges, and in the face of tight statutory deadlines.

81. For example, planning boards must determine whether certain applications are complete within 30 days. RSA 676:4, I(c)(1).

82. In practicality, planning boards routinely extend that deadline to entertain challenges to completeness, such extension also being authorized by statute (RSA 676:4, I(f)), and so should the SEC, if needed.

**VII. CONCLUSION**

83. The Northern Pass application is monumental, and it would be a monumental waste of judicial economy and the resources of the public for the SEC to undertake substantive review of it in the absence of Northern Pass having met its burden to provide a complete application.

84. This is especially true when some aspects of the incompleteness, the lack of site control, cannot be cured by Northern Pass under current circumstances.

85. Pursuant to Site 202.14, it is presumed that counsel for Northern Pass objects to this Motion. Counsel for the Public takes no position on this Motion at this time.

**WHEREFORE**, the Forest Society respectfully requests that the SEC:

- A. Determine that the application of Northern Pass is incomplete; and
- B. Grant any other such relief as is just.

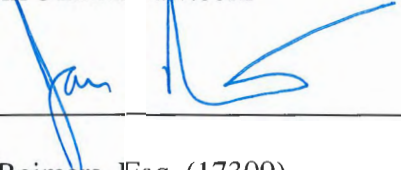
Respectfully Submitted,

**The Society for the Protection of New Hampshire Forests**

By its Attorneys,

BCM Environmental & Land Law, PLLC

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**CERTIFICATE OF SERVICE**

I hereby certify that on this day, November 19, 2015, a copy of the foregoing motion was sent by electronic mail or U.S. Mail, postage prepaid, to persons named on the Service List of this docket.

By:   
Amy Manzelli, Esq.