

December 11, 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**

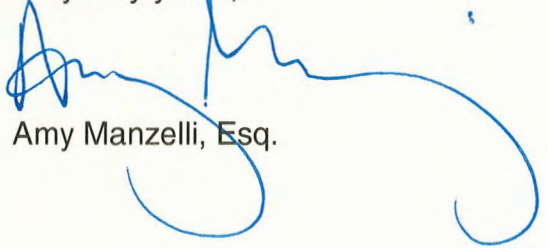
Dear Ms. Monroe:

Enclosed for filing in the above-captioned matter with the New Hampshire Site Evaluation Committee is the **Contested Motion to Clarify of the Society for the Protection of New Hampshire Forests**.

Copies of this letter and its enclosure 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 12-11-15) 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

**CONTESTED MOTION TO CLARIFY 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, requests clarification as follows:

I. INTRODUCTION

1. On December 7, 2015, the Subcommittee of the Site Evaluation Committee (“SEC”) appointed for the above-referenced Application (“Subcommittee”) submitted by Northern Pass Transmission, LLC and Public Service Company of New Hampshire (collectively the Joint Applicant is referred to as “Northern Pass”) made and passed a motion to accept the Application and authorize its legal counsel to draft an order (“Motion”).

2. The Subcommittee’s acceptance of the Application means that “the application is complete and ready for consideration.” RSA 162-H:2, I (defining “acceptance”).

3. Given that the Subcommittee decided the Application is complete, despite several acknowledgements that further information was needed, the Forest Society respectfully seeks clarification on the following four questions.

II. LEGAL RELATIONSHIP

4. First, does the Subcommittee's decision to accept the Application mean that the Subcommittee has determined that Northern Pass has a "legal relationship" with the Forest Society's real property?

5. By way of background, applicable administrative rules require applicants to provide specific information for an application to be complete.

6. In particular, Site 301.03(b)(6) requires an applicant to provide "[w]hether the applicant is the owner or lessee of the site or facility or has some legal or business relationship to it."

7. The SEC has interpreted this to mean that for every portion of a proposed site, the applicant must show the legal or business relationship that would authorize the applicant to use that property. See Order Determining Application to be Incomplete, January 13, 2014, Atlantic Wind, LLC, Docket No. 2013-02, p. 12.

8. Thus, when the Subcommittee accepted the Application, it would seem that the Subcommittee had to have determined that Northern Pass had shown a legal or business relationship to all portions of its proposed site.

9. Part of Northern Pass's proposed site includes a parcel of land owned by the Forest Society in Clarksville, NH, which parcel is known as the Washburn Family Forest.

10. Accordingly and more specifically, because the proposed site includes the Washburn Family Forest, it would seem that the Subcommittee had to have determined that Northern Pass had shown a legal or business relationship to the Washburn Family Forest that would allow Northern Pass to use that property.

11. Given that no one seems to claim a business relationship between Northern Pass and the Washburn Family Forest, it would seem that the precise determination the Subcommittee must have made is that Northern Pass had shown a legal (as opposed to a business) relationship to the Washburn Family Forest that would allow Northern Pass to use that property.

12. Thus, the Forest Society respectfully requests clarification about whether the Subcommittee's decision means that the Subcommittee has determined that Northern Pass has a "legal relationship" with the Forest Society's Washburn Family Forest?

III. ADEQUATE PROPERTY RIGHTS ISSUE AT SEC

13. Second, does the Subcommittee's decision to accept the Application render moot, immaterial, or irrelevant to the remainder of the adjudication of this Application the issue of whether Northern Pass has adequate real property rights to undertake its proposed project, including but not limited to the Washburn Family Forest, or, does it mean that the issue may be raised in the remainder of the adjudication?

14. As the Forest Society has noted previously, it firmly believes that the Application cannot be accepted in the absence of a court resolution in favor of Northern Pass with respect to the disputed real property rights.

IV. ROLE OF OTHERS WITH RESPECT TO SUBCOMMITTEE'S DUTY TO ACCEPT OR DETERMINE INCOMPLETE

15. Third, does the Subcommittee's decision mean that the Subcommittee has decided that no entity, aside from: state agencies with permitting jurisdiction; an applicant; and the SEC

or a Subcommittee, may have any role with respect to the determination of whether an application should be accepted or found incomplete?

16. During its deliberations, the Subcommittee and its counsel on behalf of the Subcommittee represented both that: (1) filings with respect to the determination of whether an application should be accepted or found incomplete might be for consideration; and, to the contrary, (2) the determination was solely between the Subcommittee and the Applicant.

17. Accordingly, the Forest Society respectfully seeks clarification as to whether the Subcommittee's decision includes a legal conclusion that no entity, except those noted previously, has any meaningful opportunity to participate with respect to such determination.

18. Relatedly, the Forest Society respectfully seeks clarification as to what constituted the administrative record upon which the Subcommittee based its decision.

19. In particular, did the record upon which the Subcommittee based its decision consist solely of materials submitted by the Applicant and State agencies?

V. "DECISION" FOR APPELLATE PURPOSES

20. By way of background, "decisions" made pursuant to RSA 162-H "shall be reviewable in accordance with RSA 541." RSA 162-H:11.

21. Pursuant to RSA 541, the appellate process begins with "any person directly affected" filing a motion for rehearing "[w]ithin 30 days after any order or decision has been made..." RSA 541:3; see also Site 202.29(c) ("A motion for rehearing shall be filed within 30 days of the date of a committee decision or order").

22. The statute and the administrative rule are ambiguous as to whether the Subcommittee making and passing its Motion on December 7, 2015 triggered the 30-day

deadline to move for rehearing, or whether the 30-day deadline will begin only upon publication of the written order memorializing and elaborating upon the motion.

23. Prior practice at the SEC supports the interpretation that the 30-day deadline begins only upon publication of the written order. (For example, in Antrim Wind Energy, LLC, Docket No. 2012-01, the subcommittee appointed for that matter accepted and acted upon a Motion for Rehearing dated June 3, 2012, which was filed within 30 days of the publication of the Subcommittee's written order on May 2, 2013, which memorialized a motion the subcommittee made and passed at a meeting on February 7, 2013, which means that the Motion for Rehearing was filed nearly four months after the making and passing of that subcommittee's motion.)

24. Accordingly, the Forest Society respectfully requests clarification that the 30-day deadline to file a motion for rehearing pursuant to RSA 541 does not begin until the subcommittee publishes its written decision.

25. Counsel for the Public could not be reached to ascertain whether he concurs, takes no position, or objects to his Motion. Counsel for the Applicant objects to this Motion.

WHEREFORE, the Forest Society respectfully requests that the Subcommittee:

- A. Clarify the questions raised herein in its written order to accept the Application, or in a separate order; and
- B. Grant such further relief as it deems appropriate.

Respectfully Submitted,

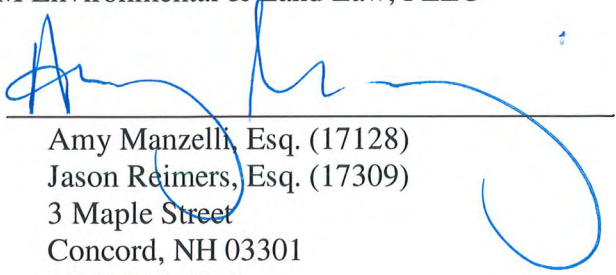
**SOCIETY FOR THE PROTECTION OF
NEW HAMPSHIRE FORESTS**

By its Attorneys,

BCM Environmental & Land Law, PLLC

Date: December 11, 2015

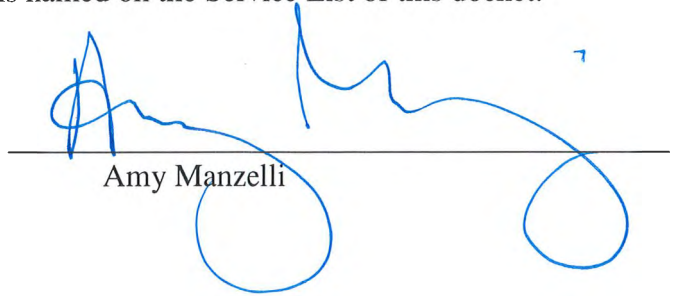
By:



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CERTIFICATE OF SERVICE

I hereby certify that on this day, December 11, 2015, a copy of the foregoing Motion to Clarify was sent by electronic mail to persons named on the Service List of this docket.



Amy Manzelli