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VIA HAND-DELIVERY

February 24, 2016

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

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 High Voltage Transmission Line in New Hampshire

Dear Ms. Monroe:

Enclosed for filing in the above-referenced docket, please find an original and one copy of the following Motions:

- 1) Applicants' Objection to Counsel for the Public's Response to Motion of Conservation Land Foundation for Additional or Deferred Public Hearings and Contested Motion for Due Process Upon Submission of Additional Information of the Society for the Protection of New Hampshire Forests;
- 2) Applicants' Objection to the Conservation Law Foundation's Motion for Additional or Deferred Public Hearings; and
- 3) Applicants' Objection to the Society for Protection of New Hampshire Forest's Motion for Due Process Upon Submission of Additional Information.

Sincerely,

Barry Needleman

Enclosures

cc: Distribution List

McLane Middleton, Professional Association
Manchester, Concord, Portsmouth, NH | Woburn, MA

McLane.com

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' OBJECTION TO COUNSEL FOR THE PUBLIC'S RESPONSE TO
MOTION OF CONSERVATION LAW FOUNDATION FOR ADDITIONAL OR
DEFERRED PUBLIC HEARINGS AND CONTESTED MOTION FOR DUE PROCESS
UPON SUBMISSION OF ADDITIONAL INFORMATION OF THE SOCIETY FOR THE
PROTECTION OF NEW HAMPSHIRE FORESTS**

NOW COME Northern Pass Transmission LLC ("NPT") and Public Service Company of New Hampshire d/b/a Eversource Energy ("PSNH") (collectively the "Applicants"), by and through their attorneys, McLane Middleton, Professional Association, and respectfully submit this Objection to Counsel for the Public's ("Public Counsel") Response to the Society for the Protection of New Hampshire Forest's ("SPNHF") Motion for Due Process Upon Submission of Additional Information and Conservations Law Foundation's ("CLF") Motion for Additional or Deferred Public Hearings (the "Response").

I. Introduction

1. On October 19, 2015 the Applicants filed an application for a Certificate of Site and Facility ("Application") with the Site Evaluation Committee ("SEC" or "Committee").
2. On December 18, 2015 the Committee issued an order accepting the Application after finding, pursuant to RSA 162-H:7, IV, that the Application contains sufficient information to satisfy the application requirements of each state agency having jurisdiction under state or federal law to regulate any aspect of the construction or operation of the proposed facility.

3. On February 16, 2016 SPNHF filed a Motion for Due Process Upon Submission of Additional Information with the Committee. In its motion, SPNHF requests that the Committee (1) conduct a second completeness determination upon submission of additional information by the Applicants, (2) use the date of the second completeness determination for purposes of calculating future statutory deadlines, (3) postpone the currently scheduled public hearings until 60-90 days following acceptance of forthcoming information, and, alternatively, (4) schedule an additional set of public hearings.

4. On February 18, 2016 CLF filed a Motion for Additional or Deferred Public Hearings with the Committee. In its motion, CLF requests that the Committee schedule additional county based public hearings or, alternatively, defer public hearings pending submission of supplemental information by the Applicants.

5. On February 22, 2016 Counsel for the Public filed a Response to CLF and SPNHF's motions. In his Response, Public Counsel states that he supports postponing the hearings or suspending the proceedings for a reasonable amount of time after the Joint Applicant's supplemental materials are filed.

6. The Applicants object to the Response.

II. Discussion

A. Public Counsel's Response Is Contrary to Express Legislative Intent

7. On December 28, 2015, the SEC sent a letter to the Applicants asking that the Applicants review the rules and the Application and respond in writing as to whether any additional information is required in order to comply with the rules and the amount of time needed to supplement the Application. The Applicants responded on January 15, 2016, stating

that they have reviewed the new rules and will submit additional information to the Committee by March 15, 2016.

8. Public Counsel supports postponing the hearings or suspending the proceedings for a reasonable amount of time after the Applicants file forthcoming information to the Committee. Public Counsel does not cite any authority to support this position and his position is contrary to the specific requirements of RSA 162-H.

9. The Legislature explicitly contemplated that pending applications might have to be supplemented when the new rules became effective; the statute, however, is devoid of any provision allowing the SEC to defer the statutorily required public hearings:

Except for the cases where the adjudicatory hearing has commenced, applications pending on the date rules adopted under this paragraph take effect shall be subject to such rules. Prior to the adoption of rules under this paragraph, applications shall be continuously processed pursuant to the rules in effect upon the date of filing. If these rules require the submission of additional information by an applicant, such applicant shall be afforded a reasonable opportunity to provide that information *while the processing of the application continues*.

RSA 162-H:10, VII [emphasis added]. Any effort to suspend the processing of an application while an applicant is afforded a reasonable opportunity to provide additional information is directly contrary to RSA 162-H:10, VII.

10. Moreover, a recent letter issued by Attorney Michael Iacopino is instructive regarding this issue. Responding to a similar request made by Senator Jeanie Forrester, attached hereto, and in reference to the above-quoted statutory language, Attorney Michael Iacopino states:

[A]s you can see from the above referenced language, the statute provides that the Applicant will be afforded a reasonable opportunity to supplement its Application while the processing of the Application continues. There is no provision for a new '90 day clock.' There is also no provision requiring the Committee to issue an additional acceptance order.

See Iacopino Letter (January 27, 2016).

B. Public Counsel's Analysis Runs Contrary to the Statute

11. Public Counsel suggests that the circumstances regarding the adoption of the new rules while the Applicants' Application was pending before the Committee calls for postponing the currently scheduled statutory public hearings. Public Counsel cites no authority for this argument. Moreover, the issue was also addressed in Attorney Iacopino's letter:

RSA 162-H:10, I-c requires the Site Evaluation Committee to hold at least one joint public hearing in each county in which a proposed facility is to be located. That joint public hearing must be held within 90 days of the acceptance of the Application. The Northern Pass Application was accepted on December 18, 2015. Therefore, the five joint public hearings ... must be completed prior to March 17, 2016. *There is no provision contained within RSA 162-H which allows the Site Evaluation Committee to extend the deadline for holding its public hearings pending amendments to the Application.*

Id. [emphasis added].

12. Public Counsel also supports suspending the proceedings until after the Applicants file additional information. Public Counsel cites RSA 162-H:14 stating that the Committee "may suspend the proceedings and the time frame if it is 'in the public interest' to do so." Public Counsel Response at ¶ 7. Public Counsel is mistaken.

13. RSA 162-H:14, which allows suspension of certain proceedings, only speaks to the Committee's deliberations that relate to the timeframes established in RSA 162-H:7, including, a deadline for deciding whether to accept the application (RSA 162-H:7, VI), a deadline for State agencies to report their progress and another for State agencies to make a final decision (RSA 162-H:7, VI-b and c), and a deadline for the Committee to make a final decision (RSA 162-H:7, VI-d). RSA 162-H:7 does not address or impose deadlines for public hearings; the statute merely states that "public information sessions shall be held in accordance with RSA 162-H:10." Id. Therefore,

RSA 162-H:14 does not grant the Committee the authority to postpone the public hearings because the required deadlines for such hearings are not included in the timeframes established in RSA 162-H:7.¹ As such, Public Counsel's analysis runs contrary to the statute.

14. Moreover, Attorney Iacopino addressed this issue in his letter. With regard to the above-quoted statutory language, Attorney Iacopino states,

Upon receiving the additional information from the Applicant, the Committee could determine that the additional information is of such a nature that the public interest requires a temporary suspension of the proceedings and the time frames. *The Site Evaluation Committee cannot make that determination until the information is provided.*

See Iacopino Letter (January 27, 2016) [emphasis added].

15. Therefore, at minimum, Public Counsel's request for suspending the proceedings is premature. The Applicants do not believe, however, that suspending the proceedings will be necessary given that the Applicants endeavored to include much of the information required by the new rules in their original Application.

16. Indeed, the Application submitted by the Joint Applicants on October 18, 2016 already substantially encompassed the information required to satisfy many of the new rules. Prior to filing, the Applicants anticipated the adoption of the new rules and closely followed their development. The additional information to be provided is limited and will not create any material difference as compared to what is already before the SEC and has been made available to the public. The filing will not identify any new, increased, or different impacts. In essence, the additional information will be limited to

¹ Site 301.12 also discusses the statutory timeframes in 162-H:7, VI-b, c, and d. Site 301.12 provides that the "committee shall temporarily suspend its deliberations and the time frames set forth *in this section* at any time when an application is pending before the committee, if it finds that such suspension is in the public interest." (emphasis added). Site 301.12 does not reference RSA 162-H:10 or the public hearings. Therefore, the Committee's rules do not contemplate the temporary suspension or a delay in the statutorily mandated timeframes for public hearings.

relatively few topics that principally address: (1) the one alternate route that the Applicants believed to be available but that is in reality not a viable alternative; (2) identification of wetlands, surface waters and archeological sites on property abutting the site that will not be impacted by the Project; (3) information that has largely already been provided on the legal rights to construct the Project along the route; (4) the contractors that have been recently selected by the Project; and (5) new requirements for the contents of the Visual Impact Assessment.

WHEREFORE, the Applicants respectfully request that the Presiding Officer:

- a. Deny Public Counsel's requests; and
- b. Grant such further relief as it deems appropriate.

Respectfully submitted,

Northern Pass Transmission, LLC and

Public Service Company of New Hampshire d/b/a

Eversource Energy

By Its Attorneys,

McLANE MIDDLETON,
PROFESSIONAL ASSOCIATION

Dated: February 24, 2016

By: 

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Certificate of Service

I hereby certify that on the 21 of February, 2016, an original and one copy of the foregoing Motion was hand-delivered to the New Hampshire Site Evaluation Committee and an electronic copy was served upon the SEC Distribution List.



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January 28, 2016

Senator Jeanie Forrester
Chairman Senate Finance
NH State Senate District 2
State House Room 105
Concord, NH 03301-4951

**Re: Your Inquiry Regarding Site Evaluation Committee Joint Public Hearings
in Docket No. 2015-06 – Northern Pass Transmission**

Dear Senator Forrester:

Thank you for your recent inquiry regarding Site Evaluation Committee procedure. Pamela Monroe, Administrator of the Site Evaluation Committee, forwarded your e-mail of January 25, 2016, regarding the scheduling of the joint public hearings in the above referenced docket to me for response. RSA 162-H:10, I-c requires the Site Evaluation Committee to hold at least one joint public hearing in each county in which a proposed facility is to be located. That joint public hearing must be held within 90 days of the acceptance of the Application. The Northern Pass Application was accepted on December 18, 2015. Therefore, the five joint public hearings (one in each county) must be completed prior to March 17, 2016. There is no provision contained within RSA 162-H which allows the Site Evaluation Committee to extend the deadline for holding its public hearings pending amendments to the Application.

RSA 162-H:10, VII sets forth the process to be used when an Application for a Certificate of Site and Facility straddles the "old" administrative rules and the Committee's "new" rules. In pertinent part, RSA 162-H:10, VII states:

"Except for the cases where the adjudicatory hearing has commenced, applications pending on the date rules adopted under this paragraph take effect shall be subject to such rules. Prior to the adoption of rules under this paragraph, applications shall be continuously processed pursuant to the rules in effect upon the date of filing. If the rules require the submission of additional information by an applicant, such applicant shall be afforded a reasonable opportunity to provide that information while the processing of the application continues."

Senator Jeanie Forrester
Chairman Senate Finance
January 27, 2016
Page 2

As you can see from the above referenced language, the statute provides that the Applicant will be afforded a reasonable opportunity to supplement its Application while the processing of the Application continues. There is no provision for a new "90 day clock." There is also no provision requiring the Committee to issue an additional acceptance order.

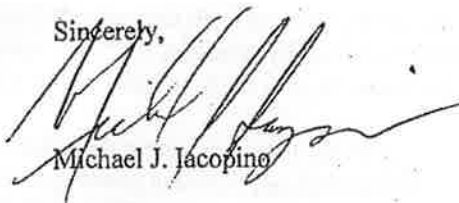
In this docket, the Applicant has filed a very large Application encompassing approximately 27,000 pages. As required by the statute, the Committee has already made its acceptance determination. A further acceptance determination is not required nor would it be appropriate given the statutory language.

However, this does not mean that the public and parties to the adjudicative process are without any remedy if new information, filed by the Applicant, requires some kind of relief. For instance, under RSA 162-H:10, I-b the Site Evaluation Committee can order the applicant to provide for additional public information sessions upon the request of a governing body of a municipality or an unincorporated place in which the proposed facility is to be located. In addition, RSA 162-H:14, I, permits the Site Evaluation Committee, "at any time while an application for a certificate is before it," to temporarily suspend deliberations and the time frames established under RSA 162-H:7 if the Committee finds that it is in the public interest to do so. Upon receiving the additional information from the Applicant, the Committee could determine that the additional information is of such a nature that the public interest requires a temporary suspension of the proceedings and the time frames. The Site Evaluation Committee cannot make that determination until the information is provided.

In addition, the Site Evaluation Committee takes public written comment throughout the pendency of the proceedings. The Committee will review all comments on the Application as filed and supplemented.

I hope this letter satisfactorily answers your questions with respect to the process that will be undertaken by the Site Evaluation Committee. Should you have further questions regarding that process, you should feel free to contact me.

Sincerely,



Michael J. Iacopino

MJI/tm

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' OBJECTION TO THE CONSERVATION LAW FOUNDATION'S
MOTION FOR ADDITIONAL OR DEFERRED PUBLIC HEARINGS**

NOW COME Northern Pass Transmission LLC ("NPT") and Public Service Company of New Hampshire d/b/a Eversource Energy ("PSNH") (collectively the "Applicants"), by and through their attorneys, McLane Middleton, Professional Association, and respectfully submit this Objection to the Conservation Law Foundation's ("CLF") Motion for Additional or Deferred Public Hearings (the "Motion").

I. Introduction

1. On October 19, 2015 the Applicants filed an application for a Certificate of Site and Facility ("Application") with the Site Evaluation Committee ("SEC" or "Committee").
2. On December 18, 2015 the Committee issued an order accepting the Application after finding, pursuant to RSA 162-H:7, IV, that the Application contains sufficient information to satisfy the application requirements of each state agency having jurisdiction under state or federal law to regulate any aspect of the construction or operation of the proposed facility.
3. On February 18, 2016 CLF filed a Motion for Additional or Deferred Public Hearings with the Committee. In its motion, CLF requests that the Committee schedule additional county based public hearings or, alternatively, defer public hearings pending submission of supplemental information by the Applicants.

4. The Applicants object to the motion.¹

II. Discussion

A. CLF's Motion Is Procedurally Improper

5. As a threshold matter, CLF is not currently a party to this proceeding, although it has sought to intervene. See Site 102.31. Since it is not a party, its pleading is improper and can only be considered public comment. See Order Determining Application To Be Incomplete, Docket No. 2013-02 (January 13, 2014) (holding that motions filed by various organizations pertaining to completeness review are out of order and will be filed as public comment).

B. CLF's Motions Is Contrary to Express Legislative Intent

6. On December 28, 2015, the SEC sent a letter to the Applicants asking that the Applicants review the rules and the Application and respond in writing as to whether any additional information is required in order to comply with the rules and the amount of time needed to supplement the Application. The Applicants responded on January 15, 2016, stating that they have reviewed the new rules and will submit additional information to the Committee by March 15, 2016.

7. CLF asks the Committee to schedule additional hearings or delay the currently scheduled hearings due to the Applicants' forthcoming submission of additional information. CLF cites no authority for its arguments. Moreover, the Legislature explicitly contemplated that pending applications might have to be supplemented when the new rules became effective but did not provide for any requirements for additional or delayed public hearings:

Except for the cases where the adjudicatory hearing has commenced, applications pending on the date rules adopted under this paragraph take effect shall be subject to such rules. Prior to the adoption of rules under this paragraph, applications shall be continuously processed pursuant to the rules in effect upon the date of filing. If these rules require the

¹ The Applicants also object to Appalachian Mountain Club's Joinder to the Motion.

submission of additional information by an applicant, such applicant shall be afforded a reasonable opportunity to provide that information *while the processing of the application continues*.

RSA 162-H:10, VII [emphasis added]. Any effort to suspend the processing of an application while an applicant is afforded a reasonable opportunity to provide additional information is directly contrary to RSA 162-H:10, VII.

8. Moreover, a recent letter issued by Attorney Michael Iacopino is instructive regarding this issue. Responding to a similar request made by Senator Jeanie Forrester, attached hereto, and in reference to the above-quoted statutory language, Attorney Michael Iacopino states:

[A]s you can see from the above referenced language, the statute provides that the Applicant will be afforded a reasonable opportunity to supplement its Application while the processing of the Application continues. There is no provision for a new '90 day clock.' There is also no provision requiring the Committee to issue an additional acceptance order.

See Iacopino Letter (January 27, 2016).

C. CLF's Motion Runs Contrary to the Statute

9. CLF requests that the Committee grant an additional round of public hearings after the Applicants submit supplemental information "to comply with Site 201.03." CLF Motion at ¶ 2. Site 201.03 pertains to public hearings and provides "[w]ithin 90 days after acceptance of an application for a certificate ... the committee shall hold not less than one public hearing in each county in which the proposed facility is to be located." It does not provide authority for the Committee to grant a second round of public hearings.

10. CLF also relies on RSA 162-H:4, II as apparent authority to support its request. RSA 162-H:4, II provides that "[t]he committee shall hold hearings as required by this chapter and such additional hearings as it deems necessary and appropriate." RSA 162-H:4, II. The

Applicants agree that the Committee has authority to order additional information sessions. Site 201.04 provides “[u]pon request of the governing body of a municipality or unincorporated place in which the proposed energy facility is to be located, or on the committee’s own motion, the committee may order the applicant to provide such additional public information sessions as are reasonable to inform the public regarding the proposed energy facility.” Site 201.04.

11. Neither the statute nor the applicable regulation authorize entities like CLF to request additional hearings or public information sessions. The Applicants do recognize that the municipalities may request such additional public information sessions, or the Committee may schedule them if it so desires. The Applicants do not believe, however, that is necessary given the 15 public information sessions/hearings that will have occurred regarding this Project between September 2, 2015 and March 16, 2016 as well as the 15 voluntary open houses that the Applicants held between August and September, 2013. See Application at ES-7.

12. CLF requests, in the alternative, that the Committee defer all public hearings until after the Applicants’ supplemental information is made available. Again, there is no statutory authority for CLF’s position. Moreover, in the attached letter, Attorney Iacopino states:

RSA 162-H:10, I-c requires the Site Evaluation Committee to hold at least one joint public hearing in each county in which a proposed facility is to be located. That joint public hearing must be held within 90 days of the acceptance of the Application. The Northern Pass Application was accepted on December 18, 2015. Therefore, the five joint public hearings ... must be completed prior to March 17, 2016. *There is no provision contained within RSA 162-H which allows the Site Evaluation Committee to extend the deadline for holding its public hearings pending amendments to the Application.*

See Iacopino Letter (January 27, 2016) [emphasis added].

13. CLF asserts that RSA 162-H:14, I grants the Committee authority to defer the scheduled hearings stating that “the SEC has the discretion to temporarily suspend certificate proceedings when in the public interest.” CLF Motion at ¶ 6. CLF is mistaken.

14. RSA 162-H:14, which allows suspension of certain proceedings, only speaks to the Committee's deliberations that relate to the timeframes established in RSA 162-H:7, including, a deadline for deciding whether to accept the application (RSA 162-H:7, VI), a deadline for State agencies to report their progress and another for State agencies to make a final decision (RSA 162-H:7, VI-b and c), and a deadline for the Committee to make a final decision (RSA 162-H:7, VI-d). RSA 162-H:7 does not specifically impose deadlines for public hearings; the statute merely states that the sessions shall be held in accordance with RSA 162-H:10. Therefore, RSA 162-H:14 does not grant the Committee the authority to postpone the public hearings because the required deadlines for such hearings are not specifically included in the timeframes established in RSA 162-H:7.² As such, CLF's motion runs contrary to the statute.

15. Moreover, Attorney Iacopino addressed this issue in his letter. With regard to the above-quoted statutory language, Attorney Iacopino states,

Upon receiving the additional information from the Applicant, the Committee could determine that the additional information is of such a nature that the public interest requires a temporary suspension of the proceedings and the time frames. *The Site Evaluation Committee cannot make that determination until the information is provided.*

See Iacopino Letter (January 27, 2016) [emphasis added].

16. Therefore, at minimum, CLF's request for suspending the proceedings is premature. The Applicants do not believe, however, that suspending the proceedings will be necessary given that the Applicants endeavored to include much of the information required by the new rules in their original Application.

² Site 301.12 also discusses the statutory timeframes laid out in 162-H:7, VI-b, c, and d. Site 301.12 provides that the "committee shall temporarily suspend its deliberations and the time frames set forth *in this section* at any time when an application is pending before the committee, if it finds that such suspension is in the public interest." (emphasis added). Site 301.12 does not reference RSA 162-H:10 or the public hearings. Therefore, the Committee's rules do not contemplate the temporary suspension or a delay in the statutorily mandated timeframes for public information sessions.

17. Indeed, the Application submitted by the Joint Applicants on October 18, 2016 already substantially encompassed the information required to satisfy many of the new rules. Prior to filing, the Applicants anticipated the adoption of the new rules and closely followed their development. The additional information to be provided is limited and will not create any material difference as compared to what is already before the SEC and has been made available to the public. The filing will not identify any new, increased, or different impacts. In essence, the additional information will be limited to relatively few topics that principally address: (1) the one alternate route that the Applicants believed to be available but that is in reality not a viable alternative; (2) identification of wetlands, surface waters and archeological sites on property abutting the site that will not be impacted by the Project; (3) information that has largely already been provided on the legal rights to construct the Project along the route; (4) the contractors that have been recently selected by the Project; and (5) new requirements for the contents of the Visual Impact Assessment.

WHEREFORE, the Applicants respectfully request that the Presiding Officer:

- a. Treat CLF's motion as a public comment;
- b. Deny CLF's requests that additional public hearings be held or, alternatively, that all public hearings be delayed; and
- c. Grant such further relief as it deems appropriate.

Respectfully submitted,

Northern Pass Transmission, LLC and Public

Service Company of New Hampshire d/b/a

Eversource Energy

By Its Attorneys,

McLANE MIDDLETON,
PROFESSIONAL ASSOCIATION

Dated: February 24, 2016

By: 

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Adam Dumville, Bar No. 20715
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Certificate of Service

I hereby certify that on the 24 of February, 2016, an original and one copy of the foregoing Motion was hand-delivered to the New Hampshire Site Evaluation Committee and an electronic copy was served upon the SEC Distribution List.


Barry Needleman



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**ALSO ADMITTED ME

January 28, 2016

Senator Jeanie Forrester
Chairman Senate Finance
NH State Senate District 2
State House Room 105
Concord, NH 03301-4951

**Re: Your Inquiry Regarding Site Evaluation Committee Joint Public Hearings
in Docket No. 2015-06 – Northern Pass Transmission**

Dear Senator Forrester:

Thank you for your recent inquiry regarding Site Evaluation Committee procedure. Pamela Monroe, Administrator of the Site Evaluation Committee, forwarded your e-mail of January 25, 2016, regarding the scheduling of the joint public hearings in the above referenced docket to me for response. RSA 162-H:10, I-c requires the Site Evaluation Committee to hold at least one joint public hearing in each county in which a proposed facility is to be located. That joint public hearing must be held within 90 days of the acceptance of the Application. The Northern Pass Application was accepted on December 18, 2015. Therefore, the five joint public hearings (one in each county) must be completed prior to March 17, 2016. There is no provision contained within RSA 162-H which allows the Site Evaluation Committee to extend the deadline for holding its public hearings pending amendments to the Application.

RSA 162-H:10, VII sets forth the process to be used when an Application for a Certificate of Site and Facility straddles the "old" administrative rules and the Committee's "new" rules. In pertinent part, RSA 162-H:10, VII states:

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Senator Jeanie Forrester
Chairman Senate Finance
January 27, 2016
Page 2

As you can see from the above referenced language, the statute provides that the Applicant will be afforded a reasonable opportunity to supplement its Application while the processing of the Application continues. There is no provision for a new "90 day clock." There is also no provision requiring the Committee to issue an additional acceptance order.

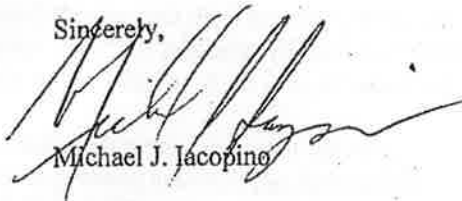
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In addition, the Site Evaluation Committee takes public written comment throughout the pendency of the proceedings. The Committee will review all comments on the Application as filed and supplemented.

I hope this letter satisfactorily answers your questions with respect to the process that will be undertaken by the Site Evaluation Committee. Should you have further questions regarding that process, you should feel free to contact me.

Sincerely,



Michael J. Iacopino

MJI/tm

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' OBJECTION TO THE SOCIETY FOR THE PROTECTION OF NEW
HAMPSHIRE FOREST'S MOTION FOR DUE PROCESS UPON SUBMISSION OF
ADDITIONAL INFORMATION**

NOW COME Northern Pass Transmission LLC ("NPT") and Public Service Company of New Hampshire d/b/a Eversource Energy ("PSNH") (collectively the "Applicants"), by and through their attorneys, McLane Middleton, Professional Association, and respectfully submit this Objection to the Society for the Protection of New Hampshire Forest's ("SPNHF") Motion for Due Process Upon Submission of Additional Information (the "Motion").

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2. On December 18, 2015 the Committee issued an order accepting the Application after finding, pursuant to RSA 162-H:7, IV, that the Application contains sufficient information to satisfy the application requirements of each state agency having jurisdiction under state or federal law to regulate any aspect of the construction or operation of the proposed facility.
3. On February 16, 2016 SPNHF filed a Motion for Due Process Upon Submission of Additional Information with the Committee. In its motion, SPNHF requests that the Committee (1) conduct a second completeness determination upon submission of additional

information by the Applicants, (2) use the date of the second completeness determination for purposes of calculating future statutory deadlines, (3) postpone the currently scheduled public hearings until 60-90 days following acceptance of forthcoming information, and, alternatively, (4) schedule an additional set of public hearings.

4. The Applicants object to the Motion.¹

II. Discussion

A. SPNHF's Motion Is Procedurally Improper

5. As a threshold matter, SPNHF is not currently a party to this proceeding, although it has sought to intervene. See Site 102.31. Since it is not a party, its pleading is improper and can only be considered public comment. See Order Determining Application To Be Incomplete, Docket No. 2013-02 (January 13, 2014) (holding that motions filed by various organizations pertaining to completeness review are out of order and will be filed as public comment).

B. SPNHF's Motion Is Contrary to Express Legislative Intent

6. On December 28, 2015, the SEC sent a letter to the Applicants asking that the Applicants review the rules and the Application and respond in writing as to whether any additional information is required in order to comply with the rules and the amount of time needed to supplement the Application. The Applicants responded on January 15, 2016, stating that they have reviewed the new rules and will submit additional information to the Committee by March 15, 2016.

7. SPNHF asserts that the “relatively unusual” circumstances involving the new rules dictate that it is necessary that the SEC conduct a second completeness determination regarding the Application. SPNHF cites no authority for its arguments. Moreover, the Legislature explicitly contemplated that pending applications might have to be supplemented

¹ The Applicants also object to Appalachian Mountain Club's Joinder to the Motion.

when the new rules became effective but did not provide for any requirements for additional completeness determinations:

Except for the cases where the adjudicatory hearing has commenced, applications pending on the date rules adopted under this paragraph take effect shall be subject to such rules. Prior to the adoption of rules under this paragraph, applications shall be continuously processed pursuant to the rules in effect upon the date of filing. If these rules require the submission of additional information by an applicant, such applicant shall be afforded a reasonable opportunity to provide that information *while the processing of the application continues*.

RSA 162-H:10, VII [emphasis added]. Any effort to defer or suspend the processing of an application while an applicant is afforded a reasonable opportunity to provide additional information is directly contrary to RSA 162-H:10, VII.

8. Moreover, a recent letter issued by Attorney Michael Iacopino is instructive regarding this issue. Responding to a similar request made by Senator Jeanie Forrester, attached hereto, and in reference to the above-quoted statutory language, Attorney Michael Iacopino states:

[A]s you can see from the above referenced language, the statute provides that the Applicant will be afforded a reasonable opportunity to supplement its Application while the processing of the Application continues. There is no provision for a new '90 day clock.' There is also no provision requiring the Committee to issue an additional acceptance order.

See Iacopino Letter (January 27, 2016).

C. SPNHF's Motion Runs Contrary to the Statute

9. SPNHF also argues that the Application was effectively "rendered incomplete" by the adoption of the new rules. Again, SPNHF cites no authority for its argument. In fact, the statute is expressly devoid of any language supporting this position.

10. Moreover, in the attached letter, Attorney Iacopino states as follows, "As required by the statute, the Committee has already made its acceptance determination. A further

acceptance determination is not required nor would it be appropriate given the statutory language.” Id.

11. SPNHF next requests that the Committee use the date of a second completeness determination as the date of acceptance for purposes of calculating all future statutory deadlines. As Attorney Iacopino stated, a second completeness determination is not authorized by the statute. Moreover, there is nothing in the statute that requires or permits re-starting the statutory clock.

12. SPNHF next requests that the currently scheduled public hearings be delayed until 60-90 days following the Committee’s acceptance of the supplemental information. Again, there is no statutory authority for SPNHF’s position and the issue was also addressed in Attorney Iacopino’s letter:

RSA 162-H:10, I-c requires the Site Evaluation Committee to hold at least one joint public hearing in each county in which a proposed facility is to be located. That joint public hearing must be held within 90 days of the acceptance of the Application. The Northern Pass Application was accepted on December 18, 2015. Therefore, the five joint public hearings ... must be completed prior to March 17, 2016. *There is no provision contained within RSA 162-H which allows the Site Evaluation Committee to extend the deadline for holding its public hearings pending amendments to the Application.*

Id. [emphasis added].

13. SPNHF asserts that “RSA 162-H:14 authorizes the SEC to alter the statutorily prescribed schedule when the SEC ‘deems it to be in the public interest.’” SPNHF Motion at ¶ 21. SPNHF is mistaken.

14. RSA 162-H:14, which allows suspension of certain proceedings, only speaks to the Committee’s deliberations that relate to the timeframes established in RSA 162:H:7, including, a deadline for deciding whether to accept the application (RSA 162-H:7, VI), a deadline for State agencies to report their progress and another for State agencies to make a final

decision (RSA 162-H:7, VI-b and c), and a deadline for the Committee to make a final decision (RSA 162-H:7, VI-d). RSA 162-H:7 does not specifically impose deadlines for public hearings; the statute merely states that the sessions shall be held in accordance with RSA 162-H:10. Therefore, RSA 162-H:14 does not grant the Committee the authority to postpone the public hearings because the required deadlines for such hearings are not specifically included in the timeframes established in RSA 162-H:7.² As such, SPNHF's motion runs contrary to the statute.

15. Moreover, Attorney Iacopino addressed this issue in his letter. With regard to the above-quoted statutory language, Attorney Iacopino states,

Upon receiving the additional information from the Applicant, the Committee could determine that the additional information is of such a nature that the public interest requires a temporary suspension of the proceedings and the time frames. *The Site Evaluation Committee cannot make that determination until the information is provided.*

See Iacopino Letter (January 27, 2016). [emphasis added].

16. Therefore, at minimum, SPNHF's request for suspending the proceedings is premature. The Applicants do not believe, however, that suspending the proceedings will be necessary given that the Applicants endeavored to include much of the information required by the new rules in their original Application.

17. Indeed, the Application submitted by the Joint Applicants on October 18, 2016 already substantially encompassed the information required to satisfy many of the new rules. Prior to filing, the Applicants anticipated the adoption of the new rules and closely followed their development. The additional information to be provided is limited

² Site 301.12 also discusses the statutory timeframes laid out in 162-H:7, VI-b, c, and d. Site 301.12 provides that the "committee shall temporarily suspend its deliberations and the time frames set forth *in this section* at any time when an application is pending before the committee, if it finds that such suspension is in the public interest." (emphasis added). Site 301.12 does not reference RSA 162-H:10 or the public hearings. Therefore, the Committee's rules do not contemplate the temporary suspension or a delay in the statutorily mandated timeframes for public information sessions.

and will not create any material difference as compared to what is already before the SEC and has been made available to the public. The filing will not identify any new, increased, or different impacts. In essence, the additional information will be limited to relatively few topics that principally address: (1) the one alternate route that the Applicants believed to be available but that is in reality not a viable alternative; (2) identification of wetlands, surface waters and archeological sites on property abutting the site that will not be impacted by the Project; (3) information that has largely already been provided on the legal rights to construct the Project along the route; (4) the contractors that have been recently selected by the Project; and (5) new requirements for the contents of the Visual Impact Assessment.

18. Finally, SPNHF requests, in the alternative, the Committee schedule an additional set of public hearings to occur 60-90 days following acceptance of the additional information. SPNHF relies on RSA 162-H:4, II as apparent authority to support its request. RSA 162-H:4, II provides that “[t]he committee shall hold hearings as required by this chapter and such additional hearings as it deems necessary and appropriate.” RSA 162-H:4, II. Site 201.04 provides “[u]pon request of the governing body of a municipality or unincorporated place in which the proposed energy facility is to be located, or on the committee’s own motion, the committee may order the applicant to provide such additional public information sessions as are reasonable to inform the public regarding the proposed energy facility.” Site 201.04.

19. Neither the statute nor the applicable regulation authorize entities like SPNHF to request additional hearings or public information sessions. The Applicants do recognize that the municipalities may request such additional public information sessions, or the Committee may schedule them if it so desires. The Applicants do not believe, however, that is necessary given

the 15 public information sessions/hearings that will have occurred regarding this Project between September 2, 2015 and March 16, 2016 as well as the 15 voluntary open houses that the Applicants held between August and September, 2013. See Application at ES-7.

WHEREFORE, the Applicants respectfully request that the Presiding Officer:

- a. Treat SPNHF's motion as public comment;
- b. Deny SPNHF's requests; and
- c. Grant such further relief as it deems appropriate.

Respectfully submitted,

Northern Pass Transmission, LLC and

Public Service Company of New Hampshire d/b/a

Eversource Energy

By Its Attorneys,

McLANE MIDDLETON,
PROFESSIONAL ASSOCIATION

Dated: February 24, 2016

By: _____



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Certificate of Service

I hereby certify that on the 24 of February, 2016, an original and one copy of the foregoing Motion was hand-delivered to the New Hampshire Site Evaluation Committee and an electronic copy was served upon the SEC Distribution List.



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January 28, 2016

Senator Jeanie Forrester
Chairman Senate Finance
NH State Senate District 2
State House Room 105
Concord, NH 03301-4951

**Re: Your Inquiry Regarding Site Evaluation Committee Joint Public Hearings
in Docket No. 2015-06 – Northern Pass Transmission**

Dear Senator Forrester:

Thank you for your recent inquiry regarding Site Evaluation Committee procedure. Pamela Monroe, Administrator of the Site Evaluation Committee, forwarded your e-mail of January 25, 2016, regarding the scheduling of the joint public hearings in the above referenced docket to me for response. RSA 162-H:10, I-c requires the Site Evaluation Committee to hold at least one joint public hearing in each county in which a proposed facility is to be located. That joint public hearing must be held within 90 days of the acceptance of the Application. The Northern Pass Application was accepted on December 18, 2015. Therefore, the five joint public hearings (one in each county) must be completed prior to March 17, 2016. There is no provision contained within RSA 162-H which allows the Site Evaluation Committee to extend the deadline for holding its public hearings pending amendments to the Application.

RSA 162-H:10, VII sets forth the process to be used when an Application for a Certificate of Site and Facility straddles the "old" administrative rules and the Committee's "new" rules. In pertinent part, RSA 162-H:10, VII states:

"Except for the cases where the adjudicatory hearing has commenced, applications pending on the date rules adopted under this paragraph take effect shall be subject to such rules. Prior to the adoption of rules under this paragraph, applications shall be continuously processed pursuant to the rules in effect upon the date of filing. If the rules require the submission of additional information by an applicant, such applicant shall be afforded a reasonable opportunity to provide that information while the processing of the application continues."

Senator Jeanie Forrester
Chairman Senate Finance
January 27, 2016
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As you can see from the above referenced language, the statute provides that the Applicant will be afforded a reasonable opportunity to supplement its Application while the processing of the Application continues. There is no provision for a new "90 day clock." There is also no provision requiring the Committee to issue an additional acceptance order.

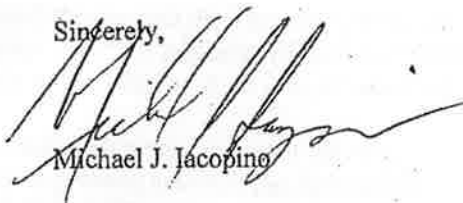
In this docket, the Applicant has filed a very large Application encompassing approximately 27,000 pages. As required by the statute, the Committee has already made its acceptance determination. A further acceptance determination is not required nor would it be appropriate given the statutory language.

However, this does not mean that the public and parties to the adjudicative process are without any remedy if new information, filed by the Applicant, requires some kind of relief. For instance, under RSA 162-H:10, I-b the Site Evaluation Committee can order the applicant to provide for additional public information sessions upon the request of a governing body of a municipality or an unincorporated place in which the proposed facility is to be located. In addition, RSA 162-H:14, I, permits the Site Evaluation Committee, "at any time while an application for a certificate is before it," to temporarily suspend deliberations and the time frames established under RSA 162-H:7 if the Committee finds that it is in the public interest to do so. Upon receiving the additional information from the Applicant, the Committee could determine that the additional information is of such a nature that the public interest requires a temporary suspension of the proceedings and the time frames. The Site Evaluation Committee cannot make that determination until the information is provided.

In addition, the Site Evaluation Committee takes public written comment throughout the pendency of the proceedings. The Committee will review all comments on the Application as filed and supplemented.

I hope this letter satisfactorily answers your questions with respect to the process that will be undertaken by the Site Evaluation Committee. Should you have further questions regarding that process, you should feel free to contact me.

Sincerely,



Michael J. Iacopino

MJI/tm