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**VIA HAND-DELIVERY**

February 26, 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:

- 1) Applicants' Response and Objection to Certain Petitions to Intervene; and
- 2) Applicants' Objection to New England Power Generators Association's Petition for Intervention.

Sincerely,

A handwritten signature in blue ink, appearing to read "Barry Needleman".

Barry Needleman

Enclosures

cc: Distribution List

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

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**STATE OF NEW HAMPSHIRE**  
**SITE EVALUATION COMMITTEE**

**SEC DOCKET NO. 2015-06**

**JOINT APPLICATION OF NORTHERN PASS TRANSMISSION LLC &  
PUBLIC SERVICE COMPANY OF NEW HAMPSHIRE  
D/B/A EVERSOURCE ENERGY  
FOR A CERTIFICATE OF SITE AND FACILITY**

**APPLICANTS' RESPONSE AND OBJECTION  
TO CERTAIN PETITIONS TO INTERVENE**

NOW COME Northern Pass Transmission LLC and Public Service Company of New Hampshire d/b/a Eversource Energy (collectively the "Applicants"), by and through their attorneys, McLane Middleton, Professional Association, and respectfully submit this Response and Objection to Certain Petitions to Intervene ("Response") in the above-captioned proceeding.

**I. Introduction**

1. On October 19, 2015, the Applicants filed an application with the New Hampshire Site Evaluation Committee ("SEC" or the "Committee") for a Certificate of Site and Facility to construct a 1,090 MW transmission line to transport hydro-electric energy from Québec to New Hampshire.

2. Over one hundred individuals, governmental bodies, and non-governmental organizations ("NGOs") filed Petitions to Intervene. These petitioners are listed in Exhibit A, attached to this Response, and are grouped into categories as described further below.

3. The Applicants recognize that parties with legitimate and concrete interests, who can properly satisfy applicable legal requirements, should be granted permission to intervene in this proceeding. At the same time, Applicants have certain due process rights that include ensuring the proceeding occurs in an orderly and prompt manner, and that potential interveners

meet the requirements of law in order to participate. These competing rights must be balanced. This Response and Objection focuses on that balance.

## **II. Standard for Intervention**

4. Through the New Hampshire Administrative Procedure Act, RSA 541-A: 32, the Legislature has established two categories for intervention in an administrative proceeding. The first category is mandatory, that is, it concerns when an administrative agency *shall* grant intervention. The second category is discretionary, that is, it concerns when an administrative agency *may* grant intervention.

5. RSA 541-A:32, I, sets forth circumstances under which a presiding officer shall or must allow intervention. Specifically, a petition for intervention shall be granted if: (a) the petition is properly filed; (b) the petition states facts demonstrating that the petitioner's rights, duties, privileges, immunities or other substantial interests may be affected by the proceeding or that the petitioner qualifies as an intervener under any provision of law; and (c) the interests of justice and the orderly and prompt conduct of the proceedings would not be impaired by allowing the intervention. See RSA 541-A: 32, I; N.H. Code Admin. R., Site 202.11(b).

6. The Committee has routinely recognized that mandatory intervention is only available when a petitioner demonstrates a substantial, direct interest that may be affected. Correspondingly, it has determined that merely residing in a town or county in which a project is proposed or having experience with local boards “does not equate to a substantial interest that may be affected by the outcome of the proceeding.” Order Granting Petitions to Intervene and Revising Procedural Schedule, Docket No. 2008-04 (October 14, 2008), p. 5; *See Id.* (“Being a resident of the county or having other experience with local boards does not equate to a substantial interest that may be affected by the outcome of the proceeding”); *See also* Order on

Motions to Intervene and Further Procedural Order, Docket No. 2011-02 (May 6, 2011), p. 5 (“It is ... clear that merely residing in Antrim does not create a sufficient interest to justify participation as an intervener in these proceedings”). In addition, the Committee rejected a petition from a citizen and business owner/real estate broker in Docket 2009-02, finding that he had “no substantial interest in this docket that differs from the interests of the public at large” and that the interests he claimed would “be adequately represented by counsel for the public.” *See Order on Pending Motions*, Docket No. 2009-02 (March 24, 2010), p. 6. Similarly, the Public Utilities Commission has observed that “[i]t should be recognized that merely being interested in such a proceeding is not the same as having a legal interest of some nature that may be affected by the proceeding.” *Re North Atlantic Energy Corporation*, 87 NHPUC 455, 456 (2002). “Merely expressing a concern about a relevant issue, no matter how well-intentioned, does not confer party status.” *Id.*

7. Under RSA 541-A:32, II and Site 202.11(c), a presiding officer may, in certain circumstances, permit intervention. Granting discretionary or permissive intervention requires a determination that such intervention “would be in the interests of justice and would not impair the orderly and prompt conduct of the proceedings.” RSA 541-A:32, II.

8. In the case of both mandatory and discretionary intervention, the presiding officer may impose conditions on the participation of interveners in a proceeding in order to “promote the efficient and orderly process of the proceeding.” Site 202.11(d). For example, in Docket No. 2008-04, the Committee found that residents of Coös County did not have a substantial interest in the proceeding, but used its discretionary authority to grant them limited intervention. The Committee held “[t]o ensure that the permissive intervention of these parties will not interfere with the orderly and prompt conduct of these proceedings, their participation will be combined

for all purposes; including discovery, presentation of evidence, and conduct of cross-examination.” *See* Order Granting Petitions to Intervene and Revising Procedural Schedule, Docket No. 2008-04 (October 14, 2008). Additionally, in Docket No. 2009-02, the Committee granted the intervention of the New Hampshire Sierra Club but limited its participation as an intervener only to the specific interests alleged in its petition. *See* Order on Pending Motions, Docket No. 2009-02 (March 24, 2010).

### **III. Discussion**

Given the volume of petitions to intervene submitted in this docket, for ease of discussion, and management of the proceeding, the Applicants have grouped the petitioners into categories and subcategories. The categories include Individuals (subdivided by abutters, non-abutters, and elected officials), Governmental Bodies (subdivided by towns and other municipal sub-units), NGOs, and Businesses. *See* Attachment A. The Applicants separately address each category, below.

#### **A. Individuals**

9. Each individual or group of individuals alleges that they own property and/or reside in New Hampshire. Although some petitions are more explicit than others, the petitioners tend to rely on the proximity of their respective property or residence to the Project route as the foundation for their alleged interest(s) in this proceeding. The Applicants acknowledge that individuals residing within close proximity to the Project (e.g. abutting property owners) may have an interest supporting their right to intervene.

10. The Applicants propose that the SEC draw on its new rules to determine “close proximity” for purposes of mandatory intervention. Specifically, to establish a legal interest based on a property’s proximity to the Project, the property should either abut the Project or be

within 100 feet of the Project. This test is consistent with the requirements of Site 301.03, which requires applicants for certificates of site and facility to include certain information about a proposed project's location "on abutting property with respect to the site, and within 100 feet of the site if such distance extends beyond the boundary of any abutting property." *See* Site 301.03(c).

11. Notwithstanding, to the extent that any particular petitioner has failed to allege a substantial interest affected by the proceeding, did not properly plead or fairly describe its circumstances, or otherwise demonstrate a basis for mandatory intervention, the Applicants urge the Committee to deny such a petition to intervene.

**1. Abutters and Non-Abutters Within One Hundred Feet of the Project**

12. The Applicants do not object to the Petitions to Intervene of abutting property owners and those non-abutting property owners whose properties are within 100 feet of the Project so long as the Committee imposes conditions pursuant to RSA 541-A:32, III to assure that intervention of such individuals does not impair the prompt and orderly conduct of the proceeding. Hence, to the extent that such parties are grouped together, that their intervention is limited only to those issues for which the Committee finds they have demonstrated a substantial interest, and that they combine their presentations of evidence and argument, cross-examination and other participation in this proceeding, the Applicants do not oppose those petitions. *See* Site 202.11(d).

**2. Non-Abutters Not Within One Hundred Feet of the Project**

13. As a threshold matter, non-abutting property owners whose properties are more than one hundred feet from the Project ("Non-Abutters") have not demonstrated substantial interests that would be affected by the proceeding. Accordingly, the Committee is not required

to grant their petitions because they failed to establish a particularized injury. The Committee may, however, permit such parties to intervene “in the interests of justice.”

14. Given the circumstances of this proceeding, the scale of the Project and the number of petitions filed with the Committee, the Applicants ask that the Committee exercise its discretion judiciously when rendering decisions about such petitions in order to preserve the orderly and prompt conduct of the proceeding and the integrity of the hearing process overall. In the absence of strict conditions on the participation of such individuals, granting such petitions would create significant risk of disrupting the orderly conduct of the proceedings, would not serve the interests of justice, and would undermine the Applicants’ due process right to a prompt and orderly proceeding. In light of these issues, the Applicants make the following proposals.

i. **Failure to Allege Sufficient Facts to Establish a Particularized Injury**

15. Parties petitioning to intervene must set forth enough facts to demonstrate that they have a legal right to intervene. See RSA 541-A:32, I(b); *Appeal of Stonyfield*, 159 N.H. 227, 231 (2009) (stating that “a party must demonstrate this his rights ‘may be directly affected by the decision, or in other words, that he has suffered or will suffer an injury in fact.’”) (internal quotations omitted). General allegations of harm are not sufficient. See *Blanchard v. Railroad*, 36 N.H. 263, 264 (1993) (finding that standing does not exist if a party cannot establish that it has an “interest[ ] in or [is] affected by the proceedings in some manner differently from the public, citizens, and taxpayers generally”).

16. Non-Abutters do not meet this requirement because their alleged interest(s) in these proceedings are no different from the interests of the public in general. See *Blanchard*, 86 N.H. at 264 (quoting *Bennett v. Tuftonborough*, 72 N.H. 63, 64 1903); See Order on Petitions to Intervene, Docket No. 2015-02 (February 16, 2016) (denying the petitions to intervene of non-

abutting property owners who do not demonstrate a substantial right, privilege or interest in the outcome of the proceedings). Standing does not exist if a party alleges "nothing distinguishing [its] right and interest from that of other citizens and taxpayers." *Id.* Further, the Non-Abutters have not and cannot allege any specific injury that they have suffered or will suffer that would provide a basis for standing. *Blanchard*, 86 N.H. at 264; *Appeal of Richards*, 134 N.H. 148, 156 (1991) (where a party is unable to demonstrate an actual or immediate injury, there is no standing).

17. Because the Non-Abutters do not own property that abuts the Project or is within close proximity to the Project, they have not and cannot allege any fact to distinguish themselves from the rest of the general public.<sup>1</sup> There is nothing in particular about the Non-Abutters' properties that distinguish them from other local residents and taxpayers. Each of the Non-Abutter's alleged interest in this proceeding arises from the premise that the Project's proximity to their properties will have an adverse effect on certain property interests. However, the claims do not satisfy the legal requirements for intervention.

**ii. Non-Abutter Interests are Sufficiently Represented by Abutting Property Owners**

18. In order for the Committee to grant a petition to intervene it must first find that "the interests of justice and the orderly and prompt conduct of the proceedings would not be impaired by allowing the intervention." Site 202.11(b)(3). The interests of justice do not require the intervention of Non-Abutters because their interests are sufficiently represented by other parties to the proceeding (e.g. Public Counsel, their own towns and municipalities, etc.). It stands to reason that any interests alleged by non-abutting property owners are either a subset in kind or a less acute form of any interests alleged by abutting property owners. That is, a non-

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<sup>1</sup> See Exhibit A



abutting property owner cannot allege an interest that an abutting property owner could not also allege.

19. Given that approximately 51 abutting property owners have petitioned to intervene, and given that the Applicants do not object to the petitions of abutting property owners, the intervention of non-abutting property owners will be wholly duplicative, will impair the interests of justice and will interfere with the orderly conduct of the proceeding.

iii. **Non-Abutter Interests Are Sufficiently Represented by Counsel for the Public**

20. Potential interveners must distinguish their interest in a manner that makes clear they will not overlap with, and repeat the efforts of Counsel for the Public, thereby subjecting the applicant to duplicative discovery requests, duplicative expert opinions and duplicative testimony. Such an outcome would be manifestly unfair to the Applicants, it would be a substantial waste of resources and it would no doubt violate the statutory mandate requiring that interveners not interfere with the orderly conduct of the proceedings. Issues that deal with the environment—including aesthetics—are precisely within the purview of Counsel for the Public.

The [Counsel for the Public] shall represent the public in seeking to protect the quality of the environment and in seeking to assure an adequate supply of energy. The counsel shall be accorded all the rights and privileges, and responsibilities an attorney representing a party in formal action and shall serve until the decision to issue or deny a certificate is final.

RSA 162-H:9.

21. Where Counsel for the Public already represents those interests, persons like the Non-Abutters have no standing. *See Appeal of Richards*, 134 N.H. at 156 (1991) (“[n]o individual or group of individuals has standing to appeal when the alleged injury caused by the administrative agency's action affects the public in general, particularly when the affected public interest is represented by an authorized official or agent of the state”).

22. The Committee has previously denied intervener status to non-abutting property owners like the Non-Abutters here. In reviewing the Petitions to Intervene submitted by property owners in the Antrim docket, the Committee held that certain property owners should not be granted intervener status because their interest was no “different from the interest of the public at large or the interest that may be represented by Counsel for the Public.” Order on Pending Motions, Re: Application of Antrim Wind, LLC, Docket No. 2014-05 at 16 (March 13, 2015). Both Counsel for the Public and the Committee will explore each issue the Non-Abutters have raised in great depth. It is their obligation and responsibility to do so. Thus, the Non-Abutters’ interests are adequately represented and their participation would be entirely repetitive and create significant risk of interference with the orderly conduct of the proceedings. Therefore, the alleged interests by the Non-Abutters are insufficient to provide a basis to grant their Petition for Intervention.

iv. **If the Committee Exercises Its Discretion to Grant The Non-Abutters’ Petitions, It Should Limit Their Participation Pursuant to RSA 541-A:32,III and Site 202.11(d)**

23. The New Hampshire Administrative Procedure Act and the New Hampshire Code of Administrative Rules provide that if the SEC allows a Petition to Intervene, the SEC may place limits on an intervener's participation. In this case, if the Committee is inclined to allow Non-Abutters to intervene, their roles should be limited pursuant to Site 202.11 (d). Specifically, the Applicants propose that Non-Abutters be grouped with abutting property owners and that their participation be limited only to those issues for which the Committee determines they have clearly and unequivocally demonstrated they have an interest. Conversely, it would be manifestly unfair to the Applicants to permit non-abutting property owners to intervene generally

on all issues where they have not alleged or demonstrated any interest relating to such issues, and where such issues will be adequately litigated by Counsel for the Public and other parties.

24. The Committee has limited the role of interveners in the past. Order on Pending Motions, Re: Application of Laidlaw Berlin BioPower, LLC, Docket No. 2009-02 at 3-5 (March 24, 2010). In analyzing three separate motions to intervene in the Laidlaw case, the Committee limited the participation of each intervener, pursuant to RSA 541-A:35, III and Site202.11(d), to only the issues where the petitioner could clearly demonstrate that it had a particular interest in the proceeding.

25. The SEC has routinely combined two or more interveners into one group in order to limit the presentation of evidence, arguments, and cross-examinations. In *Report of Prehearing Conference and Technical Session and Procedural Order, Re: Application of Groton Wind, LLC*, Docket No. 2010-01 (June 25, 2010), numerous residents of the Town of Rumney moved to intervene. The presiding officer allowed the residents of Rumney to intervene because the SEC found that each resident lived within close proximity to the proposed site and each resident may suffer an individualized harm from the construction of the project. The presiding officer, however, consolidated the residents together because the presiding officer found that all of the residents were "concerned about the same or similar issues and are similarly situated" and that "separate intervention of each resident could lead to unnecessary repetition and interfere with the prompt and orderly conduct of the proceedings." *Id.*

26. Most recently, the Committee limited the participation of interveners in the Antrim Wind docket. In analyzing the individual non-abutting property owners' motions to intervene, the Committee held "[I]n order to assure the orderly conduct of these proceedings and to avoid duplication of arguments ... it is necessary to combine the non-abutters as a single party

in this proceeding.” Order on Petitions to Intervene, Docket No. 2015-02 at 16 (February 16, 2016). The Committee further required that “the non-abutters ... designate a single spokesperson for the purposes of filing pleadings, conducting discovery and for examination at evidentiary hearings.” *Id.*

27. Notwithstanding all these points, a number of non-abutting property owners make the argument that their interest in the Project arises due to their proximity to the route formerly proposed by the Applicants. The Applicants specifically object to this assertion. Although the Applicants are required by law to include this formerly proposed route in this proceeding, the route is not actually under consideration. Therefore, any interest alleged based on the former route is improper. For that reason, the Applicants request that, should the Committee in its discretion allow some or all Non-Abutters to intervene, such interveners may not litigate issues concerning the former route. To allow otherwise would constitute a substantial waste of time and resources for all parties to the proceeding.

### **3. Elected Officials**

28. A number of State Legislators have sought to intervene in the proceeding, alleging that (1) they have an interest in protecting New Hampshire’s natural beauty, (2) they have an interest in the Committee’s interpretation of “public interest” and (3) “[m]any of our constituents have expressed serious concerns about the Joint Applicants’ proposal.” *See* Joint Petition to Intervene by Certain New Hampshire State Legislators (Feb. 5, 2016). These interests are not substantial interests under RSA 541-A:32, I that require the Committee to grant intervention. To the extent the Committee determines to grant intervention, it should be as an exercise of discretion under RSA 541:32, II.

29. The fact that an individual has been elected to a public office does not constitute a right, duty, privilege, immunity, or other substantial interest that may be affected by this proceeding or any other. To decide otherwise would lead to the strained conclusion that 424 state legislators and countless local and county officials have a right to participate in any docket of their choosing. Surely, such a result would impair the orderly and prompt conduct of proceedings.

30. The participation of state legislators as parties to an adjudicative proceeding, moreover, raises concerns about the interests of justice and the propriety of members of the legislative branch appearing before an agency that is a creation of the legislature, and urging that agency to deny an application for a particular project. It is one thing for a legislator to make a comment in a proceeding on his or her own behalf, or even on behalf of some group of constituents. It is quite another thing for a group of state legislators to act as party in a judicial setting where they are conducting discovery and being subjected to discovery, submitting testimony, cross-examining witnesses and being cross-examined, and filing briefs. As a means of constituent service it raises numerous questions for the Committee to consider. Are the legislators speaking on behalf of all their constituents and, if not, how many? What should the Committee make of the absence of the other 83% of the legislature from the proceeding? Could it be that they are neutral or in favor of the Project?

31. The elected officials also indicate that they are interested in how the new statute will be interpreted. They may seek to take some positions on that question and in fact, some have already done so. Certainly, there is no legal basis for giving any special weight or deference to their arguments on what the legislature as a whole intended when it passed the new legislation. Nonetheless, it is a peculiar circumstance fraught with concern when members of the

legislature undertake to influence the outcome of a judicial proceeding using their official status as a means of entry.

32. To the extent the elected officials have a cognizable interest in this proceeding it is in the same vein as any individual that has sought intervention and it appears that the elected officials all fall within the category of non-abutters. Consequently, the Applicants ask that the elected officials be included within and required to coordinate with that group, subject to the same conditions.

#### **4. Mr. Thomas N.T. Mullen**

33. On February 2, 2016, Mr. Mullen filed a letter requesting intervention in this proceeding. The Applicants object because Mr. Mullen fails to articulate any “right, duty, privilege, immunity or other substantial interest that may be affected by the determination of the issues in this proceeding.” RSA 541-A:32, Site 202.11(b)(2).

34. Mr. Mullen makes a number of baseless allegations regarding a failed business venture and asserts that the personal losses he incurred from the failed real estate venture and his continued work in the real estate market in New Hampshire entitle him to intervene in this proceeding. Mr. Mullen alleges that his sales dwindled due to the former route proposed by the Applicants, leading to foreclosure on the property in December of 2014. Mr. Mullen states that he has “lodged a lawsuit” against the Applicants, which he represents as an ongoing controversy. In fact, that is wrong.

35. The Grafton County Superior Court dismissed Mr. Mullen’s suit in October of 2014. The New Hampshire Supreme Court summarily affirmed this dismissal in July of 2015, holding that “the trial court correctly dismissed the amended complaint for failure to state a claim upon which relief may be granted.” *See* Docket 2014-0797, Thomas N.T. Mullen & a. v.

Public Service Company of New Hampshire & a. (2015).

36. Mr. Mullen is not currently involved in any litigation with the Applicants and, in any event, such a circumstance is not a basis for granting intervention. Mr. Mullen was afforded his constitutional right to litigate his claims in the State Courts who found his claims to be without merit. He should not be permitted to re-litigate those same claims here. Moreover, the Site Evaluation Committee is not the proper venue to voice such a grievance.

37. Finally, Mr. Mullen argues that the Project “continues to hamper [his] ability to earn a living from the sale of property,” further entitling him to intervene. This allegation is far too broad an assertion and too speculative a platform on which to establish standing in this proceeding. In Docket No. 2009-02 the Committee denied the petition to intervene of Jonathan Edwards, a real estate agent, finding that “he has no substantial interest in this docket that differs from the interests of the public at large.” *See* Order on Pending Motions, Docket No. 2009-02 (Mach 24, 2010). In that case, Mr. Edwards asserted that he was a ratepayer who would be affected by the project. Here, Mr. Mullen is making a similar argument – that he is a real estate agent who will be affected by the Project. Therefore, Mr. Mullen’s petition should be denied.

#### **5. Ms. Anita Giulietti**

38. On February 5, 2016 Ms. Anita Giulietti filed a letter requesting intervention in this proceeding. The Applicants object because Ms. Giulietti fails to articulate any “right, duty, privilege, immunity or other substantial interest that may be affected by the determination of the issues in this proceeding.” RSA 541-A:32, Site 202.11(b)(2).

39. Ms. Giulietti’s only stated interest in this proceeding is that the proposed route of the Project will allegedly be visible from a property she was previously interested in purchasing.

*See Anita Giulietti Petition* (February 5, 2015). The address of the property in question is 6 New Road, Meredith, NH 03253.

40. Ms. Giulietti cannot assert an interest in a property that she does not own. As such, her interest in the Project is indistinguishable from that of the general public and her petition should be denied.

#### **6. Dr. Deborah Warner**

41. On February 4, 2016 Dr. Deborah Warner filed a letter requesting intervention in this proceeding. The Applicants object because Dr. Warner fails to articulate any “right, duty, privilege, immunity or other substantial interest that may be affected by the determination of the issues in this proceeding.” RSA 541-A:32, Site 202.11(b)(2).

42. Dr. Warner alleges an interest in (1) the Project’s effects on recreation, (2) the Project’s effects on tourism and the reciprocal effect on her personal business, and (3) the wellbeing of her clients. These interests are insufficient to establish the basis for intervention here and moreover, will be adequately represented by Counsel for the Public.

43. Dr. Warner’s interests in recreation and tourism will be adequately represented by Counsel for the Public and are otherwise indistinguishable from the interests of the general public. *See Appeal of Richards*, 134 N.H. at 156 (1991) (“[n]o individual or group of individuals has standing to appeal when the alleged injury caused by the administrative agency's action affects the public in general, particularly when the affected public interest is represented by an authorized official or agent of the state”). Dr. Warner is also not an abutter to the Project nor will the Project be located within a close proximity to her business. Indeed, the Project will not be located in her town of Littleton.



44. Dr. Warner's allegation that "people are already traumatized by the threat of [the Project]" is without foundation and her claim that the Project will cause future trauma is pure speculation. Additionally, as a licensed psychologist, it is not within Dr. Warner's authority or professional responsibility to her clients to represent their interests in this proceeding, and it would be improper to grant her petition on such grounds. Therefore, Dr. Warner's petition should be denied.

#### **7. "No Northern Pass Coalition"**

45. The Applicants object to the intervention of the No Northern Pass Coalition Board of Directors. As a threshold matter, the No Northern Pass Coalition (NNPC) is not a legal entity capable of having legal standing to intervene. The group is neither organized nor incorporated in any manner that would confer upon them the legal rights for which they presently seek. *See R.J. Shortlidge, Jr. v. Francis C. Gutoski*, 125 N.H. 510, 513 (1984) ("A voluntary association, except as provided for by statute, has no legal existence apart from the members who compose it."). Furthermore, three of the five signatories to the NNPC petition have independently petitioned to intervene (Robert Tuveson, Gail Beaulieu, Elizabeth Terp). To grant these individuals the right to intervene independently as well as under the guise of the NNPC would be unfair to the Applicants since it would give the same parties multiples opportunities to conduct discovery, examine witnesses, sponsor witnesses and generally participate in this matter.

46. The NNPC has not pleaded any sort of legally protected interest in this proceeding. Rather, they assert that they have collected "over 6,000 signed petitions from individuals across the state of New Hampshire and New England" and "would like to enter these petitions into evidence and feel that the Site Evaluation Committee has an obligation to take [the] petitions into consideration when ruling on this project." *See* No Northern Pass Coalition Board

of Directors Petition (February 4, 2016). RSA 162-H:10, III requires the Committee to “consider and weigh all evidence presented at public hearings and shall consider and weigh written information and reports submitted to it by members of the public before, during, and subsequent to public hearings but prior to the closing of the record of the proceeding.” RSA 162-H:10, III. Therefore, the NNPC may submit any and all signed petitions to the Committee at any time prior to the closing of the record.

**B. Municipalities, Municipal Governments and Municipal Sub-Units**

**1. Towns**

47. The Applicants do not object to the petitions of Cities, Towns, or other Town Governing Bodies, provided that their interventions are limited to those issues for which they have demonstrated a concrete and well-defined interest. Additionally, for those Towns that voluntarily grouped themselves, the Applicants request that they be required to combine their presentations of evidence and argument, cross-examination and other participation in this proceeding pursuant to Site 202.11(d)(3).<sup>2</sup>

**2. Municipal Sub-Units**

48. The Applicants object to the separate intervention of municipal sub-units to the extent that their interests are already properly and sufficiently represented by their respective Towns and town governing bodies.<sup>3</sup> As illustrated in Exhibit A, for each municipal sub-unit petitioning to intervene, their respective Town or Town governing body is also petitioning to intervene.

49. In order for a petition to intervene to be granted, the presiding officer must determine that the interests of justice and the orderly and prompt conduct of the proceedings

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<sup>2</sup> See Exhibit A for a list of Towns and Town Governing Bodies fitting this category.

<sup>3</sup> See Exhibit A for a list of municipal sub-units.

would not be impaired by allowing the intervention. *See* Site 202.11(b)(3). Potential interveners must distinguish their interest in a manner that makes clear they will not overlap with, and repeat the efforts of other similarly situated interveners as well as Counsel for the Public. *See Appeal of Richards*, 134 N.H. at 156 (1991).

50. In *Hookset Conservation Com'n v. Hookset Zoning Bd. of Adjustment*, 149 N.H. 63 (2003) (hereinafter “Hookset”), a town conservation commission sought review of the zoning board of adjustment’s determination involving interpretation of a zoning ordinance. The Court examined the “policy sought to be advanced by the statutory scheme” at issue in the case and held that the conservation commission did not have standing to bring the appeal because appeals by multiple local planning boards would interfere with “the prompt and orderly review of land use applications” and “cause considerable delays.” *Id.* at 68.

51. Although *Hookset* concerned a land use statute the holding is relevant by analogy to the issue in this proceeding. That is, where the interests of municipal sub-units are sufficiently represented by their respective municipal governing bodies, the participation of municipal sub-units is disruptive to the prompt and orderly conduct of the proceedings.

52. The Applicants recognize that municipal governing bodies have a substantial interest in this proceeding. Therefore, the Applicants do not oppose the petitions of Towns and Town governments, so long as their participation is coordinated and combined. As for municipal sub-units, the Applicants request is that they be required to combine or coordinate their participation with their respective Town either outside of these proceedings or as parties to the proceeding as the Committee deems appropriate and least likely to impair the prompt and orderly conduct of the proceeding.

**C. Non-Governmental Organizations**

**1. New Hampshire Sierra Club, Appalachian Mountain Club, Society for the Protection of New Hampshire Forests, Conservation Law Foundation, Ammonoosuc Conservation Trust**

53. The Applicants do not object to the interventions of the New Hampshire Sierra Club (NHSC), the Appalachian Mountain Club (AMC), the Society for the Protection of New Hampshire Forests (SPNHF), the Conservation Law Foundation (CLF) and the Ammonoosuc Conservation Trust (ACT). However, the Applicants request that these organizations be grouped together and their participation limited pursuant to Site 202.11(d). The Applicants note, however, that it is only SPNHF as an abutting property owner that merits consideration for mandatory intervention. To the extent the other organizations are granted intervention, it is as an exercise of the Committee's discretion.

54. The five organizations allege the same interests in this proceeding pertaining to energy consumption, natural resource use and the environment as providing a foundation for their petitions. Specifically, each organization makes the following claims:

- a. That members of their organization will be affected by this proceeding;
- b. That the organization is concerned about the Project's impact on natural resources and the environment; and
- c. That the organization is concerned about regional energy use and/or natural resources use.

55. Therefore, the Applicants request that these organizations be required to combine their presentations of evidence, arguments and cross-examination and that their participation in this proceeding be limited solely to the above-listed interests pursuant to Site 202.11(d). Given the shared interests and similar organizational structures of these organizations, to allow each to

intervene independent of one another would not serve the interests of justice and would disrupt the orderly and prompt conduct of the proceedings. For example, in Docket No. 2009-02, the Committee limited the intervention of the New Hampshire Sierra Club to the narrow interest articulated in its petition holding that “the prompt and orderly disposition of the proceedings ... require that the NHSC’s participation as an intervener shall be limited...” *See* Order on Pending Motions, Docket No. 2009-02 (March 24, 2010).

56. While the Applicants do not oppose the intervention of these organizations, the Applicants object to certain interests asserted by these groups as procedurally and substantively improper before this Committee. The Applicants’ position on this matter will be discussed in more detail in Section IV below.

**2. New Hampshire Historic Preservation Alliance and The National Trust for Historic Preservation and The Sugar Hill Historic Museum**

57. The Applicants do not object to the Joint Petition to Intervene of the New Hampshire Preservation Alliance (NHPA) and the National Trust for Historic Preservation (National Trust) or the petition of the Sugar Hill Historic Museum. However, the Applicants request that these organizations be grouped together and their intervention limited pursuant to Site 202.11(d).

58. Each of these organizations assert an interest in the Project’s effects on above and below ground historical, cultural and archaeological resources within the State of New Hampshire and the protection thereof. In their Joint Petition with the NHPA, the National Trust acknowledges that “For decades, the National Trust has worked throughout New Hampshire on preservation advocacy projects, and for the last thirty years, frequently in partnership with the New Hampshire Preservation Alliance.” Thus, the NHPA and National Trust duly indicate their intention to work together should their Joint Petition be granted. Given the shared interests with

The Sugar Hill Historic Museum, the Applicants request that these three organizations be grouped together.

59. In addition, the Applicants request that their participation in these proceedings be limited only to issues regarding historic, cultural and archaeological resources insofar as they relate to the Project. These organizations have demonstrated an interest and expertise in these specific areas only. To allow them to participate outside the scope of their respective expertise risks disrupting the orderly and prompt conduct of the proceedings.

#### **D. Business Organizations**

60. The Applicants do not object to the intervention of businesses or business related organizations in this proceeding. Such organizations are listed in Exhibit A and include incorporated businesses as well as groups and organizations with specific economic interests. Nonetheless, the Applicants request that the Committee, in its discretion, combine similarly situated parties into groups as illustrated in Exhibit A.

#### **IV. Procedural Issues**

61. In order to ensure the orderly conduct of the proceedings, and the timely processing of the Application, the Applicants request that certain procedures be implemented. In prior proceedings the Committee required that interveners comply with all limitations set forth in RSA 541-A:32(III) and Site 202.11(d). See, *Order on Motions to Intervene*, SEC Docket No. 2012-01, p. 11-12 (May 18, 2012).

62. Consistent with the limitations provided in RSA 541-A:32(III), the Applicants request that all parties included in each of the groups identified above be combined for the purposes of discovery, pursuant to Site 202.12(d), presentation of evidence and argument, and examination of witnesses. As the Committee has required in the past, the Applicants request that

each group be required to designate a spokesperson for purposes of discovery, presentation of evidence, and cross-examination.<sup>4</sup>

63. Given the volume of intervention requests in this docket and the importance of completing the Committee's review within the statutory period, the Applicants believe their proposals are reasonable and will significantly advance the effort to ensure the orderly conduct of the proceeding.

64. Moreover, as discussed previously, the Applicants believe that certain interests alleged by various petitioners are procedurally and substantively improper in this proceeding. Specifically, the Applicants object to SPNHF's alleged dispute over property rights concerning public roadway easements. SPNHF and the Applicants are currently litigating this issue before the Coös County Superior Court; SPNHF should not be allowed to attempt to re-litigate this issue in this proceeding. Therefore, should the Committee, in its discretion, grant SPNHF's petition, it should limit SPNHF's intervention to exclude this issue from the proceeding. To do otherwise would impermissibly expand the scope of this proceeding.

65. In addition, the Applicants object to the petitions of CLF, NHSC and others insofar as they allege an interest in the "renewable" characteristics of hydro power and the impacts of hydro power generation in Canada. Such issues are not relevant to this proceeding and allowing intervention on these premises would impermissibly expand the scope of this proceeding.

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<sup>4</sup> The Applicants ask that the Committee remind interveners that they are required to comply with the rules governing parties to the proceeding including, but not limited to, the format of documents pursuant to Site 202.06, the proper filing of documents pursuant to Site 202.07, and the computation of time pursuant to Site 202.08. To the extent that these rules are not followed, the Applicants request that the Committee exercise its discretion to further limit the participation of interveners as appropriate in order to ensure the prompt and orderly conduct of the proceedings.

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 26, 2016

By: 

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Certificate of Service

I hereby certify that on the 26<sup>th</sup> 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



## **EXHIBIT A**

The Applicants grouped Petitioners into the following categories using information supplied in the individual petitions to intervene as well as the Applicants' own resources. To the extent that information is supplied that irrefutably rebuts the Applicants' categorizations, the Applicants will defer to the Committee's judgment.

### **1. Abutting Property Owners and Non-Abutting Property Owners Within One Hundred Feet of the Project**

1. Rodrigue and Tammy Beland
2. McKenna's Purchase Unit Owners Association
3. Donald and Betty Gooden
4. Bruce Ahern
5. David Schrier
6. Eric and Margaret Jones
7. Nancy Dodge
8. Elaine Olson and Eric Olson, individually and as co-trustees of the Eric Olson Revocable Trust, and Joshua and Elaine Olson, individually and as co-trustees of the Elaine Olson Revocable Trust
9. Elmer and Claire Lupton
10. Craig and Corinne Pullen
11. Rebecca Hutchinson
12. Mary Wellington
13. Charles and Cynthia Hatfield
14. Campbell McLaren
15. Russell and Lydia Cumbee
16. Jo Anne Bradbury
17. Eric and Barbara Meyer
18. Paul and Dana O'Hara
19. Kevin and Lisa Cini
20. Robert Thibault
21. Dennis Ford
22. Taras and Marta Kucman
23. James and Judy Ramsdell
24. Roderick and Donna McAllaster
25. Lynne Placey
26. Arlene Placey
27. Ken and Linda Ford
28. Carl and Barbara Lakes
29. Carol Currier
30. Kevin Spencer and Mark Lagasse
31. Susan Schibanoff
32. Lori and Jon Levesque
33. Virginia Jeffries
34. Robert Heath

35. Eric and Sandra Lahr
36. Bruce Adami and Robert Cote
37. Nigel Manley and Judy Ratzel
38. Kelly Normandeau
39. Laura Bonk
40. Bradley and Daryl Thompson
41. Walter Palmer and Kathryn Ting
42. Sally Zankowski
43. Bruce and Sondra Brekke
44. Mary and Peter Grote
45. Mary Lee
46. Rodney and Laura Felgate
47. Torin and Brian Judd
48. Gregory and Lucille Wolf
49. Erick, Jr. and Kathleen Berglund
50. Gerald Roy
51. Tim and Brigitte White
52. Robert Martin

**2. Non-Abutting Property Owners Not Within One Hundred Feet of the Project**

1. Nina and Elisha Gray
2. Kris Pastoriza
3. Alexandra and James Dannis
4. Elizabeth Terp
5. Philip and Joan Bilodeau
6. Frank and Kate Lombardi
7. Marsha Lombardi
8. Frederick Fits
9. Edward Piatek
10. Lawrence and Maxime Phillips
11. Michael Marino and Lee Ann Moulder
12. Wendy Doran
13. Jeanne Menard
14. Thomas N.T. Mullen
15. Robert and Joanna Tuveson
16. David Van Houten
17. Susan Percy
18. Dr. Deborah Warner
19. Mark and Susan Orzeck
20. Andrew Dodge
21. John Davidge
22. Lelah Sullivan and Stephen Buzzell
23. Weeks Lancaster Trust - Rebecca More
24. Tom Foulkes
25. Robert Craven

26. Peter Powell
27. Anita Giulietti
28. Richard McGinnis
29. Barbara and Robert Matthews
30. Sandra and Paul Kamins
31. Gail Beaulieu
32. Charles and Donna Jordan
33. Roderick Moore, Joseph Dunlap, Shawn Brady, and Christopher Thompson - The Heath Road Intervenors
34. James H. Page, Jr.
35. Maureen Quinn
36. Frank Pinter
37. Timothy and Rebecca Burbank, Edward Cenerizio, Deborah Corey, Matthew Steele
38. Linda Upham-Bornstein
39. E. Martin Kaufman, Janice Kaufman, Herman Lerner, Arthur Weinstein
40. Dixville Notch – Harvey Swell Location<sup>1</sup>
41. The Webster Family

### **3. State Representatives**

#### New Hampshire State Senators

1. Sen. Jeff Woodburn
2. Sen. Jeanie Forrester
3. Sen. Martha Fuller Clark
4. Sen. Molly Kelly

#### Coos County

5. Rep. Laurence M. Rappaport
6. Rep. John Fothergill
7. Rep. Robert L. Theberge
8. Rep. John E. Tholl, Jr.
9. Rep. Leon H. Rideout

#### Grafton County

10. Rep. Erin T. Hennessey
11. Rep. Linda Massimilla
12. Rep. Susan Ford

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<sup>1</sup> The Applicants draw attention to the fact that multiple signatories to the Dixville Notch-Harvey Swell Petition to Intervene also petitioned the Committee for intervention in their individual capacities. The Applicants request that the Committee consider the propriety of such redundancies in considering individual and group petitions to intervene. Additionally, to the extent that petitioners have voluntarily grouped themselves, the Applicants request that such petitions be treated as a single petition.

13. Rep. Rick M. Ladd
14. Rep. Kevin Maes
15. Rep. Suzanne J. Smith
16. Rep. Mary R. Cooney
17. Rep. Travis Bennett
18. Rep. Jeffrey S. Shackett
19. Rep. Charles L. Townsend
20. Rep. Patricia Higgins
21. Rep. Sharon Nordgren
22. Rep. Richard Abel
23. Rep. George Sykes
24. Rep. Brad Bailey
25. Rep. Wendy A. Piper
26. Rep. Eric Johnson
27. Rep. Duane Brown
28. Rep. Stephen Darrow
29. Grafton County Commissioners

#### Carrol County

30. Rep. Gene G. Chandler
31. Rep. Thomas L. Buco
32. Rep. Karen C. Umberger
33. Rep. Edward A. Butler
34. Rep. Susan Ticehurst

#### Merrimack County

35. Rep. Mario Ratzki
36. Rep. Karen E. Ebel
37. Rep. David H. Kidder
38. Rep. Geoffrey Hirsch
39. Rep. Caroletta C. Alicea
40. Rep. Howard M. Moffett
41. Rep. George Saunderson
42. Rep. Mary Jane Wallner
43. Rep. Mel Myler
44. Rep. Stephen J. Shurtleff
45. Rep. Paul J. Henle
46. Rep. June M. Frazer
47. Rep. James R. MacKay
48. Rep. Helen Deloge
49. Rep. Christy D. Bartlett
50. Rep. David Doherty
51. Rep. David B. Karrick
52. Rep. Mary Stuart Gile

- 53. Rep. Clyde Carson
- 54. Rep. Dick Patten
- 55. Rep. Paula Bradley

Belknap County

- 56. Rep. Valerie Fraser

Strafford County

- 57. Rep. Wayne Burton
- 58. Rep. Judith T. Spang
- 59. Rep. William S. Baber
- 60. Rep. Len DiSesa
- 61. Rep. Peter W. Bixby
- 62. Rep. Thomas Southworth
- 63. Rep. James Verschueren
- 64. Rep. Janet Wall

Rockingham County

- 65. Rep. Robert R. Cushing
- 66. Rep. David A. Borden

Cheshire County

- 67. Rep. Marjorie J. Shepardson

Sullivan County

- 68. Rep. Lee Walker Oxenham

**4. Towns and Town Governing Bodies**

- 1. Town of Ashland Select Board
- 2. City of Berlin
- 3. Town of Bethlehem Planning Board
- 4. Town of Bethlehem Select Board
- 5. Town of Bridgewater
- 6. Town of Bristol
- 7. Town of Bristol Select Board
- 8. Town of Canterbury
- 9. Town of Colebrook
- 10. Town of Dalton Select Board
- 11. Town of Deerfield Board of Selectmen and Planning Board
- 12. Town of Easton

13. Town of Easton Planning Board
14. Town of Franconia
15. Town of Franconia Planning Board
16. City of Franklin
17. Town of Holderness
18. Town of Littleton
19. Town of Pembroke
20. Town of Plymouth
21. Town of Pittsburg
22. City of Manchester
23. City of Nashua
24. Town of New Hampton
25. Town of Northumberland
26. Town of Stewartstown
27. Town of Sugar Hill
28. Town of Whitefield
29. Town of Whitefield Planning Board
30. Town of Woodstock

**5. Municipal Sub-Units**

1. Ashland Conservation Commission
2. Town of Ashland Water and Sewer Department
3. Bethlehem Conservation Commission
4. Dalton Conservation Commission
5. Deerfield Conservation Commission
6. Easton Conservation Commission
7. Franconia Conservation Commission
8. Holderness Conservation Commission
9. The Lafayette School Board
10. North Country Scenic Byways Council
11. Pemigewasset River Local Advisory Committee

**6. Non-Governmental Organizations**

1. Society for the Protection of New Hampshire Forests
2. Appalachian Mountain Club
3. Conservation Law Foundation
4. New Hampshire Sierra Club
5. Ammonoosuc Conservation Trust
6. Sugar Hill Historical Museum
7. New Hampshire Preservation Alliance and National Trust for Historic Preservation
8. No Northern Pass Coalition Board of Directors - Peter Martin

**7. Businesses and Organizations With Economic Interests**

1. Liebl Printing and Design

2. Garl and Mill Timberframes
3. Cate Street Capital/Burgess Biopower
4. International Brotherhood of Electrical Workers
5. BAE Systems, Dyn, Inc. Globe Manufacturing, Wilcox Industries Corp.
6. New England Ratepayers Association
7. Coos County Business and Employers Group
8. Dixville Capital, LLC and Balsams Resort Holdings, LLC
9. Wagner Forest Management
10. North Country Chamber of Commerce
11. Greater Rochester Chamber of Commerce
12. Greater Nashua Chamber of Commerce
13. Greater Manchester Chamber of Commerce

**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 NEW ENGLAND POWER GENERATORS  
ASSOCIATION'S PETITION FOR INTERVENTION**

Northern Pass Transmission LLC ("NPT") and Public Service Company of New Hampshire d/b/a Eversource Energy (the "Applicants"), by and through their attorneys, McLane Middleton, Professional Association, hereby object to the Petition for Limited Intervention filed by New England Power Generators Association's ("NEPGA") dated February 4, 2016. As grounds for this Objection, the Applicants state as follows:

1. NEPGA seeks mandatory intervention under RSA 541-A: 32, I or discretionary intervention under RSA 541-A: 32, II to address three issues allegedly before the Site Evaluation Committee ("SEC"):

(1) the implications for the application of the affiliate relationship between Eversource Energy and, NPT, and the potential for any undue benefit that may arise therefrom;

(2) impacts to the competitive electricity markets, including but not limited to, competitive procurement practices and the potential purchase power agreements; and

(3) any proposed "public interest" stated by the project. *See generally* RSA 162-H:1 (West Supp. 2015); N.H. Code of Admin. Rules Site 301.16 ((a)-(j)).

NEPGA Petition at ¶ 4. Based on its Motion, NEPGA is not entitled to intervention as of right, or as a matter of discretion to address these issues.



2. Although claiming to seek only “limited” intervention, by citing to the RSA 162-H:1 “Declaration of Purpose” section of the statute, and to the general criteria for determining the “public interest” in the SEC Rules (Site 301.16), NEPGA’s proposed intervention is far from limited. Rather, it is plain that NEPGA seeks to be involved in all aspects of this proceeding. Indeed, NEPGA requests that “if, during the course of the proceeding, additional issues arise that affect” the rights and duties of NEPGA members, “it be permitted to seek full party intervention status.” Applicants submit that the SEC should deny such a request as premature. If NEPGA could, in fact, establish the right to intervention at some future point, it should be required to justify its basis for a broader intervention at that point. NEPGA should not be given a free pass to future intervention without establishing the basis for it.

3. NEPGA’s Petition should be denied. First, NEPGA has not specifically identified any “rights, duties, privileges...or other substantial interests” that may be affected by this proceeding and thus does not warrant intervention as a matter of right. Instead, it provides only generalized statements about its interest in competitive markets. But this general interest in the “competitive markets” does not establish “rights, duties and substantial interests” that mandate intervention or rights that merit discretionary intervention. Second, neither subsection of RSA 541-A: 32 warrants intervention to address the specific subjects on which NEPGA seeks to intervene. The issues identified are not before this Committee but rather – if relevant to the interests of NEPGA at all – are more properly addressed at a future date before the Public Utilities Commission. Third, the Committee should deny NEPGA discretionary intervention. Allowing competitors to intervene in this proceeding may substantially impair its orderly conduct. Competitive generators like those represented by NEPGA have a strong interest in stopping any additional supply of energy in the New England region and thus, their real interest

is in preventing, rather than fostering competition. Moreover, they have a strong interest in acquiring competitive information about the Applicants through discovery once they obtain the status of an intervenor. Likewise, competitive generators have a distinct interest in delaying the proceeding in the hope that delay will harm the project. Recent experience before the PUC with NEPGA specifically, and other competitors more generally, demonstrates why the Committee should deny NEPGA's request to intervene. Finally, any interest that NEPGA may have in this proceeding can be addressed without intervention. If NEPGA has information that may be of assistance to the Committee, it can provide that information by memoranda or letters without becoming a party to the proceeding.

**NEPGA Has Failed to Identify Any Rights  
That Would Require Intervention Pursuant to RSA 541-A:32, I**

4. NEPGA contends that its interest in this proceeding is as a “trade association presenting [sic] competitive electric generating companies in New England,” that its “mission is to promote sound energy policies,” that it “believes that sustainable competitive markets are the best means to provide long-term reliable and affordable supplies of electricity for consumers,” and that its members “have a substantial and specific interest in a fully competitive generation market and maintaining a level playing field in that market.” Petition at ¶ 5. In sum, NEPGA's only interest is as an association representing companies that allegedly compete with the Applicants. Its real interest is in protecting its members from competition, as opposed to fostering greater competition. While power generators may not wish to see additional power brought to New England, that concern is not a sufficient basis to intervene before this Committee.

5. NEPGA cites to its intervention in several PUC dockets in support of its intervention here. Yet in each of the PUC Dockets cited by NEPGA, it was either granted

intervention on a discretionary basis (Dockets DE 14-238 and DE 10-195) or because no party to the docket objected (Dockets DE 10-160 and DE10-261). In each of those dockets, NEPGA advanced the same general interests it puts forward for intervention here, but as the PUC stated in Order No.25,733 in Docket 14-238 (Determination Regarding PSNH's Generation Assets) these interests "are not sufficiently direct to support mandatory intervention." Order at 12.<sup>1</sup> If anything, NEPGA's interest in Docket DE 14-238 was greater than its interest here, since that Docket involved generation assets. Yet the PUC, while permitting discretionary intervention, concluded that NEPGA's general interest in the electricity market did not demonstrate that, as required by RSA 541-A:32, I, any of its "rights, duties, privileges, immunities or other substantial interests may be affected by the proceeding or that the petitioner qualifies as an intervenor under any provision of law." *Id. See also* Order No. 25,715 in DE 14-211 in which the PUC denied a motion for intervention stating "a general interest in competitive markets or in a bidding process that has not occurred is insufficient to entitle these parties to intervene pursuant to RSA 541-A: 32, I." Order 25,715 at 3.

6. Likewise, in this proceeding, NEPGA asserts only a generalized interest in a "level playing field" and in "ensuring that Eversource Energy's competitive electric affiliate Northern Pass Transmission, LLC...is not unfairly advantaged to the detriment of other non-affiliated companies operating in the region as prohibited by...Puc Chapter 2100." Petition at

¶ 7. NEPGA offers nothing in the way of specific facts that would explain why this proceeding

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<sup>1</sup> NEPGA's statement of interest in Docket 14-238 was nearly identical to the interest it claims in this proceeding: "NEPGA is a trade association representing competitive electric generation companies in New England. NEPGA's member companies represent approximately 26,000 megawatts (MW) of generating capacity in the region with more than 2,600 megawatts represented by New Hampshire member companies. Its mission is to promote sound energy policies to further economic development, jobs and balanced environmental policy. NEPGA believes that sustainable competitive markets are the best means to provide long-term reliable and affordable supplies of electricity for consumers. NEPGA's member companies have been involved with the design and development of competitive wholesale electricity markets and sell their energy and capacity into the New England wholesale power markets administered by ISO-New England. As participants in the region's wholesale power markets, NEPGA's members have a substantial and specific interest in a fully competitive generation market and a level playing field."

affects its members. Accordingly, if intervention is allowed in this proceeding, it must be discretionary, and on the basis that the “interests of justice” support NEPGA’s involvement. But NEPGA has failed to demonstrate any reason why the interests of justice compel intervention.

**The Issues Identified by NEPGA Do Not Support  
Intervention Even on a Discretionary Basis**

7. None of the issues that NEPGA contends it will address if allowed to intervene justify its intervention.<sup>2</sup> As the New Hampshire Supreme Court has stated, a party seeking intervention pursuant to RSA 541-A: 32 must submit a petition that *specifically asserts that its rights and interests* may be affected by the proceeding.” *Appeal of New Hampshire Right to Life*, 166 N.H. 308, 313 (2014) (emphasis in original). While NEPGA has stated that its rights are impacted by this proceeding, it offers nothing about how the proceeding will affect those interests. For example, why does the affiliate relationship between Eversource and NPT affect its members and how? How specifically does this proceeding impact the competitive electricity market and in what way does approval by the SEC impact NEPGA’s members? What specific interest do NEPGA’s members have in “competitive procurement practices” and how, if at all does this Committee’s review of the Application impact those practices, which are squarely within the jurisdiction of the PUC? NEPGA leaves this Committee to guess at each of those matters and to take it at its word that the general interests of its members in competition are sufficient to justify its involvement in this matter. The statute and applicable rules require more.

8. In addition to these defects, NEPGA’s intervention should be denied because the matters it seeks to address in this Petition are not the subject of this proceeding. First, NEPGA contends that this Committee will address the affiliate relationship between Eversource and NPT.

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<sup>2</sup> NEPGA’s claimed interests are only generalized statements and in any event, involve matters beyond the jurisdiction of this Committee.

But this proceeding has nothing to do with the affiliate relationship between the Applicants. Instead, it deals with the siting of the facility.<sup>3</sup>

9. Second, the alleged impact on the “competitive energy markets” that NEPGA seeks to address are said to include (but not be limited to) “competitive procurement practices and the potential purchase power agreements” that will result if the Application is approved. But procurement practices in the construction of the NPT Project and purchase power agreements are not matters for this Committee but rather, for the PUC in potential future proceedings. Again, if NEPGA has an interest in those proceedings it can seek to intervene at that time.<sup>4</sup>

10. Third, NEPGA’s contention that it should be permitted to intervene because it, or its members, has a general interest in any “proposed ‘public interest’” findings would open the door for intervention to every party who claims to be interested in a proceeding. As the PUC has noted: “[i]t should be recognized that merely being interested in such a proceeding is not the same as having a legal interest of some nature that may be affected by the proceeding.” *Re North Atlantic Energy Corporation*, 87 NHPUC 455, 456 (2002). “Merely expressing a concern about a relevant issue, no matter how well-intentioned, does not confer party status.” *Id.*<sup>5</sup> In a similar,

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<sup>3</sup> NEPGA has also sought to intervene in a pending PUC docket (DE 15-464) concerning whether the lease between PSNH and NPT satisfies the “public good” standard in RSA 374:30. NEPGA asserts exactly the same interest in that Docket that it advances here. At a pre-hearing conference before the PUC on February 19, 2016, the Chairman of the PUC questioned why NEPGA needed full intervenor status in that proceeding, as opposed to simply providing information to the Commission where it felt it appropriate to do so.

<sup>4</sup> NEPGA contends that “proceedings currently pending before the PUC have not, and likely will not, provide NEPGA with the opportunity to present a present a full overview of the substantive issues impacting its members as that presented in the instant proceeding” because NEPGA was denied discovery in a docket involving “a purchase power agreement announced by Eversource related to the NPT project.” Petition at ¶11, citing Order No. 25,830 (October 23, 2015) in Docket 14-238. That docket involved the Settlement Agreement relating to the possible divestiture of PSNH’s generating assets. NEPGA sought discovery concerning an alleged purchase power agreement between Eversource and Hydro-Quebec. The PUC denied NEPGA’s motion for discovery because the PPA had not been finalized, noting: “If and when Eversource files an agreement with Hydro-Quebec, parties will be free to argue whether, and the extent to which, that agreement affects the settlement agreement.” Order at 4. Thus, NEPGA was denied discovery only because its motion was premature, just as its claim that it should be permitted to address future PPAs is premature here, and irrelevant to this Committee’s work.

<sup>5</sup> While standards for intervention are admittedly different from standing requirements, *Ruel v. New Hampshire Real Estate Appraiser Board*, 163 N.H. 34, 40-41 (2011), the New Hampshire Supreme Court has made it clear that

and very recent circumstance, Northern Utilities, Inc. (“Northern”) sought to intervene in a docket relating to a petition by Liberty Utilities (EnergyNorth Natural Gas) Corp. d/b/a Liberty Utilities (“Liberty”) to expand its gas franchise. *See generally* Docket No. DG 15-362. In its petition to intervene, Northern contended that its intervention was justified, in part, because it would be affected by any policy decisions made by the Commission in Liberty’s case. The Commission denied the petition, noting that it could not discern a limiting principle in Northern’s petition that would prevent peer companies in New Hampshire, and beyond, from intervening in proceedings because “all Commission rulings regarding such petitions implicate matters of policy of some interest to similarly-situated utilities, and allowing such interventions would result in unwarranted administrative burden.” *Liberty Utilities (EnergyNorth Natural Gas) Corp. d/b/a Liberty Utilities*, Order No. 25,864 (February 4, 2016) at 3-4. NEPGA has articulated no greater interest in this proceeding, and no limiting principle that would prevent every competitor from intervening in administrative proceedings for the purpose of stifling competition under the guise of creating a “level playing field.”

### **NEPGA’s Intervention May Impair the Orderly Conduct of this Proceeding**

11. Intervention by competitors in proceedings is fraught with particular concerns regarding the conduct of the proceedings. By intervening, an organization such as NEPGA may gain access to highly confidential information through discovery and since the party may have access to all discovery, the Committee cannot protect the confidentiality of that information. This, together with the opportunity for delay is likely NEPGA’s real reason for seeking to

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allegations of increased competition with business are insufficient to provide standing to appeal from an administrative agency decision. *Nautilus of Exeter v. Exeter*, 139 N.H. 450,452 (1995); *Weeks Restaurant Corp. v. City of Dover*, 119 N.H. 541, 545 (1979) (“injury resulting from competition is rarely classified as legal harm but rather is deemed a natural risk in our free enterprise economy.”) Thus, by allowing intervention based on an alleged interest as a competitor, the Committee permits parties to participate who would have no right to appear in Court and no right to challenge the Committee’s decision on appeal. *See e.g. In Re Campaign for Ratepayers’ Rights*, 162 N.H. 245 (2011) (Appeal from SEC order dismissed on standing grounds after a full hearing before the Committee.)

intervene. It has offered no expertise on the relevant issues facing this Committee. Thus, while espousing a right to “fair competition”, intervention provides an opportunity for a competitor to gain access to the very type of information it would otherwise be prohibited from obtaining in the conduct of fair competition.

12. At the same time, by seeking to address only limited issues, a competitor such as NEPGA may argue that the Applicants are not entitled to discovery from it. This is not mere conjecture. In recent proceedings before the PUC involving the recovery of the cost of construction of the flue gas desulphurization technology or “scrubber” at PSNH’s Merrimack Station (Docket DE 11-250), TransCanada Corporation was permitted to intervene and to ask enormous numbers of data requests to PSNH. Yet when the PUC ordered it to produce information sought by PSNH, TransCanada refused to comply with the PUC’s Order. More relevant to this matter, NEPGA was permitted to intervene on a discretionary basis in that same Docket and to obtain extensive information from PSNH. Yet when discovery was filed against it by PSNH, NEPGA withdrew from the proceeding, stating:

NEPGA’s intent as a party to this proceeding was to participate in a more general way as an available resource and to protect NEPGA and its members from any economic impact as a result of Commission Orders issued in this proceeding. Its intent was not to become an active participant in a protracted, heavily litigated process that capriciously required the use of significant resources by NEPGA and its members.

NEPGA Motion to Withdraw Status as Intervenor in Docket DE 11-250 dated February 24, 2014 at ¶ 3. If, as in that Docket, NEPGA’s intent is to act as a “resource” for the Committee, it may do so without intervention by providing information to the Committee through comments. NEPGA’s request to intervene has a substantial likelihood of impairing the prompt resolution of these proceedings, of increasing the volume of discovery and of providing an unfair opportunity for competitors to gain access to confidential information.

13. While the Applicants submit that NEPGA has not presented a sufficient or valid basis for intervention in this matter even on a discretionary basis, if it is permitted to intervene, NEPGA should not be permitted to “have its cake and eat it too” by allowing it to conduct discovery on a broad range of topics while contending that it is not subject to discovery on those same issues. Put simply, either NEPGA’s discovery should be limited to the issues it raises, and it should be subject to discovery on those issues, or it should not be permitted to intervene. If it obtains the status of an intervenor, the Applicants fully intend to seek discovery from NEPGA on relevant matters. Likewise, if NEPGA is permitted to seek discovery on additional issues-as potentially relevant-it should be subject to the same discovery. NEPGA should not be permitted to obtain discovery and then avoid responding to similar discovery by withdrawing at an opportune moment of its choosing.

14. NEPGA offers nothing more than a generalized blanket statement that it has an interest in competition as a basis for its intervention.<sup>6</sup> Because NEPGA has failed to demonstrate the types of substantial, legally protected interests that would entitle it to participate in these proceedings, or to explain why this Committee’s proceedings will address the issues on which it seeks to intervene, its Petition should be denied.

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<sup>6</sup> In another recent proceeding, various entities had sought to intervene based upon nebulous claims that they would provide helpful information, yet later those entities failed to constructively participate in the proceeding. In commenting upon the undefined claims justifying intervention, the Commission Chairman expressed doubt about such “blanket” claims being sufficient by stating: “So, I think it’s something that, in the future, we should perhaps consider testing that assertion when it’s made in the future. I suspect there are some other entities that appear before us regularly who would probably appreciate it if we started considering such blanket statements by intervenors more closely when they make them.” Transcript of Hearing November 30, 2015 Hearing in Docket No. DE 15-068 at 7.



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 26, 2016

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Certificate of Service

I hereby certify that on the 26<sup>th</sup> 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