

March 11, 2016

VIA HAND-DELIVERY AND EMAIL

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

**RE: New Hampshire Site Evaluation Committee Docket No. 2015-06
Joint Application of Northern Pass Transmission, LLC and Public
Service Company of New Hampshire d/b/a Eversource Energy for a
Certificate of Site and Facility for Construction of a New High Voltage
Transmission Line in New Hampshire**

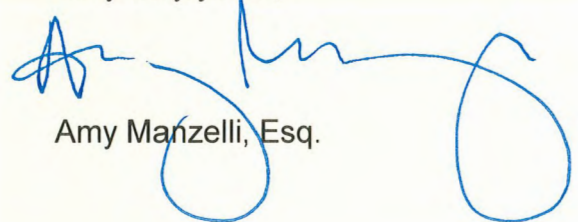
Dear Ms. Monroe:

Enclosed for filing in the above-captioned matter with the New Hampshire Site Evaluation Committee are the **Objection of the Society for the Protection of New Hampshire Forests to Applicants' Response and Objection to Certain Petition to Intervene** and the **Objection of the Society for the Protection of New Hampshire Forests to Applicants' Request for Partial Waivers Under the Newly Adopted SEC Rules**.

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

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

Very truly yours,


Amy Manzelli, Esq.

/nmm

Enclosures

cc: Distribution List (Rev. 3/11/2016) via email
Client



STATE OF NEW HAMPSHIRE
SITE EVALUATION COMMITTEE

Docket No. 2015-06

Joint Application of Northern Pass Transmission, LLC
and Public Service Company of New Hampshire
d/b/a Eversource Energy for a Certificate of Site and Facility

**OBJECTION OF THE SOCIETY FOR THE PROTECTION OF
NEW HAMPSHIRE FORESTS TO
APPLICANTS' RESPONSE AND
OBJECTION TO CERTAIN PETITIONS TO INTERVENE**

The Society for the Protection of New Hampshire Forests (the "Forest Society"), by and through its attorneys, BCM Environmental & Land Law, PLLC, objects to the requests of Northern Pass with respect to the grouping and limiting of certain intervenors. In addition to the problems and reasons other potential intervenors have noted, the requested grouping and limiting is unnecessary and inappropriate for the Forest Society because of its unique position as a property owner and its ability to enhance the orderly conduct of the proceeding; and the grouping and limiting needlessly creates ethical concerns.

I. Overview of Northern Pass's Request to Group and Limit Potential Intervenors

1. On February 26, 2016 Northern Pass filed Applicants' Response and Objection to Certain Petitions to Intervene ("Applicants' Motion"¹). In Applicants' Motion, Northern Pass requested, essentially, that all potential intervenors that oppose the project be grouped with other potential intervenors and that they all have their participation limited.

2. In particular, Northern Pass:

a. suggests denying intervention to 40 petitioners who allegedly are not abutters and whose property is located more than one hundred feet of the project

¹ Although Northern Pass styled the pleading as a "Response and Objection," the Forest Society treats it as a motion and therefore states its opposition to the Applicants' requests in the form of this objection.

(“Alleged Non-Abutters”), or in the alternative, requests granting them intervention but requiring them to be grouped with abutters and limit their participation to issues in which “the Committee determines they have clearly and unequivocally demonstrated they have an interest;”

b. suggests denying intervention to 69 elected officials, or in the alternative grouping and limiting them the same as the Alleged Non-Abutters;

c. objects to the intervention of Mr. Mullen, Ms. Giulietti, Ms. Warner, and the No Northern Pass Coalition;

d. requests municipalities that have “voluntarily grouped themselves” to be required to combine presentation of evidence and argument, cross-examination, and other participation;

e. requests for “municipal sub-units” (Conservation Commissions, Planning Boards, etc.) to be grouped with the corresponding municipality;

f. requests to limit all municipalities and municipal sub-units to “those issues for which they have demonstrated a concrete and well-defined interest”;

g. requests that five organizations Northern Pass refers to as some of the “Non-Governmental Organizations” be grouped together: New Hampshire Sierra Club, Appalachian Mountain Club (AMC), Forest Society, Conservation Law Foundation (CLF), and Ammonoosuc Conservation Trust (ACT);

h. requests to limit the five Non-Governmental Organizations to the following issues: effect of the proceedings upon their members, the Project’s impact on natural resources and the environment, and regional energy use and/or natural resource use; and

i. requests the five Non-Governmental Organizations be required to combine their presentations of evidence, arguments, and cross examination.

3. While Northern Pass purports to make this far-reaching request in the name of orderly conduct, the request would result in needlessly obstructing the meaningful participation of those who oppose the project as currently proposed.

4. On the other hand, and in direct contrast, Northern Pass did not make a similar request to combine the presentations of evidence, arguments, and cross examination of any of the potential intervenors that do not oppose the project, although Northern Pass' purported rationale—orderly conduct—applies equally to them as it does to those who oppose the project.

5. With respect to those potential intervenors that are represented by counsel, including the Forest Society, the request is entirely unnecessary and inappropriate.

II. The Forest Society is Unique Amongst Intervenors and Should Not Be Grouped or Limited as Requested

6. Northern Pass basically acknowledges that the Forest Society is entitled to mandatory intervention because of its status as an abutting property owner. As noted in its Petition to Intervene, the Forest Society owns real property interests (either fee or conservation easements) in over 20 properties included in the proposed route. On the basis of these ownership interests alone, the Forest Society is unique amongst the other “Non-Governmental Organization” with which Northern Pass requests the Forest Society be grouped.

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

8. Other potential intervenors, including CLF, the Sierra Club, and AMC, have noted numerous other important distinctions amongst the “Non-Governmental Organizations.” Rather than restate those here, the Forest Society respectfully incorporates those by reference.

9. Other potential intervenors, including CLF, the Sierra Club, and AMC, have also noted numerous legal and factual reasons why grouping and limiting participation as Northern Pass requests would be wrong. Again, rather than restate those here, the Forest Society respectfully incorporates those by reference.

10. It is too early in this matter to know the contours of each potential intervenor’s theory of and approach to the case. It is extremely likely that some of the “Non-Governmental Organizations” will take different positions and deviate from one another on any number of important issues, such as:

a. the extent to which different versions of the project may or may not be acceptable to a potential intervenor;

b. the extent to which to invest in consultants and the multiple issues associated with that (investment of financial and staff resources, selection of experts, deciding what subject matters, etc.); and

c. how, when, and what discovery requests to make; the extent of public relations.

Given the high likelihood of differences of approach and position with respect to these and many other important issues, it is inappropriate to force the Forest Society to be grouped as Northern Pass requests.

III. Forcing Parties to be Grouped and Limited Needlessly Creates Ethical Concerns

11. The grouping of potential intervenors represented by counsel raises real and significant concerns with respect to several Rules of Professional Conduct. For example, if represented entities are grouped and forced to choose one attorney to cross-examine a witness, does that attorney run the risk of inadvertently forming an attorney/client relationship with all of the entities who are not that attorney's clients, but whose interests the attorney must represent through the cross-examination? As another example, in the same scenario, does an attorney who does not perform the cross-examination run the risk of failing that attorney's duties to that attorney's client if the other attorney who performs the cross-examination does not adequately represent that client's interests?

12. Relatedly, forcing a represented party to rely on another party's attorney in any aspect of the proceedings deprives that party of their right to independent legal counsel of their own choosing.

13. Needlessly forcing represented parties to be grouped together and limiting their rights to participate creates a thorny thicket of ethical problems.

IV. The Forest Society—Not the Subcommittee—Should Limit the Forest Society's Intervention

14. It is wholly unnecessary to group and limit the Forest Society as Northern Pass requests. The Forest Society agrees with Northern Pass that orderly conduct of these proceedings is important. Accordingly, as AMC noted, the Forest Society intends to combine efforts with respect to aesthetics. More generally, the Forest Society intends to combine efforts with others on issues relevant to this matter. However, as noted, it is far too premature to have a certain understanding of how these combined efforts will take shape for the remainder of the adjudicative process. The Subcommittee should not deprive the Forest Society of its right to

participate meaningfully, which may mean having the flexibility to adjust how it may combine efforts with others.

15. Both the Forest Society and its counsel have demonstrated an ability to self-limit participation so that cross-examination would not be duplicative, evidence would not be duplicative, and so forth. The Forest Society's participation as an independent intervenor will enhance—not detract from—orderly conduct of this matter.

16. The Forest Society and the large number of other potential intervenors will continue to pursue their positions in this matter. Inevitably, positions will vary, both amongst the intervenors and as between those opposed to the project and the Applicants. The fact that numerous parties have numerous positions does not amount to non-orderly conduct of the proceeding.

17. Likewise, the fact that Northern Pass or the Subcommittee may not agree with a position asserted does not somehow transform the asserting of such position into non-orderly conduct. Indeed, such civil disagreement goes to the essence of the adjudicative process. So long as parties assert their positions in a professional manner, consistent with applicable laws, and according to reasonable time frames, as the Forest Society will continue to do, the proceeding will be orderly. As a backstop, in the event that a potential intervenor did engage in duplicative or otherwise non-orderly conduct, the Subcommittee always has the authority to limit such activity at the time it occurs.

WHEREFORE, the Forest Society respectfully requests that the Subcommittee:

- A. Grant the Forest Society's Petition to Intervene, without grouping it with any other party seeking to intervene or limiting it;
- B. Deny the Applicants' Response and Objection to Certain Petitions to Intervene with respect to all requests related to the Forest Society;
- C. Grant such further relief as it deems appropriate.

Respectfully Submitted,

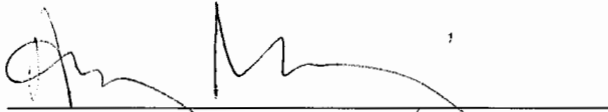
**SOCIETY FOR THE PROTECTION OF
NEW HAMPSHIRE FORESTS**

By its Attorneys,

BCM Environmental & Land Law, PLLC

Date: March 11, 2016

By:



Amy Manzelli, Esq. (17128)

Jason Reimers, Esq. (17309)

3 Maple Street

Concord, NH 03301

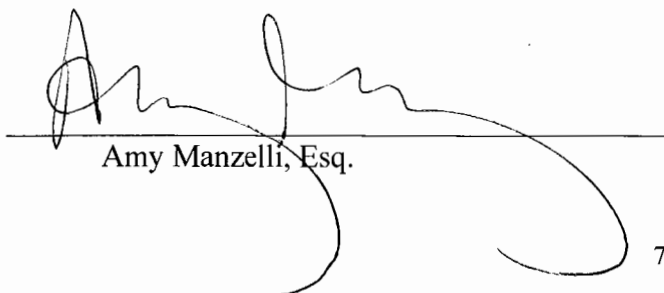
(603) 225-2585

manzelli@nhlandlaw.com

reimers@nhlandlaw.com

CERTIFICATE OF SERVICE

I hereby certify that on this day, March 11, 2016, a copy of the foregoing Objection of the Society for the Protection of New Hampshire Forests to Applicants' Response and Objection to Certain Petitions to Intervene was sent by electronic mail to persons named on the Service List of this docket.



Amy Manzelli, Esq.

STATE OF NEW HAMPSHIRE
SITE EVALUATION COMMITTEE

Docket No. 2015-06

Joint Application of Northern Pass Transmission, LLC
and Public Service Company of New Hampshire
d/b/a Eversource Energy for a Certificate of Site and Facility

**OBJECTION OF THE SOCIETY FOR THE PROTECTION OF
NEW HAMPSHIRE FORESTS TO
APPLICANTS' REQUEST FOR PARTIAL WAIVERS
UNDER THE NEWLY ADOPTED SEC RULES**

The Society for the Protection of New Hampshire Forests (the "Forest Society"), by and through its attorneys, BCM Environmental & Land Law, PLLC, objects to the Applicants' partial waiver requests because the Subcommittee and potentially impacted individuals and entities are entitled to the information that the law requires the Applicants to provide for purposes of assessing the adverse impacts of the proposed project.

I. Overview of Northern Pass's Waiver Requests

1. On February 26, 2016 Northern Pass filed Applicants' Request for Partial Waivers Under the Newly Adopted SEC Rules ("Applicants' Motion"). The Applicants requested waiver from several legal requirements:

- a. For alternative project locations:
 - i. Showing on a map the locations of improvements and property lines (Site 301.03(c)(3));
 - ii. Identification of water resources (Site 301.03(c)(4)); and
 - iii. Identification of historic resources (Site 301.03(c)(5)).

b. For entire abutting properties, no matter what distance from the project corridor they extend:

- i. Showing on a map the locations of improvements and property lines (Site 301.03(c)(3));
 - ii. Identification of water resources (Site 301.03(c)(4))
 - iii. Identification of historic resources (Site 301.03(c)(5)).
 - c. For the required decommissioning plan:
 - i. Hiring of an independent third-party to prepare the plan (Site 301.08(c)(2));
 - ii. Providing additional description or types of financial assurances (Site 301.08(c)(2)(a) and (b)); and
 - iii. Removing infrastructure to a depth of four feet (Site 301.08(c)(2)(d)).

II. Joining Objection of Counsel for the Public

2. On March 7, 2016 the Counsel for the Public filed the Objection of Counsel for the Public to Applicants' Request for Partial Waivers Under the Newly Adopted SEC Rules, through which the Counsel for Public objects to the waiver requests described in paragraphs 1(b) and 1(c) above. The Forest Society joins in and incorporates by reference the objection of the Counsel for the Public. Further, the Forest Society respectfully suggests that the arguments contained in the objection of Counsel for the Public apply with equal weight to the waiver request described in paragraph 1(a) above.

III. Three Additional Reasons the Subcommittee Should Deny the Waiver Requests

3. First, the Applicants have not explained why they should not comply with the requirements of the rules from which they now seek waiver despite their prior knowledge of those rules. The Applicants admit that “[p]rior to filing [the Application on October 18, 2015], the Applicants anticipated the adoption of the new rules and closely followed their

development.” 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, February 24, 2016, ¶ 16.

4. The Applicants went so far as to assert that the additional information with which they would supplement their Application to comply with the new rules would “not identify any new, increased, or different impacts” even though they knew that the new rules required them to do exactly that—to identify additional improvements, property lines, water and historic resources. Id.

5. Second, the waiver requests fly in the face of one of the important purposes of the statute and rules governing the siting process: to provide potentially impacted individuals and entities, like the Forest Society, with sufficient information to understand whether and how a proposed development might impact them. Counsel for the Public has already made the point that it is for the SEC to determine whether an impact is so unreasonable as to require denial of the requested certificate of site. In addition, it is for potentially impacted individuals and entities—and for them alone—to ascertain the level to which they feel they will be impacted and then to participate in the siting process according to their assessment. Northern Pass claiming that it need not provide information required by law because those in abutting and alternative locations “cannot reasonably be expected to be impacted” wrongfully robs those potentially impacted of information the law entitles them to receive from an applicant so that they can meaningfully participate.

6. Third, Northern Pass justifies not providing the required information with respect to historic and water resources, but providing the required information with respect to plants and

wildlife “given the nature of” plants and wildlife. Applicants’ Motion, footnote 1. This wrongfully assumes that the “nature” of water and historic resources is that they are somehow not as important or as sensitive as plants and wildlife. Applicable law is entirely devoid of any such distinction, and the Applicants’ disparate treatment of such resources—all of which have their own inherent and distinct value—is entirely unjustified.

7. In conclusion, requiring Northern Pass to merely comply with the letter of the law does not amount to the inappropriate “strict” compliance of which Northern Pass complains. Instead, requiring Northern Pass to comply with the rules appropriately meets the important purpose of the law in providing the public and the Subcommittee with adequate information to assess impacts of the project.

WHEREFORE, the Forest Society respectfully requests that the Subcommittee:

- A. Deny the Applicants’ Request For Partial Waivers Under The Newly Adopted SEC Rules; and
- B. Grant such further relief as it deems appropriate.

Respectfully Submitted,

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

By its Attorneys,

BCM Environmental & Land Law, PLLC

Date: March 11, 2016

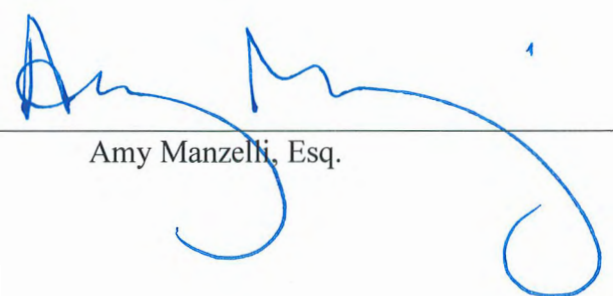
By:



Amy Manzelli, Esq. (17128)
Jason Reimers, Esq. (17309)
3 Maple Street
Concord, NH 03301
(603) 225-2585
manzelli@nhlandlaw.com
reimers@nhlandlaw.com

CERTIFICATE OF SERVICE

I hereby certify that on this day, March 11, 2016, a copy of the foregoing Objection of the Society for the Protection of New Hampshire Forests to Applicants' Request for Partial Waivers Under the Newly Adopted SEC Rules was sent by electronic mail to persons named on the Service List of this docket.



Amy Manzelli, Esq.