

The 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 to Construct a New Voltage Transmission Line and Related Facilities in New Hampshire

Reply to Applicant's Objection to Kevin Spencer and Mark Lagasse dba Lagaspence Realty Request to Fix Deadline to File Dispositive Motions Regarding Applicants' Claimed Right to Construct the Northern Pass on Easements

Reply

Intervenors Mark Lagasse and Kevin Spencer dba Lagaspence Realty LLC, hereby reply to the applicants' objection to their request that the Site Evaluation Committee (SEC) schedule a date certain by which intervenors must file their motions to dismiss the Application for Certificate of Site and Facility regarding applicants' claimed right to construct the Northern Pass on easements.

Case History

Applicants, Northern Pass Transmission LLC (NPT) and Public Service Company of New Hampshire (PSNH) in their October 19, 2015, Application for Certificate of Site and Facility, affirmatively represented to the SEC that they had the property right to construct the Northern Pass as required by RSA 162-H:7 and Site 301.03(6).

On the same date, October 19, 2015, PSNH filed a Petition in the New Hampshire Public Utilities Commission (NHPUC) asking that the NHPUC approve a lease PSNH entered with NPT.¹ The Petition alleged that NPT requested that "PSNH lease to it land and easements within existing PSNH right of way corridors" for the construction of the Northern Pass. (Petition, paragraph 7, page 2). The easement burdening intervenors' property is included in that reference.

The proposed lease was appended to the Petition. The lease, at paragraph 1.5 includes the stunning PSNH disclaimer that it does not warrant its title to the easements and stated that the lease is "AS IS".

¹ NHPUC docket DE 15-464. Intervenors have moved to dismiss the applicants' Petition on the ground that applicants do not own the right to construct the Northern Pass on the easement burdening intervenors' property. The motion is pending.

While PSNH and NPT posit, in paragraph 1.6 of the lease, that the title disclaimer is not an admission, the “AS IS” lease language demonstrates that applicants cannot satisfy the burden of proof of ownership required by RSA 162-H:7 and Site 301.03(6).²

The purpose of the Spencer and Lagasse Request to fix May 20, 2016, as the date certain by which interveners must file their motions to dismiss the Application for Certificate of Site and Facility, was to allow applicants adequate time to acquire the rights from property owners to construct the Northern Pass on the easements or to seek and obtain a judicial determination that the easements permitted such construction.

Applicants’ Objection to Interveners Request to Fix a Date Certain to File Dispositive Motions Is Specious

Applicants make the argument in their objection that interveners’ request that the SEC fix a date certain to file dispositive motions seeks to redress the SEC’s March 1, 2016, “completeness determination”.

Interveners request has nothing to do with “completeness”. Interveners request is predicated on the ground that applicants have the *burden of proof of ownership* and that, on the facts set forth in the Application for Certificate of Site and Facility, applicants cannot sustain that burden. RSA 162-H:7 and Site 301.03(6).

Applicants also argue that interveners’ attorney cannot file pleadings for them because he is not the “designated representative” of the group assigned by the SEC. In other words, per applicant’s argument, interveners cannot be represented by an attorney unless the group selects the attorney as the “designated representative”. This argument is not only specious, it is frivolous³. Interveners’ vital property interests are at stake in this docket. They are entitled to be represented by an attorney of their choice.

Wherefore

The docket at bar is immense, involving a multiplicity of interveners, including property owners whose vital interests are threatened by the Northern Pass. The case will require significant discovery with thousands of pages of documents; the selection of expensive experts; the preparation of expert reports; multiple technical sessions; the time consumed by state agencies with complex permitting responsibilities; the time consumed by the SEC dealing with motions involving intervention rights and groupings and other significant procedural matters; written pre-filed testimony; and, days of hearings.

The costs of this docket will be significant for all parties. If the applicants do not establish the right to construct the Northern Pass on the easements by acquiring them from property owners or by adjudication by a court of competent jurisdiction, the SEC process will have been a waste of time and money, both public and private.

² The applicants’ representation to the SEC that they own the property rights to construct the Northern Pass is plainly contradicted by the title disclaimer in the lease presented to NHPUC. Applicants must address the contradiction with candor to both the SEC and NHPUC.

³ See Rules of Professional Conduct 3.1.

Dispositive motions provide a procedural method to foreshorten the process, to end the proceeding without further time and expense. If applicants do establish proof that they have acquired the rights to construct the Northern Pass, the docket should be dismissed.

Therefore, interveners request that the SEC fix a date certain by which the parties must file their dispositive motions together with such other relief as proper.

Respectfully submitted,

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Certificate

I certify that this document was filed and served in accordance with the New Hampshire Site Evaluation Committee Rules

Arthur B. Cunningham