

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

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 the Construction of a New High Voltage Transmission Line in New Hampshire

Docket No. 2015-06

**CITY OF CONCORD’S RESPONSE AND PARTIAL OBJECTION TO MOTION FOR  
PROTECTIVE ORDER AND CONFIDENTIAL TREATMENT**

The City of Concord, by and through its attorneys, the Office of the City Solicitor, responds and objects in part to the Motion for Protective Order and Confidential Treatment, stating as follows:

**I. BACKGROUND**

1. On or about October 19, 2015, Northern Pass Transmission LLC and Public Service Company of New Hampshire d/b/a Eversource Energy (collectively, the “Applicants”) filed a motion seeking a protective order and confidential treatment for: (1) archeological resources data; (2) information on the status, location and distribution of native plant and animal species and natural communities; and (3) information relating to the economic value of the project to New Hampshire and the assessment of the environmental impacts of the proposed project.

2. The standard under RSA 162-H:16, VI for issuing a certificate requires that the Site Evaluation Committee find that: (1) the site and facility will not interfere with the orderly development of the region with due consideration given to the views of the municipal governing bodies; (2) the facility and siting of the facility will not have an unreasonable effect on aesthetics and the natural environment; and (3) the issuance of a certificate will serve the public interest.

3. The City of Concord has a significant interest in this matter. As proposed, the facility includes 8.1 miles of overhead transmission lines that run through dense residential neighborhoods, economically important commercial zones and conservation lands in Concord. Over one third of the population affected by the project resides in Concord. Portions of the project cross areas that may provide habitat for the Karner Blue butterfly, which is listed as a federally endangered species and has been reintroduced in Concord. The Concord City Council and its appointed subcommittee has expressed concerns about the aesthetic despoliation and audio impacts that the project will have on the City. The subcommittee recommended burial of the line through Concord, a request which the Applicants have disregarded.<sup>1</sup>

4. The City understands that there are valid reasons for not publicly disclosing the location of certain archeological resources and the distribution of certain plant and animal communities, and therefore, does not object to the production of such information under a protective order restricting access to the documents.

5. By contrast, the City of Concord objects to the confidential treatment of economic data and models that were used to establish the purported benefits of the project. Specifically, the City objects to the Applicants' submission of the heavily redacted report and testimony of Julia Frayer from London Economics International, LLC, and her use of proprietary models that have not been either explained or disclosed. Ms. Frayer's conclusions about the financial benefits to New Hampshire consumers appear to be inflated when compared to the results reached in prior studies about this project. For that reason, Ms. Frayer's data and methodology must be thoroughly examined and tested before any reliance is placed on her conclusions.

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<sup>1</sup> In March 2015, the Concord City Council appointed a subcommittee of its members to examine the effects of the project on Concord. The subcommittee met several times and requested specific information from Northern Pass, LLC about the cost of burial in Concord, but it was never provided. The subcommittee concluded that the Applicants had not adequately considered the alternative of burial of the line through Concord.

## II. ANALYSIS

### A. The City of Concord Requires Documents Relative To Archeological Resources and the Status, Location and Distribution of Native Plants, Animal Species and Natural Communities

6. With respect to data relative to archeological resources and the status, location and distribution of native plants, animal species and natural communities, the City of Concord does not object to the confidential treatment of these documents provided that it receives complete unredacted copies of the documents under a protective order.

7. Based on the prehearing conference and conversations with Attorney Barry Needleman, the City of Concord understands that the Applicants do not object to the release of these documents under a protective order. Any such order will need to allow the data to be accessed by City staff and its experts or consultants involved with the project. The data will also need to be accessed by City Council, board and commission members in non-public sessions.

### B. The City of Concord Requires Documents and Models Relative To Economic and Environmental Impacts

8. With respect to the report and pre-filed testimony prepared by Julia Frayer of London Economics International, LLC that sets forth the alleged economic and environmental benefits of the project, the City of Concord needs a complete and unredacted copy of her report and testimony to allow it to fully evaluate the claimed benefits. This documentation is important because to issue a certificate, the Site Evaluation Committee must find that the proposed facility will serve the public interest under RSA 162-H:16, VI. The Applicants assert that the public interest is served because of the project's alleged economic and environmental benefits to residents of New Hampshire. To support this claim, the Applicants filed a heavily redacted version of a report and pre-filed testimony prepared by Ms. Frayer, which concludes that the project will provide wholesale electricity market benefits and retail electricity savings, local

economic benefits, production cost savings and emission reductions. Pre-filed Direct Testimony of Julia Frayer at 4, Lines 2-10.

9. Ms. Frayer concludes that the benefits to the wholesale capacity market in New England are \$851 million to \$866 million on average. Pre-filed Direct Testimony of Julia Frayer at Pages 19, Lines 1-3. By contrast, a previous report prepared by Charles River Associates dated December 7, 2010, the Applicants' own prior expert, found that the benefits to the wholesale energy market would range from "\$206 million in 2015 . . . or \$327 million in 2024." Charles River Report, Pages 1-2.<sup>2</sup> Although Ms. Frayer states that the \$600 million difference is because she analyzed impacts to wholesale capacity market, it is apparent that Charles River Associates also considered the wholesale capacity market. Pre-filed Direct Testimony of Julia Frayer at Page 32, Lines 4-7; Charles River Report at Page 34.

10. A comparison of Ms. Frayer's conclusions with those reached by Charles River Associates shows that the primary difference is based on Ms. Frayer's use of simulation models called "POOLmod" and the "FCA Simulator." Pre-filed Direct Testimony of Julia Frayer at Page 15, Lines 11-20. However, all of the information regarding these models is redacted based on a claim that they are proprietary. This is problematic because Charles River Associates used a peer reviewed and tested model that is widely used in the utility industry, called General Electric Multi-Area Production Simulation Model ("GE MAPS"). Charles River Report at Page 19. As described by Charles River Associates, this model "is currently used by over twenty major utilities and RTOs in the U.S." *Id.* In contrast, because the Applicants claim the models used by Ms. Frayer are proprietary, it is impossible to test her conclusions or otherwise assess

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<sup>2</sup> A copy of this report can currently be located at <http://www.northernpass.us/document-library.htm> It is titled "Final Report LMP and Congestion impacts of Northern Pass Project.

her reliability. Pre-filed Direct Testimony of Julia Frayer at Pages 16-26; Report at Pages 15-17, 39-58, 100-110.

11. Not only are Ms. Frayer's claimed benefits significantly higher than the amounts calculated by the Charles River Associates study, but the claimed benefits are also higher than those calculated by the U.S. Department of Energy in its draft EIS of July 21, 2015. Pre-filed Direct Testimony of Julia Frayer at Pages 33. Ms. Frayer also acknowledges that her methodology differs from the market analysis used by the proposed New England Clean Power Line in Vermont, a line which will be buried along the entire length of the project. *Id.* at Page 34.

12. Given that Ms. Frayer's wholesale market analysis is being used to support the "public interest" and given that it differs markedly from other economic reports, the Site Evaluation Committee should order the Applicants to provide the public with both the complete report and pre-filed testimony, as well as the underlying models used to analyze the data. Without access to this information, it will not be possible to evaluate whether the claimed financial benefits to the wholesale energy market are realistic, valid or have any merit.

13. Ms. Frayer's report and pre-filed testimony also needs to be unredacted to allow the public to evaluate the claim that the project will be a form of "insurance" to prevent market shocks during peak periods, and that there will be retail electricity cost savings in New Hampshire. Those statements cannot be verified because significant portions of the pre-filed testimony and report are redacted. Pre-filed Direct Testimony of Julia Frayer at Page 30; Report at Pages 17-19, 59.

14. Finally, with respect to the environmental benefits relative to carbon omissions, there are significant portions of the pre-filed testimony and report that are redacted. Pre-filed

Direct Testimony of Julia Frayer at Page 36-38; Report at Pages 67-68. Again, it is not possible to evaluate Ms. Frayer's contention that the simulation modeling will result in a certain reduction of CO2 emissions in New England. Based on the redacted report, there is no evidence to support her opinion.

15. The City of Concord submits that all of the economic and environmental data relied upon by the Applicants to support this project should be publicly disclosed, particularly where the claimed benefits of the project are higher than previously claimed and the Applicants are using this data in statements made to the public to generate support for it.

**C. City of Concord's Proposed Protective Order**

16. In the alternative, the City of Concord seeks a protective order that would allow its legal counsel to review and share the protected documents with City of Concord employees, as well as with the City Council and Conservation Commission (and any other necessary City boards and commissions) in a non-public session. This information would remain confidential. Under RSA 42:1-a, board members are required by law to maintain the confidentiality of matters discussed in non-public sessions. Under the City's Information Security Policy, staff are required to maintain the confidentiality of confidential and internal documents.

17. The City of Concord also must be allowed to review and share the protected documents with its consultants and retained experts, and it would agree that those individuals would sign a protective order.

18. Finally, the parties must be allowed an opportunity to freely address information contained in these documents during technical sessions and cross-examination during the adjudicative hearing, as well as in its pleadings. The Applicants should also be required to

produce all economic data including unredacted reports and the models used that form the basis of their conclusions.

19. With respect to Municipal Group 3, the City of Concord has attempted to contact the members of Municipal Group 3. The Towns of Bridgewater and New Hampton do not take a position. The City of Concord was unable to receive a response from the remaining municipalities (and its boards and commissions) in Municipal Group 3 before filing this objection.

WHEREFORE, the City of Concord respectfully requests that the Site Evaluation Committee:

A. Allow the City of Concord to receive an unredacted copy of all archeological resources data, information on the status, location and distribution of native plant and animal species and natural communities.

B. Issue a protective order that would allow the City of Concord's legal counsel to review and share the protected documents with (1) City of Concord employees; (2) the City Council and its Conservation Commission (and its other boards and commissions) in a non-public session; and (3) any consultants and retained experts.

C. Issue an order requiring Applicants to produce all economic and environmental data used by the Applicants to support its application in an unredacted form including any models used so that the public has complete access to this information, or alternatively, strike the Frayer report and pre-filed testimony from the record and preclude the Applicants from citing its conclusions.

D. If the Site Evaluation Committee is not prepared to order complete public disclosure of the economic and environmental impacts and benefits, issue a protective order

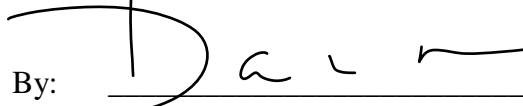
which would allow disclosure as set forth in Paragraph B and which would require production of unredacted reports and the models used.

E. Grant such other and further relief as may be just.

Respectfully submitted,

CITY OF CONCORD


April 7, 2016

By:   
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**CERTIFICATE OF SERVICE**

I hereby certify that on this 7th day of April 2016, a copy of the foregoing was sent by electronic mail to persons named on the Service List of this docket.

April 7, 2016

By:   
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Danielle L. Pacik, Deputy City Solicitor