

**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

**OBJECTION TO APPLICANTS' MOTION TO ADOPT PROCEDURAL SCHEDULE  
OF MUNICIPAL GROUP 1 SOUTH, MUNICIPAL GROUP 2,  
MUNICIPAL GROUP 3 NORTH, MUNICIPAL GROUP 3 SOUTH,  
SOCIETY FOR THE PROTECTION OF NEW HAMPSHIRE FORESTS,  
THE APPALACHIAN MOUNTAIN CLUB, CONSERVATION LAW FOUNDATION,  
SIERRA CLUB CHAPTER OF NEW HAMPSHIRE, AND AMMONOOSUC  
CONSERVATION TRUST**

**Municipal Group 1 South** (consisting of the Towns of Northumberland, Whitefield, and Bethlehem, by and through their attorneys Gardner, Fulton & Waugh, PLLC, and the Town of Littleton, by and through its attorneys Mitchell Municipal Group, P.A.<sup>1</sup>); **Municipal Group 2** (consisting of the Towns of Sugar Hill, Franconia, Easton and Plymouth, by and through their attorneys Gardner Fulton & Waugh, PLLC, and the Town of Woodstock, by and through its attorneys Mitchell Municipal Group, P.A.); **Municipal Group 3 North** (consisting of the Towns of Bridgewater and New Hampton and the Ashland Water and Sewer District, by and through their attorneys Mitchell Municipal Group, P.A., the Town of Bristol, by and through its attorneys Gardner Fulton & Waugh, PLLC, and the Town of Holderness, *pro se*<sup>2</sup>); **Municipal Group 3 South** (consisting of the Towns of Canterbury and Pembroke, both *pro se*, the City of Concord, by and through the Office of the City Solicitor, and the Town of Deerfield, by and through the Mitchell Municipal Group); the **Society for the Protection of New Hampshire Forests**, by and through its attorneys BCM Environmental & Land Law, PLLC; and the **Appalachian Mountain**

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<sup>1</sup> The Town of Dalton is also part of Municipal Group 1 South. However, undersigned did not receive a response from Dalton prior to filing this Objection.

<sup>2</sup> The Town of Ashland is also part of Municipal Group 3 North. However, undersigned did not receive a response from Ashland prior to filing this Objection.

**Club, Conservation Law Foundation, Sierra Club Chapter of New Hampshire, and Ammonoosuc Conservation Trust** (comprising one of the Non-Governmental Organizations Groups), hereby submit the following objection to the Motion to Adopt Procedural Schedule filed by Northern Pass Transmission, LLC and Public Service Company of New Hampshire d/b/a Eversource Energy (the “Applicants”) dated May 31, 2016 (“Motion”). The Motion should be denied, as follows:

1. On May 31, 2016, the Applicants filed a Motion to Adopt Procedural Schedule. The Applicants request the Presiding Officer, Chairman Honigberg, disregard the vote of the Site Evaluation Committee Subcommittee (“SEC”) on May 19, 2016 to extend the time frame for issuance of a written decision to September 30, 2017. The Applicants further request the Presiding Officer adopt a schedule that would lead to the issuance of a written decision by June 30, 2017. The Motion fails to mention that the Applicants have already proposed a procedural schedule in their motion of March 21, 2016 with a proposed end date of December 19, 2016. The SEC heard, debated, and decided that question on the merits at its May 19, 2016 hearing.

2. The Motion should be denied because it is procedurally defective.

3. First, the appropriate method to set aside or seek review of a decision from the SEC is to file a motion for rehearing under RSA 541:3. *See* RSA 541:3; N.H. Admin. R. Site 202.29. It is inappropriate for the Applicants to seek to bypass this legal requirement by requesting the Presiding Officer simply to adopt a schedule that would contradict the vote taken by the SEC on May 19, 2016.

4. Moreover, the Applicants’ attempted bypass of the required process in effect undermines judicial finality. No party may repeatedly re-raise identical issues, as the Applicants have done, because they disagree with the outcome. Indeed, re-raising the issue of the end date

for the procedural schedule should be barred by the doctrine of “law of the case” because it involves a question already decided in this matter. Once the question has been decided, it becomes binding precedent to be followed in successive stages of the same matter. *See, e.g., Saunders v. Town of Kingston*, 160 N.H. 560, 566 (2010). At the hearing on May 19, 2016, the SEC specifically considered and rejected a June 30, 2017 end date. If the Applicants may re-raise this or any issue the SEC has already decided, and there is no finality to the SEC’s decisions, all of the many parties to this matter will be free to repeatedly, and without end, file motions seeking the procedural schedule they desire, even if those parties have already filed such a request and the SEC has ruled on it.

5. In addition, the Presiding Officer should not be permitted simply to substitute his judgment for that of the SEC. The SEC considered arguments and engaged in a lengthy discussion relative to the procedural schedule in this matter. Further, because the decision to extend the time frame was so intertwined with the date to which the time frame would be extended, it is arguable that the Chair acting alone is not authorized to decide to extend the time frame to any date other than what the SEC as a whole decided.

6. Second, even assuming that the Motion is treated as a motion for rehearing, it should be denied because it fails to meet the legal standard. Under RSA 541:13, a motion for rehearing is required “to direct attention to matters that have been overlooked or mistakenly conceived in the original decision... .” *Damais v. State*, 118 N.H. 309, 311 (1978) (internal quotations omitted). A rehearing may be granted when the SEC finds “good reason” or “good cause” has been demonstrated. *See O’Loughlin v. NH Pers. Comm.*, 117 N.H. 999, 1004 (1977).

“A successful motion for rehearing must do more than merely restate prior arguments and ask for a different outcome.” *Public Service Co. of N.H.*, Order No. 25,676 at 3 (June 12, 2014).<sup>3</sup>

7. The request to review the SEC’s decision should be denied because there is no clear or demonstrable error. It is also noteworthy that the Motion grossly oversimplifies the SEC’s considerations of the issue. The Applicants state in their Motion that “[t]he Subcommittee appears to have based its decision on a general concern that schedules tend to slip, that a number of additional days would be required for technical sessions and, in choosing between issuance dates of June 30, 2017 and September 30, 2017, that accommodation should be made to summer vacation plans.” Only the transcript (not yet available) will provide a full accounting of the SEC’s considerations. However, upon information and belief of some of those present, the SEC based its conclusions on far more than that, namely that this matter involves a 192-mile project the scope of which is bigger than any project to come before the SEC in at least a generation.

8. In addition to being procedurally defective, the Motion should be denied on the merits for (1) the same reasons the SEC already specifically rejected an end date of June 30, 2017, and (2) the same collective arguments set forth by the parties hereto in our prior pleadings on this issue, which we hereby affirm and incorporate herein.

9. Lastly, the Motion should be denied because the Applicants failed to contact other parties in this case to obtain and report on their positions on the Motion pursuant to N.H. Admin. R. Site 202.14(e). The Applicants claim they attempted to obtain the position of the Counsel for the Public. However, the legal requirement is not limited to working with Counsel for the Public; applicants are required to contact all parties when filing a motion.

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<sup>3</sup> The foregoing standard should not be disputed, as it is taken from the *Applicants’ Response and Objection to Various Requests from Interveners [sic] for Review of the Status as Determined by the Presiding Officer in the March 18, 2016 Order* filed on April 7, 2016.


10. For all of these reasons, the foregoing parties respectfully request that the Motion to Adopt Procedural Schedule be denied.

Respectfully submitted,

**MUNICIPAL GROUP 1 SOUTH  
MUNICIPAL GROUP 2  
MUNICIPAL GROUP 3 NORTH  
MUNICIPAL GROUP 3 SOUTH  
SOCIETY FOR THE PROTECTION OF  
NEW HAMPSHIRE FORESTS  
THE APPALACHIAN MOUNTAIN CLUB,  
CONSERVATION LAW  
FOUNDATION, SIERRA CLUB  
CHAPTER OF NEW HAMPSHIRE,  
AND AMMONOOSUC  
CONSERVATION TRUST**

**CITY OF CONCORD**


June 8, 2016

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

By its attorneys,  
BCM ENVIRONMENTAL & LAND LAW, PLLC



June 8, 2016


By: \_\_\_\_\_

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**THE APPALACHIAN MOUNTAIN CLUB,  
CONSERVATION LAW  
FOUNDATION, SIERRA CLUB  
CHAPTER OF NEW HAMPSHIRE,  
AND AMMONOOSUC  
CONSERVATION TRUST**

June 8, 2016

By: \_\_\_\_\_


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**CERTIFICATE OF SERVICE**

I hereby certify that on this 8th day of June 2016, a copy of the foregoing was sent by electronic mail to persons named on the Service List of this docket.

June 8, 2016

By: \_\_\_\_\_

  
Danielle L. Pacik, Deputy City Solicitor