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June 9, 2016

By E-Mail & U.S. Mail

Pamela G. Monroe, Administrator
New Hampshire Site Evaluation Committee
21 South Fruit Street, Suite 10
Concord, NH 03301-2429
pamela.monroe@sec.nh.gov

Re: 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

Dear Ms. Monroe:

Enclosed for filing in the above-captioned proceeding is Counsel for the Public's Response to Motion to Adopt Procedural Schedule.

Copies of the enclosure have been forwarded via e-mail or mail to all parties as indicated on the enclosed Distribution List.

Thank you.

Sincerely,



Thomas J. Pappas

TJP/scm - 2426176_1

Enclosure

cc: Peter C.L. Roth, Esq.
Elijah J. Emerson, Esq.
Distribution List via e-mail/U.S. Mail

**STATE OF NEW HAMPSHIRE
SITE EVALUATION COMMITTEE**

No. 20 15-06

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

**COUNSEL FOR THE PUBLIC'S RESPONSE TO
MOTION TO ADOPT PROCEDURAL SCHEDULE**

Counsel for the Public (“CFP”), by his attorneys, the Office of the Attorney General and Primmer Piper Eggleston & Cramer PC, hereby responds to the Motion to Adopt Procedural Schedule (the “Motion”) filed by Northern Pass Transmission, LLC and Public Service Company of New Hampshire d/b/a Eversource Energy (collectively, the “Applicants”), as follows.

A. Background.

On October 19, 2015, Northern Pass Transmission, LLC and Public Service Company of New Hampshire d/b/a Eversource Energy (collectively, the “Applicants”), submitted a Joint Application for a Certificate of Site and Facility (the “Application”) to the SEC to construct a 192-mile transmission line to run through New Hampshire from the Canadian border in Pittsburg to Deerfield (the “Project”).

B. Procedural Issue.

1. In its Motion, the Applicants state their belief that by extending the time frame to September 30, 2017, pursuant to RSA 162-H:14, the Subcommittee extended the time frame further than what is required under the circumstances. The Applicants argue that it is in the public interest to have a shorter time frame, and further argue that their proposed time frame “better balances the overall purposes” of the review procedure in RSA 162-H than the Subcommittee’s adopted time frame. The Applicants ask the Chairman to establish a procedural

schedule that shortens the time frame to June 30, 2017, rather than the time frame that was unanimously adopted by the Subcommittee.

2. By requesting a shorter time frame and thus a different extension under RSA 162-H:14, the Applicants seek reconsideration of the Subcommittee's decision to extend the time frame to September 30, 2017. Under RSA 162-H:4, the Chairman can decide procedural matters, but the Chairman cannot alone reconsider and change a decision of the Subcommittee.

3. The Chairman should either reject the Motion on the grounds that it is procedurally incorrect, or treat the Motion as a request that the Subcommittee reconsider its decision to extend the time frame to September 30, 2017. The Chairman also can reject the Motion as premature since it seeks reconsideration of the Subcommittee's decision that has not yet been issued in the form of an order.

4. Alternatively, the Applicants' request for review may be treated as a motion for rehearing under RSA 541:3, NH Admin. Site 202.29. The purpose of rehearing "is to direct attention to matters that have been overlooked or mistakenly conceived in the original decision" *Demais v. State*, 118 N.H.309, 311 (1978) (internal quotations omitted). A rehearing may be granted when the Committee finds "good reason" or "good cause" has been demonstrated. *See O'Loughlin v. NH Pers. Comm.*, 117 N.H. 999, 1004 (1977); *Appeal of Gas Service, Inc.*, 121 N.H. 797, 801 (1981). "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); *see also Freedom Energy Logistics*, Order No. 25,810 at 4 (Sept. 8, 2015). All of the arguments made by the Applicants in the Motion, however, were fully briefed and argued and the Applicants have not pointed to anything critical that the Subcommittee has overlooked or mistakenly conceived.

5. In addition, aside from generalized arguments about the statutory purposes involved (also fully briefed and argued), the Applicants have not addressed anything new nor pointed to any particular facts (as opposed to untested claimed project benefits) showing good cause or good reason. The Subcommittee has through its deliberation based its decision on facts constituting good cause and good reason for its decision.

C. The Applicants' Proposed Schedule is Unworkable and Not in the Public Interest.

6. For the reasons discussed and considered by the Subcommittee during its deliberations on May 19, 2016, and the arguments set forth by the parties in their pleadings and during the May 19 hearing, it is in the public interest to extend the time frame of this proceeding to September 30, 2017. All of the arguments for and against extending the time frame to September 30, 2017, and the relevant factors, were heard and considered by the Subcommittee in rendering its decision. The Applicants do not argue that the Subcommittee's decision is unlawful or unreasonable; rather, the Applicants argue that their proposed time frame is better than the time frame adopted by the Subcommittee.

7. The Applicants' proposed time frame and Procedural Schedule, however, is not better. It is unworkable and not in the public interest for the following reasons:

(a) It establishes a deadline for Intervenor data requests on confidential materials before a decision on confidential materials has been made.

(b) It provides only a few days after Applicants respond to all data requests for technical sessions to begin. It is anticipated that Applicants will produce tens of thousands of documents in response to all parties' data requests. The parties and their experts will need more than a few days to review Applicants' responses to data requests in order to meaningfully participate in technical sessions.

(c) It only provides three (3) weeks from the end of technical sessions with Applicants' 25 witnesses for CFP and Intervenors to complete their review and investigation of the voluminous application material and file testimony, and provides no time for follow-up data requests from the technical sessions.

(d) It only provides four (4) months for CFP's expert consultants to complete their work, including their review and investigation of the Application, inspection of the proposed 192-mile route; review responses to data requests; conduct any necessary studies, meet with local officials, conduct interviews, etc.; run computer models; draft a report; and draft pre-filed testimony. Given the size and scope of the project, four (4) months is an unrealistically short and procedurally unfair period of time to complete this work.

(e) It only provides 15 days for technical sessions for all expert consultants for all of the parties other than Applicants, including the week before Christmas and Hanukkah, which is a difficult travel time and when many businesses close for the holiday. More time is needed.

(f) It provides insufficient time for parties to prepare and submit supplemental testimony after technical sessions with CFP and Intervenor witnesses.

(g) It provides no time for the parties to file pre-hearing motions.

(h) It provides no time for the parties to file stipulated facts.

(i) It only provides six (6) days after the structuring conference to prepare for the adjudicative hearings.

(j) It provides no time for additional site views.

(k) It only provides 45 business days to schedule all adjudicative hearings

8. The statutory process has several requirements to ensure that the Subcommittee has detailed information through a fully developed record at the adjudicative hearings in order to make the numerous fact-based findings required by RSA 162-H:16. The time frame must allow

the parties sufficient time to conduct discovery, develop testimony, and present evidence to allow the Subcommittee to satisfy its statutory obligation. Given the magnitude of the Application material and the Project, the Applicants' attempt to shorten the time for each of the required tasks will result in the denial of the parties' due process rights and the public's right to a fully vetted and transparent review of the Application.¹

9. Attached as Exhibit A is a proposed schedule that complies with the Subcommittee's May 19 decision to extend the time frame to September 30, 2017.

WHEREFORE, Counsel for the Public respectfully requests that:

- A. The Presiding Officer reject the Motion on the grounds that it is procedurally incorrect or is premature;
- B. Alternatively, the Presiding Officer treat the Motion as a motion requesting that the Subcommittee reconsider its May 19 Order and that the Subcommittee deny the Motion;
- C. Alternatively, the Presiding Officer treat the Motion as a motion for rehearing and that the Presiding Officer deny the Motion or the Subcommittee deny the Motion;
- D. That the Presiding Officer adopt the procedural schedule set forth in Exhibit A; and
- E. Grant such other and further relief as is just and equitable.

¹ The Motion assumes certain benefits and that a longer time frame will jeopardize the realization of those benefits, without any of those assumptions having been tested through the review process. The Subcommittee should not base its decision on such assumptions, but rather should base its decision on the time needed to properly review the Application.

Respectfully submitted,

COUNSEL FOR THE PUBLIC,

By his attorneys,



Dated: June 9, 2016

By: Peter C.L. Roth
Peter C.L. Roth, Senior Assistant Attorney General
Environmental Protection Bureau
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(603) 271-3679

PRIMMER PIPER EGGLESTON & CRAMER PC,



Dated: June 9, 2016

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-and-

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing RESPONSE TO MOTION TO ADOPT PROCEDURAL SCHEDULE has this day been forwarded via e-mail or mail to persons named on the Distribution List of this docket.

Dated: June 9, 2016

By: Thomas J. Pappas
Thomas J. Pappas, Esq. (N.H. Bar No. 4111)

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

**COUNSEL FOR THE PUBLIC'S
PROPOSED PROCEDURAL SCHEDULING ORDER**

Counsel for the Public, by his attorneys, the office of the Attorney General and Primmer Piper Eggleston & Cramer PC, hereby proposes the following procedural schedule for this proceeding.

May 13, 2016	<ul style="list-style-type: none">• CFP shall propound first round of data requests on Applicants (Set 1)
May 13, 2016	<ul style="list-style-type: none">• CFP files motions to retain experts and/or consultants
May 31, 2016	<ul style="list-style-type: none">• Municipal Groups, NGO's, <i>et al.</i>, submit first round of data requests (Set 2)
June 7, 2016	<ul style="list-style-type: none">• Other Intervenors submit data requests (Set 3)
June 13, 2016	<ul style="list-style-type: none">• Applicants shall respond to first round of data requests propounded by CFP (Set 1)
June 21, 2016	<ul style="list-style-type: none">• CFP shall propound second round of data requests on the Applicants (Set 4)• State agencies shall report progress, draft permits and draft conditions 150 days after acceptance of the application
July 7, 2016	<ul style="list-style-type: none">• All Intervenors remaining data requests (Set 5)
July 21, 2016	<ul style="list-style-type: none">• Applicants shall respond to second round of data requests propounded by CFP (Set 4)
August 8, 2016	<ul style="list-style-type: none">• Applicants shall respond to Intervenors remaining data requests (Set 5)

September 5 to September 30, 2016	<ul style="list-style-type: none"> • Technical sessions with Applicants' witnesses. The parties to propose days for common subject matters
December 1, 2016	<ul style="list-style-type: none"> • CFP and Intervenors to file pre-filed testimony
December 15, 2016	<ul style="list-style-type: none"> • Applicants shall propound data requests on CFP and the Intervenors
January 15, 2017	<ul style="list-style-type: none"> • CFP and the Intervenors shall respond to the data requests propounded by the Applicants and CFP
February 1 to March 1, 2017	<ul style="list-style-type: none"> • Technical sessions with CFP's and the Intervenors' witnesses
March 15, 2017	<ul style="list-style-type: none"> • Supplemental pre-filed testimony due from all parties • State agencies shall issue final permits and conditions
March 20, 2017	<ul style="list-style-type: none"> • All parties shall file any pre-hearing motions and any statements of stipulated facts
March 31, 2017	<ul style="list-style-type: none"> • Final pre-hearing conference
April 3 to April 7, 2017	<ul style="list-style-type: none"> • Additional site visits
April 17 to June 2, 2017	<ul style="list-style-type: none"> • Final adjudicative hearings to begin on April 17, 2017
June 23, 2017	<ul style="list-style-type: none"> • Post-hearing briefs due
July 6, 2017	<ul style="list-style-type: none"> • Deliberations begin
September 30, 2017	<ul style="list-style-type: none"> • Decision issued