

MCLANE
MIDDLETON

THOMAS B. GETZ
Direct Dial: 603.230.4403
Email: thomas.getz@mclane.com
Admitted in NH
11 South Main Street, Suite 500
Concord, NH 03301
T 603.226.0400
F 603.230.4448

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Via Electronic Mail & Hand Delivery

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

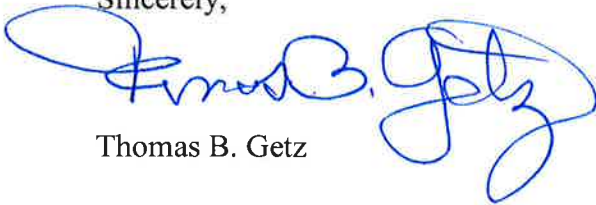
**Re: New Hampshire Site Evaluation Committee Docket No. 2015-06
Joint Application of Northern Pass Transmission LLC and Public Service Company
of New Hampshire d/b/a Eversource Energy (the "Applicants") for a Certificate of
Site and Facility
Objection to NEPGA Motion to Compel**

Dear Ms. Monroe:

Enclosed for filing in the above-captioned docket, please find an original and one copy of an
Objection to New England Power Generators Association Motion to Compel and Postpone
Technical Session filed September 6, 2016.

Please contact me directly should you have any questions.

Sincerely,



Thomas B. Getz

TBG:slb

cc: SEC Distribution List

Enclosure

**STATE OF NEW HAMPSHIRE
SITE EVALUATION COMMITTEE**

SEC DOCKET NO. 2015-06

**JOINT APPLICATION OF NORTHERN PASS TRANSMISSION LLC &
PUBLIC SERVICE COMPANY OF NEW HAMPSHIRE
D/B/A EVERSOURCE ENERGY
FOR A CERTIFICATE OF SITE AND FACILITY**

**OBJECTION TO NEW ENGLAND POWER GENERATORS ASSOCIATION
MOTION TO COMPEL AND POSTPONE TECHNICAL SESSION**

NOW COME Northern Pass Transmission LLC (“NPT”) and Public Service Company of New Hampshire d/b/a Eversource Energy (“PSNH”) (collectively the “Applicants”), by and through their attorneys, McLane Middleton, Professional Association, and respectfully submit this objection to the motion filed by the New England Power Generators Association, Inc. (“NEPGA”) on September 6, 2016, asking the Site Evaluation Committee (“SEC” or “Subcommittee”) to compel responses to certain data requests and to postpone the technical session scheduled for September 21, 2016 (“Motion”). As described more fully below, the Applicants believe that changed circumstances have negated the basis for NEPGA’s intervention. In addition, the Applicants, among other things, object to the motions to compel that seek additional calculations and/or updated calculations, and they object as well to the notion that the September 21, 2016 technical session should be postponed.

I. BACKGROUND

1. In its May 20, 2016 Order on Review of Intervention, the Subcommittee reversed the Presiding Officer’s decision to deny NEPGA’s petition to intervene. The Presiding Officer had concluded, at p. 46 of his March 18, 2016 Order on Petitions to Intervene, that NEPGA had failed to establish specific and substantial interests, and that ensuring fair or competitive markets was not within the purview of the SEC. The Subcommittee, nonetheless, permitted NEPGA’s

intervention on a limited basis, as discussed at p. 25 of the Order on Review of Intervention, which is repeated below.

NEPGA filed a motion requesting to intervene on a limited basis. Specifically, NEPGA asserts that it represents the interests of existing power generating facilities and its members will be directly affected by the Project generally, and specifically by the Power Purchase Agreement associated with the Project. NEPGA states that the Power Purchase Agreement will significantly impact the wholesale market and its members. Therefore, NEPGA asserts that it should be allowed to intervene to ensure that the interests of its members are adequately represented.

The Applicant relies, in part, on the Power Purchase Agreement as support that the construction and operation of the Project will be in the public interest. NEPGA's members' interests directly relate to the Power Purchase Agreement and its effect on the energy market. NEPGA will be allowed to intervene to protect its members' interests. NEPGA's motion is granted and NEPGA is allowed to intervene in this docket on the following limited basis: (i) to address the public interest so far as it relates to economic impacts on the competitive energy market; and (ii) to present information related to the Power Purchase Agreement, so far as it relates to the effect on the electric generation market.

2. The Power Purchase Agreement ("PPA") is the PPA between Public Service Company of New Hampshire ("PSNH") and Hydro Renewable Energy, Inc. ("HRE") filed with the Public Utilities Commission ("PUC") on June 28, 2016, which is the subject of Docket No. DE 16-693. In that proceeding, the PUC, which has exclusive jurisdiction over the PPA, will determine whether it is in the public interest.

3. On July 1, 2016, the PUC issued its Order Approving Settlement Agreements in Dockets DE 11-250 and DE 14-238, *Public Service Company of New Hampshire d/b/a Eversource Energy*, Investigation of Scrubber Costs and Cost Recovery and Determination Regarding Eversource's Generation Assets. Pursuant to the 2015 Settlement Agreement, which, among other things, provides a comprehensive approach to the divestiture of PSNH's remaining generation assets, the PPA will not be used to supply default energy service to PSNH customers. Going forward, default service will be procured through a competitive solicitation consistent with the process determined by the Commission in Docket No. IR 14-338, *Review of Default*

Service Procurement Processes for Electric Distribution Utilities. Furthermore, in order to avoid any effect on competitive power markets, the PPA, if it is approved by the PUC, will be treated as a stranded cost/benefit to be recovered from/credited to all PSNH customers.

4. If any NEPGA member seeks to be the provider of default service to PSNH in the future, the PPA will not affect the competitive market. Default service will be procured through competitive bidding, while the costs of the PPA, as well as Independent Power Producer Costs and other Power Purchase Agreement Costs, will flow through the Stranded Cost Recovery Charge (“SCRC”) mechanism, which is separate and apart from the default energy service charge. The energy and capacity from those agreements will be sold into the market and the difference between the contract costs and the market revenues will be recovered/credited through the non-bypassable SCRC applied to all PSNH customers (not just customers who take default energy service from PSNH).

5. To the extent there may have been reason for permitting NEPGA to intervene on a limited basis as of May 20, 2016, now that the PUC has opened a proceeding to review the PPA, and separately established a mechanism for treating PPA and other similar costs that insulates them from competitive markets, the reasoning for reversing the Presiding Officer’s original determination to deny NEPGA’s intervention no longer obtains. If NEPGA wishes to challenge whether the PPA is in the public interest, it may seek recourse at the PUC. Inasmuch as there is no basis for concluding that the PPA will affect the electricity generation market, the predicate for NEPGA’s participation in this proceeding is removed.

II. POWER PURCHASE AGREEMENT

6. NEPGA Data Request 2-14 asks for an un-redacted version of the Power Purchase Agreement (“PPA”). It further claims that the technical session, scheduled for September 21, 2016, should be postponed because it does not have an un-redacted copy of the

PPA. In addition, NEPGA argues that the PPA does not qualify for protection under RSA 91-A. NEPGA's positions do not hold together for the following reasons.

7. With respect to the PPA, the Applicants, consistent with the discussion above, objected to producing an un-redacted version in this proceeding because, among other things, the PPA is the subject of a separate PUC proceeding in which PSNH has asked for protective treatment, and where the PUC will determine whether the PPA is in the public interest. The Applicants invoke here the PSNH motion for confidential treatment found at:

[http://www.puc.state.nh.us/Regulatory/Docketbk/2016/16-693/INITIAL_FILING - PETITION/16-693_2016-06-28_EVERSOURCE_MOTION_CONFIDENTIAL.PDF](http://www.puc.state.nh.us/Regulatory/Docketbk/2016/16-693/INITIAL_FILING_-_PETITION/16-693_2016-06-28_EVERSOURCE_MOTION_CONFIDENTIAL.PDF)

8. Furthermore, for reasons of administrative economy and so as not to impair the prompt and orderly conduct of the SEC proceeding, litigating the PPA at the PUC where it belongs is a better use of the resources of the respective agencies.

9. Finally, the PUC decision on the PPA is in the nature of the decisions by the Department of Transportation on road crossings and the Department of Environmental Services on wetlands. The PUC will issue its decision in due course and the SEC can take administrative notice of that decision when it occurs. In the event that the PUC has not issued its decision by the time the SEC is deliberating whether to issue a Certificate, it can then decide whether to include the potential benefits of the PPA in its deliberations.

III. LONDON ECONOMICS INTERNATIONAL, LLC REPORT

10. In its Motion, NEPGA, among other things, requests that the SEC compel responses to NEPGA Data Requests 2-5, 2-7 and 2-8 relative to the report prepared by London Economics International, LLC ("LEI Report"), which is titled *Cost-Benefit and Local Economic Impact Analysis of the Propose Northern Pass Transmission Project*. Data Request 2-5 concerns the pre-filed testimony of Julia Frayer, the LEI Report, and the calculation of retail electricity

savings resulting from the Project. Data Request 2-7 concerns the impact of changes in natural gas prices on wholesale electricity market benefits. Data Request 2-8 concerns the impact of changes in capacity clearing prices on wholesale capacity market benefits.

11. The three data requests relate to the LEI report, not to the PPA. In its discussion of NEPGA's intervention, the Subcommittee, as set forth above, said that "NEPGA's members' interests directly relate to the Power Purchase Agreement and its effect on the energy market. NEPGA will be allowed to intervene to protect its members' interests." It therefore appears that the data requests are outside the scope of the limited basis on which NEPGA was granted intervention by the Subcommittee. The Applicants further explain below why NEPGA's motion to compel on these data requests would, in any regard, fail.

12. NEPGA Data Request 2-5 asks for the detailed calculations used to develop retail electricity cost savings. The Applicants referred NEPGA to Appendix D of the Cost-Benefit and Local Economic Impact Analysis of the Northern Pass Transmission Project prepared by London Economics International LLC ("LEI Report"), which describes the methodology for converting wholesale energy and capacity market benefits into retail electricity cost savings. NEPGA argues that Appendix D is not fully responsive to its request. It contends, moreover, that New Hampshire's "liberal view" of discovery, which exists for purposes of a trial as part of the adversary system, should apply in this instance. The Applicants have set forth their position on NEPGA's contention that the SEC should apply trial discovery principles to an administrative proceeding at pp. 5-9 of their August 25, 2016 objection to certain motions to compel, which it incorporates here by reference. They also believe the response is sufficient.

13. NEPGA Data Request 2-7 asks for a recalculation of wholesale market benefits based on the Energy Information Administration's 2016 forecast of natural gas prices. The Applicants objected. NEPGA characterizes its request as a simple update of the LEI Report for a

single variable so that NEPGA has more current information. It argues that “the Applicants must be required to use pricing information that accurately reflects the commodity price, and must not be permitted [to] hide behind outdated pricing that yields misleading and unrealistic savings projections so that NEPGA can fairly assess the market impacts.” NEPGA misconstrues the Applicants’ obligations. The Applicants must prove their case by a preponderance of the evidence, Site 202.19, (a) and prove facts sufficient for the SEC to make the findings required by RSA 162-H:16, Site 202.19 (b). The rules do not require the Applicants to make their case to NEPGA’s satisfaction. To the extent NEPGA believes that lower natural gas prices will extend through 2040 and that they will affect the level of benefits from the Project, it could file testimony to that effect if it were within the scope of its limited participation, which does not, however, appear to be the case. The SEC rules do not require the Applicants to perform NEPGA’s analyses, or to update its case as part of discovery.

14. NEPGA Data Request 2-8 states that the Forward Capacity Auction (“FCA”) 10 clearing price was lower than estimated in the LEI Report and asks whether, combined with the change to demand curves for FCA 11, wholesale capacity market benefits will be lower than estimated. The Applicants objected. NEPGA contends that the “new demand curves will dramatically change Forward Capacity Clearing Prices and the volume of resources that clear the auction beginning with the Forward Capacity Auction 11 commencing February 2017.” Clearly, NEPGA has an opinion on the effect of the new demand curve and that it will affect the level of benefits from the Project. It could file testimony to that effect if it were within the scope of its limited participation, which does not, however, appear to be the case. The SEC rules do not require the Applicants to speculate along with NEPGA with respect to an analysis they have not performed.

IV. POSTPONEMENT

15. NEPGA insists that it cannot adequately prepare for the technical session scheduled for September 21, 2016, because it does not have an un-redacted copy of the PPA and because the results of the Clean Energy RFP have not been released. It also states that many of the benefits claimed by the Applicants relate to the PPA, and to the Clean Energy RFP. The focus of the technical session scheduled for September 21, 2016, i.e., the pre-filed testimony of Messrs. Muntz and Quinlan, is much broader than the two topics identified by NEPGA. As explained below, NEPGA's arguments do not constitute a basis for postponing the technical session.

16. With respect to the PPA and the technical session, Mr. Quinlan stated in his pre-filed testimony, at p.5, that a PPA would "provide beneficial pricing and price stability to help insulate PSNH customers from the volatility of the power markets." He estimated approximately \$100 million in customer savings from the PPA as part of the approximately \$3.8 billion in benefits from the Forward NH Plan over a 20-year period. While the \$100 million benefits associated with the PPA are significant, they do not represent a substantial portion of the overall benefits. More important, as noted above, the PUC has exclusive jurisdiction over the PPA and will adjudicate issues related to it.

17. With respect to the Clean Energy RFP and the technical session, Mr. Muntz stated in his pre-filed testimony, at p. 9, that NPT expected to participate in the process and that if it were selected, "New Hampshire customers will not bear any of the expenses but will still experience the State and regional benefits of the Project." The Applicants do not cite the Clean Energy RFP as a benefit, or rely on it for the calculation of wholesale electricity market savings, and it is not part of its affirmative case on the public interest.

18. NEPGA also suggests in a footnote on p.2 of its Motion that the Subcommittee, in its June 23, 2016 Order, had determined that information about the Clean Energy RFP was not yet discoverable because the results had not yet been announced. What the Subcommittee said, however, at p. 8 of its Order, was that the status of the Clean Energy RFP process did not warrant extension of the deadline for data requests. It further stated that it was “conceivable that at some point, issues pertaining to the Clean Energy RFP process may become relevant” but that the issue was not ripe for review. It is perhaps conceivable, but it is still the reality, that issues pertaining to the Clean Energy RFP Process are not relevant. Accordingly, there is no reason to postpone the technical session on account of the postponement of a decision on the Clean Energy RFP.

V. CONCLUSION

19. The basis for NEPGA’s limited participation in this SEC proceeding has dissolved in light of the PUC proceedings discussed herein. Therefore, pursuant to RSA 541-A:32, V, which provides that “the presiding officer may modify the order [on intervention] at any time,” the Applicants believe the Subcommittee has sufficient basis to disallow further participation by NEPGA in this proceeding. Furthermore, even if it were permitted to continue its participation, NEPGA seeks discovery of information beyond the normal scope of discovery and outside the bounds of its limited participation. Finally, NEPGA has not shown why the technical session scheduled for September 21, 2016, concerning the testimony of Messrs. Muntz and Quinlan, cannot proceed productively.

WHEREFORE, the Applicants respectfully request that the Subcommittee:

- A. Deny NEPGA’s motion;
- B. Disallow further participation by NEPGA; and
- C. Grant such further relief as is deemed just and appropriate.

Respectfully submitted,

Northern Pass Transmission LLC and Public
Service Company of New Hampshire d/b/a
Eversource Energy

By Its Attorneys,

McLANE MIDDLETON,
PROFESSIONAL ASSOCIATION

Dated: September 16, 2016

By: 

Barry Needleman, Bar No. 9446
Thomas Getz, Bar No. 923
Adam Dumville, Bar No. 20715
11 South Main Street, Suite 500
Concord, NH 03301
(603) 226-0400
barry.needleman@mclane.com
thomas.getz@mclane.com
adam.dumville@mclane.com

Certificate of Service

I hereby certify that on the 16th of September, 2016, an original and one copy of the foregoing Objection was hand-delivered to the New Hampshire Site Evaluation Committee and an electronic copy was served upon the Distribution List.


Thomas B. Getz