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September 19, 2016

Via Electronic Mail & Hand Delivery

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

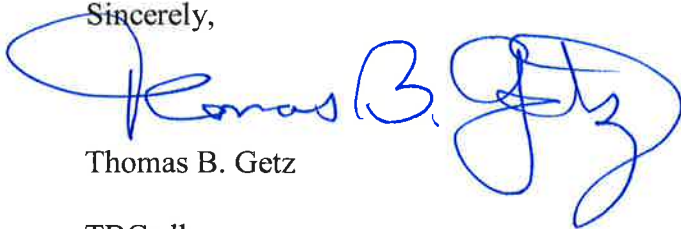
**Re: Site Evaluation Committee Docket No. 2015-06
Joint Application of Northern Pass Transmission LLC and Public Service Company
of New Hampshire d/b/a Eversource Energy (the "Applicants") for a Certificate of
Site and Facility
Objections to Motion to Stay and Motion to Compel**

Dear Ms. Monroe:

Enclosed for filing in the above-captioned docket, please find an original and one copy of the Applicants' Objections to (1) Motion to Stay Technical Sessions and Request for Expedited Ruling and (2) Motion to Compel Production of Documents Withheld, filed by various intervenors on September 7, 2016, and September 9, 2016, respectively.

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**

**APPLICANTS' OBJECTIONS TO MOTIONS TO
(1) STAY TECHNICAL SESSIONS AND REQUEST FOR EXPEDITED RULING AND
(2) COMPEL PRODUCTION OF DOCUMENTS WITHHELD**

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 to Stay Technical Sessions and Request for Expedited Ruling (“Motion to Stay”), filed by Municipal Group 1 South, Municipal Group 2, Municipal Group 3 South, Municipal Group 3 North and the Society for the Protection of New Hampshire Forests (collectively the “Petitioners”) as well as the Motion to Compel Production of Documents Withheld (“Motion to Compel”) filed by the Society for the Protection of New Hampshire Forests and Municipal Group 3 South in the above-captioned proceeding. Both the Motion to Stay and the Motion to Compel address confidential materials provided only to Counsel for the Public (“CFP”) in response to the first round of data requests. As explained below, the great majority of those materials have now been provided to the parties that have executed a confidentiality agreement. Accordingly, the Applicants believe that the two motions are substantially resolved.

I. Background

1. On September 7, 2016, the Petitioners filed a Motion to Stay, requesting that the Chairman of the Site Evaluation Committee (“SEC” or “Committee”) stay the technical sessions until an unidentified time in the future. Subsequently, on September 9, 2016, the Society for the Protection of New Hampshire Forests (“SPNHF”) and Municipal Group 3 South (MG3S) filed a Motion to Compel, requesting that the Applicants be ordered to produce documents provided in response to Counsel for the Public’s first set of data requests. In both motions, the Petitioners, as well as SPNHF and MG3S, argue for the production of confidential materials provided to Counsel for the Public. Therefore, in order to avoid repetition, the Applicants address the Motion to Compel in the discussion regarding the Motion to Stay.

2. The Petitioners argue that the current ongoing technical sessions should be stayed because “too much information is unknown and still has not been produced.” Motion to Stay at 2. From the outset, the Applicants note that the technical sessions have been proceeding in a manner that suggests the parties have sufficient information to meaningfully participate in the technical sessions. Moreover, as the Applicants articulated at p. 5 of their August 25, 2016 Objection to Certain Motions to Compel, they have produced a substantial amount of information to the parties, enabling meaningful participation. The Petitioners’ request overstates the relative magnitude of the material at issue, would serve only to needlessly delay the proceedings, and, as explained below, is unnecessary because the great majority of the documents provided only to Counsel for the Public have now been provided to parties with confidentiality agreements.

II. Confidential Documents Provided Solely to Counsel for the Public

3. The Petitioners have requested that the Applicants produce confidential materials that the Applicants provided to Counsel for the Public or Counsel for the Public's attorneys. *See* Motion to Stay at 2. The Applicants provided 42 confidential documents to Counsel for the Public in response to Counsel for the Public's first set of data requests, which were not provided to other parties in this proceeding at that time. Many of the documents are beyond the scope of discovery in SEC proceedings; however, the Applicants agreed to provide the requested documents to Counsel for the Public.

4. The Applicants, nevertheless, have since provided 38 of the 42 documents to parties that have signed an Agreement for Protective Treatment. The remaining four documents are not relevant to these proceedings and are being withheld on that basis. As the Applicants articulated in their Objection to Certain Motions to Compel, dated August 25, 2016, the scope of discovery is narrower in an SEC proceeding than it is in a trial. *See* Applicants Objection to Certain Motions to Compel, August 25, 2016, at 5-8.

5. The specific documents that the Applicants are withholding and their bases for doing so are articulated below:

- **Renewable Properties, Inc. and Northern Pass Transmission, LLC, Option to Lease Agreement, Dated October 14, 2015.**

6. The Applicants provided the above-listed Option to Lease Agreement ("OLA") in response to Counsel for the Public's first set of data requests, numbers 1-3 and 1-25. The Applicants object to providing the OLA to other parties because it is not relevant for purposes of this proceeding. Site 301.03(c)(6) requires the Applicants to provide "Evidence that the applicant has a current right, an option or other legal basis to acquire the right, to construct, operate, and maintain the facility on, over, or under the site." Site 301.03(c)(6). The Applicants have

provided the Notice of Lease for the property at issue, which is the most directly responsive document for purposes of demonstrating site control. The specific terms of the OLA do not contain information that will assist the Committee in determining whether the Applicants have a current right to the proposed site for the Project.

- **Hydro Renewable Energy Inc. and Northern Pass Transmission LLC Delivery Performance Agreement, Dated as of January 22, 2016.**

7. The Applicants provided the above-listed Delivery Performance Agreement (“DPA”) in response to Counsel for the Public’s first set of data requests, number 1-26. The Applicants object to providing the DPA to other parties because it is not relevant for purposes of this proceeding. The DPA is part of the Applicants’ proposal to the Tri-State Clean Energy RFP. The Applicants are not claiming any of the benefits associated with the Clean Energy RFP as part of their Application for a Certificate of Site and Facility. As such, the materials submitted by the Applicants in their proposal for the Clean Energy RFP will not assist the Committee in determining whether the Project meets the criteria of RSA 162-H:16. The Subcommittee said as much in its June 23, 2016 Order on Pending Motions and Procedural Order, at p. 8. Therefore, the DPA is outside the scope of discovery in this proceeding.

- **Northern Pass Transmission LLC and Hydro Renewable Energy, Inc., Amended and Restated Transmission Service Agreement, Dated January 22, 2016.**

8. The Applicants provided the above-listed Transmission Service Agreement (“TSA”) in response to Counsel for the Public’s first set of data requests, number 1-26. The Applicants object to providing this version of the TSA to other parties because it is not relevant for purposes of this proceeding. The version of the TSA as amended is part of the Applicants’ proposal to the Tri-State Clean Energy RFP. The Applicants do not claim any of the benefits associated with the Clean Energy RFP as part of their Application for a Certificate of Site and

Facility. As such, the materials submitted by the Applicants in their proposal for the Clean Energy RFP will not assist the Committee in determining whether the Project meets the criteria of RSA 162-H:16. The Subcommittee said as much in its June 23, 2016 Order on Pending Motions and Procedural Order, at p. 8. Therefore, the version of the TSA as amended is outside the scope of discovery in this proceeding.

- **Section 5.2 of Eversource Energy's Proposal to the Tri-State Clean Energy RFP.**

9. The Applicants provided Section 5.2 of Eversource Energy's Proposal to the Clean Energy RFP in response to Counsel for the Public's first set of data requests, number 1-27. The Applicants object to providing this information to other parties because it is not relevant for purposes of this proceeding. The Applicants are not claiming any of the benefits associated with the Clean Energy RFP as part of their Application for a Certificate of Site and Facility. As such, the materials submitted by the Applicants in their proposal for the Clean Energy RFP will not assist the Committee in determining whether the Project meets the criteria of RSA 162-H:16. The Subcommittee said as much in its June 23, 2016 Order on Pending Motions and Procedural Order, at p. 8. Therefore, the information is outside the scope of discovery in this proceeding.

III. Additional Documents Provided Only to Counsel for the Public's Attorneys

10. Although not reflected in the Motion to Stay, counsel for the City of Concord had informally requested that the Applicants produce additional documents provided in response to Counsel for the Public's data requests, numbers 1-7, 1-8 and 1-9. The Applicants provided those documents under seal solely to Counsel for the Public's attorneys. While the Applicants objected to producing the documents because they are not relevant to this proceeding, the Applicants agreed to provide the requested documents, provided that Attorney Thomas Pappas

would be the only person who viewed them. The Applicants object to providing these documents to other parties in this proceedings because they are simply not relevant.

11. Data requests 1-7, 1-8 and 1-9 sought copies of all (1) Requests for Proposals and Requests for Bids, (2) bids received, and (3) contracts or agreements entered into for construction of any portion of the Transmission Line, respectively.

12. In response to data requests 1-7 and 1-8, the Applicants produced solicitations for bids and resulting proposals associated with the competitive bidding process for securing contractors for the construction of the proposed Project. Such competitive bidding materials are not relevant for purposes of this proceeding as the information enclosed will not assist the committee in determining whether the Project meets the criteria of RSA 162-H:16. The Committee has previously held that “the fact that the Applicant may be *negotiating* [an]...agreement is not relevant to the considerations of the Subcommittee...Such information does not provide useful or relevant information to the Subcommittee...” SEC Docket 2012-06, Order on Outstanding Motions, p.8 (August 22, 2012).

13. In addition, the New Hampshire Public Utilities Commission has stated that “[t]he Commission has a well-established policy of not compelling the production of data related to negotiations that occurred before an agreement is filed with the Commission.” Docket No. DG 14-380, Order on Motion to Compel Discovery, p. 5 (June 5, 2015). The Commission previously denied a motion to compel discovery relating to a contract under negotiation, holding that “we do not perceive circumstances in which information about the negotiations that led to the contracts themselves would become part of the record.” Docket No. DW 04-048, Order Denying Motion to Compel Discovery, p. 3 (August 7, 2006). The Applicants see no material difference between competitive bidding materials and materials relating to the negotiating of an agreement. The

information will not assist the Committee in assessing the technical and managerial capabilities of the Applicants and is therefore not relevant.

14. With respect to documents provided in response to data request 1-9, the Applicants object to providing these documents because they are not relevant to this proceeding. What is relevant for purposes of this proceeding is information relating to the technical and managerial capabilities of the Applicants. The Applicants have entered into agreements with a number of contractors for purposes of constructing the Project. The list of contractors has been provided to the parties and is also publicly available on the Northern Pass website. Although information regarding the technical expertise, experience and background of these contractors is relevant for purposes of demonstrating the technical and managerial capabilities of the Applicants, the terms of the contracts between these companies and the Applicants are not. The terms of the agreements govern the legal rights and responsibilities of the parties to the contract only and do not contain material information relating to the capability to construct the Project.

15. In addition, the terms of these contracts contain sensitive business confidential information and the electric power industry is a highly competitive industry. Releasing the terms of such agreements would jeopardize the competitive interests of the companies involved. In consideration of the sensitive nature of these materials, and their lack of value to the Committee in making its determinations under RSA 162-H:16, the Applicants object to providing the agreements to other parties.

IV. Pending Motions to Compel

16. The Petitioners next argue that the technical sessions should be stayed because motions to compel are still pending. As the Applicants noted above, the evidence does not indicate that the Petitioners are lacking sufficient information to meaningfully participate in the

technical sessions. Moreover, the mere fact that motions to compel, which the Applicants have objected to, are pending before the Committee does not justify an argument that the informal discovery conducted through the technical sessions is not productive or should not proceed.

V. Geotechnical Borings and Information Relating to Impacts to Wetlands

17. Finally, the Petitioners argue that the technical sessions should be stayed because the Applicants have not completed their geotechnical survey for certain underground portions of the route. Additionally, the Petitioners allege that the Applicants have not provided accurate or detailed information about the extent of wetlands impacts on the route. The Applicants addressed these issues in their August 25, 2016 Objection to Counsel for Public and Grafton County Commissioners Motions to Compel/Amend Procedural Schedule, and their September 8, 2016 Objection to Motion to Amend and Postpone by the Society for the Protection of New Hampshire Forests, and incorporate those argument by reference herein.

WHEREFORE, the Applicants respectfully request that the Site Evaluation Committee:

- A. Deny the Motion to Stay;
- B. Deny the Motion to Compel; 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 19, 2016

By:  _____

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Certificate of Service

I hereby certify that on the 19th 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 SEC Distribution List.



Thomas B. Getz