

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

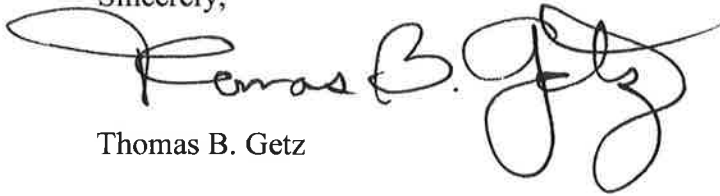
**Re: Site Evaluation Committee Docket No. 2015-06
Joint Application of Northern Pass Transmission LLC and Public Service Company
of New Hampshire d/b/a Eversource Energy (the "Applicants") for a Certificate of
Site and Facility
Motion for Rehearing of Order on NEPGA's Motion to Compel**

Dear Ms. Monroe:

Enclosed for filing in the above-captioned docket, please find an original and one copy of the Motion for Rehearing of Order on NEPGA's Motion to Compel, Motion to Disallow Further Participation and Motion to Stay.

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**

**MOTION FOR REHEARING OF ORDER ON NEPGA’S MOTION TO COMPEL,
MOTION TO DISALLOW FURTHER PARTICIPATION
AND MOTION TO STAY**

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 Motion for Rehearing of Order on the New England Power Generators Association’s (“NEPGA”) Motion to Compel, Motion to Disallow Further Participation, and Motion to Stay (“Motion”).

I. BACKGROUND

1. On September 22, 2016, the Presiding Officer issued an Order on NEPGA’s Motion to Compel (“NEPGA Order”) in this proceeding that, among other things, requires the Applicants, as part of discovery, to have London Economics International (“LEI”) and its expert witness, Julia Frayer, expend significant time, effort and money to re-run its models with different inputs to provide a re-calculation of market benefits. On the same date, the Order on Requests to Amend Procedural Schedule (“Scheduling Order”) was issued, which directed the Applicants to file supplemental responses to NEPGA’s data requests by October 7, 2016. As explained below, re-running the models is not the trivial exercise suggested in NEPGA’s Data Requests 2-7 and 2-8. The Applicants seek rehearing on the basis that this matter has been mistakenly conceived, that such an exercise does not constitute discovery, and that the ruling is in

direct conflict with the Order on Motions to Compel of the same date on the same or similar subject matter.

2. The NEPGA Order also requires that the Applicants provide, to NEPGA and other parties that have executed a confidentiality agreement in the SEC proceeding, an un-redacted version of the Power Purchase Agreement (“PPA”) between PSNH and Hydro Renewable Energy, Inc. (“HRE”), which is the subject of Public Utilities Commission (“PUC”) Docket No. DE 16-693. The Applicants seek rehearing as to the production of the un-redacted PPA generally and they seek rehearing as well related to the issue of NEPGA’s continued participation in this hearing on the basis that the matter was overlooked in the original decision.

II. RECALCULATION OF MARKET BENEFITS

3. 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. NEPGA characterizes its request as *a simple update of the LEI Report for a single variable*. At the same time, 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.

Process for producing an analysis with different inputs

4. The Presiding Officer directs the Applicants to “provide a response using the different inputs provided by NEPGA.” Compliance with this directive will take three or more weeks and cost approximately \$50,000, not including any re-modeling of local economic benefits that would flow from the re-calculation of market benefits. Consequently, the Applicants are unable to re-calculate market savings in accord with the timing set forth in the Scheduling Order.

5. As described below, the re-calculation of savings is a complex task, which is not undertaken lightly. A more systematic and comprehensive update that considers the best available information about current and future market conditions would require an even more substantial effort, likely in the range of \$100,000 or more, for professional fees associated with the computational and analytical effort. The Applicants intend to undertake such an effort for filing in this proceeding in the first quarter of 2017, which would be more informative and obviate the unrepresentative re-calculation of market savings requested here.

6. The result stemming from modeling the two changes would not be a robust forecast based on current market conditions because it does not represent a comprehensive update. Updating gas prices and the capacity market rules in isolation (keeping all else constant in the analysis already conducted) would yield a distorted view of future market conditions and run the risk of biasing the estimate of wholesale energy market benefits inasmuch as other drivers of market outcomes will have also changed. A rigorous update would take into account, among other things, modifications of assumptions, such as, the latest developments in the markets from FCA 10, which occurred after LEI submitted its report in October, 2015.

7. There are also mechanical considerations. The modeling inputs must be developed since NEPGA does not specify concrete changes, providing only a conceptual outline of the change it would like to see. LEI will need to translate the concept into a discrete, software-compatible set of input files that must then be processed by the model, after which the results must be collated and reviewed. The two changes would require re-modeling of both the Base Case and the Project Case, hence the request does not entail a simple update for a single variable, or a single run. Furthermore, the changes requested by NEPGA may lead to dynamic changes in projected market conditions, potentially including retirements, and therefore require

reconsideration of new entry, which will significantly add to the calibration effort before a final set of Base Case and Project Case modeling runs can be completed.

8. In addition, because energy and capacity markets in New England are inter-dependent, an analysis of the two requested updates requires both energy and capacity market simulations. One of NEPGA's requests concerns the capacity market while the other concerns the energy market. The integration of the energy and capacity markets will require further calibration as next discussed.

9. Finally, calibration is a critical phase of modeling. Market changes yield market responses, which can have a positive or negative effect on wholesale market prices and thereby catalyze other dynamics. For example, a market response in the capacity market can alter the market timing of new resources, or the timing and magnitude of retirements, which in turn impacts energy market outcomes. This creates a feedback loop that must be captured through integration and, in some instances, iteration of the energy market simulations and capacity market simulations.

Producing a new analysis as a form of discovery

10. In arguing for its isolated changes, NEPGA asserts 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 further 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."

11. The purpose of discovery is to enable a party to prepare adequately for hearing by providing access to facts in the custody, care or control of another party. In this instance,

however, NEPGA seeks to use discovery as a means to have evidence created for it, at the Applicants' cost, which its own witness should be providing.

12. In his September 22, 2016 Order on Motions to Compel, at pp. 11, the Presiding Officer concluded that the Applicants were correct that they "should not be required to create additional information, reports, or documents where it has already provided all of the relevant material information, reports, or documents in its custody or control." On p. 31, the Presiding Officer, moreover, denied certain data requests made by the Society for the Protection of New Hampshire Forests ("SPNHF") with respect to the LEI economic analysis, finding that, with the inputs and outputs, along with the description of the modeling approach and assumptions used, "SPNHF should be able to test the data using its own modeling approach and assumption[s]." NEPGA is similarly situated to SPNHF in asking that the Applicants create new information. Consequently, it would follow that NEPGA should be required to use its own modeling and assumptions to make its own case regarding market benefits.

Burden of proof

13. Furthermore, NEPGA misconstrues the Applicants' obligation to update their testimony. 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 LEI Report reflected information available at the time of filing, used pricing information reflecting then-current commodity prices, and was premised on the operative ISO market rules, which is entirely consistent with the requirements of pre-filed testimony.

14. The burden is on the Applicants to make their case. If, through the passage of time, the bases for various inputs and assumptions change, the risk to the Applicants is that other parties will point that out and the Site Evaluation Committee ("SEC" or in this case "Subcommittee") will discount the Applicants' evidence as a consequence. It is up to other

parties, however, to make their own cases by either providing their own evidence or challenging the Applicants' evidence. As for the Applicants, it is up to them to make the judgment whether, in accordance with the procedural schedule, to undertake a comprehensive update of market benefits to ensure that the Subcommittee will have the most up-to-date information available at the time of hearing, or open themselves to a finding of diminished market benefits from the Project. Nevertheless, it is, in point of fact, the Applicants' intention to have LEI and Ms. Frayer update the analysis of market benefits for filing in the first quarter of 2017.

Summary

15. While updating for one or two variables could, all other things being equal, potentially isolate the impact of changes to those variables, such updating would not accurately reflect the overall level of market benefits because all other things are never equal. Furthermore, re-running complex models for a couple of selected variables would yield an inaccurate outcome that failed to account for the dynamic interaction among numerous important variables. As a result, two things become clear. First, to better understand how the overall level of market benefits may have changed over time, and to provide a firmer foundation for the SEC's deliberations, a more comprehensive modeling effort should be undertaken, which, as noted above, the Applicants intend to do. Second, to the extent another party seeks to make the case that a change in some particular variable or assumption, such as natural gas prices, has an impact on the Applicants' analysis of market benefits, such a party should conduct its analysis and file its testimony.

III. BASIS FOR NEPGA PARTICIPATION

16. The Power Purchase Agreement between PSNH and HRE was filed with the Public Utilities Commission on June 28, 2016. In that proceeding, the PUC, which has exclusive

jurisdiction over the PPA, will determine whether it is in the public interest pursuant to RSA 374:57.

17. Initially, the Presiding Officer concluded, at p. 46 of his March 18, 2016 Order on Petitions to Intervene in this proceeding, 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. In its May 20, 2016 Order on Review of Intervention, however, the Subcommittee reversed the Presiding Officer's decision to deny NEPGA's petition to intervene. The Subcommittee 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.

18. 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 approved by the PUC, will be treated as a stranded cost or benefit to be recovered from, or credited to, all PSNH customers.

19. 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 or credited through the non-bypassable SCRC applied to all PSNH customers (not just customers who take default energy service from PSNH).

20. 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 in a manner that insulates them from competitive markets, the reasoning for allowing NEPGA’s limited 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 negated.

IV. PRODUCTION OF PPA

21. As described above, the PPA is relevant to this proceeding only insofar as it provides benefits, but the PUC will examine the terms of the PPA and determine whether it is in the public interest. In that context, the Applicants are concerned that broad dissemination of the PPA in an un-redacted form to any party other than Counsel for the Public, even subject to a confidentiality agreement, will put HRE at substantial economic risk in competitive markets.

22. The PPA, moreover, is of limited relevance to the instant proceeding because the operative terms of the agreement, including pricing, are beyond the scope of the SEC's inquiry and authority. As a consequence, the value in producing un-redacted versions of the PPA to all parties who have signed a confidentiality agreement is low. At the same time, the potential harm to the Applicants and HRE is high if the operative terms and pricing were to be disclosed by any of the fifty or so parties who would have access. At a minimum, a strict protective order, with significant monetary penalties for intentional or unintentional disclosure would be in order.

23. The Applicants therefore ask the Presiding Officer to grant rehearing of the PPA finding with respect to NEPGA, and the contemporaneous finding at p. 52 of the Order on Motions to Compel with respect to Municipal Group 3-North, Data Request 32.

V. CONCLUSION

24. The purpose of rehearing "is 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 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).

25. The Applicants have demonstrated good reason for rehearing. The original decision mistakenly conceived the matters raised by Data Requests 2-7 and 2-8. NEPGA says the Applicants have created an insurmountable barrier to meaningful discovery related to economic and market impact modeling. That is simply not the case, and the Presiding Officer said as much in the Order on Motions to Compel when discussing SPNH's LEI-related data requests, as noted above. Furthermore, NEPGA stated in a footnote to its Motion to Compel, at p. 6, that even if it were to "undertake its own analysis of these issues, using different models would be of limited value since the results would not allow for an 'apples to apples' comparison." Neither is that the case. NEPGA can do either or both of two things. It can continue to do what it did in its data requests, i.e., argue that certain assumptions have changed that would affect the Applicants analysis of market benefits, and/or undertake its own analysis and file testimony with its calculation of market benefits. In any event, requiring the Applicants to do NEPGA's work for it is neither necessary or appropriate, and places an unreasonable burden on the Applicants.

26. The original decision also overlooked the fact that the effect of the PPA on the energy market was the *raison d'etre* for allowing NEPGA's limited intervention in this proceeding. The facts described above, however, show that the justification for NEPGA's intervention has been extinguished by virtue of the PUC's actions in PSNH's divestiture proceeding.

27. Finally, the Applicants ask that the NEPGA Order and the contemporaneous Scheduling Order be stayed, pending consideration of this Motion, insofar as they require the Applicants to provide supplemental responses in the form of re-calculated market savings by October 7, 2016, a date that is not reasonably achievable. Correspondingly, the Applicants ask the Presiding Officer to stay the effect of his decision related to the production of the PPA in

these orders, and the Order on Motions to Compel concerning Municipal Group 3-North Data Request 32, inasmuch as production of such competitively sensitive information, pending consideration of this Motion, could cause irreparable harm.

28. Municipal Group 2, Municipal Group 3, the towns of Bridgewater, Woodstock, New Hampton, Deerfield, and Littleton, Ashland Water and Sewer, SPNHF, the Non-Governmental Organizations, and NEPGA object to the Motion. The International Brotherhood of Electrical Workers assents to the Motion. No other replies were received with respect to the Applicants' request for positions.

WHEREFORE, the Applicants respectfully request that the Presiding Officer:

- A. Grant rehearing as requested herein;
- B. Disallow further participation by NEPGA;
- C. Stay the Order on NEPGA's Motion to Compel, the Order on Motions to Compel as it pertains to production of the PPA, and the Order on Requests to Amend Procedural Schedule to the extent it requires supplemental responses to the NEPGA data requests by October 7, 2016; and
- D. Grant such further relief as is deemed just and appropriate.

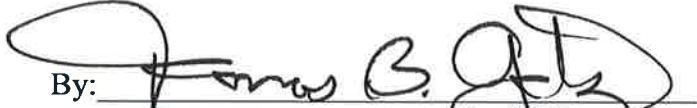
Respectfully submitted,

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

By Its Attorneys,

McLANE MIDDLETON,
PROFESSIONAL ASSOCIATION

Dated: October 6, 2016

By: 

Barry Needleman, Bar No. 9446

Thomas B. Getz, Bar No. 923

Adam Dumville, Bar No. 20715

11 South Main Street, Suite 500

Concord, NH 03301

(603) 226-0400

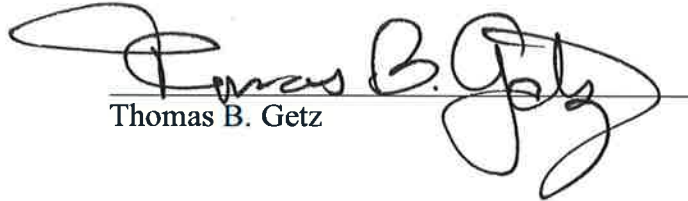
barry.needleman@mclane.com

thomas.getz@mclane.com

adam.dumville@mclane.com

Certificate of Service

I hereby certify that on the 6th of October, 2016, an original and one copy of the foregoing Motion was hand-delivered to the New Hampshire Site Evaluation Committee and an electronic copy was served upon the Distribution List.


Thomas B. Getz