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October 7, 2016

Via Electronic Mail & Hand Delivery

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

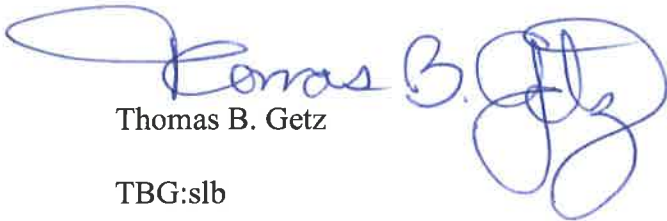
**Re: Site Evaluation Committee Docket No. 2015-06
Joint Application of Northern Pass Transmission LLC and Public Service Company
of New Hampshire d/b/a Eversource Energy (the "Applicants") for a Certificate of
Site and Facility
Objection to Motion to Compel Deposition of James A. Muntz**

Dear Ms. Monroe:

Enclosed for filing in the above-captioned docket, please find an original and one copy of Applicants' Objection to Motion to Compel Deposition of James A. Muntz.

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' OBJECTION TO MOTION TO COMPEL DEPOSITION
OF JAMES A. MUNTZ**

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 object to Municipal Groups 1 South, 2, 3 South, 3 North, and Society for the Protection of New Hampshire Forest’s (collectively the “Movants”) Motion to Compel Deposition of James A. Muntz (the “Motion”). The Applicants object to the deposition of Mr. Muntz, who has announced that he will be leaving Eversource effective October 31, 2016, because the moving parties have not demonstrated that the Committee’s standard discovery procedures are inadequate, they have not demonstrated a substantial need to depose Mr. Muntz, nor have they made a good faith effort to resolve discovery issues informally. Therefore, the Motion should be denied.

Background

1. On October 19, 2015, the Applicants submitted pre-filed testimony from more than 20 different witnesses with their Application for a Certificate of Site and Facility, including pre-filed testimony from James A. Muntz, President of Transmission for Eversource Energy.
2. As a result of the June 23, 2016 Order on Pending Motions and Procedural Order, and the Technical Session Agenda dated August 5, 2016, Mr. Muntz was originally scheduled to

appear with Mr. William J. Quinlan as part of a panel on September 21, 2016, that was rescheduled for October 11, 2016.

3. On September 15, 2016, the Applicants submitted a letter informing the Committee and all participants in SEC Docket No. 2015-06 that Mr. Quinlan and Mr. Kenneth Bowes would be jointly adopting the pre-filed testimony of Mr. Muntz. All questions relating to the topics discussed in Mr. Muntz's testimony would therefore be addressed by Mr. Quinlan and Mr. Bowes appearing as a panel.

4. On September 29, 2016, the moving parties filed their Motion seeking to compel the deposition of Mr. Muntz.

Standard for Granting Extraordinary Discovery Relief

5. Unless agreed-to by the parties, the use of depositions as a discovery tool must be authorized by the presiding officer. Site 202.12(l) provides that the presiding officer "shall authorize other forms of discovery, including technical sessions, requests for admission of material facts, depositions, and any other discovery method permissible in civil judicial proceedings before a state court, when such discovery is necessary to enable the parties to acquire evidence admissible in a proceeding." *Id.* (emphasis added).

6. As previously construed by the New Hampshire Public Utilities Commission ("PUC"), the term "necessary" imposes a stringent standard on the movant seeking a deposition in an administrative proceeding; ordering depositions is not authorized unless a party can establish that the standard discovery procedures are inadequate.¹ *See* Order No. 25,566, NH PUC, *Investigation of Scrubber Costs and Cost Recovery*, Public Service Company of New

¹ Puc 203.09 (j) is substantially identical to Site 202.12 (l).

Hampshire, Docket DE 11-250, at 3 (Aug. 27, 2013) ("Scrubber Order"). Depositions therefore are the exception, and not the rule. *Id.* at 4.

7. In order "to satisfy the 'necessary' standard, the party seeking the deposition must demonstrate a substantial need for the information that is the subject of the deponent's testimony and that the party could not, without undue hardship, obtain the information by other means." *Id.* In the Scrubber Order, the PUC found that the person being deposed, PSNH President Gary A. Long, had information that could not otherwise be obtained, which was directly relevant to a specific required finding in the proceeding, i.e., whether the company's decision-making with respect to the divestiture or retirement of the Merrimack generation facility was prudent.

8. As discussed in more detail below, the Movants have failed to establish why the deposition of Mr. Muntz is necessary. In short, he does not have information directly relevant to a specific finding in this proceeding that cannot be provided by Messrs. Quinlan and Bowes or that has not already been provided through other means of discovery.

Discussion

9. The Movants make general allegations and offer unsubstantiated conclusions about how the witness substitution made by the Applicants "deprives the parties to the SEC proceeding from the opportunity to obtain admissible evidence from Mr. Muntz regarding his unique and integral involvement and decision making related to the Project." Motion at ¶ 7. The Motion alleges that Mr. Muntz has information that is "vital to the Parties participation in this proceeding." The Movants are mistaken. The required findings in this proceeding do not rest on Mr. Muntz's or the Applicants' decision-making, but on the Applicants' capabilities and the effects of the Project.

10. In Site Evaluation Committee proceedings, it is the Applicants' burden to prove by a preponderance of the evidence that the proposed site and facility meets the requirements set out at RSA 162-H:16, namely that:

- (a) The applicant has adequate financial, technical, and managerial capability to assure construction and operation of the facility in continuing compliance with the terms and conditions of the certificate.
- (b) The site and facility will not unduly interfere with the orderly development of the region with due consideration having been given to the views of municipal and regional planning commissions and municipal governing bodies.
- (c) The site and facility will not have an unreasonable adverse effect on aesthetics, historic sites, air and water quality, the natural environment, and public health and safety.
- (d) Issuance of a certificate will serve the public interest.

11. In such proceedings, the Applicants choose who they will sponsor as witnesses to support the application and prove that a Project complies with RSA 162-H:16, IV. The SEC rules do not contemplate requiring company executives to surrender themselves to a deposition in the ordinary course, whether they are or are not witnesses, and the Applicants are not aware of any instance in which such a deposition has occurred.

12. The information contained in Mr. Muntz's testimony describes the inception of the Project, the route selection process, the federal permitting process, and NPT's participation in the clean energy proposals from the States of Connecticut, Massachusetts, and Rhode Island ("Tri-State Clean Energy RFP"). His testimony also summarizes the Applicants' technical and managerial capability to construct and operate the Project, which is the subject of Mr. Bowes' testimony. Mr. Muntz's testimony does not reach any ultimate conclusions about the findings that the Committee is required to make in order to issue a certificate of site and facility under

RSA 162-H:16, IV. Instead, Mr. Muntz's testimony provides historical grounding for the Project and its associated benefits.

13. Messrs. Quinlan and Bowes are more than adequate substitutes for Mr. Muntz. They are broadly knowledgeable about the Project and are intimately familiar with its development. Both Messrs. Quinlan and Bowes will be able to address questions relating to the topics of the Project's inception, route selection process, federal permitting process, and NPT's participation in the Tri-State Clean Energy RFP.

14. The Movants seek to depose Mr. Muntz "regarding his unique and integral involvement and decision making related to the Project." The prudence of Mr. Muntz's or the Applicants' decision making, however, is not an element of the case before the SEC. Furthermore, there is nothing in the nature of eye-witness testimony that would require the preservation of Mr. Muntz's testimony. Thus, there is nothing admissible in the proceeding that Messrs. Quinlan and Bowes cannot speak to, nor does Mr. Muntz have additional information that is necessary for the Movants to acquire in order to prepare for the final adjudicative hearings.

15. Messrs. Quinlan and Bowes can and will speak to all the topics contained in Mr. Muntz's original pre-filed testimony. The Motion, however, alleges that Messrs. Quinlan and Bowes "are simply incapable of inserting themselves into the head of Mr. Muntz to speak for him and explain how he arrived at the various high-level decisions that he made for the Project." Motion at ¶ 10. The Motion wrongly assumes that the personal thoughts and perceptions of a single company employee are relevant, which is not the case. Consequently, they have not demonstrated a substantial need for the information that would be the subject of Mr. Muntz's deposition as further explained below.

16. In *Investigation of Scrubber Costs and Cost Recovery*, certain parties moved to depose an internal company witness. In that case, however, the central issue, whether costs could be included in rates, related directly to whether the company acted prudently. See RSA 125-O:18 (“If the owner is a regulated utility, the owner shall be allowed to recover all prudent costs of complying with the requirements of this subdivision in a manner approved by the public utilities commission.”) (emphasis added).

17. In that case, the PUC was required to determine whether PSNH conducted itself with the level of care expected of highly trained specialists. The prudence standard in ratemaking is “similar to the duty of care in a case of negligence at common law, namely, what would a reasonable person do at the time the decision was made”; a critical inquiry must be made to determine whether the business “exercise[d] the requisite degree of learning, skill and ability of that calling with reasonable and ordinary care.” See Order 24,108, *In re Public Service Company of New Hampshire*, Public Service Company of New Hampshire at 12 (Dec. 31, 2002). In other words, at issue in the Scrubber case was the specific decision-making process of the company and its executives. The Scrubber Order, therefore, found that the extraordinary relief of ordering a deposition of an internal company executive was warranted because the executive’s testimony was central to evaluating whether PSNH conducted itself with the required level of care.²

18. In this proceeding, however, prudence is not an element of the case, and therefore, there is no justification for inquiring into to the level of care exercised or what a “reasonable person” would do in like or similar circumstances. The relevant information here is whether the

² Even in granting the request for a deposition, the PUC significantly limited the movants scope of inquiry. See Order 25,566, *Investigation of Scrubber Costs and Cost Recovery*, at 5–6 (“This is not, however, an open-ended authorization to query [the witness] on all matters . . . [W]e agree with PSNH that much of the information that the Joint Movants cite as important is not relevant to this docket.”).

Applicants satisfy the requirements of RSA 162-H:16, IV, not the prudence of the underlying decision making.

19. The Movants have further failed to demonstrate why the existing discovery methods are inadequate. The Applicants have responded to over 1,000 data requests since June of this year and have presented over 20 witnesses at technical sessions throughout the months of September and October. The Movants have unequivocally failed to demonstrate a substantial need for any additional information that they could not, without undue hardship, obtain by other means. *See* Order No. 25,566 at 3.

20. Finally, none of the moving parties made an effort to resolve the alleged dispute informally. *See generally*, Site 202.12(k)(4); Site 202.14(d). *See also* *See* Order No. 25,566, at 5 (requiring movant to make a good faith effort to resolve whether a deposition would be taken without the need for a subpoena). The Motion should be denied for failing to comply with the SEC's rules and administrative practice governing depositions.

WHEREFORE, the Applicants respectfully request that the Presiding Officer:

- A. Deny the Movants Motion to Compel Deposition of James A. Muntz; and
- B. 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,

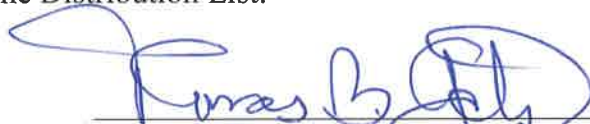
McLANE MIDDLETON,
PROFESSIONAL ASSOCIATION

Dated: October 7, 2016

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Certificate of Service

I hereby certify that on the 7th of October, 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.


Thoma B. Getz