

October 14, 2016

**Via Electronic Mail & Hand Delivery**

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

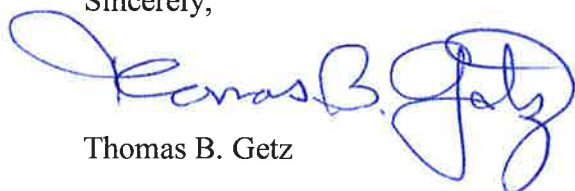
**Re: Site Evaluation Committee Docket No. 2015-06  
Joint Application of Northern Pass Transmission LLC and Public Service Company  
of New Hampshire d/b/a Eversource Energy (the "Applicants") for a Certificate of  
Site and Facility  
Objection to Various Motions to Amend the Procedural Order**

Dear Ms. Monroe:

Enclosed for filing in the above-captioned docket, please find an original and one copy of an  
Objection to Various Motions to Amend the Procedural Schedule.

Please contact me directly should you have any questions.

Sincerely,



Thomas B. Getz

TBG:slb

cc: SEC Distribution List

Enclosure

**THE STATE OF 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  
FOR CERTIFICATE OF SITE AND FACILITY**

**OBJECTION TO VARIOUS  
MOTIONS TO AMEND THE PROCEDURAL ORDER**

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 Counsel for the Public’s (“CFP”) Motion to Amend the Procedural Order (“Motion”) filed on October 4, 2016, in the above-captioned proceeding. The Applicants also object to the Society for the Protection of New Hampshire Forest’s (“SPNHF”), Grafton County Commissioners’ (“GCC”), and Abutter Group One’s (“A1”) joinders in CFP’s Motion.

The overall statutory timeframe pursuant to RSA 162-H:7, VI-d for a decision in this proceeding was extended approximately nine months, until September 30, 2017. As outlined below, CFP and the other parties have been granted numerous subsidiary extensions of time as well. Further extension of the procedural schedule is not warranted, and will cause undue delay and disrupt the orderly conduct of the proceeding.

**I. Background**

The Applicants filed an Application for a Certificate of Site and Facility on October 19, 2015, for a 192-mile electric transmission line with associated facilities (“Northern Pass” or “Project”). The SEC accepted the Application pursuant to RSA 162-H:7, VI on December 18, 2015, and a procedural order was issued on December 22, 2015.

On November 6, 2015, CFP filed a motion seeking leave to retain the law firm of Primmer Piper Eggleston & Cramer PC, which stated that “Primmer is highly qualified for this position with significant experience in administrative proceedings for the siting of electric power transmission facilities as well as complex litigation.” Motion at ¶ 5. The motion further stated that “Primmer’s expertise, talent and staffing are necessary to assure that the interests of the public in this proceeding are adequately represented and will also contribute to an orderly and expeditious proceeding.” Motion at ¶ 7. CFP’s motion was granted on December 20, 2015.

On April 1, 2016, before the discovery process even started, CFP filed a motion seeking to suspend the overall statutory timeframe for the Committee’s review of the Project.<sup>1</sup> The Applicants objected, arguing in part, that it was premature for the Committee to suspend the timeframe so early in the process. Nevertheless, the Committee granted CFP’s request to suspend the statutory timeframe for approximately nine months. *See* June 15, 2016 Order on Motions to Suspend, pursuant to which, the Committee would issue or deny a Certificate of Site and Facility on or before September 30, 2017.

On April 22, 2016, the Committee Issued a Temporary Procedural Schedule establishing deadlines, including deadlines for CFP to file motions to retain experts and deadlines for CFP to file data requests. Subsequently, on May 3, 2016, CFP filed a motion requesting that the Committee permit CFP to have a second round of data requests, namely, “expert-assisted” data requests.<sup>2</sup> The Applicants did not oppose CFP’s request for an extension of time for “expert-assisted” data requests, so long as they were to be propounded by June 13, 2016, and responded

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<sup>1</sup> SPNHF filed a similar motion to suspend the timeframes on April 5, 2016. Other parties also filed joinders in support of the motions to suspend timeframes.

<sup>2</sup> SPNHF also filed a Motion to Clarify the Scheduling Order on May 2, 2016, requesting a second round of data requests. This SPNHF motion was also followed by a notice of joinder by several other parties, including the Grafton County Commissioners.

to by July 15, 2016. *See Applicants' Objection to Various Motions to Reconsider or Clarify Temporary Procedural Schedule*, at ¶ 4 (May 12, 2016).

On May 13, 2016, nearly seven months after the Application was filed, CFP filed motions to retain experts. The Applicants assented to the request, but continued to express concern about the timely conduct of the proceeding. The Applicants' position remained that CFP had more than sufficient time to retain experts. *See Applicants' Response to Motions of Counsel for the Public For Leave to Retain Consultants*, at 1–2 (May 18, 2016).

On May 15, 2016, the Committee extended the deadlines for filing data requests again, at the request of certain interveners. On May 31, 2016, the Applicants proposed a procedural schedule, including deadlines for discovery that would lead to a decision on the Application by June 30, 2017. CFP objected to the Applicants' proposed procedural schedule on June 9, 2016.

Discovery deadlines were pushed out again pursuant to the Orders dated June 15 and June 23, 2016. The June 23, 2016 order provided CFP an additional round of “expert-assisted” data requests, and set deadlines for CFP and all other parties to file pre-filed testimony by November 15, 2016.

On June 13, 2016, July 8, 2016, and July 15, 2016, the Applicants responded to approximately 1,000 data requests, which were made available to all parties. Further Orders, on July 13 and July 21, allowed other parties to ask an additional round of data requests regarding confidential documents, extending the discovery deadlines each time.

On June 28, 2016, CFP propounded their expert-assisted data requests. The Applicants responded to these data requests on August 5, 2016. On August 2, 2015, the Committee again extended deadlines, this time for filing motions to compel at the request of certain parties.

On August 15, 2016, CFP filed another request for an extension of time for discovery coupled with a motion to compel. CFP asked for an extension of time to file testimony relating to the underground portions of the line, until after the Applicants provided additional information regarding the underground route to the Department of Transportation. CFP also asked that the Applicants further respond to CFP Expert Assisted Data Requests Exp. 1–28 through Exp. 1–74; make their witnesses available for additional technical sessions; and, be required to supplement their Application.

On September 22, 2016, the Committee issued its Order on Motions to Compel, granting in part, and denying in part CFP's Motion. On the same date, the Committee issued an Order on Requests to Amend Procedural Schedule, extending deadlines further, and granting CFP's request that the Applicant be required to provide supplemental responses to data requests addressing the underground portion of the Project and its responses to the Department of Environmental Services' requests on or before December 15, 2016. The Order also allowed an additional month and a half for CFP and intervenors to file pre-filed testimony addressing issues related to: (i) the Applicant's production pursuant to the Order on Motion to Compel and Order on NEPGA's Motion to Compel, which is the subject of a motion for rehearing filed October 6, 2016; (ii) the underground portion of the Project; and (iii) the Applicants' response to the Department of Environmental Services' requests on or before December 30, 2016. *See* Order on Requests to Amend Procedural Schedule (Sept. 22, 2016).

CFP now seeks to extend, until December 30, 2016, the deadline for filing their pre-filed testimony relating to (a) market economic issues; (b) local economic issues; (c) natural resources; and (d) aesthetics, further eroding the November 15, 2016 deadline.

## **II. Discussion**

The Applicants submit that the extension of the overall statutory timeframe from 12 months to 21 months, and the procedural schedule adopted in the June 23, 2016 Order, which, among other things, called for CFP and intervenor testimony by November 15, 2016, provided ample time for CFP's expert witnesses to timely prepare testimony. CFP and the intervenors have had available to them, for the purpose of preparing testimony, the extensive Application, with its numerous reports and pre-filed testimony, supplemental information, voluminous discovery responses, and the opportunity to ask questions in technical sessions, which should be the final step in the preparation of testimony, not the initial step in understanding what the Applicants filed.

The Declaration of Purpose for RSA 162-H, states that “[t]he legislature recognizes that the selection of sites for energy facilities may have significant impacts on and benefits.” RSA 162-H:1. The statute sets out specific deadlines so that “*undue delay* in the construction of new energy facilities be avoided; [and] that full and *timely* consideration of environmental consequences be provided. *Id.* It is the position of the Applicants that further changes in the procedural schedule will lead to undue delay in construction of a new energy facility that will significantly benefit New Hampshire.

### **A. Counsel for the Public Motion to Amend the Procedural Order**

All parties to this proceeding, including CFP, have had copies of the Application for almost a full calendar year and have had ample time to review and assess it. On the one hand, CFP recognized early on the advantage in engaging a well-qualified law firm. On the other hand, CFP took five months after the Application was accepted to file leave to retain experts, which the Applicants noted was unreasonable under the 12-month statutory time for issuance of

a decision. *See Applicants' Objection to Counsel for the Public's Motion to Suspend Time Frame at 8 (April 7, 2016).* As CFP observes, the Applicants have worked in good faith to resolve any discovery issues raised by CFP or their witnesses as expeditiously as possible, including responding to informal data requests and follow-ups outside of the formal discovery process to assist the efficient conduct of the proceeding.

The Applicants were thus dismayed to learn that CFP is seeking another extension when they are fully staffed, at the Applicants' expense, by outside counsel and numerous experts. Not only has CFP retained a competent law firm for these purposes, but numerous other environmental, engineering, economic, historic resources, and aesthetics firms, including approximately 20 experts, have been retained. It is therefore difficult to understand why the November 15, 2016 deadline for testimony cannot be met.

CFP seeks to delay the filing of testimony on market economic, local economic, natural resources, and aesthetics issues, from November 15, 2016, to December 30, 2016. It cites as a basis for the delay that the technical sessions have not been concluded and that technical sessions reveal foundational information about the Project. The delay in the completion of the technical sessions, however, is due in large measure to the fact that CFP has conducted the technical sessions like depositions, despite the recognition in the Presiding Officer's August 29, 2016 Order that technical sessions are a form of informal discovery through which experts involve in mutual dialogue in order to get a better understanding of testimony. Furthermore, looking at the technical sessions as a stage in the process during which foundational information is revealed turns the process on its head. As the last step in the process before filing testimony, it is more aptly viewed as the stage in the process during which misconceptions are resolved, or understandings are refined, before pen is put to paper.

CFP also cites to issues regarding the production of documents in native format. The Applicants acknowledge that there was an issue in the original production of such documents uploaded to the ShareFile site. The formatting issue, however, was remedied. CFP also argues that the Applicants have exchanged information in formats that are “unreadable by common software.” The Applicants have provided all data in the format that is commonly used in the industry.

In addition, CFP has indicated that certain discovery requests were received late or are still outstanding. To the Applicants’ knowledge, all discovery requests were either provided directly to CFP or uploaded to the ShareFile site. Lastly, CFP argues that it requires an extension because of the updated photosimulations. CFP mischaracterizes the Applicants’ recent submission, which involved extremely minor changes to the photosimulations.

CFP blithely asserts that its proposed amendments to the procedural schedule will not significantly impact the schedule or delay the proceeding. The reality, however, is that the schedule is becoming more back-loaded, and the time for the Applicants to fulfill their obligations is being compressed, which jeopardizes the likelihood that the adjudicative hearings will commence at a reasonable date in April, 2017.

**B. SPNHF, GCC A1**

SPNFH, GCC, and A1 have filed so-called joinders in the Motion by CFP. SPNHF, in particular, argues that its consultants have not been able to complete their testimony and that it has relied on requests for information that CFP has made to the Applicants. As discussed above, the discovery deadlines have already been extended on numerous occasions, including, most recently, on September 22, 2016, when the SEC altered the procedural schedule to allow CFP and all interveners additional time, until December 30, 2016, to file testimony relating to the



Applicants' production pursuant to the Order on Motion to Compel, the underground portion of the Project, and the Applicants' response to the DES requests.

Both GCC and A1 argue that they cannot complete their pre-filed testimony in the absence of 90% to 100% completed construction documents, that they lack completed plans showing the location of the underground route, that they lack geotechnical core-drilling reports, and that they lack proof that the Applicant has a past history and proper knowledge to bury high tension cables under a dirt road. As discussed above, the Committee has already extended the timeframe for all interveners to file testimony relating to the underground portion of the Project, (including, underground construction, underground route, and geotechnical core-drilling reports); therefore, their request is moot. To the extent GCC and A1 are requesting additional time to file pre-filed testimony on other topics, they have not made any showing why such an extension is necessary.

### **III. Conclusion**

As discussed above, the parties have had almost a full year to study the Application, including exhibits, reports, and pre-filed testimony, and have subsequently been provided supplemental materials and extensive discovery, which extends to the Technical Sessions that are expected to conclude shortly. In light of the foregoing, CFP and the other moving parties have failed to articulate any compelling reason why additional topics for testimony should be delayed from November 15, 2016, until December 30, 2016, or that succeeding deadlines need to be changed. The Applicants, of course, remain willing to continue to work in good faith with CFP and all parties to resolve any remaining discovery issues. However, further extending the timeframe for filing testimony is not warranted and would not be in the public interest. The

Applicants further submit that such extension would result in undue delay contrary to the stated purpose of RSA 162-H and respectfully request that the Motion be denied.

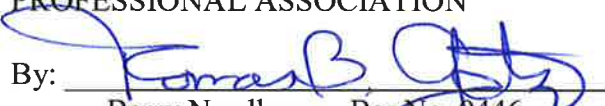
Respectfully submitted,

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 14, 2016

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Certificate of Service

I hereby certify that on the 14<sup>th</sup> 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 SEC Distribution List.

  
Thomas B. Getz