

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

November 18, 2016

Via Electronic Mail & Hand Delivery

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

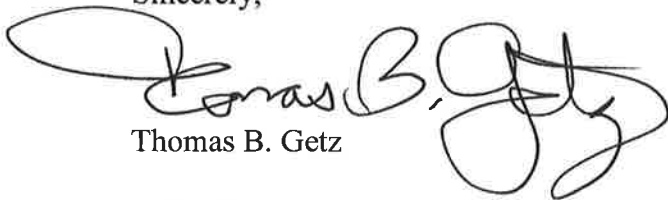
**Re: Site Evaluation Committee Docket No. 2015-06
Joint Application of Northern Pass Transmission LLC and Public Service Company
of New Hampshire d/b/a Eversource Energy (the "Applicants") for a Certificate of
Site and Facility
Objection to Pessamit Petition to Intervene**

Dear Ms. Monroe:

Enclosed for filing in the above-captioned docket, please find an original and one copy of Applicant's Objection to Pessamit Petition to Intervene.

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 PESSAMIT PETITION TO INTERVENE

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 object to the late-filed Petition to Intervene (“Petition”) filed by the Pessamit Innu First Nation (“Pessamit”) on November 11, 2016, in the above-captioned proceeding. As discussed below, Pessamit has not shown that its substantial interests would be affected by this proceeding and that its intervention would be in the interests of justice. Moreover, to the extent that Pessamit has any justiciable claims, they are beyond the jurisdiction of the New Hampshire Site Evaluation Committee (“SEC” or in this case “Subcommittee”).

I. Background

1. 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 Site Evaluation Committee (“SEC” or, in this case, “Subcommittee”) accepted the Application pursuant to RSA 162-H:7, VI on December 18, 2015.

2. On December 22, 2015, the Presiding Officer issued a Procedural Order that, among other things, set February 5, 2016, as the deadline for filing petitions to intervene and he

issued an Order on Petitions to Intervene on March 18, 2016. Subsequently, on May 20, 2016, the Subcommittee issued an Order on Review of Intervention.

3. On June 15, 2016, the Subcommittee issued an Order on Motions to Suspend. Among other things, the Subcommittee extended the overall statutory timeframe from 12 months to approximately 21 months, culminating in a decision by September 30, 2017. On June 23, 2016, the Presiding Officer issued an Order on Pending Motions and Procedural Order that, among other things, set deadlines for discovery, and the filing of Counsel for the Public (“CFP”) and Intervenor testimony by November 15, 2016.

4. On November 11, 2016, just four days before the deadline for Intervenor testimony, and nine months after the deadline for intervention, Pessamit filed its Petition in this docket.

5. Pessamit filed a motion for declaratory judgment in the Québec Superior Court, which has been pending since February 1998, claiming damages against the Government of Canada, the Government of Québec, and Hydro-Québec, and seeking a permanent injunction against Hydro-Québec to stop construction or operation of any new installations on its territory (File No. 500-05-039472-988). To date, no injunction has been issued and the proceedings are still ongoing. Although, at the request of Pessamit, the proceedings are currently suspended until January 2017.

II. Standard for Intervention

6. RSA 541-A:32, I, sets forth circumstances under which a presiding officer shall allow intervention. Specifically, a petition for intervention shall be granted if: (a) the petition is properly filed; (b) the petition states facts demonstrating that the petitioner's rights, duties, privileges, immunities or other substantial interests may be affected by the proceeding or that

the petitioner qualifies as an intervenor under any provision of law; and (c) the interests of justice and the orderly and prompt conduct of the proceedings would not be impaired by allowing the intervention. See RSA 541-A: 32, I; N.H. Code Admin. R., Site 202.11(b).

7. The Presiding Officer may grant a late-filed petition to intervene only upon a determination that such intervention would be in the interests of justice and would not impair the orderly and prompt conduct of the hearings. See Site 202.11(c).

III. Discussion

8. Parties petitioning to intervene must set forth facts sufficient to demonstrate that they have a legal right to intervene. See RSA 541-A:32,I(b); *Appeal of Stonyfield*, 159 N.H. 227, 231 (2009) (stating that "a party must demonstrate this his rights 'may be directly affected by the decision, or in other words, that he has suffered or will suffer an injury in fact.'" (internal quotations omitted). Furthermore, general allegations of harm are not sufficient. See *Blanchard v. Railroad*, 36 N.H. 263, 264 (1993) (finding that standing does not exist if a party cannot establish that it has an "interest[] in or [is] affected by the proceedings in some manner differently from the public, citizens, and taxpayers generally"). As explained below, Pessamit does not establish a substantial right or interest that is affected by the issuance of a Certificate of Site and Facility to the Applicants.

9. Pessamit argues, among other things, that Hydro-Québec illegitimately acquired capacity to Pessamit's detriment, that there will be undeclared impacts on its territory, and that there will be devastating impacts on the river downstream from existing Hydro-Québec power stations. The harms that Pessamit alleges, however, are historic in nature, related to past actions taken in Canada, and there is no factual basis for concluding that the issuance of a Certificate in this proceeding would cause harm to Pessamit.

10. Pessamit also contends that the Northern Pass Project will infringe on two international conventions and that the Project will affect Gulf of Maine Atlantic salmon. The claims with respect to international conventions appear to be collateral attempts to litigate issues of international law, which are not provisions of law that form a basis for Pessamit's intervention in this proceeding. As for the impact on salmon, Pessamit provides no factual basis for its claim and such claims, even to the extent they were at all related to the siting, construction and operation of the Project, are general in nature and fail to satisfy the requirement that petitions to intervene demonstrate how the party will be directly affected by the SEC's decision.

11. Pessamit attempts to draw a connection between the Project and Hydro-Québec's portfolio of hydroelectric generating assets in Canada, conflating the two entities as one and the same, apparently for the purpose of pursuing its claims against Hydro-Québec. The Project is a 192-mile transmission line commencing in Pittsburg, New Hampshire and ending at a substation in Deerfield, New Hampshire, sited entirely within New Hampshire. That the Project will transmit power generated by Hydro-Québec does not serve to bootstrap Pessamit's intervention in this proceeding or transform the SEC into a forum for pursuing its claims. The SEC simply does not have the authority to adjudicate issues regarding Hydro-Québec's operations in Canada, and its decision to issue a Certificate of Site and Facility for the Project will not affect Pessamit's rights or interests.

12. In light of its remote connection to this proceeding, both geographically and functionally, Pessamit has not demonstrated that its rights or interests in the outcome of this proceeding are different from any member of the public. The New Hampshire Public Utilities Commission ("PUC") addressed a similar issue with respect to a petition to intervene by the Aziscoos Lake Campers Association ("Aziscoos") in PUC Docket No. DE 02-075, regarding the

Proceeding to Approve the Sale of Seabrook Station Interests. Aziscoos asserted that it had a substantial interest in sound environmental stewardship. In Order No. 23,981 (May 31, 2002), at p. 10, the PUC denied the petition, noting that the intervention request was “apparently the result of disputes...concerning a FERC license for a hydroelectric project on Aziscoos Lake.” In addition, the PUC concluded that “as an association of residents on a lake in Maine 100 miles from the Seabrook Station they have not established a sufficient basis for full party status in this proceeding.” Finally, it stated that “generalized environmental interests will be adequately represented by other parties to this proceeding.”

13. By way of further example, on March 16, 2016, a petition to intervene was filed by the Cowasuck Band of the Penacook-Abenaki People (“Cowasuck”). The Presiding Officer issued an Order on Petitions to Intervene on July 20, 2016, denying the Cowasuck petition to intervene. Among other things, the Presiding Officer concluded that Cowasuck had not been recognized as a tribe in New Hampshire, had not established that it had a substantial right affected by the proceeding, and that it had no greater interest in the outcome of the proceeding than any other member of the public. Pessamit likewise has no right or connection to New Hampshire that warrants intervention, and thus no greater interest in the outcome of the proceeding than any other member of the public. As previously stated, its allegations are generalized and fail to articulate specifically, and directly, how it will be impacted by the SEC’s decision.

14. Pessamit also fails to show how the interests of justice would be served by overlooking the lateness of its petition or why the Presiding Officer should exercise his discretion to allow late intervention. Indeed, because the rights and interests asserted by the

Pessamit do not fall within the purview of the SEC's jurisdiction, the interests of justice would not be served by granting the Petition.

15. Moreover, given the lateness of its Petition, Pessamit's intervention could impair the orderly conduct of the proceeding. The Applicants have concluded formal discovery, intervenors and Counsel for the Public have filed the first round of pre-filed testimony, and the Applicants are in the process of preparing discovery to propound on the various parties. Granting the intervention of any party at this late stage in the proceeding would be disruptive and infringe upon the Applicants' due process rights.

IV. Conclusion

16. Pessamit bases its intervention on international rights and conventions, effects of existing Hydro-Québec facilities on lands in northern Canada, and salmon survival in the Northern hemisphere. The attenuated claims that Pessamit makes are beyond the jurisdiction of the Subcommittee and whether such claims have any merit are determinations to be made elsewhere. Consequently, Pessamit's rights will not be directly affected by the Subcommittee's decision whether to issue a Certificate of Site and Facility.

17. The Applicants filed their Application over a year ago. Pessamit filed its Petition more than nine months after the deadline and the interests of justice do not support its intervention. Accordingly, the Applicants respectfully request that the untimely Pessamit Petition be denied.

Respectfully submitted,

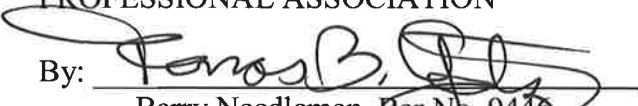
Northern Pass Transmission LLC and Public
Service Company of New Hampshire d/b/a
Eversource Energy

By Its Attorneys,

McLANE MIDDLETON,
PROFESSIONAL ASSOCIATION

Dated: November 18, 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 18th day of November, 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 SEC Distribution List.



Thomas B. Getz