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November 23, 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 Depositions**

Dear Ms. Monroe:

Enclosed for filing in the above-captioned docket, please find an original and one copy of Applicant’s Objection to Motion to Compel Deposition of James A. Chalmers and Mitch Nichols.

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. CHALMERS AND MITCH NICHOLS**

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 the Society for the Protection of New Hampshire Forest’s (“SPNHF”) motion to compel the deposition of Messrs. Chalmers and Nichols (the “Motion”) filed on November 18, 2016. The Applicants object to the depositions because SPNHF has not demonstrated that the depositions are necessary and that the approved discovery procedures are inadequate.

I. Background

1. On October 19, 2015, the Applicants submitted pre-filed testimony from Messrs. Chalmers and Nichols with their Application for a Certificate of Site and Facility.
2. Pursuant to the June 23, 2016 Order on Pending Motions and Procedural Order, and the Technical Session Agenda dated August 5, 2016, Messrs. Chalmers and Nichols participated in technical sessions on September 19 and 21, 2016.

II. Standard for Authorizing Depositions

3. 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 offer “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.” (emphasis added).

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

5. 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.* As discussed in more detail below, SPNHF has failed to establish why the depositions of Messrs. Chalmers and Nichols are necessary.

III. Discussion

6. In his August 29, 2016 Order on Motions to Transcribe Technical Session, the Presiding Officer stated that the purpose of technical sessions “is for the parties and their experts to involve in mutual dialog in order to get a better understanding of their testimony. The dialog and information provided by the witness and experts at technical sessions is not designed and should not be used for impeachment purposes.”

7. In its Motion, at p. 2, SPNHF argues that the information presented at the technical sessions “lacked clarity, and therefore the evidence to be admitted in the proceeding is

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

unclear and currently unavailable.” Although it is not entirely clear what is meant by this conclusory statement, it appears that SPNHF believes that the information presented, or statements made, by Messrs. Chalmers and Nichols constitute evidence that SPNHF may admit during the adjudicative hearings, which, as discussed below, is not the case. In addition, SPNHF does not make clear what or how much of the information presented at the technical sessions lacked clarity, thus failing to provide the Presiding Officer a basis on which to make an informed decision that the depositions are necessary.

8. SPNHF, at p. 2 of its Motion, also says that “[h]aving the ability to conduct a brief deposition of each witness, during which the record will be able to be read back to clarify exactly what question was asked and confirm the witness’s answer, will greatly enhance the adjudicative hearing in this matter.” Despite the Presiding Officer’s admonition that technical sessions are not designed for impeachment, SPNHF seeks to re-visit information provided in the technical sessions in an apparent effort to transcribe that information and use it for impeachment purposes, which it says will “enhance the adjudicative proceeding.”

9. SPNHF has not explained how a deposition is necessary to enable it to “acquire evidence.” SPNHF has seen the testimony and exhibits provided by Messrs. Chalmers and Nichols, along with their work papers and other information provided in responses to data requests, as well as the answers given during two days of technical sessions. While depositions may be necessary or appropriate in the normal course in civil litigation, administrative proceedings such as these are entirely different matters, especially insofar as they concern the testimony of experts. The Applicants have laid bare their case and SPNHF has been provided ample information to prepare its case on property values and tourism. SPNHF has failed to

demonstrate why discovery to date has been inadequate or why there is a substantial need for additional information that they could not, without undue hardship, obtain by other means.

IV. Conclusion

10. SPNHF does not explain why the depositions are necessary under the SEC's rules. It had the opportunity to inquire of Messrs. Chalmers and Nichols during the technical sessions, that time has passed, and there are no grounds for a do-over. In addition, SPNHF is not seeking to acquire evidence, gain information, engage in dialog, or discover anything for that matter. Rather, it is persisting in an attempt to use what transpired at the technical session as a vehicle for impeaching the witnesses, contrary to the Presiding Officer's order. The Applicants request that the Presiding Officer not countenance SPNHF's untimely and improper request.

WHEREFORE, the Applicants respectfully request that the Presiding Officer:

- A. Deny SPNHF's motion to compel the depositions of Messrs. Chalmers and Nichols; and
- B. Grant such further relief as is deemed just and appropriate.

Respectfully submitted,

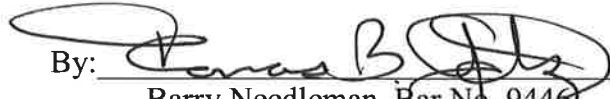
Northern Pass Transmission LLC and Public
Service Company of New Hampshire d/b/a
Eversource Energy

By Its Attorneys,

McLANE MIDDLETON,
PROFESSIONAL ASSOCIATION

Dated: November 23, 2016

By:



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Certificate of Service

I hereby certify that on the 23rd 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 the Distribution List.



Thomas B. Getz