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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

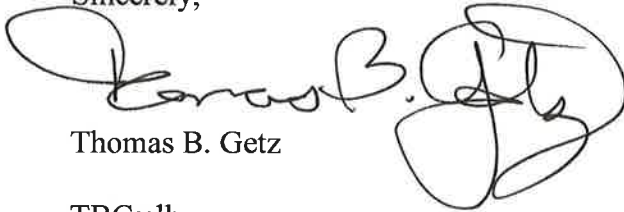
**Re: Site Evaluation Committee Docket No. 2015-06
Joint Application of Northern Pass Transmission LLC and Public Service Company
of New Hampshire d/b/a Eversource Energy (the "Applicants") for a Certificate of
Site and Facility
Objection to Motion for Rehearing re Documents Provided Informally to CFP**

Dear Ms. Monroe:

Enclosed for filing in the above-captioned docket, please find an original and one copy of an
Objection to Motion for Rehearing Regarding Documents Provided Informally to Counsel for the
Public.

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**

**OBJECTION TO MOTION FOR REHEARING
REGARDING DOCUMENTS PROVIDED INFORMALLY
TO COUNSEL FOR THE PUBLIC**

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 Forests’ (“SPNHF”) Motion for Rehearing on Order on Motion to Compel Documents Produced Informally to Counsel for the Public (“Motion for Rehearing”) filed on November 28, 2016. As the Applicants discuss below, SPNHF’s vague and unsubstantiated request fails to meet its legal burden and should be denied.

1. On October 4, 2016, the Presiding Officer issued an order ruling that, to the extent SPNHF, as part of a September 9, 2016 motion to compel, was requesting all documents produced to Counsel for the Public (“CFP”), the request was denied. Nevertheless, on October 6, 2016, SPNHF filed a motion requesting that the Applicants be compelled to produce documents produced informally to Counsel for the Public.

2. On October 17, 2016, the Applicants objected to the production of documents provided informally to CFP, arguing that SEC rules and orders did not require such production. On October 19, 2016, SPNHF filed an unauthorized supplement to its motion, attaching a list of

documents that the Applicants sent to CFP as part of informal discovery, which was compiled by CFP.

3. On October 28, 2016, the Presiding Officer issued an Order Denying the Society for the Protection of New Hampshire Forests Motion to Compel Documents Produced Informally to Counsel for the Public (“Order”). He found, at p. 6, that the request lacked specificity and sought documents that SPNHF “[d]oes not have standing to compel.” The Presiding Officer found that informal data requests “are not subject to the rule on Motions to Compel.” *Id.*

4. On November 28, 2016, SPNHF submitted a motion seeking rehearing of the Order. It contends that the Presiding Officer’s finding that SPNHF’s request falls outside the scope of a motion to compel was made in error. In addition, SPNHF melds together different concepts about technical sessions, and amended or supplemental responses, in what appears to be an attempt to form a theory about why the informal production to CFP should be provided, regardless. Furthermore, it talks about a data request made during a technical session¹ and data requests propounded in May and June but does not identify the requests. SPNHF thus intimates, without any basis, that the Applicants did not, in the first instance, provide documents responsive to data requests and/or that they did not provide supplements when required.

5. A motion for rehearing must (1) identify each error of fact, error of reasoning, or error of law which the moving party wishes to have reconsidered, (2) describe how each error causes the committee’s order or decision to be unlawful, unjust or unreasonable, and (3) state concisely the factual findings, reasoning or legal conclusion proposed by the moving party. Site 202.29(d).

¹ SPNHF may be referring here to request no. 5 regarding the technical session of Julia Frayer of September 16, 2016, which was part of Administrator Monroe’s September 16, 2016 memorandum. If that is the case, the Applicants provided the requested spreadsheet to all the parties on September 29, 2016.

6. The purpose of rehearing “is to direct attention to matters that have been overlooked or mistakenly conceived in the original decision ...” *Dumais 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.*, 17 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).

7. SPNHF’s Motion for Rehearing does not successfully refute the Presiding Officer’s determination that informal discovery is not within the scope of a motion to compel. SPNHF reprises the arguments it made previously and, at p. 4, contends that the “Committee erred in its narrow view” of the issue, and asks for a different outcome.

8. Alternatively, SPNHF seems to be saying that the documents provided informally to CFP should, for other reasons, be provided to it, that is, because a document was: (1) mentioned in a technical session; (2) responsive to some earlier data request; or (3) a supplemental response that should be made. The problem with what SPNHF implies is that it relies on generalities and provides no factual basis for its position.

9. As a general matter, the Applicants agree with the position SPNHF seems to be taking, i.e., that the Applicants are obliged to provide documents in the three categories mentioned above, assuming no valid objection applies, but the Applicants do not agree that there are applicable documents in those categories that have not been provided. Looking at the issue another way, because a document was provided to CFP informally does not mean that the

document was not otherwise provided through discovery to the other parties when it was required in the normal course.

10. To better demonstrate the latter point, the Applicants refer to the list provided by CFP to SPNHF that was included as Attachment A to SPNHF's unauthorized October 19, 2016 supplement. Where a document produced informally to CFP was responsive to a formal data request made by a party, the Applicants produced it in response to that data request. For example, in Attachment A, SPNHF identifies a spreadsheet labeled [NPT Scenic Resource Spreadsheet.xlsx]. This document was produced to all parties in response to Historical NGOs' Data Request No. 1-07. In addition, Attachment A identifies 3D CAD files. These files too were provided to all parties via the Sharefile site. Finally, Attachment A identifies a number of GIS databases and/or files. These files were provided to the parties in response to the Environmental NGOs' Data Request No. 1-23. A good deal of the information given to CFP as part of informal discovery, however, was not responsive to a formal data request.

11. SPNHF's analysis glides over the fundamental difference between a formal data request for a specific document made at a technical session, or otherwise through standard discovery, and the general request for all documents produced informally to CFP that constituted SPNHF's October 6, 2016 motion. Furthermore, SPNHF's generalized claim on rehearing fails to meet the legal requirement that a motion for rehearing identify each error, describe how each error is unlawful, unjust or unreasonable, and state concisely the proposed findings, reasoning or conclusion. Site 202.29(d). SPNHF, for instance, states "[t]he documents at issue are directly responsive to data requests the Forest Society and others propounded in May and June of this year" but does not identify any particular document or data request supporting this claim.

12. In summary, SPNHF does not provide a good reason for rehearing by showing that the original decision was unlawful or unreasonable; rather, it simply asks for a different result. Thus, inasmuch as the Presiding Officer did not overlook or mistakenly conceive anything in his original decision, the Motion for Rehearing should be denied.

WHEREFORE, the Applicants respectfully request that the Presiding Officer:

- a. Deny SPNHF's Motion for Rehearing; and
- b. Grant such further relief as it deems appropriate.

Respectfully submitted,

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

By Their Attorneys,
McLANE MIDDLETON,
PROFESSIONAL ASSOCIATION

Dated: December 6, 2016

By: 

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Certificate of Service

I hereby certify that on the 6th day of December, 2016 the foregoing Objection was electronically served upon the SEC Distribution List and an original and one copy will be hand delivered to the NH Site Evaluation Committee.


Thomas B. Getz