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December 9, 2016

By E-Mail & U.S. Mail

Pamela G. Monroe, Administrator
New Hampshire Site Evaluation Committee
21 South Fruit Street, Suite 10
Concord, NH 03301-2429
pamela.monroe@sec.nh.gov

Re: Docket No. 2015-06 – Joint Application of Northern Pass Transmission, LLC and Public Service Company of New Hampshire d/b/a Eversource Energy for a Certificate of Site and Facility

Dear Ms. Monroe:

Enclosed for filing in the above-captioned proceeding is Counsel for the Public's Objection to the Applicants' Motion to Strike Certain Pre-Filed Testimony.

Copies of the enclosure have been forwarded via e-mail to all parties listed on the attached Distribution List.

Thank you.

Sincerely,



Thomas J. Pappas

TJP/scm - 2643275_1

Enclosure

cc: Peter C.L. Roth, Esq.
Elijah J. Emerson, Esq.
Distribution List via e-mail/U.S. Mail

**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 a Certificate of Site and Facility

**COUNSEL FOR THE PUBLIC'S OBJECTION TO APPLICANTS'
MOTION TO STRIKE CERTAIN PRE-FILED TESTIMONY**

Counsel for the Public, by his attorneys, the Office of the Attorney General and Primmer
Piper Eggleston & Cramer PC, hereby objects to the Applicants' Motion to Strike Certain Pre-
filed Testimony (the "Motion to Strike") and in support states as follows:

1. On December 2, 2016, Northern Pass Transmission, LLC and Public Service
Company of New Hampshire d/b/a Eversource Energy (collectively, the "Applicants"), filed
their Motion to Strike.

2. The Applicants chiefly argue that certain pre-filed testimony should be struck be-
cause the witnesses are not parties to the proceeding.

3. In support of that argument, Applicants reference Site 202.22(b) of the SEC rules
and emphasize the word "parties" in that rule to claim that the rule limits pre-filed testimony to
testimony by parties only. *See* Motion to Strike at 2 (citing but not quoting N. H. ADMIN. R., Site
202.22(b)).

4. Site 202.22, titled "Prefiled Testimony," provides that "(a) An applicant's prefiled
testimony and exhibits shall be filed with its application [and] (b) Prefiled testimony and exhibits
from other parties or rebuttal testimony from the applicant or any other party shall be filed as de-
termined by a procedural order issued by the presiding officer." N. H. ADMIN. R., Site 202.22(b).
Although Site 202.22 uses the word "parties," and provides the procedure by which non-
applicant parties may file "testimony and exhibits," there is no limitation provided by that rule

that would restrict the testimony filed by “other parties” to only testimony of the parties themselves. *See id.*

5. The rule permits non-applicant parties to submit relevant “testimony and exhibits,” just as it permits applicants to submit relevant “prefiled testimony and exhibits.” *Id.* Site 202.24 requires the SEC to admit “all” documentary testimony and exhibits “unless excluded by the presiding officer as irrelevant, immaterial, unduly repetitious or legally privileged.” N. H. ADMIN. R., Site 202.24(b), (d); RSA 541-A:33, II.

6. Additionally, Site 202.24(a) specifically mandates that the “[r]eceipt of evidence shall be governed by the provisions of RSA 541-A:33.” N. H. ADMIN. R., Site 202.24(a). RSA 541-A:33, I provides that “[a]ll testimony of parties *and witnesses* shall be made under oath or affirmation administered by the presiding officer.” RSA 541-A:33, I (emphasis added).

7. Accordingly, Site 202.24(a) and RSA 541-A:33, I thereby provide specifically for the receipt of witness testimony evidence that is not also “testimony of parties.” *See also* N. H. ADMIN. R., Puc. 203.23(b) (“All testimony of parties *and witnesses, including any prefiled written testimony adopted by a witness at hearing*, shall be made under oath or affirmation.”). Applicants’ assertion to the contrary is simply not supported by a reasonable interpretation of the rules, and accordingly the listed pre-filed testimony should not be struck on that basis.

8. Applicants specifically challenge the pre-filed testimony of various witnesses submitted by the Society for the Protection of New Hampshire Forests (“SPNHF”). In addition to the party witness objection discussed above, the Applicants further assert that the SPNHF testimonies should be struck because they claim those testimonies “do not comport with SPNHF’s intervention.” Motion to Strike at 2. This is incorrect on two counts.

9. First, it ignores the fact that SPNHF was granted intervenor status as a “full party.” *See* Order on Petitions to Intervene, Dkt. 2015-06, dated March 18, 2016, at 31. Site

202.11(d) specifically provides that the SEC may limit an “intervenor’s participation to designated issues in which the intervenor has a particular interest demonstrated by the petition,” but the Commission did not limit SPNHF in any manner. *See* N. H. ADMIN. R., Site 202.11(d); *see also* RSA 541-A:32, III(a). Accordingly, SPNHF is not limited in the issues to which it may participate, even if those issues are not closely related to the interests it sought to protect with its intervention.

10. Second, the SPNHF testimonies do in fact fully comport with SPNHF’s intervention interests. As the Order on Petitions to Intervene explained, SPNHF “is a private, non-profit membership organization dedicated to protecting the State’s most important landscapes while promoting the wise use of its renewable natural resources.” Order on Petitions to Intervene, Dkt. 2015-06, dated March 18, 2016 at 30. That alone is a sufficiently broad interest to encompass the SPNHF Testimonies.

11. Additionally, while the Applicants focus on SPNHF’s ownership of properties in an attempt to constrict its interests in these proceedings to those properties, the Order makes clear that the reference to SPNHF’s ownership of properties was simply a basis to reject the Applicants’ attempt to combine SPNHF with other non-governmental organization intervenors into a single group. *See* Order on Petitions to Intervene, Dkt. 2015-06, dated March 18, 2016 at 31. That factor was not the sole basis for intervention, it was simply a basis for distinguishing SPNHF from other non-governmental organization intervenors. *Id.*¹

12. Applicants also specifically challenge the pre-filed testimony of Peter Scott, one of the City of Concord’s witnesses. As with the Applicants’ challenge to pre-filed testimony

¹ In fact, the Order further specifically noted that SPNHF had “identified 13 pieces of real estate owned by different parties in which the Forest Society owns a conservation easement and which will be allegedly affected by the Project.” *Id.*

submitted by SPNHF, the Applicants ignore the fact that the City of Concord was granted intervenor status as a full party. The City of Concord can submit pre-filed testimony of any witness, regardless of whether that witness is an employee of the City of Concord. Moreover, Mr. Scott's testimony comports with the City of Concord's intervention interests.

WHEREFORE, Counsel for the Public respectfully requests that the SEC:

- A. Deny the Motion to Strike Certain Pre-Filed Testimony; and
- B. Grant such other and further relief as may be just.

Respectfully submitted,

COUNSEL FOR THE PUBLIC,

By his attorneys,



Dated: December 9, 2016 By: Peter C.L. Roth, Senior Assistant Attorney General
Environmental Protection Bureau
33 Capitol Street
Concord, NH 03301-6397
(603) 271-3679

PRIMMER PIPER EGGLESTON & CRAMER PC,



Dated: December 9, 2016 By: Thomas J. Pappas, Esq. (N.H. Bar No. 4111)
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-and-

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing OBJECTION TO APPLICANTS' MOTION TO STRIKE CERTAIN PRE-FILED TESTIMONY has this day been forwarded via e-mail to persons named on the Distribution List of this docket.

Dated: December 9, 2016

By: 
Thomas J. Pappas, Esq. (N.H. Bar No. 4111)