

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

**OBJECTION OF THE SOCIETY FOR THE PROTECTION OF NEW HAMPSHIRE
FORESTS TO APPLICANTS'
MOTION TO STRIKE CERTAIN PRE-FILED TESTIMONY**

The Society for the Protection of New Hampshire Forests (the “Forest Society”), by and through its attorneys, BCM Environmental & Land Law, PLLC, objects to the portions of Northern Pass Transmission LLC’s and Public Service Company of New Hampshire d/b/a Eversource Energy’s (collectively, the “Applicants”) Motion to Strike Certain Pre-filed Testimony (“Motion to Strike”) that concern the pre-filed testimony of Philip Bilodeau,¹ Donald and Diane Bilodeau, Dawn S. Bilodeau, Dana Bilodeau, Lore Moran Dodge, Lise Moran, Dean Wilber, Kelly O’Brien Normandeau, and John Conkling, and states as follows:

BACKGROUND

1. The Forest Society submitted pre-filed testimony containing statements from the following individuals Donald and Diane Bilodeau, Dawn S. Bilodeau, Dana Bilodeau, Lore Moran Dodge, Lise Moran, Dean Wilber, Kelly O’Brien Normandeau, and John Conkling.
2. The Applicants’ filed a Motion to Strike these testimonies on December 2, 2016.

¹ The Forest Society and the Applicants agree that the Motion to Strike’s reference to testimony of Philip Bilodeau is in error. The Forest Society has not offered Philip Bilodeau as a witness.

SUMMARY OF APPLICANTS' ARGUMENT

3. The Applicants' Motion to Strike the above-described Forest Society's pre-filed testimony as improper consists of two arguments.

4. First, Applicants argue that neither the Site Evaluation Committee ("SEC" or "Committee") "rules . . . nor the most recent procedural schedule contemplate or allow for the filing of pre-filed testimony by non-parties." *Motion to Strike* at ¶ 2. Therefore, the Applicants argue, "[w]hile these individuals may file public comment with regard to their properties, they are not parties and are not representatives of the Forest Society." *Id.* at ¶ 6.

5. Second, Applicants argue the testimonies are improper because they do not bear some "reasonable connection" to the Forest Society's basis for intervention, asserting the Forest Society testimonies are "not materially different from the pre-filed testimony filed by the dozens of abutting and non-abutting property owners who properly petitioned and were granted intervention here." *Id.* at ¶¶ 5-6.

6. The Applicants conclude their argument with the following unsupported statement: "Because their testimony will not assist the Committee in making its determination, the pre-filed testimony of these individuals should be struck." *Id.* at ¶ 6.

7. For the following reasons, the Motion to Strike should be denied.

ARGUMENT

I. The Motion to Strike Should be Denied Because the Pre-filed Testimony is Permitted under the SEC Rules, RSA 541-A, the Order Granting Forest Society Intervention, and the Latest Procedural Order

8. The Forest Society incorporates by reference supporting arguments made by other parties, including the City of Concord and the Counsel for the Public.

A. The SEC Rules and RSA 541-A do not restrict the Forest Society from submitting pre-filed testimony containing statements from persons or entities other than the Forest Society or its agents or representatives.

9. First, the SEC rules do not restrict the Forest Society, an intervening full party in this docket, from submitting pre-filed testimony containing statements from persons or entities other than the Forest Society or its agents or representatives.

10. Applicants cite Site Rule 202.22(b) to support their first argument. Site Rule 202.22 concerns the content of pre-filed testimony, but it does not restrict whom may be the author of pre-filed testimony. The rule merely provides that non-applicant parties may submit pre-filed testimony as determined by a procedural order issued by the presiding officer. *Id.* 202.22(b).²

11. The Applicants are mistaken that the testimony offered by the Forest Society is testimony filed “by” non-parties. *Motion to Strike* at ¶ 2. These are testimonies filed by the Forest Society to illustrate the adverse effects of the proposed project and to support its position that the SEC should deny the application.

12. To interpret the rules as the Applicants assert would prohibit parties from submitting the testimony of non-parties and exhibits authored by non-parties. This is inconsistent with SEC practice and civil litigation practice.

13. The Applicants’ position is also contrary to the language of RSA 541-A:33, I, which provides that “[a]ll testimony of parties *and witnesses* shall be made under oath or affirmation administered by the presiding officer.” (Emphasis added.) This statute clearly

² The Applicants also support their first argument by citing Site 202.06(a), quoting the portion that reads, “[a]ll correspondence, pleadings, motions, petitions or other documents filed under these rules shall . . . [b]e typewritten or clearly printed . . .” Site 202.06(a). The relevance of this Rule for purposes of the Motion to Strike is unclear, as there appears to be no dispute that the testimonies in question were typewritten.

allows an intervenor to submit pre-filed testimony of representatives of the intervenor as well as other witnesses offered by the intervenor.

14. RSA 541-A:33, I, further provides that “evidence may be received in written form if the interests of the parties will not thereby be prejudiced substantially.” The Applicants will not be prejudiced by the introduction of the subject pre-filed testimony and have not argued that they would be.

B. The March 28, 2016, Order granting the Forest Society intervention in this docket does not restrict the Forest Society from submitting pre-filed testimony containing statements from persons or entities other than the Forest Society or its agents or representatives.

15. The SEC’s Order granting the Forest Society’s Petition to Intervene did not restrict the scope of Forest Society’s intervention such that Forest Society is prohibited from submitting pre-filed testimony containing statements from persons or entities other than Forest Society or its agents or representatives.

16. The Committee did not limit the Forest Society’s participation. It concluded, “[t]he Forest Society may participate *as full party* in these proceedings.” *Order on Motions to Intervene* at 31 Docket 2015-06, March 18, 2016 (emphasis added).

17. The Committee properly recognized that the Forest Society’s interests in this docket go beyond the specific property interests held by the Forest Society, stating that the Forest Society “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.” *Id.* at 30.

18. The Applicants’ argument that the Committee’s statement that the Forest Society clearly has an interest because of its affected property holdings means the Forest Society’s intervention is limited misinterprets the Order. Applicants are attempting to twist the

Committee’s explanation for why Forest Society, unlike other non-governmental groups, is entitled to full party status into a limit on Forest Society’s intervention status. Such an interpretation would contradict the Committee’s subsequent clear conclusion that Forest Society may intervene as a “full party.”

C. The Committee’s October 28, 2016, Order on Requests to Amend Procedural Order does not restrict Forest Society from submitting pre-filed testimony containing statements from persons or entities other than the Forest Society or its agents or representatives.

19. Finally, the Committee’s October 28, 2016, Order on Requests to Amend Procedural Order does not restrict the Forest Society from submitting pre-filed testimony containing oral statements from persons or entities other than the Forest Society or its agents or representatives.

20. The Order simply provides that the Forest Society may submit pre-filed testimony. This Order does not in any way limit the scope of testimony that may be offered

D. The testimony should not be excluded because it is not irrelevant, immaterial, unduly repetitious or legally privileged.

21. The rules provide limits and tools for ensuring the material submitted is relevant, material, and not unduly repetitious or otherwise privileged. “All documents, materials and objects offered as exhibits shall be admitted into evidence, unless excluded by the presiding officer as irrelevant, immaterial, unduly repetitious or legally privileged.” Site 202.24.

22. Here, the Committee should not exclude the testimony of the above-named individuals. These individuals’ accounts are relevant for several different reasons.

23. Some individuals, including Donald and Diane Bilodeau, have a Forest Society Easement on their property. This is directly relevant to the Forest Society’s property interests that will be directly impacted by the Project.

24. Finally, all the individuals offer statements that, like a fact witness in a civil trial, help illustrate the Forest Society's arguments regarding the adverse-effect criteria of RSA 162-H:16, IV(d); the orderly development criterion of RSA 162-H:16, IV(c); and the public interest standard of RSA 162-H:16, IV(e). *See* RSA 162-H:16, IV: "After due consideration of *all relevant information* regarding the potential siting or routes of a proposed energy facility, including potential significant impacts and benefits, the site evaluation committee shall determine if issuance of a certificate will serve the objectives of this chapter." (Emphasis added.)

25. The subject pre-filed testimony is also not immaterial or unduly repetitious, as each witness has unique interests that would be affected by Project that are consistent with the Forest Society's interests and arguments.

26. The Applicants argue that "the Forest Society Testimonies are not materially different from the pre-filed testimony filed by the dozens of abutting and non-abutting property owners who properly petitioned and were granted intervenor status." *Motion to Strike* at ¶ 6. As previously stated, each witness's and intervenor's interests are unique, and not all property owners are able to intervene in this docket. For example, some of the Forest Society's witnesses do not reside in New Hampshire year-round, and others cannot take the time away from their businesses (that would be impacted by the Project) or personal or familial obligations to participate in the time-consuming process as a party.

27. Furthermore, the rules envision questioning by Committee members and cross-examination by the parties or their representatives as the primary means for evaluating the sufficiency and credibility of the evidence. Site 202.21. Striking this evidence would deprive the

Committee and the parties of this opportunity, and of the Forest Society to protect its interests as a full party.

CONCLUSION

28. The witnesses offered by the Forest Society have offered testimony concerning the adverse impacts of the proposed project, in complete accord with all applicable laws and orders.

WHEREFORE, the Forest Society respectfully requests that the Committee deny Applicants' Motion to Strike Certain Pre-filed Testimony as it pertains to the pre-filed testimony of Donald and Diane Bilodeau, Dawn S. Bilodeau, Dana Bilodeau, Lore Moran Dodge, Lise Moran, Dean Wilber, Kelly O'Brien Normandeau, and John Conkling.

Respectfully Submitted,

**SOCIETY FOR THE PROTECTION OF
NEW HAMPSHIRE FORESTS**

By its Attorneys,
BCM Environmental & Land Law, PLLC



Date: December 12, 2016

By: _____

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CERTIFICATE OF SERVICE

I hereby certify that on this day, December 12, 2016, a copy of the foregoing Objection was sent by electronic mail to persons named on the Service List of this docket.

A handwritten signature in blue ink, appearing to read "Amy Manzelli". The signature is fluid and cursive, with the first name "Amy" and the last name "Manzelli" clearly distinguishable.

Amy Manzelli, Esq.