

**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

January 26, 2017

**Via Electronic Mail & Hand Delivery**

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

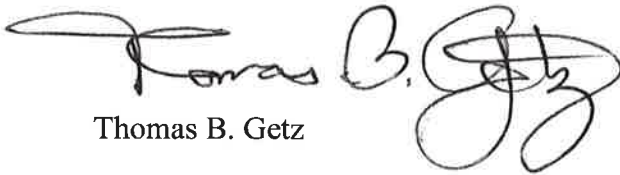
**Re: Site Evaluation Committee Docket No. 2015-06  
Joint Application of Northern Pass Transmission LLC and Public Service Company  
of New Hampshire d/b/a Eversource Energy (the "Applicants") for a Certificate of  
Site and Facility  
Objection to Lagaspence Motion to Postpone Merit Hearing**

Dear Ms. Monroe:

Enclosed for filing in the above-captioned docket, please find an original and one copy of the Applicants' Objection to Kevin Spencer and Mark Lagasse d/b/a Lagaspence Realty Motion to Postpone Merit Hearing.

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 KEVIN SPENCER AND MARK LAGASSE D/B/A  
LAGASPENCE REALTY MOTION TO POSTPONE MERIT HEARING**

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 Kevin Spencer and Mark Lagasse d/b/a Lagaspence Realty’s (“Lagaspence” or “Petitioner”) Motion to Postpone the Merit Hearing on the Joint Application for Certificate of Site and Facility (“Motion”). The Motion is procedurally defective and substantively without merit.

**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 SEC accepted the Application pursuant to RSA 162-H:7, VI on December 18, 2015.

2. Concurrently, Public Service Company of New Hampshire d/b/a Eversource Energy (“PSNH”) filed a Petition for Approval of Lease Agreement between PSNH and NPT (the “Lease Docket”) with the New Hampshire Public Utilities Commission (“PUC”). On February 9, 2016, the Petitioner was granted intervention in the Lease Docket.

3. On August 4, 2016, the Petitioner filed a lawsuit in the United States District Court, District of New Hampshire asking the court for declaratory relief asserting that the

easement burdening their property does not permit the construction of Northern Pass and that the use by Northern Pass will be unreasonable.

4. On January 17, 2017, the Petitioner filed the Motion requesting that the Site Evaluation Committee (“SEC” or “Committee”) issue an order postponing the scheduled merit hearing “until such time as Applicants’ claim of property right to build the Northern Pass has been finally adjudicated by the Courts, including any appeals.” Motion at 1.

## **II. Discussion**

5. As a threshold matter, the Motion is procedurally improper because the Petitioner did not seek concurrence from the parties on the relief sought. Site 202.14(d) provides: “The moving party shall make a good faith effort to obtain concurrence with the relief sought from other parties, if the relief sought *involves a postponement or extension of time.*” (Emphasis added.) In addition, Site 202.16(b) provides: “The party requesting postponement shall make a good faith attempt to seek the concurrence of the other parties with the request.” Both Site 202.14(d) and Site 202.16(b) expressly require the Petitioner to seek concurrence among the parties prior to filing the Motion.

6. The Presiding Officer’s June 23, 2016 Order on Pending Motions and Procedural Order, at p. 15, also requires more generally that: “Parties filing motions shall make a good faith effort to determine whether other parties assent to, or oppose, the relief sought. The result of such efforts shall be reported in the body of the motion.” In this instance, Petitioner has obligations by rule and by order to seek concurrence from the parties because the Motion involves a request for postponement of the procedural schedule. Petitioners did not seek concurrence, therefore, the motion is procedurally ineffective.

7. Furthermore, the Petitioner has not demonstrated good cause pursuant to Site 202.16 (c) that its request for postponement (which, because any final resolution of property rights likely would take months, amounts to a motion under RSA 162-H:14 to suspend deliberations beyond September 30, 2017) should be granted. Site 202.16 (c) provides that the Committee “[s]hall grant a request for postponement of a hearing if it finds that to do so would promote the orderly and efficient conduct of the proceeding.” The Petitioner has not demonstrated that postponement of the hearing will promote the orderly and efficient conduct of the proceedings. To the contrary, postponement of the final hearings is unnecessary and would needlessly delay the hearings, and could ultimately lead to a suspension of deliberations without a showing that the public interest required it.

8. The Petitioner argues that the Applicants have not met the requirements of RSA 162-H:7 and Site 301.03(c) (6) a, and that they cannot do so “[u]ntil the Joint Applicants establish the right to construct the Northern Pass ... in a court.” *Id.* The Petitioner’s reliance on RSA 162-H:7 and Site 301.03(c), which concern acceptance of an Application, is misplaced.

9. As noted above, the SEC accepted the Application pursuant to RSA 162-H:7, VI, on December 18, 2015, after finding it complete. It found, in relevant part, that the “Application contains information identifying the Applicant’s relationship to each section of the route. It identifies those areas owned in fee, those areas to be leased, and those areas in which the Applicant claims a statutory authority to construct in a public road way pursuant to RSA 231:160.” The Petitioner essentially seeks to re-litigate the Committee’s acceptance of the Application, which is a closed matter as pointed out in the Presiding Officer’s Order on Motions to Compel, at p. 15, where he found that it was an “historical fact” that the Subcommittee had

already determined that the Application contained sufficient information. The Motion is thus an extremely late-filed motion for rehearing of the Subcommittee's determination of completeness.

10. Nevertheless, the Petitioner attempts to bootstrap a rule relative to acceptance as a basis for establishing a separate, additional obligation upon the Applicants that must be met "in a court of law" prior to the commencement of adjudicatory hearings, which is an improper reading of SEC rules. The claim that the adjudication of property rights must be settled in the courts prior to the commencement of adjudicatory hearings confuses fundamental differences between the roles of administrative bodies and the courts. An example of that distinction was addressed by the PUC in the Lease Docket, where it concluded at p. 6 of its April 15, 2016 Prehearing Conference Order Granting and Denying Petitions to Intervene and Denying Motion to Dismiss that: "Property owners who wish a determination of their rights in the easements on their lands with respect to Eversource and NPT should seek redress in the courts."

11. The Petitioner argues that the currently scheduled hearing cannot proceed until there has been a judicial determination that PSNH has the legal right to lease its easements to NPT. Moreover, the Motion, at p. 10, asserts that the filing of a lawsuit challenging the Applicants' right to construct the Project "[p]revents the Committee from moving forward on the Joint Application for Certificate of Site and Facility." With respect to the former, the Petitioner provides no reference or citation for its bald assertion and, with respect to the latter, it points to no injunction or stay by any court that would prevent the Subcommittee from moving forward.

**III. Conclusion**

12. The Petitioner correctly points out in its Motion that particular disputes concerning property rights are legal questions that must be decided by the courts. The Petitioner, however, incorrectly argues at p. 10 of its Motion that the SEC hearings "cannot move forward

without the required judicial determination that PSNH has the legal rights to lease the easements to NPT.” The SEC’s exercise of its authority to grant or deny a certificate for site and facility pursuant to RSA 162-H:16, IV does not require a decision by the courts regarding the Petitioner’s property rights.

13. A postponement would not promote the orderly and efficient conduct of the proceedings. Instead, a postponement would, contrary to RSA 162-H:1, unduly delay the construction of a new energy facility and undermine the timely consideration of the environmental consequences of the Project. Finally, this is simply not the forum for the Petitioner to pursue directly, or indirectly by delay, whatever property interest claim it may have.

WHEREFORE, the Applicants respectfully request that the Presiding Officer:

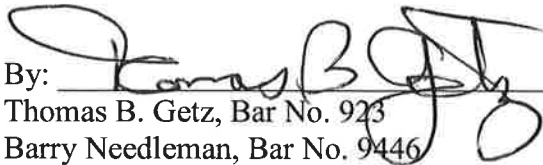
- a. Deny Petitioner’s Motion and
- b. Grant such further relief as it deems appropriate.

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: January 26, 2017

By:   
Thomas B. Getz, Bar No. 923  
Barry Needleman, Bar No. 9446  
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 26th of January, 2017 the foregoing Objection was electronically served upon the SEC Distribution List and the original and one copy will be hand delivered to the NH Site Evaluation Committee.

  
Thomas B. Getz