

**THE 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 OF THE SOCIETY FOR THE PROTECTION OF NEW HAMPSHIRE
FORESTS TO APPLICANTS' MOTION TO STRIKE PRE-FILED TESTIMONY OF
ELMER AND CLAIRE LUPTON AND ERIC AND MARGARET JONES**

The Society for the Protection of New Hampshire Forests (the "Forest Society"), by and through its attorneys, BCM Environmental & Land Law, PLLC, respectfully requests that the SEC deny Northern Pass Transmission LLC's and Public Service Company of New Hampshire d/b/a Eversource Energy's (collectively the "Applicants") Motion to Strike Pre-filed Testimony of Elmer and Claire Lupton (collectively the "Luptons") and Eric and Margaret Jones (collectively the "Joneses") that was filed on January 30, 2017. In support of this Objection, the Forest Society states as follows:

1. Applicants move to strike the pre-filed testimony of Elmer and Clair Lupton and Eric and Margaret Jones for failing to appear, respectively, at the technical sessions held on January 23, 2017, and January 26, 2017, without good cause.

2. In summary, Applicants argue the testimonies should be stricken because the Luptons and the Joneses failed to comply with the January 10, 2017, and January 20, 2017, procedural orders scheduling the relevant technical sessions, and this failure interferes with the orderly and prompt conduct of these proceedings to the prejudice of the Applicants.

3. While the Luptons' and the Joneses' failure to appear at the technical sessions may have inconvenienced parties that had prepared questions for the Luptons and the Joneses, the Applicants' position that the remedy for such failure is to strike the testimony of the

Luptons and the Joneses lacks sufficient merit and would undermine the purpose of these technical sessions.

4. First, the Motion lacks merit because neither the SEC Rules nor the relevant orders provide that a witness's testimony will be stricken if that witness fails to appear at a technical session without notice or prior explanation of good cause.

5. The rules merely provide that technical sessions are one of several tools of discovery the Subcommittee may authorize. *See* N.H. CODE ADMIN. R. ANN. Site 202.12(1).

6. The January 10, 2017, and January 20, 2017, orders setting and revising the technical sessions agenda provide for a limited number of motions a party may file to raise disputes regarding the technical sessions: "To the extent that any party is aggrieved by the handling of any inquiry, question or document request, that party shall file an appropriate motion for discovery, objection to discovery, or motion for a protective order." *Technical Session Agenda*, Docket No. 2015-06, 5 (Jan. 10, 2017); *Revised Technical Session Agenda*, Docket No. 2015-06, 6 (Jan. 20, 2017).

7. A Motion to Strike the testimony of a witness that did not attend a technical session as scheduled is not anticipated by the rules or the relevant orders of the Administrator.

8. As such, striking the testimonies would be unfair and prejudicial because neither the Luptons nor the Joneses had any reason to anticipate that their failure to attend their technical sessions could result in the exclusion of their testimony.

9. Second, the Motion should be denied because striking testimony of *pro se* intervenors for failing to attend one technical session would stand in stark contrast to the purpose of the technical sessions.

10. "The purpose of the technical session is to exchange information." *Technical Session Agenda*, Docket No. 2015-06, 4 (Jan. 10, 2017); *Revised Technical Session Agenda*,

Docket No. 2015-06, 5 (Jan. 20, 2017).

11. It is not meant to be an adversarial or argumentative forum. *See id.* (“Inquiries shall . . . not be argumentative.”) Rather, it is a form of “informal discovery . . . [the purpose of which] is for the parties and their experts to involve in a mutual dialog in order to get a better understanding of their testimony.” *Order on Motions to Transcribe Technical Session*, Docket No. 2015-06, 2 (Aug. 29, 2016).

12. For example, in ensuring the technical sessions possess an informal atmosphere of mutual dialogue, the Subcommittee decided not to record and transcribe the technical sessions because, it reasoned, recording and transcribing the sessions would lead to disputes and a legalistic atmosphere that would disadvantage the many unrepresented parties intervening in this matter. *See Counsel for the Public’s Objection to Applicants’ Partially Assented-to Motion to Have Technical Sessions Transcribed*, Docket No. 2015-06, ¶¶ 1-6; *Order on Motions to Transcribe Technical Session*, Docket No. 2015-06, 2 (Aug. 29, 2016) (concluding the Counsel for the Public “had the better argument”).

13. Similarly, granting Applicants’ Motion to Strike would undermine this informal and information-sharing purpose and may chill further participation of unrepresented intervenors.

14. Rather than resort to such procedural tactics more appropriately suited for the litigation setting, the Applicants should use the tools for resolving discovery disputes provided for in the Administrator’s procedural orders. Surely Applicants can get the information they seek through these methods, by submitting data requests, or by requesting the Administrator reschedule the appearances of the Luptons and the Joneses.

WHEREFORE, the Forest Society respectfully asks that the Subcommittee deny the Applicants' Motion to Compel and grant such other and further relief as may be reasonable and just.

Respectfully Submitted,

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

By its Attorneys,

BCM Environmental & Land Law, PLLC



Date: February 8, 2017

By: _____

Amy Manzelli, Esq. (17128)
Jason Reimers, Esq. (17309)
Elizabeth Boepple, Esq. (20218)
Stephen Wagner, Esq. (268362)
3 Maple Street
Concord, NH 03301
(603) 225-2585
manzelli@nhlandlaw.com
reimers@nhlandlaw.com
boepple@nhlandlaw.com
wagner@nhlandlaw.com

CERTIFICATE OF SERVICE

I hereby certify that on this day, February 8, 2017, a copy of the foregoing Objection was sent by electronic mail to persons named on the Service List of this docket.



Amy Manzelli, Esq.