

**THE STATE OF NEW HAMPSHIRE
SITE EVALUATION COMMITTEE**

SEC 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**

**RESPONSE OF THE SOCIETY FOR THE PROTECTION
OF NEW HAMPSHIRE FORESTS TO APPLICANTS' MOTION TO AMEND
PROCEDURAL SCHEDULE, MUNICIPAL GROUPS' MOTION TO EXTEND
DEADLINES, AND COUNSEL FOR THE PUBLIC'S RESPONSE TO SAID
MOTIONS**

The Society for the Protection of New Hampshire Forests (the "Forest Society"), by and through its attorneys, BCM Environmental & Land Law, PLLC, respectfully responds to the following motions and responses concerning the procedural schedule and upcoming deadlines: Applicants' Motion to Amend Procedural Schedule for Supplemental Testimony and Related Deadlines; Municipal Groups 1 South, 2, 3 South, 3 North's Motion to Extend Deadlines for Supplemental Prefiled Testimony; Counsel for the Public's Response to Municipal Groups' Motion to Extend Deadlines and the Applicants' Motion to Amend Procedural Schedule (the "Motions" and "Response"). In doing so, the Forest Society proposes a procedural schedule that both ensures the process concludes on September 30, 2017. In support, it states as follows:

BACKGROUND

1. On October 19, 2015, Northern Pass Transmission, LLC and Public Service Company of New Hampshire d/b/a Eversource Energy (collectively, the "Applicants"), submitted a Joint Application for a Certificate of Site and Facility (the "Application") to the New Hampshire Site Evaluation Committee (the "Committee" or "SEC") to construct a 192-mile transmission line to run through New Hampshire from the Canadian border in Pittsburg to Deerfield (the "Project").

SUMMARY OF EVOLUTION OF PROCEDURAL SCHEDULE

2. Given the scale and scope of the project, the complexity of the application, the extensive public participation, as well as weather events, there are numerous procedural orders, technical session agendas, and revisions of said orders and agenda, setting out and revising the schedule of discovery and adjudicatory hearing dates, the most pertinent of which are described in the next paragraphs.

3. First, on June 15, 2016, the Subcommittee issued an order suspending the original, statutory timeframe for issuing a decision on the application because, it stated, the Project was “unprecedented in both size and geographic scope.” Docket No. 2015-06, *Order on Motions to Suspend 7* (Jun. 15, 2016). It ordered that the Subcommittee issue a final Order and Decision on Applicants’ Application for Certificate of Site and Facility by September 30, 2017.

4. Next, on June 23, 2016, the Presiding Officer established the original Procedural Schedule setting forth a discovery schedule which included the following deadlines:

- a. Technical Sessions with Counsel for the Public’s and Intervenors’ witnesses shall be conducted between January 16, 2017, and February 15, 2017;
- b. Supplemental pre-filed testimony from all parties shall be filed by March 15, 2017 (30 days after the conclusion of technical sessions);
- c. Pre-Hearing Motions and Statements of Stipulated Facts shall be filed on or before March 20, 2017 (35 days after the conclusion of technical sessions); and
- d. Final Pre-Hearing Conference to be conducted on or before March 28 and March 29, 2017 (nearly 41 and 42 days after the conclusion of technical sessions).

5. Later in the year, on December 19, 2016, the Presiding Officer issued a Notice of Final Adjudicative Hearings. The Notice provided that there would be 29 days of hearings beginning on April 4, 2017, and ending on July 21, 2017.

6. Recently, on January 26, 2017, the Presiding Officer issued the Order On Counsel For The Public's Motion To Extend Deadline Procedural Schedule. This Order is the most recent recitation of the procedural schedule and sets forth almost the same deadlines noted above for the February and March timeframe. The only difference in those is that the January 26, 2017 order noted that the deadline for the conclusion of technical sessions had extended from February 15, 2017 to February 28, 2017.

7. Most recently, the February 13, 2017 Technical Session Schedule and Order again extended the deadline for the conclusion of technical sessions, this time from February 28, 2017 to March 17, 2017. The Order also noted the "pending motions in this docket requesting changes to the procedural schedule."

PARTIES' PROPOSALS

A. Municipal Groups

8. On February 3, 2017, the Municipal Intervenor Groups 1 South, 2, 3 South, 3 North (collectively, "the Municipal Groups") stated that these deadlines as presently scheduled do not afford them a meaningful opportunity to participate in his docket by foreclosing them from submitting supplemental testimony, not allowing them sufficient time to file prehearing motions, and allowing them time to adequately prepare for the Prehearing Conference.

9. To address these concerns, with the intent "to keep the within motion as narrow as possible and avoid postponement or rescheduling of the adjudicative sessions," the Municipal Groups propose extending the Deadlines to allow the number of days between the Deadlines and

the end of the Technical sessions anticipated by the Procedural Order and the Notice of Final Adjudicative Hearings: 15 days from the end of the Technical Session to the deadline to file supplemental testimony; 20 days from the end of the technical sessions to the deadline to file prehearing motions or stipulations of fact; and 28 days from the end of the technical session to the Prehearing Conference. Docket No. 2015-06, *Municipal Groups 1 South, 2, 3 South, 3 North's Motion to Extend Deadline for Supplemental Prefiled Testimony 2-3* (Feb. 3, 2017).

10. The Forest Society continues to support this motion and incorporates it into the schedule proposed herein.

B. Applicants

11. The Applicants propose a two-track approach, whereby the topics of Route Selection, Technical and Managerial Capabilities, Financial Capability, System Stability, and Public Health & Safety are included in Track 1 and the topics of Orderly Development, Aesthetics, Natural Environment/Resources, Historic Resources, and Economic Benefits are included in Track 2.

12. Under their proposal, the Subcommittee would establish separate dates for the filing of prehearing motions, stipulations, and pre-hearing conferences for each track, allowing one Track to enter into the adjudicate hearing stage while the pre-hearing deadlines remain pending in the other track.

13. The Applicants' stated intent is to create an efficient and orderly schedule that does not push back the Adjudicatory Hearing dates, but allows parties to have sufficient time after the completions of Technical Sessions to prepare supplemental testimony. *See* Docket No. 2015-06, *Motion to Amend Procedural Schedule for Supplemental Testimony and Related Deadlines 4* (Feb. 6, 2017).

C. Counsel for the Public

14. Finally, Counsel for the Public states that the Applicant's bifurcated approach is reasonable, but offers an adjusted proposed schedule that, it argues, takes into account the lack of time the present schedule leaves for preparing for evidentiary hearings and takes elements from the Municipal Groups' proposal to "set up an orderly and fair schedule without *undue* delay." Docket No. 2015-06, *Counsel for the Public's Response to Municipal Groups' Motion to Extend Deadlines and Applicants' Motion to Amend Procedural Schedule 4-5* (Feb. 10, 2017).

FOREST SOCIETY'S POSITION

15. The Forest Society's proposed schedule captures the intent of the existing proposals, while maintaining the SEC in the position to meet the September 30, 2017 deadline and without causing the extensive problems to the parties and the SEC that would be occasioned by a bifurcated approach.

16. Most importantly, neither the Applicants' nor the Counsel for the Public's approach is necessary to meet the decision deadline of September 30, 2017.

17. Also, neither approach is acceptable. The statute anticipates an all-inclusive evaluation of the RSA 162-H:16 standards; this is part of the so-called one-stop shopping concept of centralized state permitting. *See* N.H. ADMIN. CODE R. ANN. Site 202.01-202.30. The proposed bifurcation does not allow parties to approach the hearings in an all-inclusive manner with adequate preparation.

18. Following are two illustrations of the problematic nature of the bifurcated proposals.

19. One problem is that some supplemental pre-filed testimony filed for Track 2 will bear on the supplemental prefiled testimony of Track 1 witnesses. However, as proposed, the

benefit of the Track 2 supplemental prefiled testimony will not be had until the midst of the adjudicatory hearing of Track 1. Aside from the violation of due process that this could create, it ignores the practical limitations of parties. One should not reasonably be expected to study and work with Track 2 supplemental prefiled testimony, while at the very same time putting on one's case of Track 1 topics.

20. Another problem presented by the bifurcated approach is that many witnesses speak to many standards and different witnesses' testimonies are related. Witnesses speak to standards in both proposed tracks. For example, it would be impracticable for parties to put on their case with respect to Track 1 only to find out during Track 2 that a particular line of questioning should have been directed at a Track 1 witness.

These and other problems are likely to engender motions that the SEC will be forced to decide in the midst of the adjudicative hearing, jeopardizing meeting the September 30, 2017 deadline.

21. Bifurcating the remainder of the proceeding greatly impacts the parties' ability to adequately prepare and strategize.

22. Therefore, the Forest Society proposes a procedural schedule as follows, incorporating aspects of most of the prior proposals and calling for no change to the current schedule for a written order by September 30, 2017.

PROPOSED SCHEDULE

23. The Forest Society proposes extending the discovery deadlines to reflect the amount of time originally anticipated by the Procedural Order in place at the time the Adjudicative Hearing dates were scheduled in December, which is what the motion of the

Municipalities did. The Forest Society's proposed schedule then adjusts the dates for the adjudicative hearing to account for these extended discovery deadlines.

24. The Forest Society also proposes the Presiding Officer schedule additional adjudicatory hearing dates to bring the total number of adjudicatory hearing days to 40 on the theory that the current amount of days may be insufficient, and that to meet the September 30, 2017 deadline, planning for hearing days should be undertaken sooner rather than later.

25. The Forest Society also proposes adding four days for site visits and days for deliberation into the schedule.

26. As adjusted, the Forest Society believes the original intent of the Procedural Order can be sustained without having to adjust the September 30, 2017, deadline for a final decision.¹ This proposed schedule would also address the Forest Society's due process concerns regarding splitting into two tracks.

27. Attachment A is the January 26, 2017, Order on Counsel for the Public's Motion to Extend Deadlines, with track changes indicating the Forest Society's proposed changes to the remaining schedule for discovery.

28. Attachment B is the December 20, 2016, Revised Notice of Final Adjudicative Hearings, with track changes indicating the Forest Society's proposed changes to the dates for the adjudicative hearings.

29. Attachment C is a clean copy of the Forest Society's proposed procedural order.

WHEREFORE, the Forest Society respectfully asks that the Committee adopt its proposed schedule and grant such other and further relief as may be reasonable and just.

¹ Note that while the original procedural order allowed for 30 days between the end of the technical sessions and the deadline for supplemental prefiled testimony, the Forest Society believes that it may be reasonable and still comport with the intent of the original order to allow for only 15 days. The Forest Society's proposal calls for 15 days.

Respectfully Submitted,

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

By its Attorneys,

BCM Environmental & Land Law, PLLC



Date: February 16, 2017

By: _____

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CERTIFICATE OF SERVICE

I hereby certify that on this day, February 16, 2017, a copy of the foregoing Motion was sent by electronic mail to persons named on the Service List of this docket.



Amy Manzelli, Esq.

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

January 26, 2017

ORDER ON COUNSEL FOR THE PUBLIC'S
MOTION TO EXTEND DEADLINE

[Sections I and II omitted]

III. Procedural Schedule

The discovery schedule is modified as follows:

[Numbers 1 through 9 omitted]

10. Technical Sessions with the Applicant's witnesses addressing issues related to: (i) the Applicant's production pursuant to the Order on Motion to Compel and Order on NEPGA's Motion to Compel; (ii) the underground portion of the Project; (iii) the Applicant's response to the Department of Environmental Services' requests shall be conducted between February 20 and ~~March 17, 2017~~ February 28, 2017.¹
11. Technical Sessions with Counsel for the Public's and Intervenor's witnesses addressing issues related to: (i) market economic issues; (ii) local economic issues; (iii) natural resources; (iv) aesthetics; and (v) the Deerfield Abutter's pre-filed testimony on historic issues shall be conducted between February 20 and ~~March 17, 2017~~ February 28, 2017.
12. A Technical Session with Julia Frayer addressing Ms. Frayer's updated report shall be conducted between ~~February 27 and, if needed, 5 and~~ February 28, 2017.
13. Counsel for the Public's and Intervenor's pre-filed testimony addressing issues related to the stormwater treatment design for the Deerfield Substation, the Franklin Converter Terminal, and Transition Stations #1 and #5 shall be filed on or before February 28, 2017.
14. Supplemental pre-filed- testimony from all parties shall be filed by ~~April 3, 2017~~ March 15, 2017.
15. Pre-Hearing Motions and Statements of Stipulated Facts shall be filed on or before ~~April 7, 2017~~ March 20, 2017.
16. A Final Pre-Hearing Conference shall be conducted on or before ~~April 14 and 15, 2017~~ March 28 and March 29, 2017.

[Order and signature of the Presiding Officer omitted]
[Not all formatting alterations indicated in track changes]

¹ The technical sessions for Applicant's, Counsel for the Public's, and intervenor's' witnesses are addressed in two separate paragraphs to avoid confusion and to clarify the Procedural Order currently in effect.

**STATE OF NEW HAMPSHIRE
SITE EVALUATION COMMITTEE**

Docket No. 2015-06

**Re: 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**

December 20, 2016

REVISED NOTICE OF FINAL ADJUDICATIVE HEARINGS

Final Adjudicative Hearings in this docket are hereby scheduled to begin each day at **9:00 a.m.**, on the following 2017 dates: **April 4, 5, 6, 7, 13, 14,** 17, 18, ~~and 19,~~ and two to three additional dates to be determined by the Presiding Officer; **May 1, 2, 3, 4, 24¹, 25,** ~~and 31,~~ and two to three additional dates to be determined by the Presiding Officer; **June 8, 9, 13, 14, 15, 16, 20, 21, 22, 23,** ~~and 26,~~ and two to three additional dates to be determined by the Presiding Officer; ~~and July 20,~~ ~~and 21,~~ and five to seven additional dates to be determined by the Presiding Officer; and August: one to six dates to be determined by the Presiding Officer. ~~2017.~~ The hearings will be held at 49 Donovan Street, Concord, N.H.

The adjudicative hearings are evidentiary hearings that are open to the public. At the conclusion of the evidentiary portion of the proceeding the Subcommittee may deliberate on the merits of whether to grant or deny a Certificate of Site and Facility.

[Directions to 49 Donovan Street, Concord, NH omitted]
[Order and signature of the Presiding Officer omitted]
[Not all formatting alterations indicated in track changes]

¹ The initial Notice of Final Adjudicative Hearings issues on December 19, 2016, did not include May 24, 2017.

PROPOSED PROCEDURAL SCHEDULE

1. Technical Sessions with the Applicant's witnesses addressing issues related to: (i) the Applicant's production pursuant to the Order on Motion to Compel and Order on NEPGA's Motion to Compel; (ii) the underground portion of the Project; (iii) the Applicant's response to the Department of Environmental Services' requests shall be conducted between February 20 and March 17, 2017.
2. Technical Sessions with Counsel for the Public's and Intervenors' witnesses addressing issues related to: (i) market economic issues; (ii) local economic issues; (iii) natural resources; (iv) aesthetics; and (v) the Deerfield Abutter's pre-filed testimony on historic issues shall be conducted between February 20 and March 17, 2017.
3. A Technical Session with Julia Frayer addressing Ms. Frayer's updated report shall be conducted between February 27 and, if needed, February 28, 2017.
4. Counsel for the Public's and Intervenors' pre-filed testimony addressing issues related to the stormwater treatment design for the Deerfield Substation, the Franklin Converter Terminal, and Transition Stations #1 and #5 shall be filed on or before February 28, 2017.
5. Supplemental pre-filed testimony from all parties shall be filed by April 3, 2017.
6. Pre-Hearing Motions and Statements of Stipulated Facts shall be filed on or before April 7, 2017.
7. A Final Pre-Hearing Conference shall be conducted on or before April 14 and 15, 2017.
8. Adjudicative Hearing:
 - a. April: 17, 18, 19, and two to three additional dates to be determined by the Presiding Officer.
 - a. May: 1, 2, 3, 4, 24, 25, 31, and two to three additional dates to be determined by the Presiding Officer.
 - b. June: 8, 9, 13, 14, 15, 16, 20, 21, 22, 23, 26, and two to three additional dates to be determined by the Presiding Officer.
 - c. July: 20, 21, and five to seven additional dates to be determined by the Presiding Officer.
 - d. August: one to six dates to be determined by the Presiding Officer.
9. Site Visit: four days in July and or August to be determined by the Presiding Officer.
10. Deliberations:
 - a. August: five to ten days to be determined by the Presiding Officer; and
 - b. September: ten to fifteen days to be determined by the Presiding Officer.