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March 2, 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
Motion for Leave to Reply and Reply to Objection to Motion to Compel**

Dear Ms. Monroe:

Enclosed for filing in the above-captioned docket, please find an original and one copy of a
Motion For Leave To Reply And Reply To Objection To Motion To Compel.

Please contact me directly should you have any questions.

Sincerely,

A handwritten signature in black ink that reads "Thomas B. Getz". The signature is stylized with a large, looping "T" and a cursive "G".

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**

**MOTION FOR LEAVE TO REPLY AND REPLY TO
OBJECTION TO MOTION TO COMPEL**

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 respectfully request leave to reply¹ to the February 21, 2017 objection made by the Society for the Protection of New Hampshire Forests (“SPNHF”) to produce documents sought during the technical session held on January 19, 2017. As explained below, SPNHF misconstrues the effect of the Presiding Officer’s February 8, 2017 order denying the Applicants’ general motion to compel with respect to data request 1-2 issued to SPNHF on November 30, 2016.

I. BACKGROUND

1. At the technical session on January 19, 2017, the Applicants questioned Ms. Difley, the President and Chief Executive Officer of SPNHF, regarding the process by which SPNHF went about deciding to oppose Northern Pass, which was prompted by her testimony at p. 8, lines 9-19. Ms. Difley explained that SPNHF has an internal Policy Committee that reviews potential or proposed projects and makes recommendations to the Board of Trustees. In

¹ During an exchange between Chairman Honigberg and Mr. Iacopino at the April 12, 2016 deliberations on pending motions, they addressed the proper procedure when there is no right to reply. They observed that the appropriate practice is to file for leave to reply at the time the reply is filed. See Transcript p. 319. This motion follows that practice.

considering projects, Ms. Difley indicated that the Policy Committee does not have a written set of procedures for evaluating projects but that it looks at issues involved in the project that are of concern to SPNHF. Ms. Difley explained that the Board then convenes and votes on whether to adopt the Policy Committee's recommendation.

2. On January 23, 2017, the SEC Administrator issued the information requests made during the technical session, which sought the basis for Ms. Difley's statements and her underlying testimony. SPNHF provided its response to the Applicants data requests on February 3, 2017, objecting to Data Request Nos. 1, 2, 3 and 4; it produced no responsive documents. The Applicants moved to compel responses on February 8, 2017.

3. Data Request No.1 seeks "information related to SPNHF Policy Committee meetings and its decisions, when it considered its position on the Northern Pass Project as the Project was configured in October 2010, Jun-Jul 2013, and August 2015." Data Request No. 2 seeks the "agenda and minutes of SPNHF Policy Committee meetings where it considered its position on the Northern Pass Project." Data Request No. 3 seeks the production of agendas and meeting minutes for SPNHF Policy Committee meetings where the Policy Committee considered its position on energy projects other than Northern Pass. Data Request No. 4 seeks "communications and reports created by SPNHF regarding proposed energy projects that it considered and the potential effects of those projects on SPNHF resources."

II. DISCUSSION

4. The Applicants seek leave to reply in order to address potential confusion that may result from the overlap in the timing of the Presiding Officer's resolution of the dispute over the general data request they made on November 30, 2016, and the current dispute about the specific requests they made at the recent technical session. The Applicants believe that allowing

the reply will clarify the issues, serve the interests of justice, and not impair the orderly conduct of the proceeding.

5. On February 8, 2017, the Presiding Officer issued an Order Denying Applicants' Motion to Compel Response to Data Request 1-2 Propounded on the Forest Society ("Order"). The Applicants had made a request, on November 30, 2016, for SPNHF communications regarding NPT or the Project, to which SPNHF objected. The Presiding Officer concluded that the Applicants' motion to compel was "a general request and does not explain how internal documents or communications by members of the Forest Society from 2010 to the present, pertain to the issues before the Subcommittee." He further stated that the Applicants "will have an opportunity to question the Forest Society's regarding these matters at technical sessions and at the adjudicative hearing."

6. As noted above, the Applicants proceeded to question Ms. Difley about SPNHF's decision making at the designated technical session and, as a follow-up, requested related documents and communications. The requested information pertains to a narrower issue that SPNHF brought to light during the January 19, 2017 technical session, i.e., that an internal Policy Committee made the initial decision to oppose Northern Pass. The Applicants' requests, therefore, are fully consistent with the approach described in the Presiding Officer's Order. Contrary to SPNHF's argument that the Presiding Officer already decided the issue, he could not have decided the issue because it was not before him. The Order, as a consequence, would be dispositive only if the Applicants were making a general request for internal documents. Thus, the Applicants are entitled to the requested information in order to understand SPNHF's position with regard to the Project, its decision-making process for deciding to oppose the Project, and

how the decision to oppose the Project relates to SPNHF's overall mission, goals and stated duty to defend conserved lands.

7. The requested information is relevant and discoverable because it helps the Applicants understand the assertions articulated in Ms. Difley's pre-filed testimony. Ms. Difley testified that the Project will "directly impact" thirteen of SPNHF's conservation easements. See Pre-Filed Testimony of Jane Difley at 7-8. As discussed above, Ms. Difley said that SPNHF has a duty to defend its conserved lands, which is a primary reason for its opposition to the Project. When asked how SPNHF determines whether a proposed project will impact SPNHF lands, Ms. Difley stated generally that it has to do with the scale of the proposed project. She then confirmed that there are reports, analysis and other communications related to the committee meetings where SPNHF considered the impact of other projects on its conservation easements. This information provides the foundation for SPNHF's position on the Project and is relevant to its testimony that the Project will directly impact its conserved lands.

8. The International Brotherhood of Electrical Workers concurs with the motion, while the Non-Governmental Organization Intervenors (Conservation Law Foundation, Appalachian Mountain Club and Ammonoosuc Conservation Trust) object. No other parties expressed an opinion on the motion.

III. CONCLUSION

9. The Applicants' information request at the January 19, 2017 technical session implements the Presiding Officer's February 8, 2017 Order. The information requests are not general requests as had been the case previously. The requests are specific to statements that Ms. Difley made at the technical session. Ms. Difley opened the door to the Applicants' inquiry and

the Applicants have the right through discovery to inquire as to the basis for her statements in order both to understand her testimony and to test its credibility.

10. The four data requests at issue seek to discover information that would help the Applicants, as well as the Committee, understand the positions and assertions in SPNHF's pre-filed testimony and supporting materials as they relate to SPNHF's overall position on the Project. Moreover, such information is discoverable because it may assist the Committee in assessing the credibility of the witness' assertions, and denying access to such information would prejudice the Applicants' ability to effectively cross-examine Ms. Difley. Conversely, to the extent the Applicants are not permitted to pursue discovery because it is held to not be relevant, it would seem to follow that the underlying testimony itself is not relevant.

WHEREFORE, the Applicants respectfully request that the Site Evaluation Committee:

- A. Grant the Applicants leave to reply to the SPNHF objection;
- B. Issue an Order requiring SPNHF to produce documents responsive to Data Request Nos. 1, 2, 3 and 4; and
- C. Grant such further relief as is deemed just and appropriate.

Respectfully submitted,

Northern Pass Transmission LLC and
Public Service Company of New Hampshire d/b/a
Eversource Energy

By Its Attorneys,

McLANE MIDDLETON,
PROFESSIONAL ASSOCIATION

Dated: March 2, 2017

By: 

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Certificate of Service

I hereby certify that on the 2nd day of March, 2017, an original and one copy of the foregoing Motion was hand-delivered to the New Hampshire Site Evaluation Committee and an electronic copy was served upon the SEC Distribution List.


Thomas B. Getz