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March 24, 2017

**Via Electronic Mail & Hand Delivery**

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

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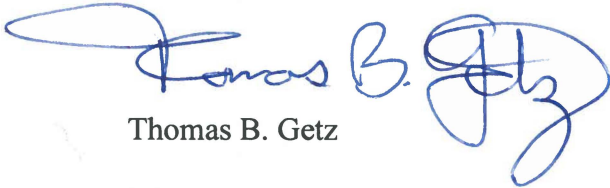
**Re: Site Evaluation Committee Docket No. 2015-06  
Joint Application of Northern Pass Transmission LLC and Public Service Company  
of New Hampshire d/b/a Eversource Energy (the "Applicants") for a Certificate of  
Site and Facility  
Motion for Clarification of Site 301.08 (d) (2) (b)**

Dear Ms. Monroe:

Enclosed for filing in the above-captioned docket, please find an original and one copy of a  
Motion For Clarification of Site 301.08 (d) (2) (b).

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**

**MOTION FOR CLARIFICATION OF SITE 301.08 (d) (2) (b)**

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 submit this motion, pursuant to Site 302.05, asking that the Site Evaluation Committee (“SEC” or in this case, “Subcommittee”), clarify the applicability of Site 301.08 (d) (2) (b) regarding the provision of financial assurances for decommissioning.

**I. BACKGROUND**

1. RSA 162-H:7, V (g) provides that an application for a Certificate of Site and Facility “[d]escribe in reasonable detail the elements of and financial assurances for a facility decommissioning plan.” The Applicants submitted their decommissioning plan on July 22, 2016.

2. Site 301.08 (d) (2) (b) states that a decommissioning plan shall include: “The provision of financial assurance in the form of an irrevocable standby letter of credit, performance bond, surety bond, or unconditional payment guarantee executed by a parent company of the facility owner maintaining at all times an investment grade credit rating.” The Applicants have filed contemporaneously with this motion the Supplemental Testimony of Michael Auseré, which is included as Attachment A, explaining how the Transmission Service

Agreement between NPT and Hydro Renewable Energy Inc. (“HRE”) provides financial assurance for decommissioning.

## **II. DISCUSSION**

3. Site 301.08 (d) (2) (b) list four forms of financial assurance, namely, an irrevocable standby letter of credit, a performance bond, a surety bond, and an unconditional payment guarantee by a parent company. It is not obvious whether the list was intended to serve as representative examples of financial assurance or to be an exclusive list of the only acceptable forms of assurance. The Applicants believe that the better interpretation is the former, i.e., that the list comprises examples. As explained at p. 8 of Mr. Auseré’s Supplemental Testimony, a performance bond is essentially a type of surety bond. The inclusion of a form of assurance that is merely a variation or type of another form of assurance, and therefore redundant, suggests that the list should be read as representative rather than exclusive.

4. In the event the Subcommittee determines that the list is exclusive, however, the Applicants seek a waiver on the basis that their proposed alternative satisfies the requirements of Site 302.05, which sets forth the standard for waiver of an SEC rule, i.e., that a rule shall be waived if the waiver serves the public interest and will not disrupt the orderly and efficient resolution of matters before the SEC. The public interest requirement is satisfied if compliance would be onerous or inapplicable under the circumstances, or if the purpose of the rule would be satisfied by an alternative method.

5. As described in Mr. Auseré’s Supplemental Testimony, the Applicants’ proposal satisfies the purpose of the rule because the TSA and the parent company guaranty from Hydro Quebec assure that funds will be available to decommission the Project. The proposed alternative, in fact, combines assurances inasmuch as the TSA assures a stream of revenues

through a FERC regulated rate that is enforceable against HRE, and it includes a parent company guaranty from the creditworthy parent of the counter-party to the facility owner.

6. In summary, the TSA between NPT and HRE, along with the parent company guaranty from HQ provides financial assurance that decommissioning, if ever required, will occur.<sup>1</sup> In the first instance, the Applicants believe that the proposed financial assurance meets the requirements of the SEC's rule. Nevertheless, if the Subcommittee determines that the TSA and the parent company guaranty do not meet the letter of the rule, the Applicants contend that the proposed financial assurance satisfies the purpose of the rule by an alternative method. Accordingly, a waiver would serve the public interest, and it would not disrupt the orderly and efficient resolution of this matter inasmuch as a suitable alternative is contained in Mr. Auseré's supplemental testimony and it will be reviewed in the normal course of the adjudicative hearings.

7. The Applicants received no responses to their request for positions.

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<sup>1</sup>A likely scenario is that the Project, like many transmission lines, will be re-conducted and refurbished over time, keeping it in service indefinitely for all practical purposes. Hence, decommissioning in a manner contemplated under the general rule may not apply.

WHEREFORE, the Applicants respectfully request that the Subcommittee:

- A. Determine that the Applicants' proposed form of financial assurance satisfies the rule in the first instance, or that it satisfies the purpose of the rule by an alternative method; and
- B. 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 24, 2017

By:   
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Certificate of Service

I hereby certify that on the 24th 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 Distribution List.

  
Thomas B. Betz

**THE STATE OF NEW HAMPSHIRE  
BEFORE THE  
NEW HAMPSHIRE SITE EVALUATION COMMITTEE  
DOCKET NO. 2015-06**

**SUPPLEMENTAL PRE-FILED DIRECT TESTIMONY  
OF  
MICHAEL J. AUSERÉ**

**IN SUPPORT OF THE  
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 TO CONSTRUCT A NEW HIGH  
VOLTAGE TRANSMISSION LINE AND RELATED FACILITIES IN  
NEW HAMPSHIRE**

**March 24, 2017**

1 **Qualifications and Purpose of Testimony**

2 **Q. Please state your name and business address.**

3 A. My name is Michael J. Auseré. My business address is 107 Selden Street, Berlin,  
4 CT 06037.

5 **Q. By whom are you employed and in what capacity?**

6 A. I am employed by Eversource Energy Service Company (“Eversource Service  
7 Company”). I am currently the Vice President of Business Development. I was appointed to this  
8 position on August 21, 2016. My responsibilities include business development, market analysis  
9 and project analysis for Eversource Energy (“Eversource”) and its subsidiaries.

10 **Q. Did you provide testimony previously in this proceeding?**

11 A. Yes.

12 **Q. Have you made changes to that testimony?**

13 A. Due to the passage of time since that testimony was filed, I have made several  
14 updates to reflect currently available financial information. For example, I updated the statement  
15 of assets and liabilities to reflect December 31, 2016 balances. To demonstrate the changes, I  
16 have included as Appendix 1 a copy of my initial pre-filed direct testimony in Track Change and  
17 provided substitute Attachments B, B-1, F, G, H, I, J and K, which include more current  
18 information.

19 **Q. What is the purpose of your supplemental testimony?**

20 A. My supplemental testimony will demonstrate that NPT has the financial assurance  
21 required by Site 301.08 (d)(2)(b) to ensure that Northern Pass Transmission LLC (“NPT”) has  
22 the financial capability to decommission the Northern Pass Transmission Project (“Northern  
23 Pass” or the “Project”), if required. Site 301.08 (d)(2)(b) was adopted after my pre-filed direct  
24 testimony was filed in this proceeding. The new rule requires a facility decommissioning plan  
25 that includes financial assurances in the form of an irrevocable standby letter of credit, a  
26 performance bond, a surety bond, or an unconditional payment guaranty executed by a parent  
27 company of the facility owner. I begin by addressing the parent company guaranty form of  
28 financial assurance and later I address the other forms of financial assurance.

29

1 **Q. What is the basis of your position?**

2 A. NPT meets the financial assurances requirements of Site 301.08 (d)(2)(b) through (1) the  
3 Transmission Service Agreement (“TSA”) between NPT and Hydro Renewable Energy, Inc.  
4 (“HRE”) and (2) the guaranty of HRE’s payment obligations by HRE’s parent, Hydro-Québec  
5 (“HQ”). As more fully described below, the TSA requires that HRE pay for all costs incurred  
6 by NPT to decommission Northern Pass. Also as more fully described below, the TSA requires  
7 HQ to guaranty HRE’s payment obligations.

8 The combination of the TSA and the HQ guaranty provides financial assurance  
9 equivalent to the forms listed by Site 301.08 (d)(2)(b), in particular, it is equivalent to an  
10 unconditional payment guaranty executed by a parent company of the facility owner. The fact  
11 that the guaranty is provided by HQ, rather than NPT’s ultimate parent Eversource, causes the  
12 strength of the financial assurance to NPT to exceed the assurance required by the SEC  
13 regulations. Although Eversource is the highest S&P-rated company among shareholder-owned  
14 utilities in the United States, HQ holds an even higher credit rating.

15 **Q. Please describe the TSA.**

16 A. As I described in my previous testimony, the TSA is a bilateral, cost-based, FERC  
17 approved, transmission service agreement pursuant to which NPT will provide firm transmission  
18 service to HRE over Northern Pass in exchange for payment of NPT’s costs for developing,  
19 constructing, operating, maintaining, and decommissioning the Project. HQ (or a subsidiary of  
20 HQ) will have the opportunity to recover its transmission payments through sales of electricity  
21 into the New England market. The essential elements of the arrangement between NPT and HRE  
22 contemplate that: (1) NPT will construct, finance, and own Northern Pass; (2) NPT will provide  
23 firm transmission service to HRE over Northern Pass, which will permit HQ (or a subsidiary of  
24 HQ) to sell power into New England; and (3) HRE will pay NPT for firm transmission service  
25 pursuant to a FERC-approved, cost-based formula rate that will enable NPT to recover the costs  
26 of development, construction, and, ultimately, decommissioning over the 40-year term of the  
27 TSA.

28 As I also noted previously, the TSA was approved by FERC on February 11, 2011, in  
29 Docket No. ER11-2377. Amendments to the TSA were accepted by FERC on January 13, 2014,  
30 in Docket No. ER14-597. FERC had previously determined, in Docket No. EL09-20, that the



1 structure of the transaction as a participant-funded, cost-based transmission project is consistent  
2 with long-standing open access policies. The cash flows under the TSA will provide NPT the  
3 financial capability to operate the Project over its useful life, the ability to collect all of its costs  
4 in a timely manner from a reliable counter-party, and the ability to decommission the Project  
5 when it is retired from service.<sup>1</sup>

6 Under the TSA, NPT will use a FERC-approved formula rate to calculate HRE's  
7 payment obligations for transmission service over Northern Pass. The formula rate recovers a  
8 return on investment plus associated income taxes, depreciation expense, operation and  
9 maintenance expenses, administrative and general expenses, municipal tax expense and other  
10 expenses associated with the Project, including any required decommissioning costs. The  
11 formula rate calculates costs on a prospective basis and then trues up such projected costs to  
12 actual costs in order for NPT to recover the annual revenue requirements associated with the  
13 Project.

14 **Q. Please describe the decommissioning provisions of the TSA.**

15 A. Section 9.3 of the TSA addresses decommissioning of the Project, which includes  
16 “the work required to (a) retire Northern Pass and dismantle the materials, equipment and  
17 structures comprising Northern Pass and (b) restore and rehabilitate any land affected by the  
18 construction or dismantlement of Northern Pass, in each case, as required by Applicable Law.”  
19 NPT will begin to collect the estimated costs of decommissioning from HRE over the last sixty  
20 months of commercial operation. Six months before the decommissioning payment period  
21 begins, NPT will provide a plan to the management committee set up under the TSA, which will  
22 include an estimate of decommissioning costs and a description of the scope and frequency of  
23 progress reports for monitoring decommissioning. HRE is obligated to pay for decommissioning  
24 costs as part of the FERC-approved formula rate.

25 All decommissioning payments made from HRE to NPT will be deposited into an  
26 external fund created on terms and conditions established by the management committee to

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<sup>1</sup> Eversource and H.Q. Energy Services (U.S.) were not selected in the three state (CT, MA, RI) Clean Energy Request for Proposal (RFP) mentioned in my initial testimony. They now intend to respond to a Clean Energy RFP sponsored by the state of Massachusetts, which is expected to be released in March 2017. If the project is selected, some costs may be passed through to customers in Massachusetts. Eversource anticipates that the TSA would be amended as necessary to reflect a successful bid.

1 ensure that such fund is used for solely for decommissioning activities. In the event actual  
2 decommissioning costs exceed the amount in the fund, NPT will begin collecting from HRE  
3 actual costs on a monthly basis until the decommissioning has been completed. If, on the other  
4 hand, actual decommissioning costs less than what had been collected in the external fund, any  
5 excess will be returned to HRE.

6 **Q. What is the current status of the TSA?**

7 A. The TSA remains in full force and effect. The TSA contained an Approval  
8 Deadline of February 14, 2017. Pursuant to an agreement executed January 26, 2017, NPT and  
9 HRE extended the Approval Deadline until December 31, 2020. See Appendix 2.

10 **Q. What financial assurance does NPT have that HRE will be able to meet its**  
11 **financial obligations under the TSA?**

12 A. The TSA requires HRE's parent, HQ, to provide NPT a guaranty of HRE's  
13 current and future payment obligations. Once construction begins, the guaranty is required to  
14 cover the amount of NPT's incurred project costs plus earnings and projected decommissioning  
15 costs.

16 HQ is Canada's largest electric utility and is one of the largest power generators and  
17 transmission companies in North America, and has been selling power to the New England  
18 energy market for the past several decades. HQ is a crown corporation incorporated under the  
19 Hydro-Québec Act and is owned by the province of Québec. Québec is the largest Province in  
20 Canada by area, and the second largest in terms of population and economic activity.

21 As indicated in Attachment J to Appendix 1, HQ's provincial credit ratings are A+  
22 (positive), Aa2 (Stable), and AA- (Stable) from S&P, Moody's, and Fitch ratings services,  
23 respectively. A parent guarantee from an entity with the financial strength and credit quality of  
24 HQ provides significant and meaningful financial assurance to NPT that it will have the financial  
25 capability to decommission Northern Pass, if required.

26 **Q. What is an irrevocable standby letter of credit?**

27 A. Site 301.08 (d)(2)(b) lists an irrevocable standby letter of credit ("SBLC") as an  
28 acceptable form of financial assurance to include in a decommissioning plan. A SBLC is a  
29 written obligation from an issuing bank to pay a sum of money to a beneficiary on behalf of its  
30 customer in the event that such customer fails to perform, up to a specific amount and for the

1 term of the SBLC (typically one-year, with potential for annual renewal). The primary purpose  
2 of this product is to provide the beneficiary with a stronger credit profile in the form of a stable  
3 financial institution as compared to the entity providing the initial services the beneficiary is  
4 seeking. The SBLC does not obligate the issuing bank to perform under the underlying  
5 performance contract, but rather assures the beneficiary of payment up to a stated dollar amount  
6 in order for the beneficiary to see to it that the service or project is completed. The beneficiary is  
7 able to draw (i.e., make a request to the issuing bank for payment) under the SBLC by presenting  
8 documents that comply with the terms of the SBLC. The irrevocable aspect of the instrument  
9 means that the issuing bank cannot revoke or amend the terms of the SBLC prior to expiration  
10 without the approval of the parties. If the issuing bank is required to make a payment to the  
11 beneficiary under the SBLC, its agreement with the customer is converted into a loan, and the  
12 customer is responsible for payment to the issuing bank.

13 HRE has not issued a SBLC to NPT under the TSA. In the hypothetical scenario it did,  
14 HRE would be considered the customer and NPT would be considered the beneficiary. If HRE  
15 were to default on any payments under the TSA, including decommissioning payments, NPT  
16 would notify the issuing bank and the bank would issue a payment to NPT for the stated amount  
17 of the SBLC.

18 Annual pricing for a SBLC depends on the credit risk of the customer, but a creditworthy  
19 customer would pay the issuing bank a fee of approximately 1% of the SBLC value each year the  
20 letter of credit is in force.<sup>2</sup> For example, a 1% annual fee on a \$100 million obligation would  
21 result in an annual payment of \$1.0 million. This cost estimate is for a SBLC with a one-year  
22 term. The annual fee for a SBLC related to decommissioning costs for Northern Pass would  
23 likely be higher because any potential decommissioning would not be expected to occur for forty  
24 or more years into the future.

25 **Q. Would a SBLC provide NPT a stronger form of financial assurance than the**  
26 **financial assurances already in place with the TSA?**

27 A. No. As described above, the TSA requires that HRE pay for all costs incurred by  
28 NPT to decommission Northern Pass. Further, the TSA requires HQ to guaranty HRE's payment  
29 obligations. The financial assurances provided under the TSA are superior to a SBLC because

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<sup>2</sup> "Surety Bonds or Bank Letters of Credit", Surety Information Office, [www.sio.org](http://www.sio.org)

1 they are not capped at a fixed amount. HRE and HQ, as the parent guarantor, are obligated to  
2 fund all costs arising from decommissioning. A SBLC, on the other hand, will only make a  
3 payment up to the stated amount of the instrument.

4 Another reason the financial assurances provided to NPT under the TSA are superior to a  
5 SBLC is that they do not have a term limit. HRE and HQ, as the parent guarantor, are required  
6 to fund the decommissioning of Northern Pass regardless of when the decommissioning activity  
7 occurs. A SBLC, on the other, typically has a one-year term.

8 **Q. What is a surety bond ?**

9 A. Site 301.08 (d)(2)(b) lists a surety bond as an acceptable form of financial  
10 assurance to include in a decommissioning plan. Surety bonds serve a similar purpose as  
11 SBLCs, but are typically issued by large insurance companies. These bonds constitute a three-  
12 party agreement among the surety, a principal, and an obligee. If the principal does not perform  
13 as promised, the surety either steps in to complete performance of the obligation or will make a  
14 payment to the obligee for any damages, up to a specified amount and as long as the event occurs  
15 within the duration of the bond contract. Surety Bonds come in the form of a performance bond  
16 or a payment bond, and are typically issued together by the Surety. The performance bond  
17 guarantees that the underlying obligation is performed to the specifications in the contract  
18 between the principal and the obligee, and the payment bond ensures that payments are made to  
19 all subcontractors associated with the contract. If the surety is required to perform or make a  
20 payment to the obligee, the surety will then look to the principal for reimbursement.

21 HRE has not issued a surety bond to NPT under the TSA. In the hypothetical scenario it  
22 did, HRE would be considered the principal and NPT would be considered the obligee. If HRE  
23 were to default on any payments under the TSA, including decommissioning payments, NPT  
24 would notify the surety and, subject to investigating and confirming a default, the surety would  
25 issue a payment to NPT for the stated amount of the bond.

26 Annual surety premiums depend on the credit risk of the principal, but a credit worthy  
27 applicant could pay a premium between 0.5% to 3% of the total bond amount.<sup>3</sup> For example, a  
28 1% annual fee on a \$100 million obligation would result in an annual payment of \$1.0 million.  
29 This price estimate is for a surety bond with a typical tenor, which is short term. The annual fee

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<sup>3</sup> "Surety Bonds or Bank Letters of Credit", Surety Information Office, [www.sio.org](http://www.sio.org)

1 for a surety bond related to decommissioning costs for Northern Pass would likely be higher  
2 because any potential decommissioning would not be expected for forty years or more into the  
3 future.

4 **Q. Would a surety bond provide NPT a stronger form of financial assurance**  
5 **than the financial assurances already in place with the TSA?**

6 A. No. As described above, the TSA requires that HRE pay for all costs incurred by  
7 NPT to decommission Northern Pass. Further, the TSA requires HQ to guaranty HRE's payment  
8 obligations. The financial assurances provided under the TSA are superior to a surety bond  
9 because they are not capped at a fixed amount. HRE and HQ, as the parent guarantor, are  
10 obligated to fund all costs arising from decommissioning. A surety bond, on the other hand, will  
11 only make a payment up to the stated amount of the instrument.

12 Another reason the financial assurances provided to NPT under the TSA are superior to a  
13 surety bond is that they do not have a term limit. HRE and HQ, as the parent guarantor, are  
14 required to fund the decommissioning of Northern Pass regardless of when the decommissioning  
15 activity occurs. A surety bond, on the other hand, has a term in line with the life of the  
16 underlying contract, which for a typical construction project would be much shorter than the  
17 timeframe for any potential decommissioning of the Project.

18 **Q. Are additional financial assurances such as a SBLC or surety bond necessary**  
19 **for Northern Pass?**

20 A. No. NPT is confident that the TSA and HQ's guarantee provide more than  
21 adequate assurance that the costs of any potential decommissioning of Northern Pass will be  
22 funded. Indeed, Eversource and NPT, and their shareholders, are relying on that guarantee for  
23 recovery of the costs associated with Northern Pass. NPT will incur approximately \$1.6 billion  
24 to construct the project and it would not incur those costs in the absence of the TSA and HQ's  
25 guarantee of HRE's obligations. Potential decommissioning costs, while not insignificant, make  
26 up a small percentage of the costs that NPT will collect from HRE over the term of the TSA.  
27 Any additional financial assurances for the funding of decommissioning costs would be  
28 redundant to assurances already provided by the TSA and unnecessarily increase Project costs.

29 **Q. Does this conclude your testimony?**

30 A. Yes.