

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

**PRE-HEARING MOTION OF THE SOCIETY FOR THE PROTECTION OF NEW  
HAMPSHIRE FORESTS TO EXCLUDE STATEMENTS FROM TECHNICAL  
SESSIONS**

The Society for the Protection of New Hampshire Forests (the “Forest Society”), by and through its attorneys, BCM Environmental & Land Law, PLLC, moves to exclude verbal statements made by witnesses during technical sessions. In support, the Forest Society states as follows:

**BACKGROUND**

1. On October 19, 2015, the Applicants submitted an Application to the SEC for a Certificate of Site and Facility (the “Application”) to construct a 192-mile transmission line (the “Project”). As proposed, the Project would have a capacity rating of up to 1,090 MW, and would run through New Hampshire from the Canadian border in Pittsburg to Deerfield.

**ARGUMENT**

2. The Forest Society respectfully requests the Presiding Officer issue a pre-hearing ruling barring any use during the adjudicatory hearing of any statement made by witnesses during the technical sessions. To allow otherwise would be contrary to the intent of the technical sessions as shaped by the order denying transcription of the technical sessions.<sup>1</sup> *Order on*

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<sup>1</sup> To be clear, the Forest Society’s position remains that the technical sessions should have been transcribed so that a formal record of them would exist. The Forest Society has preserved this issue in case of an appeal. However, the Forest Society recognizes and respects the SEC’s order to the contrary, and the instant motion is the natural consequence of that order.

*Motions to Transcribe Technical Session*, Docket No. 2015-06, at 2 (Aug. 29, 2016).

3. “The dialog and information provided by the witnesses and experts at technical sessions is not designed and should not be used for impeachment purposes.” *Id.*

4. Allowing introduction of these statements for any other purpose would be unreliable, a violation of parties’ due process rights, and would particularly disadvantage those parties that did not have the financial and technical resources to independently record and/or transcribe the technical sessions. Further, there is ample other testimony that makes introduction of these statements unnecessary.

**I. Because of the Informal Nature of Technical Sessions, Statements Made During Them Should not be Part of the Adjudicatory Hearing**

A. Anticipated Questions Based on Technical Sessions

5. The Forest Society anticipates that parties may plan to reference statements made at the technical sessions when examining witnesses at the adjudicatory hearing.

6. Such questioners may ask if the witness remembers a certain statement the questioner claims the witness made during technical session. Such questioners may refer to their own personal hand-written or typed notes from a technical session, and/or to a portion of a personal, self-made audio recording or a personal, informal transcript, in an effort to refresh the witness what the questioner claims the witness said.

7. This line of questioning is problematic for at least a couple of important reasons, all stemming from the absence of a formal transcript. First, it puts the witness (and others at the proceeding) in the position of relying upon the questioner’s personal records of what transpired at the technical sessions, when those personal records do not possess the same indicia of reliability that are automatically attributed to a formal transcript. Second, it prejudicially permits

the questioner to characterize the witness's alleged prior statement without any formal transcript available for the witness to verify and/or recall what the witness actually said.

8. A line of questioning in this style is also contrary to the orderly conduct of the proceeding. It would be more efficient to simply ask witnesses the questions desired to be asked, rather than taking up time to reference what may or may not have been said at the technical sessions. Such references are very likely to needlessly take up extra time because witnesses are bound to not quite remember every word they said at technical sessions.

#### B. Technical Sessions Are Informal

9. "The purpose of the technical session[s] is to exchange information." *Technical Session Agenda*, Docket No. 2015-06, at 4 (Jan. 10, 2017); *Revised Technical Session Agenda*, Docket No. 2015-06, at 5 (Jan. 20, 2017). They are not meant to be an adversarial or argumentative forum. *Revised Technical Session Agenda*, Docket No. 2015-06, at 5. Rather, technical sessions are a form of "informal discovery . . . 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, at 2 (Aug. 29, 2016) (referencing the argument set forth by Counsel for the Public).

10. Allowing what witnesses said during this informal dialogue would, in technical sessions in future cases, create a legalistic atmosphere that will disadvantage parties, especially unrepresented ones, and stymie the sharing of information.

11. These rationales were key to the Subcommittee's reasoning in denying transcription of the technical sessions. It reasoned that 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, at p. 2 (Aug. 29, 2016) (concluding the Counsel for the Public “had the better argument”).

12. Of course, it is not the action of recording the sessions the Presiding Officer sought to avoid. The Presiding Officer declined to have an official recording because that would be used for impeachment and, therefore, alter how parties and witnesses would behave. The same is true for any other use of statements made at technical sessions.

## **II. Unequal Access to Technical Session Transcripts**

13. Parties have unequal access to informal transcripts of the technical sessions.

14. Without the benefit of an official transcript, some parties made their own, independent audio recordings of the hearings. Given the high costs for transcription and the low quality of transcription with such self-made audio recordings, even those parties that did have access to recording do not necessarily have complete access to transcripts for statements made at the technical sessions.

## **III. There are Other Sufficient and Admissible Prior Statements for Parties to Use on Cross-Examination**

15. Statements from the technical sessions are not necessary for parties to adequately cross-examine witnesses at the hearings. The record contains numerous other past statements covering much, if not all, of the substantive topics and statements that may have been made at the technical sessions.

16. Specifically, and not exclusively, this includes witnesses' pre-filed testimony, pre-filed supplemental testimony, responses to data requests, and reports from witnesses or otherwise included with witness's pre-filed testimonies. This also includes all of the foregoing for past proceedings with which any witness may have been involved, and current related proceedings

with which any witness may be involved, such as communications, documents, reports, etc. from and to the N.H. Department of Transportation that may not yet be a part of this docket.

### **CONCLUSION**

17. Accordingly, the Presiding Officer should issue a pre-hearing ruling barring any use during the adjudicatory hearing of any statement made by witnesses during the technical sessions.

18. The parties below take the following positions with respect to this request:

a. Concur:

Abutting Property Owners (overhead portion), Deerfield  
Abutting Property Owners (overhead portion), Whitefield, Dalton, and Bethlehem  
Abutting Property Owners (underground portion), Bethlehem to Plymouth  
Grafton County Commissioners  
Municipal Group 1-North  
Municipal Group 3-South  
NEPGA  
Non-Abutting Property Owners (overhead portion) Ashland to Deerfield  
Non-Abutting Property Owners (overhead portion), Stark, Lancaster, Whitefield, Dalton, and Bethlehem  
Sugar Hill Historical Museum, NH Preservation Alliance and National Trust for Historic Preservation, North Country Scenic Byways Council

b. Oppose:

Applicant

c. Take no position:

Counsel for the Public

The remainder of the parties did not respond to a request for their position.

**WHEREFORE**, the Forest Society respectfully requests that the Committee:

A. Exclude any use during the adjudicatory hearing of any statement made by witnesses during the technical sessions;

B. Grant such further relief as it deems appropriate.

Respectfully Submitted,

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

By its Attorneys,  
BCM Environmental & Land Law, PLLC



Date: March 29, 2017

By: \_\_\_\_\_

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**CERTIFICATE OF SERVICE**

I hereby certify that on this day, March 29, 2017, a copy of the foregoing Motion was sent by electronic mail to persons named on the Service List of this docket.



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Amy Manzelli, Esq.