

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

MOTION OF THE ABUTTING PROPERTY OWNERS, BETHLEHEM TO
PLYMOUTH INTERVENOR GROUP TO COMPEL THE APPLICANTS TO PROVIDE
REQUESTED INFORMATION, AND TO SUSPEND THE TIME FRAME FOR
SUPPLEMENTAL TESTIMONY AND ADJUDICATIVE HEARINGS

The Abutting Property Owners, Bethlehem To Plymouth Intervenor Group (the "Intervenor Group") respectfully submits this Motion to Compel Northern Pass Transmission ("NPT" or "the Applicants") to provide certain information regarding the underground portion of the proposed Northern Pass project (the "Project", or "NP"), which was duly requested by the Intervenor Group during SEC technical sessions, and listed in SEC memoranda as the subject of formal information requests. The Intervenor Group respectfully submits a further motion that the SEC exercise its authority pursuant to RSA 162-H:14 to suspend the deadline for submittal of supplemental testimony and the time frame for adjudicative hearings under the subject Docket, until: (1) Applicants provide the information which is the subject of the present Motion to compel; (2) the New Hampshire Department of Transportation (NHDOT) releases its findings regarding the underground portions of NP; and (3) the Intervenor Group, other intervenors, and all parties to the Docket have had sufficient time to review and respond to the information requested from the Applicants, and the NHDOT findings.

A. Background Regarding Applicants' Information

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. On November 2, 2015, the Chairman of the Committee appointed a Subcommittee (the "Subcommittee") to consider the Application. The Subcommittee accepted the Application on December 18, 2015.

2. The Project includes three sections where the transmission line is proposed to be installed underground:

- a 0.70-mile segment from Pittsburg to Clarksville;
- a 7.5-mile segment from Clarksville to Stewartstown; and
- a 52.3-mile segment from Bethlehem to Bridgewater in Grafton County along NH Routes 302, 18, 116, 112 and 3, including passing through the center of the towns of Franconia, Easton, Woodstock and Plymouth.

3. By Order dated June 15, 2016, the SEC ordered that the Subcommittee shall issue a Final Order and Decision denying or granting the Application by September 30, 2017.
4. By Order dated June 23, 2016, the SEC established a Procedural Schedule for this Docket. This Procedural Schedule has been modified several times. By Order dated March 1, 2017, the Adjudicative Hearings for this Docket are scheduled to begin on April 13, 2017.
5. On June 28, 2016, as part of the Discovery phase of this Docket, Counsel for the Public served upon the Applicants a set of Expert-Assisted Data Requests, which included information requests about the proposed underground portions of the route. Other parties also served upon the Applicants information requests addressing the proposed underground portions of the route during the Discovery phase.
6. On August 5, 2016, the Applicants responded to Counsel for the Public's Expert Assisted Data Requests and other information requests.
7. The Applicants' response to these information requests indicated that for the underground portion of the proposed transmission line the Applicants had not determined the exact alignment of the proposed transmission line, and therefore could not comply with the Counsel for the Public's Expert Assisted Data Requests or other related information requests from other parties.
8. On August 15 Counsel for the Public filed a Motion to Compel, to which numerous intervenors to the Docket assented. This Motion pointed out that the Application was as yet incomplete because it lacked the exact proposed alignment of the underground transmission line and associated facilities and other information required under RSA 162-H:7 and Site 301.03. The same Motion to Compel further pointed out that the Application would not be complete until the Applicants identified the exact alignment of the underground portion of the transmission line as required under Site 301.03(c) and (g). The Motion listed a long list of additional information about the underground portion of the transmission line that:
 - (a) should have been included in the Application based on the requirements at RSA 162-H:7 and Site 301.03;
 - (b) is necessary to allow the Counsel for the Public, its experts, intervenors to the Docket, and the public at large to analyze and assess the proposed transmission line's impact; and
 - (c) had not as yet been provided by the Applicants.
9. The Counsel for the Public's 08/15/2016 Motion to Compel requested SEC to issue an Order compelling the Applicants to supplement its response to Counsel for the Public's Expert-Assisted Data Requests, and also requiring the Applicants to file an amendment to its Application, setting forth the exact location of all underground portions of the proposed transmission line, as required under Site 301.03(c) and (g).
10. On October 28, 2016, in response to the Counsel for the Public's Motion to Compel, other Motions to Compel, and several Motions to Amend the Procedural Order that were filed by various parties in the intervening period, SEC issued an Order that, among other things, ordered the Applicants to provide supplemental responses to information requests addressing the underground portion of the by December 15, 2016.

11. On December 18, 2016 the Applicants filed supplemental responses to information requests addressing the underground portion of the Project, in the form of a document entitled “*SHEBS Estate Bypass (SHEB) Underground Alignment Permit Package – NH DOT District 1*” (hereafter referred to as “SHEB”). SHEB purports to provide, among other things, the exact alignment of the underground portion of the proposed transmission line between Bethlehem and Plymouth, and the exact locations of ancillary facilities. However, SHEB is deficient in many respects (as outlined below) and does not comply with the Counsel for the Public's Expert-Assisted Data Requests, nor with the application requirements under RSA 162-H:7 and Site 301.03.

12. At a Technical Session on February 21, 2017 members of the Intervenor Group again requested from the Applicants information regarding the underground portions of NP, which the Intervenor Group consider critical for assessing the impacts of the proposed Project, and which is required as part of the Application under RSA 162-H:7 and Site 301.03. These information requests were documented in a Technical Session Memorandum issued by SEC on February 24, 2017. The Applicants were required to submit replies by March 6, 2017.

13. On March 6, 2017 the Applicants filed responses to the information requests made by the Intervenor Group at the February 21, 2017 Technical Session. In these responses the Applicants objected to some of the Intervenor Group's requests and declined to provide the related information. The Applicants stated that they would provide some of the other requested information “in approximately six to eight weeks” (i.e., by April 17 to May 1, 2017).

B. Background Regarding NHDOT

14. When the Application was accepted by the Subcommittee on December 18, 2015, this triggered a procedural schedule under which State agencies having permitting authority for the proposed Project were to submit their final decisions relating to their permitting authority to SEC by August 15, 2016. On August 15, 2016 NHDOT requested an extension to this deadline. By Order dated August 29, 2016 SEC extended the deadline for NHDOT to submit its decision on NP to March 1, 2017. On March 17, 2017 NH DOT again requested an extension of this deadline to April 3, 2017. By Order dated March 30, 2017 SEC extended the deadline by which NH is to submit its decision on NP to April 3, 2017.

15. The NHDOT decision regarding NP, and in particular the conditions, permits, and licenses imposed by NHDOT for construction of the underground portion of NP, are expected to contain information about the final design of the underground portion of NP that is critical to understanding the impacts of this portion of the Project.

C. Specific Information Sought in the Present Motion to Compel – Highway Easement Widths, and Documentation of Same

16. The information so far provided by the Applicants for the underground portion of the project in Franconia, Easton, and Plymouth does not include the width of the highway easements within which NP is proposed to be installed. This very basic information, which is clearly required as part of the application package under Site 301.03 (C) (3) and (6), is critical to understanding the alignment of proposed components of the Project with respect to abutters' property, the extent to which Project work zones may encroach on abutters' property, and the impacts on abutters.

17. Many of the diagrams in SHEB depict easement boundaries. However:

- the legal or documentary basis of these boundaries is not provided, and therefore the validity of the depicted boundaries can not be assessed;
- the online version of SHEB made available to the Intervenor Group does not have useable scales in most diagrams, and it is therefore impossible to determine the width of easements depicted in SHEB diagrams, or the distance of depicted easement boundaries from features on abutting properties;
- notwithstanding the measurement difficulties, it is clear that many of the easement boundaries shown in SHEB are incorrect, and do not agree with the easement widths indicated in historic road deeds, land deeds, and road layout records, which establish the easement widths for the related highway segments; and
- The Applicants themselves state that SHEB is a “preliminary” design document. This suggests that the easement boundaries and locations of proposed work zones and Project components depicted in SHEB are not final, and are subject to change.

18. The information so far provided by the Applicants clearly indicates that NP proposes to encroach on private land. Notwithstanding the difficulties of assessing measurements in SHEB, it is clear from review of SHEB that the Applicants:

- erroneously assume a 4-rod (66-ft) easement width in some highway segments for which the recorded easement widths are actually only 3 rods (49.5 ft) wide, or in some cases only 40 ft wide, based on historic road deeds, land deeds, and road layout records;
- propose to develop work zones in these segments of the highway that extend to the outer edges of the erroneously-assumed 66-ft easement width. These proposed work zones would therefore encroach on private property outside of the actual (substantially narrower) highway easement.

19. The Intervenor Group has documented two such instances in which SHEB indicates that NP will encroach on private land, in: Prefiled Direct Testimony of Walter A. Palmer and M. Kathryn Ting, submitted to SEC on December 30, 2016; and in the pre-filed testimony submitted by Campbell McLaren on December 29, 2017. These documents are filed at: Northern Pass Transmission – Eversource SEC Docket No. 2015-06; Pre-Filed and Supplemental Testimony (Track 2) – Counsel for the Public and Intervenors – 12/30/16 and 4/17/17.

20. The Applicants themselves concede that the easement boundaries and work zone boundaries in the information that they have so far provided are inaccurate. In Response 10-6 of their responses to information requests labeled Applicants' Responses to Technical Data Requests Set 10.pdf, (available on the Docket Sharefile site) the Applicants list 14 pages in their DOT submittals in which “inaccuracies mistakenly show that the Project will be located on private property”. The Applicants commit to correcting these inaccuracies in subsequent submittals, but no such corrected documents have been submitted.

21. The Applicants themselves have raised the concern that the lack of documented easement widths poses potential legal issues regarding location of NP facilities. In a letter to NHDOT Commissioner Victoria Sheehan dated October 16, 2015, Mark Hodgdon, attorney for NPT, stated:

“The Clarksville portion of Rt. 145 has no recorded layout and dates back to around 1828. It is therefore considered a prescriptive highway. Without a specific right of way width, locating...NPT... outside of the travelled way and beyond the disturbed ditch lines is legally problematic.”

Portions of Route 302 in Bethlehem and of Rte. 116 in Easton similarly have no recorded layout, and location of work zones outside of the disturbed ditch lines poses the potential of encroachment on private land. SHEB indicates that NPT proposes to locate work zones outside of the disturbed ditch lines of the highway in multiple locations, suggesting that it may not be technically feasible to limit work zones to within the disturbed roadway ditch lines.

D. Analysis Regarding Motion to Compel

22. The failure of the Applicants to provide such basic information as accurate, documented easement widths and boundaries for all proposed underground portions of NP, as clearly required under Site 301.03 (C) (3) and (6), and as requested by various parties at several points in the SEC proceedings, makes it impossible for the Intervenor Group to determine with any certainty the proposed alignment or location of Project components.

23. This lack of basic easement information seriously erodes the reliability of all of the Project alignments and layouts depicted in SHEB (which the Applicants concede is merely a preliminary design document), since it is clear that many work zones and Project components will have to be relocated once correct easement boundaries are established. This in turn denies the Intervenor Group any opportunity to assess the potential impacts of NP on our properties, until such time as correct highway easement widths and boundary locations have been established, and final alignments and locations of all Project components have been specified.

24. In their March 6, 2017 responses to the information requests made at the February 21, 2017 Technical Session, the Applicants stated that they would provide requested information about highway easement widths “in approximately six to eight weeks” (i.e., by April 17 to May 1, 2017). This timing would deny the Intervenor Group any opportunity to review this information, to conduct any discovery regarding this information, or to file pre-filed testimony or supplemental testimony in response to this information, prior to the currently scheduled deadline for filing of supplemental testimony and start of the adjudicative proceedings. It would also deny the Intervenor Group adequate time to prepare for portions of the Adjudicative Hearings addressing impacts of the underground portion of the Project.

25. Under the current situation, the members of the Intervenor Group are being forced to proceed into the final phases of this Docket without the ability to assess with any confidence the potential impacts of the proposed Project on their properties abutting the Project site. Proceeding with the current Docket schedule, including closing the opportunity for discovery and submittal of testimony, and starting of the Adjudicative Hearings, before the Intervenor Group has access to basic information that is required under Site 301.03 (C) (3) and (6), that has been duly requested by various parties at several points in the SEC proceedings, and that is crucial to the assessment of Project impacts on abutters, denies the members of the Intervenor Group due process.

26. The Intervenor Group therefore respectfully requests relief, and specifically requests that the SEC issue an Order compelling the Applicants to provide:

- The widths of highway easements on all portions of the State highways within which the Applicants propose to construct underground transmission lines;
- The locations of easement borders on both sides of the highway easements, on all portions of the State highways within which the Applicants propose to construct underground transmission lines; and
- The documentary and legal basis for the stated easement widths and easement border locations.

E. Analysis Regarding Motion to Suspend

(i) Applicants' Information

27. As detailed above, the information subject to the present Motion to Compel is crucial to an understanding by the Intervenor Group of the impacts of the underground portion of the proposed Project. Under SEC rules, this information should have been made available to all parties before the Discovery phase, before the deadline for submittal of pre-filed and supplemental testimony, and before the Adjudicative phase of the Docket. In fact, this information should have been made available by the Applicants weeks or months before these phases of the Docket. The SEC rules regarding testimony and discovery are designed to allow all parties adequate time to assess and respond to critical information.

28. In the interest of due process, the Intervenor Group has a right to adequate time for assessing and responding to the information specified under the present Motion to Compel, once this information is provided by the Applicants. Accordingly, the Intervenor Group respectfully requests relief, and specifically requests that the SEC issue an Order suspending the timeframe for Docket No. 2015-06, and revising this timeframe such that:

- the deadline for submittal of supplemental testimony regarding the underground portions of the Project is postponed until four weeks after the Applicants provide the information that is subject to the present Motion to Compel;
- The start of the Adjudicative Hearings is postponed until six weeks after the Applicants provide the information that is subject to the present Motion to Compel.

(ii) NHDOT Findings

29. As detailed in the Background section above, the findings of NHDOT regarding this Docket have been delayed substantially beyond originally established deadlines, and are now scheduled to be presented on April 3, 2017. This is only days before the currently-scheduled close of supplemental testimony on construction (April 12), and start of the Adjudicative Hearings (April 17).

30. In the event that the NHDOT were to grant approval for NP, the NHDOT findings are anticipated to be extensive and detailed. The accompanying Use and Occupancy Agreement (UOA) would specify, among other things: the conditions imposed on NPT with regard to construction on State highways; excavation permits; driveway permits; crossing agreements; and other licenses. The UOA would in effect be the first opportunity for members of the Intervenor Group to see anything more reliable than the Applicants' preliminary design plans, regarding the

design and construction of the underground portion of the Project. It would be the first opportunity for the Intervenor Group members to see final requirements, standards, and conditions for design and construction of the Project. A thorough analysis of any NHDOT Use and Occupancy Agreement would be crucial to an understanding of the Project's impacts on abutting landowners.

31. Under SEC rules, the NHDOT findings should have been made available to all parties weeks or months before the Discovery phase, the deadline for submittal of pre-filed and supplemental testimony, and the Adjudicative phase of the Docket. The SEC rules regarding submittal of State agency findings are designed to allow all parties adequate time to assess and respond to this critical information.

32. In the interest of due process, the Intervenor Group has the right to adequate time for assessing and responding to the information in the NHDOT findings. Accordingly, the Intervenor Group respectfully requests relief, and specifically requests that the SEC issue an Order suspending the timeframe for Docket No. 2015-06, and revising this timeframe such that:

- the deadline for submittal of supplemental testimony regarding the underground portions of the Project is postponed until four weeks after NHDOT releases its findings related to the Docket (i.e., until May 1, 2017); and
- The start of the Adjudicative Hearings is postponed until six weeks after NHDOT releases its findings related to the Docket (i.e., until May 15, 2017).

F. Conclusion

33. In view of the foregoing, the Intervenor Group respectfully requests that the SEC grant this motion, and specifically:

(i) Issue an Order compelling the Applicants to provide the following information to all parties to the Docket:

- The widths of highway easements on all portions of the State highways within which the Applicants propose to construct underground transmission lines;
- The locations of easement boundaries on both sides of the highway easements, on all portions of the State highways within which the Applicants propose to construct underground transmission lines; and
- The documentary and legal basis for the stated easement widths and easement boundary locations.

(ii) Issue an Order suspending the current timeframe for Docket No. 2015-06, and revising this timeframe such that:

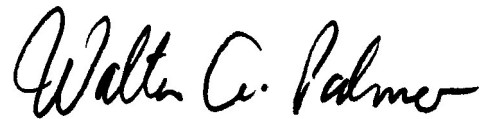
- the deadline for submittal of supplemental testimony regarding the underground portions of the Project is postponed until four weeks after NHDOT releases its findings related to the Docket (i.e., until May 1, 2017), or until four weeks after the Applicants provide the information that is subject to the present Motion to Compel, whichever is later;

- the start of the Adjudicative Hearings is postponed until six weeks after NHDOT releases its findings related to the Docket (i.e., until May 15, 2017), or six weeks after the Applicants provide the information that is subject to the present Motion to Compel, whichever is later.

(iii) Grant such further relief as it deems appropriate.

Respectfully Submitted,
Abutting Property Owners, Bethlehem To
Plymouth Intervenor Group

By its designated spokesperson

A handwritten signature in black ink that reads "Walter A. Palmer". The signature is written in a cursive, flowing style.

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Date: March 31, 2017