Before the New Hampshire Site Evaluation Committee

Docket No. 2015-06

Joint Application of Northern Pass Transmission LLC ("NPT") and Public Service Company of New Hampshire d/b/a Eversource Energy ("Eversource") for a Certificate of Site and Facility for the Construction of a New High Voltage Electric Transmission Line and Related Facilities in New Hampshire

April 1, 2017

OBJECTION TO MOTION TO STRIKE CERTAIN TRACK 1 TESTIMONY

1. In its motion dated March 29, 2017, the Applicant seeks to strike various components of the supplemental testimony filed by several intervenors in this case. The Southern Non-abutters, Ashland to Deerfield, object to this motion. The objections stated herein are in addition to, and not a substitute for, the objections previously filed with regard to the supplemental pre-filed testimony of Maureen Quinn.

2. These proceedings are intended to provide a forum in which all "environment, economic, and technical issues" related to the Applicant's proposals "are resolved in an integrated fashion." RSA section 162-H:1. According to RSA section 162-H:16, the SEC shall issue the requested Certificate to the Applicant only if it shall find that, among other things, the Project "will not have an unreasonable adverse effect on aesthetics, historic sites, air and water quality, the natural environment, and public

health and safety," and that, more generally, the "issuance of a certificate shall serve the public interest." Anything that will assist the SEC in making these determinations, without imposing undue burdens or delay, should be included in the record of these proceedings.

I. RSA 541-A:33 does not create a bar to the type of material that can be included in the record of the SEC adjudicatory hearing.

3. As the Applicant's motion recites, the rules of evidence that apply in more formal court proceedings do not apply in SEC adjudicatory hearings. Under RSA 541-A: 33, "[a]ny oral or documentary evidence may be received." The Applicant would have the SEC interpret this statute as creating a threshold requirement regarding the material to be included in the record of the hearing. The Applicant would require that the proffered material be "evidence" under a restrictive and crabbed meaning of the term.

4. The Southern Non-abutters submit that this argument turns the statute on its head. The statute is clearly intended to avoid such fine legal distinctions and to permit the introduction of various materials that might be inadmissible in other proceedings.

5. In proceedings in which the adjudicators are competent to give the appropriate weight to the materials presented, there is no reason to invent a threshold to admissibility such as that proposed by the Applicant. The SEC is competent to determine the relevance and probative value of the material the parties seek to have considered; there is no reason to require any preliminary determinations such as that proposed by the Applicant. Although material that is clearly irrelevant, immaterial or unduly repetitious

can and should be excluded at the outset, the Applicant's proposed limitation would not assist the SEC in making determinations about these characteristics.

6. In addition, the Applicant argument suggests that any material that contains "conclusions, beliefs, or concerns" should not be admitted. Surely this cannot be an appropriate approach, since such beliefs and concerns, and the strength with which they are held, must be taken into account in determining "the public interest" in this case. Furthermore, any attempt to distinguish "concerns and beliefs" from "facts" in the very narrow category urged by the Applicant would likely preclude relevant testimony.

II. Material that addresses matters beyond those that are specifically required to be addressed in an Application, or that addresses matters using methodologies other than those that the Applicant is required to use, is relevant to this proceeding and is admissible.

7. Pursuant to the power granted it under RSA 162-H:10 VII, the SEC has adopted rules indicating the information that must be provided by the Applicant in an application for a certificate and the procedures which are to be followed in any adjudicatory hearing considering the application. The former set of rules, directing the material that the Applicant must submit, should not be viewed as a limitation on the materials that are to be viewed as relevant to the ultimate determination of the SEC regarding whether the granting of a certificate is in the public interest.

8. With respect to several of the items it seeks to have stricken, the Applicant makes reference to the criteria that it must meet in presenting the SEC with information

regarding certain subject matters. For instance, at paragraph 16 of its motion, the Applicant states that one of the items to be excluded "does not meet any of the requirements established by the SEC rules with respect to visual impact analysis." The implication is that any information that was not required to be included in the Application, or that is not in the form required in the application, is irrelevant to the proceeding. This is not an appropriate reading of the rules, and is contrary to the nature of the proceedings as outlined in the statutes authorizing the SEC rules, and the rules themselves, for the conduct of these proceedings.

9. Nothing in RSA 162-H:7, RSA 162-H:10 VII or the rules promulgated by the SEC thereunder indicate that only the information of the type required of the Applicant should be considered relevant to the SEC's ultimate determination that the issuance of the certificate serves the public interest.

10. Indeed, Site 301.13 and following set forth "criteria relative to findings" that relate to various characteristics of the Applicant and of the Project that encompass factors that are not necessarily directly tied to the particular items required to be included in an application under Site 301.04 and following. This fact alone suggests that the SEC can, and should, consider information that relates to issues relevant to its determination, even if the information is not presented in the way that the Applicant is required to present it. It should not, furthermore, require that information presented by others be presented using the same methodologies required to be use by the Applicant. Finally, the SEC can, and should, consider information that is germane to the "criteria relative to findings"

even if the SEC rules impose no affirmative burden on the Applicant to provide information on such topics.

11. According to RSA section 162-H:10, III, the SEC "shall consider and weigh all evidence presented at public hearings [whether or not that hearing is the adjudicative proceeding referred to in RAS section 162-H:10, II] and shall consider and weigh written information and reports submitted to it by members of the public before, during and subsequent to public hearings but prior to the closing of the record of the proceeding."

III. Supplemental pre-filed testimony should not be strictly limited to material that was unknown at the time initial pre-filed testimony was submitted, and to attempt to apply any such limitation in a consistent manner would be unduly burdensome to all concerned.

12. The Applicant's arguments regarding the appropriate contents of supplemental testimony suggest that only matters that were entirely unknowable to the witness at time pre-filed testimony was submitted can be included in supplemental pre-filed testimony. Such a limitation is clearly inappropriate.

13. There are many reasons why matters, whether actually known to the witness or merely knowable by the witness at the time, may be appropriately included in supplemental pre-filed testimony. For instance, the witness may not have been aware of the relevance of the testimony, until it learned, through the technical sessions and related procedures, of the information offered by and the theories to be pursued by others. Similarly, the witness may have failed to anticipate arguments that might be used to raise

questions about his testimony or discredit him as a witness until after the technical sessions have taken place.

14. The Applicant further suggests that the inclusion of certain supplemental pre-filed testimony would threaten its due process rights to a fair hearing. No one is disadvantaged by the inclusion in the record of all information that relates to the ultimate determination that the SEC must make. If there is reason to doubt the authenticity of any material submitted or to raise questions about the introduction of any material, any party should be able to question the presenter regarding the material, either through motions specifically tailored to explore the nature of any questionable material, by raising objections during the adjudicative hearing, or, as is likely to be most efficient, simply through cross-examination.

15. While it is clear from the SEC rules that the technical sessions are to be used by the parties to provide scope and direction to the adjudicatory hearing, there is nothing in the SEC rules that suggest that the interactions in such sessions are the only means of challenging proffered testimony, evidence and other materials.

16. The Applicant's arguments regarding the admission of these items of supplemental pre-filed testimony purport to be based on a desire to avoid undue complication and delay as the proceedings move forward. The Southern Non-abutters submit that, in most instances, the effort required to apply consistently and fairly the criteria it sets forth for striking supplemental pre-filed testimony will only add confusion and delay.

For these reasons, the Southern Non-abutters request that the Applicant's motion to strike be denied.

Respectfully submitted,

Thomas Foulkes

As spokesperson for the Southern Non-abutters

April 4, 2017

Certificate of Service

I hereby certify that on the 4 day of April, 2017, an electronic copy of the foregoing motion was served upon the Service List for this docket.

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