

**THE STATE OF NEW HAMPSHIRE
SITE EVALUATION COMMITTEE**

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 for the Construction of a New High Voltage Transmission Line in New Hampshire

Docket No. 2015-06

OBJECTION TO STRIKE CERTAIN TRACK 1 TESTIMONY

The City of Concord and the Towns of Bethlehem, Bristol, Easton, Franconia, Northumberland, Plymouth, Sugar Hill, Whitefield, New Hampton, Littleton, Deerfield, Pembroke and Ashland Water & Service District (collectively “the Referenced Municipalities”) object to the Motion to Strike Certain Track 1 Testimony, stating as follows:

I. INTRODUCTION

1. The Applicants filed a Motion to Strike asserting that certain Track 1 testimony should not be admitted to the extent it contains: (1) unauthenticated videos; (2) immaterial direct testimony; (3) irrelevant direct testimony; or (4) improper supplemental testimony. These arguments are unfounded.

2. The Site Evaluation Committee rules state that the “receipt of evidence shall be governed by the provisions of RSA 541-A:33.” N.H. Admin. Rules, Site 202.24. In turn, RSA 541-A:33, II states:

The rules of evidence shall not apply in adjudicative proceedings. Any oral or documentary evidence may be received; but the presiding officer may exclude irrelevant, immaterial or unduly repetitious evidence. Agencies shall give effect to the rules of privilege recognized by law. Objections to evidence offered may be made and shall be noted in the record. Subject to the foregoing requirements, any part of the evidence may be received in written form if the interests of the parties will not thereby be prejudiced substantially.

(Emphasis added). The Motion to Strike lacks merit when considered in the light of RSA 541-A:33, II.

II. ANALYSIS

A. Supplemental Testimony of George E. Sansoucy – Timeliness

3. The Applicants inappropriately seek to exclude the supplemental testimony of George E. Sansoucy. The Applicants argue that the supplemental testimony is based on facts that were available prior to December 30, 2017. *See* Motion to Strike at 11-12. That argument is unfounded and lacks a good faith basis.

4. The Site Evaluation Committee has explained that supplemental pre-filed testimony may be provided to address “matters that were not known before the filing of direct testimony or to address evidence, issues and arguments that arise during the discovery phase of the matter.” *See, e.g.*, Order on Motion to Strike (September 13, 2016), Docket 2015-02.¹

5. As an initial matter, a portion of the supplemental pre-filed testimony of Mr. Sansoucy is based on the results of ISO-New England’s Forward Capacity Auction 11. Supplemental Pre-filed Testimony of George E. Sansoucy (“Sansoucy Supp.”) at 3-6. The results of this auction were not announced until February 6, 2017. It is unacceptable for the Applicants to argue that Mr. Sansoucy’s entire testimony should be stricken when his supplemental pre-filed testimony is clearly based on information that was unavailable before the other pre-filed testimony was filed on November 15, 2016 and December 30, 2016.

6. The remaining portions of Mr. Sansoucy’s supplemental pre-filed testimony were also timely filed because they address matters that were unknown before the filing of his pre-filed testimony and/or intended to address issues that were raised during his technical sessions. For example, Mr. Sansoucy’s testimony addresses the results of the Clean Energy RFP and his opinion that there are a large number of projects that will be competing for the Massachusetts

¹ The Applicants reference this ruling in their motion, and do not dispute its applicability to this proceeding. *See* Motion to Strike Certain Track 1 Testimony at 9. A copy of the order dated September 13, 2016 is [available here](#).

Clean Energy RFP. The importance of the Massachusetts Clean Energy RFP only became significant over the last few weeks, after the issuance of press releases issued by Hydro-Quebec on March 8 and 9, 2017 stating that it would not be willing to pay for the cost of the proposed transmission line in the United States. *See* Press Releases, attached as Exhibit A. The Applicants also only recently provided a copy of the letter extending the approval deadline within the Transmission Service Agreement, which letter states that “prior to the approval deadline, NPT and HRE shall file amendments to the TSA with FERC reflecting the terms and conditions of the Amended and Restated TSA *for purposes of the Massachusetts RFP*, or shall make a second amendment to the TSA to reflect changes to the Approval Deadline or other mutually agreed upon changes.” *See* Correspondence from Hydro Renewable Energy, Inc. to Northern Pass Transmission, LLC dated January 26, 2-17, attached as Exhibit B (emphasis added). Mr. Sansoucy’s supplemental pre-filed testimony addresses this new emphasis and reliance on the Massachusetts Clean Energy RFP. There is no basis for an argument that Mr. Sansoucy should have been aware that the Massachusetts Clean Energy RFP would become such a critical component of the financing of this project *before* his testimony on November 15, 2016 and December 30, 2016.²

7. Mr. Sansoucy’s supplemental pre-filed testimony also expands on his earlier testimony regarding the viability of alternatives such as using the Hydro-Quebec Phase 1 and 2 lines, as well as his concerns regarding whether the costs of the project might be passed along to

² It should be further noted that Northern Pass and Hydro-Quebec recently formulated a more carefully worded joint press release dated March 31, 2017 when it became apparent that the previous press statements made by Hydro-Quebec indicated that it would require a successful bid in the Massachusetts Clean Energy RFP. The new press release states that the Northern Pass proposal will remain viable even if it does not succeed in the Massachusetts Clean Energy RFP because the construction of the new transmission line does not depend on “the outcome of any one solicitation.” *See* Press Release, attached as Exhibit C. However, even assuming there are other potential RFPs that will be sufficient to satisfy Hydro-Quebec’s recently announced requirement that it will not pay for the cost of the transmission line in the United States, Mr. Sansoucy’s supplemental pre-filed testimony remains relevant because the same competitive forces will likely shape the outcome of these other unknown and unidentified solicitations.

New Hampshire ratepayers. Mr. Sansoucy's testimony is based on new information relative to FCA 11, and the amount of capacity that was bid by Hydro-Quebec for the Phase 1 and 2 lines. Moreover, Mr. Sansoucy was asked questions about these topics during his technical sessions, and therefore he is permitted to clarify such discussions in his supplemental testimony. Lastly, Mr. Sansoucy's supplemental pre-filed testimony also discusses the Public Utilities Commission's decision in Order 25,953 relative to the request by Northern Pass Transmission LLC to operate as a public utility. Mr. Sansoucy was asked during his technical session about his concerns regarding whether costs would be passed to the New Hampshire ratepayers. It is permissible to clarify and expand on Mr. Sansoucy's testimony by referencing the PUC proceeding and the Transmission Service Agreement.

8. In short, there is no basis for the Applicants to argue that the supplemental pre-filed testimony of Mr. Sansoucy should be stricken. Mr. Sansoucy's supplemental pre-filed testimony is intended to address recent developments and/or issues that were raised during technical sessions, all of which is in compliance with the Site Evaluation Committee's Order on Motion to Strike dated September 13, 2016. Indeed, the Applicants have similarly taken the opportunity to use supplemental testimony to clarify issues that were raised during technical sessions. For example, the supplemental testimony of Kenneth Bowes addresses criticism that was raised about the failure to bury all of the transmission lines, and he relies on a report that was prepared on May 31, 2016. *See, e.g.,* Supplemental Testimony of Kenneth Bowes. Mr. Sansoucy used his supplemental pre-filed testimony in a similar manner. The Applicants should not attempt to be allowed to play by a different set of rules when it relates to the filing of supplemental testimony.

B. Testimony of George E. Sansoucy – Alternatives

9. The Applicants further seek to strike all testimony submitted by George E. Sansoucy relative to alternatives on the basis that it is “not relevant to this proceeding.” Motion to Strike at 8. The Applicants’ motion to strike on this issue is based on the argument that, because the presiding officer’s order on the motions to compel dated September 22, 2016 denied the request to compel documents about alternative routes (with an emphasis on the Interstate 93 corridor), all evidence relative to alternatives is now prohibited. The order on the motion to compel should not be read so broadly. The fact that the parties were not allowed to obtain discovery from the Applicants on alternative routes, such as the use of the Interstate 93, does not support an argument that evidence on alternatives cannot be introduced by the other parties and/or ultimately considered by the Site Evaluation Committee. RSA chapter 162-H and the Site Evaluation Committee’s administrative rules support a determination that any party may submit evidence of alternative routes. Even if an applicant has a minimal burden to produce details of alternatives in its application, the Site Evaluation Committee may still consider evidence of alternatives introduced by other parties. This is discussed in more detail as follows.

10. With respect to an application, RSA 162-H:7, V(b) requires that the applicant “[i]dentify both the applicant’s preferred choice and *other alternatives it considers available* for the site and configuration of each major part of the proposed facility and the reasons for the applicant’s preferred choice.” (Emphasis added); *see also* N.H. Admin. Rules, Site 301.03 (discussing application requirements for alternatives). This language essentially allows an applicant to make its own determination of what alternatives are “available.”

11. There is a different standard, however, for the Site Evaluation Committee’s consideration and findings. RSA 162-H:16, IV states that “[a]fter due consideration of *all*

relevant information regarding the potential siting or routes of a proposed energy facility, including potential significant impacts and benefits, the site evaluation committee shall determine if the issuance of a certificate will serve the objectives of this chapter” (Emphasis added.) It should be noted that, prior to the recent amendments in 2015 to RSA chapter 162, the introductory language of RSA 162-H:16, IV read as follows: “The site evaluation committee, after having *considered available alternatives* and fully reviewed the environmental impact of the site or route, and other relevant factors bearing on whether the objectives of this chapter would be best served by the issuance of the certificate, must find that the site and facility” (Emphasis added).

12. It is apparent from the new language that the Site Evaluation Committee’s consideration of alternative routes is not necessarily limited to alternatives presented by the Applicant. This amended language allows consideration of *all relevant information* regarding potential routes. Moreover, the inclusion of the word “routes” (plural) allows the Site Evaluation Committee to consider alternate routes suggested by parties other than an applicant. In the event the legislature intended that the Site Evaluation Committee only consider routes that an applicant “considers available,” that same language could have been included in RSA 162-H:16, IV, but it was not. This statute instead references a broader category of information. Under the canons of statutory interpretation, by using different language, the legislature intended a different meaning than RSA 162-H:7, V(b)’s limitation of “other alternatives [NPT] considers available.”

13. Lastly, it would be unreasonable to limit “all relevant information” to information about alternatives presented by an applicant because the Site Evaluation Committee proceedings are adjudicative in nature and involve multiple parties. The information regarding other alternative routes is relevant and important when considering the objectives of RSA chapter 162-

H, which involve “the selection of sites for energy facilities” and the requirement “that the state ensure that the construction and operation of energy facilities is treated as a significant aspect of land-use planning in which all environmental, economic, and technical issues are resolved in an integrated fashion.” RSA 162-H:1. In addition, the Site Evaluation Committee’s consideration of alternative routes proffered by the parties is relevant to the consideration of “the welfare of the population” in determining whether an application is in the public interest. *See* Site 301.15(a). The welfare of the population and the public interest would not be served by the Site Evaluation Committee approving a project that is not needed and/or that could be sited elsewhere with significantly fewer negative impacts. The Applicants’ attempt to restrict evidence about other alternatives should be denied.

C. Video Exhibits and Other Direct Testimony

14. The Referenced Municipalities also object to the request to strike other testimony that include video exhibits and/or direct testimony.

15. With respect to video testimony, there is no basis for the suggestion that video exhibits are not allowed in Site Evaluation Committee proceedings. This is not the first time that a video has been submitted. *See, e.g.*, Pre-Filed Testimony of Michael Buscher, Docket 2015-02 (attaching video animations), [available here](#). The introduction of a video as evidence is well within the category of evidence allowed under RSA 541-A:33, II.

16. There is also no basis for the Applicants’ argument that the video should be excluded because “it does not meet any of the requirements established by the SEC rules with respect to visual impact analyses.” Motion to Strike at 5. The SEC rules require a visual impact analysis to be included in an application, and it must address impacts to scenic resources and

other key observation points within the area of potential impact. N.H. Admin. Rules, 301.05(b).³ These rules only apply to the requirements for an application. There is no prohibition on a party providing photographs, videos or other documents that identify aesthetic or other concerns relative to properties with form or content that may not be required in an applicant's visual impact analysis.

17. Lastly, the Applicants seek to exclude testimony of any witness who “merely states conclusions, expresses belief or notes concerns.” Motion to Strike at 7. It is inappropriate for the Applicants to seek to exclude such testimony. If anything, the arguments raised by the Applicants relate to weight to be afforded to the challenged testimony, not to its admissibility. A review of the pre-filed testimony of Bradley J. Thompson, Time and Brigitte White, Carl Lakes, Mark and Susan Orzeck and Phil and John Bilodeau reveals that each of those witnesses express their concerns about the proposed Northern Pass plans.

III. CONCLUSION

18. For all of the foregoing reasons, the Referenced Municipalities respectfully request the Site Evaluation Committee to deny the Motion to Strike Certain Track 1 Testimony.

³ For the proposed Northern Pass, the “area of potential visual impact” is defined as a radius of 10 miles because the matter involves transmission lines that are longer than 1 mile and have an increase in the height of the towers, poles and other supporting structures. *Id.* at 301.05(b)(4).

Respectfully submitted,

TOWNS OF NEW HAMPTON, LITTLETON,
DEERFIELD, PEMBROKE, and ASHLAND
WATER & SEWER DISTRICT

By and through its attorneys,

MITCHELL MUNICIPAL GROUP, P.A.

Dated: April 5, 2017

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TOWNS OF BETHLEHEM, BRISTOL, EASTON,
FRANCONIA, NORTHUMBERLAND,
PLYMOUTH, SUGAR HILL and WHITEFIELD

By and through their attorneys,

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Dated: April 5, 2017

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CITY OF CONCORD

Dated: April 5, 2017

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CERTIFICATE OF SERVICE

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

Dated: April 5, 2017

By: /s/ Danielle L. Pacik
Danielle Pacik, Esq.

EXHIBIT A

Montréal, March 8, 2017

Press Release



Northern Pass Project : Hydro-Québec won't pay a cent for line on American side

Hydro-Québec vigorously rebuts the article in the *Journal de Montréal* titled "Hydro will pay for line in U.S." The content of the article is totally false. We won't pay a cent for the Northern Pass transmission line on the American side. American consumers will pay the transmission costs in the U.S. through their electricity rates. The project is designed to be profitable to Hydro-Québec, and thus to all Quebecers.

Massachusetts wants a supply of clean energy at a stable price. To this end, it passed *An Act Relative to Energy Diversity*, known familiarly as the Baker Act. The Act will lead to the launch of a request for proposals for a large amount of hydropower within the next few weeks. Under the RFP, the selected suppliers' transmission costs will be paid by the electrical utilities. So it will be American customers who, through their electricity rates, will pay the costs of the line.

The Northern Pass project consists in building an 80-km line on the Québec side and a 300?km line on the American side, at a cost of C\$600 million on the Québec side and US\$1.6 billion on the American side, under the responsibility of Eversource.

For information:

Media relations
Hydro-Québec
514 289-5005

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More news

Montréal, March 4, 2017

Press Release

Hydro-Québec's Karim Zaghbi: global expert in battery materials

Montréal, March 1, 2017

Press Release

A Rate Increase Below Inflation: Hydro-Québec Upholds Its Commitment

Montréal, February 21, 2017

Press Release

Hydro-Québec customers increasingly satisfied

> [All news](#)

Montréal, March 9, 2017

Press Release

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Northern Pass line: Hydro-Québec has no intention to abandon the project

With a view to openness and transparency, we contacted the journalist Jean-Nicholas Blanchet yesterday to explain once again Hydro-Québec's participation in the Northern Pass line project. Mr. Blanchet's conclusions from our conversation remain erroneous. Hydro-Québec has absolutely no intention to abandon the project.

Hydro-Québec wishes to reiterate the position we shared with numerous Québec media on Wednesday:

- Hydro-Québec will not pay for the line in the U.S.
- Hydro-Québec will make sure this project is profitable for Quebecers.

We firmly believe in the strength of our alliance with our American partner, Eversource. We intend to submit this project to the request for proposals the state of Massachusetts will be issuing soon. This project will benefit both Québec and the New England states.

Year to year, Hydro-Québec seizes business opportunities on export markets, which form a large part of its profits, for the benefit of Quebecers as a whole.

EXHIBIT B



January 26, 2017

Northern Pass Transmission, LLC.
P.O. Box 330
780 North Commercial Street
Manchester, NH 03105-0330

Richard Cacchione
Chairman of the Board and President
Hydro Renewable Energy Inc.
75 Boulevard René-Lévesque O., 18th Floor
Montréal (Québec) Canada H2Z 1A4

Re: Agreement to extend the Approval Deadline

Dear Mr. Cacchione,

Reference is made to the Transmission Service Agreement dated as of October 4, 2010 and executed by and between Northern Pass Transmission LLC ("NPT") and H.Q. Hydro Renewable Energy, Inc. (now known as Hydro Renewable Energy Inc.) ("HRE"), as amended on December 11, 2013 (the "TSA")¹.

NPT and HRE mutually agree to extend the Approval Deadline from February 14, 2017 to December 31, 2020, for all purposes under the TSA. Notwithstanding the foregoing, prior to the Approval Deadline, NPT and HRE shall file amendments to the TSA with FERC reflecting the terms and conditions of the Amended and Restated TSA for purposes of the Massachusetts RFP, or shall make a second amendment to the TSA to reflect changes to the Approval Deadline and other mutually agreed upon changes.

For greater certainty, NPT and HRE agree that the definition of the term Approval Deadline shall remain in effect except as expressly modified herein. All other terms and conditions of the TSA shall remain in effect.

NPT shall make any appropriate regulatory filings that NPT determines, in its sole discretion, are required in connection with this letter agreement.


Please indicate HRE's agreement to and acceptance of this letter agreement by having the appropriate duly authorized representative of HRE countersign both originals of this letter agreement and returning one original to me.

This letter agreement may be executed in any number of counterparts (including by facsimile or other electronic transmission (e.g., a "PDF" or "TIFF" file) with the same effect as if all the Parties had signed the same document. All counterparts shall be construed together and shall constitute one and the same instrument.

Thank you in advance for your care and attention to this matter.

Sincerely,

NORTHERN PASS TRANSMISSION LLC



Leon J. Olivier
President, duly authorized

¹ Unless otherwise defined herein, capitalized terms used in this letter shall have the same meanings ascribed to them in the TSA.

Agreed to and accepted by
HYDRO RENEWABLE ENERGY INC.



Richard Cacchione
Its Chairman of the Board and President, duly authorized

The undersigned Hydro-Québec Production acknowledges having read this agreement and agrees to be bound by the terms hereof.

HYDRO-QUÉBEC PRODUCTION



Richard Cacchione
Its President, duly authorized

cc:

EXHIBIT C

Montréal, March 31, 2017

Press Release

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Eversource Energy and Hydro-Québec Reaffirm Commitment to Northern Pass Project and Clarify Cost Recovery Structure

In response to recent inquiries concerning the Northern Pass project, Eversource Energy and Hydro-Québec wish to reaffirm their mutual and strong commitment to the project and provide clarity about how the project will be funded.

“We are proud to partner with Hydro-Québec to deliver clean, reliable hydropower into New England,” said Jim Judge, President & CEO of Eversource Energy. “We are both committed to Northern Pass as part of the solution to New England’s energy challenges, and look forward to a successful outcome in the final stages of state and federal permitting in 2017.”

Northern Pass Transmission, Inc. (NPT), a wholly owned subsidiary of Eversource Energy, is developing the U.S. transmission project to interconnect with Hydro-Québec’s system and allow the delivery of 1,090 MW of clean hydropower into New England. NPT is responsible for financing and constructing the project, and will then recover its costs once the project is in service delivering power to the region. It is the method by which project costs will be recovered that has raised questions recently.

When the project was initiated, it was expected that NPT would recover its costs through future revenues that Hydro-Québec would receive from the delivery of energy into the New England wholesale market. More recently, however, alternative methods to pay for new transmission projects have been proposed by states seeking to procure deliveries of clean energy to meet their climate and energy diversity goals.

The next significant opportunity will occur this spring, when Massachusetts solicits proposals for large quantities of clean energy. If NPT is selected, its costs will be paid by the distribution companies who purchase Hydro-Québec’s clean energy. The Transmission Services Agreement (TSA), which was initially approved by the Federal Energy Regulatory Commission in 2011 and remains in effect today, will be amended and supplemented to reflect the outcome of the Massachusetts solicitation.



“Alongside Eversource, we are very much looking forward to participating in the upcoming Massachusetts request for proposals. The clean energy legislation adopted by Massachusetts recognizes the important role of hydropower in the supply mix. We already supply over 10% of New England’s electricity, but Hydro-Québec can do more to helping the region meet its ambitious carbon reduction goals,” said Éric Martel, Hydro-Québec CEO.




Importantly, continued development of NPT does not depend on the outcome of any one solicitation, and Eversource and Hydro-Québec will continue to evaluate future opportunities as they arise. There is a clear and growing demand for clean energy in New England as the

region faces the retirement of many older generating units and the need to achieve the region's environmental objectives. Meeting this demand will require that additional energy infrastructure be built. To help meet this demand, Eversource Energy and Hydro-Québec stand firmly behind the Northern Pass project, and believe it will deliver significant value to the province of Québec and help to advance New England's clean energy future.

About Northern Pass

Northern Pass is a 192-mile electric transmission line project that will provide New Hampshire and New England up to 1,090 megawatts of clean hydropower. To learn more about Northern Pass, go to www.northernpass.us .

Eversource (NYSE: ES) is New Hampshire's largest electric utility, serving more than 500,000 homes and businesses in 211 cities and towns. Recognized in 2015 as the top-ranked "green" utility  in the U.S. by Newsweek magazine, Eversource harnesses the commitment of its approximately 8,000 employees across three states to build a single, united company around the mission of delivering reliable energy and superior customer service. For more information, please visit our website (www.eversource.com ) and follow us on Twitter (@eversourceNH ) and Facebook (facebook.com/EversourceNH .

Hydro-Québec delivers reliable electric power and high-quality services. By developing hydraulic resources, we make a strong contribution to collective wealth and play a central role in the emergence of a low-carbon economy. As recognized leaders in hydropower and large transmission systems, we export clean, renewable power and commercialize our expertise and innovations on world markets. For more information, please visit our website (www.hydroquebec.com ) and follow us on Twitter (@hydroquebec ) and Facebook (facebook.com/hydroquebec1944 .

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