

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

OBJECTION OF THE ABUTTING PROPERTY OWNERS, BETHLEHEM TO
PLYMOUTH INTERVENOR GROUP
TO THE
APPLICANTS' MOTION TO STRIKE CERTAIN TRACK ONE TESTIMONY

The Abutting Property Owners, Bethlehem To Plymouth Intervenor Group (the "Intervenor Group") respectfully submits this Objection to the Motion to Strike Certain Track I Testimony ("Motion to Strike") Submitted by Northern Pass Transmission ("NPT" or the "Applicants") in the above Docket on March 29, 2017. Specifically, the Intervenor Group objects to that portion of the Motion to Strike that seeks to have video testimony submitted by the Intervenor Group stricken from the record. The Intervenor Group respectfully requests that that portion of the Motion to Strike be denied, and that the Intervenor Group's video testimony be allowed to remain as testimony admitted for the Adjudicative Hearings phase under this Docket.

Background

1. On December 27, 2016 the Intervenor Group filed Pre-filed Testimony under the subject Docket. This Pre-filed Testimony consisted of two parts: written testimony, and a video.
2. On March 29, 2017, the Applicants filed a Motion to Strike Certain Track 1 Testimony, which, among other things, seeks to strike the Intervenor Group's video testimony.

Discussion

3. In participating in this Docket the Intervenor Group seeks to provide to the SEC information that is material and important to the deliberation and decisions that the SEC must undertake with regard to the Northern Pass project ("the Project" or "NP") under RSA 162-H:16, IV. The Subcommittee must consider the Application with respect to a series of criteria specified in RSA section 162-H:16, and in SEC Rules at Site 301.13 through 301.16. The information that the Intervenor Group seeks to provide in our testimony, including our video testimony, directly pertains to a number of these criteria.

4. Specifically, The Intervenor Group's video testimony is directly pertinent to, and provides information to the Subcommittee regarding, the following criteria included in NH state law and SEC rules:

- (i) RSA 162-H:16 IV (b) and Site 301.15: Undue interference with orderly development; and
- (ii) RSA 162-H:16 IV (c) and Site 301.16: Criteria Relative to Finding of Public Interest, including unreasonable adverse impacts on:
 - private property,
 - aesthetics,
 - historic sites,
 - water quality,
 - the natural environment, and
 - public health and safety.

5. The Intervenor Group's video testimony is therefore absolutely relevant and material to the SEC in making its determinations under RSA 162-H:16, IV. Furthermore, the Intervenor Group's video testimony is clearly unique among the pre-filed testimony submitted in this Docket, and as such can not be considered repetitious.

6. In their Motion to Strike, the Applicants use selected references to invent definitions of "testimony" and "evidence" that suit their own narrow objectives, but that run counter to the needs and objectives of the SEC deliberative process. However, the Applicants' efforts to apply their invented definitions to pre-trial testimony filed before the SEC are undermined by the Applicant's own sources. The Applicants are forced to acknowledge in their own Motion that: "The Administrative Procedures Act, RSA 541-A:33,II provides that the rules of evidence do not apply in adjudicative proceedings, and that '[a]ny oral or documentary evidence may be received; but the presiding officer may exclude irrelevant, immaterial or unduly repetitious evidence.'" The Applicants themselves concede that "rules of evidence do not apply in SEC proceedings", and that the definitions that they have taken from the Administrative Procedures Manual and other outside sources do not apply to pre-filed testimony filed before the SEC. In fact, none of the rules or definitions of testimony or evidence invented by the Applicants in their Motion to Strike appear in the rules governing SEC procedures, or apply to pre-filed testimony filed before the SEC. The only standards applicable to pre-filed testimony filed before the SEC are that such testimony must be relevant, material, and not unduly repetitious. The Intervenor Group's video testimony absolutely meets these standards and therefore absolutely qualifies as admissible testimony.

7. The SEC rules consider that the adjudicating members of the SEC are competent to give the appropriate weight to the materials presented to them. A threshold of admissibility for pre-filed testimony such as that invented by the Applicant is neither

needed nor appropriate. The SEC is competent to determine the relevance and probative value of the material submitted by the parties. Preliminary screening by the Applicants of information duly submitted by other parties, according to arcane, overly restrictive, and inapplicable limitations invented by the Applicants to suit their own purposes, is neither necessary nor appropriate. The Applicant's transparent efforts to restrict the flow of material and relevant information to SEC adjudicators is purely self-serving, and hinders, rather than helps, the SEC in making its determinations under RSA 162-H:16, IV.

8. The Applicants argue that the Intervenor Group's video testimony should be stricken because it: "appears to be essentially an argument for adopting an alternative route," and "testimony advocating for an alternative route is irrelevant and, therefore, inadmissible as evidence." This argument clearly mischaracterizes the video. The focus of the Intervenor Group's video testimony, as stated in the Intervenor Group's accompanying written testimony, is on "the underground portion of the route through Franconia and Easton, showing the proximity of our homes and businesses to the roads where excavation, including blasting and drilling would occur." The video demonstrates, in a manner that cannot be conveyed in written word and can only be shown visually, the fact that the Applicant's proposal to install a high-voltage transmission line under the main streets and rural roads of Franconia and Easton is ill-conceived, and contravenes numerous criteria for project acceptability included in RSA 162-H:16, and at Site 301.13 through 301.16, as enumerated above. As such, the video is directly relevant to the SEC in making its determinations under RSA 162-H:16, IV.

9. The video does mention an alternative route for NP; the I-93 corridor. This was included because the video testimony was planned and developed many months before information about alternative routes was ruled¹ to be irrelevant to this Docket – and at a time when the Applicants themselves were consistently raising the issue of the I-93 alternative route in public hearings. The Applicant therefore unreasonably attempts to retroactively apply a ruling to the Intervenor Group's video testimony that could not have been anticipated at the time the video testimony was in production. Furthermore, the mention of the I-93 alternative constitutes only a relatively small portion of the video testimony, and is far outweighed by the extensive material and relevant content of the video. It is not reasonable or appropriate for the Applicants to seek to have an entire testimony stricken on the grounds that a minor part of that testimony is irrelevant. The remainder and greater part of the testimony remains material, relevant, and admissible, and in order for due process to be served, this admissible testimony must be retained on the record.

10. The Intervenor Group is a party to the proceedings under this docket, duly recognized by SEC.² As such, the Intervenor Group is entitled to due process in the

¹ Order on Motions to Compel, September 22, 2016

² Order On Petitions To Intervene, March 18, 2016

course of these proceedings. Specifically and perhaps most importantly, the Intervenor Group has a right to file testimony for the Adjudicative Hearing phase of these proceedings. Pre-filed testimony submitted by the Intervenor Group that is clearly material, relevant, non-repetitious, and admissible, must by law be admitted to the record for the Adjudicative Hearing. Admissible testimony from duly recognized parties cannot be stricken for any reason, and certainly not for the arcane, invented, and inapplicable reasons posed by the Applicants. The Intervenor Group considers their video pre-filed testimony to be the crux of their testimony before the SEC in this Docket. If this video testimony were to be stricken from the record, the Intervenor Group would consider that they have been denied due process.

11. The SEC process is intended to be an inclusive process, under which all parties potentially affected by a proposed project have a voice in the decision-making about the project. This is critical in order for the decisions rendered by the SEC to have any legitimacy. The Applicant's Motion to Strike seeks to silence and disenfranchise numerous parties who clearly have significant stakes in the outcome of the proceedings, and have a right to be heard by the SEC. If the SEC were to grant the Applicant's motion and disenfranchise a significant group of stakeholders, this would seriously undermine the legitimacy and the acceptance of the SEC's final decision in this matter.

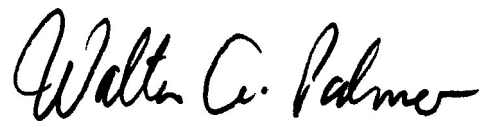
WHEREFORE, the Intervenor Group respectfully requests that the Site Evaluation Committee:

- (i) DENY the Applicant's Motion to Strike the Intervenor Group's video testimony; and
- (ii) Grant such further relief as it deems appropriate.

Date: April 7, 2017

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

By its designated spokesperson



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