

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 SOCIETY FOR THE PROTECTION OF NEW HAMPSHIRE
FORESTS TO APPLICANTS' MOTION FOR CLARIFICATION OF
SITE 301.08(d)(2)(b)**

The Society for the Protection of New Hampshire Forests (the "Forest Society"), by and through its attorneys, BCM Environmental & Land Law, PLLC, objects to the Motion for Clarification of Site 301.08(d)(2)(b) submitted by Eversource Energy and Northern Pass Transmission, LLC (the "Applicants"). The Forest Society agrees with the arguments of Counsel for the Public in his recently filed Objection to the Applicants' Motion and will not repeat those arguments herein. In further support of denying the Motion, the Forest Society states as follows:

1. The Applicants seek "clarification" of a provision that is very clear and not open to any interpretation other than its plain meaning.

2. Site 301.08(d)(2)(b) provides as follows:

(2) A facility decommissioning plan prepared by an independent, qualified person with demonstrated knowledge and experience in similar energy facility projects and cost estimates; the decommissioning plan shall include each of the following:

b. The provision of financial assurance in the form of an irrevocable standby letter of credit, performance bond, surety bond, or unconditional payment guaranty executed by a parent company of the facility owner maintaining at all times an investment grade credit rating[.]

3. The Applicants assert that “[i]t is not obvious whether the list was intended to serve as representative examples of financial assurance or to be an exclusive list of the only acceptable forms of assurance.” Motion at ¶ 3. The Applicants urge the former as “the better interpretation.” Id.

4. The plain language of the Rule is not susceptible to multiple interpretations; the Rule is an exhaustive list of four financial assurance options.

5. In 2015, the SEC considered amending the language of the Rule in such a way that would be closer to the Applicants’ preferred interpretation.¹ Specifically, the SEC considered industry requests that “there not be a specification of the appropriate means of financial security,” “that there should be more financial assurance mechanisms that would be permissible,” and “that the security provision should not be as limited as appear in this [existing] language.” SEC Rulemaking Docket No. 2014-04, Exhibit 1 at 39.

6. The SEC also considered recommendations to further restrict the fourth assurance option—the corporate guaranty. Id. at 40–41.

7. The SEC declined to amend any part of Site 301.08(d)(2)(b) and left the exhaustive list of four financial assurance options in place. Id. at 41–43.

8. The SEC’s decision not to add additional assurance options was deliberate: “The SEC determined that the specific financial assurance requirements for energy facility decommissioning plans are policy decisions that it made after consideration of extensive and detailed comments submitted through the public rulemaking process.” Letter from SEC to JLCAR (Nov. 25, 2015), Exhibit 2 at 5.

¹ In 2016, the Rule was re-codified from Site 301.08(c)(2) to Site 301.08(d)(2)(b). The language of the Rule, though, has remained the same throughout the time period relevant to this Objection.

9. Thus, it is obvious that the list was intended to be exclusive. Contra Motion at ¶ 3 (“It is not obvious whether the list was intended to serve as representative examples . . . or to be an exclusive list”)

10. Alternatively, the Applicants seek a waiver from Site 301.08(d)(2)(b) under Site 302.05.

11. In the Seacoast Reliability docket, Eversource requested a waiver from the same Rule. See SEC Docket No. 2015-04 (April 12, 2016). In that docket, the subcommittee narrowly granted the waiver. Order (Dec. 29, 2016), Exhibit 3 at 1. However, the proposed Seacoast Reliability project is materially different than the proposed Northern Pass transmission line.

12. First, Counsel for the Public and the subcommittee supported the waiver because the Seacoast Reliability project is “a reliability project subject to a FERC-approved transmission tariff.” Id. at 8, 10. Counsel for the Public and the SEC distinguished the project from commercial projects. Id.

13. Here, the proposed Northern Pass is a commercial, non-reliability project that does not carry with it a transmission tariff that assures the recovery of decommissioning costs.

14. The second distinguishing characteristic is that the Seacoast Reliability subcommittee granted the waiver in part because of the financial strength of Eversource. Id. at 4, 10.

15. However, the Seacoast Reliability Project is a 12.9-mile transmission line, whereas the proposed Northern Pass is a 192-mile transmission line for which the Applicants have not guaranteed the cost of decommissioning.

16. Rather, the Applicants maintain that “the TSA and the parent company guaranty from Hydro Quebec assure that funds will be available to decommission the Project.” Motion at ¶ 5.

17. However, the TSA can be amended at any time by the parties to that agreement. See, for example, the January 26, 2017 letter agreement between the parties stating that “NPT and HRE shall file amendments to the TSA . . . or shall make a second amendment to the TSA to reflect changes to the Approval Deadline and other mutually agreed upon changes.” Exhibit 4.

18. Hydro Quebec’s parent company guaranty may also be amended in writing by the parties. See TSA at E-9, Exhibit 5.

19. Indeed, it appears that the SEC has already denied the adequacy of the TSA relative to Site 308.08(d)(2)(b) in its order dated June 23, 2016 in this docket. The Applicants sought a waiver from the rules which required it to submit a decommissioning plan based on the argument that the TSA was sufficient. The SEC denied that request. In its order, the SEC held that the Applicants are proposing a commercial transmission line project in contrast to a reliability project, and further “the Subcommittee cannot rely on the provisions of the Transmission Service Agreement to ensure that local taxpayers will not be left with the financial burden of decommissioning in the event that the project becomes obsolete or unprofitable, and is abandoned at some future date.” Order (June 23, 2016) at 28.

20. Granting the Applicants’ current request for a waiver would serve the same disinterest to the public that the SEC recognized in its June 23, 2016 order.

21. Added to this uncertainty are recent statements from Hydro Quebec that it will not pay for the Northern Pass project, which appears contrary to language in the TSA.

22. In summary, it would not serve the public interest to waive the deliberate and specific requirements of Site 308.08(d)(2)(b) for a 192-mile non-reliability, commercial transmission line in reliance on a TSA that can be—and has been—amended by the parties to that agreement.

23. Finally, the Applicants do not assert that complying with the Rule would constitute a hardship. Rather, Eversource's recent history of seeking exemptions suggests that it simply prefers not to follow the Rule. The Applicants should be required to follow the rules that exist, not as the Applicants wish they existed.

WHEREFORE, the Forest Society respectfully requests that the Committee:


- A. Deny the Applicants' Motion for Clarification of Site 301.08(d)(2)(b);
- B. Deny the Applicants' request for a waiver; and
- C. 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



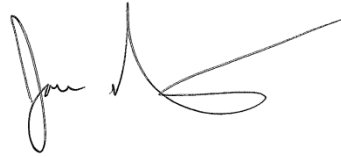
Date: April 7, 2017

By: _____

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CERTIFICATE OF SERVICE

I hereby certify that on this day, April 7, 2017, a copy of the foregoing Objection was sent by electronic mail to persons named on the Service List of this docket.

A handwritten signature in black ink, appearing to read 'Jason Reimers', with a long horizontal stroke extending to the right.

Jason Reimers

EXHIBIT 1

1 **STATE OF NEW HAMPSHIRE**2 **SITE EVALUATION COMMITTEE**

3 **September 29, 2015** - 9:36 a.m.
4 Public Utilities Commission
5 21 South Fruit Street Suite 10
6 Concord, New Hampshire

7 **IN RE: SEC Docket No. 2014-04**
8 **SITE EVALUATION COMMITTEE:**
9 **Site 100 through Site 300**
10 **Rulemaking Proceeding.**
11 ***(Meeting for members to***
12 ***discuss the Annotated Draft Final***
13 ***Proposal on proposed rules and***
14 ***the public comments thereto, and***
15 ***review and approval of the Final***
16 ***Proposals as prepared to date)***

17 **PRESENT:**18 **SITE EVALUATION COMMITTEE:**

19 Chrmn. Martin P. Honigberg	Public Utilities Commission
20 <i>(Presiding as Chairman of SEC)</i>	
21 Cmsr. Robert R. Scott	Public Utilities Commission
22 Cmsr. Kathryn M. Bailey	Public Utilities Commission
23 Dir. Elizabeth Muzzey	DCR-Div. of Historical Res.
24 William Oldenburg	Dept. of Transportation
Patricia Weathersby	Public Member
Roger Hawk	Public Member
Michele Roberge, Designee	DES - Air Resources Division

Also Present: David K. Wiesner, Esq. (NHPUC)

COURT REPORTER: Steven E. Patnaude, LCR No. 52

1 Various Energy Companies are proposing that it not be
2 required to be an "independent qualified person" who would
3 prepare the decommissioning plan. So, it could be the
4 applicant itself or an affiliate. Also, that salvage
5 value be permitted to be taken into account. And, that
6 there not be a specification of the appropriate means of
7 financial security.

8 EDP would also permit salvage value, and
9 also believes that there should be more financial
10 assurance mechanisms that would be permissible.

11 National Grid also believes that the
12 security provision should not be as limited as appear in
13 this language.

14 And, Eolian basically has the same
15 comment.

16 CHAIRMAN HONIGBERG: Is there a
17 statutory issue with the "salvage value" provision? I
18 have some memory that there's a limit on our ability to
19 allow them to include salvage value. I may be
20 misremembering.

21 MR. WIESNER: I'm not aware of that.

22 CHAIRMAN HONIGBERG: Okay. My mistake.

23 MR. WIESNER: And, I think different --
24 my understanding is that different states treat it

1 differently. But I understand the concern that, you know,
2 even at the end of a facility's useful life, there is
3 likely to be some salvage value. And, wouldn't it make
4 more sense to take that into account, and, you know,
5 somehow discount it to present value or whatever in
6 determining what the decommissioning plan is. And, this
7 language would prohibit that. And, some of the developers
8 have taken issue with that. I mean, that is, I believe,
9 the basis of their comment. I don't believe it's a legal
10 argument.

11 CHAIRMAN HONIGBERG: I actually thought
12 the legal argument went the other way. I thought there
13 was some -- maybe it's a decision, maybe it's something
14 from the Commission -- from the Committee in prior
15 decisions, I'm just not sure. If it's a straight policy
16 call, then the group can make the policy call, if we've
17 been given that authority.

18 MR. WIESNER: This is when I wish
19 Attorney Iacopino were sitting next to me. But he's not.

20 I'll also just go on and say that New
21 Hampshire Wind Watch and Mr. Quinchia have proposed some
22 more specific language regarding corporate guarantees.
23 And, it's probably best -- well, I can read it, actually.
24 They would delete the language that appears at the end,

1 which refers to "unconditional payment guaranty", and the
2 language that they would delete begins "executed by a
3 parent company of the facility owner maintaining at all
4 times an investment grade credit rating". And, they would
5 propose to include language reading "Which should for the
6 life of the project have a constant creditworthiness test
7 and the financial assurance is to be unconditional and
8 immediately payable and a backstop provision if the bank,
9 insurance company, or parent company loses its investment
10 grade credit rating as in standard project finance and
11 market conventions, i.e., four rating categories by
12 nationally recognized structured rating organizations."

13 CHAIRMAN HONIGBERG: Director Muzzey.

14 DIRECTOR MUZZEY: In order to begin
15 discussion of this, I will present the idea that we have
16 two opposite ends of ideas as to how to change or edit
17 this section. And, I don't believe there is middle ground
18 between those two extremes. By suggestion would be to
19 leave the language as is.

20 CHAIRMAN HONIGBERG: Other thoughts or
21 comments? Commissioner Scott.

22 COMMISSIONER SCOTT: I support that.
23 And, I'll point the Committee to 302.05, the waiver
24 provisions. So, we -- this doesn't preclude an applicant

1 from asking for a waiver of any of the conditions,
2 frankly. And, you know, if we deem it appropriate, we can
3 do that under assuming we approve 302.05.

4 CHAIRMAN HONIGBERG: Attorney
5 Weathersby.

6 MS. WEATHERSBY: I would agree. I think
7 that the language as written is very good, actually. I
8 think that it's important that the person who determines
9 the decommissioning plan is an independent from the
10 utility itself. And, that the salvage value, to me, is
11 rather speculative and I think should not be included.
12 And, I think Mr. Quinchia's comments are mostly captured
13 by the language that we have in here, where "the facility
14 owner has to maintain at all times an investment grade
15 credit rating".

16 So, I think that the language as written
17 is good and should be left alone.

18 CHAIRMAN HONIGBERG: Anyone want to take
19 on championing any of the changes that have been
20 suggested?

21 *[No verbal response]*

22 CHAIRMAN HONIGBERG: It would seem that
23 the answer is "no". Attorney Wiesner.

24 MR. WIESNER: So, leave the language as

1 is?

2 CHAIRMAN HONIGBERG: Leave the language
3 as is.

4 MR. WIESNER: And, in (8), we have some
5 very specific provisions for wind farm decommissioning.
6 And, in (8)(b), there's a requirement that "All
7 transformers shall be transported off-site." And, Eolian
8 has raised the question "Why should that only apply to
9 wind facilities? Why shouldn't it apply to other types of
10 facilities as well?"

11 CHAIRMAN HONIGBERG: But his comment --
12 he is a wind guy. His comment did not say "remove this
13 requirement for me"?

14 MR. WIESNER: I don't believe so. I
15 think he has another similar comment on the section that
16 requires the removal of underground infrastructure, that
17 that -- "why shouldn't that also apply to other energy
18 facilities?" So, the comment is not to delete it from
19 here, but to impose it on others.

20 CHAIRMAN HONIGBERG: Okay. Well, I'm
21 not -- then, I don't think we have to worry about deleting
22 it. The question is "whether it gets added for others?"
23 And, I believe there's also, with respect to that
24 "underground" issue, there's a question about "4 feet"

EXHIBIT 2

State of New Hampshire
Site Evaluation Committee

Martin P. Honigberg, Esquire
Chairman

Thomas S. Burack, Esquire
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November 25, 2015

Rep. Carol M. McGuire, Chair
Joint Legislative Committee on Administrative Rules
State House Annex, Room 219
25 Capitol Street
Concord, NH 03301-6312

**Re: Response to Preliminary Objection to FP 2015-11 and FP 2015-12
Site 100 and Site 201-204 - Organizational Rules and Rules of
Practice and Procedure of the Site Evaluation Committee
Site 205 and 300 - Explanation of Proposed Rule and Certificates
of Site and Facility Rules of the Site Evaluation Committee
SEC Docket No. 2014-04**

Dear Chair McGuire:

I write to you as Chairman of the Site Evaluation Committee (SEC) in response to the preliminary objection issued by the Joint Legislative Committee on Administrative Rules (Committee) to Final Proposals 2015-11 and 2015-12 regarding the SEC's Site 100-300 rules. The preliminary objection was entered on October 15, 2015, by vote of the Committee, pursuant to RSA 541-A:13, IV, based on the grounds as outlined in the Committee staff annotations to the final proposals, on the written testimony provided to the Committee prior to its meeting, on oral and written public testimony provided by the public at the Committee's meeting, and on the Committee's concerns as reflected by its comments at the meeting.

In order to address the Committee's preliminary objection, SEC Staff held a technical session with interested stakeholders on October 28, 2015, to seek resolution of the two primary bases of objections raised by public submissions and identified by the Committee: (1) the "public interest" siting criteria set forth in Site 301.16, and (2) the "cumulative impacts" analysis requirement set forth in Site 301.14(g). The technical session did not result in a consensus position regarding resolution of these two issues.

The SEC met on November 18, 2015, to consider the preliminary objection, and to develop and then approve the substance of this response to the preliminary objection. At that meeting, the SEC also established the text of rules language changes to be submitted in connection with its response and, as described below, authorized its Chairman to request revised objections at the relevant Committee meeting in order to avoid a final objection and/or joint resolution with respect to a number of issues covered by the preliminary objection.

Cultural Resources • Environmental Services • Public Utilities Commission • Resources and Economic Development • Transportation

We note further that SB 245, in addition to requiring that the SEC find that issuance of a certificate “will serve the public interest,” also amended RSA 162-H:16, IV to include the following sentence (emphasis added):

After 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 issuance of a certificate will serve the objectives of this chapter.

SB 245 also amended the SEC rulemaking mandate in RSA 162-H:10, VII to require that the SEC adopt rules relative to the criteria for siting energy facilities, “including specific criteria to be applied in determining if the requirements of RSA 162-H:16, IV have been met by the applicant for a certificate of site and facility.” Notably, this amendment *broadened* the scope of the rulemaking directive to adopt specific criteria to encompass *all* of RSA 162-H:16, IV, including the “public interest” finding under subsection (e) and the sentence quoted above, while the prior language of this section had referenced only subsections (b) and (c) of RSA 162-H:16, IV.

This appears to be strong evidence of the legislature’s intent that the SEC adopt specific criteria regarding the required “public interest” finding and the determination called for under the quoted sentence. The SEC did so through its adoption of the final proposal language of Site 301.16 and, in response to the preliminary objection, it has now revised the language of this section to more explicitly cover the values and factors referenced in the statutory purpose section, RSA 162-H:1. We believe this revision has removed any potential basis for objection to the public interest siting criteria set forth in Site 301.16.

Cumulative Impacts Analysis

The preliminary objection incorporated comments submitted by Northern Pass Transmission, New England Ratepayers Association, Monadnock Paper Mills, and the International Brotherhood of Electrical Workers asserting that the requirement set forth in Site 301.14(g) that the SEC analyze the “cumulative impacts” of all energy facilities on public health and safety, natural, wildlife, habitat, scenic, recreational, historic, and cultural resources, including aesthetic impacts and sound impacts, was inconsistent with legislative intent. Their assertion is based on the removal during the SB 245 legislative process of language that would have applied a cumulative impacts analysis to all energy facilities, as well as the inclusion through other legislative enactments of specific references to a cumulative impacts analysis for wind energy systems (RSA 162-H:10-a) and natural gas pipelines (RSA 162-H:10-b). Northern Pass also claimed that the required cumulative impacts analysis, as applied to non-wind energy facilities, was inconsistent with the other siting standards under RSA 162-H:16, IV.

The SEC was advised during its November 18 meeting that there may be a stronger basis to question whether the broader cumulative impacts analysis requirement is consistent with the legislature’s intent, in view of this legislative history and principles of statutory construction. The SEC decided to revise the language of Site 102.18, Site 301.03(h)(6), and Site 301.14(g), such that those rules

specific setback restrictions for electric transmission projects, and that the failure to do so is inconsistent with the SEC rulemaking directive under RSA 162-H:10, VII.

Through the public rulemaking process, the SEC was persuaded that specific setback distances would not be appropriate in all situations, so it would be preferable to permit specification of applicable setbacks and safety zones on an individualized, case-by-case basis, based on the record as developed for each application. The SEC believes that conclusion represents a policy determination made by the SEC and is not a proper ground for objection before the Committee. The SEC therefore has made no revision to the proposed rules in response to these comments.

Site Control and Eminent Domain

The preliminary objection incorporated testimony and comments presented by Senator Jeannie Forrester and by Dorothy McPhaul, effectively asserting that the SEC should not provide or recognize the exercise of eminent domain by applicants to secure site or route control. As stated by the SEC Chairman during the Committee's October 15th meeting and reiterated at the SEC's November 18th meeting, the SEC has no authority to grant eminent domain rights to an applicant or to any other party.

The site control requirements of proposed Site 301.03(c)(6) contain a narrow exception for applicants that can demonstrate they have taken action that may lead to eminent domain authority under a *separate* source of law, such as FERC interstate natural gas pipeline certification. Those applicants may submit an application to the SEC if they have initiated a federal regulatory proceeding or taken other action that would, if successful, provide the applicant with a right of eminent domain to acquire control of the site for the purpose of constructing, operating, and maintaining the proposed facility thereon. The SEC concluded that the related testimony and comments do not form a basis for objection, and therefore the SEC has made no revision to the proposed rules in response to these comments.

Decommissioning Plans for Energy Facilities

The preliminary objection incorporated comments submitted by Dorothy McPhaul and by EDP Renewables with respect to the decommissioning plan requirements set forth in Site 301.08(a)(7) and (c)(2). Ms. McPhaul argued that the rules should not permit applicants to provide decommissioning plan financial assurance in the form of corporate guaranties, and that the removal of structures and site restoration should be required for all energy facilities and not only for wind energy systems.

EDP Renewables argued that the express exclusion of potential salvage value when determining the required amount of decommissioning plan funding is inconsistent with legislative intent, because such exclusion was included in a prior version of the legislation which was eventually enacted through House Bill 1602 of 2014, but was removed prior to enactment. EDP Renewables also asserted that the listed forms of financial assurance are financially onerous and are not required by statute.

The SEC determined that the specific financial assurance requirements for energy facility decommissioning plans are policy decisions that it made after consideration of extensive and detailed comments submitted through the public rulemaking process. With respect to the exclusion of salvage

these comments.

Subcommittee formation (Site 103.03(a) and (d)). Committee staff commented that these proposed rules provisions should specify the circumstances and criteria for formation of subcommittees. The SEC noted that the proposed rules language tracks and cites the relevant statutory provisions. The SEC therefore has made no revision to the proposed rules in response to these comments; however, the SEC expressly authorized its Chairman to request that the Committee issue a revised objection directing removal of these rules provisions, if it appears that the Committee would find the proposed rules language to be objectionable.

State agency member designation of senior staff person (Site 103.03(d)(1)). Committee staff commented that this proposed rules provision should specify the circumstances and criteria for designation by state agency SEC members of senior staff to serve in their stead. The SEC noted that the proposed rules language tracks and cites the relevant statutory provisions. The SEC therefore has made no revision to the proposed rules in response to this comment; however, the SEC expressly authorized its Chairman to request that the Committee issue a revised objection directing removal of this rules provision, if it appears that the Committee would find the proposed rules language to be objectionable.

SEC public hearing in county or counties (Site 201.03(a) and (b)). Committee staff commented that the procedures for the SEC's non-adjudicative public hearings in the energy facility host county or counties should be specified, as in the NHDES Env-C 205 rules. The SEC noted that the proposed rules language tracks the relevant statutory provisions and that the NHDES rules seem inapposite. The SEC, however, did approve additions to Site 201.03 regarding public comments, transcripts, and website posting of information submitted in connection with its public hearings held in the county or counties.

Additional information sessions (Site 201.04). Committee staff commented that this proposed rules provision should specify the factors to be considered by the SEC when determining if any additional sessions are reasonable. The SEC noted that the proposed rules language tracks and cites the relevant statutory provision. The SEC therefore has made no revision to the proposed rules in response to this comment; however, the SEC expressly authorized its Chairman to request that the Committee issue a revised objection directing removal of this rules provision, if it appears that the Committee would find the proposed rules language to be objectionable.

Conditions of certificate (Site 301.17). Committee staff commented that this proposed rules provision should specify under what circumstances the enumerated potential certificate conditions will be imposed, and what factors and criteria will be assessed when making these decisions. The SEC has addressed this comment by adding the phrase "in order to meet the purposes of RSA 162-H" to the introductory language in Site 301.17.

Access to facility site for inspection and monitoring (Site 302.01(b)). Committee staff commented that this proposed rules provision may violate the Fourth Amendment to the United States Constitution if no pre-compliance review is provided for prior to an agency search of business premises, citing the June 2015 decision of the Supreme Court of the United States in *City of Los Angeles v. Patel*. The SEC has addressed this comment through revision of this subsection in the proposed rules.

EXHIBIT 3

**STATE OF NEW HAMPSHIRE
SITE EVALUATION COMMITTEE**

Docket No. 2015-04

**Application of Public Service Company of New Hampshire
d/b/a Eversource Energy for Certificate of Site and Facility**

December 29, 2016

**ORDER ON APPLICANT'S MOTION FOR PARTIAL WAIVER OF
THE REQUIREMENTS OF N.H. CODE ADMIN. RULES, SITE 301.08(d)(2)**¹

I. BACKGROUND

On April 12, 2016, Public Service Company of New Hampshire d/b/a Eversource Energy filed an Application for a Certificate of Site and Facility (Application) with the Site Evaluation Subcommittee (Subcommittee). The Application seeks the issuance of a Certificate of Site and Facility approving the siting, construction, and operation of a new 115kV electric transmission line between existing substations in Madbury and Portsmouth (Project.) The new transmission line is proposed to be approximately 12.9 miles in length. The Project is comprised of a combination of above ground, underground, and underwater segments. The Project will be located in the Towns of Madbury and Durham in Strafford County, and the Town of Newington and the City of Portsmouth in Rockingham County.

Along with the Application, the Applicant filed a Motion to Partially Waive Site 301.08(d)(2) (Motion), requesting that the Subcommittee partially waive the requirements of N.H. CODE ADMIN. RULES, Site 301.08(d)(2). The Subcommittee reviewed the Motion and deliberated at a hearing held on November 2, 2016. After deliberations, the Subcommittee voted, 4-3, to grant the Motion. Subcommittee Members Scott, Weathersby, Mulholland and Schmidt voted to grant the motion. Subcommittee Members Muzzey, Shulock and Whitaker

¹ At the time that the Applicant filed its Application and Motion to Partially Waive, the rule was codified as N.H. CODE ADMIN. RULES, Site 301.08(c)(2). The rule has since been re-codified as of N.H. CODE ADMIN. RULES, Site 301.08(d)(2).

voted against the motion. This Order memorializes the majority's decision.

II. POSITION OF THE PARTIES

A. Applicant

Site 301.08(d)(2), requires that the Applicant provide the following information:

- (2) A facility decommissioning plan prepared by an independent, qualified person with demonstrated knowledge and experience in similar energy facility projects and cost estimates; the decommissioning plan shall include each of the following:
 - a. A description of sufficient and secure funding to implement the plan, which shall not account for the anticipated salvage value of facility components or materials;
 - b. The provision of financial assurance in the form of an irrevocable standby letter of credit, performance bond, surety bond, or unconditional payment guaranty executed by a parent company of the facility owner maintaining at all times an investment grade credit rating;
 - c. All transformers shall be transported off-site; and
 - d. All underground infrastructure at depths less than four feet below grade shall be removed from the site and all underground infrastructure at depths greater than four feet below finished grade shall be abandoned in place.

See N.H. CODE ADMIN. RULES, Site 301.08(d)(2).

The Applicant requests that the Subcommittee waive the following requirements of N.H. CODE ADMIN. RULES, Site 301.08(d)(2): (i) the requirement to hire independent experts to develop a decommissioning plan for the Project; (ii) the requirement to provide forms of financial assurances; (iii) the requirement that all transformers be transported off-site; and (iv) the requirement to remove all underground infrastructure at depths less than four feet below grade.²

² The Applicant is not seeking a waiver of Site 301.08(d)(2)a., as the Applicant asserts that it has already satisfied this requirement. The Applicant submits that the Application and the pre-filed testimony of Michael Ausere already describe in reasonable detail the sources and means by which the Applicant would assure sufficient and secure funding to implement the plan.

The Applicant requests a waiver of the requirement to hire an independent third-party to prepare the decommissioning plan for two reasons: (1) the Applicant can satisfy the rule by an alternative method by using its own highly trained and experienced personnel, and requiring the Applicant to hire a third party would be an unnecessary expenditure of customer money and would not, therefore, be in the public interest; and (2) requiring that a decommissioning plan be prepared by an independent person at the time of the application is impracticable to the circumstances of an electric transmission system built for reliability purposes. The Applicant submits that it is extremely rare for transmission line owners to decommission and completely remove a 115 kV transmission line and related facilities that are needed for reliability purposes. The Applicant argues that once a transmission line is constructed for reliability purposes, it becomes an integral part of the electric transmission system in the New England region that the Independent System Operator-New England (ISO-NE) includes as an element of its studies. The Applicant further submits that while it is not uncommon for existing high voltage transmission lines to be re-conducted and refurbished, it is only under exceptional circumstances that they are removed completely. The Applicant asserts that the SEC should find that the requirement to hire an independent person to prepare a decommissioning plan at the time of the application not applicable to reliability projects.

The Applicant submits that it included decommissioning information in its Application, and argues that the rule Site 301.08(d)(2) does not expressly require applicants to provide a fully detailed decommissioning plan. The Applicant requests that to the extent the Subcommittee interprets the rule to require a fully detailed decommissioning plan at this time, that such a requirement be waived. The Applicant states that transmission lines that are built to ensure the reliability of the electric transmission system remain in-service for several decades and are rarely decommissioned, therefore, the decommissioning information that the Applicant has provided

constitutes what is reasonably available at this time. The Applicant argues that a more detailed decommissioning plan cannot be developed at this time as it would need to take into account any physical changes to the right-of-way, and to the lines located thereon, that may have occurred over time, as well as all applicable laws and rules that exist at the time of decommissioning. The Applicant submits that the alternative and more practicable method of satisfying the purpose of the rule would be for the Applicant to submit a detailed decommissioning plan, to the extent required at the time of decommissioning, to the Subcommittee pursuant to its authority under RSA 162-H:4, to monitor the construction and operation of the facility to ensure compliance with the terms and conditions of a certificate.

The Applicant additionally seeks a waiver of Site 301.08(d)(2)b., requiring the provision of specific types of financial assurance, and argues that the purpose of the rule is satisfied by an alternative method. Specifically, the Applicant argues that it has demonstrated in its Application and the pre-filed testimony of Michael Ausere, its “enduring financial strength and reliability to fund the cost of decommissioning, if and when that occurs.” The Applicant also asserts that the FERC-approved transmission tariff provides a satisfactory alternative mechanism for recovering the cost of decommissioning, and therefore, separate financial assurance is not required and that requirement should be waived.

The Applicant submits that Site 301.08(d)(2)c., is not applicable and should be waived as the construction of the transmission line does not include the installation or addition of any new transformers.

Finally, the Applicant requests a waiver of the requirements of Site 301.08(d)(2)d., requiring that infrastructure at depths less than four feet below grade be removed. The Applicant requests that the Subcommittee find that this rule is not applicable. In support, the Applicant argues that the Project will be built primarily on an existing utility right-of-way that is owned in

fee by the Applicant, or is controlled by it through perpetual easements. The Applicant asserts that unlike public roadways that can be put to several different public and private uses, the right-of-way will be dedicated exclusively to utility use for the foreseeable future. The Applicant further submits that complete removal of transmission infrastructure is unnecessary in an existing right-of-way or within public roads, and that removing infrastructure could potentially create more severe environmental impacts in certain locations. The Applicant argues that because the Project is constructed in an existing right-of-way, it may be more environmentally beneficial to leave the bottoms of the transmission structure in place, especially if they are located in protected wetlands or other resource areas that may exist at the time of decommissioning. The Applicant states that the transmission line requires the construction of underground segments, which include duct banks, manholes, underground cable, and submarine cable, and that these inert materials are typically placed 3 to 10 feet below grade and are designed not to impede surface activities such as vehicle travel or agricultural uses. The Applicant submits that if it was required to strictly comply with Site 301.08(d)(2)d., the Applicant would have to dig down to the top of the underground facilities, remove the upper portion of the underground facilities to 4 feet below grade, and then re-grade the excavated soil or road. Further, the Applicant asserts that submarine cable is installed from 3½ to 8 feet deep below the sediments of Little Bay, and that undertaking removal of these facilities would likely cause more environmental impacts than abandoning the entire underground and underwater facilities in place, and would place hardships on the underlying landowners whose property the transmission line traverses.

As part of the Applicant's request for partial waiver, the Applicant states that it will submit a decommissioning plan, should the removal of the Project infrastructure be required, based on the right-of-way and the existing state and federal land use and environmental rules in existence at the time of the decommissioning.

The Applicant submits that granting these partial waivers will not disrupt the orderly and efficient resolution of the proceedings before the Subcommittee.

B. Counsel for the Public

Counsel for the Public partially objects to the Applicant's request for waiver from the provisions of Site 301.08(d)(2). Specifically, Counsel for the Public objects to the Applicant's requests for waivers from the requirement of a decommissioning plan prepared by an independent qualified person, the requirement to prepare a fully detailed decommissioning plan, and the content requirements of Site 301.08(d)(2)d. Counsel for the Public agrees that waiver of Site 301.08(d)(2)b., is appropriate for a reliability project, and suggests that a waiver of Site 301.08(d)(2)c., is unnecessary as the subsection is not applicable to the Project.

Counsel for the Public submits that the Applicant has not demonstrated grounds for waiving the requirement to produce a compliant decommissioning plan. Counsel for the Public submits that the Applicant's argument that transmission projects "typically 'continue in service indefinitely,'" is contrary to the clear language of the rules, which require a decommissioning plan for all energy facilities, and therefore the rule is not inapplicable to the Project. Counsel for the Public's Objection, p. 2-3.

Counsel for the Public also argues that the fact that the Project is a reliability project has no bearing on the requirement that the decommissioning plan be prepared by an independent person. Counsel for the Public argues that while the Applicant may have qualified personnel, the rule expressly requires that an independent person prepare the plan. Counsel for the Public submits that the purpose of the rule is to ensure an unbiased view of the likely costs and engineering requirements of decommissioning. Counsel for the Public argues that having an employee of the Applicant, rather than an independent person, prepare a decommissioning plan is not an "alternative method" that would satisfy the purpose of the rule. Counsel for the Public

notes that the only grounds supplied by the Applicant to support a waiver of the requirement that the plan be prepared by an independent third-party, is that it would be unnecessary expenditure of customer money. Counsel for the Public argues that this is not an appropriate ground for waiving a rule that is intended to protect the public by ensuring an adequate, independent plan is in place to decommission energy facilities at the end of their useful life.

Counsel for the Public notes that to the extent that the Applicant requests that the requirement for a decommissioning plan be deferred to an undisclosed future date, this request fails to meet the standards for waiver under Site 302.05, as the Applicant cannot predict the future of energy infrastructure needs in New Hampshire, or the continued need for the proposed transmission line for reliability purposes. Counsel for the Public submits that the purpose of a decommissioning plan is both to be prepared for potential future decommissioning of the Project, and to inform the Subcommittee as to the eventual costs of a future decommissioning. Counsel for the Public argues that the fact that such decommissioning may or may not be far in the future is irrelevant.

Counsel for the Public also argues that to the extent that the Applicant argues that changes in the circumstances and applicable laws may make a present day decommissioning plan obsolete, the Applicant can, and should, periodically update its decommissioning plan to address such changed circumstances. Counsel for the Public submits that the fact that circumstances may change in the future does not obviate the purpose of filing a decommissioning plan now as part of the Application. Counsel for the Public argues that waiver of either the requirement that an independent person prepare a decommissioning plan, or that the decommissioning plan be submitted in appropriate detail as part of the Application is inappropriate, and that the Applicant has not met its burden of demonstrating that compliance with the rule would be onerous or inapplicable, or that an alternative method would satisfy the purpose of the rule.

With respect to the requirements of Site 301.08(d)(2)b., Counsel for the Public agrees that in the context of a reliability project subject to a FERC-approved transmission tariff, the purpose of the financial assurance requirement in the rule is satisfied and that a waiver is appropriate. Counsel for the Public argues however, that to be effective under the FERC tariff, an asset retirement obligation must exist to trigger cost recovery through rates, and submits that the Subcommittee may wish to consider, as part of its review of the Application, whether to impose a retirement obligation on the Project.

With respect to Site 301.08(d)(2)c., Counsel for the Public submits that where there are no new transformers proposed to be installed as part of the Project, this requirement is inapplicable. Counsel for the Public believes that no waiver is necessary, however, as a compliant decommissioning plan would simply state the fact that no transformers are part of the Project and, therefore, need not be transported off-site. Counsel for the Public suggests that the waiver request should be denied as unnecessary.

With respect to waiver of the requirement for removing underground infrastructure to a depth of four feet pursuant to Site 301.08(d)(2)d., Counsel for the Public first argues that the Applicant's assertion that the right-of-way is dedicated exclusively to utility use is not accurate. Counsel for the Public submits that much of the right-of-way where the transmission line is proposed is owned in fee by third parties with the Applicant holding non-exclusive use easements. Counsel for the Public notes that while the utility uses within the right-of-way are permitted for the foreseeable future, the easements are not exclusive, and the fee-owners retain the right to use their property within the right-of-way as long as such use does not interfere with the Applicant's utility use of the right-of-way. Counsel for the Public suggests that the purpose of the requirement to remove decommissioned infrastructure down to a depth of four feet below grade is to remove the environmental and physical impact of decommissioned energy facilities

from the property. Counsel for the Public argues that landowners should not be required to suffer the continued interference of unused energy infrastructure on their property. Counsel for the Public argues that the Applicant has only argued that compliance would be inconvenient, and has failed to demonstrate how compliance with the rule would be onerous or inapplicable. Further, Counsel for the Public notes that the Applicant's statement that fully removing the infrastructure could potentially create greater environmental impacts, as opposed to leaving the infrastructure in place, is unsupported. Counsel for the Public notes that while it is conceivable, that there may be specific locations where strict compliance with the rule may result in greater environmental impact, the Applicant has requested a blanket waiver rather than identifying specific areas of concern, and providing specific evidence to the Subcommittee of the environmental impact. Counsel for the Public notes that denying the blanket waiver request would not necessarily preclude the Applicant from submitting a more targeted waiver requested supported by specific evidence.

III. STANDARD OF REVIEW

The waivers sought by the Applicant are governed by our administrative rules. N.H.

CODE ADMIN. RULES, Site 302.05(a) states:

- (a) The committee or subcommittee, as applicable, shall waive any of the provisions of this chapter, except where precluded by statute, on its own motion or upon request by an interested party, if the committee or subcommittee finds that:
 - (1) The waiver serves the public interest; and
 - (2) The waiver will not disrupt the orderly and efficient resolution of matters before the committee or subcommittee.

N.H. CODE ADMIN. RULES, Site 302.05(b) further requires that in determining the public interest, the Subcommittee shall waive a rule when: (1) compliance with the rule would be onerous or inapplicable given the circumstances of the affected person; or (2) the purpose of the rule would be satisfied by an alternative method proposed.

IV. ANALYSIS

The Subcommittee finds that the financial assurances provided through the Application, the pre-filed testimony of Michael Ausere, and under the FERC-approved transmission tariff provide a satisfactory alternative mechanism for recovering the cost of decommissioning if it becomes necessary at some future date.

The Applicant submits that Site 301.08(d)(2)c., is not applicable and should be waived as the construction of the transmission line does not include the installation or addition of any new transformers. The Subcommittee agrees.

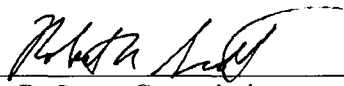
The Subcommittee is satisfied that for the purpose of the waiver request, the Applicant has provided a potential alternative to the hiring of an independent expert. However, the condition of an independent third party expert may be required as a condition of the certificate.

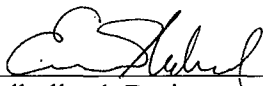
Based upon the individualized circumstances of this Project, the Subcommittee finds that partial waiver of the decommissioning requirements is in the public interest and will not disrupt the orderly and efficient resolution of matters before the Subcommittee. Namely, the Subcommittee notes that this Project is a reliability project and maintenance and upkeep of the Project will be required to continue to provide electric transmission to residents of New Hampshire. As opposed to a commercial project, this reliability project is unlikely to be decommissioned at any time in the foreseeable future. Best management practices, laws and rules may all change over the lifetime of the Project. It is not possible to predict the state of the art for decommissioning an electric transmission line decades into the future. The ISO-NE tariff assures adequate financing for decommissioning once a notice of retirement is given.


Therefore the Subcommittee grants the Applicant's request to waive the N.H. CODE ADMIN. RULES, Site 301.08(d)(2) as a requirement of the Application in this docket. However, the Applicant and all other parties should be prepared to address decommissioning during the

adjudicative process as part of the Subcommittee's obligation to consider the orderly development of the region, and other statutory factors that may be impacted by decommissioning.

SO ORDERED this twenty-ninth day of December, 2016 by the Site Evaluation Subcommittee:


Robert R. Scott, Commissioner
Public Utilities Commission
Presiding Officer


Evan Mulholland, Designee
Administrator
Department of Environmental Services


Patricia M. Weathersby, Esq.
Public Member



Charles Schmidt, Designee
Administrator
Department of Transportation

EXHIBIT 4



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.



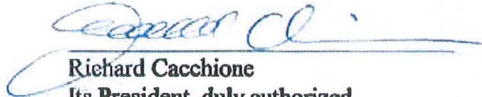
Richard Cacchione

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 5

Section 13. Governing Law. This Guaranty shall be governed by and construed in accordance with the laws of the State of New York (without regard to principles of conflict of laws that would direct for application of the laws of another jurisdiction).

Section 14. Submission to Jurisdiction. Each of the Guarantor and the Beneficiary hereto consents to submit itself to the exclusive jurisdiction of any state or federal court of competent jurisdiction located in the State of New York, United States of America, with respect to any dispute that arises under this Guaranty or in connection with the transactions contemplated hereby, and irrevocably and unconditionally waives any objection to the laying of venue of any action, suit or proceeding arising out of or relating to this Guaranty or the transactions contemplated hereby in (a) the courts of the State of New York in New York County, or (b) the United States District Court for the Southern District of New York, and hereby further irrevocably and unconditionally waives and agrees not to plead or claim in any such court that any such action, suit or proceeding brought in any such court has been brought in an inconvenient forum.

Section 15. Waiver of Jury Trial. EACH PARTY HEREBY KNOWINGLY, VOLUNTARILY, AND INTENTIONALLY WAIVES ANY RIGHTS IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION BASED HEREON OR ARISING OUT OF, UNDER, OR IN CONNECTION WITH, THIS GUARANTY OR THE AGREEMENT.

Section 16. Entire Agreement. This Guaranty constitutes the entire agreement of the Guarantor and the Beneficiary pertaining to the subject matter hereof and supersedes all prior written or oral agreements and understandings between the Guarantor and the Beneficiary with respect to the subject matter hereof.

Section 17. Amendments. No amendments or modifications of or to any provision of this Guaranty shall be binding until in writing and executed by the Guarantor and the Beneficiary. For the avoidance of doubt, this Guaranty may be reissued as provided in Section 9(c) of this Guaranty without a writing executed by the Beneficiary and such reissuance shall not require acceptance by the Beneficiary.

Section 18. Severability. If any one or more of the provisions of this Guaranty should be determined to be illegal or unenforceable, all other provisions shall remain effective.

Section 19. Interpretation. The word "including" when used in this Guaranty shall be deemed to be followed by "without limitation" or "but not limited to," whether or not it is in fact followed by such words or words of like import.

Section 20. Counterparts. This Guaranty may be executed in two or more counterparts, each of which shall be deemed to be an original, but all of which together shall constitute but one and the same instrument. The Guarantor and the Beneficiary acknowledge and agree that any document or signature delivered by facsimile or electronic transmission shall be deemed to be an original executed document for all purposes hereof.

IN WITNESS WHEREOF, the Guarantor hereto has executed this Guaranty, as of the date first set forth above.

HYDRO-QUÉBEC