

**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

**COUNSEL FOR THE PUBLIC’S OBJECTION TO APPLICANTS’
MOTION TO STRIKE CERTAIN TRACK 1 TESTIMONY**

Counsel for the Public, by his attorneys, the Office of the Attorney General and Primmer Piper Eggleston & Cramer PC, hereby objects to the Motion to Strike Certain Track 1 Testimony (the “Motion”) filed by Northern Pass Transmission LLC (“NPT”) and Public Service Company of New Hampshire (“PSNH”) (collectively, the “Applicants”) as follows:

1. Applicants seek to exclude video testimony on the grounds that it is not testimony or evidence. Applicants’ definition of evidence is too restrictive for this proceeding.

2. Site 202.24(b) provides that “[a]ll documents, materials and objects offered as exhibits shall be admitted into evidence, unless excluded by the presiding officer as irrelevant, immaterial, unduly repetitious or legally privileged.”

3. That rule broadly requires the admission of all documents, materials and objects offered as exhibits in Site Evaluation Committee (“SEC” or “Committee”) proceedings unless excluded for the specified reasons because the New Hampshire legislature has directed the SEC to consider “all environmental, economic, and technical issues” and resolve them “in an integrated fashion,” as well as maintain a balance among potential significant impacts and benefits in siting decisions including impacts and benefits on the welfare of the population and private property, among other things. RSA 162-H:1.

4. The videos that Applicants seek to strike can be properly construed as either “documents, materials” or “objects” offered as exhibits by the parties who have submitted them

to the Committee. *See* Site 202.24(b). Viewed from that perspective, those “documents, materials” or “objects” should be admitted and given the weight to which they are entitled. *Id.*

5. Applicants also seek to exclude certain pre-filed testimony on the grounds that it consists of conclusions, beliefs, or concerns that do not rise to the level of admissible evidence. Again, Applicants’ definition of evidence is too restrictive for this administrative proceeding in which most of the parties are unrepresented members of the public.

6. Pre-filed testimony of all parties, including Applicants, contains some element of conclusions and beliefs. That does not make them inadmissible. Indeed, the beliefs of members of the public are themselves facts that the Committee should consider in balancing the many considerations required to determine if the Project has unreasonable adverse effects or impacts, and if issuance of a certificate will serve the public interest. RSA 162-H:16.

7. Applicants also seek to exclude testimony regarding alternative routes as irrelevant. Route selection is a Track 1 topic, and consideration of route selection requires consideration of alternative routes.

8. RSA 162-H:16, IV requires the Committee to make certain findings “[i]n order to issue a certificate,” including, *inter alia*, that (1) “[t]he site and facility will not unduly interfere with the orderly development of the region”; (2) “[t]he site and facility will not have an unreasonable adverse effect on aesthetics, historic sites, air and water quality, the natural environment, and public health and safety”; and (3) “[i]ssuance of a certificate will serve the public interest.”

9. RSA 162-H:16, IV makes clear that the Committee may only make those required findings “[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”

This statutory language does not limit the SEC's consideration only to alternative routes presented by an applicant, but permits the SEC to consider all relevant information regarding alternative routes, presented by any party in the adjudicative hearing, particularly given the SEC's directive to consider all issues in an "integrated fashion." RSA 162-H:1.

10. Some pre-filed testimony from certain intervenors suggests there are viable alternative routes for the Project proposed by the Applicants. Irrespective of the accuracy of that claim, whether there is a viable alternative route for the Project is "relevant information" that the Committee may consider when making its findings.

11. The availability of viable alternative routes to the Project ought to be weighed in the Committee's consideration of whether any interference with orderly development is undue because a viable alternative exists, whether any of the effects on the areas outlined in the statute are unreasonable where a viable alternative exists, and whether a certificate would serve the public interest if a viable alternative is a better one.

12. The statute makes clear that the presence of viable alternatives is to be considered along with all other relevant information to be considered by the Committee in connection with its decision to issue or not issue a certificate.

13. Finally, Applicants seek to exclude certain supplemental testimony on various other grounds. Again, Applicants' view of supplemental testimony is unnecessarily restrictive, and does not account for the complexity of the Project and the voluminous evidence and issues that have arisen during the many months of responses to data requests and technical sessions involving dozens of witnesses.

14. The Applicants are free to challenge the evidence presented on these issues through cross examination and the Committee is free to appropriately weigh the evidence as it

sees fit consistent with its statutory obligations. But the evidence itself must be admitted as relevant absent another independent basis for its exclusion.

15. Artificially circumscribing the Committee's inquiry as a matter of law prior to the adjudicative hearings by striking certain pre-filed materials, as Applicants request in the Motion, runs contrary to the directive of Site 202.24(b) and contrary to the inclusive nature of SEC proceedings intended to fully explore all relevant considerations.

16. Applicants' request to strike certain pre-filed materials also runs contrary to the public and transparent nature of this proceeding. *See, e.g.*, RSA 162-H:10; RSA 162-H:13. The full and fair consideration of all relevant information in a public and transparent manner requires consideration of submissions such as those Applicants now seek to strike. The Committee should not strike the submissions, but should instead consider any of their shortcomings as part of its analysis and weighting of all submitted evidence.

Respectfully submitted,

COUNSEL FOR THE PUBLIC,

By his attorneys,



Dated: April 10, 2017

By:

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing OBJECTION TO APPLICANTS' MOTION TO STRIKE CERTAIN TRACK 1 TESTIMONY has this day been forwarded via e-mail to persons named on the Distribution List of this docket.

Dated: April 10, 2017 By: /s/ Thomas J. Pappas
Thomas J. Pappas, Esq. (N.H. Bar No. 4111)