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May 4, 2017

Via Electronic Mail & Hand Delivery

Pamela Monroe, Administrator
New Hampshire Site Evaluation Committee
21 South Fruit Street, Suite 10
Concord, NH 03301-2429

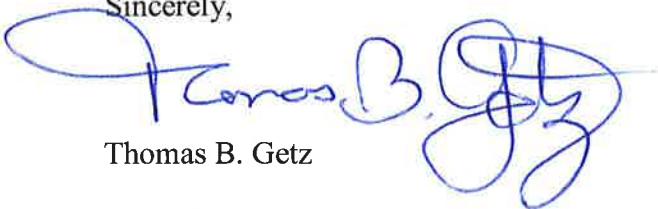
**Re: Site Evaluation Committee Docket No. 2015-06
Joint Application of Northern Pass Transmission LLC and Public Service Company
of New Hampshire d/b/a Eversource Energy (the “Applicants”) for a Certificate of
Site and Facility
Response to SPNH Motion for Clarification**

Dear Ms. Monroe:

Enclosed for filing in the above-captioned docket, please find an original and one copy of a
Response to Society For The Protection of New Hampshire Forests Motion for Clarification Re
Public Interest.

Please contact me directly should you have any questions.

Sincerely,



Thomas B. Getz

TBG:slb

cc: SEC Distribution List

Enclosure

**STATE OF NEW HAMPSHIRE
SITE EVALUATION COMMITTEE**

SEC DOCKET NO. 2015-06

**JOINT APPLICATION OF NORTHERN PASS TRANSMISSION LLC &
PUBLIC SERVICE COMPANY OF NEW HAMPSHIRE
D/B/A EVERSOURCE ENERGY
FOR A CERTIFICATE OF SITE AND FACILITY**

**RESPONSE TO SOCIETY FOR THE PROTECTION OF NEW HAMPSHIRE
FORESTS MOTION FOR CLARIFICATION RE PUBLIC INTEREST**

Northern Pass Transmission LLC and Public Service Company of New Hampshire d/b/a Eversource Energy (the “Applicants”), by and through their attorneys, McLane Middleton, Professional Association, hereby respond to the motion filed by the Society for the Protection of New Hampshire Forests and the Grafton County Commissioners (“SPNHF/GCC”) asking the Site Evaluation Committee (“SEC”) to clarify that all “tracks” of the hearings include evidence relevant to the public interest (“Motion”). As explained below, the tracking procedure does not affect the presentation of evidence during the adjudicative hearings. In addition, SPNHF/GCC incorrectly characterize the public interest finding as a net benefits test.

1. On August 5, 2016, the SEC Administrator published a Technical Session Agenda for the month of September corresponding to the pre-filed testimony filed by the Applicants’ witnesses. Subsequently, on September 22, 2016, the Presiding Officer issued an Order on Requests to Amend Procedural Order that separated pre-filed testimony by Counsel for the Public (“CFP”) and Intervenors, data requests by the Applicants, and technical sessions for CFP and Intervenor witnesses into two tracks. On March 1, 2017, the Presiding Officer issued an Order on Pending Motions (Procedural Schedule) that extended tracking to the deadlines for supplemental testimony.

2. On April 24, 2017, SPNHF/GCC filed their Motion saying, at p.3, that “the record is not clear as to when evidence relevant to the public interest standard may be introduced.” Among other things, they say that “the hearings are divided into two tracks of topics” and they set forth the tracks. Track 1 comprises project route selection, the Forward NH Plan, financial capability, system stability, and public health and safety (excluding construction related impacts) while Track 2 includes orderly development, aesthetics, air and water quality, natural environment, economic benefit, and construction impacts (historic sites were inadvertently left out of the March 1, 2017 Procedural Schedule designations).

3. SPNHF/GCC extend the tracking convention too far. The March 1, 2017 Procedural Schedule Order did not divide the hearings into tracks, nor did it need to. Separating testimony and discovery, including pre-hearing motions and conferences, into two tracks assured the prompt and orderly conduct of the proceeding as a device preparatory to hearings, but is inapplicable to the hearings themselves. For the hearings, the relevant procedural issues concern the order of the proceeding (Site 202.20) and the order of witnesses.

4. Consistent with SEC Counsel’s March 24, 2017 Addendum to Memorandum to the Parties, the Applicants submitted their witness list for Track 1 topics on March 30, 2017, and, consistent with SEC Counsel’s April 11, 2017 Report of Prehearing Conference (“PHC Report”), submitted the witness list for the balance of their case-in-chief by April 28, 2017. The PHC Report, at p. 2, also pointed out that tracking was “solely for the purpose of completing discovery and the filing of supplemental testimony.” The PHC Report also noted that, after the Applicants present their entire case-in-chief, CFP and the Intervenors “will then present their witnesses on all issues in dispute *without regard to track designation.*” *Id.* (Emphasis supplied.)

5. Clearly, the hearings are not divided into two tracks of topics. The Applicants have set forth the order of witnesses that they will use to introduce their evidence. With respect to the introduction of evidence relevant to the public interest, the Applicants have, for example, already introduced such evidence through the testimony of Messrs. Quinlan and Andrew, and will introduce further evidence through Ms. Frayer and Dr. Shapiro. At the next pre-hearing conference, CFP and Intervenors will submit their respective witness lists setting forth their orders of witnesses. CFP and the Intervenors will then have the opportunity to introduce evidence relevant to the public interest through their witnesses in the order they choose.

6. Finally, with respect to SPNHF/GCC's interpretation of the public interest finding, which may be the real purpose behind their Motion, they set forth what is in effect a net benefits test, which they describe as a "holistic" approach. In 2014, the Legislature added RSA 162-H:16, IV (e), which requires a finding that the Certificate will also serve the public interest. It is critical to recognize that the Legislature did not repeal the three existing findings, but added a fourth, and all four findings necessarily play an equal role. Consequently, the Subcommittee must harmonize the fourth finding with the other three so that they each maintain their vitality and are not subsumed by the fourth. SPNHF/GCC's formulation, however, amounts to an independent, net balancing test that would overrule the other findings. If the Legislature had intended to make the fourth finding superior to the other three, however, it would have done so.

7. The test that the Applicants must meet for a Certificate in this proceeding is not a stand-alone public interest test, which would impart broad discretion to the SEC. Instead, the public interest prong of the four-part test is guided or limited by the context of the other three findings. The SEC must find whether, in addition to the other three findings, the Project, in the language of the statute, serves the public interest. In this context, the fourth finding concerns

whether the Project provides benefits. Under the SPNHF/GCC approach, the SEC could weigh the impacts and benefits, in a manner of its own devising, but such an approach would render meaningless the findings regarding undue interference and unreasonable adverse effects, and would be contrary to legislative history, which shows that a net benefits test was considered and rejected.

WHEREFORE, the Applicants respectfully request that the Site Evaluation Committee:

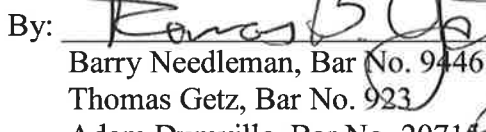
- A. Deny the Motion; and
- B. Grant such further relief as is deemed just and appropriate.

Respectfully submitted,

Northern Pass Transmission LLC and
Public Service Company of New Hampshire d/b/a
Eversource Energy

By Its Attorneys,
McLANE MIDDLETON,
PROFESSIONAL ASSOCIATION

Dated: May 4, 2017

By: 
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Certificate of Service

I hereby certify that on the 4th of May, 2017, an original and one copy of the foregoing Response was hand-delivered to the New Hampshire Site Evaluation Committee and an electronic copy was served upon the SEC Distribution List.


Thomas B. Getz