

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

**MOTION FOR REHEARING ON PRE-HEARING MOTION OF THE SOCIETY FOR  
THE PROTECTION OF NEW HAMPSHIRE FORESTS TO STRIKE PORTIONS OF  
THE APPLICANTS' FORWARD NH PLAN**

The Society for the Protection of New Hampshire Forests (the “Forest Society”), by and through its attorneys, BCM Environmental & Land Law, PLLC, moves to rehear the May 26, 2017, Order denying the Forest Society’s Pre-Hearing Motion to Strike Portions of the Applicants’ Forward NH Plan (the “Motion”) as follows:

**BACKGROUND**

1. In its Motion filed on March 29, 2017, the Forest Society requested the Subcommittee strike all evidence and testimony concerning the following portions of the Applicants’ Forward NH Plan: (i) the \$20 million Forward NH Fund; (ii) the \$7.5 million North Country Jobs Creation Fund; (iii) the \$3 million National Fish and Wildlife Fund (NFWF) Partners for NH’s Fish and Wildlife grant program; and (iv) the \$53 million of proposed upgrades to the Coos Transmission Loop.

2. Applicants objected to the Motion on April 6, 2017.

3. The Subcommittee denied the Forest Society’s Motion, stating “[t]he Forest Society’s argument is incorrect because it relies on a distinction that does not exist in the law between the types of benefits.” *Order on the Society for the Protection of New Hampshire Forests Prehearing Motion to Strike Portions of the Applicants’ Forward NH Plan*, Docket 2015-02, at 3 (May 26, 2017) (hereinafter, *Order*).

4. Based on the Administrative Procedures Act, the SEC's Administrative Rules, and the Supreme Court Rules, to preserve this issue for appeal, the Forest Society files this Motion for Rehearing.

### **LEGAL STANDARD**

5. A motion for rehearing serves a two-fold purpose: first, it permits the reviewing authority to reconsider its decision, and second, it may be a requirement prior to filing an appeal to the New Hampshire Supreme Court. N.H. CODE ADMIN. R. ANN. Site 202.29; N.H. Super. Ct. R. 10.

6. Pursuant to RSA 541:3, "any person directly affected" by an order or decision has the right to file a motion for rehearing.

7. Site 202.29(c) allows such a party to submit a motion for rehearing within 30 days of the decision or order.

8. The Forest Society is directly affected by the SEC's May 26, 2017, Order, because the relief the Forest Society sought was denied.

9. A party may apply for a rehearing by "specifying in the motion all grounds for rehearing," RSA 541:3, and "set[ing] forth fully every ground upon which it is claimed that the decision or order complained of is unlawful and unreasonable." RSA 541:4.

10. The SEC rule on rehearing further provides that a motion for rehearing shall: "(1) Identify each error of fact, error of reasoning, or error of law which the moving party wishes to have reconsidered; (2) Describe how each error causes the committee's order or decision to be unlawful, unjust or unreasonable; (3) State concisely the factual findings, reasoning or legal conclusion proposed by the moving party; and, (4) Include any argument or memorandum of law the moving party wishes to file." N.H. CODE ADMIN. R. ANN. Site 202.29(d).

## ANALYSIS

11. The Subcommittee’s conclusion that the SEC statute and rules do not support a distinction in the types of benefits the SEC may consider in evaluating an application is unlawful, unjust, and unreasonable.

12. First, the Subcommittee unreasonably restricted the question before it to whether the SEC statute and rules distinguish between “‘naturally occurring’ impacts or benefits” and “other types of benefits provided by the applicant.” *Order*, at 3.

13. The legal question presented by the Forest Society’s Motion was broader: whether the statute and rules require any claimed public benefit to have some nexus to the siting, construction, and operation of the proposed energy facility before it may be considered.

14. By narrowly restricting its analysis to whether the relevant laws made such an explicit distinction between naturally occurring benefits and other types of benefits provided by the applicants, which the Forest Society never claimed,<sup>1</sup> the Subcommittee’s analysis and conclusion is unjust and unreasonable.

15. Second, the statute and rules do not support the Subcommittee’s conclusion that it must consider all direct and indirect benefits of a project, regardless of whether there is any nexus between the benefit and the siting, construction, and operation of the project.

16. The Subcommittee’s analysis begins by citing RSA 162-H:1, the declaration of purposes section of the enabling statute. The Subcommittee concludes that this section specifically and unambiguously requires it consider impacts or benefits to the whole State and does not contain language limiting its consideration to only “naturally occurring” impacts or benefits.

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<sup>1</sup> The Forest Society never explicitly or impliedly suggested in its Motion that the phrase “natural benefit” was in the statute or rules. It clearly and accurately attributed the origin of this phrase to William Quinlan. *Order*, at 1.

17. It is axiomatic that a broad general purpose section of a statute must necessarily be constrained by a more specific section that follows it.

18. The first two clauses of RSA 162-H:16, IV require the Subcommittee consider the impacts and benefits only “regarding the potential siting or routes of a proposed energy facility.” By reading the next clause of this section as a mandate to consider any impacts and benefits within the broad scope of RSA 162-H:1, *Order* at 4, the Subcommittee unlawfully and unreasonably rendered the narrow scope of RSA 162-H:16, IV’s “impacts and benefits” superfluous.

19. The Subcommittee also erred when it cited to specific code sections requiring consideration of off-site mitigation methods to mean that the SEC could consider any off-site impacts or benefits. For example, N.H. CODE ADMIN. RULES Site 301.14(b)(5)’s requirement to consider best practical measures, which may include off-site mitigation, concerns the mitigation of a specific, on-site impact—it does not broadly permit consideration of any off-site mitigation.

20. Moreover, the Subcommittee’s concern that the Forest Society’s interpretation would “significantly restrict the Subcommittee’s ability to consider off-site mitigation” is unfounded because the rules provide for specific circumstances in which the SEC can consider off-site impacts and benefits.

21. If the Legislature had intended that applicants could create benefits unrelated to the siting, construction, or operation of a proposed project to supplement the benefits directly related to the siting, construction, or operation of a proposed project, it would have specifically provided for such an accommodation.

22. Third, the Subcommittee’s *Order* is unjust because if the SEC can consider any impact and benefit in evaluating an application, regardless of any nexus between that impact or

benefit to the actual siting, construction, and operation of the project, then an applicant's success may be determined by how much it is willing to spend on benefits unrelated to the proposed project and not by the merits of its proposed project.

23. For these reasons, the Subcommittee's Order is unlawful, unjust, and unreasonable. Therefore, a rehearing on the Motion is warranted.

24. The Forest Society will subsequently file a supplement with others parties' positions.

**WHEREFORE**, the Forest Society respectfully requests that the Committee:

- A. Grant this Motion;
- B. Expeditiously schedule a rehearing on the Motion; 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: June 22, 2017

By: \_\_\_\_\_

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**CERTIFICATE OF SERVICE**

I hereby certify that on this day, June 22, 2017, a copy of the foregoing Motion was sent by electronic mail to persons named on the Service List of this docket.



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Amy Manzelli, Esq.