

MCLANE MIDDLETON

THOMAS B. GETZ
Direct Dial: 603.230.4403
Email: thomas.getz@mclane.com
Admitted in NH
11 South Main Street, Suite 500
Concord, NH 03301
T 603.226.0400
F 603.230.4448

June 29, 2017

Via Electronic Mail & Hand Delivery

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

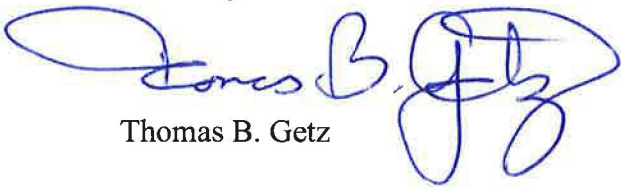
**Re: Site Evaluation Committee Docket No. 2015-06
Joint Application of Northern Pass Transmission LLC and Public Service Company
of New Hampshire d/b/a Eversource Energy (the "Applicants") for a Certificate of
Site and Facility
Objection to Motion for Rehearing on Pre-Hearing Motion to Strike Portions of
Forward NH Plan**

Dear Ms. Monroe:

Enclosed for filing in the above-captioned docket, please find an original and one copy of an
Objection to Motion for Rehearing on Pre-Hearing Motion to Strike Portions of Forward NH
Plan.

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**

**OBJECTION TO MOTION FOR REHEARING ON
PRE-HEARING MOTION TO STRIKE PORTIONS OF FORWARD NH PLAN**

NOW COME Northern Pass Transmission LLC (“NPT”) and Public Service Company of New Hampshire d/b/a Eversource Energy (“PSNH”) (collectively the “Applicants”), by and through their attorneys, McLane Middleton, Professional Association, and object to the Society for the Protection of New Hampshire Forests’ (“SPNHF”) Motion for Rehearing on Pre-Hearing Motion of the Society for the Protection of New Hampshire Forests Strike Portions of the Applicants’ Forward NH Plan (“Motion for Rehearing”) filed on June 22, 2017. As the Applicants explain below, SPNHF does not demonstrate good cause for rehearing.

I. BACKGROUND

1. SPNHF filed a Pre-Hearing Motion to Strike Portions of the Applicants’ Forward NH Plan (“Pre-Hearing Motion”) on March 29, 2017, requesting that the Committee strike portions of the Applicants’ Forward NH Plan, and arguing that the Subcommittee may only consider certain types of benefits when determining whether the Project will serve the public interest. The Applicants objected on April 6, 2017, arguing that SPNHF was trying to create “an artificial limitation on the benefits the Subcommittee may consider when determining whether a proposed energy facility would serve the public interest.” Applicants’ Objection to SPNHF Motion to Strike, Docket 2015-06, 1 (April 6, 2017).

2. On May 26, 2017, the Presiding Officer denied SPNHF's Pre-Hearing Motion. He found, among other things, that SPNHF's "argument is incorrect because it relies on a distinction that does not exist in the law between types of benefits." Order at 3. The Presiding Officer further reasoned that "the Subcommittee must consider both direct and indirect impacts and benefits" related to the Project. *Id.*

3. SPNHF's Motion for Rehearing seeks to re-characterize the central argument it made in its Pre-Hearing Motion, where it adopted and extended a phrase used by Mr. Quinlan concerning "naturally occurring" benefits. SPNHF employed that phrase as a recurring theme throughout its Pre-Hearing Motion. Nevertheless, it seeks to distance itself from the phrase, contending that it meant something "broader." SPNHF now emphasizes the term "nexus" instead, but it makes a distinction without a difference irrespective of whether benefits are parsed as direct versus indirect, or related versus unrelated.

II. STANDARD FOR REHEARING

4. A motion for rehearing must (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, and (3) state concisely the factual findings, reasoning or legal conclusion proposed by the moving party. Site 202.29(d).

5. The purpose of rehearing "is to direct attention to matters that have been overlooked or mistakenly conceived in the original decision ..." *Dumais v. State*, 118 N.H. 309, 311 (1978) (internal quotations omitted). A rehearing may be granted when the Committee finds "good reason" or "good cause" has been demonstrated. *See O'Loughlin v. NH Pers. Comm.*, 17 N.H. 999, 1004 (1977); *Appeal of Gas Service, Inc.*, 121 N.H. 797,

801 (1981). “A successful motion for rehearing must do more than merely restate prior arguments and ask for a different outcome.” *Public Service Co. of N.H.*, Order No. 25,676 at 3 (June 12, 2014); *see also Freedom Energy Logistics*, Order No 25,810 at 4 (Sept. 8, 2015).

III. DISCUSSION

6. SPNHF first complains that “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.’” Motion for Rehearing at 3. It also argues that the Subcommittee “narrowly restrict[ed] 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.” *Id.*

7. SPNHF’s claim that the Presiding Officer’s analysis was too narrow is unfounded. The Presiding Officer made clear, in footnote 2, at p. 3 of the May 26, 2017 Order, that he did not restrict his analysis to whether the paradigm of naturally occurring benefits was statutorily based and he acknowledged that it was a term initially used by Mr. Quinlan. To the contrary, the Presiding Officer emphasized the Subcommittee’s statutory obligation to consider all relevant information, including “direct and indirect impacts and benefits that accrue both locally and to the State as a whole.” Order at 4.

8. SPNHF correspondingly complains that the Presiding Officer’s interpretation of the “broad scope of RSA 162-H:1” to consider “any impacts and benefits” associated with a proposed project “unlawfully and unreasonably rendered the narrow scope of RSA 162-H:16, IV’s ‘impacts and benefits’ superfluous.” Motion for Rehearing at 4. SPNHF offers no legal

authority to refute the Presiding Officer's conclusion. Rather, SPNHF repeats the argument it made in its original motion arguing that only benefits "directly related" to the Project may be considered.

9. SPNHF also contends that the Subcommittee erred when it cited to specific provisions requiring consideration of off-site mitigation methods to mean that the SEC could consider any off-site impacts or benefits. The Presiding Officer did not err in citing these provisions. Rather, the Presiding Officer's analysis includes these references to demonstrate that the statutory framework clearly contemplates that the SEC may consider "off-site" benefits broadly.

10. Lastly, SPNHF posits an extreme hypothetical scenario in which the success of an applicant for an energy facility would be determined "not by the merits of its proposed project" but "by how much it is willing to spend on benefits unrelated to the Project." Motion for Rehearing at 5. In the first instance, SPNHF's scenario relies on the ill-founded premise that only certain types of benefits may be considered by the SEC. More important, the scenario ignores the specific statutory findings that the SEC must make to issue a Certificate, effectively assuming that the SEC in some future case may not honor its obligations.

IV. CONCLUSION

11. SPNHF creates a false dichotomy not found in the plain language of RSA 162-H:16, IV when it classifies benefits as either related or unrelated to the Project. The fact of the matter is that in regard to the benefits identified by the Applicants, those benefits would not exist but for the Project, and are therefore related to it. As for SPNHF's resort to the prefatory language of RSA 162-H:16, IV and the Purpose section, RSA 162-H:1, neither are substantive grants of authority or express limitations of authority. The prefatory language to RSA 162-H:16,

IV merely restates the legal requirement that the SEC give due consideration to all relevant information in making the required findings to issue a certificate. As for the Purpose section, SPNHF takes the reference to the “siting, construction, and operation of energy facilities” out of context, constructs a conflict from the isolated words, and assigns a meaning not justified by a plain reading of the Purpose section or by the statutory scheme of RSA 162-H.

12. Finally, SPNHF does not show that the Presiding Officer’s decision was unlawful or unreasonable and does not provide a good reason for rehearing; rather, it refashions previous arguments and asks for a different result. Inasmuch as the Presiding Officer did not overlook or mistakenly conceive anything in his original decision, the Motion for Rehearing should be denied.

WHEREFORE, the Applicants respectfully request that the Presiding Officer:

- a. Deny SPNHF’s Motion for Rehearing; and
- b. Grant such further relief as it deems appropriate.

Respectfully submitted,

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

By Their Attorneys,
McLANE MIDDLETON,
PROFESSIONAL ASSOCIATION

Dated: June 29, 2017

By: 

Barry Needleman, Bar No. 9446
Thomas Getz, Bar No. 923
Adam Dumville, Bar No. 20715
11 South Main Street, Suite 500
Concord, NH 03301
(603) 226-0400
barry.needleman@mclane.com
thomas.getz@mclane.com
adam.dumville@mclane.com

Certificate of Service

I hereby certify that on the 29th day of June, 2017 the foregoing Objection was electronically served upon the SEC Distribution List and an original and one copy will be hand delivered to the NH Site Evaluation Committee.



Thomas B. Getz