

**THE STATE OF NEW HAMPSHIRE
SITE EVALUATION COMMITTEE**

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 for the Construction of a New High Voltage Transmission Line in New Hampshire

Docket No. 2015-06

**MUNICIPAL GROUPS 1 SOUTH, 2, 3 SOUTH AND 3 NORTH'S
OBJECTION TO MOTION TO DETERMINE EXTENT OF "FRIENDLY CROSS"**

Municipal Intervenor Groups 1 South, 2, 3 South and 3 North (collectively "the Referenced Municipal Groups") object to the Motion to Determine Extent of "Friendly Cross," stating as follows:

1. This is the second attempt by the Applicants to limit the ability of those intervenors who have expressed opposition to the proposed Northern Pass high voltage electric transmission line to conduct cross-examination of each other during the proceedings. On March 7, 2017, the Applicants filed a Motion to Clarify Use of "Friendly" Examination. In that motion, the Applicants requested "that the Presiding officer clarify that there is no right to friendly cross, that friendly cross is subject to the discretion of the Presiding Officer, and that it will not be permitted without a compelling showing that the interests of justice require it." Motion to Clarify at ¶6.

2. The Applicants' Motion was denied on March 31, 2017. In the order, the Presiding Officer explained that "RSA 541-A:33, IV allows a party to an adjudicative proceeding to conduct cross-examination required *for a full and true disclosure of the facts.*" Order at 3 (emphasis added). The Presiding Officer refused to "make a prehearing determination that all friendly cross-examination will impede the prompt and orderly conduct of the proceeding." *Id.* at Page 4. The Presiding Officer further noted that parties may raise objections during the

proceeding to avoid “unduly repetitive” testimony in the event that a party believes there are “cumulative, redundant lines of inquiry *that add nothing new to the record.*” Order at 4 (emphasis added). The Presiding Officer further noted that, in the event such an objection is raised, a ruling would be made to determine the appropriateness of a line of inquiry after hearing from the parties. *Id.*

3. The Applicants now argue that another prehearing conference should be held to determine the extent of allowable cross-examination between parties, and further requests that all parties proposing to engage in such cross-examination “make an offer of proof at such prehearing conference that clearly establishes that their proposed examination will neither repeat points already made by the witness in pre-filed testimony nor introduce new testimony that the examining party or witness should have offered in writing. . . .” Motion to Determine Extent of Friendly Cross at Pages 2-3. In essence, the Applicants are requesting the intervenors to provide a pre-approved outline of all subject areas to be addressed during cross examination of the upcoming witnesses. The Applicants also appear to take an overly narrow view of the subject matters that are permitted during cross-examination of similarly aligned parties. There are a number of reasons why this request is inappropriate and should be denied.

4. First, the Applicants are essentially seeking rehearing of its previous motion. The relief sought by the Applicants in their motion to determine the extent of allowable “friendly” cross-examination has already been briefed extensively by the parties and an order has been issued. The deadline for filing a rehearing on the motion for cross-examination by similarly aligned parties has passed. The intervenors in this matter, many of whom are *pro se* and/or have limited budgets, are already working diligently to participate in these proceedings. It is time consuming to respond to motions, and the Applicants should not be allowed to file repeated

motions essentially seeking the same relief, *i.e.*, preventing the intervenors from engaging in cross-examination of each other. It should be further noted that the Applicants have recognized that it is inappropriate to file multiple motions seeking similar relief, and when such a situation was alleged to occur, the Applicants sought an order that the party be “clearly advised that repeated requests for the same relief will not be countenanced.” Applicants’ Objection to Kevin Spencer and Mark Lagasse d/b/a Lagaspence Realty Motion to Postpone Merit Hearing and Bar Testimony of Kenneth Bowes at ¶9. The same requirements should apply to all parties, including the Applicants.

5. Second, the Applicants improperly attempt to bolster their motion by relying on statements made by Attorney Michael J. Iacopino, the Subcommittee’s legal counsel. In the report issued after the third pre-hearing conference, Attorney Iacopino stated that “friendly cross-examination” is discouraged and further stated that:

The estimated time needed for cross-examination by similarly aligned intervenors suggests that some intervenors are anticipating cross-examination that would be improper friendly cross-examination. The parties are reminded again that cross-examination will be limited to matters raised in the direct testimony of witnesses and should not be used to simply repeat a witness’s direct testimony.

Report of Third Prehearing Conference at Page 9. The Applicants now rely on those statements to support their request for a prehearing conference at which all of the parties would be required to make an offer of proof to establish that their contemplated examination will neither repeat points nor introduce new testimony that the examining party should have offered in writing.

6. The statements made by Attorney Iacopino should not be used to support the Applicants’ request. The above-referenced statement in the report of the third prehearing conference appears to be a commentary, and more significantly, the relief sought by the Applicants is not consistent with the Presiding Officer’s previous orders and/or the manner in

which the proceedings have been conducted. To date, a number of intervenors in favor of the proposed high voltage transmission line have been permitted to engage in cross examination of similarly aligned parties. By way of example, Chris Boldt, the spokesperson for the City of Berlin and the City of Franklin, asked questions of William Quinlin (April 13, 2017, Morning Session), Michael Ausere and Kenneth Bowes (April 14, 2017, Afternoon Session), William Bailey, Gary Johnson and Douglas Bell (April 19, 2017, Afternoon Session), Nathan Scott, Lynn Farrington, Samuel Johnson, Kenneth Bowes, Derrick Bradstreet and Samuel Johnson (May 1, 2017, Morning Session), Julia Frayer (June 2, 2017, Afternoon Session) and Lisa Shapiro (July 21, 2017, Afternoon Session).¹ Alan Raff, representing the International Brotherhood of Electrical Workers asked questions of William Quinlin (April 13, 2017, Morning Session). All of the other spokespersons for intervenor groups in favor of the proposed high voltage electric transmission line have also been provided an opportunity to ask questions, although many of those parties have chosen not to attend the hearings and/or ask questions.

7. At no time during these proceedings have the intervenors in favor of the proposed project been notified or warned that the cross-examination of similarly aligned witnesses was being discouraged. The spokespersons for the intervenor groups were also not restricted to lines of inquiry on subject matters specifically raised in the pre-filed direct testimony of the witness. The spokespersons were also not notified that they could not use their examination to clarify and/or obtain more specific information about items that were included in the pre-filed testimony of a witness. By way of example, Attorney Chris Boldt was permitted to ask questions about the Coos Loop to a number of witnesses, even though many of the witnesses did not address the

¹ Some of the witnesses identified were on a panel, and may not have responded to questions. Attorney Boldt was unable to examine Lisa Shapiro due to a time conflict, and therefore Attorney Steven Whitley asked the questions on behalf of Attorney Boldt.

Coos Loop in their testimony. Similarly, Attorney Alan Raff was permitted to ask a number of questions to William Quinlin about the Project Labor Agreement. Those questions far exceeded the two sentences about the Project Labor Agreement contained in Mr. Quinlin's pre-filed testimony dated October 16, 2015. During the proceedings, both Counsel for the Public and the intervenors in favor of the project have been allowed to ask questions to more fully develop statements contained in a witnesses' pre-filed testimony, to explore subjects that were raised at technical sessions and to obtain clarification about testimony that was raised by other witnesses during the adjudicatory hearings. There were no objections to those questions because it was recognized that all parties would have an opportunity to ask questions for a full and true disclosure of the facts. RSA 541-A:33, IV.

8. The intervenors in favor of the proposed project were also never required to make an offer of proof before engaging in their examination, either at a prehearing conference or during the hearings. It is unfair to now require all of the intervenors who oppose the project to provide a roadmap of the specific questions that they intend to ask at an upcoming preconference hearing. The same rules must apply to all parties. The requirement for an offer of proof is also prejudicial because it provides an unfair advantage to the Applicants, as each of the intervenors will essentially be required to supply a list of all subject matters that they will be covering during their cross examination.

9. The request is also unduly burdensome. The Referenced Municipalities, and likely many of the other parties, already have a general plan for some of the subject matters that they may cover during examinations. It is highly doubtful, however, that many intervenors have developed a comprehensive outline of all subjects that they intend to ask the upcoming witnesses. There are approximately 100 witnesses who have submitted pre-filed testimony in

opposition to the project. The nature and scope of the questions for those witnesses will depend on information obtained during the upcoming witnesses for the Applicants and Counsel for the Public. Moreover, due to the general demands of this litigation, it would be an undue burden to prepare an extensive list of the subject matters for cross examination. As Barry Needleman, counsel for the Applicants acknowledged during a pre-hearing conference on April 4, 2017, the realities of litigation is that it is not common for an outline of a cross-examination to be completed until shortly before the witness appears. When discussing the timeframe for submitting exhibits, Attorney Needleman stated:

If the other folks in this room prepare the way I prepare, frequently it's not until right before you're ready to cross-examine a witness that you actually have a sense of what you're going to do, and I certainly know with respect to my preparation, witnesses that I will be cross-examining aren't going to be appearing until some point in July or August. And for me to have to figure out what exhibit I'm going to use with those people and identify them well in advance, it's not even an element of surprise issue. It's just not possible given the way we do preparation.

Transcript Prehearing Conference, April 4, 2017 (Afternoon Session) at 79. The intervenors opposing the project should be allowed the same flexibility to prepare for their cross examinations of similarly aligned witnesses.

10. Finally, it should be noted that the Municipal Groups (and likely all the other intervenors groups) fully recognize the need to avoid unduly repetitive examinations. Towards that end, the Referenced Municipal Groups and other intervenor groups have worked diligently and in good faith to conduct efficient cross examination of witness panels, and when possible, some of the groups have attempted to coordinate the subject matters for cross examination in order to avoid duplicative lines of inquiry. In addition, the Presiding Officer has been able to manage the proceedings by issuing rulings when there appears to be irrelevant, inappropriate and/or repetitive cross examinations. The anticipated length of the timeframes needed for the

upcoming witnesses is not a result of any “improper friendly cross examination,” but rather is largely due to the nature of the proposed Northern Pass transmission line and its accompanying structures. The proposed transmission line is 192 miles in New Hampshire, passes through or abuts well over 1000 properties, and will have environmental and aesthetic impacts at many of those parcels.² The number of involved parties is understandable, as many municipalities and property owners are concerned about the impacts of the proposed Northern Pass transmission line and structures, all of which will become a permanent feature throughout the State of New Hampshire for the foreseeable future. It is unfair for the Applicants to present an application for a high voltage electric transmission line with unprecedented statewide impacts, and then to attempt to hamstring the ability of the parties who oppose the proposed project to conduct examination.

WHEREFORE, the Referenced Municipal Groups request that the Site Evaluation Committee:

- a. Deny the Motion to Determine Extent of “Friendly Cross”; and
- b. Grant such further relief as it deems appropriate.

Respectfully submitted,

By and through its attorneys,

CITY OF CONCORD

Dated: August 22, 2017

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² A list of the abutting property owners is available at Appendix K of the Application for State of New Hampshire Department of Environmental Services Alteration of Terrain Permit for the Northern Pass Transmission Project New Hampshire dated October 25, attached as the Application as Volume 8, Appendix 6. The list of abutting parcels runs over 40 pages, and many of the pages list 40 to 50 parcels.

TOWNS OF NEW HAMPTON, LITTLETON,
DEERFIELD, PEMBROKE, and ASHLAND
WATER & SEWER DEPARTMENT

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Dated: August 22, 2017

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By and through their attorneys,

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CERTIFICATE OF SERVICE

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

Dated: August 22, 2017

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