

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 MOTION OF THE SOCIETY FOR THE
PROTECTION OF NEW HAMPSHIRE FORESTS TO CLARIFY THAT ISSUES
CONCERNING MARCH 1, 2017, DES DECISION PRESERVED IN EVENT OF AN
APPEAL OF THE FINAL SEC DECISION**

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 July 20, 2017, Order denying the Forest Society’s Motion to Clarify that Issues Concerning March 1, 2017, DES Decision Preserved in Event of an Appeal of the Final SEC Decision (“Motion to Clarify”). In support, it states as follows:

BACKGROUND

1. On March 1, 2017, DES recommended final approval of the Application.¹
2. The Forest Society’s Motion to Clarify requested that the SEC issue an order clarifying that DES’ recommendations are not “directly and immediately appealable pursuant to the normal appellate procedure for a DES decision and are, therefore, preserved and may be raised in an appeal of a final SEC decision granting a certificate of site approval.”
3. The Presiding Officer denied the Motion to Clarify, stating that “[t]he Subcommittee is not authorized to interpret and/or clarify statutory requirements as they apply to appeals from DES actions.” Order Denying the Forest Society’s Motion to Clarify (Department of Environmental Services’ Decision), at p. 2 (July 20, 2017). The Background Section of the

¹ “Application” refers to the Application for Certification of Site and Facility filed by Northern Pass Transmission, LLC and Public Service Company of New Hampshire d/b/a Eversource Energy in this Docket.

Order appears to imply that Forest Society’s Motion to Clarify was submitted untimely pursuant to the March 1, 2017, Order on Pending Motions (Procedural Schedule) (“Procedural Schedule Order”). *See id.* at p. 1.²

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 July 20, 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

² The July 20, 2017, Order refers to this as an “Order on Pending Motions (Procedural Order).” For purposes of this Motion for Rehearing, the Forest Society assumes that this is a reference to the March 1, 2017, “Order on Pending Motions (Procedural Schedule).”

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 lacks authority to issue this clarification is unlawful, unjust, and unreasonable.

12. First, the Order cites to no law and articulates no explicit reason for why either the SEC or the Subcommittee is without authority to issue the requested clarification. Without this, the legal basis for the Subcommittee's conclusion is unclear.

13. Issuing an order without this necessary information is unreasonable and unjust. Because DES is not the only agency making decisions concerning the Application, it is foreseeable that the issue of the SEC's appellate process for recommendations and decisions of other agencies may come up again. A detailed clarification regarding the procedure for challenging these recommendations and decisions or an explanation for why the Subcommittee cannot lawfully issue such a clarification would be helpful to parties and facilitate a more orderly proceeding by avoiding further motions for clarification or motions for rehearing.

14. Second, the Motion to Clarify sought clarification of the SEC's appellate process for issues raised in DES' decision, and the SEC has broad ability to interpret and clarify its statutory authority and rules.

15. The Motion to Clarify sought clarification on RSA 162-H:1; RSA 162-H:3, I; RSA 162-H:7-a, I(a); RSA 162-H:7-a, I(e); RSA 162-H:16, I. Motion to Clarify, ¶ 5.

16. The Subcommittee has all the powers of the full SEC provided by RSA Chapter 162-H, save four specific powers, none of which concern interpreting and applying the statute and rules concerning SEC powers and procedure. N.H. ADMIN. R. Site 103.03(a).

17. RSA Chapter 162-H specifically references the SEC's and the Subcommittee's authority for statutory interpretation. RSA 162-H:4-a, I ("*For purposes of statutory interpretation and executing the regulatory functions of this chapter, the subcommittee shall assume the role of and be considered the committee, with all of its associated powers and duties in order to execute the charge given it by the chairperson.*") (emphasis added).

18. Moreover, the Subcommittee has considered and ruled on motions for clarification that requested it clarify—and, by extension, interpret—its authorizing statute and rules. *See, e.g.*, Order on Applicant's Motion to Clarify Use of "Friendly" Examination (Mar. 31, 2017).

19. Third, to the extent the Order suggests as much, the Forest Society's Motion to Clarify was not untimely and any conclusion that the SEC is without authority to consider the Motion to Clarify because of its alleged untimeliness is unlawful, unjust, and unreasonable.

20. The March 1, 2017, Order ("Procedural Schedule"), states that pre-hearing motions for Track 1 topics were to be filed by March 29, 2017, and pre-hearing motions for Track 2 topics were to be filed by April 17, 2017. Order on Pending Motions (Procedural Schedule), at p. 7 (Mar. 1, 2017).

21. Track 1 topics include "project route selection, Forward NH Plan, financial capability, system stability, and public health and safety (excluding construction related impacts)." *Id.* Track 2 topics include "orderly development, aesthetics, air and water quality, natural environment, economic benefit, and construction related impacts." *Id.*

22. DES' review concerned the parts of the Application that relate to DES permitting or regulatory authority relative to a Wetland permit, Alteration of Terrain permit, 401 Water Quality Certificate, and Shoreland permits. While DES may consider issues related to public health and safety in its review of the Application, DES' review most predominately concerns issues of aesthetics, air and water quality, and natural environment—Track 2 topics.

23. Therefore, to the extent the Motion to Clarify was even subject to the pre-hearing deadlines in the Procedural Schedule, the applicable deadline for its submission was April 17, 2017. The Forest Society met this deadline.

24. For these reasons, the Subcommittee's Order is unlawful, unjust, and unreasonable.

25. Therefore, a rehearing on the Motion to Clarify is warranted.

WHEREFORE, the Forest Society respectfully requests that the Subcommittee:

- A. Grant this Motion for Rehearing;
- B. Expeditiously schedule a rehearing on the Motion to Clarify; 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

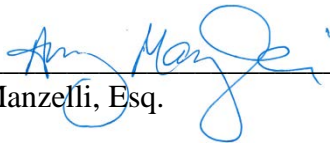
Date: August 22, 2017

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CERTIFICATE OF SERVICE

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



Amy Manzelli, Esq.