

**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

**COUNSEL FOR THE PUBLIC’S OBJECTION TO MOTION TO DETERMINE  
EXTENT OF “FRIENDLY CROSS”**

Counsel for the Public, by his attorneys, the Office of the Attorney General and Primmer  
Piper Eggleston & Cramer PC, hereby objects to the Applicants’ Motion to Determine Extent of  
“Friendly Cross” (the “Motion”) as follows:

1. Applicants’ motion requests that the Presiding Officer schedule a prehearing  
conference, prior to a procedural schedule being issued for the remainder of the hearing, for the  
purpose of “determining the extent of Friendly Cross.” Motion at 8.

2. Applicants further request that “parties proposing to engage in Friendly Cross  
make an offer of proof at such prehearing conference that clearly establishes that the proposed  
examination will neither repeat points already made by the witnesses in pre-filed testimony nor  
introduce new testimony that the examining party or witness should have offered in writing and  
that such examination is required for a full and true disclosure of the facts.” *Id.*

**A. The Presiding Officer Has Already Determined This Issue Will be Resolved  
on an as Needed Basis During the Adjudicative Hearings.**

3. On March 31, 2017, the Presiding Officer issued an Order in this docket  
addressing a very similar motion submitted by the Applicants requesting that the Presiding  
Officer issue a blanket prohibition on parties using “Friendly Cross” during the adjudicative  
hearings (the “Order”). In denying the motion, the Presiding Officer wrote: “The Presiding  
Officer cannot, as requested by the Applicant, make a prehearing determination that all friendly

cross-examination will impede the prompt and orderly conduct of the proceeding. *Such a determination must be made during the course of the proceeding.*” Order at 4 (emphasis added).

4. The Presiding Officer further stated: “We encourage the parties to bring to the Subcommittee’s attention any cumulative, redundant lines of inquiry that add nothing new to the record. If such an objection is made *during the adjudicative hearing*, the party conducting the examination should expect to be asked to explain why its line of questioning should be allowed.” *Id.* (emphasis added).

5. The Presiding Officer has already determined that objections based on “Friendly Cross” should not be made prior to the adjudicative hearing, but rather at the time the party is questioning the supposed “friendly” witness. The Applicants are now essentially moving for a rehearing of the March 31 Order without having followed the prescribed process for seeking rehearing pursuant to RSA 541 and Site 202.29 (Motion for Rehearing). The Applicants’ deadline to seek rehearing passed nearly four months ago on April 30. Even if a renewed motion were procedurally permitted at this time, the Applicant has not demonstrated sufficient grounds for reopening an issue already decided in the March 31 Order.

**B. It is not Practical or Efficient for the Presiding Officer to Conduct a Prehearing Conference with Offers of Proof as to “Friendly Cross.”**

6. The Applicants request that the Presiding Officer and the parties participate in a prehearing conference where parties will provide “offers of proof” as to why their cross-examination should be permitted. Generally, parties are not required to provide an offer of proof to exercise a right granted by statute. RSA 541-A: 33, IV provides that a “party may conduct cross-examinations required for a full and true disclosure of the facts.” The presumption is that any party can cross-examine any witness in this proceeding unless the questioning leads to “cumulative, redundant lines of inquiry that add nothing new to the record.” Order at 4.

Moreover, in light of the statutory standard, the scope of cross-examination in administrative proceedings is likely greater than what might be allowed in judicial proceedings, not less. The Applicants' request seems to ignore this distinction and would infringe upon the parties' rights.

7. In order to conduct the prehearing conference as suggested by Applicants, each party would need to describe each line of questioning it intends to ask for each witness in a kind of dress rehearsal of their cross-examinations to determine whether the Applicants or the Presiding Officer found the questioning objectionable. Such a process would be very time consuming, likely taking many days (if not weeks) to resolve. It would end up delaying the resumption of the adjudicatory proceedings. Neither the Presiding Officer nor the parties have time to participate in a proceeding where each party makes an offer of proof for each line of questioning it intends to conduct for each witness.

8. Nor should parties be reasonably expected to have developed lines of cross-examination for each witness prior to when the adjudicative proceedings will resume *for the Applicants' witnesses*. The non-Applicants, non-Counsel for the Public witnesses are not likely to take the stand for a number of weeks. To the degree that any party has already developed cross-examination questions, it is reasonable to assume that they may be revised as the adjudicative proceedings progress. Therefore, it would be inefficient to screen lines of cross-examination at this point because they are likely to change before the witnesses take the stand.

**C. The Applicants Introduce a Standard for Friendly Cross that is not Included in the March 31 Order and is not Consistent with How the Adjudicatory Proceedings have Been Conducted to This Point.**

9. The Applicants introduce a standard in the Motion that is not included in the March 31 Order. The Order states that objections could be made if certain lines of questioning are revealed to be "cumulative" and "redundant" and "add nothing new to the record." Order at

4. However, the Applicants argue that an offer of proof be made that establishes “that their contemplated 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* and that such examination is required for a full and true disclosure of facts.” Motion at 7 (emphasis added).

10. The Presiding Officer should reject this additional gloss on the statutory standard. The Applicants have regularly supplemented the record with a substantial amount of additional information on project design and negotiations with federal and State regulatory agencies. There has been redesign and refinement of existing construction plans in consultation with the Department of Transportation and the Department of Environmental Services. The Applicants have submitted supplemental information regarding historic resources that evolves out of the U.S. Department of Energy’s Section 106 process. The Applicants continue to consult with Fish & Game over their evolving avoidance and minimization and compensatory mitigation programs.

11. This supplemental information comes into the record regularly and without regard to established deadlines for submission of evidence. Much of this information submitted by the Applicants comes into the record without the other parties having an opportunity to cross-examine the Applicants’ witnesses because they have long since testified. Yet, the Applicants do not suggest that they should be limited in the same way.

12. It would be unfair and illogical to require the other parties’ witnesses, including Counsel for the Public’s witnesses, to ignore the evolution of the world in which this project is being proposed. It would be unfair because the Applicants have had the unfettered ability to provide new evidence into the record without the parties’ having the right to file discovery or

perform cross-examination on it. There is no reason to now apply such restrictions on the other parties when they have not been applied to the Applicants.

13. It is illogical to create such a prohibition because, since the parties' last submission of evidence, the facts of the project have continued to change. The Subcommittee will want to hear an evaluation of the most current version of the project and its impacts. Moreover, if additional facts or changes in laws or regulations have an impact on the Subcommittee's evaluation of the proposal, the witnesses should be allowed to comment on those impacts. It makes no sense to require the parties to act as if the project has been in stasis since the supplemental testimony was filed in April. The Applicants have not been required to approach the hearings in this manner.

WHEREFORE, Counsel for the Public respectfully requests that the Site Evaluation Subcommittee:

- A. Deny Applicants' Motion to Determine Extent of Friendly Cross; and
- B. Grant such other relief as the Court deems just.

Respectfully submitted,

COUNSEL FOR THE PUBLIC,

By his attorneys,




Dated: August 28, 2017

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**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing OBJECTION TO APPLICANTS' MOTION TO DETERMINE EXTENT OF "FRIENDLY CROSS" has this day been forwarded via e-mail to persons named on the Distribution List of this docket.

Dated: August 28, 2017

By:   
Thomas J. Pappas, Esq. (N.H. Bar No. 4111)