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September 8, 2017

By E-Mail & U.S. Mail

Pamela G. Monroe, Administrator
New Hampshire Site Evaluation Committee
21 South Fruit Street, Suite 10
Concord, NH 03301-2429
pamela.monroe@sec.nh.gov

Re: 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

Dear Ms. Monroe:

Enclosed for filing in the above-referenced matter is the following:

1. Counsel for the Public's Motion to Compel Unredacted Bids Submitted in Response to the Massachusetts Clean Energy Request for Proposals.

Thank you.

Regards,

Elijah E. Emerson

Enclosure

cc: Peter C.L. Roth, Esq.
Chris Aslin, Esq.
Thomas Pappas, Esq.

**STATE OF NEW HAMPSHIRE
SITE EVALUATION COMMITTEE**

No. 20 15-06

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 MOTION TO COMPEL UNREDACTED BIDS
SUBMITTED IN RESPONSE TO THE MASSACHUSETTS CLEAN ENERGY
REQUEST FOR PROPOSALS**

Counsel for the Public, by his attorneys, the Office of the Attorney General and Primmer Piper Eggleston & Cramer PC, moves pursuant to Site 202.12(k) for an Order compelling Applicants to provide unredacted copies of the bids submitted in response to the Massachusetts Clean Energy Request for Proposals. In support, Counsel for the Public states as follows.

A. Background.

1. On October 19, 2015, Northern Pass Transmission, LLC and Public Service Company of New Hampshire d/b/a Eversource Energy (collectively, the “Applicants”), submitted a Joint Application for a Certificate of Site and Facility (the “Application”) to the New Hampshire Site Evaluation Committee (the “Committee” or “SEC”) to construct a 192-mile transmission line to run through New Hampshire from the Canadian border in Pittsburg to Deerfield (the “Project”). On November 2, 2015, the Chairman of the Committee appointed a Subcommittee (the “Subcommittee”) to consider the Application. The Subcommittee accepted the Application on December 18, 2015.

2. As part of the Application, the Applicants filed the Prefiled Testimony of Julia Frayer addressing, among other things, the benefits of the Project to New Hampshire and its residents.¹ That analysis included the benefits from reduced retail electric rates that resulted from

¹ Testimony of Julia Frayer; Applicants Exhibit 1, Appendix 43, *Cost Benefit and Local Economic Impact Analysis of the Proposed Northern Pass Transmission Project*, London Economics International (“LEI Report”).

reductions in regional wholesale prices.² In doing this analysis, Ms. Frayer did not explain how the owner of the transmission capacity on the Project, Hydro Quebec, would utilize that capacity. Instead she speculated as to how an economically prudent user of the line would utilize that capacity.³

3. Hydro-Quebec is not a party to this proceeding and the Applicants' primary understanding as to how Hydro-Quebec intends to utilize the capacity on the Project is through analyzing specific transactions like the PPA or participation in RFPs.

4. In partial explanation of how Hydro-Quebec would utilize the capacity, the Applicants provided a power purchase agreement ("PPA") between Hydro-Quebec and the Public Service Company of New Hampshire. Applicants provided an unredacted copy of the PPA to all parties that signed a confidentiality agreement. After being rejected by the New Hampshire Public Utilities Commission, the Applicants withdrew the PPA and testimony about it as evidence in this docket.⁴

5. The Applicants and Hydro Quebec submitted a proposal in the Tri-State (Connecticut, Rhode Island and Massachusetts) Clean Energy Request for Proposals ("Tri-State RFP").⁵ Applicants provided Counsel for the Public with an unredacted copy of the proposal submitted into the Tri-State RFP. The Project was not selected in the Tri-State RFP.

6. On July 27, 2017, the Applicants and Hydro-Quebec submitted two proposals (the "Proposals") for the Project into the Massachusetts Clean Energy Requests for Proposals ("Mass RFP").⁶

² LEI Report at 17-18, 59.

³ LEI Report at 34.

⁴ Applicants' July 25, 2017, Notice of Withdrawal.

⁵ Tr. Day 2, PM at 67 (Quinlin).

⁶ <https://macleanenergy.com/83d/83d-bids/>.

7. Counsel for the Public requested that Applicants provide an unredacted copy of the Proposals. Applicants declined to provide unredacted copies of the Proposals based on a lack of relevance.

8. On August 28, 2017, the Society for the Protection of New Hampshire Forests and the NGO Intervenors submitted a Motion to Compel (“SPNHF/NGO Motion”) production of unredacted copies of the Proposals.

B. Motion to Compel.

9. Counsel for the Public supports the arguments presented in the SPNHF/NGO Motion. It is filing this separate motion because of Counsel for the Public’s unique role in energy siting proceedings by representing the interest of the public.

10. The Subcommittee is charged by statute with determining whether the Project will “serve the public interest.” Moreover, the Subcommittee must balance the potential benefits that the Project will provide against the Project’s effects on “aesthetics, historic sites, air and water quality, the natural environment, and public health and safety.” RSA 162-H:16, IV.

11. A stated purpose of the siting statute is “that all entities planning to construct facilities in the state be required to provide full and complete disclosure to the public of such plans.” RSA 162-H:1.

12. Counsel for the Public has a special role in the siting process. Counsel for the Public is tasked with representing the public during the siting process in “seeking to protect the quality of the environment and in seeking to assure an adequate supply of energy.” In fulfilling this role, it is critical that Counsel for the Public understand how the “supply of energy” crossing New Hampshire for consumption in Southern New England markets will benefit the public, in New Hampshire. RSA 162-H:9.

13. The largest single benefit claimed by the Applicants is the Project's impact on wholesale energy prices and how those savings impact New Hampshire retail rates.⁷ Thus, two fundamental questions that the Subcommittee and Counsel for the Public must address when evaluating the Project is (a) how will Hydro-Quebec utilize the transmission capacity from the Project; and (b) how will that use benefit New Hampshire residents?

14. Another critical question to answer is what resources Hydro-Quebec might use to satisfy its commitments to supply energy market products over the Project. Continually, the Applicants have stated that the commitments over the Project would be met by hydroelectric power.⁸ However, one of the proposals submitted into the Mass RFP contains commitments from both hydroelectric and wind power.⁹ The redacted version of this proposal does not indicate the amount of hydroelectric power or the amount of wind power.¹⁰ Large-scale hydroelectric power and wind power have significantly different generation profiles. This is important because the impact that the addition of the Project has on the New England electricity market depends on when and how much power will be transmitted across the line into the wholesale energy market and how much capacity can be relied on for meeting demand throughout the year and earning revenues in the Forward Capacity Market. For that reason, this change could have a meaningful impact on the benefits that the Project will provide in the New England energy markets and specifically to New Hampshire's electric ratepayers.

15. Counsel for the Public has hired the Brattle Group specifically to address these questions. Brattle Group has reviewed unredacted copies of the PPA and the proposals into the Tri-State RFP. The unredacted versions of these documents contain the key commercial terms of how the products being transmitted across the Project will be utilized in the New England energy

⁷ LEI Report at 14.

⁸ Application at 40, 60; Testimony of William J. Quinlin at 2.

⁹ <https://macleanenergy.com/83d/83d-bids/>.

¹⁰ Id.

markets. Additionally, Counsel for the Public's witnesses on local economics, Kavet, Rockler & Associates ("Kavet Rockler"), depend on answers to these fundamental questions in order to determine what local benefits the Project may provide. The Brattle Group and Kavet Rockler witnesses need to understand the terms of the Proposals to inform their testimony which is likely to be cross examined within the next few weeks.

16. When the Applicants withdrew the PPA from consideration in this docket, the only remaining proposal for how Hydro-Quebec would utilize the capacity on the transmission line was the Proposals bid into the Mass RFP.¹¹ At this point in the proceeding, it is the only actual proposal that can help answer those two fundamental questions.

17. Although the rules of evidence do not strictly apply in SEC proceedings, the Presiding Officer is instructed to "admit relevant evidence and exclude irrelevant, immaterial and unduly repetitious evidence." Site 202.02(c). According to the New Hampshire Rule of Evidence, information is relevant if: "(a) it has any tendency to make a fact more or less probable than it would be without the evidence; and (b) the fact is of consequence in determining the action." N.H. Rule of Evid. 401. Under this very broad standard, the information sought is clearly relevant. The consequential facts in this instance are how the transmission capacity from the Project may be utilized if and when the Project is constructed. Additional consequential facts that can be investigated through this information are how that utilization may affect wholesale electric markets and how ratepayers in New Hampshire will be impacted. At this point in the proceeding, the Mass RFP Proposals are the key pieces of evidence that demonstrate these facts.

18. The Mass RFP Proposals are documents that are directly relevant to the central findings that Counsel for the Public must address and that the Subcommittee must make in this docket. They are clearly relevant to the proceeding. The Applicants have previously

¹¹ Tr. Day 1, AM at 139 (Quinlin).

acknowledged that this type of information is relevant by relying on the PPA's benefits as evidence in this docket. Additionally, they provided the Tri-State RFP bid to Counsel for the Public without objection. And, as the SPNHF/NGO Motion details, the Presiding Officer has required the production of the Tri-State RFP bids pursuant to a protective order.

19. Further demonstrating the relevance of this information, both William Quinlin and Julia Frayer discussed the Mass RFP extensively during their live testimony.¹² Mr. Quinlin described it as the only current clean energy solicitation of which he is aware.¹³ Kenneth Bowes stated that the Project would likely not proceed without being successful in a solicitation like the Mass RFP.¹⁴ In response to a question from Commissioner Bailey, Michael Aussere indicated the Applicants and Hydro Quebec would have to go back and evaluate "market opportunities" if the Project was not successful in the Mass RFP.¹⁵ Thus, there is a real question about whether the Project will ever move forward without a successful bid into the Mass RFP.

20. Counsel for the Public's request for RFP-related documents came as part of informal requests for information that preceded formal discovery. This sharing of information is acknowledged and discussed in both the SPNHF/NGO Motion and the Applicants' response to that Motion. Because of the Applicants' willingness to provide this information informally, Counsel for the Public did not make a formal data request for RFP-related documents. The Applicants should be compelled to provide the unredacted copies of the Mass RFP proposals as a supplement to this informal request.

21. Regardless of whether it considers this a supplement of an existing request or not, the documents in question are of such a fundamental nature to the necessary statutory

¹² Tr. Day 1, AM at 132 (Quinlin); Tr. Day 2, PM at 62, 70 (Quinlin); Tr. Day 13, PM at 93 (Frayer).

¹³ Tr. Day 1, AM at 139 (Quinlin).

¹⁴ Supplemental Testimony of Kenneth Bowes (March 24, 2017) at 3 (noting Project will have to "explore new market opportunities."); Tr. Day 3, AM at 73 (Bowes).

¹⁵ Tr. Day 3 PM, at 141 (Aussere).

conclusions in this matter that the SEC, Counsel for the Public and the parties should have an opportunity to review the Proposals and understand how they impact the Applicants' claims regarding Project benefits.

22. Applicants cannot argue that it is too late in the proceeding to be required to provide these documents. They have consistently submitted new evidence into the record long after the final date for filing testimony. As an example, they submitted the Section 106 Programmatic Agreement on August 31st.

23. The public interest in allowing the parties to view the information in the Mass RFP Proposals clearly outweighs the Applicants needs for privacy, especially if the documents are submitted pursuant to the restrictions in the existing protective order. As explained above, this information is critical to understanding how the Project is in the public interest.

24. Consequently, Counsel for the Public seeks an Order compelling the Applicants to produce unredacted copies of the Mass RFP Proposals.

The Following Parties Concur in this Motion:

NGO Intervenors
Municipal Group 1 South
Municipal Group 1 North
Municipal Group 2
Municipal Group 3
Grafton County Commissioners
Whitefield-Bethlehem Abutting Landowners
Bethlehem-Plymouth Abutting Landowners
Bethlehem-Plymouth Non-Abutting Landowners
Webster Family Intervenor Group
Ashland-Deerfield Non-Abutting Landowners
Deerfield Abutting Landowners
Pemigewasset River Local Advisory Committee
Stark-Bethlehem Non-Abutting Landowners

The Following Parties Object to this Motion:

Applicants

The remaining parties have not responded.

WHEREFORE, Counsel for the Public respectfully requests that the SEC:

- A. Order the Applicants to provide unredacted copies of the proposal submitted in response to the Massachusetts Clean Energy Requests for Proposals; and
- B. Grant such other and further relief as is just and equitable.

Respectfully submitted,

COUNSEL FOR THE PUBLIC,

By his attorneys,

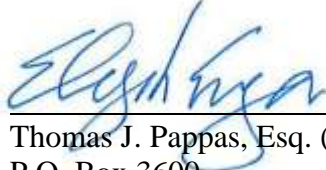


Dated: September 8, 2017

By: Peter C.L. Roth, Senior Assistant Attorney General
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PRIMMER PIPER EGGLESTON & CRAMER PC,

Dated: September 8, 2017

By: 
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-and-

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing MOTION TO COMPEL UNREDACTED COPIES OF BIDS SUBMITTED IN RESPONSE TO MASSACHUSETTS CLEAN ENERGY REQUEST FOR PROPOSALS has this day been forwarded via e-mail to persons named on the attached Spokesperson Distribution List of this docket.

Dated: September 8, 2017

By: 
Elijah D. Emerson, Esq. (N.H. Bar No. 19358)