

September 18, 2017

Via Electronic Mail & Hand Delivery

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

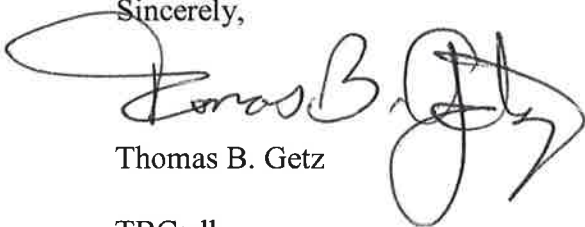
**Re: Site Evaluation Committee Docket No. 2015-06
Joint Application of Northern Pass Transmission LLC and Public Service Company
of New Hampshire d/b/a Eversource Energy (the "Applicants") for a Certificate of
Site and Facility
Objection to CFP Motion to Compel Unredacted Bids into the MA Clean Energy
Request for Proposals**

Dear Ms. Monroe:

Enclosed for filing in the above-captioned docket, please find an original and one copy of an
Objection to Counsel for the Public's Motion to Compel Unredacted Bids into the Massachusetts
Clean Energy Request for Proposals.

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 COUNSEL FOR THE PUBLIC’S MOTION TO COMPEL
UNREDACTED BIDS INTO THE MASSACHUSETTS CLEAN ENERGY
REQUEST FOR PROPOSALS**

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 respectfully submit this Objection to Counsel for the Public’s (“CFP”) Motion to Compel Unredacted Bids into the Massachusetts Request for Proposals. As explained below, CFP fails the basic test of linking its motion to compel to a specific data request or Site Evaluation Committee order that would merit compelling production of the requested documents. Moreover, the Presiding Officer has made clear that informal data requests are not subject to the rules governing motions to compel.

I. Discussion

1. On September 8, 2017, CFP asked the Presiding Officer to compel the Applicants to produce bids they made in response to the Massachusetts Clean Energy Request for Proposals (“Mass Bids”). It begins by expressing support for the joint motion to compel filed by the Society for the Protection of New Hampshire Forests (“SPNHF”) and the NGO Intervenors (“NGOs”) (together the “Joint Movants”) on August 28, 2017. (Para. 9) As the Applicants demonstrated in their September 7, 2017 objection to that motion, which they incorporate here by reference, neither SPNHF nor the NGOs pointed to a data request that would

justify production of the Mass Bid and, moreover, the Presiding Officer never directed the Applicants to produce the bid the Applicants had made in the Tri-State Clean Energy Request for Proposals (“Tri-State Bid”). Accordingly, CFP is incorrect in adopting the Joint Movants’ argument that the Applicants were required to produce an un-redacted version of the Tri-State Bid and should now be required to produce the Mass Bid. (Para. 18)

2. CFP says that it is filing a separate motion because of its unique role. (Para.10) It later cites to the relevant statute, RSA 162-H:9, which provides: “*The counsel shall represent the public in seeking to protect the quality of the environment and in seeking to assure an adequate supply of energy.*” CFP has clearly been assigned an objective, balancing role, which does make it different from other participants in the proceeding and which brings along with it corresponding duties and obligations to act even-handedly. This role, however, does not accord CFP any special privileges when it comes to traditional discovery practice.

3. CFP claims that it must “understand how the ‘supply of energy’ crossing New Hampshire for consumption in Southern New England markets will benefit the public, in New Hampshire.” (Para. 12) Its claim, however, misconstrues the operation of the regional electricity market. The facts, regardless of what happens with the Mass Bids, are these. First, the electricity from the Project will enter the New England regional grid in Deerfield, New Hampshire, suppressing wholesale energy prices in New Hampshire and the rest of New England; it will not “cross” into Massachusetts for consumption in Southern New England without providing benefits to New Hampshire. LEI Report, October 16, 2015, p. 33. Second, the electricity markets operated by the Independent System Operator - New England (“ISO-NE”) perform in such a way that the wholesale electricity market benefits from the Project depend on physical deliveries and not contractual arrangements. *Id.* p. 35. Finally, the Mass RFP is intended to procure energy, not capacity, and HRE will therefore be in the same place

when it bids into future ISO-NE capacity auctions irrespective of how the Mass RFP bid progresses.

4. CFP also makes the erroneous assertion that the Subcommittee and the CFP must address two fundamental questions, i.e., how Hydro-Québec will utilize the transmission capacity from the Project and how that will benefit New Hampshire. It premises these questions on a preceding statement that 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.” (Para. 13) As noted above, the Project’s impact on wholesale energy prices, and retail rates in New Hampshire, is unaffected by the success of the Mass Bids. Therefore, CFP’s so-called fundamental questions are, in fact, entirely beside the point.

5. Furthermore, CFP strains to equate the Mass Bids to the Power Purchase Agreement (“PPA”) as a basis for requiring the production of the Mass Bid. (Para. 18) Clearly, the PPA would have delivered benefits directly to New Hampshire through an agreement with PSNH. The attempt at a comparison to the Mass RFP, however, does not wash. The only accurate representation with respect to the demise of the PPA is that the additional benefits that were intended to be provided to New Hampshire over and above the wholesale market benefits will not be available. The Mass RFP is not a substitute for the PPA and it takes nothing away from New Hampshire ratepayers.

6. In addition, CFP quotes language from RSA 162-H:1, the purpose section, out of context. (Para. 11) It points to one of the five findings that the Legislature made in its Declaration of Purpose, which are:

Accordingly, the legislature finds [1] that it is in the public interest to maintain a balance among those potential significant impacts and benefits in decisions about the siting, construction, and operation of energy facilities in New Hampshire; [2] that undue delay in the construction of new energy facilities be avoided; [3] that full and timely consideration of environmental consequences be provided; [4] *that all entities*

planning to construct facilities in the state be required to provide full and complete disclosure to the public of such plans; and [5] that the state ensure that the construction and operation of energy facilities is treated as a significant aspect of land-use planning in which all environmental, economic, and technical issues are resolved in an integrated fashion. (Emphasis supplied.)

Based on the following paragraphs of its motion, it appears that CFP focuses on the fourth finding in isolation in order to bootstrap its motion to compel because it lacks any real basis for such a motion. While resort to the purpose section can be useful in divining legislative intent in order to resolve some ambiguity or conflict, the purpose section is not an independent grant of authority to the SEC. Nor do isolated words and phrases about full and complete disclosure (which the Applicants have provided) fill the hole in CFP's argument. Finally, focusing on the words themselves, contrary to CFP's overbroad interpretation, it appears that the plans being discussed in this clause are construction plans.

7. Furthermore, CFP continues its campaign to assert that the Subcommittee must apply a net benefits test. (Para. 10) CFP recently took this tack with respect to the Applicants' motion for clarification of the Presiding Officer's May 26, 2017 Order on Motion to Strike, where the Applicants expressed concern that the order could be construed as endorsing a net benefits test. Counsel for the Public opposed the Applicants' motion, arguing for a net benefits test and asserting that no clarification was required. The Presiding Officer, however, granted the Applicants' motion for clarification, confirmed that no determination had been made to apply a net benefits test, and, hence, rejected CFP's interpretation of the May 26, 2017 Order on Motion to Strike.

8. Most glaring, it then contends that the Mass Bid is relevant based on statements attributed to Mr. Quinlan, Ms. Frayer, Mr. Bowes, and Mr. Ausere. Inexplicably, despite Mr. Quinlan's clear testimony below to the contrary, CFP concludes that "there is a real question

about whether the Project will ever move forward without a successful bid into the Mass RFP.”

(Supplemental Testimony, p. 11, line 13.)

Q. If NPT’s proposal is not successful in the MA RFP, will the project go forward?

A. Our development of NPT is not predicated on the outcome of any one solicitation. As I have previously stated, given the large and growing demand for clean energy across the region, we believe there will be a number of opportunities for a project like Northern Pass to successfully secure contractual commitments for delivery of low cost, clean hydropower. The MA RFP is one of those opportunities. Regardless of the outcome of the MA RFP, the Applicants intend to move forward with the development of Northern Pass.

9. Ignoring Mr. Quinlan’s unequivocal testimony, CFP manufactures a position based on fragments taken out of context. Specifically, CFP says: “Kenneth Bowes stated that the Project would likely not proceed without being successful in a solicitation like the Mass RFP” when Mr. Bowes said no such thing. CFP cites for support to p.3 of Mr. Bowes’ Supplemental Testimony, and p.73 of the transcript of Mr. Whitley’s cross-examination of Mr. Bowes on the morning of April 17, 2017. With respect to the former, in his Supplemental Testimony at pp. 2 and 3, Mr. Bowes explained how he “determined that additional burial of the proposed Project would make the proposed Project economically infeasible or in viable.” See p. 2, lines 12 and 13. Consequently, the bald statement that CFP attributes to Mr. Bowes is indefensible because, first, he never said those words and, second, what he did say concerned the viability of an entirely underground project. As for the latter, Mr. Whitley was inquiring about sources of revenues to Hydro-Quebec, again in the context of Mr. Bowes’ testimony about the viability of an entirely underground project, and Mr. Bowes simply identified the Mass RFP as a potential source of revenues.

10. Finally, concerning the citation to Mr. Ausere’s testimony, it does not support CFP’s proposition that the Project depends on the Mass RFP. First, Mr. Ausere’s statement was made in the context of answering questions about the contractual rights of Hydro Renewable

Energy, LLC (“HRE”) under the Transmission Service Agreement. More important, however, he reiterated Mr. Quinlan’s testimony that the Project is “not dependent on any one RFP” but noted that other market opportunities would be evaluated if the Mass Bids were unsuccessful. (Tr. Day 3, AM at 73, line 17 to 23.)

11. CFP also argues that the Applicants should be compelled to provide the un-redacted Mass Bids as a supplement to informal requests that were made early in the proceeding. The Presiding Officer resolved the question of whether responses could be compelled to informal data requests in orders issued October 28, 2016 and January 12, 2017. In the first, his Order Denying the Society for the Protection of New Hampshire Forests Motion to Compel Documents Produced Informally to Counsel for the Public, he denied the motion, holding that “the request seeks to compel responses to informal requests, which are not subject to the rule on Motions to Compel. Site 201.12 (k).” In the second, he denied SPNHF’s motion for rehearing, reiterating that informal requests are not subject to the rule on motions to compel.

12. Finally, CFP argues that the Mass Bids should be compelled because the Applicants have submitted evidence into the record subsequent to the filing of testimony and it points as an example to the Section 106 Programmatic Agreement. As CFP knows well, the Section 106 process is iterative and that process moves along on a schedule independent of the SEC’s, typically extending beyond the issuance of a Certificate. Furthermore, the Applicants have the burden of proof and it is common practice to supplement the record, especially with respect to filing information relevant to other state or federal requirements as it becomes available.

II. Conclusion

13. The CFP motion to compel production of the Mass Bid is deficient in every regard. It is lacking to the extent it piggybacks the SPNHF/NGOs motion because it is not linked

to a specific CFP data request or controlling order for production of the Tri-State Bid. It is similarly lacking in other procedural respects, including its argument that the Mass Bid should be compelled as a supplement to an informal request. The motion to compel is lacking as well in substantive respects. Ultimately, CFP tries to make a last-minute case for relevance that would cure the fatal procedural deficiencies. To that end, CFP argues that the Mass Bids are key pieces of evidence. (Para. 18) The facts are to the contrary, however, and the Applicants are confident that they have made their case about the significant electricity market benefits that will accrue from the Project and thus met their burden with respect to the public interest. This unsupported, unfounded, and untimely motion to compel should therefore be denied.

WHEREFORE, the Applicants respectfully request that the Presiding Officer:

- A. Deny the Motion; and
- B. Grant such further relief as is deemed just and appropriate.

Respectfully submitted,

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

By Its Attorneys,

McLANE MIDDLETON,
PROFESSIONAL ASSOCIATION

Dated: September 18, 2017

By: 

Barry Needleman, Bar No. 9446
Thomas B. 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 18th of September, 2017, an original and one copy of the foregoing Objection was hand-delivered to the New Hampshire Site Evaluation Committee and an electronic copy was served upon the Distribution List.


Thomas B. Getz