

September 19, 2017

Via Electronic Mail & Hand Delivery

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

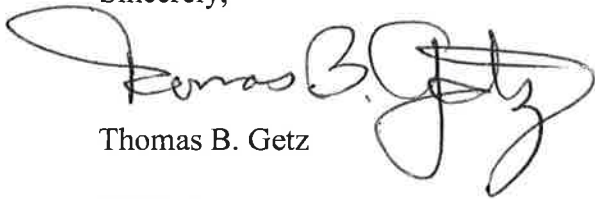
**Re: Site Evaluation Committee Docket No. 2015-06
Joint Application of Northern Pass Transmission LLC and Public Service Company
of New Hampshire d/b/a Eversource Energy (the "Applicants") for a Certificate of
Site and Facility
Objection to Deerfield Abutters' Motion for Rehearing of Procedural Order**

Dear Ms. Monroe:

Enclosed for filing in the above-captioned docket, please find an original and one copy of an
Objection to Deerfield Abutters' Motion for Rehearing of Procedural Order.

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 DEERFIELD ABUTTERS’
MOTION FOR REHEARING OF PROCEDURAL ORDER**

Northern Pass Transmission LLC and Public Service Company of New Hampshire d/b/a Eversource Energy (the “Applicants”), by and through their attorneys, McLane Middleton, Professional Association, hereby object to the motion for rehearing filed by the Deerfield Abutters on September 14, 2017, asking the Site Evaluation Committee (“SEC” or in this case “Subcommittee”) to modify the September 12, 2017 Procedural Order as it applies to friendly examination. As explained below, the Deerfield Abutters fail to demonstrate good cause for rehearing.

1. On September 12, 2017, the Presiding Officer properly recognized that cross-examination is normally conducted of witnesses who take an adverse position on a relevant issue and that “friendly cross” concerns examination of witnesses of an allied party. Furthermore, the Presiding Officer made clear that examination of witnesses with whom one agrees, insofar as it repeats points made in pre-filed testimony or provides the opportunity to testify about matters not addressed in the pre-filed direct testimony, is not necessary to ensure a full and true disclosure of the facts. Consequently, the intervenors were directed to submit, by September 22, 2017, a list including the following information:

1. Whether the examining party believes that its position is adverse to the witness including all reasons; and

2. If the examining party is not adverse to the witness, the examining party must identify the areas of cross-examination and why the cross-examination is necessary to a full and true disclosure of the facts.

3. The Deerfield Abutters complain that the Procedural Order is unfair and that it undermines due process because it limits their right to cross-examination. They also assert that their “ability to be responsive to witnesses’ testimony” will be eliminated and that “[a]daptability, flexibility, and surprise are the very core of cross-examination.” Finally, they say it is too burdensome to provide the required information.

4. The purpose of rehearing “is to direct attention to matters said to have been overlooked or mistakenly conceived in the original decision.” *Dumais v. State Pers. Comm’n*, 118 N.H. 309, 311 (1978) (internal quotations omitted). A rehearing may be granted when the Committee finds “good reason” or “good cause” has been demonstrated. *O’Loughlin v. New Hampshire Pers. Comm’n*, 117 N.H. 999, 1004 (1977); *Appeal of Gas Service, Inc.*, 121 N.H. 797, 801 (1981). “A successful motion for rehearing must do more than merely restate prior arguments and ask for a different outcome.” *Public Service Co. of N.H.*, Order No. 25,676 at 3 (June 12, 2014); *see also Freedom Energy Logistics*, Order No. 25,810 at 4 (Sept. 8, 2015).

5. The Deerfield Abutters misconstrue the Procedural Order in particular and the purposes for cross-examination in general. In the first place, there can be no doubt that the Deerfield Abutters have been permitted their full right to cross examine those witnesses to which they are adverse in this proceeding, meaning the Applicants’ witnesses. They are not, however, adverse to Counsel for the Public or to other intervenors, hence examination of those witnesses would be “friendly cross” and any restriction on such examination would not deny them due process. In that regard, the Deerfield Abutter’s argument that they need to be in a position to “surprise” witnesses with whom they do not disagree, or “be responsive” to CFP or intervenor

testimony with which they are aligned, demonstrates a misunderstanding of the purpose and conduct of cross-examination.

6. At the hearing on September 15, 2017, the Society for the Protection of New Hampshire Forests (“SPNHF”) orally proposed several changes to the Procedural Order and asked that the Presiding Officer clarify whether the September 22, 2017 filing requirement applied to witnesses for Counsel for the Public (“CFP”). After a recess, the Presiding Officer indicated that the intervenors need not include CFP’s witnesses in the list of witnesses they seek to examine.¹

7. The Procedural Order concluded that something must be done “to ensure that the proceedings are not bogged down by unnecessary and inefficient friendly cross-examination.” Accordingly, the Presiding Officer directed intervenors to “file a list identifying each witness that the intervenor seeks to cross-examine (excluding the remaining Applicants’ witnesses).” The Procedural Order makes no distinction between CFP witnesses and intervenor witnesses, which is entirely consistent with the rationale for the list in the first instance. In other words, the positions expressed in pre-filed direct testimony and the corresponding actions of the parties sponsoring the testimony are determinative. Simply because testimony is sponsored by the CFP does not negate the fact that the intervenors are not adverse to the CFP or diminish the reality that their actions are aligned.

8. The intervenors do not appear to be any more adverse to CFP than they are to one another, and therefore have no greater “right” to examine CFP witnesses than they do other intervenor witnesses. While the Presiding Officer may exercise his discretion to let the intervenors off the hook with respect to the September 22, 2017 filing requirement as a

¹ The spreadsheet included with the August 15, 2017 Report of Prehearing Conference indicates that the intervenors have 45 hours of examination of CFP witnesses, or 7½ days of “friendly cross.”

procedural matter, that should not mean that intervenors have been issued a free pass to examine CFP witnesses without consideration of whether such examination is necessary for a full and true disclosure of the facts. Accordingly, to the extent intervenors attempt to examine CFP witnesses by repeating points made in pre-filed testimony or providing an opportunity to testify about matters not addressed in pre-filed direct testimony, they would be employing tactics unnecessary to ensure a full and true disclosure of the facts and such examination should not be allowed.

9. The Procedural Order is fully consistent with the requirements of due process.

Judge Friendly determined, in *National Nutritional Foods Association v. Food and Drug Administration*, 504 F. 2d 761 (1974), that cross-examination necessary for a full and true disclosure of facts extended to parties that were adverse but that examination by parties that are not adverse may be curtailed. In fact, Judge Friendly endorsed the following process employed by the Administrative Law Judge, which is substantially similar to the process adopted in this case.

If any Participant wished to cross-examine the witness of another, he was to serve a notice of intention to do so. The notice had to state that the written direct testimony of the witness was adverse to the interest of the Participant, make specific reference to the portion of testimony considered to be adverse, and state the reasons therefor. The Hearing Examiner would determine whether to grant permission to cross-examine in his discretion. If such permission were granted, the Participant's cross-examination was to be limited to those portions of the witness' written direct testimony specified in the notice.

Id. at 793; see also *N. Plains Res. Council v. Bd. of Nat. Res. & Conservation*, 181 Mont. 500, 533-35 (1979) (Noting that cross-examination may be limited to witnesses of the opposing party or adverse party and that administrative bodies must be allowed, and encouraged, "to take steps to avoid repetitious or aimless cross-examination.")

10. In conclusion, the Deerfield Abutters have not demonstrated good cause for rehearing. They have merely alleged unfairness and asked to unnecessarily extend the hearings. Moreover, there is no infirmity in the way the Procedural Order treats “friendly cross” and the modified process employed by the Presiding Officer provides even more process than is due inasmuch as the intervenors could reasonably have been required to include CFP witnesses in the September 22, 2017 list.

WHEREFORE, the Applicants respectfully request that the Presiding Officer:

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

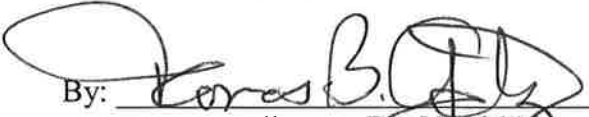
Respectfully submitted,

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 19, 2017

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Certificate of Service

I hereby certify that on the 19th 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 SEC Distribution List.


Thomas B. Getz