

**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 MOTION TO STRIKE LONDON ECONOMICS
INTERNATIONAL'S MEMORANDUM**

Counsel for the Public, by his attorneys, the Office of the Attorney General and Primmer Piper Eggleston & Cramer PC, hereby moves to strike London Economics International's ("LEI") Memorandum Regarding Record Response Explaining Differences in MOPR Calculations for Northern Pass (the "LEI Memo") dated November 21, 2017. In support of this motion, Counsel for the Public states as follows:

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").

2. The Applicants submitted the report of LEI titled "Cost-Benefit and Local Economic Impact Analysis of the Northern Pass Transmission Project" and the pre-filed testimony of Ms. Frayer on October 16, 2015. Applicants' Exhibit 1, Appendix 43 and Applicants' Exhibit 28. As LEI is an expert on energy markets, and the Minimum Offer Price Rule ("MOPR") was well-established at this time, Ms. Frayer certainly could have and should have addressed its impact on the Project in her pre-filed testimony. She did not.

3. Counsel for the Public's energy market experts, The Brattle Group, filed a report and testimony on December 31, 2015, raising concerns regarding the impacts of the MOPR on LEI's estimate of the capacity market benefits of the Project. Counsel for the Public's Exhibit 142.

4. LEI updated its report and testimony on March 17, 2017. Applicants' Exhibit at 82. LEI could have and should have addressed the MOPR issue in its updated testimony and report. It did not.

5. Finally, on April 17, 2017, the Applicants submitted LEI's supplemental testimony and rebuttal report, in which LEI did address the MOPR issue in response to The Brattle Group's testimony. Applicants' Exhibits 101 and 102.

6. In addition to addressing the MOPR's effect on LEI's estimated Project capacity market benefits in her April 2017 supplemental testimony and rebuttal report, Ms. Frayer explained her opinion on the MOPR during her live testimony before the Subcommittee. *See* Tr. Day 13, PM at 74-81, 89-92 and 104-106; Tr. Day 14, AM at 3-12, 60-65 and 87; Tr. Day 15, PM at 36, 54, 74, 175-177 and 185-186; Tr. Day 16, AM at 10-15 and 53.

7. While The Brattle Group witnesses, Sam Newell and Jurgen Weiss, were testifying and responding to questions from the Subcommittee, Commissioner Bailey made a record request specifically to Mr. Newell and Mr. Weiss. Tr. Day 53, AM at 80-83. Commissioner Bailey requested that Mr. Newell and Mr. Weiss "figure out what the difference between their analysis and LEI's analysis on the MOPR is." *Id.* at 80. As Mr. Newell pointed out, "It's really just a matter of can we put our information against theirs, and we have to see if we have all theirs, and, if not, just ask for it." *Id.* at 83. Presiding Officer Honigberg requested that Mr. Newell and Mr. Weiss "do the work you need to do, confer with Counsel for the Public,

and then have whatever quick evaluation can be done to determine how long this is going to take.” *Id.* at 82. It was clear from this exchange that Mr. Newell and Mr. Weiss were going to review the information that they possessed and, in the first instance, attempt to answer the question without consulting LEI.

8. Upon reviewing the information that it possessed, The Brattle Group determined they had sufficient information to answer the question on their own. There was no need to consult with LEI and LEI’s input was not necessary. On November 2, 2017, Counsel for the Public filed a memorandum responding narrowly to the request by Commissioner Bailey. It was three (3) pages long and simply addressed the areas where The Brattle Group’s and LEI’s analysis differed without commenting on those differences.

9. On November 21, 2017, the Applicants filed the LEI Memo with the parties that had signed the confidentiality agreement and followed a few days later with a redacted version of the LEI Memo. The six (6) page LEI Memo starts off by rearguing a point that Ms. Frayer made numerous times in her live testimony – that the Canadian portion of the Project would not be included in the MOPR calculation. The LEI Memo goes on to argue various other points regarding Brattle’s MOPR calculation. In addition to repeating testimony Ms. Frayer has already given in this docket, the LEI Memo seeks to expand her testimony and respond to issues raised during the cross-examination of The Brattle Group that extend well beyond the limited factual question raised by Commissioner Bailey’s record request that was addressed by The Brattle Group.

10. Supplementing Mr. Frayer’s testimony at this late date and without the Presiding Officer’s prior approval is not permissible under the procedural schedule in this docket. Moreover, attempting to use a record request specifically addressed to Counsel for the Public’s

witnesses to provide additional rebuttal evidence is improper. While there was some question during the hearing as to whether The Brattle Group might need to confer with LEI to obtain additional information necessary to answer Commissioner Bailey's record request, at no time did the Subcommittee request, or infer, that LEI provide a rebuttal response to The Brattle Group's answer. The Applicants' should not be allowed to use Commissioner Bailey's record request as an opportunity to supplement their testimony or supporting exhibits.

11. Accordingly, the Presiding Officer should exclude the LEI Memo because it is "unduly repetitious" of evidence already provided by the Applicants. RSA 541-A:33, II; Site 202.24(b); *See* Docket 2015-02, *Re: Application of Antrim Wind Energy, LLC*, Order Denying Motion to Reconsider and Re-Open the Record, December 2, 2016, ("*Antrim Order*") at 9 ("A close review of the Offer of Proof filed by Counsel for the Public reveals that much of the offer consists of testimony about information that is already in the record in this docket and is, therefore, cumulative and unduly repetitious.").

12. To the degree the LEI Memo contains new information, it should likewise be excluded from the record because it was information that "could have and should have" been provided at an earlier date when Applicants submitted supplemental testimony or during redirect of Ms. Frayer following cross examination by Counsel for the Public, the Intervenors, and the Subcommittee. *See, e.g.*, Tr. Day 44, PM at 42 and 90; Tr. Day 46, AM at 18-19; Tr. Day 48, PM at 29, 45, 111-112 and 180-181; Tr. Day 49, PM at 43-44, 74-75 and 76; and Tr. Day 50, PM at 45-46. In this case, Ms. Frayer is making new arguments about how the Hydro-Quebec Open Access Transmission Tariff works and provides a citation to the tariff, which is not part of the record. Additionally, her "double-counting" argument is new and not presented previous to the

LEI Memo, and neither were her arguments about opportunity costs. All of this testimony could have and should have been provided at an earlier stage in this proceeding.

13. It is inconsistent with due process and the SEC's past rulings to allow the Applicants to submit unsolicited new information after the time for direct testimony and cross-examining its witnesses has passed. Here, the Applicants "waited until the end of the proceedings" and after Counsel for the Public "had cross-examined the witness in an attempt to insert new evidence and testimony into the record." *Antrim Order* at 9. If that is allowed, Counsel for the Public will be "denied the opportunity to cross-examine" Ms. Frayer, and neither Counsel for the Public, nor any of the Intervenors, will have an opportunity to respond to the late-submitted testimony and evidence. *Id.*

14. Accordingly, the LEI Memo should be excluded from the record in this docket.

15. Counsel for the Public notified the parties of his intention to file this motion by e-mail on December 14. As of the date of filing, Applicants have not provided their position on the motion.

16. The Spokespersons for the following parties concur in this motion:

- (a) Municipal Group 1 South;
- (b) Municipal Group 3 North;
- (c) Non-Abutting Property Owners (underground portion), Bethlehem to Plymouth;
- (d) Municipal Group 2;
- (e) Municipal Group 3-South;
- (f) Society for the Protection of NH Forests.
- (g) Grafton County Commissioners;

- (h) Appalachian Mountain Club, Conservation Law Foundation, Sierra Club Chapter of NH and Ammonoosuc Conservation Trust;
- (i) Abutting Property Owners (Overhead portion) Deerfield;
- (j) Non-Abutting Property Owners (overhead portion), Stark, Lancaster, Whitefield, Dalton, and Bethlehem;
- (k) Pemigewasset River Local Advisory Committee;

17. The remaining parties have not responded

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

- A. Grant this Motion and strike London Economics International's ("LEI") Memorandum Regarding Record Response Explaining Differences in MOPR Calculations for Northern Pass dated November 21, 2017, in these proceedings; and
- B. Grant such other and further relief as may be just.

Respectfully submitted,

COUNSEL FOR THE PUBLIC,

By his attorneys,



Dated: December 15, 2017

By: Christopher G. Aslin, Senior Assistant Attorney General
Environmental Protection Bureau
33 Capitol Street
Concord, NH 03301-6397
(603) 271-3679
christopher.aslin@doj.nh.gov

PRIMMER PIPER EGGLESTON & CRAMER PC,

Dated: December 15, 2017

By: 
Thomas J. Pappas, Esq. (N.H. Bar No. 4111)
P.O. Box 3600
Manchester, NH 03105-3600
(603) 626-3300
tpappas@primmer.com


-and-

Elijah D. Emerson, Esq. (N.H. Bar No. 19358)
PRIMMER PIPER EGGLESTON & CRAMER PC
P.O. Box 349
Littleton, NH 03561-0349
(603) 444-4008
eemerson@primmer.com

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing MOTION TO STRIKE LONDON ECONOMICS INTERNATIONAL'S MEMORANDUM has this day been forwarded via e-mail to persons named on the Distribution List of this docket.

Dated: December 15, 2017

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