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September 10, 2018

BY HAND

Eileen Fox, Clerk
New Hampshire Supreme Court
One Charles Doe Drive
Concord, NH 03301

Re: Northern Pass Transmission LLC and Public Service Company of New Hampshire d/b/a Eversource Energy – SEC Docket No. 2015-06

Dear Ms. Fox:

Enclosed please find an original and seven copies of the Objection of Appellants to Joint Motions for Summary Affirmance of the Joint Parties and the McKenna's Purchase Unit Owners Association, along with an accompanying Memorandum of Law.

Thank you for your assistance, and please feel free to call me if you have any questions.

Sincerely,

Wilbur A. Glahn, III

WAG:ap
Enclosures
cc: All Parties of Record in SEC Proceeding

THE STATE OF NEW HAMPSHIRE

SUPREME COURT

No. 2018-0468

NORTHERN PASS TRANSMISSION LLC AND PUBLIC SERVICE COMPANY OF NEW HAMPSHIRE D/B/A EVERSOURCE ENERGY

Application for a Certificate of Site and Facility

SEC Docket No. 2015-06

MEMORANDUM IN SUPPORT OF OBJECTION OF APPELLANTS TO THE MOTIONS FOR SUMMARY AFFIRMANCE OF THE JOINT PARTIES AND THE MCKENNA'S PURCHASE UNIT OWNERS ASSOCIATION

Northern Pass Transmission LLC and Public Service Company of New Hampshire d/b/a Eversource Energy (collectively, the "Applicants"),[1] file this Memorandum in Support of their Objection to the Joint Motions for Summary Affirmance filed by multiple parties and to the individual Motion of the McKenna's Purchase Unit Owners Association for Summary Affirmance (collectively, the "Opponents"). Both motions were filed on August 30, 2018.[2]

Rule 25 of this Court's Rules provides that an order of summary affirmance may be entered:

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[1] Northern Pass Transmission LLC and Public Service Company of New Hampshire d/b/a Eversource Energy were referred to in the Site Evaluation Committee as the "Applicants." Although appearing as Appellants under Rule 10 of this Court's Rules, the term "Applicants" will be used in this pleading.

[2] The Opponents' Joint Motion for Summary Affirmance was filed on behalf of the Towns of Pembroke, Littleton, New Hampton, Deerfield, Plymouth, Sugar Hill, Easton, Franconia, Northumberland, Bristol and Whitefield, the City of Concord, the Society for the Protection of New Hampshire Forests, the Conservation Law Foundation, the Appalachian Mountain Club, the New England Power Generators Association and the McKenna's Purchase Unit Owners Association ("McKenna's"). McKenna's also filed a separate motion for summary affirmance. In addition to these motions, on or before August 31, 2018, thirty-three parties in the underlying SEC proceeding submitted petitions for Joinder in the Joint Motion for Summary Affirmance. None of these motions set forth any substantive arguments. As cited herein, the Joint Motion is referred to as "JM" and McKenna's Motion as "MKM." The Applicants' Notice of Appeal is referred to as the "Notice."

> when (a) no substantial question of law is presented and the supreme court does not disagree with the result below,"... or (c) the case includes the decision of the administrative agency appealed from and no substantial question of law is presented and the supreme court does not find the decision unjust or unreasonable, or (d) other just cause exists for summary affirmance.

The Opponents barely mention this standard, and do not make any effort to explain why no substantial question of law is presented by this appeal. Instead, they mischaracterize the Applicants' arguments in an attempt to miscast this appeal as raising only factual issues that the Subcommittee of the Site Evaluation Committee (respectively, the "SC" and the "SEC") was entitled to weigh, and which this Court reviews with deference. JM at 7-9, MKM at1-5, 8-12. But the Opponents are wrong; this appeal focuses on the SC's legal errors and presents several substantial questions of law.

The Notice is based in part on the failure of the SC to define the standard of "undue interference with the orderly development of the region" in RSA 162-H:16, IV and Site 301.15. It argues that the SC failed to define the "region" against which it measured the Applicants' burden of proof, failed to explain how the standards in the SEC's rules were applied in that analysis, and applied *ad hoc* standards created for this case. The Applicants also argue that the SC compounded these errors by failing to apply past precedent without providing any reasoned basis for departing from or jettisoning that precedent, and by failing to deliberate on all statutory criteria in RSA 162-H:16, IV, as required by a fair reading of that statute and the SEC's own rules. Site 202.28. Further, the Applicants assert that the SC erred by imposing a burden of proof against the vague and undefined requirements of the statute and rules without considering mitigating conditions that are an integral part of meeting the burden of proof in permitting proceedings. These issues and others on appeal raise substantial questions of law and demonstrate that the Orders are unjust and unreasonable. In short, the Notice is focused on the SC's failure to consider facts in light of properly defined and applied legal standards. The Opponents offer virtually no response to the merits of any of these legal arguments. Instead, their Motions support the Applicants' arguments.

1. **The SC's Failure to Define the Standards It Applied in Finding that the Applicants Failed to Meet Their Burden of Proof**

The Applicants have demonstrated that the SC's Orders do not define key terms in the statute and the SEC rules or explain how those key terms were applied, most particularly, the definition of the "region" against which the SC measured the Applicants' alleged failure to meet their burden of proof on "interference with the orderly development of the region." Notice at 49-53. The Notice argues that, as a matter of law, given that failure, no applicant could determine how to satisfy the statutory standard. *Id.* The Opponents' arguments prove this point.

The Opponents assert that RSA 162-H:16 and the SEC Rules provide "adequate guidance" as to the meaning of the term "region," citing to this Court's case law interpreting statutes as a whole. JM at 14-15. Yet according to the Opponents, the clarity supposedly provided by the statutes and rules is that the SEC is to focus "on various regions for specific considerations," and that the SEC reviews the "term 'region' on both a macro and micro level." *Id.* at 15.[3] The problem with this analysis—and with the SC's Orders—is that nowhere in the more than 350 pages of the Orders does the SC define a "region," explain which region it is considering, or state whether it is applying a "macro" or "micro" assessment when, as to each of the subparts of Site 301.09 or Site 301.15, it concludes that the Applicants did not meet their burden of proof with respect to undue interference with the unidentified "region."[4] Nor do the Opponents point to the

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[3] As the Applicants demonstrated in their Notice, there is no common dictionary definition of "region." Notice at 50, n. 25.

[4] The Opponents cite the decision in Portland Natural Gas Transmission System ("PNGTS") as one in which the SEC applied the term "region" in a "macro" and "micro" level. JM at 15-16. But the PNGTS decision proves the Applicants' point. In that docket, when considering the orderly development of the region, the subcommittee found that "[f]or most of the proposed route, the Committee agrees with the applicants' contention that the proposed pipeline is consistent with the orderly development of the region. However, in certain areas of Shelburne and Newton, the Committee finds that the proposed route is not consistent with the orderly development of the region." SEC Dockets No. 96-01 and 96-03, Decision (July 16, 1997) at 12. Unlike here, the PNGTS subcommittee attempted to define the "region" under consideration and, then proceeded to apply the relevant facts, analysis, testimony, and evidence in the record to that defined "region." In this case, and contrary to prior standards set by the SEC, the SC made no attempt whatsoever to define the region or regions as to which the Applicants had failed to meet their burden. f *See* Notice at 49-53, citing the decision in the Groton Wind docket. Moreover, having found

testimony of any witness, or of any expert, or to any portion of the Orders that provides a definition of this critical statutory term. And as the Applicants pointed out, the SC members themselves evidenced substantial confusion over this issue, and over the need to define the term, yet the Orders provided no definition and no explanation of how the term was applied. Notice at 51 and Addendum B.

If the definition of the "region" was as clear as the Opponents contend, one would have expected the SC to have provided a definition at least once in more than 350 pages. Likewise, if the "plain language of the administrative rules is clear," as the Opponents contend, surely they could have provided some definition in their Joint Motion. JM at 15. The best the Opponents can do is to claim that a definition of the "region" is provided by the fact that the term may include any one (or presumably all) of 82 separate communities or municipalities in New Hampshire—and even in Vermont—expected to be affected by the Project. *Id.* n. 6.[5] Apart from the fact that the SC itself provided no such definition, and never defined the "region" to which it was applying the burden of proof, the Opponents make no attempt to explain what is meant by the application of the definition on a "macro" or "micro" basis, or how the SC supposedly did so in this case. Indeed, the fact that the Opponents seriously contend that the SC has the authority to consider impacts in another state (in this case, Vermont) when evaluating undue

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that the proposal was inconsistent with the orderly development of the region in certain locations, the subcommittee in PNGTS "condition[ed] its certificate to require modifications to the route" in order to mitigate any interference with orderly development of the region. *Id.* The consideration of such mitigating conditions is directly contrary to the argument made by the Opponents in this case. JM at 10-12. *See* discussion below at 9-10.

[5] The Opponents' suggested use of municipal views to define the term "region" misreads the statute. JM at 14. While the undue interference standard requires the SEC to consider municipal views, nothing in the statute suggests that those views serve to define the "region" to be evaluated by the SEC as opposed to requiring consideration of municipal views on interference once the region has been defined. Apparently, in the view of the Opponents, the "region" is whatever a municipality says it is, even if the SC does not define it. While in this case, the SC might have found that the Applicants had failed to meet their burden of proof as to undue interference by defining the region as a town, a group of towns, 82 towns, a planning region of the State or the State as a whole, it made no attempt whatsoever to do so. The alternative reading of the Opponents' argument, that no definition of the "region" is necessary provided that enough municipalities assert that a project will cause interference with orderly development, fares no better because it transforms "due consideration" of municipal views into "exclusive consideration" which would operate in derogation of the statutory requirement to provide "due consideration of all relevant information." RSA 162-H:16 (IV).

interference with the "region" demonstrates the extent to which the term has no definition at all.

The *ad hoc* nature of the SC's findings is amply demonstrated by the Opponents' argument that:

> The plain language of the statute gives each subcommittee the authority to review each application individually, regardless of how a prior subcommittee may have made findings on the same or a similar subject matter. Moreover, the application at issue is not identical to any application that has been reviewed by the SEC. The current application is different in scope and scale from every other application to have come before the SEC. The details of the proposed facility are different.

JM at 8-9 (emphasis added). In other words, the Opponents claim that if the facts are sufficiently different, the law and the rules will change to fit the facts.

The question of the "how" by which an agency makes a decision, and the question of whether, after having repeatedly determined "how" it makes decisions and "how" applicants can satisfy their burden of proof, an agency can summarily and without reasoned explanation change how it makes decisions and change the legal standard to which applicants are held, are at the very heart of the Notice and this appeal. How the SC departed from its precedent and held the Applicants to newly created *ad hoc* standards is exactly the problem with the SC's Orders, in which it applied standards adopted solely for this case, based on the contention that this project is different. In effect, the Opponents argue that no applicant can know what the "region" will be until years into the process, after all the evidence is in and after the SEC finally deliberates, and only then tells an applicant what the "region" is for that particular case. Standing alone, the Opponents' inability to provide any clarity to the definition of the "region," and their postulation that the agency may change "how" it approaches each application as it sees fit, and is, therefore, entitled to treat every case differently, demonstrates that a

substantial basis exists for a difference of opinion on the interpretation of the statutes at issue.[6]

2. **The SC's Failure to Follow Precedent**

The Applicants demonstrated that the case law, and SC's own precedent (particularly in the area of land use), requires that where an administrative agency fails to follow its own precedent, it must provide a reasoned explanation for that departure. Notice at 67-76. The Opponents do not address this point (or the case law) at all. Instead, they argue that the SC was not bound by prior decisions because RSA 162-H:10, III so provides. This misses the point and ignores the SC's obligation under the statute to "consider, as appropriate, prior committee findings and rulings on the same or similar subject matter."

While the SC may not by statute be bound to follow the findings and rulings in prior decisions, the Applicants' point is that in the absence of some definition in the SEC Rules, or in the application of those Rules, precedent is the only thing an applicant can rely on to determine how to comply with the statute and Rules and thus how to satisfy its burden of proof. Notice at 67-76. Here, the SEC had consistently applied the rule that construction of a project in an existing right-of-way was consistent with the orderly development of the region. Thus, even if the SC was not required to follow that precedent, it was required to demonstrate the basis for departing from that precedent when finding that the Applicants failed to meet their burden of proof on that issue. Absent an explanation for jettisoning precedent, the Orders become the *ad hoc* "every case is different" ruling that the Opponents espouse, as noted above. *See also* JM at 8.

The Opponents also attempt to convert the SC's failure to follow its own precedent into a factual issue, claiming that, because the Applicants' experts were cross-examined at length, and because the SC criticized their reports, the SC was entitled to weigh the expert testimony and to reject their reports. JM at 7-8. It is true that the SC is

[6] The Opponents completely fail to address the arguments in Section h.1.b and c. of the Notice that the SC misapplied its own rules and applied criteria that appear nowhere in the SEC regulations. Notice at 53-60. This also demonstrates that a substantial basis for a difference of opinion exists regarding the interpretation of the SEC Rules.

entitled to weigh and evaluate the testimony of experts. But here, it failed to do so. Instead, the SC challenged the credibility and reliability of the methodologies of the Applicants' experts (Varney and Chalmers), notwithstanding that it had accepted and relied on materially identical reports based on identical methods in a similar docket involving transmission lines less than two years earlier. Notice at 73-76.

All the Opponents can do is repeat their mantra that different cases can be based on different facts. JM at 7. If this proposition is true, then the SC is free to abandon precedent and reject methodologies it has previously accepted in applying the statute and rules. In that case, the "every case is different" standard is no standard at all, and the statute and rules become so vague as to be unconstitutional as applied.

3. **Statements of SC Members**

The Opponents also misconstrue the law and the Applicants' arguments regarding the statements of SC members during their deliberations. JM at 13-14. Asserting that only the written findings in the Orders are relevant, they argue that comments during deliberations may not be used to contradict, and thus overturn an agency's decision. *Id.* But that is not the law and is not what the Applicants are arguing.

In this case, the statements of SC members are highly relevant because the Orders provide no definition of the standards applied by the SC to find that the Applicants failed to meet their burden of proof. The deliberations, thus, provide guidance as to the standards members said they were applying, and demonstrate that the SC had no common understanding of the SEC Rules or the applicable standards. Notice at 56-61 and Addendum B, 130-137. Furthermore, as demonstrated by Addendum B to the Notice, the vague, *ad hoc*, standards applied by the SC members during deliberations are consistent with the findings in the Orders. Indeed, these vague and improper standards found their way into the Orders. The statements of the SC members on these standards are primarily used by the Applicants to demonstrate that the improper standards discussed in the deliberations are reflected in the Orders. Notice at 58-62.[7]

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[7] The Opponents cite four cases in support of their claim that reliance on deliberative comments to overturn an agency's decision is "routinely rejected in this and other jurisdictions and thus do not present a substantial question

4. **The Failure to Deliberate on all Criteria in RSA 162-H:16, IV**

The Opponents assert that "the language of RSA 162-H:16, IV is "clear and unambiguous," and thus establishes that "the statute and rules governing the SEC do not prohibit the [SC] from terminating deliberations if it determines that the Applicants have not met their burden." JM at 9.[8] Yet, while asserting this clarity and lack of ambiguity, the Opponents fail to address the fact that Commissioner Bailey (the author of the original motion to stop deliberations) stated that a "reasonable person might read the plain meaning of the rule [202.28] to require us to consider all four criteria stated in the law." Notice at 37-38.[9] Nor do the Opponents make any effort to address the Applicants' argument that because the statutory factors are interrelated, the SC erred by injecting aesthetic considerations into the evaluation of the Applicants' burden on orderly development without ever deliberating on aesthetics. *Id.* 47-48. Again, the Applicants have demonstrated that the Notice presents substantial questions of law.

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for the Court to review." JM at 13. The cited cases do not even remotely support the position for which they are cited. In Motorsports, this Court declined to review the extensive record where the planning board did not issue a written decision, but the Court referenced other decisions in which the minutes of meetings were used to supplement a written decision. In both Daniels and Baker, the Court did examine the statements made during deliberations, finding them to support, or to be consistent with, the written decision. In the PLMRS case, the court rejected the use of federal Sunshine Act deliberations to impeach a written decision, but the court also examined the deliberations and found the written decision was not based on the reasons given in those deliberations. At most, PLMRS supports the view that deliberations cannot "routinely" be used to impeach a written opinion, not that they may never be relevant. It is also worth noting that Opponents fail to point out that Baker is a 3JX decision entitled to no precedential value, and that the quoted language from PLMRS regarding the use of deliberations is not from that case but from Kansas State Network v. FCC, 720 F.2d. 185, 191 (D.C.Cir. 1983). Rather than standing for the proposition that courts do not consider deliberative statements, these cases stand for the proposition that courts frequently do consider such statements.

[8] The Applicants' arguments concerning the failure of the SC to properly deliberate on all factors are set out in the Notice and are not repeated here. Notice at 45-48.

[9] The Opponents attempt to interpret Site 202.28 as not requiring the consideration of all statutory criteria notwithstanding the plain language of the Rule that a subcommittee "shall make a finding regarding the criteria stated in RSA 162-H:16, IV." Citing In re Appeal of N.H. DOT, 152 N.H. 565, 571 (2005), they argue that the SEC Rule "must be read to effect the intent of the statutory provisions that authorize it." JM at 11. But even assuming that the statute does not require the consideration of all statutory criteria, nothing in In re Appeal of N.H. DOT, would prevent the SEC from drafting a rule to that effect. As the DOT case points out, an administrative agency may "'adopt ordinances, rules, by-laws, or regulations in aid of the successful execution of some general statutory provision,' State v. Normand, 76 N.H. 541, 546 (1913); *see* Ferretti v. Jackson, 88 N.H. 296, 298 (1936) ... and may 'fill in details to effectuate the purpose of the statute.' Kimball v. N.H. Bd. of Accountancy, 118 N.H. 567, 568 (1978)." Nothing in RSA 162-H:16, IV prohibits the SEC from adopting a rule that recognizes the interrelationship of all statutory criteria, and thus mandating their consideration before denying a certificate.

5. **The SC's Evaluation of the Burden of Proof Without Consideration of Mitigating Measures.**

The Opponents contend that the SC had no obligation to consider mitigating measures offered by the Applicants when evaluating the burden of proof. JM at 10-12. Using the statutory canon of *ejusdem generis*, the Opponents contend that Site 301.17 is extremely limited in terms of the conditions that a SC may impose. The Opponents are wrong. The plain language of the Rule, and the precedent they cite, proves otherwise.

Site 301.17 (i) provides as follows: "In determining whether a certificate shall be issued for a proposed energy facility, the committee shall consider whether the following conditions should be included in the certificate in order to meet the objectives of RSA 162-H: ...(i) Any other conditions necessary to serve the objectives of RSA 162-H or to support findings made pursuant to RSA 162-H:16." The subsection specifically allows a subcommittee to impose conditions necessary to support a finding regarding "undue interference with the orderly development of the region," *i.e.* one of the findings in RSA 162-H:16, IV.[10] As a result, nothing in the subsection suggests that it is limited by the preceding subsections (a)-(h), and the Opponents offer no explanation of why that is the case, other than to cite the canon.

Indeed, the proof that the Opponents are wrong is demonstrated by the PNGTS decision on which they rely. JM at 15-16. As discussed in footnote 4 above, in that decision, the subcommittee imposed a condition to move the gas pipeline in order to prevent undue interference with the orderly development of a defined region. If the Opponents' reading of Site 301.17 (i) were correct, no such condition could have been imposed as it is not enumerated in the previous subsections.

But the Opponents' *ejusdem generis* argument again misses the point of the Applicants' argument. Notice at 61-66. The Notice does not challenge the SC's ability to impose conditions on the grant of a certificate. Rather, the Applicants contend that the

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[10] As this Court has recognized, *ejusdem generis* is "not a judicial ukase" and "is always subject to the qualification that general words will not be used in a restrictive sense if the act as a whole demonstrates a different legislative purpose in view of the objectives to be obtained." In the Matter of Regan v. Regan, 164 N.H. 1, 9 (2012), citing State v. Beckett, 144 N.H. 315, 319 (1999).

SC erred by refusing to consider mitigating measures that were offered as an integral part of their burden to establish no undue interference. *Id.* The Opponents make no effort whatsoever to address this argument or the cases cited by the Applicants establishing that mitigation is an essential element of the burden of proof in permitting proceedings. *Id.* at 64. Instead, they simply repeat the SC's erroneous finding that without specific evidence of the extent of interference, it had no obligation to consider mitigation at all. JM at 12. It is not surprising that they offer no authority to support this finding, or to counter the case law cited by the Applicants. There is none, and their argument, as well as the finding of the SC, are contrary to common sense.

As the Applicants have shown, and as the statute explicitly acknowledges, energy projects are expected to interfere with or impact development to some degree. Notice at 62. In this case, the record demonstrates that the future effects of the Project on tourism and property values is difficult, if not impossible, to generally forecast in the first instance, let alone with the precision the SC appeared to demand. *Id.* As a result, mitigating measures must be considered when addressing "undue interference." *Id.* If, as the SC found, the burden of proof relative to undue interference must be satisfied without regard to mitigating measures, then there would never be a need to consider mitigation because an applicant would already have demonstrated that there is no undue interference without regard to such conditions. *Id.* at 63. Put simply, divorcing the burden of proof from mitigating measures makes no sense. Since the Opponents offer no response to the Applicants' arguments on this issue, it is clear that the appeal raises a substantial question of law.[11]

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[11] The Opponents devote just a few paragraphs to the Applicants' arguments regarding the SC's imposition of a separate burden of proof relative to construction and to its failure to address significant Project benefits. JM at 18-19. The Opponents' claims with respect to the SC's findings on construction once again miss the mark. The Applicants do not dispute that in determining whether a project will unduly interfere with the orderly development of the region, the SC was entitled (indeed, obligated by Site 301.15 (a)) to consider the extent to which the siting, construction, and operation of the proposed facility will affect land use, employment, and the economy of the region." In short, the SC is to decide what impact the construction of the project will have on each of the areas addressed in Site 301.09. But here, contrary to its own Rules, the SC imposed a burden on the Applicants to demonstrate the impact of construction as a separate finding, untethered from its effect on land use, employment or economy in the region. Notice at 83-84. The Opponents ignore this argument. Likewise, although pointing out that the SC did consider certain benefits from the Project, the Opponents do not address the Applicants' argument that

6. **McKenna's Purchase**

McKenna's separately filed motion for summary affirmance is a house of cards that falls based on its misreading of the applicable SEC Rules, and the Rules of this Court. Without providing any support for the claim, or addressing any of the Applicants' legal arguments in the Notice, McKenna's baldly asserts that "[a]lthough the Notice of Appeal may purport to raise some legal issues, in actuality, the arguments are all of a factual nature and were for the trier of fact—the SEC in this case—to decide." MKM at 11. *See also id.* at 9. It makes this claim without providing a single example of a "purported" legal argument in the Notice that is "in actuality," a factual one. Proceeding from this false premise, McKenna's then claims that the appeal should be rejected for two principal reasons: first, because the Applicants failed to identify "each error of fact" or to "state concisely the factual findings" as required for motions for rehearing under Site 202.29; and second, because the Notice of Appeal fails to comply with the requirement in Rule 10(1)(f) of this Court's Rules that the statement of the case in the Notice "set forth a concise statement of the facts material to the consideration of the questions presented." MKM at 9, 11 (emphasis in original). McKenna's argument is as follows: the Applicants' challenge to the Orders is "in actuality" entirely factual, the Applicants have cited no facts that the SC misconstrued, and, therefore, the appeal must be dismissed. The conclusion is as false as the premise and the argument is meritless.

The requirement for motions for rehearing in Site 202.29 specifically provides that the motion shall identify each "error of fact, error of reasoning, or error of law which the moving party wishes to have reconsidered," and that the party shall "state concisely the factual findings, or legal conclusion proposed." 202.09 (emphasis added.) While it is undoubtedly convenient to ignore the language of the Rule, including the word "or," McKenna's is not entitled to do so. In re Guardianship of Williams, 159 N.H. 318, 323 (2009) (The legislature is not presumed to waste words or enact redundant provisions and

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the SC failed—based on a contorted reading of the Applicants' Post-Hearing Memo—to evaluate significant benefits from the capacity market that even the SC Chair concluded might have outweighed any undue interference. JM at 18; Notice at 78-80.

whenever possible, every word of a statute should be given effect). Second, Rule 10(1) of this Court's Rules requires that the statement of the case set out "facts material" to the questions raised on appeal. While these may include factual matters addressed during the hearings, they are obviously not the only material facts on which an appeal may be based. For example, as in this case, the findings set out in the Orders, the statements during deliberations, and evidence presented by way of expert reports may be material. Likewise, the facts as set out in the Orders may be referenced without necessarily referencing the hearing transcripts (despite McKenna's contention to the contrary). MKM at 11-12. In sum, McKenna's procedural arguments are patently defective and offer no basis for this Court to conclude that the Orders should be summarily affirmed.

Conclusion

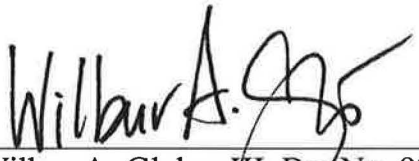
The Opponents' Motions are an exercise in avoidance. In every case, they misconstrue the Applicants' arguments, fail to address the arguments the Applicants actually make, and fail to address case law the Applicants cite. Apart from simply repeating that the SC Orders are correct, they offer no grounds on which this Court could, or should, conclude that the questions raised on appeal are not substantial and do not merit further consideration by this Court. For these reasons, and those set forth in the Notice, the Applicants submit that the Court should deny the motions for summary affirmance and accept the appeal.

Respectfully submitted,

NORTHERN PASS TRANSMISSION LLC and
PUBLIC SERVICE COMPANY OF NEW
HAMPSHIRE d/b/a EVERSOURCE ENERGY

By their Attorneys,

McLANE MIDDLETON
PROFESSIONAL ASSOCIATION

Date: September 10, 2018 By: 

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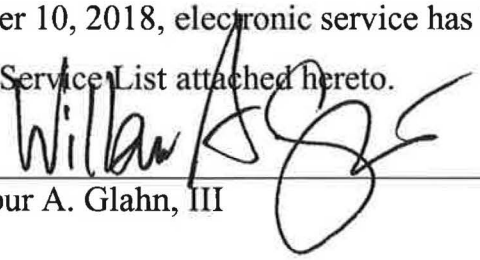
Certificate of Service

I hereby certify that on September 10, 2018, electronic service has been made upon all Parties and Intervenors on the Service List attached hereto.



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