

**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**

**July 18, 2017**

**ORDER ON APPLICANT'S MOTION TO STRIKE**

This order denies a Motion to Strike the testimony filed by or on behalf of Eric and Margaret Jones and Elmer and Clair Lupton, but requires them to participate in a telephone conference to answer questions regarding their pre-filed testimony.

**I. Background**

On January 24, 2016, Eric and Margaret Jones filed a Petition to Intervene in this docket. On January 28, 2016, Elmer and Claire Lupton filed a Petition to Intervene. The Petitions were granted on March 18, 2016. On May 20, 2016, the Joneses were grouped with the Drummer, Stark, and Northumberland Abutting Property Owners (overhead portion of the Project) and the Luptons were grouped with the Whitefield, Dalton, and Bethlehem Abutting Property Intervenors (overhead portion of the Project). Consistent with procedural orders issued in this docket, both the Joneses and the Luptons submitted pre-filed testimony.

A Technical Session Agenda was issued January 10 and revised on January 20, 2017, setting forth, among other things, the dates for which certain parties were required to appear for technical sessions. Pursuant to both the initial and revised agenda, the Luptons were required to appear at a technical session on January 23, 2017, from 1:30 to 2:30 p.m.; and the Joneses were required to appear at a technical session on January 26, 2017, from 11:00 a.m. to 12:30 p.m.

Neither the Luptons nor the Joneses appeared at the technical sessions.

On January 30, 2017, the Applicant filed a Motion to Strike the Lupton and Jones pre-filed testimony for failing to appear at the technical sessions without good cause. The National Trust for Historic Preservation; Sugar Hill Historic Museum; North Country Scenic Byways Council; Non-Abutters: Ashland to Deerfield; Municipal Group 2; Deerfield Abutters; Abutters: Dummer, Stark and Northumberland; Non-Abutters: Stark to Bethlehem; McKenna's Purchase Unit Owners Association; and Abutters and Non-Abutters Group I North Pittsburg, Clarksville, Stewartstown; the Society for the Protection of New Hampshire Forests (Forest Society) and the Grafton County Commissioners objected.

The Joneses objected on January 31, 2017, and the Luptons filed a late objection on March 7, 2017.

## **II. Positions of the Parties**

### **A. Applicant**

The Applicant argues that the Lupton pre-filed testimony should be struck for failing to appear at the Technical Session on January 23, 2017, and that the Jones pre-filed testimony should be struck for failing to appear at the Technical Session on January 26, 2017. The Applicant submits that it appeared at the January 23, 2017, technical session prepared to question the Luptons. The Applicant notes that the spokesperson for the group, Mr. David Van Houten, informed the Administrator that he had advised the Luptons that presence at the technical session was required. Similarly, the Applicant indicates that it appeared at the January 26, 2017, technical session prepared to question the Joneses.

The Applicant argues that the failure of the Luptons and the Joneses to comply with the procedural order, without any explanation, good cause, or a previous request for relief has interfered with the orderly and prompt conduct of these proceedings. The Applicant argues that scheduling

technical sessions and completing them in a timely fashion posed a significant challenge and disregard for the procedural orders creates enhanced risk of delay which is prejudicial to the Applicant.

**B. Grafton County Commissioners**

The Grafton County Commissioners argue that the Jones and Lupton testimony should not be struck as they are laypersons engaged in a complicated process. The Grafton County Commissioners submit that the technical sessions should be rescheduled.

**C. Forest Society**

The Forest Society argues while the failure of the Luptons and Joneses to appear at the scheduled technical sessions may have inconvenienced the parties that were prepared to question them, the Applicant's proposed remedy of striking the pre-filed testimony lacks merit and would undermine the purpose of technical sessions. The Forest Society argues that neither the SEC Rules nor the relevant orders provide that a witness's testimony will be struck for failing to appear at a technical session. The Forest Society argues that striking the pre-filed testimony of such parties would be unfair and prejudicial as the Luptons and Joneses had no reason to anticipate that their failure to attend technical sessions may result in the exclusion of their testimony. The Forest Society argues that the Motion to Strike should be denied because striking testimony of *pro se* intervenors for failing to attend one technical session would stand in stark contrast to the purpose of the technical sessions – "to exchange information." Forest Society's Objection, p. 2 (citing January 10, 2017, Technical Session Agenda and January 20, 2017, Revised Technical Session Agenda). The Forest Society argues further that granting the Applicant's Motion to Strike would undermine the informal nature and information-sharing purpose of the technical sessions and might chill further participation by unrepresented intervenors. The Forest Society suggests that the Applicant

can get the information it seeks through other discovery methods such as data requests or by requesting that the Administrator reschedule the appearances of the Luptons and Joneses.

**D. Eric and Margaret Jones**

The Joneses argue that the pre-filed testimony should not be struck as: they were granted intervenor status in this docket; they have attended and given oral testimony at many meetings; they spent significant time and effort researching, preparing and submitting their pre-filed testimony; they have invested significant time reading the paperwork generated in this docket; they responded to the Applicant's data request pertaining to their pre-filed testimony; they are appearing *pro se* in this docket and were unaware that attendance at technical sessions was mandatory; the orders did not clarify that attendance at technical sessions was mandatory; and they are senior citizens who live in Florida, which prohibited their participation at the technical session. The Joneses assert that if they had been aware, as they now are, that appearance at technical sessions is required, they would have made an effort to participate or at least sought to be excused.

**E. Elmer and Claire Lupton**

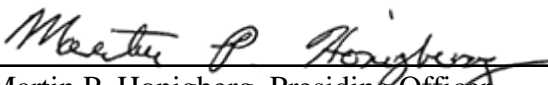
Similarly, the Luptons argues that their pre-filed testimony should not be struck as: they were granted intervenor status in this docket; they have been involved in the opposition to the Project; the proposed route will go directly over property that they own; they spent significant time and effort researching, preparing and submitting their pre-filed testimony; they have invested significant time reading the paperwork generated in this docket; they are appearing *pro se* in this docket and were unaware that attendance at technical sessions was mandatory; they are senior citizens who live in Massachusetts and Mr. Lupton has a medical situation that limits his mobility. The Luptons submit that if they had been aware, as they now are, that appearance at technical sessions is required, they would have made an effort to participate or at least sought to be excused.

### **III. Analysis**

Technical sessions form an integral part of the adjudicative process in these proceedings. Their purpose is for the parties and their experts to engage in mutual dialog in order to gain a better understanding of their testimony. Parties are entitled to question each other regarding the content of their pre-filed testimony. Failure of a party to appear at a scheduled technical session, without notice and/or good cause, deprives the Applicant and other parties, of the opportunity to obtain a clear understanding of the testimony submitted and causes delays in the proceedings. In determining whether to allow intervention in a particular docket, the presiding officer must assess whether “the interests of justice and the orderly and prompt conduct of the proceedings would not be impaired by allowing the intervention.” N.H. CODE ADMIN. RULES Site 202.11. Here, the presiding officer granted intervenor status to the Joneses and Luptons, understanding that they would participate as required and would not impair the orderly and prompt conduct of the of the proceedings. Their failure to appear at technical sessions is prejudicial to the Applicant and causes undue delay in this docket. Nevertheless, the Joneses and Luptons have expressed a desire to remain engaged in these proceedings and have stated their misunderstanding regarding the requirement to be either present or excused for the technical sessions.

The Joneses and Luptons shall make themselves available for a conference call with the Applicant and any other parties that wish to participate at a time and date determined by the Administrator. The Applicant’s Motion to Strike the Pre-filed Testimony is denied.

SO ORDERED this eighteenth day of July, 2017.

  
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Martin P. Honigberg, Presiding Officer  
Site Evaluation Committee