

**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**

September 12, 2017

PROCEDURAL ORDER

This order sets out procedures that will be used for the balance of the proceedings, including the schedule, the order of witnesses, “friendly” cross-examination, the recall of certain of the Applicant’s witnesses, and post-hearing briefing.

I. Schedule

The proceeding shall continue under the existing schedule and on those additional dates and times in the Notice of Additional Final Adjudicative Hearing Dates and Notice of Site Visit Date, issued on September 5, 2017.

The itinerary, schedule, and ground rules for the site visit on October 3, 2017, shall be issued by the Committee’s Administrator.

Additional adjudicative hearing dates may be added in the discretion of the Administrator.

The parties are forewarned that to conclude the adjudicative hearings within a reasonable amount of time, the hours of the day may be extended in the Chair’s discretion.

II. Order of Witnesses

Unless otherwise provided in this Order, the remaining witnesses shall be called in the order as set out in the Report of Third Prehearing Conference dated August 15, 2017 (Prehearing Conference Report). Municipal Group 1–North shall identify its witness panel and notify the

Subcommittee and all other parties within three business days of this order. The order of cross-examination of the remaining witnesses shall be as set forth in the Prehearing Conference Report.

III. Scope of Cross-Examination; “Friendly” Cross-Examination

The scope of cross-examination has been addressed twice previously in this docket. *See* Order on Applicant's Motion to Clarify Use of “Friendly” Examination dated March 31, 2017, and Report of Third Prehearing Conference dated August 15, 2017. The Administrative Procedures Act, RSA 541-A:33, IV, and our administrative rules, N.H. CODE ADMIN. RULES Site 202.24(a), allow cross-examination as may be necessary for a full and true disclosure of the facts. However the presiding officer may limit “irrelevant, immaterial, or unduly repetitious cross-examination or cross-examination that is not required for a full and true disclosure of the facts.” RSA 541-A: 33, II; N.H. CODE ADMIN. RULES, Site 202.02(c)(4).

Cross-examination is normally conducted with witnesses that take an adverse position on a relevant issue. Friendly cross-examination is broadly defined a cross-examination of the witnesses of an allied party. *See* Scott Hempling, *Litigation Adversaries and Public Interest Partners: Practice Principles for New Regulatory Lawyers*, Energy L.J. v.36, 1, 29 (April 26, 2015). Friendly cross-examination may also extend to examination of the witness on issues about which the examining party and the witness agree. In some types of matters, friendly cross-examination is used to repeat points made in prefiled testimony or to provide a witness the opportunity to testify about matters not addressed in the prefiled direct testimony. In this case, however, both tactics are unnecessary to ensure a full and true disclosure of facts.

At the third prehearing conference, the intervenors indicated a desire to conduct cross-examination for 235 hours—the equivalent of 39 additional hearing days. The intervenors’

estimates suggest that there is an intention to engage in improper friendly cross-examination. For instance, it is simply not plausible that the intervenors would cross-examine George Sansoucy, an expert proffered by the Joint Municipal Group, for almost an entire day on top of cross-examination by Counsel for the Public and the Applicant. Similarly, it is unreasonable to accept the estimates provided by the intervenors for friendly cross-examination of the witnesses for a number of other parties.

The Applicant moved for an order “requiring an offer of proof at a prehearing conference conducted by the Presiding Officer that gives non-adverse parties a full and fair opportunity to establish that their contemplated examination will neither repeat points already made by the witness in prefiled testimony nor introduce new testimony that the examining party or witness should have offered in writing.” Motion to Determine Extent of Friendly Cross filed August 16, 2017. Counsel for the Public and various intervenors objected to the Motion.

Having considered the motion and the objections, the Applicant’s motion is denied, because a further prehearing conference is unnecessary and would likely interfere with the prompt and orderly disposition of the proceeding. Something must be done, however, to ensure that the proceedings are not bogged down by unnecessary and inefficient friendly cross-examination. To that end, as explained below, the intervenors will have to identify their intentions in advance.

On before September 22, 2017, each intervenor shall file a list identifying each witness that the intervenor seeks to cross-examine (excluding the remaining Applicant witnesses).

Regarding each witness or witness panel, the list shall include 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.

Objections to the lists shall not be filed and the intervenors need not seek concurrence for their lists. The Subcommittee will use the lists in determining whether the proposed friendly cross-examination is necessary to a full and true disclosure of the facts. The intervenors should expect that friendly cross-examination will not be allowed unless there is a demonstration it is necessary to a full and true disclosure of the facts.

The requirement in this section does not apply to Counsel for the Public and Counsel for the Public need not file a list concerning its cross-examination intentions. Counsel for the Public fills an important statutory role and serves an independent interest in representation of the public at large in these proceedings.

IV. Recall of Applicant's Historic Resources Witness Panels

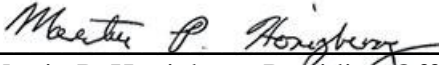
To fully carry out the purposes of RSA 162-H, it will be necessary to recall the Applicant's Historic Resource Panel. During testimony by the Applicant's Historic Resources Panel, the Applicant submitted a 74 page "Programmatic Agreement," App. Exh. 204. The Programmatic Agreement sets forth stipulations for the continuing identification of historic resources, the assessment of effects on historic resources and the processes used to avoid, minimize or mitigate adverse effects on historic resources. Neither the parties nor the Subcommittee had an adequate opportunity to review the Programmatic Agreement before the Historic Resources Panel testified. During the hearing, the Chair advised the Applicant that the Historic Resources Panel would be subject to recall. That recall will take place at an appropriate time before the presentation of witnesses by Counsel for the Public.

V. Closing Argument and Final Briefs

The Subcommittee will not hear closing arguments, but the parties may submit final briefs after the conclusion of the adjudicative hearings. At that time, all exhibits will have been filed and the record will be closed. Counsel for the Public and the intervenors shall file their closing briefs within **14 calendar** days of closing the record. The Applicant shall file its reply brief within **7 calendar** days thereafter. Each intervenor group may file a single brief. Multiple briefs from members of an intervenor group will not be accepted.

There will be no page limitations for the final briefs. The parties are reminded to be concise and succinct. Exhibits shall not be attached to the briefs. References to exhibits by name and number are sufficient. Each brief must be organized in a coherent fashion and briefs longer than 10 pages shall contain a table of contents.

SO ORDERED this twelfth day of September, 2017.



Martin P. Honigberg, Presiding Officer
Site Evaluation Committee