

April 12, 2017

Via Electronic Mail & Hand Delivery

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

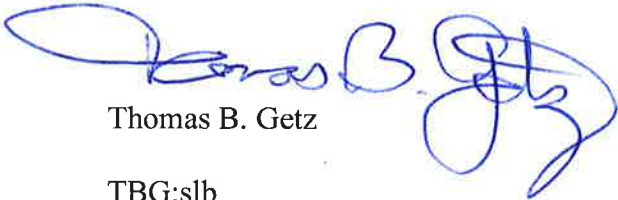
**Re: Site Evaluation Committee Docket No. 2016-03
Joint Application of Northern Pass Transmission LLC and Public Service Company
of New Hampshire d/b/a Eversource Energy (the "Applicants") for a Certificate of
Site and Facility
Objection to Motion of SPNHF for Rehearing of Order**

Dear Ms. Monroe:

Enclosed for filing in the above-captioned docket, please find an original and one copy of an
Objection to Motion of The Society For The Protection Of New Hampshire Forests for
Rehearing of Order Dismissing Petition for Declaratory Ruling.

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. 2016-03

PETITION OF TOWN OF BETHLEHEM ET AL. FOR A DECLARATORY RULING

**OBJECTION TO MOTION OF THE SOCIETY FOR THE PROTECTION OF NEW
HAMPSHIRE FORESTS FOR REHEARING OF ORDER DISMISSING PETITION
FOR DECLARATORY RULING**

Northern Pass Transmission LLC (“NPT”) and Public Service Company of New Hampshire d/b/a Eversource Energy (“PSNH”) (collectively the “Applicants”), hereby object to the Motion of the Society for the Protection of New Hampshire Forests’ (“SPNHF”) for Rehearing of the Committee’s Order dated March 7, 2017 (the “Order”). By the Order, the Committee, on its own motion, dismissed the request of the Town of Bethlehem, together with 18 other municipal entities (collectively, the “Towns”) and SPNHF and the Appalachian Mountain Club, to open a new docket before the Committee. That request was for the purpose of addressing one legal issue namely, whether the towns retained authority under RSA 231:160 to regulate the “erection, installation or maintenance of electric power lines” in the towns, notwithstanding the authority granted by the General Court to the Committee pursuant to RSA Ch. 162-H to issue a certificate of authority for the construction of specific power lines.

As the Applicants discuss below, SPNHF’s Motion fails to meet the standard for motions for rehearing and is meritless.

1. The procedural background to this matter is set forth in the Order and need not be repeated in this Objection.
2. A motion for rehearing must (1) identify each error of fact, error of reasoning, or error of law which the moving party wishes to have reconsidered, (2) describe how each error

causes the committee's order or decision to be unlawful, unjust or unreasonable, and (3) state concisely the factual findings, reasoning or legal conclusion proposed by the moving party.

Site 202.29(d). SPNHF's rambling Motion fails to identify any error in the Committee's Order.

2. SPNHF's essential complaint is that the Committee was required to conduct an adjudicative hearing on the pleading that the Towns, SPNHF and the AMC filed and which they designated as a "Petition for Declaratory Ruling." SPNHF Motion at ¶¶ 15-29. SPNHF also asserts that it was denied a fair opportunity to address the question of whether the Committee had any jurisdiction over the Petition. In short, SPNHF contends that whenever any person files a pleading entitled a "Petition for Declaratory Ruling" before the Committee, regardless of whether that pleading invokes the Committee's jurisdiction, the Committee *must* hold an adjudicative proceeding on the matter and *must* give the party filing that pleading an opportunity to be heard before the Committee prior to the pleading being dismissed. This argument is absurd and not surprisingly, is contrary to the Committee's Rules.

3. Site 203.01 permits the filing of a "petition for declaratory ruling from the committee on matters within its jurisdiction." Site 203.02 states as follows:

The committee *may dismiss* a petition for declaratory ruling that:

- (1) Fails to set forth factual allegations that are definite and concrete;
- (2) Involves a hypothetical situation or otherwise seeks advice as to how the committee would decide a future case;
- (3) Does not implicate the legal rights of the petitioner; or
- (4) *Is not within the committee's jurisdiction.*

(Emphasis added.) As the Rule makes clear, the Committee may dismiss any petition that is not within its jurisdiction.¹ Thus, it logically follows that where the Committee is presented with a

¹ Although the Committee did not reach this issue, the Applicants argued in their Motion to Dismiss that the Towns, SPNHF, and the AMC had no right to bring a petition to open a new docket simply to consider an issue of law because the Committee's jurisdiction is limited to two matters. It has jurisdiction to open a docket to decide whether a project under consideration constitutes an "energy facility" as defined in RSA 162-H:2, VII and therefore requires

“petition” that does not fall within its jurisdiction, it may dismiss that petition. It also follows just as logically that the Committee may do so on its own motion. Here, on its own motion, the Committee properly found that it was already addressing issues raised by the Towns, SPNHF and the AMC in SEC Docket No. 2015-06 (the Northern Pass Docket) and that the Petitioners’ request was “redundant.” Order at 5.

4. SPNHF cites Site 202.01 as providing that the Committee “shall conduct an adjudicative proceeding regarding an application or petition ... in accordance with the administrative procedure act, RSA 541-A.” Motion at ¶ 16. But that Rule applies only when the Committee otherwise decides that it has jurisdiction and that an adjudicative hearing is therefore required. There is no point in holding an adjudicative proceeding where the Committee has no jurisdiction to act at all. This was the point of the ruling in *Campaign for Ratepayers’ Rights*, 162 N.H. 245, 251 (2011).

5. SPNHF also complains that it wasn’t given a fair opportunity to make its arguments at a session conducted by the Committee on January 12, 2017. Motion at ¶¶ 15-27. This argument fails. First, SPNHF assumes that the notice for that session was the notice of an adjudicative proceeding, and therefore needed to comply with the requirements for such a notice. *Id.* ¶25. But since no such proceeding was required, no such notice was required. The proceeding was one in which the Committee determined, on its own motion, not to dismiss the petition as redundant of the Northern Pass Docket. It was not required to hear from the parties at all. Yet the Committee gave every party an opportunity to be heard before making its decision.

a certificate. It also has jurisdiction to decide whether changes to an existing facility constitute “sizable changes or additions” and thus require a certificate. RSA 162-H:5, I. *Campaign for Ratepayers’ Rights*, 162 N.H. 245, 251 (2011). (“We agree that the committee exercises jurisdiction over certain projects based upon whether they meet the statutory definition of ‘[e]nergy facility’” or are found to be a sizeable change or addition thereto, see RSA 162-H:2, VII.:5, I.”) The pleading filed by the Towns, SPNHF and the AMC did not address either of those matters and therefore could not invoke the Committee’s jurisdiction.

Second, SPNHF claims that the Committee “reflects arguments raised in the [Applicants’] Motion to Dismiss. *Id.* ¶32. If so, there is no error in doing so. The Order indicates the Committee’s basis for the decision. The fact that the Committee may have agreed with some of the arguments made at the session on January 12th is irrelevant. Finally, SPNHF complains that it should have been given an opportunity to file a response to the Applicants’ Motion. *Id.* ¶¶ 34-35. If the Committee had been ruling on the Applicants’ Motion, this argument might have some appeal, but it was not doing so. In any event, the Committee has complete discretion to decide whether to permit a responsive pleading, particularly where the Motion to Dismiss was a response to the arguments made in the petition.

6. It is notable that while the 19 Towns and the AMC filed the petition, only SPNHF now seeks rehearing. SPNHF is in an odd position to make this filing. Where a petition is filed to begin a docket, only a “Petitioner,” as defined in RSA 162-H:2,XI, has standing to file such a petition. SPNHF does not meet the definition of a “Petitioner” in the statute and therefore had no standing to be before the Committee at all. *Campaign for Ratepayers’ Rights*, 162 N.H. 245, 250-251. Therefore, by this Motion, SPNHF, a party with no standing to be before the Committee at all, is seeking a rehearing of an order denying that the Committee had any jurisdiction. SPNHF cannot create standing it never had by filing a motion for rehearing.

7. Finally, it is also worth noting that if the petition filed by the Towns, SPNHF and the AMC was redundant, it is even more so now. As the Committee is aware, on March 13, 2017, fourteen of the nineteen Towns that had filed the Petition in this matter filed a Motion for Expedited Order in the Northern Pass Docket raising the same issues. Either SPNHF has decided that it wants to go it alone on the rehearing in this proceeding or the Towns and SPNHF have decided on a “two-front war.” Whatever the strategy, SPNHF’s attempt to continue this

docket is not only redundant of issues that could have been raised in the Northern Pass Docket, the Motion continues to raise issues that are *actually before the Committee* in the Northern Pass Docket.

WHEREFORE, the Applicants respectfully request that the Presiding Officer:

- (A) Deny SPNHF's Motion for Rehearing; and
- (B) Grant such further relief as it deems appropriate.

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

Dated: April 12, 2017

By: 
Wilbur A. Glahn, III, Bar No. 937
Thomas B. Getz, Bar No. 923
Barry Needleman, Bar No. 9446
11 South Main Street, Suite 500
Concord, NH 03301
(603) 226-0400
bill.glahn@mclane.com
barry.needleman@mclane.com
thomas.getz@mclane.com

Certificate of Service

I hereby certify that on the 12th day of April 2017 the foregoing Objection was electronically served upon the SEC Distribution List and the original and one copy will be hand delivered to the Site Evaluation Committee.


Thomas B. Getz