

**THE STATE OF NEW HAMPSHIRE
SITE EVALUATION COMMITTEE
SEC DOCKET NO. 2015-06**

**JOINT APPLICATION OF NORTHERN PASS TRANSMISSION, LLC &
PUBLIC SERVICE COMPANY OF NEW HAMPSHIRE
D/B/A EVERSOURCE ENERGY
FOR A CERTIFICATE OF SITE AND FACILITY**

**APPLICANTS' REQUEST FOR PARTIAL WAIVERS UNDER THE NEWLY
ADOPTED SEC RULES**

NOW COME Northern Pass Transmission LLC (“NPT”) and Public Service Company of New Hampshire d/b/a Eversource Energy (“Eversource”) (collectively the “Applicants”) in support of their Joint Application for a Certificate of Site and Facility For the Construction of a New 1,090 MW Electric Transmission Line, by and through their attorneys, McLane Middleton, Professional Association, and respectfully submit this request pursuant to NH Code of Administrative Rule Site 302.05 for partial waivers of two aspects of the newly adopted SEC rules (“Request”). In support of their request, the Applicants state as follows:

I. INTRODUCTION

The Applicants have submitted to the SEC, together with this Request, additional information to its Application, pursuant to RSA 162-H:10, VII, to address aspects of the newly adopted SEC rules that were not addressed in the original Application. The original Application included almost all of the new information required by the new rules and this additional information addresses all the new aspects that had not been addressed, with the exception of two narrow areas. As explained below, those two specific requirements are either not appropriate for a linear project like the Northern Pass Transmission Project (the “Project”) or are overly burdensome and would provide limited, if any, value to the SEC’s consideration of this Project. Therefore, the Applicants seek a partial waiver for the following new rules:

1. Site 301.03(c)(3)–(5) insofar as the Applicants must provide information on abutting properties and additional information on the alternative route that the Applicant considered technically available, although not preferred, that in reality is no longer a viable alternative; and
2. Site 301.08(c)(2) for aspects of the decommissioning requirements.

II. WAIVER CRITERIA

The SEC’s waiver rule is set forth in Site 302.05. Subsection (a) provides that the SEC:

shall waive any of the provisions of this chapter, except where precluded by statute . . . upon request by an interested party, if the committee or subcommittee finds that:

- (1) The waiver serves the public interest; and
- (2) The waiver will not disrupt the orderly and efficient resolution of matters before the committee or subcommittee.

To determine whether the rule satisfies the public interest, Site 302.05(b) provides that the Committee shall waive a rule if

- (1) Compliance with the rule would be onerous or inapplicable given the circumstances of the affected person; or
- (2) The purpose of the rule would be satisfied by an alternative method proposed.

As explained below, strict compliance with the newly adopted identification and mapping rules and the decommissioning rule does not serve the public interest given the circumstances of a linear transmission Project, that compliance with the rule is onerous and excessively burdensome, and that the purpose of the rule will be satisfied by an alternative method. Also, these waivers will have no effect on the “orderly and efficient resolution” of this case.

III. WAIVER REQUEST FOR SITE 301.03(c) – IDENTIFICATION REQUIREMENTS

The Site Evaluation Committee (“SEC”) recently adopted new rules in December 2015.

The new rules require that

Each application shall contain the following information with respect to the site of the proposed energy facility and alternative locations the applicant considers available for the proposed facility:

.....

(3) The location, shown on a map, of property lines, residences, industrial buildings, and other structures and improvements within the site, on abutting property with respect to the site, and within 100 feet of the site if such distance extends beyond the boundary of any abutting property;

(4) Identification of wetlands and surface waters of the state within the site, on abutting property with respect to the site, and within 100 feet of the site if such distance extends beyond the boundary of any abutting property, except if and to the extent such identification is not possible due to lack of access to the relevant property and lack of other sources of the information to be identified;

(5) Identification of natural, historic, cultural, and other resources at or within the site, on abutting property with respect to the site, and within 100 feet of the site if such distance extends beyond the boundary of any abutting property, except if and to the extent such identification is not possible due to lack of access to the relevant property and lack of other sources of the information to be identified;

Site 301.03(c)(3)–(5).

A. Compliance With Site 301.03(c)(3) – (5) for Any Alternative Locations the Applicant Considers Available

As discussed in the Additional Information being filed contemporaneously with this Request, and in compliance with Site 301.03(c)(1)–(2), the only alternate route that the Applicant considered available includes 47 miles of overhead transmission lines along existing transmission ROW through the White Mountain National Forest, as shown on the Revised Project Maps Alternative Route, Attachment 1 of the Additional Information filing.

The Applicants seek a waiver from Site 301.03(c)(3)–(5) to the extent that the rules require the Applicants to identify such property lines, residences, industrial buildings, other structures and improvements, wetlands and surface waters, and natural, historic, cultural and other resources for each alternative the Applicants consider available.

In the original Application, the Applicants identified the route in the 2013 amended application to the United States Department of Energy (“USDOE”), as being technically “available.” See Application, Volume I, page 44. However, the Applicants consider the 47 miles of overhead transmission lines, which has been replaced by approximately 52 miles of underground transmission line between Bethlehem and Bridgewater, no longer feasible and therefore unavailable. As the Project has no intention of pursuing this alternative, the Applicants respectfully request a waiver, to the extent necessary, of the requirement to provide the additional information.

B. Location, Shown on a Map, of Property Lines, Residences, Industrial Buildings, and Other Structures and Improvements – Site 301.03(c)(3)

The Project Maps included as Appendix 1 of the original Application already identify the residences, industrial buildings, and other structures and improvements within approximately ¼ mile of the Project corridor as depicted on a scale at 1 inch equals 400 feet. The recently adopted rule requires the Applicants to identify such features “on abutting property with respect to the site, and within 100 feet of the site if such distance extends beyond the boundary of any abutting property.” Site 301.03(c)(3). The mapped area included in the Project Maps already provides the vast majority of the information possibly required by this rule. However, the rule on its face could be read to require the Applicants to identify these features on the entire abutting property, no matter the size of the parcel. Thus, the original submission will lack this identifying information only for those abutting properties that extend more than the approximate ¼ mile area from the site shown on the original Project Maps. It is impractical and unreasonably burdensome to require the Applicants to map all property lines, residences, industrial buildings and other structures and improvements outside of the mapped area. For these reasons, the Applicants respectfully request a partial waiver from this rule to the extent it requires the mapping of

structures and improvements beyond what the Applicants provide in their Additional Information.

A waiver of this rule will not disrupt the orderly and efficient resolution of matters before the Committee. In fact, providing additional maps beyond the approximate ¼ mile distance from the ROW would not add any additional pertinent information and would only have the effect of shifting the Committee's analysis away from the Project proper and towards boundary lines and buildings that cannot reasonably be expected to be impacted.

C. Identification of Wetlands and Surface Waters – Site 301.03(c)(4)

As part of the original Application, the Applicants identified all wetlands and surface waters within or adjacent to the site as displayed on the Project Maps at Appendix 1. The Project Maps depict wetlands, resource areas, and water bodies extending for approximately ¼ mile on both sides of the Project corridor. The Applicants also provided a substantial amount of additional information on wetlands and surface waters in the state and federal wetlands applications and supporting material found at Appendices 2-3 and 31-36.

The recently adopted rule requires the Applicants to identify such wetlands and surface waters “within the site, on abutting property with respect to the site, and within 100 feet of the site if such distance extends beyond the boundary of any abutting property, except if and to the extent such identification is not possible due to lack of access to the relevant property and lack of other sources of the information to be identified.” Like the prior rule, this one contemplates requiring the Applicants to identify wetlands and surface waters on the entire abutting property, no matter the distance from the Project.

To address this new rule, the Project Maps have been revised to include photo-estimated wetland boundaries within 100 feet of the Project through a combination of field delineation at the edge of the ROW and interpretations of Project-specific contours and aerial photographs.

Beyond 100 feet, approximate wetland and stream boundaries were derived from existing digital data sources including existing National Hydrography Dataset (“NHD”) stream layers and National Wetland Inventory (“NWI”) mapping. The estimated wetlands are now included in the revised set of Project Maps included with this Filing as Attachment 2. As noted above, these maps cover an area of about ¼ mile from the edge of the ROW. The estimated wetlands on abutting properties are shown in different colors on the maps to distinguish them from the jurisdictional, ground delineated wetland boundaries within the Project corridor.

The Applicants have identified through field delineation the wetlands and surface waters that may be affected by the Project. It is extremely unlikely that the Project, a linear transmission line, will have any effect on any water body that is over ¼ mile away from the edge of the ROW—the Project will not discharge to surface waters or to groundwater. Runoff from the Project will be appropriately controlled and directed away from surface waters and wetlands, and any soil disturbance will be restored after construction of the Project is complete. Even assuming there were a right of access to abutting property, requiring the Applicants to extend this analysis any farther would require a significant expenditure of resources without any corresponding benefit in assisting the SEC to review the Project. Furthermore, should the SEC require the Applicants to strictly comply with Site 301.03(c)(4), the Applicants would have to completely re-work the size and scale of their Project Maps. As one increases the scale to include more information from the NHD and NWI maps, the important and relevant information become less clear, which would be counterproductive.

A waiver of this rule will not disrupt the orderly and efficient resolution of matters before the Committee. In fact, providing additional maps beyond the approximate ¼ mile distance from the ROW would not add any additional pertinent information and would only have the effect of

shifting the Committee's analysis away from the Project proper and towards wetlands and surface waters that cannot reasonably be expected to be impacted.

D. Identification of Natural, Historic, Cultural, and Other Resources – Site 301.03(c)(5)

This rule again requires information for abutting properties or at least out to 100' from the Project. The Waiver Request for Site 301.03(c)(5) is only needed for historical resources.¹

For aboveground historic properties, the Application already identifies all existing historic properties within the one-mile from the edge of the ROW. This is the Area of Potential Effect ("APE") as designated by USDOE and the NH Division of Historical Resources ("DHR") pursuant to Section 106 of the National Historic Preservation Act. Moreover, the potential visual effects on historic sites located beyond one mile from the ROW that are listed on the state and national registers of historic places were considered in the VIA assessment submitted with the waiver request.

One missing element in addressing this rule is any above ground historical resources² on an abutting property that extends more than 1 mile from the Project. Extending the analysis beyond the APE set by DHR would be onerous and inapplicable for this Project. Therefore, based on the above-referenced discussion, the Applicants request a waiver from strict compliance of Site 301.03(c)(5) to the extent any historic properties exist outside of the one-quarter mile area of potential effect.

The APE for archeological resources is limited to the corridor proper. To identify archeological resources on abutting properties, Northern Pass obtained the location from DHR of known archeological sites within a mile of the corridor. It is not plausible that the construction and operation of a linear transmission line will have affect archaeological resources outside the APE, let alone up to a mile away. Identifying additional archeological sites outside of the

¹ Natural resources (plant and wildlife) were studied in large areas beyond the ROW given the nature of the resource and assessed fully in the original Application and accompanying technical reports.

² Archeological sites have been identified out to a mile on either side of the ROW. Natural resources (plant and wildlife) were studied in large areas beyond the ROW given the nature of the resource and assessed fully in the original Application and accompanying technical reports.

corridor will not provide value to the public or to the SEC in this process, and would be unduly burdensome on the Applicants.

A waiver of this rule will not disrupt the orderly and efficient resolution of matters before the Committee. In fact, providing additional maps beyond the approximate ¼ mile distance from the ROW would not add any additional pertinent information and would only have the effect of shifting the Committee's analysis away from the Project proper and towards historic and cultural resources that cannot reasonably be expected to be impacted.

IV. WAIVER REQUEST FOR SITE 301.08(c)(2) – DECOMMISSIONING

The New Hampshire Legislature amended RSA 162-H:7 in 2014 to add a requirement that an applicant for a certificate for an energy facility “[d]escribe in reasonable detail the elements of and financial assurances for a facility decommissioning plan.” The Application filed in this proceeding on October 19, 2015 satisfies the requirements of the statute.

The SEC's new rule, Site 301.08 (c)(2), adopted in December 2015, directs applicants for all energy facilities to submit:

A facility decommissioning plan prepared by an independent qualified person with demonstrated knowledge and experience in similar energy facility projects and cost estimates; the decommissioning plan shall include each of the following:

- a. A description of sufficient and secure funding to implement the plan, which shall not account for the anticipated salvage value of facility components or materials;
- b. The provision of financial assurances in the form of an irrevocable letter of credit, performance bond, surety bond, or unconditional payment guaranty executed by a parent company of the facility owner maintaining at all times an investment grade credit rating;
- c. All transformers shall be transported off-site;³ and

³ The Project will require the installation of transformers at the converter terminal and at the SVC in Deerfield. Should the Project be decommissioned, the Applicants will remove all transformers from the Site as required by Site 301.08(c)(2)(c).

- d. All underground infrastructure at depths less than four feet below grade shall be removed from the site and all underground infrastructure at depths greater than four feet below finished grade shall be abandoned in place.

The Applicants request a waiver of Site 301.08(c)(2), to the extent described below, chiefly because the purpose of the rule, as expressed in the underlying statute, is satisfied by the decommissioning plan filed with the Federal Energy Regulatory Commission (“FERC”), which is described in the testimony of Michael J. Ausere. See Volume II of the Application. See also Appendix 11, NPT’s Petition to Commence Business as a Public Utility, which includes the Transmission Service Agreement (“TSA”) between NPT and Hydro Renewable Energy Inc. (“HRE”) as well as the FERC order accepting the TSA cited in Mr. Ausere’s testimony. Furthermore, the new decommissioning rule is inapplicable under the circumstances given the fundamental difference between an electric transmission facility and generation facilities like wind energy projects, which appear to have prompted the underlying concerns about decommissioning. Finally, the granting of these waivers will not disrupt the orderly and efficient resolution of the proceedings before the Committee.

The Applicants request a waiver of the general requirement under Site 301.08(c)(2) that they hire an independent third-party to prepare the decommissioning plan for two reasons. First, the Applicants can satisfy, and have satisfied, this rule by an alternative method, namely by using their own highly trained and experienced personnel to develop the TSA requirements. Second, requiring that a decommissioning plan be prepared by an independent person at the time an application is submitted is impracticable insofar as it were interpreted to require specific engineering details and should be deemed inapplicable to the circumstances of electric transmission projects, which remain in service for many decades and are rarely decommissioned.

The Applicants also seek a waiver of Site 301.08(c)(2)(a) and (b), to the extent they require additional description or permit only certain types of financial assurance, because the

purpose of this rule has already been satisfied by an alternative method. Specifically, as discussed below, the TSA provides a satisfactory alternative mechanism for funding the decommissioning of the NPT transmission line, if it were to occur.

Lastly, Site 301.08(c)(2)(d) requires that infrastructure at depths greater than four feet below grade be abandoned in place, otherwise that it be removed. The Applicant requests that the SEC waive this rule as inapplicable. The Project will be built on an existing utility ROW that is owned in fee by the Companies or is controlled by them through perpetual easements. Unlike public roadways that can be put to several different public and private uses (e.g., water, sewer, gas, etc.), the ROW will be dedicated exclusively to utility use for the foreseeable future.

Moreover, complete removal of transmission infrastructure is unnecessary in an existing ROW and fully removing the infrastructure could potentially create more severe environmental impacts in certain locations. As the Project is constructed in an existing ROW, it may be more environmentally beneficial to leave the bottoms of transmission structure (the part of the transmission structure below grade) in place, especially if they are located in protected wetlands or other resource areas that may exist at the time of decommissioning. More specifically, the Project requires the construction of underground segments, which include duct banks, manholes, and underground cable. These inert materials are typically placed below grade and designed not to impede surface activities such as vehicle travel. Should the Applicant be required to strictly comply with this rule, the Applicant would have to dig down to the top of the underground facilities, remove the upper portion of the underground facilities to four feet below grade, and then re-grade the excavated soil or road. Undertaking removal of these facilities would almost certainly cause more environmental impacts than abandoning the entire underground facilities in place. In addition to environmental concerns, removal would place hardships on the underlying

landowners whose property the Project traverses. Therefore, the Applicant requests a waiver from this rule in its entirety.

Transmission Line Decommissioning

Unlike wind energy and other generation facilities, it is extremely rare for transmission owners to decommission and completely remove a network of transmission facilities. While it is common for existing high voltage transmission lines to be re-conducted and refurbished, it is only under unusual circumstances that they are removed completely. Under these circumstances, requiring the Applicants to hire an independent person to prepare a decommissioning plan would be onerous and serve no useful purpose, especially because the Applicants have already described the elements of and financial assurances for their decommissioning plan in the October 19, 2015 Application, which the SEC accepted on December 18, 2015.

As contemplated by the TSA, and as discussed further below, an alternative and more practicable method of satisfying the purpose of this rule would be for the Applicants to submit a more detailed decommissioning plan to the Committee, in advance of decommissioning, pursuant to its authority under RSA 162-H:4, I (c) to monitor the construction and operation of the facility to ensure compliance with the terms and conditions of a certificate. In that regard, complete removal of transmission infrastructure is unnecessary in an existing right-of-way and fully removing the infrastructure could potentially create more severe environmental impacts in certain locations; it may be more environmentally beneficial to leave the bottoms of transmission structures in place, especially if they are located in wetlands. Should the removal of the Project infrastructure be required, based on the existing state and federal land use and environmental rules in existence at the time of decommissioning, the Applicants will address those issues in the plan, which is also contemplated by the TSA.

Transmission Service Agreement

As explained by Mr. Ausere at p. 3 of his Pre-Filed Testimony, the TSA is a “bilateral, cost-based, FERC approved, transmission service agreement pursuant to which NPT will provide firm transmission service to HRE over the NPT Line in exchange for payment of NPT’s cost for developing, constructing, operating and maintaining the Project.” Section 9.3 of the TSA addresses decommissioning, which includes “the work required to (a) retire the NPT Line and dismantle the materials, equipment and structures comprising the NPT Line and (b) restore and rehabilitate any land affected by the construction or dismantlement of the NPT Line, in each case, as required by Applicable Law.”

The TSA recognizes the role of New Hampshire law in defining the scope of decommissioning and provides that NPT will begin to collect the costs of such decommissioning from HRE over the last sixty months of commercial operation of the line, that is, after the 35th year following commercial operation. Six months before the decommissioning payment begins, NPT will submit a decommissioning plan to the management committee set up under the TSA, which will include an estimate of the costs of decommissioning. Based on the plan and the estimate of costs, a levelized monthly decommissioning payment will be calculated by NPT and paid by HRE.

Decommissioning Conclusion

The testimony of Mr. Ausere, with relevant attachments, describes in reasonable detail the elements of and financial assurances for a facility decommissioning plan as required by RSA 162-H:7, V(g). Moreover, the plan for decommissioning circumscribed by the TSA and enforceable pursuant to FERC jurisdiction satisfies by an alternative method the purpose of Site 301.08(c)(2), which, ultimately, is to implement the statute.

The new SEC rule is unnecessarily prescriptive given the circumstances of the NPT Project in light of the type of energy facility involved and the fact of FERC jurisdiction over transmission rates. In sum, electric transmission facilities rarely require decommissioning in the nature of generation facilities but, regardless, HRE is obligated to pay decommissioning costs to NPT due to FERC jurisdiction over the TSA. Furthermore, HRE's obligation is backstopped by Hydro-Quebec, one of the largest power generators and transmission companies in North America and a Crown Corporation owned by the province of Quebec. Accordingly, the FERC-approved TSA constitutes assurance that, when and if the need to decommission arises, an appropriate decommissioning plan, consistent with New Hampshire law, will be in place along with the funds, from an extremely creditworthy source, required to implement the plan.

Counsel for the Public takes no position on this request.

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WHEREFORE, the Applicants respectfully request that the Presiding Officer:

- A. Find that the partial waiver of Site 301.03(c)(3)–(5) and Site 301.08(c)(2) serves the public interest;
- B. Find that a partial waiver of these rules will not disrupt the orderly and efficient resolution of matters before the subcommittee; and
- C. Grant such further relief as requested herein and as deemed appropriate.

Respectfully submitted,

Northern Pass Transmission LLC and Public Service
Company of New Hampshire d/b/a Eversource Energy

By its attorneys,

McLANE MIDDLETON
PROFESSIONAL ASSOCIATION

Dated: February 26, 2016

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Certificate of Service

I hereby certify that on the 26th of February, 2016, an original and one copy of the foregoing Motion was hand-delivered to the New Hampshire Site Evaluation Committee and an electronic copy was served upon the SEC Distribution List.


Thomas Getz