

# MCLANE MIDDLETON

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## VIA HAND-DELIVERY

December 17, 2015

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

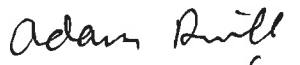
**Re: NH Site Evaluation Committee Docket No. 2015-06: Joint Application of Northern Pass Transmission LLC (“NPT”) and Public Service Company of New Hampshire d/b/a Eversource Energy (“Eversource”) for a Certificate of Site and Facility for Construction of a New 1090 MW Transmission Line**

Dear Ms. Monroe:

Enclosed please find an original and one copy of Applicants’ Objection to Motion to Clarify of the Society for the Protection of New Hampshire Forests.

Please contact me directly should you have any questions.

Very truly yours,

  
for:

Barry Needleman

BN:slb  
Enclosure

cc: Distribution List

McLane Middleton, Professional Association  
Manchester, Concord, Portsmouth, NH | Woburn, MA

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**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' OBJECTION TO MOTION TO CLARIFY OF THE  
SOCIETY FOR THE PROTECTION OF NEW HAMPSHIRE FORESTS**

NOW COME Northern Pass Transmission LLC (“NPT”) and Public Service Company of New Hampshire (“PSNH”) d/b/a Eversource Energy (collectively the “Applicants”) by and through their attorneys McLane Middleton, Professional Association, and respectfully object to the December 11, 2015 motion to clarify of the Society for the Protection of New Hampshire Forests (“SPNHF”). In support of this objection, the Applicants state as follows:

1. The motion for clarification filed by SPNHF reargues positions from its prior submissions to the Site Evaluation Committee (“SEC” or “Committee”). Its motion is out of order here as well. At the December 7, 2015 hearing, the Committee noted that there are only two parties at this time, namely, the Applicants and Counsel for the Public. SPNHF is not a party<sup>1</sup> to the proceeding and the Committee has yet to rule on its petition to intervene. Therefore, any motion filed by SPNHF is improper because SPNHF does not yet have standing to file such motions in the proceeding.

2. The Committee’s rules only contemplate reviewing and ruling on motions made by a “party” in the proceeding. *See* Site 102.10 (“Motion” means a request made to the committee or the presiding officer after the commencement of a contested proceeding for an

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<sup>1</sup> “Party” means “party” as defined by RSA 541-A:1, XII, namely, “each person or agency named or admitted as a party, or properly seeking and entitled as a right to be admitted as a party.” The term “party” includes all intervenors in a proceeding, subject to any limitations established pursuant to RSA 541-A:33, II. Site 102.11.

order or ruling directing some act to be done in favor of the party making the motion, including a statement of justification or reasons for the request.”); Site 202.14(c) (“The presiding officer shall direct the moving party to submit the motion in writing, with supporting information, by the deadline established by the presiding officer if the presiding officer finds that the motion requires additional information in order to be fully and fairly considered.”); Site 202.14(d) (“ The moving party shall make a good faith effort to obtain concurrence with the relief sought from all of the parties.”); *see also* Site 202.07(a) (“All petitions, motions, exhibits, memoranda, or other documents filed by any party to a proceeding governed by these rules shall be served by that party upon all other parties on the service list.”) (emphasis added).

3. Furthermore, the SEC Rules, PART Site 202, apply to the adjudicative stages of a proceeding. In the prior Antrim Wind proceedings, the SEC made clear that acceptance of an application is not litigated, i.e., it is not part of the adjudicative process. *See Order Determining Application to be Incomplete*, Application of Atlantic Wind, LLC, Docket 2013-02, at 14–15 (Jan. 13, 2014).

4. Any comments, pleadings, or opinions submitted by SPNHF should not be considered until such a time as SPNHF is admitted as a “party.” Therefore, the Applicants respectfully request that the Committee reject SPNHF’s motion.

5. As correctly noted by Counsel for the Committee at the December, 7, 2015 hearing, at this stage of the proceeding, an Application for a Certificate of Site and Facility only needs to contain enough information for the agencies and the Committee to carry out the proceeding. *See* RSA 162-H:7 (“Each application shall contain sufficient information to satisfy the application requirements of each state agency having jurisdiction, under state or federal law, to regulate any aspect of the construction or operation of the proposed facility, and shall include

each agency's completed application forms.”); Site 301.04 (“Upon receiving an application, the committee shall conduct a preliminary review to ascertain if the application contains sufficient information for the committee to review the application to carry out the purposes of RSA 162-H.”).

6. Both the agencies and the Committee correctly determined that the information provided to the SEC meets the threshold for finding an application to be complete—including a finding that the Applicants have provided sufficient information regarding their legal or business relationship to all parts of the proposed transmission line.<sup>2</sup> The SEC also correctly concluded that the pending lawsuit in Coös County filed by SPNHF does not have any effect on the Committee’s ability to carry out its duties, unless a Court mandates the SEC do otherwise. Therefore, there is nothing in the Committee’s deliberations that requires clarification.

7. SPNHF in essence challenges the process for determining whether an application should be accepted. In accordance with statutory directives and past practice, however, the SEC correctly administered the requirements of RSA 162-H:7. SPNHF nevertheless continues to submit improper correspondence or pleadings arguing or seeking to litigate the completeness of an application. *See Order Determining Application to be Incomplete*, Application of Atlantic Wind, LLC, Docket 2013-02, at 14–15 (Jan. 13, 2014). The Committee ought not entertain litigation over its review of the completeness of an application. *Id.* at 14.

8. As the SEC noted in *Atlantic Wind*, at pp. 14-15 (internal citations omitted), “Nothing in RSA 162-H requires the Committee to entertain litigation over completeness. Neither the statute nor [the Committee’s] administrative rules contemplate or require litigation

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<sup>2</sup> The Applicants identified their legal or business relationship with each part of the energy facility—some parts of the energy facility are in existing right of way, some are owned in fee, others will be leased. The Applicants also have an option to lease certain segments of the route and are seeking approval to construct the Project underground in public roadways in certain sections pursuant to RSA 231:160.

over the completeness determination. In fact all time[ ] frames pertaining to the issuance of a certificate of site and facility commence only upon the acceptance of an application as complete. The time frames set forth in the statute render fair litigation over completeness to be impossible.”

9. Finally, it is clear from RSA 162-H and from the SEC’s interpretation of the statute that the acceptance process was not intended to be an adjudicative process, but a ministerial act where the pertinent agencies and the Committee expeditiously review a filing to see if there is sufficient information to proceed. Inasmuch as the Committee has determined to proceed and is preparing an order accepting the application, the SPNHF motion should not be entertained.

WHEREFORE, the Applicants respectfully request that the Committee:

- A. Refuse to consider SPNHF’s motion and reject it as an improper pleading; and
- B. Grant such further relief as it deems appropriate.

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Respectfully Submitted,

Northern Pass Transmission LLC and  
Public Service Company of New Hampshire

By its attorneys,

McLANE MIDDLETON  
PROFESSIONAL ASSOCIATION

Dated: December 17, 2015

By: Adam Dumville for:

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Certificate of Service

I hereby certify that on the 17<sup>th</sup> of December 2015, an original and one copy of the foregoing objection was hand-delivered to the New Hampshire Site Evaluation Committee and an electronic copy was served upon the SEC distribution list.

Adam Dumville for:  
Barry Needleman