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Via Electronic Mail/Hand Delivery

April 7, 2016

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 High Voltage Transmission Line in New Hampshire

Dear Ms. Monroe:

Enclosed for filing in the above-referenced docket, please find an original and one copy of an Objection to Counsel for the Public’s Motion to Suspend Time Frame.

Sincerely,



Barry Needleman

Enclosures

cc: Distribution List

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**THE 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 CERTIFICATE OF SITE AND FACILITY**

**OBJECTION TO COUNSEL FOR THE PUBLIC'S
MOTION TO SUSPEND TIME FRAME**

I. Introduction

Counsel for the Public (“CFP”) filed a Motion asking the Site Evaluation Committee (“SEC” or “Committee”) to ignore the explicit statutory language and legislative intent of RSA 162-H, and take the unprecedented step of setting aside the statutory timetable for processing this Application before this matter has barely commenced.¹ Northern Pass Transmission LLC and Public Service Company of New Hampshire d/b/a Eversource Energy (“Applicants”) object.

Less than two years ago the New Hampshire Legislature extended the time frames for assessing SEC applications from nine to twelve months, fully cognizant of the fact that this Application was forthcoming. It did so with the support of parties like The Society for the Protection of New Hampshire Forests (“SPNHF”), the Appalachian Mountain Club and Conservation Law Foundation. Yet those same parties now ignore their prior positions and ask that the statutory time frame they previously supported be doubled in length.² There can be no doubt that the Legislature, informed by the views of many stakeholders, extended the review

¹ SPNHF filed a similar motion on April 5, 2016. Likewise, Conservation Law Foundation, The Appalachian Mountain Club, Ammonoosuc Conservation Trust and New Hampshire Sierra Club filed a Motion on April 7, 2016 expressing support for SPNHF’s Motion. This Objection applies to those Motions as well.

² The Society for the Protection of New Hampshire Forests filed a Proposed Procedural Schedule suggesting deliberations and decision occur in November of 2017. Appalachian Mountain Club filed a letter with the Committee urging the Committee to adopt SPNHF’s proposed schedule.

period to twelve months based on its assessment that such a period would be adequate to evaluate even complex projects like this one. While it is conceivable that even with the best efforts of all parties, some schedule extension in the future may be necessary, that day has not yet arrived. It is the position of the Applicants that all parties have an obligation under the statute to make every good faith effort to meet statutory the timetables before there is any discussion about temporarily suspending deliberations under RSA 162-H:14. Such efforts have not even begun.

II. Background

The Applicants filed an Application for a Certificate of Site and Facility on October 19, 2015, for a 192-mile electric transmission line with associated facilities (“Northern Pass” or “Project”). The SEC accepted the Application pursuant to RSA 162-H:7, VI on December 18, 2015, and the SEC Chairman issued a procedural order on December 22, 2015, which scheduled a prehearing conference for March 21 and 22, 2016. The Subcommittee designated for this proceeding must issue a decision by December 19, 2016. RSA 162-H:7, VI-d.

On April 1, 2016, Senior Assistant Attorney General Peter Roth, designated as Counsel for the Public (“CFP”), filed a motion to suspend the statutory time frame. CFP seeks a procedural schedule that would add a minimum of six months to the statutory timetable. In support, CFP cites RSA 162-H:14, which permits the SEC to “temporarily suspend its deliberations and time frames established under RSA 162-H:7” if it “deems it to be in the public interest.”

Prior to the March 22, 2016 prehearing conference, the Applicants, CFP and SPNHF circulated proposed procedural schedules. The Applicants’ proposal is consistent with the statutory time frame. SPNHF’s proposal ignored the statute and added a year to the statutory

period. At the prehearing conference, the Hearing Officer indicated that the parties should address scheduling by April 7, 2016.

III. Argument

First, the Legislature recently amended the statutory time frames with full knowledge that the Northern Pass Application was forthcoming. It is therefore unquestionably premature for the Subcommittee to jettison the statutory timetable. Second, the SEC precedent CFP cites for suspending the time frame is inapposite to the current circumstances. In fact, examples from other dockets where the SEC extended statutory time frames undercut CFP's arguments here. Third, it is not in the public interest to suspend the statutory time frame.

A. Statutory Time Frame

This Committee is well aware that as part of the extensive debates in the Legislature over reforming RSA 162-H, one key feature involved the statutory period for review of SEC applications. This debate unfolded in large part through the 2013-2014 Legislative session, at a time when Northern Pass was the focus of broad attention around the State, and in the Legislature in particular. In the midst of that debate, Senate Bill 245 amended RSA 162-H:7, which is the portion of the statute dealing with timeframes for review of applications. Specifically, the Legislature increased that review period from nine months to twelve months after very careful study and in consideration of input and guidance from many stakeholders.³

³ Senate Bill 99, from the 2013 session, among other requirements initiated a thorough review of the SEC's process, conducted as part of a stakeholder effort managed by the Office of Energy and Planning. A consultant retained by the State prepared an extensive report that evaluated the SEC processes and compared those processes to other states. One aspect of this report noted that most states had a 12 month review period. The report noted issues with the New Hampshire SEC's timetable. See New Hampshire Energy Facilities Siting Process, *available at* https://www.nh.gov/ocp/energy/programs/documents/sb99nh_siting_process.pdf, at 6. A "Coordinating Committee" served as an advisory group to the consultant. CFP was a member of that Committee.

The proposal to extend the nine month period to twelve months was made early in the amendment process.⁴ Various stakeholders, including interveners here, supported the bill, which included the twelve month time frame.⁵ The bill went through review by the House Science, Technology, and Energy Committee as well as the Finance Committee. It enjoyed widespread support in both committees.⁶

CFP and various interveners ignore the evolution of the recent statutory extension, and all the history surrounding the basis for that extension. Moreover, they assume the Legislature extended the review period from nine months to twelve months without contemplating the Northern Pass Application was forthcoming. In fact, the opposite is the case. It is virtually impossible to escape the conclusion that the Legislature, and all the supporters for the timeframe extensions, including SPNHF, CLF and AMC, favored the extension in no small part because of Northern Pass. At a bare minimum, they now have an obligation to at least try to meet that new statutory timetable rather than advocating for abandoning it at the very outset of the process.

B. Antrim Wind and Other SEC Dockets Do Not Support CFP's Position

CFP points to SEC Docket No. 2012-01, regarding the Application of Antrim Wind Energy, LLC (“Antrim Wind”), as justification for suspending the procedural time frame *at this point in this proceeding*, arguing that the SEC *has done so in prior proceedings*. CFP Motion at

6. The facts of the Antrim Wind proceeding belie that argument:

⁴ SB 245 was introduced on December 18, 2013 and referred to the Energy and Natural Resources Committee on January 8, 2014. A hearing was held on February 19, 2014. On March 13, 2014 the Energy and Natural Resources Committee submitted an Amendment to SB 245 which included the proposal to amend the time for review from nine months to twelve months.

⁵ The Society for the Protection of New Hampshire Forests, Appalachian Mountain Club, Conservation Law Foundation and Nature Conservancy filed Joint Testimony on SB 245 on April 8, 2014 in which they expressed their support for the bill and urged the House Science, Technology, and Energy Committee to recommend passage by the House. A copy of their comments may be found here: <http://nonorthernpassnh.blogspot.com/p/the-honorable-david-borden-chairman.html>

⁶ The House Science, Technology and Energy Committee voted to approve SB 245 by a vote of 16-1. The House Finance Committee voted to approve SB 245 by a vote of 20-3.

- Antrim Wind filed its application on January 31, 2012
- Antrim Wind's application was accepted on March 5, 2012
- Antrim Wind's application was subject to an eight-month time frame
- The Committee's decision was due by November 5, 2012.
- A prehearing conference was held on May 7, 2012
- A procedural schedule was issued on May 18, 2012
- Mr. Roth filed a motion to extend deadlines on August 28, 2012
- The SEC issued an order enlarging the time frame on September 13, 2012.

In that case, the Presiding Officer did not suspend the proceedings until September 13, 2012, *less than two months prior to the expiration of the statutory time frame*. The action was taken well into the established procedural schedule and after it became clear that more time was required to complete the proceeding. That case is in no way comparable to the point at which the parties find themselves in this proceeding, i.e., near the beginning, not the end.

Other SEC dockets shed further light on this issue. For example, the SEC suspended deliberations in Dockets No. 2008-04, Granite Reliable Power, LLC ("Granite Reliable"), 2009-02, Laidlaw Berlin Power, LLC ("Laidlaw") and 2010-01, Groton Wind, LLC (Groton Wind"). Granite Reliable, Laidlaw and Groton Wind were renewable energy facilities subject to 240-day time frames under RSA 162-H:6-a, which was repealed in 2014.⁷ In each of those cases, deliberations were suspended and the time frame enlarged near the expiration of the statutory time frame; none of the proceedings were suspended at the time of the initial prehearing conference as CFP urges here. In fact, Applicants are not aware of any cases where the SEC did what CFP and various interveners urge here: suspend deliberations before the adjudicatory process has barely begun.

⁷ Senate Bill 245, as part of the 2014 session, repealed RSA 162-H:6-a, relative to time frames for review of renewable energy facilities (*available at* <http://www.gencourt.state.nh.us/legislation/2014/sb0245.html>).

C. It Is Not In Public Interest to Suspend The Statutory Schedule at this Point

CFP relies on a clause from RSA 162-H:1, the Purpose section of the statute, as a basis for abandoning the statutory time frames. He concludes that inasmuch as the Legislature “recognized that the selection of sites for energy facilities may have significant impacts and benefits” the Subcommittee may deem it in the public interest to suspend deliberations. CFP Motion at 4. CFP, however, ignores the succeeding two clauses, namely, “that *undue delay* in the construction of new energy facilities *be avoided*; that full and *timely consideration* of environmental consequences *be provided*.” (Emphasis supplied.) In fact, read as a whole, the Purpose section plainly compels the conclusion that extending the statutory review process now, before the case has barely begun, is explicitly contrary to the statute’s intent.

Moreover, while it is appropriate to turn to the purpose section of a statute to resolve an ambiguity, in the nature of legislative history, the purpose sections of statutes are not substantive provisions of law. In using the phrase “public interest” in RSA 162-H:1, the Legislature did not grant the SEC a wild card to be used without restraint. It is important to consider the structure of the Legislature’s Declaration of Purpose, which sets the stage for the Committee’s substantive powers. In the first sentence, the Legislature “recognizes” the impacts and benefits that the selection of sites for energy facilities can have. In the second sentence, the Legislature “finds that it is in the public interest” to do a number of things focused on balancing potentially competing objectives. In the third sentence, the Legislature “establishes a procedure” for dealing with energy facilities. The Legislature established the SEC in RSA 162-H:3, and specified its powers and duties in RSA 162-H:4, thereby creating, throughout the subsequent provisions of the statute, the bounds within which the Committee would act and from which it would draw direction.

As a quasi-judicial agency, the SEC differs from other Executive Branch agencies. As any judge would do, the SEC must carefully construe statutes, according them their plain meaning. RSA 162-H:14 allows the Committee to “temporarily suspend its deliberations.” Simply said, as every prior SEC case where this has happened illustrates, that provision has necessarily involved a short-term, or temporary suspension, always near the end of the process.

By contrast, CFP proposes something very different here. He suggests, as a *permanent solution*, substituting an entirely different time frame for the one adopted by the Legislature. There is no way to adopt CFP’s view without ignoring the word “temporarily” in RSA 162-H:14. Moreover, the conclusion that the word “temporarily” was intended to have a specific, and limited meaning is supported by Legislative history. *See* The Report of the Energy Facility Siting, Licensing & Operation Study Committee of the New Hampshire General Court, issued August 30, 1990, at p.8 (*available at* <http://www.nhsec.nh.gov/overview/documents/report.pdf>). That Committee was tasked with integrating the state’s two siting laws, which resulted in RSA 162-H. Among other things, it recommended adoption of what became RSA 162-H:14 in order to permit the tolling of the statutory time frame, if it were determined that additional information was needed. There is no basis at present for concluding that additional information is needed and therefore no basis for temporarily suspending the time frame, much less creating an entirely different time frame out of whole cloth.

IV. The Applicants’ Proposed Schedule

The Applicants are the only party here who have done what the law requires: propose a schedule that actually meets the statutory timetable.⁸ The Applicants are prepared to continue to

⁸ The Applicants maintain that expeditious review in adherence to the statutory time frame is in the public interest, a sentiment that is shared by many other parties and entities. For example, in a letter to the Committee, Joe Casey, a

refine the details of their proposed schedule within the statutory time frame. In fact, the Applicants amended their initial proposal to reflect delay since the prehearing conference. *See* Exhibit 1.

The Application was filed on October 17, 2016, and it was accepted on December 18, 2016. CFP nevertheless sets a June 1, 2016 deadline for motions to engage consultants. That deadline, in turn, is the defining factor that risks disrupting all scheduling at this point. The Applicants believe it is not reasonable for CFP to consume half the statutory time period to retain experts.

The Applicants appreciate that this is a large case. However, that is precisely why, for example, the Applicants supported CFP's request on November 6, 2015 to retain outside counsel to assist with these efforts. The Committee approved that request on December 10, 2015. As CFP's November 6, 2015 filing made clear, outside counsel has available very substantial resources to assist CFP with this effort.

CFP sought and received the resources to prosecute this case in a timely manner. Yet, as of this filing, CFP has not yet submitted any motions seeking approval to retain experts. In

representative of the International Brotherhood of Electrical Workers (IBEW) writes, "The IBEW strongly objects to calls for delaying scheduled public hearings for the Northern Pass, and believes that such delays would not serve the public interest. The Northern Pass project will create thousands of jobs for local IBEW workers, and further delays to the SEC process will cause material harm to our members whose livelihoods depend on the timely consideration of this docket." Public Comment from IBEW (February 22, 2016). On April 4, 2016, the City of Franklin submitted a letter to the SEC supporting the Applicants' proposed schedule. Cate Street Capital, Inc., has expressed support for the Applicants' proposed procedural schedule, acknowledging that the Applicants "have proposed a clear and concise procedural schedule that adheres to the NH SEC's regulatory process." Comment Letter from Cate Street Capital (March 29, 2016). Tony Guinta, City Councilor from Franklin stated the importance of moving "this project as quickly as possible or we may lose more and more industry that will never come back to New Hampshire." September 2, 2015 Public Information Session Tr. at 29. Leon Rideout, State Representative for Coos District 7, noted that similar projects in other states "took about a year to get approved" and urged the Committee to "get moving and move on" after questioning the costs of delay to the Project. January 20, 2016 Public Information Session Tr. at 142-43. On February 24, 2016, Representative Peter T. Hansen submitted comments to the SEC stating "I urge you to go forward with this project as expeditiously as possible." The Greater Manchester Chamber of Commerce stated that it "strongly believes the statutory timeline requiring the SEC to rule within 12 months of the acceptance of the application is appropriate, fair, and should remain in place as this process moves forward." March 18, 2016 SEC Comment Letter.

previous dockets, the timeline for CFP to file a motion to retain experts adhered to a roughly two to three month period from the date of acceptance of the application.⁹ If CFP were filing these motions on a rolling basis, all parties could have at least commenced phased discovery. While it may not have been possible to get all experts approved by now, many could have been approved, especially given the fact that the Applicants stand ready to work with CFP on this issue. Given these facts, the Applicants believe that requiring CFP to file all its expert retention motions by no later than May 6, 2016 – almost 7 months after the Applicants filed the Application and almost 5 months after the SEC accepted the Application and approved CFP’s request for outside counsel assistance – is undeniably reasonable.

V. Conclusion

The law permits the Subcommittee to “temporarily suspend its deliberations and the time frame established under RSA 162-H:7.” However, CFP, and others, are asking that RSA 162-H:7 simply be ignored and that the Subcommittee *permanently* adopt a different time frame. Such an action would be contrary to clear legislative intent, premature at best and certainly not temporary.

It is common in litigation that one side benefits, and the other side is harmed by delay. The Applicants believe that, with this concern in mind, the Legislature made an informed decision in setting time frames for the review of applications as a general matter and in amending the time frame to its current twelve month period. Accordingly, the Applicants request that the

⁹ In the Antrim Wind Docket, Docket, No. 2015-02, the SEC issued an Order accepting the application on December 1, 2015 and Counsel for the Public filed a motion for leave to retain an expert witness on February 3, 2016. In the Groton Wind Docket, Docket No. 2010-01, the SEC issued an Order accepting the application on April 26, 2010 and Counsel for the Public filed a motion for leave to retain an expert on July 28, 2010. In the Granite Reliable Power Docket, Docket No. 2008-04, the SEC issued an Order accepting the application on August 14, 2008 and Counsel for the Public filed a motion to retain an expert on November 7, 2008.

Subcommittee implement RSA 162-H:7, VI-d and immediately adopt the Applicants' proposed schedule (see Exhibit 1) so that this process can move forward without "undue delay."

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: April 7, 2016

By:  _____

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Certificate of Service

I hereby certify that on the 7th of April, 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.


 _____
Barry Needleman

EXHIBIT 1

Procedural Schedule

1. **March 22, 2016** – Prehearing Conference
2. **April 15, 2016** -- SEC denies motion to suspend time frame
3. **May 6, 2016** – Counsel for the Public Files Motion to Engage Consultants
4. **May 13, 2016** – Counsel for the Public propounds discovery requests upon Applicants on all topics that do not require consultant input and Interveners propound discovery requests upon Applicants on all topics
5. **May 16, 2016** – Agencies report on progress of permits 150 days after application is accepted
6. **June 10, 2016** – Counsel for the Public propounds all data requests upon Applicants that require assistance of an expert consultant
7. **June 20, 2016** – Applicants respond to first round of discovery requests from Counsel for the Public and all discovery requests from Interveners
8. **June 27 to June 30, 2016** – Technical sessions of Applicants’ witnesses for which Counsel for the Public and Interveners have completed discovery
9. **July 11, 2016** – Applicants respond to Counsel for the Public’s second round of discovery requests
10. **July 18 to July 22, 2016** – Technical sessions of Applicants’ remaining witnesses conducted
11. **August 5, 2016** – Counsel for the Public and interveners disclose their experts, if any, to the Applicants and provide pre-filed testimony
12. **August 15, 2016** – Agencies issue final permitting decisions 240 days after application is accepted
13. **August 19, 2016** – Applicants propound discovery requests upon Counsel for the Public and Interveners
14. **September 19, 2016** – Counsel for the Public and Interveners respond to discovery requests

EXHIBIT 1

15. **September 26 to September 30, 2016** – Technical sessions of Counsel for the Public witnesses and intervenor witnesses conducted
16. **October 7, 2016** – Parties file statement of stipulated facts, any other stipulations, and supplemental testimony
17. **October 12, 2016** – Structuring Conference
18. **October 17 to November 18, 2016** – Final Adjudicatory Hearings
19. **November and December 2016** – Deliberations
20. **December 19, 2016** – Decision Issued