



BARRY NEEDLEMAN
Direct Dial: 603.230.4407
Email: barry.needleman@mcLane.com
Admitted in NH, MA and ME
11 South Main Street, Suite 500
Concord, NH 03301
T 603.226.0400
F 603.230.4448

December 4, 2015

Via Hand Delivery and E-mail

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:

On December 2, 2015, Peter Roth, designated Counsel for the Public in the above-captioned proceeding, submitted a letter offering certain comments and perspectives on the Joint Application. He purports to take no position on whether the Joint Application is complete, and acknowledges that completeness is not a matter to be adjudicated. He nonetheless takes a number of positions on whether the application constitutes a *prima facie* case. Mr. Roth’s positions, except in one minor regard,¹ are relevant neither to completeness nor to whether the Applicants have met their burden of going forward, which are congruent under the acceptance structure codified in RSA 162-H:7. His comments in the main go to the merits of the case, which will be adjudicated once the Application has been accepted.

Mr. Roth addresses four subject areas in his letter, viz., Project Benefits, Constructability, the ISO-NE System Stability and Reliability Report, and, Impact to Historical Resources. Under the heading of Project Benefits, he points out that the testimony of Julia Frayer, which addresses benefits, was submitted pursuant to a request for confidential treatment. Ms. Frayer’s testimony was discussed in a recent meeting among Mr. Roth, his counsel, and counsel for the Joint Applicants, and Mr. Roth was assured that there was no objection to providing him the testimony. Nevertheless, Mr. Roth says that the “Committee should require the Applicants to provide the withheld testimony and report to Counsel for the Public and allow adequate time for us to review the testimony to determine whether it makes a *prima facie* case.”

Perhaps there has been some miscommunication among counsel but, regardless, Mr. Roth has been provided a copy of Ms. Frayer’s materials, recognizing that he is obliged to treat them in

¹ As explained on p. 3, certain materials were omitted from electronic versions of the Joint Application.

confidence pending a decision by the Committee on the Applicants' motion for confidential treatment. Mr. Roth and his outside counsel will certainly have adequate time to conduct discovery on Ms. Frayer's testimony, prepare cross-examination, and make whatever arguments they deem appropriate during the adjudication.

Under the heading of Project Benefits, Mr. Roth also addresses "Alternatives." He says that the "central *need* for the Project is not well defined." He also says that he cannot determine if alternatives other than alternative routes were considered; he specifically refers to non-transmission alternatives. In 2009, the Legislature repealed the requirement that applicants for energy facilities demonstrate the need for a project, which recognizes the fundamental change to the electric industry under restructuring and New Hampshire's policy decision to rely on competitive forces to encourage the construction of energy facilities. In 2014, moreover, the Legislature amended RSA 162-H:7, V, which at subsection (b) requires an applicant to:

Identify both the applicant's preferred choice and other alternatives it considers available for the site and configuration of each major part of the proposed facility and the reason for the applicant's preferred choice.

The Applicants have fully complied with RSA 162-H:7, V (b) by identifying the route it considers available for the Project and the reasons for its preferred choice. Mr. Roth, seeks to apply to the Project the type of review that was applied to vertically integrated utilities prior to the restructuring of the electric industry; a paradigm at odds with a structure that relies on the competitive forces of the marketplace.

Under the heading of Constructability, Mr. Roth addresses Underground Construction,² Overhead Construction, Laydown and Staging Areas and Access Roads, the Description of Project Infrastructure, and Location of Residence and Other Structures. He contends that "there is *insufficient information on the specific impacts* of the Project's construction on the communities that will host the Project." The issues that Mr. Roth raises with respect to underground and overhead construction, as well as laydown, staging, and access, concern whether the Applicants have met their burden of proof, and not administrative completeness.

As to the description of project infrastructure, Mr. Roth correctly observes a production problem that was discovered with the electronic versions of the Application. The original, paper copy of Appendix 1, referred to as the Project Maps, contains depictions in the form of structure designs and plan and profile drawings of the route. The omission is being corrected by providing thumb drive replacements for Appendix 1 to the Committee, Counsel for the Public, and the Towns. Mr. Roth, however, incorrectly asserts that the NPT application inadequately identifies the location of residences and other structures under the SEC Chair's Order Determining Application

² Mr. Roth states that the pre-filed testimony of Lynn Farrington regarding the temporary traffic impacts from construction "indicates that certain sections of road could be closed for one or two weeks." Her testimony makes no such statement and the Joint Applicants anticipate no such impacts, nor would the Department of Transportation likely permit such.

to be Incomplete in *Atlantic Wind*. In that case, the applicant provided only a “generalized ‘contextual’ description” of the structures in its application, referencing a one-page Area Context Map that shows no residences or structures. In contrast, Appendix 1 to the Joint Application for the Northern Pass Project includes 180 Project Maps that clearly identify on aerial overlays the location of all residences, commercial structures and other structures. That is precisely what the SEC rules require.

The Joint Applicants fully address the issues of system stability and reliability in the testimony of Bradley P. Bentley and at section (g) (10) of the Application. Mr. Bentley provides his expert opinion that the required AC system upgrades to and between the Deerfield and Scobie Pond Substations will be similar after the reduction in the capacity of the project from 1,200 MW to 1,090 MW to what the ISO-NE previously determined. Mr. Roth, however, posits that there could be a waste of administrative resources in the review of unnecessary impacts. Any impacts from the AC system upgrades are limited and minimal. Furthermore, the SEC has routinely recognized the role of the ISO-NE in addressing system stability and reliability, and made the issuance of certificates subject to final ISO-NE approval.

Finally, Mr. Roth reprises positions taken by the Division of Historical Resources (DHR) in its November 30, 2015 letter to the Committee. These issues are addressed in a Memorandum of Understanding with DHR.

Mr. Roth’s comments are not germane to the Committee’s decision whether to accept the Joint Application. The Joint Applicants respectfully request that the Committee defer consideration of these comments until such time that they prove relevant to adjudication of the Joint Application.

Very truly yours,



Barry Needleman

cc: Service List