

**THE STATE OF NEW HAMPSHIRE  
PUBLIC UTILITIES COMMISSION**

Northern Pass Transmission, LLC

DE 15-462

**CITY OF CONCORD'S NOTICE OF POSITION ON MOTION TO STAY**

The City of Concord, by and through its attorneys, the Office of the City Solicitor, hereby submits this Notice of Position on Motion to Stay this matter pending the decision by the Site Evaluation Committee on the application for a Certificate of Site and Facility filed by Northern Pass Transmission, LLC and Public Service Company of New Hampshire d/b/a Eversource Energy.

1. On October 19, 2015, Northern Pass Transmission, LLC and Public Service Company of New Hampshire d/b/a Eversource Energy (the "Applicants") filed an application for a Certificate of Site and Facility with the Site Evaluation Committee ("SEC"). On November 2, 2015, the Chairman of the Committee appointed a Subcommittee (the "Subcommittee") to consider the application. The application is being heard under Docket No. SEC 2015-06.

2. As part of that application, Northern Pass Transmission, LLC and Eversource also filed petitions to construct and maintain electric lines across public waters. Those petitions are being heard by the Public Utilities Commission as Dockets DE 15-460 and DE 15-462.

3. RSA 371:17 states that a license to construct and maintain poles, towers, wires and fixtures may be requested by a public utility "whenever it is necessary, in order to meet the reasonable requirements of service to the public." RSA 371:20 states that the Public Utilities Commission may grant a license when "it finds that the licensed petitioner for . . . may be exercised without substantially affecting the public rights in said waters or lands."

4. In this matter, the parties disagree on the standard for issuing a license to cross public waters. More specifically, there is a disagreement regarding whether it is necessary for an applicant to establish that the proposed project is necessary to meet the reasonable requirements of service to the public. The second area of disagreement is the standard for determining whether the proposed project may be exercised without substantially affecting the public rights in the public waters, and whether such a determination can take into consideration issues such as aesthetic/visual impacts and impacts on natural resources. The deadline for briefing those legal issues is April 18, 2016.

5. RSA 162-H:6-a, VI requires all participating state agencies to make and submit to the Subcommittee a final decision on the parts of the application that relate to its jurisdiction no later than 240 days after an application has been accepted. Nonetheless, the Subcommittee may enlarge the time frame established under this section to issue or deny a certificate. RSA 162-H:14. The Subcommittee is currently reviewing motions to suspend the time frames in the SEC matter, and a hearing is scheduled for April 12, 2016. A decision on those motions may extend the deadline by which a decision needs to be rendered in this matter, and therefore will impact the scheduling deadlines.

6. Regardless of whether the Subcommittee extends the deadline, in the event that the Public Utilities Commission determines that the standard for issuing a license requires findings on issues such as aesthetic/visual impacts and the natural environment, it will be necessary to stay and/or suspend the timeframes in this matter. This project is unprecedented due to the scale and scope of the project. The issue of aesthetic/visual impacts and natural resources will be addressed by the Subcommittee in its proceedings, and there will need to be extensive discovery and experts to address these issues. These issues will also be addressed at

the adjudicative hearing, and will be addressed in the Subcommittee's decision on the issuance of the certificate.

7. For purposes of judicial economy of the parties and the agencies involved, it would not be appropriate to litigate the same issues in two separate forums. Moreover, the City of Concord also needs to ensure that it is not estopped from making arguments to the SEC in the event that these issues are addressed by the Public Utilities Commission in this matter.

8. It should be noted that the request for a public crossing is particularly important for the City of Concord because the proposed public water crossing involves Turtle Pond, an area with important scenic and recreational value in the City of Concord. Indeed, the Department of Energy has stated in its Draft Environmental Impact Statement that the proposed structures in this area will have an aesthetic/visual impact that increases current conditions at Turtle Pond from "moderate" to "strong." The City of Concord has an interest in the proposed crossing because it will substantially affect the public rights in its public waters.

9. The City of Concord hereby notifies the Public Utilities Commission that, depending on the scope of this proceeding, it intends to file a motion with the Site Evaluation Committee to suspend the deadline for issuing a public water crossing permit.

Respectfully submitted,

CITY OF CONCORD

By: 

Danielle L. Pacik, Deputy City Solicitor  
41 Green Street  
Concord, New Hampshire 03301  
Telephone: (603) 225-8505  
Facsimile: (603) 225-8558  
dpacik@concordnh.gov

April 8, 2016

**CERTIFICATE OF SERVICE**

I hereby certify that on this 8th day of April, 2016, seven copies of the foregoing were hand delivered to the Commission, as well as copies to Northern Pass Transmission, LLC and the Office of the Consumer Advocate.

April 8, 2016

By:

Handwritten signature of Danielle L. Pacik, consisting of a large 'D', a smaller 'L', and another 'L'.

\_\_\_\_\_  
Danielle L. Pacik, Deputy City Solicitor