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May 8, 2017

Ms. Debra A. Howland
Executive Director and Secretary
New Hampshire Public Utilities Commission
21 South Fruit Street, Suite 10
Concord, New Hampshire 03301

Re: Docket No. DE 15-464, Public Service Company of New Hampshire
Petition for Approval of Lease Agreement with Northern Pass Transmission LLC
Motion to Establish a Procedural Schedule

Dear Ms. Howland:

Please treat this letter as the opposition of the Office of the Consumer Advocate (OCA) to the motion filed by Public Service Company of New Hampshire (PSNH) in the above-referenced docket on May 5, 2017. The PSNH motion requests that the Commission approve a procedural schedule which begins with the issuance of data requests to PSNH on May 22, 2017 and culminates with a merits hearing to be conducted during the weeks of September 25 or October 2, 2017.

The OCA understands and appreciates PSNH's interest in moving this case toward resolution given that the PSNH petition has been pending since October 2015. Nevertheless, this case is important to the interests of PSNH's residential customers and raises novel issues that require thorough discovery and meticulous preparation prior to hearing so as to preserve the due process rights of all parties.

Many of the parties to the instant case are involved in the related proceedings before the Site Evaluation Committee (SEC), in which extended evidentiary hearings are now in progress whose purpose is to determine whether Northern Pass LLC, an affiliate of PSNH, should be permitted to construct a controversial participant-funded transmission project. The OCA is not involved in the SEC proceedings, takes no position on any questions pending before the SEC, and is thus indifferent to the effect the SEC proceedings may have on this case, or vice versa, in either the practical or legal sense.

However, this docket is essentially the only opportunity for the OCA to address potential impacts of the Northern Pass project on PSNH's residential customers. Given that a substantial portion of the Northern Pass project relies upon a license granted by PSNH to Northern Pass to use a portion of an existing PSNH transmission right-of-way that has long been included in PSNH retail rates, it is imperative from the standpoint of PSNH ratepayers that the Commission rigorously evaluate whether the affiliate transaction at the heart of this case involves adequate compensation from Northern Pass to PSNH.

The protracted delay to which this case has been subject is principally the result of circumstances beyond the control of either PSNH or the OCA. The Commission hit the "pause" button to consider the extent to which it would be necessary for the Commission to resolve disputed issues of property law that reduce, in essence, to the question of whether PSNH has the legal right to transfer rights it acquired when it purchased or, in some instances, took by eminent domain, certain easements in real property. By orders entered in September 2016, the Commission directed the parties to brief a series of eight specifically questions. Nearly seven months later, on April 6, 2017, the Commission issued Order No. 26,001, leaving the property law issues unresolved (as non-jurisdictional to the Commission) but concluding that because PSNH had made at least *prima facie* showing that its lease is consistent with applicable property law the case can now proceed to resolution on its merits. The Commission directed its Staff "to work with the parties to develop a procedural schedule for this proceeding with the goal of having a final order by year's end, if possible." *Id.* at 15.

Inexplicably, the PSNH motion asks the Commission to short-circuit this process and impose a procedural schedule unilaterally. In support of this implicit request for the Commission to revise its previous determination of how to proceed, PSNH argues that (1) the Commission should not consider the needs of parties also litigating at the SEC because such parties "elected to participate here with the knowledge and understanding of other obligations that may exist in other forums," PSNH Motion at 2, and (2) multiple rounds of discovery are "not necessary" because PSNH's petition has been "available for review for more than a year and a half already," *id.* at 2-3. PSNH concedes that other scheduling proposals have been under discussion that would meet the "if possible" goal of a final order by the end of 2018 but the utility complains that such proposals are unreasonable because they are "based on a presumption that additional extensions or accommodations would not be requested over the course of the proceeding." *Id.* at 2.

Regardless of any potential effects on other parties, PSNH's position is patently unfair to the interests represented by the OCA. The resources of our office are extremely limited and we had no way of knowing this docket would go on hiatus for seven months to allow for in-depth study of property law issues that do not bear directly on the collective interests of residential ratepayers. We therefore reasonably assumed that, once the Commission had addressed the property law questions to its satisfaction, the OCA would have a full and fair opportunity to conduct discovery and prepare for hearing. Accordingly, our position in the recent discussions about scheduling has been (1) that two rounds of discovery (not "multiple rounds") are reasonable given the novel and complex issues in the case, and (2) a hearing in November allows for a thoughtful development of the case and a final order by the end of 2018.

Although it appeared to us that until PSNH filed its motion the parties were on their way to reaching an agreement about a schedule, in light of the PSNH filing it is now reasonable to assume there will be no such agreement. In these circumstances the appropriate course of action is not to reward PSNH for its intransigence but to convene a second prehearing conference for the purpose of discussing how the case will proceed to hearing. *See* N.H. Code Admin. Rules 203.15(a) (providing that “[i]n order to facilitate proceedings and encourage informal disposition, the presiding officer shall, upon motion of any party, or upon the presiding officer’s own motion, schedule one or more prehearing conferences”). The OCA knows from experience that at such a gathering the presiding officer would be in a position to extract a suitable degree of cooperation from all parties with respect to an appropriate schedule. In the alternative, the OCA will not object if the Commission simply adopts a procedural schedule that calls for at least two rounds of Staff/Intervenor/OCA discovery and a hearing in November or December.

At the risk of stating the obvious, the OCA asks the Commission and PSNH to bear in mind that anything related to Northern Pass is highly controversial and contentious. To the extent that any proceeding related to Northern Pass is vulnerable to allegations that the rights of intervenors and the concerns of the public are not being treated with solicitude, no one benefits. For these reasons, the Commission should deny the PSNH motion and proceed as suggested herein by the OCA.

If there are questions about the foregoing please do not hesitate to contact me.

Sincerely,



D. Maurice Kreis
Consumer Advocate

Cc: Service List