

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

Northern Pass Transmission, LLC

DE 15-460 and DE 15-462

**MOTION FOR REHEARING FILED BY THE CITY OF CONCORD AND SOCIETY
FOR THE PROTECTION OF NEW HAMPSHIRE FORESTS**

The City of Concord, by and through its attorneys, the Office of the City Solicitor, and the Society for the Protection of New Hampshire Forests (the “Forest Society”), by and through its attorneys, BCM Environmental & Land Law, PLLC, hereby submits this joint motion for rehearing of the Public Utility Commission’s order dated June 28, 2016 (Order No. 25,910), stating as follows:

1. The City of Concord and the Forest Society, as parties to this proceeding, may move for rehearing of the order. N.H. Admin. Rules, PUC 203.07 and 203.33; RSA 541:3. Reconsideration is justified when a Committee’s decision is “unlawful or unreasonable.” RSA 541:4.

2. In its order dated June 28, 2016 (Order No. 25, 910), the Commission held that the proposed public crossings in Dockets DE 15-460 and DE 15-462 meets the requirement of providing “service to the public” as set forth in RSA 371:17. The City of Concord and the Forest Society respectfully disagree, and therefore, move for rehearing.

3. As the Commission is aware, 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”) relating to the construction of a 192-mile high voltage transmission line from the Canadian border at Pittsburg to a substation located in Deerfield, commonly referred to as the Northern

Pass Transmission Line Project (“Project”). The application is being heard under Docket No. SEC 2015-06.

4. As part of the application, the Applicants also filed petitions to construct and maintain electric lines across public water. Those petitions are being heard by the Commission under Dockets DE 15-460 and DE 15-462. Northern Pass Transmission, LLC is seeking to construct and maintain new electric transmission lines and associated facilities across public waters. Eversource is seeking to relocate, rebuild and enlarge the existing facilities owned by PSNH to accommodate the new lines needed for the Project. The City of Concord intervened in both of the public crossing dockets and the Forest Society intervened in Docket DE 15-460.

5. The Commission issued an order requiring the parties to submit legal memorandum in both dockets by May 2, 2016 which included the issue of whether the proposed public crossings meet the requirement of providing “service to the public” as set forth in RSA 371:17. Both the City of Concord and the Forest Society, as well as staff for the PUC, filed legal memoranda explaining that RSA 371:17 contains the threshold requirement that a license may only be issued when the crossing is *necessary* to meet the reasonable requirements of service to the public. The City of Concord and the Forest Society further argued that the necessity language in RSA 371:17 precludes its use by transmission projects that are not needed for system reliability, *i.e.*, merchant projects.

6. In its order, the Commission incorrectly held that the necessity language in RSA 371:17 does not preclude its use by transmission projects that are not needed for system reliability and/or are necessary to deliver services to a customer within a territory. In making this determination, the Commission relied on its decision in *EnergyNorth Natural Gas, Inc.* Order No. 23,657 (March 22, 2001). The reliance on that decision was incorrect because the

request for a license to cross public water involved a gas pipeline project that was being constructed to serve a customer in the public utility's territory. There was no dispute that the construction of the gas pipeline was needed for the customer. Unlike that case, the proposed project in this matter is a "merchant" or "participant funded" project that is not intended to meet any identified need for additional power in New Hampshire, or to address system reliability issues in New England generally. There are also no specific customers that need the crossing in order to be "served." The power transported over the new transmission line will not be available for distribution to New Hampshire residents, but rather, New Hampshire utility companies will be required to purchase some of the power and have it transported back to New England to sell to its retail customers.

7. The Commission's reliance on the amendments to RSA 371:1 was also incorrect. In 2001, RSA 371:1 was amended to prevent eminent domain for an electric generating plant. In 2012, RSA 371:1 was amended to clarify that a public utility is not allowed to take private land or property rights "for the construction or operation of an . . . electric transmission project not eligible for regional cost allocation, for either local or regional transmission tariffs, by ISO-New England or its successor regional system." RSA 371:1. A review of the legislative history reveals that this latter amendment was adopted *to clarify and confirm* that Northern Pass Transmission, LLC is prohibited from taking private land by eminent domain because the project does not meet the requirement of providing "service to the public." Laws 2012; 2:6; N.H.S. Jour. 120-57 (2012) (discussing that the purpose of amendment was to clarify and ensure that private property could not be taken for the Project). The same analysis applies to RSA 371:17. The fact that RSA 371:17 was not amended does not support an interpretation that the legislature intended a different standard to be applied, but rather, reaffirms that merchant or participant

funded projects that do not serve any specific customers do not meet the threshold requirement that the crossing is *necessary* to meet the reasonable requirements of service to the public.

8. For all of the foregoing reasons, as well as the arguments raised by the City of Concord and the Forest Society in its briefs, it is respectfully requested that the Commission grant this motion for rehearing.

WHEREFORE, the City of Concord and SPNHF respectfully request that the Committee:

- A. Grant this Motion;
- B. Deny the license on the basis that the project is not necessary to serve the public;
- C. Schedule a hearing if deemed appropriate; and
- D. Grant such further relief as it deems appropriate.

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

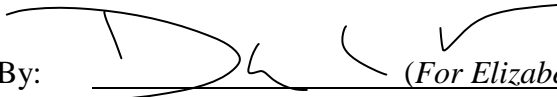
July 28, 2016

SOCIETY FOR THE PROTECTION OF
NEW HAMPSHIRE FORESTS

By its Attorneys,

BCM Environmental & Land Law, PLLC


July 28, 2016

By:  (For Elizabeth Boepple)
Amy Manzelli, Esq. (17128)
Jason Reimers, Esq. (17309)
Elizabeth A. Boepple, Esq. (20218)
3 Maple Street
Concord, NH 03301
(603) 225-2585

CERTIFICATE OF SERVICE

I hereby certify that on this 28th day of July, 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.

July 28, 2016

By: 
Danielle L. Pacik, Deputy City Solicitor