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November 10, 2015

**Via Hand-Delivery and Electronic Mail**

Martin P. Honigberg, Chairman  
New Hampshire Site Evaluation Committee  
21 Fruit Street, Suite 10  
Concord, NH 03301

**RE: Application of Northern Pass Transmission LLC for a Certificate for Site and Facility for the Northern Pass Transmission Project before the Site Evaluation Committee; Docket 2015-06**

Dear Chairman Honigberg and Members of the Site Evaluation Committee:

The New England Power Generators Association (NEPGA) appreciates the opportunity to present its comments on the application by Northern Pass Transmission LLC's (NTP) application before the Site Evaluation Committee (SEC).<sup>1</sup> NEPGA is the trade association representing competitive electric generating companies in New England. NEPGA's member companies represent approximately 25,000 megawatts (MW), or 80% of all generating capacity in the region. In New Hampshire, NEPGA represents nearly 66% or roughly 2,700 MW of generation capacity located in 10 towns and cities from a diverse portfolio of fuels and technologies. NEPGA's members employ approximately 800 workers in the state and contribute nearly \$46 million in state and local taxes. NEPGA's mission is to support competitive wholesale electricity markets in

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<sup>1</sup> The comments expressed herein represent those of NEPGA as an organization, but not necessarily those of any particular member.

New England. We believe that open markets guided by stable public policies are the best means to provide reliable and competitively-priced electricity for consumers. A sensible, market-based approach furthers economic development, jobs and balanced environmental policy for the region.

As you are aware, on October 19, 2015, NPT filed an application with the SEC for a Certificate of Site and Facility to develop a 192-mile transmission project with associated access and interconnection infrastructure. NEPGA takes no position for or against energy infrastructure projects. NEPGA strongly supports competitively-developed electricity supplies. As an association, NEPGA works to develop competitive wholesale electricity markets that facilitate competitive entry to provide reliable, environmentally-responsible and competitively-priced power. NEPGA similarly has no position for or against NPT.

NEPGA, however, has consistently expressed significant public policy concerns regarding this project stemming from the relationship between Eversource and its competitive energy affiliate, NPT. These issues raise concerns about potential undue preference and a slanted playing-field harming competitive outcomes for the electricity marketplace and consumers. This is particularly true when a competitive energy affiliate may use property, services or receive other benefits provided by utility ratepayers for utility purposes. With respect to the instant application, the relationship between the utility and a competitive energy affiliate calls into question whether NPT is in a position to demonstrate site control – specifically, whether NPT has complied with statutory and regulatory obligations related to the proposed use of its affiliate's property. This is a necessary question as the SEC considers the completeness of the NPT application and

whether it is ripe for further consideration.

Upon review of NPT's application, and in an effort to help establish an initial record on this matter, NEPGA provides the attached Memorandum of Law (Foley Hoag Memorandum) focusing on threshold issues related to whether NPT has demonstrated that it has appropriate access to and control of its proposed right-of-way and has properly addressed any and all relevant rules regarding commercial affiliate relationships. NEPGA asserts that NPT's application fails to demonstrate site control over the lands necessary for the development of the transmission facilities as required by statute and SEC regulations. *See, e.g.,* RSA 162-H:7 and N.H. Admin. Rule Site 301.03. Both RSA 162-H and N.H. Admin. Rule Site 301.03 establish clear standards for determining whether an application is complete, including requiring that an applicant hold the necessary site control rights to each aspect of the project. *See, e.g.,* N.H. Admin. Rule Site 301.03(b)(6). As set forth more fully in the Foley Hoag Memorandum, the application submitted by NPT fails to meet these requirements. NEPGA, therefore, respectfully requests that, pursuant to N.H. Admin. Rule Site 301.05, the Chairperson of the SEC determine that NPT's application in the above-referenced docket is incomplete.

As outlined in great detail in the Foley Hoag Memorandum, there can be no doubt that NPT is a competitive energy affiliate of Eversource as defined in N.H. Admin. Rule PUC 2102.03. As such, it is subject to the requirements set forth in N.H. Admin. Rules Chapter PUC 2100. For example, the nondiscrimination and separation provisions contained in that chapter apply to any agreement between PSNH and NPT, including but not limited to any agreement that would grant NPT the right to utilize or acquire interests in PSNH property, including rights-of-way. The rules also govern how

such assets transferred between affiliates are valued. *See, e.g.*, N.H. Admin. Rule PUC 2105.09. This requirement is an important protection for PSNH's ratepayers with respect to improper affiliate conduct and has substantial implications with respect to the goal of operating transparent and non-discriminatory markets. Despite more than five years of project development, NPT has still failed to resolve this critical issue of site control as it relates to its transmission lines, whether those line are installed above or below ground.

Moreover, in addition to extensive regulatory requirements that would govern any such agreements between NPT and Eversource, such agreements would also be subject to RSA 366. That statute expressly requires that, as affiliates, any agreement between PSNH-NPT, including ones relating to the use of rights-of-way, be filed with the PUC. *See, e.g.*, RSA 366:1. Although Eversource has very recently released a copy of a compensation agreement with NPT, the PUC has not issued any order that such an agreement satisfies either companies' requirements under RSA 366 or compliance with the affiliate transactions rules, especially those rules addressing non-discrimination and valuation of property transferred between affiliate entities. Failure to comply with these and other statutory and regulatory requirements further demonstrates that NPT's application is substantively deficient, and must be rejected as incomplete. It would be highly inefficient for the SEC to undertake a formal review of NPT's application until these affiliate requirements are met, because NPT cannot and will not be able to demonstrate site control until and unless these issues have been resolved.

Because NPT has failed to show compliance with the rules and regulations governing affiliate transactions, particularly as they relate to easements and rights-of-

way, the SEC should declare the application incomplete and avoid expending valuable agency time and resources on a project that may or may not ultimately be able to secure site control and meet its numerous and fundamental statutory and regulatory obligations.<sup>2</sup> Accordingly, for the reasons set forth above and those set forth more fully in the Foley Hoag Memorandum, we urge the SEC to deem the application incomplete.

Sincerely,



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Dan Dolan  
President

Encl.

cc: T. Burack  
J. Rose  
R. Scott  
K. Bailey  
E. Muzzey  
V. Sheehan  
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<sup>2</sup> Moreover, although not discussed in the Foley Hoag Memorandum, site control is necessary for additional permits required by NPT for the development of this project, including but not limited to, Alteration of Terrain, Water Quality Certification, Wetlands and Shoreland permits. The permit applications submitted by NPT fail to demonstrate that NPT has the property interests in the lands necessary to support them. Failure to demonstrate such site control for these permits, by necessity, constitutes a lack of site control for the purposes of SEC review, since permit completeness is incorporated into the SEC's completeness determination under N.H Admin. Rule Site 301.03(d)(2). Failing to meet these requirements, therefore, constitutes an additional basis for an incompleteness determination.