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DEPARTMENT OF JUSTICE**

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October 20, 2016

Pamela G. Monroe, Administrator  
New Hampshire Site Evaluation Committee  
21 South Fruit Street, Suite 10  
Concord, New Hampshire 03301

Re: SEC Docket No. 2015-04  
Application of Public Service Company of New Hampshire d/b/a Eversource Energy  
("Eversource") for a Certificate of Site and Facility for the Construction of a New 115 kV  
Transmission Line from Madbury Substation to Portsmouth Substation

Dear Ms. Monroe:

Enclosed for filing in reference to the above-captioned matter is an original and one copy  
of the following:

- Partial Objection of Counsel for the Public to *Applicant's Motion to Partially Waive Site 301.08(c)(2)* and
- Partial Objection of Counsel for the Public to *Applicant's Motion to Partially Waive Site 301.03(c)(3)-(5)*.

Thank you for your attention to this matter. Please feel free to call with any questions.

Sincerely,

A handwritten signature in cursive script, appearing to read "Christopher G. Aslin".

Christopher G. Aslin  
Assistant Attorney General  
Environmental Protection Bureau  
(603) 271-3679

/cmc  
Enclosure  
cc: Distribution List

**THE STATE OF NEW HAMPSHIRE  
SITE EVALUATION COMMITTEE**

**No. 2015-04**

Application of Public Service Company of New Hampshire d/b/a Eversource Energy (“Eversource”) for a Certificate of Site and Facility for the Construction of a New 115 kV Transmission Line from Madbury Substation to Portsmouth Substation

**PARTIAL OBJECTION OF COUNSEL FOR THE PUBLIC TO  
APPLICANT’S MOTION TO PARTIALLY WAIVE SITE 301.08(c)(2)**

Counsel for the Public, by his attorneys, the office of the Attorney General, hereby objects to the Applicant’s motion to partially waive Site 301.08(c)(2) of the SEC Rules (the “Motion”). Counsel for the Public responds as follows:

1. On April 12, 2016 Public Service Company of New Hampshire d/b/a Eversource Energy (the “Applicant”) submitted an Application for a Certificate of Site and Facility in the above captioned docket. Along with the Application, the Applicant submitted a Motion to Partially Waive Site 301.08(c)(2).

2. Pursuant to the Motion, the Applicant requests waivers from most of the requirements of Site 301.08(c)(2), arguing that transmission lines in general, and reliability projects in particular, are not commonly decommissioned and that changes over time make preparing a detailed decommissioning plan now inefficient.

3. Specifically, the Applicant requests that “the SEC waive the requirement that the decommissioning plan be prepared by an independent qualified person as well as the content requirements provided in subsections (b), (c) and (d)” of Site 301.08(c)(2). Motion at 2. In addition, the Applicant asserts that the rules do not “expressly require applicants to provide a fully detailed decommissioning plan,” but to the extent such detail is required, requests “a waiver from that requirement as well.” Motion at 5.

4. For the reasons stated below, Counsel for the Public objects to the Applicant's requests for waivers from the requirement of a decommissioning plan by an independent qualified person; the requirement to prepare a fully detailed decommissioning plan; and the content requirements of Site 301.08(c) (2)(d). Counsel for the public agrees that a waiver of Site 301.08(c)(2)(b) is appropriate for a reliability project, and suggests that a waiver of Site 301.08(c)(2)(c) is unnecessary as that subsection is inapplicable to this project.

**A. Standard of Review**

5. Pursuant to Site 302.05(a), waiver of the Committee's rules is permitted if the Committee finds that the waiver "serves the public interest" and "will not disrupt the orderly and efficient resolution" of the proceedings. Site 302.05(b) goes on to clarify that "in determining the public interest," the subcommittee shall waive a rule if: "(1) Compliance with the rule would be onerous or inapplicable given the circumstances of the affected person; or (2) The purpose of the rule would be satisfied by an alternative method proposed."

6. As the movant, the Applicant bears the burden of demonstrating that compliance with the rule would be "onerous or inapplicable" or that the "purpose of the rule would be satisfied by an alternative method." Site 302.05(b).

**B. The Applicant Has Not Demonstrated Grounds for a Waiver of the Requirement of Producing a Compliant Decommissioning Plan.**

7. The central argument of the Applicant is that transmission projects typically "continue in service indefinitely." Motion at 2-3. However, this argument is contrary to the clear language of the rules, which require a decommissioning plan for all "energy facilities," which term expressly includes a "new transmission line of design rating in excess of 200 kilovolts." *See* N.H. Code of Admin. Rules Site 301.08(c)(2) and 102.19(e). The plain meaning of the rules applies equally to a merchant transmission line and a reliability project.

Accordingly, the decommissioning requirements are not “inapplicable” to this project and the fact that the facility may not be decommissioned for many decades does not make the requirement to prepare a decommissioning plan “onerous.”

**1. Decommissioning Plan Prepared by an Independent Person**

8. Similarly, the fact that the current project is a reliability project has no bearing on the requirement that the decommissioning plan be prepared by an independent person. The rule’s language is clear and unequivocal: “A facility decommissioning plan [shall be] prepared by an independent qualified person with demonstrated knowledge and experience in similar energy facility projects and cost estimates.” Site 301.08(c)(2) (emphasis added).

9. While the Applicant may have qualified personnel with “demonstrated knowledge and experience,” the rule expressly requires an “independent” person prepare the plan. The purpose of the rule is to ensure an unbiased view of the likely costs and engineering requirements of decommissioning. Having an employee of the Applicant, instead of an independent person, prepare a decommissioning plan clearly is not an “alternative method” that would satisfy the purpose of the rule.

10. The only grounds supplied by the Applicant to support a waiver of the express requirement that the plan be prepared by an independent person is that hiring a third-party to prepared the plan would be an “unnecessary expenditure of customer money.” Motion at 4. While the costs of a reliability project are passed on to customers, this is not an appropriate ground for a waiver of a rule that is intended to protect the public by ensuring an adequate, independent plan is in place to decommission energy facilities at the end of their useful life. Saving some costs today at the potential expense of future ratepayers is directly contrary to the purpose of the decommissioning plan requirement.

11. Though not stated with great clarity, the Applicant appears to also be making a subsidiary request that the requirement of a decommission plan be deferred to an undisclosed date far in the future when decommissioning of a reliability project may be required. This argument similarly fails to meet the standards for a waiver under Site 302.05. The Applicant cannot predict the future of our energy infrastructure needs in New Hampshire or the continued need for the proposed transmission line for reliability purposes. While the line may be needed for reliability purposes today and for several decades into the future, it may also become obsolete.

12. The purpose of a decommission plan is both to be prepared for the potential future decommissioning of the project and to inform the Subcommittee as to the eventual costs of a future decommissioning. The fact that such decommissioning may (or may not) be far in the future is irrelevant to the rule's requirement that a decommissioning plan be submitted as part of the application prior to issuance of a Certificate of Site and Facility. Thus, the alternative of a future submission of a decommissioning plan does not satisfy the purpose of the rule and is not an appropriate ground for a waiver.

13. To the extent that the Applicant argues that changes in circumstances and applicable laws may make a present day decommissioning plan obsolete, Applicant can, and should, periodically update its decommissioning plan to address such changed circumstances. The fact that circumstances may change in the future, however, does not obviate the purpose of filing a decommissioning plan now as part of the application for a Certificate of Site and Facility.

14. Counsel for the Public respectfully suggests that a waiver of either the requirement that an independent person prepare a decommissioning plan, or that the decommissioning plan be submitted in appropriate detail as part of the application is

inappropriate and that the Applicant has not met its burden of demonstrating that compliance with the rule would be onerous or inapplicable, or that an alternative method would satisfy the purpose of the rule.

**2. Provision of Specific Financial Assurances Pursuant to Site 301.08(c)(2)(b)**

15. The Applicant seeks a waiver of the requirement of Site 301.08(c)(2)(b) to provide financial assurances in specific forms enumerated in the rule, on the basis of a proposed alternative method to satisfy the purpose of the rule. Specifically, the Applicant points to the FERC-approved transmission tariff that would apply to this reliability project and would allow for recovery of the costs of a decommissioning obligation from all customers in New England.

16. Counsel for the Public agrees that in the context of a reliability project subject to a FERC-approved transmission tariff, the purpose of the financial assurance requirement of Site 301.08(c)(2)(b) is satisfied and that a waiver is appropriate. However, to be effective under the FERC tariff, an asset retirement obligation must exist to trigger cost recovery through rates. The Subcommittee may wish to consider as part of its review of the application whether to impose a retirement obligation on the project.

**3. Transportation of All Transformers Off-Site Pursuant to Site 301.08(c)(2)(c)**

17. Where there are no new transformers proposed to be installed as part of the project, this requirement is inapplicable. Counsel for the Public believes that no waiver is necessary, however, as a compliant decommissioning plan would simply state the fact that no transformers are part of the project and, therefore, need not be transported off-site. Accordingly, Counsel for the Public respectfully suggests that the waiver request be denied as unnecessary.

**4. Removal of Underground Infrastructure to a Depth of Four Feet Pursuant to Site 301.08(c)(2)(d)**

18. Finally, the Applicant requests a general waiver of the requirement that “all underground infrastructure at depths less than four feet below grade shall be removed from the site.” Site 301.08(c)(2)(d). In support of its request, the Applicant asserts that the project will be constructed in an existing right-of-way (“ROW”) “dedicated exclusively to utility use for the foreseeable future,” and that “fully removing the infrastructure could potentially create more severe environmental impacts in certain locations.” Motion at 6-7.

19. As a preliminary matter, the Applicant’s assertion that the ROW is “dedicated exclusively to utility use” is not accurate. Much of the ROW where the transmission line is proposed is owned in fee by third parties with the Applicant holding non-exclusive use easements. While utility uses within the ROW are permitted for the foreseeable future, the easements are not exclusive. The fee-owners retain the right to use their property within the ROW as long as such use does not interfere with the Applicant’s utility use of the ROW.

20. The purpose of the requirement to remove decommissioned infrastructure down to a depth of four feet below grade is to remove the environmental and physical impact of decommissioned energy facilities from the property. Landowners should not be required to suffer the continued interference of unused energy infrastructure on their property.

21. With regard to the waiver request itself, the Applicant has provided no grounds for a waiver other than that strict compliance would be inconvenient. The Applicant asserts that it would “have to dig down to the top of the underground facilities, remove the upper portion of the underground facilities to four feet below grade, and then re-grade the excavated soil or road.” Motion at 7. This is precisely what the rule requires and the Applicant has not demonstrated that it would be unduly onerous or inapplicable to comply with the rule.

22. Moreover, the Applicant's statement that fully removing the infrastructure "could potentially" create greater environmental impacts than leaving the infrastructure in place is equivocal and completely unsupported. The Applicant has provided no evidence of greater environmental impacts that would form the basis for a waiver.

23. Indeed, while it is conceivable that there may be specific locations where strict compliance with the rule may result in greater environmental impact, the Applicant has requested a blanket waiver rather than identifying specific areas of concern and providing specific evidence to the Subcommittee of the environmental impact. Without such evidence there is no record upon which the Subcommittee could approve a waiver, and the Applicant's blanket request must be denied.

24. Denial of the Applicant's blanket waiver request would not necessarily preclude the Applicant from submitting a more targeted waiver request, supported by specific evidence.

### **C. Conclusion**

25. For all of the above reasons, Counsel for the Public respectfully submits that the Applicant has not met its burden for a waiver of the requirements of Site 301.08(c)(2), with the exception of Site 301.08(c)(2)(b).

WHEREFORE, Counsel for the Public prays that the Subcommittee:

(A) Grant the Motion with respect to the request to waive the requirements of Site 301.08(c)(2)(b);

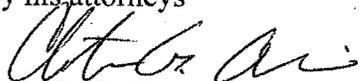
(B) Deny the Motion with respect to all other requests for waiver; and;

(C) Grant such other and further relief as may be just.

Respectfully submitted,

COUNSEL FOR THE PUBLIC

By his attorneys



Dated: October 20, 2016

Christopher G. Aslin  
Assistant Attorney General  
Environmental Protection Bureau  
33 Capitol Street  
Concord, New Hampshire 03301-6397  
Tel. (603) 271-3679

**Certificate of Service**

I hereby certify that a copy of the foregoing Partial Objection of Counsel for the Public has been forwarded this day to persons named on the Service List in this docket.

Dated: October 20, 2016

  
Christopher G. Aslin