

THE STATE OF NEW HAMPSHIRE  
SITE EVALUATION COMMITTEE  
DOCKET NO. 2015-04

**Seacoast Reliability Project – 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**

**OBJECTION OF THOMAS A. DECAPO AND Yael D. DECAPO  
TO APPLICANT'S MOTION TO PARTIALLY WAIVE SITE 301.03(c)(3) – (5)**

Thomas A. DeCapo and Yael D. DeCapo (together, the "DeCapo Family"), who own 313 and 315 Durham Point Road, Durham, New Hampshire, and hold interests in another adjacent parcel (together, the "DeCapo Property"), by and through their representatives, BLA Schwartz, PC, hereby object to the Applicant's Motion To Partially Waive Site 301.03(c)(3)-(5) (the "Request"), stating as follows:

**I. BACKGROUND**

1. On **April 12, 2016**, Public Service Company of New Hampshire d/b/a Eversource Energy ("Eversource" or the "Applicant") filed with the New Hampshire Site Evaluation Committee an Application for a Certificate of Site and Facility for the Construction of a New 115 kV Transmission Line from Madbury Substation to Portsmouth Substation (the "Application" for the "Project"). Part of that transmission line will traverse the DeCapo Property and its construction will disturb the ground soil in Little Bay contiguous to the DeCapo Property waterfront . The same day Eversource filed the Application, Eversource submitted the Request seeking partial waivers of Site 301.03(c)(3)-(5) in order to avoid submitting maps that include the entirety of abutting properties and that identify certain important attributes and resources pertaining to those properties.. That rule requires each application for a certificate of site and facility to contain:

(3) The location, shown on a map, of property lines, residences, industrial buildings, and other structures and improvements within the site, on abutting property with respect to the site, and within 100 feet of the site if such distance extends beyond the boundary of any abutting property;

(4) Identification of wetlands and surface waters of the state within the site, on abutting property with respect to the site, and within 100 feet of the site if such distance extends beyond the boundary of any abutting property, except if and to the extent such identification is not possible due to lack of access to the relevant property and lack of other sources of the information to be identified;

(5) Identification of natural, historic, cultural, and other resources at or within the site, on abutting property with respect to the site, and within 100 feet of the site if such distance extends beyond the boundary of any abutting property, except if and to the extent such identification is not possible due to lack of access to the relevant property and lack of other sources of the information to be identified.

NH ADC SITE 301.03 (emphasis added). In the Request, Eversource stated that it understood "these rules to require the identification of resources across the entire width or along the entire length of any abutting property, regardless of the distance from the Project." Motion at 2.

2. In the Request, however, Eversource admitted that it had not satisfied those requirements, asserting that it should be exempt because it had already "identified all property lines, residences, industrial buildings, other structures and improvements, wetlands and surface waters, and natural, historic, cultural and other resources within the Project right-of-way (ROW) and adjacent to the Site" and that "[t]o further expand the amount of area displayed on [the] maps would require varying the scale of the map continuously along the route or selecting a scale that would accommodate the largest abutting property, which would make the data effectively unreadable." Id. But Eversource also admitted that "there are some large abutting

properties whose boundaries extend beyond the edges of the Project maps" and stated that "to . . . comply with the rules and identify all resources on every single abutting property – no matter how large the property – would be onerous and would not provide the Committee with any additional meaningful information . . ." Id. Eversource argued that compliance with the rules "would be onerous and would not provide the Committee with any additional meaningful information." Id.

3. On **July 21, 2016**, pursuant to RSA 541-A:32 and Site 202:11, the DeCapo Family filed a Motion to Intervene in this matter because a portion of the Seacoast Reliability Project will pass through a purported easement on the DeCapo Property, will enter Little Bay adjacent to the DeCapo Property, and the Seacoast Reliability Project will cross Little Bay adjacent to and in front of the DeCapo Property.

4. On **August 24, 2016**, the presiding officer of the Site Evaluation Committee granted, in part, the DeCapo Family's motion to intervene but grouped its intervention with other Durham property owners. The DeCapo Family has moved for a review of that order, which is scheduled to be heard on November 2, 2016, and submits this objection to Eversource's Request to protect the interests that formed the basis of the DeCapo Family's intervention.

5. On **September 7, 2016**, during the pre-hearing conference, Eversource represented to the Committee that it awaited a ruling on the Request. Eversource did not indicate that it had taken any steps to fully comply with Site 301.03(c)(3)-(5) pending a ruling on the Request.

6. On **October 4, 2016**, the DeCapo Family submitted a letter to Eversource advising that the DeCapo Family intended to oppose the Request and that "to the extent that

Eversource has not taken steps to comply with the SEC's mapping rules during the pendency of the Request, any delay to the project occasioned by the SEC's denying relief to Eversource would be Eversource's own fault and not grounds for any relief to Eversource."

7. On **October 10, 2016**, the SEC issued a Notice of Hearing on Pending Motions and Deadline for Filing, ordering that oppositions to the Request be filed by October 20, 2016.

8. The DeCapo Family believes that the Request is unwarranted under the circumstances and should be denied.

## **II. LEGAL STANDARD**

9. Under Site 302.05(a), The Committee can waive a requirement if granting the waiver "serves the public interest" and would not "disrupt the orderly and efficient resolution of matters before the committee or subcommittee." Site 302.05(b) provides that the public interest is determined by considering whether compliance would be "onerous" or inapplicable "given the circumstances of the affected person" or if the purpose of the rule can be satisfied by an alternative method proposed. Because Eversource has neither shown that the purpose of the rule can be satisfied by an alternative method proposed nor that compliance would be onerous or inapplicable given the circumstances the Committee should deny the Request.

## **III. ARGUMENT**

### **A. Eversource Has Not Shown That An Alternative Method Satisfies The Purpose Of The Rule**

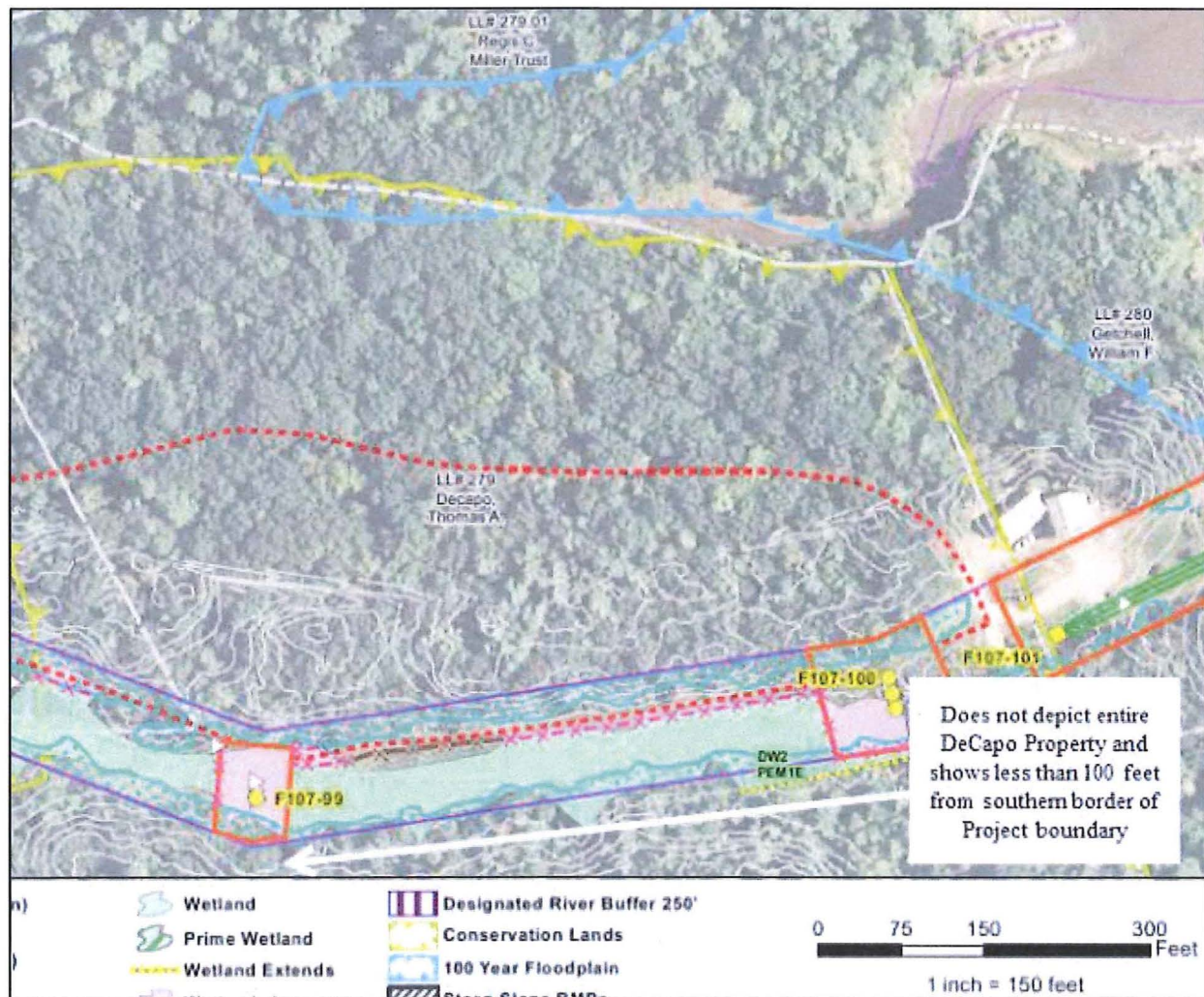
10. Eversource argues that the maps contained in the appendices of the application sufficiently satisfy the purpose of Site 301.03 such that full compliance with the mapping rules would not satisfy the public interest and would be "onerous and excessively burdensome." The "alternative method proposed" is therefore what Eversource has already



submitted to the Committee, which seemingly presumes that the Committee would accept the "alternative" without Eversource suggesting any other options.

11. But Eversource's failure to fully comply with Site 301.03 presents the Committee with incomplete information about the transmission line's impacts on abutting properties – including the DeCapo Property – and about the Project's impact on Little Bay.

12. For example, see these sections of Map 17 in Appendix 2:







Eversource makes unsubstantiated promises about the Project: "the Project will not discharge to surface waters or to groundwater, runoff from the Project will be appropriately controlled and directed away from surface waters and wetlands, and any soil disturbance will be restored after construction of the Project is complete." Eversource is essentially asking the Committee to simply trust that its limited mapping of surface waters and wetlands will be of no consequence.

14. Moreover, with respect to its non-compliant mapping of Little Bay, Eversource cites to the sediment dispersion modeling created by its own experts, which Eversource expects the Committee to accept at face value without the opportunity to evaluate potentially contradictory evidence that might be submitted by experts retained by other parties during the course of the proceedings. It is the role of the SEC – not of Eversource and Eversource's experts – to decide whether the Project will have unreasonable adverse effects and the provision of incomplete mapping as justification for a request for waiver of the mapping requirement effectively usurps the Committee's discretion in this regard.

15. Indeed, the role of the Committee is to make its own independent determinations, which is especially important where Eversource proposes to undertake an unprecedented method to construct the underwater section of the line – doing extensive jet plowing in Little Bay, which has extraordinarily swift and strong tidal currents. Eversource's own experts admit that Little Bay is a relatively small body of water such that, for example, its currents are not affected by the wind, noting that "the effect of wind is expected to show only in areas with relatively larger surface areas such as Great Bay proper and not Little Bay where the cable burial will occur." Appendix 35 at 2. Notwithstanding Little Bay's unusually unpredictable currents, Eversource is planning to plow three trenches, each between 4.67 and 9.17 feet deep, to bury three individual cables, stretching more than a mile across Little Bay.

This will disturb the sediment and release it into the Little Bay. Compliant mapping of Little Bay would enable the Committee to better assess the impact of the re-settled sediment and to more fully evaluate the opinions of Eversource's experts on this issue.

16. Indeed, an important resource not shown at all in Appendix 2, the only appendix that shows the abutting property borders, is the location and scope of existing shellfish beds in Little Bay – a natural resource that may be especially vulnerable to the re-settling of the displaced sediment. Although Appendix 7 includes maps that show the historical location of shellfish beds (Appendix 7, Figure 3.4-3) and the locations where certain shellfish were observed on a particular day (Appendix 7, 3.4-7), those maps are, to say the least, imprecise, and Eversource includes no maps that show the location of the shellfish vis-a-vis abutting property lines. Shellfish beds are an important natural resource. The location and impact on them is important to the DeCapo Family and should be important to the Committee.

17. Furthermore, it is well known that this area has been settled by Native Americans and then colonists since 1630 and that this area of Little Bay contains some of the least developed area with historical and cultural sites. The DeCapos have been informed by the vice president of the Durham Historic Association that there are likely many historical sites on the abutting properties in addition to those on the ROW as currently mapped by Eversource (specifically mentioned by the vice president was a 1600 mill adjacent to their property line and not included in the mapping provided by Eversource). The rule requires mapping beyond the project path itself precisely so that the Committee can see the full extent of the area impacted. By seeking to limit their mapping requirements, Eversource is seeking to deprive the Committee from taking into consideration the full extent of the historical/cultural and archeological resources in the area impacted by the Project.



18. In short, the limited mapping proffered by Eversource deprives abutting property owners, including the DeCapo Family, from fully analyzing the impact of the Project on their property and likewise impedes the Committee from fully assessing the impact of the Project, and there is no good cause for a waiver of the mapping requirements. Eversource should be directed, as the rules require, to show the entirety of abutting properties and to identify their "natural, historic, cultural, and other resources."

**B. Eversource Has Not Demonstrated That Fully Complying With The Mapping Requirements Would Be Onerous Or Inapplicable**

19. Eversource does not contend that the mapping requirements are inapplicable to the Project, but rather complains that fully complying with the mapping rule would be onerous because Eversource "would have to increase the size and scale of their Existing Conditions Mapping." Eversource does not claim that compliance with the rule is technically unfeasible or that it would be unduly expensive or provide any concrete basis to support these summary assertions. Instead, the Request appears to be an attempt to circumvent the SEC's ability to fully weigh the Project's environmental impact based on all the evidence required by the application and submitted during the course of the proceeding.

WHEREFORE, the DeCapo Family respectfully requests that the Site Evaluation Committee:

- A. Deny Eversource's Request;
- B. Order Eversource to supplement its Application as soon as possible to provide all of the information required by Site 301.03(c)(3)-(5); and
- B. Grant such other relief as the Site Evaluation Committee deems just and necessary.

Dated: October 20, 2016

Respectfully Submitted,



Irwin B. Schwartz\*  
Nicholas Cassie\*  
BLA Schwartz, PC  
One University Avenue, Suite 302B  
Westwood, Massachusetts 02090  
Phone: 781-636-5000  
Fax: 781-636-5090

CERTIFICATE OF SERVICE

I, Irwin B. Schwartz, hereby certify that an original and one copy of the foregoing motion has this 20 day of October, 2016 been sent Federal Express to the New Hampshire Site Evaluation Committee and via electronic mail to the SEC Distribution List.



Irwin B. Schwartz

---

\* Not admitted in New Hampshire.