STATE OF NEW HAMPSHIRE
SITE EVALUATION COMMITTEE

Docket No. 2015-04

Application of Public Service Company of New Hampshire d/b/a Eversource Energy for Certificate of Site and Facility

August 24, 2016

ORDER ON PETITIONS TO INTERVENE

I. Background

On April 12, 2016, Public Service Company of New Hampshire d/b/a Eversource Energy filed an Application for a Certificate of Site and Facility (Application) with the Site Evaluation Committee (Committee). The Application seeks the issuance of a Certificate of Site and Facility approving the siting, construction, and operation of a new 115kV electric transmission line between existing substations in Madbury and Portsmouth (Project.) The new transmission line will be approximately 12.9 miles in length. The project is comprised of a combination of above ground, underground, and underwater segments. The Project will be located in the Towns of Madbury and Durham in Strafford County and the Town of Newington and the City of Portsmouth in Rockingham County.

On April 29, 2016, pursuant to RSA 162-H:4-a, the Chair of the Committee appointed a Subcommittee in this docket (Subcommittee).

On June 13, 2016, the Subcommittee issued an Order finding that the Application contained sufficient information to carry out the purposes of RSA 162-H. On June 23, 2016, a Procedural Order was issued that, among other things, established the deadline for filing motions to intervene as July 22, 2016. The following timely motions to intervene were received:

- Town of Newington (Newington);

- Joint petition filed by The University of New Hampshire (UNH) and the Town of Durham (Durham);
- Conservation Law Foundation (CLF);
- Helen H. Frink;
- Durham Point/Little Bay Abutters (Little Bay);
- Thomas A. DeCapo and Yael D. DeCapo (DeCapos);
- Donna Heald McCosker (McCosker);
- Jason and Elizabeth Baker as owners of Fat Dog Shellfish Co., LLC (Fat Dog); and
- On July 25, 2016, a late motion to intervene was filed by The Nature Conservancy (TNC).

On August 1, 2016, the Applicant filed responses to the motions to intervene. The Applicant does not object to the petition to intervene filed by Newington, or to the joint petition filed by Durham and UNH to intervene as a single party. The Applicant does not object to the petitions to intervene filed by CLF, TNC, Ms. Frink, Little Bay, Ms. McCosker, the DeCapos or Fat Dog. However, the Applicant requests that the intervention granted to those intervenors be limited.

The Applicant asks that CLF, TNC, and Fat Dog be grouped as one party and required to combine their presentations of evidence, argument, cross examination and other participation in the proceeding pursuant to RSA 541-A: 32, III, and N.H. CODE OF ADMIN. RULES, Site 202.11(d)(3). In addition, the Applicant requests that CLF, TNC[1] and Fat Dog be limited in their participation to issues involving water quality and the natural environmental in the Great Bay estuary. *See* RSA 541:32, III(a); N.H. CODE OF ADMIN. RULES, Site 202.11(d)(1).

[1] TNC owns four properties upon which a portion of the Project will be constructed. The Applicant agrees that TNC's participation should include any issue that directly affects TNC's properties.

Similarly, the Applicant requests that Little Bay, the DeCapos, and McCosker be grouped as one party and required to combine their presentations of evidence, argument, cross-examination, and other participation pursuant to RSA 541-A:32, III, and N. H. CODE OF ADMIN. RULES, Site 202.11(d)(3). The Applicant also requests that the scope of participation of Little Bay, the DeCapos, and McCosker be limited to those issues that directly affect their properties. *See* RSA 541:32, III(a); N.H. CODE OF ADMIN. RULES, Site 202.11(d)(1). The Applicant also requests that Ms. Frink's intervention be limited to issues that directly affect the property that she owns. *See* RSA 541:32, III(a); N.H. CODE OF ADMIN RULES, Site 202.11(d)(1).

CLF, TNC, and the DeCapos each filed a response and objection to the Applicant's request that intervention be limited by combination or by issue.

II. Intervention

A. Standard for Intervention

The New Hampshire Administrative Procedure Act provides that an administrative agency must allow intervention when:

> (a) The petition is submitted in writing to the presiding officer, with copies mailed to all parties named in the presiding officer's notice of the hearing, at least 3 days before the hearing;
>
> (b) The petition states facts demonstrating that the petitioner's rights, duties, immunities or other substantial interests may be affected by the proceeding or that the petitioner qualifies as an intervener under any provision of the law; and
>
> (c) The presiding officer determines that the interests of justice and the orderly and prompt conduct of the proceedings would not be impaired by allowing the intervention. *See* RSA 541-A:32, I.

The statute also permits the presiding officer to allow intervention "at any time upon determining that such intervention would be in the interests of justice and would not impair the

orderly and prompt conduct of the proceedings." RSA 541-A:32, II. The Committee's rules contain similar provisions. *See* N.H. CODE ADMIN. RULES, Site 202.11 (b)-(c).

Pursuant to RSA 162-H:4, V, the presiding officer is authorized to rule on petitions for intervention. The presiding officer may limit the issues pertaining to a particular intervenor, limit the procedures in which a particular intervenor may participate, or combine intervenors and other parties for the purposes of the proceeding, so long as the limitations placed on the intervenors are not so extensive as to not prevent the intervenor from protecting the interest which formed the basis of intervention. *See* RSA 541-A:32, III and IV; N.H. CODE ADMIN. RULES, Site 202.11(d) and (e).

B. The Motions to Intervene

1. <u>Town of Newington</u>

A substantial part of the Project will be located within the Town of Newington. Newington requests that the Subcommittee allow it to intervene in this docket in order to address and protect its rights, duties, interests, and privileges that may be affected by the siting, construction and operation of the Project within the town. Newington also claims that the interests of justice and the orderly and prompt conduct of these proceedings will not be impaired by the granting its petition to intervene. The Applicant does not object to Newington's petition to intervene.

Under RSA 162-H:16, IV(b), the Subcommittee must give due consideration to the views of municipal and regional planning commissions and municipal governing bodies. RSA 541-A:39, I, requires the Subcommittee to afford municipalities a reasonable opportunity to submit data, views, or comments with respect to the issuance of any permit, license, or any other

action within its boundaries. Accordingly, the petition to intervene submitted by Newington is granted. The Town of Newington may intervene in these proceedings.

2. <u>The Town of Durham and the University of New Hampshire</u>

The Town of Durham and the University of New Hampshire, filed a joint petition to intervene as a single party. The Applicant does not object to the joint petition to intervene as a single party.

A significant portion of the project will be located in Durham and will pass through property owned by UNH. The Application identifies archaeological resources and historical sites in Durham that may be impacted by the project. In addition, the Applicant has contracted with UNH to acquire property for the location of a transition structure and an easement for the purpose of siting and constructing 2,100 feet of underground cable.

As noted above, the Subcommittee must give due consideration to the views of municipal and regional planning commissions and municipal governing bodies. *See* RSA 162-H:16, IV(b). As with Newington, the Subcommittee must afford Durham and UNH a reasonable opportunity to submit data, views, or comments with respect to the issuance of any permit, license, or any other action within its boundaries. *See* RSA 541-A:39, I. The petition filed by Durham and UNH to intervene as a single party is granted.

3. <u>Conservation Law Foundation</u>

CLF is a non-profit environmental advocacy organization dedicated to the protection and responsible use of New England's natural resources. It has approximately 3,300 members, 450 of whom reside in New Hampshire. CLF asserts that it includes members that reside in communities that the Project will cross and it represents members who use and enjoy the Great Bay estuary, including Little Bay. CLF submits that it has worked diligently on restoration of

water quality and the ecosystem in the Great Bay estuary, has a direct interest in protecting the estuary in the future, and employs a fully-staffed Waterkeeper program that monitors and advocates for the health of the Great Bay. CLF requests intervention so that it can protect its members' interests by addressing the effect of the Project on the Great Bay estuary and other natural resources.

The Applicant does not object to the intervention of CLF, but requests that its participation be combined with TNC and Fat Dog, and limited only as to potential impacts relating to water quality and the natural environment in the Great Bay estuary.

CLF, TNC, and Fat Dog all share similar concerns as to the impacts of the Project on the Great Bay estuary and the surrounding environment. TNC's interest also includes the impacts of the Project on the real estate it owns or has a legal interest. Fat Dog's interest also includes the impacts that the Project may have on its business interests.

The presiding officer may impose conditions on an intervenor's participation in the proceeding, including limiting an intervenor's participation to designated issues in which the intervenor has a particular interest demonstrated by the petition, so long as the limitations are not so extensive as to prevent the intervenor from protecting the interest which formed the basis of the intervention. *See* RSA 541-A: 32, III and IV; and N. H. CODE OF ADMIN. RULES, Site 202.11(d)(1) and (e).

CLF has demonstrated a substantial interest in the outcome of this proceeding on behalf of its members to justify intervention, in that it has demonstrated a substantial interest in protecting and addressing the effects of the Project on the Great Bay estuary, including Little Bay, as well the impact of the Project on water quality and the environment. In order to promote the efficient and orderly process of the proceeding, CLF's motion to intervene is granted with the

limitation that its participation shall be limited to discovery, evidence, and cross-examination on the specific impacts of the Project on air and water quality, and the natural environment. This limitation is not so extensive as to prevent CLF from protecting the interest which formed the basis of its intervention.

4. <u>The Nature Conservancy</u>

TNC is a 501(c)(3) non-profit organization dedicated to conservation for the benefit of people and nature. TNC asserts that it owns or has a direct legal interest, in four properties totaling more than 270 acres on which a portion of the Project, if constructed, will be sited. TNC also argues that it was involved in oyster reef restoration projects in the Great Bay estuary and the Project may impact TNC's interests since a portion of the Project is proposed to be sited in the Great Bay estuary. TNC concludes that in light of these interests, that its rights, duties, privileges, immunities or other substantial interests may be affected by the proceeding.

The Applicant does not object to the intervention of TNC, but requests that its participation be combined with CLF and Fat Dog, and also limited to the potential impacts on water quality and the natural environment in the Great Bay estuary, and to water quality and the natural environment as it relates to the properties owned or encumbered by TNC.

TNC, CLF, and Fat Dog all share an interest in the potential impacts of the Project on the Great Bay estuary. TNC is also concerned about the impacts on its four properties on which a portion of the Project would be located.

TNC has demonstrated a substantial interest in the outcome of this proceeding to justify intervention. TNC has an interest in protecting and addressing the effects of the Project on the Great Bay estuary and other natural resources, as well protecting its interests, rights and privileges that stem from its land ownership and conservation easements within the Project area.

TNC's motion to intervene is granted without limitations.

5. Individual Parties

a. Helen H. Frink

In support of her petition to intervene, Ms. Frink asserts that she, John D. Frink, and Sara F. Ryder, jointly own real estate located at 272 Nimble Hill Road in Newington, New Hampshire (Frink Farm). She asserts that the Project will cross this real estate and, consequently, that the proceeding will affect her rights, duties, privileges, or other substantial interests.

The Applicant does not object to Ms. Frink's intervention. The Applicant requests, however, that her participation is limited to the Project's impact on aesthetics, historic sites, the natural environment, water quality, property values and public health and safety as it relates solely to her jointly owned property.

As an owner of land where the Project, if approved, will be located, Ms. Frink has a substantial interest in the outcome of these proceedings. She should be allowed to intervene so that she can address the impact of the Project on her rights, duties, privileges, or other substantial interests. Apart from having a direct impact on her real estate, the Project may have an indirect impact on Ms. Frink and the Frink Farm by impacting the orderly development of the region, the environment and water quality in the region, the local economy and the real estate market in the region. In addition, the financial, managerial and technical capabilities of the Applicant may affect Ms. Frink's interests in the outcome of this proceeding. Ms. Frink's motion to intervene is granted without limitations.

b. Durham Residents

The following residents of Durham filed a joint petition to intervene as a single party as the "Durham Point/Little Bay Abutters" group of intervenors: (i) Mathew and Amanda Fitch

(291 Durham Point Road, Durham, New Hampshire); (ii) Jeffrey and Vivian Miller (297 Durham Point Road, Durham, New Hampshire); (iii) Lawrence and Anne Gans (289 Durham Point Road, Durham, New Hampshire); and (iv) Deborah Moore (305 Durham Point Road, Durham, New Hampshire). The Little Bay group claims that the Project right-of-way either crosses their properties or abuts it, and that its rights, duties, privileges, immunities or other substantial interests may be affected by the proceeding.

Thomas A. DeCapo and Yael D. DeCapo own property at 313 and 315 Durham Point Road in Durham, New Hampshire, and also hold certain interests in another adjacent parcel of real estate. They claim that the Project will cross their property and will cross Little Bay in an area that is adjacent to and in front of their real property. They are concerned about the effect of the Project on their property and the Little Bay.

Donna Heald McCosker resides at 220 Longmarsh Road in Durham, New Hampshire. She asserts that the Project will cross her property and will have a significant impact on her well, her design and gardening business, and aesthetics.

The Applicant does not object to the requests to intervene filed by the Little Bay group, the DeCapos, or Ms. McCosker. The Applicant requests that they are combined as one group of intervenors and that the scope of their intervention is limited solely to the effects of the Project on their properties.

The Little Bay group, the DeCapos, and Ms. McCosker have a direct interest in the outcome of these proceedings. Construction and operation of the Project, if permitted, will have a direct impact on their real estate and their rights, interests, and privileges as property owners. The Project may impact their rights directly and indirectly. Limitation of the intervenors' participation to the direct impacts of the Project on their properties will deprive them of the

opportunity to address impacts that the Project may have if the Applicant does not have the financial or technical capacity to construct and operate the Project in accordance with the Certificate, or if it impacts the orderly development and economy of the region, and the real estate market. The Little Bay group, the DeCapos, and Ms. McCosker petitions to intervene in this docket are granted without limitation, subject to the condition that follows.

The Little Bay group, the DeCapos, and Ms. McCosker reside in close proximity to each other and expressed substantially similar interests in the proceeding. In order to avoid duplicative arguments and to ensure the prompt and orderly development of these proceedings, their participation in this docket shall be combined for the purposes of presentation of evidence, argument, cross-examination, and other participation. *See* RSA 541-A:32, III; and N.H. CODE OF ADMIN. RULES, Site 202.11(d)(3). The group will be referred to as the Durham Residents.

c. Fat Dog Shellfish Co., LLC

Jason and Elizabeth Baker are exclusive members of Fat Dog Shellfish Co., LLC. They assert that Fat Dog is a 12-acre oyster farm located in Little Bay. They further submit that four acres of the farm will be located a few hundred meters north of the Project's crossing in Little Bay. The Bakers are concerned about the impact the Project may have on oyster production and their business in general.

The Applicant does not object to the Fat Dog's intervention. It requests that Fat Dog's participation in this docket is combined with CLF and TNC, and that Fat Dog's participation be limited to the impacts of the Project on water quality and the natural environment of the Great Bay estuary.

Construction of the Project may impact the growth, production, and distribution of Fat Dog's oyster farm, resulting in a negative effect on its business. Jason and Elizabeth Baker shall

be allowed to intervene in this docket in order to address and protect Fat Dog's, rights, duties, privileges, or other substantial interests. These are different from the interests of CLF and TNC. Although Fat Dog, CLF, and TNC are each concerned about the impact of the Project on the Great Bay estuary, Fat Dog is also concerned about the Project's impact on its business. Fat Dog's participation cannot reasonably be combined with CLF's and TNC's participation in this docket. Fat Dog's interests are not limited to the Project's impact on Great Bay and natural resources, and also involve the Project's impact on the local economy, orderly development of the region, and the public interest. Fat Dog's motion to intervene is granted without limitations.

III. Orders

It is hereby ordered that the petitions to intervene filed by the following parties are granted, subject to conditions set forth in the Order:

1. Town of Newington – as a single party;
2. Town of Durham and the University of New Hampshire – as a group;
3. Conservation Law Foundation – as a single limited party;
4. The Nature Conservancy – as a single party;
5. Helen H. Frink – as a single party;
6. The "Durham Point/Little Bay Abutters" - Mathew and Amanda Fitch, Jeffrey and Vivian Miller, Lawrence and Anne Gans, Deborah Moore, Thomas A. DeCapo and Yael D. DeCapo, and Donna Heald McCosker – as a group, referred to as the Durham Residents; and
7. Jason and Elizabeth Baker as members of Fat Dog Shellfish Co., LLC – as a single party.

It is further ordered that each group of intervenors shall designate a spokesperson, and notify the Administrator of the designee. The designee will be responsible for communicating

with the Subcommittee, the Applicant, and the other parties in this docket with respect to conducting discovery and filing pleadings.

SO ORDERED this twenty-fourth day of August, 2016.

Robert R. Scott, Presiding Officer
Site Evaluation Committee