

**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**

May 25, 2017

**ORDER ON LATE-FILED PETITION TO INTERVENE
(Dr. Regis C. Miller)**

This Order grants, with limitations, a late-filed motion to intervene in this docket.

I. Background

On June 23, 2016, the Subcommittee issued a Procedural Order setting forth, among other deadlines, a deadline for filing petitions to intervene on July 22, 2016. On August 24, 2016, an Order on Petitions to Intervene was issued. Following the Order, a number of intervenors filed motions for reconsideration and/or rehearing. On October 10, 2016, the Subcommittee conducted a hearing on the pending motions. Following the hearing, on November 29, 2016, the Subcommittee issued Orders addressing the requests for reconsideration and/or rehearing.

On October 17, 2016, a Procedural Schedule was issued establishing a timeline for discovery in this docket. On December 15, 2016, the Town of Durham and the University of New Hampshire filed a partially assented to Motion to Postpone the Procedural Schedule. On the same day, an Order granting the Motion to Postpone was issued. On January 20, 2017, the Applicant filed an Uncontested Motion to Stay Procedural Schedule. By Order dated February 15, 2017, the Presiding Officer granted the Applicant's Motion to Stay Procedural Schedule until such time as an amendment to the Application was filed and the Applicant and the parties submitted a new proposed procedural schedule. On March 29, the amendment to the Application

was filed. On April 3 and April 5, respectively, the Applicant and the Town of Newington submitted proposed revised procedural schedules. On April 26, 2017, the Subcommittee held a public meeting to address various procedural matters and on May 22, 2017, an Order and Revised Procedural Schedule was issued. Under the current procedural schedule, Counsel for the Public and all Intervenors were required to submit data requests to the Applicant by April 19, 2017, and the Applicant was required to respond by May 12, 2017. The technical sessions in this docket are scheduled to begin on May 30, 2017.

On May 1, 2017, the Subcommittee received a late-filed Petition to Intervene from Dr. Regis C. Miller. The Applicant objected to Dr. Miller's Petition on May 11, 2017.

II. 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 intervenor 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 Administrative Procedure Act and our procedural rules also allow the Presiding Officer to place limits on an intervenor's participation. *See* RSA 541-A:32, III; N.H. CODE ADMIN. RULES, Site 202.11(d). If the petition is undisputed, the Presiding Officer shall grant a late-filed petition to intervene upon a determination that such intervention would be in the interests of justice and would not impair the orderly and prompt conduct of the hearings. N.H. CODE ADMIN. RULES, Site 202.11 (c). 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 intervenors do not prevent the intervenor from protecting an interest that formed the basis of intervention. *See* N.H. CODE ADMIN. RULES, Site 202.11(d). Any party aggrieved by a decision on a petition to intervene may, within 10 calendar days, request that the committee review such decision. *See* RSA 162-H:4, V.

III. Positions Of The Parties

Dr. Miller owns real estate located at 283 Durham Point Road in Durham, New Hampshire. She claims that a portion of the Project will run through her property. Dr. Miller also asserts that her substantial interests may be affected by this proceeding as a property owner and abutter with right-of-way easements for an approximately 2,738 linear foot portion of the project. Dr. Miller also asserts that her intervention will not affect the orderly and prompt conduct of the proceedings.

The Applicant argues that Dr. Miller's Petition should be denied because it was not properly filed pursuant to Site 202.11, that it was filed 283 days after the deadline that was set by the Presiding Officer, and that allowing intervention at this stage of the proceeding will impair

the orderly and prompt conduct of the proceedings. Specifically, the Applicant asserts that the parties have already propounded data requests upon the Applicant and allowing Dr. Miller to intervene at this stage of the proceeding would create a risk that her participation would undercut and interfere with the orderly and prompt conduct of the proceeding.

The Applicant also states that Dr. Miller's Petition does not allege or establish that the Project would directly affect Dr. Miller in any way and that the Petition merely alleges that the Project may affect Dr. Miller's property for 2,738 feet. The Applicant argues that the Project will not traverse Dr. Miller's property at all, but does acknowledge that she is an abutter to the northerly edge of the Project right-of-way, next to the Gans' property, for approximately 690 feet. In the alternative, the Applicant requests that if Dr. Miller's Petition is granted that the Presiding Officer group her with the "Durham Residents" for purposes of filing motions, conducting discovery, and examination at the adjudicative hearing.

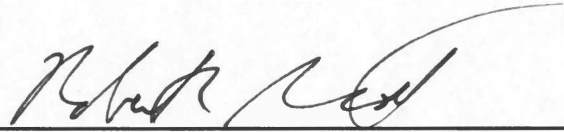
IV. Analysis

Both the Petition and the Applicant state that the Project right-of-way abuts Dr. Miller's property; therefore, she has a substantial interest in the outcome of these proceedings. She should be allowed to intervene so that she can address the impacts of the proposed Project on her interests, rights, and privileges. Dr. Miller's concerns, however, are substantially similar to the concerns raised by the "Durham Residents" group of intervenors. To avoid duplicative arguments and to ensure the prompt and orderly conduct of the proceedings, Dr. Miller's participation in this docket shall be combined for purposes of presentation of evidence, argument, cross-examination, and other participation, with the "Durham Residents" group of intervenors. Since the deadlines for propounding data requests on the Applicant have passed, the parties have already undertaken extensive discovery, and technical sessions are scheduled to

begin on May 30, Dr. Miller's participation is limited to the timelines established in the Procedural Order issued on May 22, 2017, on a "going forward" basis.

Dr. Miller's Petition to Intervene is granted, with the limitations set-forth above.

SO ORDERED this 25th day of May, 2017.

A handwritten signature in black ink, appearing to read "Robert R. Scott", is written over a horizontal line.

Robert R. Scott, Presiding Officer
Site Evaluation Committee