

**STATE OF NEW HAMPSHIRE
SITE EVALUATION COMMITTEE**

Docket No. 2015-06

**Joint Application of Northern Pass Transmission, LLC
and Public Service Company of New Hampshire
d/b/a Eversource Energy for a Certificate of Site and Facility**

June 23, 2016

**ORDER ON APPLICANT'S REQUEST
FOR PARTIAL WAIVERS UNDER THE NEWLY ADOPTED SEC RULES**

I. BACKGROUND

On October 19, 2015, Northern Pass Transmission, LLC and Public Service Company of New Hampshire d/b/a Eversource Energy (collectively Applicant) submitted an Application to the New Hampshire Site Evaluation Committee (Committee) for a Certificate of Site and Facility (Application) to construct a 192-mile transmission line. The transmission line is proposed to have a capacity rating of up to 1,090 MW. The line is proposed to run from the Canadian border in Pittsburg, New Hampshire to Deerfield, New Hampshire.

On November 2, 2015, pursuant to RSA 162-H:4-a, the Chairman of the Committee appointed a Subcommittee (Subcommittee).

On December 7, 2015, the Subcommittee reviewed the Application. The Subcommittee determined that the Application contained sufficient information to satisfy the application requirements of each state agency having jurisdiction under state or federal law to regulate any aspect of the construction or operation of the proposed facility. *See* RSA 162-H:7, IV. The Subcommittee also made an independent determination that the Application contains sufficient information to carry out the purposes of RSA 162-H. *See* RSA 162-H:7, III; Order Accepting Application (December 18, 2015).

On December 16, 2015, the Committee readopted its administrative rules with amendments. *See* N.H. CODE ADMIN. R. ANN. Site 100, 200, 300. The readoption of the administrative rules was statutorily required. *See* RSA 162-H:10, VII. On December 28, 2015, the Committee's Administrator directed the Applicant to supplement the Application so that it would comply with the readopted rules. The Applicant filed supplemental documentation on February 26, 2016. The Applicant also filed a Request for Partial Waivers Under the Newly Adopted SEC Rules. This Order addresses that request.

The following parties responded to the request for rule waivers:

- Counsel for the Public;
- Society for the Protection of New Hampshire Forests;
- Conservation Land Foundation;
- Appalachian Mountain Club;
- Town of Bethlehem and Bethlehem Selectboard;
- Grafton County, individually, and a the temporary spokesperson for the Intervenor Group Grafton County Commissioner and Rick Samson, Coos County Commissioner;
- National Trust for Historic Preservation, NH Preservation Alliance, Sugar Hill Historical Museum, and North County Scenic Byways Council (Preservation Intervenor);
- Towns of Bridgewater, Bristol, Easton, Franconia, Littleton, New Hampton, Northumberland, Sugar Hill, Whitefield and Woodstock and the City of Concord;
- City of Berlin;
- Non-Abutting Property Owners: Ashland-Deerfield (By Thomas Foulkes, Temporary Spokesperson);
- Abutting Property Owners: Ashland-Deerfield
- Proposed Deerfield Abutting Property Owners Intervenor;
- Abutting Property Owners: Bethlehem-Plymouth (By Walter Palmer, Designated Spokesperson);
- Jo Anne Bradbury;
- Bruce Ahern;
- Andrew Dodge; and
- Mary A. Lee.

II. MOTION AND OBJECTIONS

A. Applicant's Request for Waiver of Rules Related to Mapping and Identification.

The Applicant seeks partial waivers from the requirements of the following rules: (i) 301.03(c)(3) – identification of property lines, residences, industrial buildings, and other structures and improvements; (ii) 301.03(c)(4) – identification of wetlands and surface waters; (iii) 301.03(c)(5) – identification of historic resources; and (iv) 301.08(c)(2) – decommissioning.

1. Site 301.03(c)(3)-(5).

Under the New Hampshire Code of Administrative Rules, Site 301.03(c)(3)-(5), the Applicant is required to provide the following information with respect to the site of the proposed energy facility and alternative locations that the Applicant considers available for the proposed facility:

- (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.

See N.H. CODE ADMIN. R. ANN. Site 301.03(c)(3)-(5).

a. *Alternative Route.*

The Applicant seeks waiver of Site 301.03(c)(3)-(5) as the rules apply to the information pertaining to the alternative locations available for the Project. In support, the Applicant asserts that the only alternative route that the Applicant considered as available, is a 47-mile overhead transmission line along an existing right-of-way through the White Mountain National Forest. The Applicant admits that said route remains technically available, but argues that it has no intention of pursuing this alternative. It concludes that the alternative is no longer “feasible” and is therefore, unavailable. The Applicant asks the Subcommittee to waive the provisions of Site 301.03(c)(3)-(5), that require the Applicant to identify property lines, residences, industrial buildings, other structures and improvements, wetlands and surface waters, and natural, historic, cultural and other resources for the alternative route.

The Applicant submits that requiring the Applicant to identify property lines, residences, industrial buildings, other structures and improvements, wetlands and surface waters, and natural, historic, cultural and other resources for an alternative route that is no longer “feasible” would require significant additional mapping and resources, would be onerous and excessively burdensome, and would not serve the public interest. The Applicant has represented to the Subcommittee that it is not seeking certification of the alternative route, and that if it were to seek certification of the alternate route at some future date, it would submit a new application to the Subcommittee for consideration.

b. *Location of Property Lines, Residences, Industrial Buildings, and Other Structures and Improvements - Site 301.03(c)(3).*

The Applicant asserts that the plan sheets that have already been provided to the Subcommittee identify the locations of property lines, residences, industrial buildings, other structures and improvements within ¼ mile of the Project. It acknowledges that the plan sheets

do not identify property lines, residences, industrial buildings, other structures and improvements located on abutting properties that extend beyond ¼ mile of the Project. The Applicant argues, however, that it is “impractical and unreasonably burdensome” to require the Applicant to provide such information. The Applicant argues that the rule on its face could be read to require the Applicant to identify property lines, residences, industrial buildings and other structures and improvements on entire parcels of an abutting property, no matter the size, and that such an undertaking is unreasonably burdensome. The Applicant further asserts that waiver of the rule requiring it to provide information about property lines, residences, industrial buildings, other structures and improvements located on abutting properties extending beyond ¼ mile of the Project, would not disrupt the orderly and efficient resolution of these proceedings because such information is not pertinent and “would only have the effect of shifting the Committee’s analysis away from the Project proper and towards boundary lines and buildings that cannot reasonably be expected to be impacted.” *See Applicants’ Request for Partial Waivers Under the Newly Adopted Rules dated February 26, 2016.* The information provided by the Applicant consists of approximately 198 plan sheets.

During the Hearing, the Applicant advised the Subcommittee that it would take a “couple weeks of efforts” to identify residences, industrial buildings and structures that are located on abutting properties beyond ¼ mile of the Project. The Applicant further indicated that it would take more than nine hundred additional plan sheets to identify property lines, residences, industrial buildings, other structures and improvements beyond ¼ mile of the Project.

c. Wetlands and Surface Waters - Site 301.03(c)(4).

The Applicant asserts that it has already identified wetlands and surface waters within or adjacent to the Site. The Applicant also submits that it has provided the following supplemental

documentation pertaining to the wetlands and surface waters that are approximately ¼ mile of the Project's right-of-way: (i) within 100 feet of the Project - photo-estimated wetland boundaries derived through a combination of field delineation at the edge of the right-of-way and interpretation of the Project's contours and aerial photographs; and (ii) from 100 feet of the Project to approximately ¼ mile of the Project - approximate wetland and stream boundaries derived from National Hydrography Dataset stream layers and national Wetland Inventory mapping. The Applicant argues that it is "extremely unlikely" that the Project will have any effect on any water body outside of ¼ mile from the Project's right-of-way. The Applicant further asserts that strict compliance with the rule would require it to expend significant resources and completely re-work the size and scale of Project Maps, without any corresponding benefit in assisting the SEC to review the Project. Finally, the Applicant argues that waiver of this rule would not disrupt the orderly and efficient resolution of matters before the Subcommittee.

During the Hearing, the Applicant did not claim a lack of access to abutting properties. The Applicant did assert, however, that the identification of wetlands and surface waters beyond ¼ mile of the Project would involve mapping of approximately 383 properties on over 900 plan sheets. The Applicant also stated that the information provided beyond 100 feet of the Project is "old and unreliable." Finally, the Applicant stated that construction and operation of the Project will not have a "direct" effect on the wetlands and surface waters beyond 100 feet of the Project.

d. *Historic Resources - Site 301.03(c)(5).*

The Applicant requests waiver of Site 301.03(c)(5), as it applies to: (i) the above ground historic resources that are located on abutting properties beyond one mile of the Project's right-of-way; and (ii) archeological resources outside of the Project's corridor.

The Applicant asserts that it has already identified above ground historic properties within one mile from the edge of the right-of-way. That Applicant submits that this is the Area of Potential Effect (APE) as designated by the United States Department of Energy (USDOE) and the NH Division of Historical Resources (DHR). The Applicant further asserts that it identified the potential visual effects on historic sites located beyond one mile that are listed on the state and national registers of historic places in the Visual Impact Assessment filed with the Subcommittee and that it would be “onerous and inapplicable” to require the Applicant to identify above ground historic properties that are located on abutting properties beyond one mile from the edge of the right-of-way.

The Applicant further states that it identified archeological resources within the corridor proper and that it also obtained the location of known archeological sites within one mile of the Project from the Division of Historic Resources. The Applicant argues, however, that the Project will not have any effect on archeological resources located outside of the Project’s corridor. The Applicant submits that it is not plausible that the construction and operation of a linear transmission line would impact archeological resources outside of the APE, let alone up to a mile away. The Applicant concludes that identification of archeological resources located outside of the Project’s corridor would not provide value to the public or to the Subcommittee, would be unduly burdensome, and would only have the effect of shifting the Committee’s attention away from the Project proper and towards historical and cultural resources that cannot reasonably be expected to be impacted.

The Applicant also asserts that waiver of the rule requiring it to identify above ground historic resources beyond one mile of the Project and archeological resources beyond the

corridor of the Project would not disrupt the orderly and efficient resolution of matters before the Subcommittee.¹

The Applicant did not state that it lacks access to these properties, but rather that it would be onerous and inapplicable to the Project to require the Applicant to identify above ground historic resources that are located on abutting properties beyond one mile from the edge of the right-of-way and archeological resources beyond the corridor of the Project.

2. Decommissioning - Site 301.08(c)(2).

Under the New Hampshire Code of Administrative Rules, Site 301.08(c)(2), the Applicant is required to provide the following information:

- (2) A facility decommissioning plan prepared by an independent, qualified person with demonstrated knowledge and experience in similar energy facility projects and cost estimates; the decommissioning plan shall include each of the following:
 - a. A description of sufficient and secure funding to implement the plan, which shall not account for the anticipated salvage value of facility components or materials;
 - b. The provision of financial assurance in the form of an irrevocable standby letter of credit, performance bond, surety bond, or unconditional payment guaranty executed by a parent company of the facility owner maintaining at all times an investment grade credit rating;
 - c. All transformers shall be transported off-site; and
 - d. All underground infrastructure at depths less than four feet below grade shall be removed from the site and all underground infrastructure at depths greater than four feet below finished grade shall be abandoned in place.

See N.H. CODE ADMIN. R. ANN. Site 301.08(c)(2).

¹ In conclusion, the Applicant asserts that providing the maps beyond ¼ mile of the Project would not add additional pertinent information and would shift the Subcommittee's analysis. The entire section and analysis addressing historic resources, however, does not reference ¼ mile. The section specifically addresses a one mile limit, for above ground historic resources and the Project's corridor for archeological resources.

The Applicant does not request that the Subcommittee waive Site 301.08(c)(2)c, and asserts that it will remove all transformers from the Site. The Applicant requests that the Subcommittee waive the following requirements of Site 301.08(c)(2): (i) the requirement to hire independent experts to develop a decommissioning plan for the Project; (ii) the requirement to provide forms of financial assurances identified in Site 301.08(c)(2)b; and (iii) the requirement to remove all underground infrastructure at depths less than four feet below grade identified in Site 301.08(c)(2)d.

The Applicant argues that the requirement to hire an independent third-party to prepare the decommissioning plan should be waived because such plan has already been addressed in the Transmission Service Agreement that was prepared by the Applicant's experts, and such a requirement is inapplicable to transmission projects that are expected to remain in service for decades and are rarely decommissioned. During the hearing, the Applicant also argued that while the rules require submittal of a decommissioning plan prepared by an independent qualified expert, the rules and RSA 162-H, do not require the Applicant to provide a detailed "engineering" decommissioning plan, and that the decommissioning sections of the Transmission Service Agreement comply with Site 301.08(c)(2).

The Applicant further argues that the requirement to provide certain forms of financial assurance of decommissioning contained in Site 301.08(c)(2)b, should be waived because the Applicant provided a satisfactory alternative mechanism for funding of decommissioning in the Transmission Service Agreement. The Applicant also claims that sufficient funds will be designated for decommissioning of the Project in case of early termination of the Transmission Service Agreement.

The Applicant argues that it should not be required to remove all underground infrastructure at depths less than four feet below grade because the Project will be built within an existing right-of-way and removal of infrastructure located within this right-of-way is unnecessary, and could potentially create more severe environmental impacts in certain locations.

B. Objections.

1. Counsel for the Public.

Counsel for the Public does not object to the Applicant's request to waive the rules as they apply to the alternative route, subject to a condition that the Applicant agrees not to seek certification of the alternative route without submitting a new Application. The Applicant agrees to that condition.

As to the Applicant's request to waive the rules requiring the Applicant to identify structures, buildings, improvements, wetlands, surface waters, and historic resources on abutting properties, Counsel for the Public argues that the Applicant failed to demonstrate that such requirements are onerous because the Applicant did not identify any specific facts that would demonstrate and prove it.

As to the decommissioning requirement, Counsel for the Public asserts that the Transmission Service Agreement does not comply with requirements of the rules and, therefore, cannot be used as a viable alternative to the decommissioning plan. Counsel for the Public also asserts that the Transmission Service Agreement does not contain a decommissioning plan and does not contain provisions that would require the Applicant to develop a certain and specific decommissioning plan. Therefore, Counsel for the Public concludes that the Transmission

Service Agreement cannot substitute for a decommissioning plan that is required by the administrative rules.

Counsel for the Public also asserts that the rules call for the decommissioning plan prior to the construction of the Project, so that citizens of New Hampshire can be assured that there is a plan that will come into effect regardless of the Applicant's relationship with its partners.

Counsel for the Public concludes that an alternative that would require the Applicant to file the decommissioning plan at some uncertain time in the future, does not satisfy such objective and, therefore, cannot be considered and used as a viable alternative.

2. SPNHF.

The Society for the Protection of New Hampshire Forests (SPNHF) joins Counsel for the Public's Objection and agrees with its reasoning. SPNHF, however, asserts that the same reasoning should be applied to the requirement to identify structures, buildings, improvements, wetlands, surface waters, and historic resources on abutting properties of the Project's alternative route. SPNHF further argues that the Applicant should be required to comply with the rules because the Applicant knew the extent and subject matter of the regulations prior to their promulgation, and compliance with the rules will guarantee that people and entities that may be affected by the Project, will receive sufficient information for determining the extent of the Project's impact.

During the Hearing, SPNHF further asserted that the Subcommittee cannot, and will not, be able to determine whether the Project is in the "public interest," without having a valid decommissioning plan before it.

3. CLF.

The Conservation Law Foundation joined Counsel for the Public's Objection.

4. AMC.

The Appalachian Mountain Club (AMC) joined and agreed with Counsel for the Public's Objection. AMC further asserts that the Applicant actively participated in developing the administrative rules currently in effect. AMC argues that the Applicant's request is an attempt to avoid compliance with the rules and that, considering that the Applicant's parent company has a history of improperly decommissioning transmission lines, the Applicant should be required to provide a decommissioning plan together with its Application. Finally, AMC argues that the Subcommittee does not have the resources and expertise that would enable it to enforce the development and implementation of a decommissioning plan at some unidentified future date.

5. Town of Bethlehem and Bethlehem Selectboard.

The Town of Bethlehem Board of Selectmen, Planning Board, and Conservation Commission (collectively Town of Bethlehem) objected to the Applicant's request to waive the rules addressing the decommissioning of the Project. The Town of Bethlehem argues that the Project will include transition stations and other infrastructure, and the Applicant's assertion that decommissioning of such infrastructure would not be environmentally beneficial is without merit. The Town of Bethlehem further argues that the Applicant's assertion that transmission lines are hardly ever decommissioned is without merit. The Bethlehem Selectboard further argues that allowing the Applicant to abandon large industrial infrastructure in the future, will adversely impact property values of the neighborhood.

6. Grafton County Commissioners and Coos County Commissioner Rick Samson.

The Grafton County Commissioners, individually, and the temporary spokesperson for the Intervenor Group Grafton County Commissioner and Rick Samson, Coos County Commissioner, joined in the objections filed by Counsel for the Public, AMC, and SPNHF.

7. National Trust for Historic Preservation, NH Preservation Alliance, Sugar Hill Historical Museum, and North Country Scenic Byways Council (Preservation Intervenors).

The National Trust for Historic Preservation, NH Preservation Alliance, Sugar Hill Historical Museum and North Country Scenic Byways Council (hereinafter the Preservation Intervenors), joined in and incorporated by reference the Objection of Counsel for the Public and the arguments contained therein. The Preservation Intervenors additionally assert that the Applicant's waiver request suggests that all of the study within the APE has been completed and that the boundaries of the APE are fixed, however the APE boundaries have not yet been finalized and many consulting parties have specifically objected to an arbitrary one mile APE boundary. The Preservation Intervenors further argue that there is a reasonable likelihood that above ground historic resources outside of the one mile APE located on abutting properties would also suffer unreasonable adverse effects due to visual impacts caused by the construction of the Project, and that those historic resources will not be identified if the Applicant is not required to follow the new SEC rules.

8. Towns of Bridgewater, Bristol, Easton, Franconia, Littleton, New Hampton, Northumberland, Sugar Hill, Whitefield and Woodstock and the City of Concord.

The Towns of Bridgewater, Bristol, Easton, Franconia, Littleton, New Hampton, Northumberland, Sugar Hill, Whitefield and Woodstock and the City of Concord joined in the Objection of Counsel for the Public.

9. City of Berlin.

The City of Berlin took no position regarding to the Applicant's request.

10. Non-Abutting Property Owners: Ashland-Deerfield (By Thomas Foulkes, Temporary Spokesperson).

The Non-Abutting Property Owners: Ashland-Deerfield Intervenor Group join in the Objections filed by Counsel for the Public and SPNHF. The Non-Abutting Property Owners: Ashland-Deerfield Intervenor Group argues that they, the Subcommittee, and other impacted individuals and entities, are entitled to the information that the law requires the Applicant to provide for purposes of assessing the adverse impacts of the proposed Project. The Non-Abutting Property Owners: Ashland-Deerfield group, argues that the Applicants have not explained why they should not comply with the new rules despite prior knowledge of their promulgation and adoption. The group argues that the waiver requests fly in the face of one of the important purposes of the statute and rules governing the siting process – to provide potentially impacted individuals and entities with sufficient information to understand whether and how the proposed development might affect them. The group further disagrees with the Applicant's argument that the Transmission Service Agreement satisfies the decommissioning requirements. The group proposes that if the Applicant finds the new rules burdensome, then it should not object to petitions to extend the schedule, as this would give them additional time to comply with the rules from which they have sought waivers.

11. Abutting Property Owners: Ashland-Deerfield.

The Abutting Property Owners: Ashland-Deerfield Intervenor Group expressed the following opinions with respect to the Applicant's waiver requests:

With respect to compliance with Site 301.03(c)(3)-(5) for alternative locations, the Abutting Property Owners: Ashland-Deerfield Intervenor Group takes the position that the

Subcommittee should permit the waiver only if the Applicant formally and officially removes the alternate 47-mile pathway from the Project. If this condition is not met, the Abutting Property Owners: Ashland-Deerfield Intervenor Group takes the position that the Subcommittee should deny the waiver request as a waiver would not serve the public interest.

With respect to Site 301.08(c)(2) decommissioning requirements, the Abutting Property Owners: Ashland-Deerfield Intervenor Group takes the position that the Subcommittee should deny the waiver request. The group argues that the decommissioning plan filed with Federal Energy Regulatory Commission (FERC) does not satisfy the requirements, and granting the waiver would not serve the public interest.

12. Proposed Deerfield Abutting Property Owners Intervenors.²

The Deerfield Abutting Property Owners group objects to the Applicant's requests for partial waivers under the newly adopted rules. The Deerfield Abutting Property Owners group is concerned with the visual impacts of the Project on the historic resources of the Town. Specifically, the group notes that there is a section along Nottingham Road in Deerfield, that has no less than 31 antique homes in a mile long stretch identified as a Rural Historic District, and that intervenors along the right-of-way in Deerfield believe that there are additional historic resources outside of the one mile boundary that may be adversely impacted visually by the Project. The group argues that these historic resources must be identified, and that the Applicant should be required to abide by the administrative rules. The Deerfield Abutting Property Owners group further agrees with the position of the Preservation Intervenors that it will be impossible for the Subcommittee to determine whether there will be unreasonable adverse effects to historic

² The Proposed Deerfield Abutting Property Owners group was approved by Order dated May 20, 2016. *See* Subcommittee Order on Review of Intervention dated May 20, 2016.

resources if the Applicant is not required to fully identify the potentially impacted landscape scale resources.

13. Abutting Property Owners: Bethlehem-Plymouth

The Abutting Property Owners: Bethlehem-Plymouth Intervenor Group joins in the Objection of Counsel for the Public. The Abutting Property Owners: Bethlehem-Plymouth Intervenor Group, additionally argues that failing to require a decommissioning plan increases the likelihood that Project infrastructure will be abandoned in place at the end of its productive life. The group argues that if the infrastructure is abandoned in place that: (i) the cable and splice boxes installed in the underground portions of the line located in the town centers will be obstructions to underground infrastructure installation, maintenance or enhancements by the affected towns; (ii) the cable and splice boxes could cause issues for the roads under which they are installed, and the New Hampshire taxpayers would bear the cost of repairs; (iii) the underground cables and/or splice boxes could disintegrate over time, causing contamination or unsafe surfaces, resulting in costs to the State or local taxpayers; (iv) abutters to transfer stations and overhead portions of the Project will be left with a decaying eyesore; and (v) the costs of removing the infrastructure will be borne by local taxpayers. The group further argues that new technologies may render the Project obsolete or uncompetitive which could shorten the lifespan of the Project, and that therefore a decommissioning plan should be required as a condition of initial permitting of the Project and not left to be developed at some later, unspecified time.

14. Jo Anne Bradbury.³

Ms. Bradbury Objects to the Applicant's request for partial waivers, and joins in the Objections of Counsel for the Public and SPNHF. Ms. Bradbury owns two parcels that will be crossed by the proposed high voltage power lines with 140 towers in Deerfield. She argues that the intrusion onto her land and other property owners warrants full disclosure, and that granting the waivers would not serve the public interest.

15. Bruce Ahern.⁴

Mr. Ahern concurs with the Objection of Counsel for the Public. Mr. Ahern also argues that with respect to the request to waive decommissioning requirements, the Applicant ignores the fact that technology is rapidly changing and may make the transmission Project obsolete; and that if the Project is abandoned without decommissioning, the people of New Hampshire will not have the resources to protect the public from the structures that have been built.

16. Andrew Dodge.⁵

Mr. Dodge joins in the Objections of Counsel for the Public and SPNHF.

17. Mary Lee.⁶

Ms. Lee objects to the Applicant's requests for waivers due to the magnitude of the Project.

³ Ms. Bradbury has been assigned to the Deerfield Abutting Property Owners group by Order dated May 20, 2016. *See* Subcommittee's Order on Review of Intervention dated May 20, 2016.

⁴ Mr. Ahern is part of the Non-Abutting Property Owners: Stark, Lancaster, Whitefield, Dalton and Bethlehem subgroup of the Non-Abutting Property Owners: Clarksville-Bethlehem (overhead portion of the Project) group.

⁵ Mr. Dodge is a member of the Abutting Property Owners: Bethlehem (underground portion of the Project) – Plymouth subgroup of the Non-Abutting Property Owners: Clarksville-Bethlehem (overhead portion of the Project) group.

⁶ Ms. Lee is a member of the Ashland, Northfield, Canterbury, Allenstown and Concord group.

III. ANALYSIS AND FINDINGS

A. Standard

1. Standard for Waiver.

The New Hampshire Code of Administrative Rules, Site 302.05(a) states as follows:

- (a) The committee or subcommittee, as applicable, shall waive any of the provisions of this chapter, except where precluded by statute, on its own motion or upon request by an interested party, if the committee or subcommittee finds that:
 - (1) The waiver serves the public interest; and
 - (2) The waiver will not disrupt the orderly and efficient resolution of matters before the committee or subcommittee.

See N.H. CODE ADMIN. R. ANN. Site 302.05(a). The New Hampshire Code of Administrative Rules, Site 302.05(b), further states that in determining the public interest, the Subcommittee shall waive a rule under the following circumstances: (i) compliance with the rule would be onerous or inapplicable given the circumstances of the affected person; or (ii) the purpose of the rule would be satisfied by an alternative method proposed. *See* N.H. CODE ADMIN. R. ANN. Site 302.05(b).

2. Standard of Statutory Construction.

Rules of statutory interpretation are well-settled in New Hampshire:

When construing statutes and administrative regulations, we first examine the language used, and, where possible, we ascribe the plain and ordinary meanings to words used. Words and phrases in a statute are construed according to the common and approved usage of the language unless from the statute it appears that a different meaning was intended. Additionally, we interpret disputed language of a statute or regulation in the context of the overall statutory or regulatory scheme and not in isolation. We seek to effectuate the overall legislative purpose and to avoid an absurd or unjust result. We can neither ignore the plain language of the legislation nor add words which the lawmakers did not see fit to include.

Bovaird v. N.H. Dep't of Admin. Servs., 166 N.H. 755, 758-59 (2014) (citations and quotations omitted).

B. Analysis.

1. Site 301.03(c)(3)-(5).

a. *Alternative Route.*

The New Hampshire Code of Administrative Rules, Site 301.03(c)(3)-(5), requires the Applicant to identify property lines, residences, industrial buildings, other structures, wetlands, surface waters, and 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,” for the “alternative locations the applicant considers available for the proposed facility.” *See* N.H. CODE ADMIN. R. ANN. Site 301.03(c)(3)-(5).

While the Applicant does not dispute that the alternative it considered remains technically “available,” it requests that the Subcommittee find that such alternative is “unavailable” because it is not “feasible.” The Applicant has further advised the Subcommittee that it is not seeking certification of the alternative route, and that it would not do so without filing a new Application. The Subcommittee finds that requiring the Applicant to identify property lines, residences, industrial buildings, other structures and improvements, wetlands and surface waters, and natural, historic, cultural and other resources for the alternative route which is no longer “feasible” and for which the Applicant is not seeking certification, would be onerous and excessively burdensome and would not serve the public interest.

The Applicant’s request to waive Site 301.03(c)(3)-(5), as they apply to the identified alternative, is granted.

b. *Property Lines, Residences, Industrial Buildings, Other Structures, Wetlands, Surface Waters, and Historic Resources.*

The New Hampshire Code of Administrative Rules, Site 301.03(c)(3)-(5), require the Applicant to identify property lines, residences, industrial buildings, other structures, wetlands, surface waters, and historic 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.” *See* N.H. CODE ADMIN. R. ANN. Site 301.03(c)(3).

The clear language of Site 301.03(c)(3)-(5), requires the Applicant to identify property lines, residences, industrial buildings, other structures and improvements, wetlands, surface waters, and historic resources that: (i) are at or within the site; (ii) on abutting property with respect to the site; and (iii) within 100 feet of the site if such distance extends beyond the boundary of any abutting property. *See* N.H. CODE ADMIN. R. ANN. Site 301.03(c)(3)-(5).

i. Property lines, residences, industrial buildings, other structures and improvements - Site 301.03(c)(3).

The Applicant argues that the request to identify property lines, residences, industrial buildings, other structures and improvements located on abutting properties that extend beyond ¼ mile of the Project, is “impractical and unreasonably burdensome,” and that waiver of such request will not disrupt the orderly and efficient resolution of these proceedings.

The Project is a 192-mile transmission line. Apart from the visual effect, it is unlikely that the Project will have any effect on residences, industrial buildings, other structures and improvements located farther than ¼ mile from either side of the right-of-way. The visual effect of the Project on the structures is addressed in the Visual Impact Assessment submitted by the Applicant. Identification of residences, industrial buildings, other structures and improvements located on abutting properties that extend beyond ¼ mile from the 192-mile transmission line, would require the Applicant to provide in excess of nine hundred additional maps and is

unreasonably burdensome. Therefore, partial waiver of this requirement is in the public interest. Furthermore, partial waiver of the provisions of Site 301.03(c)(3), that require the Applicant to identify residences, industrial buildings, other structures and improvements located on abutting properties beyond ¼ mile of the Project, will not disrupt the orderly and efficient resolution of matters before the Subcommittee.

The Subcommittee is cognizant of the concerns of property owners abutting the substations that will be upgraded, the transition stations that will be constructed, and the converter terminal that will be constructed. The Applicant's request to waive the provisions of Site 301.03(c)(3), that require the Applicant to identify residences, industrial buildings, other structures and improvements located on abutting properties beyond ¼ mile of the Project, is granted as to properties abutting the transmission line, subject to the condition that the Applicant must provide tax maps and assessor cards for such abutters. The Applicant's request to waive provisions of Site 301.03(c)(3), that require the Applicant to identify residences, industrial buildings, other structures and improvements located on abutting properties beyond ¼ mile of the Project, is denied as to properties abutting the: (i) substations that will be upgraded; (ii) the transition stations that will be constructed; and (iii) the converter terminal that will be constructed.

ii. Wetlands and Surface Waters - Site 301.03(c)(4).

The Applicant asserts that it is "extremely unlikely" that the Project will have any effect on any water body beyond ¼ mile from the Project's right-of-way, and that strict compliance with the rule will require it to expend significant resources and completely re-work the size and scale of Project Maps. The request for waiver, claims that compliance with this new rule would require the Applicant to file maps/plan sheets that would be so out of scale as to make them

useless for the Subcommittee. Alternatively, the Applicant argues that the filing of over 900 new plan sheets is an unreasonably burdensome requirement.

Construction of the Project will be localized within a new or existing, but strictly defined right-of-way. In addition, best management practices will be utilized during construction and use of access roads and laydown areas. It is unlikely that the Project will have any impact on surface waters and wetlands beyond ¼ mile of the Project. In addition, it will be extremely onerous for the Applicant to identify each and every wetland and surface water located on abutting properties that extend beyond ¼ mile of the Project. Further, the NH Department of Environmental Services (NHDES) has indicated that it will be able to review the application and issue final permit decisions and conditions by August 15, 2016, without the information for which the Applicant seeks a waiver. It is in the public interest to waive Site 301.03(c)(4), as it applies to the identification of wetlands and surface waters beyond ¼ mile of the Project. Furthermore, waiver of this requirement will not disrupt the orderly and efficient resolution of matters before the Subcommittee. The Applicant's request to waive provisions of Site 301.03(c)(4), that require the Applicant to identify wetlands and surface waters beyond ¼ mile of the Project is granted.

iii. Historic Resources - Site 301.03(c)(5).

The Applicant argues that, apart from potential visual impact, the Project will have no effect on above ground historic resources located on abutting properties beyond one mile of the Project. The visual effect of the Project on above ground historic resources, however, is addressed by the Applicant in the Visual Impact Assessment that was provided. The Applicant further argues that the Project will have no impact on archeological resources beyond the corridor of the Project, and requests that the Subcommittee waive the provisions of

Site 301.03(c)(5), that require the Applicant to identify archeological resources located on abutting properties that extend beyond the Project corridor.

The only impact the transmission line may have on above ground historic resources one mile away from the Project is visual. The visual impact, however, has been addressed by the Applicant in the Visual Impact Assessment report that was provided. Considering that the Project encompasses 192 miles, it will be unduly burdensome for the Applicant to identify each and every historic above ground resource located on abutting properties beyond one mile. Further, the Applicant has already identified above ground historic properties within one mile from the edge of the right-of-way, which constitutes the Area of Potential Effect (APE) as designated by the United States Department of Energy (USDOE), and the NH Division of Historical Resources (DHR). Waiver of this requirement will not disrupt the orderly and efficient resolution of matters before the Subcommittee. The Applicant's request to waive the provisions of Site 301.03(c)(5), that require the Applicant to identify above ground historic resources beyond one mile of the Project is granted.

It is highly unlikely that construction and operation of the Project will have a negative impact on any archeological sites located on abutting properties. The only parts of the Project that will be constructed outside of the Project's right-of-way, and may potentially disturb archeological sites, are access roads and laydown yards. The Applicant, however, will implement best management practices while constructing the access roads and laydown yards and will ensure that no archeological sites will be disturbed. In addition, it would be highly burdensome for the Applicant to identify each and every archeological site on properties that abut the 192-miles of the Project. It is in the public interest to waive provisions of Site 301.03(c)(5), that require the Applicant to identify archeological resources on abutting properties and 100 feet

beyond abutting properties if the abutting property does not extend over 100 feet. Waiver of this requirement will not disrupt the orderly and efficient resolution of matters before the Subcommittee. The Applicant's request to waive provisions of Site 301.03(c)(5), that require the Applicant to identify archeological resources on abutting properties and 100 feet beyond abutting properties, if the abutting property does not extend over 100 feet, is granted.

2. Decommissioning - Site 301.08(c)(2).

a. *Applicability.*

The Applicant argues that decommissioning requirements should not apply to transmission lines because the lines are used for decades and almost never decommissioned. The Applicant's argument is contrary to the clear language of the rules. The New Hampshire Code of Administrative Rules, Site 301.08(c)(2), applies to all "energy facilities." *See* N.H. CODE ADMIN. R. ANN. Site 301.08(c). The New Hampshire Code of Administrative Rules, Site 102.19(e), specifically defines "energy facility" as a "new electric transmission line of design rating in excess of 200 kilovolts." *See* N.H. CODE ADMIN. R. ANN. Site 102.19(e). It is clear that the Project is a new transmission line of design rating in excess of 200 kilovolts and, therefore, is an "energy facility," as defined by the regulations. It would be contrary to the clear language of the rule to find that Site 301.08(c)(2), that applies to all "energy facilities," does not apply to the Project. As any other "energy facility," the Project must comply with requirements set forth in the New Hampshire Code of Administrative Rules, Site 301.08(c)(2), unless such requirements are waived.

b. *Waiver.*

The Applicant requests that the Subcommittee waive: (i) the requirement to hire independent experts to develop a decommissioning plan for the Project; (ii) the requirements to

provide forms of financial assurances identified in Site 301.08(c)(2)b; and (iii) the requirement to remove all underground infrastructure at depths less than four feet below grade identified in Site 301.08(c)(2)d.

In support of its request to waive the provisions that require the Applicant to hire an independent expert to develop a decommissioning plan and to provide certain forms of financial assurance of decommissioning, the Applicant asserts that it developed an alternative to these requirements that is reflected in the previously filed Transmission Service Agreement.

The Transmission Service Agreement defines “decommissioning” as “the performance of the work required to: (a) retire the Northern Pass Transmission Line and dismantle the materials, equipment and structures comprising the Northern Pass Transmission Line; and (b) restore and rehabilitate any land affected by the construction or dismantlement of the Northern Pass Transmission Line, in each case, as required by Applicable Law.” Transmission Service Agreement, §1.1.

Section 9.3.2. (Decommissioning Plan) of the Transmission Service Agreement, further requires the Applicant, six months prior to the commencement of the Decommissioning Payment Period, to deliver to the Management Committee a statement that sets forth in reasonable detail the following:

- (i) [Applicant’s] estimation of (A) the Decommissioning Costs and Salvage Proceeds and, unless this Agreement is terminated early under Section 3.3 or Section 15.3, the Levelized Monthly Decommissioning Payment derived therefrom, and (B) any activities associated with either thereof; and
- (ii) the scope and frequency of informational progress reports with respect to the Decommissioning of the Northern Pass Transmission Line, including the process for the recovery by Owner of its actual Net Decommissioning Costs following the exhaustion of the Decommissioning Fund prior to the completion of Decommissioning.

Transmission Service Agreement, § 9.3.2(a). The Management Committee is required to agree upon the Decommissioning Plan within sixty days following its receipt of the Applicant's estimations. Transmission Service Agreement, §9.3.2(b).

The Transmission Service Agreement further requires the Applicant to collect, through a FERC-approved rate, a monthly payment designed to cover the costs of decommissioning from Hydro Renewable Energy Inc. over the last five years of the 40-year term of the Agreement. *See* Transmission Service Agreement, § 9.3.1, 9.3.3(a) (defining "Decommissioning Payment Period"). The Applicant further asserts that it would be a better alternative for the Applicant to submit the decommissioning plan to the Committee when, and if, it decides to decommission the Project.

In addition, the Applicant requests that the Subcommittee waive provisions of Site 301.08(c)(2)d, requiring the Applicant to remove all underground infrastructure at depths less than four feet below grade. In support, the Applicant asserts that it is common practice not to remove transmission lines underground infrastructure and that removal of such infrastructure may cause more negative impact to the natural environment, as opposed to abandonment.

As indicated above, it is clear that Site 301.08(c)(2), including Site 301.08(c)(2)d, applies to transmission lines with a design rating in excess of 200 kilovolts. Therefore, this rule cannot be waived simply because the Project is a transmission line and it is customary not to remove underground structures or transmission lines. Furthermore, it is unclear whether the removal of the underground portion of the Project will cause more harm to wetlands and the natural environment as opposed to abandonment. Apart from the Applicant's assertion, the Subcommittee did not receive any documentation or information that would indicate and prove that abandonment of underground infrastructure of the entire Project will, in fact, be beneficial

for wetlands and the natural environment. The Subcommittee also did not receive any reports addressing benefits and negative aspects of specific decommissioning methods as they apply to each and every part of the Project. Without receiving such information and documentation, the Subcommittee cannot determine that waiver of Site 301.08(c)(2), is in the interest of the public. The Applicant has not demonstrated that the decommissioning requirements are overly burdensome or inapplicable to the Project.

Further, the Subcommittee is unpersuaded by the Applicant's argument that the rules and RSA 162-H, do not require the Applicant to provide a detailed "engineering" decommissioning plan. The language of the rule is clear. The Applicant must provide "[a] facility decommissioning plan prepared by an independent qualified person with demonstrated knowledge and experience" which shall include: (a) a description of sufficient and secure funding to implement the plan; (b) the provision of financial assurance in the form of an irrevocable standby letter of credit, performance bond, surety bond, or unconditional payment guaranty executed by a parent company of the facility owner maintaining at all times an investment grade credit rating; (c) all transformers shall be transported off-site; and (d) all underground infrastructure at depths less than four feet below grade to be removed from the site and all underground infrastructure at depths greater than four feet below finished grade to be abandoned in place. The Transmission Service Agreement, offered as an alternative by the Applicant, fails to satisfy the requirements of a decommissioning plan, and the Applicant has not demonstrated that the requirement is onerous or inapplicable under the circumstances of the Project.

While the Transmission Service Agreement sets forth a mechanism that may assure that the Applicant will have funds needed for the decommissioning of the Project, review of it

demonstrates that, apart from the financing mechanism, it does not set forth decommissioning procedures and does not require the Applicant to develop a decommissioning plan that would address specific stages of decommissioning. It does not address the decommissioning process and does not require the Applicant to develop a decommissioning plan that would identify specifics of the decommissioning process, and therefore cannot be used as an alternative to the requirement to develop a decommissioning plan. Further, the Applicant proposes a commercial transmission line project, as opposed to a reliability project. The Subcommittee cannot rely on the provisions of the Transmission Service Agreement to ensure that local taxpayers will not be left with the financial burden of decommissioning in the event that the project becomes obsolete or unprofitable, and is abandoned at some future date.

The Applicant's request to waive decommissioning requirements of Site 301.08(c)(2), is denied.

IV. ORDER

It is hereby ordered that Applicant's Request for Partial Waiver Under the Newly Adopted SEC Rules is granted in part and denied in part;

It is hereby further ordered that the Applicant's request to waive provisions of Site 301.03(c)(3)-(5), as they apply to the alternative route, is granted;

It is hereby further ordered that the Applicant's request to waive provisions of Site 301.03(c)(3), is granted as to properties abutting the transmission line, subject to the condition that the Applicant must provide tax maps and assessor cards for such abutting properties;

It is hereby further ordered that the Applicant's request to waive the provisions of Site 301.03(c)(3), is denied as to properties abutting the: (i) substations that will be upgraded; (ii) the

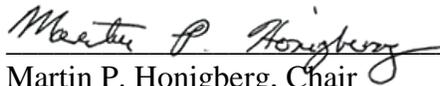
transition stations that will be constructed; and (iii) the converter terminal that will be constructed;

It is hereby further ordered that the Applicant's request to waive provisions of Site 301.03(c)(4), that require the Applicant to identify wetlands and surface waters beyond ¼ mile of the Project is granted;

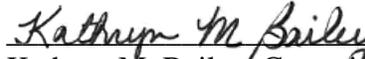
It is hereby further ordered that the Applicant's request to waive provisions of Site 301.03(c)(5), that require the Applicant to identify aboveground historic resources beyond one mile of the Project and archeological resources on abutting properties and 100 feet beyond abutting properties, if the abutting property does not extend over 100, feet is granted; and

It is hereby further ordered that the Applicant's request to waive decommissioning requirements of Site 301.08(c)(2), is denied.

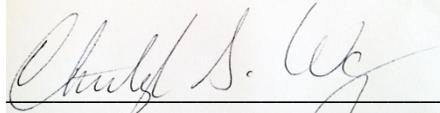
SO ORDERED this twenty-third day of June, 2016 by the Site Evaluation Subcommittee:



Martin P. Honigberg, Chair
Site Evaluation Committee
Presiding Officer



Kathryn M. Bailey, Commissioner
Public Utilities Commission



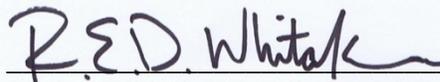
Christopher Way, Designee
Division of Economic Development
Department of Resources and Economic
Development



Patricia Weathersby, Public Member



Craig A. Wright, Designee
Director, Air Resources Division
Dept. of Environmental Services



Rachel Whitaker, Public Member