

**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**

May 26, 2017

**ORDER ON THE SOCIETY FOR THE PROTECTION OF NEW HAMPSHIRE
FORESTS PREHEARING MOTION TO STRIKE PORTIONS OF
THE APPLICANTS' FORWARD NH PLAN**

This Order denies the Forest Society's Prehearing Motion to Strike Portions of the Applicants' Forward NH Plan.

I. Background and Positions of the Parties

A. The Forest Society

In its Motion filed on March 29, 2017, the Forest Society requests that the Subcommittee strike any and all information and documentation related to: (i) the Forward NH Fund that will be funded by the Applicant with \$200 million; (ii) the North Country Jobs Creation Fund that will be funded by the Applicant with \$7.5 million; (iii) the contribution in the amount of \$3 million that will be made by the Applicant to the National Fish and Wildlife Fund partners for New Hampshire's Fish and Wildlife grant program; and (iv) the \$53 million earmarked for proposed upgrades to the Coos Transmission Loop.

The Forest Society argues that this information should be excluded because it does not "relate to the siting and construction of the Project." Specifically, the Forest Society claims that RSA 162-H:1 authorizes the Subcommittee to consider and balance only the impacts and

benefits that “naturally occur”¹ from the siting, construction and operation of the Project. The Forest Society asserts that the language of RSA 162-H:16, IV, supports its argument, and requires the Subcommittee to consider all relevant information regarding the potential siting or routes of the proposed energy facility, including potential significant impacts and benefits.

The Forest Society also claims that N.H. CODE ADMIN. RULES Site 301.16 further supports its position that the benefits considered by the Subcommittee must “naturally occur” from the siting and construction of the Project. The Forest Society argues that N.H. CODE ADMIN. RULES Site 301.16 excludes consideration of so-called “unnatural benefits” or indirect benefits because it requires the Subcommittee to consider whether the proposed energy facility itself, as opposed to the energy facility and other benefits not related to the facility, will serve the public interest.

B. Applicant

In its Objection filed on April 6, 2017, the Applicant argues that all of the elements of the Forward NH Plan are directly linked to the Project and that the Forest Society has created an artificial limitation on the benefits that the Subcommittee may consider when determining whether a proposed energy facility would serve the public interest. The Applicant argues that the Forward NH Plan encompasses all of the Project’s benefits and that it is inherently tied to the siting, construction, and operation of the Project; and that in the absence of the Project, the Forward NH Plan would not exist. The Applicant also claims that the Forest Society improperly asserts that the statute provides that “relevant impacts and benefits of a proposed facility are those impacts and benefits occasioned by the facility itself,” and that it was meant to limit SEC

¹ The term “naturally occurring” is not contained in the statute. The term does appear in the pre-filed testimony of William Quinlan, where he described the Forward NH Plan as “designed to provide specific benefits to New Hampshire beyond the benefits naturally occurring from the delivery of 1,090 MW of low carbon, competitively priced power from Hydro-Québec.” See Motion, p. 2; and Pre-filed Testimony of William Quinlan, October 16, 2015, p. 2. We assume that is the source of the Forest Society’s usage in its motion.

review to so-called natural benefits in determining whether the Project will serve the public interest.

III. Analysis

The Forest Society's argument is incorrect because it relies on a distinction that does not exist in the law between types of benefits. Neither RSA 162-H nor our administrative rules parse out the benefits to be considered as being "natural" benefits, arising organically from the project, or other types of benefits provided by the applicant. The Committee's enabling statute, RSA 162-H:1, specifically identifies the types of impacts and benefits that the Subcommittee is required to consider:

The legislature recognizes that the selection of sites for energy facilities may have significant impacts on and benefits to the following: the welfare of the population, private property, the location and growth of industry, the overall economic growth of the state, the environment of the state, historic sites, aesthetics, air and water quality, the use of natural resources, and public health and safety.

The plain language of the purpose section of the statute specifically and unambiguously requires the Subcommittee to consider the impacts and benefits of the Project on the welfare of the population, the location and growth of the industry, and the overall economic growth of the State. There is no language that limits the Subcommittee's consideration to "naturally occurring" impacts or benefits.

In order to consider the statutory areas of concern, the Subcommittee must consider both direct and indirect impacts and benefits. That includes benefits that naturally occur as well as benefits offered by the developer for the purpose of mitigating or offsetting negative impacts. Excluding such evidence would contradict the legislative mandate because it would preclude the Subcommittee from analyzing the Project's impact on the welfare of the population, the location and growth of industry, and the overall economic growth of the State.

The Forest Society also misses the mark when it suggests that RSA 162-H:16, IV, somehow limits the Subcommittee in considering only “naturally occurring benefits” of the Project. RSA 162-H:16, IV. provides that, “After due consideration of all relevant information regarding the potential siting or routes of a proposed energy facility, including potential significant impacts and benefits, the site evaluation committee shall determine if issuance of a certificate will serve the objectives of this chapter.” This language requires the Subcommittee to consider the objectives of the statute, which as noted above, are broad and concern direct and indirect impacts and benefits that accrue both locally and to the State as a whole. Included within that consideration is the requirement that the Subcommittee consider whether the Project will interfere with the “orderly development of the region.” *See* RSA 162-H:16, IV (b). While the extent of the “region” is not defined in the statute, the Project, as proposed, reaches from the Canadian border to the Town of Deerfield. There is no doubt that the region affected by a project is a large portion, if not all of the State. Under this standard, consideration of the impacts and benefits only in the cities and towns where the line itself will be located would be improper.

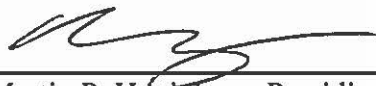
The Forest Society’s motion implies that impacts or benefits that occur “off-site” should not be considered. This argument is directly contradicted by our administrative rules, which require us to consider off-site avoidance, minimization, and mitigation measures. N.H. CODE ADMIN. RULES Site 102.12, defines the term “best practical measures” as “available, effective, and economically feasible on-site or off-site methods or technologies used during siting, design, construction, and operation of an energy facility that effectively avoid, minimize, or mitigate relevant impacts.” Our administrative rules require us to consider the use of “best practical measures” to avoid, minimize, or mitigate adverse effects. Consideration of best practical measures requires that the Subcommittee consider off-site mitigation when considering: the

impacts on historic sites and archaeological resources, *see* N.H. CODE ADMIN. RULES Site 301.14(b)(5); the effectiveness of measures taken or planned to avoid, minimize or mitigate potential adverse effects on the natural environment, wildlife species, rare plants, rare natural communities and other exemplary natural communities, *see* N.H. CODE ADMIN. RULES Site 301.14(e)(5)-(6); and whether a proposed energy facility will have an unreasonable effect on public health and safety, *see* N.H. CODE ADMIN. RULES Site 301.14(f)(1). Accepting the Forest Society's interpretation of the administrative rules would significantly restrict the Subcommittee's ability to consider off-site mitigation. The rules, however, plainly require that both on-site and off-site mitigation are to be considered, including the direct and indirect impacts and benefits of the Project.

Ultimately the Subcommittee will consider all of the impacts and benefits of the Project in determining whether to grant or deny a Certificate. In doing so, the Subcommittee will be able to analyze the components of the Forward NH Fund, the North Country Job Creation Fund, the mitigation payment to the National Fish and Wildlife Foundation, the improvements to the Coos Loop and any other alleged benefits, and determine whether the benefits of the Project outweigh any adverse impacts. Excluding evidence of the proposed benefits would prohibit consideration of these benefits by the Subcommittee and undermine the objectives of the statute.

The Forest Society's Motion to Strike Portions of the Applicants' Forward NH Plan is denied.

SO ORDERED this 26th day of May, 2017.



Martin P. Honigberg, Presiding Officer
Site Evaluation Committee