

**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**

December 22, 2017

ORDER ON MOTION FOR DECLARATORY RULING

This Order denies the Motion for Declaratory ruling filed by the Ammonoosuc Conservation Trust, Appalachian Mountain Club, and Conservation Law Foundation's (NGO Intervenors).

I. Background

On November 15, 2017, the NGO Intervenors filed a Motion for Declaratory Ruling (Motion). The Society for Protection of New Hampshire Forests joined the Motion and the Applicant objected.

II. Positions of the Parties

The NGO Intervenors claim that the Application and witness testimony in this docket relies on the premise that the proposed Project will transmit only hydroelectric power. The NGO Intervenors state that one bid submitted in response to the Massachusetts Request for Proposal (Mass RFP) describes the Project as transmitting 300 MW of wind power and 790 MW of hydroelectric power. The NGO Intervenors seek a declaratory ruling stating that: the only Application before the Committee in Docket No. 2015-06 pertains to a transmission line proposed to transmit 1,090 MW of hydroelectricity; and any final order in this proceeding applies only to a transmission line delivering hydroelectric power and not wind.

The Applicant objects and argues that the Motion is procedurally improper. The Applicant argues that the Intervenor's Motion constitutes a Petition for a Declaratory Ruling because it asks the Subcommittee to "prejudge a question of law." The Applicant further argues that the Intervenor's Petition should be dismissed because it does not request a ruling on the applicability of RSA 162-H to a particular proposed facility, does not pertain to interventions, and is not an initial filing that requests the Committee to take action within its jurisdiction. *See* N.H. CODE ADMIN. RULES Site 102.33. The Applicant also argues that the Petition should be dismissed under N.H. CODE ADMIN. RULES Site 203.02(c)(2) and (3) because it involves a hypothetical situation and does not implicate the intervenor's legal rights.

The Applicant asserts there is no basis for concluding that a Certificate may be limited because: (i) the Committee's rules do not require that the Applicant define the source of electricity; and (ii) the Subcommittee has accepted the Application as filed. The Applicant further asserts "[t]here is no basis for concluding that the Subcommittee may only issue a Certificate for a project that would exclusively transmit hydroelectric power."

III. Analysis

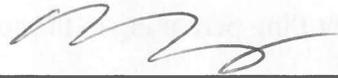
N.H. CODE ADMIN. RULES Site 203.01 specifically address requests for declaratory rulings and states that "[a]ny person may submit a petition for declaratory ruling from the committee on matters within its jurisdiction by filing an original written petition and 10 copies with the committee." The Motion is procedurally and substantively improper. Declaratory rulings are governed by our administrative rules and are normally determined in the context of a separate proceeding. The relief sought is the equivalent of a request to deny the Application because the information contained in it is inconsistent with one of the alleged bids offered in the Mass RFP. The determination to grant or deny a certificate, including the imposition of

conditions, will be made after deliberations on the entire record of the proceeding. The Motion seeks a premature ruling pertaining to the scope of and conditions on a certificate that has not been granted.

It is true that the Application does not mention the transmission of wind generated power. There has been substantial evidence received about the environmental and economic impacts of the Project based on its ability to transmit hydroelectric power. The Subcommittee may approve and certify construction and operation of the Project as described in the Application and all amendments to it. As of this date, the Application and testimony describes a Project that will transmit only hydroelectric power. *See* Application, at 40 (“Northern Pass is a 192-mile, high-voltage electric transmission line, with associated facilities, proposed to carry 1,090 MW of renewable hydroelectric power from Canada into New Hampshire, where it will enter the New England electric grid.”); Application, at 66 (“The Project will provide the capacity to deliver 1,090 MW of clean, renewable, hydroelectric power to the State and the region, which will contribute significantly to improved air quality.”); Application, at 95 (“To the extent that hydroelectric power purchased from Québec displaces gas and other fossil-fired generation in New England, the Project will lead to a reduction in greenhouse-gas emissions related to locally-sourced fossil generation.”). In addition, William Quinlan testified that the Project will deliver hydroelectric generation. *See* Transcript, Day 2 AM, p. 99.

The Applicant has not sought to amend its Application to include transmission of wind generated electricity. A determination on the scope of a Certificate or any conditions can only be made after consideration and deliberation based on the complete record. The Motion is therefore DENIED.

SO ORDERED this 22 day of December, 2017.



Martin P. Honigberg, Presiding Officer
Site Evaluation Committee