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STATE OF NEW HAMPSHIRE

SITE EVALUATION COMMITTEE

January 12, 2016 - 9:07 a.m.
Public Utilities Commission
21 South Fruit Street Suite 10
Concord, New Hampshire

**IN RE: SEC DOCKET NO. 2015-08
TENNESSEE GAS PIPELINE
COMPANY, LLC:**
*(Public meeting of Subcommittee
members to consider intervention
in the Federal Energy Regulatory
Commission proceedings involving
the siting of high pressure gas
pipelines in order to protect
the State of New Hampshire.)*

| | |
|---|--|
| PRESENT FOR SUBCOMMITTEE: | SITE EVALUATION COMMITTEE: |
| Chairman Martin P. Honigberg <i>(Presiding as Chairman of SEC)</i> | Public Utilities Commission |
| Cmsr. Thomas S. Burack <i>(Vice Chairman of SEC)</i> | Dept. of Environmental Services |
| Cmsr. Kathryn M. Bailey Elizabeth Muzzey Patricia Weathersby Rachel Whitaker* <i>(* = via teleconference)</i> | Public Utilities Commission Dept. of Cultural Resources Public Member Alternate Public Member |

ALSO PRESENT FOR THE SEC: Michael J. Iacopino, Esq.
(Brennan Lenehan)
Pamela G. Monroe, Administrator

OTHER APPEARANCES NOTED: Brian Buonamano, Asst. Atty. Gen.
N.H. Department of Justice

COURT REPORTER: Steven E. Patnaude, LCR No. 052

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P R O C E E D I N G

1
2 CHAIRMAN HONIGBERG: We're going to get
3 started. We're here this morning in SEC Docket 2015-08,
4 which is the Tennessee Gas Pipeline LLC anticipated
5 petition to the Site Evaluation Committee regarding a
6 pipeline in the southwestern part of the state, running
7 along the southern towns. We're going to resume our
8 discussion of our obligation under RSA 162-H:10-b, which
9 requires us to "consider intervention in the Federal
10 Energy Regulatory Commission proceedings involving the
11 siting of high pressure gas pipelines in order to protect
12 the state of New Hampshire." And, that is a quote from
13 the statute.

14 Before we go further, let's see who's
15 here.

16 VICE CHAIRMAN BURACK: Good morning.
17 Tom Burack, Commissioner of Department of Environmental
18 Services.

19 CHAIRMAN HONIGBERG: Martin Honigberg of
20 the Public Utilities Commission.

21 COMMISSIONER BAILEY: Kathryn Bailey
22 with the Public Utilities Commission.

23 MS. WEATHERSBY: Patricia Weathersby,
24 public member.

1 DIRECTOR MUZZEY: Elizabeth Muzzey,
2 Department of Cultural Resources.

3 CHAIRMAN HONIGBERG: And on the phone we
4 have?

5 MS. WHITAKER: Rachel Whitaker, from
6 White Mountains Community College.

7 CHAIRMAN HONIGBERG: We're also joined
8 by the SEC's Administrator, Pam Monroe; a lawyer from the
9 Attorney General's Office, Brian Buonamano; and Counsel to
10 the SEC, Mike Iacopino. We have also some members of the
11 public here to observe the proceedings.

12 When last we were together we were
13 discussing what other agencies were doing, among other
14 things, we were discussing that. And, I think we were
15 hoping maybe Brian Buonamano would be able to share with
16 us some more information about what some of the other
17 state agencies are doing with respect to intervention in
18 the Federal Energy Regulatory Commission proceeding.

19 MR. BUONAMANO: I can give you that --

20 CHAIRMAN HONIGBERG: If you can turn
21 your microphone on first, too. Thanks.

22 MR. BUONAMANO: I can give you that,
23 although nothing is final until they actually make the
24 filing. And, may be something, you know, are we going to

1 have a non-meeting today?

2 CHAIRMAN HONIGBERG: If counsel believes
3 it would be advisable for us to confer with counsel in a
4 non-meeting, we can certainly make that happen. Is there
5 anything you can share with us in public? Before we do
6 that, we're going to try and go and at least identify some
7 of the issues we'd be interested in talking about before
8 we break and have a non-meeting. But is there anything
9 you can tell us at this point?

10 MR. BUONAMANO: Well, the Mass. SEC did
11 intervene in, you know, their siting agency. DRED is
12 going to be intervening, Fish & Game, Office of Energy &
13 Planning, and there's -- and I think -- I've heard that
14 Joe Foster is going to be intervening.

15 CHAIRMAN HONIGBERG: You work for him.

16 MR. BUONAMANO: I do work for him.

17 CHAIRMAN HONIGBERG: And, so, the
18 Attorney General is considering intervening as the
19 Attorney General?

20 MR. BUONAMANO: Correct.

21 CHAIRMAN HONIGBERG: Okay.

22 MR. BUONAMANO: But nothing's final, I
23 would just put that out, until we see those appearances or
24 those interventions actually move through.

1 CHAIRMAN HONIGBERG: Oh, I understand.
2 And, the deadline is Friday. And, even then, all
3 decisions are final until changed.

4 I think we had an understanding that
5 even someone who does intervene can probably withdraw that
6 intervention pretty much at any time, is that right?

7 MR. BUONAMANO: Correct.

8 CHAIRMAN HONIGBERG: All right.

9 MR. BUONAMANO: I would also note that
10 the question marks are still with DOT, Public Utilities
11 Commission, Historical Resources. And, then, you know,
12 LCHIP, generally speaking, towns, cities, regional
13 planning commissions, that sort of thing.

14 VICE CHAIRMAN BURACK: Mr. Chairman?

15 CHAIRMAN HONIGBERG: Commissioner
16 Burack.

17 VICE CHAIRMAN BURACK: Just to address
18 DES, I anticipate that DES will intervene in this
19 proceeding via a notice of intervention. When I say "this
20 proceeding", I mean the "FERC proceeding".

21 CHAIRMAN HONIGBERG: I'm not, at this
22 point, aware of the Public Utilities Commission looking to
23 intervene in the FERC proceeding. The PUC's jurisdiction,
24 while relevant, is not in any way affected, we don't

1 think. So, we don't expect the Public Utilities
2 Commission will be looking to intervene.

3 Director Muzzey.

4 DIRECTOR MUZZEY: I can add that the
5 Division of Historical Resources is not planning to
6 intervene as well. Judging from past Section 106 reviews,
7 our role in that process has given us all the access and
8 information we needed to do our responsibilities.

9 CHAIRMAN HONIGBERG: Attorney Iacopino,
10 you have anything you want to share with us? Do you
11 believe it would be appropriate for us to go into a
12 non-meeting with counsel?

13 MR. IACOPINO: Yes, I do.

14 CHAIRMAN HONIGBERG: All right. Is
15 there anything else anyone wants to put on the public
16 record at this time, before we break and go into a
17 non-meeting?

18 *[No verbal response]*

19 CHAIRMAN HONIGBERG: All right. Seeing
20 none, we're going to break. Off the record.

21 *[Brief off-the-record discussion*
22 *ensued.]*

23 CHAIRMAN HONIGBERG: All right. So,
24 we're breaking now. We're going into another room.

1 Rachel, stay on the line.

2 MS. WHITAKER: Okay.

3 *[Recess taken for the SEC Subcommittee*
4 *to confer with counsel in a*
5 *non-meeting.]*

6 CHAIRMAN HONIGBERG: All right. We're
7 going back on the record following our meeting with -- our
8 non-meeting with our lawyers to discuss a number of legal
9 issues that are raised by this, some of which are
10 carryovers from our conversation with the lawyers last
11 week.

12 Before we go any further, I'm going to
13 put two things out there. One is, I'm going to correct
14 something I said when we were together before. In fact,
15 the Public Utilities Commission is considering intervening
16 in the FERC proceeding. Which goes to show you that a
17 agency that has 70 employees can have multiple things
18 going on without the Commissioners knowing about it.

19 The other thing I'm going to put on the
20 record is just to confirm that, under RSA 91-A, that we
21 have a quorum of the Subcommittee in the room, with five
22 members of the seven-member Subcommittee. That allows a
23 member to participate by telephone, where she can hear
24 everyone and everyone can hear her.

1 So, unless one of the lawyers over there
2 wants to disagree with that, I just got that on the
3 record.

4 I think we're, I hope, ready to resume a
5 discussion of our obligations under RSA 162-H. And, I
6 will open the floor to anyone who has a comment, an
7 opinion, or wants to make a motion.

8 Commissioner Bailey. You knew I had to
9 start somewhere.

10 COMMISSIONER BAILEY: Okay. I'll try to
11 start the conversation. I take this decision very
12 seriously. And, there are a lot of legal issues, as I
13 understand them, to consider. I think, as the Site
14 Evaluation Committee, our main purpose is to determine
15 whether this project is in the public interest. And,
16 then, the statute says, "but, if the FERC is going to look
17 at it, we have to decide whether to intervene to protect
18 the public interest." Well, we don't even know if the
19 project is "in the public interest" in the first instance.
20 So, to intervene to "protect the public interest", when we
21 don't know whether the project is "in the public
22 interest", seems like a difficult decision to make.

23 The other thing that I'm thinking about
24 is that I'm really happy to see all the other agencies,

1 who don't have to determine whether the project is in the
2 public interest, but can take positions, are intervening.
3 And, I'm really pleased to see that the Attorney General,
4 who has the broad, I think, the broad interest of the
5 state, and that's what he would be -- he would be thinking
6 about in his intervention is, you know, the greater good
7 of the state or what is in the state's interest.

8 And, so, I think that it may be better,
9 because we're a quasi-judicial agency -- or, committee,
10 and if we intervene, somebody could take the position "oh,
11 well, they intervened, so they obviously already have
12 decided what they're going to do." Again, we don't know
13 whether the project is in the public interest.

14 To avoid that, I think it would be
15 better, in this case, not to file an intervention.
16 Although, I understand, you know, there are many public
17 commenters, public comments that we've received that
18 suggest that we should intervene. I think that what we
19 need to do is we need to figure out whether the project is
20 in the public interest, and then, when we figure it, when
21 we make that decision, then we can either file comments at
22 the FERC or we can ask the Attorney General to advocate on
23 our behalf. But for us to do both at the same time I
24 think would create some legal challenges.

1 CHAIRMAN HONIGBERG: Thank you,
2 Commissioner Bailey. Other thoughts or comments?

3 Commissioner Burack.

4 VICE CHAIRMAN BURACK: Thank you, Mr.
5 Chairman. First, I would just echo the sentiment
6 expressed by Commissioner Bailey. That this is a -- this
7 is a very, very challenging, difficult issue to get our
8 arms around, I think. And, certainly, I see that there
9 are -- there are many, many legal issues that need to be
10 considered here.

11 I would offer the observation that,
12 while I believe that a finding of public interest is one
13 of the findings that we will have to make with respect to
14 this matter, it is by no means the only determination that
15 we would, as a body, have to make, as to whether we would
16 or would not issue a Certificate of Site and Facility.
17 That is just one of multiple findings that we'd have to
18 have evidence before us on, and then be able to make a,
19 you know, make a decision with respect to, and that,
20 again, would just be one of multiple factors.

21 I think that that standard is perhaps a
22 little different from the standard that I think is
23 specified here in this new statutory provision that
24 requires us to consider intervening "to protect the

1 interests of the state", but I'm not sure I got that
2 exactly right. Does somebody have the exact statutory
3 language in front of them? I apologize here. Here we go.

4 So, again, just the language of 162-H,
5 Section 10-b, Section IV, reads "The committee shall
6 consider intervention in Federal Energy Regulatory
7 Commission proceedings involving the siting of high
8 pressure gas pipelines in order to protect the interest of
9 the state of New Hampshire."

10 So, I think it's a slightly different
11 test, arguably, from what's a public -- what's in the
12 public interest or not. But I certainly would agree that
13 there is probably some not insignificant overlap between
14 those two different standards.

15 I am, like you, Commissioner Bailey, I
16 am, I'm not sure "comfort" is the right word, but I think
17 it's very helpful to see that a number of other agencies,
18 including the agency for which I work, DES, have indicated
19 that they do intend to intervene. And, it's certainly
20 helpful to know that the Attorney General is considering,
21 but, evidently, and, again, none of these we recognize are
22 final, but we understand the Attorney General is also
23 considering intervention. And, certainly, arguably, his
24 scope of authority is quite broad, just as our scope of

1 authority is quite broad.

2 I am mindful that it's possible that
3 there could be areas that fall within SEC jurisdiction and
4 also within FERC jurisdiction that may not fall squarely
5 within the authority or jurisdiction of any of the
6 underlying agencies that provide us with information that
7 we consider in our -- in our review of an application.

8 Having said that, I think those areas
9 are probably very, very limited. And, particularly, if
10 the AG were to intervene, there would be a party there
11 available to be able to assert any interest of the state
12 relating to those matters.

13 I think there's also a timing issue here
14 that has to be considered. And, that is that, while,
15 certainly, we don't even have an application before us at
16 this time, we have not taken a position on this matter,
17 that is on a potential pipeline project here in the state,
18 such as has been filed with the Federal Energy Regulatory
19 Commission. And, we, I assume, could not and would not be
20 in a position to articulate a position on such a project,
21 unless and until we had gone through a complete proceeding
22 to its conclusion.

23 And, my understanding of the timing on
24 all of this is that, by statute, we would have basically

1 12 months from the time an application is filed with us.
2 I don't have as clear an understanding necessarily of
3 whether there is a particular deadline within which FERC
4 must act. But, unless -- unless we were to conclude our
5 proceeding before FERC does, and I have heard that it's
6 possible that the FERC proceeding could wrap up by
7 December of this year, December of 2016, it's very
8 possible that the FERC proceeding would be over before our
9 proceeding is, and that would probably further limit, if
10 we even had any comments to make or particularly legal
11 positions to assert with respect to the FERC proceeding.
12 That would suggest that we may not be in a position to
13 have much impact, that is any state interests may be --
14 just may not -- the timing just may not be right to try to
15 assert such state interests in a FERC proceeding.

16 So, I'm certainly cognizant of that,
17 that issue. But, I guess, where I'm -- ultimately, where
18 I find myself trying to come to grips with this decision
19 is the issue of the need that we have as a body, and I
20 think this is as distinguished from those up the
21 underlying regulatory agencies, we do operate as a
22 quasi-judicial body, as you said earlier, Commissioner
23 Bailey. And, so, we have, I think, an obligation to
24 maintain, to the extent we possibly can, a real

1 impartiality in the process, and including protection
2 against a perception that we are being anything other than
3 impartial with respect to all the parties in the
4 proceeding.

5 And, I do worry about the risk, if we
6 were to intervene in a parallel proceeding, I do worry
7 about the risks of at least a perception that somehow, by
8 intervening, we have -- we have indicated that we have
9 taken a position with respect to the matter.

10 So, those are just some thoughts that I
11 have. And, I'm interested to hear the thoughts of other
12 members of the Committee.

13 CHAIRMAN HONIGBERG: Other thoughts from
14 members of the committee?

15 Attorney Weathersby.

16 MS. WEATHERSBY: I share the concerns of
17 fellow Committee members that have spoken concerning the
18 perception that we may have taken a position before
19 concerning the project before we have actually come to any
20 determination.

21 But I also think that there is some
22 benefit in intervening, should our process finish prior to
23 the FERC process, that intervention would help us preserve
24 the right to appeal or ask the FERC to rehear issues that

1 are contrary to what the SEC has determined at the
2 conclusion of our process.

3 And, I think that the SEC would be in
4 the best position to do that, rather than the Attorney
5 General's Office, who I likely would agree with the
6 findings that the SEC reached may have a slightly
7 different interpretation. So, I think that the SEC would
8 be in the best position to ask FERC to reconsider any of
9 its conclusions that may be different than ours.

10 I'm also concerned about the timing
11 issue, in that they may finish before us. In which case,
12 I would be in favor of feeling not having any involvement,
13 other than in the motion to intervene, because I don't
14 want to appear as though we are trying to influence their
15 final decision.

16 But there's also the possibility that
17 the applicant will not file an application with us. They
18 have indicated that they will. But it's my understanding
19 that they don't have to. And, if that's the case, it may
20 be worth intervening to alert the FERC of the factors that
21 the Site Evaluation Committee uses to reach its
22 conclusion, the factors it weights and considers, so
23 that -- and ask them to consider some of the same factors.
24 So, we try to get them, they won't follow a similar

1 process, but will at least consider some of the things
2 that we would consider, and hopefully reach the same
3 conclusion.

4 So, I'll leave it at that.

5 CHAIRMAN HONIGBERG: Thank you, Attorney
6 Weathersby. Other thoughts or comments?

7 Director Muzzey.

8 DIRECTOR MUZZEY: I also appreciate all
9 the consideration this group has given to this question.
10 It's a new question for us, and it's been complicated.

11 I remain concerned, though, about the
12 number of unknowns that are before us of how this proposed
13 project will develop, both under state and federal reviews
14 that are ongoing. The question of timing is a tricky one,
15 in particular. And, I can see two possible paths that the
16 Committee could take. One could be to intervene in such a
17 manner that our objectivity is clearly stated, as well as
18 our interest in protecting the interest of the state and
19 reserving our right to do so, if needed. The other option
20 or other pathway could be that we remain open to the idea
21 of requesting late intervention, if it becomes clear that
22 it would be in the best interest of the state for the SEC
23 to do so.

24 So, those are two of the pathways that I

1 see now that would potentially solve this question.

2 CHAIRMAN HONIGBERG: Ms. Whitaker, do
3 you have any thoughts or comments you want to share? Or,
4 do you want me to go before you?

5 MS. WHITAKER: No. I'm all set. Thank
6 you.

7 CHAIRMAN HONIGBERG: All right. This is
8 an extremely difficult question, and unprecedented, as
9 Director Muzzey just said. And, it's unprecedented, in
10 part, because it's a new statute and a new requirement of
11 the SEC. The SEC is not like the other state agencies
12 that we've talked about, in that we don't have the kind of
13 regulatory authority over a particular aspect of a
14 project. We look at its location, it's siting. And,
15 that's all the SEC is charged with looking at. It has a
16 number of factors it needs to consider in determining
17 whether the project is appropriately sited. And, those
18 things include health, safety, aesthetics, economic
19 development. And, in each of those categories, one of the
20 state agencies that we've talked about is considering
21 strongly intervening in the FERC proceeding.

22 I think it's also significant and
23 somewhat persuasive that the project is coming to the SEC,
24 at least it is its current stated intention to do so.

1 Were it to decide that it's not going to file with the
2 SEC, contrary to all of its public statements, and the
3 filing that it made here indicating that it was initiating
4 the pre-filing public information session process, I think
5 might be a different -- might be a different question.

6 I think that Director Muzzey's first way
7 of proceeding, in the event we did decide to intervene, by
8 being explicitly neutral and consistently neutral, and
9 making sure that all of the parties to the FERC proceeding
10 understood that the SEC's position was going to be neutral
11 on big -- on all questions big and small, including
12 "should some so-and-so be entitled to an extension of time
13 to file a document?" Up to and including every relevant
14 substantive consideration before the FERC. Unless and
15 until the SEC makes a decision about what it believes is
16 the right answer, it would be inappropriate for the SEC to
17 take any position.

18 We, as Commissioner Bailey indicated,
19 we've received a number of comments. I think all of them
20 believe or stating the belief that we should intervene,
21 some believe we "must intervene". I disagree with the
22 commenters who believe we "must intervene". I also
23 disagree with the commenters who say we "should intervene
24 and take a negative position against the pipeline". That

1 would supersede our statutory obligation and render us
2 incapable of maintaining any position. It would be
3 impossible for the SEC to function were it to take a
4 position on the pipeline, or any project, prior to hearing
5 the evidence on it.

6 I could easily be convinced that it was
7 the right thing to do to file a petition to intervene,
8 with the explicit neutrality stated, to be inconsistent on
9 all questions throughout the process. I could also be
10 convinced that the upside, the benefits of doing so, are
11 limited in these circumstances, because of the expected
12 participation of so many substantive state agencies, and
13 that the benefits might not weigh -- might not outweigh
14 the risks that someone, despite our best efforts to
15 maintain our neutrality, will be perceived to have taken a
16 position by taking no position.

17 As frustrating as that would be to me, I
18 fully expect the comments and letters to start coming,
19 regardless of what we do. That whatever we have done is
20 an indication that we are either in favor of the pipeline
21 or against it. So, we're just going to have to live with
22 that.

23 I could -- this is a really close
24 question. I could vote either way on this. I would

1 entertain a motion. I would remind everyone that, with
2 six people here, a 3-3 vote and the motion fails, whatever
3 the motion was, fails. So, we're going to need to figure
4 out how to maneuver through that, if we have a 3-3.

5 Would anyone like to make a motion?

6 VICE CHAIRMAN BURACK: Mr. Chairman,
7 before making a motion, whether it's myself or somebody
8 else, I'd be interested in really exploring and clearly
9 articulating what those conditions would be that would
10 have to be associated with a motion to intervene. That
11 is, if we were to decide to intervene, presumably, we
12 would be drafting or we'd be asking for assistance, most
13 likely from the Attorney General's Office, in drafting a
14 motion.

15 What are the specific elements that we
16 would want to articulate in there, as to (a) our rationale
17 for intervening, and (b) what are the -- what are the
18 specific statements or types of statements we would want
19 to have there, in order to, as you said, demonstrate our
20 neutrality, unless and until we do come to a final
21 decision?

22 CHAIRMAN HONIGBERG: I think that one
23 you just articulated is a prominent one. We intend to
24 remain neutral, unless and until we take a position. We

1 will not take a position on any of the procedural or
2 substantive questions on which we are -- on which we are
3 asked to take a position. Those are the two that come to
4 mind quickly.

5 You know, if I were tasked with drafting
6 it, I would then look at some other models and see what
7 comes up.

8 Does either of the lawyers out there
9 have any inspirations as to what other explicit neutrality
10 conditions we might want to put in such a document?

11 Attorney Buonamano.

12 MR. BUONAMANO: Yes. I think that we
13 could certainly develop language, either, you know, from
14 our own brain trust or from examples from other
15 jurisdictions and other interventions from similar
16 agencies.

17 CHAIRMAN HONIGBERG: Other thoughts or
18 comments? Or a motion?

19 *[Short pause.]*

20 CHAIRMAN HONIGBERG: The silence is
21 deafening.

22 MS. WEATHERSBY: Would we need to state
23 in such a motion our rationale for intervening, and do we
24 want to put that on the record?

1 CHAIRMAN HONIGBERG: I think it depends
2 on what you want to articulate. I mean, if you would --
3 if the reason for the intervention, if you were moving to
4 intervene, and there were a specific reason, and other
5 reasons you would reject, then I would advise you to put
6 that in the motion, so it's clear. Because if it's
7 just -- if, in fact, your support would only be
8 conditioned on a particular set of circumstances existing,
9 then it makes sense to get that out there, because others
10 may have a different understanding.

11 MS. WEATHERSBY: Then, I would be in
12 favor of putting in there that the rationale for
13 intervention is to preserve our rights to appeal any
14 decision of the FERC that may be contrary or inconsistent
15 with the grant or denial of any certificate by the SEC.

16 CHAIRMAN HONIGBERG: I'm a little
17 concerned about the level of specificity you just
18 articulated.

19 But, Commissioner Burack.

20 VICE CHAIRMAN BURACK: Yes. Again, if I
21 were to support such a motion, it would -- and language,
22 it would have to be tied to the language that instructs us
23 to consider this intervention. That is, it would have to
24 be that we are taking -- we are doing this to preserve our

1 rights to be able to, if and when necessary, to protect
2 the interest of the State of New Hampshire. And,
3 presumably, that interest of the State of New Hampshire
4 would be as articulated in any final decision that we
5 might come to in this matter. And, again, if we were to
6 hear this to conclusion, the only three outcomes that I
7 can see, other than the possibility of no decision, that
8 is, if the application were withdrawn or somehow put in
9 abeyance through the process, but, otherwise, the standard
10 way the SEC would deal with any matter is either to grant
11 a certificate, grant a certificate with conditions, or
12 deny a certificate.

13 And, so, I would imagine that, if we
14 were to intervene, it would be for the sole purpose of
15 being able to protect the interest of the State of New
16 Hampshire, as may be articulated by or evidenced in
17 whatever that final decision is of the SEC.

18 Does that comport with your
19 understanding, Attorney Weathersby?

20 MS. WEATHERSBY: That's much more
21 eloquently stated. Thank you.

22 CHAIRMAN HONIGBERG: Attorney
23 Weathersby, was that a motion?

24 MS. WEATHERSBY: So moved.

1 CHAIRMAN HONIGBERG: Is there a second?

2 DIRECTOR MUZZEY: Second.

3 CHAIRMAN HONIGBERG: All right. The
4 motion's been made by Attorney Weathersby and seconded by
5 Director Muzzey. Is there any further discussion of the
6 motion we'd like to have?

7 Commissioner Bailey.

8 COMMISSIONER BAILEY: I, like you, am
9 sort of on the fence. I think that that's a nice
10 compromise. But I just want to talk a little bit about
11 the risks of the perception that we may have some kind of
12 particular position that we think we're going to take in
13 our minds. And, so, I'm just thinking out loud here.

14 So, if the Committee decided that not to
15 grant, to deny the certificate, then we would take that to
16 the FERC at the end of the case and say "deny it, because
17 we chose to deny it"? Or, what -- I guess I'm trying to
18 see what happens with the three possible outcomes that
19 Commissioner Burack just articulated. If the Committee
20 denies the application, then what position would we take
21 at FERC? I guess, if the Committee grants the application
22 with conditions, we might take the position with FERC that
23 you need to impose these same conditions.

24 So, does that give people or does

1 that -- can somebody argue that, by deciding to intervene,
2 we have decided that we're probably most likely going to
3 grant with conditions?

4 CHAIRMAN HONIGBERG: I am fairly certain
5 that whatever we do is going to be misinterpreted by some
6 members of the public and some entities out there, be they
7 advocacy groups, consortiums of -- consortia of other --
8 of large organizations. It's going to be misconstrued, I
9 guarantee it.

10 That said, we can only be as clear as we
11 can be. My expectation is that, at the end of whatever
12 process we go through, assuming it goes all the way to
13 decision, that we would tell the FERC "this is what we
14 did, and here's why. And, we don't think you should do
15 anything inconsistent with what we did." And, if we have
16 denied the application, we would say "we think you should
17 deny the application, too." If we've granted it with
18 certain conditions, we said -- we would presumably say
19 something like "if you're going to grant this, grant the
20 right to proceed, it should contain the same conditions
21 that we impose." And, if we grant it, we would say "we
22 granted it." I don't honestly know what else we would
23 say.

24 Director Muzzey.

1 DIRECTOR MUZZEY: I think it's difficult
2 to know, obviously, what the SEC will do for a finding,
3 because we don't even have an application before us
4 already. And, so, I would not even presume that we would
5 do any of those options, depending on whether -- what a
6 finding may be, if needed.

7 I'm looking at this is that we are just
8 preserving our right, if needed, to comment to FERC. Not
9 to tell them to do anything in particular, not to tell
10 them they should do one thing or the other. But, as an
11 intervenor, to have that status to comment, if we find
12 it's needed in the future.

13 CHAIRMAN HONIGBERG: We do not need to
14 be intervenors to provide those comments. And, we have
15 that issue at the PUC, we have it at the SEC. There
16 are -- people can comment on the issues that are relevant
17 to the proceeding. They can comment on anything. You
18 know, there's no obligation that their comments on other
19 topics are going to have any bearing on the decision.
20 But, if they are commenting, members of the public have a
21 right to comment. It's true at the FERC, it's true at the
22 PUC, it's true at the SEC.

23 And, we're about to do a number of
24 public comment hearings sometime in March on another

1 application that you may have read about in the paper.
2 And, you know, we will hear lots of different opinions on
3 lots of different things, some of which may not be
4 relevant to what we're doing, but they will all be there
5 and have a right to make those comments.

6 If we -- if all we want to do is let the
7 FERC know what we've done, we don't need to be
8 intervenors. If we want to have the right to, as Attorney
9 Weathersby said, take some other action, we would need to
10 intervene, to make a more aggressive -- take a more
11 aggressive stance, with the -- threat's a bad word, but
12 with the possibility, anyway, of appealing, if the FERC
13 does something that is different from what we want.

14 Commissioner Bailey.

15 COMMISSIONER BAILEY: Couldn't we do --
16 couldn't the Attorney General's Office do that on behalf
17 of the state, to keep the SEC completely segregated from
18 the issue? But, I mean, you know, we could use the
19 Attorney General's Office as our lawyer who would --

20 CHAIRMAN HONIGBERG: Two different
21 questions.

22 COMMISSIONER BAILEY: -- to appeal or
23 advocate on behalf of our decision?

24 CHAIRMAN HONIGBERG: Well, there's two

1 different things, and I think the answer to both is
2 potentially "yes". I think, if the SEC wants to
3 intervene, it will almost certainly be done through the
4 Attorney General's Office. The Attorney General will be
5 our lawyer for that process.

6 If you are referring to Attorney General
7 Foster's decision to intervene as the Attorney General?

8 COMMISSIONER BAILEY: Yes.

9 CHAIRMAN HONIGBERG: I think the answer
10 is "I don't know", and I don't think Attorney Buonamano is
11 going to know or be able to answer that question. The
12 Attorney General is going to have lots of things that are
13 before him, lots of issues that he may want to raise, with
14 respect to the welfare of the citizens of the state, the
15 rights of the state as a state. It's incredibly broad.

16 It is well within, I think, his
17 authority to make the kind of argument that you're making.
18 But it also, in his discretion, it would be within his
19 discretion to say "no, that's not an issue that I want to
20 pursue as the Attorney General."

21 Attorney Buonamano, you may comment, if
22 you'd like, if you think I've -- if you want to
23 supplement?

24 MR. BUONAMANO: I would agree with what

1 you just said.

2 CHAIRMAN HONIGBERG: Commissioner
3 Burack.

4 VICE CHAIRMAN BURACK: Thank you, Mr.
5 Chairman. I want to pick up on a word that you used
6 earlier, which is "inconsistency", in answering the
7 question, Commissioner Bailey, that you asked earlier,
8 "what would different outcomes mean here?"

9 And, I think it's -- I don't want to say
10 it's "irrelevant", in terms of what the ultimate outcome
11 is or decision is that might be made by this body. But I
12 think what we'd have to look at, in terms of defining the
13 interests of the state, is, presumably, the interests of
14 the state is in seeing the decision of the SEC be the
15 decision that guides whatever action is taken with respect
16 to the project.

17 And, to the extent that that decision is
18 inconsistent with the -- with the decision the FERC makes,
19 that would be, I would think, the grounds for a potential
20 motion for reconsideration or an appeal or some other --
21 some other legal action that we would be entitled to take
22 as an intervenor, that we would not be entitled to take as
23 a commenter.

24 And, I think, in the final analysis,

1 that would really be the reason for us, if we are going to
2 vote to intervene, that would be the reason. That we are
3 just -- in the event that there are inconsistencies at the
4 end of this process, and, again, timing will be a factor
5 as well, but, if there are inconsistencies between what
6 decision we finally make as a body, as the SEC, and what
7 decision the FERC makes, we have at least preserved our
8 ability to be able to, through the FERC process, and
9 potentially beyond that in the court system, although, I
10 think primarily in the FERC process initially, we have at
11 least preserved our right to be able to assert the state's
12 interest directly, and not have to rely upon another
13 entity, such as the Attorney General, to assert those
14 interests on our behalf, when we did not take direct
15 action ourselves to try to preserve or protect those
16 interests.

17 So, that's -- ultimately, that's why I
18 think we would be doing this. And, I'm certainly
19 comfortable with that. And, I'm certainly comfortable
20 with doing it on the conditions that have been discussed
21 here, in essence, that we are intending to remain neutral.
22 Unless and until we take a final decision, we don't intend
23 to take positions on any interim steps or actions or
24 decisions being taken by the FERC while our SEC proceeding

1 is going on. And, we are neutral with respect to the
2 project. That is, we take no position with respect to it,
3 either in support or opposition, or having concerns about
4 it, unless and until we get to a final decision.

5 CHAIRMAN HONIGBERG: Commissioner
6 Bailey.

7 COMMISSIONER BAILEY: This may be a
8 question either for you or Mr. Buonamano. But, if we were
9 to intervene under those terms, would it be possible to
10 state in the motion to intervene that we don't even intend
11 to participate until we have finished our proceeding?

12 CHAIRMAN HONIGBERG: Other than
13 "anything is possible", Attorney Buonamano, do you have
14 anything you want to share or do you want to -- do you
15 want that question in a non-meeting?

16 MR. BUONAMANO: That's all right. I
17 would say that your motion to intervene would not require
18 that express statement in order to take that type of
19 course of action. You know, the intervention would be
20 accomplished regardless of a description on how the agency
21 might choose to use the powers granted to it by that
22 intervention.

23 CHAIRMAN HONIGBERG: Answer the question
24 in reverse. Can it contain such a statement as a -- if

1 that's what the will of the group is, as a message to the
2 public, the applicant, and everyone who has -- who's
3 already decided whether this is a good or a bad idea, to
4 remind them that we're not taking any position?

5 MR. BUONAMANO: Yes.

6 CHAIRMAN HONIGBERG: Attorney
7 Weathersby.

8 MS. WEATHERSBY: My only concern with
9 that is, in the unlikely scenario that no application is
10 filed with the SEC or an application is withdrawn from the
11 SEC, that we would then say "we're not going to intervene
12 until we reach a final decision", which we will never
13 reach.

14 So, I would not be in favor of that
15 language, but be in favor of other language that states
16 that "we will remain explicitly neutral, until we reach a
17 decision or until our process is avoided in fashion".

18 CHAIRMAN HONIGBERG: What position would
19 we take if our process is avoided? Do you have in mind
20 that we would then go to the FERC and say "The applicant
21 before you chose not to come to the state siting
22 authority; we, the state siting authority, would like you
23 to apply our processes and our standards in your review of
24 this application"?

1 MS. WEATHERSBY: Yes.

2 CHAIRMAN HONIGBERG: Can we do that? I
3 mean, again, anything is possible.

4 Commissioner Bailey.

5 COMMISSIONER BAILEY: I think that's
6 what makes the most sense in interpreting this statute.
7 To me, -- can I have it back? We have one copy up here.
8 You know, when the Legislature told us that we "shall
9 consider intervening in FERC proceedings", I think it
10 makes the most sense to intervene -- for the Site
11 Evaluation Committee to intervene in a FERC proceeding
12 where the applicant doesn't come here. Because, then, we
13 might have meetings and make some decisions about what we
14 were going to -- about the positions that we might want to
15 take with FERC in order to protect the interests of the
16 State of New Hampshire as the Site Evaluation Committee.
17 I think that makes sense.

18 So, I wonder if we could say "We don't
19 intend to participate during the pendency of the Site
20 Evaluation Committee process. But, if the application is
21 never filed" -- I don't know, to make some caveat or make
22 it a little bit less specific. I don't know.

23 CHAIRMAN HONIGBERG: Director Muzzey.

24 DIRECTOR MUZZEY: While I understand

1 that perspective, I am reminded that we have no rules or
2 procedures in place to take those types of actions,
3 outside of a proceeding where an application is before us.
4 So, I would be concerned about committing to any -- that
5 type of action in a public letter.

6 I think, you know, we can talk about
7 that, and, certainly, we have some rulemaking ahead of us
8 when it comes to pipeline projects, and that may be
9 considered at that time. But I would prefer to emphasize
10 our neutrality, without getting -- in an intervention
11 request, if we do so, I would prefer to emphasize our
12 neutrality, and some of the earlier points made by
13 Commissioner Burack, rather than to get into specifics of
14 what we would do if an application did not come before us.

15 CHAIRMAN HONIGBERG: Commissioner
16 Burack.

17 VICE CHAIRMAN BURACK: Mr. Chairman, I
18 think we have -- we could approach this a couple different
19 ways. One, we can -- we can assume that we have to -- we
20 have to cover the entire waterfront, in terms of all the
21 potential sort of pathways that this process could take
22 from this point forward. Or, we can proceed on an
23 assumption that an application will be filed, because the
24 applicant, at least as you've articulated, Mr. Chairman,

1 the applicant has publicly indicated that it intends to
2 file an application with the Site Evaluation Committee.
3 And, we can be explicit that we are -- we are proceeding
4 to move to intervene. And, again, we don't know for sure
5 that the FERC will grant our motion for intervention, but
6 we are moving to intervene on the assumption that that's
7 going to occur.

8 If that assumption turns out to be
9 incorrect or, you know, facts change, circumstances
10 change, I think it's very reasonable for us, as a body, to
11 say "Okay, circumstances are different from what we had
12 anticipated when we made the original decision." We
13 appropriately can go back and reconsider or consider a
14 different approach, because the facts are not as they were
15 or as we assumed that they would be.

16 And, so, I think that, certainly,
17 Commissioner Bailey's reading of the statute is one
18 potential reading of it. I'm not sure that one
19 necessarily can say that that's the only correct reading
20 of it. I think there are theories of statutory
21 construction that would suggest that, because the language
22 is plain on its face, we might never get to a question of
23 "what did the Legislature intend by this language?" But,
24 that notwithstanding, I think we could come back and

1 assert that as an alternative reading of this language, if
2 we did find ourselves in a place where, in fact, no
3 application were filed with the SEC.

4 CHAIRMAN HONIGBERG: I have a question
5 for the Administrator, Ms. Monroe. Commissioner Burack
6 just put it essentially to me about whether -- what
7 statements the applicant or the prospective applicant has
8 made regarding its intentions. Can you confirm for me
9 what the state of the record is in this docket?

10 MS. MONROE: Yes. On November 16, 2015,
11 Scott O'Connell, from Nixon Peabody, on behalf of the
12 Tennessee Gas Pipeline, LLC, submitted a letter to
13 Chairman Honigberg, stating its intent to submit an
14 application for a Certificate of Site and Facility in
15 connection with the Northeast Direct Project, which
16 includes 71 miles of pipeline from the Mass. border, in
17 Winchester, New Hampshire, and exiting the state in
18 Pelham, New Hampshire.

19 And, in addition, submitted affidavits
20 with the Notice of Public Information Sessions that were
21 to take place on December 1st, 2nd, and 3rd of 2015.

22 CHAIRMAN HONIGBERG: And, those public
23 information sessions did take place, did they not?

24 MS. MONROE: Yes, they did.

1 CHAIRMAN HONIGBERG: Do you have any
2 other information about the applicant's intentions as to
3 when they might be filing a petition?

4 MS. MONROE: No.

5 CHAIRMAN HONIGBERG: Okay. Commissioner
6 Burack.

7 VICE CHAIRMAN BURACK: So, Mr. Chairman,
8 if we were to proceed with this motion, certainly, I would
9 assume it would be predicated on the understanding that
10 we're basing this on the representations made by legal
11 counsel to the prospective applicant, and that's the basis
12 on which we're seeking to intervene at this time. And,
13 should circumstances change, I think we'd be in a position
14 then to reconsider and take other action, if we felt
15 appropriate.

16 CHAIRMAN HONIGBERG: Does anyone
17 disagree with what Commissioner Burack just said? I think
18 that makes eminent sense.

19 *[No verbal response]*

20 CHAIRMAN HONIGBERG: All right. Is
21 there other discussion, further comments, on Attorney
22 Weathersby's motion?

23 *[No verbal response]*

24 CHAIRMAN HONIGBERG: Ms. Whitaker,

1 you've been silent here in your first proceeding. It's
2 quite an introduction to the SEC, was it not?

3 MS. WHITAKER: It is. I am taking it
4 all in.

5 CHAIRMAN HONIGBERG: "Unprecedented" is
6 the word of the day.

7 VICE CHAIRMAN BURACK: Mr. Chairman,
8 before we take a vote on the motion, just a question about
9 process from here.

10 Would the Attorney General's Office
11 draft a motion that would then come back for review by the
12 full Committee? Or, would it be appropriate for the
13 Committee to designate you as the Chair, or you and me as
14 the Chair and Vice Chair, or some subcommittee hereof, to
15 be able to review and approve a final version of a motion
16 to intervene?

17 And, who would actually sign a motion to
18 intervene? That is, is it signed by you, as the Chairman,
19 or is it signed by counsel, the Attorney General, as legal
20 counsel to the Committee? I assume it's the latter, but I
21 think it would be important that we clarify these details.

22 CHAIRMAN HONIGBERG: I agree with you
23 that it is important to clarify those details. I share
24 your understanding that the document itself that gets

1 filed would come from counsel, and be signed by counsel on
2 behalf of the SEC.

3 With respect to review of the work and
4 approval and confirmation that it should go forward, I
5 don't know if either of the lawyers, and this actually
6 might be an easier question for Attorney Iacopino in some
7 ways. But, Attorney Buonamano, if you have thoughts on
8 it, I'd be delighted to hear from either or both of you?

9 MR. BUONAMANO: I've seen it done both
10 ways. Both are acceptable. It just depends on timing and
11 control. How much control over the specific wording of
12 the motion itself does the full Committee want to keep
13 over it? Or, whether that wants to be delegated? The
14 fact that there's a deadline probably plays into that.
15 And, I would just leave it at that.

16 CHAIRMAN HONIGBERG: Attorney Iacopino.

17 MR. IACOPINO: My recommendation would
18 be that, because what will happen is the attorney who
19 represents the Site Evaluation Committee at the FERC will
20 also file an appearance at the same time that the motion
21 to intervene is filed, my recommendation would be that
22 both the motion and the appearance are signed by the
23 attorney who does that on behalf of the Committee.

24 I also have a concern in that you don't

1 want to be approached on an *ex parte* basis, as
2 individuals, by people who may be participating in the
3 FERC proceeding. So, it's got to be very clear that your
4 voice at the FERC proceeding is the attorney who is
5 assigned to represent the Committee.

6 CHAIRMAN HONIGBERG: With respect to the
7 work between -- we haven't even taken a vote yet, I'll
8 just remind people of that. But, if we were to decide to
9 seek intervenor status, the work done between that moment
10 and the filing, it is -- it is not easy to work with a
11 group of more than one.

12 [Laughter.]

13 CHAIRMAN HONIGBERG: So, it is a matter
14 of working with counsel. It is arguably outside -- or,
15 actually, not "arguably", it probably is outside the scope
16 of RSA 91-A. So, the kinds of multiparty communications
17 regarding content would be allowed under 91-A, because of
18 the attorney/client nature of it.

19 Is it your view that, under the SEC
20 statute, that the SEC could authorize the Chair, Vice
21 Chair, or some combination thereof, to work with counsel
22 on this?

23 MR. IACOPINO: Yes. I think you could,
24 if that's the way that you wanted to do it. Or, counsel

1 could prepare a document, circulate it, take comments,
2 re-prepare it or re -- or, edit it in accordance with
3 those comments, until each member has indicated that they
4 are comfortable with it.

5 CHAIRMAN HONIGBERG: Attorney Buonamano.

6 MR. BUONAMANO: So long as the motion
7 that's ultimately filed is consistent with the motion that
8 was carried at the meeting, certainly, a single
9 Commissioner or a delegated, you know, person to work with
10 the assigned attorney, I think is fine.

11 CHAIRMAN HONIGBERG: Okay. Other
12 thoughts, comments, questions? Or, are we ready to vote?

13 *[No verbal response]*

14 CHAIRMAN HONIGBERG: All right. Seeing
15 no further comments, all in favor of Attorney Weathersby's
16 motion please say "aye"?

17 *[Multiple members indicating "aye".]*

18 CHAIRMAN HONIGBERG: Okay. That was
19 unanimous, I think, right? So, there are no opposed?

20 *[No verbal response]*

21 CHAIRMAN HONIGBERG: All right. How
22 would the Committee like to proceed with drafting? Does
23 everyone want to be involved and have attorney -- the
24 attorneys circulate to the group? Or, would the Committee

1 like to delegate me or delegate Commissioner Burack or
2 delegate Commissioner Bailey, or some subset of this
3 entire group to get this done? Individual? Multiples?
4 Make me an offer?

5 Commissioner Bailey.

6 COMMISSIONER BAILEY: What about a
7 combination of you and Attorney Weathersby, since it was
8 her motion?

9 CHAIRMAN HONIGBERG: Attorney
10 Weathersby?

11 MS. WEATHERSBY: That would be fine.
12 Or, I'd be happy to have either the Chair or the Vice
13 Chair, I'd be very comfortable with that. Looking over
14 it, I think they'd certainly have full understanding of
15 the issues, and very capable of handling the petition.

16 CHAIRMAN HONIGBERG: Okay. How do we
17 want to do it then?

18 Commissioner Burack.

19 VICE CHAIRMAN BURACK: Mr. Chairman, I'd
20 certainly be very comfortable with you and Attorney
21 Weathersby doing this. But, if it makes folks comfortable
22 to have a triumvirate of three attorneys looking at this
23 on behalf of the Committee, in conjunction with the
24 attorney from the Attorney General's Office who would

1 carry the overall drafting role, I'd be happy to
2 participate, if that would be of aid and assistance.

3 CHAIRMAN HONIGBERG: All right. I think
4 I'm going to exercise some authority I think I might have
5 under the statute, and designate Attorney Weathersby,
6 Commissioner Burack, and myself to work with counsel on
7 preparing this. If there's no objection to that, then
8 that's how we'll proceed? And, we'll try and get this
9 done quickly.

10 *[No verbal response]*

11 CHAIRMAN HONIGBERG: Any other thoughts
12 or comments or questions or other business we need to
13 transact?

14 Yes, Commissioner Burack.

15 VICE CHAIRMAN BURACK: Mr. Chairman, I
16 don't know if you want to say something further on this,
17 but moving off of this topic and to just a broader topic.
18 I don't think any of us want to allow this moment to go
19 without recognizing the fact that one of our colleagues on
20 the Site Evaluation Committee, Roger Hawk, died earlier
21 this week, on January 7th, or I guess just last week.
22 And, Roger was one of our first public members of this
23 body, I think served with great dignity and compassion,
24 and a real interest in serving the people of New Hampshire

1 through this process. And, it's very saddening to have
2 learned of Roger's death. Certainly, I know we all wish
3 his family well. And, I just want to take a moment to
4 recognize and thank him for his extraordinary service here
5 and so many aspects of his both public and private life.

6 CHAIRMAN HONIGBERG: I want to second
7 that and echo those comments, Commissioner Burack. Thank
8 you. Even as Roger was not doing well, he was committed
9 to participating in these events to the greatest extent
10 possible. His perspective, coming from planning, was
11 unique. And, it was a shame, a real shame, in every sense
12 of the word, that he was not able to serve a long, full
13 term as a member of this Committee, and that he was taken
14 from his family when he was.

15 With that said, on that sad note, is
16 there any other business we need to transact?

17 *[No verbal response]*

18 CHAIRMAN HONIGBERG: Commissioner Burack
19 moves we adjourn, and Commissioner Bailey seconds. Is
20 there any further discussion?

21 *[No verbal response]*

22 CHAIRMAN HONIGBERG: Seeing none, all
23 those in favor say "aye"?

24 *[Multiple members indicating "aye".]*

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CHAIRMAN HONIGBERG: We are adjourned.

MS. WHITAKER: Aye.

CHAIRMAN HONIGBERG: Thank you, Rachel.

MS. MONROE: Bye, Rachel.

MS. WHITAKER: Thank you, guys.

***(Whereupon the meeting was adjourned at
11:11 a.m.)***