

**STATE OF NEW HAMPSHIRE
SITE EVALUATION COMMITTEE**

Docket No. 2021-05

**Re: Petition for Declaratory Ruling of New Hampshire Transmission, LLC,
Regarding Transmission Substation Upgrade**

September __, 2022

**ORDER ON PETITION FOR AN EXEMPTION, FOR A DECLARATORY RULING THAT
THIS PROJECT IS NOT A SIZEABLE ADDITION, OR FOR EXPEDITED REVIEW**

This Order grants New Hampshire Transmission LLC's request for a ruling declaring that its proposed project to install and construct two 50 MVAR capacitors and three 345kV circuit breakers with associated transmission line and equipment at the electric transmission substation in Seabrook near the Seabrook Station nuclear power plant is not a sizable change or addition as defined by RSA 162-H:5, I (Petition.) Given this result the Subcommittee does not reach the Petitioner's alternative requests for an exemption from the requirements of RSA chapter 162-H or its request for expedited review of an application for a certificate of site and facility.

I. Brief Description of the Project

New Hampshire Transmission LLC (Petitioner) seeks to install and construct two 50 MV AR capacitors and three 345 kV circuit breakers along with associated transmission lines and equipment at the electric transmission substation (Substation) in Seabrook (Project) near the Seabrook Station nuclear power plant (Seabrook Station.) The Project is proposed to be constructed within the confines of an existing parking lot at Seabrook Station. The capacitor banks will need to be interconnected to an adjacent 345kV Eversource Line 363 electric transmission line via transmission tap conductors (lines) and structures that will be built and owned by Eversource as part of

the Project. The tap line will exceed 200 kilovolts and is an energy facility that triggers the jurisdiction of the Site Evaluation Committee (Committee.) *See* RSA 162-H:2, VII(e).

The Project will be constructed on the site of an existing parking lot that is approximately 2.06 acres. This acreage amounts to approximately 3.6% of the total developed acreage within the Seabrook Station site. The current estimated cost for the project is \$8.9 million.

II. The Petitioner

The Petitioner is the majority owner (88.2%) of Seabrook Station. The Petitioner is a public utility regulated by the Public Utilities Commission (PUC.) The Petitioner also filed a petition with the PUC to authorize the Petitioner to own, operate, and finance the project. *See* PUC Docket No. DE 22-027. Petitioner is a direct, wholly owned subsidiary of NextEra Energy Transmission, LLC. Petitioner also owns the Substation.

The Substation interconnects the 1,318 MW Seabrook Station nuclear facility to the New England electric grid. The Substation is also a Pool-Transmission Facility under the Tariff of the Independent System Operator for New England (ISO-NE) and a part of the New England Bulk Power System. It is an integral part of the North-South Interface and the North New England–Scobie plus Line 394 Interface. It connects the following 345kV transmission lines: (i) the Seabrook to Ward Hill 394 Line; (ii) the Seabrook to Scobie 363 Line; and (iii) the Seabrook to Timber Swamp/Newington 369 Line.

Both Seabrook Station and the Substation were constructed and operate under a Certificate of the Site and Facility issued in January 1974.

III. Procedural History

The Petitioner initially sought alternative forms of relief from the Committee. The Petition contains a request that the Project be determined to be exempt from the application and certification requirements of RSA chapter 162-H. Alternatively, the Petitioner requests the Committee to determine, by declaratory ruling, that the Project does not constitute a sizable addition to the existing facility under RSA 162-H:5. A third alternative requested by the Petitioner is that the Committee review the Application for a Certificate of Site and Facility on an expedited basis and issue a Certificate of Site and Facility.

The Petition was filed on April 1, 2022. On April 12, 2022, the Chair of the Site Evaluation Committee appointed Commissioner Robert Scott, Department of Environmental Services, Pradip K. Chattopadhyay, Public Utilities Commissioner and Robert Baines, public member, to serve on a subcommittee to hear the Petition (Subcommittee.)

On April 12, 2022, Commissioner Robert Scott filed a letter naming staff attorney Kerry Barnsley as a state agency member designee, pursuant to RSA 162-H:4-a, III. On April 22, 2022, the Chair designated Attorney Barnsley to be the presiding officer.

On July 5, 2022, the Subcommittee issued an Order and Notice of Public Meeting and Public Information Hearing. The Order and Notice described the Project and noticed a public meeting and public information hearing before the Subcommittee for July 25, 2022, in Seabrook. The Order and Notice was published on the Subcommittee's website. It was also published in the Union Leader on July 7, 2022, and in the Portsmouth Herald on July 8, 2022. A display ad was published in the Portsmouth Herald on July 11, 2022. No parties sought intervention. However,

Thomas Costello, an abutter to the Project, filed written comments in the form of questions on July 15, 2022. The Petitioner filed answers to Mr. Costello's questions on July 20, 2022.

A Public Meeting and Public Information Hearing was held on July 25, 2022. At the public hearing, the Petitioner was represented by Attorney Douglas Patch.

Attorney Patch was accompanied by the following persons each of whom was sworn:

Richard Allan
President, New Hampshire Transmission

Corrine DeDomenico
Project Development, New Hampshire Transmission

Peter Larochelle
Manager/Nuclear Transmission
New Hampshire Transmission

Erika St. Pierre
Project Manager, TRC Environmental

Heather Storlazzi Ward
Wetlands Scientist, TRC Environmental

At the hearing, the Petitioner relied on the following exhibits:

Pet. Ex. 001: Petitioner's Petition – filed on April 1, 2022

Pet. Ex. 002: Petitioner's Redacted Application Materials - filed on April 1, 2022

Pet. Ex. 003: Petitioner's Unredacted Application Materials - filed on April 1, 2022 – CONFIDENTIAL

Pet. Ex. 004: Shoreland Impact Permit - filed with SEC on May 10, 2022

Pet. Ex. 005: Letter of Support from the Town of Seabrook – dated May 5, 2022, filed on May 10, 2022

Pet. Ex. 006: Pre-filed Testimony St. Pierre and Storlazzi Ward - filed on July 13, 2022¹

¹ Petitioner initially prefiled the testimony of Dana Valteau a wildlife biologist at TRC. On July 13, 2022, The Petitioner notified the Subcommittee that Mr. Valteau had left

Pet. Ex. 007: Updated Layout of Project

Pet. Ex. 008: Petitioner's Response to Information Request from Thomas Costello – filed on July 20, 2022

Pet. Ex. 009: Petitioner's Public Hearing/Meeting Presentation Power Point

Neither Mr. Costello nor any other member of the public appeared at the Public Meeting.

Attorney Patch presented the arguments for the Petitioner. When necessary, his presentation was supplemented by the sworn witnesses. Atty. Patch and the sworn witnesses answered all the questions posed by the Subcommittee. Upon the conclusion of the Petitioner's presentation, the Presiding Officer called for public questions or comments. No members of the public were present.

The Subcommittee then closed the record and began deliberations. After discussion, the Subcommittee decided to grant the relief seeking a declaratory ruling that the Project was not a sizable change or addition to an existing facility. Given this ruling the Subcommittee did not consider the alternative requests for relief. This Order memorializes the Subcommittee's reasons for its declaratory ruling.

IV. Position of the Applicant

The Petition filed by the Applicant in this docket was expansive. It included a complete Application for a Certificate of Site and Facility and sought three alternative types of relief—an exemption from the statutory requirements of RSA chapter 162-H; or, a declaratory ruling, that the Project does not constitute a sizable addition to the existing facility under RSA 162-H:5; or, that the Committee review the Application for

his position and his testimony was adopted by the joint prefiled testimony of Erika St. Pierre and Heather Storlazzi Ward both employed by TRC.

a Certificate of Site and Facility on an expedited basis and issue a Certificate of Site and Facility. However, at the public hearing the Petitioner expressed its desire for the Subcommittee to consider the request for a declaratory ruling as its primary request for relief. Transcript pp. 16-17².

The Petitioner points out that the Project as proposed is the result of ISO-NE's 2029 New Hampshire Solution Study (posted as final on May 27, 2021) which studied reliability criteria violations. Pet. Ex. 2, p. 2; Transcript p. 19. The project was preferred by ISO-NE based on cost, performance, and expandability³. Transcript p. 19.

V. Request for Declaratory Ruling – Standard of Review

The Petitioner's primary request for relief seeks a declaratory ruling that the Project as proposed is not a sizeable addition to an existing energy facility. RSA 162:5, I, requires a developer to obtain a certificate of site and facility for "sizeable changes or additions" to existing energy facilities. RSA 162:5, II, requires a developer to obtain a certificate of site and facility for sizeable changes or additions to facilities certified under statutes that existed before 1992.

A declaratory ruling is a decision by the Committee about "the specific applicability of any statutory provision or of any rule or order of the agency." *See* RSA 541-A:5, I. When considering a petition for declaratory ruling the Subcommittee must follow the process set out at RSA 541-A:29 and N.H. Admn. R. Site 203.01 and 02.

Under RSA 541-A:29 the Committee must:

² References to the transcript of the July 25, 2022 Public Meeting and Informational Hearing are cited as "Transcript" followed by the page number.

³ In addition to this Project ISO-NE also identified a Stacom Project at the Amherst NH Eversource substation as part of the preferred option to address the state-wide reliability criteria violations. The Petitioner and Eversource are permitting the projects separately despite the fact that ISO-NE identified the need for both projects. Transcript, p. 19.

1. Within 30 days of receipt, examine the application, petition, or request, notify the applicant of any apparent errors or omissions, request any additional information that the agency is permitted by law to require, and notify the applicant of the name, official title, address, and telephone number of an agency official or employee who may be contacted regarding the application. *See* RSA 541-A:29, I.
2. Approve or deny the petition within 60 days through the use of non-adjudicative process if non-adjudicative process is permitted by law; *See* RSA 541-A:29, II(a) or,
3. Commence an adjudicative hearing and make a determination within a reasonable period of time. *See* RSA 541-A:29, II.

The Committee's administrative rules require:

Upon review and consideration, the committee shall issue a written ruling either granting or denying the petition, including an explanation of the factual and legal basis for granting or denying the petition, within 90 days of receipt of the petition.

See Site 203.02(b). In this case the Petitioner initially identified the declaratory ruling as relief that was alternative to its exemption request. The time frames required by the statute and the administrative rules did not apply until the Petitioner identified the Declaratory Ruling as its preferred form of relief⁴.

The Committee has been asked on several occasions to determine whether an addition or change to an existing energy facility is "sizeable." This question has arisen regarding Seabrook Station on two prior occasions where the Committee considered declaratory rulings.

The Petition correctly asserts that the Committee issued a declaratory ruling in 2008 pertaining to Seabrook Station. In that case the Committee determined that relocating the reserve auxiliary transformers and the generator step-up transformer connections, installing five new gas insulated substation breakers, and erecting a new

⁴ The Petitioner identified a declaratory ruling as its preferred form of relief on July 25, 2022, at the Public Meeting and Public Information Hearing.

substation structure with a higher roofline than the existing structure, at a cost estimated at \$38 to \$44 million was not a sizeable addition to Seabrook Station. *See Florida Power and Light, Docket No. 2008-05, Order Granting Motion for Declaratory Ruling Regarding Seabrook Transmission Substation Reliability Upgrade, (December 17, 2008).*

In 2018 the Committee again issued a ruling declaring the replacement of four circuit breakers, replacement of existing foundations and busses for the three transmission lines, replacement of relay protection systems, and enhancements to the Air Termination Yard, with an estimated cost of \$87 million was not a sizeable change or addition to Seabrook Station. *See Petition of New Hampshire Transmission for Declaratory Ruling, Docket No. 2018-02, Order on Petition for Declaratory Ruling, (August 2, 2018).*

The Petitioner notes that the Project is smaller and less expensive than previous changes and additions to Seabrook Station that were deemed to be not sizeable by the Committee.

RSA 162-H:5 prohibits the siting, construction, or operation of an energy facility unless the facility has received a Certificate of Site and Facility from the Committee. Existing facilities and those that were constructed prior to the enactment of RSA chapter 162-H or its predecessor, RSA chapter 162-F, require the issuance of a Certificate of Site and Facility for “sizeable changes or additions.” *See RSA 162-H:5, I, II.*

While the Subcommittee is not bound by prior findings or rulings, when appropriate, it must consider prior rulings and findings on the same or similar subject matters. *See RSA 162-H: 10, III.* Here the Subcommittee finds the Committees prior definitions and findings to be instructive.

The Committee defines the word “sizable” as “having considerable size.” See Order Granting Motion for Declaratory Ruling, Docket No. 2014-01, Motion of Granite State Gas Transmission Company for Declaratory Ruling on the Squamscott Replacement Project, at 9 (Aug. 20, 2014) (citing and quoting Order Granting Motion for Declaratory Ruling, Docket No. 2012-02, Motion of Granite State Gas Transmission Company for Declaratory Ruling on the Little Bay Bridge Crossing Replacement Project, at 4 (July 5, 2012)). “Considerable” is defined as “large in amount, extent or degree” or “worthy of consideration, important.” *Id.*; see also Order Denying Motion for Declaratory Ruling, Docket No. 2009-01, Motion of Campaign for Ratepayers Rights, *et. al.*, for a Declaratory Ruling Regarding Modifications to Merrimack Station Electric Generating Facility, at 8 (Aug. 10, 2009). Whether a proposed addition or change to an energy facility is sizable is a fact-driven determination. See Order Granting Motion for Declaratory Ruling, Docket No. 2014-01, at 9.

In previous decisions, the Committee considered these factors in determining whether a change or addition to an existing facility was sizable: (i) the existing size of the energy facility and the size of the proposed change; (ii) whether the proposed change will require the acquisition of new land; (iii) whether the proposed change will create a change in the capacity of the existing facility; (iv) whether the proposed change is merely a replacement of existing components of the facility as opposed to an expansion or increase in size of those components; and (v) whether the proposed addition or change to a facility will cause disruption in the existing environment. *Id.* at 9-10; see Order Granting Motion for Declaratory Ruling, Docket No. 2012-02, at 4; see also Order Denying Motion for Declaratory Ruling, NHSEC Docket No. 2009-01, at 8 (vacated on jurisdictional grounds in *In re Campaign for Ratepayers’ Rights*, 162 N.H. 245 (2011)). “The vast difference in size, type and capacity of existing energy facilities

must govern the nature of the consideration and the weight applied to various factors.” Order Granting Motion for Declaratory Ruling, Docket No. 2014-01, at 10. The Subcommittee finds the five factors expressed in previous dockets to be applicable here.

In applying the forgoing factors, the Subcommittee determined that the Project was not a sizeable change or addition to an existing facility that required a certificate of site and facility. In reaching this decision the Subcommittee considered each of the criteria.

VI. Request for Declaratory Ruling - Analysis

Having reviewed the Petition, the various filings and the exhibits and hearing the preference of the Petitioner for a declaratory ruling, the Subcommittee determined that it would first treat the Petition as a motion for declaratory ruling. In considering the requested relief the Subcommittee considered the expansive nature of the materials provided to the Subcommittee. Those materials included a complete application for a certificate of site and facility filed after the Petitioner conducted a public information session. *See* Pet Ex. 2, Appendix 11, pp. 2-634. The Application, Pet. Ex. 2, included all information required for an application for a certificate of site and facility. The Application also included 14 appendices detailing various aspects and components of the Project. The Appendices included a wetlands water body and vernal pool delineation report, Pet. Ex. 2, Appendix 1; electrical drawings, Pet. Ex. 2, Appendix 5; civil design drawings, Pet. Ex. 2, Appendix 7. Also included in the appendices was the Petitioner’s permit applications with the Department of Environmental Services, Pet. Ex. 2, Appendix 4, photographs of the project site, Pet. Ex. 2, Appendix 9; a visual impact analysis report Pet. Ex. 2 Appendix 10; and importantly, the system study request submitted to ISO-NE, Pet. Ex. 2 Appendix 6.

Having reviewed the Petition, Pet. Ex. 1, the Application, Pet. Ex. 2, the prefiled testimony of Erika St. Pierre and Heather Storlazzi Ward and having had the opportunity to question the Petitioner's witnesses under oath the Subcommittee determined that it had sufficient information to proceed and to determine if the request for a declaratory ruling should be granted.

1. The existing size of the energy facility and the size of the proposed change.

The Project is proposed to be constructed on a portion of the Seabrook Station site that is approximately 2.06 acre and currently serves as a parking lot. Pet. Ex. 2 pp. 2-18. The Project will be located north of the existing North Access Road on the Seabrook Station property. The site is bordered to the south by an approximately 245-foot wide Eversource transmission easement, to the west by an existing abandoned Boston & Maine railroad right of way, to the north by emergency response infrastructure, and to the east of an approximately 70-foot wide Unitil easement. The Project access road is located off US Route 1. The overall size of the Seabrook Station site is 889 acres, of which approximately 600 acres is marshland or wetlands. *Id.* The project will not encroach on any marshlands or wetlands. It will be constructed in an area that currently serves as a paved parking lot. The Project is expected to impact less than 0.4% of the total Seabrook Station acreage and 3.6% of the total Seabrook Station developed acreage. Pet. Exh. 2, pp. 2-20. The area in which the Project will be constructed is only a small portion of the overall site.

The change and additions proposed for the Project are not sizable in their relative cost or required capital outlay. The estimated cost of the Project is \$8.9 million. The Committee has previously found upgrade projects at Seabrook Station to not be sizable despite estimated construction and replacement cost of \$87 million for the replacement of four circuit breakers, existing foundations and busses for three

transmission lines, and relay protection systems, and enhancements to Air Termination Yard. See Order on Petition for Declaratory Ruling, NHSEC Docket No. 2018-02 (August 2, 2018). In 2008, a reliability upgrade relocated reserve transformers and generator step-up connections and installed five gas insulated breakers and erected a new substation structure with a higher roofline at the estimated cost of \$38 million to \$44 million. See Order Granting Declaratory Ruling, Docket No. 2008-05 (December 17, 2008.) The cost of this Project is substantially less than other projects at Seabrook Station which were not deemed to be a sizable changes or additions. Yet the need for this Project to maintain grid reliability is just as important.

2. Does the Project require the acquisition of new land?

The Project will be constructed entirely within the referenced parking lot and will not require the acquisition of new land or development on unimproved lands.

3. Does the Project Change the Capacity of the Existing Facility?

The proposed Project will not increase the generating capacity of the Seabrook nuclear power plant. Likewise, the Project when complete will not increase the transmission capacity of the Seabrook Substation. However, the Project will equip the Seabrook Substation to address the reliability violations predicted by ISO-NE in its New Hampshire 2029 Needs Assessment, dated December 2019, consistent with the ISO-NE preferred solution addressed in its New Hampshire 2029 Solutions Study, dated May 27, 2021. See Pet. Ex. 2 (Redacted) and 3, Appendix 6.

4. Is the proposed change a replacement of existing components of the facility as opposed to an expansion or increase in size of those components?

The Project is not a simple replacement of existing components. New and different components will be added to the existing substation parking lot area. An

existing building and trailers will be removed from the Project area to allow for the installation of the capacitor banks, transmission line and associated equipment. *See* Pet. Ex. 2, Appendix 7 (TRC Civil Design Drawings - compare existing conditions at pp. 2-324 with proposed site plan at pp. 2-323.) Despite the installation of new and different components in the Project area there will not be a change in the nature of the site. The capacitor banks, transmission line and associated equipment are typical and comparable to equipment and components that already exist at the site and throughout the developed area of the Seabrook Station facility. Additionally, there will be minimal if any change to the public view of the Project area. The Petitioner commissioned a visual impact assessment (VIA.) *See* Pet. Ex. 2, Appendix 10. The VIA establishes that the overall visual impact of the Project is minimal. When the Project can be seen, it is seen in conjunction with the existing Seabrook Station and the existing utility and transmission infrastructure in the area. The Project does not alter the visual character of the landscape. The limited areas of visibility are generally confined to the immediate area of the Site where existing industrial features further minimize any potential for adverse impacts. *See* Pet. Ex. 2, Appendix 10, pp. 2-606. The minimal visual impact mitigates the fact that the Project includes new and different components.

5. Will the proposed addition or change to the facility cause disruption in the existing environment?

The Project is not likely to cause disruption in the existing environment. As noted above the Project will be constructed and installed within an existing paved parking lot. The Petitioner has obtained a Shoreland Protection Permit from the Department of Environmental Services. *See* Pet. Ex. 4. The Petitioner submitted an application for an Alteration of Terrain Permit. *See* Pet. Ex. 2, Appendix 4, pp. 2-222. Compliance with the environmental permits will assure that little, if any, harm is

caused to the natural environment. The Petitioner has also engaged in consultation with the New Hampshire Natural Heritage Bureau to determine if the Project jeopardizes listed, threatened, or endangered wildlife, rare plants, or exemplary natural communities. *See* Pet. Ex. 2, Appendix 15A. Because the Project will be contained to the existing paved parking lot and will not encroach on surrounding wetlands there is little concern that the Construction will impact wildlife, rare plants, or exemplary natural communities.

In addition, the Petitioner's contractors will be subject to Department of Transportation rules governing the trucking and delivery of component parts to the site.

The Petitioner has also engaged in consultation with the New Hampshire Division of Historical Resources. As a result of that consultation, it was determined that the Project will not impact any known archeological sites and will not impact any historic properties. *See* Pet. Ex. 2, Appendices 13A and 13B. *See also* Prefiled Testimony of Dana Valleau, Pet. Ex. 2 pp. 2-074 (adopted by St. Pierre and Storlazzi Ward.) Combined with the visual impact assessment, described above, the Subcommittee finds that the construction and operation of the Project will not cause disruption to the natural environment or the cultural environment.

The Subcommittee also considered the Town of Seabrook's support for the project. *See* Pet. Ex. 5. In addition to addressing reliability concerns the Project will bring additional tax dollars to the Seabrook community.

VII. Conclusion

After reviewing the Petition and hearing testimony and arguments, the Subcommittee determined that the Project, as proposed, is not a sizable change or addition to the existing facility. The issuance of a new Certificate of Site and Facility

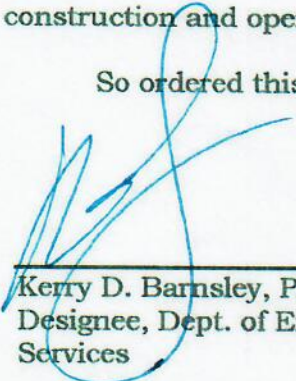
for the proposed upgrades under RSA 162-H:5, II, is unnecessary. The Petition for Declaratory Ruling is granted, and Petitioner may proceed without the issuance of a Certificate of Site and Facility.

Having made this determination, the Subcommittee did not address the requests for an exemption under RSA 162-H:4, IV, or the request for expedited review of a complete application for a certificate of site and facility.


VIII. ORDER

It is hereby Ordered that: the request for a Declaratory Ruling as contained in the Petition is granted and a Certificate of Site and Facility is unnecessary for the construction and operation of the Project.

So ordered this ____ day of September 2022.



Kerry D. Barnsley, Presiding Officer
Designee, Dept. of Environmental
Services



Pradip Chattopadhyay, Commissioner
New Hampshire Public Utilities
Commission

Robert A. Baines
Public Member

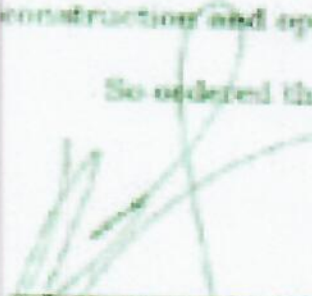
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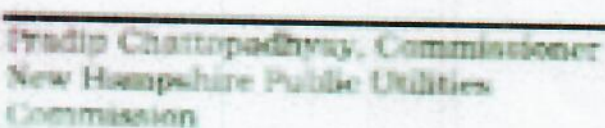
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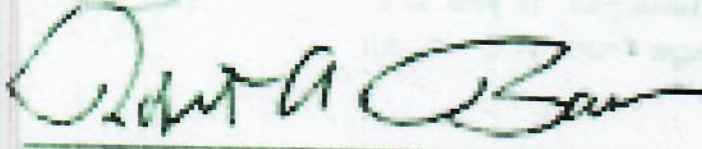
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