

STATE OF NEW HAMPSHIRE

**SITE EVALUATION COMMITTEE
(Docket No. SEC 96-01)**

**DECISION ON SUPPLEMENTAL JOINT MOTION FOR REHEARING
AND
PUBLIC COUNSEL MOTION TO ENFORCE**

I. Procedural Status

On July 16, 1997, the Site Evaluation Committee issued a decision in this docket which granted the request of Portland Natural Gas Transmission Inc. (PNGTS) for a Certificate of Site and Facility pursuant to RSA 162-H to construct, operate and maintain the PNGTS Project, and granted to Maritimes & Northeast Pipeline, L.L.C. (M&N) and PNGTS a Certificate of Site and Facility pursuant to RSA 162-H to construct, operate and maintain the joint facilities and associated facilities. In response to a Motion for Reconsideration the Committee issued an order on September 26, 1997. On October 27, 1997, the applicants filed a Joint Supplemental Motion for Reconsideration raising issues with respect to the Order issued on September 26, 1997. On November 4, 1997, Public Counsel filed a Response to the Motion. On November 6, 1997, Public Counsel filed a Motion to Enforce alleging that PNGTS and M&N had violated Condition 7 of the Committee's July 16, 1997 order. On November 17, 1997, the applicants filed an Objection to Public Counsel's Motion to Enforce.

On November 21, 1997, the Committee issued an Order responding to portions of applicants' Joint Motion for Rehearing. The Committee denied the applicants' Request for Reconsideration, Clarification or Rehearing of NHPUC Condition A, denied the applicants' Request for Reconsideration or Rehearing of the Committee's Ruling with respect to its jurisdiction over laterals as "intrastate" facilities under the RPSA, and the Committee scheduled a public hearing for December 5, 1997 with respect to whether NHDES Condition 12, as revised September 23, 1997, was unworkable and would prevent successful construction of the project; and on Public Counsel's Motion to Enforce.

II. NHDES Condition 12

The applicants in their Joint Supplemental Motion for Reconsideration argue that NHDES Condition 12, as revised September 23, 1997, is not workable. To support their contention the applicants submitted a "Waterbody Crossing Turbidity Analysis," which they maintain addresses comprehensively the issues on turbidity raised by the SEC's September 26, 1997, Decision and Order, offers new data and analysis and proposes an alternative approach to turbidity monitoring. The applicants submit that the SEC and NHDES should reconsider the provisions of NHDES Condition 12, review and accept applicant's turbidity analysis and proposed mixing zone modifications, and make appropriate revisions to NHDES Condition 12.

Public Counsel, in its objection, maintains that the applicants are not entitled to reconsideration of NHDES Condition 12, and states that the same water quality issues now addressed in the Joint Supplemental Motion for Reconsideration were considered during the adversarial hearings and in post hearing meetings with the applicants, and that the report addressing water quality and turbidity issues is not properly characterized as newly discovered evidence entitling applicants to reconsideration of NHDES Condition No.12. In requesting expedited consideration of their application, Public Counsel contends, applicants represented that they submitted a complete application to the Committee which would provide the Committee, Public Counsel, and the NHDES with information sufficient to allow the agencies to make permit recommendations and the Committee to issue an energy facility certificate, and that the Committee should not permit applicants to short-circuit the statutory process of adversarial proceedings by first allowing expedited consideration and then permitting the untimely filing of substantive information and unilateral changes to the conditions. Public Counsel further asserts that if information which should have been provided during the hearing is accepted as "newly discovered evidence" simply because it is generated after the hearing, the ability of the public, Public Counsel and the NHDES to participate meaningfully in the permitting and certifying process will be seriously undermined.

The Committee finds that the state's water quality standards utilized in the Clean Water Act Section 401 Certificate place conditions on the construction of the pipeline and the DES monitors compliance with these conditions. The conditions are imposed to avoid immediate and serious danger of irreparable environmental damage, destruction and discharges of highly turbid water to New Hampshire's rivers and streams. The Department of Environmental Services adopted Surface Water Quality Regulations. These rules are designed to avoid destruction of wetlands, excessive turbidity and irreparable harm from water pollution caused by disturbances to the surface waters of the State. NHDES Condition 12 imposes requirements set forth in the New Hampshire Administrative Rules Env-Ws 430 and requires certificate holders to maintain and protect all existing and designated uses of the surface waters impacted by construction of the pipeline, during the period of construction. The Committee modified its original Condition 12 in its order of September 26, 1997 to include a mixing zone in an effort to clarify the way the rule would work. The applicants continue to have problems with the application of the rule claiming that it would make the project unworkable. Public Counsel engaged independent technical experts for consultation regarding the issue.

A technical conference was held with NHDES staff, the applicants and Public Counsel during which they examined the various consultants' studies. The result of the technical conferences is a recommendation by NHDES (Attachment A attached hereto), which recommendation is acceptable to all of the parties with one exception. Public Counsel recommends that the Committee rather than NHDES grant approval for wet crossings on a case by case and/or stream type category basis. Public Counsel strongly suggests that the public be involved with the wet river crossings issues and asserts that an expert concerned with the public interest should be involved to the extent that the expert may participate in solving of problems as they may arise. The applicants expressed their commitment to have the public involved by

agreeing to increase the consultant's budget to \$15,000 so that Professor McDowell can consult with NHDES. NHDES has agreed to be open to suggestions from the Fish and Game Department and Counsel to the Public as well as interested members of the public. Having accepted the expressions of the parties set forth above, the Committee accepts Condition 12 as submitted by NHDES (Attachment A attached hereto) as an amendment to the Site and Facility Certificate issued September 26, 1997.

III. Motion to Enforce

The Public Counsel filed a Motion To Enforce the applicants' obligation to comply with the requirement to provide a fact sheet containing information set forth in Attachment F of the Committee's Decision and Order to each landowner affected by the construction of the pipeline. On August 13, 1997, applicants jointly moved for reconsideration of the Committee's decision. In their Joint Motion for Reconsideration, applicants requested reconsideration or modification of only one provision concerning the fact sheet, the requirement that they "affirmatively explain the landowners' rights and answer any questions the landowners may have had about the fact sheet." (Condition E.7). On September 26, 1997, the Committee granted reconsideration and revised the original condition to provide that "Applicants should affirmatively explain the material in the fact sheet and outline the procedures the landowner should be aware of concerning issues of eminent domain and or easements, and answer any questions the landowners may have about the fact sheet." The Committee also stated that, "the fact sheet should also inform the landowner that they are entitled to retain an attorney for legal services." Public Counsel contends the applicants have failed to meet the above-referenced requirements relating to the fact sheet and interactions with landowners.

The Committee received the testimony of several public witnesses at the December 5, 1997 hearing who stated that the applicants did not comply with the strict requirements of the Committee's orders. Issues were raised concerning the landowners fact sheet, easement language, and land acquisition practices. The Committee requested that the applicants respond in writing to the Committee.

In their response, the applicants acknowledged that they will send a letter to all affected landowners by regular mail that would explain each of the three points contained in Attachment C hereof. In addition, they will send landowners a Revised Landowner Fact Sheet, which land agents will use in the future when dealing with landowners. As to easement issues, the applicants agree to waive the right to increase the size of the pipe and to include language that would make the scope of the easement consistent with the powers under the FERC Certificate. The applicants' response to land acquisition practices included how they arrived at the valuation of one of the properties. They also provided a chronology of meetings and actions that took place since the Committee hearing in June 1997.

Public Counsel agrees that the steps proposed by the applicants will alleviate most of the problems presented, but continues to argue that the applicants failed to act in a timely fashion or within the spirit of the order.

The Committee is disappointed in the way the applicants proceeded with the issues of landowners concerns, especially the issue of the fact sheet. Although the Committee finds the applicant's actions were not willful, it lacked the sensitivity that should be directed to citizens that are impacted by the construction of a large project that encumbers their land. The Committee has insisted and continues to insist that the applicants be sensitive to the position of citizens who are impacted by the construction and maintenance of this large gas pipeline project. There is a fine line as to what authority can be exercised to control negotiations between parties who ultimately may need to litigate their rights in a proper forum. To alleviate the matter further, the Committee will require the applicants to send a letter (as set forth in Attachment C-1) to all landowners by regular mail clarifying the following points: (1) repair of property damage, (2) landowners grievances, and (3) well inspection. The applicants will send to landowners a Revised Landowners Fact Sheet (Attachment C-2) and prepare a Right-of-Way Agreement to conform with the sample provided in Attachment C-3. The applicants will also prepare a Limited Release of Easement Rights to conform to Attachment C-4 wherein the applicants will limit the size of the pipe, and limit the scope of the easement to be consistent with the powers under the FERC certificate. Based on the foregoing, the Committee concludes that the issues raised by the Motion to Enforce have been addressed and are now moot. Therefore, the Motion to Enforce is dismissed without prejudice.

IV. NHPUC Conditions

The Order of November 21, 1997 permitted the parties to stipulate on the technical aspects and requirements of NHPUC Condition A.1 (issue of pipeline notch toughness standards). A Stipulation consented to by the parties was filed on December 4, 1997 agreeing to the pipeline toughness standards to replace NHPUC Condition A.1. The Committee accepted the Stipulation and NHPUC Condition A.1 is amended as set forth in Attachment B hereto.

The parties also agree that NHPUC Attachment D, A. Pipe Specifications • Piping 1 (see Decision and Order dated July 16, 1997), should be amended to remove and eliminate the word "wetland."

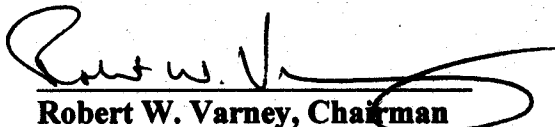
Based upon the foregoing the Committee hereby Orders:

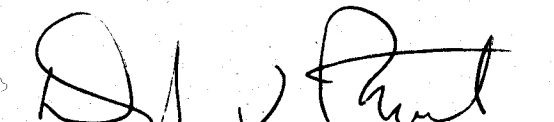
1. NHDES Condition 12 of the Committee's decision dated July 16, 1997 be amended to read as set forth in Attachment A hereof.
2. NHPUC Condition A.1 of the Committee' decision dated July 16, 1997 be amended to read as set forth in Attachment B hereof.

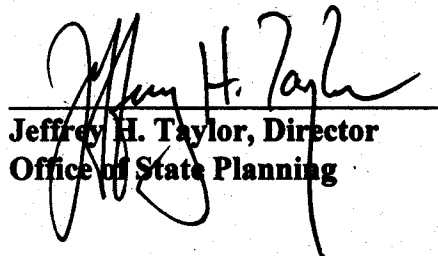
3. The applicants will send the following documents to all landowners within 20 days and file an affidavit of compliance within 30 days:
 - (a) A letter (as set forth in Attachment C-1) by regular mail clarifying the following points: (1) repair of property damage, (2) landowners grievances, and (3) well inspection,
 - (b) A revised Landowners Fact Sheet (Attachment C-2),
 - (c) Right-of-Way Agreement to conform with sample in Attachment C-3, and
 - (d) Limited Release of Easements Rights to conform to Attachment C-4 wherein the applicants will limit the size of the pipe, and limit the scope of the easement to be consistent with the powers under the FERC certificate.
4. NHPUC Attachment D, A. Pipe Specifications • Piping 1. (See Decision and Order dated July 16, 1997) is amended to remove and eliminate the word "wetland".
5. The legal rulings in the Committee's November 21, 1997 Order which were stayed under paragraph 5 of that Order are now final.

The Committee accepts the Findings of Facts and Conclusions of Law consistent with this decision to be true and rejects those findings of Fact and Conclusions of Law that are inconsistent herewith.

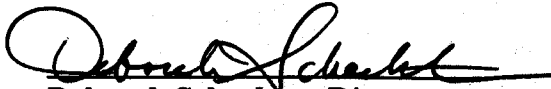
So Ordered:

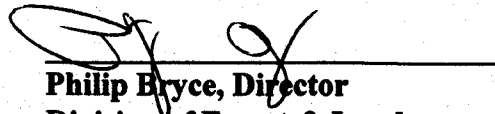

Robert W. Varney, Chairman
Commissioner, Dept. of
Environmental Services


Douglas L. Patch, Vice-Chairman
Chairman, Public Utilities Commission

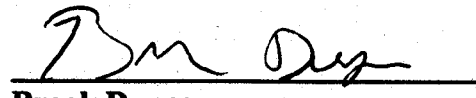

Jeffrey H. Taylor, Director
Office of State Planning



Kenneth A. Colburn, Director
Air Resources Division
Dept. of Environmental Services



Deborah Schachter, Director
Governor's Office of Energy
& Community Services

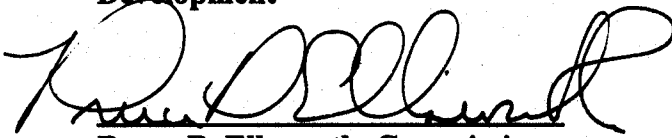

Philip Bryce, Director
Division of Forest & Lands
Dept. of Resources & Economic Development

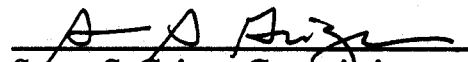

Leon S. Kenison, Commissioner
Dept. of Transportation

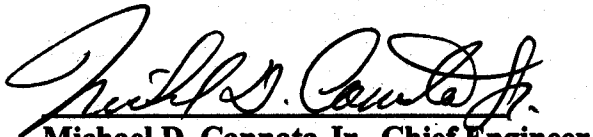

Brook Dupee
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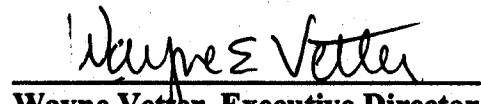

Richard McLeod, Director
Division of Parks
Dept. of Resources & Economic
Development


Robb Thomson, Commissioner
Dept. of Resources & Economic Development


Bruce B. Ellsworth, Commissioner
Public Utilities Commission


Susan S. Geiger, Commissioner
Public Utilities Commission


Michael D. Cannata Jr., Chief Engineer
Public Utilities Commission


Wayne Vetter, Executive Director
Fish and Game Department

Dated January 28, 1998 at Concord, New Hampshire.