

**STATE OF NEW HAMPSHIRE
SITE EVALUATION COMMITTEE
(Docket No. SEC 96-01)
(Docket No. SEC 96-03)**

**ORDER GRANTING HEARING ON
JOINT SUPPLEMENTAL MOTION FOR RECONSIDERATION
AND MOTION TO ENFORCE**

I. JOINT SUPPLEMENTAL MOTION FOR RECONSIDERATION

On October 27, 1997, Portland Natural Gas Transmission System ("PNGTS") and Maritimes & Northeast Pipeline L.L.C. ("M&N") ("applicants") filed a Joint Supplemental Motion for Reconsideration ("Motion") raising three issues with respect to the Committee's September 26, 1997, ruling on the applicants' first reconsideration motion. On November 4, 1997, Counsel for the Public filed a Response to the Motion. On November 6, 1997, the Site Evaluation Committee ("Committee") suspended the portions of its order at issue in the Motion for a period of up to three weeks, for purposes of further consideration.

In their Motion, the applicants allege that NHDES Condition 12, as revised September 23, 1997, is not workable and will prevent successful construction of the pipeline project. Motion, ¶¶ 5 and 7. The applicants raise a number of legal issues regarding NHDES Condition 12, all premised on their assertion that it will be impossible for them to comply with the condition, which requires that pipeline construction conform with New Hampshire water quality standards. As originally drafted, the condition required compliance with the water quality standards at all times. In response to the applicants' first reconsideration motion, and as an accommodation to the applicants, Condition 12 was modified to allow a mixing zone in which turbidity may exceed the state standards under certain conditions. Because the mixing zone was first adopted following reconsideration, it is properly the subject of a supplemental motion for reconsideration. Dziama v. City of Portsmouth, 140 N.H. 542 (1995).

The applicants also argue in the Motion that NHPUC Condition A.1 with respect to pipeline toughness standards is "neither necessary nor practicable." Motion, ¶ 11. The applicants challenged NHPUC Condition A.1 in their first motion for reconsideration, but the Committee declined to modify it. Because the Committee has already had the opportunity to reconsider this issue, it may not properly be raised in a second motion for reconsideration. Petition of Ellis, 138 N.H. 159 (1993).

Finally, the applicants challenge the Committee's ruling that the project laterals are intrastate facilities under the Revised Pipeline Safety Act ("RPSA"), 49 U.S.C. §60104(c). Motion, ¶ 11. This ruling was made for the first time in the Committee's decision on

reconsideration, and therefore is properly raised in the Motion. Dziama v. City of Portsmouth, 140 N.H. 542 (1995).

The applicants' requests for reconsideration on the two issues properly before the Committee should be granted only if the applicants can demonstrate the need to correct a clear error of law or fact, or to present newly discovered evidence which was not available at the time of the adversarial hearing. With respect to NHDES Condition 12, the applicants allege that it will be impossible for them to comply with the proposed mixing zone, and that the condition as written will prevent construction of the project. These are factual issues. Because the issue of a mixing zone was not before the Committee during the adversarial hearings, they are new factual issues. Therefore, the Committee will grant the applicants' request to reopen the adversarial hearing with respect to the workability of the mixing zone.

At the rehearing, the applicants will bear the burden of demonstrating that it will be impossible for them to comply with the amended NHDES Condition 12. Condition 12 was specified by NHDES pursuant to RSA 162-H:16, I, which requires the Committee to incorporate all specified terms and conditions into its final certificate, and provides that the Committee may not issue a certificate if any state agency with jurisdiction recommends denial. Further, Condition 12 is part of the state's water quality certification under Section 401 of the federal Clean Water Act, 33 U.S.C. § 1341. Because the Condition was properly specified by NHDES and rests within that agency's expertise, the Committee will presume that Condition 12 is reasonable and lawful, and the applicants will bear the burden of rebutting this presumption. As the rehearing will be a continuation of the adversarial hearing process, any party, as well as NHDES representatives, may participate for the limited purposes therein.

The applicants raise no factual issues with respect to the Committee's ruling that the project laterals are intrastate facilities for purposes of safety regulation. Nor does the Motion cite any legal support for the applicants' claim that the ruling is erroneous. Therefore, the Committee denies the applicants' request to strike this language from its Decision, Order and Certificate. Motion, ¶ 12. However, for purposes of clarification, the Committee notes that the RPSA and the Natural Gas Act ("NGA") have different definitions of the term "intrastate"; the Committee's ruling that the laterals are intrastate facilities for purposes of safety regulation was intended to interpret only the RPSA definition, not the NGA definition.

As noted above, the applicants' challenge to NHPUC Condition A.1 is not properly before the Committee. Therefore, the Committee will not consider further evidence or argument on this issue. Nevertheless, to remove any ongoing confusion regarding the applicants' voluntary agreement with respect to pipeline toughness standards, the Committee will allow until December 4, 1997, for the filing of a joint statement by all parties, including the PUC staff, incorporating any agreed-to changes to NHPUC Condition A.1. Absent such agreement, Condition A.1 will remain in its current form.

II. MOTION TO ENFORCE

On November 6, 1997, Counsel for the Public filed a Motion to Enforce, alleging that the applicants have violated and continue to violate the Committee's certificating order by failing to provide affected property owners with landowner fact sheets prior to completion of land negotiations, and by failing to conduct face-to-face explanations of the content of the fact sheet. On November 17, 1997, the applicants filed an Objection to the Motion to Enforce, contending that they are not in violation of the Committee's Order and that they are presently distributing the landowner fact sheet by certified mail.

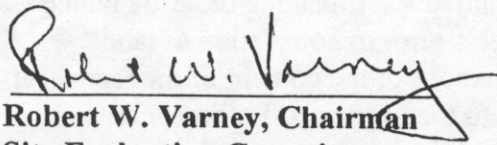
RSA 162-H:12 gives the Committee authority to order compliance with any certificate condition and, after hearing, to suspend a certificate if the certificate holder does not terminate the violation within 15 days after receipt of the order.

The materials submitted to the Committee by the parties are not sufficient to enable the Committee to determine whether the applicants are in continuing violation of the Committee's certificating order. Therefore, the Committee will schedule a hearing on Public Counsel's Motion to Enforce.

The Committee hereby **ORDERS** as follows:

1. That on December 5, 1997, the Committee will hold a hearing on Public Counsel's Motion To Enforce;
2. That on December 5, 1997, the Committee will reopen the adversarial hearing for the presentation of evidence with respect to whether NHDES Condition 12, as revised September 23, 1997, is not workable and will prevent successful construction of the project;
3. That the applicants' request for reconsideration, clarification or rehearing of NHPUC Condition A.1 is **DENIED**, but that the parties may submitted agreed-to modifications no later than December 4, 1997;
4. That 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 is **DENIED**, but that ruling is clarified as noted above.
5. That paragraphs 3 and 4 of this Order, along with NHDES Condition 12, NHPUC Condition A.1, and the Committee's ruling with regard to the intrastate nature of the laterals for purposes of pipeline regulation, shall be stayed until such time as the Committee issues a final ruling following the December 5, 1997, hearing.

SO ORDERED.

A handwritten signature in cursive script that reads "Robert W. Varney". The signature is written in dark ink and is positioned above the printed name.

Robert W. Varney, Chairman
Site Evaluation Committee

Dated November 21, 1997 at Concord, New Hampshire.