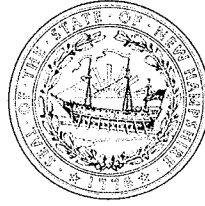


**ATTORNEY GENERAL  
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November 4, 2014

Thomas S. Burack, Chair  
New Hampshire Site Evaluation Committee  
29 Hazen Drive  
Concord, New Hampshire 03302

Re: NHSEC Docket No. 98-02 – AES Londonderry, LLC – Informational Filing  
of October 28, 2014

Dear Commissioner Burack:

When this matter was originally determined, Counsel for the Public was appointed. While I have not been specifically so designated in this matter at present, we wish to make informational comments in response to the informational filing.

1. While the Order, dated May 25, 1999, does purport to delegate to the Department of Environmental Services certain authority with respect to minor realignment of a cooling water line, it does not appear that this delegation was within the terms of the referenced statute and was outside of the Committee's subject matter jurisdiction and is void.<sup>1</sup> As it existed in 1998, RSA 162-H:4, III-a, provided:

III-a. The committee may delegate to an agency or official represented on the committee the authority to specify the use of any technique, methodology, practice, or procedure approved by the committee within a certificate issued under this chapter, or the authority to specify minor changes in the route alignment to the extent that such changes are authorized by the certificate for those portions of a proposed electric transmission line or energy transmission pipeline for which information was unavailable due to conditions which could not have been reasonably anticipated prior to the issuance of the certificate.

The May 25, 1999 Order, however, goes beyond the statute and provides,

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<sup>1</sup> *Appeal of Campaign for Ratepayers' Rights*, 162 N.H. 245, 250 (2011).

Pursuant to RSA 162-H:4 III-a, the Committee delegates to the New Hampshire Department of Environmental Services authority to specify minor modifications in the water intake and discharge structures alignment to the extent that such modifications are necessary as a result of information that was unavailable due to conditions which could not have been reasonably anticipated prior to the issuance of the certificate, including, but not limited to, information regarding various environmental resources, alignment requests from property owners, alignment modifications necessitated by compliance with either State or Federal law, and alignment modifications requested by the Towns of Londonderry and Litchfield.

First, the statute provides only for the delegation of alignment modification of an “electric transmission line or energy transmission pipeline” both of which have relatively clearly understood meanings which should not reasonably be interpreted to include a plant cooling water supply line. The statute does not provide for a general delegation of authority to realign either the energy facility itself or ancillary facilities or associated facilities such as those at issue in the recent Informational Filing. Further, the statute authorizes delegation to “specify” minor changes when “such changes are authorized” by the certificate. Given the conservative wording of the statute requiring specified changes authorized in the certificate, the grant in the Order may exceed the statutory authority.

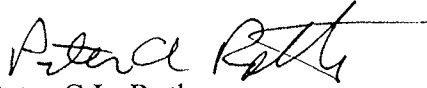
Second, the statute and the order both delegate only minor alignment modifications. Nothing bounds the delegation with a definition of what is “minor” or provides guidance about what to do next. Allowing the Department to determine what is “minor” and then proceed or not without reasonably definite policies and basic standards impermissibly enables the Department to determine its own jurisdiction. Moreover, it appears to be an untenable determination in the present case. The Informational Filing describes the existing cooling water pipeline as being 15,840 feet in length. The section of it at issue is described as 2,800 feet in length. This means that nearly 18% of the pipeline is being relocated under the minor realignment delegated authority. While it is difficult to tell from the copy of the plan provided with the Informational Filing, it also appears that the deviation of the over half mile of pipeline from the original certificated route, adding at least 4 right angles, is also considerable, and does not constitute a “minor change[] in route alignment.”

2. Finally, while the October 28 submittal is captioned as an Informational Filing, the letter seeks a finding (about what is not entirely clear). There is a process established in the Committee’s rules for obtaining a declaratory ruling. N.H. Admin. R. Site 203. That process has not been followed in this case and there is no reason why it should not be.

Letter to Thomas S. Burack, Chair  
November 4, 2014  
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Thank you for your consideration of this response.

Sincerely yours,

A handwritten signature in black ink, appearing to read "Peter C.L. Roth", with a horizontal line extending to the right from the end of the signature.

Peter C.L. Roth  
Senior Assistant Attorney General  
Environmental Protection Bureau  
(603) 271-3679

cc: Maureen D. Smith, Esquire  
Kevin Smith, Town Manager, Town of Londonderry  
Eugene J. Forbes, Director, Water Pollution Division, DES  
Craig A. Wright, Director, Air Resources Division, DES  
K. Allen Brooks, Senior Assistant Attorney General