

**State of New Hampshire  
Site Evaluation Committee**

**Docket No. 2015-04**

**Application of Public Service Company of New Hampshire  
d/b/a Eversource Energy for Certificate of Site and Facility**

November 14, 2018

**INTERVENOR MATTHEW FITCH POST-HEARING BRIEF**

This simplified post-hearing brief will address the Seacoast Reliability Project's (SRP) status with respect to the parameters outlined in RSA Ch. 162-H that governs the Site Evaluation Committee's (SEC) review of the application for the project.

**RSA 162-H:16, IV**

RSA 162-H:16, IV opens with; "After due consideration of all relevant information regarding the potential siting or routes of a proposed energy facility, including potential significant impacts and benefits, the site evaluation committee shall determine if issuance of a certificate will serve the objectives of this chapter."

In this proceeding, the SEC did not, nor was the Committee afforded the opportunity to, consider "all relevant information regarding the potential siting or *routes*" for the SRP. This project had three routes reviewed by the Applicant with the Applicant making the sole decision at its discretion alone, to select the path presented to the SEC for approval. The general overview of the two alternate routes, the Northern Route and Southern Route, provided by the Applicant in pre-filed and direct testimony do not constitute a consideration of "all relevant

information” regarding those routes. The Applicant solely reviewed and determined the “best” route option for the project from their company’s perspective prior to filing the application with the SEC. The format and restrictions associated with availability, scheduling and order of the proceeding did not and does not allow for the SEC to adequately, or indeed, partially review and consider “all relevant information” regarding the alternate routes and the differences compared to the chosen route to determine “potential significant impacts and benefits”.

**RSA 162-H:16, IV (a)**

RSA 162-H:16, IV (a) requires the Applicant to have; “adequate financial, technical, and managerial capability to assure construction and operation of the facility in continuing compliance with the terms and conditions of the certificate. “ The Applicant is understood to be a profitable commercial entity with sufficiently adequate resources to fund the financial component of the SRP. To this end, the Applicant’s financial status is understood to be adequate “to assure construction and operation of the facility” within the Northern Route and Southern Route as well.

The Applicant has relied on sub-contracted, outside assistance to advise and review various construction aspects of the proposed Project, specifically with respect to the Jet Plow traversing of Little Bay. This would indicate that the Applicant doesn’t have the “technical” capability to assure construction of the project but we are led to presume they have the “managerial” capability.

It was understood during the proceeding that the New Hampshire Department of Environmental Services (DES) has no history of reviewing, approving or denying a Jet Plow

project. If the Applicant relies on sub-contracted entities to review, propose and perform the Jet-Plow portion of the Project and DES has no history of reviewing any Jet Plow projects previously, the entire validity and accuracy of the evidence and testimony provided during the proceeding rests solely with those same sub-contracted entities.

**RSA 162-H:16, IV (b)**

RSA 162-H:16, IV (b) requires; “The site and facility will not unduly interfere with the orderly development of the region with due consideration having been given to the views of municipal and regional planning commissions and municipal governing bodies.” Both the Town of Durham/UNH and the Town of Newington testified extensively within the docket and throughout the proceeding that the Project would in fact “unduly interfere with the orderly development of the region”. Both municipalities testified to the fact that the project would unduly interfere with the tourism, enjoyment and varied use of Little Bay. The Town of Durham testified that a large number of businesses are expected to have varied impacts from the construction of the Project. The Town of Newington testified extensively to the severe negative impacts the Project will have on its small and finite Residential District.

The Strafford County Regional Planning Commission did not specifically take a position on the project in their June 13, 2017 letter included in the docket however, the report referenced therein “How People Benefit From New Hampshire’s Great Bay Estuary” specifically describes the impact of SRP on Little Bay as “poor”.

It is clear that with “due consideration...given to the views of municipal and regional planning commissions” per RSA 162-H:16, IV (b) the Project should not be approved.

## **RSA 162-H:16, IV (c)**

RSA 162-H:16, IV (c) requires; “The site and facility will not have an unreasonable adverse effect on aesthetics, historic sites, air and water quality, the natural environment, and public health and safety.” The Applicant has not been able to show via a preponderance of evidence that the Project “will not have an unreasonable adverse effect on aesthetics, historic sites, air and water quality, the natural environment, and public health and safety.”

**Aesthetics:** The Project proposes to replace a long standing distribution line on approximately 35’ to 40’ poles with a transmission facility with poles averaging 85’ throughout the above ground portion. There is a clear and material difference in these structures to even the casual observer. Testimony from the Applicants witnesses, Intervenors and their witnesses, subject matter experts as well as public comments submitted to the record speak to an impact to Aesthetics across the above ground portion of the Project. The Applicant’s witnesses claimed little to no negative impact whereas the majority of the other parties claimed there would be material negative impact.

**Historic Sites:** Similarly to aesthetics, the Project’s impact to historic sites was reviewed and positions fell along “party lines” with the Applicant’s witnesses claiming little to no impact and the majority of other parties claiming there would be varying amounts of negative impact.

**Air and Water Quality:** While air quality was not challenged, water quality was extensively scrutinized. The Applicant’s witnesses and sub-contracted entities claimed limited and/or reasonable impacts to water quality during the proposed Jet Plowing of Little Bay while the various Intervenors witnesses and experts suggested material negative impacts to the

water quality in Little Bay due to Jet Plowing. The modeling and forecasting provided by the Applicant's witnesses was also questioned for not being accurate and/or not adequately addressing various environmental concerns.

DES has set forth various conditions in its approval however, fact remains that this is the first time DES has attempted to review and approve a Jet Plow project.

With two alternative (Northern and Southern) routes readily available to accomplish the same exact goal that SRP purports to achieve, it is senseless to risk any potential environmental or water quality hazardous via Jet Plowing through Little Bay. The Applicant cannot prove via a preponderance of evidence that the Jet Plow procedure won't have an unreasonable adverse effect on the water quality of Little Bay.

**The Natural Environment:** Similar to water quality above, it cannot be proven via a preponderance of evidence that the natural environment, which includes Little Bay, will not be unreasonably adversely effected by the Project. Any project can and will have a potentially negative impact on the natural environment however, utilizing existing High Voltage Transmission Line (HVTL) corridors via the Northern and/or Southern alternate routes and not traversing the bed of Little Bay should prove to have significantly less impact.

The proposed route for SRP before the SEC has varying degrees of impact to the natural environment with its significant undergrounding through Newington's Residential and Historic Districts, its Jet Plowing through the bed of Little Bay, its need for permanent concrete mattresses within Little Bay, its replacing of long standing ~40' tall distribution poles with ~85' transmission structures in residential, historic and conservation areas and its undergrounding of Main Street in Durham on historic University of New Hampshire property.

The alternate Northern and Southern routes were both presented as being 100% contained within existing HVTL corridors and above ground. The Applicant has not shown that the chosen route to accomplish the goals of SRP is the least impactful option.

**Public Health and Safety:** The Applicant has also not been able to prove via a preponderance of evidence that the Project will not have an unreasonable adverse effect on public health and safety. Specifically, the impact of the yet-to-be-confirmed amount of concrete mattresses in Little Bay to recreational users is not known and cannot be quantified.

Using RSA 162-H:16, IV (c) as the standard for approval, the Applicant has not been able to prove via a preponderance of evidence that the project “will not have an unreasonable adverse effect on aesthetics, historic sites, air and water quality, the natural environment, and public health and safety” and should therefore be denied.

#### **RSA 162-H:16, IV (e)**

RSA 162-H:16, IV (e) requires; “Issuance of a certificate will serve the public interest.” The public, when informed to varying degrees at various stages of this Project’s process have had the opportunity to provide comments and opinion to the SEC defining, essentially, the “public(s) interest”. The vast majority of public commenter’s, whether supplying written comments or verbal, in-person comments when provided the opportunity have made clear that the project is not in the public interest and is vehemently opposed. If there truly is a verifiable, quantifiable and “urgent” need for the project, alternatives are available that accomplish the exact goals SRP is projected to address (Northern Route and Southern Route) as well as at least

one alternative (Gosling Road Auto-Transformer) that both accomplishes the expressed goals SRP looks to address and builds in additional capacity for decades to come. The public comments show that people are aware that grid reliability is essential and smart future growth and capacity needs to be built in over time. However, it is crystal clear that a thoughtful, smart and considerate approach is required to ensure the best possible option is utilized. SRP in its current proposed configuration before the SEC does not “serve the public interest.”

## **Conclusion**

The SEC’s review and subsequent approval or denial of an application is governed by RSA 162-H. As outlined above, the Applicant has failed to prove beyond a preponderance of evidence, across multiple parameters, that the project will not have an unreasonable adverse effect in its proposed configuration.

SEC did not, nor was the Committee afforded the opportunity to, consider “all relevant information regarding the potential siting or *routes*” for the SRP. While this could alternately be attributed to a flawed process or failure on behalf of the Applicant, it nevertheless handicapped the Committee from the outset from making an informed and complete decision. There are/were two additional proposed routes that purport to accomplish the same exact goals for the SRP as the route being considered for approval that were not, nor have not been vetted by the SEC for consideration. Two routes that reside within existing HVTL corridors and were represented as being considered to be built entirely above ground. Two routes that did not require going under the fragile Great Bay Estuary. Two routes that also benefit from the suite of projects already constructed by the Applicant in support of the SRP. Two routes, that

by all accounts *should* have had the opportunity to be fully reviewed and considered by the SEC, as RSA 162-H requires. The Committee is therefore unable, per RSA 162-H and its statutory standards, to make a complete, informed and thoughtful determination to approve the Seacoast Reliability Project. It is clear that if the Committee must decide regardless, while not considering “all relevant information regarding the potential siting or *routes*”, that the SRP application does not meet the requirements of RSA 162-H and should therefore be denied.

Respectfully Submitted,

Matthew Fitch  
Durham Point Rd  
Durham, NH