

THE STATE OF NEW HAMPSHIRE SITE EVALUATION COMMITTEE

DOCKET NO. 2015-04

APPLICATION OF EVERSOURCE ENERGY FOR A CERTIFICATE

OF SITE AND FACILITY

FOR THE SEACOAST RELIABILITY PROJECT

POST- HEARING BRIEF OF HELEN H. FRINK

INTERVENOR AND CONSULTING PARTY

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INTRODUCTION

As an intervenor and a Consulting Party I represent the owners of the Darius Frink Farm, 272 Nimble Hill Road, Newington, NH, in opposition to the Seacoast Reliability Project. I respectfully propose to the Site Evaluation Committee that the Applicant, Eversource Energy, has provided insufficient data, used misleading and inaccurate maps, engineering drawings, photographs, and cost estimates, and has displayed a disregard for the views of municipal planning commissions and public citizens. This project would impose adverse effects on aesthetics, historic sites, and the natural environment, such that this Committee is unable to grant a certificate of site and facility for the Seacoast Reliability Project.

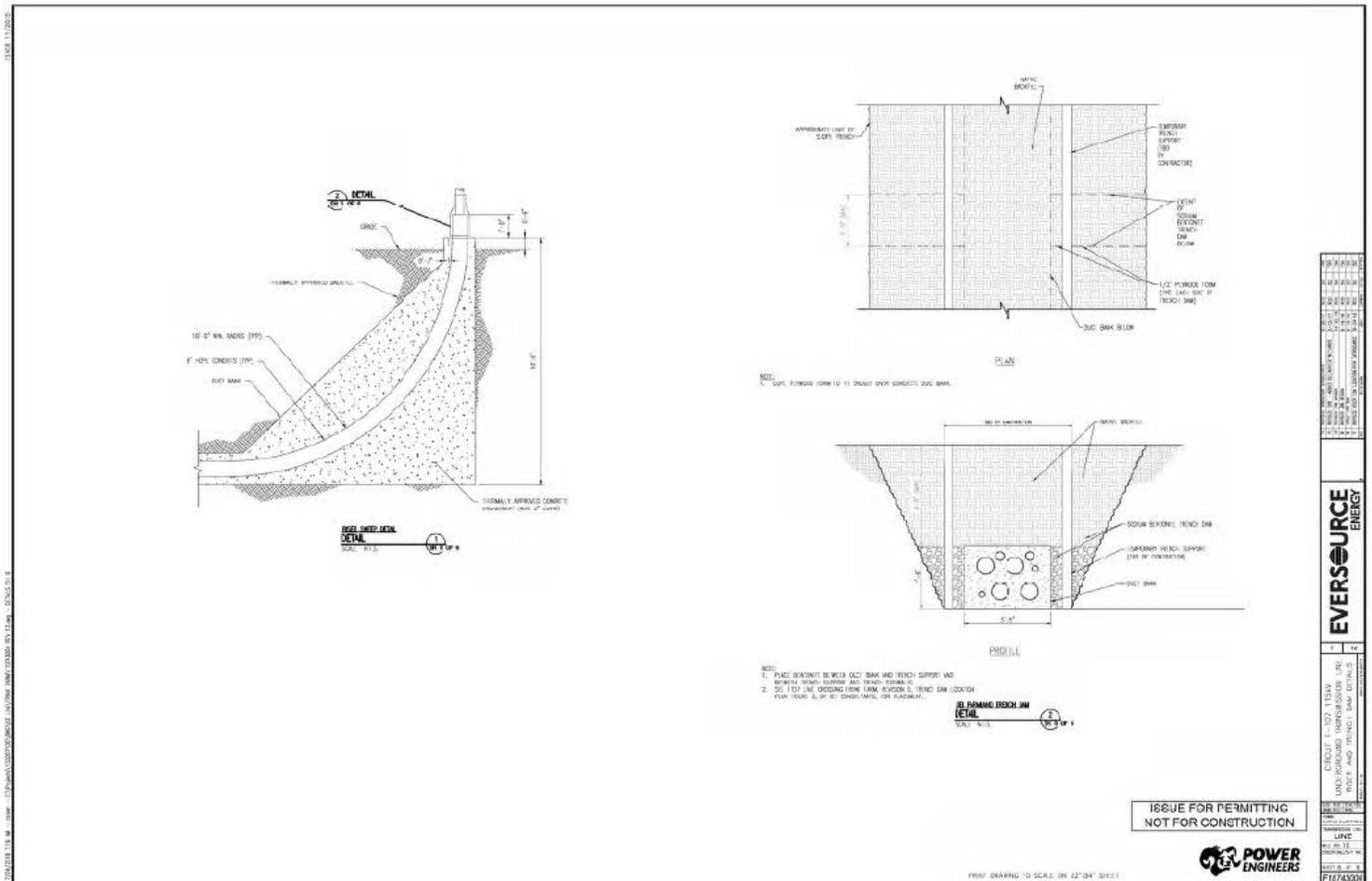
ARGUMENT

I. The Applicant's leadership and consultants have failed to provide accurate and updated maps,

The Applicant's Revised Environmental map 24 of 31 dated 7-16-18 (HF Exhibit 8) misrepresents the extent of the Darius Frink Farm within the Newington Center Historic District, marked on the map with orange diagonal lines as "historic sites." I cited this error in my pre-filed direct testimony of July, 2017 and again in my supplemental pre-filed testimony of July 2018, yet Eversource's consultant, Normandeau Associates, never corrected the map. This error is significant because it leads readers to the false conclusion that the transition tower to be placed on the Darius Frink Farm is not within the Newington Center Historic District. In her testimony of October 16th, the Applicant's witness, Cheryl Widell, stated that "It is a map that is used, will be used in

the field for the protection of historic resources and mitigation and care of them” (Transcript, Day 10 am, page 103). Therefore the persistence of this error is significant. Furthermore, Eversource’s map of Durham’s historic sites contained the same mis-identification or under-representation of those sites, again benefiting the Applicant. Moreover, this Revised Environmental Map inaccurately represents the extent of Frink Farm conservation lands. The notched yellow line indicating conservation lands and running between the Frink and Pickering farms should match the property line.

II. The Applicant’s leadership and consultants have failed to provide accurate and updated engineering drawings.



The Applicant's Revised Engineering Design Drawing shown above, (Appendix 5b, page 41 of 55, dated 7-27-18) provides on the right a profile of the farmland trench proposed for construction through the Darius Frink Farm. This profile drawing shows a sodium bentonite "trench dam" as a bulwark encasing the sides of the duct bank. On September 17th Intervenor Helen Frink questioned the Construction Panel, expressing concern that sodium bentonite would act as a dam causing backup flooding in the farm fields and wetlands, where the trench runs perpendicular to the flow of water and toxins moving down plume from Pease. Eversource's David Plante responded that sodium bentonite is no longer part of current design (Transcript, Day 3 am, 9-17-18, pages 51-53). Yet we have no accurate, current design to evaluate. The potential impact of damming and backup flooding concerns the agricultural viability of some of the most valuable farmland in New Hampshire. Conservation of the Frink Farm in 2005 was achieved using federal and Town of Newington funds because at least 50% of its soils are prime agricultural soils. Hence, the design and construction of the farmland trench are of grave concern, not only to the landowners, but to the easement holder, the Rockingham County Conservation District (RCCD), and to other stakeholders: the Town of Newington and the Natural Resources Conservation Service, whose approval was required to amend our conservation easement to permit construction of the SRP.

The same Revised Engineering Design Drawing (Appendix 5b, page 41 of 55, dated 7-27-18), is identified vertically in the left margin as "Frink farm." The drawing on the left side of the page titled Riser Sweep Detail purports to illustrate the transition from the overhead line on the Pickering Farm running eastward to the underground line in the

Frink farmland trench. However, the sweep as shown runs to the left of the “riser” (transition tower) monopole as if the underground line were to the west. In reality, the sweep should run to the right of the pole, as the underground line proposed would be to the east of the pole, i.e. into the Frink Farm. The drawing is backwards, as Eversource’s Dena Champy confirmed when speaking to Helen and John Frink at an October 14, 2017 meeting with the US Army Corps of Engineers on historic resources at the Schiller Plant in Portsmouth.

III. The Applicant’s leadership and consultants have failed to provide accurate and updated photographs.

HF Exhibit 10 shows the design of the transition tower proposed to be located on the Darius Frink Farm; this design was supplied to Frink family by Eversource’s Sandra Gagnon in June, 2017. During Construction Panel hearings David Plante indicated that this photograph no longer reflects the current design. (Transcript Day 3: 9-17-18 am, pages 43-46). Eversource’s aesthetics consultant David Raphael’s visual simulation (Attachment B, page 3 of his Supplemental Pre-filed Testimony dated July 27, 2018) shows a different design. In a June 8, 2018 email to Nadine Miller, Eversource’s Mark Doperalski attached an image of a transition structure, but did not share it with the Frink family (Applicant’s Exhibit 185; Appendix 33 Supplemental NHDHR Correspondence, page 87). The visibility of this transition tower and its impact on Newington’s historic and scenic resource that is the Frink Farm were much discussed during adjudicative hearings – without the benefit of the Parties or the Committee seeing whatever is the most recent design.

IV. The Applicant's leadership and consultants have failed to provide accurate and updated cost estimates.

In his testimony of September 18th Robert Andrew, Director of Systems Solutions, cited an estimated total project cost of \$85 million (+ or – 25%) (Transcript Day 4 am, pages 63 and passim). Yet under questioning he was uncertain whether that estimate included payments for wetlands mitigation, or for burial of the line in Durham, or in Newington's Hannah Lane subdivision and the Frink Farm. Nor did the estimate cited include costs for Frink Farm conservation improvements specified in a Memorandum of Agreement with RCCD in 2016 (Transcript Day 4 am page 131. The MOA is APP. EX. 169). Conversations with other intervenors during the adjudicative hearings revealed that Eversource has offered to buy out property owners on both sides of Little Bay, or has actually succeeded in doing so. What is the actual cost of these options or purchases, mitigation payments, and line burial where it has been, or might yet, be agreed upon?

Moreover, on December 15, 2017 Eversource signed with RCCD a Memorandum of Understanding covering the management and treatment of contaminated water and soil on the Frink Farm (APP. EX. 219). However, Eversource has not conducted recent tests for the depth of surface water that will be encountered during trench construction, nor for perfluorinated compounds (PFOS, PFOA, also called PFCs or PFAS – perflouralkyds) contaminating that water and soil. Water testing done in the summer of 2016 explored only the three locations where poles for the overhead line would have been placed, and one test of surface water in Knight's Brook tributary. Without adequate

water tests, the Applicant has no basis for estimating the costs of trucking away and disposing of PFAS contaminated water & soil in accordance with the MOU referenced above. New Hampshire's Department of Environmental Services plans to issue new, stricter limits for PFOA and PFOS toxins in 2019. Uncertainties about the location and concentration of these toxins in both the Pickering and Frink lands further clouds the true costs of dealing with this problem during construction of the underground line.

Throughout the Amended Application, Eversource refers to removal of the existing distribution line through the Frink Farm as mitigation for locating the transition tower within the Newington Center Historic District. While moving the distribution line may not require SEC approval, it will cost money, and those costs are not addressed in the application submitted in this docket.

Weathering steel monopoles and transition towers are proposed throughout the Seacoast Reliability Project route. The recent imposition of high tariffs on foreign steel imports will increase steel costs to a level that may make the current SRP route less attractive than either the so-called northern route or the alternative known as the Gosling Road transformer. The Applicant may well update these cost figures in filing its final brief. Yet the absence of updated figures places intervenors at a disadvantage in advocating their opposition to the Seacoast Reliability Project route during the adjudicative hearings. The deck is plainly stacked in favor of the Applicant.

The absence of accurate, updated maps, engineering drawings, photographs, and costs

leaves critical details in the hands of the Applicant. Without a full knowledge of the project and all of its impacts, the Site Evaluation Committee is being asked to approve a general concept, not a plan.

V. Applicant's failure to consider the views of municipal and regional planning commissions and municipal governing bodies.

RSA 162H:16-IV-b requires the Site Evaluation Committee to determine that the Seacoast Reliability Project "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."

Transcripts of adjudicative hearings make clear that Eversource disregarded the master plans and land use regulations of both Durham and Newington, indeed, did not even file these plans as required under SEC procedural rules. Eversource displays a flagrant disregard for the towns' definitions of rural, residential, & historic districts, and for the prohibitions and restrictions which should block construction of the Seacoast Reliability Project.

The Twelfth Development Policy of Newington's Master Plan states:

Newington seeks to ensure the preservation of the Town's historic resources. Much of Newington's historic, architectural and scenic resources have suffered in the past due to the arrival of Pease Air Force Base and the rapid growth east of the Spaulding Turnpike. The Town seeks to protect the remaining resources.

Among the remaining historic, architectural and scenic resources that Newington seeks to protect are the Darius Frink Farm and the Alfred Pickering Farm. Both lie along highly traveled roads, both are currently being farmed, and both encompass the 19th century homes and agricultural outbuildings that constitute their historic and scenic value. Newington's commitment to the Frink Farm led to a vote at the March, 2005 town meeting to fund one-fourth of the value our conservation easement, an expense of about a half-million dollars. Due consideration of Newington's planning and land use regulations weighs heavily against approval of the SRP. Denis Hebert testified eloquently to Newington's commitment to preserving the precious few scenic resources remaining in its rapidly urbanizing landscape.

RSA 162H:16-IV-c requires the Site Evaluation Committee to determine that the Seacoast Reliability Project will not have “an unreasonable adverse effect on aesthetics, historic sites, air and water quality, the natural environment, and public health and safety.”

VI. Adverse Effect on Aesthetics and Historic Sites

The Darius Frink Farm is identified as both a scenic (aesthetic) and historic resource. Our 2005 Farmland Conservation Easement states among its purposes that the land shall be conserved “for the scenic enjoyment of the general public.” Aesthetic value is also a component of the Farm's qualification for the National Register of Historic Places: “The property's current pastured appearance is true to its historic appearance and integrity.”

The Darius Frink Farm's listing on the National Register explicitly links aesthetic quality to integrity. But it is precisely this “historic appearance and integrity” that would be

irredeemably damaged by the intrusion of a 75-foot tall steel monopole tower measuring 8 feet in diameter at its base. The enormity and scale of this tower far exceeds that of any nearby manmade structure. The cleared 100-foot wide right of way and the 65-foot tall H-frame poles through the Pickering lands would expose the tower to view from the Nimble Hill and Old Post Roads, both designated as scenic roads by the town of Newington. The tower's visibility from the upstairs of the Frinks' 1840 brick farmhouse, from the barn, and from the surrounding fields creates the intrusion of an "incompatible visual element," diminishing the integrity of the site in such a manner as to cause an adverse effect. The National Historic Preservation Act Section 106: § 800.5 states:

If a project may alter characteristics that qualify a specific property for inclusion in the National Register in a manner that would *diminish the integrity of the property, that project is considered to have an adverse effect*. Integrity is the ability of a property to convey its significance, based on its location, design, setting, materials, workmanship, feeling, and association. [Italics mine].

New Hampshire's State Historic Preservation Officer, Nadine Miller, provided a finding of "No adverse effect" for the Frink Farm in her letter of August 1, 2017 addressed to SEC Administrator Pamela Monroe, expressing merely a reservation about the effect of constructing the underground line. In my testimony of October 17th, I quoted from an October 4th email from Ms. Miller to me in which she explained her finding of "no adverse effect" because the "transition pole was tucked within the existing forested area and did not protrude significantly from the top of the tree line" (Transcript Day 11 pm 10-17-18, page 36). The Applicant's witness, Cherilyn Widell, also mistakenly asserted that

the 75-foot monopole would not constitute an adverse effect because it could be concealed by surrounding 40-50-foot trees: “it should be about the same size as the tree cover or it would not be visible so no, visually no adverse effect” (Transcript, Day 10 am, October 16, 2018, page 107).

The photograph below contradicts these assertions that surrounding trees might conceal the tower. It was taken on October 12, 2018 and shows the existing distribution line pole, 35-40-feet high, against the tallest of the surrounding trees.



HF Exhibit 28, page 2

From one-half to one-third of the 75-foot transition tower will protrude above the tree. Other surrounding vegetation is lower in height. Between the tower and the hayfield

extending to Nimble Hill Road lies Knight's Brook tributary and surrounding wetlands, whose low-growing shrub-scrub vegetation will not provide any screening. The huge industrial-scale tower will stand on a slight rise of land somewhat above the wetlands, making its intrusion into the bucolic scene even more prominent and disturbing.

The transition tower could be avoided by undergrounding the transition line through the Alfred Pickering Farm, which was cited for "Adverse Effect" in the NHDHR letter of August 1, 2017 referenced above. On September 17th I questioned Eversource's witness Kenneth Bowes about the Applicant's efforts to secure underground rights from the Pickering Farm landowners (Transcript Day 3 am, pages 34-35). It remains unclear what efforts Eversource made to secure underground rights: were contacts made via certified mail? Did the Applicant offer to purchase underground rights, (as was done with the Frink family and with residents on Hannah Lane) and if so, what price was offered? Eversource obviously prefers the less costly option of the overhead line.

The Site Evaluation Committee's Site 301.06, Effects on Historic Sites, requires that each application include "plans for avoiding, minimizing, or mitigating potential adverse effects. . . on historic sites and archeological resources and the alternative measures considered but rejected by the Applicant." Without details of Eversource's efforts to purchase underground rights through the Pickering Farm, the corporation has failed to provide this required information regarding "alternative measures considered but rejected by the Applicant." As things stand, we have no evidence of a serious effort to avoid the adverse effect to the Newington Center Historic District by undergrounding the

line all the way from Little Bay Road through residential and historic areas, an approach which would accord with the town's land use regulations.

Eversource dismissed the issue of avoidance by repeatedly stating that burying the transmission line through the Frink Farm and removing the existing distribution line would adequately address the adverse effects defined in Section 106 of the National Historic Preservation Act. However, it appears that removal of the existing distribution line is not included in the application submitted in this docket. The Applicant has not specified how the taller poles needed for the relocated distribution line will impact Newington's scenic roads, nor whether permission has been obtained from the town for this work, nor whether Eversource has negotiated with the owner of the roadside poles now used for the distribution line, Consolidated Communications. (See testimony of Denis Hebert, Day 11 am, 10-17-18, pages 39-41).

VII. Mitigation Discussions; Consulting Parties

The Site Evaluation Committee's Site 301.06 Effects on Historic Sites also addresses "the applicant's consultations with the Division of Historical Resources of the Department of Cultural Resources, and, if applicable, with the lead federal agency, and, to the extent known to the applicant, any consulting parties." Negotiations on mitigation for adverse impacts to historic sites in Newington were conducted in a superficial and slipshod manner that excluded consultation with Consulting Party Helen Frink and with the Chair of the Newington Historic District Commission, Lulu Pickering. Not coincidentally, Ms. Pickering is the owner of the Alfred Pickering Farm, which will sustain the greatest adverse effect in Newington. The result of these negotiations, an

offer to fund some educational panels at Fox Point and the writing and printing of a booklet on farming in Newington, was derided as “insulting beyond belief” at the October 11, 2018 public hearing at Pease, especially because the Seacoast Reliability Project will severely impact two of the last remaining historic farms in Newington (Transcript of Public Hearing, page 23).

Eversource and NHDHR were fully aware of my status as a Consulting Party, who should have participated in the Section 106 Process, as can be seen in a June 8, 2018 email from Eversource’s Mark Doperalski to Nadine Miller:

The design of the Seacoast Reliability Project transition structure located at the Frink Farm has been changed from a three-pole structure to a monopole structure pursuant to the preferences of the Town of Newington (as represented by Dennis Hebert) and the Frink Family, *the only two consulting parties participating in the Section 106 Process*. A view simulation of the monopole has been attached for your records.

Please let us know if the DHR has any questions or concerns.

Thank you,

Mark

Mark Doperalski, M.A., RPA

Cultural Resources Specialist (Applicant’s Exhibit 185; Appendix 33 Supplemental NHDHR Correspondence, page 87; italics mine).

Eversource’s historic resources witness, Cherilyn Widell, responded as follows to my question about my exclusion from mitigation discussions: “If you were a Consulting Party, normally you are invited to public meetings, you are provided with drafts of

documents, you are given an opportunity to sign them” (Day 10 am, 10-16-18, pages 122-123). The Applicant’s failure to include the town of Newington and me as consulting parties in mitigation discussions constitutes a failure to comply with the Section 106 process.

VIII. Adverse Effects on the Natural Environment

Construction of the Seacoast Reliability Project will adversely affect the environment of Newington’s historic and residential areas. The route will pass through sites polluted by PFCs seeping down plume from the former Pease Air Force Base. My Supplemental Pre-filed Direct Testimony included the following results of testing in Knight’s Brook tributary conducted on March 12, 2018 by a contractor to Pease:

PFOS (perfluorooctanesulfonic acid) was measured at a level of 2.30 µg/l (micrograms per liter) and PFOA (perfluorooctanoic acid) at 0.79 µg/l (micrograms per liter).

One microgram per liter (ug/L), is about one part per billion, as Eversource’s Kurt Nelson testified, stating that Knight’s Brook tributary shows “elevated concentrations” of PFCs (Transcript Day 4, pm, 9-18-18, page 78).

DES’s “final” decision of February 28, 2018 addresses PFC contamination on the Frink farm on pages 10 and 11:

At least ninety (90) days prior to conducting dewatering activities in the vicinity of the Pease International Tradeport [i.e., the former Pease Air Force Base (Pease)] and the Darius Frink Farm property in Newington, the Applicant shall consult with the Pease Development Authority, NHDES Waste Management Division, and US Environmental Protection Agency to

determine if groundwater has been contaminated by perfluorinated compounds (e.g., PFOA, PFOS) to levels which would require special treatment. Should special treatment be necessary, the Applicant shall submit a plan to the NHDES Waste Management Division for approval and then implement the approved plan.

Water is of critical importance to any farm. Eversource and DES should invite landowners to participate in all discussions of water treatment connected with project construction, and property owners should receive copies of all proposed water management plans before construction. Treatment of contaminated water on the Frink Farm may involve the use of a 20,000 gallon fractionation tank, an industrial-type facility whose installation and presence in our fields will further impact the agricultural viability and even the appearance of our farm (Testimony of Kurt Nelson, Transcript Day 4, pm, 9-18-18, page 88).

Eversource's Memorandum of Understanding with RCCD requires the Applicant to truck away all excess soil and dispose of it off site. Using the dimensions of the duct bank shown in the engineering design on page 2 and the right of way length of 1,500 feet, a minimum of 475 cubic yards of soil will need to be trucked off site. With a weight of 1.5 tons per cubic yard, Eversource's contractors will haul away between 30 and 40 immense truckloads of soil, Trucking this volume of soil in trucks weighing upwards of 30 tons will have a lasting impact on the appearance and agricultural viability of soils in the right of way, where Eversource plans to construct two 16-foot-wide access roads.

The Pickering easement is landlocked, accessible only via the Frink right of way or the rights of way of other landowners to the east. Therefore, it is likely that construction vehicles will truck machinery and equipment through our farm to the work pad overlaying the Frink-Pickering boundary, since access via Nimble Hill Road is easier than via Little Bay Road. Use of the right of way through our hayfield as an access road to the 300-foot long construction pad also constitutes an adverse impact to a historic landscape, because the visual effects of replacing forage grasses with road materials will last years after construction is completed. Kenneth Bowes testified that construction would take place between August 1 and October 24 of 2019, during haying season (Transcript Day 3 am, 9-17-18, page 47). Eversource has agreed to pay \$4,000 for loss of the hay crop in the area impacted by construction, but dust and the placement of the access roads will significantly complicate normal harvesting activities.

While Eversource has committed on paper to restoring the hayfield, the actual work will be done by contractors and subcontractors whom it will be difficult to hold accountable. It should be noted that funding governed under the Eversource's Memorandum of Agreement with RCCD is NOT a source of funding for such restoration. That MOA outlines monies to be paid by Eversource exclusively for improvements to the farmland post construction; those improvements were a condition for the Natural Resource Conservation Service's approval of the amendment to our conservation easement.

Construction of the transmission line will also seriously impact our fragile wetlands. In late July of this year the John D. Brown Company of Weare, an Eversource sub-

contractor, clear-cut our wetlands and scoured the vegetation right across the Knight's Brook tributary. The contractor performed vegetation clearing on the Pickering Farm, and was allowed to enter, but not to exit the property outside of the Pickering right of way, proving definitively that the Pickering right of way is land-locked. Therefore the mowing equipment was brought out through the Frink wetlands. Owner and farmer John Frink gave verbal permission for the Brown company to pass through our lands, but had no notice that cutting would be done (See my testimony, Transcript Day 11 am, 10-17-18, pages 44-46). Earlier, Eversource's Kurt Nelson had testified on this subject as follows:

Wetlands BMPs [best management practices] were used in the crossing of the wetland area. Polyethylene mats were used to cross over the wetland area. And that is about the extent of it. There was some concern about cutting of vegetation, and there may have been some mowing of vegetation along the, within the wetland area to better facilitate mats. That may have been a possibility. The work done was done under the provisions for utility notification maintenance which applies to utility maintenance activities and wetland areas. (Transcript Day 6 am, 9-21-18, pages 174-175).

We simply do not know whether Eversource informed the John D. Brown Company and its employees of the presence of PFCs in the brook and wetlands they mowed through. In any case, the photo below shows that vegetation cutting on the Frink property served no useful purpose whatsoever.



HF Exhibit 15 Knight's Brook tributary

A comparison of the height of the pole to the vegetation between it and the brook shows that nothing growing in this area could possibly reach the distribution line. This savage clear-cut was completely unnecessary. The “provisions for utility notification maintenance which applies to utility maintenance activities and wetland areas” simply means that Eversource and its subcontractors are not required to follow the limitations that New Hampshire’s wetlands regulations place on landowners.

CONCLUSION

This high-handed treatment of farmland and wetland is precisely what we, the owners of the Darius Frink Farm, most fear from the construction process. Our negotiations with Eversource over the past four years have given us every reason to distrust and to oppose construction of the Seacoast Reliability Project. With the greatest reluctance we have entered into an option agreement for the sale of underground rights, and have cooperated with the Rockingham County Conservation District in drafting an MOA with Eversource governing farmland improvements, and an MOU (Soil and Water Investigation and Management Plan). These agreements constitute a devil's bargain, offering some protection of our interests, should the Project be approved. These steps in no way diminish our full and complete opposition to the Seacoast Reliability Project.

Our beloved farm means far more to us than property or valued real estate. We hold it as a sacred trust, purchased two centuries ago by our great-great-grandfather, farmed, cared for, and protected by five generations of our family. We plead most ardently that the SEC deny the Seacoast Reliability Project a certificate of site and facility.