

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 15, 2018

**KEITH FRIZZELL'S FINAL BRIEF IN OPPOSITION**

NOW COMES Keith Frizzell by and through his attorneys, Wadleigh, Starr & Peters, PLLC and files the following Final Brief in Opposition to the Project stating as follows:

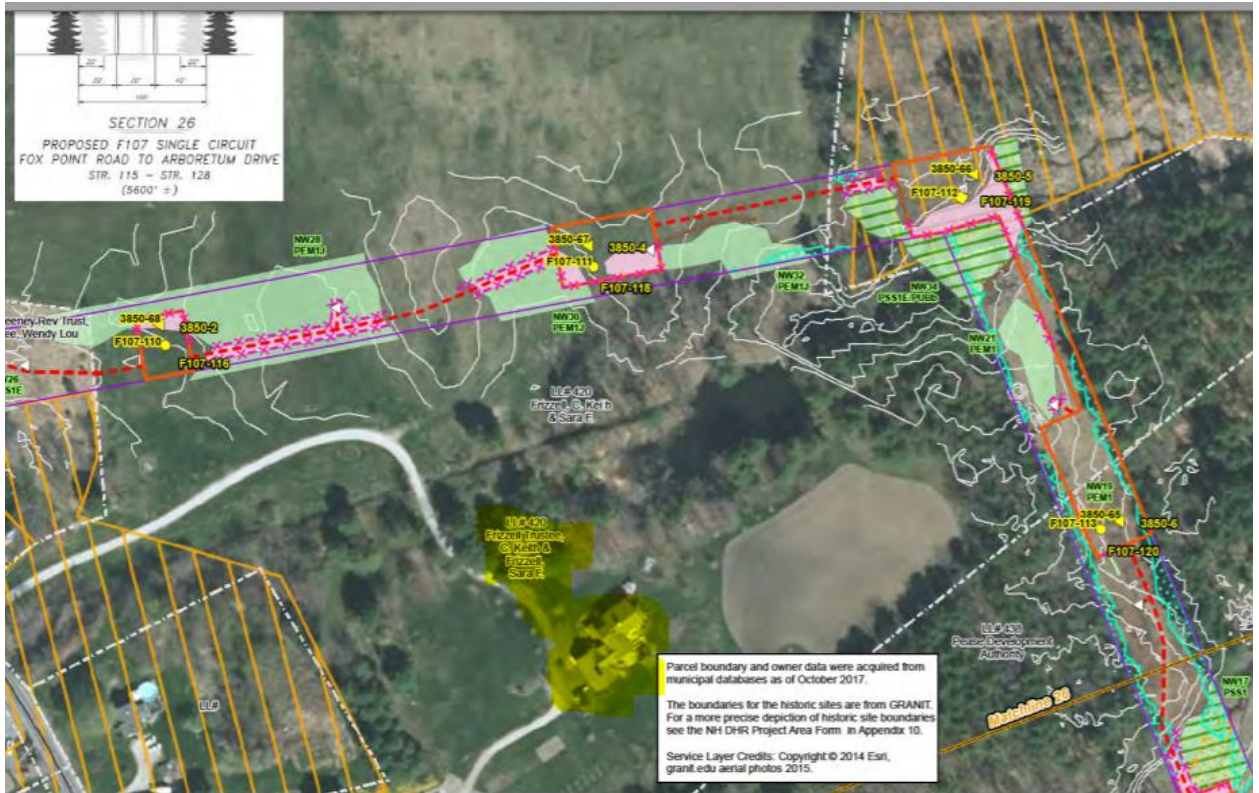
I. INTRODUCTION

Keith Frizzell and the Frizzell family own and live on 37 acres of land located at 24 Fox Point Road in Newington, New Hampshire (the "Property"). The Property consists of rolling pastures, woodlands, a pond, buffalo and agricultural enclosures, and is improved with a custom house and barn built by the Frizzell family in 2004.

Public Service Company of New Hampshire ("Eversource" or the "Applicant") possesses a 100' wide right of way ("ROW") across the northern and eastern edges of the Property, where it currently houses a utility pole route consisting of three, approximately 35' utility poles supporting a 115-kv electrical line.

In its petition, Eversource proposes a substantial and devastating expansion of its use of the ROW by adding two HVTL towers, 3850-67 and 68 as well as replacing the existing distribution utility poles with new—taller—poles, F107-110 and 111. These towers and poles, totaling four separate utility structures, essentially create a high voltage transmission corridor across Mr. Frizzell's property, and connect to additional, and highly visible transmission structures on neighboring properties.

Portion of Application, Appendix 2b, Map 26 of 31 (highlighting of Frizzell home added):



The Project will fundamentally change the real estate value and aesthetics of the Property, and PSNH has failed to satisfy the requirements of RSA 162-H.<sup>1</sup>

Accordingly, the Application must be DENIED.

## II. ARGUMENT

### A. The Applicant failed to meet its burden.

The Applicant’s Burden before the New Hampshire Site Evaluation Committee (the “SEC” or the “Committee”) is to provide facts sufficient for the SEC to determine, by a preponderance of

<sup>1</sup> See generally N.H. Rev. Stat. Ann. § 162-H (2015).

the evidence, that the issuance of a certificate will serve the objectives of RSA 162-H:16(IV).<sup>2</sup>

The SEC standard is contained throughout the controlling laws and SEC rules, beginning with RSA 162-H:10(IV) stating:

The site evaluation committee shall require from the applicant whatever information it deems necessary to assist in the conduct of the hearings, and any investigation or studies it may undertake, and in the determination of the terms and conditions of any certificate under consideration.<sup>3</sup>

More specifically, RSA 162-H:16(IV) sets forth the following requirements:

II. Any certificate issued by the site evaluation committee shall be based on the record. The decision to issue a certificate in its final form or to deny an application once it has been accepted shall be made by a majority of the full membership. A certificate shall be conclusive on all questions of siting, land use, air and water quality.<sup>4</sup>

IV. 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 order to issue a certificate, the committee shall find that:

(b) 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.<sup>5</sup>

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<sup>2</sup> N.H. Rev. Stat. Ann. § 162-H:10(IV) (2015) stating that “[a]fter 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 order to issue a certificate, the committee shall find that: (a) The applicant has 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. (b) 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. (c) 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. (d) [Repealed.] (e) Issuance of a certificate will serve the public interest.

<sup>3</sup> N.H. Rev. Stat. Ann. § 162-H:10 (IV) (2015).

<sup>4</sup> N.H. Rev. Stat. Ann. § 162-H:16 (IV) (2015).

<sup>5</sup> *Id.*

It is the Applicant's Burden to provide "all relevant information" to prove by a preponderance of the evidence that the facility "will not unduly interfere with the orderly development of the region."<sup>6</sup> **Absent that evidence, the SEC has no authority to make the required determination.**

As required by RSA 162-H:10(VII), the SEC rules set out the "...criteria for the siting of energy facilities, including specific criteria to be applied in determining if the requirements of RSA 162-H:16(IV) have been met by the applicant for a certificate of site and facility."<sup>7</sup> Specifically, the burden and standard of proof required by the SEC in site 202.19 underscores the Applicant's Burden, stating in relevant part:

(a) The party asserting a proposition shall bear the burden of proving the proposition by a preponderance of the evidence.

(b) An applicant for a certificate of site and facility shall bear the burden of proving facts sufficient for the committee or subcommittee, as applicable, to make the findings required by RSA 162-H:16 (emphasis supplied).<sup>8</sup>

**B. James Chalmers' testimony is not credible.**

The Applicant's reliance on the testimony of James Chalmers serves no credible purpose. In his written and verbal testimony, Dr. Chalmers' consistently opines that "there will be no discernible effect of the Project on property values or marketing time in local or regional real estate markets."<sup>9</sup> Mr. Frizzell challenged this point in his testimony and response to data requests.<sup>10</sup> He relied, in part, on the decision of SEC Docket No. 2015-06.<sup>11</sup> Although this decision is under appeal in the New Hampshire Supreme Court Docket No 2018-468, the order has not been stayed.

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<sup>6</sup> *Id.*

<sup>7</sup> N.H. Rev. Stat. Ann. § 162-H:10(VII) (2015).

<sup>8</sup> SEC, Ch. 200, Site 202.19 (2015).

<sup>9</sup> See generally, Chalmers & Associates, High Voltage Transmission Lines and Real Estate Markets in New Hampshire, July 15, 2018; SEC Trial Tr., Day 7, Pg. 80 – 81, Morning Sess. (Sept. 24, 2018).

<sup>10</sup> See generally, Frizzell Exhibit KF1; See generally, Applicant Exhibit 260; testimony, Afternoon Sess., Oct. 25, 2018.

<sup>11</sup> SEC Docket No. 2015-06 - Northern Pass Transmission.

When answering the Applicant's data requests, Mr. Frizzell quoted extensively from the decision in Northern Pass, and Applicant Ex. 260 is part of the record in this case. Here, the salient point is that, in Northern Pass, the SEC determined:

While Dr. Chalmers approach was broad, the Subcommittee finds the report and testimony to be insufficient to demonstrate that the Project will not have an unreasonably adverse impact on real estate values throughout the region. We find much of Dr. Chalmers' testimony and his report to be **shallow and not supported by the data.**

Subsequently, Dr. Chalmers' literature review did not support his conclusions, and the SEC denied Eversource's application in Northern Pass.<sup>12</sup>

Here, Dr. Chalmers massaged his process but reached the same conclusion related to seacoast property values as that of Northern Pass. Chalmers' maintains the addition of HVTL towers and lines to Mr. Frizzell's property and increasing the height of distribution poles will have no discernible effect on the value of the property. Accordingly, the Committee evaluating the Seacoast should reach the same result as that of the Committee in Northern Pass, Chalmers' testimony is not credible.

### **C. Cross examination of Mr. Frizzell was ineffective.**

Mr. Frizzell was specifically cross-examined regarding the effect of the project on property values by the Applicant's counsel on October 25, 2018.<sup>13</sup> Straying far afield, and evaluated in the most charitable light, the examination clearly revealed the Applicant's lack of confidence in Dr. Chalmers' opinion related to property values. During cross examination, counsel addressed Mr. Frizzell's pre-filed testimony, and failed to address the testimony that Mr. Frizzell had just

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<sup>12</sup> See SEC, Decision and Order Denying Application for Certificate of Site and Facility, 194, March 30, 2018; See SEC, Order on Applicant's Motion for Rehearing of Decision and Order Denying Application; Applicant's Motion for Rehearing of Decision and Order Denying Application and Request to Vacate Decision of February 1, 2018 and to Resume Incomplete Deliberations; and Intervenors' Request to Strike, 68, July 12, 2018.

<sup>13</sup> SEC Trial Tr., Day 14, Pg. 82, l. 12 – Pg. 92, l. 2, Afternoon Sess., Oct. 25, 2018; See Id. At Pg. 88, l. 2 – Pg. 89, l. 24.

provided, under oath, on the stand (i.e., actual testimony supported by answers to data requests contained in Applicant Ex. 260). In this clumsy effort, the Applicant employed a classic “Straw Man”<sup>14</sup> argument, establishing that when Mr. Frizzell provided his pre-filed testimony on July 31, 2017, he did not rely on information that did not yet exist. As such, it will come as no surprise that Mr. Frizzell never took the ridiculous position that his pre-filed testimony was based on information that did not exist.

In contrast, the answers to data requests, “these statements,” provided on April 16, 2018, did contain information that became available after the pre-filed testimony. The cross-examination builds or, more accurately, descends until this low point is reached on transcript page 88:

14	Q	Well, you filed your Prefiled Testimony on July
15		31st, 2017; is that right?
16	A	If that's the date, then I would have to agree.
17	Q	And the Northern Pass order wasn't issued until
18		March 30th of 2018.
19	A	Okay.
20	Q	So there's no way for you to have relied upon
21		these statements when you're writing your
22		Prefiled Testimony; is that accurate?
23	A	It would seem to be.
24	Q	Okay. Let's set this timing issue aside.

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<sup>14</sup> The straw man is an informal fallacy in which the proponent gives the impression of refuting an argument while refuting an argument that was not presented.

<sup>15</sup> SEC Trial Tr., Day 14, Pg. 88, Afternoon Sess., Oct. 25, 2018.

There was, of course, no “timing issue” to set aside, and the Applicant’s transparent effort to distract from Dr. Chalmers’ lack of credibility while attempting to discredit Mr. Frizzell failed miserably.

For the aforementioned reasons, the Committee should deny Eversource’s application.

WHEREFORE, Keith Frizzell respectfully requests that this Committee:

- a. Deny the Applicant’s Petition; and
- b. Grant such further relief as it deems appropriate.

Respectfully Submitted,

**Keith Frizzell**  
By his Attorneys

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Certificate of Service

I hereby certify that on 15th of November, 2018, an original and one copy of the foregoing Motion was served electronically and by US Mail to the New Hampshire Site Evaluation Committee.

    /jl/      
Joshua Lanzetta