

November 21, 2018

VIA EMAIL ONLY (Pamela.Monroe@sec.nh.gov)
Pamela G. Munroe, Administrator
NH Site Evaluation Committee
21 South Fruit Street, Suite 10
Concord, NH 03301-2429

**RE: New Hampshire Site Evaluation Committee Docket No. 2015-04
Application of Public Service Company of New Hampshire d/b/a Eversource
Energy for a Certificate of Site and Facility**

Dear Ms. Monroe:

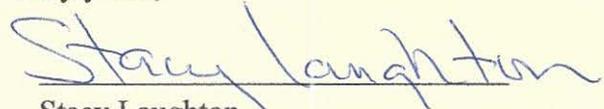
Enclosed for filing in the above-referenced docket is the following:

TOWN OF NEWINGTON'S SUPPLEMENTAL POST-HEARING BRIEF

Copies of this letter and the enclosure have this date been forwarded via email to all parties on the Distribution List.

If you have any questions or concerns, please do not hesitate to contact me.

Very truly yours,


Stacy Laughton,
Paralegal

/sl

Encl (1)

cc: Distribution List (rev. 10/23/18) via email



**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 a Certificate of Site and Facility

TOWN OF NEWINGTON'S SUPPLEMENTAL POST-HEARING BRIEF

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I. PROCEDURAL HISTORY

On April 12, 2016, the Applicant filed an Application for a Certificate of Site and Facility ("Application") which was accepted by the Subcommittee by Order dated June 13, 2016. On October 17, 2016 the Subcommittee issued a Procedural Schedule which was subsequently modified several times.

On January 20, 2017 the Applicant filed an Uncontested Motion to Stay the Procedural Schedule. Soon thereafter, DES and DHR requested additional time to complete their respective review of the proposed project.

On April 26, 2017, one year after the Applicant filed its Application, the Subcommittee convened a public hearing and voted to extend the deadlines for state agencies to submit final reports to August 1, 2017, and for the final written decision to December 29, 2017. The new deadlines were set forth in an Order dated May 22, 2017.

The June 20, 2017 Revised Procedural Schedule established an adjudicative hearing and deliberations schedule beginning in mid-October and ending in early November, 2017. On August 10, 2017, the Applicant again requested a delay in the proceeding by Motion to Postpone Final Adjudicative Hearings in order to address DES concerns over potential impacts of the project on water quality of Little Bay.

The Subcommittee granted Applicant's Motion by Order dated August 21, 2017. After convening another public hearing on March 14, 2018, the Subcommittee voted to further extend the December 29, 2017 deadline to reach a final decision stating in its Order dated April 6, 2018: "The procedural schedule in this docket has been extended many times due to no fault of the Subcommittee." The Subcommittee found the reasonable and prudent course was to once again extend the deadline for a final written decision until April 1, 2019.

Adjudicative hearings began on August 29, 2018 and continued through October 26, 2018 during which time the Subcommittee heard testimony of the Applicant's 21 witnesses and considered approximately 270 exhibits for the Applicant.

Upon the completion of the adjudicative hearings on October 26, 2018, the record was closed and the Subcommittee issued an Order on Exhibits and Schedule for Final Briefs on October 31, 2018. Two days later, on November 2, 2018, the Applicant filed a Motion to Reopen the record. Attached to the Motion was an addendum to Applicant's Visual Assessment, APP Ex 05, seeking to supplement the existing record related to scenic resources within the area of potential impact which had been overlooked in the original VA. This is Applicant's third supplement or amendment to its visual impact assessment ("VIA").¹

Throughout the more than two and a half years between the time the Applicant filed its application in April 2016 and the close of the record on October 26, 2018, Applicant continued to supplement its application through responses to state agencies, responses to CFP and Intervenor questions, and responses to Subcommittee requests.

The Subcommittee re-opened the record and held a hearing on the afternoon of November 15. The Applicant put forth its aesthetic consultant, David Raphael, for the limited purpose of cross examination by Counsel For the Public ("CFP") and Intervenors on Mr. Raphael's third Addendum to his VIA that addressed the "narrow and discrete issue," concerning "scenic resources known as Determined Eligible Sites."²

¹ See APP Ex 075, *Amended Pre-Filed Testimony of David Raphael dated March 29, 2017*, APP Ex 142, *Supplemental Pre-Filed Testimony of David Raphael dated July 27, 2018*.

² See *Applicant's Motion to Re-open Record*, at 2 (Nov. 2, 2018).

II. ARGUMENT

Applicant's Additional Evidence Fails to Satisfy the SEC Rules

The Applicant's shortcomings in adequately assessing the project's adverse effects on the area's scenic resources have, yet again, neither been alleviated nor relieved after a third bite at the apple.

First, as Mr. Raphael admitted,³ this Addendum does not reflect additional assessment of scenic resources. Rather, this was ostensibly a statement of an assessment of a limited-by-definition,⁴ but very large number of resources⁵ that had been reviewed for impact. However, he neglected to include *any* of those resources *or* an actual assessment of them, in his original, first or even second addendums to his VIA. At best this shows sloppiness, at worst, it shows an intentional misleading of the actual adverse effects on historic sites that possess a scenic quality.

Second, Mr. Raphael's testimony only further reinforced the conclusion that his methodology was flawed and contrary to the requirements of the SEC Rules. When queried by Commissioner Fitzgerald about where in his VIA Mr. Raphael covered the bare ground conditions, Mr. Raphael discussed using that as nothing more than a starting point to then layer on vegetation, topography, etc. in order to *eliminate* sites from consideration.⁶ This again is contrary to the Rule and shows Applicant's substitution of its judgment over the requirements of the SEC standards and rules.

³ Tr. DAY 16 at 33.

⁴ Mr. Raphael's list only includes historic sites that may be eligible for listing on the state or national register of historic sites. As we argued in our Post Hearing Brief, this category of sites is included but is not the exclusive category of historic sites under New Hampshire's definition of historic sites set forth in RSA 227-C:1, VI.

⁵ Tr. DAY 16 at 56.

⁶ *Id.* at P. 60-61

Third, Mr. Raphael's testimony yet again illustrates his lack of understanding that the SEC rules are not hurdles to overcome but rather standards to apply to adequately assess the project's impact on New Hampshire's precious and dwindling scenic resources. He makes a passing glance toward the rule of a 10 mile out geographic scope⁷ but yet again uses this as a means to eliminate sites from consideration and in fact found it so inconsequential as to leave it out entirely from his VIA.⁸

Finally, there is nothing in the Applicant's additional evidence or Mr. Raphael's additional testimony that supports the conclusion that the project will not have an unreasonable adverse effect on the area's scenic resources. To the contrary, Mr. Raphael's flawed methodology and misapplication of the SEC rules should lead the Subcommittee to only one conclusion: the Applicant has failed to meet its burden.

III. CONCLUSION

For all of the reasons set forth above and in our Post Hearing Brief, the SEC must deny a certificate of site and facility for the Project. The Applicant has failed to meet its burden of proving all of the applicable statutory and regulatory criteria. Alternatively, if the SEC nevertheless approves a certificate, we ask again that the SEC include certificate conditions as set forth in our Post Hearing Brief.

Respectfully submitted,
THE TOWN OF NEWINGTON
By and through its attorneys:



Susan S. Geiger, Esq. (N.H. Bar # 925)

⁷ Tr. DAY 16 at 56.

⁸ *Id.*

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CERTIFICATE OF SERVICE

I hereby certify that on November 21, 2018 a copy of the foregoing Post-Hearing Supplemental Brief was sent by electronic mail to persons named on the Service List of this Docket.



Elizabeth A. Boepple