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**VIA ELECTRONIC MAIL AND HAND DELIVERY**

November 2, 2017

New Hampshire Site Evaluation Committee  
Pamela G. Monroe, Administrator  
21 South Fruit Street, Suite 10  
Concord, NH 03301

New Hampshire Department of Environmental Services  
Rene Pelletier, PG – Assistant Director  
29 Hazen Drive, PO Box 95  
Concord, NH 03302-0095

**Re: SEC Docket No. 2015-04: Public Service Company of New Hampshire d/b/a  
Eversource Energy for a New 115k Transmission Line from Madbury Substation to  
Portsmouth Substation  
Applicant’s Response to Town of Durham Filing with NHDES**

Dear Ms. Monroe and Mr. Pelletier:

This letter responds to the filing of the Town of Durham submitted to Mr. Pelletier on October 30, 2017. We believe the Town’s letter is procedurally improper and contrary to the practice of the New Hampshire Site Evaluation Committee (“SEC” or “Committee”).

Public Service Company of New Hampshire d/b/a Eversource Energy (the “Applicant”) has filed an Application for a Certificate of Site and Facility with the Committee, which is currently pending. Pursuant to RSA 162-H and the Committee’s Rules at Site 202, the SEC shall conduct “an adjudicative proceeding regarding an application or petition . . . in accordance with the administrative procedure act, RSA 541-A, and the [Committee’s] rules.” RSA 162-H:10 specifically provides that after the pre-filing and post-filing public hearings, all subsequent public hearings shall be in the nature of adjudicative proceedings under RSA 541-A.

The presiding officer of the Committee oversees adjudicative proceedings, and is specifically authorized in Site 202.02(c) to:

- (1) Facilitate informal resolution of contested issues;
- (2) Conduct any hearing in a fair, impartial and efficient manner; . . .
- (4) Admit relevant evidence and exclude irrelevant, immaterial or unduly repetitious evidence; [and]
- (5) Provide opportunities for the parties and committee members to question any witness . . . .

The Town of Durham sought and was granted leave to intervene in this SEC proceeding as a full party. Full party status also obligates the Town of Durham to comply with SEC procedures. Here, Durham has submitted additional pleadings on numerous occasions outside of the SEC adjudicative process and addressed directly to the NH Department of Environmental Services (“DES”). RSA 162-H and RSA 541-A, however, governs the specific procedures to be followed in contested cases, such as this matter pending before the Committee. As you know based on our filing with DES and our filings at the SEC, Eversource disagrees with many of Durham’s assertions and will contest those assertions, as required, in the SEC process.

To the extent the Town of Durham wishes to contest facts, opinions, or conclusions that have been made and presented by the Applicant as part of its Application, the Town is obligated to litigate these issues directly before the SEC—not through individual agencies that fall under the SEC’s overall jurisdictional permitting authority. Moreover, if the Town wants the SEC to consider additional potential permitting conditions as part of the Committee’s review, the Town can make that request to the Committee and the SEC has the authority to consider such additional permit conditions. *See* RSA 162-H:7-a, I(e).

In addition, pursuant to RSA 162-H

State agencies having permitting or other regulatory authority may participate in committee proceedings as follows:

- (a) Receive proposals or permit requests *within the agency's permitting or other regulatory authority, expertise, or both*; determine completeness of elements required for such agency's permitting or other programs; and report on such issues to the committee;
- (b) Review proposals or permit requests and submit recommended draft permit terms and conditions to the committee; [and]
- (c) Identify issues of concern on the proposal or permit request or notify the committee that the application raises no issues of concern.

RSA 162-H:7-a, I (emphasis added). Pursuant to the statute, NHDES purview here properly focuses on the Wetlands Permit Application, the Alternation of Terrain Permit Application, the Application for Water Quality Certification, and the Shoreland Permit Application—all those are “*within the agency’s permitting or other regulatory authority [and] expertise.*”

The filing by the Town of Durham, particularly the discussion of the “Gosling Road Transformer”, not only goes far beyond those NHDES areas of jurisdiction under RSA 162-H, but they also fail to acknowledge that the “Gosling Road Transformer” is not actually an alternative at all, is not before the SEC in the pending proceeding, and was long ago dismissed as a viable option. Please also refer to the Applicant’s Response to the Town of Newington Letter to NH DES of October 31, 2017.

Moreover, as fully discussed in its Application for a Certificate of Site and Facility, the Applicant concluded that horizontal direction drilling is not feasible. *See* Wetland Application at page 6-31; Application at page 102; Pre-filed testimony of Mr. James Jiottis (adopted by Mr. Kenneth Bowes) at page 20. Therefore, such an alternative method is not properly before the SEC for consideration. It is important to note, however, that notwithstanding Durham’s unfounded contention that the Applicant did not adequately assess the possibility of horizontal direction drilling, the Applicant did in fact fully evaluate the use of this technology to cross Little Bay. *See also* Attachment A (Applicant’s Response to Town of Durham Data Request 1-8).

The Department currently has in its possession all relevant information that is required to review the Project’s permit applications. As discussed in-depth above, the filing by the Town includes information that is solely before the Site Evaluation Committee and should not be litigated outside of the SEC process. Moreover, the discussion of alleged alternatives is not subject to review by the SEC as an alternative and is not within the Department’s permitting or other regulatory authority.

The Applicant has made its best effort to provide a comprehensive and complete response to the NHDES questions while also remaining mindful of the fact that there is an SEC process occurring here under which the Applicant has various obligations and due process rights. In that process, opposing parties have taken positions in their pre-filed testimony. The Applicant will respond to those parties in due course and pursuant to a scheduling order issued by the SEC. Requiring the Applicant to litigate these issues outside of the SEC processes raises substantial procedural concerns for the Applicant.

Based on the foregoing, the Department should not consider the entire filing of the Town of Durham dated October 30, 2017 during its review of the Project’s permit applications.

Please contact me directly should you have any questions.

Very truly yours,



Barry Needleman

BN:amd

Enclosure: Attachment A

Cc: SEC Distribution List

**Durham 1-8** When it was developing this Project did PNSH take into account the possibility of directional boring under Little Bay? If it did not, please explain why not. If it did, please explain why it rejected this option.

**Response:** The Project investigated the use of horizontal directional drilling (“HDD”) as a means to cross Little Bay and retained firms familiar with large scale HDD to analyze the crossing of Little Bay. The use of HDD to cross Little Bay would have required drilling through quartzite rock with a bore diameter of over 40 inches exceeding 6,000 feet in length.

The quartzite rock under the bay is classified as portions of the Kittery and Eliot formations that contain quartzite rock with known compressive strengths up to 30,000 pounds per square inch (“psi”). The drilling process would have required drill units be placed on the east and west shores, drilling 24 hours a day for a period of three to six months to complete the drill. An HDD drill for electric cable requires the bore be sleeved with a plastic pipe. This pipe must be constructed outside the bore and pulled through as a solid piece. Assembly of the PVC sleeve would have required a setup area over 6,000 feet long. As an example, if this setup were done on the Durham side using the existing ROW, the PVC sleeve would have extended from the shore of Little Bay across Durham Point Road and across Longmarsh Road. Moreover, HDD would have required large set-up areas on both sides of the bay for pulling and staging cable reels, typical setup areas are approximately 100 feet by 250 feet. This would have been a significant disturbance to project abutters.

Use of HDD also requires large quantities of a bentonite (clay) slurry which is used to coat and lubricate the drilled shaft. While the material is inert, containment procedures are required to prevent its spilling into the surrounding environment. The containment would have required large pools be established on both sides of the bay during the drill. A review of the geologic structure indicated the potential for fault lines in the bed rock under the bay. Drilling through the fault lines increases the possibility of the bore “fracking out,” which could release the bentonite slurry across the bottom of the bay coating the sea floor.

Based on technical, environmental and abutter impacts identified during the bore analysis, PSNH did not select HDD as the method to cross Little Bay. Please also refer to the Pre-filed testimony of James Jiottis at pages 20 to 21 for a complete description of the methods considered for crossing Little Bay.

**Witnesses Available for Cross Examination include:** Jim Jiottis