

Orr&Reno

Susan S. Geiger
sgeiger@orr-reno.com
Direct Dial 603.223.9154
Direct Fax 603.223.9054
Admitted in NH and MA

November 22, 2017

Via U.S. and Electronic Mail

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

***Re: NH SEC Docket No. 2015-04 -Seacoast Reliability Project,
Wetlands Permit Application Submitted 4/12/16, Supplemented 3/15/17-
Town of Newington's Response to Applicant's 10/31/17 Letter***

Dear Mr. Pelletier:

The Town of Newington respectfully responds to the October 31, 2017 letter to you from Eversource's attorney by stating as follows:

1. As Eversource's letter correctly notes, the role of the New Hampshire Department of Environmental Services ("NHDES") properly focuses on the above-referenced wetlands permit application which is presently pending before your agency. As required by RSA 162-H:7, IV, Eversource filed its wetlands permit application with the New Hampshire Site Evaluation Committee ("NHSEC") as part of its NHSEC application. Although Eversource's wetlands permit application was filed with its NHSEC application, the wetlands permit application must contain sufficient information to satisfy NHDES's wetlands permit application requirements. *See* RSA 162-H:7, IV.

2. NHDES rules require a wetlands permit applicant to "demonstrate by plan and example" that the project's design in assessing the impact of the proposed project to areas and environments under NHDES's jurisdiction has considered, among other things, "**the alternative proposed by the applicant is the one with the least impact to wetlands or surface waters on site.**" (Emphasis added.) *See* N.H. Code Admin. R. Env-Wt 302.04(a)(2).

3. Unless a waiver is granted, NHDES cannot grant a wetlands permit if an applicant has failed to document consideration of the above-referenced factor. *See* N.H. Code Admin. R. Env-Wt 302.04(e)(2).

4. Eversource's wetlands permit application submitted April 12, 2016 contains the following statement in response to question 2, *i.e.*, the question concerning whether the alternative proposed by the applicant is the one with the least impact to wetlands or surface waters on site:

Beginning in 2008, a working group led by ISO-NE conducted a Needs Assessment, which led to a determination that the New Hampshire Seacoast area ("Seacoast Area") requires additional generation resources and/or transmission capacity. The Needs Assessment found that there are violations of the transmission system criteria in the Seacoast Area under certain potential system operating conditions. As a result, the working group also conducted a Solution Study to identify potential solutions to correct these violations. **The Solutions Study led to the development of four solution alternatives**, each comprised of a separate suite of projects, one of which included the Madbury to Portsmouth Project. After reviewing each suite of projects, the solution set that included the Madbury to Portsmouth project was selected by ISO-NE on January 12, 2012 as the preferred solution, consistent with regional transmission planning standards as the lowest cost and best overall option. (Emphasis added.)

Detailed natural resource studies were not conducted for all the alternatives as that level of detail is not required; however, the benefits of the preferred alternative related to wetland and surface water impacts include utilizing an existing cable crossing area in Little Bay, utilizing existing ROW areas including wetland and other areas that are periodically disturbed for maintenance and vegetation management, and fewer impacts to prime wetlands. See narrative for additional detail on the various alternative routes studied. (Emphasis added.)

Additional information is included in the permit application narrative and associated NH SEC application materials.¹

5. As the foregoing statement and application narrative at pages 6-27 through 6-29 indicate, although Eversource did provide information in its wetlands permit application about

¹ Eversource's supplemental filing dated 3/15/17 indicates that the foregoing response to question 2 remains unchanged from the original application.

“alternative routes” for an overhead transmission line in the Seacoast Area, it did not document the environmental impacts of another alternative that would completely avoid impacts to Little Bay, the Town of Durham and the Town of Newington’s Historic District and residential areas, *i.e.*, the so-called Gosling Road Autotransformer Alternative. In the absence of this documentation, the extent to which the Gosling Road Autotransformer Alternative would have less impacts to wetlands and surface waters than the proposed Project is unknown.


6. Eversource’s October 31, 2017 letter to you states, without supporting authority, that “[t]he Town of Newington is well aware that the Gosling Road Autotransformer is not practicable and is not available as a solution to meet the needs of the regional electric grid...” While it is true that the Town of Newington is aware that ISO-New England rejected the Gosling Road Autotransformer Solution based on cost information that is approximately six (6) years old, Newington does not know whether ISO-New England is willing to reconsider its decision in light of updated cost information or the proposed project’s impacts to Little Bay and the Newington Historic District. Accordingly, Newington is asking the NHSEC to exercise its authority under RSA 162-H:16, III to consult with ISO-NE on this issue. *See attached Motion to Consult with ISO-New England.* Until such time as ISO-NE has answered the question of whether it will reconsider the Gosling Road alternative, it is unknown whether that alternative is practicable and available to address the current and future needs of the regional electric grid.

7. Lastly, Newington wishes to note that the reason it did not participate in the ISO-NE planning process that led to the selection of the proposed project was because Newington had no knowledge of that process until well after it was concluded. *See Prefiled Direct Testimony of Denis J. Hebert, July 28, 2017, p. 38.* Eversource’s letter, at page two, cites testimony of Mr. Andrew which describes the ISO-NE Planning Advisory Committee (“PAC”) process which “seeks input from stakeholders” and testimony of Mr. Quinlan that states that local communities, like the Town of Newington, “could have been involved with the ISO-NE planning process, should they have chosen to do so.” Newington believes that those statement are terribly misleading. Simply put, neither ISO-NE nor Eversource provided the Town of Newington with actual notice of the PAC process while the process was underway. In addition, it is unclear whether ISO-NE or Eversource is even required to provide such actual notice, as Newington has been unable to find such requirements in ISO-NE’s tariff or other documents on its website. While ISO-NE is required to post PAC information on its website and while it is also true that the PAC process is open to the public, communities like Newington cannot participate in PAC processes affecting them unless they are provided with meaningful notice and an opportunity to participate at a meaningful time, consistent with principles of fundamental fairness and due process of law. Accordingly, Newington is asking the NHSEC to consult with ISO-NE to seek a change in its rules and procedures to insure that host communities like Newington are given notice and a right to participate in the PAC process. *See attached Motion.*

Thank you for your consideration of the above comments.

Mr. Rene Pelletier, PG – Assistant Director
November 22, 2017

Very truly yours,


Susan S. Geiger

Enclosure

cc: NH SEC Administrator Pamela Monroe (electronic mail only)
Barry Needleman, Esq.(electronic mail only)

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**THE STATE OF NEW HAMPSHIRE
SITE EVALUATION COMMITTEE
SEC DOCKET NO. 2015-04**

**APPLICATION OF
PUBLIC SERVICE COMPANY OF NEW HAMPSHIRE
D/B/A EVERSOURCE ENERGY
FOR A CERTIFICATE OF SITE AND FACILITY**

PARTIALLY ASSENTED-TO MOTION TO CONSULT WITH ISO-NEW ENGLAND

NOW COMES The Town of Newington, New Hampshire (“Newington”) by and through its undersigned attorneys, and respectfully moves the New Hampshire Site Evaluation Committee (“SEC” or “Committee”) to exercise its authority under RSA 162-H:16, III to consult with ISO-New England (“ISO-NE”) in the consideration of the certificate sought by Public Service Company of New Hampshire d/b/a Eversource Energy (“Eversource” or “the Applicant”) in the above-captioned matter. In support of this Motion, Newington states as follows:

1. On April 12, 2016, Eversource filed with the New Hampshire Site Evaluation Committee (“SEC” or “Committee”) an Application for a Certificate of Site and Facility (“Application”) for the Seacoast Reliability Project, *i.e.*, a 115kV transmission line proposed to be located in a route running through the Towns of Madbury, Durham, Newington and Portsmouth, and through the University of New Hampshire campus and Little Bay (“the Project”).

2. Newington was not made aware of the Project until after it had been selected by ISO-NE as the preferred solution to address transmission system issues in the Seacoast Region. Because Newington was unaware of ISO-NE's planning process or its Planning Advisory Committee meetings regarding this Project, Newington did not participate in the ISO-NE's processes and was therefore not able to present information to ISO-NE regarding how the Project would impact the Seacoast Region, the Town of Newington, and their natural and historic resources.

3. Upon learning of the Project, Newington's representatives met several times with Eversource's representatives over the past few years to discuss the Project and its anticipated impacts on Newington. In addition, Newington has gathered information about the Project by attending public information sessions, conducting discovery on the Application, and attending several technical sessions in this docket.

4. On July 28, 2017, Newington submitted the prefiled direct testimony of Newington Planning Board Chairman Denis J. Hebert ("Hebert Testimony"). Among other things, the Hebert testimony discusses various aspects of the Project that are inconsistent with Newington's Master Plan and, as a result, concludes that the Project will unduly interfere with the orderly development of the region. *See* Hebert Testimony, pp. 4 -14. In addition, the Hebert testimony discusses Newington's concerns about the Project's impacts on aesthetics, historic sites, natural resources and water quality, and public health and safety. *See* Hebert Testimony, pp. 21-37.

5. The Hebert Testimony also concludes that the Project is not in the public interest. *See* Hebert Testimony, pp.14-21. Among other things, this conclusion is based upon information concerning the so-called Gosling Road Autotransformer Option ("Gosling Road

Solution”) which ISO-New England (“ISO-NE”) ranked as the highest of four options to address transmission issues in the Seacoast Region, but which ISO-NE ultimately rejected on the basis of cost.¹ *See* Hebert Testimony, p. 15 and Attachment DJH-7. As the Hebert Testimony indicates, the Gosling Road Solution would be less impactful than the Project as it would completely avoid the construction of new high voltage transmission lines through the University of New Hampshire, Durham, Newington and Portsmouth, as well as Little Bay. *See* Hebert Testimony, p. 19. The Gosling Road Solution would also accommodate more future load growth than the Project. *See* Hebert Testimony, p. 16. In addition, the cost estimates used by ISO-NE in 2012 to assess the Gosling Road Solution and the Project indicate that, although the Gosling Road Solution would cost 22% more than the Project, the Gosling Road Solution would provide twice the amount of power than the Project. *Id.*

6. The Gosling Road Solution would also be of great economic benefit to the state by enabling large energy users to locate their businesses along New Hampshire’s only deep water port in Newington. *See* Hebert Testimony, p. 20. Newington has recently learned that the port will be expanding in 2019 and that the State will be contributing \$7 million to this expansion project. Properties along the port are in the process of being sold or listed for sale which creates the potential for future development in this area. Newington believes this will create additional electrical load which ISO-NE likely did not consider when it conducted its 2012 Transmission Solution Study.

7. ISO-NE is presently engaged in another round of Transmission Solution Studies. *See* Hebert Testimony, p. 17. In light of this fact, as well as the serious concerns raised by the

¹ Note that this cost information is now approximately 6 years old.

New Hampshire Department of Environmental Services² and several intervenors³ about the Project's impacts to Little Bay, important historic resources, and to businesses, Newington believes that the Committee should consult with ISO-NE as soon as possible to determine whether the Gosling Road Solution should be pursued in lieu of the Project.

8. RSA 162-H:16, III authorizes the Committee to "consult with interested regional agencies and agencies of border states in the consideration of certificates." As the operator of the region's transmission system, and as the entity responsible for regional transmission system planning, ISO-New England can be properly viewed as a "regional agency" within the meaning of the above-referenced statute. Accordingly, the Committee may properly consult with ISO-NE regarding the Application.

9. The Committee is obligated to determine whether issuing a certificate to the Project "will serve the public interest." See RSA 162-H:16, IV (e). The public interest criteria that the Committee must consider include: "the welfare of the population;" "private property;" "the location and growth of industry;" "the overall economic growth of the state;" "the

² A letter dated August 1, 2017 from the New Hampshire Department of Environmental Services ("DES") recites a long list of issues concerning the Project's impacts on Little Bay, prime wetlands and other matters that the Applicant has not yet addressed to the satisfaction of DES.

³ For example, the Town of Durham's testimony raises serious concerns about the Project's environmental impacts on Little Bay, a resource which Durham's residents consider to be "priceless and fragile." Testimony of Todd Selig (July 28, 2017), p. 4. Prefiled testimony of Helen Frink notes that overhead transmission lines and a transition structure are proposed to be located on and will directly impact historic properties (Pickering and Frink Farms) and will introduce an incompatible visual element that diminishes the open field setting that is a character-defining feature of the properties. Pre-filed Direct Testimony of Helen H. Frink, pp. 1-2. Ms. Frink's prefiled testimony also expresses concerns that excavation may spread PFOA and PFOS to other uncontaminated areas of the historic Frink Farm property. *Id.*, p. 4. Prefiled testimony of Jason Baker on behalf of Fat Dog Shellfish Company, LLC expresses concerns that the Project's proposed jet plow and diver dredging operations in Little Bay will likely adversely impact Mr. Baker's nearby oyster culturing business. According to Mr. Baker, these "impacts could range from short-term harvest closures and declines in product quality ... to larger scale crop contamination and mortality." Prefiled Direct Testimony of Jason Baker on Behalf of Fat Dog Shellfish (July 30, 2017), p. 1. Prefiled testimony of Donna Heald expresses specific concerns about the Project's adverse impacts to her land, her horticultural business and the plants used in that business. Pre-Filed Direct Testimony of Donna Heald (July 31, 2017).

environment of the state;" "historic sites;" "aesthetics;" "air and water quality;" "the use of natural resources;" and "public health and safety." N.H. Admin. Rule Site 301.16 (a)- (j). It is unclear whether or to what extent ISO-NE considered these factors in deciding that Eversource should proceed with the Project in lieu of the Gosling Road Solution. Given that uncertainty, and in light of the serious issues associated with the Project that could be entirely avoided by the Gosling Road Solution, Newington submits that it is imperative that the Committee exercise its authority to consult with ISO-NE to determine if ISO-NE continues to agree that proceeding with the Project at this time continues to be the preferred solution to Seacoast Region transmission issues. Moreover, because the cost data upon which ISO-NE relied to select the Project over the higher-ranked Gosling Road Solution is several years old, Newington respectfully asks the Committee to request that ISO-NE examine updated cost information regarding the Project and the Gosling Road Solution to determine if the Project remains the less costly alternative.

10. The Legislature's purpose in enacting RSA 162-H was to treat construction and operation of energy facilities "as a significant aspect of land-use planning in which **all environmental, economic, and technical** issues are resolved in an **integrated** fashion." (Emphasis added.) RSA 162-H:1. Newington respectfully submits that the Committee's consultation with ISO-NE about whether the Project should proceed is directly aligned with the above-stated purpose of the Committee's enabling statute.

11. Lastly, Newington is very concerned that it was not able to participate in the PAC process that led to the selection of the Project because Newington did not receive actual notice about the PAC process. While Newington is aware that ISO-NE's procedures include posting information about PAC meetings on ISO-NE's website, those postings cannot be viewed

commensurately with actual notice to affected cities and towns provided prior to initiating the PAC process for a particular project.

12. Newington is concerned that the apparent disconnect between ISO-New England's planning and project selection process and the State's responsibilities for environmental protection and project siting will lead to future cases where host communities like Newington are not able to communicate their concerns to ISO-NE at a meaningful time during the transmission planning process. For that reason, and consistent with principles of fundamental fairness and due process of law, Newington respectfully asks that the Committee request that ISO-NE change its processes and rules to require that ISO-NE provide host communities with actual notice of proposed energy solutions that will affect those host communities, and that such actual notice be provided at a meaningful time, *i.e.*, at such time that will enable affected communities to participate in the project selection process.

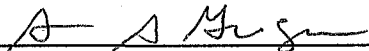
13. The undersigned contacted the parties to this proceeding via electronic mail for the purpose of obtaining their positions regarding the relief requested in this Motion. The following parties concur: Town of Durham; Conservation Law Foundation; The Nature Conservancy; Helen Frink; Smith Family; Viv and Jeff Miller; Donna Heald; and Matthew Fitch on behalf a portion of the Durham Intervenor Group (previously "Durham Point/LittleBay Abutters"), *i.e.*, the Miller, Gans, Moore and Fitch Families. Counsel for the Public concurs with the relief sought in paragraphs A and B of the Motion, but takes no position on the relief requested in paragraph C. The Applicant objects to the Motion, and the other parties did not indicate their positions prior to the time this Motion was filed.

WHEREFORE, Newington respectfully requests that the Committee exercise its authority under RSA 162-H:16, III and:

- A. Consult with ISO-NE to determine whether the Gosling Road Autotransformer Option is still a feasible solution to the Seacoast reliability problem and whether it should be pursued by Eversource in lieu of the current Seacoast Reliability Project;
- B. Provide a written report of such consultation to the parties in the instant docket prior to the commencement of adjudicative hearings;
- C. Request that ISO-NE change its rules and procedures to provide actual, written notice to host and affected communities of their rights to participate in the PAC process on any project that will affect those communities, and that such notice be given prior to initiating the project selection process; and
- D. Grant such further relief as the Committee deems appropriate.

Respectfully submitted,

Town of Newington
By Its Attorneys
Orr & Reno, P.A.

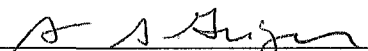


Susan S. Geiger - N.H. Bar # 925
45 South Main Street
Concord, NH 03302-3550
(603) 223-9154
sgeiger@orr-reno.com

Dated: November 22, 2017

Certificate of Service

I hereby certify that on this 22nd day of November, 2017, a copy of the within Motion was sent to the Service List via electronic mail.



Susan S. Geiger