



For a thriving New England

CLF New Hampshire 27 North Main Street
Concord, NH 03301
P: 603.225.3060
F: 603.225.3059
www.clf.org

September 2, 2016

VIA EMAIL AND HAND-DELIVERY

Ms. Pamela G. Monroe, Administrator
New Hampshire 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 for Construction
of New Transmission Line (Madbury to Portsmouth)**

Dear Ms. Monroe:

Please find enclosed for filing in the above-referenced matter an original plus eight copies of the Motion for Subcommittee Review and Reconsideration Regarding Limitation of Conservation Law Foundation's Intervention.

Copies of this filing have, this date, been forwarded via email to all parties on the Service List in this docket.

Please feel free to contact me should you have any questions or concerns.

Sincerely,

Thomas F. Irwin

TFI/dlh

Encls.

cc: Docket No. 2015-04 Service List

**THE 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 for
Construction of New Transmission Line (Madbury to Portsmouth)

**MOTION FOR SUBCOMMITTEE REVIEW AND RECONSIDERATION REGARDING
LIMITATION OF CONSERVATION LAW FOUNDATION'S INTERVENTION**

Conservation Law Foundation (“CLF”), pursuant to Site 202.11(f),¹ respectfully moves for review and reconsideration of the August 24, 2016 order of Site Evaluation Committee’s Subcommittee in the above-referenced docket, as it pertains to CLF’s intervention status, and requests full intervenor status, as follows:

1. By motion dated July 22, 2016, CLF moved to intervene in this proceeding. In its motion, CLF stated that it is a non-profit, member supported environmental advocacy organization “dedicated to the protection and responsible use of New England’s natural resources, including resources affected by the generation, transmission, and distribution of electric power.” Motion to Intervene at 1, ¶ 2. CLF’s motion emphasized concerns regarding the health of Little Bay, including the proposed project’s impacts on Little Bay and other resources, the necessity of those impacts, and the means by which they can be avoided. *Id.* at 2. However, while emphasizing those issues, CLF’s motion did not identify them to the exclusion of others. Rather, it

¹ Site 202.11(f) states: “Any party aggrieved by a decision on a petition to intervene may within 10 days request that the decision be reviewed by the committee or subcommittee, as applicable.”

specifically and deliberately contained language of inclusion, reserving the right to address other issues.

2. On August 24, 2016, the Subcommittee issued an order addressing all motions to intervene filed in this docket. In its Order, the Subcommittee rejected the request of Public Service Company of New Hampshire d/b/a Eversource (“Eversource”) to consolidate CLF with two other parties. However, while granting CLF intervenor status as a single party, it limited the scope of CLF’s intervention, stating:

CLF has demonstrated a substantial interest in the outcome of this proceeding on behalf of its members to justify intervention, in that it has demonstrated a substantial interest in protecting and addressing the effects of the Project on the Great Bay estuary, including Little Bay, as well as the impact of the Project on water quality and the environment. In order to promote the efficiency and orderly process of the proceeding, CLF’s motion to intervene is granted with the limitation that its participation shall be limited to discovery, evidence, and cross-examination on the specific impacts of the Project on air and water quality, and the natural environment. This limitation is not so extensive as to prevent CLF from protecting the interest which formed the basis of its intervention.

See Order at 6-7.

3. CLF anticipates focusing on the impacts of the project on water quality and the natural environment, including the nature and extent of those impacts and the means by which they can be avoided. Accordingly, it is possible that its advocacy will fit within the Order’s limitation. However, at this early stage of the proceeding – particularly before discovery – CLF cannot definitively rule out a substantial interest in other issues that may arise or become more fully developed in the proceeding, nor as a matter of fundamental fairness and due process should CLF or any party be required at the earliest stage of a proceeding to definitively and explicitly identify

- each and every issue of concern and be precluded from addressing additional issues of concern that develop during the course of discovery and the adjudicatory process.
4. While intervenors may voluntarily elect to limit the issues they will address in their intervention, CLF did not do so. Again, while CLF anticipates focusing on issues related to Little Bay and openly identified this focus in its motion to intervene, it described its interests as advancing solutions that strengthen the region's environmental *and economic* vitality² and deliberately invoked language of *inclusion* to not limit its rights. *See e.g.*, Motion to Intervene at 2, ¶ 4 (“CLF and its members have a substantial interest in this proceeding, *including but not limited to* the impacts of the proposed project on Little Bay and other resources, and the extent to which such impacts are necessary or can be avoided, and CLF members may be directly affected by its outcome.”) (emphasis added); at 2, ¶ 5 (“CLF intends to submit evidence and analysis on subjects relative to, *inter alia*, the adverse effects of the proposed project on Little Bay and associated resources, and whether those effects are necessary or can be otherwise avoided.”) (bold font added); at 3, ¶ 6 (“CLF seeks full intervenor status and appreciates the opportunity this proceeding provides to offer rigorous analysis of the impacts of the proposed project.”).
 5. Importantly, there is no factual basis for limiting CLF's intervention on the grounds that it will “promote the efficient and orderly process of the proceeding.” Indeed, CLF has significant expertise participating in adjudicatory proceedings such as this

² *See* CLF's Motion to Intervene ¶ 3. CLF's mission statement is as follows: “CLF protects New England's environment for the benefit of all people. We use the law, science and the market to create solutions that preserve our natural resources, build healthy communities, and sustain a vibrant economy.”

one and as a matter of practice does so in a manner that does not interfere with efficiency and orderly process.

6. The Subcommittee has discretion to place limitations on intervenors during the course of the proceeding. Should the Subcommittee determine that limitations are necessary for purposes of efficiency and orderly process at a later time, it can do so. However, confining CLF to a limited scope of issues at the earliest stages of the proceeding is unfair, undermines CLF's right to protect its interests, and is not premised on any evidence that, absent limitations, CLF's intervention will interfere with the efficient and orderly process of the proceeding.
7. CLF has made a good faith effort to obtain the position of other parties regarding this motion and has received the following responses: Office of the Public Counsel, the Town of Newington, Helen Frink, The Nature Conservancy, and Thomas A. and Yael D. DeCapo assent; Eversource objects.

WHEREFORE, Conservation Law Foundation respectfully requests that the Subcommittee:

- A. Review and reconsider its Order as it relates to limiting CLF's intervention;
- B. Grant CLF intervention without limitation; and
- C. Grant such other relief as it deems appropriate.

Respectfully submitted,

CONSERVATION LAW FOUNDATION

BY:  _____

Thomas F. Irwin, Esq.
V.P. and CLF New Hampshire Director
Conservation Law Foundation
27 N. Main Street
Concord, NH 03301
(603) 225-3060 x3013
Fax (603) 225-3059
tirwin@clf.org

September 2, 2016

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Motion to Intervene has on this 2nd day of September, 2016 been sent by email to the service list in Docket No. 2015-04.

 _____

Thomas F. Irwin, Esq.
Conservation Law Foundation