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September 12, 2016

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

**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 Objection to Various Requests from Interveners**

Dear Ms. Monroe:

Enclosed for filing in the above-captioned docket, please find an original and one copy of the Applicant's Objection to Various Requests from Interveners for Review of their Status as Determined by the Presiding Officer in the August 24, 2016 Order.

Please contact me directly should you have any questions.

Sincerely,

Adam M. Dumville

AMD:slb
Enclosure

cc: Distribution List

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**

**APPLICANT’S OBJECTION TO VARIOUS REQUESTS FROM INTERVENERS FOR
REVIEW OF THEIR STATUS AS DETERMINED BY THE PRESIDING OFFICER IN
THE AUGUST 24, 2016 ORDER**

NOW COMES Public Service Company of New Hampshire d/b/a Eversource Energy (“PSNH”) (the “Applicant”), by and through its attorneys, McLane Middleton, Professional Association, and respectfully submit the Applicant’s Objection to Various Requests from Intervenors for Review of their Status as determined by the Presiding Officer in the August 24, 2016 Order.

I. Introduction

1. On August 24, 2016, the Presiding Officer issued an Order on Petitions to Intervene (the “Order”) pursuant to NH RSA 162-H:4, V. The Order issued by the Presiding Officer was a well-conceived effort to efficiently manage this case while simultaneously balancing competing due process interests of all the parties. Following the issuance of the Order, certain individuals and the Conservation Law Foundation (“CLF”) filed motions requesting review or rehearing of the Order.

2. As an initial matter, the Applicant did not object to the participation of any of the individuals or groups that sought intervention. However, to promote the orderly and prompt conduct of the proceedings, the Applicant requested that certain individuals be grouped for purposes of presenting evidence and arguments, using cross-examination and for other

participation. The Applicant further requested that certain intervenors participation be limited to those specific interests where they have demonstrated that they have a concrete interest in the proceeding.

3. The Presiding Officer properly exercised his discretion under RSA 541-A:32, III and combined two other individuals with the Durham Point / Little Bay Abutters to form one group of “Durham Abutters” and also properly limited CLF’s participation to only those issues where the group demonstrated a substantial interest in the proceeding, namely, 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. The Order ensures that each intervenor will be able to protect their interests, while at the same time, will promote the efficiency of review of this project, and avoid duplicative evidence and arguments. Therefore, the Applicant respectfully urges the Committee to deny all requests for review or rehearing.

II. Standard of Review

4. RSA 162-H:4, V provides that “Any party aggrieved by a decision on a petition to intervene may within 10 calendar days request that the committee review such decision.” RSA 162-H:4, V. In this case, the parties allegedly aggrieved by the Order were granted intervention, but object to the limitations imposed on their participation.

5. The Presiding Officer is authorized to rule on petitions to intervene, *see* RSA 162-H:4, V, but may simultaneously limit the issues pertaining to a particular intervenor, limit the procedures in which a particular intervenor may participate, or combine intervenors and other parties for the purposes of the proceeding so long as the limitations placed on the intervenors do not prevent the intervenor from protecting an interest that formed the basis of the intervention. *See* RSA 541-A:32, III; N.H. Code. Admin. R. Site 202.11(d).

6. When ruling on petitions to intervene, the Presiding Officer acts as the trier of fact, and in this situation, has been delegated the authority to decide the issues relating to intervention. Upon a request for review, the Committee sits as an appellate reviewer. In such circumstances, the factual findings of the Presiding Officer are treated deferentially and overturned only when there is an error of law or there is substantial evidence that the result is unjust or unreasonable. *See* RSA 541:13.

7. Alternatively, the review may be treated as a motion for rehearing, in which case the purpose of rehearing “is to direct attention to matters that have been overlooked or mistakenly conceived in the original decision” *Damais v. State*, 118 N.H. 309, 311 (1978) (internal quotations omitted). A rehearing may be granted when the Committee finds “good reason” or “good cause” has been demonstrated. *See O’Loughlin v. NH Pers. Comm.*, 117 N.H. 999, 1004 (1977); *Appeal of Gas Service, Inc.*, 121 N.H. 797, 801 (1981). “A successful motion for rehearing must do more than merely restate prior arguments and ask for a different outcome.” *Public Service Co. of N.H.*, Order No. 25,676 at 3 (June 12, 2014); *see also Freedom Energy Logistics*, Order No. 25,810 at 4 (Sept. 8, 2015).

8. In either case, review of the Presiding Officer’s decision should be limited insofar as there is clear and demonstrable error and not result in the Committee simply substituting its judgment for that of the Presiding Officer’s.

9. Here, as discussed further below, the requests for review or reconsideration fail to identify any error of fact, reasoning, or error of law, nor do they describe how an error causes the Presiding Officer’s order to be unlawful, unjust or unreasonable.

III. Combination of Interveners – Durham Abutters

10. The Presiding Officer granted the unopposed petitions to intervene of (1) the Durham Point/Little Bay Abutters (including Matthew and Amanda Fitch of 291 Durham Point Road, Durham, NH; Jeffrey and Vivian Miller of 297 Durham Point Road, Durham; Lawrence and Anne Gans of 289 Durham Point Road, Durham; and Deborah Moore of 305 Durham Point Road, Durham (collectively the “Durham Point / Little Bay Abutters”); (2) Thomas A. DeCapo and Yael D. DeCapo; and (3) Donna Heald McCosker. The Presiding Officer grouped these interveners into one group as they expressed substantially similar interests in the proceeding, to avoid duplicative arguments, and to ensure the prompt and orderly development of the proceedings.

11. These three interveners have since filed requests for review and rehearing. Essentially, they each argue that have unique interests that are different from other individuals, that their interests conflict, and that by grouping these intervenors together, it will limit their intervention in this matter.

12. The SEC has routinely grouped interveners that live in close proximity and have substantially similar interests. *See e.g., Order on Petitions to Intervene, Joint Application of Northern Pass Transmission, LLC and Public Service Company of New Hampshire d/b/a Eversource Energy*, Docket 2015-06 (March 18, 2016) (grouping numerous abutters and municipal groups with similar interests and positions to avoid duplicative arguments and ineffective process even though some individuals expressed concerns specific to the character of their property); *Application of Antrim Wind Energy, LLC, Order on Petitions to Intervene*, Docket 2015-02 (Feb. 16, 2016) (grouping residential abutters who have similar interests into one party to avoid duplicative arguments and ineffective process); *Report of Prehearing*

Conference and Technical Session and Procedural Order, Re: Application of Groton Wind, LLC, Docket No. 2010-01 (June 25,2010) (grouping residents who lived in close proximity to the proposed site together as they were concerned about “the same or similar issues and are similarly situated” in order to avoid “unnecessary repetition and interfere with the prompt and orderly conduct of the proceedings”).

13. Each of these three parties seeking review of the Order live in close proximity and/or abut each other as clearly displayed on Attachment A of the Applicant’s Response to Durham Point / Little Bay Abutters, Thomas A. DeCapo and Yael D. DeCapo, and Donna Heald McCosker Petitions to Intervene (Aug. 1, 2016) (attached). Importantly, both the DeCapos and the Millers directly abut Little Bay. The intervenors have each expressed concerns about the impact the Project will have on their individual property.

14. In their petition to intervene, the Durham Point Abutters only alleged that they have general interests in the proceeding. *See* Petition to Intervene on Behalf of the “Durham Point / Little Bay Abutters” at ¶ 3 (“The Durham Point / Little Bay Abutters have rights, duties, privileges, immunities or other substantial interests that may be affected by this proceeding as property owners and/or abutters with Right of Way (ROW) easements as indicated in studies included in the Application . . . for an approximately 2,738 linear foot portion of the Seacoast Reliability Project.”). Their petition does not elaborate on any specific interests that are substantially different or unique from the other abutters located in the Town of Durham.

15. Ms. McCosker’s petition to intervene alleged general concerns about the Project’s impact to her property including impacts to aesthetics, tree clearing (and potential indirect impacts to her business as a result of tree clearing), pole locations, and water supply. *See*

McCosker Petition to Intervene as Property Owner at 220 Longmarsh Road, Durham, NH 03824, at 1-2.

16. The DeCapos petition to intervene generally alleged that the Project will pass through an easement on the DeCapo property, will enter Little Bay adjacent to the DeCapo property and will cross Little Bay adjacent to and in front of the DeCapo property. *See* DeCapo Motion to Intervene, at ¶ 4. The DeCapos have alleged that they have general interests relating to their enjoyment of their property as well as impacts to Little Bay. Indeed, the DeCapos have admitted that they have the same points of view as the rest of the Little Bay/Durham Point Abutters on many issues. *See* DeCapo Motion for Review or Reconsideration of Order on Intervention, p. 8 at n*1 (stating that the DeCapo family does not disagree with the other Durham Residents-intervenors' concerns and that the DeCapo family similarly opposes the over-ground poles for their environmental, ecological, and scenic impact primarily from the Bay).

17. In their motions for review and reconsideration, the intervenors have now each alleged additional "unique" concerns that relate to their property that—they argue—set them apart from the other intervenors. *See* McCosker Motion for Review and Reconsideration at 1–2 (alleging again indirect impacts to business caused by tree clearing and that specific issues related to water supply are unique); DeCapo Motion for Review or Reconsideration of Order on Intervention, at 4–6 (alleging impacts to Little Bay are unique to the DeCapos' property); Motion for Subcommittee Review and Reconsideration Regarding Limitation of The Durham Point/Little Bay Abutters Intervention, at ¶ 7 (alleging that the fact that they own property on the eastern side of Durham Point Road with direct shore access to Little Bay is unique).

18. The intervenors are mistaken. The fact that certain individual intervenors have expressed additional specific concerns regarding the impact of the Project on their owned

property does not significantly distinguish them to warrant status as an individual intervenor. *See e.g., Order on Petitions to Intervene, Joint Application of Northern Pass Transmission LLC and Public Service Company of New Hampshire d/b/a Eversource Energy, Docket 2015-06 at 48 (Mar. 18, 2016)* (stating that “[w]hile each intervenor has something that makes him, her, or it unique, there are many common interests and positions that make . . . combinations and consolidations . . . appropriate). Because most of the interveners’ interests here are indeed aligned (i.e. seeking to protect the use and enjoyment of personal property), the grouping of these individuals was well within the discretion of the Presiding Officer and cannot be considered an abuse of discretion or reversible error. If each of these three parties were granted individual status, it would disrupt the prompt and orderly conduct of the proceedings because each group has alleged substantially similar interests and would therefore likely present the same or similar evidence and arguments during the course of the proceeding.

19. The motions for review and/or reconsideration only make a general statement as to how the parties have divergent issues without specifically addressing how working in one group would without a doubt create a conflict.¹ Importantly, both the DeCapos’ and the Durham Point/Little Bay Abutters requests for review and rehearing overlook the essential fact that *both* the DeCapos and the Millers (members of the Durham Point/Little Bay Abutters) own shoreline property that abuts Little Bay.² Both the DeCapos and the Millers have an interest in protecting Little Bay and their shorefront property. Therefore, it is inconceivable that the interests of the DeCapos and that of the Durham Point/Little Bay Abutters are in fact in conflict.

¹ The DeCapo Motion for Rehearing attempts to manufacture a conflict of interest between the DeCapos and the other Durham residents. The Applicant, however, is committed to working with all parties, in good faith, to resolve as many disputes as possible during the SEC process. The fact that the Applicant has had conversations with both the DeCapos and other Durham residents to avoid, minimize, and mitigate potential impacts of the Project in the Durham Point/ Little Bay area should not be held against the Applicant.

² Indeed, it is the Millers that own property that directly abuts the proposed Little Bay Crossing Corridor – not the DeCapos.

20. In addition, the DeCapos' claim that their access to Little Bay is substantially different or unique from the public at large because they own a dock and motor boat is unfounded. Little Bay is a public water body. *See* RSA 271:20, I; Official List of Public Waters, NH Dept. of Envtl. Servs. (July 29, 2016). Moreover, in a SEC proceeding, Counsel for the Public is charged with protecting the quality of the environment, including water quality and public water bodies. *See* RSA 162-H:9 (“The counsel shall represent the public in seeking to protect the *quality of the environment* and in seeking to assure an adequate supply of energy.”) (emphasis added). Therefore, the DeCapos' interest in the protection of Little Bay is no different from that of the general public. *See Blanchard v. Railroad*, 86 N.H. 263, 264 (1933) (finding that standing does not exist if a party cannot establish that it has an “interest[] in or is affected by the proceedings in some manner differently from the public, citizens, and taxpayers generally”). *See also Order on Pending Motions, Re: Application of Laidlaw Berlin BioPower, LLC*, Docket No. 2009-02, at 5–6 (March 24, 2010) (denying a petition to intervene where the petitioner had not demonstrated a substantial interest in the proposed project that differed from the public at large); *Appeal of Richards*, 134 N.H. at 156 (finding that an individual or group does not have standing if the proposed action affects the public in general, particularly when the affected public interest is represented by an authorized state official).

21. Further, each of the motions for rehearing and reconsideration do not present any new arguments that were not raised previously. Indeed, most of the DeCapos' motion simply rehashes their Motion for Leave to File Reply in Support of Motion to Intervene, filed with the Committee on August 4, 2016.

22. With regard to the DeCapos' claim that grouping interveners somehow compromises the ethical responsibilities of an attorney in representing their client, the Applicant

disagrees. As a threshold matter, interveners have been grouped in other proceedings before both the New Hampshire Public Utilities Commission and the SEC, and their attorneys have had no problem complying with their ethical responsibilities.

23. The New Hampshire Rules of Professional Conduct (Rules) are also instructive on this issue: “Together with the law and other regulations governing lawyers, the Rules establish the boundaries of permissible and impermissible lawyer *conduct*.” Rules of Professional Conduct, *Statement of Purpose* (emphasis supplied). The Rules are not a means of subverting otherwise sound and constitutional provisions of law. On the contrary, the Rules work in harmony with the law, including the type of SEC administrative practice at issue here.³ Also, as noted above, the interveners have failed to articulate how the combining of these interveners would manifestly create a conflict.

24. Finally, it is important to note, that in accordance with prior SEC practice, each individual intervenor may file pre-filed testimony on his or own behalf and therefore testify at the final hearings. The requirement instilled by the SEC on this abutter intervener group asks the parties to attempt, in good faith, to reach decisions on representation, discovery, pleadings and other issues raised in the docket. Moreover, in accordance with past practice, should any individual intervenor certify to the SEC that they are unable to agree with the group, they have the right to file a motion stating its disagreement and asking for alternative relief.

25. In accordance with the foregoing, the Presiding Officer has not overlooked or mistakenly conceived any matter contained in the original decision; none of the conditions imposed on the interveners are so extensive as to prevent the intervener from protecting the

³ See Model Rules of Professional Conduct, Preamble and Scope at ¶ 15 (“The Rules presuppose a larger legal context shaping the lawyer’s role. That context includes court rules and statutes relating to matters of licensure, laws defining specific obligations of lawyers and substantive and procedural law in general.”).

interest which formed the basis of the intervention. Therefore, their motions for rehearing should be denied.

IV. Limitation of Issues – CLF

26. The Presiding Officer granted the unopposed petition to intervene of CLF. The Presiding Officer, however, correctly limited CLF’s participation in this matter to those issues that it has demonstrated a substantial interest in the proceeding, namely, 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 natural environment.

27. CLF now asks the Committee to reconsider its order because while “CLF anticipates focusing on the impacts of the project on water quality and the natural environment . . . CLF cannot definitely rule out a substantial interest in other issues that may arise or become more fully developed in the proceeding.”

28. As discussed in the Applicants Response to CLF’s Petition to Intervene, in order to intervene in a SEC proceeding, “the petitioner must establish that their rights, duties, privileges, immunities or other substantial interests may be affected by the proceeding or that the petitioner qualifies as an intervenor under any provision of law.” RSA 541-A:32, I; N.H. Code. Admin. R., Site 202.11(b). The Presiding Officer may limit an intervenor’s “participation to designated issues in which the intervenor has a particular interest demonstrated by the petition.”

29. Here, CLF has only clearly demonstrated a particular interest in the protection of water quality and the natural environment, with a more exact emphasis on Little Bay and the Great Bay estuary. CLF has not demonstrated any other particularized interest that would warrant intervention. A generic allegation that CLF seeks to advance solutions that strengthen the region’s economic vitality is not in and of itself a particularized interest to further grant CLF

full intervention status. Moreover, CLF's alleged interest in promoting the economic vitality of the region is no different than the public-at-large.

30. In the past, the Committee has routinely limited interveners to addressing only those issues that the intervener has demonstrated a particular interest in the proceeding. *See e.g.*, Order on Pending Motions, Docket No. 2009-02, at 4–5 (March 24, 2010) (limiting participation of intervenors only to the specific interests alleged in the petition—including limiting New Hampshire Sierra Club's interest solely to the sustainability of a forest management plan).

31. CLF's Motion for Subcommittee Review and Reconsideration Regarding Limitation of Conservation Law Foundation's Intervention does not present any further arguments or new facts that were not included in its original petition or its Objection to Applicant's Request to Limit the Participation of Conservation Law Foundation, filed with the Committee on August 8, 2016.

32. Based on the aforementioned, the Presiding Officer has not overlooked or mistakenly conceived any matter contained in the original decision; the condition imposed on CLF is not so extensive as to prevent CLF from protecting the interest which formed the basis of the intervention, namely, protecting the natural environment and water quality. Therefore, CLF's motion for rehearing should be denied.

[Remainder of page intentionally left blank]

WHEREFORE, the Applicant respectfully asks that the Committee:

- a. Deny the interveners' motions for review or reconsideration; and
- b. Grant such other further relief as is deemed just and appropriate.

Respectfully Submitted,

Public Service Company of New Hampshire d/b/a
Eversource Energy

By its attorneys,

McLANE MIDDLETON
PROFESSIONAL ASSOCIATION

Dated: September 12, 2016

By: Adam Dumville

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Certificate of Service

I hereby certify that on this 12th day of September, 2016, an original and one copy of the foregoing Motion was hand-delivered to the New Hampshire Site Evaluation Committee and an electronic copy was served upon the Distribution List.

Adam Dumville
Adam Dumville

ATTACHMENT A

