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October 13, 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 Response to Smith's Late Filed Motion to Intervene**

Dear Ms. Monroe:

Enclosed for filing in the above-captioned docket, please find an original and one copy of the Applicant's Response to Nick Smith's Late Filed Motion to Intervene.

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 RESPONSE TO NICK SMITH'S LATE FILED MOTION TO
INTERVENE**

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 Response to Nick Smith's Late Filed Motion to Intervene in the above-captioned proceeding.

I. Introduction

1. On April 12, 2016, PSNH filed an Application for a Certificate of Site and Facility before the New Hampshire Site Evaluation Committee ("SEC" or the Committee") to construct a new 12.9 mile 115 kV transmission line and associated facilities from the Madbury Substation in Madbury through the Towns of Durham and Newington to the Portsmouth Substation in Portsmouth (the "Project"). The Committee accepted the application on June 13, 2016.
2. On June 23, 2016, the Committee issued a Procedural Order, establishing, among other things, deadlines for parties to file motions to intervene in the docket. The Order established that motions to intervene must be filed on or before the close of business on July 22, 2016. *See* Procedural Order at 3.
3. On July 20, 2016, four abutting property owners collectively filed a motion to intervene as one party. Those property owners are as follows: 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. All of the aforementioned property owners have a PSNH easement running directly across their property (the Fitchs, the Gans, and Ms. Moore) or directly abut a property where the Project will be located (the Millers).

4. On July 21, 2016, the DeCapos, who own property at 313 and 315 Durham Point Road, Durham, filed a motion to intervene. The Project will also traverse the DeCapos' property.

5. On July 22, 2016, Ms. McCosker, who owns property at 220 Longmarsh Road, Durham, also filed a motion to intervene. The Project will traverse Ms. McCosker's property.

6. On August 1, 2016, the Applicant filed its response to the Durham Point / Little Bay Abutters, Thomas A. DeCapo and Yael DeCapo, and Donna Heald McCosker Petitions to Intervene. In its response, the Applicant did not object to the participation of any of the individuals 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.

7. On August 24, 2016, the Presiding Officer issued an Order on Petitions to Intervene (the "Order") pursuant to NH RSA 162-H:4, V, thereby, grouping the Durham Point / Little Bay Abutters, Thomas A. DeCapo and Yael DeCapo, and Donna Heald McCosker into one intervener group (collectively the "Durham Residents"). *See* Order on Petitions to Intervene, SEC Docket 2015-04 at 9–10 (Aug. 24, 2016).

8. Certain parties subsequently filed Motions for Review and Reconsideration of the Presiding Officer's August 24, 2016 Order. The Applicant objected to those motions on September 12, 2016.

9. On October 4, 2016, Nick Smith, who owns property at 270 Durham Point Road, Durham, submitted a late filed motion to intervene.¹ Smith generally alleges that the Project “traverses [his] property, and the proposed project would impact [their] view scapes, property values, and wildlife habitats.”

10. As depicted on the map of Durham Point, Attachment A, all of the Durham Residents and Mr. Smith essentially own contiguous parcels of property along the Project route and are within a short distance to Little Bay.

II. Standard for Intervention

11. Through the New Hampshire Administrative Procedure Act, RSA 541-A: 32, the Legislature has established two categories for intervention in an administrative proceeding. The first category is mandatory, that is, it concerns when an administrative agency *shall* grant intervention. The second category is discretionary, that is, it concerns when an administrative agency *may* grant intervention.

12. Pursuant to RSA 541-A:32, I and Site 202.11, in order to intervene in a SEC proceeding: (1) the petitioner must properly file a petition; (2) 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; and (3) that the interests of justice and the orderly and prompt conduct of the proceedings would not be impaired by allowing the intervention.² RSA 541-A:32, I; N.H. Code Admin R., Site 202.11(b).

¹ Mr. Smith asserts that he filed a Motion to Intervene with the Committee on July 22, 2016. However, Mr. Smith did not properly serve a copy of his motion upon the “Service List” as defined by Site 102.47 and required by Site 202.07(a). Therefore, his motion to intervene is properly deemed a late motion to intervene and should be denied. However, based upon the status of the current proceeding, and the fact that Mr. Smith attempted in good faith to comply with Committee’s rules, the Applicant is not necessarily opposed to Mr. Smith’s intervention so long as he is grouped with the Durham Residents.

² While Mr. Smith’s Motion to Intervene is unquestionably late, it is the position of the Applicant, that at this particular time, allowance of his motion to intervene would not impair the orderly and prompt conduct of the proceedings, as long as Mr. Smith is grouped with the Durham Residents.

13. The SEC may also grant a petition to intervene “upon determining that such intervention would be in the interest of justice and would not impair the orderly and prompt conduct of the proceedings.” RSA 541-A:32, II, Site 202.11(b).

14. The presiding officer may impose conditions on the participation of intervenors in a proceeding in order to “promote the efficient and orderly process of the proceeding.” Site 202.11(d). Such conditions include limiting the intervenor’s “participation to designated issues in which the intervenor has a particular interest demonstrated by the petition”; limiting the intervenor’s “use of cross-examination and other procedures so as to promote the orderly and prompt conduct of the proceedings”; and “Requiring 2 or more such intervenors to combine their presentations of evidence and argument, cross-examination and other participation in the proceedings.” RSA 541-A:32, III(a)–(c); Site 202.11(d)(1)–(3). See also *Order Granting Petitions to Intervene and Revising Procedural Schedule*, Docket No. 2008-04 (October 14, 2008) (“[t]o ensure that the permissive intervention of these parties will not interfere with the orderly and prompt conduct of these proceedings, their participation will be combined for all purposes; including discovery, presentation of evidence, and conduct of cross-examination.”); *Order on Pending Motions*, Docket No. 2009-02 (March 24, 2010) (limiting participation of an intervenor only to the specific interests alleged in the petition).

III. Discussion

15. The Project will be constructed within an easement that traverses property owned by Mr. Smith. The Applicant acknowledges that Mr. Smith may have an interest supporting his right to intervene.

16. The Applicant incorporates and re-alleges its position and arguments regarding the DeCapos, the Fitchs, the Gans, Ms. Moore and the Millers as previously articulated in the

Applicant's Response to Durham Point / Little Bay Abutters, Thomas A. DeCapo and Yael D. DeCapo, and Donna Heald McCosker Petitions to Intervene, and 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 on Petitions to Intervene.

17. The Committee's August 24, 2016 Order on Petitions to Intervene appropriately determined that the moving parties "reside in close proximity to each other and expressed substantially similar interests in the proceeding." Order at 10. To avoid duplicative arguments and to ensure the prompt and orderly development of these proceedings, their participation in the docket properly was combined for the purposes of presentation of evidence, argument, cross-examination, and other participation. *Id.*

18. The Applicant does not object to the Motion to Intervene of Mr. Smith so long as the Committee imposes the same conditions contained in the August 24, 2016 Order, pursuant to RSA 541-A:32, III, to assure that intervention of Mr. Smith does not impair the prompt and orderly conduct of the proceeding. Specifically, the Applicant requests that Mr. Smith and the Durham Residents combine their presentations of evidence and argument, cross-examination and other participation in this proceeding, and that one spokesperson be appointed to represent the group. *See* Site 202.11(d).

19. In this case, the Applicant respectfully requests that Mr. Smith be grouped with the Durham Residents as one party—as previously contemplated by the August 24, 2016 Order—for purposes of filing motions, conducting discovery, and for examination at evidentiary hearings.

20. All seven property owners—all of the Durham Residents and Mr. Smith—are essentially located in the same vicinity and/or abut each other and are also in the same general

proximity to the Project and to Little Bay. Each of the seven property owners are concerned about the same or similar issues and are similarly situated along the Project route. Indeed, Mr. Smith's interests relate to "view scapes, property values, and wildlife habitat" and are substantially similar to the concerns raised by other members of the Durham Resident intervenor group. Mr. Smith does not have any unique concerns that warrant separate intervention apart from the Durham Residents. Therefore, Mr. Smith should be grouped with the Durham Residents into one party. Separate intervention and participation of these parties would likely lead to unnecessary repetition and interfere with the prompt and orderly conduct of the proceedings. *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 and stating that); 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")*.

WHEREFORE, the Applicant respectfully asks that the Committee:

- A. Group Mr. Nick Smith with the Little Bay / Durham Point Abutters into one party and require them to designate a spokesperson and combine their presentations of evidence and argument, cross-examination and other participation in this proceeding; 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: October 13, 2016

By: Adam Dumville

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Certificate of Service

I hereby certify that on the 13th day of October, 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

