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Via Electronic Mail and Hand Delivery

November 23, 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 115 kV Transmission Line from Madbury Substation
to Portsmouth Substation – Applicant’s Objection to Durham Historic Association’s
Late-Filed Petition to Intervene**

Dear Ms. Monroe:

Enclosed for filing in the above-captioned docket, please find the Applicant’s Objection to the Durham Historic Association’s Late-Filed Petition to Intervene.

Please contact me directly should you have any questions.

Sincerely,



Adam M. Dumville

AMD:slb
Enclosure

cc: Distribution List

McLane Middleton, Professional Association
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**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 DURHAM HISTORIC ASSOCIATION’S LATE-
FILED PETITION 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 object to the Durham Historic Association’s (“DHA” or the “Association”) Late-Filed Petition to Intervene.

I. Background

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, New Hampshire (the “Project”). The Committee accepted the application on June 13, 2016.

1. On June 23, 2016, the Presiding Officer issued a Procedural Order that, among other things, set July 22, 2016 as the deadline for filing petitions to intervene. The Presiding Officer also issued an Order on Petitions to Intervene on August 24, 2016. Subsequently, on November 2, 2016 the Subcommittee deliberated on various requests from intervenors for review of their status as determined by the Presiding Officer in the August 24, 2016 Order. The

Subcommittee resolved all outstanding issues regarding petitions to intervene, but have yet to issue an order.

2. On October 17, 2016, the Presiding Officer issued a Procedural Schedule, requiring all interveners to propound discovery requests on the Applicants by or on November 16. On November 16, certain interveners complied with the order and propounded discovery requests upon the Applicant.

3. On November 16, DHA filed its late-Filed petition to intervene—117 days after the deadline for filing petitions to intervene set by the presiding officer and on the same day that discovery commenced.

II. Standard for Intervention

4. RSA 541-A:32, I, sets forth circumstances under which a presiding officer shall allow intervention. Specifically, a petition for intervention shall be granted if: (a) the petition is properly filed; (b) the petition states facts demonstrating that the petitioner's 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 (c) the interests of justice and the orderly and prompt conduct of the proceedings would not be impaired by allowing the intervention. *See* RSA 541-A: 32, I; N.H. Code Admin. R., Site 202.11(b).

5. The Presiding Officer may grant a late-filed petition to intervene only upon a determination that such intervention would be in the interests of justice and would not impair the orderly and prompt conduct of the hearings. *See* Site 202.11(c).

III. Discussion

6. Here, the Petition was not properly filed because it was filed 117 days after the deadline set by the Presiding Officer and DHA cannot establish that intervention would be in the

interests of justice. Moreover, the Petition to Intervene at this juncture would impair the orderly and prompt conduct of the proceedings.

7. Parties petitioning to intervene must set forth enough facts to demonstrate that they have a legal right to intervene. *See* RSA 541-A:32,I(b); *Appeal of Stonyfield*, 159 N.H. 227, 231 (2009) (stating that “a party must demonstrate this his rights 'may be directly affected by the decision, or in other words, that he has suffered or will suffer an injury in fact.’”) (internal quotations omitted). Furthermore, general allegations of harm are not sufficient. *See Blanchard v. Railroad*, 36 N.H. 263, 264 (1993) (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”).

8. Another way of formulating the “injury in fact” requirement is that “[n]o individual or group of individuals has standing to appeal when the alleged injury caused by an administrative agency’s action affects the public in general.” *Id.* (quoting *Appeal of Richards*, 134 N.H. 148, 156 (1991)).

9. Moreover, when considering whether a petitioner is “directly affected” by an administrative action the petitioner must establish his or her right to claim relief by demonstrating that it has “some direct, definite interests in the outcome of the action or proceeding.” *Hannaford Bros. v. Town of Bedford*, 164 N.H. 764, 767–68 (2013). “Standing will not be extended to all persons in the community who might feel that they are hurt by a local administrator’s decision.” *Id.*

10. DHA has not established a substantial right or interest that is affected by the issuance of a Certificate of Site and Facility to the Applicants.

11. Here, DHA has not made any factual claims that would demonstrate that the organization has a direct, definite interest in the outcome of this SEC proceeding. DHA has not asserted that its members own any historic sites in the Town of Durham, nor have they explained how the Project will affect any of its members. The Petition to Intervene merely asserts that DHA is a “non-profit, member supported educational research organization and museum dedicated to the preservation of memory and artifacts connected with the history of Oyster River Plantation and the Town of Durham.” The Petition simply states that “DHA informs and educates residents and other of the history of the town and how contemporary Durham developed over nearly 400 years of recorded history.” DHA does not allege that the Association or its members own historic sites, but that DHA merely “holds archives, maps, manuscripts and geologies” and is a “warehouse of local knowledge.”

12. DHA does not set forth any definite interest in the outcome of the proceeding, nor does it assert any specific harm that might be caused by the proceeding, but merely asserts that there will be impacts on historical sites without specifically identifying any concrete impacts. The group exists solely to “inform and educate” residents. It has no tangible interest in this proceeding. Therefore, DHA does not have standing to intervene in this proceeding and allowing DHA to intervene would not be in the interest of justice.

13. In addition, DHA has filed their petition to intervene 117 days late—on the day that discovery commenced. The Association has not provided the Subcommittee with *any* evidence or reasoning, or a sufficient basis, for failing to comply with the Presiding Officer’s Order from June 23 establishing specific deadlines for filing petitions to intervene. As the discovery process has already commenced, allowing DHA to intervene at this stage in the process would undercut and interfere with the orderly and prompt conduct of the proceeding.

See Site 202.11(c). Granting this petition to intervene would also arguably set a precedent for other potential interveners who failed to meet the deadline for intervening but nonetheless now wish to participate.

14. If DHA's Petition to Intervene is granted, it is highly likely that DHA will seek to propound data requests outside of the laid out discovery process. Such an interruption will significantly impact the schedule and statutory timeframes set forth in RSA 162-H:7, VI-d, which requires the Subcommittee to issue or deny a certificate within 365 days of the acceptance of an application. Granting the intervention of any party at this late stage in the proceeding would be disruptive and infringe upon the Applicants due process rights.¹

15. To the extent the SEC allows DHA's intervention, the Applicant respectfully requests that the Committee limit DHA's involvement solely to the potential impact of the Project on historic sites within the Town of Durham. While the Applicant does not concede that DHA has established a substantial interest in the outcome of the proceeding, DHA has only made allegations about the potential impact of the Project on historic sites specifically within the Town of Durham. DHA has not demonstrated any other particularized interest that would warrant intervention. A generic request to be granted "full intervener status" is not in and of itself a particularized interest to further grant DHA full intervention status. Moreover, DHA's alleged interest in protecting historical structures in Durham is no different than the public-at-large and will be adequately addressed by Counsel for the Public, who has hired experts in the field of historical resources. In addition, DHA's interests are also represented by the Town of Durham, who is an intervener in these proceedings.

¹ To the extent the SEC allows DHA's intervention, the Applicant respectfully requests that the SEC prohibit DHA from propounding data requests and participating in the discovery process at this stage. Allowing DHA to propound data requests would impair the orderly and prompt conduct of the proceedings.

16. 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).

IV. Conclusion

17. The Applicant filed its Application over seven months ago. DHA filed its Petition almost four months after the deadline and the interests of justice do not support its intervention. DHA’s rights will not be directly affected by the Subcommittee’s decision whether to issue a Certificate of Site and Facility. Accordingly, the Applicants respectfully request that the late-filed DHA Petition to Intervene be denied.

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WHEREFORE, the Applicant respectfully asks that the Committee:

- a. Deny DHA's late-filed Petition to Intervene; 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: November 23, 2016

By:



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Certificate of Service

I hereby certify that on this 23rd day of November, 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