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Via Electronic Mail & Hand Delivery

March 13, 2017

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 Late-Filed Petition to Intervene**

Dear Ms. Monroe:

Enclosed for filing in the above-captioned docket, please find the Applicant's Objection to Keith Frizzell'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 KEITH FRIZZELL'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 Mr. Keith Frizzell's Late-Filed Petition to Intervene. Mr. Frizzell's petition is over seven months late and would interfere with the orderly conduct of the proceeding.

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.

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, 2016. On November 16th, certain interveners complied with the order and propounded discovery requests upon the Applicant. The Applicant responded to all data requests in accordance with the Procedural Schedule on December 9, 2016.

3. On January 20, 2017, the Applicant filed a Motion to Stay the Procedural Schedule to allow the Applicant to file an Amendment to the Application after the Applicant received the necessary approvals to amend a conservation easement in Newington, NH from the United States Department of Agriculture. The Presiding Officer granted the Motion on February 15, 2017.

4. On March 3, 2017, Mr. Frizzell filed his late-Filed petition to intervene—224 days (over seven months) after the deadline for filing petitions to intervene set by the Presiding Officer.

5. The Applicant anticipates filing its Amendment to the Application in the very near future and intends to immediately re-commence these proceedings to move towards siting this much needed reliability project.

II. Standard for Intervention

6. 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).

7. 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).

8. 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. *Blanchard v. Railroad*, 36 N.H. 263, 264 (1993).

9. 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.*

III. Discussion

10. Mr. Frizzell’s Petition is untimely—it was filed 224 days after the deadline set by the Presiding Officer. Mr. Frizzell offers no good reason for such tardiness. Such a late-filed petition, with no compelling justification, creates serious risk to the orderly and prompt conduct of the proceedings. Moreover, Mr. Frizzell cannot establish that intervention would be in the interests of justice.

11. Mr. Frizzell 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, 2016 establishing specific deadlines for filing petitions to intervene. As the discovery process has already commenced, and the Applicant intends on filing an Amendment to its Application in the very near future, allowing Mr. Frizzell to intervene at this stage in the process would create a risk that his participation would undercut and interfere with the orderly and prompt conduct of the proceeding. *See* Site 202.11(c).

12. In this matter, the Applicant has already spent a considerable amount of time working with Mr. Frizzell to understand his perceived concerns about the Project. While the Applicant acknowledges that the Project will be constructed on an easement that traverses Mr. Frizzell's property, the Applicant has spoken with the Petitioner on numerous occasions beginning in April of 2015. The Applicant then met with Mr. Frizzell on three separate occasions in May, June and July 2016 to discuss the proposed design, other line design options, heights, pole locations and design constraints. The Applicant also provided locations on other parts of the Eversource system where Mr. Frizzell could review the line design similar to the design being proposed on his property.

13. Based on these discussions, the Applicant has already agreed to remove two structures in the side-by-side design on Mr. Frizzell's property (one of the proposed 115 kV transmission structures and one of the proposed 34.5 kV distribution structures), which results in an abnormally long span.¹ The Applicant further offered to slide certain structures within 10 feet depending on Mr. Frizzell's specific visibility concerns and preferences.

¹

These changes will be included in the March 2017 amendment that will be submitted in the very near future.

14. The Applicant met with Mr. Frizzell at the July Public Information Session in Newington and discussed landscaping to minimize and mitigate the views of the Project from Mr. Frizzell's property. The proposed structures were staked in August 2016 and the pole locations were shared with Mr. Frizzell and his landscape architect in September; however, since then, Mr. Frizzell has not informed the Applicant of his preference for sliding the poles. The Applicant remains committed to working with Mr. Frizzell to continue to avoid, minimize, and mitigate the concerns raised by Mr. Frizzell during the siting process. However, allowing Mr. Frizzell to intervene at this point would not be in the interests of justice.

15. Importantly, if allowed to intervene, Mr. Frizzell would likely be a standalone party because Mr. Frizzell could not appropriately be grouped with other existing interveners or intervener groups. Allowing another individual intervener to participate, without being part of a group at this stage of the proceeding, would create a serious risk to the orderly and prompt conduct of the proceeding going forward. Granting the intervention of any party at this late stage in the proceeding would likely be disruptive and infringe upon the Applicants due process rights because Mr. Frizzell will likely seek the opportunity to propound additional data requests.²

16. To the extent the SEC allows Mr. Frizzell's intervention, the Applicant respectfully requests that the Committee limit Mr. Frizzell's involvement solely to the perceived impacts of the Project on Mr. Frizzell's owned property. Mr. Frizzell's Petition does not allege or establish that the Project would directly affect Mr. Frizzell in any other way, other than the alleged direct impacts to his property in Newington. Mr. Frizzell has not demonstrated any other particularized interest that would warrant full intervener status. A generic request to be granted

²

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

“full intervener status” is not in and of itself a particularized interest to further grant Mr. Frizzell full intervention status.

17. 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

18. The Applicant filed its Application eleven months ago. Mr. Frizzell filed his Petition over seven months after the deadline and the interests of justice do not support its intervention. Accordingly, the Applicants respectfully request that Mr. Frizzell’s late-filed Petition to Intervene be denied.

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WHEREFORE, the Applicant respectfully asks that the Committee:

- a. Deny Mr. Frizzell'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: March 13, 2017

By: 

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Certificate of Service

I hereby certify that on this 13th day of March, 2017, an original and one copy of the foregoing Objection was hand-delivered to the New Hampshire Site Evaluation Committee and an electronic copy was served upon the Distribution List.


Adam Dumville