

# MCLANE MIDDLETON

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**Via Electronic Mail**

April 25, 2017

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

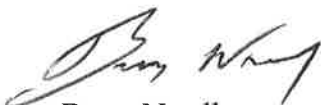
**Re: SEC Docket No. 2015-04: Public Service Company of New Hampshire d/b/a  
Eversource Energy for a New 115 kV Transmission Line from Madbury Substation  
to Portsmouth Substation  
Applicant's Objection to Town of Durham's and UNH's Motion to Postpone  
Technical Sessions**

Dear Ms. Monroe:

Enclosed for filing in the above-captioned docket, please find the Applicant's Objection To Town of Durham's and The University of New Hampshire's Motion to Postpone Technical Sessions.

Please contact me directly should you have any questions.

Sincerely,



Barry Needleman

BN:slb

Enclosure

cc: Distribution List

McLane Middleton, Professional Association  
Manchester, Concord, Portsmouth, NH | Woburn, Boston, MA

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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 TOWN OF DURHAM’S AND THE UNIVERSITY OF  
NEW HAMPSHIRE’S MOTION TO POSTPONE TECHNICAL SESSIONS**

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 objects to the Town of Durham (“the Town”) and the University of New Hampshire’s (“UNH”) (collectively the “Petitioners”) Motion to Postpone the Technical Sessions.

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

2. On October 17, 2016, the Presiding Officer issued an initial Order establishing a Procedural Schedule. The parties conducted discovery in November and December of 2016. On December 28, 2016, the Presiding Officer issued a revised procedural schedule to accommodate the filing of an amendment to the Application by PSNH.

3. On January 20, 2017, the Applicant filed a Motion to Further Stay the Procedural Schedule until such a time that PSNH received the necessary federal approvals to file an amendment to the Application, which would allow PSNH to construct the Project underground across the Darius Frink Farm and through the Newington Center Historic District. On February 15, 2017, the Presiding Officer granted the Applicant's request, which was found to promote the goal of administrative efficiency. The Presiding Officer, however, noted that

[t]he Applicant did not specifically request suspending the February 8, 2017, deadline for the state agencies to issue final permits or conditions as set forth in RSA 162-H:7, VI-c, and contained in Paragraph 6 of the Revised Procedural Order; or the suspension of the statutory timeframe as set forth in RSA 162-H:14. The Applicant's request is limited to a temporary postponement of the procedural schedule and may be ruled on by the Presiding Officer.

Order on Motion to Stay Procedural Schedule, at 3 (Feb. 15, 2017) (citing RSA 162-H:4, V).<sup>1</sup>

The Order further stated that the consideration of requests to extend deadlines by certain agencies are not “not merely procedural and must be undertaken by the Subcommittee in a public meeting.” *Id.* at 4 (citing RSA 162-H:14).

4. On March 29, 2017, after receiving all the necessary federal, state and local approvals to site an additional portion of the line underground in the Town of Newington, the Applicant filed its Amendment with the Committee, which also addressed certain other minor Project modifications.

5. Subsequently on, April 3, 2017, the Applicant filed an uncontested Proposed Revised Procedural Schedule, which included three proposed days for technical sessions on May 30, June 7 and June 12 and a suggested deadline for the agencies to issue final

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<sup>1</sup> On February 3, 2017, the Division of Historic Resources (“NHDHR”) requested an extension of time until March 31, 2017, to complete its review. On February 6, 2017, the Department of Environmental Services (“NHDES”) also requested an extension of time to a date that is “30 days after the date when Eversource provides all final requests for project impacts to be reviewed by NHDES, or to a date to be determined in accordance with proposed provisions included within the Applicant's Uncontested Motion to Stay Procedural.”

recommendations.<sup>2</sup> In fact, the Town of Durham and UNH specifically consented to the proposed schedule. *See Applicant's Proposed Revised Procedural Scheduling Order following the Amendment to the Application submitted to the SEC on March 29, 2017.* Four days later, the Town of Newington requested a slight modification to the schedule, to which the Applicant concurred, as did the Town of Durham and UNH. *See Town of Newington's Proposed Procedural Schedule, April 7, 2017.* Both proposed schedules—the April 3 proposed schedule submitted by the Applicant and the April 7 schedule submitted by the Town of Newington—set technical sessions before the suggested date of when state agencies should issue final permits and conditions. The Petitioners did not take issue with the proposed schedules.

6. On April 7, 2017, the Presiding Officer issued an Order on Revised Partial Procedural Schedule, establishing deadlines for further discovery and technical sessions. This Order, however, did not extend any deadlines for the agencies to issue final permit decisions, as the Subcommittee is required to meet publically to address such requested extensions.

7. Subsequently, on April 18, 2017, the Town of Durham and UNH filed a Motion to Postpose Technical Sessions. Two days later, on April 20, 2017, the Committee issued an Order and Notice Scheduling a Public Meeting to address suspension of the statutory timeframe in RSA 162-H:14 and the pending requests of the Division of Historical Resources and the Department of Environmental Services to extend the timeframe and deadlines set out in RSA 162-H:7, VI-c.

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<sup>2</sup> RSA 162-H:7, VI-c provides that “[a]ll state agencies having permitting or other regulatory authority shall make and submit to the committee a final decision on the parts of the application that relate to its permitting and other regulatory authority, no later than 240 days after the application has been accepted,” the Subcommittee has the authority pursuant to RSA 162-H:14 “to temporarily suspend its deliberations and time frame established under RSA 162-H:7, if it is deemed in the public interest” and to allow certain extensions for agencies to issue final decisions. In order for an agency deadline established in RSA 162-H:7 to be elongated, the Subcommittee must meet publically and vote on the request.

## Discussion

8. The Town of Durham and UNH's Motion to Postpone the Technical Sessions should be denied because the requested open-ended delay would be prejudicial to the Applicant, the request does not comport with the customary procedural practice of the Committee, the Petitioners have not raised a specific concrete reason why the delay should occur and why it would promote "administrative efficiency", and the Petitioners previously concurred with the proposed procedural schedules.

9. The Town of Durham and UNH have had an abundant amount of time to review and assess the Application in its entirety, indeed, the parties have already engaged in a considerable amount of discovery. The Amendment filed on March 29 affects only a few discrete portions or segments of the Project, most of which are not in the Town of Durham and do not affect the Town or UNH.<sup>3</sup> The established Procedural Schedule set by the Presiding Officer sets technical sessions for the Applicant's witnesses beginning on May 30, 2017, which provides the Petitioners 60 days to review the Amendment—ample time to digest the changes to the Application and prepare for the technical sessions. Indeed, many of the interveners, including the Petitioners, have already submitted additional data requests on the Amendment indicating that they have reviewed the Amendment and have certain queries.

10. As a condition of intervention in matters before the SEC, the presiding officer must determine that the "interests of justice and the orderly and *prompt* conduct of the proceedings would *not be impaired* by allowing the intervention." Site 202.11(b)(3) (emphasis

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<sup>3</sup> It appears that the Petitioners seek to review only those permit conditions that will be established by NHDES. *See* Motion at 2 ("Durham and Public Counsel submitted comments to [NHDES] in February and March. Seeing whether and to what extent those comments were taken into account and seeing what the agencies' final recommendations are would help focus questions for the technical sessions."). However, the Amendment submitted by the Applicant does not affect the Applicant's proposal for crossing Little Bay and the Amendment, in general, only has minor modifications to the NHDES permit Applications in the Town of Durham. Allowing a postponement simply to wait for final NHDES conditions is not justified.

added); *see also* RSA 162-H:1 (making clear that New Hampshire’s energy facility siting statute was enacted, in pertinent part, to ensure “that *undue delay* in the construction of new energy facilities *be avoided* [and] that full and *timely consideration* of environmental consequences *be provided*”) (emphasis added).

11. Here, the Applicant did not object to the intervention of the Town of Durham and UNH and the Presiding Officer found that their intervention would not impair the orderly and prompt conduct of the proceedings. However, the Petitioners’ motion would, without a doubt, affect the orderly and prompt conduct of the proceedings. The Applicant has already extended certain timeframes for this Project and incurred additional delays in an effort to respond to concerns raised by host communities and other stakeholders; further delay of this much-needed Project may impact the reliability of electric service in New Hampshire.

12. Moreover, the requested delay would not promote administrative efficiency and would certainly unduly delay the proceeding. The Petitioners argue that delaying technical sessions until after the final agency recommendations are submitted would be of “great benefit to the intervenors and would provide more focus for the technical sessions.” However, such a requested delay solely for the purpose of waiting for final agency recommendations appears unprecedented in SEC practice.<sup>4</sup> Indeed, technical sessions of the Applicants’ witnesses were held well in advance before final agency recommendations were issued in the largest project ever to come before the Committee.<sup>5</sup>

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<sup>4</sup> *See e.g.*, Docket 2015-05, Joint Application of New England Power Company d/b/a National Grid and Public Service Company of New Hampshire d/b/a Eversource Energy for a Certificate of Site and Facility (holding technical sessions of the Applicants’ witnesses on March 1 and March 2, 2016 when final decisions by agencies were not due until June 1, 2016); Docket 2015-02, Application of Antrim Wind Energy, LLC for a Certificate of Site and Facility (holding technical sessions of the Applicants’ witnesses on April 25 and 26, 2016 when final decisions by agencies were not due until July 28, 2016).

<sup>5</sup> In SEC Docket 2015-06, the Application of Northern Pass Transmission LLC and Public Service Company of New Hampshire d/b/a Eversource Energy, technical sessions of the Applicants’ witnesses commenced on September 6, 2016 and were held through December 2016 and into January 2016. Final agency recommendations were not issued

13. The delay sought by the Petitioners will not further help “focus questions” for the technical session. Each intervenor will have the opportunity to ask questions of the Applicant’s witnesses on each of the required statutory criteria found in RSA 162-H:16. The Petitioners ability to ask pertinent questions about these topics will not change as a result of the final agency recommendations. Importantly, the Applicants will be required to comply with all conditions and requirements of the final agency recommendations as part of a Certificate of Site and Facility issued by this Subcommittee.

14. To the extent the Petitioners argue that the technical sessions would run more efficiently after the agency’s file their final recommendations, the Applicant disagrees. If the Petitioners feel that there are additional issues that need to be addressed after the technical sessions and after receipt of the agency’s final recommendations, the intervenors have the opportunity to file pre-filed testimony addressing those perceived issues.

15. Lastly, before the Applicant filed its Proposed Revised Procedural Schedule on April 3, 2017, the Applicant sought assent from each Party in the docket. The Town and UNH specifically stated that they did not object to the Applicant’s proposed schedule, which placed technical sessions with the Applicant’s witnesses before any suggested deadline for the agencies to issue their final recommendations. Again, on April 7, when Newington suggested a slight modification to the schedule, the Town and UNH concurred with the proposed changes. Importantly, during discussions on the revised procedural schedule, the Petitioners never once raised the proposed schedule change as laid out in their Motion to Postpone Technical Sessions.

16. The Motion undercuts the very purpose of seeking assent before filing a motion, *see* Site 202.14(d) and Site 202.16(b), and goes against the Presiding Officer’s Order dated

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until March 1, 2016 by NHDES and April 3, 2017 by NHDOT. Moreover, to date, neither the NHDHR nor the NHPUC have issued final recommendations.

February 15, 2017, which provided that “[w]ithin one week after filing the Amendment, the Applicant, *after consultation with other parties*, shall file a new proposed procedural schedule which shall include a schedule for discovery.” The Committee’s rules and the February 15 Order specifically require all parties to go through a consultative process—ostensibly, to avoid disputes like this.

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WHEREFORE, the Applicant respectfully asks that the Committee:

- A. Deny the Town of Durham's and UNH's Motion to Postpone the Technical Sessions; 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: April 25, 2017

By:  \_\_\_\_\_

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Certificate of Service

I hereby certify that on the 25<sup>th</sup> day of April, 2017, an electronic copy of this objection was filed with the Site Evaluation Committee and an electronic copy was sent to the Distribution List.

  
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Barry Needleman