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Via Hand Delivery & Electronic Mail

May 11, 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 Dr. Regis C. Miller's Late-Filed Petition to Intervene**

Dear Ms. Monroe:

Enclosed for filing in the above-captioned docket, please find the Applicant's Objection to Dr. Regis C. Miller'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

**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 DR. REGIS C. MILLER’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 objects to Dr. Regis C. Miller’s Late-Filed Petition to Intervene (the “Petition”). Dr. Miller’s Petition does not allege or establish that the project would directly affect Dr. Miller in any way and is over nine months late and would therefore 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 interveners 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 March 29, 2017, the Applicant filed an amendment to the Application. On April 19, 2017, certain parties propounded discovery requests upon the Applicant relating to the Amendment and the December 1, 2016 Normandeau Report.

4. On May 1, 2017, the Committee received Dr. Miller's Late-Filed Petition to Intervene—283 days (over nine months) after the deadline for filing petitions to intervene set by the Presiding Officer.

5. The Applicant will respond to the data requests regarding the Amendment and the Normandeau Report on or before May 12, 2017, in accordance with procedural schedule issued by the Presiding Officer on April 7, 2017. Technical Sessions are scheduled for May 26, May 30, June 7, and June 12, 2017.

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 intervener 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 he or she 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. Dr. Miller’s Petition was not provided to all of the parties on the SEC service list¹ and was untimely—it was received by the Committee 283 days after the deadline set by the Presiding Officer—and therefore was not properly filed in compliance with Site 202.11(b)(1).

¹ Dr. Miller did not serve the SEC distribution list or the parties named by the Presiding Officer. In fact, Dr. Miller only sent a copy of the Petition to the other Durham Point Abutters. The Applicant was not aware of this submission until the Committee posted the Petition to the Committee’s website on May 8, 2017. Such a procedural mistake suggests that Dr. Miller’s participation in this docket may interfere with the orderly conduct of these proceedings.

Dr. Miller offers no good reason for failing to comply with the Committee's rules, nor has Dr. Miller offered an excuse for such tardiness.² Such a late-filed petition, with no compelling justification, creates serious risk to the orderly and prompt conduct of the proceedings. Moreover, Dr. Miller cannot establish that intervention would be in the interests of justice.

11. Dr. Miller 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—the Applicants have responded to numerous data requests and will respond to additional requests by May 12 and the technical sessions have already been scheduled—allowing Dr. Miller to intervene at this stage in the process would create a risk that Dr. Miller's participation would undercut and interfere with the orderly and prompt conduct of the proceeding. *See* Site 202.11(c); *see also* Order on Late Petitioners to Intervene (Pessamit Innu First Nation and Sabbow and Co. Inc.), Docket 2015-06 (Jan. 5, 2017) (denying late petitions to intervene because the parties have already undertaken extensive discovery and allowing the untimely interventions at this stage of the proceedings would impair the orderly and prompt conduct of the proceedings).

12. Granting the intervention of any party at this late stage in the proceeding would likely be disruptive and infringe upon the Applicant's due process rights because Dr. Miller will likely seek the opportunity to propound data requests. To the extent the SEC allows Dr. Miller's

² Dr. Miller states in the cover letter that Dr. Miller is a "recent resident of Durham" and has only "just become fully aware of the SRP." However, public records indicate that Greg Miller and Regis Miller purchased the property on July 8, 2014 approximately a year and nine months before the Applicant filed its Application for a Certificate of Site and Facility—and therefore, has had ample time to understand any potential impacts of this Project on the property and Little Bay in general. Moreover, Dr. Miller has owned the property since before the Applicant held its pre-filing and post-filing public information sessions, and the Applicant's records indicate that certain mailings providing information about the Project were sent to Dr. Miller as early as April 2015.

intervention, the Applicant respectfully requests that the SEC prohibit Dr. Miller from propounding data requests and participating in the discovery process at this stage. Allowing Dr. Miller to propound data requests would impair the orderly and prompt conduct of the proceedings.

13. Moreover, Dr. Miller's Petition does not allege or establish that the Project would directly affect Dr. Miller in any way. The Petition simply alleges that the Project may affect Dr. Miller's property for approximately 2,738 feet. In fact, the Project will not traverse Dr. Miller's owned-property at all.³ The Petition has only generally alleged that Dr. Miller has "rights, duties, privileges, immunities or other substantial interests that may be affected by the proceeding as a property owner and an abutter with Right of Way (ROW) easements as indicated in studies included with the Application." Petition at 2. Dr. Miller has not provided the Committee any concrete facts to support the right to intervene.

14. While the Applicant objects to the Late-Filed Petition to Intervene, to the extent the SEC allows Dr. Miller's intervention, the Applicant respectfully requests that the Committee limit Dr. Miller's involvement solely to the *perceived* impacts of the Project on Dr. Miller's owned property. Dr. Miller has not demonstrated any other particularized interest that would warrant full intervenor status. In the past, the Committee has routinely limited intervenors to addressing only those issues that the intervenor 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—

³ The Applicant acknowledges that while Dr. Miller's property is not encumbered by an easement held by the Applicant, Dr. Miller is an abutter to the northerly edge of the Project right-of-way, next to the Gans' property, for approximately 690 feet. *See* Attachment A.

including limiting New Hampshire Sierra Club's interest solely to the sustainability of a forest management plan).

15. Moreover, to the extent the Committee grants Dr. Miller's Late-Filed Petition, the Applicant respectfully requests that the Dr. Miller be grouped with the Durham Residents as one party for purposes of filing motions, conducting any discovery allowed by the Committee, and for examination at evidentiary hearings. All of the Durham Residents—including Dr. Miller—essentially abut each other and are in the same general proximity to the Project and to Little Bay. *See Attachment A.* Each of these property owners are concerned about the same or similar issues and are similarly situated along the Project route, and therefore, Dr. Miller should be grouped into one party with the Durham Residents. 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); 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”).*

IV. Conclusion

16. The Applicant filed its Application approximately 13 months ago. Dr. Miller filed the Petition over nine months after the deadline and the interests of justice do not support its intervention. Accordingly, the Applicants respectfully request that Dr. Miller's Late-Filed Petition to Intervene be denied. To the extent the Committee allows Dr. Miller's intervention, the Applicant respectfully requests that the Committee limit Dr. Miller's participation as requested above and that Dr. Miller be grouped with the Durham Residents for purposes of this proceeding.

WHEREFORE, the Applicant respectfully asks that the Committee:

- a. Deny Dr. Miller'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: May 11, 2017

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Certificate of Service

I hereby certify that on this 11th day of May, 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

