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*Via Electronic Mail*

March 29, 2018

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  
Objection to Conservation Law Foundation's Motion Requesting SEC to Address  
NHDES Recommendations as Part of Adjudicatory Process**

Dear Ms. Monroe:

Enclosed for filing in the above-captioned docket, please find an Objection to Conservation Law Foundation's Motion Requesting SEC to Address NHDES Recommendations as Part of Adjudicatory Process.

Please contact me directly should you have any questions.

Sincerely,



for:

Barry Needleman

BN: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**

**OBJECTION TO CONSERVATION LAW FOUNDATION'S  
MOTION REQUESTING SEC TO ADDRESS NHDES RECOMMENDATIONS AS  
PART OF ADJUDICATORY PROCESS**

NOW COMES Public Service Company of New Hampshire d/b/a Eversource Energy (“Eversource”) (the “Applicant”), by and through its attorneys, McLane Middleton, Professional Association, and objects to the Conservation Law Foundation’s Motion Requesting SEC to Address NHDES Recommendations as Part of Adjudicatory Process.

**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 the Seacoast Reliability Project—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. The Application contained various permit applications to the New Hampshire Department of Environmental Services (“DES” or “Department”), including a wetland impact permit and a shoreland impact permit for construction of the Project under and along the shorelines of Little Bay.

2. As part of the Project, Eversource proposes to install submarine conductors approximately 0.9 miles long under Little Bay within an existing designated cable corridor.

Three submarine cables will be laid and buried beneath the soft sediments of the Little Bay floor to a maximum depth of 42 inches in the shallows and five feet in the channel using three methods. The primary installation method will use a jet plow in the subtidal and most of the intertidal zone. Other cable installation methods will include diver burial in the nearshore intertidal zone and excavation for cable trenches in the transition zone from the marine to the terrestrial structures. The proposed jet plow and diver burial methods are thoroughly described in the application narrative, pre-filed testimony, permit applications, and related supplements.<sup>1</sup> The Conservation Law Foundation (“CLF”), among other interveners, have raised concerns about the cable installation methods in Little Bay.

3. On February 28, 2018, DES issued its Final Decision recommending approval of Eversource’s Application for the Project as it related to the Department’s permitting and regulatory authority. DES specifically approved (subject to certain conditions) the construction of the Project under Little Bay via jet plow and diver burial technologies. DES Final Decision, at 7. DES’s approval was not conditioned upon the development of any additional information.

4. As part of its Final Approval, DES issued a recommended approval of a Wetland Permit, Alteration of Terrain Permit, 401 Water Quality Certificate, and Shoreland permit. The Wetland permit includes 84 conditions that Eversource must comply with during construction—21 of which are specifically applicable to the Little Bay Cable Crossing and six that pertain to shoreline restoration, as well as various other conditions that relate to wetlands mitigation to address impacts during construction, part of which will occur during the submarine cable installation.

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<sup>1</sup> See Application at 33–34; Pre-Filed Testimony of William Wall at 4–7; Pre-Filed Testimony of James Jiottis at 20–21 (adopted by Mr. Kenneth Bowes).

5. In its cover letter submitting the Final Approval, DES recommended that the Subcommittee “*consider* having the Applicant conduct a more thorough evaluation of the Horizontal Direction Drilling (HDD) method for installing cable under Little Bay and a trial jet plow run (without cable) in Little Bay.” DES Final Decision, at 1. These recommendations were initially suggested by the Town of Durham and UNH in their letter to DES dated October 30, 2017.<sup>2</sup> These recommendations were not made by CLF, nor are these suggestions supported by evidence or expert opinions from CLF witnesses. Indeed, there is no information in the record from CLF supporting the positions it asserts in its Motion.

6. On March 21, 2018, CLF filed a Motion requesting that the SEC require the Applicant to address NHDES recommendations as part of adjudicatory process. CLF supports the Town of Durham’s Motion filed on March 16, 2018<sup>3</sup> and further requests that the Committee alter the procedural schedule and the timing for the adjudicative hearings to allow “further HDD evaluation during the adjudicatory process, to enable the development of needed information for the benefit of the Committee, and with the ability of the parties to engage in discovery and cross-examination, prior to the Committee’s final decision relative to issuance of a certificate.” Motion

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<sup>2</sup> The October 30, 2017 letter from the Town and UNH to DES opined that “viable alternatives exist to the river crossing (i.e. Gosling Road Transformer and directional drilling)” and recommended that NH DES require a permit prerequisite for the Applicant to prepare a detailed evaluation of HDD. The Town and UNH offered specific language proposed at page 6 of their letter, which would require the Applicant to perform such a detailed evaluation “Prior to issuance” of the wetland permit. The recommended language was as follows.

The Applicant shall prepare a detailed evaluation of the applicability of directional drilling for this project. The evaluation shall include a detailed cost description, including cost estimates from at least two directional drilling companies, and comparison to the expected costs of the jet plow installation method. In addition, the Applicant shall prepare a detailed evaluation of conducting directional drilling just in the shallow areas that are currently outside of the proposed jet plow areas (i.e., the areas where hand work is currently proposed) and prepare cost estimates for this limited directional drilling work. These evaluations shall be submitted to NHDES.

The letter at page 7 also recommended that the Applicant (1) “submit for NHDES approval, plans detailing a jet plow trial run that shall be conducted prior to cable installation,” (2) conduct a jet plow trial run; and (3) develop a report from the trial run.

<sup>3</sup> The Applicant filed a partial objection to the Town of Durham’s Motion on March 26, 2018.

at ¶ 5. CLF’s Motion also argues that the Applicants should complete a jet plow trial run (as initially recommended by the Town in its October 2017 comments and included in the Department’s cover letter suggesting that the SEC “consider” such a condition as part of a certificate) after the completion of an HDD evaluation, and “*only if* such evaluation demonstrates that HDD is technologically infeasible or would have greater environmental impact than the jet plow method is anticipated to have.” *Id.* at ¶ 6 (emphasis added). Finally, CLF’s Motion requests that “if the HDD evaluation does not obviate the need to consider the jet plow method, the Committee require [sic] a trial run to be conducted prior to a final determination by the Committee, with the methods and results presented to the Committee and all parties to this proceeding with the opportunity for discovery and cross-examination.” *Id.*

7. The Applicant objects to CLF’s Motion, in part for the reasons set forth in its Partial Objection to the Town of Durham/UNH’s Motion and also for the additional reasons stated herein. Specifically, the Motion is (1) premised on a mischaracterization of the DES Final Decision and (2) is essentially a procedurally improper appeal of DES’s Final Decision. As such, the Motion should be denied.

## II. Argument

### A. CLF’s Request to Require an Additional HDD Analysis—Like The Town of Durham/UNH’s Motion—Is Premised on a Mischaracterization of the DES Final Decision Regarding HDD

8. As fully discussed in its Partial Objection to the Town of Durham/UNH’s Motion<sup>4</sup>, CLF’s Motion ignores the fact that the DES approval is *not* conditioned upon the Applicant conducting an additional evaluation of HDD methods. Thus, CLF, like the Town of Durham, is asking this Subcommittee to adopt an approach that DES already rejected, thereby

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<sup>4</sup> The Applicant incorporates here its position and arguments as described in its Objection to the Town of Durham/UNH’s motion and requests that the SEC deny the relief sought by CLF.

overruling DES's determination on this issue.<sup>5</sup> See Applicant's Partial Objection to Town of Durham and UNH's Motion Requesting that the SEC Hire Horizontal Directional Drilling Expert, Docket 2015-04 at ¶¶ 9 – 13; 18–19 (March 26, 2018).

9. Moreover, as discussed in its Objection, the Applicant anticipates filing rebuttal testimony from two previously disclosed witnesses: William Wall of LS Cable and Kenneth Bowes of Eversource, both of whom have experience in HDD installation methods. See *id.* ¶¶ 14–17. Their testimony will be supported by other contractors involved in this Project. The rebuttal testimony will address issues raised by opponents in their testimony and during the course of discovery. The rebuttal testimony will also furnish the SEC with information that it may require to compare jet plow and HDD means, methods and impacts as it pertains to construction in Little Bay.

10. The Applicant's proposed procedural schedule already contemplates providing the type of information CLF claims is necessary here. However, the Applicant's schedule envisions proving that information during the normal course of the proceeding, subject to the typical approach used in the SEC process. By contrast, upending the process, as CLF asks the Subcommittee to do here—and after DES explicitly rejected a request to require HDD studies prior to issuance of the permit—is inappropriate and unfair to the Applicant.

B. CLF's Motion Is A Procedurally Improper Appeal Of A Proposal That DES Has Already Rejected

11. CLF's motion is premised on the concept that the DES Final Determination compels the need to generate more information by requiring a jet plow trial run before the final hearing. That premise is simply incorrect. To the extent DES believed it needed more data on

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<sup>5</sup> As discussed further herein, CLF has the right to make such an argument at the proper time and in the proper manner. In other words, CLF can attempt to present affirmative evidence at the final hearing demonstrating why it thinks the Subcommittee should overrule DES. CLF bears the burden of proof on that issue. Site 202.19(a).

the jet plow, it could have requested additional information. *See* RSA 162-H:7, VI-b). And, in fact, DES did so. *See e.g.*, Applicant’s Responses to CLF Data Requests 1-3, 1-6, 1-7, 1-8, 1-11, 1-15, 1-18, 1-23, 1-24, 1-25, 2-10.

12. During its review, DES specifically sought additional information from the Applicant on jet plow installation methods and potential impacts to Little Bay. DES also requested that the Applicant respond to some of the interveners’ concerns after the Department issued draft permit conditions—a fact that CLF fails to mention in its Motion.<sup>6</sup>

13. DES then assessed all this information and issued its Final Determination. Based on the totality of this record, DES did not require a trial jet plow run. CLF asks this Subcommittee, without any factual or expert support, to ignore the DES determination and the record supporting it, and order a jet plow trial run prior to issuance of the SEC certificate.<sup>7</sup>

14. CLF’s Motion seeks to place another inappropriate burden on the Applicant that DES rejected: CLF asks the Subcommittee to require a jet plow trial run *only* if HDD is demonstrated to be unworkable or it would have greater environmental impacts. CLF Motion at ¶ 6. In essence, CLF is asking the Subcommittee to overrule DES’s approval of the jet plow and diver burial installation methods and instead, substitute CLF’s unsubstantiated opinion that HDD is a better construction technology.

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<sup>6</sup> *See* NH DES Progress Report and Draft Permit Conditions, Docket 2015-04 at 4–11 (Nov. 10, 2016) and Applicant’s Response to NH DES November 10, 2016 Progress Report (March 29, 2017) (responding to questions from NH DES); NH DES Status Update Letter, at 2–4 (asking specific questions and requiring additional information from the Applicant regarding jet plow installation methodologies, sediment dispersion modeling, and methods that could be employed to reduce the spatial impact of the sediment plumes, among others) and Applicant’s Response to NH DES “Issues of Concern” From Their SEC Letter Dated August 1, 2017 (Sept. 19, 2017) (responding to questions from NH DES and providing additional information). After reviewing all of the information in the record, the Department concluded that Eversource’s Application satisfied its rules and requirements and issued the required wetland permit, which was not premised upon a jet plow trial run.

<sup>7</sup> CLF also fails to acknowledge that requiring the Applicant to perform the jet plow trial run would increase project costs (thereby affecting ratepayers). If the Applicant was required to conduct a trial run in advance of the actual construction, we estimate it would cost at least approximately \$1.5 million.

15. If CLF believes DES got this wrong and that HDD is technically feasible and has less of an environmental impact than the jet plow technology, CLF has the burden to present sufficient evidence to support its proposition. *See* Site 202.19(a) (“The party asserting a proposition shall bear the burden of proving the proposition by a preponderance of the evidence.”). However, as mentioned above, none of the parties, including CLF, have put forward any evidence that HDD would be a better alternative.

16. From the inception of this case, CLF was on notice that the Applicant considered and rejected HDD. CLF has not hired an expert to rebut the Applicant’s position or take issue with DES’s Final Determination. CLF cannot now turn Site 202.19(a) on its head simply by filing a motion and demanding the Applicant generate more information to disprove CLF’s unsubstantiated theories. *See also* Counsel for the Public’s Response to Pending Motion, Docket 2015-04 at n\* 1 (March 26, 2018) (stating that “Counsel for the Public disagrees . . . with “CLF’s apparent suggestion that the jet plow method should be allowed only if further evaluation demonstrates that HDD is technologically infeasible or would have greater environmental impact than the jet plow method” and noting that the Subcommittee must consider impacts to abutters and cost to ratepayers, among others).

17. CLF’s request ignores the fact that the DES Final Decision unequivocally *approved* Eversource’s application to construct the Project using jet plow and hand jet technologies in Little Bay. DES Final Decision at 7; 19–22. If CLF wants to challenge that approval, it must do so consistent with SEC rules and practice. Since this Motion seeks to evade that process, it should be denied.



WHEREFORE, the Applicant respectfully requests that:

- I. CLF's Motion Requesting SEC to Address NHDES Recommendations as Part of Adjudicatory Process be denied;
- II. The Chair adopt the Applicant's proposed procedural schedule dated March, 16, 2018; and
- III. 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 21, 2018

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

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Certificate of Service

I hereby certify that on the 21 of March, 2018, an electronic copy of this objection was filed with the Site Evaluation Committee and an electronic copy was sent to the Distribution List.

 \_\_\_\_\_  
Barry Needleman

**CLF 1-3** Please describe, and produce all documents, information and communications related to, the relationship between sediment type and the spatial extent of sediment dispersal associated with jet plowing in the Little Bay crossing.

**Response:** The relationship to sediment type and dispersal is discussed in the RPS ASA Modeling Sediment Dispersion from Cable Burial Report (Appendix 35, Sections 3.2 and 3.3). Additional sediment grain size analysis data is provided in the Characterization of Sediment Quality Along Little Bay Crossing supplemental report submitted to the SEC on December 1, 2016.

**Witnesses Available for Cross Examination include:** Ann Pembroke

**CLF 1-6** Regarding the pre-filed direct testimony of Ann E. Pembroke (page 5, lines 13-15), please describe in detail the relationship between “advance rate” of the jet plow, rate of sediment disturbance (the volume of sediment disturbed per time value), and the spatial extent and concentration of the sediment plume.

**Response:** The jet plow speed of 100 m/hour is conservative (slow), but realistic. The general assumption, to which both Caldwell and RPS ASA concurred, was that a faster advance rate in fine sediments would result in the same volume of sediments going into suspension, but over a shorter period of time. Jet plowing can only start on high slack tide because of the shallow water depth on the tidal flats. The spatial extent of the plume will be controlled by the tides. At the modeled advance rate of 100 m/hour, it will take approximately 13 hours to cross the bay so the plume will be influenced by both ebb and flood tides. A higher advance rate would result in a faster crossing so the tidal influence would differ, generally reducing the influence of the flood tide on the plume excursion.

**Witnesses Available for Cross Examination include:** Ann Pembroke

**CLF 1-7** Please produce all documents, information and communications related to the anticipated suspension and re-suspension of sediments disturbed by the use of jet-plowing associated with the Little Bay crossing.

**Response:** The sediment suspension analysis was developed by the SSFATE modeling described in the RPS ASA Modeling Sediment Dispersion from Cable Burial Report (Appendix 35, Sections 3 and 4). Section 3 describes the input parameters and the results of one cable installation, and addresses the cumulative effects of installing three cables (Section 3.5).

**Witnesses Available for Cross Examination include:** Ann Pembroke

**CLF 1-8** Please state, and produce all documents, information and communications related to, the volume of sediments anticipated to be disturbed by the Little Bay crossing construction process, including the volume of sediments that is anticipated to re-settle in the cable trenches.

**Response:** The volumes of sediment suspended during the jet plowing and hand jetting operations analysis are a combination of the dimensions of the “trench” and the percent of that material that is put into suspension. Both were estimated based on professional judgment and practical experience by Caldwell Marine Inc, and RPS ASA. The jet plow trench dimensions are simply the dimensions of the jet plow blade, since the sediments directly ahead of the blade are fluidized, allowing the blade to slice through the sediments. As described in the RPS ASA Modeling Sediment Dispersion from Cable Burial Report (Appendix 35, Section 3.3.1), a range of values is given in the literature for the percentage of the trench sediments that are suspended. Caldwell Marine Inc. estimated their technology would suspend 10% of the trench volume. RPS ASA used a more conservative 25% of the trench volume in their models. The hand jetting operation is less precise. The majority of the hand jetting work will be conducted within silt curtains for short periods around the high tide. In these areas, the assumption was made that 90% of the sediments would be contained within the silt curtains. Silt curtains cannot be used on the deeper sections within the channel because currents will prohibit their effectiveness. Section 3 of Appendix 35 describes the input parameters and the results of one cable installation, and addresses the cumulative effects of installing three cables (Section 3.5 of Appendix 35).

**Witnesses Available for Cross Examination include:** Ann Pembroke

**CLF 1-11** Please describe, and produce all documents, information and communications related to, the manner in which Eversource will monitor the sediment plume during construction of the Little Bay crossing and measures it will take if the plume travels farther than projected.

**Response:** Eversource proposes real-time monitoring of turbidity and total suspended solids at multiple stations both upgradient and downgradient of the jet plowing operation, as described in the Little Bay Environmental Monitoring Plan (Appendix D of the Application for Water Quality Certificate, Appendix 14). Should samples indicate that water quality thresholds will be exceeded, the installers can either halt or slow forward progress until the plume turbidity drops back to acceptable levels. Eversource's proposed monitoring plan is under review through the SEC and environmental permitting processes. Eversource is committed to working with NHDES and the USACE to modify this plan should the agencies request changes.

**Witnesses Available for Cross Examination include:** Ann Pembroke

**CLF 1-15** Please describe, and produce all documents, information and communications related to, the volume of intake water associated with jet-plow construction activity associated with the Little Bay crossing.

**Response:** Please see the Natural Resource Impact Assessment (Appendix 34, Sections 5.5, page 37, and 5.7, page 40). In order to evaluate potential biological impacts resulting from withdrawal of water from the bay, the intake rate was estimated based on previous projects using jet plows. Because each jet plow is designed specifically to meet the requirements of an individual project, the water intake may vary from that estimate.

**Witnesses Available for Cross Examination include:** Ann Pembroke

**CLF 1-18** Please state whether there are locations within the Little Bay crossing where cables will be buried to depths greater than eight feet and, if there are, describe, and produce all documents, information and communications regarding, the locations where that will occur, and the depths at which the cables will be buried.

**Response:** There are no locations within Little Bay that the Applicant intends to install the cables at a depth deeper than eight feet. As the penetration depth of the jet plow blade is readily controlled by the operator, the likelihood of plowing deeper than eight feet inadvertently is very low.

**Witnesses Available for Cross Examination include:** Sarah Allen and Marc Dodeman



**CLF 1-23** Please describe, and produce all documents, information and communications regarding, the cumulative duration of time during which jet plowing will be conducted, and the cumulative duration of time during which divers will be operating hand jets.

**Response:** The duration of jet plowing and cable burial by divers using hand jets is discussed in the Natural Resource Impact Assessment (Appendix 34, Section 5.0 and 5.1) and in the Pre-Filed Testimony of Marc Dodeman at pages 4 to 7.

**Witnesses Available for Cross Examination include:** Sarah Allen

**CLF 1-24** Regarding sections 7 and 7.1 (pages 15 – 16) of the Caldwell Marine International, LLC Marine Construction Operations Capabilities & Experience document appended as Attachment B to the pre-filed testimony of Marc Dodeman, please identify which of the listed submarine utility projects employed jet plowing and which ones employed horizontal directional drilling.

**Response:** All of the projects listed in Attachment B are predominantly jet plowing projects. Caldwell Marine has overseen HDDs at shore end landings where they are required by permit or where the system electrical design requirement requires burial to a specific depth in the landing area.

**Witnesses Available for Cross Examination include:** Marc Dodeman

**CLF 1-25** Please describe, and produce all documents, information and communications related to, the estimated time duration of in-water construction activities associated with jet plowing (including hand-jetting), horizontal directional drilling, and any other construction alternatives analyzed for the Little Bay crossing.

**Response:** Please see the Applicant's Response to Durham Data Request Durham 1-32.

**Witnesses Available for Cross Examination include:** Marc Dodeman

**CLF 2-10** Please describe with specificity, and produce copies of all documents, information and communications related to, whether and/or how the proposed time of year for constructing the Little Bay crossing was considered when assessing potential impacts to oysters.

**Response:** Several factors were assessed in determining the timing of the construction of the Little Bay crossing using the proposed installation method of jet plowing. These factors include: weather conditions (temperature), biological activity, and interference with other users of the estuary.

The ability to handle the cables (i.e., unrolling from cable spool) is substantially affected by air temperature such that installation cannot take place when temperatures are near or below freezing. This effectively limits the construction window to mobilization and pre-installation activities in mid-summer through final installation activities in December. Biological activity certainly occurs year-round, but late winter through early summer has been clearly identified as a period of concern. For example, preferred habitat conditions for federally-managed species are more prevalent in the spring months than in summer or fall (refer to Essential Fish Habitat Assessment Report). Winter flounder spawning and early demersal-settlement period takes place from mid-winter through June. This species is of particular concern because eggs and juveniles, two vulnerable life stages are associated with the sea-floor. In addition, the estuary supports populations of four species of anadromous fish that may make spawning runs through the project area in the spring. Eversource also seeks to avoid interfering to the greatest extent possible with the boating activity that takes place in Little Bay primarily in the summer months, precluding work from Memorial Day through Labor Day at a minimum. All of the above mentioned factors prompted Eversource to target the fall months for cable installation across Little Bay.

Installation during the fall avoids the spawning season (typically June through August in Great Bay) for oysters. While suspended sediments could be redeposited on oysters, the Natural Resource Impact Assessment (Appendix 34, section 5.5) evaluated the effect of burial on oysters. Suspended sediment dispersion was modeled based on installation during a spring tide and predicted that existing oyster beds or aquaculture operations would be minimally exposed to the plume generated by the jet plow or hand-jetting.

**Witnesses Available for Cross Examination include:** Ann Pembroke