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Via Electronic Mail and US Mail

August 3, 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
Applicant's Objection to Mark Joyce and Karen Crowley Late-Filed Petition to
Intervene**

Dear Ms. Monroe:

Enclosed for filing in the above-captioned docket, please find the Applicant's Objection to Mark Joyce and Karen Crowley'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 MARK JOYCE AND KAREN CROWLEY
LATE-FILED PETITION TO INTERVENE**

NOW COMES Public Service Company of New Hampshire d/b/a Eversource Energy ("Eversource" or the "Applicant"), by and through its attorneys, McLane Middleton, Professional Association, and respectfully objects to Mark Joyce and Karen Crowley's Late-Filed Petition to Intervene (the "Late-Filed Petition"). Mr. Joyce and Ms. Crowley's Late-Filed Petition is over two years late, and therefore, will interfere with the orderly conduct of the proceedings.

I. Background

1. On April 12, 2016, Eversource 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.

2. 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.

3. 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.

4. 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. Technical sessions with the Applicant's witnesses were conducted in May and June 2017.

5. On June 20, 2017, the Presiding Officer issued a Revised Procedural Schedule requiring that Counsel for the Public and interveners provide pre-filed testimony on or before July 31, 2017. The Applicant propounded data requests on Counsel for the Public and interveners on August 14, 2017. Counsel for the Public and interveners responded to those data requests on April 11, 2018.

6. Technical sessions with Counsel for the Public's and interveners witnesses were held in May 2018.

7. Additional technical sessions were also held on July 10, 2018 following the submittal of additional information pertaining to horizontal directional drilling and after the Subcommittee allowed late-filed testimony from Dr. Regis Miller, Jeffrey and Vivian Miller, and Matthew and Amanda Fitch.

8. On July 20, 2018, Counsel for the Public and Interveners were required to file any supplemental pre-filed testimony.

9. On July 26, 2018, the Committee received the Late-Filed Petition—*two years and eight days* after the deadline for filing petitions to intervene set by the Presiding Officer and approximately one year after the deadline for parties to submit pre-filed testimony.

II. Standard for Intervention

10. 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) (emphasis added).

11. 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).

12. 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).

13. 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

14. The Late-Filed Petition was filed with the SEC service list over two years after the deadline established by the Presiding Officer. Such a late-filed petition, with no compelling justification, creates serious risk to the orderly and prompt conduct of the proceedings. Moreover, Mr. Joyce and Ms. Crowley cannot establish that intervention would be in the interests of justice; the Late-Filed Petition does not present any statement or evidence about how their involvement in this proceeding would “be in the interests of justice and would not impair the orderly and prompt conduct of the hearings.”

15. Mr. Joyce and Ms. Crowley offer an explanation for failing to comply with the Committee’s rules by stating that they “did not learn of the concrete bunkers or aprons until the technical session held on July 10, 2018.” Late-Filed Petition at ¶ 3. The proposed use of concrete mattresses, however, has been a part of the Project Application since it was initially filed on April 12, 2016. *See* Application for a Certificate of Site and Facility, at E-8, 87, 89, 92, 97 – 98, 100, Appendix 2 – Environmental Maps, Map 17–19; Pre-Filed Testimony of Anthony Godfrey dated April 12, 2016, at page 6, line 24–28 (adopted by William Wall).¹

¹ The proposed concrete mattresses were also presented on the Amended Environmental Maps, Appendix 2a of the Amended Application, discussed and identified in certain filings made to the NH DES and NH SEC, and displayed on the Revised Environmental Maps dated September 1, 2017.

16. Mr. Joyce and Ms. Crowley have not provided the Subcommittee with sufficient evidence or a compelling reason 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 been completed (including data requests and technical sessions)—and all parties have submitted Pre-Filed and Supplemental Pre-Filed Testimony—allowing Mr. Joyce and Ms. Crowley to intervene at this stage in the process would create a substantial risk that their 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). Moreover, the Late-Filed Petition makes several factual errors that do not support intervention.²

² The Late-Filed Petition to Intervene incorrectly argues: (1) that the Project will adversely impact their vested property rights; (2) that the Eversource easement has been “legally abandoned” and/or are limited to a 34.5 kV line; and (3) that Eversource does not possess the property rights to construct high voltage transmission lines below ground.

Eversource will not impact any property owned by Mr. Joyce and Ms. Crowley, which is limited by the high water line of Little Bay, as shown on Plan No. D-12730 attached to their Petition. The Little Bay Restrictive Covenants referred to in the Petition do not extend to Little Bay and have no applicability to the public waters adjacent to their property. The Project will solely be constructed either where Eversource already has or will have an underground easement, and where Eversource has already obtained a water crossing license from the NH PUC. The Petition contends that the 1950 McFarland easement and Public Utility Commission Order No. 5881 both effect a limitation on Eversource’s property rights, but fails to note that the McFarland easement was released by a release deed in 1997 (Rockingham County Registry of Deeds Book 3231, Page 2794), in exchange for a new grant of easement rights on the abutting Beswick property (Lot #5, Plan No. D-1273), and also fails to point out that Order No. 5881 has no relevance to the Joyce/Crowley property in Newington because it related solely to a condemnation of an easement over other property in the City of Portsmouth. In addition, litigation over private property rights should be left to the courts. *See Order on Lagaspence Motion to Postpone and Grafton County Commissioners’ Motion to Continue*, Docket No. 2015-06, at 2 – 3 (April 7, 2017) (adjudication of property rights between private parties is left for the courts).

17. 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 Mr. Joyce and Ms. Crowley will likely seek the opportunity to propound data requests and also the opportunity to file pre-filed testimony. To the extent the SEC allows Mr. Joyce and Ms. Crowley's intervention, the Applicant respectfully requests that the SEC prohibit Mr. Joyce and Ms. Crowley from propounding data requests, from participating in the discovery process, and from filing pre-filed testimony at this stage. Allowing Mr. Joyce and Ms. Crowley to propound data requests or file pre-filed testimony with less than a month to go before final hearings would impair the orderly and prompt conduct of the proceedings and prejudice the Applicant.

18. While the Applicant objects to the Late-Filed Petition to Intervene, to the extent the SEC allows Mr. Joyce and Ms. Crowley's intervention, the Applicant respectfully requests that the Committee limit their involvement solely to the *perceived* impacts of the Project on their owned property. Mr. Joyce and Ms. Crowley have 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

To the extent Mr. Joyce and Ms. Crowley wish to argue point number two—which Eversource unequivocally disagrees with—their argument is without merit and, again, it is in the wrong forum. *See* Order Accepting Application, Docket 2015-04 at 7 (June 13, 2016) (“The Application contains information identifying the Applicant’s relationship to each section of the route.”); *see also* Order on Lagaspence Motion, Docket No. 2015-06, at 2 – 3 (concluding that the Application was complete that it contained the necessary evidence demonstrating that the Applicant has the legal authority to use the site for the proposed facility, and that adjudication of property rights between private parties is left for the courts).

Finally, the third argument made in the Late-Filed Petition is also incorrect. As Eversource has stated in its original Application in this proceeding, Eversource has contracted to purchase the necessary underground easement where the cable will make landfall on the Newington side of the Bay, thereby providing the Applicant with the necessary underground land rights to install the Project underground. *See* Application, Docket 2015-04 at 4 (April 12, 2016) (“After crossing the Bay, the Project will make land fall on property where [Eversource] has a contract to purchase a new easement.”).

in the petition—including limiting New Hampshire Sierra Club’s interest solely to the sustainability of a forest management plan).

19. Moreover, to the extent the Committee grants Mr. Joyce and Ms. Crowley’s Late-Filed Petition, the Applicant respectfully requests that Mr. Joyce and Ms. Crowley be grouped with Mr. Keith Frizzell as one party—the Newington Residents—for purposes of filing motions and for examination at evidentiary hearings. Separate intervention would further 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); 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

20. The Applicant filed its Application over 27 months ago. Mr. Joyce and Ms. Crowley filed their Late-Filed Petition over two years after the deadline—approximately one month before final hearings and after all discovery and necessary filing deadlines have passed. The interests of justice and the orderly and prompt conduct of the proceedings do not support their intervention. Accordingly, the Applicants respectfully request that Mr. Joyce and Ms. Crowley’s Late-Filed Petition to Intervene be denied. To the extent the Committee allows Mr. Joyce and Ms. Crowley’s intervention, the Applicant respectfully requests that the Committee

limit their participation as requested above and they be grouped with Mr. Frizzell as a Newington Residents group for purposes of this proceeding.

WHEREFORE, the Applicant respectfully asks that the Committee:

- a. Deny Mr. Joyce and Ms. Crowley'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: August 3, 2018

By:



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Certificate of Service

I hereby certify that on this 3rd day of August, 2018, an electronic copy of the foregoing Objection was served upon the Distribution List.



Adam Dumville