

MCLANE
MIDDLETON

BARRY NEEDLEMAN
Direct Dial: 603.230.4407
Email: barry.needleman@mclane.com
Admitted in NH, MA and ME
11 South Main Street, Suite 500
Concord, NH 03301
T 603.226.0400
F 603.230.4448

VIA ELECTRONIC MAIL

May 8, 2019

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 115k Transmission Line from Madbury Substation to
Portsmouth Substation
Eversource's Objection to Conservation Law Foundation's Motion To Stay**

Dear Ms. Monroe:

Enclosed for filing in the above-referenced docket is Eversource's Objection to Conservation Law Foundation's Motion To Stay.

Please call me with any questions.

Sincerely,



Barry Needleman

BN:slb
Enclosure

Cc: SEC Distribution List

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

McLane.com

**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**

**EVERSOURCE’S OBJECTION TO CONSERVATION LAW FOUNDATION’S
MOTION TO STAY**

Public Service Company of New Hampshire d/b/a Eversource Energy (“Eversource”) objects to the Motion to Stay (“Motion”) filed by the Conservation Law Foundation (“CLF”). CLF’s Motion and request for relief is contrary to the governing law. It should therefore be denied.

I. Background

On January 31, 2019, a Subcommittee of the Site Evaluation Committee issued a Decision and Order Granting Application for Certificate of Site and Facility for the Seacoast Reliability Project (the “Project”). On March 4, 2019, the Town of Newington and Eversource executed a settlement agreement. CLF, and others, filed motions for reconsideration on March 4, 2019, to which the Applicant objected on March 8, 2019. The Subcommittee convened on March 11, 2019 to deliberate on the requests for reconsideration. The Subcommittee unanimously denied all of the motions for reconsideration. *See Order on Motions for Rehearing*, Docket 2015-04 (April 11, 2019). On April 25, 2019, Eversource and the Town of Durham executed a settlement agreement.

On April 19, 2019, Eversource notified the SEC Administrator of its intent to begin construction on May 6, 2019. Eversource explicitly stated it will not begin construction within United States Army Corps of Engineers (“USACE”) jurisdictional areas, including wetland

resources and the historic cable house,¹ and that Eversource will not begin construction in areas that require New Hampshire Department of Transportation permits.²

On May 1, 2019, CLF filed an improper Motion to Stay with the SEC requesting that “the Committee stay its decision and order, including the effectiveness of the certificate of site and facility and the commencement of construction, until such time as (a) Applicant has a final, unappealable decision and certificate authorizing the project, and (b) Applicant has obtained all legally required permits.” Motion at 5.

II. CLF’s Motion and Request for Relief is Contrary to Governing Law

The Certificate of Site and Facility is a validly issued, final decision of the Subcommittee. CLF does not, and cannot cite to any law that would now permit the Subcommittee to act on the requested stay. Indeed, CLF’s approach here is directly contrary to established law.

First, there is nothing in RSA 162-H or RSA 541 authorizing the Subcommittee to issue the requested stay. While RSA 162-H:12, I–II permits the SEC to suspend a Certificate in certain extreme circumstances, that can only occur if the SEC determines that a term or condition has been violated, or that a material misrepresentation has been made. CLF has not made any such allegations. Therefore, the provisions of RSA 162-H:12, I–II do not apply.

¹ Eversource is awaiting a Section 404 Permit from USACE.

² CLF implies that Eversource was required to provide CLF with direct notification of its intent to commence construction. Eversource has, however, complied with all of the notice requirements of its Certificate. In addition, contrary to CLF’s assertion, Eversource’s commencement of construction is not “premature”. Eversource has all of its required permits and approvals to commence construction in upland areas. Pursuant to the preference of the University of New Hampshire, Eversource must begin construction on the UNH campus in May to complete construction by August 23, 2019 and prior to the start of the 2019-2020 school year. *See* Letter of Support for Eversource’s Request for Minor Modification from William Janelle, Associate Vice President of UNH (April 8, 2019). As described above, Eversource will not conduct work in USACE jurisdictional areas and will avoid any work in areas that require a NH DOT permit or approval.

RSA 541:5 governs motions for rehearing and provides that “[u]pon the filing of [a] motion for rehearing, the commission shall within ten days either grant or deny the same, or suspend the order or decision complained of pending further consideration, and any order of suspension may be upon such terms and conditions as the commission may prescribe.” (emphasis added). Since the rehearing process is now complete under RSA 541:5, the SEC has no authority under this statute to suspend the Certificate.

Second, once a motion for rehearing is denied, an affected party has no recourse before the Subcommittee (absent a certificate violation or misrepresentation). The affected party’s sole remedy is with the New Hampshire Supreme Court pursuant to RSA 541:6.

Third, RSA 541:18 provides that following a decision on a motion for rehearing “[n]o appeal or other proceedings taken from an order of the commission shall suspend the operation” of a final order issued by the Subcommittee. RSA 541:18 further makes clear that the only tribunal that may suspend a final order of the Subcommittee is the Supreme Court. *Id.* (“the supreme court may order a suspension of such order pending the determination of such appeal or other proceeding whenever, in the opinion of the court, justice may require such suspension”).

Lastly, CLF’s argument that the Order is not a “final” decision is contrary to well-established law. The New Hampshire Supreme Court specifically addressed the effectiveness and finality of administrative agency orders in *Appeal of Seacoast Anti-Pollution League*, 125 N.H. 708 (1984). In that case, the Court spoke to the differences between the statutory provisions of RSA 541:5 (which permits an agency to suspend an order while a motion for rehearing is pending) and RSA 541:18 (which provides that only the Supreme Court may suspend an order following a final decision on rehearing). In addressing both these statutes, the Court concluded that while a “commission’s initial order should not be deemed a valid

authorization until the rehearing is completed An unsuspended commission order becomes effective upon completion (or denial) of rehearing, unless a request for suspension is promptly filed with, and granted by, this court.” (emphasis added). In other words, only the Supreme Court may stay an administrative decision following a motion for rehearing.

III. Conclusion

Based on the foregoing, it is unequivocally clear that there is no legal authority supporting CLF’s Motion. In fact, the clear legal authority compels denial of that motion.

WHEREFORE, the Applicant respectfully asks that the Subcommittee:

- a. Deny Conservation Law Foundation’s Motion to Stay; 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 8, 2019

By: 

Barry Needleman, Esq. Bar No. 9446
Adam Dumville, Esq. Bar No. 20715
11 South Main Street, Suite 500
Concord, NH 03301
(603) 226-0400
barry.needleman@mclane.com
adam.dumville@mclane.com

Certificate of Service

I hereby certify that on this 8th day of May 2019, an electric copy of this Combined Objection was electronically sent to the New Hampshire Site Evaluation Committee and served upon the SEC Distribution List.


Barry Needleman