

**STATE OF NEW HAMPSHIRE
SITE EVALUATION COMMITTEE**

Docket No. 2015-04

**Application of Public Service Company of New Hampshire
d/b/a Eversource Energy for Certificate of Site and Facility**

November 29, 2016

**ORDER ON MOTION OF THE CONSERVATION LAW FOUNDATION
FOR REVIEW AND RECONSIDERATION REGARDING LIMITED INTERVENTION**

I. BACKGROUND

On April 12, 2016, the Public Service Company of New Hampshire d/b/a Eversource Energy filed an Application for a Certificate of Site and Facility (Application) with the Site Evaluation Committee (Committee). The Application seeks the issuance of a Certificate of Site and Facility approving the siting, construction, and operation of a new 115kV electric transmission line between existing substations in Madbury and Portsmouth (Project.) The new transmission line will be approximately 12.9 miles in length. The Project is comprised of a combination of above ground, underground, and underwater segments. The Project will be located in the Towns of Madbury and Durham in Strafford County, and the Town of Newington and the City of Portsmouth in Rockingham County.

On July 22, 2016, the Conservation Law Foundation (CLF) filed a motion to intervene in this docket. On August 24, 2016, the Presiding Officer issued an order allowing CLF to intervene on a limited basis. CLF's intervention was limited to issues concerning the specific impacts of the project on air and water quality, and the natural environment. On September 2, 2016, CLF filed a motion seeking review and reconsideration by the Subcommittee. CLF requested full intervenor status in this docket.

The Applicant objected to the motion on September 12, 2016.

On November 2, 2016, the Subcommittee held a deliberative hearing on CLF's motion for Subcommittee review and reconsideration. At that time, the Subcommittee deliberated on the merits of the motion and voted, 5-2, to grant the motion. Robert Scott and David Shulock of the Subcommittee both voted nay. This Order memorializes the majority's decision to grant the motion.

II. STANDARD FOR INTERVENTION

Subcommittee review of the presiding officer's rulings on intervention pursuant to RSA 162-H:4, V, is *de novo*.

The New Hampshire Administrative Procedure Act provides that an administrative agency must allow intervention when:

- (a) The petition is submitted in writing to the presiding officer, with copies mailed to all parties named in the presiding officer's notice of the hearing, at least 3 days before the hearing;
- (b) The petition states facts demonstrating that the petitioner's rights, duties, immunities or other substantial interests may be affected by the proceeding or that the petitioner qualifies as an intervenor under any provision of the law; and
- (c) The presiding officer determines that 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.

The statute also permits the Presiding Officer to allow intervention, "at any time upon determining that such intervention would be in the interests of justice and would not impair the orderly and prompt conduct of the proceedings." RSA 541-A:32, II. The Committee's rules contain similar provisions. *See* N.H. CODE ADMIN. RULES Site 202.11 (b)-(c).

Pursuant to RSA 162-H:4, V, the Presiding Officer is authorized to rule on petitions for intervention. The Administrative Procedure Act and our procedural rules also allow the

presiding officer to place limits on an intervenor's participation. *See* RSA 541-A:32, III; N.H. CODE ADMIN. RULES Site 202.11(d). The Presiding Officer may limit the issues pertaining to a particular intervenor, limit the procedures in which a particular intervenor may participate, or combine intervenors and other parties for the purposes of the proceeding, so long as the limitations placed on intervenors do not prevent the intervenor from protecting an interest that formed the basis of intervention. *See* N.H. CODE ADMIN. R. ANN. Site 202.11(d). Any party aggrieved by a decision on a petition to intervene may, within 10 calendar days, request that the Subcommittee review the decision. *See* RSA 162-H:4, V. The pending petition seeks that review and reconsideration.

III. ANALYSIS

CLF is a non-profit environmental advocacy organization dedicated to the protection and responsible use of New England's natural resources. It has approximately 3,300 members, 450 of whom reside in New Hampshire. In its Motion to Intervene, CLF asserted that it includes members that reside in communities in the proposed path of the Project. CLF also asserted that it represents members who use and enjoy the Great Bay estuary, including Little Bay. CLF submitted that it has worked diligently on restoring the water quality and the ecosystem in the Great Bay estuary and has a direct interest in protecting the estuary in the future. CLF requested intervention so that it can protect its member's interests by addressing the effect of the Project on the estuary and other natural resources.

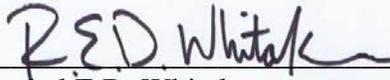
The Presiding Officer granted CLF's Motion to Intervene. CLF's participation in this docket, however, was limited to "discovery, evidence, and cross-examination on the specific impacts of the Project on air and water quality, and the natural environment." *See* Order on Petitions to Intervene, at 7.

CLF admits that its original motion to intervene spoke mainly to impacts on air and water quality and the environment, particularly the Great Bay estuary. CLF argues, however, that its participation should not be limited in this docket. CLF claims that its original motion was written using inclusive language and specifically referenced an interest in the “economic vitality” of the region. CLF also asserts that it is premature to limit its participation at this stage of the proceedings because the exact issues that may arise in this docket have not yet been established. CLF relies upon its claim that its original motion used “inclusive language” to argue that it sought full intervention rights.

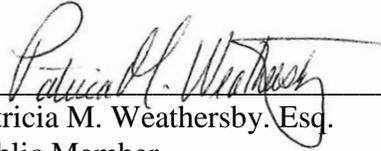
The Applicant objects stating that, apart from claiming an interest in the Project’s impact on water quality and the natural environment on Little Bay and the Great Bay estuary, CLF failed to articulate any specific interest, right, or privilege that will be impacted as a result of construction and operation of the Project. The Applicant asserts that CLF’s participation in this docket should be limited only to the interests that were clearly articulated by CLF – the Project’s impact on water quality and the natural environment on Little Bay and the Great Bay estuary.

The Project may affect the interests of CLF’s members. Apart from having a direct impact by affecting air and water quality and the natural environment, the Project may have impacts on the orderly development and the economy of the region. Those issues may have an indirect impact on CLF’s prime areas of concern. Strictly limiting the scope of CLF’s participation to direct impacts on air and water quality and the natural environment will preclude CLF from fully addressing the extent of the impacts of the Project on its members. CLF’s request for reconsideration is granted. CLF may participate as a single party in this docket and address all relevant issues.

SO ORDERED this twenty-ninth day of November, 2016.



Rachel E.D, Whitaker
Alternate Public Member



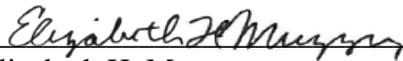
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