

**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 MOTIONS FOR REVIEW AND RECONSIDERATION OF  
INTERVENTION FILED BY THOMAS A. DECAPO AND Yael D. DECAPO;  
“DURHAM POINT/LITTLE BAY ABUTTERS;” AND DONNA HEALD MCCOSKER**

**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 20, 2016, a group of intervenors consisting of Matthew and Amanda Fitch, Jeffrey and Vivian Miller, Lawrence and Anne Gans, and Deborah Moore, collectively referring to themselves as the “Durham Point/Little Bay Abutters,” filed a motion to intervene. On July 21, 2016, Thomas A. DeCapo and Yael D. DeCapo (the DeCapo family) filed a motion to intervene. On July 22, 2016, Deborah Heald McCosker filed a motion to intervene.

On August 24, 2016, the Presiding Officer granted each of the petitions to intervene but,

pursuant to RSA 541-A:32, III and N.H. CODE ADMIN. RULES Site 202.11(d), combined the participation of the intervenors into a single group referred to as the “Durham Residents.” Each of the intervenors sought review and reconsideration of the Presiding Officer’s ruling under RSA 162-H: 4, V. The Applicant objected to these motions on September 12, 2016.

On November 2, 2016, the Subcommittee conducted a hearing on the pending motions. During the hearing, the Subcommittee reviewed and addressed the petitions to review and reconsider the grouping of the intervenors. By a vote of 6-1, the Subcommittee denied the motions for review and reconsideration. Patricia Weathersby, Public Member of the Subcommittee, voted nay. This Order memorializes the decision of the majority.

## **II. STANDARD FOR INTERVENTION**

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. RULES Site 202.11(d). Any party aggrieved by a decision on a petition to intervene may, within 10 calendar days, request that the committee review such decision. *See* RSA 162-H:4, V.

### **III. ANALYSIS**

The Presiding Officer originally found that the members of the Durham Residents group reside in proximity to each other and expressed substantially similar interests in the proceeding. In order to avoid duplicative arguments and to ensure the prompt and orderly development of these proceedings, their participation in this docket was combined for the purposes of presentation of evidence, argument, cross-examination, and other participation.

The "Durham Point/Little Bay Abutters" assert that their interests are substantially different from other intervenors in the Durham Residents group and combining their participation with these intervenors will substantially limit their ability to address their interests in this docket. Specifically, they assert that they own property on the eastern side of Durham Point Road with direct shore line access to Little Bay. They further assert that their interests are different from interests of the other intervenors because: (i) they are concerned about the impact of the Project on the environment, aesthetics, property value, and the health and well-being of the

families that may be affected; and (ii) other intervenors are concerned about the impact on Little Bay, the tidal flats, oysters and clam beds, dock and boating access, a 12-foot dug well and a home-based business.

Similarly, Ms. McCosker asserts that her interests are different from the interests of the “Durham Point/Little Bay Abutters” and the DeCapo family because she is specifically concerned about the impact of the Project on her well and water line, her gardening business, and the view from her house of the power lines and poles.

Finally, the DeCapo family argues that their participation in this docket should not be combined with the other intervenors in the Durham Residents group because: (i) they have different interests in this docket; (ii) their counsel is prohibited from “representing” other intervenors whose interests may be opposite to the DeCapo family’s interests; and (iii) the DeCapo family will be precluded from addressing its interests, if its participation is combined with other intervenors because its interests are already in conflict with other intervenors’ interests. As to the affected interests, the DeCapo family asserts that, unlike other Durham Resident group intervenors, they are concerned about the impact of the Project on their boat ingress and egress, tidal boating window, and oyster and clam beds along their property’s waterfront. They further assert that these interests are substantially different from the interests raised by the other Durham Resident intervenors. They also argue that their lawyer is precluded from representing other intervenors by the New Hampshire Rules of Professional Conduct where, in the future, their interests may contradict with the interests of other intervenors. Finally, the DeCapo family argues that a conflict has already arisen when the DeCapo family, unlike other intervenors, refused to settle its issues with the Applicant.

The Applicant objects to the requests made by the “Durham Point/Little Bay Abutters,”

Ms. McCosker, and the DeCapo family. The Applicant asserts that, although the interests demonstrated by these intervenors are different, they do not contradict and/or exclude each other. The Applicant argues that the DeCapo family's position does not contradict the other parties' positions where no conflict was created by the DeCapo family's refusal to privately settle issues in dispute with the Applicant. The Applicant further argues that the Rules of Professional Conduct do not preclude the parties' counsel from representing their clients within the designated group. The Applicant concludes that combining these intervenors' participation in this docket is reasonable, because they reside in proximity to each other and combining their participation will not impact these parties in their ability to address their individual rights, interests and privileges.

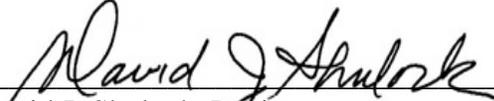
Combining the Durham Residents in one group will not restrict their ability to address and litigate their interests. Intervenors' interests are not exclusive to each other. The intervenors' may address and express their interests as a group. Furthermore, the Rules of Professional Conduct do not restrict counsel from representing their clients' interests within the group or before the Subcommittee. The petitions for Review and Reconsideration filed by the "Durham Point/Little Bay Abutters," Ms. McCosker, and the DeCapo family are denied. The "Durham Point/Little Bay Abutters," Ms. McCosker and the DeCapo family shall participate as a single group of intervenors referred to as the "Durham Residents" in this docket.

The Durham Residents shall designate a spokesperson that will be responsible for communicating with the Subcommittee, the Applicant, and the other parties in this docket with respect to conducting discovery and filing pleadings. All members of the group shall attempt, in good faith, to reach decisions on representation, discovery, pleadings and other issues raised in this docket. Any individual intervenor, however, if unable to agree with the group, has a right to file a motion stating its disagreement and a motion for alternative relief.

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



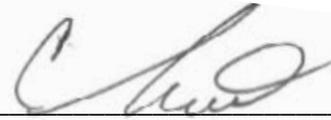
Robert R. Scott, Commissioner  
Public Utilities Commission  
Presiding Officer



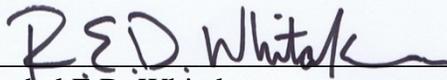
David J. Shulock, Designee  
Director of Legal Division  
Public Utilities Commission



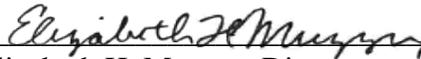
Evan Mulholland, Designee  
Administrator  
Department of Environmental Services



Charles Schmidt, Designee  
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Department of Transportation



Rachel E.D. Whitaker  
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Elizabeth H. Muzzey, Director  
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