

**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**

December 21, 2016

**ORDER ON MOTION TO INTERVENE**  
**(Durham Historic Association)**

**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 Subcommittee (Subcommittee). 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 is proposed to 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 June 23, 2016, a Procedural Order was issued, setting forth, among other deadlines, a deadline of July 22, 2016, for filing petitions to intervene. On August 24, 2016, the Presiding Officer issued an Order on Petitions to Intervene. Following issuance of the Order, a number of intervenors filed motions for review and reconsideration. On November 2, 2016, the Subcommittee conducted a hearing on the pending motions and on November 29, 2016, the Subcommittee issued Orders addressing the motions.

On November 16, 2016, the Subcommittee received a late-filed Petition to Intervene from the Durham Historic Association (DHA). On November 23, 2016, the Applicant objected to DHA's Petition.

This Order addresses DHA's Petition to Intervene.

## **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 intervener 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 N.H. CODE ADMIN. RULES, Site 202.11 (b)-(c), contains similar provisions.

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; and 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. POSITIONS OF THE PARTIES**

DHA is a non-profit educational research organization and museum dedicated to the preservation of history of the Oyster River Plantation and the Town of Durham (Durham). DHA asserts that it holds numerous historic documents and possesses unique knowledge of the historic resources within the Durham. DHA requests intervention so that it can assist the Subcommittee with evaluating the impact of the Project on historic resources.

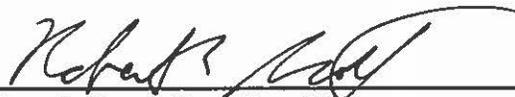
The Applicant argues that DHA's petition should be denied because it does not establish an injury in fact, the Petition was filed late, and allowing intervention at this stage of the proceeding will impair the orderly and prompt conduct of the proceedings. As to the injury in fact, the Applicant argues that DHA failed to identify any specific right or privilege that will be affected as a result of construction and operation of the Project. The Applicant also argues that allowing DHA to intervene will impact and potentially modify the discovery schedule and requests that DHA's Petition to Intervene be denied. In the alternative, the Applicant requests that DHA's scope of participation be limited to the Project's impact on historic sites within the Town of Durham and that DHA be prohibited from propounding data requests and participating in the discovery process.

### **IV. ANALYSIS**

In deciding whether to grant a certificate, the Subcommittee is required to consider and decide whether the proposed Project will have an unreasonable adverse effect on historic sites. *See* RSA 162-H:16, IV(c). DHA has a recognized interest in the preservation of historic

resources, including historic sites, in Durham. DHA's expertise and knowledge of historic resources in Durham may assist the Subcommittee with determining the impact of the Project on historic sites. Furthermore, allowing DHA's intervention will not interfere with the orderly and prompt conduct of the proceedings. Technical sessions of the Applicant's witnesses were scheduled to be conducted on December 19 and 21, 2016, but were postponed at the request of the Parties, and a revised procedural schedule will soon be issued. DHA may participate in the re-scheduled technical sessions. DHA's participation will not delay resolution of this docket and DHA is allowed to intervene in this docket as a single intervenor. It is apparent, however, that DHA's interests are limited to the impact of the Project on both above and below ground historic resources in Durham. DHA's participation in this docket shall be limited to issues associated with the impact of the Project on historic resources in Durham. DHA's Petition to Intervene is granted in part and denied in part. The Applicant's request to limit DHA's participation in the discovery process is granted, to the extent that certain discovery deadlines have already passed.

SO ORDERED this twenty-first day of December, 2016.



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Robert R. Scott, Presiding Officer  
NH Site Evaluation Committee