

**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 29, 2016

**ORDER ON APPLICANT'S MOTION FOR PARTIAL WAIVER OF
THE REQUIREMENTS OF N.H. CODE ADMIN. RULES, SITE 301.03 (c)(3)-(5)**

I. BACKGROUND

On April 12, 2016, 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.

Along with the Application, the Applicant filed a Motion to Partially Waive Site 301.03(c)(3)-(5) (Motion), requesting that the Subcommittee partially waive the identification and mapping requirements contained in N.H. CODE ADMIN. RULES, Site 301.03(c)(3)-(5). The Subcommittee reviewed the Motion and deliberated at a hearing held on November 2, 2016. After deliberations, the Subcommittee unanimously voted to grant the motion in part and to deny the motion in part. This Order memorializes that decision.

II. THE APPLICANT'S WAIVER REQUESTS

The Applicant seeks a waiver from the requirements of the following administrative rules: (i) N.H. CODE ADMIN. RULES, Site 301.03(c)(3), requiring the identification and mapping of property lines, residences, industrial buildings, and other structures and improvements; (ii) N.H. CODE ADMIN. RULES, Site 301.03(c)(4), requiring the identification of wetlands and surface waters; and (iii) N.H. CODE ADMIN. RULES, Site 301.03(c)(5), requiring the identification of natural, historic, cultural and other resources.

The Applicant is required to provide the following information with respect to the site of the proposed energy facility and alternative locations the Applicant considers available for the proposed facility:

- (3) The location, shown on a map, of property lines, residences, industrial buildings, and other structures and improvements within the site, on abutting property with respect to the site, and within 100 feet of the site if such distance extends beyond the boundary of any abutting property;
- (4) Identification of wetlands and surface waters of the state within the site, on abutting property with respect to the site, and within 100 feet of the site if such distance extends beyond the boundary of any abutting property, except if and to the extent such identification is not possible due to lack of access to the relevant property and lack of other sources of the information to be identified;
- (5) Identification of natural, historic, cultural, and other resources at or within the site, on abutting property with respect to the site, and within 100 feet of the site if such distance extends beyond the boundary of any abutting property, except if and to the extent such identification is not possible due to lack of access to the relevant property and lack of other sources of the information to be identified.

The Applicant seeks to waive all or a portion of each rule.

III. POSITION OF THE PARTIES

A. The Applicant

The Applicant submits that, as part of its Application, it identified all property lines, residences, industrial buildings, other structures and improvements, wetlands and surface waters, and natural, historic, cultural and other resources within the Project right-of-way and adjacent to the Project. The Applicant further asserts that it used the best available computer resources, mapping and technology and expanded the identification of all resources listed in Site 301.03(c)(3)-(5), to the entire geographic area shown on the Project Maps, irrespective of individual property boundaries. The Applicant claims that to further expand the area displayed on these maps would require varying the scale of the map continuously along the route, or selecting a scale that would accommodate the largest abutting property, which would make the data effectively unreadable. The Applicant suggests that the maps it has provided, in most instances, capture the abutting properties and in some cases went beyond abutting properties, however; there are some large abutting properties whose boundaries extend beyond the edges of the Project Maps. The Applicant argues that requiring it to strictly comply with the rules and identify all resources on every single property, irrespective of size, would be onerous and would not provide the Subcommittee with any additional meaningful information to inform its decision.

1. N.H. CODE ADMIN. RULES, Site 301.03(c)(3) – Identification and Mapping of Property Lines Residences, Industrial Buildings, and Other Structures and Improvements

The Applicant submits that the existing conditions maps display the residences, industrial buildings, and other structures and improvements within 300 feet of the Project centerline. The Applicant argues that it is impractical and unreasonably burdensome to require the it to map all property lines, residences, industrial buildings and other structures and improvements outside of the mapped area. The Applicant requests a

partial waiver of N.H. CODE ADMIN. RULES, Site 301.03(c)(3) to the extent it requires mapping of structures beyond what the Applicant has provided in its Application.

2. N.H. CODE ADMIN. RULES, Site 301.03(c)(4) – Identification of Wetlands and Surface Waters

The Applicant states that it has identified all wetlands and surface waters within or adjacent to the Project site as displayed on the existing conditions mapping contained in Appendices 2 through 4 to the Application. The Applicant submits that the location and type of each waterbody within the Project right-of-way is delineated. The Applicant points out that, to the extent possible, it has identified wetlands and surface waters within 100 feet of the Project through a combination of field delineation and interpretations of Project-specific contours and aerial photographs. The existing conditions maps identify the location of wetlands and surface waters on abutting properties within approximately 1,000 feet on either side of the edge of the right-of-way. The Applicant asserts that, because it does not have the right to access private abutting properties, the additional information displayed on these maps was obtained from the United States Fish and Wildlife Service, National Wetland Inventory Maps. The Applicant acknowledges that while this information is helpful, it does not reflect the same level of accuracy that is provided when wetlands are fully delineated. The Applicant indicates that as the distance from the Project increases, the usefulness of the overlay information decreases.

The Applicant argues that it has substantially complied with the purpose of the rule, which is to identify wetlands and surface waters that may be affected by the Project. The Applicant submits that it is extremely unlikely that the Project will have any effect on any fresh water body that is over 100 feet away, let alone 1,000 feet beyond the boundary of each side of the right-of-way. The Applicant states that the Project will not discharge to surface waters or to groundwater, that runoff from the Project will be

appropriately controlled away from surface waters and wetlands, and that any soil disturbance will be restored after construction of the Project is complete. The Applicant further asserts that for the Little Bay crossing, the sediment dispersion model, contained in Appendix 35 to the Application, shows the potential of the Project to impact the estuarine waters during the submarine cable installation. The Applicant argues that this report and its maps depict Little Bay under various water quality conditions during the cable installation process, and that supplemental mapping of Little Bay on aerial photographs will add minimal additional information. The Applicant argues that extending this analysis would be a significant waste of resources without any corresponding benefit in assisting the Subcommittee in reviewing the Project.

The Applicant also claims that requiring strict compliance with N.H. CODE ADMIN. RULES, Site 301.03(c)(4), would require increasing the size and scale of the existing conditions mapping, making the relevant information less clear. Lastly, the Applicant submits that a waiver of the rule will not disrupt the orderly and efficient resolution of matters before the Subcommittee, and that requiring strict compliance will not add any additional pertinent information and would have the effect of shifting the Subcommittee's analysis towards wetlands and surface waters that cannot reasonably be expected to be impacted.

3. Natural, Historic, Cultural, and Other Resources – N.H. CODE ADMIN. RULES, Site 301.03(c)(5)

a. Natural Resources

The Applicant asserts that the existing conditions maps provided in Appendices 3 and 7, depict the location of natural resources within the mapped area, typically 1,000 feet on each side of the right-of-way, and that it is impractical and unreasonably burdensome to require the Applicant to map all natural resources outside of

the mapped area. The Applicant requests a partial waiver of the requirement to map natural resources that extend beyond 1,000 feet of each side of the right-of-way. The Applicant further asserts that the original maps in the Rare, Threatened and Endangered Species and Exemplary Natural Communities Report, depict the location of certain rare species, and exemplary natural communities within 1,000 feet on each side of the right-of-way. Further, to the extent that such resources are required to be identified as natural resources, the Applicant requests a waiver from the rule requiring the Applicant to identify such natural resources outside of the area already mapped.

b. Historic and Archeological Resources

The Applicant has identified all the existing historic properties within ½ mile on either side of the transmission line, the area of potential effect (APE). The Applicant asserts that extending the analysis beyond the APE set by the New Hampshire Division of Historical Resources would be onerous for the Project and inapplicable due to the “flat topography” of the surrounding area. The Applicant requests a waiver from strict compliance with Site 301.03(c)(5), to the extent it requires identification of any historic properties that may exist outside of the ½ mile APE.

The Applicant submits that it has also completed an archeological desk review of abutting properties on each side of the corridor and within 100 feet of the site if such distance extended beyond the boundary of the abutting property. The Applicant is not requesting a waiver of that portion of the rule at this time.

B. Counsel for the Public

Counsel for the Public submits that the Applicant has not demonstrated that the mapping and resource identification requirements are onerous or not applicable. Counsel for the Public notes that while the Applicant broadly asserts that complying with the mapping and resource

identification requirements of N.H. CODE ADMIN. RULES, Site 301.03(c)(3)-(5) is overly burdensome because it would be difficult to either obtain required information on large parcels, or to depict large parcels in a meaningful way on resource maps, the Applicant has not provided specific examples, or even identified the number or size of large abutting properties that are not already mapped and would require a waiver. Counsel for the Public submits that it is inappropriate for the Applicant to claim a burden without providing specific evidence of the alleged burden. Counsel for the Public also argues that the Subcommittee cannot assess the importance of mapping structures and resources on large abutting properties without being told the location or extent of those abutting properties that would be subject to the waiver. Counsel for the Public finds the Applicant's argument regarding scaling of maps to be unpersuasive and submits that the Applicant has not asserted that printing maps to show all abutting properties in a readable scale would be technically unfeasible or oppressively expensive. Rather, Counsel for the Public argues, the Applicant's request appears to be a matter of convenience. Counsel for the Public argues that where large properties abut the Project, maps need not change in scale to show a larger area on a single page, but rather, a readable scale can be maintained while adding additional pages, or increasing the size of maps to show areas farther from the transmission line.

Counsel for the Public also submits that, with respect to the Applicant's request for waivers of the requirements for identification of property lines, residences, industrial buildings, and other structures and improvements, the Applicant's sole argument in support of its request for waivers is inconvenience. Counsel for the Public submits that the Applicant has not met its burden to show grounds for granting a waiver. Counsel for the Public argues that to the extent that specific properties pose specific challenges, the Applicant could submit specific waiver requests to address those particular properties. Counsel for the Public submits that a blanket waiver request without demonstration of actual hardship is not appropriate.

With respect to the requirement to identify wetlands and surface waters, Counsel for the Public notes that the Subcommittee has insufficient information to determine whether providing fully compliant maps would be unduly burdensome. Counsel for the Public notes, however, that the Applicant has provided wetland and surface water information out to approximately 1,000 feet to either side of the Project right-of-way, and asserts that this is an adequate method to satisfy the purpose of the rule. Counsel for the Public agrees and does not object to a waiver from the requirements of N.H. CODE ADMIN. RULES, Site 301.03(c)(4).

With respect to the requirement to identify natural, historic, cultural and other resources, Counsel for the Public argues that granting waiver is not warranted. With regard to natural resource identification and mapping, Counsel for the Public argues that the Applicant does not explain how it would be impractical or unduly burdensome to comply with the rule. Counsel for the Public further notes that it is unclear from the Applicant's Motion what natural resource information has been omitted and requires a waiver. Counsel for the Public submits that there is inadequate specificity in the Motion for the Subcommittee to know what the requested waiver would cover, or to support a finding that compliance with the rule would be onerous or inapplicable.

With regard to historic resources, Counsel for the Public argues that the Applicant's Motion provides only generalized information and no clear description of why a waiver is needed or the extent of the waiver requested. Counsel for the Public notes that historic resources are depicted on Appendix 2 to the Application, but only within an area up to 300 feet from the Project right-of-way, and in some locations, depicts substantially less than 300 feet from the Project right-of-way. Counsel for the Public argues that while the Applicant points to the NH DHR Project Area Form (Appendix 10) and the Seacoast Reliability Project Preliminary Report: Historic Resources (Appendix 11), as additional sources of identification of historic resources

within one-half mile on either side of the Project, these appendices do not clearly map the location and extent of the historic resources or relate them to property lines as contemplated by N.H. CODE ADMIN. RULES, Site 301.03(c)(5). Counsel for the Public argues that the Applicant has not demonstrated why it could not depict historic resources on the larger scale existing conditions maps, let alone on all abutting properties, and has not identified specific large properties that would pose an undue burden to depict on existing condition maps. Counsel for the Public notes that, unlike wetlands and surface water resources that are not subject to visual impacts, historic resources may be highly susceptible to visual impacts, and where a historic resource is located on a property abutting the Project, it is critical for the Subcommittee to have sufficient information to assess the potential impacts of the Project on those resources. Counsel for the Public argues that the Applicant should not be permitted to frustrate the clear purpose of the rule by obtaining a waiver.

C. Town of Newington

On April 22, 2016, the Town of Newington (Newington) filed its Objection to Applicant's Motion to Partially Waive Site 301.03(c)(3)-(5). Newington is concerned that failing to fully comply with the rules will present the Subcommittee with incomplete and inaccurate information about the Project's impacts on individual abutting properties and Newington as a whole.

Newington submits that the Applicant has not satisfied the requirements of N.H. CODE ADMIN. RULES, Site 302.05(a) for waivers, and argues that the Applicant has not demonstrated that a waiver would serve the public interest and would not disrupt the orderly and efficient

resolution of the matters before the Subcommittee.¹ Additionally, Newington asserts that the Applicant's failure to fully comply with the newly adopted rules calls into question the completeness of the Application, and that granting the Applicant's request for partial waivers would impact the orderly and efficient resolution of this docket.

On October 20, 2016, Newington filed a Supplemental Objection to Applicant's Motion to Partially Waive Site 301.03(c)(3)-(5). Through its Supplemental Objection, Newington asserts additional grounds for requesting denial of the Applicant's Motion to Partially Waive Site 301.03(c)(3)-(5). Newington first addresses the Applicant's concern that expanding the area displayed on its maps would require varying the scale of the map continuously along the route or adjusting the scale to accommodate the largest abutting property. Newington proposes a solution, noting that the Applicant could prepare larger maps using the existing scale and fold them into the binders submitted as part of the Application, or roll and provide them in protective tubes. Newington submits that this solution would not be onerous and is in fact contemplated by N.H. CODE ADMIN. RULES, Site 301.02(a), which provides that oversized documents shall be folded to 8 ½ x 11 inch sheets, or rolled and provided in protective tubes. Newington argues that the Applicant has failed to demonstrate that compliance with the rules would be onerous.

Newington further disagrees with the Applicant's assertion that compliance with N.H. CODE ADMIN. RULES, Site 301.03(c)(3)-(5) would not provide the Subcommittee with any additional meaningful information to inform their decision about whether to issue a Certificate of Site and Facility. Newington argues that the Applicant's failure to comply with the rules from which it seeks waivers will leave the Subcommittee with incomplete and skewed information

¹ Newington reserved its right to supplement its Objection after it had the opportunity to fully review the entire Application, or at such other time, as directed by the Committee. At the time of its initial Objection, Newington argued that it was unclear whether affected property owners were aware of the Application and/or the Applicant's request for waivers of the rules. Newington argued that granting a waiver at that juncture, before affected landowners had been provided with notice and an opportunity to respond, would not be in the public interest and would create serious due process concerns. Newington supplemented its Objection on October 20, 2016.

about the Project's proximity to, and impacts on, abutting properties and the structures and resources within them. Newington argues that the information required by N.H. CODE ADMIN. RULES, Site 301.03(c)(3)-(5) is necessary to assist the Subcommittee in making the findings required by RSA 162-H:16, IV(c), regarding impacts on aesthetics, historic sites, water quality and the natural environment. Newington further argues that because the Subcommittee must determine whether the Project will unduly interfere with the orderly development of the region, it is important that the Application contain an accurate and complete identification of all resources within as much of the area surrounding the Project as possible, so that the Subcommittee can examine the Project's context within the region, and not simply within the limited context of the area within and "adjacent" to the proposed right-of-way. Newington notes that in its deliberations in developing the language in the N.H. CODE ADMIN. RULES, Site 301.03(c)(3), the Subcommittee expressly rejected the phrase "adjacent to the site" and replaced it with "abutting property." Newington submits that the Applicant's failure to provide all of the information required by N.H. CODE ADMIN. RULES, Site 301.03(c)(3)-(5) results in exclusion of important data from the maps contained in Volume 2, Appendix 2, of the Application. By way of example, Newington notes that:

- Newington's National Register Historic District, an important historic resource which will be transected by the Project, is not depicted in its entirety.
- Maps 21 and 22 (LL #410) do not show the entire Frink Farm property, which is listed in the National Register of Historic Places. In addition, the property that is shown is not entirely designated as historic.
- Map 22 shows only a very limited portion of Little Bay Road, which is a designated scenic road.
- Map 21 (LL #408) fails to identify the Pickering Farm (which is eligible for listing on the National Register of Historic Places) as an historic resource, does not show the entire property, or the historic farm house and outbuildings.

- The abutting property owned by Newington shown on Maps 21-22 (LL#408.08) is not shown in its entirety and does not show the Town's Historic District (cemetery, Meeting House, Parade/Open Space, etc.).
- The aforementioned Project Maps contain charts and illustrations that obliterate sections of the Maps, making it impossible to determine what lies beneath them.

Finally, Newington argues that the Applicant's failure to fully comply with its mapping and identification obligations may require other parties to "fill in the blanks," created by the Applicant's failure to provide all of the information required by N.H. CODE ADMIN. RULES, Site 301.03(c)(3)-(5). Newington argues that the required information is highly relevant to the statutory criteria that the Subcommittee must apply in determining whether to grant a certificate of site and facility for the Project. Newington argues that shifting the burden of production to other parties unfairly requires that they expend time, effort, and money to compile information that the rules require of the Applicant, and therefore will impact the orderly and efficient resolution of this docket.

On October 20, 2016, Durham and UNH filed its Support of the Newington's Supplemental Objection to Applicant's Motion to Partially Waive Site 301.03(c)(3)-(5). On October 20, 2016, The Durham Point/Little Bay Abutters filed its Support of the Newington's Supplemental Objection to Applicant's Motion to Partially Waive Site 301.03(c)(3)-(5).

D. Thomas A. DeCapo and Yael D. DeCapo

Thomas A. DeCapo and Yael D. DeCapo (the DeCapo Family) argue that a waiver of N.H. CODE ADMIN. RULES, Site 301.03(c)(3)-(5) is not warranted. Specifically, the DeCapo Family submits that the Applicant has not shown that the purpose of the rule can be satisfied by an alternative method, nor that compliance with the rules would be onerous or inapplicable. The DeCapo Family argues that the Applicant's failure to fully comply with the provisions of N.H. CODE ADMIN. RULES, Site 301.03, presents the Subcommittee with incomplete information about

the transmission line's impacts on abutting properties – including the DeCapo Property – and about the Project's impact on Little Bay. The DeCapo Family argues that the incomplete mapping provided by the Applicant could deprive intervenors, such as itself, and the Subcommittee, from analyzing the impact of displaced sediment from jet plowing on the shoreline. The DeCapo Family argues that in its request for partial waivers, the Applicant seeks to usurp the Subcommittee's role in assessing the environmental impact of the Project. The DeCapo Family further submits that the Applicant makes unsubstantiated promises about the impact of the Project, such as "the Project will not discharge to surface waters or to groundwater, runoff from the Project will be appropriately controlled and directed away from surface waters and wetlands, and any soil disturbance will be restored after construction of the Project is complete." DeCapo Family Objection, p. 7 (internal quotations omitted). The DeCapo Family asserts that the Applicant is essentially asking the Subcommittee to simply trust that its limited mapping of surface waters and wetlands will be of no consequence.

The DeCapo Family also points to the Applicant's mapping of Little Bay and argues that the Applicant cites to the sediment dispersion modeling created by the Applicant's experts and expects the Subcommittee to accept such modeling at face value without the opportunity to evaluate potentially contradictory evidence that might be submitted by experts retained by other parties during the course of the proceedings. The DeCapo Family argues that it is the role of the Subcommittee, not the Applicant or the Applicant's experts, to determine whether the Project will have unreasonable adverse effects, and that providing incomplete mapping as justification for a request for waiving the mapping requirements, effectively usurps the Subcommittee's discretion. The DeCapo Family further urges that complete mapping is important where, as here, the Applicant proposes to undertake an unprecedented method to construct the underwater section of the line by conducting extensive jet plowing in Little Bay. The DeCapo Family argues

that this will disturb the sediment and release it into Little Bay, and that compliant mapping would enable the Subcommittee to better assess the impact of the re-settled sediment and to more fully evaluate the opinions of the Applicant's experts on this issue. The DeCapo Family notes that the location and scope of existing shellfish, an important natural resource vulnerable to the re-settling of the displaced sediment, is not depicted on the present mapping.

With respect to the impact on historical sites, the DeCapo Family argues that there are likely many historical sites on the abutting properties, in addition to those currently mapped by the Applicant, as the Little Bay area was settled by Native Americans and then colonists since 1630. Specifically, the DeCapo Family references a "1600 mill," adjacent to their property line, which is not included in the area mapped by the Applicant. The DeCapo Family submits that the rule requires mapping beyond the Project path itself so that the Subcommittee can see the full extent of the area impacted, and that by seeking waiver of these requirements, the Applicant is seeking to deprive the Subcommittee from taking into consideration the full extent of the historical/cultural and archeological resources in the area impacted by the Project. The DeCapo Family submits that the limited information proffered by the Applicant deprives abutting property owners from fully analyzing the impact of the Project on their property and impedes on the Subcommittee's ability to assess the impact of the Project. The DeCapo Family argues that there is no good cause for waiver of the mapping requirements.

The DeCapo Family additionally argues that the Applicant has not demonstrated that full compliance with the mapping requirements would be onerous or inapplicable. The DeCapo Family notes that while the Applicant does claim that compliance would require increasing the size and scale of existing conditions maps, the Applicant does not claim that compliance is technically unfeasible or would be unduly expensive.

IV. STANDARD OF REVIEW

The waivers sought by the Applicant are governed by N.H. CODE ADMIN. RULES, Site 302.05(a) that provides as follows:

- (a) The committee or subcommittee, as applicable, shall waive any of the provisions of this chapter, except where precluded by statute, on its own motion or upon request by an interested party, if the committee or subcommittee finds that:
 - (1) The waiver serves the public interest; and
 - (2) The waiver will not disrupt the orderly and efficient resolution of matters before the committee or subcommittee.

Site 302.05(b) further requires that in determining the public interest, the Subcommittee shall waive a rule when: (1) compliance with the rule would be onerous or inapplicable given the circumstances of the affected person; or (2) the purpose of the rule would be satisfied by an alternative method proposed.

V. ANALYSIS

A. N.H. CODE ADMIN. RULES, Site 301.03(c)(3) – Identification and Mapping of Property Lines Residences, Industrial Buildings, and Other Structures and Improvements

N.H. CODE ADMIN. RULES, Site 301.03(c)(3) requires the Applicant to identify property lines, residences, industrial buildings, other structures “within the site, on abutting property with respect to the site, and within 100 feet of the site if such distance extends beyond the boundary of any abutting property.” The Applicant requests a partial waiver of N.H. CODE ADMIN. RULES, Site 301.03(c)(3) to the extent it requires mapping of structures beyond what the Applicant has provided, arguing that it is impractical and unreasonably burdensome to require the Applicant to map all property lines, residences, industrial buildings and other structures and improvements outside of the mapped area.

The Applicant's Motion to Waive N.H. CODE ADMIN. RULES, Site 301.03(c)(3) does not provide substantial support for the proposition that the public interest requires waiver. While the Applicant states that the rule is onerous, that claim is unsupported by the facts. The Motion fails to identify any of the surrounding properties in general terms, by size, distance, or any specific features of the surrounding property. The Motion does not advise the Subcommittee on how many properties are affected by waiver of the rule, the type of properties, and whether the affected properties are private or public lands. Without knowledge of these facts, the Subcommittee cannot find that compliance with the rule would be onerous or inapplicable under the circumstances, or that there is a satisfactory alternative. Waiver based on the information provided is not in the public interest. Therefore, the request to waive N.H. CODE ADMIN. RULES, Site 301.03(c)(3) is denied without prejudice. Should the Applicant file a new motion for waiver, it should cite to specific facts and circumstances that warrant waiver under N.H. CODE ADMIN. RULES, Site 302.05.

B. N.H. CODE ADMIN. RULES, Site 301.03(c)(4) – Identification of Wetlands and Surface Waters

N.H. CODE ADMIN. RULES, Site 301.03(c)(4) requires the Applicant to identify wetlands and surface waters “within the site, on abutting property with respect to the site, and within 100 feet of the site if such distance extends beyond the boundary of any abutting property, except if and to the extent such identification is not possible due to lack of access to the relevant property and lack of other sources of the information to be identified.” The Applicant requests a partial waiver of the rule, arguing that requiring strict compliance with the rule would require increasing the size and scale of the existing conditions mapping, making the relevant information less clear, that waiver will not disrupt the orderly and efficient resolution of matters before the Subcommittee, and that requiring strict compliance will not add any additional pertinent

information, but instead would have the effect of shifting the Subcommittee's analysis towards wetlands and surface waters that cannot reasonably be expected to be impacted.

The Applicant supported this request for a waiver by providing data for wetlands and surface waters within 1,000 feet of either side of the Project right-of-way. While the Applicant could not conduct a complete delineation of such wetlands and surface waters due to lack of access to private property, it did provide substitute data based on the United States Fish and Wildlife Service, National Wetlands Maps. In addition, as part of the siting process, the Project will undergo a complete wetlands review by the Department of Environmental Services (DES). Requiring the Applicant to provide more detail under these circumstances would be onerous. In addition, the Applicant has provided substitute data that is satisfactory. Finally, the Applicant has filed a wetlands application with DES, that will undergo extensive review by that agency as part of the siting process. The Applicant's request to waive provisions of N.H. CODE ADMIN. RULES, Site 301.03(c)(4) is granted.

C. N.H. CODE ADMIN. RULES, Site 301.03(c)(5) - Identification of Natural, Historic, Cultural, and Other Resources

N.H. CODE ADMIN. RULES, Site 301.03(c)(5) requires the Applicant to identify natural, historic, cultural, and other resources "within the site, on abutting property with respect to the site, and within 100 feet of the site if such distance extends beyond the boundary of any abutting property, except if and to the extent such identification is not possible due to lack of access to the relevant property and lack of other sources of the information to be identified." The Applicant seeks partial waiver of N.H. CODE ADMIN. RULES, Site 301.03(c)(5), arguing that extending its analysis of historic properties beyond ½ mile of the transmission line would be onerous for the Project and inapplicable due to the flat topography of the surrounding area, and that it is impractical and unreasonably burdensome to require the Applicant to map all natural resources outside of the area already mapped by the Applicant.

There appears to be significant natural, historic and cultural resources that may be impacted by the Project. These resources include, but are not limited to, the Frink Farm, the Newington Historic District, Little Bay Road, and the Pickering Farm in the Durham Point Historic District. The extent of these resources, and the impact of the Project on other resources will be among the important considerations before the Subcommittee. While the Applicant asserts that additional mapping would be onerous for the Project and inapplicable due to the flat topography of the surrounding area, and that it is impractical and unreasonably burdensome to require the Applicant to map all natural resources outside of the area presently mapped, the Applicant offers no facts demonstrating that it would be onerous to comply with N.H. CODE ADMIN. RULES, Site 301.03(c)(5). If anything, flat topography of the surrounding area should make it easier for the Applicant to comply with the rule. The Motion does not provide the Subcommittee with any facts that warrant limiting the identification of natural, historical, and cultural resources as required in the rule. Therefore, the request for waiver from the requirements of N.H. CODE ADMIN. RULES, Site 301.03(c)(5) is denied.

VI. ORDER

It is hereby ordered that Applicant's Motion to Partially Waive Site 301.03(c)(3)-(5) is granted in part and denied in part;

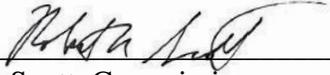
It is hereby further ordered that the Applicant's request to waive provisions of N.H. CODE ADMIN. RULES, Site 301.03(c)(3) is denied without prejudice;

It is hereby further ordered that the Applicant's request to waive provisions of N.H. CODE ADMIN. RULES, Site 301.03(c)(4) is granted; and

It is hereby further ordered that the Applicant's request to waive provisions of N.H. CODE ADMIN. RULES, Site 301.03(c)(5) is denied.

SO ORDERED this twenty-ninth day of December, 2016 by the Site Evaluation

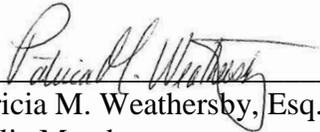
Subcommittee:



Robert R. Scott, Commissioner
Public Utilities Commission
Presiding Officer



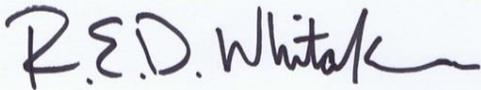
Evan Mulholland, Designee
Administrator
Department of Environmental Services



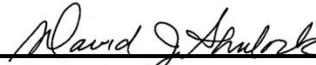
Patricia M. Weathersby, Esq.
Public Member



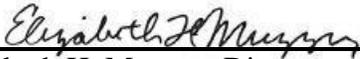
Charles Schmidt, Designee
Administrator
Department of Transportation



Rachel E.D. Whittaker
Public Member



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



Elizabeth H. Muzzey, Director
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Department of Cultural Resources