

**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 301.08(d)(2)**<sup>1</sup>

**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 301.08(d)(2) (Motion), requesting that the Subcommittee partially waive the requirements of N.H. CODE ADMIN. RULES, Site 301.08(d)(2). The Subcommittee reviewed the Motion and deliberated at a hearing held on November 2, 2016. After deliberations, the Subcommittee voted, 4-3, to grant the Motion. Subcommittee Members Scott, Weathersby, Mulholland and Schmidt voted to grant the motion. Subcommittee Members Muzzey, Shulock and Whitaker

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<sup>1</sup> At the time that the Applicant filed its Application and Motion to Partially Waive, the rule was codified as N.H. CODE ADMIN. RULES, Site 301.08(c)(2). The rule has since been re-codified as of N.H. CODE ADMIN. RULES, Site 301.08(d)(2).

voted against the motion. This Order memorializes the majority's decision.

## **II. POSITION OF THE PARTIES**

### **A. Applicant**

Site 301.08(d)(2), requires that the Applicant provide the following information:

- (2) A facility decommissioning plan prepared by an independent, qualified person with demonstrated knowledge and experience in similar energy facility projects and cost estimates; the decommissioning plan shall include each of the following:
  - a. A description of sufficient and secure funding to implement the plan, which shall not account for the anticipated salvage value of facility components or materials;
  - b. The provision of financial assurance in the form of an irrevocable standby letter of credit, performance bond, surety bond, or unconditional payment guaranty executed by a parent company of the facility owner maintaining at all times an investment grade credit rating;
  - c. All transformers shall be transported off-site; and
  - d. All underground infrastructure at depths less than four feet below grade shall be removed from the site and all underground infrastructure at depths greater than four feet below finished grade shall be abandoned in place.

*See* N.H. CODE ADMIN. RULES, Site 301.08(d)(2).

The Applicant requests that the Subcommittee waive the following requirements of N.H. CODE ADMIN. RULES, Site 301.08(d)(2): (i) the requirement to hire independent experts to develop a decommissioning plan for the Project; (ii) the requirement to provide forms of financial assurances; (iii) the requirement that all transformers be transported off-site; and (iv) the requirement to remove all underground infrastructure at depths less than four feet below grade.<sup>2</sup>

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<sup>2</sup> The Applicant is not seeking a waiver of Site 301.08(d)(2)a., as the Applicant asserts that it has already satisfied this requirement. The Applicant submits that the Application and the pre-filed testimony of Michael Ausere already describe in reasonable detail the sources and means by which the Applicant would assure sufficient and secure funding to implement the plan.

The Applicant requests a waiver of the requirement to hire an independent third-party to prepare the decommissioning plan for two reasons: (1) the Applicant can satisfy the rule by an alternative method by using its own highly trained and experienced personnel, and requiring the Applicant to hire a third party would be an unnecessary expenditure of customer money and would not, therefore, be in the public interest; and (2) requiring that a decommissioning plan be prepared by an independent person at the time of the application is impracticable to the circumstances of an electric transmission system built for reliability purposes. The Applicant submits that it is extremely rare for transmission line owners to decommission and completely remove a 115 kV transmission line and related facilities that are needed for reliability purposes. The Applicant argues that once a transmission line is constructed for reliability purposes, it becomes an integral part of the electric transmission system in the New England region that the Independent System Operator-New England (ISO-NE) includes as an element of its studies. The Applicant further submits that while it is not uncommon for existing high voltage transmission lines to be re-conducted and refurbished, it is only under exceptional circumstances that they are removed completely. The Applicant asserts that the SEC should find that the requirement to hire an independent person to prepare a decommissioning plan at the time of the application not applicable to reliability projects.

The Applicant submits that it included decommissioning information in its Application, and argues that the rule Site 301.08(d)(2) does not expressly require applicants to provide a fully detailed decommissioning plan. The Applicant requests that to the extent the Subcommittee interprets the rule to require a fully detailed decommissioning plan at this time, that such a requirement be waived. The Applicant states that transmission lines that are built to ensure the reliability of the electric transmission system remain in-service for several decades and are rarely decommissioned, therefore, the decommissioning information that the Applicant has provided

constitutes what is reasonably available at this time. The Applicant argues that a more detailed decommissioning plan cannot be developed at this time as it would need to take into account any physical changes to the right-of-way, and to the lines located thereon, that may have occurred over time, as well as all applicable laws and rules that exist at the time of decommissioning. The Applicant submits that the alternative and more practicable method of satisfying the purpose of the rule would be for the Applicant to submit a detailed decommissioning plan, to the extent required at the time of decommissioning, to the Subcommittee pursuant to its authority under RSA 162-H:4, to monitor the construction and operation of the facility to ensure compliance with the terms and conditions of a certificate.

The Applicant additionally seeks a waiver of Site 301.08(d)(2)b., requiring the provision of specific types of financial assurance, and argues that the purpose of the rule is satisfied by an alternative method. Specifically, the Applicant argues that it has demonstrated in its Application and the pre-filed testimony of Michael Ausere, its “enduring financial strength and reliability to fund the cost of decommissioning, if and when that occurs.” The Applicant also asserts that the FERC-approved transmission tariff provides a satisfactory alternative mechanism for recovering the cost of decommissioning, and therefore, separate financial assurance is not required and that requirement should be waived.

The Applicant submits that Site 301.08(d)(2)c., is not applicable and should be waived as the construction of the transmission line does not include the installation or addition of any new transformers.

Finally, the Applicant requests a waiver of the requirements of Site 301.08(d)(2)d., requiring that infrastructure at depths less than four feet below grade be removed. The Applicant requests that the Subcommittee find that this rule is not applicable. In support, the Applicant argues that the Project will be built primarily on an existing utility right-of-way that is owned in

fee by the Applicant, or is controlled by it through perpetual easements. The Applicant asserts that unlike public roadways that can be put to several different public and private uses, the right-of-way will be dedicated exclusively to utility use for the foreseeable future. The Applicant further submits that complete removal of transmission infrastructure is unnecessary in an existing right-of-way or within public roads, and that removing infrastructure could potentially create more severe environmental impacts in certain locations. The Applicant argues that because the Project is constructed in an existing right-of-way, it may be more environmentally beneficial to leave the bottoms of the transmission structure in place, especially if they are located in protected wetlands or other resource areas that may exist at the time of decommissioning. The Applicant states that the transmission line requires the construction of underground segments, which include duct banks, manholes, underground cable, and submarine cable, and that these inert materials are typically placed 3 to 10 feet below grade and are designed not to impede surface activities such as vehicle travel or agricultural uses. The Applicant submits that if it was required to strictly comply with Site 301.08(d)(2)d., the Applicant would have to dig down to the top of the underground facilities, remove the upper portion of the underground facilities to 4 feet below grade, and then re-grade the excavated soil or road. Further, the Applicant asserts that submarine cable is installed from 3½ to 8 feet deep below the sediments of Little Bay, and that undertaking removal of these facilities would likely cause more environmental impacts than abandoning the entire underground and underwater facilities in place, and would place hardships on the underlying landowners whose property the transmission line traverses.

As part of the Applicant's request for partial waiver, the Applicant states that it will submit a decommissioning plan, should the removal of the Project infrastructure be required, based on the right-of-way and the existing state and federal land use and environmental rules in existence at the time of the decommissioning.

The Applicant submits that granting these partial waivers will not disrupt the orderly and efficient resolution of the proceedings before the Subcommittee.

**B. Counsel for the Public**

Counsel for the Public partially objects to the Applicant's request for waiver from the provisions of Site 301.08(d)(2). Specifically, Counsel for the Public objects to the Applicant's requests for waivers from the requirement of a decommissioning plan prepared by an independent qualified person, the requirement to prepare a fully detailed decommissioning plan, and the content requirements of Site 301.08(d)(2)d. Counsel for the Public agrees that waiver of Site 301.08(d)(2)b., is appropriate for a reliability project, and suggests that a waiver of Site 301.08(d)(2)c., is unnecessary as the subsection is not applicable to the Project.

Counsel for the Public submits that the Applicant has not demonstrated grounds for waiving the requirement to produce a compliant decommissioning plan. Counsel for the Public submits that the Applicant's argument that transmission projects "typically 'continue in service indefinitely,'" is contrary to the clear language of the rules, which require a decommissioning plan for all energy facilities, and therefore the rule is not inapplicable to the Project. Counsel for the Public's Objection, p. 2-3.

Counsel for the Public also argues that the fact that the Project is a reliability project has no bearing on the requirement that the decommissioning plan be prepared by an independent person. Counsel for the Public argues that while the Applicant may have qualified personnel, the rule expressly requires that an independent person prepare the plan. Counsel for the Public submits that the purpose of the rule is to ensure an unbiased view of the likely costs and engineering requirements of decommissioning. Counsel for the Public argues that having an employee of the Applicant, rather than an independent person, prepare a decommissioning plan is not an "alternative method" that would satisfy the purpose of the rule. Counsel for the Public

notes that the only grounds supplied by the Applicant to support a waiver of the requirement that the plan be prepared by an independent third-party, is that it would be unnecessary expenditure of customer money. Counsel for the Public argues that this is not an appropriate ground for waiving a rule that is intended to protect the public by ensuring an adequate, independent plan is in place to decommission energy facilities at the end of their useful life.

Counsel for the Public notes that to the extent that the Applicant requests that the requirement for a decommissioning plan be deferred to an undisclosed future date, this request fails to meet the standards for waiver under Site 302.05, as the Applicant cannot predict the future of energy infrastructure needs in New Hampshire, or the continued need for the proposed transmission line for reliability purposes. Counsel for the Public submits that the purpose of a decommissioning plan is both to be prepared for potential future decommissioning of the Project, and to inform the Subcommittee as to the eventual costs of a future decommissioning. Counsel for the Public argues that the fact that such decommissioning may or may not be far in the future is irrelevant.

Counsel for the Public also argues that to the extent that the Applicant argues that changes in the circumstances and applicable laws may make a present day decommissioning plan obsolete, the Applicant can, and should, periodically update its decommissioning plan to address such changed circumstances. Counsel for the Public submits that the fact that circumstances may change in the future does not obviate the purpose of filing a decommissioning plan now as part of the Application. Counsel for the Public argues that waiver of either the requirement that an independent person prepare a decommissioning plan, or that the decommissioning plan be submitted in appropriate detail as part of the Application is inappropriate, and that the Applicant has not met its burden of demonstrating that compliance with the rule would be onerous or inapplicable, or that an alternative method would satisfy the purpose of the rule.

With respect to the requirements of Site 301.08(d)(2)b., Counsel for the Public agrees that in the context of a reliability project subject to a FERC-approved transmission tariff, the purpose of the financial assurance requirement in the rule is satisfied and that a waiver is appropriate. Counsel for the Public argues however, that to be effective under the FERC tariff, an asset retirement obligation must exist to trigger cost recovery through rates, and submits that the Subcommittee may wish to consider, as part of its review of the Application, whether to impose a retirement obligation on the Project.

With respect to Site 301.08(d)(2)c., Counsel for the Public submits that where there are no new transformers proposed to be installed as part of the Project, this requirement is inapplicable. Counsel for the Public believes that no waiver is necessary, however, as a compliant decommissioning plan would simply state the fact that no transformers are part of the Project and, therefore, need not be transported off-site. Counsel for the Public suggests that the waiver request should be denied as unnecessary.

With respect to waiver of the requirement for removing underground infrastructure to a depth of four feet pursuant to Site 301.08(d)(2)d., Counsel for the Public first argues that the Applicant's assertion that the right-of-way is dedicated exclusively to utility use is not accurate. Counsel for the Public submits that much of the right-of-way where the transmission line is proposed is owned in fee by third parties with the Applicant holding non-exclusive use easements. Counsel for the Public notes that while the utility uses within the right-of-way are permitted for the foreseeable future, the easements are not exclusive, and the fee-owners retain the right to use their property within the right-of-way as long as such use does not interfere with the Applicant's utility use of the right-of-way. Counsel for the Public suggests that the purpose of the requirement to remove decommissioned infrastructure down to a depth of four feet below grade is to remove the environmental and physical impact of decommissioned energy facilities



from the property. Counsel for the Public argues that landowners should not be required to suffer the continued interference of unused energy infrastructure on their property. Counsel for the Public argues that the Applicant has only argued that compliance would be inconvenient, and has failed to demonstrate how compliance with the rule would be onerous or inapplicable. Further, Counsel for the Public notes that the Applicant's statement that fully removing the infrastructure could potentially create greater environmental impacts, as opposed to leaving the infrastructure in place, is unsupported. Counsel for the Public notes that while it is conceivable, that there may be specific locations where strict compliance with the rule may result in greater environmental impact, the Applicant has requested a blanket waiver rather than identifying specific areas of concern, and providing specific evidence to the Subcommittee of the environmental impact. Counsel for the Public notes that denying the blanket waiver request would not necessarily preclude the Applicant from submitting a more targeted waiver requested supported by specific evidence.

### **III. STANDARD OF REVIEW**

The waivers sought by the Applicant are governed by our administrative rules. N.H.

CODE ADMIN. RULES, Site 302.05(a) states:

- (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.

N.H. CODE ADMIN. RULES, 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.

#### IV. ANALYSIS

The Subcommittee finds that the financial assurances provided through the Application, the pre-filed testimony of Michael Ausere, and under the FERC-approved transmission tariff provide a satisfactory alternative mechanism for recovering the cost of decommissioning if it becomes necessary at some future date.

The Applicant submits that Site 301.08(d)(2)c., is not applicable and should be waived as the construction of the transmission line does not include the installation or addition of any new transformers. The Subcommittee agrees.

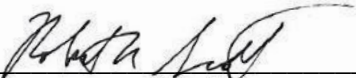
The Subcommittee is satisfied that for the purpose of the waiver request, the Applicant has provided a potential alternative to the hiring of an independent expert. However, the condition of an independent third party expert may be required as a condition of the certificate.

Based upon the individualized circumstances of this Project, the Subcommittee finds that partial waiver of the decommissioning requirements is in the public interest and will not disrupt the orderly and efficient resolution of matters before the Subcommittee. Namely, the Subcommittee notes that this Project is a reliability project and maintenance and upkeep of the Project will be required to continue to provide electric transmission to residents of New Hampshire. As opposed to a commercial project, this reliability project is unlikely to be decommissioned at any time in the foreseeable future. Best management practices, laws and rules may all change over the lifetime of the Project. It is not possible to predict the state of the art for decommissioning an electric transmission line decades into the future. The ISO-NE tariff assures adequate financing for decommissioning once a notice of retirement is given.

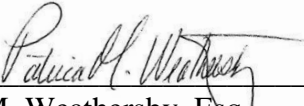
Therefore the Subcommittee grants the Applicant's request to waive the N.H. CODE ADMIN. RULES, Site 301.08(d)(2) as a requirement of the Application in this docket. However, the Applicant and all other parties should be prepared to address decommissioning during the


adjudicative process as part of the Subcommittee's obligation to consider the orderly development of the region, and other statutory factors that may be impacted by decommissioning.

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

  
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Robert R. Scott, Commissioner  
Public Utilities Commission  
Presiding Officer

  
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Evan Mulholland, Designee  
Administrator  
Department of Environmental Services

  
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Patricia M. Weathersby, Esq.  
Public Member

  
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Charles Schmidt, Designee  
Administrator  
Department of Transportation