

**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**

**April 28, 2017**

**ORDER ON MOTION TO INTERVENE**

**(Keith Frizzell)**

**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 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 April 21, 2016, Attorney Christopher Aslin was designated to serve as Counsel for the Public in this docket.

On June 1, 2016, the Subcommittee reviewed the Application. The Subcommittee determined that the Application contains sufficient information to satisfy the Application requirements of each state agency having jurisdiction, under state or federal law, to regulate any aspect of the construction or operation of the proposed facility. *See* RSA 162-H:7, IV. The

Subcommittee also made an independent determination that the Application contains sufficient information to carry out the purposes of RSA 162-H. *See* RSA 162-H: 7, III.

On June 23, 2016, the Subcommittee issued a Procedural Order setting forth, among other deadlines, a deadline for filing petitions to intervene on July 22, 2016. On August 24, 2016, an Order on Petitions to Intervene was issued. Following the Order, a number of intervenors filed motions for reconsideration and/or rehearing. On October 10, 2016, the Subcommittee conducted a hearing on the pending motions. Following the hearing, on November 29, 2016, the Subcommittee issued Orders addressing the requests for reconsideration and/or rehearing.

On January 20, 2017, the Applicant filed an Uncontested Motion to Stay Procedural Schedule. By Order dated February 15, 2017, the Presiding Officer granted the Applicant's Motion to Stay Procedural Schedule staying the procedural schedule until such time as an amendment to the Application was filed and the Applicant and the parties submitted a new proposed procedural schedule.

On February 3, 2017, the Division of Historic Resources requested an extension of time, until March 31, 2017, to complete its review, due to the receipt of extensive public comment. On April 24, 2017, DHR informed the Subcommittee by letter that it could not complete its review of above ground resources before June 16, 2017.

On February 6, 2017, the Department of Environmental Services also requested an extension of time to a date that is "30 days after the date when Eversource provides all final requests for project impacts to be reviewed by DES, or to a date to be determined in accordance with proposed provisions included within the Applicant's Uncontested Motion to Stay Procedural." On April 24, 2017, Rene Pelletier on behalf of DES advised counsel to the Subcommittee that DES could not complete its review in this project before August 1, 2017.

On March 3, 2017, the Subcommittee received a late-filed Petition to Intervene from Mr. Keith Frizzell. The Applicant objected to Mr. Frizzell's Petition on March 13, 2016.

Under the current procedural schedule Counsel for the Public and all Intervenors were required to submit data requests to the Applicant by April 19, 2017 and the Applicant must respond by May 12, 2017. To date no technical sessions have been conducted in this docket.

On April 25, 2017, the Subcommittee voted to extend deadlines for state agencies to provide final reports and suspended the deadline for a final decision.

This Order grants Mr. Frizzell'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 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. 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**

Mr. Frizzell owns real estate located at 24 Fox Point Lane in Newington, New Hampshire. He claims that the right-of-way where the Applicant seeks to construct the Project crosses his property in two separate locations. Mr. Frizzell claims that the Project will be visible from his property and will have a substantial impact on his property and his rights as a property owner. Mr. Frizzell also asserts that his intervention will not affect the orderly and prompt conduct of the proceedings because the procedural schedule in this docket was suspended by Order dated February 15, 2017.

The Applicant argues that Mr. Frizzell's Petition should be denied because it was filed late and allowing intervention at this stage of the proceeding will impair the orderly and prompt conduct of the proceedings. Specifically, the Applicant asserts that the parties have already propounded data requests upon the Applicant and allowing Mr. Frizzell to intervene at this stage of the proceedings will be obstructive and will cause additional delays. The Applicant also

argues that Mr. Frizzell's intervention will not be in the interests of justice because Mr. Frizzell failed to intervene in a timely manner and failed to set forth a reason for the delay of his request. Finally, the Applicant requests the Subcommittee to limit Mr. Frizzell's intervention to the issues related to the Project's impact on his property.

#### **IV. ANALYSIS AND FINDINGS**

As an owner of land where the Project will be located, Mr. Frizzell has a substantial interest in the outcome of these proceedings. He should be allowed to intervene so that he can address the impact of the Project on his interests, rights, and privileges. Allowing Mr. Frizzell to intervene, at this stage of the proceedings, will not interfere with the orderly development of this docket. Under the current Partial Procedural Schedule, the Applicant is required to respond to the data requests propounded by the Intervenors on or before May 12, 2017. Mr. Frizzell's data requests, if any, can be addressed and answered by the Applicant within the time-frame currently designated by the Procedural Schedule in advance of the technical sessions if they are propounded upon the Applicant on or before May 11, 2017.

#### **V. ORDERS**

It is hereby ordered that the Petition to Intervene filed by Mr. Keith Frizzell is granted;  
and

It is hereby ordered that Mr. Frizzell shall propound his data requests upon the Applicant on or before May 11, 2017 and the Applicant shall answer by May 25, 2017.

SO ORDERED this twenty-eighth day of April, 2017.

  
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Robert R. Scott, Presiding Officer  
Commissioner, Public Utilities Commission