

**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 a Certificate of Site and Facility**

August 10, 2018

**ORDER ON LATE MOTION TO INTERVENE
(Crowley Joyce Revocable Trust)**

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.)

On June 13, 2016, the Subcommittee accepted the Application, finding it contains sufficient information to carry out the purposes of RSA 162-H. On June 23, 2016, the Subcommittee issued a Procedural Order setting forth, among other deadlines, a deadline for filing petitions to intervene by July 22, 2016. On August 24, 2016, the Presiding Officer issued an Order on Petitions to Intervene. Several 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 an amendment to the

Application was filed and the Applicant and the parties submitted a new proposed procedural schedule.

On February 6, 2017, the Department of Environmental Services (DES) 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 March 29, 2017, The Applicant filed an Amended Application. On April 24, 2017, Rene Pelletier on behalf of DES advised the Subcommittee that DES could not complete its technical review of this Project before August 1, 2017. On April 25, 2017, the Subcommittee voted to extend deadline for state agencies to provide final reports and suspended the deadline for a final decision.

The Presiding Officer issued a Revised Procedural Schedule on June 20, 2017. Adjudicative hearings were scheduled for October 2017. On August 10, 2017, the Applicant moved to postpone the final adjudicative hearings until the concerns raised by DES are appropriately addressed. On August 21, 2017, the Presiding Officer granted the motion to postpone.

On February 28, 2018, DES filed its Final Decisions and recommendations.

On April 6, 2018, the Subcommittee further suspended the statutory timeframe to render a final decision. On the same day the Presiding Officer issued a Revised Procedural Order governing the remaining discovery and establishing a schedule for further discovery and technical sessions. The Revised Procedural Order calls for a Final Prehearing Conference on August 22, 2018 and for adjudicative hearings to begin on August 29, 2018.

On July 26, 2018, Mark Joyce and Karen Crowley, Trustees of the Crowley Joyce Revocable Trust (Crowley Joyce) filed a late Petition to Intervene (Petition). The Applicant objected and Crowley Joyce replied (Reply).

This order grants the late request to intervene but limits the extent of intervention.

II. Standard For Intervention

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* Site 202.11 (b)-(c).

Under RSA 162-H:4, V, the Presiding Officer may 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 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* 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. Position of the Parties

Crowley Joyce owns property at 52 Gundalow Landing in Newington. The property is identified as Lot # 6 on a Plan entitled Subdivision of Little Bay, Newington, New Hampshire, dated February 13, 1984, by the Kimball Chase Company, Portsmouth, New Hampshire, recorded in Rockingham County Registry of Deeds as Plan No. D-12730. The Crowley Joyce property abuts property through which the Applicant has an easement. The Crowley Joyce property is shorefront property on Little Bay. Crowley Joyce claims that its property “is immediately adjacent to the location where Eversource proposes to jet plow Little Bay in Newington and to construct a large concrete bunker or apron on the shoreline directly in front of their property.” Petition p. 1. Crowley Joyce argues that constructing concrete mattresses as proposed by the Applicant will adversely affect aesthetics, orderly development of the region and will impinge on their private property rights.

Crowley Joyce also alleges the Project, as proposed, violates certain protective covenants governing the Gundalow Landing subdivision. Crowley Joyce asserts that the proposed Project exceeds the scope of the Applicant’s easement and therefore the Applicant does not have a sufficient easement within which to construct the Project.

Crowley Joyce recognizes that its petition to intervene is late. They explain that they were unaware of the possibility that the Applicant might construct a concrete mattress near Gundalow Landing. They claim to have first learned of concrete mattresses at the technical session held on July 10, 2018. They also argue that the Applicant failed to describe the concrete mattress in reasonable detail.

Crowley Joyce argues that despite the late request, its intervention will not impair the orderly and prompt conduct of the proceedings. To support this argument, they point out that they have not sought to file late testimony or conduct further discovery. *See Reply*, p. 4.

The Applicant objects to the Petition. The Applicant notes that the deadline for filing petitions for intervention was over two years ago. The Applicant argues that all direct testimony in this docket has been filed and discovery is complete. The Applicant contests Crowley Joyce's stated reason for late filing. The Applicant argues that the potential to construct concrete mattresses is adequately addressed in the Application and in subsequent filings. The Applicant cites to several places in the original Application and the Amended Application describing the proposed use of concrete mattresses.¹ The Applicant disputes Crowley Joyce's claim that the easement is insufficient or that the Applicant does not have sufficient property rights to construct the Project as identified in the Application. The Applicant also argues that issues surrounding restrictive covenants and disputes over property rights are best left to the courts.

The Applicant alternatively argues that if intervention is granted it should be limited and Crowley Joyce should be combined with intervenor Keith Frizzell for all purposes.

IV. Analysis

The submarine construction of the Project in Little Bay has been the subject of great controversy in this docket. The proceedings in this docket have been stayed and delayed to allow the Applicant, DES, Counsel for the Public and the intervenors to research and investigate the impacts of the proposed construction on Little Bay. Extensive discovery by way of data requests and technical sessions is complete. This discovery yielded more detailed information

¹ Application for a Certificate of Site and Facility, at E-8, 87, 89,92, 97-98,100, Appendix 2-Environmental Maps, Map 17-19; Pre-Filed Testimony of Anthony Godfrey dated April 12, 2016, at page 6, line 2428 (adopted by William Wall). Amended Application Environmental Maps, Appendix 2-a; Revised Environmental Maps dated September 1, 2017. *See* Objection p. 4.

concerning the proposed concrete mattresses. However, the use of concrete mattresses is referenced in the Application, the Amended Application, and supporting documents, albeit rather obscurely. Allowing intervention so late in the process risks impairing the orderly and prompt disposition of the matter that has been pending for more than two years.

On the other hand, the proximity of the Crowley Joyce property to the easement, Little Bay and the proposed Project establishes a substantial interest in the outcome of the proceeding. The question becomes whether there is a way to accommodate both the Crowley Joyce interest and to conclude the proceedings in a prompt and orderly manner.

Allowing intervention on a limited basis will permit Crowley Joyce to protect its interests in the proceeding and assure an orderly and prompt disposition. Crowley Joyce asserts that it does not seek to file late testimony or conduct discovery. *See* Reply p. 4. Allowing late testimony or further discovery would impair the prompt disposition of the proceedings as discovery is complete and the adjudicative hearing is scheduled to begin in a little over two weeks. However, limiting the procedures in which Crowley Joyce may participate eliminates the risk of further delay. Crowley Joyce's participation will not impair the prompt and orderly disposition of the proceeding if limited to examination of witnesses, argument and briefing. Allowing intervention on these terms does not delay the proceeding and will not require filing additional testimony, discovery or technical sessions.

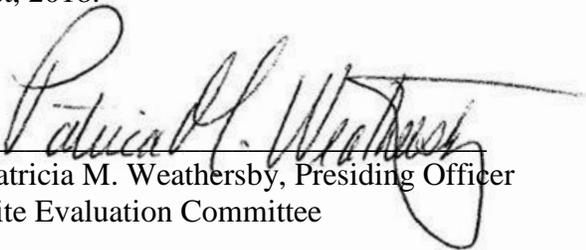
The Applicant's alternate request to combine Crowley Joyce with Keith Frizzell is denied. The Frizzell property and the Crowley Joyce property are different. The Frizzell property abuts the overhead portion of the line and the Crowley Joyce property is adjacent to the underground and underwater portions of the line. Their interests do not neatly coincide.

V. ORDERS

It is ordered that the Petition to Intervene filed by Mark Joyce and Karen Crowley on behalf of the Crowley Joyce Revocable Trust is granted; and

It is further ordered that the Crowley Joyce Trust's intervention shall be limited to cross-examination of witnesses, final argument and briefing. The Crowley Joyce Trust may not engage in formal discovery or file testimony of witnesses and there will be no delay in the scheduled proceedings.

SO ORDERED this tenth day of August, 2018.



Patricia M. Weathersby, Presiding Officer
Site Evaluation Committee