

**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**

May 20, 2019

**ORDER ON MOTION TO STAY
DECISION AND ORDER GRANTING CERTIFICATE OF SITE AND FACILITY**

This Order denies the Motion of Conservation Law Foundation to Stay Decision and Order Granting Certificate of Site and Facility.

I. PROCEDURAL HISTORY

On January 31, 2019, the Subcommittee issued a written Decision and Order Granting the Application for a Certificate of Site and Facility (Decision) and an Order and Certificate of Site and Facility with Conditions (Certificate). The procedural history in this docket is discussed at length in the Decision.

On March 4, 2019, the Town of Durham, the Conservation Law Foundation (CLF), and the Durham Residents Group of Intervenors filed motions for rehearing. The Applicant objected. On March 11, 2019, the Subcommittee held a public hearing and deliberations on the pending motions. On April 11, 2019, the Subcommittee issued an Order Denying Motions for Rehearing.

On April 19, 2019, the Applicant notified the SEC Administrator of its intent to commence construction on May 6, 2019, of portions of the Seacoast Reliability Project. On May 1, 2019, CLF filed a Motion to stay the Decision. The Applicant objected.

II. POSITIONS OF THE PARTIES

CLF argues that it is premature for the Applicant to begin construction and that allowing the Applicant to proceed could result in wasted resources, unnecessary environmental and

community impacts, and practical constraints on other entities with decision making authority. In particular, CLF argues that the Subcommittee should stay the Decision and Certificate and prevent the Applicant from commencing construction of the Project because: (i) CLF intends to petition the Supreme Court for judicial review; (ii) the United States Army Corps of Engineers has not yet rendered a determination on the Project's pending application for a Section 404 Permit under the Clean Water Act; and (iii) New Hampshire Department of Transportation (DOT) has not issued permits required for the construction of the Project.

The Applicant argues that there is nothing in RSA 162-H or RSA 541 that authorizes the Subcommittee to issue the stay requested by CLF. RSA 162-H:12, I-II provides that the Certificate can be suspended by the Committee if the conditions of the Certificate are violated or upon a finding of a material misrepresentation. The Applicant states that CLF does not raise any fact warranting suspension of the Certificate under RSA 162-H:12, I-II. The Applicant also argues that RSA 541:5 does not apply because it authorizes the Subcommittee to suspend the Certificate only upon filing of a motion for rehearing and the rehearing process is complete. Finally, the Applicant asserts that RSA 541:18 specifically precludes the Subcommittee from taking the requested action as the only tribunal that may grant the relief requested is the Supreme Court.

III. STANDARD OF REVIEW

The motion raises a procedural claim that may be determined by the Presiding Officer. *See* RSA 162-H:4, V.

Rules of statutory interpretation are well-settled in New Hampshire:

When construing statutes and administrative regulations, we first examine the language used, and, where possible, we ascribe the plain and ordinary meanings to words used. Words and phrases in a statute are construed according to the common and approved usage of the

language unless from the statute it appears that a different meaning was intended. Additionally, we interpret disputed language of a statute or regulation in the context of the overall statutory or regulatory scheme and not in isolation. We seek to effectuate the overall legislative purpose and to avoid an absurd or unjust result. We can neither ignore the plain language of the legislation nor add words which the lawmakers did not see fit to include.

Bovaird v. N.H. Dep't of Admin. Servs., 166 N.H. 755, 758-759 (2014) (citations and quotations omitted). When interpreting two or more statutes that deal with a similar subject matter, the Courts construe them so that they do not contradict each other, and so that they will lead to reasonable results and effectuate the legislative purpose of the statutes. *Maroun v. Deutsche Bank Nat'l Trust Co.*, 167 N.H. 220, 225 (2014) (citation omitted).

IV. ANALYSIS AND FINDINGS

“[A] tribunal that exercises a limited and statutory jurisdiction is without jurisdiction to act unless it does so under the precise circumstances and in the manner particularly prescribed by the enabling legislation.” *Appeal of Campaign for Ratepayers' Rights*, 162 N.H. 245, 250 (2011) (quotation and citation omitted). The Committee is a tribunal with limited statutory jurisdiction.

RSA 541:5 and RSA 162-H:12 authorize the Subcommittee to suspend the Certificate. RSA 541:5 provides that: “upon the filing of . . . [a] motion for rehearing, the commission shall within ten days either grant or deny the same, or suspend the order or decision complained of pending further consideration, and any order of suspension may be upon such terms and conditions as the commission may prescribe.” RSA 162-H:12, authorizes the Committee to suspend the Certificate when it determines that: (i) any term or condition of the Certificate is being violated; (ii) the Applicant has made a material misrepresentation in the application or in the supplemental or additional statements of fact or studies required of the Applicant; or (iii) the Applicant has violated the provisions of RSA 162-H or any rule adopted under RSA 162-H. *See* RSA 162-H:12. The provisions of RSA 541:5 and RSA 162-H:12 do not apply in this case.

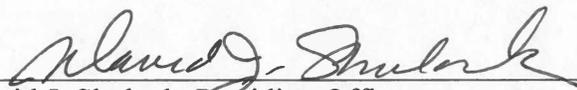
Motions for rehearing were filed, the Subcommittee held a public hearing, and issued a written order denying the motions. CLF does not allege that any condition of the Certificate or provisions of RSA 162-H have been violated. CLF does not argue that the Applicant has made a material misrepresentation in the Application or in the supplements to the Application.

Furthermore, RSA 541:18 specifically provides that “[n]o appeal or other proceedings taken from an order of the commission shall suspend the operation of such order; provided, that the supreme court may order a suspension of such order pending the determination of such appeal or other proceeding whenever, in the opinion of the court, justice may require such suspension.” According to the clear and unambiguous language of RSA 541:18, the New Hampshire Supreme Court, not the Subcommittee, is the tribunal that is authorized to suspend the Decision and Certificate pending the determination of the appeal.

As a tribunal with limited statutory jurisdiction, the Subcommittee is not authorized by its enabling statute (RSA 162-H) to suspend the Certificate under the circumstances asserted in the Motion to Stay.

The Motion of Conservation Law Foundation to Stay Decision and Order Granting Certificate of Site and Facility is denied.

SO ORDERED this twentieth day of May, 2019.



David J. Shulock, Presiding Officer
Site Evaluation Committee