

State of New Hampshire
Site Evaluation Committee

www.nhsec.nh.gov
21 South Fruit St., Suite 10
Concord, New Hampshire
03301-2429
Telephone (603) 271-2435
Fax (603) 271-4033



Robert R. Scott
Vice-Chair

September 23, 2019

VIA E-MAIL AND FIRST-CLASS MAIL

Marcia Brown
20 Noble Street
Somersworth, NH 03878-2621

**Re: Response to Motion for Enforcement and to Reopen Record
Site Evaluation Committee Docket No. 2015-04**

Dear Ms. Brown:

I have reviewed your correspondence and the attachments submitted to the Site Evaluation Committee on September 9, 2019. I have also reviewed Eversource's objection dated September 13, 2019. In your submittal, you requested that the Committee enforce conditions contained in the Certificate issued on January 31, 2019,¹ in the above-referenced docket. Specifically, you claim that Eversource made certain enforceable commitments to your client and now seeks to avoid those commitments in violation of the Certificate. You also assert that failure by Eversource to comply with commitments made during the Site Evaluation Committee proceedings in Docket No. 2015-04 results in a material misrepresentation. Lastly, you request reopening the record of the proceeding to accept additional evidence attached to your motion.

In its deliberations, the Subcommittee acknowledged that it received testimony from your client, Ms. McCosker, that: (1) the Project will have negative impacts on her business; (2) Eversource offered a number of suggestions to mitigate and minimize the Project's impacts; and (3) Ms. McCosker expressed her dissatisfaction with Eversource's offers. Decision at Page 271. The Subcommittee also recognized that construction and operation of the Project may directly or indirectly impact Ms. McCosker and other business and property owners and that it was paramount to have a process in place through which business owners and property owners could address these impacts through avoidance, mitigation, minimization, and/or compensation, when appropriate. Decision at Page 272. The Subcommittee then adopted conditions for a dispute resolution procedure. Decision at Pages 276-278 and Certificate at Pages 14-15.

RSA 162-H:12, I, provides the administrator as designee, may determine whether any term or condition of a certificate is being violated. As a general matter, the Site Evaluation Committee does not have jurisdiction to adjudicate property rights between private parties. Since the Committee does not

¹ Contemporaneous with the Certificate, the Subcommittee issued a Decision and Order (Decision) granting the application for Site and Facility. Both documents are posted on the Committee's website at the following link: <https://www.nhsec.nh.gov/projects/2015-04/2015-04.htm#Current> (Tabs 367 and 368).

have such authority, I cannot recommend that the Committee open a docket to enforce your claims or to pursue an emergency suspension action. Your concerns may be better addressed in a court with jurisdiction to consider this matter or Ms. McCosker may avail herself of the dispute resolution process established in the Certificate.

If you disagree with this determination, you may file a petition for declaratory ruling consistent with RSA 541-A:1, V, RSA 162-H:8-a, II (d)(2), and Site 203. If you do file a petition for declaratory ruling with the Committee, please be sure to include the filing fee and indicate whether you are requesting a 3-member subcommittee. It may also be helpful for you to review the most recent declaratory ruling docket decided by the Committee in Docket No. 2018-01, at the following link: <https://www.nhsec.nh.gov/projects/2018-01/2018-01.html>.

If you have further questions please contact me at pamela.monroe@sec.nh.gov.

Sincerely,

A handwritten signature in black ink, appearing to read 'P. Monroe', written in a cursive style.

Pamela G. Monroe
Administrator

Ec: Service List Docket No. 2015-04