

**STATE OF NEW HAMPSHIRE  
SITE EVALUATION COMMITTEE**

**Docket No. 2015-05**

**Re: Joint Application of New England Power Company  
d/b/a National Grid and Public Service Company of New Hampshire  
d/b/a Eversource Energy for a Certificate of Site and Facility**

**January 6, 2017**

**ORDER ON MOTION FOR REHEARING**

**I. BACKGROUND AND DESCRIPTION OF THE PROJECT**

On August 5, 2015, New England Power Company d/b/a National Grid (NEP) and Public Service Company of New Hampshire (PSNH) d/b/a Eversource Energy (collectively Applicant) filed a joint application for a certificate of site and facility (Application) with the Site Evaluation Committee (Committee). The Application sought the issuance of a Certificate of Site and Facility (Certificate) approving the siting, construction and operation for a new 345 kV electric transmission line (Project). The proposed transmission line was proposed to be constructed in an existing developed transmission line corridor between NEP's Tewksbury 22A Substation in Tewksbury, Massachusetts, and PSNH's Scobie Pond 345 kV Substation in Londonderry, New Hampshire. The pre-existing transmission line corridor traverses the towns of Pelham and Hudson in Hillsborough County, and Windham and Londonderry, in Rockingham County.

On August 12, 2015, a Subcommittee was appointed to consider the Application. On November 30, 2015, Margaret Huard's motion to intervene was granted.

The adjudicative hearing in this docket was held on June 13 and 14, 2016. During the adjudicative hearing, the Applicant presented testimony of its witnesses who were cross-

examined by Counsel for the Public and Ms. Huard. Ms. Huard also presented testimony and was cross-examined. The Subcommittee posed questions to several of the witnesses.

The Subcommittee deliberated on June 14 and July 11, 2016.

On July 7, 2016, Ms. Huard filed a Motion for Site Visit. Ms. Huard's Motion was denied on July 11, 2016.

A Decision and Order granting a Certificate was issued on October 4, 2016. On October 19, Ms. Huard filed a Motion for Rehearing, on October 26, the Applicant objected to Ms. Huard's Motion, and on October 31, 2016, Ms. Huard filed an addendum to her Motion for Rehearing.

The addendum took the form of a petition and contains signatures from a number of residents that claim to be abutters to the Project, or who otherwise live in proximity to the Project. Presumably, the addendum was filed with the purpose of identifying the new parties as "directly affected" persons pursuant to RSA 541:3. On October 31, 2016, a hearing was held on Ms. Huard's Motion for Rehearing.

This Order denies the Motion for Rehearing.

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

### **A. Ms. Huard**

#### **1. Public Interest**

Ms. Huard argues that the Subcommittee "negligently and wrongfully" made a determination that the Project is in the public interest "with little to no deliberation" on the specific criteria contained in N.H. CODE ADMIN. RULES, Site 301.16. In support of these claims, Ms. Huard argues that the Subcommittee disregarded much of her testimony in favor of the testimony of expert witnesses presented by the Applicant. She argues that her status as a licensed certified public accountant as well as her training in forensics and fraud detection should

have been considered in qualifying her as an expert in determining the likelihood that statements of others were false or questionable. In particular, Ms. Huard complains that her testimony regarding public health and safety and property rights was disregarded by the Subcommittee.

## **2. Private Property and Property Rights**

Ms. Huard argues that the Subcommittee failed to properly consider private property and property rights during its deliberations. She claims that the Subcommittee failed to consider the market value of real property and the legal implications of language contained in certain easement deeds. Ms. Huard asserts that the Subcommittee failed to consider whether, and determine that, the Applicant owns or has a legal right allowing it to construct the Project within the existing right-of-way. Ms. Huard further asserts that the Subcommittee's finding that the Applicant has legal right to construct the Project within the existing right-of-way is erroneous. In addition to her claims about the legal implications of language in certain easement deeds,<sup>1</sup> Ms. Huard claims that the Project poses an undue burden on "servient properties," and identifies the undue burden as additional tree clearing within the right-of-way which, in her opinion, will affect a change in the natural environment and the "climate of the servient private properties," as well as increase the risk of electric shock to others.

## **3. Property Values**

Ms. Huard asserts that the Subcommittee disregarded various aspects of the testimony she submitted and the arguments she presented. Ms. Huard claims that the Subcommittee put too much weight on the expert opinion of the Applicant's expert, Mr. Chalmers, while ignoring Ms. Huard's opinions and criticisms of Mr. Chalmers' testimony. Based upon her characterization of

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<sup>1</sup> It is noted that Ms. Huard does not own property subject to the easement for the right-of-way and she is not an abutter to the right-of-way. Her property is on David Drive in Hudson. See Applicant's Objection to Ms. Margaret Huard's Petition to Intervene, Attachment A (depicting location of Huard property in relation to the right-of-way).

the Subcommittee's deliberations, Ms. Huard concludes that the Subcommittee ignored the burden of proof required of the Applicant with respect to property values.

#### **4. Aesthetics**

With regard to the Subcommittee's consideration of the aesthetic impacts of the Project, Ms. Huard again claims that the Subcommittee showed a "complete unjust disregard for a change in aesthetics for private property owners." Motion for Rehearing, p. 9. Ms. Huard then cites to various portions of the transcript of the deliberations to accentuate her ultimate conclusion that the Applicant failed to meet its burden of proof on the issue. Ms. Huard argues that the Subcommittee's decision about the impact of the Project on aesthetics is contrary to the evidence presented. Specifically, Ms. Huard asserts that the Subcommittee: (i) failed to consider the effect of the Project on views from private properties; and (ii) failed to consider Ms. Huard's testimony and exhibits while reaching the decision that the Project will not have an unreasonable adverse effect on aesthetics.

#### **5. Public Health and Safety**

Ms. Huard argues that the Subcommittee failed to properly consider the impact of the Project on public health and safety and she disagrees with the conclusions reached by the Subcommittee. Ms. Huard points to specific portions of the testimony and the deliberations to buttress her argument that the Subcommittee failed to properly consider public health and safety issues. In addition, Ms. Huard complains that the Subcommittee did not take into account her own physical experiences when in proximity to the existing power lines. Ms. Huard asserts that: (1) the Subcommittee's decision that the Project, and associated risk of electric shock, will not have unreasonable adverse effect on public safety is erroneous; (2) the Subcommittee failed to consider that the Project may have negative effect on people who stand or walk under it; and (3)

the Subcommittee failed to consider the risk of poles collapsing and made an erroneous determination that there is no risk associated with collapsed poles.

## **6. Lack of Site Visit**

Ms. Huard argues that the Subcommittee should grant a rehearing because a site visit was not conducted in this docket. Ms. Huard argues that it is uncommon for the Site Evaluation Committee not to conduct a site visit. She argues that failing to conduct a site visit in this particular case eliminated the opportunity for the Subcommittee to personally observe the proximity of residences to the right-of-way, the extent of the tree barrier, and the natural environment along the right-of-way. In addition, she claims that the Subcommittee could have spoken to residents along the right-of-way during a site visit, and that “at least one Subcommittee member may have experienced firsthand the sensation of electric shock or other negative health effects while performing the site visit, confirming the dangers communicated to them regarding public health and safety.” Motion for Rehearing, p. 15.

## **B. Applicant**

The Applicant objects to Ms. Huard’s Motion. As a threshold matter, the Applicant challenges the standing of the 20 non-party signatories to Ms. Huard’s Motion and argues that since they are not intervenors in this docket, no weight should be given to their added signatures. The Applicant argues that Ms. Huard fails to identify any issue that was overlooked or mistakenly conceived by the Subcommittee and fails to introduce any new evidence that was not before the Subcommittee during the adjudicative hearings. The Applicant argues that Ms. Huard merely restates prior arguments and requests a different outcome.

The Applicant argues that it was appropriate for the Subcommittee to treat Ms. Huard’s testimony as lay testimony and to note that she did not present any expert testimony. The Applicant argues that under those circumstances the Subcommittee reasonably weighed the

testimony presented by Ms. Huard and appropriately gave that testimony and the evidence the weight that it deserved under the circumstances.

### **1. Public Interest**

With respect to Ms. Huard's allegation that the Subcommittee determined the matter of public interest "with little to no deliberation," the Applicant submits that the Subcommittee appropriately and thoroughly considered and balanced all of the factors in N.H. CODE ADMIN. RULES, Site 301.16, to find that the Project as a whole is in the public interest. The Applicant further argues that Ms. Huard failed to point to any issue that has been overlooked or misconceived by the Subcommittee and has not provided any new evidence warranting rehearing.

### **2. Private Property and Property Rights**

The Applicant responded to Ms. Huard's claim that the Subcommittee failed to consider property rights in its consideration of the Application. The Applicant argues that the supplemental testimony of David Plante and Bryan Hudock established by a preponderance of the evidence that the Applicant has the necessary legal rights to construct the Project. The Applicant also argues that the record fully supports the Subcommittee's finding.

### **3. Property Values**

With respect to Ms. Huard's arguments that the impact on property values was not given due consideration, the Applicant responds that the Committee's rules do not specifically require consideration of "private property," when analyzing whether a project would unduly interfere with the orderly development of the region. The Applicant argues that it demonstrated, through the testimony of James Chalmers, that the Project will not have a discernable effect on property values or marketing times in local or regional real estate markets. The Applicant further

argues that Ms. Huard has not articulated any issue that was overlooked or misconceived by the Subcommittee.

#### **4. Aesthetics**

The Applicant argues that Ms. Huard's Motion fails to account for the Committee's rules regarding aesthetics which require the Committee to focus its analysis on publically accessible "scenic resources." The Applicant notes that "scenic resources" include only those "resources to which the public has a legal right of access," and argues that private property is "unquestionably excluded from the definition of 'scenic resources.'" Applicant's Objection, p. 10 (quoting N.H. CODE ADMIN. RULES, Site 102.45). The Applicant submits that under its own rules, the Committee is not at liberty to analyze private property in its assessment of whether a proposed project may have an unreasonable adverse effect on aesthetics.

Notwithstanding this argument, the Applicant argues that it submitted a Visual Impact Assessment (VIA) which concluded that the overall visual impact of the Project would be minimal and that Ms. Huard did not present any evidence, studies, or expert testimony regarding the impact of the Project on aesthetics, but provided only her personal opinions about the aesthetic impacts of the Project. The Applicant argues that Ms. Huard's opinion alone was insufficient for the Subcommittee to reject the systematic analysis contained in the VIA. Further, the Applicant argues that to the extent Ms. Huard alleges that the Subcommittee failed to consider "private property" under the public interest prong of the rules, N.H. CODE ADMIN. RULES, Site 301.16(b), the Committee received sufficient evidence and appropriately considered private property. The Applicant notes that David Plante testified about the Applicant's extensive outreach efforts and dedication to working with private landowners along the right-of-way to avoid, minimize, and mitigate the potential impacts to private property as a result of tree clearing and the construction of the Project and that during deliberations, the Subcommittee commended

the Applicant for its willingness to work with private landowners to address potential impacts of the Project. The Applicant concludes that Ms. Huard's Motion fails to raise any issue pertaining to aesthetics that has been overlooked or mistakenly conceived and therefore the Motion should be denied.

## **5. Public Health and Safety**

The Applicant argues that the Subcommittee did not overlook or misconstrue any issue of fact in the record regarding the determination of public health and safety that warrants rehearing. The Applicant further asserts that Ms. Huard has failed to introduce any new evidence in the Motion that establishes good cause for a rehearing. Specifically, the Applicant argues that it demonstrated, through numerous witnesses, appendices, and reports, that the construction and operation of the Project will not have an unreasonable adverse effect on public health and safety. The Applicant argues that the Subcommittee gave the evidence in the record due consideration and that the testimony proffered by David Plante, Bryan Hudock, Garrett Luszciski, Mark Suennen, Dr. William Bailey, and Dr. Gary Johnson, established that the Project will not have an unreasonable adverse effect on public health and safety. The Applicant submits that Ms. Huard's Motion simply argues that the Subcommittee disregarded Ms. Huard's testimony and "failed to consider her unsubstantiated allegations relating to certain sensations or ill effects caused by the existing high-voltage transmission lines in the Project [right-of-way]." Applicant's Objection, p. 13-14. The Applicant submits that the Subcommittee appropriately considered all of the evidence and testimony set forth by Ms. Huard. Finally, the Applicant argues that, with respect to Ms. Huard's concerns that the Subcommittee may have disregarded effects associated with the collapse of a tower, pole, or other structure, the Applicant has appropriately addressed Ms. Huard's concerns through its Supplement #3.



## **6. Site Visit**

The Applicant argues that the Subcommittee properly denied Ms. Huard's late motion for a site visit after the record had closed. The Applicant further argues that the Subcommittee appropriately determined that it did not need to visit the Project right-of-way.

### **III. STANDARD**

Under RSA 541:2, any order or decision of the Subcommittee may be the subject of a Motion for Rehearing or of an appeal in the manner prescribed by the statute. A request for a rehearing may be made by "any party to the action or proceeding before the commission, or any person directly affected thereby." *See* RSA. 541:3. The motion for rehearing must specify "all grounds for rehearing, and the commission may grant such rehearing if in its opinion good reason for the rehearing is stated in the motion." *Id.* Any such motion for rehearing "shall set forth fully every ground upon which it is claimed that the decision or order complained of is unlawful or unreasonable." RSA 541:4.

"The purpose of a rehearing is to direct attention to matters said to have been overlooked or mistakenly conceived in the original decision, and thus invite reconsideration upon the record to which that decision rested." *Dumais v. State of New Hampshire Pers. Comm.*, 118 N.H. 309, 311 (1978) (internal quotations omitted). A rehearing may be granted if the Subcommittee finds "good reason." *See* RSA 541:3. A motion for rehearing must be denied where no "good reason" or "good cause" has been demonstrated. *See O'Loughlin v. NH Pers. Comm.*, 117 N.H. 999, 1004 (1977); *see also In re Gas Service, Inc.*, 121 N.H. 797, 801 (1981).

A motion for rehearing shall:

- (1) Identify each error of fact, error of reasoning, or error of law which the moving party wishes to have reconsidered;
- (2) Describe how each error causes the committee's order or decision to be unlawful, unjust or unreasonable;

(3) State concisely the factual findings, reasoning or legal conclusion proposed by the moving party; and

(4) Include any argument or memorandum of law the moving party wishes to file.

N.H. CODE ADMIN. RULES, Site 202.29.

#### **IV. ANALYSIS**

Ms. Huard has failed to state good cause for rehearing. Ms. Huard does not identify any error of fact, reasoning or law which she wishes to have reconsidered, nor does she describe how such purported error causes the Decision to be unlawful, unjust or unreasonable.

##### **A. Public Interest**

The Subcommittee may issue a Certificate only if it finds that issuance will serve the public interest. *See* RSA 162-H, IV(e). When determining whether the issuance of a certificate will serve the public interest, the Subcommittee is required to consider the following:

- (a) The welfare of the population;
- (b) Private property;
- (c) The location and growth of industry;
- (d) The overall economic growth of the state;
- (e) The environment of the state;
- (f) Historic sites;
- (g) Aesthetics;
- (h) Air and water quality;
- (i) The use of natural resources; and
- (j) Public health and safety.

*See* N.H. CODE ADMIN. RULES, Site 301.16(a)-(j).

Ms. Huard argues that the Subcommittee made a determination that the Project is in the public interest with little to no deliberation on the specific criteria contained in N.H. CODE ADMIN. RULES, Site 301.16. The Subcommittee finds that Ms. Huard has not demonstrated that its decision with respect to the determination of public interest warrants rehearing. The Subcommittee specifically and thoroughly considered all of the evidence before it in finding that

the issuance of a certificate will serve the public interest, including, but not limited to, testimony from the Applicant's experts, Robert Andrew and John W. Martin, the specific need for the Project as a reliability project, and Ms. Huard's arguments that the Project will not serve the public interest. Decision, p. 88-90. The Subcommittee imposed conditions to ensure the public interest and specifically required the Applicant to notify the Subcommittee if the Applicant's forecasted or actual expenditures for the entire Project exceed the projected cost for the entire Project by an amount equal to or greater than 25 percent. The Subcommittee also required that within 30 days of the date of commercial operation, that the Applicant provide the Committee with its forecasted and actual expenditures for the entire Project and its allocation of such expenditures to the New Hampshire portion of the Project. Decision, p. 90-91. The Subcommittee further required that the Applicant shall construct the Project within three (3) years of the date of the Certificate and shall file as-built drawings of the Project with the Committee at the date of the Project's commercial operation. Decision, p. 91.

#### **B. Private Property and Property Rights**

Ms. Huard argues that the Subcommittee failed to properly consider private property and property rights in its deliberations. Ms. Huard has not identified any error of fact, reasoning or law which she wishes to have reconsidered, nor does she describe how such purported error causes the Decision with respect to its analysis of the impact on private property and property rights to be unlawful, unjust or unreasonable. The Subcommittee specifically considered the impact on properties closest to the right-of-way and determined that, on balance, issuance of a certificate will serve the public interest.

#### **C. Property Values**

Ms. Huard has failed to identify any point of fact or law which was overlooked or mistakenly conceived by the Subcommittee with respect to its analysis of the impact of the

Project on property values. In its deliberations, the Subcommittee specifically considered, *inter alia*, the following: (1) testimony from Dr. Chalmers that the impact on market values would be minimal; (2) the visual impact on properties closest to the right-of-way; and (3) the Applicant's efforts to mitigate adverse effects on visual impacts on surrounding properties. The Subcommittee thoroughly considered the evidence before it in making its finding that the Project will not unduly interfere with the orderly development of the region. Specifically, the Subcommittee considered Ms. Huard's testimony regarding the impact of the Project on the ability of property owners to sell their properties, and Dr. Chalmers' opinion that there would be no discernable, measurable effect on local real estate markets or regional real estate markets. Decision, p. 52-56.

#### **D. Aesthetics**

In determining whether the Project will have an unreasonable adverse effect on aesthetics, the Subcommittee is required to consider the following factors:

- (1) the existing character of the area of potential visual impact;
- (2) the significance of affected scenic resources and their distance from the proposed facility;
- (3) the extent, nature, and duration of public uses of affected scenic resources;
- (4) the scope and scale of the change in the landscape visible from affected scenic resources;
- (5) the evaluation of the overall daytime and nighttime visual impacts of the facility as described in the visual impact assessment submitted by the applicant and other relevant evidence submitted pursuant to Site 202.24;
- (6) the extent to which the proposed facility would be a dominant and prominent feature within a natural or cultural landscape of high scenic quality or as viewed from scenic resources of high value or sensitivity; and

- (7) the effectiveness of the measures proposed by the applicant to avoid, minimize, or mitigate unreasonable adverse effects on aesthetics, and the extent to which such measures represent best practical measures.

*See* N.H. CODE ADMIN. RULES, Site 301.14 (a)(1)-(7).

Ms. Huard argues that the Subcommittee failed to consider the effect of the Project on views from private properties and failed to consider her testimony and exhibits while reaching the decision that the Project will have no unreasonable adverse effect on aesthetics. The Subcommittee finds that Ms. Huard has not identified any point of fact or law which was overlooked or mistakenly conceived with respect to its analysis of aesthetic impacts of the Project. During deliberations on June 14, 2016, the Subcommittee specifically addressed the matter of aesthetics and considered the evidence before it, including the Visual Impact Analysis and Ms. Huard's arguments regarding private properties. The Subcommittee specifically addressed Ms. Huard's concerns that certain private properties, by virtue of their location, would suffer adverse aesthetic effects, and noted that the Applicant has made a concerted effort to work with property owners in an effort to mitigate impacts of the Project. Transcript of Deliberations, Day 1, June 14, 2016, p. 46-59. Ms. Huard has failed to identify any point of fact or law which was overlooked or mistakenly conceived by the Subcommittee with respect to its analysis of aesthetic impacts of the Project.

#### **E. Public Health and Safety**

In determining whether the Project will have an unreasonable adverse effect on public health and safety, the Subcommittee must consider: (i) the potential adverse effects of construction and operation of the Project on public health and safety; (ii) the effectiveness of measures undertaken or planned to avoid, minimize, or mitigate such potential adverse effects; and (iii) the extent to which such measures represent best practical measures. *See* N.H. CODE

ADMIN. RULES, Site 301.14 (f)(1). In addition, as to electric transmission lines, the Subcommittee must consider: (i) the proximity and use of buildings, property lines, and public roads; (ii) the risks of collapse of towers, poles, or other supporting structures; (iii) the potential impacts on public health and safety of electric and magnetic fields generated by the proposed facility; and (iv) the effectiveness of measures undertaken or planned to avoid, minimize, or mitigate such potential adverse effects, and the extent to which such measures represent best practical measures. *See* N.H. CODE ADMIN. RULES, Site 301.14 (f)(4).

Ms. Huard has not identified any point of fact or law which was overlooked or mistakenly conceived by the Subcommittee with respect to its analysis of the Project's impact on public health and safety. The Subcommittee finds that it appropriately considered all of the evidence before it in determining the impact of the Project on public health and safety. The Subcommittee specifically considered not only Ms. Huard's testimony regarding her personal experiences, but also the expert testimony of Dr. Bailey and Dr. Johnson. Decision, p. 81-87. The Subcommittee also imposed conditions to ensure the public health and safety. The Subcommittee, in its Decision, required the Applicant to submit measurements of actual electro-magnetic fields both before and after construction as a condition of the Certificate. Further, the Subcommittee required the Applicant to employ traffic controls in accordance with the 2009 edition of the Manual on Uniform Control Devices and DOT policies. Decision, p. 87. The Subcommittee also required that, in order to ensure safety of the public during the construction phase of the Project, the Applicant shall comply with DOT's guidance on traffic control and blasting. Decision, p. 87. Ms. Huard has failed to establish that the Subcommittee overlooked or mistakenly conceived any point of fact or law in making its decision with respect to effects of the Project on public health and safety.

## F. Site Visit

Ms. Huard argues that the decision not to conduct a site visit after the close of the record led to numerous erroneous determinations made by the Subcommittee. Ms. Huard has failed to indicate any error of fact, reasoning, or law, which she wishes to have reconsidered with respect to the decision to deny her late-filed request for a site visit. Ms. Huard's Motion further fails to describe how such purported error causes the Subcommittee's Decision to be unlawful, unjust or unreasonable.

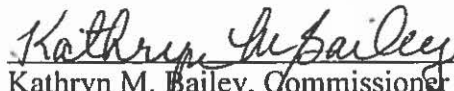
## V. ORDER

Based upon the foregoing analysis, Ms. Huard's Motion for Rehearing is denied.

SO ORDERED this sixth day of January, 2017.



F. Anne Ross, General Counsel, Designee  
Public Utilities Commission  
Presiding Officer



Kathryn M. Bailey, Commissioner  
Public Utilities Commission



Richard A. Boisvert, Designee  
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