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VIA ELECTRONIC MAIL

February 21, 2017

New Hampshire Site Evaluation Committee
Pamela G. Monroe, Administrator
21 South Fruit Street, Suite 10
Concord, NH 03301

**Re: SEC Docket No. 2015-05: Public Service Company of New Hampshire d/b/a
Eversource Energy and New England Power Company d/b/a National Grid:
Applicants' Objection to Motion to Reopen Record**

Dear Ms. Monroe:

Enclosed for filing in the above-captioned docket, please find the Applicants' Objection to Intervener Huard's Motion to Reopen Record.

Please contact me directly should you have any questions.

Sincerely,


Adam M. Dumville

AMD:slb
Enclosure

cc: Distribution List

McLane Middleton, Professional Association
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THE STATE OF NEW HAMPSHIRE

SITE EVALUATION COMMITTEE

SEC DOCKET NO. 2015-05

**JOINT APPLICATION OF NEW ENGLAND POWER COMPANY
D/B/A NATIONAL GRID &
PUBLIC SERVICE COMPANY OF NEW HAMPSHIRE
D/B/A EVERSOURCE ENERGY
FOR A CERTIFICATE OF SITE AND FACILITY**

**APPLICANTS' OBJECTION TO INTERVENER HUARD'S
MOTION TO REOPEN RECORD**

NOW COME New England Power Company d/b/a National Grid ("NEP") and Public Service Company of New Hampshire d/b/a Eversource Energy ("PSNH") (collectively the "Applicants") by and through their attorneys, McLane Middleton, Professional Association, and submit this Objection to Intervener Huard's Motion to Reopen Record (the "Motion") and respectfully request that the New Hampshire Site Evaluation Committee (by its Subcommittee assigned to consider and rule upon this Application) deny the Motion because it is procedurally improper and fails to set forth good cause for reopening the record.

I. Background

On July 23, 2015, the Applicants filed their Application for a Certificate of Site and Facility to site, construct and operate a new 345 kV electric transmission line within the existing transmission right-of-way ("ROW") between the NEP-owned Tewksbury 22A Substation in Tewksbury, Massachusetts and the PSNH-owned Scobie Pond 345 kV Substation in Londonderry, New Hampshire (the "Project").

On June 13 and 14, 2016, the Subcommittee presided over an adjudicative hearing, during which time the Subcommittee heard from 21 witnesses—20 witnesses proffered by the Applicants and Intervener Huard herself—considered over 40 exhibits for the Applicants and

approximately 50 exhibits from Intervener Huard, and received oral and written statements from interested members of the public. The Subcommittee considered not only Intervener Huard's testimony regarding her personal experiences and her opinions relating to electric and magnetic fields ("EMF"), but also the expert testimony of Applicants' witnesses Dr. William Bailey and Dr. Gary Johnson regarding EMF. The Subcommittee also received and considered Stipulated Facts and Requested Findings of the Joint Applicants and Counsel for the Public (May 20, 2016). Upon completion of the adjudicative hearing on June 14, 2016, and after closing the record pursuant to Site 202.26, the Subcommittee began deliberations.

The Subcommittee deliberated on both June 14 and July 11, 2016, and voted unanimously to approve the Project. On October 4, 2016 the Subcommittee issued its written Decision and Order Granting Application for a Certificate of Site and Facility and Order and Certificate of Site and Facility with Conditions. The Certificate, as amended, further requires the Applicants to conduct pre- and post-construction EMF measurements. *See Order on Applicants' Motion for Clarification and Amended Order of Certificate of Site and Facility*, Docket 2015-05 at 6 (Nov. 29, 2016).

On October 19, 2016, Intervener Huard filed a Motion for Rehearing making all of the same arguments that she made during the adjudicative hearing. The Applicants objected on October 26, 2017. The Subcommittee convened a hearing on October 31, 2016 to discuss the pending Motion for Rehearing, and voted unanimously to deny it. On January 6, 2017, the Subcommittee issued a written order denying Intervener Huard's Motion for Rehearing.

On February 17, 2017—42 days after the Subcommittee's Order on Motion for Rehearing, 136 days after the Subcommittee issued its Decision and Order Granting Application for a Certificate of Site and Facility and Order and Certificate of Site and Facility with

Conditions, and 248 days after the close of the record—Intervener Huard has now made yet another attempt to stop and/or delay this needed reliability project by filing a procedurally improper Motion to Reopen the Record.

II. The Motion to Reopen Record is Procedurally Improper and Fails to Satisfy the Required Standard for Reopening the Record

A motion to reopen the record of an administrative proceeding, such as proceedings before the Site Evaluation Committee and the Public Utilities Commission, is only proper before a final written decision is issued. Once a written decision is issued, the appropriate procedural mechanism to review a decision is to file a motion for rehearing pursuant to RSA 541:3.¹

Site 202.27(a) provides that “[a] party may request by written motion that the record in any proceeding be re-opened to receive relevant, material and non-duplicative testimony, evidence or argument.” The record may only be reopened “if the presiding officer determines that additional testimony, evidence or argument is necessary for a full consideration of the issues presented in the proceeding.” Site 202.27(b).

The rule for reopening the record exists to allow the presiding officer to determine whether to receive additional evidence that will assist the committee in fully considering the issues before a certificate is issued or denied. *See generally New Hampshire Telephone Association*, 96 N.H. P.U.C. 632 (stating that a motion to reopen the record only “appl[ies] to matters that have not yet been resolved by the Commission” and that in a case where the record is closed and a written order is issued, “the proper request for relief is not to reopen the record but to seek rehearing for the purpose of considering new evidence”).²

¹ Intervener Huard has already filed a Motion for Rehearing; the new Motion to Reopen the Record essentially seeks a second bite at the apple.

² Other jurisdictions take the same approach. *See e.g.*, RI P.U.C. Rule of Practice and Procedure 1.26(a)(1) (“[A]t any time after the conclusion of a hearing in a proceeding, *but before the issuance of the written order*, any party to

The Site Evaluation Committee's rules found at Site 202, *et seq.*, describe in a linear fashion the Adjudicative Process starting from the assignment of a subcommittee, to appearances of attorneys, to the intervention process, to discovery, to closing the record, to the issuance or denial of a certificate, to motions for rehearing. After the record is closed pursuant to Site 202.26, a party may move to reopen the record pursuant to Site 202.27 as long as the motion is made prior to the Subcommittee's order granting or denying a certificate pursuant to Site 202.28. Once a certificate is issued or denied, the only recourse for a party is to file a motion for rehearing, pursuant to Site 202.29. Here, it is clear that Intervener Huard's Motion to Reopen the Record is procedurally improper and should be denied because a final decision has already been made and Intervener Huard has already unsuccessfully filed for rehearing.

Even if the Motion was procedurally proper, a movant seeking to reopen an administrative record must establish exceptional circumstances and provide sufficient reasoning why the information could not have been provided into evidence during the proceeding, and that the newly provided evidence must reveal facts that would result in a conclusion different from the ultimate decision already made. *See generally New Hampshire Telephone Association*, 96 N.H. P.U.C. 632 ("There is nothing in Comcast's submission that persuades us the information could not have been provided earlier and nothing in the submission that alters our opinion about the nature of Comcast's service or the prospective nature of its offerings.").

The BioInitiative Report provided by Intervener Huard is dated August 2007. Intervener Huard has failed to offer any reason—let alone a credible one—why the report could not have been provided during the hearing. The National Grid Report provided with the motion, dated December 7, 2016, was developed more than two months after the Certificate of Site and Facility

the proceeding may, for good cause shown, move to reopen the proceedings for the purpose of taking additional evidence.") (emphasis added).

was issued and after the Subcommittee deliberated on Intervener Huard's Motion for Rehearing.³ Allowing Intervener Huard to reopen the record after a final decision has been issued, after a motion for rehearing has been denied, and after the 30 day appeal period pursuant to RSA 541:6 has lapsed, would make a mockery of the concept of administrative finality. *See Vermont Yankee Nuclear Power Corp. v. Natural Resources Defense Council, Inc.*, 435 U.S. 519, 554-55 (1978) ("Administrative consideration of evidence . . . always creates a gap between the time the record is closed and the time the administrative decision is promulgated. . . . If upon the coming down of the order litigants might demand rehearings as a matter of law because some new circumstance has arisen, some new trend has been observed, or some new fact discovered, there would be little hope that the administrative process could ever be consummated in an order that would not be subject to reopening.") (citations omitted).

Moreover, Intervener Huard has failed to introduce any new evidence that would establish a substantial likelihood that the Subcommittee would alter its ultimate opinion that the Project would not have an unreasonable adverse effect on public health and safety. The "new evidence" provided by Intervener Huard is, in effect, more of the same argument that Intervener Huard made during the final hearing. The Subcommittee has already considered overwhelming evidence that the Project will not have an unreasonable adverse effect on public health and safety. *See Order on Motion for Rehearing*, Docket 2015-05 at 14 (Jan. 6, 2017).

III. The Evidence Provided by Intervener Huard Is of No Probative Value

The first document submitted by Intervener Huard summarizes magnetic field measurements taken at the home of a single resident, Mr. Dion, on a specific date and time; it is of no probative value. The measured magnetic field levels are well below current scientifically-

³ Of note, to the Applicants' knowledge, the owners of 19 David Drive have not intervened in this proceeding, nor have they submitted any concerns about EMF to either the SEC or the New Hampshire Public Utilities Commission.

established public health guidelines and not at all unusual. The National Institute of Environmental Health Sciences (“NIEHS”) estimates that 31 to 46 million people have similar magnetic field levels at their residences (NIEHS, 2002, p. 30).

The second document submitted by Intervener Huard is a chapter authored by Cindy Sage, who is not a scientist, titled Summary for the Public. The section is one of a number of sections with different authors compiled together in what is called the BioInitiative report. The authors are a self-selected volunteer EMF activists and scientists. The group does not represent or act on behalf of any recognized or authoritative scientific, health, or regulatory agency. The report is meant to provide an alternative view of the scientific literature on potential health effects of extremely low frequency (“ELF”) and radio-frequency (“RF”) EMF to that offered by numerous national and international scientific and public health agencies. The BioInitiative report was completed in 2007 and then updated in 2012. Both versions were posted on the internet and were not published in the peer-reviewed scientific literature.

This second document also has no probative value. The BioInitiative report did not employ the weight-of-evidence approach for assessing scientific research. It selectively references studies that suggest some biological or health effects without consideration given to study quality, but fails to reference a large number of those studies that report no effects. It heavily relied on *in vitro* cellular studies, which are considered only as secondary supplementary sources of information by health and scientific agencies, for example, the International Agency for Research on Cancer (IARC) and the World Health Organization (WHO). At the same time, it almost entirely lacks a thorough review of *in vivo* laboratory animal studies that are considered as one of the primary sources of evidence, in addition to epidemiologic studies, in human health risk assessment.

The conclusions of the BioInitiative report are wholly inconsistent with the conclusions of authoritative health risk assessments conducted by national and international governmental, health, and scientific agencies, such as the WHO, IARC, the International Commission on Non-Ionizing Radiation Protection (ICNIRP), and the NIEHS, whose views were based on a weight-of-evidence review of the research and are on record in Applicants' Appendix AF, "*Current Status of Research on Extremely Low Frequency Electric and Magnetic Field and Health, Merrimack Valley Reliability Project, April 27, 2015*" in this proceeding. None of these agencies have concluded that environmental exposures to ELF magnetic fields at levels below current scientifically-established guidelines pose any risk to human health.

The BioInitiative report has also been widely criticized in the scientific community, for example, by the Health Council of the Netherlands (HCN, 2008) and the Australian Centre for Radiofrequency Bioeffects Research (ACRBR, 2008), for not following generally accepted scientific methods, such as the well-established weight-of-evidence assessment, when reviewing the scientific literature on EMF and health. The criticisms include selective reporting of positive studies in support of a specific conclusion, lack of consideration of study quality, and the heavy reliance on *in vitro* studies of tissues and cells, as opposed to *in vivo* laboratory animal studies and epidemiologic research. These flaws explain why this report's conclusions are largely inconsistent with the conclusions of other national and international expert risk assessment panels and the large body of scientific literature.

In addition to a selective summary of research, the BioInitiative report also includes recommendations for limits on human exposure. However, the report contains no rationale or justification for the recommended limits.

IV. Conclusion

Based on the foregoing, Intervener Huard's Motion should be denied as it is procedurally improper and it fails to articulate any new evidence that should alter the Subcommittee's decision to grant a Certificate of Site and Facility to the Applicants. Because the Motion merely reiterates prior arguments and claims and does not contain new or reliable evidence, the Motion should be denied.

WHEREFORE, the Applicants respectfully request that the Subcommittee:

- A. Deny the motion to reopen record; and
- B. Grant such further relief as requested herein and as deemed appropriate.

Respectfully Submitted,

New England Power Company and
Public Service Company of New Hampshire
By its attorneys,

McLANE MIDDLETON
PROFESSIONAL ASSOCIATION

Dated: February 21, 2017

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Certificate of Service

I hereby certify that on the 21st day of February, 2017 this Motion was sent electronically to the New Hampshire Site Evaluation Committee and an electronic copy was served upon the SEC Distribution List.

Adam Dumville, Esq.
Adam Dumville