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VIA ELECTRONIC MAIL

April 3, 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 Intervener Huard's Motion for Hearing**

Dear Ms. Monroe:

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

Please contact me directly should you have any questions.

Sincerely,

A handwritten signature in black ink that reads "Adam Dumville".

Adam M. Dumville

AMD:slb
Enclosure

cc: Distribution List

McLane Middleton, Professional Association
Manchester, Concord, Portsmouth, NH | Woburn, Boston, MA

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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 FOR HEARING**

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 for Hearing (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, the Motion seeks to cross-examine the Applicants on a report that is not "evidence" pursuant to RSA 541-A:33, RSA 162-H or the Committee's rules, and the Report (as defined herein below) was not required for the Applicants to meet their burden that the Project would not have an unreasonable adverse effect on public health and safety. The Report was submitted solely to demonstrate the Applicants' compliance with a condition of the Certificate of Site and Facility previously issued to the Applicants by the Subcommittee.

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 the hearing, 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 a 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 and on January 6, 2017, after reconvening a hearing, the Subcommittee issued a written order denying Intervener Huard’s Motion for Rehearing.

On February 17, 2017, Intervener Huard made another attempt to stop and/or delay this needed reliability project by filing a procedurally improper Motion to Reopen the Record. The

Motion to Reopen the Record was denied by the Presiding Officer on March 30, 2017 because it was procedurally improper, and merely rehashed duplicative arguments made by Ms. Huard during the course of the proceeding and matters already considered during the deliberations.

On March 28, 2017, the Applicants submitted their report summarizing Pre-Construction Measurements of Electric and Magnetic Field Levels (the “Report”), as required by its Certificate Condition as amended by the *Order on Applicants’ Motion for Clarification and Amended Order of Certificate of Site and Facility*, Docket 2015-05 at 6 (Nov. 29, 2016).

Subsequently, on March 30, 2017, Ms. Huard has filed yet another motion. This time, Ms. Huard seeks to conduct cross examination “on a new piece of evidence submitted by the applicant on March 27, 2017, Pre-Construction Measurements of Electric and Magnetic Field Levels[,]” that, as Ms. Huard puts it, was “submitted after the adjudicative hearing and therefore not available for cross examination during the adjudicative hearing.”

II. The EMF Report Submitted by the Applicants Complies with a Condition of the Certificate—It is Not “Evidence” Admitted by the Committee Before the Record was Closed

The Applicants have already received a Certificate of Site and Facility with Conditions. *See Order and Certificate of Site and Facility with Conditions*, (October 4, 2016). The initial Order contained a requirement that the Applicants conduct pre-construction and post-construction EMF measurements. The condition was subsequently amended following the Applicants’ Motion for Clarification. *See Order on Applicants’ Motion for Clarification and Amended Order of Certificate of Site and Facility*, Docket 2015-05 at 6 (Nov. 29, 2016). The new condition requires:

That the Applicant[s], in consultation with the PUC's Safety Division, shall measure actual electric and magnetic field levels along the Project ROW in the locations and at the distances as near as possible to those identified in Tables A-1 and A-2 in the Application, Appendix AG, Attachment A, both before and after

the Project is placed into service. If peak or near-peak conditions do not occur before elements of the Project are placed into service, Pre-Project measurements should be presented in both raw form and adjusted to reflect a peak loading condition and other conditions represented in Table A-1 and A-2 at each measurement location. Pre-project measurements shall be taken before any existing lines are moved and under conditions as near as possible to conditions assumed in the original modeling shown in the Tables A-1 and A-2. Post construction measurements will be taken during the summer peak loading season and a similar procedure will be used, if necessary, in acknowledgement that the Applicant cannot know in advance when peak loading will occur and that the days planned for measurements may occur when line loadings are below the forecasted peak loading; and it is...¹

The requirement that the Applicants conduct pre-construction and post-construction EMF measurements is a Condition of the Certificate designed to ensure that the calculations and model used in the Application accurately predicts EMF levels along the Project right-of-way. The measurements were not, and are not, required to satisfy any requirement contained in RSA 162-H or the SEC's rules—the Report was not “evidence” submitted during the hearing. Indeed, Site 202.24(a) establishes that RSA 541-A:33 governs the admissibility of “evidence.” However, RSA 541-A:33 only applies to evidence received during an adjudicative hearing, not after the close of the record. Therefore, Ms. Huard is mistaken when she states the Report submitted by the Applicants qualifies as “evidence.”

Moreover, the requirement that the Applicants conduct EMF measurements stems from a condition rooted in Site 301.17, which describes the specific conditions that the Committee may impose on a holder of a Certificate of Site and Facility, once a certificate is issued. Site 301.17(h) specifically provides that the Committee may impose “Other conditions necessary to ensure construction and operation of the energy facility subject to the certificate in conformance with the specifications of the application.” *Id.*

¹ The *Order and Certificate* also ordered that “if the results of the electro-magnetic fields measurements exceed the guidelines of the International Committee on Electromagnetic Safety or the International Commission on Non-Ionizing Radiation Protection, the Applicant shall file with the Committee a mitigation plan designed to reduce the levels so that they are lower than the Commission's or Committee's standards.”

The Applicants have already demonstrated to the Committee that the Project will not have an unreasonable adverse effect on public health and safety. Therefore, the Report submitted to the Committee on March 28, 2017 is not “evidence” submitted to support its Application. The Applicants are simply complying with a condition subsequent, after receiving the Certificate; therefore, the Applicants cannot, as a matter of practice and law, be subject to cross-examination at this time.

III. The Motion to Reopen Record is Procedurally Improper

Ms. Huard’s motion essentially seeks to reopen the record, again. As made abundantly clear by the Presiding Officer’s order dated March 30, 2017, “[a] motion to reopen the record is normally filed after the record in the proceeding has been closed, but a final decision has not been reached.” *Order Denying Motion to Reopen the Record*, Docket No. 2015-05 at 2–3. Here, the record was closed, the Subcommittee deliberated, and the Subcommittee reached a final decision on the Application. The Subcommittee has already further considered and denied Ms. Huard’s motion for rehearing and her motion to reopen to the record to admit additional evidence on EMF.

Now, Ms. Huard erroneously relies on Site 202.26(e), which governs the practice of cross-examination on evidence admitted *before* the record is formally closed, but after the adjudicative hearings are concluded. Site 202.26(a) provides the general rule that at the conclusion of a hearing, the record shall be closed unless a party requests that the record be left open pursuant to Site 202.26(b) “to accommodate the filing of evidence, exhibits or arguments not available at the hearing.” Site 202.26(b). Under this rule, the Presiding Officer may allow the record to remain open, but only for a maximum of 30 days after the completion of the hearing. Site 202.26(c). Subject to 202.26(e), while the record is still *open*, a party may

request the opportunity to cross examine on the additional evidence, exhibits or arguments submitted. Once again, such a date and time for cross examination must be made while the record is open and no later than 30 days following the submission of the additional evidence.

Ms. Huard's reliance on Site 202.26(e) is unfounded. Site 202.26 only allows for cross examination of evidence submitted while the record is open and before the Committee makes a final decision. Ms. Huard did not request that the record remain open following the completion of the hearings.² Once the record was closed, it must be reopened pursuant to Site 202.27 before additional evidence or arguments are provided. Moreover, a motion to reopen the record must be made prior to the final determination or decision of the Subcommittee. *See Order Denying Motion to Reopen the Record*, Docket No. 2015-05 at 3. Here, Ms. Huard has already sought to reopen the record and as previously discussed, her request was denied as being procedurally improper. Therefore, Ms. Huard's current request must be denied.

IV. The Evidence Provided in the Report Verifies the Model Used in the Application

The Report makes abundantly clear that the results of the pre-construction EMF measurements demonstrate that the measured EMF levels along the Project ROW are consistently similar to or lower than the calculated EMF levels contained in Appendix AG of the Application. The results confirm the accuracy and applicability of the modeling approach used to estimate the EMF levels presented in the Application. Indeed, both measured and calculated EMF levels at all locations are far below the recognized health-based standards and guidelines developed by the International Commission on Non-Ionizing Radiation Protection ("ICNIRP")

² Indeed, Site 202.26 contemplates allowing cross-examination for up to 60 days after the completion of the adjudicative hearing. Here, 290 days, over 9 months, have elapsed since the adjudicative hearing was completed and Ms. Huard filed her motion seeking a hearing.

and the International Committee for Electromagnetic Safety (“ICES”). *See Report*, at vii – viii; 28–29.

Once the Project is constructed, the Applicants will perform a similar analysis of EMF levels along the Project ROW to determine the post-construction EMF levels. To the extent the levels rise above those internationally recognized standards, the Applicant will file a mitigation plan with the Committee designed to reduce the levels so that they are lower than the recognized ICNIRP and ICES standards.

V. Conclusion

Based on the foregoing, Intervener Huard’s Motion should be denied as it is procedurally improper and the information submitted by the Applicants clearly verified the model used in the Application, which demonstrate that the Project will not have an unreasonable adverse impact on public health and safety.

[Remainder of page intentionally left blank]

WHEREFORE, the Applicants respectfully request that the Subcommittee:

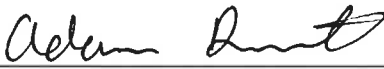
- A. Deny the motion; and
- B. Grant such further relief as requested herein and as deemed appropriate.

Respectfully Submitted,

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

McLANE MIDDLETON
PROFESSIONAL ASSOCIATION

Dated: April 3, 2017

By: 
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Certificate of Service

I hereby certify that on the 3rd day of April, 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