

**THE STATE OF NEW HAMPSHIRE  
SITE EVALUATION COMMITTEE**

Joint Application of Northern Pass Transmission, LLC and Public Service Company of New Hampshire d/b/a Eversource Energy for a Certificate of Site and Facility for the Construction of a New High Voltage Transmission Line in New Hampshire

Docket No. 2015-06

**CITY OF CONCORD'S MOTION FOR REHEARING ON  
ORDER ON INTERVENTION**

The City of Concord, by and through its attorneys, the Office of the City Solicitor, hereby submits the following motion for rehearing pursuant to RSA 541:3 and N.H. Admin. Rule, Site 202.29, stating as follows:

1. On November 17, 2015, Concord moved to intervene.
2. On March 18, 2016, the presiding officer of the Site Evaluation Committee issued an order that consolidated Concord's intervention with other municipalities and materially limited Concord's intervention in this matter. Order on Petitions to Intervene (March 18, 2016) at 8. The order consolidated Concord in Municipal Group 3 (Southern Section) which consisted of Holderness, Ashland, Bridgewater, New Hampton, Bristol, Canterbury, Pembroke and Deerfield.<sup>1</sup> *Id.*
  2. Concord subsequently requested the Site Evaluation Committee ("SEC") to review and modify the order of the presiding officer. On April 12, 2016, the SEC held a hearing on the request for review.
  3. On May 20, 2016, the SEC issued an order denying Concord's request to be provided separate and independent intervenor status. The SEC, however, reconfigured Municipal Group 3. Concord was placed in Municipal Group 3 (South), which is comprised of

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<sup>1</sup> A number of these municipalities also had boards and commissions that intervened.

Canterbury, Concord, Pembroke (Board of Selectmen and Conservation Commission) and Deerfield (Board of Selectmen, Planning Board and Conservation Commission). Concord now files this motion for rehearing. N.H. Admin. Rule, Site 202.29.

4. Concord has distinct interests from the other municipalities and their boards. The manner in which the City of Concord has been grouped with other municipalities violates the requirements under RSA 541-A:32, IV and N.H. Admin. Rule, Site 202.11(e) which provide that to the extent that a presiding officer imposes conditions on intervention, such conditions shall not be “so extensive as to prevent the intervenor from protecting the interest which formed the basis of the intervention.”

5. As discussed in detail in Concord’s motion for review of order on intervention, Concord has a significant interest in this proceeding because the proposed project impacts the orderly development of the region, as well as because Concord owns several parcels of property which will be impacted by the proposed route. The legislature intended for municipalities to have an opportunity to provide their views relative to the site and facility. RSA 162-H:16 states that the SEC may only issue a certificate to the extent that it finds that “[t]he site and facility will not unduly interfere with the orderly development of the region with due consideration having been given to the views of municipal and regional planning commissions and municipal governing bodies.” It is clear from this requirement that municipalities have an important role in the SEC proceedings. In this matter, Concord’s interests are heightened because it has an ownership interest in property that will be impacted by the proposed development.

6. The consolidation of the Concord into Municipal Group 3 (South) contains unworkable and rigorous requirements for conducting discovery, filing of pleadings and for cross-examination of witnesses through one spokesperson. The SEC’s order does not allow

Concord to conduct cross-examination to address issues of specific concern to Concord that are not addressed by the group's spokesperson or by another party's cross-examination. The SEC's order also does not allow Concord to file supplemental pleadings on relevant issues of specific concern to Concord that are not adequately addressed in the group's consolidated pleading. The SEC's order also does not appear to allow Concord to ask questions of witnesses during the technical sessions to the extent issues of specific concern to Concord that are not addressed by the group's spokesperson or another party's questions. This unprecedented approach is not justified and not consistent with the rights afforded to municipalities under previous SEC proceedings. Indeed, the SEC has long allowed municipalities who are impacted by a proposed project the right to independently respond and present evidence on issues in a contested case proceeding. Municipalities have historically been allowed to participate in the adjudicatory process as full parties, and have not been consolidated.<sup>2</sup>

7. The SEC's requirement that Concord participate in this proceeding only through a designated spokesperson and the consolidation of filings with parties in its grouping will prevent Concord from a fair and adequate opportunity to respond to issues in a way that fully protects the City of Concord's procedural due process interests. *See* U.S. CONST. amend. XIV; N.H. CONST., pt. I, art. 15. While on the surface, the issues raised by municipalities may seem similar, each municipality is primarily concerned with the project impacts within their own borders. Concord can only be effectively heard through its own attorneys and through exclusive management of how it presents testimony and legal arguments before the SEC. Moreover, the spokesperson designation could also impair Concord's attorneys from carrying out strategic activities for Concord because of a consolidation obligation imposed by the SEC, which may

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<sup>2</sup> A number of these proceedings were referenced in Concord's motion for review of order on intervention.

require Concord to accommodate the interests of other parties through the cross-examination of witnesses and the filing of briefs.

8. The Board's consolidation and spokesperson requirement that groups Concord with the Towns of Canterbury, Deerfield and Pembroke is also inconsistent with the professional responsibilities of the attorneys for Concord. The municipalities involved in Municipal Group 3 have potentially unique issues, and some of the municipalities may choose to make decisions for strategic or political reasons. Under the Rules of Professional Conduct 1.2(a), a lawyer is required to abide by a client's decisions concerning the objectives of representation. The requirement that the parties choose a "spokesperson" for filing pleadings and presenting cross-examination raises issues for those attorneys representing municipalities who may disagree with the proposed approach of other municipalities and is simply unworkable.

9. For all of the reasons set forth herein, as well as all of the arguments raised in Concord's motion for review of order on intervention, Concord moves for a rehearing on the intervention order. Rather than formal consolidation and mandatory groupings, the SEC should encourage coordination between Concord and the other members of Municipal Group 3 (South) to avoid duplication. It should be noted that Concord has already been coordinating its activities whenever possible with other intervenors in this matter, and it will continue to do so. Concord will continue to work with other intervenors when feasible to minimize duplicative discovery requests, cooperate on the presentation of evidence, cooperate in cross-examination, and cooperate in briefing. Moreover, the SEC continues to have the right to impose limitations during hearings and other proceedings to avoid the duplication of evidence and testimony.

10. In the alternative, the SEC should amend its order to specifically allow Concord to participate in technical sessions and conduct additional cross-examination to address issues of

specific concern that are not addressed by the group's spokesperson or by another party's cross-examination. The SEC should also amend its order to allow Concord to file supplemental pleadings on relevant issues of specific concern that are not adequately addressed in the group's consolidated pleading.

11. In accordance with N.H. Admin. Rule, Site 202.14, Concord has attempted to obtain concurrence from the parties. Concord has been notified that the following parties concur with the relief sought: (1) Deerfield Abutting Property Owner Intervenor Group; (2) Non-Abutting Property Owners: Ashland-Deerfield; (3) the Town of Northumberland; (4) the Town of Whitefield; (5) the Town of Bethlehem; (6) the Town of Sugar Hill; (7) the Town of Franconia; (8) the Town of Easton; (9) the Town of Plymouth; (10) the Town of Bristol; (11) the Town of Pembroke; (12) Town of Canterbury; (13) Grafton County Commissioners; (14) Society for the Protection of New Hampshire Forests; (15) Bruce Ahern; (16) McKenna's Purchase; and (17) Kelly Normandeau. The following parties do not take any position: (1) Town of Littleton; (2) Town of Woodstock; (3) Town of Bridgewater; (4) Town of New Hampton; (5) Town of Deerfield; and (6) Ashland Water & Sewer Department. The International Brotherhood of Electrical Workers objects to the relief sought.<sup>3</sup> As of the time of filing of this motion, Concord has not received a response from the other parties.

WHEREFORE, the City of Concord respectfully requests that the Site Evaluation Committee:

A. Allow Concord to participate in the proceedings as an independent party for purposes of discovery, technical sessions, filing pleadings and cross examination;

B. In the alternative, amend the intervention order to allow the City of Concord: (1) to participate in technical sessions to address issues of specific concern that are not addressed by

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<sup>3</sup> It should be noted that the International Brotherhood of Electrical Workers has been granted independent intervenor status, despite the fact that its sole basis for intervention is as an organization with an economic interest in the project.

the group's spokesperson or by another party's questions; (2) to conduct additional cross-examination during hearings to address issues of specific concern that are not addressed by the group's spokesperson or by another party's cross-examination; and (3) to file supplemental pleadings on relevant issues of specific concern that are not adequately addressed in the group's consolidated pleading.

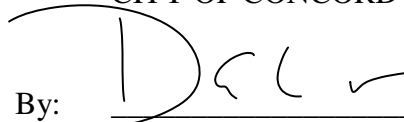
C. Grant such other and further relief as may be just.

Respectfully submitted,

CITY OF CONCORD

June 17, 2016

By:



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**CERTIFICATE OF SERVICE**

I hereby certify that on this 17th day of June 2016, a copy of the foregoing was sent by electronic mail to persons named on the ~~Service List~~ of this docket.

June 17, 2016

By:



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Danielle L. Pacik, Deputy City Solicitor