



VIGGO C. FISH
Direct Dial: 603.226.4412
Email: viggo.fish@mcclane.com
Admitted in NH
11 South Main Street, Suite 500
Concord, NH 03301
T 603.226.0400
F 603.230.4448

November 28, 2016

Via Electronic Mail & Hand Delivery

Pamela Monroe, Administrator
New Hampshire Site Evaluation Committee
21 South Fruit Street, Suite 10
Concord, NH 03301-2429

**Re: Site Evaluation Committee Docket No. 2015-06
Joint Application of Northern Pass Transmission LLC and Public Service Company
of New Hampshire d/b/a Eversource Energy (the "Applicants") for a Certificate of
Site and Facility
Objection to Sabbow Late-Filed Petition to Intervene**

Dear Ms. Monroe:

Enclosed for filing in the above-captioned docket, please find an original and one copy of
Applicant's Objection to Sabbow and Co., Inc.'s Late-Filed Petition to Intervene.

Please contact me directly should you have any questions.

Sincerely,

A handwritten signature in blue ink, appearing to read "Viggo C. Fish".

Viggo C. Fish

VCF:slb

cc: SEC Distribution List

Enclosure

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

DOCKET NO. 2015-06

**JOINT APPLICATION OF NORTHERN PASS TRANSMISSION LLC
AND PUBLIC SERVICE COMPANY OF NEW HAMPSHIRE
D/B/A EVERSOURCE ENERGY
FOR CERTIFICATE OF SITE AND FACILITY**

**APPLICANTS' OBJECTION TO SABBOW AND CO., INC.'S LATE-FILED PETITION
TO INTERVENE**

NOW COME Northern Pass Transmission LLC (“NPT”) 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 respectfully object to the late-filed Petition to Intervene (“Petition”) filed by Sabbow and Co., Inc. (“Sabbow”) on November 16, 2016, in the above-captioned proceeding. As discussed below, Sabbow has not presented a complete and accurate picture of the circumstances, and it has therefore not shown that its substantial interests would be affected by this proceeding and that its intervention would be in the interests of justice. Moreover, to the extent that Sabbow has any claim, it is beyond the jurisdiction of the New Hampshire Site Evaluation Committee (“SEC” or in this case “Subcommittee”).

I. Background

1. The Applicants filed an Application for a Certificate of Site and Facility on October 19, 2015, for a 192-mile electric transmission line with associated facilities (“Northern Pass” or “Project”). The SEC accepted the Application pursuant to RSA 162-H:7, VI on December 18, 2015.

2. On December 22, 2015, the Presiding Officer issued a Procedural Order that, among other things, set February 5, 2016, as the deadline for filing petitions to intervene and he

issued an Order on Petitions to Intervene on March 18, 2016. Subsequently, on May 20, 2016, the Subcommittee issued an Order on Review of Intervention.

3. On June 15, 2016, the Subcommittee issued an Order on Motions to Suspend pursuant to which it extended the overall statutory timeframe from 12 months to approximately 21 months, culminating in a decision by September 30, 2017. On June 23, 2016, the Presiding Officer issued an Order on Pending Motions and Procedural Order that set deadlines for discovery, and the filing of Counsel for the Public (“CFP”) and Intervenor testimony by November 15, 2016.

4. On November 15, 2016, the City of Concord submitted pre-filed testimony by Peter Scott, General Counsel for Sabbow. The next day, November 16, 2016, Sabbow filed the Petition seeking to intervene in this proceeding.

5. PSNH acquired an easement for the use of right-of-way in the vicinity of 77 Regional Drive in Concord, Sabbow’s principal place of business, from the City of Concord (“City”) in 1950. See Attachment A. In 2001, PSNH entered into an Agreement and Consent to Joint Use (“Joint Use Agreement”) with Sabbow permitting it to encroach upon PSNH’s easement. See Attachment B.

II. Standard for Intervention

6. RSA 541-A:32, I, sets forth circumstances under which a presiding officer shall allow intervention. Specifically, a petition for intervention shall be granted if: (a) the petition is properly filed; (b) the petition states facts demonstrating that the petitioner's rights, duties, privileges, immunities or other substantial interests may be affected by the proceeding or that the petitioner qualifies as an intervenor under any provision of law; and (c) the interests of justice

and the orderly and prompt conduct of the proceedings would not be impaired by allowing the intervention. See RSA 541-A: 32, I; N.H. Code Admin. R., Site 202.11(b).

7. The Presiding Officer may grant a late-filed petition to intervene only upon a determination that such intervention would be in the interests of justice and would not impair the orderly and prompt conduct of the hearings. See Site 202.11(c).

III. Discussion

8. As an initial matter, Mr. Scott submitted his testimony prior to seeking intervention as a party. In his testimony, he discusses at somewhat greater length most of the issues included in the Petition. The testimony is procedurally improper given that Sabbow is not a party nor is Mr. Scott an official representative of the City of Concord. Both the Petition and the testimony omit critical facts. Most important, in neither document does Sabbow mention the Joint Use Agreement.

9. Parties petitioning to intervene must set forth facts sufficient to demonstrate that they have a legal right to intervene. See RSA 541-A:32,I(b); *Appeal of Stonyfield*, 159 N.H. 227, 231 (2009) (stating that "a party must demonstrate this his rights 'may be directly affected by the decision, or in other words, that he has suffered or will suffer an injury in fact.'" (internal quotations omitted)). Furthermore, general allegations of harm are not sufficient. See *Blanchard v. Railroad*, 36 N.H. 263, 264 (1993) (finding that standing does not exist if a party cannot establish that it has an "interest[] in or [is] affected by the proceedings in some manner differently from the public, citizens, and taxpayers generally"). As explained below, Sabbow does not establish that the issuance of a Certificate of Site and Facility will affect its rights. The interests alleged by Sabbow with respect to use of the easement, moreover, are outside the purview of the SEC's jurisdiction.

10. Sabbow alleges that the Applicants' use of the easement for siting the Project "[a]mount[s] to an increase in the use of the property beyond what was anticipated by the initial easement, and therefore amount[s] to a taking of property." See Sabbow Petition at 2. Sabbow contends that allowing its intervention would assist the Committee in the administration of this matter. *Id.* The SEC is not the forum for litigating issues regarding property rights. Therefore, granting intervention based on a claimed interest in hearing issues related to the PSNH easement is not in the interest of justice.

11. The April 4, 2001 Joint Use Agreement granted Sabbow the right to utilize a portion of the easement as a storage area for its concrete products subject to certain conditions. The underlying PSNH easement prohibits the erection or maintenance of any building and structure, and authorizes the removal of all obstructions within the easement. By entering into the Joint Use Agreement, Sabbow, among other things, agreed not to store any equipment in excess of 12 feet in height within the easement and to keep all storage materials 30 feet away from any PSNH structures. While consenting to Sabbow's use for the purposes discussed above, PSNH in no way waived any of its rights under the easement.

12. Sabbow makes a number of confounding statements about its property that might lead one to infer that the Project would have impacts on Sabbow's ability to conduct its business on property outside the right-of-way, which is not the case. For instance, Sabbow asserts that part of the Project "[w]ill be located on Sabbow's Regional Drive property" in Concord, New Hampshire. See Sabbow Petition at 1. The facts, however, are these: PSNH acquired its easement from the City in 1950; Sabbow appears to have acquired two properties underlying the PSNH right-of-way in 1995 and 1999, subject to the easement; and, Sabbow stores a

considerable amount of product and inventory on the PSNH easement pursuant to the Joint Use Agreement. See Attachment C.

13. In the years since signing the Joint Use Agreement, PSNH has notified Sabbow on a number of occasions that it is in violation. On November 10, 2005, after conducting a site inspection, PSNH informed Sabbow that it was not complying with the Joint Use Agreement. See Attachment D. On June 9, 2006, PSNH sent Sabbow a letter regarding an incident in which a forklift operator made contact with and broke a PSNH wire strung 20 feet above the ground. See Attachment E. On July 3, 2009, PSNH again sent Sabbow a letter explaining that it was out of compliance. See Attachment F. At present, Sabbow once more does not appear to be in compliance with the terms of the Joint Use Agreement by failing to keep a 30-foot buffer between the concrete materials and the PSNH structures.

14. In fact, the Project should not materially affect Sabbow's legitimate use of the easement for storing its concrete products. The existing H-frame 115 kV structures for the P-145 circuit will be replaced by monopole structures, which will eliminate the guy wires for that circuit and require four fewer poles. Construction of the Project will require five new poles, increasing by one the total number of structure elements within the right-of-way covered by the Joint Use Agreement. Therefore, inasmuch as Sabbow has not shown that its legitimate business activities will be impacted by the Project, it has not demonstrated a substantial interest in this proceeding.

15. Moreover, granting intervention at this late stage is not in the interests of justice. Sabbow had ample time to file a petition to intervene prior to the deadline for intervention. The Applicants have had discussions with Sabbow regarding the Project going back to June 2011, when representatives for the Applicants spoke with Sabbow regarding their intended use of the

easement for the Project. Later, in October of 2014, representatives of the Applicants met with representatives of Sabbow at the Sabbow property to further discuss the Project. The deadline for filing petitions to intervene passed nearly nine months ago but Sabbow does not give any reason for not filing on time.

16. Finally, given the lateness of its Petition, Sabbow's intervention would likely impair the orderly conduct of the proceeding. The Applicants have concluded formal discovery, intervenors and Counsel for the Public have filed the first round of pre-filed testimony, and the Applicants are in the process of preparing discovery to propound on the various parties. Granting the intervention of any party at this late stage in the proceeding would be disruptive and infringe upon the Applicants' due process rights.

IV. Conclusion

17. The crux of Sabbow's Petition and testimony concerns how the Applicants might exercise their property rights within the easement right-of-way, which is a legal issue that is not within the SEC's jurisdiction to resolve. Consequently, Sabbow's rights will not be directly affected by the Subcommittee's decision whether to issue a Certificate of Site and Facility. Furthermore, Sabbow filed its Petition more than nine months after the deadline for intervention and the interests of justice do not support its intervention at this late date. Accordingly, the Applicants respectfully request that the untimely Sabbow Petition be denied.

Respectfully submitted,

Northern Pass Transmission LLC and Public
Service Company of New Hampshire d/b/a
Eversource Energy

By Its Attorneys,

McLANE MIDDLETON,
PROFESSIONAL ASSOCIATION


Dated: November 28, 2016

By:  for Thomas Getz

Barry Needleman, Bar No. 9446
Thomas B. Getz, Bar No. 923
Adam Dumville, Bar No. 20715
11 South Main Street, Suite 500
Concord, NH 03301
(603) 226-0400
barry.needleman@mclane.com
thomas.getz@mclane.com
adam.dumville@mclane.com

Certificate of Service

I hereby certify that on the 28th day of November, 2016, an original and one copy of the foregoing Objection was hand-delivered to the New Hampshire Site Evaluation Committee and an electronic copy was served upon SEC Distribution List.

 for Thomas Getz
Thomas B. Getz

EAA-2010

KNOW ALL MEN BY THESE PRESENTS

That City of Concord

of Concord County of Merrimack

in The State of New Hampshire

(hereinafter called the Grantor) in consideration of one dollar and other valuable considerations paid by the Public Service Company of New Hampshire, a corporation having a principal place of business at Manchester, in the County of Hillsborough, and The State of New Hampshire (hereinafter called the Grantee), the receipt whereof is hereby acknowledged, do hereby give, grant, bargain, sell and convey unto the Grantee and its successors and assigns forever, the RIGHT and EASEMENT to erect, repair, maintain, rebuild, operate, patrol and remove electric transmission and distribution lines, consisting of suitable and sufficient poles and towers, with suitable foundations, together with wires strung upon and extending between the same, for the transmission of electric current, together with all necessary cross-arms, braces, anchors, wires, guys and other equipment over and across a strip of land 130 feet in width in the town/city of Concord county of Merrimack State of New Hampshire.

Said 130 foot strip shall extend 75 feet easterly and 55 feet westerly of a line or extension of a line, described as follows:

Beginning at a point in the southerly boundary line of lot #4492A as shown on the Assessors' Map of the City of Concord, said point of beginning being one hundred sixty-one (161) feet measured westerly along said southerly boundary line from a stone bound marking the southeasterly corner of lot #4492A; thence running North 60°00' E a distance of fourteen hundred fifty-seven (1457) feet to a point in the northerly boundary line of lot #4208.

Said one hundred thirty (130) foot right of way strip includes all or part of lots #4206, 4492A, 4492B, 4492C, and 4211 as shown on the Assessors' Map for the City of Concord.

Being a part of the same premises described in deed of

dated and recorded in
the County Registry of Deeds, Book
Page

This conveyance shall include (1) the right to clear and keep clear the strip of all trees and underbrush by such means as the Grantee may select, and to remove all structures or obstructions which are now or may hereafter be found within the limits of the above described strip and (2) the right to remove from the premises of the Grantor above referred to such trees as in the judgment of the Grantee may interfere with or endanger said lines or their maintenance or operation.

All wood and timber on said strip which is cut by the Grantee shall remain the property of the Grantor but the Grantee shall have the right to cut, fit and leave such wood and timber in such manner as it may determine.

And the parties hereto, by delivering and accepting this conveyance, agree that all agreements, understandings and negotiations, written or verbal, heretofore made or entered into by the parties hereto or their representatives with respect to this conveyance are hereby waived and cancelled, and that there are no agreements, promises, representations or understandings with respect to this conveyance not herein mentioned.

To have and to hold to the Grantee and its successors and assigns forever.

The Grantor covenants and agrees that it has full right, title and authority to convey the foregoing rights and easements and will defend same to said Grantee against the lawful claims or demands of all persons.

In Witness Whereof the Grantor has, by virtue of a vote of the City Council taken on the 11th day of September, 1950, caused its corporate seal to be hereunto affixed and these presents to be signed, executed, acknowledged and delivered in its name and behalf by Woodbury Brackett, its Manager, this 13th day of September, 1950.

~~for the consideration aforesaid, do hereby release to the said Grantee~~
~~right of~~ in the before-mentioned premises.

WITNESS hand and seal this day of 19

In the presence of

Wagel W. Hutchins

City of Concord

By: *Woodbury Brackett*

City Manager



hand and seal this day of

The State of New Hampshire
 Merrimack SS.
 September 13, 1950.

Then Woodbury Brackett personally appeared and acknowledged the foregoing instrument to be the free act and deed of the Grantor.

~~personally appeared and acknowledged the foregoing instru-~~
~~ment to be~~ voluntary act and deed.
 Before me.

My Commission Expires
 Jan. 30, 1952

Notary Public

Margaret A. Sawyer
 Justice of the Peace

66-

49-

~~personally appeared and acknowledged the foregoing instru-~~
~~ment to be~~ voluntary act and deed.

Before me:

Concord
 MERRIMACK COUNTY RECORDS
 Received Dec. 1, 9-50 A. N. 1950
 Recorded Lib. 888 Vol. 413
 Examined: *Katherine A. Crowley*

Notary Public

Justice of the Peace

Register.

Right of way or easement
 Public Service Company

mt

EAA-2046

KNOW ALL MEN BY THESE PRESENTS

That City of Concord

of Concord County of Merrimack

in The State of New Hampshire

(hereinafter called the Grantor) in consideration of one dollar and other valuable considerations paid by the Public Service Company of New Hampshire, a corporation having a principal place of business at Manchester, in the County of Hillsborough, and The State of New Hampshire (hereinafter called the Grantee), the receipt whereof is hereby acknowledged, do hereby give, grant, bargain, sell and convey unto the Grantee and its successors and assigns forever, the RIGHT and EASEMENT to erect, repair, maintain, rebuild, operate, patrol and remove electric transmission and distribution lines, consisting of suitable and sufficient poles and towers, with suitable foundations, together with wires strung upon and extending between the same, for the transmission of electric current, together with all necessary cross-arms,

braces, anchors, wires, guys and other equipment over and across a strip of land 265 feet

in width in the town/city of Concord county of Merrimack
State of New Hampshire.

Said 265 foot strip shall extend 75 feet easterly
and 195 feet westerly of a line or extension of a line, described as follows:

Beginning at a point in the southerly boundary line of lot #4230 as shown on the Assessors' Map of the City of Concord, said point of beginning being two hundred sixty-one (261) feet measured westerly along said southerly boundary line from an iron pin marking the southeasterly corner of lot #4230A; thence running south $20^{\circ}00'$ W, a distance of three hundred eleven (311) feet to an angle point; thence turning and running south $41^{\circ}00'$ E a distance of twenty hundred seventy-four (2074) feet to an angle point; thence turning and running south $19^{\circ}30'$ W, a distance of thirty-one hundred seventy-one (3171) feet to a point in the northerly boundary line of lot #4237.

Said two hundred sixty-five (265) foot right of way strip includes all or part of lots #4231, 4232, 4233, 4237A, 4723K, 4723I, 4235, 4726, 4725A, 4725, 4239, and 4240 as shown on the Assessors' Map for the City of Concord.

Being a part of the same premises described in deed of

to _____ dated _____ and recorded in
the _____ County Registry of Deeds, Book _____
Page _____

This conveyance shall include (1) the right to clear and keep clear the strip of all trees and underbrush by such means as the Grantee may select, and to remove all structures or obstructions which are now or may hereafter be found within the limits of the above described strip and (2) the right to remove from the premises of the Grantor above referred to such trees as in the judgment of the Grantee may interfere with or endanger said lines or their maintenance or operation.

All wood and timber on said strip which is cut by the Grantee shall remain the property of the Grantor but the Grantee shall have the right to cut, fit and leave such wood and timber in such manner as it may determine.

And the parties hereto, by delivering and accepting this conveyance, agree that all agreements, understandings and negotiations, written or verbal, heretofore made or entered into by the parties hereto or their representatives with respect to this conveyance are hereby waived and cancelled, and that there are no agreements, promises, representations or understandings with respect to this conveyance not herein mentioned.

To have and to hold to the Grantee and its successors and assigns forever.

The Grantor covenants and agrees that it has full right, title and authority to convey the foregoing rights and easements and will defend same to said Grantee against the lawful claims or demands of all persons.

And

In Witness Whereof the Grantor has, by virtue of a vote of the City Council taken on the 11th day of September, 1950, caused its corporate seal to be hereunto affixed and these presents to be signed, executed, acknowledged and delivered in its name and behalf by Woodbury Brackett, its Manager, this 13TH day of September, 1950.

~~for the consideration aforesaid, do hereby release to the said Grantee~~

~~right of~~ in the before-mentioned premises.

~~WITNESS~~ hand and seal this day of 19

In the presence of

Harold D. Perkins

City Of Concord

By: *W. B. Brackett*

City Manager

~~WITNESS~~ hand and seal this day of 19

The State of New Hampshire
Merrimack ss.
September 13 1950

Then Woodbury Brackett personally appeared and acknowledged the foregoing instrument to be the free act and deed of the Grantor.

personally appeared and acknowledged the foregoing instrument to be voluntary act and deed
Before me.

By Commission Expires
Jan. 30, 1952

Notary Public

Justice of the Peace

ss.

19

personally appeared and acknowledged the foregoing instrument to be voluntary act and deed

Before me

Notary Public

Justice of the Peace

Concord
MERRIMACK COUNTY RECORDS
Received Dec. 1, 9-30 A.M. 1950
Recorded L15, 888 Fol. 411
Examined: *Katherine A. Plover*

Register.

EAA-2046

CITY OF CONCORD

In the year of our Lord one thousand nine hundred and fifty.

RESOLUTION AUTHORIZING THE CONVEYANCE OF AN EASEMENT TO PUBLIC SERVICE
COMPANY OF NEW HAMPSHIRE.

The City of Concord resolves as follows:

Sec. 1. That the right and easement to erect, repair, maintain, rebuild, operate, patrol and remove electric transmission and distribution lines, consisting of suitable and sufficient poles and towers, with suitable foundations, together with wires strung upon and extending between the same, for the transmission of electric current, together with all necessary cross-arms, braces, anchors, wires, guys and other equipment over and across a strip of land in Concord 265 feet wide extending 75 feet easterly and 195 feet westerly of the following described line:

Beginning at a point in the southerly boundary line of lot #4230 as shown on the Assessors' Map of the City of Concord, said point of beginning being two hundred sixty-one (261) feet measured westerly along said southerly boundary line from an iron pin marking the southeasterly corner of lot #4230A; thence running south 20° 00' west a distance of three hundred eleven (311) feet to an angle point; thence turning and running south 41° 00' east a distance of twenty hundred seventy-four (2074) feet to an angle point; thence turning and running south 19° 30' west, a distance of thirty-one hundred seventy one (3171) feet to a point in the northerly boundary line of lot #4237.

Said two hundred sixty-five (265) foot right of way strip includes all or part of lots #4231, 4232, 4233, 4237A, 4237K, 4237I, 4235, 4726, 4725A, 4725, 4239, and 4240 as shown on the Assessors' Map for the City of Concord; be conveyed to the Public Service Company of New Hampshire.

Sec. 2. That the City Manager is hereby authorized to execute a conveyance of said rights to the Public Service Company of New Hampshire.

Sec. 3. This resolution shall take effect upon its passage.

In City Council
October 9, 1950
Passed:

A true copy:
Attest:

Arthur E. Rely

City Clerk.

C/K EAM 2046
1493 JAN-2010 415484
222 Enc.
22nd
2.

2001-APR 24 AM 8:46

Attachment B
BK2256 PG1864

AGA-4666

AGREEMENT AND CONSENT TO JOINT USE

AGREEMENT made this 4th day of April, 2001 by and between PUBLIC SERVICE COMPANY OF NEW HAMPSHIRE, a New Hampshire corporation with its principal place of business at 1000 Elm Street, Manchester, New Hampshire, 03105 (hereinafter called PSNH); and SABBOW AND CO, INC., a New Hampshire corporation, with a mailing address of 12 Industrial Park Drive, Concord, New Hampshire, 03301 (hereinafter called SABBOW);

WITNESSETH THAT

WHEREAS, PSNH acquired a 265 foot wide easement by deeds of the City of Concord, both dated September 13, 1950, and recorded in the Merrimack County Registry of Deeds, Book 688, Page 413 and Book 688, Page 411 (hereinafter called the Easement), which is essential to its operations in the Concord area and has poles, lines and appurtenant equipment across portions of the Easement;

WHEREAS, SABBOW is the fee owner of property located off Industrial Park Drive in Concord, New Hampshire, a portion of which is subject to the Easement;

WHEREAS, SABBOW wishes to construct and maintain a storage area for concrete products (hereinafter called the Encroachment), between PSNH structures 41 and 43 on transmission line #V-182 and between PSNH structures 84 and 85 on transmission line #P-145 and between PSNH structures 59 and 60 on transmission line #318;

WHEREAS, the Easement prohibits the erection or maintenance of any building and structure and authorizes the removal of all obstructions within the Easement;

WHEREAS, PSNH desires to cooperate with SABBOW in the construction and maintenance of the Encroachment, and SABBOW desires to cooperate with PSNH to protect its easement rights.

NOW THEREFORE, in consideration of the mutual covenants contained herein, the parties agree as follows:

(1) This Agreement runs solely with the parcel of land and described in the Easement.

(2) PSNH consents to the construction and maintenance of the Encroachment and the use of a portion of the Easement by SABBOW as described above; such consent is not to be deemed a waiver of any of its rights under the Easement.

(3) SABBOW and PSNH agree to jointly use a certain portion of the Easement as described above, subject to the conditions contained herein.

(4) SABBOW and PSNH agree to use their best efforts to cooperate in said joint use and to use their efforts to provide each other, when requested, with engineering and surveying plans, maps or information necessary or helpful in locating or determining rights of the other.

(5) SABBOW agrees to take all safety precautions when working under and near PSNH's high voltage electric transmission lines.

(6) SABBOW agrees to provide notification to PSNH prior to beginning construction and/or maintenance of the Encroachment adjacent to PSNH facilities and equipment within the Easement. Notification to PSNH shall be addressed to James F. Mayo, P.E., Transmission Line Engineer or his successor at P.O. Box 330, Manchester, New Hampshire, 03105 or at telephone number (603)634-2254.

(7) SABBOW agrees to use its best efforts to construct and maintain the Encroachment in a reasonable manner so that it does not interfere with or damage the towers, poles, cables or any other equipment owned, constructed or maintained by PSNH. SABBOW agrees to cover the full reasonable costs to PSNH for any such interference or damage as a result of its construction and/or maintenance activities within the Easement. SABBOW further agrees to cover the full reasonable costs to PSNH in advance for any relocation, bracing, changing and raising of any towers, poles, cables, or any other equipment owned, constructed or maintained by PSNH as may be required to properly operate, maintain, repair, rebuild, patrol and remove the same as a result of its construction and/or maintenance activities within the Easement.

(8) SABBOW agrees to construct and/or maintain the Encroachment such that it does not prevent PSNH from replacing, repairing, rebuilding, operating, patrolling and removing its towers, poles, cables or any other equipment owned, constructed or maintained by PSNH, or from complete and unobstructed access to and along the PSNH transmission lines # V-182 and P-145.

(9) SABBOW agrees that any field changes within the Easement during construction or thereafter, or any blasting activities, future construction or change of use within the Easement shall be subject to prior written approval by PSNH. Requests for approval shall be addressed to James F. Mayo, P.E., Transmission Line Engineer or his successor. PSNH's approval will not be unreasonably withheld.

(10) SABBOW agrees not to pile any snow or construction materials or store any equipment that would exceed twelve feet (12') in height within the Easement. SABBOW also agrees to keep all storage materials thirty feet (30') away from any PSNH structures.

(11) SABBOW agrees not to construct any permanent structures, including storage sheds, within the Easement.

(12) SABBOW agrees not to place any wells or septic systems within the Easement.

(13) SABBOW agrees that following construction and/or maintenance of the Encroachment to dispose of all waste material outside the Easement; grade, resoil and reseed in a reasonable manner wherever necessary; employ any necessary erosion control measures; and restore and maintain the Easement in a condition acceptable to PSNH.

(14) SABBOW agrees to obtain and keep in force during the term of this Agreement any and all permits or approvals required by any authority having jurisdiction over construction of this nature, and shall be responsible for payment of any and all taxes levied on it.

(15) SABBOW agrees to indemnify, defend and save harmless PSNH from and against any and all loss, cost, damage, expense and claims, and against any and all claims, actions or proceedings for property damage, personal injury or death arising out of the use of the rights granted herein and not resulting from acts or omissions of PSNH or its agents or subcontractors.

(16) Any consent, express or implied, by either party to a breach by any other party of a covenant, or a condition contained herein, shall not constitute a waiver of any prior or succeeding breach of any covenant or condition contained herein.

(17) This Agreement shall be binding upon and inure to the benefit of the parties and their heirs, administrators, successors and assigns.

(18) The Agreement shall be interpreted in accordance with the law of the State of New Hampshire and it shall be specifically enforceable.

(19) This Agreement contains the entire Agreement between the parties and any amendment thereof shall be in writing and executed by the parties to this Agreement.

(20) This Agreement and any amendments thereto shall be recorded in the Merrimack County Registry of Deeds.

EXECUTED by the parties the day and year first above written.

PUBLIC SERVICE COMPANY OF NEW HAMPSHIRE

Ryanne M. Parkhurst
Witness

By: Paul E. Ramsey
Paul E. Ramsey
Vice President - Customer Operations

[Signature]
Witness

SABBOW AND CO., INC.
By: Peter Sabbow
Peter Sabbow
President
Duly Authorized

State of New Hampshire
County of Hillsborough

The foregoing instrument was acknowledged before me this 4th day of April, 2001 by Paul E. Ramsey, Vice President - Customer Operations of Public Service Company of New Hampshire, a New Hampshire corporation, on behalf of the corporation.

ANNE-MARIE SOMMER, Notary Public
My Commission Expires March 8, 2002

Anne-Marie Sommer
Notary Public/Justice of the Peace

State of New Hampshire
County of Merrimack

The foregoing instrument was acknowledged before me this 27th day of MARCH, 2001 by Peter Sabbow, President of Sabbow and Co, Inc., a New Hampshire corporation, on behalf of the corporation.

Brian W. Heath
Notary Public/Justice of the Peace
BRIAN W. HEATH, Notary Public
My Commission Expires February 10, 2002

MERRIMACK COUNTY RECORDS

Kathi L. Quay, Register



November 10, 2005

Rick Hinck
New Hampshire Wilbert Vault Co
77 Regional Drive
Concord, NH 03301

Re: Stock piling at 77 Regional Drive
Concord, NH
PSNH 318, P145, V182 Transmission Line Easement

Dear Mr. Hinck:

I am writing to follow up on the conversation we had on November 1, 2005 pertaining to the stock piling of concrete material within the Public Service of New Hampshire (PSNH) transmission line easement on a property located at 77 Regional Drive in the City of Concord, New Hampshire.

PSNH owns a 265 foot wide easement by deeds of the City of Concord, dated September 13, 1950, recorded in the Merrimack County Registry of Deeds, Book 688, Page 411 and Book 688, Page 413. The easements grant PSNH the right to erect, repair, maintain, rebuild, operate, patrol and remove electric transmission and distribution lines over the entire 265 strip as well as to remove all structures and obstructions. A copy of the easements is enclosed. PSNH has constructed and currently maintains three high voltage (115kV & 34.5kV) overhead transmission lines in its easements at this location, designated as the PSNH 318, P145 and V182 lines.

PSNH entered into an "Agreement and Consent to Joint Use" with Sabbow and Co, Inc, dated April 4, 2001, recorded in the said Registry, Book 2256, Page 1864. A copy of the Agreement is enclosed. The Agreement allows storage within the easement but with conditions and restrictions. During my site visit on November 1, 2005, I noted many of these conditions are in violation:

1. The material exceeds 12 feet in height. See paragraph 10 on page 3. There are inherent dangers and obvious safety concerns associated with having large piles of material beneath the high voltage powerlines. The powerlines are designed to meet a minimum clearance, as required by the National Electrical Safety Code, between the ground and energized lines. There is the associated danger of

Rick Hinck
November 10, 2005
Page 2

equipment, such as the lift trucks, making contact with the energized lines. The rules and regulations for other governing agencies may also be impacted.

2. Currently, the material is stored within the 30 foot radius of the PSNH structures (pole, guy wire, anchor rod, etc.). See paragraph 10 on page 3. Damage to the guy wires could result in the structural failure of the lines.
3. The material obstructs access to the PSNH structures. See paragraph 8 on page 2. PSNH is bound by regulation to provide safe reliable power and must have access to its structures 24 hours a day 7 days a week. These lines provide power to large areas of the state. Should PSNH need to make emergency repairs, obstructions would delay the repairs.
4. The material is located in an area outside the boundaries set in the Agreement. See the third "Whereas..." on page 1.

PSNH routinely does not allow material of any kind within its transmission easements. PSNH entered into an agreement to store material with restrictions to avoid the potential danger of injury to persons and property. The conditions set in the Agreement are not randomly generated, nor are they unreasonable.

We request the conditions at this site be corrected. Please contact me at (603) 634-3200 when this is complete.

Sincerely,

Celine Bilodeau
PSNH Engineering Technician

June 9, 2006

Mr. Ray Billings
New Hampshire Wilbert Vault Co.
77 Regional Drive
Concord, NH 03301

Re: Stock piling at 77 Regional Drive
Concord, NH
PSNH 318, P145, V182 Transmission Line Easement

Dear Mr. Billings:

This letter is written in response to your request to address the safety concerns of the work being performed within the Public Service of New Hampshire's (PSNH) easement on a property located at 77 Regional Drive in the City of Concord, New Hampshire.

PSNH owns a 265 foot wide easement by deeds of the City of Concord, dated September 13, 1950, recorded in the Merrimack County Registry of Deeds, Book 688, Page 411 and Book 688, Page 413. The easements grant PSNH the right to erect, repair, maintain, rebuild, operate, patrol and remove electric transmission and distribution lines over the entire 265 strip as well as to remove all structures and obstructions. A copy of the easements is enclosed. PSNH has constructed and currently maintains three high voltage (115kV & 34.5kV) overhead transmission lines in its easements at this location, designated as the PSNH 318, P145 and V182 lines.

PSNH entered into an "Agreement and Consent to Joint Use" (JUA) with Sabbow and Co., Inc, dated April 4, 2001, recorded in the said Registry, Book 2256, Page 1864. The JUA allows storage of concrete material within the easement to a maximum height of twelve (12) feet. The JUA also has language which state that Sabbow shall keep all storage materials thirty feet (30') away from any PSNH structures (poles, guy wires, anchor rod, etc.). A copy of the JUA is enclosed.

It was brought to our attention that on April 12, 2006, a fork lift operator employed by New Hampshire Wilbert Vault, Co. made contact with and broke the neutral wire on the 34.5 kV line designated Line 318. This contact was with a wire which is over twenty (20) feet above the ground, which exceeds the clearance required for area subject to vehicular traffic.

Mr. Ray Billings

June 8, 2006

To avoid such an incident in the future, it is imperative that all equipment operated within the right-of-way not exceed highway legal height, or thirteen (13) feet, whichever is less.

We request the area within thirty feet (30') be cleared of all material. Damage to the poles or guy wires could result in the structural failure of the lines. This is a safety issue. Possible consequences are fires and personal injury, as well as, system outages and loss revenue.

If you have any further questions, do not hesitate to contact me at (603) 634-3200.

Very truly yours,

Celine Bilodeau
PSNH Engineering Technologist

Enclosures

July 3, 2009

Mr. Ray Billings
Facilities Manager
Phoenix Precast Concrete Products
12 Industrial Park Drive
Concord, NH 03301

Subject: Use of PSNH Transmission Right of Way at 77 Regional Drive and
12 Industrial Park Drive Concord NH/PSNH Joint Use Agreement

Dear Mr. Billings:

I am writing to report on a recent site visit by Public Service of New Hampshire (PSNH) to the premises of the Phoenix Precast Concrete Products Company on Regional Drive in Concord, New Hampshire. The Phoenix Precast Company, as a part of Sabbow and Company, is subject to an Agreement and Consent for Joint Use with PSNH dated April 4, 2001 as recorded in the Merrimack County Registry of Deeds (Book 2256 and Page 1864). This agreement describes the conditions under which PSNH has agreed to the joint use of the 265 foot wide transmission corridor which partially encumbers the subject property. The primary encroachment type addressed by the agreement is the storage of precast concrete products.

During the recent site visit, it was observed that the storage of concrete products is being conducted in a manner that does not conform to the terms of the recorded agreement. The agreement specifically states in clause 10 that Sabbow "agrees to keep all storage materials thirty feet (30') away from any PSNH structures". The site visit proved that storage materials in the form of heavy precast concrete products are being stored much closer than thirty feet from PSNH structures. In some cases they have been placed in apparent contact with supporting guy wires which hold PSNH power structures in place.

PSNH is mandated to provide a reliable, safe, and cost effective flow of energy to its entire customer base. As such it is responsible to protect its facilities from damage that might lead to dangerous and costly power outages. *Damage to any component of the 34,500 volt or 115,000 volt power structures on the Sabbow properties could be the cause of serious injury and/or costly power outages.*

Another aspect of the storage problem is one of access. *The current condition of the right of way within the Sabbow property makes access to power structures problematic.* PSNH needs clear quick access to all of its power pole installations at all times, especially in cases of emergency such as the ice storm of last December. If any power structure had failed on the Sabbow property during that storm, restoration efforts could very well have been hampered by unaccepted inventory storage practices, leading to prolonged power restoration times for businesses and residences.

PSNH has a long history of working with land owners to develop safe joint uses of rights of way. The very fact that PSNH entered into an agreement with the Sabbow Companies bears this statement out. In this same spirit of cooperation I ask that you reply to this letter at your earliest convenience with your plan to mediate the conditions I have described. PSNH greatly appreciates your prompt attention.

Sincerely,

Russell Maille
Engineering Technician
PSNH Transmission Engineering
634-2477
maillrb@nu.com

Cc: Mr. Chris Allwarden, PSNH Senior Legal Counsel
Mr. Gary Booth, PSNH Senior Project Leader
Mr. James Jiottis, PSNH Transmission Engineering Manager