

**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

OBJECTION TO MOTION FOR REHEARING

The City of Concord and the Towns of Bethlehem, Bristol, Easton, Franconia, Northumberland, Plymouth, Sugar Hill, Whitefield, New Hampton, Littleton, Deerfield, Pembroke and Ashland Water & Sewer Department (collectively “the Referenced Municipalities”) object to the Applicant’s Motion for Rehearing of the April 24, 2017 Order Denying Applicant’s Motion to Strike, stating as follows:

1. On March 29, 2017, the Applicants filed a motion to strike asserting that certain Track 1 testimony should be excluded. Among other things, the Applicants sought to exclude the testimony submitted by George E. Sansoucy relative to alternatives on the basis that it is “not relevant to this proceeding.” Motion to Strike Certain Track 1 Testimony at 8.

2. On April 5, 2017, the Referenced Municipalities filed an objection stating that the testimony regarding alternative routes was relevant and that RSA 162-H: 16, IV required the Site Evaluation Committee to consider “*all relevant information regarding the potential siting or routes.*” (Emphasis added). Objection to Motion to Strike Certain Track 1 Testimony at 5-6.

3. On April 24, 2017, the Presiding Officer denied the motion to strike, stating, in regards to the alternative route testimony, that “evidence of alternatives might be relevant to the statutory factors that must be considered by the Subcommittee.” Order dated April 24, 2017 at 9.

4. On May 24, 2017, the Applicants filed a motion for rehearing as it applies to the testimony on alternative routes. The Applicants argue on rehearing that the ruling is incorrect

because evidence of alternatives are “not relevant to any statutory finding whether some theoretical alternative posed by another party might be less adverse or less interfering because those alternatives are not the Applicants’ preferred choice and the Applicants do not consider them available.” Motion for Rehearing at 10.

5. As previously discussed in the Objection to Motion to Strike Certain Track 1 Testimony filed by the Referenced Municipalities, RSA 162-H:16, IV states that “[a]fter due consideration of *all relevant information regarding the potential siting or routes* of a proposed energy facility, including potential significant impacts and benefits, the site evaluation committee shall determine if the issuance of a certificate will serve the objectives of this chapter.” (Emphasis added.) Before the recent amendments in 2015 to RSA chapter 162, the introductory language of RSA 162-H:16, IV read as follows: “The site evaluation committee, after having *considered available alternatives* and fully reviewed the environmental impact of the site or route, and other relevant factors bearing on whether the objectives of this chapter would be best served by the issuance of the certificate, must find that the site and facility” (Emphasis added).

6. This new language now makes it clear that the Site Evaluation Committee’s consideration of alternative routes is not limited to “available alternatives” that have been presented by an applicant. This amended language allows consideration of “*all relevant information* regarding the potential siting or routes.” The language does not only allow “all relevant information,” but the inclusion of the word “routes” (plural) allows the Site Evaluation Committee to consider alternate routes suggested by parties other than the “available alternatives” presented by an applicant. In the event the legislature intended that the Site Evaluation Committee only consider routes that an applicant “considers available,” that language

could have been included in RSA 162-H:16, IV, but it was not. This statute instead references a broader category of information. Under the canons of statutory interpretation, by using different language, the legislature intended a different meaning than RSA 162-H:7,V(b)'s limitation of "other alternatives [NPT] considers available."

7. As also discussed in the Objection to Motion to Strike Certain Track 1 Testimony filed by the Referenced Municipalities, it would be unreasonable to limit "all relevant information" to information about alternatives presented by an applicant because the Site Evaluation Committee proceedings are adjudicative in nature and involve multiple parties. The information regarding other alternative routes is relevant and important when considering the objectives of RSA chapter 162-H, which involve "the selection of sites for energy facilities" and the requirement "that the state ensure that the construction and operation of energy facilities is treated as a significant aspect of land-use planning in which all environmental, economic, and technical issues are resolved in an integrated fashion." RSA 162-H:1. The evidence of alternatives is also important for determining whether a proposed facility is in the "public interest." RSA 162-H:16, IV(e); *see also* Site 301.15(a) (requiring consideration of "the welfare of the population" in determining whether an application is in the public interest). The public interest and the welfare of the population would not be served by the Site Evaluation Committee approving a project that is not needed and/or that could be sited elsewhere with significantly fewer negative impacts. The Applicants' attempt to restrict evidence about other alternatives should be denied.

8. The Applicants also incorrectly rely on rulings made by the Site Evaluation Committee in other cases. More specifically, the Applicants rely on the Site Evaluation Committee's orders in *Granite Reliable Power*, Docket No. 2008-04, Decision Granting

Certificate of Site and Facility (July 15, 2009), *Antrim Wind*, Docket No. 2012-01, Decision Denying Certificate for Site and Facility (April 25, 2013) and *Laidlaw Berlin BioPower*, Docket No. 2009-02, Decision Granting Certificate of Site and Facility (November 8, 2010). The reliance on those decisions is unavailing. The orders in *Granite Reliable Power*, *Antrim Wind* and *Laidlaw* do not support an argument that evidence or alternatives presented by other parties should be stricken.

9. In *Granite Reliable Power*, the Site Evaluation Committee specifically held that it would be appropriate to consider evidence of alternatives that were not submitted by an applicant, stating as follows:

RSA 162–H: 16, IV requires the Subcommittee to consider alternatives but does not provide detailed guidance as to how alternatives are to be considered. The Site Evaluation Committee normally considers the evidence of alternatives presented by an applicant. *The Committee also considers any other evidence in the record pertaining to alternative sites.* In this case, the Subcommittee considered the Applicant’s site selection process and also considered the possibility of approving a smaller sized project.

Granite Reliable Power, Docket No. 2008-04, Decision Granting Certificate of Site and Facility (July 15, 2009) at 27. (Emphasis added). In contrast to the Applicants’ arguments, the foregoing order shows that the Site Evaluation Committee considered evidence of alternatives that were not presented by the applicant.

10. In *Antrim Wind*, the Site Evaluation Committee also considered evidence of alternatives presented by an expert for Counsel for the Public. In that case, the Counsel for the Public’s expert submitted evidence relative to alternatives to wind turbines and the size of the balance of the proposed facility. *Antrim Wind*, Docket No. 2012-01, Decision Denying Certificate for Site and Facility (April 25, 2013) at 53-54. The Site Evaluation Committee’s

consideration of that alternative proposal in its order demonstrates that it allowed the evidence to be introduced.

11. Lastly, the decision in *Laidlaw* does not support a determination that evidence of alternatives should be stricken as irrelevant. In that case, the Site Evaluation Committee addressed whether it was required under the former statute to consider evidence of “all available alternatives in order to strike a balance between the environment and the need for new energy facilities in New Hampshire.” *Laidlaw Berlin BioPower*, Docket No. 2009-02, Decision Granting Certificate of Site and Facility (November 8, 2010) at 37 (quotations omitted). The issue in that case involved whether the Site Evaluation Committee was *required* to evaluate “every possible alternative” as part of its analysis. *Id.* There is nothing in the decision to support a determination that an intervenor is precluded from introducing evidence relative to alternatives. Moreover, under the language of the newly revised RSA statute, the Site Evaluation Committee is allowed to consider evidence of such alternatives for purposes of determining whether a project is within the public interest.

12. Based on the foregoing, the Applicants’ motion for rehearing should be denied because they fail to provide a sufficient reason for rehearing of the April 24, 2017 order. The motion for rehearing fails to state any error of fact, reasoning, or law that would warrant reconsideration of the decision on the motion to strike. *See* RSA 541:3; N.H. Admin. Rule, Site 202.29. The order already considered in detail the relevance of alternatives, and the Applicants have failed to set forth a sufficient basis for overturning the decision.

WHEREFORE, the Referenced Municipalities respectfully request that the Site Evaluation Committee:

- a. Deny Applicants’ Motion for Rehearing; and

b. Grant such further relief as it deems appropriate.

Respectfully submitted,

TOWNS OF NEW HAMPTON, LITTLETON,
DEERFIELD, PEMBROKE, and ASHLAND
WATER & SEWER DEPARTMENT

By and through its attorneys,

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Dated: June 5, 2017

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CERTIFICATE OF SERVICE

I hereby certify that on this date, a copy of the foregoing was sent by electronic mail to persons named on the Service List of this docket.

Dated: June 5, 2017

By: /s/ Danielle L. Pacik
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