

STATE OF NEW HAMPSHIRE SITE EVALUATION COMMITTEE

SEC DOCKET NO. 2015-06

JOINT APPLICATION OF NORTHERN PASS TRANSMISSION LLC & PUBLIC SERVICE COMPANY OF
NEW HAMPSHIRE D/B/A EVERSOURCE ENERGY

FOR A CERTIFICATE OF SITE AND FACILITY

**Ashland to Deerfield NonAbutters Intervenor Group's Objection to
Applicant's Motion for Rehearing**

The Ashland to Deerfield NonAbutters Intervenor Group respectfully objects to the Applicant's Motion for Rehearing, filed on April 27, 2018, and requests that the Subcommittee deny said Motion, stating as follows:

I The Subcommittee's Power to Impose Conditions upon the Applicant does not Preclude a Finding of Undue Interference with Orderly Development

1. The Applicant finds fault with the Subcommittee's Written Decision and Order for failing to take into account the possibility that the Subcommittee has the power to impose conditions adequate to ameliorate any shortcomings in the Applicant's proof. This assertion is tantamount to a claim that every permit should be granted because it is always possible that a set of conditions could be drafted which would eliminate all shortcomings in the evidence presented in support of an application. This claim is inconsistent with the procedures for consideration an application for a certificate, including the Applicant's burden of proof, as contemplated by RSA 162-H and Site 202 and 301.

2. The Subcommittee clearly has the authority to impose conditions as part of an order granting a petition. The record of the deliberations demonstrates that the individual members of the subcommittee were aware of their ability to impose conditions. The fact that the Subcommittee did not discuss any particular condition does not invalidate its conclusion that the Project would result in undue interference.

3. The Applicant suggests that the Subcommittee's final determination is deficient because the Subcommittee failed to take into account various conditions that it "accepted" after the end of the adjudicatory hearing and the closing of the record in this case. The Applicant only accepted these conditions after the Subcommittee's initial oral determination that the requested permit be denied.

4. The Applicant now asserts that "[T]he **proposed conditions were an integral element of the evidence the Applicants presented to meet their burden of proof.**" Motion for Rehearing, page

5. This is an awkward claim, since the conditions themselves were not drafted until after the record of the adjudicatory hearing was closed on December 22, 2017, pursuant to Site 202.26. No motion to reopen the record for the purpose of adding evidence regarding accepted conditions has been made, and Applicant denies that it seeks to reopen the record. Motion for Rehearing, page 1 fn. 1.

5. Although some aspects of similar conditions are referred to in the Application and in the record of the adjudicatory hearing, the conditions as agreed to by the Applicant cannot be considered evidence in this proceeding. The specific conditions themselves were drafted and agreed to by the Applicant only after the record in the case was closed. The facts on which the conditions

would be based go beyond anything about which testimony relating to conditions was included in the record. These facts have not been subject to cross-examination. For instance, neither the adequacy of the limitations on the funds to be dedicated for particular purposes in Attachment B Potential Conditions 3 (land use), 7 (tourism), 8 (property value), and 12 (public interest) nor the overall adequacy of the Forward New Hampshire Fund as more specifically described in Attachment C Condition 71 have been subject to scrutiny.

6. The Subcommittee did not have an opportunity to evaluate the desirability or the efficacy of the mechanisms anticipated by the Applicant for the distribution of these funds. Apparently all of the funds involved with respect to new Potential Conditions 3, 7, 8 and 12 would be distributed only to communities and organizations. None of these funds would necessarily be made available to those individuals within those communities and organizations who will actually suffer losses in value or limitations on their activities and in the uses of their land and other property. As the record in the adjudicatory hearing frequently reveals, such approaches can disrupt local politics by positioning communities and organizations in opposition to those within such groups who will in fact be adversely impacted.

7. The Subcommittee was not given the opportunity to solicit the views of those most likely to be impacted by the Project regarding the adequacy of the new conditions that the Applicant now asserts it has accepted. Lacking that information, the Subcommittee has never been in a position to determine whether these newly drafted conditions would in fact be sufficient to allow it to conclude that the undue adverse impacts that it found would otherwise result from the project would be adequately mitigated.

8. Contrary to the inferences and assertions in the Applicant's Motion for rehearing, the Subcommittee did take the possibility of its power to impose conditions into account, but, because it found the Applicant's presentation on the substantive matters to be so inadequate, it concluded that it would have no ability to evaluate the adequacy or effectiveness of conditions. A specific conclusion to this effect was made with respect to the impact of the Project on tourism, Written Decision and Order at p. 225-27 and p. 284. Similar consideration of the Applicant's specifically proposed conditions relating to mitigating effects on property values were discussed in the Decision at p. 198-99, and p. 285.

II The Subcommittee's Decision Adequately Addressed the Standards to be Applied under Site 301.15 with respect to Undue Interference with Orderly Development

9. The Applicant faults the Committee's written decision for failing to address the relationship between the requirements of matters that must be addressed in an application as set forth in Site 301.09 and the criteria to be used in making determinations about undue interference with orderly development in Site 301.15. The Applicant seems to be arguing that a permit must be granted whenever an application has been accepted by the Committee as complete with respect to the requirements set forth in Site 301.09. This is obviously not the intent of the SEC rules.

10. Site 301.09 only sets forth the minimum requirements for the application. The fact that an applicant offers testimony—regardless of how incomplete or incredible—addressing each of the topics required to be considered in an application submitted to the Site Evaluation Committee for its consideration does not mean that the permit requested should be granted.

11. The Subcommittee concluded that Applicant's witness on tourism was not credible, Written Decision and Order at p. 225, and expressed doubts about various aspects of several of

Applicant's other witnesses. The Subcommittee is entitled to take into account the extent to which the Applicant's witnesses' approaches to the particular requirements were limited to the bare minimum necessary under the Applicant's view of the requirements of Site 301.09. The Subcommittee was also entitled to take into account the lack of plausibility of the conclusions reached by the Applicant's witnesses in making its ultimate decision.

12. Throughout the adjudicatory hearing, Applicant stubbornly refused to offer information beyond the information it considered consistent with its view of the requirements of SEC 301. The Applicant made a conscious choice to limit the evidence presented through its pre-filed testimony to that which would be relevant under its reading of the application requirements, even though it was aware that its reading of the application requirements was not the only possible reading. As a result of these choices of the Applicant, the Subcommittee was offered far less information than might have been relevant to its ultimate determinations on all issues involved in granting a permit.

13. The findings of the Subcommittee, including its conclusions about the credibility and adequacy of the testimony and other evidence presented to it, are sufficient to support its denial of a permit to the Applicant.

III Use of an Existing Corridor for Portions of a Project does not Preclude Undue Interference with Orderly Development

14. Applicant insists that the precedents of the SEC compel that, at least to the extent that a proposed project uses an existing corridor, there is a conclusive presumption that orderly

development will not be adversely impacted and that there will therefore be no undue interference.

15. The logical consequence of this argument would be that no additional evidence related to orderly development would ever be appropriate regarding the portions of a proposed project that lie physically within an existing corridor. This clearly cannot be the case, since land uses within the corridor can change. This is obviously true for the portions of the proposed project that are within the Pemi/I-93 corridor.

16. Even if under ordinary conditions, the best route for a transmission project is an existing utility corridor, it does not follow that any additional use of the corridor for electric transmission will not have adverse impacts that may in themselves, or in connection with other impacts, cause undue interference. This is especially true for those parts of Applicant's proposed project that, although within the existing corridor, will be the location of the additional physical infrastructure associated with the transition from underground to overhead.

17. Applicant appears to take the position that, once a right of way is obtained, the requisite permits for any proposed transmission activity is granted, and the project involved constructed and placed in service, there can be no undue influence on development from any additional activity or structure that does not extend beyond the physical boundaries of the original right of way.

18. No permitting authority would ever want its actions to have such a permanent effect. If such a permanent and immutable effect were involved, each proposed permit action would require far more scrutiny than is usually undertaken. All possible future transmission activities and

structures, and all possible future uses compatible with the initial transmission activity, would become relevant at the time of the initial permitting.

IV Conclusion

19. Applicant chose to limit the material presented in its Application and in the analysis presented by its experts so as to downplay the adverse impacts of the Project. Rather than admitting adverse impacts, and in good faith attempting to negotiate regarding conditions that might sufficiently reduce these impacts, the Applicant stubbornly refused to acknowledge many adverse impacts. As a result, and despite the enormous volume of material introduced, the record left the Subcommittee legitimately in doubt about many important aspects of the effect of the Project would have on orderly development.

20. The findings and conclusions of the Subcommittee in its Written Decision and Order fully support the denial of the Application. No further proceedings are necessary.

For these reasons, the Ashland to Deerfield NonAbutters Intervenor Group requests that the Motion for Rehearing be denied.

Respectfully submitted,

A handwritten signature in black ink that reads "Charlie Crane". The signature is written in a cursive, slightly slanted style.

Temporary Spokesperson for the Ashland to Deerfield Nonabutters Intervenor Group

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing has on this May 7, 2018 been sent by email to
the service list in Docket No. 2015-06.

Charlie Crane
