

THE STATE OF NEW HAMPSHIRE
SITE EVALUATION COMMITTEE

RE:)	
Northern Pass Transmission, LLC and)	
Public Service Company of New Hampshire)	
d/b/a Eversource Energy:)	
Joint Application for a Certificate of Site and)	SEC DOCKET No. 2015-06
Facility for Construction of a New High Voltage)	
Electric Transmission Line in New Hampshire)	

Business Intervenor Group’s Concurrence with Applicants’ Motion for Rehearing

The International Brotherhood of Electrical Workers (“IBEW”) and the Coos County Business and Employers Group (hereinafter collectively referred to as “the Business Intervenor Group”) join in the Applicants’ Motion for Rehearing, dated April 27, 2018, and say:

1. The Business Intervenor Group concurs with the legal arguments and reasoning set forth in Applicants’ motions for rehearing, dated February 28, 2018 and April 27, 2018. As a result, it joins in Applicants’ motions for rehearing and the relief requested by the Applicants, and incorporates Applicants’ arguments herein by reference.

2. Additionally, the Business Intervenor Group incorporates all prior arguments it made in its initial concurrence with Applicants’ February 28, 2018 Motion for Rehearing into the present concurrence. For ease of reference, a copy of the Business Intervenor Group’s initial concurrence has been attached hereto as Attachment A.

3. For the reasons set forth in the Applicants’ motions for rehearing as well as those set forth by the Business Intervenor Group, the Subcommittee should vacate its decision, resume deliberations on the Application, and grant Applicants a Certificate of Site and Facility.

Respectfully submitted,

IBEW
By Its Representative,

Dated: 05-04-2018

By: Brian T. Murphy
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COOS COUNTY BUSINESS AND EMPLOYER
GROUP

By Its Attorney,

Dated: 5/7/18

By: J. J. Bianco
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Certificate of Service

I hereby certify that on this day the foregoing was sent to the New Hampshire Site Evaluation Committee and a copy was sent by electronic mail or U.S. Mail, postage prepaid to persons named on the SEC distribution list.

Dated: 5/8/2018

By: J. J. Bianco

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Introduction

1. The Business Intervenor Group concurs with the legal arguments and reasoning set forth in the Applicants’ motion for rehearing, dated February 28, 2018. As a result, it joins in the Applicants’ motion for rehearing and the relief requested by the Applicants. For the reasons set forth in that motion as well as those set forth below, the Subcommittee should vacate its February 1, 2018 decision and resume deliberations on the Application.¹

¹ Like the Applicants, the Business Intervenor Group focuses this submission on the procedural aspects of the Subcommittee’s determination. It reserves the right to address other substantive areas of the Subcommittee’s analysis and determination.

Legal Analysis

I. The Subcommittee's decision to end deliberations was contrary to its administrative rules.

2. The Subcommittee's decision to end its deliberations early in this matter was in error because its decision was contrary to the SEC administrative rules and RSA 162-H.

3. Site 202.28(a) states: "The committee or subcommittee, as applicable, shall make a finding regarding the criteria stated in RSA 162-H:16, IV, and Site 301.13 through 301.17, and issue an order pursuant to RSA 541-A:35 issuing or denying a certificate."

4. In this matter, the Subcommittee stopped deliberating after it concluded that the Project would unduly interfere with the orderly development of the region. It did not address the remaining criteria in the statute and administrative rules. As the Applicants discuss in their motion, the Subcommittee is obligated to follow its own administrative rules; its failure to do so is reversible error. Because the Subcommittee did not make a finding on all criteria in RSA 162-H:16, IV, and Site 301.13 through 301.17, the Subcommittee should vacate its February 1, 2018 decision and resume deliberations.

II. The Subcommittee's decision to end deliberations was inconsistent with RSA 162-H:16.

5. The Subcommittee's decision to end its deliberations was also contrary to RSA 162-H:16, IV. The statute states, in pertinent part: "After 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 issuance of a certificate will serve the objectives of this chapter. . . ." RSA 162-H:16, IV.

6. As the Applicants correctly point out, the statute requires the Subcommittee to give "due consideration of all relevant information" in its deliberations. Here, the Subcommittee only considered some information (but not all relevant information) related to the first two

statutory criteria—the Applicants’ financial, technical, and managerial capabilities, see RSA 162-H:16, IV(a), and whether the Project would unduly interfere with the orderly development of the region, see RSA 162-H:16, IV(b). The Subcommittee did not consider all relevant information in this matter because it did not engage in a discussion of the remaining statutory criteria, see RSA 162-H:16, IV(c), (e), and it failed to consider other relevant information on orderly development of the region, see RSA 162-H:16, IV(b).

7. By failing to give due consideration to all relevant information in this matter, the Subcommittee’s decision was premature and inconsistent with the statutory scheme. Thus, the Subcommittee should vacate its decision and resume deliberations.

III. The Subcommittee failed to apply the appropriate standard by misapprehending the meaning of the term “unduly interfere.”

8. The Subcommittee’s deliberations demonstrate that it failed to apply the appropriate standard in evaluating whether the Project “will not unduly interfere with the orderly development of the region” RSA 162-H:16, IV(b). The key language in the statute is “unduly interfere.” The statute does not prohibit a project from having an “impact” or an “effect” on the orderly development of region—indeed, RSA 162-H:1 contemplates that such facilities will have some impact. Rather, the statute prohibits a project that will unduly interfere with the orderly development of the region. Despite the plain language of the statute, certain comments made by the Subcommittee members during the deliberations indicate that they improperly conflated the terms “impact” and “unduly interfere” in rendering their decision.

9. For example, Subcommittee Member Way made the following statements: “I believe there’s going to be an impact to business.” (NPT Deliberations Tr. Day 3 AM 7:23-8:1); “I was not convinced that the entire project would be consistent with prevailing land use.” Id. 8:12; “I do not believe that the Applicant has met the burden of proof that there will be no impact

on tourism.” Id. 9:11; “I’m not sure that I accept the argument that there will be no impact on property values . . . I just don’t think it passes the “straight-face test that there will be none.” Id. 10:1–9.

10. Subcommittee Member Dandenau stated: “I am not convinced that the construction phase of this project will not have an impact on tourism.” Id. 11:24; “I’m concerned that vegetative clearing will have an impact on land use.” Id. 12:19; “I’m concerned about this project’s impact on property values.” Id. 13:15

11. Subcommittee Weathersby stated: “I do believe that property values will be affected by the presence of this project in a much greater degree than was stated by the Applicant.” Id. 16:9; “I also believe that the Applicant’s analysis fell short by requiring actual physical interference with land use.” Id. 17:11.

12. Subcommittee Member Oldenburg stated: “I believe there will be an impact on tourism.” Id. 18:23; “I believe there will be business impacts along the route that will occur during construction, but I’m not as convinced that they will be long-term impacts.” Id. 19:6.

13. Subcommittee Member Wright stated: “With respect to the real estate values, I did not find the witness credible. I thought there were lots of gaps. I thought we received significant evidence from other parties that there could be real estate impacts from the Project.” Id. 23:10; “Municipal views . . . I wasn’t convinced that lack of specificity in some of the initial plans was sufficient to indicate that there could not be an impact.” Id. 24:14.

14. Subcommittee Member Bailey stated: “With respect to property values, I don’t believe that the Applicant has met its burden to demonstrate that there will not be an impact on property values. . . . And I think that there could be an impact on property values.” Id. 26:20–27:8; “I also, like the others, have not been convinced that there wouldn’t be an impact on

tourism.” Id. 27:11; “So we really do need to take into account the views of municipal officials, and those have all been very negative and have in many cases demonstrated their belief that this is not consistent with their master plans.” Id. 28:17.

15. These statements demonstrate that in evaluating this Project, the Subcommittee misapprehended the appropriate standard contained in RSA 162-H:16, IV(b). For this reason, the Subcommittee should vacate its decision and resume deliberations on the Application.

IV. The Subcommittee failed to consider whether appropriate conditions would satisfy concerns related to orderly development of the region.

16. The Subcommittee further erred because it did not consider whether appropriate conditions could address the concerns of the Subcommittee on the issue of orderly development. On the third day of deliberations and beginning the afternoon session, Commissioner Bailey moved to deny issuing a certificate for the Application, stating that the Applicants had failed to meet its burden of proof that the Project will not unduly interfere with the orderly development of the region. (NPT Deliberations Tr. Day 3 PM, 3:12–22.) She stated, as one basis for ending deliberations, the following: “And I’m worried that, if we continue with our deliberations, we will really need to figure out what conditions we would impose on a lot of things. And that’s not — that’s not going to be simply and it’s not going to be fast. . . .” (Id. 8:12–17.)

17. As the Applicants discuss in their motion, this statement, standing alone, is sufficient grounds for the Subcommittee to vacate its decision and resume deliberations. The SEC rules require that the Subcommittee consider whether conditions could address issues associated with the statutory criteria. See Site 202.28(a); Site 301.17. The Subcommittee’s decision to not discuss how conditions could address its concerns are inconsistent with the SEC rules as well as past SEC precedent.

18. For example, in Antrim Wind Energy, LLC, SEC Docket No. 2012-01 (hereinafter “Antrim Wind I”), the Subcommittee evaluated whether conditions would allow the applicant to satisfy the statutory criteria of RSA 162-H. At one point in the deliberations and in addressing the issue of financial, technical, and managerial capacity, certain members of the Subcommittee were concerned that the applicant had not met its burden of proof that it had the financial capacity as required by the statute. Commissioner Bailey, who was on the Subcommittee for that project, asked whether it was possible for the Subcommittee to impose a condition that, if met, would render the applicant financially capable of constructing and operating the facility as proposed. (Antrim Wind I, Deliberations Tr. Day 1 AM 98:4–16.)²

19. On the final day of the deliberations in Antrim I, the Subcommittee, including Commissioner Bailey, engaged in significant debate and discussion about whether appropriate conditions could be imposed that would mitigate the project’s effect on aesthetics. See generally (Antrim Wind I, Deliberations Tr. Day 3 PM.) Indeed, prior to making its ultimate decision to deny issuance of a certificate for the application, Subcommittee Chair Ignatius asked whether the Subcommittee was of the view that the project as proposed would create undue adverse effect on aesthetics “and there is no mitigation that people can come up with that would resolve or cure that problem” (Antrim Wind I, Deliberations Tr. Day 3 PM at 70:12–14.) The Subcommittee’s deliberations in the Antrim Wind I docket, as well as other dockets, demonstrate their recognition that they need to determine whether conditions can address concerns raised by the Subcommittee.

² While consideration of whether such conditions would satisfy the statutory criteria was deferred and the application was denied on other grounds, the fact that the Subcommittee engaged in such a discussion stands in stark contrast to the deliberations that took place in the present matter.

20. The SEC's deliberations in other dockets stand in stark contrast to the deliberations that took place in this matter. Given the mandates of the SEC rules and the SEC's past practice of imposing conditions, if necessary, to address certain statutory and regulatory criteria, it is unclear why the Subcommittee did not engage in similar discussions during their deliberations on this Application or entertain whether conditions could be imposed to address concerns of the Subcommittee members. In their motion, the Applicants discuss ways for the Subcommittee to impose reasonable conditions in this matter that may alleviate the concerns of the Subcommittee members.

21. Given the time and resources that all parties have devoted to this proceeding, the Subcommittee should devote the time necessary to comply with the statutory and regulatory criteria to render a just decision on the merits of the Project. It should evaluate whether appropriate, reasonable conditions—including, but not limited to, those proposed conditions by the Applicants in agreement with Counsel for the Public and separately—can address concerns raised by the Subcommittee members. It follows that the Subcommittee should vacate its February 1, 2018 decision and resume deliberations.

V. The Subcommittee failed to give due consideration to all positive impacts the Project will have on orderly development of the region.

22. As a final matter, the Subcommittee failed to give due consideration to the positive, transformational impact that this Project would have on the orderly development of the region. The Project will have a positive impact on the IBEW's membership by providing good paying jobs and will increase the demand for well-trained electricians and apprentices. It will also add young and qualified workers to New Hampshire's construction industry, which will not only benefit the IBEW and its members but also New Hampshire as a whole.

23. Additionally, the Project will create significant tax revenues for the host communities and counties, which will be beneficial for those communities, counties, and their residents.

24. Further, the Forward New Hampshire Fund and the North Country Jobs Creation Fund will both serve to benefit New Hampshire. As the testimony before the SEC demonstrated, these initiatives will provide significant economic benefits to the entire state, but particularly in the northern part of the state. And as the Applicants discuss, the Subcommittee should consider the ways that the Forward New Hampshire Fund can address certain concerns raised by the Subcommittee members during the deliberations.

25. Finally, the Subcommittee did not—but should—address and evaluate one notable benefit that would result from the Project—the upgrades to the Coos Loop. The Subcommittee took evidence on the positive impact that would occur as a result of the Coos Loop upgrades. See (Allen Bouthillier Pre-Filed Testimony, Nov. 15, 2016, at 7); (Paul Grenier Pre-Filed Testimony, Dec. 28, 2016, at 3–5.) As discussed in this testimony, the Coos Loop is at capacity, which prohibits any more renewable energy projects in the North Country. If it is upgraded, it will allow the North Country to reach its potential for renewable energy. This would allow for increased output from generation facilities and would also allow for construction of new wind energy and solar power facilities. This upgrade, if it occurs, would have a significant, positive impact on Coos County as well as the entire state. Thus, it is another example of the positive benefit the Project would have on the orderly development of the region. Despite the introduction of this testimony, the positive impact that the Coos Loop upgrades would have on the orderly development of the region was not evaluated during the Subcommittee’s

deliberations. In resuming deliberations, the Subcommittee should evaluate this benefit, as well as others that have been set forth in the testimony before the SEC.

26. Each of these significant, positive impacts from the Project will contribute to the orderly development of the region. It follows that, upon resuming its deliberations, the Subcommittee should credit these benefits in making its determination as to whether to issue a certificate of site and facility to the Project.

VI. Conclusion

In closing, the Subcommittee's compliance with RSA 162-H:16 and the SEC rules is not merely an aspirational goal. The statute and accompanying rules govern this proceeding, and the Subcommittee is bound to follow them. For the reasons set forth in Applicants' motion for reconsideration and the points raised above, the Subcommittee should vacate its February 1, 2018 decision and continue its deliberations in this matter.

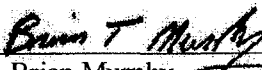
WHEREFORE, the Business Intervenor Group respectfully requests that the Subcommittee:

- A. Grant the Applicants' motion for rehearing;
- B. Vacate the Subcommittee's February 1, 2018 decision;
- C. Resume deliberations in this matter; and
- D. Grant such other and further relief as may be just.

Respectfully submitted,

IBEW
By Its Representative,

Dated: March 7, 2018

By: 

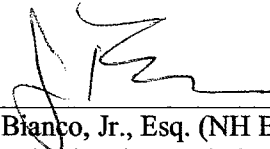
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COOS COUNTY BUSINESS AND EMPLOYER
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By Its Attorney,

Dated: 3/7/18

By: _____


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Dated: 3/7/18

By: _____

