

**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 a Certificate of Site and Facility**

March 1, 2016

**ORDER ON PENDING MOTIONS TO SUSPEND PROCEEDINGS
OR POSTPONE PUBLIC HEARINGS**

This Order denies the requests filed by various prospective intervenors and joined or supported by Public Counsel and a number of towns to suspend or postpone the public hearings scheduled in the first part of the month of March. As explained below, the supplemental information submitted by the Applicants does not warrant stopping the proceeding as has been requested. It is appropriate, however, to schedule two additional hearings limited to the supplemental information.

I. DESCRIPTION OF THE PROJECT AND BACKGROUND

On October 19, 2015, Northern Pass Transmission, LLC, and Public Service Company of New Hampshire d/b/a Eversource Energy (collectively Applicant) submitted an Application to the New Hampshire Site Evaluation Committee (Committee) for a Certificate of Site and Facility (Application) to construct a 192-mile transmission line. The transmission line is proposed to have a capacity rating of up to 1,090 MW, and run from the Canadian border in Pittsburg, New Hampshire, to Deerfield, New Hampshire.

On November 2, 2015, pursuant to RSA 162-H:4-a, the Chairman of the Committee appointed a Subcommittee (Subcommittee) to consider the Application.

On December 7, 2015, the Subcommittee met to consider the status of the Application. At that time, the Subcommittee determined that the Application contained sufficient information to

satisfy the application requirements of each state agency having jurisdiction under state or federal law to regulate any aspect of the construction or operation of the proposed facility. *See* RSA 162-H:7, IV. The Subcommittee also made an independent determination that the Application contained sufficient information to carry out the purposes of RSA 162-H. *See* RSA 162-H:7, III; Order Accepting Application (December 18, 2015).

On December 16, 2015, the Committee readopted its administrative rules with amendments. *See* N.H. CODE ADMIN. R. ANN. Site 100, 200, 300. The readoption of the administrative rules was statutorily required. *See* RSA 162-H:10, VII. On December 28, 2015, the Committee's Administrator requested that the Applicant review the rules and to supplement the Application, if necessary, so that it would comply with newly adopted rules. On January 15, 2016, the Applicant responded by stating that it would be submitting additional information and that it intended to submit its supplement by March 15, 2016.

On February 3, 2016, the Subcommittee issued an Order and Notice scheduling public hearings in Meredith, Holderness, and Deerfield on March 1, 14, and 16, 2016, respectively. On the same day, the Subcommittee issued a second Order and Notice scheduling public hearings in Colebrook and Concord on March 7 and 10, 2016, respectively. The Colebrook and Concord hearings will be held contemporaneously with public hearings conducted by the United States Department of Energy.

On February 26, 2016, the Applicant filed what it called "Additional Information to Address Revised SEC Rules Effective as of December 16, 2015" (Additional Information). The Additional Information was accompanied by eleven (11) attachments. The Additional Information and the attachments contain information that the Applicant asserts is required by the Committee's readopted administrative rules but was not required at the time of the filing of the Application. On February 26, 2016, the Applicant also filed a Request for Partial Waivers Under the Newly Adopted SEC Rules

(Waiver Request). The Waiver Request seeks a partial waiver of the requirements of N.H. CODE ADMIN. R. ANN. Site 301.03(c) pertaining to the identification of certain features on abutting properties and the identification of technically available alternative routes. The Waiver Request also seeks a partial waiver of N.H. CODE ADMIN. R. ANN. Site 301.08(c)(2) pertaining to decommissioning requirements.

II. PENDING MOTIONS

The Subcommittee received the following pleadings all of which pertain to the public hearings schedule:

- Contested Motion for Due Process Upon Submission of Additional Information filed by the Society for the Protection of New Hampshire Forests (Forest Society);
- Un-Assented To Motion for Additional or Deferred Public Hearings filed by Conservation Law Foundation (CLF);
- Response of Counsel for the Public to Motion of Conservation Law Foundation for Additional or Deferred Public Hearings and Contested Motion for Due Process Upon Submission of Additional Information of The Society for the Protection of New Hampshire Forests;
- Appalachian Mountain Club's Joinder in the Motions for Additional or Deferred Public Hearings Filed by the Society for the Protection of New Hampshire Forests and the Conservation Law Foundation;
- Assent of the Towns of Bristol, Easton, Franconia, Northumberland, Sugar Hill, and Whitefield to Motions of CLF and SPNHF; and
- Assent of the Towns of New Hampton, Woodstock, Bridgewater & Littleton to Motions of CLF and SPNHF.

The Applicant objected to the Forest Society's and CLF's Motions and Counsel for Public's Response on February 24, 2016. The motions pertaining to the scheduling of the public hearings were filed prior to the filing of the Additional Information and the Waiver Request.

A. Forest Society.

The Forest Society argues that the date of acceptance of the Application should not be the date when the original Application was accepted by the Subcommittee, but should be the date (i) when the Subcommittee receives the supplemental documentation complying with the new administrative rules, or (ii) when the Subcommittee conducts a hearing and determines that the Application, as supplemented, is complete. The Forest Society rests its argument, in part, on RSA 162-H:7, III, which requires the Subcommittee to “expeditiously conduct a preliminary review to ascertain if the application contains sufficient information to carry out the purpose of” RSA 162-H. The Forest Society further asserts that all other statutory deadlines, including the deadline for public hearings, should be calculated from the date of receipt or acceptance of the supplemental documentation. The Forest Society concludes that the Subcommittee should postpone the scheduled public hearings and reschedule them within 60 or 90 days of the receipt or acceptance of the supplemental documentation.

In addition, the Forest Society argues that the Subcommittee should postpone public hearings pursuant to RSA 162-H:14, because such postponement is in the public’s interest. Specifically, the Forest Society claims that meaningful participation by members of the public can be ensured only if such hearings are scheduled after the public has had the opportunity to review supplemental documentation provided by the Applicant.

The Forest Society also objects to the Colebrook and Concord public hearings because they are scheduled to be held contemporaneously with the United States Department of Energy. According to the Forest Society, holding the hearings at the same time is “likely to cause significant confusion,” may be overly lengthy, and may create a perception that “the SEC is disinterested in the public’s participation.”

The Forest Society alternatively requests that the Subcommittee hold a second set of public hearings pursuant to RSA 162-H:4, II. In support, the Forest Society asserts that such additional hearings are necessary and appropriate in light of the additional documentation.

B. CLF.

CLF also claims that it is in the public interest to postpone the hearings until the public has had a reasonable time to review the supplemental documentation provided by the Applicant. Unlike the Forest Society, however, CLF does not ask the Subcommittee to rule that all statutory deadlines should start running from the Subcommittee's receipt or acceptance of the supplemental documentation. Instead, CLF asserts that upon the review of the supplemental documentation, the Subcommittee should determine whether it is in the public interest to "re-set the clock of this proceeding" or simply conduct postponed public hearings without altering other deadlines. In the alternative, similar to the Forest Society, CLF asserts that it is necessary and appropriate for the Subcommittee to schedule an additional set of public hearings after the public has the opportunity to review the additional documentation.

C. Counsel for the Public.

On February 22, 2016, Counsel for the Public filed a Response to the Forest Society's and CLF's Motions. Counsel for the Public asserts that it is not known whether the supplemental documentation filed by the Applicant will comply with the new regulations or whether it will affect the Committee's completeness determination. Counsel for the Public asserts, however, that the public's meaningful participation in public hearings may be assured only if the public is provided with the opportunity to review the supplemental documentation prior to the public hearings. Counsel for the Public "suggests" that the public interest and the orderly and efficient conduct of the proceeding would be best served by a postponement of the public hearings for the

amount of time necessary to ensure that everyone in the process has up to 90 days to review the supplemental documentation. Therefore, Counsel for the Public asserts that he supports postponing public hearings or suspending the proceedings for a reasonable amount of time after the supplemental documentation is filed.

D. Appalachian Mountain Club.

On February 23, 2016, the Appalachian Mountain Club joined the Forest Society's and CLF's motions. The Appalachian Mountain Club did not assert an independent legal argument and did not make any prayer for relief.

E. Towns of Bristol, Easton, Franconia, Northumberland, Sugar Hill, and Whitefield.

On February 24, 2016, the Towns of Bristol, Easton, Franconia, Northumberland, Sugar Hill, and Whitefield filed an "Assent" to the motions filed by the Forest Society and CLF. Those towns argue that it would be in the public interest and in the "spirit and intent of the rules governing the process" to postpone the hearings until after the public has had the opportunity to review the supplemental documentation under RSA 162-H:14, or to "re-start the 90-day period" for public hearings to a date 60 to 90 days after the supplemental application is filed.

F. Towns of New Hampton, Woodstock, Bridgewater, and Littleton.

On February 29, 2016, the Towns of New Hampton, Woodstock, Bridgewater, and Littleton filed an "Assent" to the motions of the Forest Society and CLF. This latter group of towns argues that the public will have insufficient time to review and comment on supplemental documentation provided by the Applicant. In addition to adopting the arguments of the towns in the previous paragraph, this group of towns asserts that "SEC has several viable options to address the apparent lack of opportunity to meaningfully participate as argued in the motions by CLF and [the Forest Society]." They also argue that it is in the public interest to postpone the

currently scheduled public hearings until the Subcommittee determines that the Application is complete.

G. Applicant.

The Applicant objects to the Forest Society's and CLF's Motions and Counsel for Public's Response on February 24, 2016. The Applicant first argues that the Forest Society and CLF requests should be treated as public comments, not motions, and should not be ruled upon because the Forest Society and CLF are not yet parties to this proceeding. If the requests are considered, the Applicant asserts that the Forest Society, CLF, and Counsel for the Public requests are contrary to the intent and clear language of RSA 162-H, because the statute does not set forth a procedure for review of supplemental documentation, does not authorize or require the Subcommittee to calculate the statutory deadlines from the date of acceptance of supplemental documentation, and specifically states that the "applicant shall be afforded a reasonable opportunity to provide [supplemental] information while the processing of the application continues." *See* RSA 162-H:10, VII.

The Applicant further asserts that the Subcommittee is not authorized to alter statutorily prescribed deadlines and postpone public hearings. The Applicant claims that (i) the statute that allows the Subcommittee to suspend certain proceedings (RSA 162-H:14) refers only to the deliberations and deadlines set forth by RSA 162-H:7, and (ii) RSA 162-H:7 does not contain deadlines associated with public hearings. The Applicant also argues that the Forest Society, CLF, and Counsel for the Public requests are premature and unwarranted. The Applicant asserts that the public interest cannot be ascertained without reviewing the actual supplemental documentation. The Applicant claims that the Forest Society and CLF do not have standing to request additional public hearings because such hearings can be scheduled only upon the request

of a governing body of a municipality or unincorporated place in which the Project is to be located or on the Committee's own motion.

Finally, while the Additional Information had not yet been submitted when the Applicant filed its Objection, the Objection contained a summary description of what would be included. According to Applicant, the supplemental documentation would not be extensive or fundamentally different from what had already been filed.

III. ANALYSIS AND FINDINGS

A. RSA 162-H:10, VII Requires the Continuous Processing of the Application.

Rules of statutory interpretation are well-settled in New Hampshire:

When construing statutes and administrative regulations, we first examine the language used, and, where possible, we ascribe the plain and ordinary meanings to words used. Words and phrases in a statute are construed according to the common and approved usage of the language unless from the statute it appears that a different meaning was intended. Additionally, we interpret disputed language of a statute or regulation in the context of the overall statutory or regulatory scheme and not in isolation. We seek to effectuate the overall legislative purpose and to avoid an absurd or unjust result. We can neither ignore the plain language of the legislation nor add words which the lawmakers did not see fit to include.

Bovaird v. N.H. Dep't of Admin. Servs., 166 N.H. 755, 758-759 (2014) (citations and quotations omitted).

The argument that the Subcommittee is required to calculate statutory deadlines from the acceptance of the supplemental documentation as opposed to the acceptance of the original application is erroneous. Upon the filing of an application RSA 162-H:7, III, requires the Subcommittee to "expeditiously conduct a preliminary review to ascertain if the application contains sufficient information to carry out the purpose of" RSA 162-H. The Statute does not contain language either indicating or implying that the term "application," as codified by the

statute, means supplemental documentation that might be provided by the Applicant pursuant to RSA 162-H:10. To the contrary, the New Hampshire Code of Administrative Rules Site 102.09 clearly defines “application” as a “written document filed with the committee seeking the issuance of a Certificate of Site and Facility.” See N.H. CODE ADMIN. R. ANN. Site 102.09.

Furthermore, the legislature has made it crystal clear that it intended continued work on applications during the transition period for the rules.

Prior to the adoption of rules under this paragraph, applications shall be continuously processed pursuant to the rules in effect upon the date of filing. If the rules require the submission of additional information by an applicant, such applicant shall be afforded a reasonable opportunity to provide that information *while the processing of the application continues*.

RSA 162-H:10, VII (emphasis added). The language of the statute is unambiguous – the Subcommittee is required to continue to process the “application” even if the Applicant must submit supplemental documentation.

Interpreting the term “application” as supplemental documentation provided by the Applicant is contrary to the plain language of the statute. In addition, such an interpretation would require the Subcommittee to ignore a clear statutory mandate to continue to process the Application pending submittal of supplemental information.

The clear language of the Statute thus requires the Subcommittee to continue to process the Application that was filed by the Applicant on October 19, 2015, and to conduct public hearings within 90 days of acceptance of the Application. See RSA 162-H:10, I-c.

B. Requests to Suspend Proceedings.

Under RSA 162-H:14, the Subcommittee may suspend deliberations and time frames established under RSA 162-H:7 if it “deems [such suspensions] to be in the public interest.” While the Applicant argues that RSA 162-H:14 does not specifically apply to public hearings, it

is nonetheless clear that the Subcommittee has the statutory authority to schedule additional public hearings or public information sessions, and to suspend the balance of the proceedings as set forth in RSA 162-H:14. *See* RSA 162-H:14 (suspension of the proceedings); RSA 162-H:4, II (additional hearings); RSA 162-H:10, I-b (additional public information sessions). As explained further below, regardless of the scope of the Subcommittee's authority to suspend proceedings under RSA 162-H:14, there is no evidence before the Subcommittee demonstrating that the public interest requires suspension of the proceedings.

The Applicant has filed the Additional Information required by the readopted administrative rules. The Additional Information consists of the following:

1. An eighteen page document containing, identifying, and explaining additional content to be added to the Application.
2. Attachment 1 – An alternative route map-set demonstrating the location of a 47-mile overhead alternative portion of the Project that was considered by the Applicant. The map-set also identifies the site acreage of the alternative route, and wetlands and surface waters along the alternative route. This attachment was filed by the Applicant in order to comply with N.H. CODE ADMIN. R. ANN. Site 301.03 (c), as amended, requiring applicants to file information regarding the location and address of the proposed facility and any alternative routes; the site acreage of the proposed facility (on a U.S. Geological Survey or GIS map); the location of residence businesses and industrial structures within the site or on abutting properties along the alternative route.
3. Attachment 2 – Project maps that were revised to include photo-estimated wetland boundaries and the 100-foot buffer to them. The maps also include identification of approximate wetland and stream boundaries derived from existing digital data sources.

4. **Attachment 3 – A table identifying historic and cultural resources within the Area of Potential Effect as determined by the United States Department of Energy in consultation with the New Hampshire Division of Historic Resources. The Applicant asserts that Attachment 3 identifying historic and cultural resources is confidential under RSA 227-C:11 and asks the Subcommittee to treat the table as confidential information not available to the public.**

5. **Attachment 4 – Pre-Filed Testimony of Kenneth Bows stating that the Applicant has the current right, an option, or other legal basis to acquire the right to construct, operate, and maintain the Project on, over, or under the site. The testimony also contains Mr. Bows' conclusion that the Applicant has a current or conditional right of access to private properties within the boundaries of the Project sufficient to accommodate a site visit by the Subcommittee.**

6. **Attachment 5 – A current pro forma statement of assets and liabilities for Northern Pass Transmission, LLC.**

7. **Attachment 6 – Viewshed Analysis consisting of computer-based viewshed maps that illustrate where the Project may be visible within ten miles of the centerline of the transmission corridor.**

8. **Attachment 7 – Scenic Resources Identification & Assessment containing information identifying and characterizing the potential impact on the scenic resources within the area of potential visual impact located 3 to 10 miles from the transmission line.**

9. **Attachment 8 – Photosimulations from 28 representative private property observation points at varying distances within the area of potential visual impact.**

10. **Attachment 9 - Photosimulations from the October 14, 2015, Visual Impact Assessment reprinted at high resolution at 15.3 inches by 10.2.**

11. Attachment 10 – Eversource’s New Hampshire Electric Operations Emergency Response Plan dated March 5, 2015.

12. Attachment 11 – Summary of Written Municipal and Regional Comments.

13. Request for Partial Waivers Under the Newly Adopted SEC Rules requesting that the Subcommittee waive the regulations requiring the Applicant to (i) identify the location of abutting properties along the Project’s right-of-way that extend beyond the mapped area, (ii) identify wetlands and surface waters located on abutting properties that extend beyond the mapped area, (iii) identify historic and cultural resources beyond the Area of Potential Effect, and (iv) lay out its full decommissioning plan.

While the Additional Information contains some material that is new, much of the material is already part of the Application but in a different form. The most voluminous part of the Additional Information is in Attachments 1, 2, and 3. As stated above, Attachment 1 is a map-set describing an alternative over-head transmission route that the Applicant does not intend to pursue. Attachment 2 is a map-set of the project with additional layers portraying wetlands, acreage, and structures that are outside of the site but on abutting properties or within 100 feet of the Site. Attachment 3 is a confidential filing that identifies historic resources which are beyond the area of potential effect (one-mile radius of the site) but on abutting properties. The new information contained in Attachments 1, 2, and 3 concerns features that are not within the site itself. The information is not so voluminous as to require a suspension of the proceedings to review the information.

Attachment 4 consists of additional prefiled testimony from Kenneth Bows concerning the Applicant’s current right, option, or other legal basis to acquire the right to construct, operate, and maintain the Project on, over, or under the site. The testimony also contains Mr. Bows’

conclusion that the Applicant has a current or conditional right of access to private properties within the boundaries of the Project sufficient to accommodate a site visit by the Subcommittee. This information is already included in the original Application.

The Additional Material also includes an annotated current pro forma balance sheet in Attachment 5. The information contained on the balance sheet is not overly complicated and suspension of the proceedings to allow additional review is not in the public interest.

Attachments 6, 7, 8 and 9 involve aesthetics and the visual impacts of the proposed project. Attachment 9 is merely a reproduction of previously filed photo-simulations reprinted at a higher resolution. Attachment 8 contains photo-simulations from 28 additional private properties to which the Applicant had access. Attachment 6 is a viewshed analysis that extends the analysis from 3 miles to 10 miles as now required by the administrative rules. Likewise, Attachment 7 contains a Scenic Resources Identification & Assessment that extends the area of potential effect from three miles as originally filed to ten miles from the center line of the Site. While the attachments contain an extended area of potential effect, the information provided is not so extensive as to require a suspension of the proceedings in this docket.

Attachment 10 includes the Applicant's emergency response plan for the Project.

There is nothing contained within the Additional Information and the Attachments that appears to impact the public interest to the extent that a suspension of the proceedings is required.

C. Additional Public Hearings.

As noted above, the Subcommittee may schedule additional events to provide information and to hear from members of the public. *See* RSA 162-H:4, II (additional hearings); RSA 162-H:10, I-b (additional public information sessions). Although the Additional

Information does not establish that it is in the public interest to suspend the proceeding in this docket, further public hearings are appropriate. The purpose of further hearings will be to receive public comment on the Additional Information. Therefore the Subcommittee will schedule two additional public hearings. At the additional public hearings, the subject matter will be limited to the Additional Information, including the Attachments. An order and notice of the additional public hearings will be issued in the near future. The additional public hearings will be held pursuant to the authority granted to the Subcommittee pursuant to RSA 162-H:4.

It is also important to note that the Subcommittee will accept written public comments and reports throughout the pendency of this docket pursuant to RSA 162-H:10, III.

D. Concurrent Hearings with the United States Department of Energy

Some of the movants object to the scheduling of concurrent public hearings in Concord and Colebrook with the United States Department of Energy. They claim that concurrent hearings will cause “confusion” and undermine the public’s participation. Public hearings under RSA 162-H:10, I-c and the Department of Energy public hearings are both designed to elicit and encourage public comments on the Project. The concurrent scheduling is a convenience to the public and will eliminate the need to attend numerous public hearings. The suggestion that concurrent hearings will cause confusion or undermine public participation is mere speculation. The Subcommittee will be providing its full attention to the concerns of all parties.

IV. ORDERS

It is hereby ordered that the Contested Motion for Due Process Upon Submission of Additional Information filed by the Society for the Protection of New Hampshire Forests is denied;

It is hereby further ordered that the Un-Assented To Motion for Additional or Deferred Public Hearings filed by Conservation Law Foundation is denied;

It is hereby further ordered that relief requested in the Response of Counsel for the Public to Motion of Conservation Law Foundation for Additional or Deferred Public Hearings and Contested Motion for Due Process Upon Submission of Additional Information of The Society for the Protection of New Hampshire Forests is denied;


It is hereby further ordered that relief requested in the Appalachian Mountain Club's Joinder in the Motions for Additional or Deferred Public Hearings Filed by the Society for the Protection of New Hampshire Forests and the Conservation Law Foundation is denied;

It is hereby further ordered that relief requested in the Assent of the Towns of Bristol, Easton, Franconia, Northumberland, Sugar Hill, and Whitefield to the motions filed by the Forest Society and CLF is denied;

It is hereby further ordered that relief requested in the Assent of the Towns of New Hampton, Woodstock, Bridgewater, and Littleton to the motions filed by the Forest Society and CLF is denied; and

It is hereby further ordered that two additional public hearings will be scheduled. The Administrator shall arrange the dates, places, and times for said hearings and shall issue an Order and Notice of the additional public hearings to be published by the Applicant.

So ordered this first day of March, 2016:



Martin P. Honigberg, Presiding Officer
New Hampshire Site Evaluation Committee