

**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**

June 15, 2016

ORDER ON MOTIONS TO SUSPEND

I. 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, sometimes referred to herein as the Project, is proposed to have a capacity rating of up to 1,090 MW, and to run through New Hampshire from the Canadian border in Pittsburg to Deerfield.

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

In April 2016, the Subcommittee received the following motions:

- Counsel for the Public's Partially Assented-To Motion to Suspend the Time Frame Established Under RSA 162-H:7; and
- Partially Assented-To Motion of the Society for the Protection of New Hampshire Forests (Forest Society) to Suspend Time Frame for Public Interest.

Each motion seeks temporary suspension of timeframes set forth in RSA 162-H:9. The Applicant objected to the motions on April 7, 2016.

On May 19, 2016, the Subcommittee conducted a public hearing addressing the motions. This Order memorializes the Subcommittee's decision on the Motions to Suspend.

II. Position of the Parties

Under RSA 162-H:7, VI-d, the Subcommittee is required to issue or deny a certificate for an energy facility within 365 days of the acceptance of an application. *See* RSA 162-H:7, VI-d. The motions request suspension of this deadline.

In his motion, Counsel for the Public asserts that the plain language of the statute authorizes the Subcommittee to suspend the time frame established under RSA 162-H:7, including RSA 162-H:7, VI-d, "at any time while an application is before it" if the Subcommittee "deems it to be in the public interest." Counsel for the Public argues that the legislature directly authorized the Subcommittee to suspend the deadline at this stage of the proceedings when it amended RSA 162-H:14, and added language stating that a decision to suspend can be made "at any time."

Counsel for the Public also argues that it is in the public interest to suspend the deadline to allow the public and the Subcommittee to review the Project and all issues associated with construction and operation of the Project in a meaningful manner. Counsel for the Public argues that the Project is unprecedented in size and geographic scope, will have substantial impacts on numerous regions of the State of New Hampshire, and will require a significant discovery process and consideration of a large number of complex issues. Counsel for the Public concludes that "[e]xtending the time frame is necessary to ensure that all parties have a full and fair opportunity to pursue each of these complex issues and it is the only way to ensure the protection of due process rights." Counsel for the Public urges the Subcommittee to adopt a procedural schedule that would require the Subcommittee to start deliberations on or about June 23, 2017.

The Forest Society concurs with and incorporates the Counsel for the Public's arguments. The Forest Society, however, requests that the Subcommittee suspend all time frames set forth in RSA 162-H:7: (i) the 150-day deadline for agency progress reports; (ii) the 240-day deadline for agency final decisions with conditions; and (iii) the 365-day deadline for the final decision. In addition, the Forest Society requests that the Subcommittee adopt a procedural schedule that would require a final decision in November, 2017.

During the public hearing, the Subcommittee also heard oral arguments from a number of parties that concurred with Counsel for the Public and the Forest Society and asserted that their ability to address issues raised in this docket and present their position to the Subcommittee will be undermined if the Subcommittee decides not to suspend the time frame established under RSA 162-H:7.

The Applicant objects to both motions. The Applicant asserts that the Subcommittee is not authorized by the statute to suspend the statutory time frame at this stage of the proceedings. Specifically, the Applicant asserts that the legislature amended RSA 162-H:7, and expanded the nine-month period for the final decision to a 365-day period while knowing that the Project would be considered by the Subcommittee. The Applicant concludes that the 365-day period cannot be suspended due to the size of the Project, because it was enacted to accommodate projects of this size.

The Applicant also argues that in the past, the Committee extended the statutory time frames in other dockets near or at the end of the period allotted for the final decisions and not at the beginning of the discovery phase. The Applicant asserts that the Committee should continue this practice. The Applicant also argues that the statute and the Committee's prior decisions limit the authority of the Subcommittee to suspend only one deadline contained in RSA 162-H:7 (365-

day deadline) and only during the deliberations stage of the proceedings. Finally, the Applicant argues that the Subcommittee is authorized only to “temporarily suspend” a statutory time frame and is prohibited from “permanently” adopting a different time frame.

III. Analysis and Findings

The Subcommittee may suspend the statutory time frame only if: (i) it is authorized to suspend it under the enabling statute; and (ii) the Subcommittee finds that such suspension is in the public interest. *See* RSA 162-H:14; *Appeal of Campaign for Ratepayer’s Rights*, 162 N.H. 245, 250 (2011) (stating that a tribunal that exercises a limited and statutory jurisdiction is without jurisdiction to act unless it does so under the precise circumstances and in the manner particularly prescribed by the enabling legislation).

A. Jurisdiction

To determine whether the Subcommittee has authority to suspend a statutory time frame, the Subcommittee is required to review and analyze its enabling statute.

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). RSA 162-H:14 states, “[i]f the site evaluation committee, at any time while an application for a certificate is before it, deems it to be in the public interest, it may temporarily

suspend its deliberations and time frame established under RSA 162-H:7.” RSA 162-H:14. The plain language of the enabling statute allows the Subcommittee to suspend time frames established under RSA 162-H:7 “at any time while an application for a certificate is before it.” RSA 162-H:14. The statutory language is unambiguous and there is no need to consider legislative history. *See Chroniak v. Golden Investment Corp.*, 133 N.H. 346, 351 (1990).

Neither the term “temporarily” nor the statement that a “time frame” as opposed to “time frames” can be suspended make the clear meaning of the statute ambiguous. “Temporarily” means “[l]asting for a time only, existing or continuing for a limited time, not of long duration, not permanent, transitory, changing, but a short time.” *Black’s Law Dictionary* 1634 (4th ed. 1957). It is clear that the legislature authorized the Subcommittee to “temporarily” suspend the proceeding as opposed to suspending it “permanently.” To read the term “temporarily” as precluding the Subcommittee from adopting a procedural schedule that would expand the 365-day deadline would render the authority to suspend deadlines invalid and would lead to an absurd result. RSA 162-H:14 does not identify any specific deadline that the Subcommittee is authorized to suspend, but states that the Subcommittee may suspend the “time frame” contained in RSA 162-H:7. The Subcommittee refuses to add statutory language that the legislature did not see fit to include and to create ambiguity where none exists. The language of RSA 162-H:14, clearly authorizes the Subcommittee to suspend the time frame set forth under RSA 162-H:7, including all deadlines within said time frame, at any time during the proceedings.

B. Public Interest

The Subcommittee is authorized, under RSA 162-H:14, to temporarily suspend the statutory time frame if suspension is “in the public interest.” RSA 162-H does not define the term “public interest” for the purposes of suspension of the time frame set forth in RSA 162-H:7.

See RSA 162-H:14. In establishing the Site Evaluation Committee, the legislature adopted the following findings and purposes:

. . . the legislature finds that it is in the public interest to maintain a balance among those potential significant impacts and benefits in decisions about the siting, construction, and operation of energy facilities in New Hampshire; that undue delay in the construction of new energy facilities be avoided; that full and timely consideration of environmental consequences be provided; that all entities planning to construct facilities in the state be required to provide full and complete disclosure to the public of such plans; and 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.

See RSA 162-H:1.

The Project before the Subcommittee involves the construction of a 192-mile transmission line and associated infrastructure. The Project is unprecedented in both size and geographic scope. While considering the Project and deciding whether to grant or deny the Certificate, the Subcommittee and the parties in this docket are required to address the Project's impact on the orderly development of the region, aesthetics, historic sites, air and water quality, the natural environment, and public health and safety. The parties in this docket will have to review, comprehend, and respond to a plethora of reports, documents, and testimony related to those and other issues. The Subcommittee finds that the 365-day deadline should be suspended to ensure full and timely consideration of the environmental consequences of the Project and that the construction and operation of the Project is treated as a significant aspect of land-use planning in which all environmental, economic, and technical issues are resolved in an integrated fashion. Considering the magnitude of the Project and the issues raised in this docket, it is in the public interest to suspend the 365-day deadline. The Subcommittee is also aware of the legislative concern to avoid "undue" delay in the construction of the new facilities. The

Subcommittee finds that it is reasonable to temporarily suspend the 365-day deadline and require the Subcommittee to issue its Order granting or denying the Certificate by September 30, 2017. Given the extensive and complicated nature of the Application, the suspension of the deadline to issue a determination until September 30, 2017, is reasonable and will assure that the delay does not become undue or unreasonable.

The Subcommittee notes that the state agencies with permitting or other regulatory authority in this docket did not request suspension of the deadlines for their preliminary reports and final decisions.¹ In fact, the Subcommittee has already received a preliminary report from the Department of Environmental Services indicating that a final report will be prepared within the statutory time frame. Therefore, the Forest Society's request to suspend the 150-day and the 240-day deadlines is denied. The Subcommittee authorizes the Presiding Officer of the Subcommittee to issue rulings on requests to suspend the 150-day and 240-day deadlines if such requests are received from the agencies in the future. In addition, RSA 162-H:4, V, provides the presiding officer with the authority to determine procedural schedules, discovery schedules and other procedural matters.

¹ The New Hampshire Fish and Game Department filed a letter indicating that it is reviewing the Application and is interested in participating in the proceedings "at some level in the near future." The state agency deadlines set forth in RSA 162-H:7 do not apply to Fish and Game as they do not have permitting or other regulatory authority.

IV. Orders

It is hereby ordered that the Motion to Suspend filed by Counsel for the Public is granted in part and denied in part;

It is hereby further ordered that the Motion to Suspend filed by the Forest Society is granted in part and denied in part;

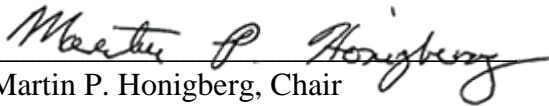
It is hereby further ordered that the time frame set forth in RSA 162-H:7, VI-d, shall be suspended;

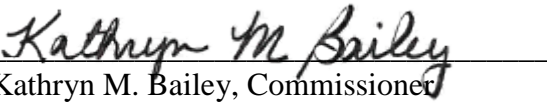
It is hereby further ordered that the Subcommittee shall issue a Final Order and Decision denying or granting the Applicant's Motion for Certificate of Site and Facility by September 30, 2017;

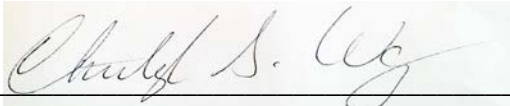
It is hereby further ordered that the Forest Society's request to suspend deadlines set forth in RSA 162-H:7, VI-b and RSA 162-H:7, VI-c, is denied; and


It is hereby further ordered that the Presiding Officer of the Subcommittee is authorized to review and rule upon any proper request for suspension of the deadlines set forth in RSA 162-H:7, VI-b and RSA 162-H:7, VI-c, from the state agencies to which such deadlines apply.


SO ORDERED this fifteenth day of June, 2016 by the Site Evaluation Subcommittee:

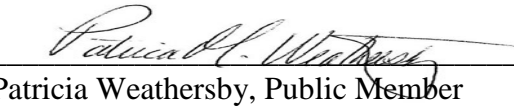

Martin P. Honigberg, Chair
Site Evaluation Committee
Presiding Officer

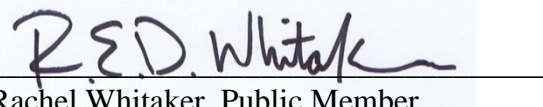

Kathryn M. Bailey, Commissioner
Public Utilities Commission


Christopher Way, Designee
Division of Economic Development
Department of Resources and Economic
Development


William Oldenburg, Designee
Assistant Director of Project Development
Department of Transportation


Craig A. Wright, Designee
Director, Air Resources Division
Dept. of Environmental Services


Patricia Weathersby, Public Member


Rachel Whitaker, Public Member