

**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**

July 21, 2016

**ORDER ON MOTIONS FOR REHEARING
ON ORDER ON REVIEW OF INTERVENTION**

This Order memorializes the denial of rehearing requests regarding intervention filed by the City of Concord, the McKenna's Purchase Unit Owners Association, Thomas Mullen, and Peter Powell.

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 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 Chair of the Committee appointed a Subcommittee (Subcommittee).

On March 18, 2016, the presiding officer issued an Order on the petitions to intervene that were received in this docket. The statute provides that any party aggrieved by a decision on a petition to intervene may within 10 calendar days request that the committee review presiding officer's decision. *See* RSA 162-H:4, V.

A. City of Concord's Request for Rehearing

On November 17, 2015, the City of Concord (Concord) filed a petition to intervene in this docket. Concord's petition was granted in the Order issued on March 18, 2016. Its participation in this docket was consolidated with the Town of Holderness (Board of Selectmen and Conservation Commission), the Town of Ashland (Board of Selectmen, Conservation Commission and Water & Sewer Department), the Town of Bridgewater, the Town of New Hampton, the Town of Bristol, the Town of Canterbury, the Town of Pembroke (Board of Selectmen and Conservation Commission), and the Town of Deerfield (Board of Selectmen, Planning Board and Conservation Commission).

On March 25, 2016, Concord filed a timely motion to review and reconsider the order consolidating its participation with other municipalities.

On April 12, 2016, the Subcommittee conducted a hearing and denied Concord's request to participate in this docket as an individual intervenor. On May 20, 2016, the Subcommittee issued an Order, memorializing its decision. The Order reconfigured groupings of intervenors and consolidated Concord's participation with the Town of Canterbury, the Town of Pembroke (Board of Selectmen and Conservation Commission), and the Town of Deerfield (Board of Selectmen, Planning Board, and Conservation Commission).

On June 17, 2016, Concord filed a Motion for Rehearing on the Order on Intervention, requesting that the Subcommittee allow it to proceed as an independent intervenor in this docket.

The Applicant objected to Concord's request on June 22, 2016.

On June 23, 2016, the Subcommittee held a hearing on pending motions and denied Concord's request. This Order memorializes the Subcommittee's decision.

B. McKenna's Purchase Unit Owners Association's Motion for Rehearing

On January 7, 2016, McKenna's Purchase Unit Owners Association (MPUOA) filed a petition to intervene in this docket. MPUOA's petition to intervene was granted in the Order issued on March 18, 2016. MPUOA's participation in this docket was consolidated with the following abutting property owners residing in the City of Concord and the Towns of Ashland, Northfield, Canterbury, Allenstown, and Deerfield: Carol Currier, Mary A. Lee, Craig and Corinne Pullen, Taras and Marta Kucman, Kelly Normandeau, Laura M. Bonk, Philip H. Bilodeau and Joan C. Bilodeau, Erick B. Berglund Jr. and Kathleen A. Berglund, Rebecca Hutchinson, Torin Judd and Brian Judd, Jo Anne Bradbury, Jeanne M. Menard as a General Partner of the Menard Forest Family Limited Partnership, Jeanne M. Menard for Peter F. Menard and Anne K. Burnett, Kevin and Lisa Cini, Bruce A. Adami and Robert J. Cote, and Eric and Sandra Lahr.

On March 25, 2015, MPUOA requested that the Subcommittee review the order consolidating its participation with other intervenors and allow it to participate as an individual party in this docket.

On April 12, 2016, the Subcommittee conducted a hearing and denied MPUOA's request to participate in this docket as an individual intervenor. On May 20, 2016, the Subcommittee issued an Order memorializing its decision. The Order reconfigured the groupings of intervenors and consolidated MPUOA's participation with the following residents of the City of Concord and the Towns of Ashland, Northfield, Canterbury and Allenstown: Carol Currier, Mary A. Lee, Craig and Corinne Pullen, Taras and Marta Kucman, Kelly Normandeau and Laura M. Bonk.

On June 17, 2016, MPUOA filed a motion requesting that the Subcommittee reconsider its decision to consolidate MPUOA's participation with other intervenors in this docket.

The Applicant objected to MPUOA's request on June 22, 2017.

On June 23, 2016, the Subcommittee held a hearing on pending motions and denied MPUOA's motion. This Order memorializes the Subcommittee's decision.

C. Thomas Mullen and Peter Powell Request for Rehearing

On February 2 and 5, 2016, Thomas Mullen and Peter Powell filed petitions to intervene in this docket. On March 18, 2016, the Presiding Officer issued an Order on Petitions to Intervene, denying Mr. Mullen's and Mr. Powell's requests. On March 21, 2016, Mr. Mullen and Mr. Powell jointly filed a timely motion requesting that the Subcommittee review the Presiding Officer's decision. During a hearing on April 12, 2016, the Subcommittee addressed their request and denied the petition to intervene. The order memorializing the Subcommittee's decision was issued on May 20, 2016.

On April 29, 2016, Mr. Mullen, Mr. Powell and "Realtors Opposed to Northern Pass" (Realtors) "appealed" the Subcommittee's decision denying their petition to intervene.¹

The Applicant objected to Mr. Mullen's request on May 27, 2016.

On June 23, 2016, the Subcommittee held a hearing on pending motions and denied the requests. This Order memorializes the Subcommittee's decision.

II. Standard

A motion for rehearing shall:

- (1) Identify each error of fact, error of reasoning, or error of law which the moving party wishes to have reconsidered;
- (2) Describe how each error causes the committee's order or decision to be unlawful, unjust or unreasonable;
- (3) State concisely the factual findings, reasoning or legal conclusion proposed by the moving party; and

¹ It is noted that although Mr. Mullen states that he wishes to "appeal" the Subcommittee's decision, he is required to file a motion for rehearing with the Subcommittee prior to filing his appeal with the New Hampshire Supreme Court. *See* RSA 541:3; 541:6. Therefore, Mr. Mullen's motion is treated as a request for rehearing in this docket.

(4) Include any argument or memorandum of law the moving party wishes to file.

NH CODE ADMIN. R. ANN. Site 202.29.

III. Analysis and Findings

A. City of Concord's Request for Rehearing

Concord argues that its participation in this docket should not be consolidated with other municipalities. Concord asserts that its interests are distinct and individualized and argues that its consolidation with other intervenors: (i) deprives it of due process rights; (ii) prevents it from protecting the interests which formed the basis of the intervention; and (ii) is contrary to the Rules of Professional Conduct.

Concord argues that by consolidating its participation with other intervenors and requesting that each group of intervenors designate a spokesperson, the Subcommittee effectively deprived Concord of the opportunity: (i) to address its concerns and interests through discovery; (ii) to conduct cross-examination and address issues that are not addressed by the group's spokesperson; (iii) to file supplemental pleadings; and (iv) to ask questions during technical sessions. Concord asserts that it can only be effectively represented through its own attorneys and through exclusive management of how it presents testimony and legal arguments before the Subcommittee. Concord further argues that its attorneys, under the Rules of Professional Conduct, are obligated to abide by Concord's decisions concerning the objectives of representation and that consolidating Concord with other intervenors may cause conflicts in the event that they disagree with the proposed approach of other municipalities.

Concord requests that the Subcommittee allow it to participate as an independent intervenor in this docket. In the alternative, Concord requests that the Subcommittee amend its intervention order to allow Concord: (i) to participate in technical sessions to address issues of

specific concerns that are not addressed by the group's spokesperson or by another party's questions; (ii) to conduct additional cross-examination during hearings to address issues of specific concern that are not addressed by the group's spokesperson or by another party's cross-examination; and (iii) to file supplemental pleadings on relevant issues of specific concern that are not adequately addressed in the group's consolidated pleadings.

In the Order dated May 20, 2016, the Subcommittee noted that all groupings of intervenors should attempt, in good faith, to reach decisions on representation, discovery, pleadings and other issues in this docket, and that any individual intervenor, if it is unable to agree with the group, has the right to file a motion stating its disagreement and a motion for alternative relief. (Order at Page 28). The Applicant argues that Concord's request should be denied because Concord's arguments have already been addressed by the Subcommittee in its prior Order, and Concord failed to state any new facts that would indicate that rehearing of the Subcommittee's prior decision is warranted. The Subcommittee determined that Concord failed to provide any error of fact, reasoning, or law that would warrant rehearing of the Order. Concord's Motion for Rehearing on Order on Intervention is denied.

B. MPUOA's Request for Rehearing

MPUOA asserts that its interests in this docket are unique and its ability to address these interests will be limited if it is required to coordinate its participation with other intervenors from the group. Specifically, MPUOA asserts that it should be allowed to intervene as a full party because it represents one hundred forty-eight members and because the Project will cross MPUOA's property that is the only habitat in New Hampshire for the Karner Blue butterfly. Finally, MPUOA argues that it is in the process of hiring counsel and that counsel's ability to represent its interests will be hampered by the presence of six other property owners.

The Applicant argues that MPUOA's request for rehearing should be denied because MPUOA reiterated previously addressed arguments and failed to set forth "good cause" that would warrant the rehearing.

The Subcommittee determined that MPUOA failed to provide any error of fact, reasoning, or law that would warrant rehearing of the Order. MPUOA's motion for rehearing is denied.

C. Thomas Mullen and Peter Powell Motion for Rehearing

Thomas Mullen and Peter Powell assert that they wish to "appeal" the Subcommittee's denial of its intervention status. They argue that the Project's impact on real estate values is a significant issue in this docket and that they should be allowed to intervene in order to address this issue. They further argue that their intervention would benefit other intervenors because of their knowledge of the industry and the real estate market in the North Country.

The Applicant objects to the request for rehearing. The Applicant argues that Mr. Mullen and Mr. Powell restate and reiterate arguments that have already been addressed by the Subcommittee during the public hearing. The Applicant concludes that the requests should be denied because they failed to demonstrate the needed specificity required to establish an interest in this proceeding.

Mr. Mullen and Mr. Powell failed to state any fact that would demonstrate that the Subcommittee committed an error of fact, reasoning, or law when it denied the motion to intervene. Mr. Mullen's and Mr. Powell's requests for rehearing of the Subcommittee's decision denying intervention are denied. Any party to these proceedings is free to retain Mr. Mullen and Mr. Powell as witnesses if they believe they have relevant information to provide to the Subcommittee. Mr. Mullen and Mr. Powell can also submit public comments in this docket throughout the pendency of the proceeding. The request for rehearing made on behalf of a group titled, "Realtors Opposed to Northern Pass" is also denied. "Realtors Opposed to Northern Pass"

did not request intervenor status in this docket and, consequently, no order that can be reheard or reconsidered by the Subcommittee. The “Realtors’ Opposed to Northern Pass” request for rehearing is denied.

IV. Orders

It is hereby ordered that City of Concord’s request for rehearing is denied;

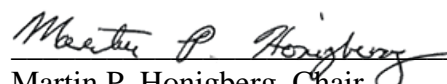
It is hereby further ordered that McKenna’s Purchase Unit Owners Association’s request for rehearing is denied;

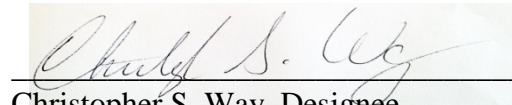
It is hereby further ordered that Thomas Mullen’s request for rehearing is denied;

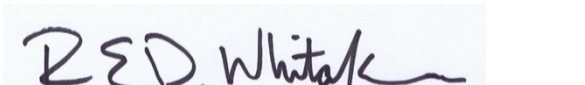
It is hereby further ordered that Peter Powell’s request for rehearing is denied; and

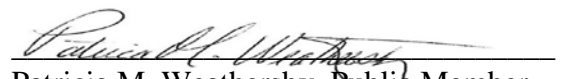
It is hereby further ordered that “Realtors’ Opposed to Northern Pass” request for rehearing is denied.

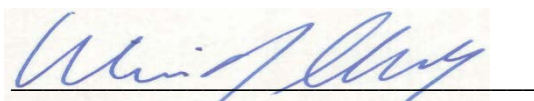
SO ORDERED this twenty-first day of July, 2016 by the Site Evaluation Subcommittee:


Martin P. Honigberg, Chair
Site Evaluation Committee
Presiding Officer


Christopher S. Way, Designee
Administrator
Division of Economic Development
Dept. of Res. and Econ. Development


Rachel E.D. Whitaker, Alternate Public
Member


Patricia M. Weathersby, Public Member


William Oldenburg, Designee
Assistant Director
Dept. of Transportation