

**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**

**November 22, 2016**

**ORDER ON DEERFIELD ABUTTERS' MOTION FOR REHEARING**

On August 15, 2016, the Subcommittee held a public hearing and deliberations on a Motion for Rehearing filed by the Deerfield Abutter Intervenor Group. The Subcommittee voted to deny the Motion for Rehearing and this Order memorializes that decision.

**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 December 16, 2015, the Committee readopted its administrative rules with amendments. The readoption of the administrative rules was statutorily required pursuant to RSA 162-H:10, VII. On December 28, 2015, the Committee's Administrator directed the Applicant to supplement the Application so that it would comply with the readopted rules.

The Applicant filed supplemental documentation and a Request for Partial Waivers Under the Newly Adopted SEC Rules on February 26, 2016. The Applicant requested partial waivers from the requirements of the following rules: (i) 301.03(c)(3) – identification of property

lines, residences, industrial buildings, and other structures and improvements; (ii) 301.03(c)(4) – identification of wetlands and surface waters; (iii) 301.03(c)(5) – identification of historic resources; and (iv) 301.08(c)(2) – decommissioning

On June 23, 2016, the Subcommittee granted in part and denied in part the Applicant’s request, subject to certain conditions. The Subcommittee ordered, *inter alia*, that: the Applicant’s request to waive provisions of Site 301.03(c)(3) that require the Applicant to identify residences, industrial buildings, other structures and improvements located on abutting properties beyond ¼ mile of the Project was granted as to properties abutting the transmission line, subject to the condition that the Applicant must provide tax maps and assessor cards for such abutting properties; that the Applicant’s request to waive the provisions of Site 301.03(c)(3) was denied as to properties abutting the: (i) substations that will be upgraded, (ii) the 29 transition stations that will be constructed, and (iii) the converter terminal that will be constructed; and that the Applicant’s request to waive provisions of Site 301.03(c)(4) that require the Applicant to identify wetlands and surface waters beyond ¼ mile of the Project was granted.

On June 30, 2016, the Deerfield Abutters Intervenor Group (Deerfield Abutters) filed a Motion for Rehearing on the Order on Applicant’s Request for Partial Waivers Under the Newly Adopted SEC Rules (Motion for Rehearing) issued on June 23, 2016, requesting rehearing on the Subcommittee’s Order with respect to partial waiver of Site 301.03(c)(3) and Site 301.03(c)(4). The Applicant objected to the Motion for Rehearing on July 11, 2016.

## **II. Positions of the Parties**

### **A. Deerfield Abutters’ Request for Rehearing**

The Deerfield Abutters argued that rehearing is warranted because they believe that the Committee had inadequate and erroneous information regarding Project Maps as they relate to

mapping of structures and wetlands when it issued its Order. They seek rehearing of the Subcommittee's decision with respect to waiver of Site 301.03(c)(3)-(4). The Deerfield Abutters asserted that they were not afforded the opportunity to present information regarding their objections to the Applicant's request for partial waivers during the Subcommittee's hearings on April 12, and May 19, 2016. Specifically, the Deerfield Abutters submitted that they were not aware at the end of the hearing on April 12, 2016, that no further arguments would be heard from Intervenors on May 19, 2016, and therefore they were unable to present their arguments.

With respect to Site 301.03(c)(3), which requires mapping of "property lines, residences, industrial buildings, and other structures and improvements within the site, on abutting property with respect to the site, and within 100 feet of the site if such distance extends beyond the boundary of any abutting property," the Deerfield Abutters argued that there are important structures not located on the required mapping. The Deerfield Abutters argued that consideration of whether the waiver is in the public interest includes consideration of the impact on private property pursuant to Site 301.16. The Deerfield Abutters believe that the Applicant does not have an accurate number of those properties that will be affected by the Project in accordance with Site 301.03(c)(3), and submitted that granting partial waivers with respect to Site 301.03(c)(3) places an unjust burden on the intervenors and does not serve the public interest. The Deerfield Abutters also argued that the Applicant's argument in support of partial waivers – that it is unlikely the Project will have any effect on residences, industrial buildings, other structures and improvements located further than ¼ mile from either side of the right-of-way and that the Visual Impact Assessment submitted by the Applicant addresses the visual impacts of the Project – reflects an attitude that these structures do not matter. The Deerfield Abutters note that none of the Deerfield Intervenor properties are included in the Visual Impact Assessment.

Finally, the Deerfield Abutters argued that accurate and complete mapping serves the public interest and aids in protecting construction workers as well as property owners. They noted an unmapped log cabin abutting the right-of-way which has an 1,800 foot underground electric line and large switch box behind an unmapped garage which is very close to the new transmission line structure, and submit that inaccurate or incomplete mapping could have disastrous and life-threatening consequences should this underground line be inadvertently drilled into by an unsuspecting work crew. The Deerfield Abutters argued that requiring tax cards without corresponding mapping is meaningless, and requested that the Subcommittee require the Applicant to review all the tax cards along the right-of-way and ensure that all properties are correctly mapped.

With respect to identification and mapping of wetlands and surface waters pursuant to Site 301.03(c)(4), the Deerfield Abutters requested a rehearing on partial waivers because they argued that the existing Project Maps and calculations provided by the Applicant depict an understated effect on wetlands. The Deerfield Abutters noted that while the Applicant stated that runoff from the Project will be controlled, the Applicant does not address impacts on wetlands which may occur when construction of the structures takes place within water bodies. The Deerfield Abutters argued that a waiver of those requirements does not serve the public interest and that the Applicant's request for such a waiver attempts to minimize the importance of wetland water systems which are vital resources to Deerfield and all New Hampshire communities. They submit that granting a waiver is unjust and burdensome to property owners, that private property, conserved lands, and water quality stand to be compromised by partial waiver of these requirements, and that granting a waiver is not in the public interest.

B. Applicant's Objection to Motion for Rehearing

The Applicant argued that the Deerfield Abutters' Motion for Rehearing should be denied as it fails to meet the requirements of a motion for rehearing set forth in Site 202.29. The Applicant asserts that the Deerfield Abutters' Motion does not identify specific errors of fact, reasoning or law in the Order on Applicant's Request for Partial Waivers to be reconsidered, and does not describe how the claimed error caused the Subcommittee's decision to be unlawful, unjust or unreasonable. The Applicant further submitted that the Deerfield Abutters failed to identify any matters that have been overlooked or mistakenly conceived by the Subcommittee.

The Applicant argued that the Deerfield Abutters do not demonstrate any good reason for the Subcommittee to grant their motion with respect to Site 301.03(c)(3) and (4). The Applicant noted that the Deerfield Abutters' request that the Committee "require the Applicant to review all tax cards along the right-of-way to ensure that all properties are counted and mapped correctly[,]" is not a challenge to the Applicant's Request for partial waivers, but rather a request for additional mapping within the right-of-way. The Applicant submitted that whether structures were properly mapped on the Project Maps is a question the Intervenors may raise if relevant to an issue properly raised in this proceeding, but has no bearing on whether structures beyond ¼ mile of the transmission line should be mapped. The Applicant also noted that the Subcommittee concluded that granting a partial waiver was in the public interest and cited the following factors: (a) construction of the Project will be localized within a strictly defined right-of-way; (b) best management practices would be used during construction; (c) it is unlikely that the Project will have any impact on surface waters and wetlands beyond ¼ mile of the Project; (d) DES does not need the information subject to the waiver request to complete its review; and (e) it will be extremely onerous for the Applicant to identify each and every wetland and surface

water located on abutting properties that extend beyond ¼ mile of the Project. The Applicant submitted that while the Deerfield Abutters generally take issue with the conclusion that the impact on surface waters or wetlands will be limited to within ¼ mile of the Project, the Deerfield Abutters did not challenge the other factors or address the onerous impact of denying the waiver request – a consideration of the Subcommittee in issuing its Order on Applicant’s Request for Partial Waivers.

The Applicant also submitted that the Deerfield Abutters attempted to raise new issues through their Motion for Rehearing and such newly addressed matters should be excluded from consideration by the Subcommittee. Specifically, the Applicant noted that the Deerfield Abutters Objection focused solely on Site 301.03(c)(5) relating to the identification of historic, cultural and other resources, and that the objections filed by Jo Anne Bradbury and the Abutting Property Owners-Ashland-Deerfield generally argued that the public interest would not be served by waivers. The Applicant concludes that the specific issues now raised by the Deerfield Abutters were not included in their respective objections.

The Applicant further asserted that by their own admission, the Deerfield Abutters participated in the hearings in April and May of 2016, where issues regarding the Applicant’s request for partial waivers were discussed. The Applicant noted that while the Deerfield Abutters argued that the Subcommittee did not “open[] the floor for further discussion from the intervenors” at the May 19, 2016 Hearing, the Deerfield Abutters did not move to supplement their Objections with additional information following the Hearing, but rather waited for a ruling on the Applicant’s motion to raise specific challenges regarding the adequacy of identification and mapping of structures and wetlands. The Applicant argued that the Motion for Rehearing is

therefore an untimely attempt to supplement the Deerfield Abutters' Objections and should be denied.

### **III. Standard**

Pursuant to RSA 541:3:

Within 30 days after any order or decision has been made by the commission, any party to the action or proceeding before the commission, or any person directly affected thereby, may apply for a rehearing in respect to any matter determined in the action or proceeding, or covered or included in the order, specifying in the motion all grounds for rehearing, and the commission may grant such rehearing if in its opinion good reason for the rehearing is stated in the motion.

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

N.H. CODE OF ADMIN. RULES Site 202.29.

### **IV. Analysis**

The Deerfield Abutters' Motion for Rehearing fails to state any fact that would warrant reconsideration of the decision on the Applicant's Request for Partial Waivers with respect to Site 301.03(c)(3) and Site 301.03(c)(4). The Deerfield Abutters do not identify any error of fact, reasoning or law that they wish to have reconsidered, nor do they describe how such purported error causes the Order to be unlawful, unjust or unreasonable. The Deerfield Abutters do not state the factual findings, reasoning or legal conclusions that they propose. Rather, the Deerfield

Abutters submit that they believe that the Committee had inadequate and erroneous information regarding Project Maps as they relate to mapping of structures and wetlands when it issued its Order. While the Deerfield Abutters do raise concerns regarding the accuracy and adequacy of information provided by the Applicant, they do not address how this information has any bearing on whether partial waiver is warranted for unmapped properties outside of the ¼ mile previously mapped. If the Deerfield Abutters take issue with the mapping of structures required pursuant to the Subcommittee's Order – those residences, industrial buildings, other structures and improvements located on abutting properties within ¼ mile of the transmission line, properties abutting the: (i) substations that will be upgraded, (ii) the 29 transition stations that will be constructed, and (iii) the converter terminal that will be constructed, and wetlands and surface waters within ¼ mile – such a challenge is not appropriate for review on a motion for rehearing as to waiver of mapping requirements for those properties which fall outside of ¼ mile of the Project.

In issuing the Order on Applicant's Request for Partial Waivers, the Subcommittee noted that with respect to Site 301.03(c)(3), identification of residences, industrial buildings, other structures and improvements located on abutting properties that extend beyond ¼ mile from the 192-mile transmission line would require the Applicant to provide in excess of nine hundred additional maps and is unreasonably burdensome, and that partial waiver will not disrupt the orderly and efficient resolution of matters before the Subcommittee. With respect to Site 301.03(c)(4), the Subcommittee found waiver to be in the public interest as construction of the Project will be localized within a new or existing but strictly defined right-of-way, best management practices will be utilized during the construction and use of access roads and laydown areas, that DES, the agency with expertise in this area, found that the information



provided was adequate for purposes of its review, and it will be onerous for the Applicant to identify each and every wetland and surface water located on abutting properties that extend beyond ¼ mile of the Project. The Deerfield Abutters' Motion for Rehearing fails to identify how any of these findings resulted from a purported error of fact, reasoning or law.

Finally, although the Deerfield Abutters suggest that their position on the Applicant's Request for Partial Waivers was not heard at the April 12 and May 18, 2016 Hearings, the record reflects that the Deerfield Abutters were afforded an opportunity to submit their position at the April 12, 2016 Hearing. Specifically, the record reflects the following exchange:

CHAIRMAN HONIGBERG: Ms. Menard

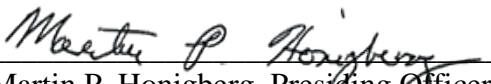
MS. MENARD: Yes. The Deerfield Abutters did file an objection to the waiver for historic, and *I have no further information.*

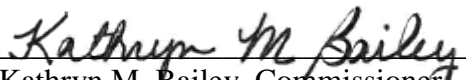
April 12, 2016 Hearing on Motions Transcript, p. 370 (emphasis added).

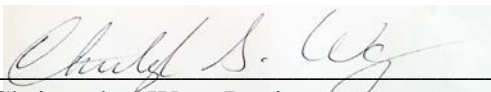
Despite having the opportunity to express their positions at the hearing on April 12, 2016, the Deerfield Abutters' spokesperson indicated that she had no further information for the Subcommittee's consideration. The Deerfield Abutters now argue that they believed they would have an opportunity to discuss, and were prepared to discuss, their position at the hearing on May 19, 2016. It is unclear why the Deerfield Abutters were not prepared to address their position at the time of the hearing on April 12, 2016, however it is clear that the Deerfield Abutters did not file any post-hearing motions seeking to supplement or update their Objection to the Applicant's Request for Partial Waivers and did not raise any of the arguments they now seek to address through a rehearing. The Deerfield Abutters limited their Objection to Site 301.03(c)(5), and did not address the specific arguments that they have now raised in their Motion for Rehearing.


The waivers granted to the Applicant apply to mapping requirements that must be included within an application. The granting of partial waivers does not prohibit the submission of evidence and arguments by the intervenors with respect to the effects of the Project outside of the mapped area. The Deerfield Abutters' concerns regarding unmapped areas may still be raised during the proceedings. The Motion for Rehearing does not state good reason for rehearing on the partial waivers. The Deerfield Abutters' Motion for Rehearing is denied.

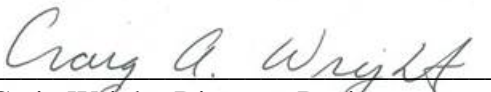
SO ORDERED this twenty-second day of November, 2016.

  
Martin P. Honigberg, Presiding Officer  
Site Evaluation Committee

  
Kathryn M. Bailey, Commissioner  
Public Utilities Commission

  
Christopher Way, Designee  
Division of Economic Development  
Dept. of Resources and Econ. Development

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

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