

**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**

January 5, 2017

**ORDER ON LATE PETITIONS TO INTERVENE
(Pessamit Innu First Nation and Sabbow and Co., Inc.)**

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.

On December 22, 2015, the Chairman of the Subcommittee issued a Procedural Order setting forth, among other deadlines, a deadline for filing motions to intervene on February 5, 2016.

On November 10, a Petition to Intervene was filed by the Pessamit Innu First Nation (Pessamit), and on November 18, 2016, the Applicant objected to the Petition.

On November 16, a Petition to Intervene was filed by Sabbow and Co., Inc. (Sabbow), and on November 28, 2016, the Applicant objected to Sabbow's Petition. Sabbow replied to the

Applicant's Objection on November 30, 2016. The Subcommittee also received a response from Counsel for the Public to Sabbow's Petition to Intervene.

This Order denies both of the Petitions to Intervene.

II. Standard for Intervention

The New Hampshire Administrative Procedure Act provides that an administrative agency must allow intervention when:

- (a) The petition is submitted in writing to the presiding officer, with copies mailed to all parties named in the presiding officer's notice of the hearing, at least 3 days before the hearing;
- (b) The petition states facts demonstrating that the petitioner's rights, duties, immunities or other substantial interests may be affected by the proceeding or that the petitioner qualifies as an intervener under any provision of the law; and
- (c) The presiding officer determines that the interests of justice and the orderly and prompt conduct of the proceedings would not be impaired by allowing the intervention.

See RSA 541-A:32, I.

The statute also permits the presiding officer to allow intervention "at any time upon determining that such intervention would be in the interests of justice and would not impair the orderly and prompt conduct of the proceedings." RSA 541-A:32, II. The Committee's rules contain similar provisions. *See* N.H. CODE ADMIN. RULES, Site 202.11 (b)-(c).

III. Analysis

A. Pessamit's Petition to Intervene

Pessamit asserts that it has approximately 4,000 registered members and claims that the Project will have an adverse effect on its traditional territory, customs and traditions. Pessamit argues that the Project will have an unreasonable adverse effect on the population of salmon in the State of Maine and the Betsiamites River and that the Project will have a significant adverse

effect on the lands that allegedly were owned by the Pessamit and were acquired by Hydro-Québec Company without the Pessamit's consent.

The Applicant argues that the Pessamit failed to demonstrate rights, interests and privileges that will be affected by the Project. The Applicant further asserts that the alleged harm to the Pessamit's territory is historic in nature, related to past actions taken in Canada, and that there is no factual basis for concluding that issuance of a Certificate would cause harm to the Pessamit. As to the alleged harm to the impact on salmon, the Applicant asserts that Pessamit failed to provide a factual basis for its claim. The Applicant also argues that allowing the Pessamit to intervene at this stage of the proceedings will impair the orderly conduct of the proceedings.

The interests asserted by the Pessamit are unrelated to the pending Application. The Pessamit failed to demonstrate that the Project, as opposed to the government of Canada or Hydro-Québec, will impact its rights, privileges and interests. Furthermore, the Pessamit are not a recognized tribal entity in New Hampshire and the Pessamit claims no ownership of lands in the State of New Hampshire. The Petition to Intervene fails to establish that the Pessamit has a substantial right, title, interest or other claim that warrants intervention. The Pessamit has no greater interest in the outcome of this proceeding than any other member of the general public.

In addition, Pessamit filed its Petition to Intervene 279 days late. Allowing the untimely intervention of Pessamit at this stage of the proceedings would impair the orderly and prompt conduct of the proceedings.

For the reasons stated above, the Pessamit's Petition to Intervene is denied.

B. Sabbow's Petition to Intervene


Sabbow is a New Hampshire corporation with a principal place of business at 77 Regional Drive, Concord, New Hampshire. Sabbow asserts that the Project will cross its property and, may make it impossible for Sabbow to continue its business in that location. Sabbow also argues that the plans filed by the Applicant contain several inaccuracies or inconsistencies and that it should be allowed to intervene to address these.

The Applicant objects to Sabbow's Petition. In support, the Applicant argues that Sabbow failed to state that its rights, duties, privileges, immunities or other substantial interests may be impacted by the Project. The Applicant argues that PSNH acquired an easement to use the right-of-way in the vicinity of Sabbow's place of business from the City of Concord in 1950, and that in 2001, PSNH entered into a Joint Use Agreement with Sabbow, permitting it to encroach upon PSNH's easement. The Applicant further asserts that construction and operation of the Project will not impair Sabbow's ability to use the easement for a storage area for its concrete products consistent with the Joint Use Agreement. Finally, the Applicant asserts that Sabbow's request is untimely and, if granted, will impair the orderly and prompt conduct of these proceedings.

Sabbow has a voice in this matter even without intervenor status. On November 15, 2016, the City of Concord submitted the pre-filed testimony of Mr. Peter Scott, General Counsel for Sabbow. On the following day, Sabbow filed a Petition to Intervene, 285 days after the deadline set-forth in the Procedural Order. On December 2, 2016, the Applicant filed a Motion to Strike the pre-filed testimony of a number of individuals, including Mr. Scott. On December 27, 2016, an Order was issued, denying the Applicant's request to strike the testimony of Mr. Scott and allowing him, as a representative of Sabbow, as a witness

for the City of Concord. Moreover, throughout the pendency of this docket, Sabbow was on notice of pending issues, but chose not to request intervention in this docket. At this point in the proceedings, the parties have already undertaken extensive discovery. Allowing Sabbow to intervene, at this stage of the proceedings, would impair the orderly and prompt conduct of these proceedings. Sabbow's Petition to Intervene is denied.

SO ORDERED this fifth day of January, 2017.


Martin P. Honigberg, Presiding Officer
Site Evaluation Committee