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 11, 2017

ORDER ON MUNICIPAL GROUPS 1 SOUTH, GROUP 2, 3 SOUTH, 3 NORTH AND THE SOCIETY FOR THE PROTECTION OF NEW HAMPSHIRE FORESTS' JOINT MOTION FOR REHEARING OF THE OCTOBER 24, 2016 ORDER ON MOTION TO COMPEL DEPOSITION OF JAMES A. MUNTZ

I. Background

Technical sessions in this docket were held during the months of September and October 2016.

Witnesses for the Applicant, James A. Muntz, former President of Transmission for Eversource Energy, and William Quinlan, were scheduled to be available for questioning on the matters of: "Project Route Selection, Forward NH Plan, NH-Specific Benefits, Clean Energy RFP, etc.," during a technical session on September 21, 2016.

On September 15, 2016, the Applicant informed the Administrator that Mr. Muntz was withdrawing as a witness and that Mr. William J. Quinlan and Mr. Kenneth Bowes would jointly adopt Mr. Muntz's pre-filed testimony. The Applicant noted that both Mr. Quinlan and Mr. Bowes would appear and be available to answer questions at the technical session. Under revisions to the technical session agenda, Mr. Quinlan and Mr. Bowes were rescheduled to appear at a technical session on October 11, 2016.

On September 29, 2016, Municipal Groups 1 South, Group 2, 3 South, 3 North, and the Society for the Protection of New Hampshire Forests (collectively referred to as Intervenors) filed a Motion to Compel Deposition of James A. Muntz (Motion to Compel Deposition). On

October 7, 2016, the Applicant filed an objection. The technical session for Mr. Quinlan and Mr. Bowes took place as scheduled on October 11, 2016.

On October 24, 2016, the Presiding Officer issued an Order denying the Motion to Compel Deposition (Order). The Intervenors filed a timely Joint Motion for Rehearing to which the Applicant objected.

II. 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;
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> (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 ADMIN. RULES, Site 202.29.

III. Positions of the Parties

A. Intervenors

The Intervenors argue that standard discovery procedures are inadequate to obtain the information known by Mr. Muntz, regarding "… the Project's inception and the route selection process, how the Project design was modified over time, the federal permitting process, and [the Applicant's] participation in the [Tri-State Clean Energy RFP] … [as well as] the Applicant['s]

technical and managerial capability to construct and operate the Project." Motion for Rehearing p. 2-3. The Intervenors note that the deadline to propound data requests had passed and that it was not reasonable for parties to utilize their limited data requests to pose questions they believed they would have the opportunity to ask Mr. Muntz at a technical session. The Intervenors further argue that it would be unreasonable to expect the parties to anticipate Mr. Muntz's departure from the Project.

The Intervenors suggest that the October 11 technical session was inadequate because Mr. Muntz did not appear, and Mr. Quinlan and Mr. Bowes were "only able to broadly answer questions about the inception of the Project, how the [P]roject design was modified over time, the route selection process, etc." Motion for Rehearing, p. 3. The Intervenors argue that the Order was based on an error of reasoning, because it was based on a misconceived notion that Mr. Quinlan and Mr. Bowes would be able to answer questions about considerations and processes that they were not involved in. The Intervenors further argue that the Order includes an error of fact in that Mr. Quinlan and Mr. Muntz were not able to address "all questions relating to the topics in Mr. Muntz's testimony," despite the Applicant's assertions that they could. The Intervenors also argue that the Order resulted from an error of law in failing to recognize that the information possessed by Mr. Muntz with regard to the inception of the Project, the route selection, and how the design was modified over time is admissible evidence relevant to the criteria of RSA 162-H:16, IV (b)-(c). The Intervenors suggest that the substitution for Mr. Muntz only six days prior to the scheduled technical session is an extraordinary occurrence requiring extraordinary relief in the form of a deposition.

The Intervenors also argue that the Applicant held Mr. Muntz out to possess certain information about "the Project's inception and route selection process, how the Project was modified over time, the federal permitting process, and [the RFP]." Motion for Rehearing, p. 4 (citing Mr. Muntz's testimony at p. 1, lines 23-27). The Intervenors point out that the Applicant

did not hold out any other witness to possess such information, including Mr. Bowes and Mr. Quinlan. The Intervenors state that Mr. Quinlan's involvement with the Project did not begin until mid-2014 and Mr. Bowes' involvement began in December of 2015, and that only Mr. Muntz has knowledge of the aforementioned route selection process, modifications to the Project, federal permitting process, and RFP process. The Intervenors note, by way of example, an occurrence at the September 22, 2016, technical session, in which Mr. Quinlan was asked a question to which the Applicant's attorney clarified that Mr. Muntz – not Mr. Quinlan – had made the high-level decisions regarding the Project that were the subject of the question. The Intervenors indicate that the information they seek from Mr. Muntz, and which Mr. Bowes and Mr. Quinlan do not possess, "is the extent of the [Applicant's] consideration of alternatives and, if the full extent was minor, why that was the case." Motion for Rehearing, p. 5. The Intervenors observe that in his pre-filed testimony, Mr. Muntz provided a summary of alternatives and that, at the October 11, 2016, technical session, neither Mr. Bowes nor Mr. Quinlan were able to provide much further insight into the consideration of alternatives summarized in Mr. Muntz's pre-filed testimony.

The Intervenors sharply criticize the Applicant's arguments set forth in its Objection to the Motion for Deposition. Specifically, the the Applicant argued that "Mr. Muntz's testimony does not reach any ultimate conclusions about the findings that the Committee is required to make" under RSA 162-H:16, and is simply "historical grounding for the Project and its associated benefits." Motion for Rehearing, p. 5 (citing Objection to Motion for Deposition, ¶ 12). The Intervenors suggest that the information possessed by Mr. Muntz is relevant to the Subcommittee's determination of whether the Project would: (1) have an unreasonable adverse effect on aesthetics, historic sites, air and water quality, the natural environment, and public health and safety; and (2) unduly interfere with the orderly development of the region.

The Intervenors argue that impacts on these categories are unreasonably adverse, in part, because alternatives exist which would entail little to no impact. The Intervenors argue that denying them the opportunity to depose Mr. Muntz constitutes error, in that it has deprived the Intervenors of the opportunity to fully evaluate the criteria in RSA 162-H:16, IV. The Intervenors acknowledge that RSA 162-H:7 does not require the Applicant to present the details of alternative routes in its Application, that it does not consider available. They argue, however, that RSA 162-H:16, IV allows other parties to introduce evidence regarding potential alternative routes. The Intervenors note that prior to the 2015 amendment to RSA 162-H:16, IV, the statute included consideration of available alternatives and notes that while the language in the revision of the statute omits such reference, if the legislature had intended to limit the consideration to only those routes the Applicant considers available, it could have included language similar to that set forth in RSA 162-H:7.

The Intervenors also note that in the Objection to the Motion for Deposition, the Applicant argued that the Intervenors had not made a good faith attempt to resolve the discovery issue informally and that depositions would be inappropriate because the matter does not involve the prudence of the decision-making. The Intervenors argue that no such requirements are applicable to requests for a deposition. Specifically, the Intervenors argue that: (1) the good faith requirement is applicable to motions to compel, not motions for depositions; (2) the "prudence" requirement cited by the Applicant from a PUC docket is not an element of RSA 162-H or Site 202.12(l); (3) decisions in PUC dockets do not have the effect of modifying the requirements set forth by the administrative rules. The Intervenors argue that to the extent that the Presiding Officer's Order was based on either a good faith or prudence requirement, such reasoning is error warranting rehearing. The Intervenors suggest at a rehearing, the Subcommittee should: (1) correct its errors of reasoning, fact, and law; (2) conclude that the information sought from Mr. Muntz with regard to the inception of the Project and route selection, and how the Project

was modified over time, constitutes admissible evidence relevant to the criteria in RSA 162 H:16,IV (b); and (3) Order that Mr. Muntz appear for a deposition.

B. Applicant

The Applicant argues that: (1) the Motion for Rehearing presents a new theory for requiring a deposition of Mr. Muntz based on his understanding of possible alternatives, which is not supported by the law or precedent in this case; and (2) fails to show that Mr. Quinlan and Mr. Bowes are not competent to adopt Mr. Muntz's testimony. The Applicant submits that the approach suggested by the Intervenors in considering whether to grant a deposition would nullify the effect of amendments to RSA 162-H:7 and RSA 162-H:16, IV, concerning the consideration of alternatives, and argues that this approach is not defensible under the statutory scheme. The Applicant also argues that although the Intervenors indicate that RSA 162-H:16, IV "allows other parties to introduce evidence regarding potential alternative routes," the statute has no such provision.

The Applicant cites to prior orders in this docket and argues that the Presiding Officer's orders have made clear that consideration of alternatives which were not chosen by the Applicant are not relevant to the determination of whether to issue a certificate. Finally, the Applicant argues that the Intervenors have failed to demonstrate that Messrs. Quinlan and Bowes are not qualified to adopt Mr. Muntz's testimony or that they were unable to satisfactorily respond to specific questions, and that because the Intervenors have not demonstrated that the information they seek is admissible, they have not met the standard for granting rehearing and that the Presiding Officer did not overlook or mistakenly conceive any point of fact, reasoning, or law warranting rehearing.

IV. Analysis

The Intervenors have not stated good reason for rehearing. The Intervenors have not demonstrated that the Order resulted from any error of fact, reasoning, or law; nor have they

shown how any purported error caused the Order to be unlawful, unjust, or unreasonable. In addition, the Motion for Rehearing presents a new argument not previously set forth in the motion requesting the deposition. The Intervenors' new argument is that a deposition of Mr. Muntz is necessary because he exclusively has information regarding the Applicant's consideration of alternatives in the route selection process. The Intervenors argument that the Order warrants rehearing if it was based on either a good faith or prudence requirement is moot, as the Order did not rely on either. Pursuant to Site 202.12(l), the Presiding Officer denied the Intervenors' Motion to Compel Deposition, finding that the Intervenors had failed to demonstrate that such a deposition is necessary. The Order specifically noted that: (1) Mr. Muntz has chosen to cease his employment with Eversource Energy; (2) as a former employee, Mr. Muntz will no longer be responsible for matters concerning the Application; (3) the Applicant has provided two witnesses to substitute for Mr. Muntz; (4) those witnesses have adopted Mr. Muntz's pre-filed testimony; (5) the Applicant has stated that the substituted witnesses will be available to address all questions relating to topics discussed in Mr. Muntz's testimony; and (6) a deposition of Mr. Muntz is unlikely to lead to the discovery of additional admissible evidence that is relevant to matters before the Subcommittee. The Intervenors' Motion for Rehearing fails to establish that the Presiding Officer's findings or reasoning were factually or legally inaccurate such that rehearing would be warranted. The Intervenors' Motion for Rehearing is denied.

SO ORDERED this eleventh day of January, 2017.

Martin P. Honigberg, Presiding Officer
NH Site Evaluation Committee