

**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**

**April 7, 2017**

**ORDER ON LAGASPENCE MOTION TO POSTPONE AND GRAFTON COUNTY  
COMMISSIONERS' MOTION TO CONTINUE**

This order denies two motions to postpone the adjudicative hearings.

**I. Background**

On June 23, 2016, a Procedural Order was issued in this docket. The schedule set forth in the Procedural Order was modified several times. On March 1, 2016, an amended procedural schedule was issued scheduling the adjudicative hearing to begin on April 13, 2017.

The following motions and objections related to the current procedural schedule are resolved in this Order:

- A Motion to Postpone the Merit Hearing on the Joint Application for a Certificate of Site and Facility (January 17, 2017) filed by Kevin Spencer and Mark Lagasse d/b/a Lagaspence Realty;
- The Applicant's Objection to Kevin Spencer and Mark Lagasse d/b/a Lagaspence Realty's Motion to Postpone Merit Hearing (January 26, 2017);
- The Grafton County Commissioners' Further Response to Motion Regarding Scheduling and Motion to Continue Adjudicatory Hearing (February 24, 2017); and
- Applicant's Objection to Grafton County Commissioners Pleading (March 6, 2017).

## **II. Motion to Postpone the Merit Hearing**

### **A. Positions of the Parties**

Kevin Spencer and Mark Lagasse d/b/a Lagaspence Realty (Lagaspence) argues that the Applicant has failed to demonstrate that it has sufficient property rights required for the construction and operation of the Project within the right-of-way encumbering their property. Lagaspence has filed suit in the United States District Court, District of New Hampshire, asking the court for declaratory relief asserting that the easement burdening their property does not permit the construction of Northern Pass. Motion at Page 6. Lagaspence requests postponement of the merits hearing pending a decision by the Court

The Applicant claims that Lagaspence has failed to demonstrate good cause for postponing the final hearing in this docket. The Applicant argues that the requested relief will cause unnecessary and unwarranted delays in resolving this matter and that the motion is an attempt to re-litigate the sufficiency of the Application, which is an issue that has already been litigated in this docket.

### **B. Analysis and Findings**

The N.H. CODE ADMIN. RULES, Site 202.16, provides that a hearing shall be postponed if a party requesting postponement of a hearing demonstrates that “to do so would promote the orderly and efficient conduct of the proceeding.” Lagaspence has failed to demonstrate that the orderly and efficient conduct of this proceeding requires postponement of adjudicatory hearings.

The Committee does not have the authority to adjudicate property rights between private parties. The ultimate determination of property rights is left to the courts. The Committee’s authority is to determine whether a proposed project should be sited, constructed, and operated as provided in the application. The rules require that an application identify evidence that the

applicant has legal authority to use the site proposed for the facility. See N.H. CODE ADMIN. RULES, Site 301.03(c)(6). On December 18, 2015, the Subcommittee issued an order determining that the Application is complete. It is unreasonable to postpone the hearings to enable the parties to re-litigate that issue. The motion to postpone the merits hearing is denied.

### **III. Motion to Continue Adjudicatory Hearing**

#### **A. Positions of the Parties**

The Grafton County Commissioners assert that the Applicant failed to provide complete and accurate design plans for the project, and that without having such plans, the Commissioners and other intervenors in this docket cannot, and will not be able to, ascertain the impact of the project on the natural environment, aesthetics, and historic resources in the region. The Commissioners also argue that the Applicant revised its plans for the crossing of Gale River and continues to refuse to provide detailed plans for said crossing, undermining the Commissioners' ability to address the impact of the Project in a timely manner. The Commissioners requested continuation of the adjudicatory hearing until May of 2017, and suspension of the procedural schedule until the Applicant provides complete and accurate design plans for the project.


The Applicant asserts that it revised its plans in response to a request of the Department of Transportation. The Applicant further argues that it is customary for applicants to file preliminary construction plans that are revised, adjusted and finalized in response to the agencies' requests, and that the Subcommittee has already determined that the plans filed with the Application are sufficient.

#### **B. Analysis and Findings**

The Subcommittee has already determined that the Applicant provided sufficient information to enable the Subcommittee to consider the Project. It is customary for developers

to supplement their design plans in response to agency comments and to accommodate newly discovered facts. The effect of the project on orderly development, environment, aesthetics, historic resources, air and water quality, aesthetics, public health and safety and the public interest can be evaluated based on the plans provided. Intervenors in this docket can argue that the Applicant's plans are insufficient to carry their burden of proof. Postponing the adjudicative hearings is not necessary and will cause undue delay. The Grafton County Commissioners' Motion to Continue is denied.

SO ORDERED this seventh day of April, 2017.

  
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Martin P. Honigberg, Presiding Officer  
Site Evaluation Committee