

**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 13, 2017

**ORDER ON MOTION FOR EXPEDITED ORDER
RELATIVE TO LOCAL PERMITS, LICENSES AND ORDINANCES**

This Order denies the Motion for Expedited Order Relative to Local Permits, Licenses and Ordinances filed by intervening municipalities. This ruling does not preclude parties from making arguments regarding the issues raised in the Motion during the course of the adjudicative proceeding.

I. Background

On March 1, 2017, an Order on Pending Motions (Procedural Order) was issued in this docket. Pursuant to the Procedural Order, adjudicative hearings will begin on April 13, 2017. On March 13, 2017, the City of Concord and the Towns of Bethlehem, Bristol, Easton, Franconia, Northumberland, Plymouth, Sugar Hill, Whitefield, Bridgewater, New Hampton, Littleton, Deerfield, Pembroke and Ashland Water & Service District (Intervenors) filed a Motion for Expedited Order Relative to Local Permits, Licenses and Ordinances (Motion). The Applicant objected on March 23, 2017.

II. Positions of the Parties

A. Intervenors

The Intervenors seek an order confirming that the Applicant is required to obtain local permits and licenses for the siting and construction of transmission towers, poles, wires and

associated equipment within locally maintained rights of way in the event that the Project is approved. They also seek an order confirming that the Applicant is required to comply with local ordinances and regulations relative to construction permits.

In support of the Motion, the Intervenors argue that, under RSA 231:159 *et seq.*, only municipalities have the authority to issue a permit or license to utilize municipally maintained highways and that RSA 162-H does not limit this authority. The Intervenors also argue that New Hampshire Supreme Court's decision in *Public Service Company of N.H. v. Hampton*, 120 N.H. 68 (1980), does not support the argument that the SEC process preempts the municipal review of local highway crossings, that the holding is narrow and inapposite to whether a utility is required by *explicit state law* to obtain a permit or license under RSA 231:161. The Intervenors also claim that the Applicant should be required obtain permits required by the municipalities and to comply with all other applicable local requirements, *i.e.* blasting permits, encumbrance permits, temporary and permanent access permits (including driveway permits where applicable), noise ordinances and seasonal weight limits on certain local roads for trucks. In support, the Intervenors argue that the Applicant agreed to cooperate with municipalities and obtain the required permits, when necessary. They further assert that RSA 162-H does not contain provisions that preempt the municipalities' authority to issue and enforce such permits.

B. Applicant

The Applicant responds that the Legislature clearly expressed its intent to preempt municipal authority over energy facilities subject to the Committee's jurisdiction by stating that the Certificate "shall be conclusive on all questions of siting, land use, air and water quality" and by mandating that the Committee give due consideration to "the views of municipal and regional planning commissions and municipal governing bodies." *See* RSA 162-H:16, II, and IV(b).

The Applicant further argues that the New Hampshire Supreme Court clearly recognized that the authority of the Committee preempts municipal authority over projects subject to the Committee's jurisdiction by stating the following:

We regard it as inconceivable that the legislature, after setting up elaborate procedures and requiring consideration of every imaginable interest, intended to leave the regulation of transmission lines siting to the whim of individual towns. Towns are merely subdivisions of the State and have only such powers as are expressly or impliedly granted to them by the legislature Whatever power towns may have to regulate the location of transmission lines within their borders, that power cannot be exercised in a way that is inconsistent with State law.

Local regulation is repugnant to State law when it expressly contradicts a statute or is contrary to the legislative intent that underlies a statutory scheme. The action by the defendant towns in this case is repugnant to RSA ch.162-F because it is contrary to the legislative intent that all matters regarding the construction of bulk power plants and transmission lines covered by the statute be determined in one integrated and coordinated procedure by the site evaluation committee, whose findings are conclusive. By enacting RSA ch. 162-F, the legislature has preempted any power that the defendant towns might have had with respect to transmission lines embraced by the statute, and the actions by the defendant towns with regard to transmission lines is of no effect.

Hampton, 120 N.H. at 72.


Finally, the Applicant argues that the Intervenors' Motion is premature because the controversy, if any, between the Applicant and the municipalities may be amicably resolved prior to the conclusion of the adjudicative hearing or may be addressed by the Subcommittee after hearing the arguments presented.

III. Analysis

The issues raised in the Motion were previously raised by the same municipalities in a Petition for Declaratory Ruling that was filed with the Committee on December 19, 2016, in Docket No. 2016-03. There, the Committee held that "[t]he issue of whether the Subcommittee will approve the siting of the Northern Pass project across, over, under, and along locally-maintained highways is squarely before the Subcommittee in the Northern Pass docket." Order

Dismissing Petition for Declaratory Ruling, Docket No. 2016-03, at page 5 (March 7, 2017). To the extent the Site Evaluation Committee has jurisdiction to consider the issues raised in the Motion, those issues should be resolved as part of the Subcommittee's deliberative process after reviewing all of the evidence and arguments presented in this docket. The Subcommittee can decide whether to issue a Certificate as it considers all the evidence and exhibits filed in this docket, and hearing testimony and related legal arguments presented by the parties. The Motion is denied, without prejudice. The parties may make arguments regarding these issues during the course of the adjudicative proceeding. The Subcommittee may deliberate and decide the issues raised in the Motion as part of its final decision and order.

SO ORDERED this thirteenth day of April, 2017.



Martin P. Honigberg, Presiding Officer
Site Evaluation Committee