

**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**

October 9, 2017

**ORDER DENYING THE SOCIETY FOR THE PROTECTION OF NEW HAMPSHIRE
FORESTS MOTION FOR REHEARING
(Department of Environmental Services' Decision)**

This Order denies the Forest Society's Motion for Rehearing of Order on Motion to Clarify issues associated with Department of Environmental Services (DES) decision to recommend approval of certain environmental permits.

I. Background

On March 31, 2017, the Society for the Protection of New Hampshire Forests (Forest Society) filed a "Motion to Clarify the Issues Concerning March 1, 2017, DES Decision Preserved in Event of an Appeal of the Final SEC Decision" (Motion to Clarify). The Motion was denied on July 20, 2017.

On August 22, 2017, the Forest Society filed a Motion for Rehearing.¹

II. Standard

N.H. CODE ADMIN. RULES Site 202.29 provides that 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;

¹ Contemporaneously with filing its Motion for Rehearing, the Forest Society also filed a Request for Waiver of Site 202.29(c) that requires motions for rehearing to be filed within thirty (30) days of a decision or order. The Request for Waiver is addressed in a separate order.

(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.

A request for a rehearing may be made by “any party to the action or proceeding before the commission, or any person directly affected thereby.” RSA. 541:3. Motions for rehearing must specify “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.” *Id.* Any motion for rehearing “shall set forth fully every ground upon which it is claimed that the decision or order complained of is unlawful or unreasonable.” RSA 541:4.

“The purpose of a rehearing is to direct attention to matters said to have been overlooked or mistakenly conceived in the original decision, and thus invite reconsideration upon the record to which that decision rested.” *Dumais v. State of New Hampshire Pers. Comm.*, 118 N.H. 309, 311 (1978) (internal quotations omitted). A rehearing may be granted upon a finding of “good reason.” *See* RSA 541:3. A motion for rehearing must be denied where no “good reason” or “good cause” has been demonstrated. *See O’Loughlin v. N.H. Pers. Comm.*, 117 N.H. 999, 1004 (1977); *see also In re Gas Service, Inc.*, 121 N.H. 797, 801 (1981).

III. Position of the Parties

The Forest Society asserts that the finding that the Subcommittee lacks authority to interpret and/or clarify statutory requirements as applied to appeals from DES actions is unlawful, unjust and unreasonable. The Forest Society claims that the Subcommittee failed to cite any law and/or articulate any reason supporting its conclusion. The Forest Society argues that it did not request interpretation of DES’ rules, but requested that the Subcommittee interpret

its governing statute under RSA 162-H:4-a, I. The Forest Society further argues that its Motion to Clarify could not be denied as untimely because it related to “Track 2 issues.”

IV. Analysis

The Order on Motion to Clarify did not address and did not analyze the alleged untimely filing of the Forest Society’s Motion to Clarify.

The Forest Society did not request that the Subcommittee interpret provisions of its governing statute, but stated that none of the provisions of RSA 162-H address the process and deadlines for appealing a DES decision and sought clarification.² In the absence of direct delegation of authority in RSA 162-H, the Forest Society requested an interpretation of the rules and statutes applicable to appeals of DES decisions. The Subcommittee does not have the authority to do so.

Finally, the Order provided ample explanation of why the Forest Society’s Motion to Clarify was denied. The Forest Society’s disagreement with the Order or dissatisfaction with reasoning provided does not establish good cause for rehearing.

The Forest Society’s Motion for Rehearing is denied.

SO ORDERED this ninth day of October, 2017.



Martin P. Honigberg, Presiding Officer
Site Evaluation Committee

² “None of the sections of RSA 162-H that discuss various aspects of state agencies in an SEC matter address the issue of how to appeal agency-specific determinations of statutes that are not necessarily part of the SEC statutory scheme ... upon which the SEC will partially base its decision. RSA 162-H:1; RSA 162-H:3, I; RSA 162-H:7-a, I(a); RSA 162-H:7-a, I(e); RSA 162-H:16, I.” Motion to Clarify, at 3.