

**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**

December 22, 2017

**ORDER ON MOTION FOR NEW PUBLIC HEARINGS
AND MOTION TO REQUEST A NEW APPLICATION**

This Order denies a motion for new public hearings and a motion for a new Application filed by the Grafton County Commissioners (Commissioners).

I. Background

On February 24, 2017, the Commissioners filed a Motion to Continue Adjudicatory Hearing based on alleged inadequacies of the Application. An Order denying the motions was issued on April 7, 2017.

On November 6, 2017, the Commissioners filed a Motion for New Public Hearings and a Motion for a New Application. The Society for the Protection of New Hampshire Forests, Municipal Groups 1 South, 2, 3 North and 3 South, and the Non-Abutting Property Owners Group of Intervenor (Bethlehem to Plymouth) joined in the motion. The Applicant objected.

II. Positions of the Parties

The Commissioners assert that the Applicant inaccurately described the underground portion of the Project to the public at information sessions and public hearings conducted under RSA 162-H:10, I and I-a. Specifically, the Commissioners argue that during information sessions and public hearings, the Applicant asserted that the underground portion of the Project would be constructed under the surface of existing roads and would not require chemicals for

insulating the cables. The Commissioners argue that discovery and the Applicant's witness testimony on cross-examination both demonstrate that, if built as proposed, the Project would not be constructed exclusively under the surface of the roads. They also argue that, contrary to assertions made during information sessions and public hearings, the Applicant's witnesses testified that the Applicant will use flowable thermal backfill to insulate the cables.

The Commissioners also argue that the Project plans filed by the Applicant are incomplete and may be subject to further changes. The Commissioners request an order requiring the filing of an amended Application describing the Project as reflected in the most current plans and supplements. The Commissioners also request an order requiring that the amended Application include additional information that they believe is not addressed by the plans, such as the location of transmission station #5, the crossing of the Gale River, the specific location of the underground portion related to the road, and other details.

The Applicant argues that the issues raised by the Commissioners have been addressed by the orders issued on April 7, 2017, and September 19, 2017. The Applicant asserts that the Commissioners' request constitutes an improper untimely motion for rehearing of these orders and should be denied. On the merits of the Commissioners' arguments, the Applicant asserts that the public information sessions and public hearings correctly described the Project based on the plans that existed at the time and correctly stated that the Project would be constructed within the bounds of the public highways. The Applicant further argues that it is within the Department of Transportation's exclusive jurisdiction to decide where exactly the underground portion of the Project will be located under the public highways and the review of the Application should not be delayed to accommodate the Department of Transportation's process.

III. Standard of Statutory Construction

Rules of statutory interpretation are well settled in New Hampshire:

When construing statutes and administrative regulations, we first examine the language used, and, where possible, we ascribe the plain and ordinary meanings to words used. Words and phrases in a statute are construed according to the common and approved usage of the language unless from the statute it appears that a different meaning was intended. Additionally, we interpret disputed language of a statute or regulation in the context of the overall statutory or regulatory scheme and not in isolation. We seek to effectuate the overall legislative purpose and to avoid an absurd or unjust result. We can neither ignore the plain language of the legislation nor add words which the lawmakers did not see fit to include.

Bovaird v. N.H. Dep't of Admin. Servs., 166 N.H. 755, 758-59 (2014) (citations and quotations omitted).

IV. Analysis

A. Request for Additional Public Information Sessions and Public Hearing

Under RSA 162-H:10, the Applicant must hold public information sessions and the Subcommittee must participate at public hearings. RSA 162-H:10, I, I-a and I-c. These procedural requirements are separate and distinguishable from each other.

1. Public Information Sessions

Under RSA 162-H:10, I, “[a]t least 30 days prior to filing an application for a certificate” the Applicant must conduct at least one public information session in each county where the proposed facility is to be located.” During these public information sessions, the Applicant is required to “present information regarding *the project* and provide an opportunity for comments and questions from the public to be addressed by the applicant.” RSA 162-H:10, I (emphasis added).

Under RSA 162-H:10, I-a, “[w]ithin 45 days after acceptance of an application for a certificate,” the Applicant must hold at least one public information session in each county in

which the proposed facility is to be located. “The session shall be for public information on *the proposed facility* with the applicant presenting the information to the public.” RSA 162-H:10, I-a (emphasis added).

The Legislature authorized the Subcommittee to order the Applicant to provide additional public information sessions upon request of the governing body of a municipality or unincorporated place in which any part of the proposed facility is to be located or on the Subcommittee’s own motion, “as are reasonable to inform the public of *the proposed project*.” RSA 162-H:10, I-b (emphasis added).

The language of the statute shows the purpose of the public information sessions conducted under RSA 162-H:10, I (pre-filing information sessions) is to inform the public about the “project” and invite comments and questions that will be addressed in the Application. The purpose of public information sessions conducted pursuant to RSA 162-H:10, I-a (post-filing information sessions) is to advise the public of the project already filed with the Subcommittee.

The request to conduct additional public information sessions under RSA 162-H:10, I (pre-filing public information sessions) must be denied because the Project has been submitted for the Subcommittee’s consideration and the Committee’s enabling statute does not authorize the Subcommittee to conduct additional pre-filing information sessions.

Even if the request were otherwise timely, the Commissioners’ request to conduct additional public information sessions under RSA 162-H:10, I-a must be denied. The Application has been filed and the proceedings have followed the process outlined in the statute and are extensive. To date, the Subcommittee has held 70 days of adjudicative hearings. The Commissioners intervened in the adjudicative hearing process and have participated throughout those proceedings. Transcripts of the proceeding have been published and available to the public

in a prompt and expedited manner. The parties are free to argue that any changes in the project or lack of information warrants denial of a certificate.

The Commissioners fail to recognize the site evaluation process and the statutory scheme that recognizes substantive modifications to an application may occur during the review process. *See* RSA 162-H:7, IX (“The applicant shall immediately inform the committee of any substantive modification to its application.”).

2. Public Hearings

Under RSA 162-H:10, I-c, “[w]ithin 90 days after acceptance of an application for a certificate,” the Subcommittee must hold at least one public hearing in each county in which the proposed facility is to be located. “Subsequent public hearings shall be in the nature of adjudicative proceedings under RSA 541-A” RSA 162-H:10, II.

The statutory language is unambiguous. Public hearings are conducted within 90 days of acceptance of the Application. All subsequent hearings shall be in the nature of adjudicative hearings. The Commissioners’ request to conduct additional public hearings similar to those that were conducted within 90 days of acceptance of the Application is denied. As stated above, the Subcommittee has conducted 70 days of adjudicative hearings. The Commissioners and other parties have had an adequate opportunity to address all outstanding issues including any changes to the construction plans for the underground portion of the proposed route. The Subcommittee conducted four additional hearings to receive oral statements from members of the public during the adjudicative phase of the proceedings. Further hearings to obtain public comments are unnecessary and would only delay a prompt and orderly disposition of the proceedings. As required by statute, the Subcommittee accepted written public comments until the close of the

record. To date there are more than 3000 public comments on file in this docket. The request for additional public hearings is denied.

B. Request for a New Application

The Commissioners' request to order the Applicant to file a new Application is similar to the request made in their Further Response to the Motion Regarding Scheduling and Motion to Continue Adjudicatory Hearing filed on February 24, 2017. There, the Commissioners asserted that the Applicant failed to provide complete and accurate design plans for the Project and requested suspension of the procedural schedule until the Applicant provides complete and accurate design plans for the Project.

The Order issued on the Commissioners' Further Response stated:

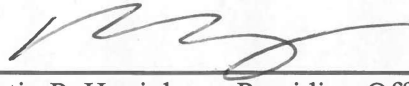
[t]he Subcommittee has already determined that the Applicant provided sufficient information to enable the Subcommittee to consider the Project. It is customary for developers to supplement their design plans in response to agency comments and to accommodate newly discovered facts. The effect of the 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.

Order on Grafton County Commissioners' Motion to Continue, at 3 (April 7, 2017).

The motion seeking to require a new application is based on the same facts and argument, regarding the alleged incompleteness of Project's plans. The Commissioners have failed to articulate any new facts that would warrant reconsideration of the reasoning or holding stated in the Order issued on April 7, 2017.

RSA 162-H:7, IX anticipates that substantive modifications to the Application may occur and the Applicant has advised the Subcommittee of the modifications. Witnesses have been recalled to address such modifications and the parties have had the opportunity to extensively cross-examine those witnesses. There is no basis to require a new Application and the Motion is denied.

SO ORDERED this 22 day of December, 2017.

A handwritten signature in black ink, appearing to read 'M. Honigberg', is written over a horizontal line.

Martin P. Honigberg, Presiding Officer
Site Evaluation Committee