

**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 6, 2016

REPORT OF PREHEARING CONFERENCE

Background

On March 22, 2016, a prehearing conference was held in the above referenced docket. Counsel to the Site Evaluation Committee, Michael J. Iacopino, was the presiding officer. This memorandum will serve as a report of prehearing conference pursuant to RSA 541-A:31, V(d). Notice pursuant to RSA 541-A:31, V(b) of the prehearing conference was included in the procedural schedule issued on December 22, 2015. The entire prehearing conference was recorded verbatim. This memorandum is meant only as a summary of those matters which should be reported to the Subcommittee. In order to get a more detailed understanding of the prehearing conference, the reader should review the transcript upon its filing.

Participants

At the beginning of the prehearing conference, appearances were taken. A list of the attendees at the prehearing conference is attached to this Report of Prehearing Conference. Also present were Pamela Monroe, Administrator for the Site Evaluation Committee and Iryna Dore of the Brennan Lenehan law firm who assists Mr. Iacopino as counsel to the Site Evaluation Committee.

General Discussion

Explanation of Prehearing Conference Process.

After taking appearances, the presiding officer provided an explanation of the prehearing conference process. The presiding officer advised the attendees that the prehearing conference was not an opportunity to advocate for their positions. It is an opportunity for an informal discussion of procedural matters. The attendees were advised that the prehearing conference was being recorded verbatim and were asked to respect the challenges facing the court reporter.

Organization of Intervenor Groups and Temporary Spokespersons.

After explaining the prehearing conference, the presiding officer recessed the prehearing conference to allow the various intervenor groups to caucus and to designate a temporary spokesperson.

Discussion of Appeals from and Review of Intervenor Rulings.

After permitting a caucus, the prehearing conference was reconvened. There was extensive discussion regarding appeals from the rulings on intervention and rulings combining various intervenors. The presiding officer pointed out that appeals to the full Subcommittee regarding these rulings are required to be filed by March 28, 2016, which is 10 days after the date of issuance of the order on intervention. The presiding officer then canvassed the attendees with respect to their positions concerning intervention and/or the grouping of various intervenors. Widespread concern was expressed by the intervenors. The largest concern expressed by intervenors was the combinations and groupings created by the order. Intervenors expressed various reasons why the groupings were inappropriate or, in the opinion of various intervenors, were contrary to their substantial interests as intervenors.

The Applicants indicated that they believed that the order on intervention “essentially got it right.” As a result of the discussion amongst the parties, it was clear that no common ground would be reached with respect to the issue of intervenor groupings and that the Subcommittee would need to be convened to hear argument and rule on all requests for review of intervention orders.

Discussion of Pending Motions.

The presiding officer explained that there were 3 motions pending before the Subcommittee: (1) a motion for protective order and confidential treatment of the economic report contained at Appendix 43 of the Application; (2) the Applicant’s request for waiver of rules; and (3) Attorney Cunningham’s motion to set a deadline for motions to dismiss.

The Applicant indicated that it intended to file a redacted economic report and redacted testimony of their expert, Judith Frayer. After some discussion, the Applicant indicated that the redacted report and redacted testimony would be filed on or before March 28, 2016. The Applicant explained that there were portions of the economic report and the testimony which were required to remain non-public but that the redacted economic report and testimony would be publically filed.

The presiding officer pointed out that it was necessary to set objection dates for the motions that are pending before the Subcommittee. After further discussion, it was determined that the presiding officer would recommend to the Chairman of the Subcommittee that a single objection deadline for the intervenors and Counsel for the Public would be set. It was determined that the date to be recommended would be 10 days after March 28, 2016, which is April 7, 2016. The presiding officer advised the attendees that he would recommend to the Chairman that objections to the Motion for Protective Order and Confidential Treatment be filed

on or before April 7, 2016. The presiding officer advised that he would recommend to the Chairman that objections to the request for waiver of rules be filed by the same date, April 7, 2016. It was also noted that Attorney Cunningham's motion had been filed and was objected to and is ready for ruling by the Chair.

The presiding officer inquired as to whether or not the Applicant anticipated any additional amendments or supplements to the Application. The Applicants indicated that they did not anticipate amendments or supplements.

Discussion of Overall Timeframes and Schedules.

Discussion then turned to the overall timeframes and schedule requirements of RSA 162-H. It was noted that the Applicant, Counsel for the Public and the Forest Society had all filed proposed schedules for the proceeding. The presiding officer noted that many of the intervenors would be seeing those schedules for the first time. After discussion, it was determined that the presiding officer would recommend that the intervenors file their positions with respect to the proposed schedules on or before April 7, 2016.

During this discussion, Counsel for the Public also advised the presiding officer and the attendees that he intended to file a motion to suspend the timeframes pursuant to RSA 162-H:14. Counsel for the Public indicated that he would file his motion on or before March 31, 2016.

It was noted that the dates for objections to all motions are 10 days from the date of filing. This means that objections to Counsel for the Public's motion to suspend the timeframes would be due by April 10, 2016. Likewise, the Applicants' objection to any motions for review of intervention status would be required to be filed by April 7, 2016. Because of the significant difference of opinion, it was determined that agreement would not be reached amongst all of the

parties regarding an overall timeframe and schedule. The prehearing conference thereupon broke for the lunch recess.

Discussion of Discovery Needs and Events.

Upon return from recess, the parties began to discuss the need for discovery and the scheduling of discovery events. The presiding officer made a brief presentation to the attendees explaining the normal course of discovery in matters before the Site Evaluation Committee.

After much discussion regarding the competing schedules, it was determined that other than the various motion deadlines already determined, it is unlikely that the parties would reach any agreement with respect to the scheduling of discovery. It was also noted that the scheduling of discovery must, in some part, be based upon the overall timeframe for the proceedings which is presently a matter of dispute amongst the parties.

Discussion of Expected Motions and Additional Hearings.

The discussion at the prehearing conference then turned to expected motions and additional proceedings. The presiding officer pointed out that it was the intention of the Subcommittee to schedule two additional public hearings. One public hearing would be held “north of the Notch” and one public hearing held “south of the Notch.” The presiding officer pointed out that the purpose of the additional public hearings was to hear from the public with respect to the supplemental materials filed by the Applicant on February 26, 2016.

The Society for the Protection of New Hampshire Forests (SPNHF) then raised the issue of additional site visits. Attorney Manzelli, on behalf of SPNHF, indicated that they would have suggestions for additional site visits. Some of the other parties also indicated that they had recommendations for additional site visits. The presiding officer advised the attendees that additional site visits were a possibility and could be conducted any time while the Application

was pending. Ms. Manzelli advised that SPNHF may also be interested in making a request that there be a “ballooning exhibit”. The purpose of the ballooning exhibit would be to float a balloon at the height of the towers so that so that the aesthetic effect of the height of the towers can be judged by the Subcommittee members. The Applicant indicated that although it would consider these types of requests, ballooning had several complexities and difficulties associated with it which would have to be considered by the Applicant and ultimately by the Subcommittee.

Discussion of Issues Not in Dispute.

The presiding officer canvassed the attendees to determine if there were any issues upon which the parties could find agreement or any issues which were not in dispute by the parties. There were none.

Additional Business.

Prior to the conclusion of the prehearing conference, there was a wide-ranging discussion about the various processes that would be used. Many intervenors re-stated concerns about intervenor groupings and the lack of time available for group meetings would be detrimental to their ability to represent their interests. The presiding officer reiterated that any intervenor who was consolidated within a group could make a separate motion or request regarding individual issues where the group did not represent the interest of the individual intervenor.

In addition, other matters were raised. These general concerns are all contained in the transcript of the proceeding.

Recommendation for Procedural Schedule Based Upon the Discussions Held at the Prehearing Conference.

The presiding officer was unable to determine that there was any basis for stipulation or agreement on an overall schedule. However, the following deadlines are recommended in order to address issues that must be resolved in the short term:

1. All requests for review of intervention or the grouping of intervenors must be filed on or before March 28, 2016. This is a statutory deadline.

2. Pursuant to Site Evaluation Committee rules, the Applicant will have until April 7, 2016, to file any objections to the requests for review of intervenor status or grouping.

3. The Applicant will file its redacted economic report and testimony on or before March 28, 2016.

4. All parties who wish to object to the Motion for Protective Order and Confidential Treatment shall file said objections by April 7, 2016. *See* Order and Notice dated March 25, 2016.

5. All parties who wish to object to the Applicant's request for waiver of the Site Evaluation Committee rules will file said objections on or before April 7, 2016. *See* Order and Notice dated March 25, 2016.

6. Counsel for the Public shall file his motion to suspend the timeframes and extend the schedule on or before March 31, 2016.

7. The Applicant and any other party wishing to object to Counsel for the Public's motion to suspend the timeframes and extend the schedule must file their objection thereto on or before April 10, 2016.

8. The Subcommittee shall hold a hearing to determine all motions for review of intervention status and any other motions to be determined by the Subcommittee. The Chairman of the Subcommittee will determine whether or not oral argument will be taken at the hearings or whether they will simply be deliberative hearings. In addition, the Subcommittee may consider other motions, objections and issues pertaining to the resolution of all outstanding matters including the request for waivers, the Motion for Protective Order and Confidential Treatment, the motion to set a motion to dismiss deadline and an overall procedural schedule if appropriate. This hearing has been scheduled for April 12, 2016. *See* Order and Notice dated March 25, 2016.

Having determined that no further agreements would be reached, the prehearing conference was adjourned.



Michael J. Iacopino
Counsel to the NH Site Evaluation Committee