

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24

**STATE OF NEW HAMPSHIRE**

**SITE EVALUATION COMMITTEE**

**August 15, 2016 - 1:25 p.m.**  
 Public Utilities Commission  
 21 South Fruit Street Suite 10  
 Concord, New Hampshire

NHPUC AUG24'16 PM 2:05

**IN RE: SEC 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.**  
**(Meeting on Motion for**  
**Rehearing)**

**PRESENT FOR SUBCOMMITTEE/SITE EVALUATION COMMITTEE:**

Chrmn. Martin P. Honigberg Public Utilities Comm.  
 (*Presiding as Presiding Officer*)

Cmsr. Kathryn M. Bailey Public Utilities Comm.  
 Dir. Craig Wright, Designee Dept. of Environ. Serv.  
 Christopher Way, Designee Dept. of Resources &  
 Economic Development  
 William Oldenburg, Designee Dept. of Transportation

**ALSO PRESENT FOR THE SEC:**

Michael J. Iacopino, Esq., Counsel to the SEC  
 (Brennan Lenehan...)

Pamela G. Monroe, SEC Administrator  
 Marissa Schuetz, SEC Program Specialist

**COURT REPORTER:** Steven E. Patnaude, LCR No. 052



**ORIGINAL**

STEVEN E. PATNAUDE  
 COURT REPORTER  
 21 SOUTH FRUIT STREET  
 CONCORD, NH 03301  
 PH 603 271-1234

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24

## I N D E X

### PAGE NO.

**QUESTIONS BY:**

Mr. Way	4
Chairman Honigberg	6
Mr. Oldenburg	9
Cmsr. Bailey	12

**STATEMENTS BY:**

Mr. Oldenburg	12
Cmsr. Bailey	15
Dir. Wright	17

<b>MOTION BY DIR. WRIGHT</b> to deny the Motion for Rehearing	17
<b>SECOND BY MR. WAY</b>	18

**DISCUSSION ON THE MOTION**

Cmsr. Bailey	18, 19
Dir. Wright	18
Mr. Way	19
Chairman Honigberg	19

**VOTE ON THE MOTION** 20

Summary of upcoming schedule re: SEC 2015-06 by Administrator Monroe	21
---	----

<b>MOTION BY MR. WAY</b> to adjourn	22
<b>SECOND BY CMSR. BAILEY</b>	23
<b><u>VOTE ON THE MOTION</u></b>	23

**P R O C E E D I N G**

1  
2 CHAIRMAN HONIGBERG: Good afternoon,  
3 everyone. We're here this afternoon in Docket  
4 2015-06, which is the Application of Northern  
5 Pass Transmission and Public Service Company of  
6 New Hampshire, which does business as  
7 Eversource, for a Certificate of Site and  
8 Facility. This is a meeting of the  
9 Subcommittee appointed in Docket 2015-06. We  
10 have five members of the Subcommittee here  
11 today, and that is a quorum.

12 I'll ask the members to identify  
13 themselves. I will go first. My name is  
14 Martin Honigberg. I'm with the Public  
15 Utilities Commission.

16 COMMISSIONER BAILEY: Kathryn Bailey  
17 with the Public Utilities Commission.

18 DIR. WRIGHT: Craig Wright,  
19 Department of Environmental Services.

20 MR. WAY: Christopher Way, from the  
21 Department of Resources and Economic  
22 Development.

23 MR. OLDENBURG: William Oldenburg,  
24 from the Department of Transportation.

1 CHAIRMAN HONIGBERG: Our two public  
2 members could not be here today. Sitting to my  
3 left is Counsel to the SEC, Mike Iacopino.  
4 Sitting out in the gallery are our  
5 Administrator, Pam Monroe, and Marissa Schuetz.

6 So, I think we only have one item to  
7 consider today. That is a motion for rehearing  
8 on our order granting partial waivers under the  
9 SEC rules related to mapping of wetlands and  
10 structures along the route. Do I have that  
11 correct, Ms. Monroe?

12 ADMINISTRATOR MONROE: Yes.

13 CHAIRMAN HONIGBERG: All right.  
14 Would anyone like to open the discussion of the  
15 motion for rehearing? Mr. Way.

16 MR. WAY: Thank you, Mr. Chairman. I  
17 guess this would be a question for Counselor  
18 Iacopino. For us to grant the motion here  
19 before us today, criteria would have to be met  
20 suggesting that our previous decision was  
21 unjust, unlawful, unreasonable, and I guess  
22 based upon incomplete information or errors in  
23 fact. Can you walk us through a little bit  
24 about those standards and what would have to be

1 met today?

2 MR. IACOPINO: Sure. You're standard  
3 comes from the statutory -- the standard comes  
4 statutorily from RSA 541, Section 3, which  
5 identifies that a person seeking a rehearing in  
6 an administrative proceeding must apply for the  
7 rehearing within 30 days of the order or  
8 decision, and they must specify in their motion  
9 all grounds for the rehearing, and the  
10 Commission may grant the rehearing if there is  
11 good reason for the rehearing stated in the  
12 motion.

13 And, generally, a motion for  
14 rehearing must identify each and every error of  
15 fact, reasoning, or law that is alleged to have  
16 been committed by the Committee. It must  
17 describe how that error causes the order or  
18 decision to be unjust, unlawful and  
19 unreasonable -- or unreasonable. And it must  
20 state that -- it must state concisely what the  
21 party making the motion believes the order  
22 should be, and include any argument with  
23 respect to that.

24 So, your decision today is to

1 determine, number one, has the movant, the  
2 moving party, demonstrated to you that the  
3 order as you issued it is unlawful, unjust,  
4 unreasonable, if they have provided you with  
5 sufficient information demonstrating either an  
6 error of reasoning, an error of law or an error  
7 of fact. So, that that warrants -- that,  
8 basically, makes your prior ruling unjust,  
9 unreasonable or unlawful.

10 So, that's sort of the standard that  
11 has to be met by the moving party today.

12 MR. WAY: Thank you.

13 CHAIRMAN HONIGBERG: I have a  
14 question for you, Mr. Iacopino.

15 MR. IACOPINO: Yes, sir.

16 CHAIRMAN HONIGBERG: How does the  
17 filing and the mapping requirement relate to  
18 the substantive decision that the Subcommittee  
19 will be required to make at the end of this  
20 process? If it's not included on a map, does  
21 that mean that no one can talk about it, that  
22 it's not relevant, or how does that work?

23 MR. IACOPINO: Absolutely not. The  
24 mapping requirement that was the subject of

1 this waiver is an application requirement.  
2 It's what had to be included within the  
3 application itself. You granted a limited  
4 waiver in this particular instance. That does  
5 not stop any party to the proceeding from  
6 raising impacts that they believe will occur  
7 outside of the area that is mapped. For  
8 instance, in this particular motion, there's  
9 some concern raised about a garage and cabin  
10 that is just outside of the area mapped.  
11 There's nothing that prohibits the parties from  
12 litigating whether or not the impact on that  
13 property should have a -- should make a  
14 difference in whether or not you grant the  
15 certificate, or, if you grant the certificate,  
16 whether or not you should install certain  
17 conditions in that certificate.

18 If the moving parties wanted to argue  
19 that the impact of that, of the project on any  
20 particular property, is so much that you should  
21 not grant the certificate, they're free to do  
22 that. It's still the Applicant's burden to  
23 prove that they have met all the statutory  
24 requirements. But there's no limits on the

1 litigation, in terms of that they only get to  
2 litigate what's in the Applicant's maps.

3 CHAIRMAN HONIGBERG: That last thing  
4 you said, I want to -- I was going to ask you  
5 about that, the burden of proof. That it is, I  
6 mean, what you said, that, as a general matter,  
7 the Applicant has the burden of proofing that  
8 they're entitled to a Certificate of Site and  
9 Facility, which requires them demonstrating  
10 that there's no unreasonable adverse impacts,  
11 as the statute sets forth, right?

12 MR. IACOPINO: Correct.

13 CHAIRMAN HONIGBERG: And that a  
14 particular building or geographic feature or  
15 something is not mapped or is not required to  
16 be mapped in the application doesn't shift that  
17 burden to someone opposing the application,  
18 does it?

19 MR. IACOPINO: Does not shift the  
20 burden of persuasion to that person at all.  
21 It's still the burden of persuading you that  
22 they're within the statutory criteria and that  
23 they're not having an unreasonable adverse  
24 impact is still on the applicant. So, the



1           burden of proof is still with the applicant,  
2           and it's always with the applicant in that  
3           regard.

4                   CHAIRMAN HONIGBERG:  It does become  
5           incumbent upon someone concerned about a  
6           particular feature to bring that forward, does  
7           it not?

8                   MR. IACOPINO:  Correct.  Yes.

9                   CHAIRMAN HONIGBERG:  Okay.  Does  
10          anyone have any other questions?

11                   Yes, Mr. Oldenburg, and then Mr. Way.

12                   MR. OLDENBURG:  Mr. Chairman, a  
13          question of procedure.  Are we going to talk  
14          about both or are we going to separate them  
15          into two different topics?

16                   CHAIRMAN HONIGBERG:  Both what?

17                   MR. OLDENBURG:  Both of the motions  
18          for the wetland mapping and the wetland  
19          structures.

20                   CHAIRMAN HONIGBERG:  Oh, the two --  
21          within the motion there are two issues.

22                   MR. OLDENBURG:  Yes.

23                   CHAIRMAN HONIGBERG:  We can take that  
24          however we want.  I think, ultimately, this is

1 one motion, that either is going to be granted  
2 or denied, or perhaps granted in part, denied  
3 in part, depending on how we sort it all out.  
4 So, I think we can talk about them separately,  
5 if you want to talk about the two, the two  
6 types of information separately.

7 I was -- understanding that's a  
8 procedural question. Mr. Way, did you also  
9 have a procedural or legal question or are we  
10 ready to start talking substance?

11 MR. WAY: Well, maybe it helps on  
12 that last question. And I guess for Counselor  
13 Iacopino, we had talked -- what you had spoken  
14 about previously mostly was structures that  
15 we're talking about. I think the two  
16 structures that were part of the request for  
17 rehearing. What you said, does that also apply  
18 to impacts that might occur as a result of  
19 wetlands beyond a quarter mile? Someone could  
20 bring up those impacts as well, historical  
21 structures, I'm assuming, or you tell me?

22 MR. IACOPINO: I don't believe  
23 historical resources is part of this particular  
24 motion, but the theory is the same for all of

1           them.  Is that, if somebody wants to argue to  
2           this committee and bring evidence that the  
3           project, as proposed, will have an unreasonable  
4           adverse impact on a wetland that does not  
5           happen to be within the mapped area, they're  
6           free to do that.  And, if the Applicant cannot  
7           persuade you that there is no unreasonable  
8           adverse impact on wetlands, then you would deny  
9           the certificate.  If the Applicant persuades  
10          you that there is, despite what arguments are  
11          made by the other parties, then you would  
12          normally grant the certificate, and oftentimes  
13          with some kind of conditions to address  
14          wetlands.  There's usually always wetland  
15          conditions that are, in the first instance,  
16          usually recommended by DES.

17                        So, the point is is, yes, it would  
18                        still apply, that same litigation versus  
19                        application argument still applies to wetlands.  
20                        So, just because it's not within the mapped  
21                        section, doesn't mean it cannot be litigated.

22                        MR. WAY:  Thank you.

23                        CHAIRMAN HONIGBERG:  Commissioner  
24                        Bailey.

1                   COMMISSIONER BAILEY: Does the fact  
2                   that DES has asked us to extend the time frame  
3                   for their review of wetlands impact this  
4                   decision in any way?

5                   MR. IACOPINO: There was a reference  
6                   in the original order to the fact that there  
7                   would be final decisions by today, but I don't  
8                   believe that that order was based upon that.  
9                   You know, just sort of it was non-necessary  
10                  language in that order. You're clearly not  
11                  going to go forward until you have a final  
12                  input from DES. So, I do not believe that  
13                  legally it has any impact that they have asked  
14                  for an extension of time.

15                  CHAIRMAN HONIGBERG: All right.  
16                  Any -- doesn't look like there's any more  
17                  procedural type questions.

18                  Someone want to take on the motion  
19                  itself? Either in whole or in part?

20                  Mr. Oldenburg.

21                  MR. OLDENBURG: I guess I'll begin.  
22                  One of the things, and this dealt more with the  
23                  wetland mapping and surface water mapping. One  
24                  of the things that, and mainly because I was

1 concerned about this at the original hearing,  
2 was what are the requirements? What are the  
3 mapping requirements, basically, not for us to  
4 certify, but for permit requirements from the  
5 other agencies?

6 And, so, I was interested to see,  
7 back in May, that DES had given a progress  
8 report, a quite lengthy one, 37 pages -- or, 36  
9 pages. And, then, a couple days later, on May  
10 20th, there was a supplemental. So, I went  
11 through that to see what their conclusions  
12 were. And I guess, just so -- I'll reference a  
13 few things that I found. On Page 2, number 2,  
14 they did reference that the Applicant had to  
15 "demonstrate that the plan was the -- "of the  
16 proposed alternative was the least impacting",  
17 but that was only concerning the new  
18 right-of-way.

19 CHAIRMAN HONIGBERG: Mr. Oldenburg,  
20 just to be clear, what document are you  
21 referring to?

22 MR. OLDENBURG: This is DES's letter  
23 of May 16th. It was their progress report from  
24 the Wetlands Bureau. They had submitted, it

1 was Wetlands Bureau and Shoreland Protection,  
2 there was a couple different sections. So,  
3 this is the Wetlands Bureau. So, that didn't  
4 seem to -- it seemed to be on point, but a  
5 different section. It was the new proposed  
6 right-of-way.

7 Then, on Page 3 of that same  
8 document, number 9 discussed wetland impact  
9 plans within the existing right-of-way. I  
10 could not find any of the (a) through (v)  
11 comments that addressed any wetland mapping.

12 The only comment that I found was  
13 more of a question, on Page 4 of 36, it was  
14 number 20, and I'll just read it: "That all  
15 wetland areas along the 192-mile corridor are  
16 required to be field delineated and classified  
17 in accordance with 301.01 and 301.02. Have  
18 these requirements been met?" And "did the  
19 same" -- or, pardon me, "did some of the  
20 wetland areas get interpreted and identified  
21 from aerial photographs?"

22 That was the only point where they  
23 actually questioned, that I could find, the  
24 mapping. And that, to me, pertained -- it was

1 more of a question whether it actually had been  
2 delineated within accordance of the rules.

3 I didn't find in any of these  
4 documents where DES questioned the need for  
5 more mapping or that the impacts covered didn't  
6 cover the impact or that the wetland mapping  
7 didn't entirely cover the application.

8 There were questions, obviously,  
9 about future things, construction laydown areas  
10 and things that weren't part of the Application  
11 that would have to be mapped, but I didn't see  
12 anywhere where they questioned the mapping that  
13 was provided.

14 So, I guess I didn't see anything,  
15 from at least their standpoint, where more  
16 mapping would be required than what was  
17 provided by the Applicant.

18 CHAIRMAN HONIGBERG: Any thoughts or  
19 comments from anyone specific to the Motion for  
20 Rehearing on either section?

21 Commissioner Bailey.

22 COMMISSIONER BAILEY: I remember  
23 satisfying in my mind at the last hearing that  
24 DES was satisfied with mapping out to a quarter

1 of a mile, and that they felt that that  
2 information was enough to evaluate the project.

3 So, I think that, if intervenors are  
4 concerned about a specific body of water that  
5 may be impacted that's beyond a quarter of a  
6 mile, that that would be -- I would expect that  
7 that would be something that we would  
8 adjudicate or we would hear about in the actual  
9 hearings on the merits.

10 And, as Attorney Iacopino  
11 represented, it would be up to the Applicant to  
12 persuade us that there wasn't an unreasonable  
13 impact on that, on that water body.

14 So, I don't see that we made any  
15 error of fact, error in reasoning or error of  
16 law. And, so, therefore, I don't think that I  
17 would grant a rehearing on this.

18 CHAIRMAN HONIGBERG: Commissioner  
19 Bailey, that sounded an awful lot like a  
20 motion?

21 COMMISSIONER BAILEY: I was just  
22 saying what I was thinking.

23 CHAIRMAN HONIGBERG: All right.

24 COMMISSIONER BAILEY: Someone else



1 might want to make a motion.

2 CHAIRMAN HONIGBERG: We won't hold  
3 you to that yet then. Any further discussion  
4 or further thoughts?

5 Mr. Wright.

6 MR. WRIGHT: Thank you, Mr. Chairman.  
7 I think hearing from what Attorney Iacopino  
8 said, regarding our ability to take testimony  
9 from folks on these areas outside of the  
10 mapping, and the fact that DES is doing its job  
11 with respect to the wetlands impacts, I think I  
12 would be prepared to make a motion, if you  
13 would so entertain one?

14 CHAIRMAN HONIGBERG: I think  
15 Commissioner Bailey would be very happy if you  
16 would do that.

17 DIR. WRIGHT: Given all those facts I  
18 just stated, I think I would make a motion that  
19 I don't feel that the motion supplies or  
20 identifies any specific errors of law or fact,  
21 and nor does it describe how our decision was  
22 either unlawful, unjust or unreasonable. So, I  
23 would make a motion to deny the Motion for  
24 Rehearing.

1 CHAIRMAN HONIGBERG: Is there a  
2 second?

3 MR. WAY: Second.

4 CHAIRMAN HONIGBERG: All right. Is  
5 there any further discussion of Mr. Wright's  
6 motion?

7 Commissioner Bailey.

8 COMMISSIONER BAILEY: I just want to  
9 clarify that you are -- is this for the motion  
10 to waive the rule with respect to wetlands or  
11 with respect to both wetlands and structures?

12 DIR. WRIGHT: If it wasn't clear, I  
13 would say for both, for structures and  
14 wetlands.

15 COMMISSIONER BAILEY: Okay. And, for  
16 the same reasoning, because -- well, I think  
17 we've talked about it.

18 DIR. WRIGHT: Correct.

19 COMMISSIONER BAILEY: That  
20 structures, if there's a particular structure  
21 that has a significant impact, an intervenor  
22 could come and testify even about that impact,  
23 and then it would be up to the Applicant to  
24 show us why that wasn't unreasonably adverse.

1 DIR. WRIGHT: That's the logic I'm  
2 following.

3 COMMISSIONER BAILEY: Okay.

4 CHAIRMAN HONIGBERG: And Mr. Way?

5 MR. WAY: And my second, that was  
6 based upon my understanding.

7 COMMISSIONER BAILEY: And I think  
8 that now we have the tax cards. So, we know  
9 about all of the structures on each piece of  
10 property. We just don't have them on a map.  
11 So, I think I can go along with that.

12 CHAIRMAN HONIGBERG: All right.  
13 Before calling for a vote, I'll add that, for  
14 similar reasons to what others have said, since  
15 nothing prohibits a party or intervenor from  
16 making an argument on any structure or wetland  
17 area, regardless of whether it's mapped, I'm  
18 comfortable that we don't need to revisit the  
19 order on the rules waiver that we're talking  
20 about right now. So, I'm prepared to vote in  
21 favor of Mr. Wright's motion.

22 Is there any further discussion?

23 *[No verbal response.]*

24 CHAIRMAN HONIGBERG: Seeing none,

1 those -- if you're in favor of Mr. Wright's  
2 motion, which is to deny the Motion for  
3 Rehearing, you'll be voting "yes" or "aye". If  
4 you're opposed to Mr. Wright's motion, and  
5 instead would like to see us rehear and revisit  
6 the waiver, you'll vote "no", and then we'll  
7 have to do something further.

8 But does everyone understand the  
9 yeses and noes here?

10 *[Multiple members nodding in the*  
11 *affirmative.]*

12 CHAIRMAN HONIGBERG: Okay. So, all  
13 in favor of Mr. Wright's motion please signify  
14 by saying "yes"?

15 *[Multiple members indicating*  
16 *"yes".]*

17 CHAIRMAN HONIGBERG: Are there any  
18 opposed?

19 *[No verbal response.]*

20 CHAIRMAN HONIGBERG: All right. The  
21 yeses or the ayes have it and the motion is  
22 approved.

23 Is there anything else we need to do  
24 this afternoon, Ms. Monroe?

1 ADMINISTRATOR MONROE: Not that I'm  
2 aware of.

3 CHAIRMAN HONIGBERG: Can you give us  
4 a preview of the schedule upcoming in this  
5 docket? I think, for the most part, the  
6 members of the Subcommittee aren't part of a  
7 lot of the pre hearing on the merits stuff.  
8 But just to put on the record, for those of us  
9 who -- or, for those who don't, who want to  
10 know what's going on. I know there are  
11 technical sessions coming up and some other  
12 stuff. So, can you give us the dates on those?

13 ADMINISTRATOR MONROE: Yes, I can.  
14 And, also today is the deadline for filing  
15 motions to compel for discovery.

16 CHAIRMAN HONIGBERG: And I know there  
17 have been a few filed.

18 ADMINISTRATOR MONROE: Correct.

19 CHAIRMAN HONIGBERG: I think I'm  
20 aware of three at this point.

21 ADMINISTRATOR MONROE: Right. And,  
22 as mentioned, we did receive the request for an  
23 extension of time from DES, which, I believe,  
24 in the Subcommittee's prior order, they voted

1 to allow the Presiding Officer to make a  
2 decision on that.

3 We have the technical sessions  
4 scheduled for September, which the Subcommittee  
5 will not attend. Mr. Iacopino and myself will  
6 handle that. First one's September 6th, 9th,  
7 12th, and, if needed, the 14th, 15th, 16th,  
8 19th, 20th, and the 22nd of September, if  
9 needed, 21st, September 30th. It's going to be  
10 a busy September.

11 MR. IACOPINO: And we're going to try  
12 Antrim wind in September as well.

13 ADMINISTRATOR MONROE: We have  
14 multiple, seven days of Antrim Wind  
15 adjudicative proceedings scheduled in September  
16 also.

17 CHAIRMAN HONIGBERG: All right. Is  
18 there anything else anybody wants to raise or  
19 discuss?

20 *[No verbal response.]*

21 CHAIRMAN HONIGBERG: I'll entertain a  
22 motion to adjourn.

23 MR. WAY: I'll move we adjourn.

24 COMMISSIONER BAILEY: Second.

1 CHAIRMAN HONIGBERG: Mr. Way moves,  
2 Commissioner Bailey seconds. All in favor say  
3 "aye"?

4 *[Multiple members indicating*  
5 *"aye".]*

6 CHAIRMAN HONIGBERG: Any opposed?  
7 *[No verbal response.]*

8 CHAIRMAN HONIGBERG: We are  
9 adjourned.

10 ***(Whereupon the meeting was***  
11 ***adjourned at 1:47 p.m.)***

12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24