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

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)
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. 092

ORIGINAL
INDEX

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

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

DISCUSSION ON THE MOTION

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

VOTE ON THE MOTION

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

MOTION BY MR. WAY to adjourn 22
SECOND BY CMSR. BAILEY 23
VOTE ON THE MOTION 23
PROCEEDING

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

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

COMMISSIONER BAILEY: Kathryn Bailey with the Public Utilities Commission.

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

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

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

{SEC 2015-06} [Re: Motion for Rehearing] {08-15-16}
CHAIRMAN HONIGBERG: Our two public members could not be here today. Sitting to my left is Counsel to the SEC, Mike Iacopino. Sitting out in the gallery are our Administrator, Pam Monroe, and Marissa Schuetz.

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

ADMINISTRATOR MONROE: Yes.

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

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

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

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

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

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

MR. WAY: Thank you.

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

MR. IACOPINO: Yes, sir.

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

MR. IACOPINO: Absolutely not. The mapping requirement that was the subject of
this waiver is an application requirement. It's what had to be included within the application itself. You granted a limited waiver in this particular instance. That does not stop any party to the proceeding from raising impacts that they believe will occur outside of the area that is mapped. For instance, in this particular motion, there's some concern raised about a garage and cabin that is just outside of the area mapped. There's nothing that prohibits the parties from litigating whether or not the impact on that property should have a -- should make a difference in whether or not you grant the certificate, or, if you grant the certificate, whether or not you should install certain conditions in that certificate.

If the moving parties wanted to argue that the impact of that, of the project on any particular property, is so much that you should not grant the certificate, they're free to do that. It's still the Applicant's burden to prove that they have met all the statutory requirements. But there's no limits on the {SEC 2015-06} [Re: Motion for Rehearing] {08-15-16}
litigation, in terms of that they only get to litigate what's in the Applicant's maps.

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

MR. IACOPINO: Correct.

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

MR. IACOPINO: Does not shift the burden of persuasion to that person at all. It's still the burden of persuading you that they're within the statutory criteria and that they're not having an unreasonable adverse impact is still on the applicant. So, the
burden of proof is still with the applicant, and it's always with the applicant in that regard.

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

MR. IACOPINO: Correct. Yes.

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

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

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

CHAIRMAN HONIGBERG: Both what?

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

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

MR. OLDENBURG: Yes.

CHAIRMAN HONIGBERG: We can take that however we want. I think, ultimately, this is
one motion, that either is going to be granted or denied, or perhaps granted in part, denied in part, depending on how we sort it all out. So, I think we can talk about them separately, if you want to talk about the two, the two types of information separately.

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

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

MR. IACOPINO: I don't believe historical resources is part of this particular motion, but the theory is the same for all of
them. Is that, if somebody wants to argue to this committee and bring evidence that the project, as proposed, will have an unreasonable adverse impact on a wetland that does not happen to be within the mapped area, they're free to do that. And, if the Applicant cannot persuade you that there is no unreasonable adverse impact on wetlands, then you would deny the certificate. If the Applicant persuades you that there is, despite what arguments are made by the other parties, then you would normally grant the certificate, and oftentimes with some kind of conditions to address wetlands. There's usually always wetland conditions that are, in the first instance, usually recommended by DES.

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

MR. WAY: Thank you.

CHAIRMAN HONIGBERG: Commissioner Bailey.
COMMISSIONER BAILEY: Does the fact that DES has asked us to extend the time frame for their review of wetlands impact this decision in any way?

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

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

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

Mr. Oldenburg.

MR. OLDENBURG: I guess I'll begin. One of the things, and this dealt more with the wetland mapping and surface water mapping. One of the things that, and mainly because I was
concerned about this at the original hearing, was what are the requirements? What are the mapping requirements, basically, not for us to certify, but for permit requirements from the other agencies?

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

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

MR. OLDENBURG: This is DES's letter of May 16th. It was their progress report from the Wetlands Bureau. They had submitted, it
was Wetlands Bureau and Shoreland Protection, there was a couple different sections. So, this is the Wetlands Bureau. So, that didn't seem to -- it seemed to be on point, but a different section. It was the new proposed right-of-way.

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

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

That was the only point where they actually questioned, that I could find, the mapping. And that, to me, pertained -- it was
more of a question whether it actually had been
delineated within accordance of the rules.

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

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

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

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

Commissioner Bailey.

COMMISSIONER BAILEY: I remember
satisfying in my mind at the last hearing that
DES was satisfied with mapping out to a quarter
of a mile, and that they felt that that information was enough to evaluate the project.

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

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

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

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

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

CHAIRMAN HONIGBERG: All right.

COMMISSIONER BAILEY: Someone else
might want to make a motion.

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

Mr. Wright.

MR. WRIGHT: Thank you, Mr. Chairman.

I think hearing from what Attorney Iacopino said, regarding our ability to take testimony from folks on these areas outside of the mapping, and the fact that DES is doing its job with respect to the wetlands impacts, I think I would be prepared to make a motion, if you would so entertain one?

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

DIR. WRIGHT: Given all those facts I just stated, I think I would make a motion that I don't feel that the motion supplies or identifies any specific errors of law or fact, and nor does it describe how our decision was either unlawful, unjust or unreasonable. So, I would make a motion to deny the Motion for Rehearing.
CHAIRMAN HONIGBERG: Is there a second?

MR. WAY: Second.

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

Commissioner Bailey.

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

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

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

DIR. WRIGHT: Correct.

COMMISSIONER BAILEY: That structures, if there's a particular structure that has a significant impact, an intervenor could come and testify even about that impact, and then it would be up to the Applicant to show us why that wasn't unreasonably adverse.
DIR. WRIGHT: That's the logic I'm following.

COMMISSIONER BAILEY: Okay.

CHAIRMAN HONIGBERG: And Mr. Way?

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

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

CHAIRMAN HONIGBERG: All right.

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

Is there any further discussion?

[No verbal response.]

CHAIRMAN HONIGBERG: Seeing none,
those -- if you're in favor of Mr. Wright's motion, which is to deny the Motion for Rehearing, you'll be voting "yes" or "aye". If you're opposed to Mr. Wright's motion, and instead would like to see us rehear and revisit the waiver, you'll vote "no", and then we'll have to do something further.

But does everyone understand the yeses and noes here?

[Multiple members nodding in the affirmative.]

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

[Multiple members indicating "yes".]

CHAIRMAN HONIGBERG: Are there any opposed?

[No verbal response.]

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

Is there anything else we need to do this afternoon, Ms. Monroe?
ADMINISTRATOR MONROE: Not that I'm aware of.

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

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

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

ADMINISTRATOR MONROE: Correct.

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

ADMINISTRATOR MONROE: Right. And, as mentioned, we did receive the request for an extension of time from DES, which, I believe, in the Subcommittee's prior order, they voted
to allow the Presiding Officer to make a
decision on that.

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

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

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

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

[No verbal response.]

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

MR. WAY: I'll move we adjourn.

COMMISSIONER BAILEY: Second.
CHAIRMAN HONIGBERG: Mr. Way moves, Commissioner Bailey seconds. All in favor say "aye"?

[Multiple members indicating "aye".]

CHAIRMAN HONIGBERG: Any opposed?

[No verbal response.]

CHAIRMAN HONIGBERG: We are adjourned.

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