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P R O C E E D I N G

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2 CHAIRMAN HONIGBERG: We're here in
3 SEC Docket 2015-06, the Joint Application of
4 Northern Pass Transmission and Public Service
5 Company of New Hampshire, which does business
6 as Eversource Energy. This was not originally
7 scheduled. It was noticed yesterday, once
8 everyone realized that the site visits that
9 were planned for today and tomorrow probably
10 weren't the best idea, given the weather.

11 So, we're going to take the
12 opportunity to deal with three motions that are
13 pending that require the consideration of the
14 full Subcommittee.

15 So, before we do anything else, let's
16 have the members of the Subcommittee introduce
17 themselves, started to my far left.

18 MR. OLDENBURG: Bill Oldenburg, New
19 Hampshire DOT.

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

22 CMSR. BAILEY: Kathryn Bailey, Public
23 Utilities Commission.

24 CHAIRMAN HONIGBERG: Martin

1 Honigberg, Public Utilities Commission.

2 MS. WEATHERSBY: Patricia Weathersby,
3 public member.

4 MR. WAY: Christopher Way, Department
5 of Resources & Economic Development.

6 MS. WHITAKER: Rachel Whitaker,
7 alternate public member.

8 CHAIRMAN HONIGBERG: Sitting directly
9 to my right is Mike Iacopino, Counsel to the
10 Site Evaluation Committee.

11 MR. IACOPINO: Good morning.

12 CHAIRMAN HONIGBERG: And sitting all
13 the way down to my far left is Pam Monroe, the
14 Administrator of the SEC.

15 Mr. Iacopino, why don't you cue us up
16 and tell us which motion we should deal with
17 first.

18 MR. IACOPINO: Mr. Chairman, I would
19 suggest that the Committee begin with the
20 Motion for Reconsideration of Intervention
21 filed by the Sabbow Company, in Concord.
22 Because, since the other two motions deal with
23 some similar issues, the intervention motion
24 may be the easiest to take up first.

1 CHAIRMAN HONIGBERG: So,
2 procedurally, the status is that the motion for
3 intervention was filed sometime last fall. It
4 was denied by the Chair, and Sabbow filed a
5 timely Motion for Rehearing, which, under the
6 statute, requires consideration by the full
7 Committee, or, in this case, the Subcommittee.

8 And what is the Subcommittee's legal
9 standard? My understanding is that they are
10 not bound in any way by the order that was
11 issued by the Chair. Is that correct?

12 MR. IACOPINO: That is correct. It's
13 a *de novo* decision by the Committee to
14 determine. Understanding that the original
15 motion was a Motion for Late Intervention, to
16 determine whether or not, number one, the
17 person seeking intervention has a substantial
18 claim, title, right or interest in the
19 proceeding, and whether or not allowing them to
20 intervene would impair the prompt and orderly
21 conduct of the proceedings.

22 CHAIRMAN HONIGBERG: All right. Does
23 anyone have anything they want to offer up by
24 way of discussion on the motion?

1 MR. WAY: Mr. Chairman?

2 CHAIRMAN HONIGBERG: Mr. Way.

3 MR. WAY: In looking at the Motion
4 Motion for Reconsideration, I think one of the
5 concerns that I had is I didn't really see any
6 errors in fact, I didn't see a justification
7 for reconsideration at the time.

8 The other thing, too, that I noticed
9 is that they're already part of the Concord
10 Group as well. And the submittal came after
11 the Concord Group's submittal.

12 So, I would not be supportive of
13 this. And I think, primarily, because I
14 just -- I didn't see any information in the
15 request that gave any error of fact. It seemed
16 very general to me.

17 CHAIRMAN HONIGBERG: Any other
18 thoughts or comments they want to offer?

19 Commissioner Bailey.

20 CMSR. BAILEY: I think Mr. Sabbow has
21 the opportunity to participate with the City of
22 Concord. And I think granting him individual
23 intervenor status would affect the orderly
24 conduct of the proceeding, and may give him

1 status that we didn't give other intervenors
2 status who wanted to participate individually.

3 So, I believe that his participation
4 with Concord is sufficient, especially given
5 the late nature of his request.

6 CHAIRMAN HONIGBERG: To be clear,
7 Sabbow is a company, I believe. And it's the
8 general counsel who has been listed as a
9 witness, who has actually submitted prefiled
10 testimony by the City.

11 CMSR. BAILEY: That's what I meant,
12 yes.

13 CHAIRMAN HONIGBERG: Other thoughts
14 or comments?

15 MS. WEATHERSBY: Mr. Chair?

16 CHAIRMAN HONIGBERG: Ms. Weathersby.

17 MS. WEATHERSBY: In Sabbow's Motion
18 for Reconsideration, it appears as though they
19 desire intervention to be sure that Northern
20 Pass Transmission's plans are accurate,
21 complete, and consistent, and they want to be
22 able to monitor the effects of the construction
23 on the ground, especially across their
24 property. And I think that those are very,

1 certainly, noble desires, but I think that they
2 can be done without intervention, without being
3 a full party to this proceeding.

4 I think that the plans are being
5 monitored very carefully by others, including
6 governmental agencies and Counsel for the
7 Public, as well as other parties. And I think
8 that there's nothing that prohibits them from
9 monitoring the effects of construction across
10 their property, and across others' properties.
11 Again, that's being handled by DOT, DES, and
12 other parties to this action.

13 So, I don't see that there's a
14 compelling reason to allow Sabbow in as a full
15 party.

16 CHAIRMAN HONIGBERG: Any other
17 thoughts or comments people want to offer?

18 *[No verbal response.]*

19 CHAIRMAN HONIGBERG: Would anyone
20 like to make a motion?

21 MR. WAY: I'd make a motion.

22 MR. IACOPINO: Who was that?

23 CHAIRMAN HONIGBERG: It's Mr. Way.

24 MR. WAY: One second. I'd make a

1 motion to deny the motion, the Sabbow Motion
2 for Reconsideration.

3 CHAIRMAN HONIGBERG: Is there a
4 second?

5 DIR. WRIGHT: Second.

6 CHAIRMAN HONIGBERG: Mr. Wright
7 seconds.

8 Is there any further discussion of
9 the Motion?

10 *[No verbal response.]*

11 CHAIRMAN HONIGBERG: Seeing none.
12 All in favor of denying the Motion for
13 Reconsideration will say "yes". All those who
14 would grant the Motion for Reconsideration will
15 say "no".

16 All in favor say "yes"?

17 *[Multiple members indicating*
18 *"yes".]*

19 CHAIRMAN HONIGBERG: Any noes?

20 *[No response.]*

21 CHAIRMAN HONIGBERG: All right. The
22 motion carries unanimously.

23 What's the second motion,
24 Mr. Iacopino?

1 MR. IACOPINO: The second motion is a
2 Motion to Suspend Proceedings filed by a group
3 of the municipalities. That Motion was
4 filed -- I'll just get to it.

5 CHAIRMAN HONIGBERG: "Recently" isn't
6 good enough?

7 MR. IACOPINO: Yes. Well,
8 recently -- the thing is there's just --
9 there's been some additional filings this
10 morning on it as well. So, I just want to make
11 sure that everybody is working off of the same
12 document.

13 That was filed March 29th. Thank
14 you. There have been objections and responses
15 filed. The Applicant has objected to the
16 Motion. Counsel for the Public has responded
17 to the Motion, and not supported it, is my
18 understanding. And, so, that Motion seeks
19 suspension, based upon the ability or lack of
20 ability, perceived lack of ability of the
21 Committee to properly evaluate a number of
22 different factors, given the fact that there
23 has been some press releases and other news
24 stories about the role of Hydro-Quebec and

1 the -- whether or not the Mass. Clean Energy
2 RFP -- whether or not the matter should be
3 suspended until the Mass. Clean Energy RFP has
4 been completed. They ask for a six-month
5 suspension of the proceedings.

6 CHAIRMAN HONIGBERG: There's a
7 statute that specifies what the Committee's
8 authority is and what it has to find in order
9 to suspend the deadline. Can you refresh our
10 memory as to what the legal standard is?

11 MR. IACOPINO: It's RSA 162-H,
12 Section 14, which allows the Committee to
13 suspend its deliberations and the time frames
14 contained within the statute, if it finds that
15 it is in the public interest to do so. It's a
16 public interest standard.

17 CHAIRMAN HONIGBERG: All right.
18 Anyone want to offer up comments or thoughts on
19 this motion?

20 Commissioner Bailey, you look like
21 you're grabbing the microphone.

22 CMSR. BAILEY: I'll take a first shot
23 at this.

24 There are going to be a lot of

1 reasons that we could suspend these
2 proceedings. But I think that we need to press
3 forward and attempt to get to the end, as we
4 said we would. We've already suspended the
5 proceedings until September. And I think that
6 this Mass. RFP -- or, this Massachusetts
7 Request for Proposal may be one reason that the
8 Applicant could use the line, but there could
9 be several other reasons that -- or,
10 opportunities for them to sell the
11 transmission. And to suspend this for one
12 possibility is not a good reason.

13 We may know the results of this RFP
14 before we get to the end of deliberations. We
15 could condition it on their winning the Mass.
16 RFP, if we decide that that's the only way that
17 this can go forward.

18 So, I think that this is more of an
19 issue that we need to deal with in the merits
20 of the proceeding. And I don't think it's a
21 reason to suspend the hearings.

22 CHAIRMAN HONIGBERG: Does anyone else
23 have thoughts or want to offer comment on the
24 municipals' Motion to Suspend?

1 Someone grabbed a microphone. Ms.
2 Weathersby.

3 MS. WEATHERSBY: Sure. So, the
4 movants allege, and it certainly appears to be
5 the case, that Northern Pass Transmission is
6 now dependent on the sale of electricity to pay
7 for the construction of the Project. And
8 there's no guarantee that Northern Pass
9 Transmission will have a buyer for that power.

10 That said, I think that that all goes
11 to the financial capability of the Applicant to
12 build and maintain the line. And that is
13 something that we will get into very heavily as
14 part of the proceedings. And I think that
15 that's where this should get fleshed out. So,
16 we can see, really, what is the financial
17 viability of this Project.

18 So, I would not be in favor of
19 suspending the proceedings until the decision
20 on the Mass. RFP, but to really get into this
21 issue in the course of the proceedings.

22 CHAIRMAN HONIGBERG: Any other
23 thoughts or comments on the municipals' Motion
24 to Suspend?

1 *[No verbal response.]*

2 CHAIRMAN HONIGBERG: Would anyone
3 like to make a motion?

4 Mr. Wright.

5 DIR. WRIGHT: I would make a motion
6 that we deny the request to suspend the
7 proceedings.

8 CHAIRMAN HONIGBERG: Is there a
9 second?

10 CMSR. BAILEY: Second.

11 CHAIRMAN HONIGBERG: Is there any
12 further discussion or comments anybody wants to
13 make on the motion?

14 *[No response.]*

15 CHAIRMAN HONIGBERG: Seeing none.
16 All in favor of denying the Motion to Suspend
17 the deadlines will say "yes". Those who would
18 like to deny the motion and instead move on to
19 considering suspension or to suspend would say
20 "no".

21 All in favor say "yes"?

22 *[Multiple members indicating*
23 *"yes".]*

24 CHAIRMAN HONIGBERG: Any opposed?

1 [No response.]

2 CHAIRMAN HONIGBERG: All right. The
3 motion carries unanimously and that Motion is
4 denied.

5 Mr. Iacopino, the third motion we
6 have to consider.

7 MR. IACOPINO: The third motion --
8 I'm sorry. The third motion is the Motion of
9 Abutting Property Owners from Bethlehem to
10 Plymouth to Compel the Applicants to Provide
11 Requested Information and to Suspend the Time
12 Frame for Supplemental Testimony and
13 Adjudicative Hearings.

14 This Motion seeks combined types of
15 relief. The request to -- it contains within
16 it a request to postpone certain internal
17 deadlines within the schedule. That request,
18 which is they request that the deadline for the
19 submittal of supplemental testimony regarding
20 underground portions of the Project be
21 postponed for four weeks, until after New
22 Hampshire DOT releases its findings related to
23 the docket, in other words, until May 1st.

24 And they ask that the start of the

1 adjudicative proceedings be postponed six
2 weeks. They also ask that the time frames be
3 suspended.

4 The issues about the internal
5 scheduling are procedural issues that, under
6 our statute, are left to the Chairman of the
7 Committee to determine.

8 However, the request for suspension
9 of the proceeding, again, is something that the
10 entire Committee must determine whether they
11 are inclined to do that. And, again, the
12 standard there is whether it's in the public
13 interest under RSA 162-H, Section 14.

14 So, that's that Motion. That Motion
15 has been objected to by the Applicant. And
16 Counsel for the Public has indicated support
17 for delaying the internal deadlines, but does
18 not support the suspension of the proceeding.

19 CHAIRMAN HONIGBERG: Just to be clear
20 then, what the Subcommittee is considering here
21 is the suspension request, not the request to
22 change the internal deadlines. Correct?

23 MR. IACOPINO: Yes.

24 CHAIRMAN HONIGBERG: All right.

1 Everybody clear on that?

2 *[Multiple members nodding in the*
3 *affirmative.]*

4 CHAIRMAN HONIGBERG: All right.

5 Anybody have any thoughts or anything they want
6 to share about the Motion to Suspend that was
7 filed by the Abutting Group?

8 Yes, Mr. Oldenburg.

9 MR. OLDENBURG: Mr. Chairman, a
10 little sort of high-level perspective of the
11 DOT comments that were questioned.

12 One of the requirements that the DOT
13 has is that a Use and Occupancy Agreement would
14 be filed or be completed between the Applicant
15 and the DOT. And it says that that agreement
16 is based upon final plans. Oh, I'm sorry. The
17 realization is is that those final plans aren't
18 done, and the DOT continues to work with the
19 Applicant. And it's just that that agreement
20 has a component of it of having the final
21 plans, you know, as part of that agreement, so
22 that it documents the roles and
23 responsibilities of both parties.

24 So, it's, because of the size and

1 complexity of this Project, it's not uncommon
2 that we continue to meet with the Applicant to
3 review the plans as those plans are finalized.

4 So, the idea that -- I think the
5 implication of this is that the DOT won't
6 approve the Project until the final plans are
7 complete. I think it was also noted that the
8 DOT doesn't see any large stumbling blocks
9 along the way that would stop the DOT from
10 permitting or reaching that Use and Occupancy
11 Agreement.

12 So, just a little clarity on, I
13 think, what the DOT's comments generally deal
14 with with regards to the final plan indication.

15 CHAIRMAN HONIGBERG: Mr. Oldenburg,
16 the DOT's jurisdiction here is over the state
17 roads, and only the state roads, is that
18 correct?

19 MR. OLDENBURG: Correct. The state
20 roads along the state right-of-way.

21 CHAIRMAN HONIGBERG: And is it the
22 DOT that will determine where within the
23 right-of-way the Project can be placed and
24 where the Applicant can work within that

1 right-of-way to do what it needs to do?

2 MR. OLDENBURG: Ultimately, we reach
3 an agreement with where the facility should be.
4 And I think that some of the discussion is, you
5 know, "is it here or is it ten feet over?" "Is
6 it going to be located on the bridge?" "Under
7 the bridge?" Those are the types of
8 discussions that are still ongoing.

9 We only control along the state
10 roadway within the state right-of-way.

11 CHAIRMAN HONIGBERG: Maybe this
12 question is for Mr. Iacopino, but it might also
13 be for you, Mr. Oldenburg.

14 How does the SEC process interact
15 with the DOT's jurisdiction and supervision of
16 that process?

17 Maybe Mr. Iacopino should take the
18 first shot at that.

19 MR. IACOPINO: DOT is a State agency.
20 Under RSA 162-H, the DOT is treated in the same
21 manner that every other State agency is
22 treated. Although, in many instances in the
23 past, we -- the DOT process has extended beyond
24 the final decision of the Site Evaluation

1 Committee, because final construction details
2 are very rarely available while the SEC is
3 doing their work. Because lots of final
4 construction details aren't available until the
5 contractor is "on the ground", so to speak.

6 We have had, in the past, situations
7 where we have delegated authority to the
8 Department of Transportation. We've had
9 situations in the past where we've, because
10 there was two or three different possibilities,
11 we've looked at the two or three different
12 possibilities, and have either approved or
13 denied them, or ranked them, and advise the
14 Applicant "you go to number one first, number
15 two second, or number three third." We've also
16 had situations where the applicant has had to
17 come back and amend a certificate.

18 I'll give you one example that comes
19 up -- that always comes up in my mind, because
20 it was an usual one. When they built the gas
21 plant in Londonderry, they had planned to
22 deliver the turbine by rail. There was no --
23 for some reason, they mismeasured a tunnel,
24 they couldn't deliver by rail. They came in

1 and sought an amendment to their application to
2 bring the turbine in over I-93 on a tracked
3 vehicle that was traveling about four to five
4 miles per hour. They had to get a
5 subsequent -- the Committee required them to
6 get a subsequent permit from DOT for the
7 purposes of doing that. That's just one
8 example of the types of things that come up.

9 So, oftentimes, the -- and I think
10 DOT, in their letter to the Committee, has
11 indicated that it is an iterative process that
12 they go through. So, oftentimes, the Site
13 Evaluation Committee will not know what the
14 final plan is. However, it is up to the
15 Committee to determine if that's what is
16 necessary in any given particular case. So, it
17 may be different for different projects.

18 But, experientially, the DOT permits
19 have generally come later in the process, if
20 not after a Site Evaluation Committee has
21 completed its work.

22 CHAIRMAN HONIGBERG: All right. Does
23 anyone have any thoughts or comments they want
24 to offer about this Motion?

1 MS. WEATHERSBY: Mr. Chairman? I
2 just have a question, I guess, for Attorney
3 Iacopino.

4 There's been allegations that this
5 Project is going to encroach on private lands.
6 It's alleged that there's documented cases that
7 they're utilizing private land for either the
8 right-of-way or the work zones. It would seem
9 to me as though, if that's the case, the
10 affected landowners would have some sort of
11 private right of action to trespassers.

12 I mean, is there relief available to
13 them outside of this proceeding?

14 MR. IACOPINO: Certainly, any time
15 that there's a trespass to property there's the
16 availability of civil relief to the -- for the
17 individual who owns the property. In addition,
18 trespassing is a criminal offense under New
19 Hampshire law.

20 And, finally, I believe, in the
21 letter that you received from the Department of
22 Transportation, they indicated that, as part of
23 their requirements, they would require that all
24 of the work be conducted within the

1 right-of-way that is controlled by the
2 Department of Transportation.

3 So, to answer your question, there
4 are three separate legal requirements that --
5 at least three separate legal requirements that
6 would apply to work that goes outside of the
7 right-of-way.

8 MS. WEATHERSBY: Just one more
9 question about the process.

10 Is it true that final plans approved
11 by DOT would need to be completed prior to
12 commencement of construction of the Project?

13 MR. IACOPINO: That is ultimately up
14 to you, as a Committee, to determine. You have
15 to determine -- the DOT has to participate in
16 your process, and then you must then determine
17 whether or not, wherever we are, you have
18 enough evidence to determine that the Project,
19 as proposed, and based upon what you have
20 received, has an unreasonable adverse impact on
21 various factors: Environment, orderly
22 development, public health and safety. I think
23 all of those things are, in one way or another,
24 attached to construction and what the DOT

1 covers. So, as a Committee, you would have to
2 determine "given what we have received as
3 evidence, the plans in the state that they are,
4 can I decide that there is or is not an
5 unreasonable adverse impact from that?"

6 So, that is the -- ultimately, a
7 decision that you have to make. I can tell
8 you, as I already pointed out, in the past, we
9 haven't always been at a point when you've had
10 a final construction plan, yet you made
11 decisions. You made the decision in those
12 cases.

13 CHAIRMAN HONIGBERG: Other questions,
14 comments, thoughts on the Motion?

15 *[No verbal response.]*

16 CHAIRMAN HONIGBERG: Would anybody
17 like to make a motion?

18 Mr. Oldenburg.

19 MR. OLDENBURG: Mr. Chairman, I'll
20 make a motion that the request be denied.

21 CHAIRMAN HONIGBERG: Is there a
22 second?

23 MR. WAY: I'll second.

24 CHAIRMAN HONIGBERG: All right is

1 there any further discussion?

2 *[No response.]*

3 CHAIRMAN HONIGBERG: Seeing none.

4 Those who are in favor of the motion and would
5 deny the Motion to Suspend the deadlines that
6 was filed by the Abutter Group would vote
7 "yes". Those who are opposed and would like to
8 suspend the deadline would vote "no".

9 All in favor say "yes"?

10 *[Multiple members indicating*
11 *"yes".]*

12 CHAIRMAN HONIGBERG: Are there any
13 opposed?

14 *[No response.]*

15 CHAIRMAN HONIGBERG: The motion
16 carries unanimously.

17 Mr. Iacopino, is there anything else
18 we can or should do while we are here?

19 MR. IACOPINO: Unless you have --
20 unless you have questions for Ms. Monroe or
21 myself that you want to ask in public session,
22 there is no other business that needs to come
23 before the Committee today.

24 CHAIRMAN HONIGBERG: All right. I'll

1 entertain a Motion to Adjourn?

2 DIR. WRIGHT: So moved.

3 CMSR. BAILEY: Second.

4 CHAIRMAN HONIGBERG: All in favor?

5 *[Multiple members indicating*

6 *"aye".]*

7 CHAIRMAN HONIGBERG: All right. We

8 are adjourned.

9 ***(Whereupon the deliberations***

10 ***were adjourned at 9:53 a.m.)***

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