STATE OF NEW HAMPSHIRE

SITE EVALUATION COMMITTEE

April 6, 2017 - 9:25 a.m.
49 Donovan Street
Concord, New Hampshire

IN RE: SEC DOCKET NO. 2015-06
(Deliberations on Certain Motions)

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 &
William Oldenburg, Designee       Dept. of Transportation
Patricia Weathersby              Public Member
Rachel Whitaker                  Alternate Public Member

ALSO PRESENT FOR THE SEC:

Michael J. Iacopino, Esq., Counsel to the SEC
Iryna Dore, Esq.
(Brennan, Caron, Lenehan & Iacopino)

Pamela G. Monroe, SEC Administrator

COURT REPORTER: Steven E. Patnaude, LCR No. 052
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{SEC 2015-06} [Deliberations on Motions] {04-06-17}
CHAIRMAN HONIGBERG: We're here in SEC Docket 2015-06, the Joint Application of Northern Pass Transmission and Public Service Company of New Hampshire, which does business as Eversource Energy. This was not originally scheduled. It was noticed yesterday, once everyone realized that the site visits that were planned for today and tomorrow probably weren't the best idea, given the weather.

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

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

MR. OLDENBURG: Bill Oldenburg, New Hampshire DOT.

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

CMSR. BAILEY: Kathryn Bailey, Public Utilities Commission.

CHAIRMAN HONIGBERG: Martin
Honigberg, Public Utilities Commission.

MS. WEATHERSBY: Patricia Weathersby, public member.

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

MS. WHITAKER: Rachel Whitaker, alternate public member.

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

MR. IACOPINO: Good morning.

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

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

MR. IACOPINO: Mr. Chairman, I would suggest that the Committee begin with the Motion for Reconsideration of Intervention filed by the Sabbow Company, in Concord. Because, since the other two motions deal with some similar issues, the intervention motion may be the easiest to take up first.
CHAIRMAN HONIGBERG: So,
procedurally, the status is that the motion for
intervention was filed sometime last fall. It
was denied by the Chair, and Sabbow filed a
timely Motion for Rehearing, which, under the
statute, requires consideration by the full
Committee, or, in this case, the Subcommittee.

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

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

CHAIRMAN HONIGBERG: All right. Does
anyone have anything they want to offer up by
way of discussion on the motion?
MR. WAY: Mr. Chairman?

CHAIRMAN HONIGBERG: Mr. Way.

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

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

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

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

Commissioner Bailey.

CMSR. BAILEY: I think Mr. Sabbow has the opportunity to participate with the City of Concord. And I think granting him individual intervenor status would affect the orderly conduct of the proceeding, and may give him
status that we didn't give other intervenors status who wanted to participate individually.

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

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

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

CHAIRMAN HONIGBERG: Other thoughts or comments?

MS. WEATHERSBY: Mr. Chair?

CHAIRMAN HONIGBERG: Ms. Weathersby.

MS. WEATHERSBY: In Sabbow's Motion for Reconsideration, it appears as though they desire intervention to be sure that Northern Pass Transmission's plans are accurate, complete, and consistent, and they want to be able to monitor the effects of the construction on the ground, especially across their property. And I think that those are very,
certainly, noble desires, but I think that they
can be done without intervention, without being
a full party to this proceeding.

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

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

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

[No verbal response.]

CHAIRMAN HONIGBERG: Would anyone
like to make a motion?

MR. WAY: I'd make a motion.

MR. IACOPINO: Who was that?

CHAIRMAN HONIGBERG: It's Mr. Way.

MR. WAY: One second. I'd make a
motion to deny the motion, the Sabbow Motion for Reconsideration.

CHAIRMAN HONIGBERG: Is there a second?

DIR. WRIGHT: Second.

CHAIRMAN HONIGBERG: Mr. Wright seconds.

Is there any further discussion of the Motion?

[No verbal response.]

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

All in favor say "yes"?

[Multiple members indicating "yes".]

CHAIRMAN HONIGBERG: Any noes?

[No response.]

CHAIRMAN HONIGBERG: All right. The motion carries unanimously.

What's the second motion, Mr. Iacopino?
MR. IACOPINO: The second motion is a Motion to Suspend Proceedings filed by a group of the municipalities. That Motion was filed -- I'll just get to it.

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

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

That was filed March 29th. Thank you. There have been objections and responses filed. The Applicant has objected to the Motion. Counsel for the Public has responded to the Motion, and not supported it, is my understanding. And, so, that Motion seeks suspension, based upon the ability or lack of ability, perceived lack of ability of the Committee to properly evaluate a number of different factors, given the fact that there has been some press releases and other news stories about the role of Hydro-Quebec and
the -- whether or not the Mass. Clean Energy RFP -- whether or not the matter should be suspended until the Mass. Clean Energy RFP has been completed. They ask for a six-month suspension of the proceedings.

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

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

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

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

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

There are going to be a lot of
reasons that we could suspend these proceedings. But I think that we need to press forward and attempt to get to the end, as we said we would. We've already suspended the proceedings until September. And I think that this Mass. RFP -- or, this Massachusetts Request for Proposal may be one reason that the Applicant could use the line, but there could be several other reasons that -- or, opportunities for them to sell the transmission. And to suspend this for one possibility is not a good reason.

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

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

CHAIRMAN HONIGBERG: Does anyone else have thoughts or want to offer comment on the municipals' Motion to Suspend?
Someone grabbed a microphone. Ms. Weathersby.

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

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

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

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

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[No verbal response.]

CHAIRMAN HONIGBERG: Would anyone like to make a motion?

Mr. Wright.

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

CHAIRMAN HONIGBERG: Is there a second?

CMSR. BAILEY: Second.

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

[No response.]

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

All in favor say "yes"?

[Multiple members indicating "yes".]

CHAIRMAN HONIGBERG: Any opposed?
[No response.]

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

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

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

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

And they ask that the start of the
adjudicative proceedings be postponed six weeks. They also ask that the time frames be suspended.

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

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

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

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

MR. IACOPINO: Yes.

CHAIRMAN HONIGBERG: All right.
Everybody clear on that?

    [Multiple members nodding in the affirmative.]

CHAIRMAN HONIGBERG: All right.

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

    Yes, Mr. Oldenburg.

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

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

    So, it's, because of the size and
complexity of this Project, it's not uncommon that we continue to meet with the Applicant to review the plans as those plans are finalized. So, the idea that -- I think the implication of this is that the DOT won't approve the Project until the final plans are complete. I think it was also noted that the DOT doesn't see any large stumbling blocks along the way that would stop the DOT from permitting or reaching that Use and Occupancy Agreement.

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

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

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

CHAIRMAN HONIGBERG: And is it the DOT that will determine where within the right-of-way the Project can be placed and where the Applicant can work within that...
right-of-way to do what it needs to do?

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

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

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

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

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

MR. IACOPINO: DOT is a State agency. Under RSA 162-H, the DOT is treated in the same manner that every other State agency is treated. Although, in many instances in the past, we -- the DOT process has extended beyond the final decision of the Site Evaluation
Committee, because final construction details are very rarely available while the SEC is doing their work. Because lots of final construction details aren't available until the contractor is "on the ground", so to speak.

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

I'll give you one example that comes up -- that always comes up in my mind, because it was an usual one. When they built the gas plant in Londonderry, they had planned to deliver the turbine by rail. There was no -- for some reason, they mismeasured a tunnel, they couldn't deliver by rail. They came in
and sought an amendment to their application to bring the turbine in over I-93 on a tracked vehicle that was traveling about four to five miles per hour. They had to get a subsequent -- the Committee required them to get a subsequent permit from DOT for the purposes of doing that. That's just one example of the types of things that come up.

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

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

CHAIRMAN HONIGBERG: All right. Does anyone have any thoughts or comments they want to offer about this Motion?
MS. WEATHERSBY: Mr. Chairman? I just have a question, I guess, for Attorney Iacopino.

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

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

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

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

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

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

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

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

MR. IACOPINO: That is ultimately up to you, as a Committee, to determine. You have to determine -- the DOT has to participate in your process, and then you must then determine whether or not, wherever we are, you have enough evidence to determine that the Project, as proposed, and based upon what you have received, has an unreasonable adverse impact on various factors: Environment, orderly development, public health and safety. I think all of those things are, in one way or another, attached to construction and what the DOT
covers. So, as a Committee, you would have to
determine "given what we have received as
evidence, the plans in the state that they are,
can I decide that there is or is not an
unreasonable adverse impact from that?"

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

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

[No verbal response.]

CHAIRMAN HONIGBERG: Would anybody
like to make a motion?

Mr. Oldenburg.

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

CHAIRMAN HONIGBERG: Is there a
second?

MR. WAY: I'll second.

CHAIRMAN HONIGBERG: All right is
there any further discussion?

[No response.]

CHAIRMAN HONIGBERG: Seeing none.

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

All in favor say "yes"?

[Multiple members indicating "yes".]

CHAIRMAN HONIGBERG: Are there any opposed?

[No response.]

CHAIRMAN HONIGBERG: The motion carries unanimously.

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

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

CHAIRMAN HONIGBERG: All right. I'll
entertain a Motion to Adjourn?

DIR. WRIGHT: So moved.

CMSR. BAILEY: Second.

CHAIRMAN HONIGBERG: All in favor?

Multiple members indicating "aye".

CHAIRMAN HONIGBERG: All right. We are adjourned.

(Whereupon the deliberations were adjourned at 9:53 a.m.)