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STATE OF NEW HAMPSHIRE
SITE EVALUATION COMMITTEE

March 12, 2018 - 11:07 a.m.
49 Donovan Street
Concord, New Hampshire

{Electronically filed with SEC 03-12-18}

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.

(PUBLIC MEETING ON PENDING
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.
- Patricia Weathersby Public Member
- Rachel Dandeneau Public Member

PRESENT FOR THE SEC:

- Michael J. Iacopino, Esq., Counsel to the SEC
- Iryna Dore, Esq.
(Brennan, Lenehan, Iacopino & Hickey)
- Pamela G. Monroe, SEC Administrator

(No Appearances Taken)

COURT REPORTER: Susan J. Robidas, NH LCR No. 44

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P R O C E E D I N G S

CHAIRMAN HONIGBERG: Good morning, everyone. We're here to talk about a motion for rehearing and a request that we vacate the decisions that were made orally about a month ago and reopen deliberations. We received one or two filings supportive of that motion. We've received a number of filings opposed. I think there were three or four substantive oppositions and a number of people who filed joinders to various objections. We also received at least one motion to strike the Applicant's motion. So we have a number of things to discuss. They are all governed by state statutes. So I'll ask counsel to remind us of the provisions of the New Hampshire laws that govern what we're doing here today.

MR. IACOPINO: Thank you, Mr. Chairman.

Motions for rehearing, such as that filed by the Applicant, are governed by RSA 541:5, which, essentially for the Committee's sake, says that, "Upon the filing

1 of such motion, the Commission shall, within
2 ten days, either grant or deny the same, or
3 suspend the order or decision complained of
4 pending further consideration, and any order
5 of suspension may be upon such terms and
6 conditions as the Commission may prescribe."
7 If there is a suspension, the consideration
8 that the statute's talking about is
9 consideration of the motion for rehearing.
10 So there is that statute.

11 There's also -- we have an
12 Administrative Rule, Site 202.29, which also
13 governs mostly the behavior of the parties
14 with respect to motions for rehearing and
15 governs what they must file with us. Today
16 is Day 10 from the filing of the Applicant's
17 motion for rehearing. So that's what governs
18 the motion for rehearing.

19 The other relief requested in
20 the Applicant's motion is that you, I guess
21 for lack of a better term, reopen your
22 deliberations and continue to deliberate on
23 those matters that were not discussed
24 during -- or those statutory factors that

1 were not, according to the Applicant,
2 discussed during the course of your
3 deliberations in late January and early
4 February. There is no governing statute with
5 respect to that, in terms of when you have to
6 rule on that type of request for relief or
7 how you have to consider it or rule upon it.
8 That is just the same as any other motion
9 that comes before the Committee, any other
10 request for relief. If the Committee feels
11 that that is an appropriate action to take,
12 you can do that. If you feel it's
13 inappropriate, you can deny it.

14 And with respect to the
15 rehearing portion of the motion, again, your
16 options are to grant the motion; you can deny
17 the motion; you can suspend the motion under
18 the terms of the statute -- I'm sorry -- you
19 can suspend the decision, which would be your
20 oral decision since we don't have a written
21 decision out yet; you can suspend your
22 decision pending further consideration; and
23 you could -- there's also suggestions out
24 there from various parties that you could

1 deny the Applicant's motion for rehearing
2 without prejudice to them re-bringing it
3 after a written order has been issued.

4 CHAIRMAN HONIGBERG: So,
5 "without prejudice," for the non-lawyers in
6 the room, just means that it's denied, but it
7 could be re-brought at another time; right?

8 MR. IACOPINO: Correct.

9 CHAIRMAN HONIGBERG: The word
10 "suspend," if I give someone permission -- if
11 I enter an order giving someone permission to
12 do something and then I suspend that order,
13 they no longer have permission to do what I
14 gave them permission to do; right?

15 MR. IACOPINO: Yes, sir.

16 CHAIRMAN HONIGBERG: If I've
17 made a decision that says they can't do
18 something, and I suspend that decision, that
19 doesn't mean they can do it; right?

20 MR. IACOPINO: That's correct.
21 They would need, in this case, a certificate
22 to do what they want to do. The suspension
23 of a denial of something has little practical
24 effect in the short term.

1 CHAIRMAN HONIGBERG: All
2 right. You just answered the last follow-up
3 question I had on that.

4 All right. Does anyone have
5 any other legal questions for counsel? Does
6 anyone want to discuss anything?
7 Commissioner Bailey.

8 COMMISSIONER BAILEY: I think
9 that we should probably suspend our oral
10 decision for now.

11 CHAIRMAN HONIGBERG: I tend to
12 agree with that. I think it's not practical,
13 given the schedule, the way the motion was
14 filed and the objections have come in, to
15 expect everybody to have processed all the
16 information that was filed and make a
17 decision within ten days. The statute allows
18 for the suspension and allows conditions.

19 Commissioner Bailey, would you
20 be thinking, then, that we would put
21 conditions on that would contemplate
22 considering this motion and all other motions
23 for rehearing after a written decision has
24 been made by the Subcommittee, all motions

1 for rehearing are in, and all objections to
2 those have been filed? Is that what you're
3 thinking?

4 COMMISSIONER BAILEY: Yes,
5 because I think that we would have to suspend
6 the order again if we didn't do that because
7 it's not practical to receive motions for
8 rehearing and objections and make a decision
9 in ten days without such a suspension. So,
10 yes, I would move that.

11 CHAIRMAN HONIGBERG: You want
12 to turn that into a motion?

13 COMMISSIONER BAILEY: Well, we
14 can talk about it.

15 CHAIRMAN HONIGBERG: All
16 right. Other thoughts? Ms. Dandeneau.

17 MS. DANDENEAU: I just have a
18 question about what the time line would be if
19 that's the path that we chose. If somebody
20 could lay that out for me, that would be
21 helpful.

22 CHAIRMAN HONIGBERG: I'll try.
23 And counsel, if I get this wrong, correct me.

24 We have to issue a written

1 decision by the end of March. The statute
2 requires motions for rehearing or
3 reconsideration within 30 days of the written
4 decision. The statute, as counsel just read,
5 contemplates a decision within ten days. But
6 in this instance, I think what we would want
7 to do is give people an opportunity to
8 respond to motions for rehearing and then
9 make that a reasonable time and then consider
10 all of them, because the underlying order
11 will have been suspended when we can all get
12 together and have -- let me back up -- get
13 together to consider all of those enough time
14 after the filings have been made so we can
15 read and process them. I don't think that's
16 going to be an attractive sentence or two in
17 the transcript.

18 DIR. WRIGHT: Mr. Chair, could
19 you try to expand upon that. So if we do as
20 you're suggesting, we would still issue our
21 written order; correct?

22 CHAIRMAN HONIGBERG: Correct.

23 DIR. WRIGHT: Okay. And then
24 in that order we'd specify the time lines for

1 motions for rehearings and any other
2 considerations?

3 CHAIRMAN HONIGBERG: I think
4 we would do the latter now.

5 DIR. WRIGHT: Okay.

6 CHAIRMAN HONIGBERG: They
7 would be keyed off of the issuance of the
8 order. The order might then have dates
9 within it based on whatever we decide today.
10 Counsel.

11 MR. IACOPINO: The only thing
12 that I would say about that is, obviously you
13 have to realize that the statute puts a
14 statutory time frame on filing motions for
15 rehearing, and the parties have 30 days
16 within which to do that. And I would not
17 recommend shortening or trying to lengthen
18 that time. In other words, I think that any
19 motions for rehearing should be filed in
20 compliance with the statutory requirements
21 under RSA 541.

22 CHAIRMAN HONIGBERG: Ms.
23 Weathersby, you want to say something?

24 MS. WEATHERSBY: Yes. I think

1 I now understand the process. And I guess I
2 would be supportive of suspension. I don't
3 think we should vacate our oral decision.
4 I'm pretty confident that that decision was
5 well-reasoned, lawful, made in accordance
6 with the statute and the administrative
7 rules. So I think that suspending the oral
8 decision until such time there's actually a
9 final written decision does sort of add some
10 clarity without just a dismissal.

11 CHAIRMAN HONIGBERG: To be
12 clear, the suspension would continue through
13 our consideration of motions for rehearing I
14 think. It wouldn't just be suspended through
15 the written decision. I mean, some of it
16 would be moot as a result of the issuance of
17 the written decision, but the written
18 decision would become the operative document.

19 MS. WEATHERSBY: Yes. No, I
20 understand that. I think at some point we
21 ought to wrap in the discussion about
22 reopening the record -- not the reopening --
23 reopening deliberations or not and the timing
24 of that if we do and all that. But as far as

1 just the decision -- I've got a cold, not
2 thinking well. As far as addressing the oral
3 decision to deny the Application, I think
4 that that should be suspended as we've just
5 discussed.

6 CHAIRMAN HONIGBERG: Other
7 thoughts? Someone want to make a motion?
8 Commissioner Bailey grabs the microphone.

9 COMMISSIONER BAILEY: I move
10 that we suspend the decision until such time
11 as the order has -- our written decision has
12 been published, that we've received motions
13 for rehearing or reconsideration consistent
14 with the statute, and allow enough time for
15 objections and our response.

16 CHAIRMAN HONIGBERG: Before
17 taking a second, do you want to put a time
18 frame in for responding to motions for
19 rehearing? You want to make the standard New
20 Hampshire ten days? Do you want to make it
21 ten business days?

22 COMMISSIONER BAILEY: Well,
23 maybe, Counsel, you could help us out here.
24 But the party who disagrees with our decision

1 has 30 days. And then people who disagree
2 with their motion, how long do they usually
3 get?

4 MR. IACOPINO: In past
5 practice it's been ten days.

6 COMMISSIONER BAILEY: Ten
7 business days or ten --

8 MR. IACOPINO: Ten days. And
9 there's no requirement for filing objections
10 for motions for rehearing --

11 COMMISSIONER BAILEY: Right,
12 but we'll probably get them. Sorry.

13 MR. IACOPINO: In other words,
14 the parties that oppose the motion for
15 rehearing, assuming they oppose it, they
16 don't have to -- they're not required to file
17 objections, but --

18 CHAIRMAN HONIGBERG: This is
19 an enthusiastic bunch, though.

20 MR. IACOPINO: Yes, they are.
21 But the standard is ten days.

22 COMMISSIONER BAILEY: Okay.
23 So I would say ten days after motions for
24 rehearings or objections.

1 CHAIRMAN HONIGBERG: Is there
2 a second to Commissioner Bailey's motion?

3 MS. DANDENEAU: I'll second.

4 CHAIRMAN HONIGBERG: All
5 right. Is there further discussion anyone
6 wants to add?

7 MS. DANDENEAU: I have a
8 question.

9 CHAIRMAN HONIGBERG: Ms.
10 Dandeneau.

11 MS. DANDENEAU: Ms. Weathersby
12 just mentioned a moment ago about talking
13 about reopening deliberations. Do we need to
14 have that conversation before we vote on this
15 motion, or can we do that afterwards and
16 separately?

17 CHAIRMAN HONIGBERG: I believe
18 we could do that at either time. I believe
19 that the motion on -- that is currently
20 pending sweeps the request to reopen
21 deliberations into it. And so the discussion
22 of reopening deliberations would happen in
23 connection with all other motions for
24 rehearing sometime in the future.

1 MS. DANDENEAU: Okay. Thank
2 you.

3 COMMISSIONER BAILEY: So what
4 you mean by that is we would issue -- under
5 the motion right now, as it stands, without
6 talking about reopening deliberations, we
7 would issue our written decision. Everybody
8 would say you should reconsider and go
9 through all the statutory elements, and you
10 got this, that and the other thing wrong, and
11 we would reopen after the written decision,
12 after all -- after 60 -- after 40 days or
13 more have gone by?

14 CHAIRMAN HONIGBERG: That is
15 when we would consider that request to
16 reopen.

17 COMMISSIONER BAILEY: Okay.
18 But we could consider the request today as
19 well.

20 CHAIRMAN HONIGBERG: Yes, we
21 could.

22 COMMISSIONER BAILEY: Okay.
23 So I think by granting the motion to suspend,
24 we haven't really answered that question

1 about if we're thinking about reopening,
2 whether we would do it now or after motions
3 for reconsideration of the written order.

4 CHAIRMAN HONIGBERG: That
5 would be my understanding.

6 Counsel, you agree with that?

7 MR. IACOPINO: I think that
8 the -- you could do it today if the Committee
9 so voted to do that, or you could -- that
10 could be relief that is granted subsequent to
11 the filing of the motions for rehearing.
12 It's entirely up to the Committee in terms of
13 how you would want to proceed.

14 I understand, and I just want
15 to make sure I understand the motion that's
16 pending right now. I understood it to mean
17 that this motion, which has both the request
18 for rehearing, as well as a request for other
19 relief, such as continuing deliberations,
20 vacating the decision that you made, that
21 that entire motion would be decided down the
22 road after the written order is written and
23 after any other motions for rehearing are
24 filed. That's the way I understood your

1 motion, so that it would include not only the
2 rehearing portion of the motion, but also the
3 other relief requested. I don't know if I
4 understood that correctly or not.

5 COMMISSIONER BAILEY: I think
6 it wasn't specific, and intentionally so. I
7 would like to have a conversation if we think
8 we're going to reopen deliberations. I think
9 it makes sense to do that today. But I don't
10 think we need to do that to decide the motion
11 on suspension, because if we grant the motion
12 to suspend and then we decide to reopen
13 deliberations, it's just going to take longer
14 to get to the written order. So the time
15 frame is going to be longer, but the effect
16 of the suspension is that our decisions are
17 suspended until we've gone through the
18 rehearing process; right?

19 (Off-the-record discussion between SEC
20 counsel and Chairman)

21 CHAIRMAN HONIGBERG: I think
22 if that's what you want to do, you should
23 withdraw your motion and have a -- and we can
24 have a discussion about whether to resume

1 deliberations, because the process you just
2 outlined I think is inconsistent internally.
3 Either we reopen deliberations and deliberate
4 on everything or we issue the written order
5 contemplated by the actions taken a month
6 ago. We do one of those two things, not
7 both. So if you want to have a discussion
8 about reopening deliberations, I would
9 encourage you to withdraw your motion and
10 then we'll have a discussion about it.

11 COMMISSIONER BAILEY: Okay.
12 Can we table it?

13 CHAIRMAN HONIGBERG: Sure.
14 That works, too.

15 COMMISSIONER BAILEY: All
16 right.

17 CHAIRMAN HONIGBERG: I assume
18 everybody's okay with tabling that motion?

19 MS. WEATHERSBY: Yeah.

20 CHAIRMAN HONIGBERG: All
21 right. It's on the table. What do you want
22 to talk about, Commissioner Bailey?

23 COMMISSIONER BAILEY: Well, I
24 just want to -- I think we should talk about

1 reopening deliberations and see where
2 everybody is on that idea. I agree with Ms.
3 Weathersby. I don't think that we should
4 vacate our decision. But I was persuaded by
5 Counsel for the Public's pleading that said
6 that it's better public policy to deliberate
7 on all the issues. And so I was wondering if
8 other people were thinking the same thing;
9 and if they are, it might make sense to do
10 that before we issue the written decision
11 rather than after. I'm not sure it's going
12 to change the outcome, but from a
13 process-wise what makes sense.

14 CHAIRMAN HONIGBERG: Ms.
15 Weathersby or Mr. Wright.

16 DIR. WRIGHT: Well, I was just
17 going to clarify that. Is it -- so do we
18 reopen deliberations on everything or just on
19 what we hadn't already decided, or both on
20 the table?

21 COMMISSIONER BAILEY: Well, I
22 think -- what I was thinking is that we would
23 finish the deliberations that people have
24 criticized us for not finishing.

1 DIR. WRIGHT: So the final two
2 factors that we --

3 COMMISSIONER BAILEY: Right.

4 CHAIRMAN HONIGBERG: Ms.
5 Weathersby.

6 MS. WEATHERSBY: Just on that
7 point, if we reopen deliberations, I don't
8 think anyone's being precluded from going
9 back and saying, Hey, I want to talk about
10 tourism some more. We may not -- I don't
11 think we really should, but that's -- by
12 reopening deliberations, I think you reopen
13 the whole thing. I think reopening
14 deliberations would be a good idea because I
15 think that understanding where the Committee
16 sits on the other factors that we didn't
17 address would be instructive. I don't think
18 it would be dispositive at all. And
19 therefore, I don't really have a preference
20 as to whether we do it before our final
21 decision is issued or after. I don't think
22 we need to do it. I just think that there's
23 a few issues that would -- a lot of work's
24 gone into a number factors we didn't get to.

1 I think that it would be helpful to all
2 parties to have an analysis of those.
3 There's some legal issues, you know, what's a
4 historic site, the interplay of the 106
5 process and state process and -- you know,
6 sort of some of those things that I think
7 would just be helpful to review. But I don't
8 think -- my opinion still stands, that they
9 did not meet their burden concerning orderly
10 development of the region. And, you know, I
11 don't think we can grant a certificate.
12 Certainly not going to reopen the record and
13 then get new conditions and all of that put
14 on.

15 So I would be in favor of
16 going through the other factors, but, as I
17 said, I don't really have a preference
18 whether it's done before or after a final
19 decision is issued.

20 CHAIRMAN HONIGBERG: What
21 would the context be after? I'm a little
22 confused as to what you think would happen.
23 How would we -- if we go down the road of
24 issuing the decision, the written decision

1 based on the oral actions taken a month ago,
2 what are you -- at what point are you
3 thinking we would then discuss the other
4 factors that are in the statute?

5 MS. WEATHERSBY: I mean,
6 procedurally, I think if they still have --
7 unless we just decide today that there would
8 be a motion to reopen deliberations. So it
9 would just -- it would be purely instructive.
10 And maybe that's not our role. I'm not -- am
11 I answering your question? What was your --
12 tell me again?

13 (Off-the-record discussion between SEC
14 counsel and Chairman.)

15 CHAIRMAN HONIGBERG: Okay.
16 Other thoughts on this?

17 [No verbal response]

18 CHAIRMAN HONIGBERG: I'll
19 offer mine. I don't think we're in any way
20 obligated to deliberate on the other factors.
21 I said when I voted to continue deliberations
22 that I thought it was probably better
23 administrative practice to do it, but that we
24 weren't obligated to. And I continue to

1 believe that. It's not our role to advise
2 someone on something that's hypothetical. I
3 think the Attorney General's Office, Counsel
4 for the Public's memorandum on this is
5 exactly right: We'd probably be better to
6 have done it, but we're not obligated to do
7 it.

8 I mean, does anyone want to
9 make a motion to reopen deliberations? I
10 mean, we're going to get an opportunity to
11 talk about it again if we go down the road
12 that we were going with Commissioner Bailey's
13 motion that is currently on the table, to
14 discuss whether to reopen deliberations in
15 connection with all of the motions for
16 rehearing that will be filed after the
17 written decision is issued. So if we
18 don't -- if no one wants to make a motion
19 now -- Mr. Wright, you look like you're
20 grabbing your microphone.

21 DIR. WRIGHT: So that's the
22 motion that Commissioner Bailey currently has
23 on the table or not, the one that we tabled?

24 CHAIRMAN HONIGBERG: What?

1 DIR. WRIGHT: I'm sorry. I
2 thought we tabled your motion.

3 CHAIRMAN HONIGBERG: We tabled
4 Commissioner Bailey's motion to suspend the
5 decisions that were made a month ago and
6 consider them after the written decision.
7 And at some point we're going to need to take
8 that motion off the table and deal with it.
9 But at this point it's still on the table.
10 The open question is whether anyone wants to
11 make a motion to reopen deliberations at this
12 time.

13 [No verbal response]

14 CHAIRMAN HONIGBERG: I see no
15 one making such a motion.

16 Commissioner Bailey, would you
17 like to have your motion removed from the
18 table?

19 COMMISSIONER BAILEY: Yes.

20 CHAIRMAN HONIGBERG: I assume
21 that no one objects to that?

22 [No verbal response]

23 CHAIRMAN HONIGBERG: All
24 right. Is there any further discussion of

1 Commissioner Bailey's motion?

2 [No verbal response]

3 CHAIRMAN HONIGBERG: Seeing
4 none, all in favor say "aye."

5 [Multiple members indicating "aye".]

6 CHAIRMAN HONIGBERG: Are there
7 any opposed?

8 [No verbal response]

9 CHAIRMAN HONIGBERG: The
10 "ayes" have it. The motion is granted.

11 Mr. Iacopino, is there
12 anything else we need to do?

13 MR. IACOPINO: Did you want to
14 leave the scheduling of the deliberations and
15 whatnot to the administrator?

16 CHAIRMAN HONIGBERG: Yes.

17 MR. IACOPINO: Then I don't
18 believe there's anything else that we need to
19 do. But for my own clarity, if I --

20 CHAIRMAN HONIGBERG: Yeah, why
21 don't you read what you think we just did.

22 MR. IACOPINO: I think what
23 you just did is the Subcommittee has just
24 voted to suspend its oral decision which was

1 made, I believe, on February 1st, and to do
2 that to avoid the ten days' requirement of
3 RSA 541 so that you can give further
4 consideration to the motion that is pending;
5 that you will issue your written order; and
6 subsequent to your written order, the parties
7 will have the ability to file motions for
8 rehearing with respect to your written order.
9 You will -- and the motion contemplates a
10 ten-day objection period, and then after the
11 objection period there will be a hearing
12 scheduled to deliberate on all the motions
13 for rehearing and any other relief that is
14 sought in those motions once you receive the
15 objections.

16 CHAIRMAN HONIGBERG: To comply
17 with that provision of RSA 541, will we need
18 to meet to suspend the final order after
19 motions for rehearing are filed, or is this
20 sufficient to act as that suspension?
21 Because we clearly will not act on motions
22 for rehearing within ten days of their filing
23 after we issue the written decision here?

24 MR. IACOPINO: No, I think

1 your -- I think that under 541:5, RSA 541:5,
2 this suspension can contain the terms and
3 conditions that will permit us not to have to
4 suspend again once the written order is
5 issued.

6 CHAIRMAN HONIGBERG: Okay. So
7 if there's nothing else we need to do, we
8 will adjourn.

9 Off the record.

10 (Hearing adjourned at 11:36 a.m.)

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C E R T I F I C A T E

I, Susan J. Robidas, a Licensed
Shorthand Court Reporter and Notary Public
of the State of New Hampshire, do hereby
certify that the foregoing is a true and
accurate transcript of my stenographic
notes of these proceedings taken at the
place and on the date hereinbefore set
forth, to the best of my skill and ability
under the conditions present at the time.

I further certify that I am neither
attorney or counsel for, nor related to or
employed by any of the parties to the
action; and further, that I am not a
relative or employee of any attorney or
counsel employed in this case, nor am I
financially interested in this action.

Susan J. Robidas, LCR/RPR
Licensed Shorthand Court Reporter
Registered Professional Reporter
N.H. LCR No. 44 (RSA 310-A:173)

	Application (1) 12:3	Certainly (1) 21:12	consider (6) 5:7;9:9,13;15:15, 18;24:6	decided (2) 16:21;19:19
[appropriate (1) 5:11	certificate (2) 6:21;21:11	consideration (6) 4:4,7,9;5:22;11:13; 26:4	decision (39) 4:3;5:19,20,21,22; 6:17,18;7:10,17,23; 8:8;9:1,4,5;11:3,4,8, 9,15,17,18;12:1,3,10, 11,24;15:7,11;16:20; 19:4,10;20:21;21:19, 24,24;23:17;24:6; 25:24;26:23
[Multiple (1) 25:5	assume (2) 18:17;24:20	Chair (1) 9:18	considerations (1) 10:2	
[No (5) 22:17;24:13,22; 25:2,8	assuming (1) 13:15	CHAIRMAN (48) 3:2,20;6:4,9,16; 7:1,11;8:11,15,22; 9:22;10:3,6,22; 11:11;12:6,16;13:18; 14:1,4,9,17;15:14,20; 16:4;17:20,21;18:13, 17,20;19:14;20:4; 21:20;22:14,15,18; 23:24;24:3,14,20,23; 25:3,6,9,16,20;26:16; 27:6	considering (1) 7:22	
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