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)  

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

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

The other relief requested in
the Applicant's motion is that you, I guess
for lack of a better term, reopen your
deliberations and continue to deliberate on
those matters that were not discussed
during -- or those statutory factors that
were not, according to the Applicant, discussed during the course of your deliberations in late January and early February. There is no governing statute with respect to that, in terms of when you have to rule on that type of request for relief or how you have to consider it or rule upon it. That is just the same as any other motion that comes before the Committee, any other request for relief. If the Committee feels that that is an appropriate action to take, you can do that. If you feel it's inappropriate, you can deny it.

And with respect to the rehearing portion of the motion, again, your options are to grant the motion; you can deny the motion; you can suspend the motion under the terms of the statute -- I'm sorry -- you can suspend the decision, which would be your oral decision since we don't have a written decision out yet; you can suspend your decision pending further consideration; and you could -- there's also suggestions out there from various parties that you could
deny the Applicant's motion for rehearing
without prejudice to them re-bringing it
after a written order has been issued.

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

MR. IACOPINO: Correct.

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

MR. IACOPINO: Yes, sir.

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

MR. IACOPINO: That's correct.
They would need, in this case, a certificate
to do what they want to do. The suspension
of a denial of something has little practical
effect in the short term.
CHAIRMAN HONIGBERG: All right. You just answered the last follow-up question I had on that.

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

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

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

Commissioner Bailey, would you be thinking, then, that we would put conditions on that would contemplate considering this motion and all other motions for rehearing after a written decision has been made by the Subcommittee, all motions
for rehearing are in, and all objections to
those have been filed? Is that what you're
thinking?

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

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

COMMISSIONER BAILEY: Well, we
can talk about it.

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

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

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

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

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

CHAIRMAN HONIGBERG: Correct.

DIR. WRIGHT: Okay. And then in that order we'd specify the time lines for
motions for rehearings and any other considerations?

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

DIR. WRIGHT: Okay.

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

Counsel.

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

CHAIRMAN HONIGBERG: Ms.

Weathersby, you want to say something?

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

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

MS. WEATHERSBY: Yes. No, I understand that. I think at some point we ought to wrap in the discussion about reopening the record -- not the reopening -- reopening deliberations or not and the timing of that if we do and all that. But as far as
just the decision -- I've got a cold, not thinking well. As far as addressing the oral decision to deny the Application, I think that that should be suspended as we've just discussed.

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

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

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

COMMISSIONER BAILEY: Well, maybe, Counsel, you could help us out here. But the party who disagrees with our decision
has 30 days. And then people who disagree
with their motion, how long do they usually
get?

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

COMMISSIONER BAILEY: Ten
business days or ten --

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

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

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

CHAIRMAN HONIGBERG: This is
an enthusiastic bunch, though.

MR. IACOPINO: Yes, they are.

But the standard is ten days.

COMMISSIONER BAILEY: Okay.

So I would say ten days after motions for
rehearings or objections.
CHAIRMAN HONIGBERG: Is there a second to Commissioner Bailey's motion?

MS. DANDENEAU: I'll second.

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

MS. DANDENEAU: I have a question.

CHAIRMAN HONIGBERG: Ms. Dandeneau.

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

CHAIRMAN HONIGBERG: I believe we could do that at either time. I believe that the motion on -- that is currently pending sweeps the request to reopen deliberations into it. And so the discussion of reopening deliberations would happen in connection with all other motions for rehearing sometime in the future.
MS. DANDENEAU: Okay. Thank you.

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

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

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

CHAIRMAN HONIGBERG: Yes, we could.

COMMISSIONER BAILEY: Okay. So I think by granting the motion to suspend, we haven't really answered that question.
about if we're thinking about reopening,
whether we would do it now or after motions
for reconsideration of the written order.

CHAIRMAN HONIGBERG: That
would be my understanding.

Counsel, you agree with that?

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

I understand, and I just want
to make sure I understand the motion that's
pending right now. I understood it to mean
that this motion, which has both the request
for rehearing, as well as a request for other
relief, such as continuing deliberations,
vacating the decision that you made, that
that entire motion would be decided down the
road after the written order is written and
after any other motions for rehearing are
filed. That's the way I understood your
motion, so that it would include not only the
rehearing portion of the motion, but also the
other relief requested. I don't know if I
understood that correctly or not.

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

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

CHAIRMAN HONIGBERG: I think
if that's what you want to do, you should
withdraw your motion and have a -- and we can
have a discussion about whether to resume
deliberations, because the process you just outlined I think is inconsistent internally. Either we reopen deliberations and deliberate on everything or we issue the written order contemplated by the actions taken a month ago. We do one of those two things, not both. So if you want to have a discussion about reopening deliberations, I would encourage you to withdraw your motion and then we'll have a discussion about it.

COMMISSIONER BAILEY: Okay. Can we table it?

CHAIRMAN HONIGBERG: Sure. That works, too.

COMMISSIONER BAILEY: All right.

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

MS. WEATHERSBY: Yeah.

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

COMMISSIONER BAILEY: Well, I just want to -- I think we should talk about
reopening deliberations and see where
everybody is on that idea. I agree with Ms.
Weathersby. I don't think that we should
vacate our decision. But I was persuaded by
Counsel for the Public's pleading that said
that it's better public policy to deliberate
on all the issues. And so I was wondering if
other people were thinking the same thing;
and if they are, it might make sense to do
that before we issue the written decision
rather than after. I'm not sure it's going
to change the outcome, but from a
process-wise what makes sense.

CHAIRMAN HONIGBERG: Ms.
Weathersby or Mr. Wright.

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

COMMISSIONER BAILEY: Well, I
think -- what I was thinking is that we would
finish the deliberations that people have
criticized us for not finishing.
DIR. WRIGHT: So the final two

factors that we --

COMMISSIONER BAILEY: Right.

CHAIRMAN HONIGBERG: Ms.

Weathersby.

MS. WEATHERSBY: Just on that

point, if we reopen deliberations, I don't

think anyone's being precluded from going

back and saying, Hey, I want to talk about

tourism some more. We may not -- I don't

think we really should, but that's -- by

reopening deliberations, I think you reopen

the whole thing. I think reopening

deliberations would be a good idea because I

think that understanding where the Committee

sits on the other factors that we didn't

address would be instructive. I don't think

it would be dispositive at all. And

therefore, I don't really have a preference

as to whether we do it before our final

decision is issued or after. I don't think

we need to do it. I just think that there's

a few issues that would -- a lot of work's

gone into a number factors we didn't get to.
I think that it would be helpful to all parties to have an analysis of those. There's some legal issues, you know, what's a historic site, the interplay of the process and state process and -- you know, sort of some of those things that I think would just be helpful to review. But I don't think -- my opinion still stands, that they did not meet their burden concerning orderly development of the region. And, you know, I don't think we can grant a certificate. Certainly not going to reopen the record and then get new conditions and all of that put on.

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

CHAIRMAN HONIGBERG: What would the context be after? I'm a little confused as to what you think would happen. How would we -- if we go down the road of issuing the decision, the written decision
based on the oral actions taken a month ago, what are you -- at what point are you thinking we would then discuss the other factors that are in the statute?

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

tell me again?

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

CHAIRMAN HONIGBERG: Okay.

Other thoughts on this?

[No verbal response]

CHAIRMAN HONIGBERG: I'll offer mine. I don't think we're in any way obligated to deliberate on the other factors. I said when I voted to continue deliberations that I thought it was probably better administrative practice to do it, but that we weren't obligated to. And I continue to
believe that. It's not our role to advise someone on something that's hypothetical. I think the Attorney General's Office, Counsel for the Public's memorandum on this is exactly right: We'd probably be better to have done it, but we're not obligated to do it.

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

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

CHAIRMAN HONIGBERG: What?
DIR. WRIGHT: I'm sorry. I thought we tabled your motion.

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

[No verbal response]

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

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

COMMISSIONER BAILEY: Yes.

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

[No verbal response]

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

[No verbal response]

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

[Multiple members indicating "aye".]

CHAIRMAN HONIGBERG: Are there any opposed?

[No verbal response]

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

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

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

CHAIRMAN HONIGBERG: Yes.

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

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

MR. IACOPINO: I think what you just did is the Subcommittee has just voted to suspend its oral decision which was
made, I believe, on February 1st, and to do
that to avoid the ten days' requirement of
RSA 541 so that you can give further
consideration to the motion that is pending;
that you will issue your written order; and
subsequent to your written order, the parties
will have the ability to file motions for
rehearing with respect to your written order.
You will -- and the motion contemplates a
ten-day objection period, and then after the
objection period there will be a hearing
scheduled to deliberate on all the motions
for rehearing and any other relief that is
sought in those motions once you receive the
objections.

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

MR. IACOPINO: No, I think
your -- I think that under 541:5, RSA 541:5, 
this suspension can contain the terms and 
conditions that will permit us not to have to 
suspend again once the written order is 
issued.

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

Off the record.

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

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)
March 12, 2018

MOTION FOR REHEARING

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March 12, 2018

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(2) early - must
MOTION FOR REHEARING
March 12, 2018

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