MCLANE
MIDDLETON

BARRY NEEDLEMAN
Direct Dial: 603.230.4407
Email: barry.needleman@mclane.com
Admitted in NH, MA and ME
11 South Main Street, Suite 500
Concord, NH 03301
T 603.226.0400
F 603.230.4448

VIA E-MAIL & HAND DELIVERY

November 21, 2018

New Hampshire Site Evaluation Committee
Pamela G. Monroe, Administrator
21 South Fruit Street, Suite 10
Concord, NH 03301

Re: SEC Docket No. 2015-04: Public Service Company of New Hampshire d/b/a Eversource Energy for a New 115k Transmission Line from Madbury Substation to Portsmouth Substation
Applicant's Post-Hearing Memorandum

Dear Ms. Monroe:

Enclosed for filing in the above-referenced docket please find the Applicant's Post-Hearing Memorandum.

Please call me with any questions.

Sincerely,

Barry Needleman

BN:slb
Enclosure

Cc: SEC Distribution List

STATE OF NEW HAMPSHIRE

SITE EVALUATION COMMITTEE

SEC DOCKET NO. 2015-04

APPLICATION OF PUBLIC SERVICE COMPANY OF NEW HAMPSHIRE D/B/A EVERSOURCE ENERGY FOR A CERTIFICATE OF SITE AND FACILITY

APPLICANT'S POST-HEARING MEMORANDUM

November 21, 2018

Barry Needleman, Esq. Bar No. 9446
Adam Dumville, Esq. Bar No. 20715
McLane Middleton, Professional Association
11 South Main Street, Suite 500
Concord, NH 03301
(603) 226-0400
barry.needleman@mclane.com
adam.dumville@mclane.com

TABLE OF CONTENTS

I. INTRODUCTION

As a leader in economic growth in New Hampshire, the Seacoast Region has a longstanding and growing need for reliable electric transmission service. Eversource has proposed the Seacoast Reliability Project ("SRP" or "Project") to address reliability needs initially identified by the Independent System Operator of New England ("ISO-NE") in 2012.[1] At that time, ISO-NE determined (and has since confirmed) that the transmission grid in the Seacoast area is not meeting mandatory criteria and is susceptible to a number of violations that risk system reliability. ISO-NE concluded that SRP will provide the additional transmission capacity necessary to address these issues.

The Project, as proposed by Eversource, consists of a new 13-mile transmission line substantially within an existing right-of-way that connects substations in Madbury and Portsmouth, and traverses those communities, as well as the towns of Durham and Newington. SRP is unusual among New Hampshire Site Evaluation Committee ("NHSEC") projects because virtually all the benefits of SRP will occur in the communities and region where it would be constructed. Most importantly, the Project will ensure that Seacoast homes and businesses have reliable access to the power they need. As such, SRP strongly supports and promotes the orderly development of this region.

Eversource has worked diligently over the past five years to understand and address the concerns the Project presented to communities and abutting property owners. These parties provided valuable feedback, which the Company carefully assessed and wherever possible, accommodated these suggestions. As a result of these efforts, the Project was materially revised in multiple ways since it was first introduced. For example, Eversource modified the Project

[1] ISO-NE is a non-profit corporation responsible for managing the New England electric grid under the regulatory authority of the Federal Energy Regulatory Commission.

design to (1) underground an additional 2,680 feet through the Newington Center Historic District (inclusive of the Darius Frink Farm) and the Hannah Lane residential area; (2) underground 2,100 feet across Main Street and near the new football stadium in Durham; (3) acquire additional right-of-way adjacent to the railroad station in Durham, which allowed Eversource to reduce the number of structures and lower structure heights; (4) relocate transition structures in Durham and Newington to accommodate property owner and Town feedback; and (5) adjust structure types at numerous locations to accommodate abutting property owners and host communities preferences.

As a result of this proactive engagement, Eversource has resolved a wide range of issues with host communities and abutting property owners.[2] In addition, the Company worked closely with regulators to address issues they raised. Eversource's commitments are memorialized in the following documents:

- MOU with the NH Division of Historical Resources;
- MOA with the U.S. Army Corps of Engineers;
- MOU with the Town of Newington;
- MOU with the Town of Durham;
- MOU with the University of New Hampshire;
- MOUs with Rockingham County Conservation District;
- Stipulations and Joint Proposed Certificate Conditions with Counsel for the Public addressing aesthetics, property damage and property value concerns; implementation of various construction and environmental best management practices, as well as working with local communities; agreeing to a measurement process for electric and magnetic fields; and committing to certain decommissioning requirements; and
- Various proposed side letter agreements, option agreements and a settlement with abutting property owners which contain a variety of written assurances and commitments.

[2] The SEC also received supportive or complimentary letters from the Town of Madbury, and the cities of Portsmouth, Dover, and Somersworth, and the Greater Portsmouth, Greater Rochester and Greater Dover Chambers of Commerce.

Eversource's commitment to work cooperatively with interested parties is evidenced by these agreements and the totality of Eversource's outreach efforts and accommodations. This important infrastructure project serves the public interest by addressing the critical electrical needs of the region in a cost-effective manner while also accommodating the concerns of regulators, host communities and abutting property owners.

Eversource has demonstrated that it has the technical, managerial and financial capability to construct and operate the Project—a fact previously recognized by the SEC in other proceedings.[3] As discussed above, the Project will not unduly interfere with orderly development of the region and, in fact, the Project will promote and support such development. Through the testimony of experts, reports of and agreements with state agencies, stipulations with Counsel for the Public, and agreements with municipal officials, business owners and residents—all of which provide for robust mitigation of any potential effects—Eversource has proven that the Project will not have unreasonable adverse effects on aesthetics, historic sites, air and water quality, the natural environment, and public health and safety. Finally, by ensuring reliability of the electric transmission system in the host communities and the surrounding Seacoast region, there is no doubt that the Project serves the public interest. Consequently, the SEC now has before it a record which unequivocally demonstrates that Eversource has met all the requirements under RSA 162-H to be issued a Certificate of Site and Facility to construct and operate the Seacoast Reliability Project.

[3] *See Decision and Order Granting Application for Certificate of Site and Facility*, Docket 2015-05, at 42, 46 (Oct. 4, 2016)

II. STATUTORY FINDINGS AND BURDEN PROOF

Pursuant to RSA 162-H:16, IV, the SEC must make four findings in order to issue a Certificate.

After due consideration of all relevant information regarding the potential siting or routes of a proposed energy facility, including potential significant impacts and benefits, the Site Evaluation Committee ("SEC") shall determine if issuance of a certificate will serve the objectives of this chapter. In order to issue a certificate, the Subcommittee shall find that:

(a) The applicant has adequate financial, technical, and managerial capability to assure construction and operation of the facility in continuing compliance with the terms and conditions of the certificate.
(b) The site and facility will not unduly interfere with the orderly development of the region with due consideration having been given to the views of municipal and regional planning commissions and municipal governing bodies.
(c) The site and facility will not have an unreasonable adverse effect on aesthetics, historic sites, air and water quality, the natural environment, and public health and safety.
(d) [Repealed.]
(e) Issuance of a certificate will serve the public interest.

Furthermore, the SEC's rules, at Site 202.19, set forth the Burden and Standard of Proof that the SEC must apply when making its findings:

(a) The party asserting a proposition shall bear the burden of proving the proposition by a preponderance of the evidence.
(b) An applicant for a certificate of site and facility shall bear the burden of proving facts sufficient for the committee or subcommittee, as applicable, to make the findings required by RSA 162-H:16.

Finally, the SEC's rules, at Site 301.13 through 301.16, set forth criteria or considerations corresponding to each statutory finding that guide the Subcommittee's deliberations.

Hence, the Applicant must prove facts sufficient for the Subcommittee to find (1) that it has the financial, technical and managerial capability to construct and operate the facility, (2) that the facility will not unduly interfere with orderly development of the region or (3) have unreasonable adverse effects, and (4) that the issuance of a certificate for the facility will serve the public interest. The Applicant proves those facts in either of two ways: first, by providing

substantial evidence in instances where other parties have provided no evidence to the contrary, and second, by a preponderance of the evidence when other parties have submitted evidence to the contrary. To satisfy the preponderance of the evidence standard, the Applicant must prove that the proposition sought to be established is more likely than not (i.e. 51% or more). At the same time, in the event opponents of the Project assert a proposition, then that party bears the burden of proving that claim by a preponderance of the evidence. Site 202.19(a).

III. THE SUBCOMMITTEE'S REQUIRED FINDINGS

A. The Applicant has the financial, technical and managerial capability to assure construction and operation of the facility in continuing compliance with the terms and conditions of the certificate

An applicant for a Certificate of Site and Facility must prove facts sufficient for the Subcommittee to find that the applicant has adequate financial, technical, and managerial capability to assure construction and operation of the facility in continuing compliance with the terms and conditions of the certificate. RSA 162-H:16, IV(a). Eversource has proved such facts through its Application, accompanying materials and the pre-filed testimony of Aaron Cullen, Kenneth Bowes, David Plante, Lynn Frazier, William Wall, Marc Dodeman, and Nick Strater. Counsel for the Public agrees that there is sufficient evidence for the Subcommittee to find that the Applicant has met its burden under RSA 162-H:16, IV(a).[4]

1. The Applicant has Demonstrated that it has the Financial Capability to Construct and Operate the Project

The Applicant has demonstrated by a preponderance of the evidence that it has the financial capability to construct and operate the Project in continuing compliance with the terms and conditions of the Certificate.[5] The Applicant's financial capability is based on the financial strength of Public Service Company of New Hampshire ("PSNH") and its parent Eversource and their combined experience financing, constructing, and operating transmission facilities in New England. The Applicant's testimony and evidence in this regard is uncontroverted. Counsel for

[4] *Counsel for the Public's Post-Hearing Brief*, at 8.

[5] Site 301.13 provides that: (a) In determining whether an applicant has the financial capability to construct and operate the proposed energy facility, the committee shall consider:

(1) The applicant's experience in securing funding to construct and operate energy facilities similar to the proposed facility;

(2) The experience and expertise of the applicant and its advisors, to the extent the applicant is relying on advisors;

(3) The applicant's statements of current and pro forma assets and liabilities; and

(4) Financial commitments the applicant has obtained or made in support of the construction and operation of the proposed facility.

the Public also agrees that "the Applicant has experience securing funding for and financing the construction, operating, and maintenance of similar transmission line projects." *Stipulated Facts and Requested Findings of the Applicant and CFP*, App. Ex. 184 ¶ 7; *see also Counsel for the Public Post-Hearing Brief*, at 8 (agreeing that the Applicant has met its burden demonstrating that it has the financial capability to construct and operate the Project).

Eversource is rated by the three major credit rating agencies. At the time of Mr. Cullen's testimony before the Subcommittee on September 21, 2018, Standard and Poor's ("S&P") rated Eversource as A positive, Moody's rated Eversource A3 stable, and Fitch rated Eversource A- with a stable outlook. Tr. Day 6 PM at 5. The Applicant anticipates utilizing internally generated cash flows from operations, long and short-term debt issuances, and capital contributions from Eversource to fund SRP's capital requirements. Eversource's strong credit ratings provide it with ready access to capital markets. In addition, PSNH has a strong record of financing the construction, operation, and maintenance of energy facilities like SRP, and funded those projects in the same manner SRP will be funded. App. Ex. 1, p. 62; *see also* App. Ex. 5, p. 3.

Recently, in the Merrimack Valley Reliability Project ("MVRP") docket, the SEC found that the applicants, including PSNH, had "sufficient financial capacity to construct, operate and maintain the Project in compliance with the Certificate." *Decision and Order Granting Application for Certificate of Site and Facility*, Docket No. 2015-05, p. 46 (October 4, 2016). In MVRP, the Subcommittee found that the applicants were "financially stable and sound … have the ability to obtain low interest rates on their debt … have favorable credit ratings from leading rating agencies" and "ha[ve] cash flows that secure[ ] their financial stability. *Id.* at 46. These same conclusions can be drawn with respect to Eversource's financial capabilities for this

Project. The evidence clearly demonstrates that Eversource currently has and will continue to have the financial capability to construct and operate the Project.

2. The Applicant has Demonstrated that it has the Technical and Managerial Capability to Construct and Operate the Project

The Applicant has demonstrated by a preponderance of the evidence that it has the requisite technical and managerial capability to construct and operate the Project.[6] *See Application*, App. Ex. 1 at 64–67; *Stipulated Facts and Requested Findings of the Applicant and CFP*, App. Ex. 184, ⁋⁋ 8–10.[7] Additionally, the SEC recently found that Eversource has the technical and managerial capability to construct and operate large energy infrastructure projects in the MVRP Docket, 2015-05.[8]

[6] Site 301.13 provides that:
(b) In determining whether an applicant has the technical capability to construct and operate the proposed facility, the committee shall consider:
(1) The applicant's experience in designing, constructing, and operating energy facilities similar to the proposed facility; and
(2) The experience and expertise of any contractors or consultants engaged or to be engaged by the applicant to provide technical support for the construction and operation of the proposed facility, if known at the time.
(c) In determining whether an applicant has the managerial capability to construct and operate the proposed facility, the committee shall consider:
(1) The applicant's experience in managing the construction and operation of energy facilities similar to the proposed facility; and
(2) The experience and expertise of any contractors or consultants engaged or to be engaged by the applicant to provide managerial support for the construction and operation of the proposed facility, if known at the time.

[7] For a further description of the Applicant's and its contractors experience designing construction, and managing transmission projects, *see Substitute Pre-Filed Direct and Amended Testimony of Kenneth Bowes* at p. 1-2 and Att. A; *Pre-Filed Testimony and Amended Pre-Filed Testimony of David Plante*; *Substitute Pre-Filed Testimony of William Wall* at p. 2, Att. A–B; *Pre-Filed Testimony and Amended Pre-Filed Testimony of Lynn (Farrington) Frazier* at p. 1 –2, Att. A. *See also* Transcript Day 1 PM at 32–33 (Mr. Quinlan testified that he would characterize the size of this project as a medium sized project for the company's management capabilities and that the company had experience working on many projects that are "orders of magnitude larger" than SRP and on hundreds of others that are smaller).

[8] *See Decision and Order Granting Application for Certificate of Site and Facility*, Docket 2015-05, at 42 (Oct. 4, 2016) (concluding that Eversource has "demonstrated the managerial and technical capability to construct and operate the Project in accordance with the terms and conditions of the Certificate" and that Eversource's "capacity is evidenced by its experience and successful track record in the industry").

The Project will be constructed and operated by a team with substantial experience constructing high voltage transmission lines in New England. Eversource operates New England's largest utility system serving more than 3.6 million electric and natural gas customers across Connecticut, Massachusetts, and New Hampshire. Eversource owns and operates approximately 4,270 circuit miles of transmission lines, 72,000 pole miles of distribution lines, 578 transmission and distribution stations, and 450,000 distribution transformers. App. Ex. 1 at 64. PSNH and its predecessor companies have owned, operated and maintained transmission facilities in New Hampshire for over one hundred years. *Id*. PSNH is responsible for operating approximately 780 circuit miles of 115 kV, 8 miles of 230 kV and 252 miles of 345 kV transmission lines and about 204 active transmission and distribution substations. *Id*. PSNH has constructed many similar projects similar to SRP, including but not limited to, the Y138 115 kV line, the J125 115 kV project, Y170 115 kV project, and the recently completed Merrimack Valley Reliability Project. *Id*. at 64–65. Recently, Eversource and its subsidiaries also successfully constructed two undersea cable projects, namely, the Long Island Replacement Project and Falmouth to Martha's Vineyard Cable Project. *Id.* at 65.

Eversource has also engaged numerous contractors and consultants with the necessary experience and qualification to construct and operate the Project. The Applicant's consultants

include Power Engineers,[9] Leidos Engineering,[10] Louis Berger,[11] and LS Cable of America.[12] Counsel for the Public has agreed that the "Applicant and its selected contractors have experience in designing, constructing, operating, and maintaining similar transmission facilities throughout New England." *Stipulated Facts and Requested Findings of the Applicant and CFP*, App. Ex. 184, ¶ 10; *see also Counsel for the Public Post-Hearing Brief*, at 8 (agreeing that the Applicant has met its burden demonstrating that it has the technical and managerial capability to construct and operate the Project).

[9] Power Engineers ("Power") is a consulting services and engineering firm with extensive knowledge and experience in the design and construction of high voltage transmission lines. *Application*, App. Ex. 1 at 65. Their project portfolio extends internationally and includes a diverse range of energy delivery projects for both the distribution and transmission projects. *Id*. In 2009, Power won the Edison Award for their work on the Arrowhead-Weston 345 kV transmission line in Wisconsin for a 220-mile 345 kV transmission line designed to relieve transmission constraints and improve the reliability in northwestern Wisconsin. *Id*. at 65–66 Power also has substantial experience with the design and support of underground transmission lines. *Id*. at 66.

[10] Eversource has engaged Leidos Engineering ("Leidos") to be the contractor on the two substations that require upgrades and additions. Leidos is an award-winning engineering firm with specialized expertise in the electric utility industry. *Id*. Leidos has extensive experience resolving a range of issues associated with operating an electric grid including aging equipment, evolving technology, increased capacity requirements, facility expansion, and the need for real-time communication, monitoring, and protection and control of substations. *Id*.

[11] Louis Berger has been retained to assist the Project with all aspects of traffic management during construction. Ms. Lynn Frazier, the Applicant's transportation engineer, has demonstrated significant experience in transportation engineering and has managed various projects including intersection and roadway operational analysis using Synchro/Sim Traffic, HCS and VISSIM, roadway design, striping, signing, and safety analysis. *Pre-Filed Testimony of Lynn Frazier (Farrington)*, App. Ex. 14, at 1–2; Attachment A.

[12] Eversource has awarded LS Cable of America ("LS Cable") a contract to manufacture and install the submarine cable portion of the Project. The underwater portion of the Project will be constructed in a Designated Charted Cable Area, which was established around 1902 with the first cable installation likely in 1906. Tr. Day 3 PM at 49-51. LS Cable has extensive experience in installing and maintaining underwater electric transmission lines.[12] Most recently, LS Cable was responsible for the successful manufacturing and installation of a 32 kilometer 34.5 kV submarine transmission cable between Block Island, Rhode Island and Narragansett on the mainland Rhode Island for National Grid in connection with the first ever ocean wind farm in the United States. LS Cable has manufactured and installed numerous submarine cable systems and has the technical and managerial capability to construct the underwater potions of this Project.

i. Outreach

Since the inception of the Project, Eversource has communicated extensively with host communities, residents, abutters, and businesses to ensure that they are fully informed about the construction of the Project. Eversource's extensive outreach program further demonstrates that the Applicant and its contractors have the technical and managerial capability to construct and operate the Project, while simultaneously conducting itself as a good citizen of the communities in which it operates.

Based on its outreach and discussions with communities and individuals, Eversource has made numerous design changes to the Project. Some of those design changes include: (1) siting an additional 2,680 feet of the Project underground through the Newington Center Historic District and Hannah Lane residential area; (2) siting 2,100 feet of the Project underground across Main Street and near the new football stadium in the Town of Durham; (3) acquisition of additional right-of-way adjacent to the railroad in the Town of Durham to reduce the number of structures and lower structure heights by 10 to 15 feet; (4) relocation of transition structures in Durham and in Newington to accommodate landowner and town feedback; and (5) revisions to structure types at numerous locations to respond to preferences from abutters and the host communities. For a complete summary of all outreach efforts and design changes, please refer to the *Supplemental Pre-Filed Testimony of Bowes and Plante,* App. Ex 140, Attachment A.

a) Town of Durham / UNH

The Applicant has worked diligently with the Town of Durham. *See Contact History Exhibit with the Town of Durham,* App Ex. 214. The Applicant held its first meeting with the Town in 2013. The Applicant held 34 meetings with the Town between 2013 and June 2018 to work through various concerns. Tr. Day 10 PM at 156–57.

On cross-examination, Mr. Selig recounted the significant pre-filing outreach efforts made by the Applicant to work with the Town, including, but not limited to design changes on Cutts Road, Ffrost Road, and Sandy Brook Drive; additional underground under Main Street in Durham; and in excess of $200,000 of ARM fund money to be used in Town at the Wagon Hill Farm. Tr. Day 10 PM at 158–61. Mr. Selig agreed that over a ten-month process, the Town and Eversource "sat together and went through literally every pole location in Durham." Tr. Day 10 PM at 160. Moreover, Mr. Selig recalled that the Applicant and the Town continued to work together to reach agreement on a variety of other changes that were a result of the Town's input after filing of the Application. *Id*. at 161–62; *see also id*. at 164 (Mr. Selig testified that the Applicant has been responsive to concerns raised by the community); *id*. 169–71 (Mr. Selig also agreed that Eversource had worked very hard over a long period of time and that the changes made by the Applicant are a result of those efforts and that Eversource had made a good-faith effort to respond to concerns of abutters in Durham).

The Applicant and the Town of Durham have continued to collaborate and have since reached agreement on many issues, which have been memorialized in an MOU. *See* App. Ex. 270. Indeed, when discussing the draft MOU with the Town during the final hearings, Mr. Selig identified additional areas of concern, including, use of Penny Brook Lane and protection of historic resources. As evidenced by the Applicant's commitment to addressing the Town's concerns, the Applicant has since agreed to not use Penny Brook Lane (*see* App Ex. 270 ⁋ IV.A.I. – no mention of Penny Brook Lane for oversize or overweight vehicles); the Applicant and the Town have reached agreement on the protection of historic resources in Town (*see id*. ⁋ VIII.A–D); and the Applicant has agreed to use timber matting on the Class VI portions of Beech

Hill Road and Foss Farm Road to avoid potential impacts to the Class VI roads (*see id.* ¶ VIII.D).

The Applicant has also worked carefully with UNH. *See Contact History Exhibit with UNH*, App Ex. 215. The first meeting between the parties was in 2013; the Applicant and Durham held 38 meetings with UNH between 2014 and June 2018 to work through various concerns. Tr. Day 10 PM at 156–57. The Applicant and UNH have memorialized their agreements in an MOU. *See* App. Ex. 267.

b) Town of Newington

The Applicant has worked diligently with the Town of Newington. *See Contact History Exhibit with the Town of Newington*, App Ex. 217. The first meeting was in 2013. The Applicant held 31 meetings with the Town between 2013 and June 2018 to work through various concerns. Tr. Day 11 AM at 48-49. In addition, the Town had multiple phone calls and e-mails with the Project's outreach team. Tr. Day 11 AM at 49. As a result of those meetings, numerous changes were made to the Project prior to filing, including, the removal of the distribution line between Little Bay Road and Fox Point Road, reducing structure heights and revising structure types. *Id.*; App. Ex. 140, Attachment A at 5–6.

Post-filing, the Applicant continued discussions with the Town with the "understanding that [the parties] were working collaboratively." Tr. Day 11 AM at 51. The Applicant agreed to make other significant changes as a result of this process: (1) relocation of the Flynn Pit transition structure; (2) modification of transition structure at Flynn Pit from a three-pole structure to a monopole structure;[13] (3) additional underground across the Frink Farm within the

[13] Mr. Hebert agreed that the Town was content with the transition structure. Tr. Day 11 AM at 55. He further stated that Eversource "had to go about ten feet higher than what was on the original three poles, but the fact that there was some pretty high trees in that area and that the only way you're going to be able to view [the Flynn Pit riser structure] was right there from Little Bay Road and that the impact to Little

Newington Center Historic District and through the adjoining neighborhood on Hannah Lane for a total of 2,680 feet underground;[14] (4) modification of transition structure on the Frink Farm from a three-pole structure to a monopole structure;[15] (5) relocation of portions of the underground segment through Gundalow Landing. Tr. Day 11 AM at 51-66. Mr. Hebert agreed that Eversource worked diligently and in good faith with the Town to try to understand and address as many concerns as possible. Tr. Day 11 AM at 61-62.

The agreements reached between the Applicant and Town have been memorialized in an MOU and Addendum to the MOU.[16] The combined MOUs satisfactorily address all the issues raised in Mr. Hebert's "Public Health and Safety" section of Newington Exhibit 1 and all issues raised in Eric Weinrieb's Pre-Filed Testimony, which was adopted by Mr. Hebert.[17]

c) Individual Abutters

The Applicant has undertaken significant efforts to address concerns raised by all abutters along the Project corridor. Eversource's robust outreach plan has ensured that all abutters have been notified of the Project and have provided contact information to Eversource's outreach team. As a result of Eversource's efforts, the Applicant has made substantial efforts to understand and address concerns about impacts to private property and to make commitments to

---

Bay Road was going to be greatly diminished by setting it back four to 500 feet and going to a single pole." *Id*.

[14] To successfully site the Project underground, Mr. Hebert agreed that the Applicant worked in conjunction with the Natural Resource Conservation Service, Rockingham County Conservation District, the Town and the Fink Family to secure the necessary approvals. Tr. Day 11 AM at 56–57. *See also Amended Conservation Easement*, App. Ex. 218.

[15] Ms. Frink also agreed with this modification. *See* Tr. Day 3 AM at 43; Day 11 PM at 57–59.

[16] *See Memorandum of Understanding with Town of Newington*, App. Ex. 168 and *Addendum to Memorandum of Understanding Executed on February 5, 2018*, App. Ex. 140, Att. A, Appx. 5.

[17] *See Supplemental Pre-Filed Testimony of Denis J. Hebert*, New-Ex. 2 at 3 (stating that "[t]aken together, the MOU and MOU Addendum satisfactorily address the issues raised in the "Public Health and Safety" section of my Prefiled Direct Testimony at page 30, line 3 through page 37, line 14. They also satisfactorily address the issues raised in Eric Weinrieb's Prefiled Direct Testimony filed July 31, 2017.").

those that may be affected by the construction of the Project. The Applicant's efforts have been documented in various locations, including, the *Applicant's Outreach Summary*, *see Supplemental Pre-Filed Testimony of Bowes and Plante,* App. Ex 140, Attachment A; *Individual Outreach Summaries with Abutters*, *see e.g.*, App. Ex 228, 235, 240, 245, 250, 258, and the commitments the Applicant has made to these individuals through the development of planting plans; *see e.g.*, App. Ex. 230, 232, 238, 239, 244; and side letter agreements *see e.g.*, 229, 237. *See also Notice of Withdrawal*, Docket 2015-04 (Oct. 15, 2018) (intervenors Mark Joyce and Karen Crowley withdrew from the proceedings after reaching "an agreement that resolves all concerns related to the Seacoast Reliability Project to the satisfaction of all Parties").

1) Helen Frink and Darius Frink Farm

The Applicant worked diligently with Helen Frink and her family to address concerns. Applicant's Exhibit 250 demonstrates the history of the Applicant's course of dealings with members of the Frink Family and that it represents a "significant effort to engage with [the Frink Family]."[18] As part of on-going discussions, the parties were able to reach agreement on a number of issues, such as: siting the Project underground across their property; changing the monopole from a three-pole structure to a monopole structure;[19] executing a MOU regarding Soil and Groundwater management;[20] executing a MOA that provides funding for the employment of a natural resource scientist pre-construction, during, and post-construction and guarantees various improvements to the Frink Farm;[21] commitments to take photographs and videos of any

[18] Tr. Day 11 PM at 52.
[19] Tr. Day 3 AM at 43; Day 11 PM at 57–59.
[20] *Soil and Water Management Plan, Supplemental Pre-Filed Testimony of Allen, Pembroke, and Nelson,* App. Ex. 145, Attachment B, Appendix A.
[21] Tr. Day 6 AM at 104; *MOA for Darius Frink Farm Conservation Easement Improvements,* App. Ex. 169.

stonewalls on the Frink property before and after construction;[22] and commitments to restore soils and grass post-construction.[23]

While Ms. Frink has raised certain concerns about impacts of the Project to the Frink Farm, *see e.g.*, Frink Ex. 29 at 3, her testimony is directly contrary to legal documents that the Frink Family has executed in the course of these proceedings. In fact, the *First Amendment to the Conservation Easement*, App. Ex. 218, which was signed by all members of the Frink Family, specifically states that the removal of the existing distribution line and construction of the underground transmission line:

> is not prohibited by the Conservation Easement Deed, but it instead *enhances* the purposes of the Conservation Easement Deed by removing the existing overhead electric distribution line in favor of an underground electric transmission line, specifically by reducing by 50 feet the Utility Easement width, by excluding future overhead utility lines, and by adding certain conservation and farm improvements on the Property at Eversource's expense.

App. Ex. 218 ¶ E (emphasis added).

Moreover, Eversource will contribute up to $243,635 for improvements on the Frink Farm ($10,000 of which will go to Rockingham County Conservation District). App. Ex. 169; Tr. Day 11 PM at 53–55. These funds are in addition to the $50,000 already paid to the Frink Family for underground rights and a guarantee for $4,000 in the event of crop loss during construction. *See Frink Executed Option Agreement*, App. Ex. 251 § ¶ 2; ¶ 14(f). Finally, Eversource has agreed to terminate its overhead rights across the Frink Farm property. *Id.* ¶ 14(b).

[22] Tr. Day 3 AM at 51.
[23] Tr. Day 3 AM at 57; *see also Soil Management Plan for Easement Frink Farm* (*Supplemental Pre-Filed Testimony of Allen, Pembroke, and Nelson,* Attachment B, Appendix A, Attachment A-1, pdf page 241–42 of App. Ex. 145) (requiring that all ground surface areas impacted during construction be scarified to remove compaction and seeded and mulched with a seed mix recommended by the Rockingham Conservation District).

2) Durham and Newington Residents

The Applicant has undertaken significant efforts to address concerns raised by abutters. As demonstrated by the Individual Outreach Summaries, contact with residents commenced early in the process and has been on-going. The Applicant's outreach team has worked diligently to develop vegetation planting plans, address construction related concerns, move transmission structures at the request of abutters, and make various post-construction commitments, such as, restoration of driveways, access roads, and private property to pre-existing conditions. The Applicant has offered mitigation to every resident or abutter that has engaged with the Applicant, including all interveners. The Applicant has further committed to working with all abutters during and post-construction to ensure concerns have been satisfied.

For example, the Applicant has worked to the best of its abilities to accommodate concerns of Ms. Donna Heald—who operates a gardening business within the right-of-way without an existing joint use agreement with Eversource[24]—as evidenced by the side letter agreement and the Applicant's commitments therein. *See Side Letter Agreement to Donna Heald*, App. Ex. 229 (committing to relocate a structure on Ms. Heald's property, proposing a planting and screening plan, committing to hiring a mutually agreeable commercial landscape company to inventory and relocate plant stock, promising to provide a precautionary alternative water source during construction).[25]

Similarly, for example, the Applicant worked with Jeff and Vivian Miller to make promises that would avoid, minimize and mitigate potential impacts from the construction of the Project (which is adjacent to their property). *See Side Letter Agreement to Jeff and Vivian Miller*,

[24] Tr. Day 15 PM at 230.
[25] *See also* Tr. Day 15 PM at 222–24. *Compare Donna Heald Response to Data Request 1-2*, App. Ex. 234, *with Side Letter Agreement to Donna Heald*, App. Ex. 229 (the Applicant's commitments respond directly to what Ms. Heald requested in a data request).

App. Ex. 236 (offering to relocate the transition structure, proposing a planting plan, ensuring restoration of their driveway, committing to surveying culverts in driveway, etc.).

ii. Dispute Resolution

The Applicant and Counsel for the Public have proposed a Mitigation and Dispute Resolution Process as well, to address any concerns that arise during or post-construction. *See Stipulated Proposed Conditions of Approval*, App. Ex. 193 ⁋⁋ 17–21; *Final Draft Proposed Dispute Resolution Process*, App Ex. 268. The Mitigation and Dispute Resolution Process is designed to ensure that there are no unreasonable impacts to the public during and after construction of the Project. The Mitigation and Dispute Resolution Process—which includes a Dispute Resolution Fund that shall be financed by Eversource with an initial $100,000 upon issuance of a Certificate—will ensure that an individual or business will be compensated following demonstrable: (1) physical damage to real or personal property; (2) loss of business; (3) diminution in the value of real property; and/or (4) unreasonable interference with access, or use (including noise) of real property and/or associated littoral rights. To the extent the SEC has concerns about potential impacts to private property, the proposed Mitigation and Dispute Resolution Process, which shall be overseen by a neutral Dispute Resolution Administrator (an attorney or retired judge selected and appointed by the Subcommittee), provides sufficient evidence that the Applicant is committed to protecting all private property and compensating for any loss as a result of the Project.

3. Financial, Technical and Managerial Conclusion

Based on the Application materials and the testimony in this docket, Eversource's experience financing, constructing, and operating other similar transmission facilities in the Northeast, and the Applicant's demonstrated outreach efforts, the Applicant has proved facts sufficient for the Subcommittee to find that it has adequate financial, technical, and managerial

capability to assure construction and operation of the facility in continuing compliance with any terms and conditions contained in a Certificate of Site and Facility.

B. The site and facility will not unduly interfere with the orderly development of the region with due consideration having been given to the views of municipal and regional planning commissions and municipal governing bodies

The Applicant has proved facts sufficient for the Subcommittee to find, with due consideration to municipal views, that the Project will not unduly interfere with the orderly development of the region. RSA 162-H:16, IV(b). The Applicant's assessment of orderly development of the region is informed, in part, by the critical fact that the Project is a reliability project specifically designed to benefit the Seacoast Region and the communities that make up that region. *See* App. Ex. 139, p. 1. In that respect, the Project is actually compatible with, enhances and promotes the orderly development of the region.

The Applicant has shown by a preponderance of the evidence that construction and operation of the Project will not interfere with traditional patterns of land use, that it will increase employment and that it will bolster the economy of the region by, among other things, boosting State GDP, increasing tax revenues, and ensuring reliable power for the host communities and the Seacoast region. Moreover, the Applicant has made provisions to mitigate any potential temporary and isolated impacts to tourism and community services and infrastructure that might occur during construction. The Applicant has also committed to reasonable decommissioning measures should the Project be deemed unnecessary in the future.

As for municipal views, the Applicant has demonstrated that the Project is consistent with the master plans and zoning ordinances of affected communities and has rebutted the views of municipalities to the contrary. The Applicant has worked with each affected municipality throughout the preparation of the Application, the pendency of the SEC proceeding, and has committed to continuing to work with each municipality, if a certificate is issued, during the

construction and operation of the Project in order to ensure that the Project does not interfere with, among other things, business operations, land use, and tourism and recreation activities.

1. Land Use

The Applicant has proved by a preponderance of the evidence that the Project will not interfere with or adversely affect prevailing land uses in the region. Site 301.15(a). Site 301.09(a) requires that an applicant estimate the potential effect of the construction and operation of a project on land use in the region and must provide the following information:

1. A description of the prevailing land uses in the affected communities; and

2. A description of how the proposed facility is consistent with such land uses and identification of how the proposed facility is inconsistent with such land uses.

As discussed below, the preponderance of the evidence shows that the Project will not interfere with or adversely affect prevailing land uses. Most notably, one of the prevailing land uses is the existing electric utility corridor and the Project will be built almost entirely within that corridor or an existing transportation corridor.

Hence, in the context of the orderly development of the region, there can be no other reasonable conclusion than that the use of the existing utility corridor for the proposed transmission line is consistent with the prevailing land uses.

The Applicant retained Robert Varney and Normandeau Associates, Inc. ("Normandeau") to assess the effects of the Project on land use. Mr. Varney examined the existing land uses in all affected communities, and provided detailed existing land use descriptions for each community. As summarized in Mr. Varney's pre-filed testimony, the prevailing land uses along the Project corridor include forests, agriculture, residential, commercial, industrial, transportation, ***utilities***, historic, natural resources, conservation and

recreation areas, and government and institutional uses. App. Ex. 13, p. 4. The Project is consistent with and will not interfere with these uses. *Id.*

Mr. Varney's assessment of land use included a comprehensive review of local and regional long-range planning documents, and considered comments from the communities and local and regional planners. App. Ex. 13, p. 8. Mr. Varney concluded that the Project is "generally consistent" with local and regional planning documents including master plans and zoning ordinances. *Id.*

After a comprehensive review and analysis of each segment of the Project, Mr. Varney determined that the Project will not affect and will not change the character of existing land uses along the project corridor, including the utility corridor itself. Mr. Varney's conclusion with respect to land use is based on his consideration of a number of factors. The Project will be almost entirely located within an existing electric utility or transportation corridor. Although the electric corridor passes through a number of different land uses, Mr. Varney explained that the utility and transportation corridors have co-existed with the prevailing land uses around the corridors "as part of the fabric of local development and there is no reason to expect any change to the continuation of these uses as a result of the Project." App. Ex. 146, p.3.

Mr. Varney also testified that siting transmission lines in already developed corridors is a sound planning and environmental principle and should be encouraged over the use of alternative routes where there currently is no existing developed corridor, a principle the SEC itself has affirmed in prior transmission cases. App. Ex. 146, p.3; see also Tr. Day 8 AM at 11; *see Order No. 21,268*, Docket No. DSF 93-128 (June 14, 1994) (stating that the "single important fact bearing" on the finding that the proposed transmission line would be compatible with land use patterns in the area is that the proposed line occupies or follows existing ROW); *Order 20,739*,

Docket No. DSF 91-130 (February 2, 1993) (finding that siting the proposed transmission line in an existing corridor is the "single most important factor" in its orderly development analysis and "will be consistent with the established land use patterns in the area"). The Project's use of existing electric utility corridors helps ensure that the Project will have minimal impact on local land uses and will be consistent with local patterns of development.

Moreover, the SEC has historically looked favorably on transmission lines that were to be constructed in existing rights-of-way. The SEC in the 2016 *Merrimack Valley Reliability Project* decision noted that the project would be constructed "within the existing right-of-way that, for years, has been used to transmit electricity and is encumbered by associated structures and equipment. Construction of the Project within an already existing right-of-way is consistent with the orderly development of the region." *Decision and Order Granting Application for Certificate of Site and Facility*, Docket No. 2015-05, p. 58 (October 4, 2016).

The Applicant, working with the host communities, made multiple modifications to the Project's design, before and after filing the Application, in order to accommodate community concerns and help ensure, among other objectives, that the Project will not interfere with existing land uses. The Applicant conducted extensive outreach to municipalities, residents, businesses, regional planning commissions and other entities prior to and throughout the pendency of the applications. The Applicant listened to the views and concerns expressed by each entity and, where possible, modified the Project's design to address the concern and to achieve the best design for the Project with the least impact to adjacent land. App. Ex. 146, p.3; *see also* App. Ex. 140, Attachment A. As Mr. Varney testified, the Applicant

> [m]odified the line designs, they relocated poles to lower the number of views for the Project. They secured approvals with the federal government and the County Conservation District and the Frink family and the town to locate underneath the Frink Farm and the Historic District to go underneath Nimble Hill Road, to go

> through the existing right-of-way at Hannah Lane underground and to remove overhead structured that are located in the field at the Frink Farm and where is crosses Nimble Hill Road and is overhead behind the homes at … Hannah Lane.

Tr. Day 8 AM at 48. In summarizing the Applicant's outreach efforts and resultant project modifications, Mr. Varney explained, "[s]o a number of design changes have been made, considerably extra expense to try to address as much of the concerns as they feel that they can. I think it's a commendable effort on the part of the Applicant to try to take the concerns seriously and to work so hard to try to address the concerns…" *Id.*

Although a number of parties have challenged Mr. Varney's conclusions with respect to land use and the orderly development of the region, none of the intervener witnesses provide credible evidence that the project is inconsistent with prevailing land uses. The Town of Newington, in its post-hearing brief, attempts to conflate Mr. Varney's thorough assessment of land use, and his broader conclusion regarding the effect of the Project on orderly development, with the SEC's decision in the Northern Pass docket in a strained attempt to manufacture a deficiency where none exists. *See Town of Newington Post-Hearing Brief*, p. 21. Newington selectively ignores essential aspects of Mr. Varney's report and testimony and key facts from the record. From these errant premises Newington then incorrectly asserts that Mr. Varney reached his conclusion based on the sole fact that the Project would be primarily sited in an existing right-of-way.

To the contrary, Mr. Varney testified that his position with respect to utilizing existing electric utility corridors was "intended to convey to the SEC members … that use of existing corridors is a sound environmental and planning principle and should be encouraged over the use of alternative routes where there currently is no existing utility corridor." Tr. Day 8 AM at 11. When asked whether he reached his conclusion about land use based on this principle alone, Mr. Varney explained that "[b]ased on [his] review of the specifics of this Project, [he] found that

there would not be an adverse effect or an inconsistency with adjacent land uses, given the presence of the existing corridor." Tr. Day 8 AM at 87. Mr. Varney explained that "[t]here are a wide range of factors" that informed his position on land use, including that the Project would be sited in an existing corridor and that prevailing land uses in the region have coexisted with the existing corridor without impediment. Tr. Day 8 AM at 87, *see also Pre-Filed Testimony of Robert W. Varney,* App. Ex. 13, p, 4. Importantly, neither the Town of Newington, the Town of Durham and UNH, nor any other party to this docket have introduced evidence directly challenging Mr. Varney's conclusion that the Project will not have an adverse impact on the prevailing land uses.

Nevertheless, the Town of Newington, citing the SEC's decision in the Northern Pass docket, contends that siting a 115 kV transmission line in the same electric utility corridor as an existing distribution line categorically interferes with the orderly development of the region. *Town of Newington Post-Hearing Brief*, p. 21. Similarly, the Town of Durham and UNH, alluding to the Northern Pass decision, argue that siting a transmission line in a corridor occupied by an existing distribution line would result in a new use for the electric utility corridor because "transmission and distribution lines are very different." *Post-Hearing Brief on Behalf of the Town of Durham and the University of New Hampshire*, p. 17. Neither Newington nor Durham and UNH provide credible evidence that the addition of SRP to the existing electric utility corridor would in fact adversely affect the prevailing land uses adjacent to the corridor or within the Seacoast region. They do not provide a single example of where an existing use of adjacent land would be negatively impacted, much less change (for example, agricultural land being converted to some other use, or recreational land being converted to some other use.). Their attempt to draw a distinction between the use of an electric utility corridor for the distribution of

electricity and the transmission of electricity is unpersuasive. Moreover, Newington's position that the SEC's decision in the Northern Pass docket should categorically apply to this Project without consideration for the underlying facts cannot withstand scrutiny. As Mr. Varney testified, "this is a different project, in a different location with a number of different factors associated with it" and each project must "be considered on its own merits … on a case-by-case basis." Tr. Day 8 AM at 12.

Finally, in its brief, at p. 14, CFP characterizes Mr. Varney's position as a "narrow conception of when an energy facility may be inconsistent with adjacent land uses" and urges the Subcommittee to look beyond Mr. Varney's analysis to "the actual change caused by the Project to assess whether it is consistent or inconsistent with prevailing land uses." CFP, however, does not identify what "actual change caused by the Project" it has in mind. Nor does CFP provide a single example of an actual change in land use. If it is alluding to potential aesthetic impacts that some may argue would result from higher structures in the utility corridor that is not an issue of consistency with prevailing land uses (because the utility corridor will still be used as a utility corridor) but an entirely separate issue as to whether the Project will have an unreasonable adverse effect on aesthetics that is the subject of a different finding. CFP appears to have an overly broad and unwarranted conception as to the scope of the land use element of the orderly development finding. The Applicant urges the Subcommittee to conduct its analysis in a systematic way within the structure of the statute, its rules, and past decisions.[26]

[26] CFP at p. 6 of its brief also contends, generally but incompletely, that previous decisions by the SEC are not binding and points to portions of an opinion letter of the Office of the Attorney General ("AG") for support. What CFP leaves out is critical. The AG letter, among other things, cites New Hampshire cases that hold that an administrative judgment has the same force as a judicial judgment and that an agency may "follow, distinguish, or, in an appropriate situation, overrule [its] own precedents in a manner comparable to what the courts do under the doctrine of *stare decisis…*" Furthermore, the AG letter says "that where a question of law has been previously settled by judicial decision, that precedent should not be departed from without explanation in later deliberations on the same question of law." Thus, while it

The preponderance of the evidence substantiates Mr. Varney's opinion that the Project is consistent with prevailing land uses along the Project route and that it will not affect those land uses. The comprehensive information required for the Application and submitted by the Applicant regarding land use in the affected communities demonstrates that the Project is consistent with prevailing land uses. Mr. Varney further testified that any impacts to land use during construction will be "localized and temporary" and the Applicant "intends to make every effort to avoid and minimize impacts during construction." Tr. Day 8 AM at 87. Because the preponderance of the evidence shows that the Project will have minimal impact on land use, it supports the conclusion that the Project will not unduly interfere with the orderly development of the region.

2. Employment

The Applicant has demonstrated by a preponderance of the evidence that the Project will increase employment. Dr. Shapiro's modelling concluded that the Project would create roughly 30 to 46 New Hampshire jobs during the construction of the Project. Amended Pre-Filed Testimony of Dr. Lisa K. Shapiro, App. Ex. 83, p. 7. The peak number of total jobs is estimated to be between 54 and 97. Amended Pre-Filed Testimony of Dr. Lisa K. Shapiro, App. Ex. 83, p. 7.

3. Economy of the Region

The Applicant has demonstrated by a preponderance of the evidence that that the Project will have a beneficial impact on the regional and local economies. The Applicant retained Dr. Lisa Shapiro to assess the economic effect of the Project on the host communities, counties, and

is narrowly the case that the SEC is "not bound" by precedent, "it must acknowledge and explain its departure from precedent." The SEC cannot simply "refuse" to follow precedent but must have a good reason for doing so.

the State. Her assessment provided information on (1) the estimated property tax payments the Project will pay to the host communities and (2) the economic effect on in-state economic activity during the development, construction, and operation of the Project.

Even under the most conservative assumptions, it is undisputed that the Project will provide significant tax revenue to the host communities and region. *See State and Local Tax Revenue Data*, App. Ex. 101. Dr. Shapiro concluded that SRP will pay an estimated $956,140 to $1,410,881 in new local property taxes in the first full year of operation as well as $156,900 to 172, 590 in county property taxes and $459,700 to $561,855 in state education property taxes. *State and Local Tax Revenue Data*, App. Ex. 101, pp. 1-4. In total, SRP is estimated to pay $1,572,740 to $2,145,326 in total property tax payments. *Id.* at 4. Dr. Shapiro's assessment conservatively estimated property tax payments in order to "estimate a lower range of payment to provide a higher degree of confidence." App. Ex. 9, p. 3. Therefore, the estimated property tax payments reflect a conservative measure of property taxes paid by the Project. Mr. Selig, on behalf of the Town of Durham, testified that Dr. Shapiro's conservative estimate "would certainly be a meaningful tax benefit" to the Town. Tr. Day 10 PM at 178, 179. Moreover, because the Project "is not expected to cause any direct increase in the number of students, nor increased need for public safety, sewer or fire protection," property taxes paid by the Project are unlikely to be "offset by any direct increased demand for and expenditures on local service. *Id.*

The Project will create economic benefits locally and statewide by increasing economic output (sales), gross state product (GSP), and personal income during the construction phase of the Project. App. Ex. 9, p. 6. Using project cost data, Dr. Shapiro used the Regional Economic Models Inc. (REMI) model to estimate expenditures on professional and technical services, engineering, site work, materials and construction during the construction period. Although Dr.

Shapiro did not estimate these effects, to the extent workers travel to New Hampshire to work, demand could increase for lodging, food and sundries, which is another aspect of the conservative nature of Dr. Shapiro's economic estimates.

Dr. Shapiro also estimated that as a result of project related expenditures, New Hampshire's average annual sales would increase by about $6.7 million to $7.1 million per year and annual average GSO would increase by roughly $4.3 million to $5.0 million per year. App. Ex. 83, p. 8.

Finally, Dr. Shapiro estimated that, as a result of direct, indirect, and induced economic activity, personal income in New Hampshire is estimated to increase by a total of $8.1 million to $12.3 million on a cumulative basis. App. Ex. 83, p. 9.

In its brief, CFP alludes that Dr. Shapiro's analysis is deficient because her modelling did not account for potential business losses or the increase in electricity rates for New Hampshire electric customers. *See Counsel for the Public's Post-Hearing Brief*, p. 16. Dr. Shapiro testified that there are no negative economic impacts "that rose to the level of being able to model." Tr. Day 6 PM at 31. Dr. Shapiro reviewed the testimony of the construction panel witnesses and did not see anything "that would suggest that construction impacts or any of the other potential negative impacts were not being mitigated." Tr. Day 6 PM at 23. There is no basis in the record to suggest that the Project will have a negative impact on businesses and, as CFP explains in its brief, "the Applicant has agreed to a mitigation and dispute resolution process … for property damage [and] business losses … caused by the Project." *Counsel for the Public's Post-Hearing Brief*, p. 81.

Regarding electricity rates, when asked by CFP regarding this exact issue, Dr. Shapiro explained that the rate increase would be borne across all New England customers and would be

"relatively small." Tr. Day 6 PM at 59. Based on the estimated $84 million Project cost, customer rate impacts are estimated to be between $0.012 to $0.013 cents per kilowatt hour. Tr. Day 1 PM at 7. Assuming a customer uses 600 kWh per month, this amounts to an increase of approximately 8 cents per month and less than one dollar per year. For purposes of Dr. Shapiro's economic impact analysis, this increase in electric rates is *de minimus* and too small to have a meaningful role in her REMI analysis. Moreover, Dr. Shapiro testified that she also did not model the Project's reliability benefits to the region and its customers, which would be an added benefit resulting from the Project. Tr. Day 6 PM at 60.

No other party submitted evidence or testimony regarding the estimated economic benefits of the Project. The Applicant has shown, by a preponderance of the evidence, that the Project will provide an economic benefit to the host communities, the region and the State.

i. Real estate values

The Applicant has demonstrated by a preponderance of the evidence that the Project will only have limited or minimal impacts on properties within the affected communities, which is one of several factors that the SEC considers as part of its orderly development analysis. Site 301.09(b)(4). The Applicant's expert has further concluded that this minimal effect will not result in any discernible effect on the regional real estate market. Notwithstanding the opinions of Applicant's expert, as a backstop to ensure sufficient protection of the public's interests, the Applicant has worked with Counsel for the Public and presented a dispute resolution process to provide "an unbiased avenue for affected property owners to be compensated for any diminution in value that could be adequately demonstrated through an appraisal." CFP Final Brief, p. 19.[27]

[27] While CFP raises several generalized concerns regarding the methodology used by Dr. Chalmers, these concerns are not supported by any specific evidence offered by CFP or any evidence provided as part of the record for consideration before the Subcommittee. Furthermore, to the extent CFP believes any properties were missed by Dr. Chalmers, CFP agrees that the proposed dispute resolution process adequately protects property owners from any

The testimony of the Applicant's expert, Dr. James Chalmers, is based, in part, on an extensive review of existing literature addressing the question of whether proximity to high voltage transmission lines ("HVTL's") affects market value.[28] In addition, Dr. Chalmers relied on New Hampshire-specific case studies. Based on Dr. Chalmers' analysis of real estate sales, specifically in the New England market, he concluded that while some properties in proximity to the Project may experience a limited market price effect, this potential limited effect on properties within the affected communities will not result in any discernible effect on the regional real estate market. By contrast, none of the other testimony presented here provides the type of thorough and complete assessment offered by Dr. Chalmers. All of those opinions are from lay witnesses and relate specifically to concerns they have about their own personal property interests.[29] Moreover, these individuals do not provide any testimony related to the effect of the Project on the broader regional real estate market and thus, Dr. Chalmers' opinions on that issue are uncontested.

potential losses. *Counsel for the Public's Post-Hearing Brief*, p. 19. Similarly, to the extent the Town of Newington argues that "[u]nmitigated impacts to private property should result in either certificate denial or imposition of reasonable conditions," *Town of Newington's Post-Hearing Brief*, p. 51, the proposed dispute resolution process should similarly satisfy any concern raised regarding any potential impacts to private properties.

[28] While CFP argues in his post-hearing brief that Dr. Chalmers "did not rely on either his subdivision studies or market activity research," *Counsel for the Public's Post-Hearing Brief*, p. 17, CFP's assertion is inconsistent with the record and testimony submitted by Dr. Chalmers. Tr. Day 7 AM at 112-13 (Dr. Chalmers noting that the published literature supports the findings reached in the New Hampshire-specific case study assessment regarding the lack of effect of HVTLs on property value.); *see also* Tr. Day 7 PM at 8-9 (Dr. Chalmers again noting that his conclusions are supported by both the literature "and then the case studies."). While the case study research provided Dr. Chalmers within New Hampshire – specific data, Dr. Chalmers also relied on the literature review for additional support for his overall conclusions.

[29] *See e.g. Pre-Filed Testimony of Jeff & Vivian Miller*, p. 15 (noting "loss of property value due to pole placement closer to our property and home."); *see also Pre-Filed Testimony of Regis Miller*, p. 4 (noting "I am extremely concerned that our property value will decrease as a result of the negative impact on Little Bay, unsightly transmission lines, loss of tourism, and loss of privacy."); *see also Pre-Filed Testimony of Matthew and Amanda Fitch*, p. 3 (noting "as I understand from Mr. Chalmers testimony [the project] will have a negative impact on our property's value up to the double digit percent range.")(emphasis added)

In his comprehensive study, Dr. Chalmers first analyzed the existing professional literature on the effect of HVTL's on property values. The overarching conclusion is that an effect cannot be presumed and that location-specific analysis is required.

In order to provide this location-specific analysis, Dr. Chalmers' initial report, submitted in April, 2016, included 58 case studies assessing residential property sales throughout New Hampshire.[30] The research included case studies that analyzed individual residential sales of properties crossed or bordered by a HVTL and subdivision studies that analyzed the timing and pricing of lot sales in subdivisions where some lots are crossed or bordered by a HVTL and others are not. The Case Studies represented a broad spectrum of such properties in New Hampshire. The Subdivision Studies analyzed the sale of unimproved lots before homes have been built. Dr. Chalmers submitted supplemental testimony in July, 2018, which included an additional 20 case studies in the southeastern part of the State, providing an even more precise Project-specific analysis. In addition, Dr. Chalmers submitted, as part of his supplemental testimony, a Massachusetts and Connecticut study, which included 42 additional case studies that lent further support to his conclusions.

In order to provide a comprehensive review, Dr. Chalmers assessed commercial/industrial development areas along the Project route as well as giving consideration to undeveloped land. With respect to commercial lots, Dr. Chalmers concluded that, because the Project will be entirely within an existing ROW, there will be no change in the development potential of nearby properties. Based on his literature review, Dr. Chalmers concluded that there

[30] This same report was previously submitted as part of the Northern Pass proceedings, Docket No. 2016-06. During that proceeding, several minor errors were identified in the underlying data included in the report. Since the close of the Northern Pass docket, Dr. Chalmers has re-reviewed this report and corrected all of those errors as well as a few other issues Dr. Chalmers identified during his review. Tr. Day 7 AM at 17; *see also Supplemental Pre-Filed Testimony of Dr. James Chalmers,* App. Ex. 147, pp. 1-2. None of the errors had any material effect on the individual case studies or changed anything with respect to Dr. Chalmers' overall conclusion.

will be no impact on the market value of commercial/industrial properties along the Project route. *Supplemental Pre-Filed Testimony of James Chalmers,* App. Ex. 147, p. 10; *see also Supplemental Pre-Filed Testimony of James Chalmers,* App. Ex. 147, Attachment A, pp. 10-11 . In assessing vacant land, Dr. Chalmers concluded that most of the vacant land is unlikely to be developed, particularly since much of it is conservation land. As a result, the Project will not have an effect on the use of the land and consequently, there will be no effect on the market value of these lots. *Supplemental Pre-Filed Testimony of James Chalmers,* App. Ex. 147, p. 10.

Overall, Dr. Chalmers' New Hampshire and New England-specific research identified three specific characteristics that increase the likelihood that a property may experience a price effect associated with an HVTL:

1. the residence is located within 110 feet of the ROW;
2. the visibility of the HVTL changed after the project was constructed; and
3. the property was encumbered by the transmission line ROW.

Pre-Filed Testimony of James Chalmers, App. Ex. 12, p. 6. Further, the research found that even where those three elements were present, property value effects only occurred roughly half of the time. *Pre-Filed Testimony of James Chalmers,* App. Ex. 147, p. 3.

Dr. Chalmers then applied these findings to assess the number of properties that might have sales price effects from the Project. To refine his analysis, Dr. Chalmers assessed the Project on a segment-by-segment basis. For each segment, he compiled a list of all properties within 300 feet of the ROW and evaluated whether the property was encumbered and whether the property would experience a change in visibility once the Project was constructed. *Supplemental Pre-Filed Testimony of James Chalmers,* App. Ex. 147, pp. 12-19. Dr. Chalmers identified 63 such residential properties within 300 feet of the ROW along the above-ground

portion of the Project. *Supplemental Pre-Filed Testimony of James Chalmers,* App. Ex. 147, p. 19. In order to assess the visibility of the Project on properties within 300 feet of the ROW, Dr. Chalmers used aerial imagery and visited each property during the course of three separate site visits, sometimes visiting a property more than once. *Supplemental Pre-Filed Testimony of James Chalmers,* App. Ex. 147, p. 11. During each site visit, Dr. Chalmers was accompanied by a colleague or member of the Project team and they would observe the property either from the public road or from Eversource's ROW. *Supplemental Pre-Filed Testimony of James Chalmers,* App. Ex. 147, p. 11; *see also* Tr. Day 7 PM at 5-6.

Of the 63 residential properties identified, Dr. Chalmers concluded that 12 properties have the characteristics that make them susceptible to an adverse sales effect. *Supplemental Pre-Filed Testimony of James Chalmers,* App. Ex. 147, p. 20. Applying the conclusion reached through the case study method that roughly half of these types of properties would experience a price effect, Dr. Chalmers concluded that approximately 6 properties overall may experience some adverse sales price effect due to the ROW. *Supplemental Pre-Filed Testimony of James Chalmers,* App. Ex. 147, p. 20. Dr. Chalmers expects no impacts along the underground route once construction is complete due to the absence of visibility concerns and the fact that there will be no intrusion on the use of the property beyond the effect of the easement. *Supplemental Pre-Filed Testimony of James Chalmers,* App. Ex. 147, p. 20.

Dr. Chalmers offered the 6 affected property estimate not as a definitive count of properties that will experience adverse price effects, but simply to provide the Committee with some context as to the order of magnitude of potential property value effects associated with the Project. Overall, the universe of properties that could potentially experience a price effect associated with the construction of this Project is very small relative to the number of properties

along the route. This is in large part due to the fact that the Project is being sited in an existing ROW and, in several places, will be located underground. As Dr. Chalmers stated, even if all 14 properties identified and located within 100 feet of the Project were to experience some level of price effect, this would not result in any effect on the regional real estate market. Tr. Day 7/Afternoon Session, p. 73 (Dr. Chalmers noting this conclusion in response to Mr. Iacopino's inquiry as to whether "[i]f in fact all 14 of those properties did indeed exhibit a price effect and it was at the high range of 17 percent….would you consider that to have an effect on the overall market?")

The rules require, and Dr. Chalmers' work provides, an estimate of the effect of the Project on real estate values in the affected communities. Site 301.09(b) (4). He has determined the estimated effect to be minimal and limited to a small number of properties that may experience potential impacts. Furthermore, based on his assessment of the market research and his application of that research to New Hampshire, and the specific design of this Project, Dr. Chalmers demonstrated that there will be no discernible effect on the real estate market in the region. While individual intervenors have expressed concerns about impacts to specific properties along the Project route, *see infra* fn. 29, they have not offered any evidence that the Project will adversely affect the real estate market in the region or the economy of the region. Finally, Site 301.15 (a) requires that the Subcommittee consider the extent to which the Project will affect the economy of the region and real estate values make up one of the six elements that constitute the economy of the region as set forth in Site 301.09 (b). Dr. Chalmers' work supports a finding that the Project will not have any discernible effect on the economy of the region. None of the testimony offered by any of the individual intervenors directly addresses this point.

Notwithstanding the substantial evidence on this issue supporting the Applicant's position, Eversource has worked with CFP to propose a dispute resolution process for addressing concerns about property value effects. *See* App. Ex. 193, pp. 3-4. Specifically, among other things, the proposed condition would provide an explicit mechanism for addressing claims from property owners who believe their property value has been adversely affected. Due consideration of all relevant information, including the testimony of Dr. Chalmers and the proposed condition, shows that the Project will have only a limited effect on a small number of properties in the affected communities, the proposed condition would mitigate any such effects, and, as a consequence, the Project would not affect the regional real estate market.

ii. Tourism and Recreation

The Applicant has demonstrated, by a preponderance of the evidence, that the Project will not negatively affect tourism in the region and will not impact tourist-oriented attractions or recreation facilities in the Seacoast. Mr. Varney thoroughly evaluated tourist-oriented attractions and recreational facilities in the region promoted by the New Hampshire Office of Travel and Tourism Development as well as regional chambers of commerce. *See* App. Ex. 146, Attachment B. In addition, Mr. Varney considered tourist-oriented sites and activities submitted by the Towns of Durham and Newington. Newington provided a list of tourism-based businesses, destinations and events that the Town believes could be affected by construction and/or operation of the Project. Mr. Varney considered each destination as part of his review and concluded that "while there are numerous destinations, activities and events in the Seacoast region, there are no major tourist attractions located adjacent to or near the project corridor." App. Ex. 146, p. 15.

Mr. Varney acknowledged that a limited number of sites and activities along the corridor could be temporarily impacted during construction, but that construction impacts will be limited

in duration and scope and, in each instance, the Project team will continue to coordinate and communicate with each point of contact to ensure the temporary impacts are avoided or minimized. Mr. Varney met with a substantial number of business owners directly to discuss the construction and operation of the Project and testified that with good coordination and communication, impacts to businesses will be avoided.[31] Tr. Day 7 PM at 125. Mr. Varney's approach was "expansive in trying to include as many types of tourism businesses as [he] could and to evaluate each one as it relates to the Project." Tr. Day 8 AM at 130. Not one business voiced concerns that the Project would negatively impact its business. *Id.* at 131. Overall, Mr. Varney concluded that there "will not be any significant impact on tourism." *Id.* at 124.

No other party has submitted credible evidence demonstrating an impact to tourism and recreation in the region. Although the Town of Durham and UNH contend that the Project would interfere with recreation on Little Bay, they have provided no evidence of such an effect. For example, in support of their position that the Project would interfere with recreation on Little Bay, Durham and UNH refer to the comments of Peter Sawtell, the owner and lead instructor of Seven Rivers Paddling. *See Post-Hearing Brief of the Town of Durham and the University of New Hampshire,* p. 20. However, as Mr. Varney testified, Mr. Sawtell's "primary concern was to make sure that the crossing [of Little Bay] was done in an environmentally sound way" and that Mr. Sawtell "agreed that the chances of any effect on his paddling operations were very limited." Tr. Day 7 PM at 119. In addition, while CFP loosely offers that Mr. Varney's assessment of tourism and recreation in the region lacks a sound analytical methodology, CFP

[31] *See for example Tr. Day 7/Afternoon Session*, pp. 120-123 (Mr. Varney explaining he met with Gundalow Company and Portsmouth Harbor Cruises and provided information about the Project, their business schedules, and ways in which potential impacts during construction could be avoided or mitigated. Specifically, Mr. Varney testified that the owner of Portsmouth Harbor Cruises indicated that "with good coordination and communication up front after SEC approval but before construction, having that good communication would enable them to avoid any impacts if there were, and he questioned whether or not there would even be any impacts on his operation."); *see also Tr. Day 8/Morning*, p. 132.

provided no evidence or testimony refuting Mr. Varney's conclusions. *See Counsel for the Public's Post-Hearing Brief*, p. 20. The substantial credible evidence reviewed and compiled by Mr. Varney with respect to tourism and recreation in this proceeding demonstrates by a preponderance of the evidence that the Project will not have a significant impact on tourism and recreation in the region.

iii. Community Services and Infrastructure

The Applicant has demonstrated by a preponderance of the evidence that construction of the overhead and underground segments of the Project will not have a noticeable impact on traffic operations, and therefore, is not expected to have adverse impacts on community services and infrastructure or the travelling public. *Supplemental Pre-Filed Testimony of Lynn Frazier*, App. Ex. 141 at 2. Louis Berger conducted a conservative traffic analysis, which demonstrated that the expected traffic impacts from Project construction is minimal.[32]

The Project will further implement adequate traffic management strategies to minimize impacts to the travelling public during construction. *See also infra* § III.C.5.vi—viii. All potential impacts are acceptable based upon the Highway Capacity Manual. *Supplemental Pre-Filed Testimony of Lynn Frazier*, App. Ex. 141 at 4. Based on the relatively minor number of additional trucks entering and exiting the right-of-way during construction on a daily basis, the construction of the project is not anticipated to have a significant appreciable impact on traffic. *Id*.

In addition, the Project will not place any new or significant demands on local or regional services, facilities, or infrastructure. *Revised Land Use Report*, App. Ex. 146, Attachment A at 62. Mr. Selig testified that the Town of Durham has resolved most of its concerns regarding

[32] *See id*., *Traffic Impact Analysis Report*, Attachment A to Supplemental Pre-Filed Testimony of Lynn Frazier; *see also* Transcript Day 3 PM at 30–35.

community services and infrastructure with the Applicant and has memorialized that agreement in an MOU. See Tr. Day 10 PM at 167-68. Counsel for the Public also agrees that if compliance with local MOUs is made a condition of a Certificate, construction impacts to local infrastructure should be adequately addressed. *Counsel for the Public's Post-Hearing Brief*, at 21.

4. Decommissioning

The Applicant submitted a Motion to Partially Waive Site 301.08(d)(2).[33] In that motion, it explained that transmission lines that are similar in nature to SRP "must remain operational, and, thus, are typically rebuilt, as needed, and remain in service indefinitely." Motion to Partially Waive Site 301.08(d)(2) at 2. Moreover, "[o]nce a transmission line is constructed for reliability purposes, it becomes an integral part of the electric transmission system in the New England region that ISO-NE includes as an element in its studies. Thus, while it is not uncommon for existing high voltage transmission lines to be reconductored and refurbished, it is only under exceptional circumstances that they are removed completely." *Id*. at 4.

The Subcommittee reviewed the Motion and held a hearing on November 2, 2016. The Subcommittee voted to grant the motion.[34] First, the Subcommittee has previously determined that the FERC-approved transmission tariff provides a satisfactory alternative mechanism for recovering the cost of decommissioning if it becomes necessary at a further date.[35] Second, the Subcommittee determined that the Applicant adequately provided a potential alternative to hiring

[33] At the time that the Applicant filed its Application and Motion to Partially Waive, the rule was codified as N.H. CODE ADMIN. RULES, Site 301.08(c)(2). The rule has since been re-codified as of N.H. CODE ADMIN. RULES, Site 301.08(d)(2).
[34] *See Order on Applicant's Motion for Partial Waiver of the Requirements of N.H. Code Admin. Rules, Site 301.08(d)(2)*, Docket 2015-04 (Dec. 29, 2016).
[35] *Order on Applicant's Motion for Partial Waiver*, at 10; *see also* Pre-Filed Testimony of Michael Ausere, App. Ex. 5, at 6 (adopted by Aaron Cullen); Application, App. Ex. 1, at 110–11.

of an independent expert, but noted that a condition of the certificate may require the applicant to retain an independent third party in the future.[36]

The Applicant will submit a decommissioning plan, should the removal of the Project infrastructure be required, based on the right-of-way and the existing state and federal land use and environmental rules in existence at the time of the decommissioning. *Stipulated Proposed Conditions of Approval*, App. Ex. 193 ¶ 36. In addition, the Applicant has agreed to: (i) submit a report to the Committee every 10 years indicating any change in the need for the Project to ensure the continued reliability of the regional bulk transmission system; (ii) promptly notify the Committee of any retirement obligation that arises; and (iii) submit to the Committee a decommissioning plan in accordance with then-applicable rules, upon any imposition of a decommissioning obligation, or prior to the retirement of any part of the Project. *Id.* ¶ 37.

Based upon the Subcommittee's waiver of Site 301.08(d)(2) and the Applicant's future commitment to decommissioning, if necessary, the Applicant has shown by a preponderance of the evidence that the Project will not interfere with the orderly development of the region. *See* Site 301.15(b); *see also Counsel for the Public's Post-Hearing Brief*, at 24 (stating that the Applicant and CFP have agreed upon proposed conditions related to decommissioning).

5. Views of municipal and regional planning commissions and municipal governing bodies

Pursuant to RSA 162-H:16, IV(b), the Subcommittee, in making a finding relative to orderly development, must give "due consideration" to municipal views. Although the SEC rules require that the Subcommittee consider the views of municipalities in order to make its orderly development finding, the rules do not require, or even contemplate, that the

[36] *Order on Applicant's Motion for Partial Waiver*, at 10.

Subcommittee or the Applicant should defer to such views. Indeed, the statute and rules do not require that an applicant consider such views at all. However, throughout the course of this proceeding, and the preparation of the Application, the Applicant has worked diligently to understand the views of municipalities about the Project and, when possible, to address concerns.[37]

The Applicant's review of master plans and zoning ordinances is summarized in Mr. Varney's report, *Review of Land Use and Local and Regional Planning, the Seacoast Reliability Project*. App. Ex. 146, Attachment A. This report also details the extensive and diligent outreach the project team conducted. Mr. Varney concluded that the Project is "reasonably compatible with the context of the landscape in the region and is supportive of the general goals and policies of local and regional land use planning documents." App. Ex. 146, p. 13.

A number of regional planning commissions and communities in the region, including Madbury and Portsmouth submitted comments to the SEC. For example, the Greater Rochester Chamber of Commerce, in a letter dated April 28, 2016, voiced its support for the Project emphasizing the need for reliable electric service to meet the growing electric demands of the Seacoast region. The City of Portsmouth, in its public comment dated August 27, 2018, explained that the Project team "has been collaborating with the City to keep [them] informed as to the project's progress over the past four and a half year." The City explained that they "are pleased with Eversource's efforts to keep the City informed, and remain confident that [they]

[37] The project team began meeting with municipalities in late 2013, over two years before filing the SEC application. Specifically, prior to filing, the project team held 18 meetings in person or by phone with the Town of Newington, the majority of which were with the Planning Board Chair. The project team met with the Town of Durham 25 times and UNH 23 times (some of which were joint meetings). The project team also met with the Town of Madbury three times, the City of Portsmouth five times, and met with other municipalities in the region including Dover, Newmarket and Somersworth. *See Outreach* Summary, App. Ex. 140, Attachment A; *Supplemental Pre-Filed Testimony of Robert Varney*, App. Ex. 146, p. 11.

will continue to work together to address any local concerns relative to the construction of the [Project]." In a comment dated July 23, 2015, the Town of Madbury explained that the Town "understands the need as expressed by ISO New England, and it in support of adequate infrastructure for the region's power needs." Other towns in the region, including the City of Dover and the City of Somersworth, also filed comments in support of the Project and the services it will provide to the region. *See, for example,* Comment of City of Dover, Docket No. 2015-04 (October 15, 2015).

Two municipalities, the Town of Durham and the Town of Newington, intervened in this proceeding. The Town of Newington's orderly development argument is premised in large part on its amendment to its master plan. That amendment occurred in 2015 after the Project was announced, it was designed specifically to target the Project, and it occurred after Mr. Varney and the Project team had met with the Town to discuss the Project.[38] See Tr. Day 8 AM at 123-129. Specifically, the Newington Planning Board amended the utility section of the Newington master plan to say that "a high voltage transmission line is incompatible with residential land use and should be buried." Tr. Day 8 AM at 47. When asked about the Town's basis for making this change to its master plan, Mr. Hebert testified that, but for a general citation to RSA 674:2, titled "Master Plan; Purpose and Description", the Town had no basis for changing its master plan. Tr. Day 11 PM at 75-81.

[38] Furthermore, the Amendment did not follow the usual process for revisions to a Master Plan. Mr. Varney testified that he has assisted in the preparation of over 50 master plan and "the process that they used for an amendment to the master plan was very unusual." Tr. Day 8 AM at 126. "The process usually involves visioning sessions and discussion of [the town's] overall vision for the community, and then you start making revision to land use and other chapters." *Id.* Mr. Varney also explained that the Town had hired the Rockingham Planning Commission to work with them on their master plan and had, in fact, conducted visioning sessions in November of 2017, almost three years after they amended their master plan, for that purpose. *Id.* at 127

Municipal master plans are "aspirational in nature" and serve as a "general guide" for land use and development that is "implemented through a host of measures including zoning ordinance[s], subdivision regulations, site plan review, founding of conservation protection, and other means." Tr. Day 8 AM at 29. Master plans provide "an overall framework" and are not intended to "target[] a specific development project that is being proposed in the community." *Id.* Importantly, as was the case with respect to the above-mentioned amendment, amending the master plan does not require a town meeting vote, and therefore, any amendment does not necessarily represent the view of the municipality itself. Rather, it reflects the view of the planning board, who adopted the amendment by a voice vote after a single meeting on the subject. Tr. Day 8 AM at 28. Notably, the Town of Newington did not amend its zoning ordinance and, when asked by the Subcommittee whether the ordinance restricts development of utility infrastructure in the residential district, Mr. Hebert testified that it does not. See Tr. Day 11 PM at 157. Mr. Hebert testified that if a certain use is not listed in the zoning ordinance, it is not permitted and that Newington's zoning ordinance "makes it very clear what's allowed and what's not allowed. Tr. Day 11 PM at 140. When asked whether public utilities are permitted in the residential district at all, Mr. Hebert testified "[n]o. Just the distribution lines that support the residential area." Tr. Day 11 PM at 157. However, Mr. Hebert then conceded that although the Town permits distribution lines in its residential district, distribution lines are not a permitted use under the Town's zoning ordinance. *Id.* Mr. Hebert also testified that, while not listed as a permitted use, the Town also permits telecommunication and telephone lines and infrastructure in the residential district. *Id.* Mr. Hebert's testimony directly contradicts Newington's position that the Project is inconsistent with its zoning ordinance because transmission lines are not specifically listed as a permitted use in the residential district.

Tellingly, Mr. Hebert also testified that the Applicant "went as far as they could go to try to help the Town in many ways, and [the Town] tried to do the same thing;" however, after a year and half of the Applicant's working collaboratively with the Town, once it became clear the Applicant did not have the ability to underground the Project through the remainder of Newington's residential district, the planning board unilaterally, and without formally notifying the Applicant, decided to change the Town master plan. Tr. Day 11 AM at 171-72; Tr. Day 11 AM at 160; Tr. Day 11 AM at 165-66. Mr. Hebert testified that the planning board amended the master plan to prohibit transmission lines in the Town's residential district and that the changes to the master plan were, as a last resort, "made specifically for the purpose of addressing this Project." Tr. Day 11 AM at 73. Although municipalities in New Hampshire have the authority to amend their master plans, it is antithetical to the SEC's purpose as a state siting committee to give credence to the Newington planning board's use of its master plan to block the Project. As the chairman in a previous docket concerning the siting of a HVTL before the SEC opined, "I am more impressed by the communities who took positions before [the project] was a glimmer in anyone's eye, who have planning documents, master plans or other zoning ordinances that have been on the books … those are, to me, more significant because they're not project-specific. They are more general statements of what the communities believe their community should look like and weren't passed in response to rumors or projections about what this project would do…" Tr. Deliberations Day 2 AM, Docket No. 2015-06 (January 31, 2018).

The Applicant has worked hard to address Newington's concerns. Mr. Hebert himself testified that the Applicant worked "collaboratively" with Newington for a year and a half prior to filing the Application and "tried very hard" to meet the towns concerns. Tr. Day 11 AM at 160. Specifically, in response to Newington's concerns about overhead lines in the residential

district, the Applicant agreed to bury the Project through Gundalow Landing as well as Little Bay Road and moved the transition structure at Flynn Pit. Tr. Day 8 AM at 48; App. Ex. 146, p. 10. The Applicant also worked collaboratively with the Town to both fund and secure conservation rights for Knights Brook, an area of scenic quality the Town sought to preserve from development. Tr. Day 11 AM at 170-71.

The record is replete with evidence showing the Applicant's extensive work to understand the views of municipalities, and, wherever possible, address those concerns. The Applicant worked with each municipality to ensure that the Project will not interfere with the orderly development of the region.

6. Conclusion

In sum, SRP is a reliability project designed to ensure a reliable supply of electricity to the Seacoast region – the fastest growing part of the State. This Project is unique among SEC projects in the sense that virtually all the benefits it provides will occur in the area where the project is being built. Accordingly, the Project promotes the orderly development of the region.

The Applicant has demonstrated by a preponderance of the evidence that the Project (1) will not affect prevailing land uses, (2) will increase employment and (3) will positively affect the economy of the region, which, under the SEC's rules, requires that the Applicant assess the economic effect of the Project on affected communities, in-state economic activity, real estate values, tourism and recreation, and community services and infrastructure. With respect to the elements of the economy of the region, the Applicant has demonstrated by a preponderance of the evidence that the Project will have a positive impact on economic activity and will have minimal impacts on real estate values, tourism, and community services and infrastructure. Finally, recognizing that the municipalities have not demonstrated through their views that the Project will have a significant negative impact on prevailing land uses, employment or the

economy of the region, and giving due consideration to all relevant information, including the Applicant's proposed condition that would mitigate any potential impact on real estate values, it is clear that the Applicant has proved facts sufficient for the Subcommittee to find that the Project will not unduly interfere with the orderly development of the region.

C. The site and facility will not have an unreasonable adverse effect on aesthetics, historic sites, air and water quality, the natural environment, and public health and safety

1. The Project Will Not Have an Unreasonable Adverse Effect on Aesthetics

The Applicant has demonstrated by a preponderance of the evidence that the Project will not have an unreasonable adverse effect on aesthetics. While CFP's visual expert initially identified 13 locations of concern, CFP subsequently stipulated that that the Project will not have a significant adverse effect and that the Applicant's mitigation commitments alleviate impacts on the viewing public. App. Ex. 194 at 1-2 (revised stipulation #12); *Counsel for the Public's Post Hearing Brief* at 39.

As the Subcommittee assesses this issue, it must focus on the criteria in Site 301.14, which require consideration of the visual effects of the Project on the viewshed in the region as a whole (rather than focus only on individual resources).[39] For example, the criteria focus on the "*area* of potential effect" and "change in the *landscape*," speak in terms of "scenic resources" in

[39] The seven criteria are: (1) the existing character of the area of potential effect; (2) the significance of affected scenic resources and their distance from the proposed facility; (3) the extent, nature, and duration of public uses of affected scenic resources; (4) the scope and scale of the change in the landscape visible from affected scenic resources; (5) the evaluation of the overall daytime and nighttime visual impacts of the facility; (6) the extent to which the proposed facility would be a dominant and prominent feature within a natural or cultural landscape of high scenic quality or as viewed from scenic resources of high value or sensitivity; and (7) the effectiveness of the measures proposed by the applicant to avoid, minimize, or mitigate unreasonable adverse effects on aesthetics, and the extent to which such measures represent best practical measures.

the plural, and require an evaluation of "the *overall* daytime and nighttime visual impacts of the facility."[40] Site 301.14 (emphasis added).

To assist the Subcommittee's review of aesthetics, the Applicant's visual expert prepared an assessment of individual scenic resources within the viewshed area, *see* Site 301.05(b)(5), so the Subcommittee can appreciate the relationship of the individual parts to the whole area of potential visual effect. In reaching an ultimate conclusion, the Subcommittee must look at the totality of the regional viewshed and potential aesthetic effects to determine whether the effects are unreasonably adverse. This broad-based, holistic approach is clear from prior SEC decisions and from the language of the new rules.[41]

i. Visual Assessment

The Applicant engaged David Raphael of LandWorks to complete a visual assessment ("VA") for the Project consistent with generally accepted professional standards and the SEC

[40] The Project is located in an existing corridor and is reasonably scaled in relation to the existing characteristics of the Project area. *See Application*, App. Ex. 1 at 70 (the overall visibility of the Project is limited due to the existing topography (flat, level terrain), vegetation and intervening structures in the Project area; the placement of the Project within an existing PSNH utility corridor with existing distribution and transmission lines requires limited adjustments and clearing; the Project is consistent with existing land use patterns because the Project will be located in an urban area, that is generally highly developed; and, the Project area is less sensitive to a new transmission line because there are existing utility corridors throughout the Project area).

[41] *See, Decision and Order Granting Application for Certificate of Site and Facility*, Docket No. 2015-02, p. 121 (March 17, 2017) (the Subcommittee finding that "the Project will not have an unreasonable adverse effect on aesthetics of the region"); *see also Decision Issuing Certificate of Site and Facility with Conditions*, Docket No. 2006-01, p. 27 (June 28, 2007) (in which "the Committee considers the effects on the viewshed in the region."); *see also Decision Granting Certificate of Site and Facility with Conditions*, Docket No. 2008-04, p. 43 (July 15, 2009) (holding that "the Project will not have unreasonable adverse effects on the aesthetics of the area."); *see also Decision Granting Certificate of Site and Facility with Conditions*, Docket No. 2010-01, p. 51 (May 6, 2011) (holding that "the turbines will not have an unreasonable adverse effect on the aesthetics of the region."); *see also, Decision and Order Denying Application for Certificate of Site and Facility*, Docket No. 2012-01, p. 51 (September 25, 2013) (the Subcommittee concluding that the project would have an "unreasonable adverse effect on the aesthetics of the region."); *see also Decision and Order Granting Application for Certificate of Site and Facility*, Docket No. 2015-05, p. 65 (October 4, 2016) (the Committee holding that "the Project will not have an unreasonable adverse effect on the aesthetics of the region.")

rules pursuant to Site 301.05.[42] *See Visual Assessment for Seacoast Reliability Project*, App. Ex. 51 and 52. Mr. Raphael's pre-filed testimony describes the significant experience of LandWorks in conducting VAs on projects of this nature and scale throughout the Northeast. *See* App. Ex. 17. Mr. Raphael also employed the exact same methodology for the recently-approved *Antrim Wind Energy* Project, SEC Docket 2015-02. In addition to the original VA, LandWorks completed updates to the VA to address changes made to the Project since the original filing of the Application.[43]

CFP engaged Michael Lawrence of Michael Lawrence Associates, PLC ("MLA") to prepare an assessment report. As part of MLA's assessment, Mr. Lawrence reviewed the VA prepared by LandWorks.[44] While Mr. Lawrence initially had some criticisms about the Project's proposed use of available avoidance, minimization, and mitigation measures, the Applicant and MLA worked together to develop a plan for addressing potential visual impacts, including planting plans for areas of concern identified by Mr. Lawrence.

No other party has provided reliable evidence showing that the Project will have a significant adverse effect on aesthetics. None of the interveners presented a visual assessment in

[42] Tr. Day 9 PM at 119–22 (Mr. Raphael further explained the genesis of the LandWorks VA methodology when questioned by the Subcommittee and confirmed that the methodology is well established and widely adopted).

[43] *See Addendum to the LandWorks Visual Assessment for the Seacoast Reliability Project*, App. Ex. 95 and 96 (Oct. 7, 2016); *Amended Pre-Filed Testimony of David Raphael*, App. Ex 75; *Supplemental Pre-Filed Testimony of David Raphael*, App. Ex. 142 (with updated visual simulations, concrete mattress addendum, and Nimble Hill Road addendum); *Revised Photosimulations of Nimble Hill Road, Newington and Little Bay, Durham – Updating Ap. Ex. 96 and App. Ex. 142*, App. Ex. 186; *Little Bay East Side Concrete Mattress Photosimulation*, App. Ex. 269; *Seacoast Reliability Project Potential Viewshed Map*, App. Ex. 266; *Addendum to Visual Assessment Regarding Historic Sites that have been Determined Eligible*, App. Ex. 271.

[44] Mr. Lawrence's review did not comply with the SEC's rules for conducting a visual assessment; indeed, Mr. Lawrence essentially reviewed the Project under the *Queeche* standard pursuant to Vermont state law. Tr. Day 14 PM at 8. When asked whether Mr. Lawrence's approach to assessing visual impacts could be replicated, Mr. Lawrence stated that "I think someone would have to use their imagination based on the descriptions that I elaborated on in my report." Tr. Day 14 PM at 8–9.

accordance with SEC rules, nor did any of the interveners retain a professional landscape architect or someone familiar with conducting visual assessments to review the Project. Aside from the original MLA Report, there is no credible challenge to the LandWorks VA. To the extent other parties address aesthetics, they offer lay opinions from interested viewers, not the opinions of the "reasonable person" or "average viewer".[45] Moreover, as demonstrated above *supra* § III.A.2.i., and discussed more fully below, the Applicant has worked diligently with landowners to address their concerns and has committed to continuing their efforts throughout construction and after the Project is built.[46]

ii. Identification of Scenic Resources

The methodology used in developing the VA and the resulting work complies with all of the SEC's rules. It uses a substantially similar methodology to that employed in the *Merrimack Valley Reliability Project* and the same methodology as used in *Antrim Wind*, both of which have been reviewed and approved by this Committee.

Pursuant to the SEC rules, the VA considered potential impacts of the Project out to a 10-mile radius (overall 20-mile overall corridor).[47] For this analysis, the area with the greatest

[45] Site 102.44 requires that the characterization of "scenic quality" be based upon a "reasonable person's perception of intrinsic beauty." The Subcommittee must make a distinction between the "average viewer" (i.e. the accepted standard in visual analysis as it represents a disinterested viewer who would give a more accurate response to a change in the environment) and the "interested viewer" (i.e. someone who has a stake in whether the Project is built or not). Tr. Day 9 PM at 126–28. For example, Mr. Hebert testified that it was the Town's position that aboveground visual impacts are unreasonable if *any* of the overhead structures or *any portions* of those structures were visible. Tr. Day 11 AM at 85–86. Such an opinion comes from an interested party and is untenable.

[46] Mr. Raphael testified that "on all the projects I've worked on . . . in my 40 years of practice, this project and this company has gone to great lengths to try and mitigate the visual effect, provide mitigation measures to property owners and abutters, made changes to the engineering design upon our recommendations to reduce the visual effect, and worked very hard and consciously to make this project as amenable and as best to fit as it possibly can . . . given the change in structure height and the nature of the transmission line itself." Tr. Day 9 PM at 179-80.

[47] *Site* 301.05(b)(4)(d)(2). *See also* United States 2010 Census of Population and Housing, *available at* https://www.census.gov/prod/cen2010/cph-2-31.pdf at IV-1 (determining Durham and Portsmouth to be urbanized areas); *id*. at E-8 Map (depicting urban areas and urban clusters in New Hampshire). Since the

potential for visual impact is determined to be within a 6-mile corridor running parallel to the Project's center line, that is, 3 miles on each side of that center line. *VA*, App. Ex. 51 at 7. This determination is based on a number of precedents and standards for the visual assessment of other transmission projects in New England. *Id.* It is reinforced by the fact that beyond 3 miles, the visibility and potential for visual impact from transmission structures diminishes significantly. *Id.*

The Town of Newington's Post-Hearing Brief at p. 34 wrongly asserts that the Applicant limited its review of scenic resources to a geographic scope within 3-miles on either side of the corridor. LandWorks identified all scenic resources within the area of potential visual impact within 10-miles in compliance with Site 301.05(b)(5). *VA*, App. Ex. 32, at 7–8. Site 301.05(b)(5) only requires an identification of scenic resources "*within the area of potential visual impact*."[48]

LandWorks conducted extensive research, as well as multiple site visits, to create an inventory of all public viewpoints or key observation points. To identify these locations, data was obtained from local town plans and regional documents, online media sources such as local, state, national, and organizational websites, reference books on geology, geomorphology,

---

Project is located, in part, in urbanized areas, the area of potential visual impact should be limited to a ½ mile radius in those areas. However, to ensure scenic resources with visibility of the Project were not missed, the Applicant's area of potential visual impact was over-inclusive and went out 10-miles.

[48] "'Area of potential visual impact' means a geographic area from which a proposed facility *would be visible*, and *would result in potential visual impacts*, subject to the areal limitations specified in Site 301.05(b)(4)." Site 102.10 (emphasis added). The requirement that a VA identify scenic resources *within the area of potential visual* impact means that scenic resource must have a view of the Project and that the Project would result in potential visual impacts to that resource. There is no requirement in the SEC rules that requires an Applicant to identify all scenic resources within a 20-mile radius if the resource would not have a view of the Project and would not be potentially impacted. The LandWorks VA went above and beyond what is required in the SEC rules.

physiography, and ecology, topographic maps, aerial photography, road atlases, and field observation. *Id*. at 8.

Pursuant to Site 301.05(b)(5), the VA identified scenic resources within the area of potential visual impact from which the proposed facility would be visible.

> "Scenic resource" as defined by the SEC rules
>
> means resources to which the *public has a legal right of access* that are: (a) Designated pursuant to applicable statutory authority by national, state, or municipal authorities for their *scenic quality*; (b) Conservation lands or easement areas that possess a *scenic quality*; (c) Lakes, ponds, rivers, parks, scenic drives and rides, and other tourism destinations that possess a *scenic quality*; (d) Recreational trails, parks, or areas established, protected or maintained in whole or in part with public funds;[49] (e) Historic sites that possess a *scenic quality*; or (f) Town and village centers that possess a *scenic quality*.

Site 102.45 (emphasis added). The definition of scenic resources focuses on "scenic quality," namely, "a *reasonable person*'s perception of the intrinsic beauty of landforms, water features, or vegetation in the landscape, as well as any visible human additions or alterations to the

[49] To the extent the Town of Newington suggests that current use parcels should be considered in a visual assessment, the Town is mistaken; current use parcels are not scenic resources. Current use parcels have not been assessed or considered in prior visual assessments performed in New Hampshire and the SEC has not treated current use parcels as scenic resources in any prior proceeding. Tax breaks for current use parcels do not establish, protect or maintain areas in whole or in part with public funds; indeed, owners of current use properties do not receive any public funds. In addition, the Town Newington seems to imply that parcels in the current use program with a recreational adjustment—which land is open for members of the public to engage in a limited amount of activities, namely, hunting, fishing, snowshoeing, hiking, skiing, nature observation—are publicly accessible. *See* RSA 79-A:4 (establishing an additional 20% discount if there is no prohibition on the aforementioned activities on the current use parcel). The Town's interpretation is inconsistent with the general concept of "legal right of access" which contemplates allowing generalized access to a property. The recreation adjustment does not require general public access, and merely requires a landowner to open up their land for very few specific use activities. In addition, the recreation adjustment allows property owners to exclude mechanized vehicles, off-road vehicles, and camping, as well as some other uses that are not expressly allowed—and therefore are prohibited—including swimming, road and/or mountain biking, rock climbing, bouldering, horseback riding, water sports, etc., all of which are generally considered recreational activities. *See* State of New Hampshire Current Use Criteria Booklet for April 1, 2015 to March 31, 2016, *NH Dep't of Rev*. Therefore, "access" to current use parcels is not consistent with the principle of "legal right of access." Lastly, as the Town points out that nearly 1.5 million acres in New Hampshire share the "Current Use – Recreational" status, it would be nearly impossible to assess these sites as part of a visual assessment.

landscape."[50] In accordance with the SEC rules, the LandWorks VA focused on those resources that have a scenic value or scenic purpose associated with them and where a legal right of public access is established. Importantly, if a scenic resource, including historic resources, is not publicly accessible, it cannot, by definition, be a "scenic resource".

"Legal right of access" requires that the public at-large to have the ability to both physically and legally access the property; visual access does not equal a legal right of access.[51] The Town of Newington, in its Post-Hearing Brief at pp. 37–38, misconstrues the common law in New Hampshire by asserting that a landowner that does not "post" his or her property (i.e., by putting up a publicly displayed notice which informs people they are trespassing if they enter their property) provides members of the public with a legal right of access to that private property without any invitation or permission from the underlying landowner. In fact, New Hampshire has long recognized that "a trespasser is a person who enters or remains on land in

[50] Site 102.44. *See also* Tr. Day 9 PM at 153–54 (equating the "average" viewer with the "reasonable person" as someone who does not have a preconceived notion and is not directly affected by the Project).
[51] The Committee's rules require an Applicant, and the SEC, to assess potential impacts *from* a scenic resource; not *of* a resource. For example, Site 301.05(b)(1), Site 301.05(b)(5), and Site 301.05(b)(6)(c)–(d), all require a visual assessment to assess potential impacts of a Project from the resource, not of the resource. *See also* Site 301.05(b)(7) (requiring "[p]hotosimulations *from* representative key observation points, *from* other scenic resources for which the potential visual impacts are characterized as "high" . . . and, to the extent feasible, *from* a sample of private property observation points within the area of potential visual impact"). *See also Tr. Rulemaking*, Docket 2014-04, pp. 47, 50-53 (Sept. 21, 2015) (determining that the focus of an analysis of scenic resources should be "from the perspective of the scenic resource"). In the Rulemaking Docket, Chairman Honigberg opined that as the SEC rules are written, it is clear that the aesthetics analysis must be done as if "you're at the scenic resource and looking at the facility" and that an applicant must complete an "inquiry into how the facility would affect the view *from* the affected scenic resource." *Id*. at 51 (emphasis added). *See also Antrim Wind Visual Assessment*, Docket No. 2015-02, p. 16-17 (September 3, 2015) (determining visual effect *from* sensitive scenic resources and assessing six criteria to determine "how visible a project may appear in the landscape *from* a particular resource"); *see also Merrimack Valley Reliability Project*, Docket No. 2015-05, p. 25 (December 31, 2015)(determining project visual impact by assessing selected viewpoints that "provide open views toward the Project site (as determined through field verification) *from* areas that could be considered scenic resources within the visual study area"). *See also* Tr. Day 9 PM at 15 (Mr. Raphael testified that "We're charged with creating simulations from the scenic resource, you know, to the project view, which typically the project's not located in a scenic resource. So we're really looking at what is the visual effect to the scenic resource.").

the possession of another without the possessor's consent or other legal privilege."[52] Restatement (Third) of Torts: Phys. & Emot. Harm § 50 (2012). In other words, members of the public do not, generally, have a right to enter all private property in New Hampshire. The New Hampshire Supreme Court has specifically refuted Newington's argument by holding that the mere existence of open land, without any form of posting, is insufficient to establish a public legal right of access. "The fact that the ground was unenclosed, and that…people at their pleasure went there without objection, was not an invitation; and from that fact alone no license to go there can be inferred." *Clark v. City of Manchester*, 62 N.H. 577, 579 (1883).[53]

LandWorks reviewed publicly available information to identify scenic resources.[54] *VA* at 9. LandWorks identified 181 scenic resources within the area of potential visual impact. Of the scenic resources identified, only 30 had potential visibility of the Project. *See VA* at 53–54.

With the assistance of Preservation Company, LandWorks considered historic sites[55] listed on the State and National register of historic places, as well as those determined eligible

[52]The New Hampshire Supreme Court has held that "[o]ne is subject to liability to another for trespass, irrespective of whether he thereby causes harm to any legally protected interest of the other, if he intentionally [ ] enters land in the possession of the other." *Case v. St. Mary's Bank*, 164 N.H. 649, 658 (2013). Actions that would otherwise constitute trespass, however, are not trespass if they are privileged, i.e. the owner or possessor of the land has consented to the entry. *Id*.

[53] While in *Ouellette v. Blanchard*, 116 N.H. 552 (1976), the New Hampshire Supreme Court held that the historical distinctions between invitee, licensee, and trespasser as the sole determinants of the standard of care owed by an occupier of land were no longer applicable, the common law principle that it is a trespass to enter land without consent, as articulated in *Case v. St. Mary Bank*, remains unchanged. *Case v. St. Mary's Bank*, 164 N.H. 649, 658 (2013).

[54] Nearly 100 publicly available sources, including GIS data (available through NH Granit, USGS), town plans, published guidebooks (e.g. Explorer's Guide to New Hampshire), publications (e.g. local recreational brochures), online media (e.g. visitNH.org), state databases (e.g. listed and determined eligible historic resources) as well as general field observations. *See also* Section 6 of VA. Collectively, the different data sources provide a comprehensive understanding of the scenic resources to be evaluated, and the potential effect the Project may have on users of those resources.

[55] During Subcommittee questioning of Mr. Raphael, Director Muzzey asked several questions about "historic resources" and historic farms. Tr. Day 9 PM at 142–48. There is a distinction between an analysis of a historic resource under Site 301.06 and 301.14(b) and the analysis of a historic resource that is publicly accessible and has scenic quality under Site 301.05 and 301.14(a). For the former analysis, all historic sites within a ½ mile radius were assessed by Ms. Widell, regardless of whether the historic

for listing. Preservation Company provided LandWorks with a list of 138 sites listed on the NH State or National Registers of Historic Places within a 10-mile radius of the Project. *See Resources Listed in National Register with Visibility,* App. Ex 263 (listing historic sites within 10-mile radius that were considered by LandWorks). With the assistance of Preservation Company, LandWorks assessed those historic sites, including historic districts,[56] that are publicly accessible, possessed scenic quality, and had a view of the Project.[57]

In addition, LandWorks also considered historic sites out to 10 miles that have been "determined eligible" for inclusion in the State or National register, including eligible historic districts. *See Addendum to Visual Assessment Regarding Historic Sites that have been Determined Eligible,* App. Ex. 271 (determining that the Project would not adversely impact historic sites that have been determined eligible for listing on the State or National register).

---

resource was publicly accessible and it had visibility of the Project. For the later analysis, Mr. Raphael conducted a visual assessment of a historic resource *only if* the resource was publicly accessible and it had a view of the Project. If the historic resource in question is not publicly accessible (i.e. the Alfred Pickering Farm or the Pickering Road Farm) it cannot be a scenic resource and therefore it would not appear on Mr. Raphael's list of scenic resources. In addition, if a historic resource does not have the requisite "scenic quality" it would not qualify as a scenic resource because it does not have the necessary scenic value under the SEC's definition of a "scenic resource". *See* Site 102.45 (defining "scenic resource" to include "[h]istoric sites that possess a scenic quality").

[56] Director Muzzey asked Mr. Raphael about his assessment of historic districts and locally designated roads. Tr. Day 9 PM at 148–50. To the extent a historic district is listed on the state or national register or eligible for listing, it is publicly accessible, it will have a view of the Project, and it has scenic value, Mr. Raphael considered the resource. *See* e.g. *Resources Listed In National Register w/ Visibility*, App. Ex. 263; *Addendum to Visual Assessment Regarding Historic Sites that have been Determined Eligible,* App. Ex. 271, n *2. If the district did not meet all of the criteria, Mr. Raphael would not have been required to assess it under the SEC rules. Tr. Day 9 PM at 150. In addition, all locally designated roads were considered in the VA within the area of potential effect. *See e.g.*, VA at 53–54 (assessing Mills Scenic Byway, Durham Point road, Bennett Road, Little Bay Road, Old Dover Road, etc.).

[57] CFP Ex. 11 at 134 ("Preservation Company provided LandWorks with a list of 138 sites listed on the NH State or National Registers of Historic Places within a 10-mile radius of the Project, which is attached. Those sites that lacked public access and/or did not possess the requisite setting as a feature of their significance, i.e. indicating that they possess scenic quality, were removed. Out of all the sites identified, only one site on the attached list (Newington Center Historic District) was noted as having a potential view of the Project and possessed the requisite view, landscape, or setting to qualify as a historic resource that is also a scenic resource.").

During cross-examination of Mr. Raphael on the *Addendum to Visual Assessment Regarding Historic Sites that have been Determined Eligible*, CFP asked Mr. Raphael whether he assessed the UNH Historic District, Durham Point Historic District, and Newmarket and Bennet Farms Historic District. The record clearly shows that each of these were considered as part of the VA. *See* VA, App. Ex. 51 at 52, 54, 59, 61, 62, 64, 76–79, 86 (assessing UNH Historic District at various locations within the eligible district); *id*. at 49, 53, 57, 60, 62–63, 93 (assessing Durham Point Road and multiple views from various publically accessible viewpoints within the eligible Durham Point Historic District, including, from Durham Point Road across from Colony Cove Road and Durham Point Road at Crombie Curve); *id*. at 47–48, 53, 56, 60, 62–63 (assessing Bennet Road and Newmarket Road (a.k.a. Mills Scenic Byway) and multiple views from various publically accessible viewpoints within the Newmarket and Bennet Farms eligible district, including, from Bedard Farm on Newmarket Road and from LaRoche Farm on Bennett Road). Two other eligible historic districts were also assessed in the VA. *See id*. at 50, 54, 58, 60, 62–64, 71–73, 86 (Fox Point); *id* at 50 (Wiswall Falls). The record here demonstrates that neither the interveners[58] or CFP [59] identified a single existing scenic resource that LandWorks should

[58] Durham Historic Association implied that LandWorks did not consider the Durham Historic District, Wiswall Falls, Smith Chapel, or East Foss Farm, *see* Tr. Day 14 AM at 133–34. DHA is simply wrong; the LandWorks assessment considered these sites when identifying scenic resources. *See Resources Listed in National Register with Visibility*, App. Ex 263 (listing Durham Historic District, Wiswall Falls, and Smith Chapel as having been considered, but either lacked public access, visibility of the Project, or scenic quality); *see also VA*, App. Ex. 32 at 45 (determining that the John Sullivan House within the Durham Historic District has no Project visibility); *id*. at 49–50 (determining Wiswall Falls has no Project visibility); *id*. at 51 (determining that East Foss Farm has no Project visibility). DHA also mistakenly asserted in its Post-Hearing Brief that the Applicant did not consider trails in the Longmarsh Preserve; however, the Applicant unequivocally considered such impacts. *See VA*, App Ex. 32 at 51, 54, 58, 61, 62, 63.

[59] CFP mistakenly asserts that LandWorks did not consider publicly funded trails that have a primary purpose other than scenic views and that LandWorks did not consider snowmobile and ATV trails. The VA considered publicly funded trails and other conservation areas. *See e.g.*, VA at 50–52 (assessing College Woods, East Foss Farm, Wagon Hill Farm and its trail networks, Four Tree Island and Prescott Parks, etc.). Indeed, Mr. Raphael specifically testified that he considered snowmobile trails or ATV trails, and if they were part of an existing state park, they would be assessed as one resource. Tr. Day 9

have assessed and was missed.[60] In fact, CFP's own visual expert, Mr. Lawrence, testified that if he had identified any scenic resources that Landworks missed, he would have called that out.[61]

iii. Determination of Visibility

Once scenic resources were identified, field visits and site photography were conducted. *VA* at 10. LandWorks performed a computer-based viewshed analysis, pursuant to Site 301.05(b)(4), to define the area of potential visual impact, and to determine which resources may have potential visibility of the Project within that area. For this Project, LandWorks prepared a map depicting the location of the Project based on bare ground conditions using topographic screening only, App. Ex. 266, and with consideration of screening by vegetation, App. Ex 52 (Exhibit 1 and Exhibit 2). Regarding bare earth, other than the creation of a map for informational purposes, nothing else is required under the rules.[62] There is certainly nothing in

PM at 81–82. No party has identified a snowmobile trail or ATV trail that exists and was missed by LandWorks.

[60] *See e.g.*, Tr. Day 14 AM at 112 (Mr. Lawrence stated that as part of his review, he reviewed the Applicant's visual impact assessment for completeness of its identification of scenic resources). When questioned by Subcommittee Member Mr. Way, Mr. Lawrence also recounted that he was comfortable with Mr. Raphael's assessment of scenic resources, including historic sites, based on information that Attorney Needleman showed during his examination. Tr. Day 14 PM at 43–45. While Mr. Lawrence did not develop his own list of scenic resources, *see id*. at 69, Mr. Lawrence testified that he would have specifically identified any additional sites if he had felt that they had been missed. *Id*. at 44–45.

[61] Tr. Day 14 PM at 44-45.

[62] Site 301.05(b)(1) requires an applicant to provide: "a description and map depicting the locations of the proposed facility and all associated buildings, structures, roads, and other ancillary components, and all areas to be cleared and graded, that would be visible from any scenic resources, based on both bare ground conditions using topographic screening only and with consideration of screening by vegetation or other factors." LandWorks generated a map depicting the location of the Project using only bare ground conditions. App. Ex. 266. The production of a bare earth visibility map is all that is required under the SEC rules. *The phrase "bare ground conditions" appears once in the SEC rules and site 301.05(b)(1) is not cross-referenced by any other rule.* Moreover, the "area of potential visual impact" ("APVI") is not determined based only on an assessment of bare ground conditions, but is defined by identifying the area from which the proposed facility *would* be visible and *would* result in potential visual impacts. Site 102.10 (emphasis added). The use of either bare-earth or vegetative viewshed map alone, is not sufficient, in part, because viewshed maps indicate theoretical visibility and requires further analysis and field work to confirm Project visibility.

the rules that requires the bare earth map to be used as part of the analysis of scenic resources.[63] *VA* at 11. Viewshed analyses are used mainly as a point of departure for identifying areas with potential visibility. *Id*. They show that, due to topography or intervening vegetation, that some resources will have no views of the Project and therefore will not be affected. *Id*. The viewshed analyses prepared for this Project provides the first step in ruling out those areas with no visibility, and identifying what areas might have visibility. *Id*. Additional visual studies (e.g. visual simulations, line-of-sight sections, 3D modeling, field analysis) are necessary to understand the details and context of a view from any location. *Id*.

iv. Assessment of Scenic Resources with Potential Views of the Project

Once LandWorks identified those scenic resources that are publicly accessible and would have a potential view of the Project, LandWorks assessed each resource for its significance or visual sensitivity in accordance with Site 301.05(b)(2), (5), (6). Typically, the lower its significance or visual sensitivity, the higher its ability to accept change. *Id*. at 15. To gauge these characteristics, LandWorks considered cultural designation and scenic quality. Cultural designation considers the local, regional, statewide or national cultural significance of a particular resource, often indicated by formal designation or inclusion in a current or recent

[63] Mr. Raphael testified that while he considered bare ground conditions as part of his assessment, the use of "bare ground" was essentially useless in this area of the state due to the flat topography. Tr. Day 9 AM at 64–66 (stating that "in an area like this which is very, very level, we didn't feel like the bare-earth analysis provided us with any . . . detailed information . . . that we could rely on . . . or we didn't already expect when you conduct a bare-earth analysis"). Counsel for the Public's aesthetic expert Mr. Lawrence also agreed that due to topography and existing forest cover that the Project would not be widely visible and that visibility of the Project is "limited due to the extensive tree cover and woodland landscapes." Tr. Day 14 PM at 6–7. Indeed, if one were to look at the 10-Mile Potential Viewshed Map with Topography Only, App. Ex. 266, essentially the entire Seacoast Area would have a view of the Project. *See* Tr. Day 15 PM at 75 (Counsel for the Public's historic witness Patricia O'Donnell also confirmed that the bare earth map "basically shows us that in southeastern Madbury, pretty much all of Durham and Newington, and the portion where the line enters Portsmouth, *everything* is in view") (emphasis added). Based on existing tree cover and other intervening features, we know that is not the case. Nevertheless, the Applicant complied with the requirement of Site 301.05(b)(1). *See* App. Ex. 266.

community (or official) planning document that recognizes its cultural, natural resource, recreational, or scenic value. *Id*. A resource may not necessarily have high scenic quality, but visual character could be important to how it is valued. *Id*. A cultural designation of low, medium or high was assigned to each resource. *Id*. at 16. LandWorks next assessed scenic quality following the widely accepted Bureau of Land Management visual quality rating system. *Id*. at 16–17. The ratings from cultural designation and scenic quality were combined to determine an overall sensitivity level rating.

A resource that received an Overall Sensitivity Level rating of 'Low,' 'Low-Moderate' or 'Moderate' has the ability to accept change in the landscape, and is not further analyzed (i.e. the Project will not have an unreasonable visual effect given the low to moderate value of the resource). Resources that receive a 'Moderate-High' or 'High' rating are more sensitive to changes in the landscape due to their greater visual quality or scenic significance and are further analyzed to determine the level of visual effect the Project may have on the resource. For this Project, ten resources were identified as having an overall sensitivity level rating that required further analysis. *VA* at 64.[64]

v. Assessment of Overall Visual Effect

In determining overall visual effect to any of the ten identified sensitive resources, LandWorks considered the criteria found in Site 301.05(b)(6). *VA* at 19–31 (assessing scale and spatial presence, prominence, compatibility, distance, contrast, viewer effect,[65] including

[64] LandWorks initially listed nine sensitive resources in its VA, but also considered a tenth, Nimble Hill Road. *See Supplemental Pre-Filed Testimony of David Raphael*, App. Ex. 142, Attachment D.
[65] Mr. Raphael testified that he considered viewer effect and what the viewer sees at all stages of his assessment. Tr. Day 9 PM at 91–92.

activity, extent of use, duration of view, and remoteness, etc.).[66] LandWorks also prepared and considered photosimulations in accordance with Site 301.05(b)(7)–(8).[67] Based on this review, only one identified scenic resource, namely, Little Bay Road in Newington was given a moderate-high overall visual effect rating.[68] However, when the Project was amended to go underground in the Newington Center Historic District, that overall-visual effect rating was changed from a moderate-high overall visual effect rating to low. *See Addendum to LandWorks VA,* App. Ex. 95 at 8. All other scenic resources were considered to have a low overall visual effect rating, except for UNH, which received a moderate visual effect rating.

Notwithstanding these ratings, LandWorks conducted a further analysis of Newington, the Little Bay shoreline, the Great Bay National Wildlife Refuge, and UNH. *VA* at 98–104; App. Ex. 95; App Ex. 142, Attachment C–D. Based on this additional assessment, LandWorks confirmed that the Project will not have an unreasonable adverse effect on aesthetics.

vi. The Project Will Not Adversely Affect the Aesthetics of Little Bay

Likely the most discussed scenic resource during the proceedings was Little Bay. The VA concluded that the overall visual sensitivity to change for Little Bay was moderate. *See VA* at 63. Therefore, in accordance with the VA methodology, LandWorks determined that the proposed elements of the Project at Little Bay did not rise to a level of concern where the Project

[66] On cross-examination, Mr. Raphael also made clear that his methodology comports with the requirements of Site 301.05(b)(6) and that his methodology considers all of the required factors and they are "touch points" for the analysis. Tr. Day 9 PM at 100–02.

[67] *See Visual Assessment for Seacoast Reliability Project,* App. Ex. 52; *Addendum to the LandWorks Visual Assessment for the Seacoast Reliability Project,* App. Ex. 96; *Supplemental Pre-Filed Testimony of David Raphael,* App. Ex. 142, Attachment A–C; *Revised Photosimulations of Nimble Hill Road, Newington and Little Bay, Durham – Updating Ap. Ex. 96 and App. Ex. 142,* App. Ex. 186; *Little Bay East Side Concrete Mattress Photosimulation,* App. Ex. 269.

[68] In fact, when assessed for the Overall Viewer Effect Rating, Little Bay Road received a low-moderate rating *See VA* at 87–89.

would result in an unreasonable adverse effect on aesthetics. Nonetheless, LandWorks prepared a narrative as well as photographs and photosimulations for Little Bay. *See e.g.*, *VA* at 100–02.

The Project will be buried underneath Little Bay. To transition from an overhead line, a transition structure is required on the Durham side of the Bay. *See* App Ex. 186 (Revised Photosimulations) at 4–10. The structure will be set back 360 feet from the shoreline. *VA* at 100. This location diminishes the visual presence of the structure and will greatly reduce the potential visual effect when viewed from the waters of Little Bay and Great Bay. Vegetation and shoreline configuration limit the views of the structures from further away.

LandWorks also assessed the potential visual impacts due to the use of concrete mattresses necessary to protect the new transmission line.[69] According to estimates by LandWorks, the actual area of visible mats at low tide on the Durham side will be limited to an area approximately 24–28 feet wide by 34 feet long, and approximately 16–18 feet wide by 60 feet long on the Newington side. *Id.* at 2.[70] During periods of low tide, paddlers on either side will not be drawn to the location of the concrete mattresses; indeed, it is likely difficult for kayaks or canoes to access the concrete mattresses during low tide because of very shallow water. *Id.*[71] Therefore, the viewing distance of the mats at low tide would be approximately ½ mile from either side of the bay. *Id.* Mr. Lawrence agreed that assessing impacts to Little Bay from the middle of the Bay is a good place to make the evaluation and that halfway across the bay is a reasonable location to make such an assessment. Tr. Day 14 PM at 53.

[69] *See Concrete Mattress Addendum to VA,* App. Ex. 142; *Little Bay East Side Concrete Mattress Photosimulation,* App. Ex. 269.
[70] To the extent more or less mattresses are used than what was initially calculated by LandWorks, it would not be out of scale or draw the eye. Tr. Day 9 AM at 24 – 25.
[71] *See also* Tr. Day 9 AM at 12 (describing difficulties of approaching the shore during low tide).

Moreover, at approximately 24 to 28 feet wide, the amount of shoreline that will be covered with concrete mattresses is insignificant when compared to the length of the Little Bay Channel, which is a couple miles long. Tr. Day 9 PM at 114. A boater would only experience the concrete mattresses for a fraction of the overall time that one spends travelling down the entire channel. Tr. Day 9 PM at 114–15. In addition, the mats are "not dissimilar to concrete boat ramps that you see in many locations on ocean and lake shore type boat launches." Tr. Day 9 AM at 38–39. Counsel for the Public's expert, Mr. Lawrence, unequivocally agreed that: (1) the existing development and structures along the Little Bay shoreline create a visual pattern that will not be undermined by the concrete mattresses; (2) that the existing elements of Little Bay provide a visual pattern which can readily accommodate the proposed mats; and (3) that the mats will be an unobtrusive element. Tr. Day 14 AM at 102–03. *See also* Tr. Day 14 AM at 110 (Mr. Lawrence agreed that "concrete mattresses will be a very minor feature of the landscape and will only minimally affect the viewer's experience of the water, the bay and the views to the shoreline"); Tr. Day 14 PM at 50– 51 (Mr. Lawrence verified that the concrete mattresses would not be a significant visual impact when questioned by Subcommittee Member Way).

Moreover, the shorelines of Little Bay are already developed with large residences, docks and other shoreline elements, and extensive tree clearing.[72] Neither side is pristine.[73] Indeed, the

[72] *See Concrete Mattress Addendum to VA*, App. Ex. 142 at 3. *See also Supplemental Pre-Filed Testimony of David Raphael*, Attachment C, Exhibit 21A: View of Newington Shoreline and Durham Shoreline (showing the existing development along Little Bay, which includes, numerous residences, docks, and other shoreline structures, as well as numerous areas of extensive tree clearing). Indeed, the Jackson Laboratory is not far from the location of the cable crossing, which has an extremely large footprint on the Bay, and there are numerous boat launches at Adams Point. Tr. Day 9 AM at 77–78.

[73] Tr. Day 9 AM at 77–78; *Concrete Mattress Addendum to VA*, App. Ex. 142 at 3. *See also* Tr. Day 9 AM at 8 (distinguishing Little Bay as an important water-related natural resource and wildlife resource from a resource that is identified or elevated by its scenic qualities and determining that when comparing Little Bay to other shorelines in the Northeast, Little Bay does not rise to the level of having high scenic values from a visual perspective). Indeed, Durham's own master plan, TD-UNH Ex. 24, focuses on Little Bay from a wildlife and natural resource perspective; not from a scenic values perspective. Tr. Day 9 AM at 9.

area where the cable will make land fall is not within a distinctive landscape, nor is it in an area with unique scenic elements.[74] Both sides of the bay also have views of the existing cable house built in the early-mid 1900s.

As a minimization measure, the Applicant is able to dye the concrete mattresses to more fully resemble existing conditions.[75] In addition, it is highly likely that after a short period of time, the mattresses will fade due to the natural weathering process, the deposition of sediments, or may harbor algae and other plant life incorporating the mattresses into their natural surroundings.[76] Hence, the shoreline is able to "visually absorb" the concrete mattresses. Tr. Day 9 AM at 26.

The concrete mattresses will not draw the eye to any great extent and do not constitute a substantive intrusion into the visual landscape. Due to their limited size, minimal visual presence, and the fact that they will readily become part of the surrounding shoreline, the concrete mattresses will be a very minor feature of the landscape. Based on the evidence provided by the Applicant, which is supported by the opinions of MLA, the concrete mattresses will not have a significant adverse effect on aesthetics.

---

[74] Certain interveners, such as the Durham Residents, subjectively consider Little Bay to be a resource of extreme importance. However, as discussed *supra* note 41, the Subcommittee must make a distinction between the "average viewer" and the "interested viewer".

[75] *See* Tr. Day 6 AM at 113–115 (stating that tinting would take place at the factory and would be an "integral component of the concrete" and would "not dissolve out of the structure"); *Revised Photosimulations of Newington and Little Bay, Durham – Updating Ap. Ex. 96 and App. Ex. 142*, App. Ex. 186 at 4 – 10; *Little Bay East Side Concrete Mattress Photosimulation*, App. Ex. 269.

[76] *See Supplemental Pre-Filed Testimony of David Raphael, Concrete Mattress Addendum to VA*, App. Ex. 142, Attachment C at 3; Tr. Day 6 AM at 112–13 (stating that after time, there will be some sedimentation on top of the mattresses and that there will also be some biological cover that takes place over time so that will have some camouflaging effect); Tr. Day 9 AM at 25–26 (colonization by sea life or algae and discoloration from sediment over time will make the mattresses look darker and even harder to pick-out).

vii. Counsel for the Public and the Applicant Have Agreed Upon Reasonable Mitigation Measures

Counsel for the Public, Mr. Lawrence, the Applicant, and Mr. Raphael have worked collaboratively to address potential visual impacts from the construction and operation of the Project. While Mr. Lawrence initially identified a few areas that he believed warranted further consideration and suggested that additional mitigation measures be undertaken, Counsel for the Public and the Applicant have reached agreement on these issues and have proposed joint conditions of approval. *See Stipulated Proposed Conditions of Approval*, App Ex. 193, Condition 32 and 33 (requiring the Applicant to develop vegetation planting plans, in conjunction with Mr. Lawrence, for the 13 locations identified in the MLA report, which include Fox Point Road, Durham Point Road, and the Mills Scenic Byway, and requiring the Applicant to work with all landowners along the Project route that will be affected by tree trimming, tree clearing, or taller structures to develop vegetation planting plan). Mr. Raphael and Mr. Lawrence have already been working collaboratively to develop mitigation plans for all of the sites as appropriate and those sites identified by Mr. Lawrence. Tr. Day 9 PM at 130–33.

Based on these commitments, Counsel for the Public and the Applicant have stipulated that the vegetation planting plans result in "reasonable mitigation measures" and that the after the development and implementation of these vegetation planting plans, the Project will not have a significant adverse visual effect. *See Amended Stipulated Facts and Requested Findings of Applicant and CFP*, App. Ex. 194. In addition to these commitments, the Applicant has made similar promises to each town and UNH. *See MOU with UNH*, App. Ex. 267 at ¶ IV.A ("Eversource will work with UNH Campus Planning staff to establish a reasonable and mutually agreeable vegetation screen plan (including gates and/or fences)" which is to be reviewed and approved by UNH); *Durham MOU*, App. Ex. 270 at ¶ V.J (Eversource will work with all

abutting landowners to establish reasonable and mutually agreeable vegetation screening plans); *Newington MOU*, App. Ex. 168 at ⁋ VI.B (same).[77]

Mr. Lawrence also testified that the Applicant's commitments resolved all of the issues that were raised in his testimony. Tr. Day 14 AM, at 98; *see also* Tr. Day 9 PM at 193 (Mr. Raphael understood that if mitigation was done in the locations identified by MLA, Mr. Lawrence's concerns would be addressed); Tr. Day 14 PM at 5 (MLA did not conclude that the Project would have an unreasonable adverse effect on aesthetics); Tr. Day 14 PM at 12 (Mr. Lawrence testified that the Applicants have gone above and beyond what the SEC aesthetic rules require).

viii. Eversource Has Proposed Reasonable and the Best Practical Measures to Avoid, Minimize, and Mitigate Potential Adverse Effects to Aesthetics

In addition to the commitments made by the Applicant in its *Stipulated Proposed Conditions of Approval*, App. Ex. 193, and as discussed above, the Applicant has proposed numerous avoidance, minimization and mitigation measures that represent the best practical measures.[78] Such measures include: (1) co-location of the new transmission line in an existing corridor; (2) placement of the line under waters of Little Bay and the placement of transition structures on both sides to minimize visual effect to users of the water; (3) selection of structure types, heights, placements, and material to reduce visual presence in several locations along the corridor; (4) undergrounding of the Project across Main Street in Durham and the Newington

[77] As suggested by Director Muzzey, to the extent a vegetation screening plan is needed or developed for a historic resource, the Applicant is amenable to having the State Historic Preservation Office review the landscaping plan as well as a condition of a Certificate. Tr. Day 14 PM at 66–67.

[78] Site 102.12 defines "Best practical measures" as "available, effective, and economically feasible on-site or off-site methods or technologies used during siting, design, construction, and operation of an energy facility that effectively avoid, minimize, or mitigate relevant impacts."

Center Historic District;[79] (5) removal of existing distribution line across the Frink Farm in the Newington Center Historic District;[80] (6) commitment to dye the concrete mattresses to blend into the natural surroundings; (7) the retention of vegetative buffers, wherever possible, to provide screening at road crossings and minimize visibility; (8) the development of planting plans at road crossings, the 13 locations identified by Mr. Lawrence, and for private properties that are impacted by construction of the Project.[81] *See also Counsel for the Public's Post-Hearing Brief,* at 39 (agreeing that "[t]he Applicant's mitigation commitment alleviates the impact of the Project on the viewing public").

ix. Aesthetics Conclusion

The employment of a comprehensive methodology for the visual assessment, beginning with the inventory of sensitive resources, yielded the conclusion that there were no locations where the proposed Project would exceed a threshold of visual change and effect that would be considered unreasonable. *VA* at 98.[82] Based on this assessment it was determined that the Project, as a whole, will not have an unreasonable adverse effect on aesthetics, nor will it have an significant adverse effect on any one scenic resource.[83] The Project will almost entirely be located within an existing utility corridor. Typical Project visibility is limited to crossing points

[79] *See* Tr. Day 14 AM at 143 (Mr. Lawrence testified that when the proposal was changed to underground "I breathed sigh of relief and felt it was a huge improvement").
[80] *See* Tr. Day 14 PM at 65-66 (Mr. Lawrence testified that "I'm very gratified that what was a 30-foot high series of poles across the hay field at the Frink Farm is now not going to be there anymore. So I think that's actually an improvement, and I understand that there is going to be a large pole, but it's back at the back of that area. So I mean, I guess I commend the Applicant on that.").
[81] Subcommittee Member Weathersby inquired about non-specular conductors for this Project. However, the use of these conductors has not been proposed by the Applicant and there currently is not any evidence in the record from the construction panel that would support their use.
[82] *See also* NHDES Revised Final Decision, Comm. Ex. 12d, Permit Findings 26 ("The Applicant prepared a Visual Assessment ("VA") dated October 7, 2016 which demonstrated that the project will not have an unreasonably adverse effect on aesthetics to address the requirements of Env-Wt 302.04(a)(9).").
[83] *See also* Tr. Day 9 AM at 62 (LandWorks looked at the Project on a "location by location basis" but also "as a whole").

on local roads, and state highways, a few open areas (some in parking lots), and a short section at the UNH campus. Visibility is limited due to the extensive tree cover and woodland landscapes in many sections, with tree heights typically at 55 to 65 feet. *VA* at 95. Moreover, a number of avoidance, minimization and mitigation measures have been proposed.

Based on the conclusions in the VA and the seven criteria found in Site 301.14(a) that the Subcommittee must consider, the Project will not have an unreasonable adverse effect on aesthetics. The seven criteria focus on the "area of potential effect" and "change in the landscape," speak in terms of "scenic resources" in the plural, and require an evaluation of "the overall daytime and nighttime visual impacts of the facility." Site 301.14 (emphasis added). In the past, the SEC has generally considered the effects of the Project on the viewshed in the region as whole when assessing whether a Project may have unreasonable adverse effects on aesthetics.[84]

In addition to the substantial evidence supporting the Applicant's position, Eversource has worked with CFP to propose specific conditions to mitigate potential impacts to aesthetics. *See* App. Ex. 193 PP 32–33. The proposed conditions provide for a process whereby the Applicant and its expert and CFP and their expert will work collaboratively to develop vegetation planting plans. In addition, the Applicant has committed to working in good faith with affected landowners to reach agreement on vegetation plans, and to the extent an agreement

[84]*See, e.g.*, *Decision and Order Granting Application for Certificate of Site and Facility*, Docket No. 2015-05, pp. 64-65 (October 4, 2016)(concluding that "the Project will not have an unreasonable adverse effect on aesthetics *of the region*" even though the project will adversely impact 10 scenic resources) (emphasis added); *Decision and Order Granting Application for Certificate of Site and Facility*, Docket No. 2015-02, p. 118 (March 17, 2017) (concluding that the "Project will not have an unreasonable adverse effect on the aesthetics of the *region*") (emphasis added); *Decision Issuing a Certificate of Site and Facility with Conditions*, Docket No. 2006-01, at 27 (June 28, 2007) ("In determining whether the Project will have an unreasonable adverse effect on aesthetics, the Committee considers the effects on the viewshed in the *region*.") (emphasis added).

cannot be reached, the Applicant and/or landowner may submit a claim for resolution as part of the Mitigation and Dispute Resolution Process described in Conditions 17–21 of App. Ex. 193. Based on these commitments and the conclusions in the VA, the Applicant has proved facts sufficient for the Subcommittee to find that the Project will not have an unreasonable adverse effect on aesthetics.

2. The Project Will Not Have an Unreasonable Adverse Effect on Historic Sites and Archeological Resources

As demonstrated in the discussion below, and focusing in particular on the criteria in Site 301.14 (b)(1)-(5), the Applicant has proved facts sufficient for the Subcommittee to find that the Project will not have an unreasonable adverse effect on historic sites, including both archeological resources (underground) and above-ground historic resources.

The Applicant has submitted substantial evidence demonstrating that the Project will have no impact on archeological resources within the Project area. The archeological survey work was extensive, it followed a DHR-approved methodology, and the Applicant made effective route design modifications as necessary. In its Final Report, DHR agreed that no significant archeological sites will be affected. *Final Report*, App. Ex. 167.

In addition, the Applicant has properly identified above-ground historic sites, assessed potential effects, and proposed mitigation for any unavoidable adverse effects. All historic sites that the Project might affect were identified, evaluated for historic significance and integrity, and assessed for adverse effect in accordance with DHR's prescribed methods. Adverse effects have been fully resolved to the satisfaction of the regulators. *See Memorandum of Understanding ("MOU")*, App. Ex. 200; *see also USACE Memorandum of Agreement ("MOA")*, App. Ex. 200, Attachment A.

The Applicant worked closely with DHR and USACE throughout this proceeding, considering their input and conducting the analyses under their direction. This cooperative approach resulted in final agreements with both agencies that concluded the process and fully addressed all of the agencies' concerns. *See MOU*, App. Ex. 200; *see also MOA*, App. Ex. 200, Appendix A. In addition, the Applicant worked diligently with host communities to address their concerns regarding historic resources. Those efforts resulted in an MOU with the Town of Durham (App. Ex. 270) and an MOU with UNH (App. Ex. 267).[85] In sum, all issues regarding historic resources have been addressed and resolved.

i. Archeological Resources

a) The Applicant conducted a thorough, agency-approved identification and assessment of potential effects on archeological resources

The Applicant's archeological consultant, Victoria Bunker, Inc. ("VBI"), fully assessed the Project's potential effects on archeological resources within the Project area. VBI worked closely with DHR throughout to ensure a thorough and complete assessment. Dr. Bunker and VBI conducted a Phase I-A archeological survey for the proposed overhead, underground, and underwater components of the existing Project corridor. App. Ex. 18, p. 2; *see also* App. Ex. 170-176. VBI surveyed the entire length of the Project within the full width of the corridor, and did desk studies for certain locations outside of the Project corridor for access roads and lay down yards. App. Ex. 18, pp. 2-3. The Phase I-A level of survey provides an initial broad identification of any known archeological resources, as well as any potential areas within the Project area considered to have the potential for archeological resources.

[85] Applicant also executed an MOU with the Town of Newington (App. Ex. 168) but it did not address historic resources. The Applicant did, however, make commitments to the Town for the protection of stone walls. App. Ex. 143, Attachment C.

VBI recommended a Phase I-B survey for each of the sensitive locations identified in the Phase I-A survey that the Project may affect. *Id.* at 5. DHR reviewed all of the Phase I-A reports and concurred with the findings and recommendations. *Id.* VBI then conducted a Phase I-B survey to refine the Phase I-A results and confirm the presence or absence of sites within sensitivity areas, all in accordance with DHR guidance. App. Ex. 18, p. 5-6; *see also* App. Ex. 177-180. As a result of the Phase I-A and Phase I-B survey work performed, VBI found no adverse effect to archeological sites throughout the entire Project area and DHR concurred.[86] App. Ex. 144, p. 5; App. Ex. 167.

The Applicant and VBI also gave additional attention to the resources identified by the Durham Historical Association ("DHA"). For example, in response to concerns DHA raised regarding possible impacts to the Edgerly Farm area, VBI completed a supplemental Phase I-B survey. No evidence of an archeological site was found. App. Ex. 144, p. 4. All of the

[86] VBI did identify archeological artifacts at the LaRoche Brook site – a cellar hole located in the right-of-way. Tr. Day 2 AM at 53-57. The Project will avoid impacts to this area by placing an access road and structure outside the archeological site area and using temporary fencing to avoid inadvertent impacts during construction. App. Ex. 144, pp. 2-3; Tr. Day 2 AM at 32 and 55 (noting that "the site can be efficiently and confidently avoided."). Dr. Bunker further testified that the work pad for the proposed structure would be roughly 20 feet from the archeological site. Tr. Day 2 AM CONFIDENTIAL at 78. Because of these avoidance measures, DHR agreed that it will not be adversely affected. *Department of Historic Resources Update*, Docket No. 2015-05, p. 2 (April 25, 2017). In its April 25, 2017 status report to the Committee, DHR confirmed that the LaRoche Brook Wetlands Cellar Hole site would not be affected if the Project avoided impacts during construction. *Id.*; *see also* App. Ex. 144, pp. 2-3. Dr. Bunker further confirmed during her testimony that given the distribution of the artifacts, the type of artifacts, and the low artifact density, she does not believe any artifacts will be negatively impacted by the construction. Tr. Day 2 AM at 109-110.

The Applicant and VBI also gave careful scrutiny to graveyards and cemeteries. The Phase IA surveys provide information regarding the location of any cemeteries or graveyards within the Project area. App. Ex. 18, p. 3-4. The Phase I-A survey and related desk reviews also identified cemeteries and graveyards adjacent to the ROW. *E.g.*, App Ex 176 (CONFIDENTIAL); Tr. Day 2 AM at 43-45. Dr. Bunker testified further that the Applicant will comply with the required cemetery buffer area to avoid any potential impacts. App. Ex. 18, pp. 7-8.

archeological resources discussed in DHA's testimony are addressed in Attachment A to the *Supplemental Pre-filed testimony of Cherilyn Widell*. App Ex 143.[87]

b) The Project will not have an unreasonable adverse effect on archeological resources

Dr. Bunker concluded that "due to the Applicant's efforts to avoid impacts, the Project will not have any adverse effect on known archeological sites." App. Ex. 144, p. 5. DHR has concurred with this conclusion. App. Ex. 167. Further, DHR and the Applicant have entered into an MOU regarding avoidance, minimization, and mitigation. App. Ex. 200.[88] The MOU includes, as Appendix C, Training, Monitoring, Unanticipated Discovery, Curation and Repatriation Plans. *Id.* at Appendix C, pp. 1-14. Appendix C specifically identifies the procedures to be followed in the event of an unanticipated discovery of potentially significant archaeological deposits, human remains, or unanticipated effects upon known historic properties identified in the Project's APE. App. Ex. 200, Appendix C, p. 5. The careful and thorough review the Applicant completed in consultation with DHR and USACE demonstrates the Project will not have an unreasonable adverse effect on archeological resources.

[87] For example, Dr. Bunker testified at length regarding her review of burial sites and specifically, the possible Samuel Hill burial site. Tr. Day 2 AM at 28-40. The only information DHA provided regarding this site "was a brief quotation from an early 20th century document that described the possibility of a gravesite, a grave location, in Durham in a grove of trees, oak trees, on a hillside near a railroad station." Tr. Day 2 AM at 110-111. Dr. Bunker did not believe this "vague reference" was sufficient to designate sensitivity in the survey area. *Id.* at 111. She did a walkover survey of this area twice and in her professional opinion, nothing further needed to be done to assess the area. *Id.* Despite this, the Applicant has nevertheless agreed to do a ground penetrating radar survey of that area. App. Ex. 270, p. 9. The Applicant also agreed to expand the identified "quarry sensitivity area" and flag the "quarrymen's bench" identified by DHA. *Id*. at 10.

[88] As suggested by Director Muzzey, to the extent a vegetation screening plan is needed or developed for a historic site, the Applicant would be amendable to having the State Historic Preservation Office review the landscaping plan as well as a condition of a Certificate. Tr. Day 14 PM at 66–67. In addition, the Applicant is amendable to a Condition that would require the Applicant to develop a vegetation screening plan for any listed or eligible for listing historic site (including outside of the ½ mile APE), that has a view of the Project, thereby further mitigating any potential impacts to historic resources and eliminating the concerns raised by Patricia O'Donnell.

ii. Historical Sites/Above-Ground Resources

a) The Applicant conducted a thorough, agency-approved review of above-ground historic resources

The Applicant conducted a thorough assessment of above-ground historic resources.[89] Each phase was completed in conformance with DHR practice and procedures, under DHR direction, and with DHR (and, as appropriate, USACE) concurrence. The review culminated in DHR and USACE determining that there would be some, limited adverse effects to above-ground historic resources that can be appropriately and fully mitigated. *See* App. Ex. 200.

The Applicant initiated review of the Project with DHR on March 6, 2015. App. Ex. 225. After commencing review, the Applicant worked directly with DHR to set the Area of Potential Effect ("APE"). App. Ex. 19, p. 4. DHR adopted a one mile APE (which is more extensive than what would be strictly required under NHPA Section 106) on or about April 10, 2015. *Id.* After the APE was determined, the Applicant filed a Project Area Form ("PAF") with DHR on February 17, 2016. *Appendix 33*, App. Ex. 53, p. 46. As indicated in the PAF, the APE defined the study area for the PAF and, therefore, the development of the PAF and the subsequent review and identification of resources was wholly predicated on the one mile APE. App. Ex. 29.

In the PAF, the Applicant's consultants assessed the historic, geographic and architectural context of resources within the APE, and identified those properties that merited additional evaluation. App Ex 19, at pp. 3-4. After reviewing the PAF, DHR confirmed in its report to the SEC on November 10 and 17, 2016 that "[t]he identification of above-ground historic sites was completed on June 8, 2016." App. Ex. 225 and 264. The Applicant

[89] The record includes the following documents addressing above-ground historic resources: Request for Project Review (App Ex 53, pp. 1-2); Project Area Form ("PAF") (App Ex 29); 11 Inventory Forms (App Ex 112-119; 162); DHR's Determination of Eligibility Forms (App Ex 163); and, 10 Effects Tables (App Ex 164).

recommended that ten properties or districts were potentially eligible historic resources that might be affected by the Project and therefore required further review. *See* App. Ex. 112-119,162; *see also,* App. Ex. 163. Individual inventory forms were completed for each potentially affected resource. They were subsequently provided to, and approved by DHR.

The Applicant then prepared effects tables[90] for each resource as indicated by DHR and submitted them to DHR. App. Ex. 164. DHR reviewed the effects tables, completed its own review of the potentially affected resources and then issued its Final Report on August 1, 2017. DHR concluded in its Final Report that there will be adverse effects at four resources, which included the Cable House District also identified by the USACE. App. Ex. 167, p. 2. The Final Report contemplated that DHR would continue to work with the Applicant to "conclud[e] minimization efforts and mitigation agreements" to fully address the impact from the Project on these resources. *Id.* Consistent with this statement, the process moved forward with the execution of the MOU and MOA. *See* App. Ex. 200. The parties worked together to address and resolve adverse effects. That process is now complete and, as a consequence, all resources of concern have now been adequately addressed. This entire process demonstrates that the Applicant has proved facts sufficient for the Subcommittee to find that the Project will not have an unreasonable adverse effect on historic properties within the Project area.

[90] CFP asserts that Ms. Widell "did not attempt to analyze whether the Project would have any unreasonable adverse effects on any individual historic sites." CFP Final Brief, p. 57. This statement fails to take into consideration the individual effects tables prepared by the Applicant, which provide a full assessment of the effects of the Project on individual resources. While Ms. Widell ultimately reached a conclusion regarding whether the Project as a whole would have an unreasonable adverse effect on historic resources, her conclusion was based on her assessment of individual resources.

1) CFP's characterization of NHDHR's role as limited to Section 106 issues is incorrect

At every step of this process, DHR oversaw a comprehensive review of historic resources that encompassed the requirements of both Section 106 and RSA 227-C:9.[91] Among other things, RSA 227-C:9 makes clear that bodies like the SEC are required to "fully cooperate" with DHR when the work of these other bodies involves historic resources "*so that the division* [meaning DHR] *may determine the effect of such undertakings on historic resources.*" (emphasis added). Moreover, it has been the long-standing practice of the SEC, including in the cases since the rules were revised in 2014, to rely on DHR's assessment of historic resources in the context of energy project siting.[92] By contrast, if the SEC were to adopt Counsel for the Public's view and its witness's definitions, the SEC would be acting contrary to all of this established precedent involving the appropriate legal scope of historic resource review (including DHR's consistent approach in the energy facility siting context).

Throughout this proceeding, DHR referenced RSA 227-C:9 in its various reports to the SEC[93] and, ultimately, in the "whereas" clause of the MOU. *See* e.g. App. Ex. 225; *see also* App. Ex. 200. The record is clear that DHR extended its review beyond the requirements of Section 106, most notably in designating a broader APE,[94] pursuant to its separate charge under

[91] RSA 227-C:9 provides as follows: "All state agencies, departments, commissions, and institutions shall fully cooperate with the division in the location, identification, evaluation and management of historic resources, and to that end shall provide the division with appropriate information on all state licensed, assisted, or contracted projects, activities, or programs so that the division may determine the effect of such undertakings on historic resources."

[92] *Antrim Wind Project*, Docket No. 2015-02; *Merrimack Valley Reliability Project*, Docket No. 2015-05. In addition, by comparison, the SEC has approved projects where the historic resources reviews were less advanced than this process or in some cases, actually still not complete. *See e.g. Groton Wind*, Docket No. 2010-01, pp. 55-56 (May 6, 2011)(Noting that the 106 process will extend beyond the timeline set out in RSA 162-H and was not complete at the time the certificate was issued.).

[93] App. Ex. 225, p. 1.

[94] If DHR had deferred to USACE in setting the APE based only on Section 106, that APE would have been quite narrow, essentially encompassing the limited USACE federal permit area surrounding Little

RSA 227-C:9. If DHR's role had been limited to Section 106 review alone, there would have only been one adverse effect determination made – the Little Bay Underwater Cable Terminal House. Instead, DHR assessed "historical resources for the entire Project" (App. Ex. 167, p. 2.), which ultimately resulted in four adverse effect findings for this Project rather than just one adverse effect in conjunction with the narrower APE used by the ACOE for its Section 106 review. Again, this demonstrates that DHR's involvement in the SEC process is more expansive than simply providing recommendations pursuant to Section 106, and further demonstrates why DHR's assessment should be given deference when the Subcommittee considers the appropriate parameters of the historic sites analysis.

2) Despite the thorough and complete agency review that occurred here, which included full resolution of all issues of concern to the agencies, CFP's expert Ms. O'Donnell, essentially argues that DHR made procedural mistakes and reached the wrong conclusion

CFP's expert, Patricia O'Donnell, challenges the Applicant and DHR on two key issues: (1) she asserts they incorrectly set the APE (CFP Ex. 5-a, p. 8); and, (2) she asserts they incorrectly identified resources (CFP Ex. 6, p. 2). As a result,[95] Ms. O'Donnell argues, without performing any assessment of any particular resources, that the Project will have an unreasonable adverse effect on historic resources.

In essence, Ms. O'Donnell is asking the Committee to substitute her judgement for that of DHR and to conclude based on that judgment alone that there will be an unreasonable adverse

Bay. By contrast, in light of DHR's broader review consistent with RSA 227-C:9, the APE was set at 1 mile – well beyond what was necessary to implement Section 106. *See Final Report*, App. Ex. 167, p. 2.

[95] Ms. O'Donnell does not limit her critique of DHR to just these issues. In fact, she believes DHR simply was wrong about other specific determinations. For example, she disagrees with DHR's conclusion that the riser structure on the Frink Farm will not have an adverse effect. Tr. Day 15 AM at 54-55; *see also* Tr. Day 15 AM at 66-68.

effects. Moreover, she is asking the Committee to accept her assertions even though she relies on a strained and unique reading of the rules,[96] she can point to no situation in New Hampshire where her interpretation of the rules has been employed,[97] and, she did not consider prior SEC decisions and was unaware they are contrary to her positions here.[98]

i) Notwithstanding Ms. O'Donnell's opinion, DHR and the USACE set an appropriate APE

Ms. O'Donnell suggests that the appropriate APE for this Project should have been six miles, i.e., at 3 miles on either side of the ROW. *See* CFP Ex. 5, p. *9; see also* Tr. Day 15 AM at 94. By contrast, given the nature and location of this Project, DHR found that such a larger APE was not warranted and that a 1 mile APE was sufficient. App Ex 143 at p. 8, lines 2-10.

Ms. O'Donnell's position flies in the face of Site 301.06(b), the rule requiring the Applicants to identify "historic sites and areas of potential archeological sensitivity located within the area of potential effects as defined in 36 C.F.R. §800.16(d)." In accordance with that federal regulation, the lead federal agency in consultation with the State Historic Preservation Officer ("SHPO"), is responsible for determining the APE. 36 C.F.R. §800.4(a). In this case, the lead federal agency, USACE, established the APE as essentially only the area of its Clean Water Act wetlands permit jurisdiction. *See* App. Ex. 200, Appendix A, Attachment A. The New Hmapshire SHPO, in this case DHR, did not concur with USACE's determination of the APE.[99] Thus, for purposes of the DHR and SEC review of historic sites for this Project, the APE established by DHR is much larger than the limited APE set by the USACE for NHPA Section 106 purposes.

[96] Tr. Day 15 AM at 107.
[97] Tr. Day 15 AM at 97-99.
[98] Tr. Day 15 AM at 96.
[99] App. Ex. 53, PDF p. 25 (DHR letter of May 26, 2018 to USACE).

DHR exercises its discretion on a case-by-case basis to set the APE consistent with the circumstances of a particular project, as it did here.[100] For example, the indirect visual APE here is double the size of the APE that was established by DHR and approved by the SEC in the similar and recently decided Merrimack Valley Reliability Project. *Decision and Order Granting Application for Certificate of Site and Facility*, Docket No. 2015-05, p. 65 (noting the ¼ mile APE used in that case).

Ms. O'Donnell's report and testimony makes clear that her only basis for claiming the APE should be larger stems from her confusion about how the SEC's visual analysis rules work,[101] and her mistaken conflation of those rules with the SEC's rules governing historic resource analysis. Tr. Day 15 AM at 98-99. To the extent Ms. O'Donnell has alleged a larger APE is warranted, the record is clear that her view is contrary to the position taken by DHR, inconsistent with the SEC regulations, inconsistent with prior SEC cases, and is not supported by any evidence that specific resources were improperly excluded.[102]

[100]The overall visibility, or lack of visibility, is one factor DHR takes into account in determining the appropriate APE for any Project. In this case the Applicant's visual expert, David Raphael, noted that "typical Project visibility is limited to crossing points on local roads, and state highways, a few open areas (some in parking lots), and a short section at the UNH campus. Visibility is limited due to the extensive tree cover and woodland landscapes in many sections, with tree heights typically 55 to 65 feet." App. Ex. 32, p. 95-96. CFP's visual expert, Mr. Lawrence generally agreed with this assertion. CFP Ex. 4-a, p. 4.

[101] For example, Ms. O'Donnell relies on her belief that the SEC should assume a "bare earth" condition. This theory has no regulatory or common sense basis. First, bare earth analysis is not used in any way, and never has been in any circumstance in an SEC proceeding, with respect to historic resources. In fact, "bare earth" is referenced in only one place in the entire SEC rules – at Site 301.05(b)(1)—and that section only relates to visual analysis. Moreover, as noted *supr*a § III.C.1.iii, bare earth information is simply required to be submitted—it is not actually used in any way to conduct the required visual analysis under the SEC rules. Thus, Ms. O'Donnell's reliance on that approach here is entirely misplaced.

[102] The adequacy of the ½ mile APE is further borne out in the assessment of historic sites done in the VIA that required a 10 mile area of potential visual impact. As found by David Raphael in his VIA and subsequent analysis, the vast majority of sites have no visibility. The small number of sites that have some potential visibility beyond ½ mile of the ROW would not be adversely affected. See Addendum to the VIA submitted on November 2, 2018.

ii) Notwithstanding Ms. O'Donnell's assertions, the Applicant correctly identified above-ground historic resources

In the development of the PAF, the Applicant undertook a survey to identify all historic sites within the one-mile APE. App. Ex. 19, p. 3. By letter dated May 31, 2016, DHR expressly determined that the identification process was concluded. App. Ex. 224. Not only did DHR determine that the resource identification was complete, but it stated that it was complete in accordance with RSA 162-H:7, IV. *Id.*

Ms. O'Donnell disagrees with DHR's conclusion. She argues that DHR and the Applicant failed to take into consideration (*i.e.,* "capture") certain categories of historic sites. CFP Ex. 6, p. 4 (arguing for a "broader New Hampshire definition" of historic sites). Ms. O'Donnell's believes that under New Hampshire law the broader definition of historic sites includes things like current use properties.[103] Moreover, she thinks that the failure of the Applicant and DHR to consider such properties is an error, and that this error in and of itself merits a determination that the Project will have an unreasonable adverse effect on historic sites. In fact, it is Ms. O'Donnell who is making the error. The notion that properties like those in current use are the type of sites that must be evaluated (1) has no basis in law,[104] (2) is contrary

[103] CFP Ex. 5-a, p. 23.

[104] There is nothing in case law, the rules themselves or the legislative history to support the notion that current use properties should be considered historic sites. With respect to the age factor alone, the New Hampshire current use statute was adopted in 1973. Ms. O'Donnell acknowledges that the use of an age reference makes sense to appropriately limit the types of historic resources to be assessed. Tr. Day 15 PM at 51. Despite the fact that none of the current use parcels could meet the typical 50-year age threshold for determining significance in the context of historic resource assessment, Ms. O'Donnell identified them as historic sites.

to a reasonable interpretation of the term "historic site" in Site 102.23,[105] (3) runs afoul of DHR policy guidance and practice,[106] (4) contradicts past practice[107]; and (5) defies common sense.[108]

Any claim that the Applicant has limited the breadth and depth of review of cultural resources is incorrect and contrary to DHR's interpretation of the requirement set out in RSA 162-H:7, IV. The record in this proceeding demonstrates that the Applicant has produced an extensive amount of research and analysis of historic resources in the Seacoast area, as directed and approved by DHR in conformance with standard DHR practice. As Ms. Widell testified, she

[105] As discussed above in §B(1)(i), DHR's review was not limited solely to Section 106. Yet, the SEC rules on historic sites focus largely on Section 106 requirements, and the definition of "historic site" itself in Site 102.23 provides only Section 106 eligible properties as an example. The application requirements set forth in Site 301.06 require that the Applicant demonstrate that project review has begun in compliance with Section 106 where applicable (Site 301.06(a)), that all historic sites and areas of potential archaeological sensitivity be identified within the area of potential effects as defined by the federal law (Site 301.06(b)), that the determination by the DHR or the lead federal agency if applicable on effect on historic properties be included in the Application (Site 301.06(c)), and that the Applicant describe the status of consultations with the lead federal agency and consulting parties as defined in the Section 106 Regulations (Site 301.06(e)). As can be readily seen, the SEC focused its Application requirements for historic sites on Section 106-related information. This is fully consistent with the SEC's practice under the new rules, as well.

[106] *See DHR Policy Memorandum*, App. Ex. 143, Attachment D. The DHR's Policy Memorandum specifies what is properly covered by the new SEC rules on historic sites. This policy guidance was adopted by DHR on January 15, 2016 to clarify how it would apply the revised SEC rules that had been enacted a month earlier. DHR first observes that it reviews SEC application materials to determine whether they meet the requirements of Section 106. *Id.* at 1. "In NH, above ground historic properties meeting the definition of Site 102.23 are identified through preparation and submission of area and individual inventory forms … Information gathered and analyzed in individual inventory forms and historic district area forms provides a recommendation of whether a property is eligible for listing on the National Register of Historic Places." *Id.* Nowhere in the document does the DHR suggest that the DOE or the SEC should undertake a broader review of historic sites for SEC purposes. *Id.* In this proceeding, DHR has reported to the SEC that its review encompassed the requirements of Section 106 and that it also has reviewed the Project under its state enabling law RSA 227-C and under the SEC's enabling statute, RSA 162-H. App Ex 224 (DHR report indicating that the Applicant had concluded the identification phase in accordance with RSA 162-H:7,IV); App Ex 167 (indicating in its Final Report of August 1, 2017 that it had reviewed the Project under RSA 227-C and Section 106).

[107] There has not been a single SEC case, either before or after the current rules were adopted, where the SEC or DHR required such analysis.

[108] As a practical matter evaluating all the various categories of additional properties Ms. O'Donnell thinks should be evaluated is impossible. *See e.g.* Tr. Day 15 PM at 51 (Ms. Weathersby asking Ms. O'Donnell whether the universe of historic sites could become so large as to become "an impossible task.")

"looked at everything," and that, while she focused on National Register listed and eligible sites, she could not imagine a resource that would fall under the SEC's definition of a historic resource that "would not meet National Register eligibility." Tr. Day 10 PM at 11, 16.

In contrast, Ms. O'Donnell did no evaluation of individual properties whatsoever, and Ms. O'Donnell failed to point to any historic site where the Project will have an adverse effect. Rather than identifying any actual adverse effect, Ms. O'Donnell argues that the Applicant's failure to capture dubious categories of historic sites means that the Project will have an unreasonable adverse effect. This assertion is contrary to the findings and guidance provided by DHR throughout this process. App. Ex. 224

Simply stated, Ms. O'Donnell's opinion that the Project will have an unreasonable adverse effect is based on her judgment that "we have a whole series of resources that haven't been fully considered." Tr. Day 15 PM at 48. She acknowledged that she "really didn't do an assessment," and she "tried to make the case that the identification process was incomplete." *Id.* When asked by Director Muzzey what more could have been done to minimize impacts to historic sites, Ms. O'Donnell limited her issues of concern principally to vague assertions regarding conservation lands, stone walls and graveyards (*Id.* at 61-63), and then added local areas of scenic and cultural value like those identified by DHA. (*Id.* at 64.)[109] As discussed below, the Applicant did address the specific types of resources identified by Ms. O'Donnell and thus, in practice, everything more that Ms. O'Donnell says should have been done, has already been done.

[109] Ms. O'Donnell further added that her "public waters" historic site category was covered in the environmental testimony. Tr. Day 15 PM at 63. She clarified that her criticism of this category not being included was limited in that it did not apply so much for recreation areas unless "antique," and she similarly limited her criticism of the Applicant for failing to assess current use parcels. *Id.* at 61-62.

b) Adverse effects to historical sites are limited and fully addressed by the DHR MOU and USACE MOA

Neither Ms. O'Donnell nor DHA offer competent evidence of additional adverse effects beyond those already identified and addressed by DHR, USACE and the Applicant. Ms. O'Donnell did not undertake an actual assessment of adverse effects, as she acknowledged during questioning from Ms. Muzzey. Tr. Day 15 PM at 48. Thus, there really is no basis in her report to find any adverse effects. Still, for each town chapter in the report accompanying her pre-filed testimony, Ms. O'Donnell included a section titled "Heritage Landscapes Summary of Sites with Potential Effect."[110] In those sections, without completing any analysis, she lists specific sites to suggest example of where the Project may have an adverse effect. *See* CFP Ex 5-a, pp. 40, 48, and 54. Ms. O'Donnell's conclusory assertion that certain resources will be adversely affected, without performing any actual assessment, is contrary to the finding made by DHR in direct consultation with the Applicant.

Ms. O'Donnell agrees that there will be no adverse effects in Portsmouth. But she does mention 17 specific properties in the other three towns that might be adversely affected. While Ms. O'Donnell has not actually provided any analysis to support a finding that any of these properties will be affected by the Project in any way, the Applicant specifically addressed each of these properties. App. Ex. 143, Attachment E. As Ms. Widell explained, she considered these properties and found, for example, that they: (1) are outside the APE; (2) lack historic integrity (*e.g.*, the W.H. Elliott Rose Company district in Madbury); or (3) are already included in the list of adverse effects (*e.g.*, stone walls and the two historic districts in Durham.) App. Ex. 143,

[110]Ms. O'Donnell described how she looked at potential effects in the introduction of each of these sections. She states that she did a desktop review for potential adverse effects, using a holistic approach. CFP Ex 5-a, pp. 40, 48, and 54.

Attachment E. Ms. O'Donnell does not identify any adverse effects that have not already been fully addressed by the Applicant and reviewing agencies.

DHA also provided DHR, the Applicant and the SEC with information on historic resources in Durham. DHA Ex. 2-4. Ms. Widell carefully reviewed and evaluated these resources. App. Ex. 143, Attachment A. Most of them relate to graveyards and stone walls, and many are not in the APE or are subsumed within Ms. Widell's assessment of the historic districts or other historic properties.

A common concern in the DHA list of properties is stone wall protection. However, DHA, through Ms. Mackie, agreed that the Project had addressed all of the stone walls of concern to DHA (Tr. 11 PM at 107), that the stone wall impact avoidance measures are acceptable (*id.* at 135), and that generally they are "happy for all the stone walls" *(id.* at 126).

The Applicant also agreed to take additional measures beyond any regulatory requirement to address other issues DHA raised. See App. Ex. 267. These include doing a ground penetrating survey at the possible location of the Samuel Hill Family gravesites (referred to at Tr. Day 11 PM at 14-115),[111] and using only timber mats on Beech Hill and Foss Farm Roads (referred to at *id.* at 112-113). The DHA testimony provides no basis for a finding of any additional adverse effects other than those already identified and fully addressed by the Applicant and the reviewing agencies.

[111] CFP and DHA have recommended that ground penetrating radar be used at this location as a condition of any issued Certificate. CFP Final Brief, p. 55; DHA Post-Hearing Brief, p. 31. This additional measure has already been agreed to by the Applicant and has been memorialized in the Durham MOU. App. Ex. 270, pp. 9-10.

c) The Project will not have an unreasonable adverse effect on historic sites

In making its determination regarding effects on historic sites, the Subcommittee must consider the significance of the potentially affected sites, the number and nature of the adverse effects, and how effectively the Applicant has avoided, minimized and mitigated such effects, all guided by the findings by DHR. Site 301.14(b).[112]

Working closely with DHR, the Applicant identified and addressed the Project's potential adverse effects to historic sites. The Applicant has effectively minimized or avoided impacts. The agencies determined that there will be four adverse effects, and they have entered into agreements with the Applicant that require avoidance, minimization and mitigation measures to address those four effects. App. Ex. 200 (DHR MOU and USACE MOA).

The Applicant took "substantial meaningful measures to avoid and minimize potential adverse effects" on historic sites. App. Ex. 19, p. 7. These steps include specific design changes to eliminate or reduce visual impact in the area of the Newington Center Historic District and the Newmarket and Bennett Roads Historic District. Such measures include lowering structure heights, using weathering steel, and moving structure locations. *Id*. at 7-8. The underground re-design in the area of the Newington Center Historic District eliminated two adverse effects. App. Ex. 76, p. 1-2. In addition, the Applicant has also offered to provide vegetative screening to minimize the visual effect on the Alfred Pickering Farm. Tr. Day 10 PM at 125-26. Notably, the visual effect of the corridor is reduced by the removal of the existing distribution line. See Effects Table, App Ex 164, pp. 8-12; Tr. Day 10 PM at 125-127.

[112] The focus of the rules is on the effects from an entire project and not for any individual resource. Ms. Widell assessed the Project in this way. App Ex 19, pp.8-11; App. Ex. 143, p. 10. Ms. O'Donnell concurs with this approach. Tr. Day 15 PM at 56-57.

The DHR MOU and the USACE MOA, furthermore, commit the Applicant to (1) an extensive effort to minimize effects on the Cable House (Newington side), (2) protective measures for the stone walls governed by the DHR MOU in the two Durham historic districts,[113] and (3) development of a publicly oriented educational booklet as mitigation for the adverse effect on the Alfred Pickering Farm in Newington.[114] App Ex 200. In addition, the Applicant has made further commitments to avoid and minimize impacts to historic sites within the Project area and, more specifically, within the towns of Durham and Newington.[115] Due in part to these avoidance and minimization efforts the resultant impact to historic sites is minimal.

iii. Conclusion Regarding Historic Sites

The Applicant has demonstrated by a preponderance of the evidence that the Project will have only a limited effect on a small number of historic resources in the affected communities and will not have any adverse effect on known archeological sites. Giving due consideration to all relevant information, including the testimony of Ms. Widell and the proposed conditions recommended by DHR, both in its final report, App. Ex. 167, and in the MOU, App. Ex. 200,

[113] This commitment to use best management practices in dealing with stone walls is not just for the construction of the Project, but for future operation and maintenance activities, as well. App. Ex. 200, Section D.2, p. 5.

[114] Ms. O'Donnell agrees that the booklet is an appropriate mitigation measure if it is web-based and otherwise broadly accessible. Tr. Day 15 PM at 65.

[115] In Section VIII of the Durham MOU the Applicant made an overall commitment to take all appropriate and necessary steps to avoid and minimize impact to historic resources in Durham, to minimize impacts to stone walls identified by DHA (and other historic and boundary walls in the ROW), to undertake a ground penetrating radar survey in the possible location of the Samuel Hill family grave sites, to broaden the protected quarry area in Durham, and to use only timber mats for the Beech Hill Road and Foss Farm Road access roads. App. Ex. 270, pp. 9-10. In addition, the UNH MOU commits the Applicant to minimizing impacts to the 24 stone walls in the ROW on UNH property. App. Ex. 267, p. 4. The proposed stipulations and approval conditions offered jointly by the Applicant and CFP includes a commitment by the Applicant to comply with DHR's suggested conditions. App. Ex. 193, p. 3. The Applicant informed the Town of Newington in a letter dated July 26, 2018 how it would minimize impacts to the 7 stone walls identified by the Town. App. Ex. 143, Attachment C. Similarly, the Applicant committed to minimizing impacts to all the stone walls identified by DHA. DHA Ex 2 & 3.

therefore, the Applicant has proved facts sufficient for the Subcommittee to find that the Project will not have an unreasonable adverse effect on historic sites.

3. The Project Will Not Have an Unreasonable Adverse Effect on Air and Water Quality

The Applicant has proved sufficient facts for the Subcommittee to find that the Project will not have an unreasonable adverse effect on air and water quality. The Project does not require an air quality permit from NHDES, and once constructed, it will not produce air emissions. While the Project will have some temporary impacts on water quality during construction, NHDES has issued the requisite wetlands, shoreland, and alteration of terrain permits and a water quality certificate, which in totality demonstrate that the Project will not have a long term deleterious effect on water quality.

i. Air Quality

Construction of the Project may have minor, short-term localized effects on air quality, primarily from fugitive dust (resulting from ground disturbance at work sites and vehicular movements on access roads along the corridors). *Application*, App. Ex. 1 at 82. However, no long term effects on air quality will result from the operation of the proposed transmission lines. *Id*. Neither the construction, nor the operation of the Project, requires an air permit under any statute or other regulatory authority.[116] Counsel for the Public agrees that that the Project will not have an unreasonable adverse effect on air quality.[117]

To minimize short-term adverse effects to air quality during construction, environmental monitors will review ongoing activities, including verifying and documenting that appropriate

[116] Site 301.14(c) states that: "In determining whether a proposed energy facility will have an unreasonable adverse effect on air quality, the committee shall consider the determinations of the New Hampshire department of environmental services with respect to applications or permits identified in Site 301.03(d) and other relevant evidence submitted pursuant to Site 202.24."
[117] *Stipulated Facts and Requested Findings of the Applicant and CFP*, App. Ex. 184 at ⁋⁋ 16–17.

preventative and proactive BMPs are being used and maintained. *Id*. These practices may include mulching/covering soil stock piles and installing wind breaks to reduce the potential for the generation of wind-eroded particulates, using water trucks to suppress construction-related (fugitive) dust when necessary, and installing crushed stone aprons at all access road entrances to public roadways to minimize tracking of soil onto public thoroughfares. *Id.* at 82–83. In addition, vehicular emissions will be limited by requiring contractors to properly maintain construction equipment and vehicles, and by minimizing vehicle idling times in accordance with New Hampshire air quality regulations. Once constructed, the Project will produce no air emissions, and therefore, will not have an adverse impact on local air quality.[118]

ii. Water Quality

The Project has been designed to avoid environmental impacts where possible and to minimize impacts where unavoidable; it will not have an unreasonable adverse effect on water quality. Multiple environmental surveys and assessments were conducted in consultation with the appropriate state and federal environmental regulatory authorities. The results of these studies were incorporated into the engineering and construction aspects of the Project, resulting in a final design that avoids and minimizes environmental impacts to the greatest extent possible.

Site 301.14 provides that:

> In determining whether a proposed energy facility will have an unreasonable adverse effect on water quality, the committee shall consider the determinations of the New Hampshire department of environmental services, the United States Army Corps of Engineers, and other state or federal agencies having permitting or other regulatory authority, under state or federal law, to regulate any aspect of the construction or operation of the proposed facility, with respect to applications and

[118] *See also Decision and Order Granting Application for Certificate of Site and Facility*, Docket 2015-05 at 68–69 (Oct. 4, 2016) (concluding that the construction and operation of a new 345 kV electric transmission line will not have an unreasonable adverse impact on air quality); *Pre-Filed Testimony of Sarah Allen*, App. Ex. 15 at 2–3 (April 12, 2016).

permits identified in Site 301.03(d), and other relevant evidence submitted pursuant to Site 202.24.

The Applicant and its consultants conducted a comprehensive analysis of wetland and water resources, potential impacts, and potential avoidance and minimization opportunities.[119] NHDES and other regulatory agencies have conducted a thorough review[120] of the pertinent Application materials, permit applications, reports and analyses as well as numerous sets of comments and pre-filed testimony from other parties in this proceeding, including, Counsel for the Public and the Town of Durham/UNH. As conceded by the Town of Durham/UNH witnesses, including their experts, their concerns were heard by the NHDES and the evidence shows their opinions had a material influence on the Department's ultimate decision.[121]

[119] Normandeau was contracted to provide the natural resource assessments, including air quality, water resources, general wildlife habitat, rare species and communities, essential fish habitat and intertidal and subtidal biological resources for the Project area. Ms. Sarah Allen of Normandeau Associates was retained to assess the potential effects of the Project on air quality, wetland resources, wildlife and its habitat, and rare species and communities. *See* App. Ex. 15, 78, 135, 145. Ms. Ann Pembroke, also of Normandeau, was retained to conduct assessments for marine resources, including, sediment, benthos, shellfish and aquaculture. *See* App. Ex. 16, 79, 135, 145. To support Normandeau's efforts, Dr. Craig Swanson of RPS ASA was retained to conduct Suspended Sediment Modeling. *See* App. Ex. 35, 104, 136. Mr. Bjorn Bjorkman of GEI Consultants, Inc. was retained to assist in the completion of Characterizations of Sediment Quality Along the Little Bay Crossing. *See* App. Ex. 105, 136. Mr. Kurt Nelson of Eversource also provided valuable information on Company policies and the soil and groundwater management plan. *See* App. Ex. 135, 145. In addition to the contents of the original Application, these witnesses worked together with the NHDES to respond to their questions and issues of concern through numerous filings, submissions of additional data, and response to questions. *See e.g.*, App Ex. 103–11 (Applicant's Supplemental Information dated June 30, 2017 including Revised Modeling Sediment Dispersion, Supplement to Characterization of Sediment Quality along Little Bay, SRP Existing Cable Removal Plan, Revised Environmental Monitoring Plan, Salt Marsh Protection and Restoration Plan, Response to Comments from Counsel for the Public and Durham/UNH, Soil and Groundwater Management Plan, Best Management Practices and Construction Plan for Protected Wildlife and Plants); App. Ex. 120–21 (Response to NHDES Issues of Concern, Best Management Practices and Construction Plan for Protected Wildlife and Plants; Revised Little Bay Impact Assessment Report; Updated NHDES Wetland Permit Application Form; Revised Environmental Monitoring Plan for Little Bay; Essential Fish Habitat Assessment); App. Ex. 145, Attachment B (Revised Soil and Groundwater Management Plan).

[120] *See Counsel for the Public's Post-hearing Brief* at 60–61 (agreeing that NHDES conducted a thorough review of the Project and issued a final decision recommending permit approval with conditions).

[121] Town Administrator Todd Selig testified that "our environmental team has offered a lot of suggestions" throughout the process, Tr. Day 10 PM at 152; that DES listened patiently and respectfully to Durham's and UNH's concerns, Tr. Day 10 PM at 175; and that the Town had a fair opportunity to present its concerns to DES. *Id*. Mr. Dacey from GeoInsight also testified that the Department listened

The issuance of the NHDES Revised Final Decision contains all required NHDES permit approvals and conditions relating to the environment.[122] *See* Comm. Ex. 12c and 12d. The NHDES Revised Final Decision—which includes various water quality related permits and approvals—is *prima facie* evidence that the construction and operation of the Project will not have an unreasonable adverse effect on water quality.[123] The issuance of these permits and the water quality certificate establish by a preponderance of the evidence that the Applicant has satisfied all state water quality-related permitting requirements for the Project. No other party in this proceeding has produced any additional evidence that was not already considered and/or rejected by NHDES—the agency having permitting authority and expertise in assessing potential impacts to water quality. The Applicant and Counsel for the Public have also agreed upon *Stipulated Proposed Conditions of Approval* regarding water quality. App. Ex. 193 ⁋⁋ 22–29.

patiently and respectfully to their concerns. Tr. Day 13 AM at 77-78. In questioning of Mr. Selig by the Subcommittee, Mr. Fitzgerald aptly noted that all of the Town/UNH's concerns are "pretty clearly laid out in the pre-filed testimony" and that "obviously they're public at this point." Tr. Day 10 PM at 194. Durham/UNH's environmental panel also testified about (1) the copious amounts of information, various concerns, and proposed permit conditions that was provided to NHDES by Woods Hole, GeoInsight, and UNH through letters and pre-filed testimony, and (2) the number of interactions Durham/UNH had with NHDES (including two meetings without the Applicant or its contractors being present)). *See* Tr. Day 13 AM at 74–84. NHDES considered Durham/UNH's comments and suggestions when the agency made its permit decisions. *See SRP Conditions Comparison,* App. Ex. 208 (a comparison between conditions proposed by Durham/UNH and those conditions adopted by NHDES shows that NHDES seriously considered and adopted many of their suggested permit conditions); Tr. Day 13 AM at 84–91. Indeed, the Department adopted many of Durham/UNH suggestions and asked the Applicant to provide additional information to respond to Durham/UNH's submissions. *Id.* at 81. Mr. Dacey agreed that DES took their concerns "very seriously" and stated that DES "did a good job." Tr. Day 13 AM at 92.

[122] While Durham/UNH argue they were prejudiced during the review process after the issuance of the February 28, 2018 decision, the DES's revisions to the February 28, 2018 permit (as noted in the August 31, 2018 letter) were relatively minor. *See* Tr. Day 13 AM at 10 (Durham/UNH witnesses testified that "there wasn't really a lot of new information [in the August 31, 2018 filing] over the February filing from the DES"). Therefore, their argument has no merit.

[123] *See e.g., Decision and Order Granting Application for Certificate of Site and Facility,* Docket 2015-05 at 73–74 (concluding that the comprehensive process employed by NHDES in its issuance of a Wetlands Permit, Alteration of Terrain Permit, and Shoreland Permit demonstrates that the project will not have an unreasonable adverse effect on water quality and stating that each of the issued permits "addresses the impact of the Project on wetlands, surface water quality, and shoreland").

Without substantiating their positions, Durham/UNH and CLF essentially argue that there is too much "uncertainty" or that there is a "risk" relating to construction of the Project in Little Bay. However, as discussed more fully below, the Applicant's assessments of existing conditions coupled with the use of industry-proven modelling technology, clearly establish that the Project will not have an unreasonable adverse effect on water quality. The record fully supports the permitting decisions and the Subcommittee is required to consider the determinations of NHDES and other agencies having permitting or regulatory authority. Site 301.14(d).

a) Wetlands Permit

Impacts to water resources are almost entirely temporary. The Applicant has sought permitting for a total of 607,777 square feet of wetlands, surface waters, and upland tidal buffer zones, including, 9,740 square feet of total permanent impacts, with 8,681 square feet of impacts due to the installation of concrete mattresses.[124] The estimate of the number of concrete mattresses is conservatively high.[125] Comm. Ex. 12d, at 4. The remaining 598,307 square feet are temporary impacts. *Id*. The Applicant has satisfied all regulatory requirements regarding wetlands impacts. Potentially affected wetlands were appropriately delineated and the Project design avoided and minimized impacts to the maximum extent practicable. The Applicant will

[124] The total square feet of permanent impacts in Comm. 12d is not accurate. The permitted permanent impacts total of 9,470 square feet, should include 8,681 square feet from concrete mattresses (8,681 + 778 + 11 = 9,470). Tr. Day 4 PM at 109; App Ex. 128 at 4.

[125] Tr. Day 2 PM at 30–31 (Mr. Bowes testified that "we identified the areas where concrete mattresses might be needed . . . our calculations were conservative, to make sure that we didn't understate potential need for those" but that "at this point it's clearly not a guarantee that the full amount of mattresses would be needed"); *see also* Tr. Day 3 PM at 124 (Mr. Dodeman testified that "hopefully we have designed the system with a lot more [concrete mattresses] than we will need and hopefully that number goes down"); Tr. Day 5 PM at 47–50 (Ms. Allen testified that the environmental maps show the location of concrete mattresses based on a conservative estimate, that the issue of concrete mattresses is *not* "open-ended", and if additional concrete mattresses are needed, the Applicant would have to go back to DES to seek approval).

confirm its original delineations prior to construction.[126] The unavoidable permanent impacts from the construction of the Project are minimal and all temporary impacts will be fully restored.[127]

For those impacts that are unavoidable, substantial mitigation was proposed and agreed to by the relevant agencies (DES and U.S. Army Corps of Engineers), including payment of $349,834.26 to the DES Aquatic Resources Mitigation ("ARM") Fund. *See* NHDES Revised Final Decision, Comm. Ex. 12d, Conditions ⁋⁋ 67–81 (establishing specifics for wetlands mitigation, including use of ARM Fund payments to the Town of Durham and Newington for town-specific projects). The Department has further determined that the Applicant's proposed mitigation plans meet the intent of the Mitigation Rules of Env-Wt 800. *See id*., Finding ⁋ 31.

During construction, the Applicant will utilize a variety of Best Management Practices ("BMP") to ensure that potential impacts to wetlands are avoided and minimized and all appropriate siltation/erosion/turbidity controls shall be installed prior to construction, maintained during construction, and remain in place until the area is stabilized.[128] *See NHDES Revised Final Decision*, Comm. Ex. 12d, AoT Bureau Condition ⁋ 5, 17; Wetlands Bureau Condition ⁋⁋ 4, 18, 24, 82.

In addition, the Applicant has committed to and is required by the *NHDES Revised Final Decision*, to retain independent environmental inspectors with approval by DES.[129] Normandeau

[126] *See Pre-Filed Testimony of Sarah Allen,* App, Ex 15 at 3–5; *Supplemental Pre-Filed Testimony of Allen and Pembroke*, at 3–5; Tr. Day 5 PM at 162–63
[127] *NHDES Revised Final Decision*, Comm. 12d, General Condition ⁋ 14; Finding ⁋⁋ 18, 22, 25, 28.
[128] While the Town of Newington raised concerns in its testimony about impacts to the environment, Mr. Hebert agreed that if Eversource and its contractors comply with permit conditions, the Town would be satisfied. Tr. Day 11 AM at 100.
[129] Tr. Day 1 PM at 136-139; Tr. Day 3 PM at 103–05; *NHDES Revised Final Decision*, Comm. Ex. 12d, Conditions ⁋⁋ 2, 29–30, 40.

will also have a role in performing the environmental monitoring, in addition to the required independent monitors required by the DES conditions that will report directly to DES.[130]

b) Construction of the Project Will Not Have a Significant Adverse Effect on Little Bay

The Applicant agrees with the other parties in this docket that Little Bay and the Great Bay estuary are important resources to the State and the region and that they deserve protection. It is well known that there have been various attempts in the Great Bay Estuary to reduce nutrients in the ecosystem and to increase eelgrass and oyster populations. Based upon these common understandings, the Applicant and its contractors have worked diligently with the State and federal regulators to ensure that the construction of the Project will not adversely impact the Bay or the ecosystem. The issuance of the required permits demonstrates that the Project will not have an adverse impact. The other parties in this proceeding have not presented any credible evidence that calls into question the decisions made by those agencies with permitting authority. Indeed, Counsel for the Public's experts concurred in large part with the Applicant's findings and analyses, and agreed that the installation methods proposed by the Applicant are typical within the industry for cable installation in similar environments as Little Bay.

As discussed in the Pre-Filed Testimony of William Wall, App. Ex. 73, the Applicant proposes to use jet plow technology[131] for the majority of the cable installation across Little Bay and to use hand-jetting in the near shore. The installation plan calls for laying the submarine

[130] *See* Tr. Day 6 AM at 94–96; Tr. Day 6 AM at 94–96 (Normandeau will have a role as part of environmental monitoring).

[131] App. Ex. 73 at 4 ("The cable jet plow is a device which is laid on the seafloor and towed from the barge. Its main mechanical components are two skids which allow the sled to slide across the bottom, and an articulated blade which rotates down into the seafloor. The blade is fitted with water injectors along its leading edge which liquefy the sediment immediately ahead of the blade greatly reducing the force required to pull the plow forward. The cable is strung through the plow blade from the barge, and as the plow moves forward, the cable runs through the blade and is left embedded at a pre-determined depth underneath the seafloor.").

cables from reels in three continuous parallel runs from shore to shore. *Id*. at 5–6. Pursuant to National Electrical Safety Code ("NESC") requirements, the minimum depth at which the submarine cable can be buried at any point is 42 inches. *Id*. at 6. Wherever a 42-inch burial cannot be achieved with the jet-plow, articulated concrete mattresses[132] will be installed over the top of the submarine cables to provide the required protection. *Id*. at 6. A typical 30 foot separation between the cables is proposed in the area where jet-plow installation is taking place, to provide a safe working distance of the plow from each previously installed cable section.

Sections of cable between the open-cut trench on the shorelines and the end of the jet plow operation will be buried by divers using a hand jetting process. *Id*. at 7. Silt curtains will be deployed surrounding the entire work area. *Id*. As divers bury the cable utilizing a hand-held water jet hose, the deployed turbidity curtain will create a barrier to minimize the migration of suspended particulates from the vicinity of the work area. See *id*., Attachment F for "Diver Jet Burial Procedure."

Jet plow technology is not new; many of the Applicant's consultants and engineers, as well as Counsel for the Public's Expert, ESS Group, Inc.,[133] have worked on jet plow projects for decades and there is a significant amount of historical evidence on the use of jet plow and its effects. By comparison, Durham/UNH's experts have no prior experience working on jet plow projects or underwater cable installations. Tr. Day 13 AM at 73. Today, using jet plow

[132] *See Articulated Concrete Mattress Installation Descriptive*, App. Ex. 133, Appendix A (providing a descriptive regarding the purpose for use and equipment methodology typically employed when installing protective articulated mattresses over cables in shallow water).

[133] ESS Group, Inc. has worked on at least 15 submarine cable projects using jet plow installation, including, larger capacity lines and projects with significantly longer distances than what is proposed for this Project. Tr. Day 12 PM at 52-54. Mr. Payson Whitney of ESS Group, Inc. testified that "the approach taken here [is] similar to those other projects" and that the environmental impacts characterized by the Applicant are "generally consistent with the type and extent of impacts that [ESS has] experienced on other submarine cable projects." *Id*. at 54–55. Indeed, "the use of jet plowing waters of one state versus another are fundamentally no different." Tr. Day 12 PM at 63.

technology to install underwater cables is relatively routine; its effects to water quality are *de minimis* and temporary. Tr. Day 6 AM at 130. ESS Group, Inc. concurs.[134]

The construction of the Project using a jet plow will not permanently impact or degrade water quality within Little Bay. NHDES has concluded that the issuance of permits for this Project complies with State water quality laws and regulations.

1) Sediment Dispersion During Construction Will Not Materially Affect Little Bay

Each jet plow pass will last less than a day, will produce a sediment plume that lasts for less than a few of hours in any given location, and will not cloud the entire bay crossing with excess sediment.[135] The Applicant has provided credible and sufficient evidence to support these conclusions.[136] By incorporating a five to seven day interval[137] between each of the three cable installations, there is limited potential for prolonged resuspension of sediment; therefore, there will be no cumulative increases in suspend sediment.[138] In addition, the Applicant has provided

[134] When Mr. Payson Whitney of ESS Group, Inc. was asked whether the removal of the existing cable, digging and excavating three trenches, and diver/hand jetting and jet plowing would degrade water quality, he testified that: "I would agree that those activities would cause *temporary and localized* impacts in terms of sediment disturbance. As to whether they degrade, I think that's a matter of degree." Tr. Day 12 PM at 9 (emphasis added). He further clarified that those impacts "are just temporary". *Id.*
[135] Tr. Day 4 PM at 102–03; *Revised Sediment Dispersion Modeling Report*, App. Ex 104 at iii–iv.
[136] *Revised Sediment Dispersion Modeling Report*, App. Ex 104. *See also* Tr. Day 4 PM at 113–115 (confirming that App. Ex. 104 contains the sediment dispersion model for the revised burial depth of 42" (from five feet), which further reduced the mass of sediment that would be fluidized and mobilized into the water column by approximately one-third); Tr. Day 5 AM at 20 (Ms. Pembroke testified that "Based on the fact that the character of the sediments indicates very low levels of contaminants, that the sediment plume disperses quickly and is extremely ephemeral, no one area of the bay will be exposed to a plume for longer than a period of minutes to perhaps an hour during any given passage of a jet plow."); Tr. Day 5 AM at 62–63 (Dr. Swanson testified that: the Applicant's model looked at suspended sediment concentrations and how long they last and determined that "the duration of those at any particular point are very, very short; on the order of sometimes minutes and not more than an hour; that "it's an ephemeral issue from the perspective of the Project" and that a specific location might see resuspension for a period of minutes and then a "quick settling down").
[137] *See also NHDES Revised Final Decision*, Comm. Ex. 12d, Wetland Condition ⁋ 59 (requiring at least a 5 day interval between cable installations unless otherwise authorized by NHDES).
[138] *Revised Sediment Dispersion Modeling Report*, App. Ex 104 at iv.

substantial evidence showing that with the use of silt curtains,[139] concentrations of the sediment plume caused by diver hand jetting are intermittent, more localized, and dissipate shortly after diver activity ceases (i.e. within 20 minutes).[140]

The results of the Applicant's sediment dispersion model are consistent with the prior experience of Counsel for the Public's construction witnesses.[141] ESS Group confirmed the accuracy of the model used in this instance and agreed that the modeler for this project, RPS ASA, has provided effective and acceptable modeling data.[142] ESS Group further testified that in their experience, the model used by the Applicant is "conservative", that sediment concentrations in prior projects were less than what the model predicted, and that the dissipation rate of sediment is "quite rapid."[143]

Moreover, Mr. Whitney testified regarding the underwater cable installation: (1) that in the big picture, ESS Group no longer has any concerns that have not yet been addressed; (2) that "Counsel for the Public and others had the opportunity to critique the Applicant's documents and poke holes in it, as it were, and find those holes or data gaps, and I think to the most extent they

[139] *NHDES Revised Final Decision*, Comm. Ex. 12d, Wetland Condition ⁋ 56 (requiring the Applicant to use silt curtains to the maximum extent practicable to minimize turbidity in Little Bay).
[140] *Revised Sediment Dispersion Modeling Report*, App. Ex 104 at iii–iv.
[141] *See Technical Review Report, Eversource Seacoast Reliability Project – Little Bay Crossing*, CFP Ex. 1-a at 11 (ESS Group stated that "The results of the modeling are also similar to our experience in that they show that predicted suspended sediment concentrations and deposition induced by these operations is at its highest in the near-bottom portion of the water column near the operating device and lower concentrations and deposition thickness travel some distance from the cable alignment based on tidal current conditions. The results also show the suspended sediment concentrations return to ambient conditions within several hours of completion of installation operations, which has also been our experience—both with predictive modeling and field monitoring during submarine cable installations.").
[142] Tr. Day 12 PM at 69–72
[143] Tr. Day 12 PM at 64–68; *Technical Review Report, Eversource Seacoast Reliability Project – Little Bay Crossing*, CFP Ex. 1-a at 12.

have been addressed"; and (3) that "we've come a long way, and we've answered a lot of the questions that we initially had."[144]

NHDES also thoroughly considered the impact of jet plow and sediment dispersion as impacted by wind and weather. Tr. Day 4 PM at 116–19. In fact, DES has imposed conditions directly relating to wind and weather that require a stoppage or delay of installation under certain weather conditions.[145] Mr. Whitney did not articulate any additional reasons for a lower wind speed from a sediment transport perspective. *See* Tr. Day 12 PM at 134–35 (Mr. Whitney testified: "We all know that when we get a storm that comes through and even on a good day where you get a really big front that comes through and you get these sustained winds over hours and hours and hours, we all see the waters go from blue to brown because it naturally gets stirred up."). UNH's Stephen Jones further testified: "We do know that during large storm events that the currents, that there's more turbulence in the water and the sediments are stirred up." Tr. Day 13 AM at 63. Dr. Jones also agreed that "storm events also bring in significant new sediments from the watershed" and that when big storms blow through Little Bay, they stir up sediment. Tr. Day 13 AM at 109.

The Project will not introduce new sediment to the ecosystem.[146] The construction will cause some sediment mobilization of existing sediment and, at most, sediment accumulation

[144] Tr. Day 12 PM at 144–45; ESS Group, Inc. also testified that while ESS identified some initial data gaps, they have been largely addressed, and that the additional data provided by the Applicant since the original application was helpful in reducing uncertainties with the Project. Tr. Day 12 PM at 56–57, 66; *Pre-Filed Supplemental Testimony of Payson R. Whitney, III P.E. and Matthew D. Ladewig, ESS Group, Inc.*, CFP Ex. 3 at 1.

[145] *NHDES Revised Final Decision*, Comm. Ex. 12d, Wetland Conditions ⁋⁋ 53–54.

[146] *Compare to* the estimated 9.1 tons of new sediment that enters the Great Bay Estuary Watersheds per square mile per year. *See Final Report of the Commission to Study the Causes, Effects, and Remediation of Siltation in the Great Bay Estuary*, CLF Exhibit 27 at 11–12 . *See also* Tr. Day 13 AM at 160–62 (estimating that sediment entering the watershed is approximately 7 to 9,000 tons annually and may actually be larger).

immediately along the Project route will be between 5 to 10 mm.[147] The deposition that is expected away from the cable trench is minimal and declines with distance away from each cable installation.[148] Based on the foregoing, the Applicant has demonstrated that the Project will not increase sediment in the Bay that will significantly affect water quality during construction.

2) The Project Will Not Materially Increase Nitrogen in Little Bay

Some parties have raised concerns that the jet plow and hand jetting will increase nitrogen levels in the water column.[149] However, the Applicant's expert, Mr. Bjorkman explained that "the amount of nitrogen that can be released under reasonably foreseen circumstances will not materially affect the Little Bay as a whole, Great Bay Estuary as a whole or for that matter anything at all more than very locally and very ephemerally." Tr. Day 4 PM at 104. The potential for release of nitrogen based on the amount of dissolved nitrogen in the sediment is "very, very small in relation to what is already there and what is already present in the water column." Tr. Day 6 AM at 151; *see also* App. Ex. 109 at 29–32 ("[I]ncreases in organic nitrogen and ammonium are expected to be short-lived as the system re-equilibrates and the nitrogen reenters the sediment sink. Overall, the released nitrogen would account for only a small percentage of the total nitrogen concentrations in the sediment. Inasmuch as the nutrient criteria for nitrogen in Great Bay are based on long term exposure values (and are based on a 5-year average), short-term increases in surface water nitrogen concentrations from sediment disturbance are unlikely to adversely affect the attainment status for nutrients in Little Bay.").[150]

[147] Tr. Day 6 AM at 153–54; *Revised Sediment Dispersion Modeling Report*, App. Ex 104 at 49–51.
[148] *Id.*
[149] CLF's own Exhibit 22 provides that between 2012 and 2016, the nitrogen levels in the Great Bay Estuary were calculated at 43.6 tons per square mile (of tidal estuary surface area). *State of our Estuaries Report 2018*, CLF Ex. 22 at 8.
[150] The nitrogen loading numbers provided by the Town of Durham/UNH for their so-called "worst case scenario" were not accepted by NHDES, were exaggerated, and are contested by the Applicant's experts.

To ensure that additional nitrogen loading does not adversely impact water quality, NHDES has introduced monitoring conditions during construction that include adaptive management provisions in the event of water quality exceedances. *See* Comm. Ex. 12d, Condition ⁋ 45 (establishing requirements for Water Quality Monitoring and Adaptive Management Plan, including, sampling parameters, locations, timing, etc. for analysis of nitrogen); *SRP Conditions Comparison,* App. Ex. 208 at 4 (Durham/UNH specifically recommended that the Final DES Permit include laboratory analysis for various parameters, including "Total nitrogen, nitrogen, nitrate/nitrite, total Kjeldahl nitrogen, (TKN) and nitrogen," which the Department adopted).

Counsel for the Public's experts, ESS Group, Inc., also agreed that "the installation really is a one-time temporary impact" and while "there will be some release of nitrogen from sediments into surface water . . . there's lots of other different inputs [e.g. nitrogen entering from wastewater treatment plants, the watershed, and the atmosphere] that can be used to put this in perspective that are long-term inputs that don't nicely go away." Tr. Day 12 at 129–30. Moreover, ESS agreed that this Project is not in a unique situation to stir up nitrogen and that the disturbance of nitrogen has not been enough of a reason to stop the use of jet plowing in prior projects. Tr. Day 12 at 130–31. Indeed, "[e]very time an anchor drags across the bottom of a sea floor, there's some sort of disturbance there, you're releasing something into the water

However, the other scenarios presented by the Town of Durham/UNH were more scientifically reasonable, and indicate that the amount of nitrogen that would be introduced would be "trivial in the big scheme of things." Tr. Day 6 AM at 151–52. Durham/UNH experts specifically agreed that the Project is not "adding" nitrogen into the Bay. Tr. Day 13 AM at 72. Moreover, there is no place in the record indicating that NHDES has agreed with Durham/UNH's calculations or indicating that NHDES is concerned that the Project will significantly increase nitrogen in the Bay. Tr. Day 13 AM at 126.

column . . . ." *Id*. at 131. Moreover, ESS could not recall any prior jet plow project where nitrogen has been a significant issue of concern. Tr. Day 12 PM at 131–32.[151]

3) Construction of the Project Will Not Introduce New or Elevated Levels of Contaminants Into Little Bay

The use of the jet plow will not introduce any new contaminants or elevated concentrations of anything beyond what is already naturally present.[152] Tr. Day 5 AM at 32. Results of sediment testing in Little Bay in 2016 and 2017 establish that contaminant levels are low and of negligible risk to biota, which confirms a prior assessment done by US EPA's National Coastal Condition Assessment that concluded sediment quality in Little Bay is good.[153] To the extent that other parties challenge the quality of Little Bay sediment, no party has put forward any evidence that would actually demonstrate that the suspension of sediment in Little Bay as a result of this Project will create water quality violations. No party has performed any sediment sampling on their own that would call into doubt the results of the sediment analysis conducted by the US EPA or the Applicant. There is also no indication of any "hidden"

[151] ESS Group has worked on other projects where nitrogen loading is an issue in the estuary, such as the 150-mile long Pepco Holdings, Inc. Mid-Atlantic Power Pathway Project, Chesapeake Bay, MD, *see* Resumes of Payson Whitney and Matthew D. Ladewig; but nitrogen apparently was not raised as an issue by regulators or the public.

[152] The Applicant acknowledged that in the *worst* case scenario, the cable installation *could* result in an acute water quality violation for copper. Tr. Day 5 AM at 33–34. However, this scenario requires 100% dissolution to account for that possibility, whereas a more typical dissolution is orders of magnitude lower than 100%, therefore a water quality violation is exceedingly unlikely. Nevertheless, per the recommendation of Durham/UNH's consultants, *NHDES Revised Final Decision*, Comm. Ex. 12d, Wetland Condition ¶ 45, requires the Applicant to sample for dissolved copper.

[153] *Supplemental Pre-Filed Testimony of Allen, Pembroke, Nelson*, App. Ex. 145 at 8; *Supplement to Characterization of Sediment Quality Along Little Bay Crossing*, June 30, 2017, App. Ex. 105 at 3–4 (finding that: (1) previous testing of surface sediments by USEPA indicated that sediment quality in Little Bay is good; (2) the results of the Applicant's 2016 assessment concluded that there is no potential for ecological effects from constituents of potential concerns; (3) the results of the Applicant's 2017 assessment confirmed that pesticides were non-detect, the contribution of sediment nitrogen will not affect long-term compliance with nutrient criteria, that there was no evidence for substantial segregation of contaminants in the sediment column, and that contaminant "concentrations present in sediment, even under the worst-case assumptions inherent in the USACE RIM mass balance will not result in water quality criteria violations at the expected suspended solids concentrations during the cable installation").

contaminants.[154] Moreover, sediment contamination was not considered as a factor affecting the estuary in Piscataqua Region Estuary Program's 2013 State of the Estuary report.[155]

The modeling performed by the Applicant demonstrates that under reasonably anticipated circumstances the construction of the Project would not cause any adverse effects. *Id.* Confirmation of the Applicant's expectations will be field verified pursuant to the NHDES required water quality monitoring and adaptive management plan as well as the jet plow trial run.[156] In addition, given the transitory nature of the plume, the Project will not result in bioaccumulation in organisms. *Id.* at 32–33.[157]

c) The Jet Plow Trial Run Will Confirm the Accuracy of the Modeling and Ensure that the Cable Installation Will Not Cause Water Quality Violations

As part of the permitting process, the Applicant has committed to conducting a jet plow trial run, which has subsequently become a condition of the *NHDES Revised Final Decision*.[158] To the extent there are lingering issues or concerns about the accuracy of the modeling used by the Applicant, or the potential for water quality violations, the jet plow trial run will provide the Applicant and its contractors with the opportunity to identify and correct any issues prior to commencing construction.[159]

---

[154] Applicant's expert Mr. Bjorkman testified that the sediment samples taken from Little Bay "did not show any evidence, any spikes . . . of any contaminants . . . which is a strong indication that there will not be any . . . hidden" and that "[w]e should have seen a signal that there was something different in some of those samples if there was indeed any presence at all of contaminants."). Tr. Day 6 PM at 38.
[155] *SRP Natural Resource Existing Conditions Report*, App. Ex. 26, at vi.
[156] *NHDES Revised Final Decision*, Comm. Ex. 12d, Wetland Conditions ⁋⁋ 45, 60b.
[157] *See also infra* § III.C.5.xi (the Project will not adversely affect shellfish)
[158] *Supplemental Pre-Filed Testimony of Kenneth Bowes and David Plante*, App Ex. 140 at 3; *see also NHDES Revised Final Decision*, Comm. Ex. 12d,Wetland Condition ⁋ 60b; *see also* Tr. Day 5 AM at 20–22; 25–26.
[159] Durham/UNH witness Mr. Dacey agreed that the trial run would enable additional data to be collected and to verify the modeling outputs. Tr. Day 13 AM at 105–06.

The Applicant's proposal[160] is consistent with industry practice and is in-line with those recommendations made by ESS Group, Inc.[161] The proposed 1,000 consecutive foot distance is industry standard, including for projects that are significantly longer, such as the 6.5 mile long Bayonne Project.[162]

The jet plow trial run can be used to identify potential minor adjustments in the construction installation based on real-time conditions and address any potential water quality related issues that are identified during the trial run.[163] Contrary to the assertion made by Durham/UNH in their post-hearing brief that SEC would not be provided with the results of the jet plow trial run, Wetland Condition 60b also specially conditions the Department's approval of the wetland permit on the submission of a "jet plow trial run summary report" that must be tendered to NHDES *and* the SEC for approval and authorization to continue with the jet plow.[164]

In addition, as the Project will require three separate cable runs for each cable, the data that is collected from the first jet plow installation will be used to instruct and modify installation

[160] NHDES and the Applicant are in agreement that conducting the jet plow trial run 21 days before installing the first cable provides sufficient time to develop the report (7 days) and give NHDES and the SEC 14 days for review. Similar successful jet plow projects (e.g., Hudson Transmission Facility (NY-NJ) and Bayonne Energy Project (NY-NJ)) conducted trial runs 14 days before beginning cable installation. While some parties raised concerns about timing, Durham/UNH witness Mr. Dacey testified that in his experience, NHDES does not write permit conditions that they cannot implement. Tr. Day 13 AM at 125. ESS Group also testified that it would be up to NHDES whether the agency could review the jet plow trial report within the allotted time. Tr. Day 12 PM at 17 – 18; *id*. at 98.

[161] *See Supplemental Testimony of Payson R. 29 Whitney, III*, CFP Ex. 2 at 10–12. Performing the jet plow trials just prior to the installation activities assures that the trial will use the same equipment and personnel that will be used for the cable installation, provides a trial during the same seasonal conditions as the installation, and allows vessel crews to familiarize themselves with similar tidal, current, and navigational conditions as will be experienced during the installation. *Id*. at 10; *see also* Tr. Day 12 PM at 72–78; 21–23.

[162] Tr. Day 12 PM at 95–96.

[163] *See* CFP Ex. 2 at 11 (stating that "the installers use the results of the jet plow trials to set the operating conditions of the jet plow (e.g., jetting pressures, rates of advancement) to be used during the submarine cable installation").

[164] *NHDES Revised Final Decision*, Comm. Ex. 12d, Wetland Condition ¶ 60b ("Installation of submarine cable in Little Bay shall not proceed until authorized by NHDES and the SEC.").

of the subsequent cables. Tr. Day 6 AM at 147–48. Indeed, the monitoring plan for the jet plow, is an "adaptive monitoring plan" so that it can be "tweaked as needed as information is gathered." *Id.* at 148.

d) The Development of Additional Plans Per the NHDES Revised Final Decision is Fully Consistent With NHDES Permitting Authority

During the adjudicative hearings, the Town of Durham/UNH argued that the final determination of what will be contained in many of the DES monitoring plans should be completed prior to the SEC issues its decision. *See e.g.*, Tr. Day 13 AM at 10-11. Certain parties also argued in their briefs that approval of certain monitoring plans after a Certificate is issued constitutes an unlawful delegation. As discussed below, however, RSA 162-H:4 clearly permits such delegation and is consistent with NHDES practice and procedure, as well as SEC precedent. In prior SEC proceedings, the NHDES has required the development of identical and similar plans after permit approval, but prior to construction. *See e.g.*, NHDES Final Decision and Conditions, Docket 2015-02 (July 26, 2016) (requiring submission of a surface water quality monitoring plan, Spill Prevention, Control, and Countermeasures plan (SPCC), and a plan to prevent water quality violations due to discharges of concrete wash water during construction, after permit issuance but at least 90 days prior to construction).[165]

The Applicant agrees with Counsel for the Public that "RSA 162-H does anticipate and encourage consultation and coordination with other agencies and entities, but the ultimate decision on issuing and fashioning a certificate rests with the Subcommittee." *Counsel for the Public's Post-Hearing Brief*, at 90. However, any argument that suggests the SEC does not have the authority to delegate approval of monitoring plans is directly contrary to plain language of

[165] *See also* Tr. Day 4 PM at 104–06 (discussing timing of approval of water quality monitoring plan).

the statute and should be rejected. RSA 162-H:4, III specifically authorizes the delegation of authority to a state agency or official to *monitor* the construction or operation of an energy facility.[166] In addition, RSA 162-H:4 provides that "[t]he committee may delegate to the administrator or such state agency or official as it deems appropriate the authority to specify the use of *any* technique, methodology, practice, or procedure approved by the committee within a certificate issued under this chapter." (emphasis added). RSA 162-H:16, VII also provides the Subcommittee with the explicit authority "to condition the certificate upon the results of required federal and state agency studies whose study period exceeds the application period."

NHDES's common practice, as noted above, is to require the development of monitoring plans after a permit approval to ensure compliance with the terms of a permit. The SEC clearly has the authority to delegate the approval of such monitoring plans, or condition the certificate upon NHDES and SEC approval of such monitoring plans to be developed, to further ensure that adequate provisions to protect the environment are followed.

In this case, while NHDES requires approval of thirteen monitoring plans prior to construction, the Applicant has worked in good faith to submit drafts of many of the required monitoring plans to NHDES and other parties well in-advance of their due date; to date, the Applicant has submitted eight of the construction monitoring plans to NHDES and the parties.[167] *Compare e.g.*, *NHDES Revised Final Decision*, Comm. Ex. 12d, Condition 45 (requiring that a Water Quality Monitoring Plan be submitted to NHDES at least 90 days prior to construction), *with*, App. Ex. App. Ex. 129 *Revised Environmental Monitoring Plan for Little Bay* (submitting

[166] RSA 162-H:4, III states that "The committee may delegate the authority to *monitor* the construction or operation of any energy facility granted a certificate under this chapter to the administrator or such state agency or official as it deems appropriate, but shall ensure that the terms and conditions of the certificate are met." (emphasis added).

[167] To the extent Durham/UNH have continuing concerns, they can submit further comments to the Department for their potential consideration, as they have in the past. Tr. Day 13 AM at 181–82.

a draft water quality monitoring plan to NHDES on September 19, 2017). The cable removal plan has been reviewed and accepted as final by NHDES. *See NHDES Revised Final Decision,* Condition ⁋ 49.

All the parties, including Durham/UNH, have had ample time to comment on the draft plans that have already been submitted, and did so.[168] The final plans will be very similar in structure and substance, but will include the modifications prescribed in the relevant conditions in the NHDES Revised Final Decision. Construction of the Project will not proceed until all plans are finalized and approved by NHDES.[169]

e) Construction of the Project Will not have An Adverse Effect on Water Quality Due to the Presence of PFOA / PFOS

The Applicant has thoroughly assessed groundwater in the areas that have been potentially impacted by the presence of Perfluorooctanoic acid ("PFOA") and Perfluorooctane Sulfonate ("PFOS") and where the Project will be constructed.[170] The Applicant has worked in consultation with NHDES to understand the fate of the transport of PFCs relative to Pease Air Force Base and submitted a revised Soil and Groundwater Management Plan in July 2018, which is predicated upon the assumption that any groundwater that is encountered in the Newington/Portsmouth area is potentially impacted by perfluorinated chemicals ("PFCs"). Tr.

[168] Witnesses for the Town of Durham/UNH have commented on the construction monitoring plans submitted to NHDES on multiple occasions. *See e.g.*, Pre-Filed Direct Testimony of Famely, Jones, Shultz, and Dacey, TD-UNH Ex. 2 at 9, 11, 17-18 (commenting on the Environmental Monitoring Plan, Mixing Zone Plan, Existing Cable Removal Plan, etc.); Supplemental Testimony of Famely, Jones, Shultz, and Dacey, TD-UNH Ex. 3 at 2–4 (commenting on the Environmental Monitoring Plan, Mixing Zone Plan, Existing Cable Removal Plan, etc.); App. Ex. 206 (letter from Town of Durham/UNH to DES); App. Ex. 205 (meeting sign-in sheet showing a meeting occurred with Town of Durham and DES without the Applicant).

[169] *See also NHDES Revised Final Decision*, Comm. Ex. 12d, Wetland Condition ⁋ 60b ("Installation of submarine cable in Little Bay shall not proceed until authorized by NHDES and the SEC.").

[170] *See Supplemental Pre-Filed Testimony of Allen, Pembroke, Nelson – Revised Soil and Groundwater Management Plan*, App. Ex. 145, Attachment B at 1–9 (describing site characterization and site assessment work performed by the Applicant and its contractors).

Day 4 PM at 79. An Updated Soil and Water Investigation was submitted to the DES for their review and approval on July 18, 2018.[171]

In addition, a site specific Updated Soil and Water Investigation and Management Plan, dated December 15, 2017, has been developed and approved by the Rockingham County Conservation District for the Darius Frink Farm property in Newington.[172] These plans will ensure that soil and groundwater is managed appropriately on-site or disposed of appropriately off site and will not have an adverse impact on water quality.[173]

iii. Alteration of Terrain (AOT) Permit

The NHDES Revised Final Decision includes permit conditions to comply with the Alteration of Terrain Bureau's rules and regulations to ensure that the Project will not cause or contribute to any violations of the surface water quality standards established in Env-Wq 1700.[174] The AOT permit requires the Applicant to comply with best management practices for construction, as well as, EPA's NPDES Construction General Permit, which requires the development and implementation of a Stormwater Pollution Prevention Plan.[175] The issuance of the AOT permit and compliance with its conditions further demonstrates that the Project will not have a significant adverse effect on surface water quality.

---

[171] *Id.*; *NHDES Revised Final Decision*, Comm. Ex. 12d, Condition 38.
[172] *See* App. Ex. 145, Attachment B, Appendix A; *Memorandum of Understanding – Soil Management Plan – Darius Frink Farm*, App. Ex. 219. To preserve agricultural integrity of the Frink Farm, soils will be excavated, segregated and backfilled. App. Ex. 219, ⁋ 2. Eversource also agreed to remove and dispose of all excess soil generated from construction activities on the Darius Frink Farm offsite. App. Ex. 219, ⁋ 3; *see also* Tr. Day 3 AM at 53; Tr. Day 4 PM at 85–86. Eversource will also recover all groundwater from excavation areas and will treat and discharge to surface water under a NPDES Remediation General Permit or dispose of offsite. App. Ex. 219, ⁋ 4; *see also* Tr. Day 4 PM at 88–91.
[173] Mr. Hebert testified that he had concerns about groundwater management, however, he did not review the Soil and Groundwater Management Plan. Tr. Day 11 AM at 60. Ms. Frink testified that the Soil and Groundwater Management Plan for the Frink farm "largely resolved" her issues and as long as Eversource and its contractors follow its agreements and permits Ms. Frinks concerns have been resolved. Tr. Day 11 PM at 73–74.
[174] *NHDES Revised Final Decision*, Comm. Ex. 12d, AOT Bureau ⁋⁋ 2–3.
[175] *Id.*, Comm. Ex. 12d, AOT Bureau at Conditions ⁋⁋ 5, 8.

iv. Water Quality Certification

The construction of the Project involved the discharge of dredge or fill materials into surface waters of the United States, and therefore, requires a federal Clean Water Act ("CWA") permit from the U.S. Army Corps of Engineers. In accordance with Section 401 of the CWA, and NH RSA 485-A:121, III, the construction of the Project requires a Section 401 Water Quality Certification. The *NHDES Revised Final Decision* includes the requisite 401 Water Quality Certification, which certifies that the Project will not violate surface water quality standards.[176]

v. Shoreland Permit

The *NHDES Revised Final Decision* also includes a permit and recommended conditions pursuant to the state's Shoreland Water Quality Protection Act and accompanying regulations.[177] The permit requires implementation of best management practices to protect the shore land as well as surface water quality. *Id*. The issuance of the Shoreland Permit provides further evidence that the Applicant has met its burden that the Project will not have an unreasonable adverse effect on water quality.

vi. The Project Will Not Have An Unreasonable Adverse Effect on Water Quality

Based on the foregoing, the Applicant has demonstrated by a preponderance of the evidence that the construction and operation of the Project will not have an unreasonable adverse effect on water quality. While Counsel for the Public highlights certain areas for the Subcommittee to consider, such as the jet plow trial run and the mixing zone for Little Bay, CFP does not challenge the Applicant's ultimate conclusions, nor does CFP challenge the issuance

[176] *Id*., Comm. Ex. 12d at pp. 22–23.
[177] *Id*., Comm. Ex. 12d at pp. 24–26.

and conditions of the "Final Decision" issued by NHDES.[178] The issuance of the aforementioned permits and approvals addresses specific impacts to wetlands, surface water quality, shoreland, and alteration of terrain.[179] Each of the specific permits contains conditions and mitigation measures that will ensure the Project will not have an unreasonable adverse effect on water quality. *See Decision and Order Granting Application for Certificate of Site and Facility*, Docket 2015-05 at 73–749 (Oct. 4, 2016) (concluding that due to the issuance of the various DES permits and related conditions and mitigation measures, the construction and operation of a new 345 kV electric transmission line will not have an unreasonable adverse effect on water quality).

4. The Project Will Not Have an Unreasonable Adverse Effect on the Natural Environment

The Applicant has performed a number of studies to evaluate the potential effects of the Project on a wide range of natural resources.[180] The Applicant has worked in conjunction with NHDES, New Hampshire Natural Heritage Bureau, and NH FGD, US ACE, US EPA, US Fish and Wildlife Services, and NOAA Fisheries Service throughout the permitting process. The collaboration with these various agencies resulted in the development of construction best

[178] *See Counsel for the Public's Post-Hearing Brief* at Part III-C-3(b) at 61 n *172.
[179] As previously requested by the Town of Durham/UNH, the Subcommittee should give deference to the proposed agency terms and conditions. *Partially Assented-to Motion Requesting that the SEC Hire Horizontal Directional Drilling Expert*, Docket 2015-04, at ⁋ 9 (citing RSA 162-H:16, I).
[180] See *Natural Resource Impact Assessment Report*, App Ex. 54 and 87; *Rare, Threatened, Endangered Species and Exemplary Natural Community Report*, App Ex. 57; *Essential Fish Habitat (EFH) Assessment*, App. Ex. 58; *Biological Assessment (BA) For Northern Long-Eared Bat*, App Ex. 59; *Revised Little Bay Impact Assessment Report*, App. Ex. 125. *See also* Application, App. Ex. 1 at 93–104. Ms. Sarah Allen of Normandeau Associates was retained to assess the potential effects of the Project on wildlife and its habitat and rare species and communities. *See* App. Ex. 15, 78, 135, 145. Ms. Ann Pembroke, also of Normandeau was retained to conduct assessments for marine resources, including, sediment, benthos, shellfish and aquaculture. *See* App. Ex. 16, 79, 135, 145.

management practices ("BMP").[181] The plan specifies BMPs by resource.[182] The respective agencies have indicated their satisfaction with the proposed plans.[183] Counsel for the Public does not argue that the Project will have an unreasonable adverse effect on the natural environment and concludes that the BMPs and time of year restricts are generally protective of rare, threatened or endangered wildlife and plants.[184] Counsel for the Public's expert, ESS Group, also testified that the time of year restrictions proposed by the Applicant "were reasonable and consistent with industry standards." Tr. Day 12 PM at 58–60. The Applicant and Counsel for the Public have agreed upon *Stipulated Proposed Conditions of Approval* regarding the natural environment. App. Ex. 193 ⁋⁋ 22–31. The *NHDES Revised Final Decision* also requires that a NH Certified Wetland Scientist be on-site to oversee the construction process, and walk the areas of proposed activity prior to ground disturbance every day.[185] The Applicant has also developed BMPs for soil and erosion control.[186]

In considering whether a Project will have an unreasonable adverse effect on the natural environment, including wildlife species, rare plants, rare natural communities, and other exemplary natural communities, the Subcommittee shall consider the factors enumerated in Site 301.14(e)(1)–(7). Based on the assessments and BMPs listed above, and as described further below, the Project will not have an unreasonable adverse impact on the natural environment.

---

[181] *Best Management Practices and Construction Plan for Protected Wildlife and Plants*, App. Ex. 124; *see also NHDES Revised Final Decision*, Comm. Ex. 12d, Wetland Conditions ⁋⁋ 32–36.
[182] Tr. Day 5 PM at 170–71.
[183] *Communications with Outside Agencies*, App. Ex. 189.
[184] *Counsel for the Public's Final Post-Hearing Brief*, at Part III-C-3(c). To the extent CFP requested additional clarifications on page 68, the Applicant responds in Section IV.F. *infra*.
[185] *NHDES Revised Final Decision*, Comm. Ex. 12d, Wetland Condition ⁋ 34.
[186] Tr. Day 5 PM at 172–73.

i. Construction of the Project Will Not Have a Significant Adverse Effect on Wildlife Species or Habitat

Prior to filing the Application, Eversource and Normandeau conducted surveys to determine if there were any species or habitats of concern, or rare, threatened or endangered species. Although no rare wildlife species were found during field surveys, suitable habitat for some species is known to occur along the proposed right-of-way.[187] App. Ex. 1, at 94–95. During Project construction, the Applicant and its contractors will implement species-specific BMPs to avoid impacts to those species and their potential habitats.[188] Such BMPs will include having an active work area repeatedly surveyed by an environmental monitor prior to, and during, construction to remove any listed species individuals, and constructing during times of the year that minimize impacts to the species of concern. *Id.*

Only minimal vegetation clearing or construction is necessary along the banks of the Oyster River and the Valentine Canal, thus no adverse impacts are anticipated for American eel, swamp darter and banded sunfish in these streams. App. Ex. 1, at 95. The ringed boghaunter, a state-Endangered dragonfly, occurs in a sedge meadow near the SRP corridor. *Id.* Some marginally suitable habitat for this species was identified within the corridor during a field survey, but no evidence of this species was observed and no impacts are anticipated from Project construction. *Id.*

[187] Certain listed bats species were detected at four locations along the route subsequent to the filing of the Application.

[188] App. Ex. 1, at 95; Tr. Day 6 AM at 9–10. Portions of the SRP corridor have the potential to support rare wildlife species, including New England cottontail, northern long-eared bat, American bald eagle, osprey, northern black racer, Blandings turtle, spotted turtle, ringed boghaunter, American eel, banded sunfish, and swamp darter. While few of these species were directly observed during corridor surveys, the Project has assumed they could be present for some portion of the year and has developed construction practices to avoid and minimize adverse effects to the species and their habitats. A full description of listed species is in the Rare, Threatened and Endangered Species and Exemplary Natural Communities Report for this project. *See* Ap. Ex 57; *see also* App. Ex. 1 at 94.

a) Bald Eagles

The Applicant submitted a plan to NHFGD to address bald eagles and an eagle nest recently brought to the attention of the Applicant during the summer of 2018,[189] which is approximately 640 feet from the closest point of the right-of-way on the Durham side and over 700 feet from the underwater cable construction activities. *Communications with Outside Agencies*, App Ex. 189 at 15–16. NHFGD has concurred with the Applicant's recommendations to protect bald eagles. *See October 16, 2018 Fish and Game Letter*, App. Ex. 203. The agency noted in its letter that it "appreciates the applicant's efforts of involving the agency in the proposed project and we encourage the continuation of these discussions throughout the construction process, in order to address any issues that may become evident." *Id*. The letter further concluded that the submarine cable installation is not expected to have impacts to nesting bald eagles so long as the submarine portion of the Project is constructed from September to December, which the Applicant has committed to doing. App Ex. 189, at pdf. 16.

b) Northern Long-eared Bats

There are no known nearby maternity roost trees or hibernacula for the federally threatened and state endangered northern long-eared bat (NLEB) within five miles of the Project area. App. Ex. 1 at 96. Ultrasonic acoustic surveys were conducted to inventory NLEB within the proposed limits of work for the SRP. Although some calls were identified, the limited proposed tree clearing for the Project is expected to have negligible effect on NLEB. App Ex. 145, at 6. Where possible, Eversource will perform the tree clearing outside of the maternity season (June-July) to minimize risks to non-flying pups. App Ex. 145, at 6–7. *See also* App. Ex. 1 at 95–96.

[189] The Applicant relies on records from Natural Heritage and Fish & Game; this nest was not previously recorded and the Applicant was not privy to the existence of this nest. Tr. Day 6 AM at 29.

c) New England Cottontail

The New England cottontail is dependent on early successional habitat, such as the shrub and grasslands found under transmission lines. App. Ex. 1 at 96. While these types of habitats are declining, Eversource is actively working the NHFGD to manage its transmission corridors to benefit New England cottontail. *Id*. Although New England cottontail has not been observed in the SRP corridor, the corridor may potentially benefit the species by supplementing its habitat and providing a potential connective route for this rabbit to disperse to other suitable habitats. *Id*.

d) Sturgeon

While known occurrences of Atlantic and shortnose Sturgeon in the Piscataqua River and Great Bay Estuary are rare,[190] the Applicant submitted a plan to NHFGD to address Atlantic and Shortnose sturgeon within Little Bay based on a revised listing of protected species within the project vicinity on July 23, 2018. *Communications with Outside Agencies*, App Ex. 189 at 17–19. The NHFGD has concurred with the Applicant's recommendations to protect sturgeon. *See October 16, 2018 Fish and Game Letter*, App. Ex. 203.[191]

[190] In the Piscataqua River system, which includes the Great Bay Estuary, Atlantic sturgeon were detected on 14 occasions (one of which was at the mouth of the Oyster River and thirteen were in the Piscataqua River) between November 2010 and May 2016 and Shortnose sturgeon were detected 11 times during the same time period (8 of which were only in the Piscataqua River). *Communications with Outside Agencies*, App Ex. 189 at 17. In 2017, the US Geological Survey concluded that "there is no evidence of sturgeon spawning activity in the overall Great Bay system." *Id*. at 18.

[191] NHFGD specifically noted that "sturgeons occur in lower numbers in the Fall than in the Spring" when construction is expected. App. Ex 203. In addition, the agency stated that: "Considering the noise level and scope of work that is proposed for the project, Sturgeons present within the area should be startled away from the impacted area once daily work started. In addition, the sediment plume created by the jet plow would not be considered a concern for sturgeon as they would be startled away from the site due to the noise and disturbance resulting in avoidance of the project area. All the Best Management Practices outlined in the letter should be followed, in order to minimize impacts to all existing Sturgeon during construction." *Id*.; *see also* Tr. Day 6 AM at 125 – 28 (concrete mattress usage at 8,681 square feet make up a very small percentage of Little Bay and would not affect the number of sturgeon in Little Bay).

e) Aquaculture sites

The Applicant does not anticipate any significant impacts to aquaculture sites. *See e.g.*, Tr. Day 6 AM at 46; App. Ex. 1 at 98–100. The Applicant has worked hard, and is continuing to work with NHDES and the aquaculture sites within the vicinity of the Project to ensure that the construction of the Project will not have an adverse impact on shellfish and aquaculture sites in Little Bay.[192]

Water quality modeling indicates that aquaculture facilities in upper Little Bay may be temporarily exposed to suspended sediment concentrations during construction of the Project. App. Ex. 1 at 99. However, the expected sediment concentrations are well within naturally occurring suspended sediment levels observed in the Bay during the fall; therefore, no impacts to these farms are anticipated. *Id*. Counsel for the Public's construction experts, ESS, also made clear that they were involved in a similar jet plow project that "went through [oyster] lease beds" and were not aware of any complaints or documentation after the fact that indicated oyster beds suffered any adverse impacts as a result of the jet plow. Tr. Day 12 PM at 37–38; 72. No other party has provided credible evidence to contradict the Applicant's conclusion that construction of the Project will not adversely impact aquaculture sites.[193]

---

[192] Tr. Day 6 AM at 45–50. Mr. Nelson testified that Eversource has had numerous conversations with the oyster famers in the vicinity of the Project. *Id*. at 46. Regarding the closest oyster farm, the Applicant has had conversations with the owner, who has represented that he is not excited about keeping his current location active and that Eversource is in discussions with the owner to assist him in moving his oyster stock out of the area and to his other site. *Id*. at 46–47. Another new oyster farmer who recently obtained a license and does not have a large quantity of stock has been advised by NHFGD that he would need to move his stock during construction. *Id*. at 47. The Applicant has extended an offer to help him relocate during construction. *Id*. Lastly, the Applicant has been working with the owner of Fat Dog Shellfish Company, who is on the northern end, about avoidance, minimization, and mitigation measures, including, cleaning of cages and cold storage. *Id*. at 48–50; Tr. Day 14 AM at 48; *see also, Applicant's Letter to Jay Baker, October 9, 2018,* App. Ex. 256; Tr. Day 14 AM at 37–39 (describing the Applicant's outreach with oyster famers).

[193] Mr. Baker of Fat Dog Shellfish Company, who has aquaculture licenses in Little Bay approximately 1,000 meters north from the cable installation, testified that he has "concerns" about the potential impacts, but he did not conduct any studies or assessments that contradicts the evidence put forward by the

The DES Revised Final Decision contains certain conditions to avoid and minimize potential impacts to aquaculture sites.[194] *See* Committee Ex. 12d, ¶ 44 (requiring the Applicant to develop a mixing zone plan to comply with the minimum criteria of Env-Wq 1707.02 and ensuring that "the mixing zone shall not include any portion of an aquaculture site that has aquaculture product (i.e., oysters, etc.) in the water during and up to 24 hours following jet plow and hand-jetting activities"); *id*. ¶ 46 (requiring the development of a shellfish monitoring program, which shall include testing of shellfish for multiple constituents prior to and after jet plow installation); *id*. ¶ 51 (requiring the applicant to provide advance notice to aquaculture licensees in Little Bay of the schedule for work so that "licensees have time to plan ahead and implement any operational changes they may need to take" and to keep licensees up-to-date of any changes in schedule). In addition NHDES Wetland Condition 45 requires the applicant to conduct water quality monitoring, in real time, to ensure that no water quality violations occur.

To the extent there is any issue during construction the Applicant has committed to offering mitigation. *See Stipulated Proposed Conditions of Approval,* App. Ex. 193, Conditions 17 – 21; *Final Draft Proposed Dispute Resolution Process,* App. Ex. 268. Based on the foregoing, it is not expected that the Project will have an adverse impact on aquaculture sites or their operations.

Applicant. Tr. Day 14 AM at 39, 46. Indeed, Mr. Baker admitted that a closure of Little Bay due to construction was "not a guarantee, but a concern", Tr. Day 14 AM at 29, and that he is quite familiar with and used to shellfish harvesting closures occurring in the bay due to large rainfall events or wastewater releases. Tr. Day 14 AM at 24–25; *id*. at 40–42. Moreover, to the extent sediment accumulation and its effects on shellfish was raised as a concern, it was demonstrated that the model does not predict additional sediment accumulation of bottom thickness in the vicinity of his the aquaculture site. *See Revised Modeling Sediment Dispersion from Cable Burial Little Bay,* App. Ex. 104 at 49–51. Additionally, Mr. Baker also testified that his oysters naturally experience sediment accumulation, approximately 1/8 of an inch, and are able to re-emerge from the sediment cover unscathed. Tr. Day 14 AM at 43–44.

[194] Mr. Baker also testified that he raised his concerns with NHDES and that NHDES was aware of his concerns. Tr. Day 14 AM at 55.

f) Benthic Infauna

The Applicant has conducted sufficient assessments of potential impacts to benthic organisms. A benthic infauna survey was conducted along three transects running perpendicular to the cable crossing to characterize the invertebrate community that would be disturbed during cable installation.[195] While benthic infauna may be disturbed during the jet plow installation, the assessments demonstrate that benthic infauna are widespread and is, therefore, highly likely to repopulate the disturbed sediments quickly.[196] The NHDES Revised Final Decision requires the Applicant to develop a benthic habitat monitoring plan to be approved by NHDES and NHFGD and require the development of a benthic infaunal community plan for pre- and post-construction monitoring.[197] Counsel for the Public's construction experts, ESS Group, also testified that they did not have concerns about benthic and bathymetric monitoring plans so long as the details of the plan were worked out with NHDES. Tr. Day 12 PM at 61–62. On prior projects where similar monitoring was done, ESS Group testified that it did not detect significant long-term changes between pre- and post-jet plow conditions. *Id*. at 62–63.

g) Lobsters and Horseshoe Crabs

American lobsters and horseshoe crabs are both large benthic organisms likely to occur along the submarine cable route. App. Ex. 1 at 100. Population estimates are not available for Little Bay. Because lobsters often burrow into the substrate during the day, those along the cable route would be impacted by the jet plowing. Although lobsters adjacent to the trenches would be subject to some deposition, it is unlikely to have a deleterious effect because this species is an active burrower. *Id.* Similar to lobsters, horseshoe crabs adjacent to the jet plow installation

[195] *See Natural Resources Existing Conditions Report*, App Ex. 54 and 87.
[196] *Pre-Filed Testimony of Ann Pembroke*, App. Ex. 16 at 8; App. Ex. 1 at 100; Tr. Day 4 PM at 108–09 (Ms. Pembroke testified that impacts to benthic organisms would be temporary).
[197] *NHDES Revised Final Decision*, Comm. Ex. 12d, Wetland Conditions ⁋⁋ 42–43.

would be subject to deposition but would likely be able to extricate themselves from the unconsolidated sediments. *Id*. Because the volume of water required for the jet plow is very small compared to the volume of upper Little Bay, entrainment is unlikely to have a significant effect on the population. *Id*.

h) Wildlife Habitat

The expected clearing for this Project, namely, going from a 60-foot wide corridor to 100-foot wide corridor, is likely to only minimally affect wildlife habitat, with little significant habitat loss to adjacent forested habitat and the forest-dependent wildlife species present. App. Ex. 1 at 97. The benefits to species that depend on shrub and grassland habitats may be somewhat greater due to the relatively smaller amount of this habitat type that is currently available. *Id*. The corridor is unlikely to create a barrier for wildlife that uses the surrounding forested habitats.[198] *Id*. Construction oversight and timing will be managed according to BMPs for affected species and habitats to minimize mortality and habitat impacts. *Id*. In addition, to the extent access roads and pad areas are used, following the completion of Project construction, all access roads and pad areas will be graded, smoothed, stabilized, seeded and/or mulched. The native vegetation will come back naturally on its own. Tr. Day 6 AM at 8. There are no anticipated long term negative impacts to wildlife habitat.

i) Essential Fish Habitat

The essential fish habitat (EFH) assessment conducted by Normandeau demonstrates that impacts to EFH of demeral fishes, fishes dwelling at or near the bottom of Little Bay, will be

[198] *See also* Tr. Day 6 AM at 3–7 (The Project will require some vegetation removal to allow for construction and operation of the Project. However, such tree limbing and clearing will not significantly affect the natural environment. In addition, brush maintenance on the floor of the right-of-way corridor will be required for construction; however, it is expected that the corridor will remain heavily vegetated throughout.)

negligible because the substrate will recover to its preexisting condition quickly after construction. App. Ex. 16 at 9. In addition, impacts to EFH of pelagic fishes, fishes in the water column not specifically associated with the substrate, will be negligible because the sediment plume will be limited in duration and in spatial extent. *Id*.

The Project does not anticipate any adverse effects from electric and magnetic fields from the Project. Tr. Day 6 AM at 128–29. Currently, there are no existing limits or standards that are applicable to EMF and marine life. Tr. Day 4 PM at 133. Even so, the Project will use mitigating factors to prevent electric current and magnetic fields from reaching the water body. *Id*. at 129.

ii. Construction of the Project within the Project Corridor Will Not Have a Significant Adverse Effect Rare Plants, Natural Communities, and Exemplary Natural Communities

One state-endangered plant species, crested sedge, was observed within the Project Area. App. Ex. 1 at 94. Four exemplary natural communities or natural community systems were confirmed within the Project Area in Little Bay: High salt marsh, Salt marsh system, Sparsely vegetated intertidal system, and Subtidal system. *Id*. A full description of listed species is in the *Rare, Threatened and Endangered Species and Exemplary Natural Communities Report,* App. Ex. 57.

a) Crested Sage

Temporary work roads will impact a very small area (60 square feet) of the state-Endangered crested sedge habitat mapped within the Project corridor. App. Ex. 1 at 95. As described in *Best Management Practices and Construction Plan for Protected Wildlife and Plants,* App. Ex. 124, all work will be performed on timber mats to minimize soil disturbance and damage to this perennial species. *Id*. The Applicant will conduct population monitoring both

before and after construction to assess the response of crested sedge to the construction impacts, and the tree clearing, both of which could be beneficial to this open-grown species. *Id.*

b) Eelgrass

Eelgrass has not been present within nearly a mile of the Project corridor, since at least 2012. Tr. Day 5 AM at 92. App. Ex. 1 at 97–98. The area will be surveyed again for eelgrass during the active growing season prior to in-water cable installation, but the ecology of eelgrass bed expansion strongly indicates that colonization of the Project corridor is unlikely. *Id.*; *see also NHDES Revised Final Decision*, Comm. Ex. 12d, Wetland Condition ⁋ 41 (describing requirements of the eelgrass surveys). Therefore, it is not anticipated that construction of the Project will impact eelgrass.

c) Salt Marsh

Eversource has designed the Project to avoid impacts to salt marsh where possible. Temporary impacts to fringing salt marsh are unavoidable on both shores of Little Bay. App. Ex. 145 at 5. Temporary impacts will result from timber mat placement to allow construction equipment to cross the marsh to reach the work areas, and from burial of the cables underneath the marsh. *Id.* The burial effort will require salvage of the existing peat where feasible, and replacement of the peat and salt marsh restoration after the cable burial is completed. *Id.* The Applicant has also submitted a *Salt Marsh Protection and Restoration Plan* to NHDES and ACOE for their approval.[199] The restoration plans describe the existing conditions, construction activities, salt marsh protection and restoration methods, and long-term monitoring to document recovery.

[199] *NHDES Revised Final Permit Decision,* Wetland Conditions ⁋⁋ 61–66; *see also SRP Salt Marsh Protection and Restoration Plan,* App. Ex. 108; Tr. Day 6 AM at 33–35.

iii. Natural Resources Conclusion

The Applicant has demonstrated by a preponderance of the evidence that the Project will not have significant adverse effects on wildlife species and habitat, or rare plants and natural communities. The Applicant has made specific commitments to avoid and minimize impacts to the natural environmental during construction, including but not limited to, the development of protocols for encounters with rare, threatened, or endangered species during construction, the development of BMPs in coordination with NHNHB and NHFGD and the submission of such BMPs for NHDES approval, and implementation of the BMPs and time of year restrictions. The conditions contained in the NHDES Revised Final Decision establish explicit requirements that Eversource must follow during construction and operation of the Project to ensure the Project will not negatively affect wildlife, rare plants, or natural communities. Accordingly, in conjunction with the NHDES Revised Final Decision and the *Stipulated Proposed Conditions of Approval*, App. Ex. 193, the Applicant has proved facts sufficient for the Subcommittee to find that the Project will employ reasonable avoidance, minimization, and mitigation measures and that the construction and operation of the Project will not have an unreasonable adverse effect of the natural environment.

5. The Project Will Not Have an Unreasonable Adverse Effect on Public Health and Safety

The Applicant has proved facts sufficient for the Subcommittee to find that the Project will not have an unreasonable adverse effect on public health and safety. ISO-NE has identified a reliability need in the region; but for this Project, public health and safety may be jeopardized if the reliable delivery of electricity is not maintained. For any energy facility, the Committee must consider "the information submitted pursuant to Site 301.08 and other relevant evidence submitted pursuant to Site 202.24, the potential adverse effects of construction and operation of

the proposed facility on public health and safety, the effectiveness of measures undertaken or planned to avoid, minimize, or mitigate such potential adverse effects, and the extent to which such measures represent best practical measures." Site 301.14(f)(1).[200]

i. Electric and magnetic fields

The Applicants retained Dr. William Bailey to review the levels of Electric and Magnetic Fields ("EMF") the Project would produce along the proposed route. Based on his report and testimony in this proceeding and the fact that the EMF levels will be well below any standards for public safety, the Applicant has demonstrated by a preponderance of the evidence that EMF associated with the operation of the Project will not have unreasonable adverse effect on public health and safety.

Among other things, Dr. Bailey undertook an assessment of the most current scientific literature on health research regarding exposure to these fields. He concluded that the Project will not have an unreasonable adverse effect on public health and safety as a result of electric and magnetic fields. His summary of the scientific research further supports the conclusion of scientific and public health agencies that there are no established effects of EMF on public health

[200] Site 301.08(b) requires an Applicant to submit "an assessment of electric and magnetic fields generated by the proposed facility and the potential impacts of such fields on public health and safety, based on established scientific knowledge, and an assessment of the risks of collapse of the towers, poles, or other supporting structures, and the potential adverse effects of any such collapse." Site 301.08(d) requires an assessment of operational sound "if the facility would involve use of equipment that might reasonably be expected to increase sound by 10 decibel A-weighted (dBA) or more over background levels," a plan for fire safety prepared by or in consultation with a fire expert, a plan for emergency response to the proposed facility, and a description of any additional measures taken or planned to avoid, minimize, or mitigate public health and safety impacts that would result from the construction and operation of the proposed facility, and the alternative measures considered but rejected by the applicant. For the construction of electric transmission lines, Site 301.14(f)(4) requires the Committee to consider "the proximity and use of buildings, property lines, and public roads, the risks of collapse of towers, poles, or other supporting structures, the potential impacts on public health and safety of electric and magnetic fields generated by the proposed facility, and the effectiveness of measures undertaken or planned to avoid, minimize, or mitigate such potential adverse effects, and the extent to which such measures represent best practical measures."

and safety at the levels associated with the Project. This conclusion is not contested by any other party in the proceeding. [201]

Since the 1970s, a large number of scientific studies have examined the potential for either short or long-term environmental and health effects of EMFs, and expert panels on behalf of scientific, health, and government agencies have evaluated the available scientific literature on potential EMF effects. Among others, studies have been prepared by: the US National Institute on Environmental Health in 1998; the International Agency for Research on Cancer ("IARC") in 2002; the National Radiological Protection Board ("NRPB") in 2004; the World Health Organization ("WHO") in 2007; International Commission on Non-Ionizing Radiation Protection ("ICNIRP") in 2010; and the Scientific Committee on Emerging and Newly Identified Health Risks ("SCENIHR") in 2015. None of these agencies have found that the overall evidence suggests the existence of any adverse long-term health effects from exposure to EMF below scientifically-established guidelines. *Pre-Filed Testimony of Dr. William Bailey*, App. Ex. 11, p. 9.

The electric and magnetic fields for the Project are well below any of the established guidelines. [202] CFP agrees that the calculated electric-field levels for the Project are below the guidelines set by ICNIRP and ICES for public exposure to electric and magnetic fields.

---

[201] Mr. Fitch from the Durham Residents group raised concerns regarding EMF in his pre-filed testimony. Durham Residents Ex. 4, pp. 2-3. In light of these concerns, Eversource visited the Fitch property on August 8, 2018 to take measurements of pre-construction EMF. *See EMF Readings Map*, App. Ex. 241. The results showed that Mr. Fitch's electric meter as well as his stove, crock pot, and refrigerator all emit higher levels of EMF than the existing line. Further the results showed that the modeled Magnetic Field for the Project would be less than the EMF currently emitted from existing items in Mr. Fitch's home. In addition, to provide further assurance, the Applicant agreed to take post-construction EMF measurements at Mr. Fitch's home. App. Ex. 242.

[202] At the edges of the transmission ROW above ground, the magnetic field along the route will vary between 0.48 and 22.74 mG and the electric field will vary between 0.03 and 0.91 kV/m. By comparison, the ICNIRP standards, as of 2010, recommend 4.2 kV/m for electric fields and 2,000 mG for magnetic fields. The ICES limits, as of 2007, are 5 kV/m and 9,040 mG. *Pre-Filed Testimony of Dr. William Bailey*, App. Ex. 11, p. 7.

Stipulated Facts and Requested Findings of the Applicant and CFP, App. Ex. 184, pp. 4-5; *see also Pre-Filed Testimony of Dr. William Bailey*, App. Ex. 11, p. 7. As noted in the proposed stipulated facts, "[u]nder all operating conditions, the EMF levels modelled to result from the Project are projected to be well below the exposure levels identified by ICES and ICNIRP." *Id.* at 5.

In order to further ensure the protection of the public, the Applicant has agreed, as part of any certificate that may be issued, to work in consultation with the NHPUC Safety Division to measure actual EMF associated with the Project during peak-load. *Stipulated Proposed Conditions of Approval*, App. Ex. 193, p. 6. These results will be provided to the SEC. In addition, the Applicant will provide a mitigation plan to the SEC if there are any exceedances of the guidelines set out by ICES or ICNIRP. *Id.*

ii. Sound

The Applicants has demonstrated by a prepondeance of the evidence that the operation of the Project will not significantly increase sound above background levels and, therefore, will not adversely affect public health and safety. Under normal equipment conditions, Eversource has not experienced audible noise issues with transmission lines operated at 115 kV. *See Pre-Filed Testimony of James Jiottis*, App. Ex. 6, at p. 29–31. Moreover, "it is generally accepted in the utility and scientific community that corona induced audible noise typically becomes a design concern for transmission lines at 345 kV and above, and is less notable from lines that are operated at lower voltages, such as the Project." *Id*. at 29. As part of the Application, Eversource

conducted computer modeling, which determined that measured sound at 50 feet from the centerline of the Project would not increase over present values. *Id*. at 30.[203] *Id*. at 30.

iii. Proximity and use of buildings, property lines, and public roads, the risks of collapse of towers, poles, or other supporting structures

As described in the Application, Eversource proactively mitigates the risks associated with the collapse or failure of overhead transmission line elements during the course of engineering and throughout the facilities' lifecycle. The occurrence of a transmission line structure failure is a rarity and as such the potential for adverse impact is minimal. *See* Application, Ex. 1 at 107–09.

iv. Emergency Response and Fire Safety

Eversource submitted an Emergency Response Program, App. Ex. 62, that establishes protocols and procedures should there be an emergency, including but not limited, to severe weather, flooding fire or explosion at any of the Project facilities. The Emergency Response Program demonstrates that Eversource has the ability to swiftly and safely respond to an emergency that may occur.

v. Blasting

Blasting may be required in certain situations where the construction team encounters shallow-to-bedrock soil depths and subsurface boulders. App Ex. 1 at 29. No blasting will occur in, or on the shoreline of, Little Bay. *Id*. For transmission line construction any blasting activity, where required, will be limited to the small volume of material needed to be removed to set and

[203] It is also unexpected that the Project would create radio or electrical interference. *See* Pre-Filed Testimony of James Jiottis, App. Ex. 6, at p. 30–31. If such interference is itenfied with transmission ines, the source of interference can be located and repaired. *Id*.

plumb the pole structures.[204] *Id.* No adverse effects from blasting activity upon either sensitive natural resources or adjacent property owners are anticipated due to the small charges required for this activity. *Id.* Project specific blasting specification will be included in the requirements for contractors. *Id.* If a contractor is required to employ blasting during the execution of the work, the contractor must comply with PSNH's standards, the Agreements reached in the MOUs with Towns, as well as all applicable state and federal permitting requirements regarding blasting and the safe handling of explosives. *Id.* All blasting will be performed by qualified personnel who are licensed by the applicable state and/or federal agencies. Town officials and abutting landowners will be notified in advance of such activity. *Id.*

Eversource has reached agreements with both the Towns of Newington and Durham regarding blasting.[205] The MOUs require Eversource to work with the Towns to provide adequate notice and an opportunity for the Town to review blasting plans and other pertinent information. Compliance with the terms of these MOUs will ensure the protection of public health and safety should blasting be required.

vi. Aviation

The Applicant has confirmed that the Project, as designed, will meet all Federal Aviation Administration ("FAA") height requirements that are applicable to utility structures and glide paths for aircraft approaching and leaving the Pease Airport. App. Ex. 1 at 57. Eversource met with the FAA to confirm that the overhead design of the project would not interfere with local or federal aviation regulations. *Id.* The FAA, Air National Guard, and the Pease Development

[204] *See also* Transcript Day 3 AM at 20 (Mr. David Plante testified that "[t]he only blasting that we're proposing to do right now is related to the underground cable installation on the south side of Main Street in Durham.").
[205] *See Addendum to Memorandum of Understanding Executed on February 5, 2018, Compliance with Newington Blasting Regulations*, App. Ex. 140, Attachment A, Appendix 5; *Town of Durham MOU*, App. Ex. 270 ⁋ V.G.

Authority reviewed the proposed Project and its location and confirmed that the Project would not have any effects on air traffic; the FAA also issued a Determination of No Hazard to Air Navigation. *Id*. The Project will also re-submit FAA Form 7460-1, Notice of Proposed Construction or Alteration, to the FAA at least 45 days before commencing construction to address any changes that have been made to original design, including, the underground sections through Newington. *Id*. at n *22; App. Ex. 193 ¶ 7.

vii. Crossings of State Maintained Highways and NH DOT Permits and Approvals

The Applicant will comply with all NHDOT rules, regulations, and issued permits including driveway permits, aerial road crossings, Use and Occupancy Agreements, and Encroachment Agreements.[206] As of the close of the record, the NHDOT had not yet issued its final permits and related conditions. NHDOT has indicated that it will issue the necessary licenses and permits after the Site Evaluation Committee issues an approval. Therefore, the Applicant requests that the SEC delegate authority to NHDOT to issue such permits and/or approvals and that the Certificate of Site and Facility be conditioned upon the issuance of such permits and/or approvals and compliance with the conditions contained in those permits and/or approvals.

viii. Crossings of Municipally Maintained Roads

The Applicant has demonstrated by a preponderance of the evidence that the Project will not unreasonably interfere with the safe, free, and convenient use of locally maintained highways for public travel. Eversource seeks permission to install the Project, including conduit, cable, wires, poles, structures and devices across, over, under and along certain locally-maintained

[206] The Applicant has also submitted one exception request to the NHDOT relating to a setback from existing highway structures. *See Supplemental Pre-Filed Testimony of Kenneth Bowes and David Plante*, App. Ex. 140 at page 88–90; Transcript Day 3 PM at 9–11.

highways, including 10 aerial crossings in the communities of Durham, Newington, and Portsmouth, and four underground roadway installation segments in Durham (Main Street) and Newington (Gundalow Landing Circle, Little Bay Road, and Nimble Hill Road). *See Overhead and Underground Municipal Highway Crossings*, App. Ex. 37 and 93. The overhead and underground sections are identified by town and roadway.

a) The SEC has exclusive authority to grant permission to an energy facility to utilize locally-maintained highways

In *Public Service Company of New Hampshire v. Town of Hampton*, 120 N.H. 68 (Jan. 31, 1980), the Court noted that the "declared purposed of RSA ch. 162-F [forerunner to RSA ch. 162-H] is to provide a resolution, in an 'integrated fashion,' of all issues involving the routing of transmission lines." *Id.* at 70. The Court held that the Town of Hampton could not regulate transmission lines associated with the Seabrook Nuclear Station, noting that the SEC protects the public health and safety of towns with respect to transmission lines covered by the siting statute. Eversource has filed a request with the DOT to cross state-maintained highways and has included that request with the Application as required by RSA 162-H:7 and Site 301.03 (d). *See NH Department of Transportation Applications*, App. Ex. 36 and 93.

The authority to erect electric transmission lines and underground cables in state and local highways is codified at RSA 231:160. The standard for locating poles, lines, and underground cables is set forth at RSA 231:168, which states that the lines "will not interfere with the safe, free and convenient use for public travel of the highway." To further that process, the DOT has adopted certain standards, which are set forth in its Utility Accommodation Manual ("UAM"), which was recently updated in October 2017.[207]

[207] The Applicant made minor design changes due to the recent amendments to the February 2010 UAM. *See Supplemental Pre-Filed Testimony of Kenneth Bowes and David Plante*, App. Ex. 140 at 6–7.

The New Hampshire Supreme Court has made it clear that the authority to license placement of power lines, poles and underground conduit within highways is regulatory in character and must be exercised in a non-exclusionary and reasonable manner. In *Town of Rye v. Pub. Serv. Co. of New Hampshire*, 130 N.H. 365, 369 (1988), the Court found that a crossing application may be denied only for a public safety-based reason.

Eversource seeks approval from the Subcommittee to install its Project within, along, over, under, and across locally-maintained highways. The plans provided to the SEC are at 90% level design, *see Supplemental Pre-Filed Testimony of Kenneth Bowes and David Plante*, App. Ex. 140 at 2, lines 2–3, well above the standard 30% design level, which is the commonly accepted level of detail for initial permit applications consistent with DOT practice. This request mirrors the approach followed in the request made to DOT for state-maintained highways, and the approach followed in the Merrimack Valley Reliability Project. *See Decision and Order Granting Certificate of Site and Facility*, SEC Docket 2015-05 at 19-20, 49, 85-87 With respect to the underground highway installation sections in the towns of Durham and Newington, Eversource proposes that the Subcommittee approve the crossings of locally maintained roads, subject to the Applicant complying with DOT Standard Specifications for Road and Bridge Construction and the provisions, instructions, and regulations set forth in the DOT's standard excavation Permit.

In addition, the Applicant commits to complying with the agreements reached in the MOUs with the Towns of Durham and Newington regarding construction in local roadways. The Applicant has already discussed local road crossings and underground installations with the host communities and no issues have been raised.[208] Moreover, to the extent such issues have

[208] *Supplemental Pre-Filed Testimony of Kenneth Bowes and David Plante*, App. Ex. 140 at 8–9. *See also* MOU with Town of Durham, App. Ex. 270 ⁋⁋ V.A–C (agreeing that the Director of Public Works and

not already been resolved with the host communities, the Applicant and Counsel for the Public have put forth proposed conditions. *Joint Proposed Conditions of Approval*, App. Ex. 193 ⁋ 11 (requiring the Applicant to coordinate with the municipal engineer, road agent, or other authorized municipal officer to comply to the extent possible with existing municipal construction rules and regulations, and if such compliance is not possible, the Applicant and municipal official shall reach an agreement, subject to the dispute resolution oversight by the SEC Administrator); *id*. ⁋ 11 (requiring the Applicant to coordinate with host municipalities to restore municipal roads in the event of damage during construction).

Lastly, Eversource has already provided appropriate traffic management and control plans. *See Overhead and Underground Municipal Highway Crossings*, App. Ex. 37 and 93. As explained in Ms. Frazier's testimony, the Project will not unreasonably interfere with the safe, free, and convenient use for public travel of locally maintained highways, and it will not have an unreasonable adverse effect on public and safety. *Pre-Filed Testimony of Lynn (Farrington) Frazier*, App. Ex. 14 at 5; *Supplemental Pre-Filed Testimony of Lynn Frazier*, App. Ex. 141 at 4.

b) CFP's Arguments Pertaining to Crossings of Locally Maintained Roads are Contrary to RSA 162-H

CFP appears to take the position in its brief at p. 85 *et seq*., that the SEC does not preempt local authority over highway crossings despite the Supreme Court's clear stance on the

Town Manager have reviewed the aerial and underground road crossings and will work with the Town and its police department when traffic control plans are necessary); MOU with Town of Newington, App. Ex. 168 ⁋ V.F (road construction and restoration for construction of underground segments); Tr. Day 10 PM at 160 (Mr. Selig agreed that "over the course of about a ten-month process, [the Town] and Eversource sat together and went through literally every pole location in Durham"); City of Portsmouth Public Comment Letter, Docket 2015-04, August 27, 2018 ("We are pleased with Eversource's efforts to keep the City informed, and remain confident that we will continue to work together to and [sic] address any local concerns relative to the construction of the Seacoast Reliability Project in Portsmouth."); T*own of Madbury Public Comment Letter*, Docket 2015-04, July 23, 2015. *See also* Transcript Day 3 PM 35–37 (Applicant has worked with all four towns and have draft or final MOUs (or they are not needed in the case of Madbury and Portsmouth), but are asking for the SEC to approve crossings of municipally maintained roads).

matter. It proffers a distinction without a difference as to preemption of local authority depending on the statutory source of local authority (RSA 674:16 for zoning ordinances versus RSA 271:161 for local road crossings) that would apply if the Project were not an energy facility. Moreover, CFP overlooks that RSA 162-H was enacted well after RSA 231:160 *et seq.*, which indicates that the Legislature intended for the SEC's integrated review of energy facilities to be controlling. Thus, it is unreasonable to conclude that the Legislature intended to carve out crossings of locally-maintained highways from the SEC's comprehensive preemption.

Moreover, CFP "recommends" that the Subcommittee "defer" to municipalities and delegate monitoring responsibilities to them. The SEC cannot defer or transfer its decision making authority to the municipalities without clear statutory authority permitting such a transfer, nor can it delegate its monitoring responsibilities to such municipalities—RSA 162-H:4, III makes clear that delegation is limited to state agencies or officials. The Subcommittee may approve a condition that makes clear, for instance, that the Administrator should take municipal positions into account as part of monitoring authority delegated to the Administrator but any action to put authority into the hands of the municipalities would be *ultra vires*.

ix. Construction Use of Municipally Maintained Highways

As discussed above, the Applicant has submitted appropriate traffic management and control plans for the construction of the Project for both state and locally maintained roads. In addition, the Applicant identified the specific roads that Eversource will access during construction. *Supplemental Pre-Filed Testimony of Kenneth Bowes and David Plante,* App. Ex. 140 at 7–8. As part of on-going discussions with the Towns of Newington and Durham, the Applicant and host communities have reached agreement on the use of local highways,

including, which specific roads shall be used during construction.[209] Moreover, the Applicant has agreed, as part of its MOU discussions to post a bond to ensure proper restoration of all local roads and has agreed to provide the Towns of Durham and Newington with additional monies to oversee portions of the construction in their respective towns.[210] To the extent the use of oversize and overweight vehicles is not covered, i.e. in Madbury and Portsmouth, the Applicant commits to working with the local officials to reach agreement on the use of such roads. *Joint Proposed Conditions of Approval*, App. Ex. 193 ⁋ 10. The Applicant has provided sufficient evidence that the construction and operation of the project will not negatively impact locally-maintained roads.

x. Boater Safety

The Project will not have an adverse effect on boater safety in Little Bay. Prior to construction and during construction, the Project will work with the United States Coast Guard to issue a Notice to Mariners. Application, App. Ex. 1, at 15. The Notice to Mariners will ensure publication of the construction to the boating communities. Tr. Day 3 PM at 130. In addition, prior to placement of the concrete mattresses, the Applicant will coordinate with NH Division of Ports and Harbors and/or NH Department of Safety Marine Patrol to determine whether navigational markers are required. *NHDES Revised Final Decision*, Comm. Ex. 12d Condition ⁋ 52. Post-construction, the existence of concrete mattresses near shore will have a negligible effect on navigation; the proposed increase in nine inches "which for recreational boaters, would only make a difference at the nearest portions to shore where most people wouldn't be taking boats." Tr. Day 2 PM at 53–54.[211]

[209] *MOU with Town of Durham*, App. Ex. 270 ⁋ IV.A; *MOU with Town of Newington*, App. Ex. 168 ⁋ IV.A.
[210] *MOU with Town of Durham*, App. Ex. 270 ⁋ IX,A.; ⁋ V,D.; *MOU with Town of Newington*, App. Ex. 168 ⁋ IV.A.5, ⁋ IV.A.1.
[211] *See also* Tr. Day 6 AM at 120–21 ("I did want to just kind of for a perspective make it clear that on the

Once the Project is built, Eversource will submit as-built drawings to NOAA identifying the location of the cables and concrete mattresses. Tr. Day 3 PM at 128–29; Tr. Day 12 PM at 109-110. The Project and all related facilities will be added to the NOAA charts. *Id*.; *see also id*. at 136–39. Before NOAA can update its charts, the Applicant would mark the location of the Project to alert boaters. *Id*. at 129. The Applicant will work with the appropriate state agencies and US Coast Guard to obtain approval for any buoy or marker on a temporary or permanent basis. *See id*. at 140–41; *id*. at 182–83.[212]

xi. Shellfish Consumption

The Applicant and DES are working on developing parameters for a shellfish tissue sampling program. *See* Comm. Ex. 12d, Condition 46; Tr. Day 5 AM at 17 (parameters will also include monitoring criteria for health concerns). No party has put forth any evidence, including Durham/UNH or CLF, that would indicate that construction of the Project in Little Bay would potentially create a human health issue due to oyster consumption or relating to the mobilization of pathogens in the water column; their raw speculation and concerns are unfounded. In fact, UNH's Dr. Jones stated the Applicant and NHDES did a "good job" looking at pathogens in shellfish and does a "really good job" of analyzing water quality. Tr. Day 13 AM at 15, 95. Indeed, Durham/UNH raised their concerns with NHDES on multiple occasions, and without a

west shore the mattresses extend out about a hundred feet, and they're actually within kind of natural rock areas, that they almost form jetties. I'm not going to call them that, but that's what they look like. They're several linear formations of rock coming out from the shore and the mattresses are within those. So it would be very difficult for boat traffic to get in there and park because of these rocks and in part because it's really shallow at the time that boats could get in there.").

[212] *See also NHDES Revised Final Decision*, Comm. Ex. 12d, Finding ¶ 23 ("The Applicant will coordinate with the U.S. Coast Guard, Pease Development Authority-Division of Ports and Harbors and NH Marine Patrol to ensure that a Notice to Mariners is issued to minimize impacts on public commerce, navigation, recreation and the extent to which the project interferes with or obstructs public rights of passage or access to address the requirements of Env-Wt 302.04(a)(8) and Env-Wt 302.04(a)(10).").

doubt, NHDES did not find their concern convincing or noteworthy because NHDES did not issue a permit condition that directly relates to pathogens in the water column.[213]

Moreover, the Applicant and DES are working to establish a mixing zone to ensure that no portion of the mixing zone includes an aquaculture site that has aquaculture product in the water. *See* Comm. Ex. 12d, Condition 44. The Applicant has also had discussions with shellfish license owners to move their product away from the Project during construction and to ensure that Fat Dog Oyster Company will not be exposed to a sediment plume.[214]

xii. The Applicant's Construction Methods Will Not Have Unreasonable Adverse Effects

Throughout the proceedings, various parties have recommended that Eversource consider other options for crossing Little Bay ranging from horizontal directional drilling ("HDD"), to split pipes, to trenching, to use of different cables. However, at the end of all the hearings, none of the other parties in this proceeding have presented credible evidence that another means of constructing the Project is safer, more reliable, less disruptive to abutters and communities, or more protective of the environment.

a) HDD is Not a Viable Option for Crossing Little Bay

In accordance with the NHDES recommendation for an evaluation of HDD and the Presiding Officer's April 6, 2018 Revised Procedural Order, the Applicant submitted supplemental information and pre-filed testimony on July 1, 2018 assessing the feasibility of

[213] Tr. Day 13 AM at 95–97 (Dr. Jones of UNH candidly admitted that these issues were specifically brought to NHDES's attention on at least three separate occasions, in July 2017, October 2017, and July 2018 with NHDES). Moreover, Durham/UNH witnesses could not recall providing a suggested condition to NHDES relative to pathogens. *Id*. at 97. *See also Response to Comments from CFP and Durham UNH*, App. Ex. 109 at 29–30 (refuting claims regarding "potential" impacts to shellfish due to mobilization of pathogens).

[214] Tr. Day 5 AM at 19-20; Tr. Day 5 AM at 61–63; Tr. Day 6 AM at 46–49; Tr. Day 6 AM at 132–38.

using HDD to cross Little Bay.[215] The supplemental information evaluated the possibility of using HDD for the full bay crossing and also solely for the two shore landings. The comparison paper reinforced Eversource's prior conclusion that the jet plow installation method provides a better-balanced option for the SRP submarine cable installation enabling a reliable solution that employs a combination of avoidance, minimization and mitigation measures to ensure the sustainability of environmental resources. App. Ex. 133 at E-2.

As discussed in more detail in those filings, HDD presents significant construction-related challenges, creates intrusive and widespread construction impacts to residents in both the towns of Durham and Newington, requires much more land on either side of Little Bay for a significantly longer duration, introduces the risk of an inadvertent return, and is substantially more costly.[216] Moreover, Eversource does not currently possess the requisite land rights to construct the Project using HDD technology. App. Ex. 134 at 8–9; Tr. Day 1 PM at 165-67.

Eversource's conclusions are confirmed by the independent evaluation undertaken by Counsel for the Public's experts ESS Group. ESS Group did not dispute the Applicant's conclusions in the HDD Report, did not disagree that HDD would be technically challenging, and agreed that the "HDD approach would be significantly more costly than a jet plow installation." Tr. Day 12 PM at 80–81. Moreover, Mr. Whitney testified that the length required

[215] *See Horizontal Directional Drilling and Jet Plow: A Comparison of Cable Burial Installation Options for a 115 kV Electric Transmission Line in Little Bay,* App. Ex. 133; *Supplemental Pre-filed Testimony of Bowes, Plante, Dodeman, Strater,* App Ex. 134; *Supplemental Pre-Filed Testimony of Pembroke, Allen, Nelson,* App. Ex. 135.

[216] *See also* Tr. Day 3 PM at 94–95 (Eversource proposes to use jet plow to cross the bay, in part, because: HDD is not the preferred alternative based on construction risk; the company was "very concerned that we would not be successful with HDD operations"; and because the Army Corps of Engineers did not support HDD). Additionally, to the extent HDD is significantly more costly, there is a risk that the additional costs over jet pow would be localized. *See* Tr. Day 1 PM at 53–54.

for this HDD installation is uncommon and "on the edge."[217] Tr. Day 12 PM at 119. In addition, the Project would take significantly longer with potentially greater impacts to the surrounding community when compared to jet plow. *Id*. at 120–123. Therefore, imposing a requirement that the Applicant cross Little Bay using HDD technology is not practicable.

b) There Are No Plausible Alternatives to Concrete Mattresses that the Subcommittee Should Consider

In Counsel for the Public's supplemental pre-field testimony, it was suggested that the use of split pipes or uraduct might be feasible to limit or eliminate the use of concrete mattresses. However, both proposed methods were reviewed and deemed to be infeasible by the Applicant's technical panel. Specifically, Mr. Wall testified that the use of split pipes "on this cable, would affect the ampacity so they cannot be used on this particular Project." Tr. Day 1 PM at 116.; *see also* Tr. Day 3 PM at 86 – 87 (it was determined that the Applicant cannot make the split pipes work with ampacity issues). ESS Group also agreed that it had no reason to question the Applicant's conclusions that the split pipes would affect ampacity and that use of split pipes would be technically infeasible. Tr. Day 12 PM at 27; *id*. at 60–61, *id*. at 113.

The Applicant also considered Uraduct, however, it cannot be used for this Project because "it's very, very light and would not be applicable for th[e] type of protection" needed for the Project. Tr. Day 1 PM at 116. Parties also raised the possibility of trenching and blasting as an alternative to concrete mattresses. However, such additional work on the shore of Little Bay would add approximately 100 days of construction work and cost an additional $3 to $5 million. Tr. Day 3 PM at 198–99.

[217] *See also* Tr. Day 12 PM at 119 ("It's not so much . . . the ability or nonability to drill that far. It's . . . how far you can pull the cable without it being pulled apart. If you think about how much this cable weighs per foot and then you start adding the number of feet in the crossing, that's a pretty heavy load and you have to tug on it pretty hard to get it through that pipe. So that, in my experience, has been the thing that's driven the length of HDD uses either for a full crossing or for a landfall approach.").

c) Other alternatives

The Applicant's construction team also looked at many other alternatives during the design phase, including, but not limited to whether three cord vs. single cord cables could be used. The other parties in this docket have not presented any reliable evidence that suggest that the Project should be designed in any other manner. In fact, all parties involved except for ESS have no experience in underwater cable construction, indeed, they essentially are trying to redesign the project after many experienced professional design engineers have worked on this project. Tr. Day 2 PM at 35 – 43. Accordingly, the Applicant has demonstrated by a preponderance of the evidence that its construction methods will not an unreasonable adverse effect on public health and safety and that the alternative methods discussed during the hearings are not practicable or feasible or are significantly more expensive—the cost of which would be borne by ratepayers.

D. Issuance of a certificate will serve the public interest

As demonstrated above, the Project will not unduly interfere with the orderly development of the region and it will not have unreasonable adverse effects. Prior to 2014, the absence of undue or unreasonable negative consequences, along with financial, technical and managerial capability, was a sufficient basis for issuing a Certificate. Now, an applicant must also demonstrate that a Project will serve the public interest, meaning that, aside from not having significant negative consequences in specified areas, it will have positive consequences as well. As explained below, the positive consequences comprise a number of significant benefits and, thus, the Applicant has proved sufficient facts for the Subcommittee to find that the Project will serve the public interest. Also set forth below is a legal analysis of how the new public interest finding co-exists with the other three pre-existing findings including clarifying that the public

interest requirement does not override or subsume the other statutory requirements, as some parties argue here.

1. Benefits

The Applicant has demonstrated by a preponderance of the evidence that the benefits from this proposed Project are significant. At a fundamental level, this is an electric reliability project, the purpose of which is to provide an additional path between the Deerfield and Scobie Pond substations. The Project will improve electric reliability across the entire New Hampshire Seacoast Area by "addressing reliability violations for various contingencies within the area…[and will] enable[] the Seacoast Area's transmission system to meet the national, regional, and New England region's reliability standards." App. Ex. 139, p.1. ISO-NE conducted an assessment of the New Hampshire and Vermont portion of the New England transmission system to determine if the electric infrastructure is sufficient to reliably deliver power. The study concluded that, for the New Hampshire Seacoast Region, additional transmission capacity is needed. *See* App. Ex. 3, p. 4; *see also Stipulated Facts and Requested Findings of the Applicant and CFP*, App. Ex. 184 ⁋⁋ 37–38.

The final selection of the preferred solution in response to the assessment completed by ISO-NE, which included SRP, was primarily decided by reliability impacts and the fact that it was less costly than the competing alternative. *Stipulated Facts and Requested Findings of the Applicant and CFP*, App. Ex. 184 ⁋⁋ 2–3, 36, 39. SRP is designed to specifically strengthen system reliability by addressing thermal and voltage issues identified by ISO-NE in the Seacoast Region. This Project is the last piece to enable the system to meet the national, regional, and New England regional reliability standards. *Supplemental Pre-Filed Testimony of Robert Andrews*, App. Ex. 139, p. 2. In addition, as discussed by Mr. Quinlan, "loads have continued to grow in the Seacoast Region of New Hampshire. So that identified need in 2012 has grown as a

result of more customer demand in the region." Tr. Day 1 AM at 34. This added load has increased the need for the suite of projects identified by ISO-NE, which includes SRP.[218] The Project will directly serve the public interest by providing and ample and reliable electricity supply to residents and business in the Seacoast Area. App. Ex. 139, p.1.

The Project will directly benefit the four host communities, in addition to other towns within the Seacoast Area. Specifically, the Portsmouth Substation serves the City of Portsmouth, the Town of Newington, and Pease. Portsmouth currently has a single transformer and is supplied by a single transmission line, loss of either could cause an outage to all customers normally supplied by the substation. App. Ex. 139, p. 2. The Project will provide a second transmission supply to Portsmouth Substation, improving the reliability of electric supply to customers in Portsmouth and Newington (including the Pease area). App. Ex. 139, p. 2. In addition, the Madbury Substation serves the town of Durham (including the University of New Hampshire). App. Ex. 139, p. 2. The Project will add an additional transmission line supply to the Madbury substation and will specifically resolve contingencies that create low voltage (and potential voltage collapse conditions) in the Madbury, Dover, Rochester and Tasker Farm Substation areas. App. Ex. 139, p. 2. Additionally, due to the nature of the Project, these benefits will be provided to the host communities, but the cost of constructing the project, pending ISO-NE approval, will be borne by the region as a whole and not solely by PSNH customers in New Hampshire.[219]

---

[218] *See Pre-Filed Testimony of Robert Andrews*, App. Ex. 3, p. 3 (noting that "[t]he Seacoast Region's electric demand is increasing, and is expected to represent approximately 25% of New Hampshire's electric demand in 2020."); *see also* Comm. Ex. 5, Response to Data Request SEC 1-1 ("The Seacoast area has been an economic engine for the state of NH, from an electrical supply perspective this is documented by the addition of two new Eversource substations to supply area loads.").

[219] Tr. Day 1 PM at 11-12 (Mr. Quinlan noting "[w]e are going to make the case for regional treatment for this entire project given its current design. We believe that the decisions we've made are in accordance

In addition, the Project will provide numerous economic benefits to the State and the region. Specifically, the Project will be an $84 million investment in local and State infrastructure improvements with approximately $19.1 million spent on local and State businesses and labor. App. Ex. 83, p. 7. During the peak of construction, the Project will create between 54 and 97 New Hampshire jobs. *Id*. PSNH has indicated that it will make every effort to maximize the use of construction-related workers from New Hampshire to the extent possible based on availability. *Id*. The tax payments associated with the Project to Strafford County are estimated between $122,000 and $135,000 and to Rockingham County between $36,000 and $40,000. *Id.* at 4.

Dr. Shapiro has also estimated, in addition to the County payments, that for each of the host communities the Project will make the following first year tax payments to each town: Madbury between $59,091 and $88,091; Durham between $748,785 and $1,098,217; Newington between $132,853 and $194,851; and Portsmouth between $41,796 and $61,300. App. Ex. 101, Appendix 44a. These tax payments to the towns provide a significant benefit and, as noted by Mr. Selig regarding Durham, "would certainly be a meaningful tax benefit." Tr. Day 10 PM at 178-79. Not only will the Project provide meaningful tax benefits to these communities, but, as Mr. Selig acknowledged on behalf of the town of Durham, by enhancing electric reliability, the Project will also provide benefit to businesses and residents in the area. Tr. Day 10 PM at 180.

As part of the Project design and development, Eversource will remove the existing distribution lines in Newington from the field at the Frink Farm. This measure will enhance the

with good utility practice and that they're necessary for siting the project…So our view is they are regional in nature and our expectation is ISO New England will agree.")

aesthetic quality of this area.[220] This improvement in the Newington Center Historic District also serves the public interest.

Notably, consistent with Site 301.16, the Project will (a) positively benefit the welfare of the population, (b) encourage the location and growth of industry, (c) promote the overall economic growth of the state, and (d) promote public health and safety due to the fact that it is an electric reliability project. In addition, it will provide benefits to key historic sites and aesthetic resources within the affected communities by undergrounding a currently existing distribution line near the Frink Farm property and Newington Historic District. Given that the Project will advance and ensure the reliability of power distribution in the Seacoast Region, coupled with the careful siting and numerous economic benefits the Project will bring to the State and the region, SRP clearly serves the public interest.

2. Legal Standard

Prior to 2014, the SEC, pursuant to RSA 162-H:16, IV, (a), (b) and (c), used a three-prong test in determining whether to issue a Certificate of Site and Facility. That test required it to consider: (1) financial, technical and managerial capability, (2) whether the proposed project would unduly interfere with the orderly development of the region, and (3) whether the project would have unreasonable adverse effects. In 2014, the Legislature expanded the test by adding RSA 162-H:16, IV (e), which requires a finding that the Certificate will also serve the public interest.

[220] Tr. Day 14 PM at 65-66 (Mr. Lawrence noting "I'm very gratified that what was a 30-foot high series of poles across the hay field at the Frink Farm is now not going to be there anymore…So I mean, I guess I commend the Applicant on that."); *see also* Tr. Day 10 AM at 109-10 (Ms. Widell noting "with the removal of the distribution lines and the opening up of your field, too, as an open space, I think that really contributes to the efforts and the goals of Newington…So I think actually this is quite beneficial to the Newington Historic District."); *see also* Tr. Day 9 PM at 117-18 (Mr. Raphael noting "the net gain of the undergrounding for the rest, if not the entire of the remainder of the property, and the view of that meadow now being free of utility structures, I think it is a definite net gain visually.")

The four-prong test that the Applicant must meet for a Certificate in this proceeding is not a stand-alone public interest test. In other words, the Legislature did not simply say that, in order to issue a Certificate, the SEC shall find that it is in the public interest. All four statutory findings play an equal role. If the Legislature had intended to make the fourth finding superior to the other three, it would have done so.

A number of examples of stand-alone public interest tests can be found in statutes administered by the Public Utilities Commission ("PUC").[221] The Legislature, however, took a very different approach with respect to the construction of energy facilities in New Hampshire by providing significant guidance to the SEC in the form of four mandatory findings. As a result, it is clear that the SEC has far less discretion, that is, it is more constrained than the PUC is when the PUC renders a decision under a stand-alone public interest test.

The alternative to the guided public interest approach is a stand-alone public interest test[222] in which the Subcommittee, in one formulation, could simply add up and balance the pluses and minuses of the proposal, that is, apply a net benefits or balancing test of its own devising. Such an approach, however, would render meaningless the findings regarding undue interference and unreasonable adverse effects, and would be contrary to legislative history,

[221] For example, RSA 374:26, which governs permission to engage in business as a public utility; RSA 374:30 and 33, which governs public utility mergers and acquisitions; and, RSA 369:1, which governs the issuance of securities. Respectively, under RSA 374:26 the PUC may grant authority to commence business when it "would be for the public good," under RSA 374:30 a utility may transfer or lease its franchise, works or system when the PUC finds "it will be for the public good," under RSA 374:33, a utility may acquire stock when the PUC finds it "lawful, proper and in the public interest," and, under RSA 369:1 a utility may issue securities when the PUC finds that it is "consistent with the public good."

[222] The general rule for what constitutes the public good or public interest in the case of a stand-alone public interest test is set forth in *Grafton County Electric Light & Power v. State*, 77 N.H. 539 (1915). In that case, the Court concluded, in the context of a statute relative to the transfer of property by public utilities, that the measure described by the Legislature as the public good "is equivalent to a declaration that the proposed action must be one not forbidden by law, and that it must be a thing reasonably to be permitted under all the circumstances of the case." *Id.* As noted above, however, the SEC has not been charged with applying a stand-alone public interest test and its discretion is as a consequence not so broad.

which shows that a net benefits test was considered and rejected. Specifically, JLCAR noted in its initial objection to the proposed rules "[t]he Legislature substantially revised the NH energy siting law by passage of SB 245 during the 2014 session. During that process, it provided for a 'public interest standard' and specifically considered and rejected a 'net benefits' standard (removed the 'net benefits' language from an earlier version of SB 245)…The SEC now seeks to incorporate that new test, (the 'net benefit' standard) as a means of defining the 'public interest' by using language substantially similar to that specifically removed by the Legislature."). *Preliminary Objection Letter*, NH SEC Docket 2014-04 (October 16, 2015).

In order to lead to a reasonable result, one in which the parts of the test do not contradict one another, which comports with the plain meaning of the statutory language, and which is consistent with legislative history, to "serve the public interest" should be read to require that an applicant demonstrate that a facility will provide benefits, which is something the SEC had not been required to consider prior to the 2014 amendment. The new finding should not be read to include consideration of adverse effects or impacts that are the subject of other findings, which is the only sure way to give full force and effect to each of the four parts. Consequently, the Subcommittee must harmonize the fourth finding with the other three so that they all maintain their vitality and are not subsumed by the fourth. If the Legislature had intended to make the fourth finding superior to the others, it could have and would have done so.

The New Hampshire Supreme Court has addressed the issue of what constitutes the public good or public interest when applying a stand-alone public interest test. *See Grafton County Electric Light & Power v. State*, 77 N.H. 539 (1915) (holding that the measure described by the Legislature as the public good "is equivalent to a declaration that the proposed action must be one not forbidden by law, and that it must be a thing reasonably to be permitted under all the

circumstances of the case"). This, however, is applicable only in instances in which a stand-alone public interest test must be applied, which is not the standard required of the SEC. Instead, the more applicable standard is the New Hampshire Supreme Court's review of a public interest standard applied by the PUC in *Appeal of Pinetree Power, Inc.*, 152 N.H.92 (2005). In that case, the Court rejected the application of a net benefits test noting that there was no basis in the statutory scheme or case law for the application of such a test.

The SEC has applied the criteria set forth in Site 301.16 relative to a finding of public interest in two proceedings, namely, *Antrim Wind Energy LLC*, Docket No. 2015-02 and *Eversource – Merrimack Valley*, Docket No. 2015-05, issuing decisions on March 17, 2017 and October 16, 2016, respectively. Site 301.16 provides:

In determining whether a proposed energy facility will serve the public interest, the committee shall consider:

(a) The welfare of the population;
(b) Private property;
(c) The location and growth of industry;
(d) The overall economic growth of the state;
(e) The environment of the state;
(f) Historic sites;
(g) Aesthetics;
(h) Air and water quality;
(i) The use of natural resources; and
(j) Public health and safety.

In neither *Antrim* nor *Merrimack Valley* did the SEC apply a net benefits test when making its public interest finding, nor does Site 301.16 provide for such weighing or balancing. Instead, the SEC considered the list of factors in a way that harmonized the new public interest finding with the other three findings, giving full force and effect to each. In both cases, the SEC enumerated its other statutory findings, noted the project would not have unreasonable adverse effects, identified benefits, and found that the project would serve the public interest. Specifically, in

Merrimack Valley, the SEC recognized that the transmission line was a reliability project important to the region and, in *Antrim*, the SEC recognized economic benefits to the region and the state, as well as better air quality.

The public interest finding in RSA 162-H:16, IV is a part of the whole; it is one element of a four-prong test and operates within certain confines. Ultimately, in the event that an applicant has the financial, technical, and managerial capability to construct and operate a facility, and that facility will not unduly interfere with the orderly development of the region or have unreasonable adverse effects on any areas contemplated in RSA 162-H:16, IV (c), the facility will serve the public interest, and the SEC may issue a certificate, if the facility will provide benefits. The benefits, however, are viewed independently; they are not netted, weighed or balanced against impacts, but considered in relation to the factors listed in Site 301.16.

As the foregoing demonstrates, CFP is incorrect when it argues that the plain meaning of RSA 162-H is that the new public interest finding in and of itself constitutes an independent, stand-alone balancing test. CFP's argument ignores the fundamental principle of statutory construction that "[t]he words of a statute should not be read in isolation; rather, all sections of a statute must be construed together." *Sprague Energy Corp. v. Town of Newington*, 142 N.H. 804, 806 (1998). To get to its plain meaning, CFP overlays RSA 162-H:1, the purpose section, on the public interest finding in such a way that it demotes or nullifies the orderly development and unreasonable adverse effects findings. CFP is correct that the overall statutory scheme should be considered but it looked in the wrong place. Rather than looking to the purpose section to justify its outcome, CFP should have focused on harmonizing the four findings. Moreover, CFP misinterprets the purpose section when it concludes that the Legislature intended that the SEC should apply the public interest finding as an overall balancing or net benefits test. The

appropriate way to interpret the purpose section and the statutory scheme is to recognize that the Legislature achieved its balancing of impacts and benefits by requiring four specific findings, two of which focus on the extent of Project impacts, and one of which focuses on Project benefits. The Legislature did not leave to the SEC the discretion to construct its own balancing or net benefits test and legislative history confirms it.

IV. Miscellaneous

A. The Applicant Has the Necessary Land Rights to Construct and Operate the Project

1. Property Rights – Overview

The Applicant has provided substantial evidence showing that it has the requisite property rights to construct, operate, and maintain the Project in accordance with Site 301.03(c)(6). *See Application*, App. Ex. 1 at 3, 11; *Amendment to Application*, App. Ex. 68 at 1, 3; *Pre-Filed Testimony of James Jiottis*, App. Ex. 6 at 3–4; *Pre-Filed Testimony of Kenneth Bowes*, App. Ex. 7 at 3. Moreover, the SEC has already accepted the application and found that the Application contains sufficient information for the Committee to undertake its review pursuant to RSA 162-H. *See Order Accepting Application*, Docket 2015-04 at 7 (June 13, 2016) ("The Application contains information identifying the Applicant's relationship to each section of the route.").

To the extent any opposing parties wish to argue that the Eversource easements have been "legally abandoned" and/or are limited to use for only a 34.5 kV line, or that Eversource does not possess the property rights under its easements to construct high voltage transmission lines above or below ground, such arguments (which Eversource does not concede have any merit) are raised in the wrong forum. In prior dockets, parties have argued that an Applicant did not have the necessary property rights to construct a project. The SEC rejected that argument, holding that adjudication of property rights between private parties must be left to the courts. *See Order on Lagaspence Motion to Postpone and Grafton County Commissioners' Motion to Continue*, SEC Docket No. 2015-06 at 2–3 (April 7, 2017) (concluding that the Application was complete, that it contained the necessary evidence demonstrating that the Applicant has the legal authority to use the site for the proposed facility, and that adjudication of property rights between

private parties is left for the courts). *See also Presiding Officer's Order on Motions to Compel*, SEC Docket 2015-06, at p. 14-15 (September 22, 2016) (stating that "[t]he Subcommittee has already determined that the Application contained sufficient information to satisfy the application requirements of each state agency having jurisdiction under state or federal law to regulate any aspect of the construction or operation of the proposed facility.").

More specifically, the *Order on Lagaspence Motion to Postpone and Grafton County Commissioners' Motion to Continue* stated that: "The Committee does not have the authority to adjudicate property rights between private parties. *The ultimate determination of property rights is left to the courts*. The Committee's authority is to determine whether a proposed project should be sited, constructed, and operated as provided in the application. The rules require that an application identify evidence that the applicant has legal authority to use the site proposed for the facility." Order at 2-3 (emphasis added).

Furthermore, it is clear that the interpretation of deeds must be left to the courts. *See Lynch v. Town of Pelham*, 167 N.H. 14, 20 (2014) ("The proper interpretation of a deed is a question of law for [the New Hampshire Supreme Court]."). This principle plainly applies to an express grants of utility easements by deeds. *See Lussier v. N.E. Power Co.*, 133 N.H. 753, 757 (1990).

The NH PUC has also reached the same conclusion. *See Prehearing Conference Order Granting and Denying Petitions to Intervene and Denying Motion to Dismiss*, PUC Docket DE 15-464, Order No. 25,882, at 6 (April 15, 2016). ("Our review of the easements, their ownership, and transferability is necessary, but will be limited to whether the easements on their face appear to be broad enough to allow for construction of the NPT project, and are transferrable in the manner claimed by Eversource. As such, our review will not be binding on individual property

owners. Property owners who wish a determination of their rights in the easements on their lands with respect to Eversource and NPT should seek redress in the courts.")

In sum, RSA 162-H does not confer the SEC with the authority to adjudicate property rights. The SEC's authority is to decide whether to grant or deny a certificate pursuant to RSA 162-H:16, IV.

2. CLF, Durham/UNH and Newington Mistakenly Assert That The Applicant Does Not Have the Requisite Property Right to Cross Little Bay

CLF, joined by Durham/UNH and Newington, make the argument that the Applicant is required to obtain permission for an easement from the Governor and Executive Council to construct the Project (or at least the concrete mattresses associated with the Project) in the submerged lands of Little Bay. Post-Hearing Memorandum of CLF, pp. 155-17; Post-Hearing Brief of Durham/UNH, pp. 29-30; Newington Post-Hearing Brief, pp. 59-60. In support of this errant argument, these Project opponents rely on a February 9, 2012 letter from an Assistant Attorney General addressed to a private citizen, which CLF introduced into evidence. This argument is wrong for several reasons: (1) the letter is not a formal opinion of the Attorney General and therefore holds no legal authority or precedential value; (2) a NHPUC license for crossing under public waters, which the Applicant obtained, confers the requisite legal right to construct the Project under Little Bay; (3) RSA 371:22 (which the letter relies upon in part) was repealed in 2013; and (4) the issuance of a license does not require Governor and Executive Council approval.

First, pursuant to State law, the Attorney General is authorized to provide opinions upon any question of law submitted by the Legislature and when requested, to provide advice to any state board, commission, agent or officer on questions of law relating to the performance of their official duties. RSA 7:7; RSA 7:8. The February 9, 2012 letter is not addressed to the

Legislature or a state agency and it does not provide an opinion of law submitted to the Legislature or any state board, commission, agent or officer. As a matter of law, the letter cannot be considered an official Attorney General Opinion and it therefore holds no precedential value, nor does it carry any legal weight or authority.[223] Interestingly, Newington in its Post-Hearing Brief essentially concedes this point when it suggests to the SEC that, if it has any question regarding this legal issue, it "should seek an opinion from the Attorney General's Office prior to issuing a certificate for the Project." Newington Post-Hearing Brief, p. 60. The SEC of course has no such obligation, and the Project opponents have failed to provide any such opinion.

Second, the New Hampshire Public Utilities Commission has issued a license to Eversource to install the Project in and across Little Bay. *See Complete PUC Docket for DE 16-1441*, App. Ex. 187.[224] The license authorizes the use of State land to construct and operate the Project. The difference between a license and an easement, under New Hampshire real estate law concepts, relates only to their succession. State law defines an easement as a "nonpossessory right to the use of another's land… [that] runs with the land…and is inheritable."[225] This compares to a license, which likewise grants a right or permission for use of another's land, but which state law defines as a "transient or impermanent interest which does not constitute an 'interest in land.'"[226] The New Hampshire Supreme Court has characterized

[223] Indeed, official Attorney General Opinions are addressed to the Legislature or some other public official in response to a question from the legislature or that public office. *Compare* CLF Ex. 23, *with* https://www.doj.nh.gov/public-documents/opinions.htm (listing formal Opinions Issued by the Attorney General – all of which are addressed to a public official).

[224] Further, pursuant to the PUC Order *Nisi* Granting License, a notice of this Order was given to the New Hampshire Attorney General's Office, the Town Clerks of Durham and Newington, the U.S. Army Corps of Engineers, the NH DES, and was published in a statewide newspaper of general circulation; however, no objection or appeal was ever filed.

[225] Charles Syzpszak, Real Estate § 8.01 (1st Ed. Lexis Nexis Matthew Bender), citing *Burcky v. Knowles*, 120 N.H. 244, 247 (1980)(citations omitted).

[226] Charles Syzpszak, Real Estate § 8.01 (1st Ed. Lexis Nexis Matthew Bender), citing *Waterville Estates Ass'n v. Town of Campton*, 122 N.H. 506, 509 (1982)(citations omitted).

utility licenses as "agreements, in the usual sense of the term, to occupy and use public property."[227] Similarly, by statute, a PUC license is specifically granted to "construct and maintain" a "pipeline, cable, or conduit or a line of poles or towers and wires and fixtures thereon, over, under or across any of the public waters of this state" to provide utility services to the public.[228] Therefore, obtaining a license is all that is required for constructing the Project in and across the public waters of Little Bay in this proceeding.

Third, the contention that an easement is required in addition to a license properly granted pursuant to RSA 371:17 relies upon a statute that has been repealed. When the February 9, 2012 letter was written—which specifically references RSA 371:17–23—RSA 371:22 provided that "any such license creating rights over, under, or across any of the lands owned by the state shall be evidenced by an instrument executed in the name of the state by the governor."[229] However, effective June 19, 2013 and subsequent to the February 9, 2012 letter, RSA 371:22 was repealed by Senate Bill 175. Testimony from a hearing on the bill in the Senate Committee on Energy and Natural Resources illustrated the intention of the repeal was to lessen the burdens on utility companies when running additional utility lines along poles that had already been through the necessary permitting and evaluation processes. During his testimony, then-PUC Commissioner Michael Harrington stated that, to his knowledge, RSA 371:22 was "not being followed," and expressed his view that the entire process of utilities permitting should be streamlined to reduce the bureaucracy and expense involved in expanding utility networks along existing utility pathways.[230]

---

[227] *New England Tel. & Tel. Co. v. City of Rochester*, 144 N.H. 118, 121 (1999).
[228] N.H. Rev, Stat, Ann. § 371:17.
[229] Presumably, Assistant Attorney General Mulholland was relying at least in part on RSA 371:22 in formulating the opinion stated in his letter.
[230] *Licenses and Permits – Waters and Watercourses – Crossings: Hearing on S.B. 175 Before the S. Comm. on Energy and Natural Resources*, 2013 Leg., 163rd Sess. (NH 2013).

Since the repeal of RSA 371:22, it cannot be argued that an easement or any other permissive land right is required in connection with or in addition to the licensing of a crossing of a public water body, or any submerged lands within that water body. The clear practice since the repeal is that an easement is not necessary. Specifically, based on research of the publicly available records recorded at the New Hampshire county registries of deeds, it appears none of the following projects that received licenses from the PUC since the repeal of RSA 371:22 also obtained an easement:

- EnergyNorth Natural Gas, Inc. d/b/a Liberty Utilities, Docket DG 13-226, (Sep. 19, 2013) (natural gas pipeline under Soucook River);
- NH-Big Island Co, Docket DE 15-066 (April 8, 2015) (electric, telecom, water and sewer lines under Lake Winnipesaukee);
- New Hampshire Electric Cooperative, Inc., Docket, DE 15-002 (May 8, 2015) (electric lines under Squam lake);
- New Hampshire Electric Cooperative, Inc., Docket DE 15-370 (March 22, 2016) (natural gas pipeline under Soucook River);
- Granite State Gas Transmission, Inc. DG 16-471 (July 27, 2016) (natural gas pipeline under Pomery Cove, Piscataqua River);
- New Hampshire Electric Cooperative, Inc., DE 16-849 June 12, 2017, (electric cable under Lake Winnipesaukee);
- Pennichuck East Utility, Inc., Docket, DW 17-036 (June 16, 2017) (water main under Merrimack River);
- Northern Utilities, Inc.; DG 17-039 (Sept. 6, 2017) (natural gas distribution main under Little River);
- New Hampshire Electric Cooperative, Inc., Docket DE 17-080, (Sept. 8, 2017) (electric lines under Lake Winnipesaukee); and
- EnergyNorth Natural Gas, Inc. d/b/a Liberty Utilities, Docket DG 17-093 Nov 22, 2017 (natural gas pipeline under Beaver Brook).[231]

Lastly, CLF and the other Project opponents are mistaken that RSA 4:40 requires any approval for this Project by the Governor and Executive Council. RSA 4:40 governs the disposal of real estate owned by the State, and requires that "all requests for the disposal or leasing of

[231] While Granite State Gas Transmission Company appears to unnecessarily have obtained an easement in Docket DG 14-124 for a natural gas pipeline under the Squamscott River in August 2014, it did not obtain an easement for DG 16-471 as part of a proceeding in July 2016. It is clear that the practice today is that an easement is not necessary.

state-owned properties" must be approved by certain commissions, councils, and the Governor and Executive Council. If the Governor and Executive Council approve, the State may "sell, convey, transfer or lease the real property." "State-owned property" includes real estate that the State has title to, and the submerged lands under great ponds and navigable waters.[232] However, the term "disposal" is understood to mean "sell, convey, [or] transfer." RSA 4:40, I. As noted above, an easement grant, although constituting an "interest in land" does not involve a sale, conveyance or transfer of state lands, but only a non-possessory right of use; the grantor (which in this case would be the state) retains ownership, and so RSA 4:40 would not seem to apply at all to an easement transfer. Moreover, as also noted above, a license does not constitute an "interest in land"; consequently, the issuance of a license from the PUC would not require the approval of the Governor and Executive Council under this statute either.

Based on the foregoing, there is nothing in New Hampshire statutes or regulations that requires an easement or other recorded property interest for a crossing of a public water body. The Applicant has secured all of the crossing and installation rights it needs to cross under Little Bay.

3. The PUC Water Crossing License Order Requires Compliance With The National Electrical Safety Code (NESC) When Applicant Constructs and Installs the Project In Little Bay

Durham/UNH and CLF have asserted that the Project's application is flawed because the NHPUC's Order granting the Applicant a license to install the Project in and across Little Bay was issued without informing the NHPUC of the Applicant's proposed use of concrete

[232] *Opinion of the Justices (Public Use of Coastal Beaches)*, 139 N.H. 82, 88 (1994) (citing *Phillips Petroleum Co. v. Mississippi*, 484 U.S. 469, 476 (1988)); 43 U.S.C. 1301 et seq.

mattresses, and therefore the Applicant lacks a necessary approval for the Project.[233] *Post-Hearing Brief of Durham/UNH,* p. 30. This assertion ignores the record.

The NHPUC Order granting the Applicant a license to install the Project in and across Little Bay, issued in NHPUC Docket DE 16-441, was expressly conditioned on "the requirement that Eversource constructs, installs, operates, and maintains, and, if applicable, alters the lines consistent with the provisions of the National Electrical Safety Code, in accordance with N.H. Code Admin. Rules Puc 306.01, as may be applicable and as amended from time to time, and all other applicable safety standards in existence at that time . . . ." *Complete PUC Docket for DE 16-441*, App. Ex. 187 at pp. 72–73. During Committee questioning (by Mr. Shulock) of the Applicant's construction witnesses, the Applicant confirmed that the use of concrete mattresses, if needed, would be required to comply with the NESC to provide cable protection if the required 42" burial depth could not be achieved. Tr. Day 3 PM at 142–43. By requiring that the Project installation in Little Bay comply with the National Electrical Safety Code, the NHPUC's Order already incorporates all of the approvals needed to use concrete mattresses, if required, in connection with the installation of the Project. Furthermore, in the filing made by the Applicant subsequent to the issuance of the NHPUC Order to inform the NHPUC of the Applicant's alteration in proposed burial depth of the cable, it was stated that, in the event the altered burial depth cannot be achieved, "supplemental mechanical protection will be used per the NESC to protect the cable and the public." *Complete PUC Docket for DE 16-441*, App. Ex. 187 at pp. 79–80. Subsequently, the PUC issued a letter to the Applicant in which it determined that approval

[233] Newington goes further and contends this was a "material misrepresentation" by the Applicant, warranting the SEC in requiring the Applicant to supply information to the PUC concerning concrete mattresses before issuance of a certificate. *Newington Post-Hearing Brief, p.60.*

of the crossing did not need to be changed and no amendment of the NHPUC's original Order was necessary. *Id*. at 84.

Moreover, there is no question that NHDES has also issued a permitting approval for the use of concrete mattresses in connection with the Project's installation in Little Bay. *See NHDES Revised Final Decision,* Comm. Ex. 12d at 4. *See also id.* at Condition ⁋ 52 (requiring the Applicant to coordinate with NH Division of Ports and Harbors and/or NH Department of Safety Marine Patrol to determine whether navigational markers are required).[234]

B. All Maps Will Be Combined Prior to Construction

During the final hearings, certain parties raised perceived issues regarding the accuracy of the environmental maps found at App. Ex. 148. The environmental maps use the best data that is currently available; however, those data sets are only as good as what is provided to the Applicant. When dealing with different sources of GIS data, there are instances where data boundaries may deviate slightly from the property line.[235] Notwithstanding these issues, the Applicant is already in the process of combining all maps into one map set that will be distributed to contractors prior to construction.[236] Indeed, the real purpose for the mapping is to

[234] *NHDES Revised Final Decision* Condition ⁋ 52, which requires the Applicant to consult with various state agencies about the existence of the concrete mattresses, will further ensure that construction of the Project will not substantially affect the public rights in the water. To the extent there is a concern about boater safety, *see* Tr. Day 3 PM at 142–43, these other agency conditions address that concern. Nevertheless, if the NHPUC requires additional information about the proposed use of concrete mattresses during or after installation, or the SEC requires such follow-up as a Certificate condition, the Applicant will comply.

[235] *See* Tr. Day 3 AM at 38–40 (stating that parcel boundary and owner data was obtained from municipal data bases whereas boundaries for historic sites came from GRANIT; that there are likely to be deviations due to the nature of pulling multiple sources of data together; and that if you want the most accurate information one should go directly to the source of the information); *see also* Tr. Day 4 PM at 73 (when putting together different sets of GIS data, they never line up perfectly).

[236] *See* Tr. Day 5 PM at 55. (Ms. Allen testified that: "We're in the process of building what we're calling construction maps that we will put all the critical information on. A lot of this information will come off, and we will add on information that is important to the contractors to know either for avoidance or treatment areas or various techniques that are relevant to construction.").

guide site walk downs and provide for flagging, which will be used in the field during construction.

C. The Future Relocation of Distribution Lines in Newington, Which Do Not Meet the Definition of An "Energy Facility", Is Not An Issue For Consideration Before the Subcommittee

The Project will remove the existing electric distribution lines across the Frink Farm and the Hannah Lane properties in the Town of Newington and, in the future, these lines will be relocated to and re-built on public roads. The re-build of these distribution lines is not part of the Project and was not included in the Application;[237] indeed, electric distribution lines under 100 kV do not meet the definition of an "energy facility" under RSA 162-H:2. When needed, Eversource will work with the incumbent local telephone company, Consolidated Communications (which jointly owns the distribution poles with the Applicant and has responsibility for setting distribution poles in Newington), and with the Town of Newington, to accomplish the relocation. To the extent any approvals are necessary for the permanent relocation of the distribution lines, Eversource will be working with the towns and appropriate agencies to obtain those approvals.[238] Therefore, the SEC should not consider the relocation and rebuild of these distribution lines in its deliberations or in determining whether to issue a Certificate.

---

[237] To the extent to Town of Newington argues that the Applicant has failed to meet its burden of proof because it has not provided an analysis of the impact of the relocated distribution line, the Town inaccurately describes the proposed relocation. Contrary to the assertion made by the Town of Newington that the relocation will be completed "as part of this Project," Newington Final Post-Hearing Brief, p. 47, the relocation will be completed separate and apart from the Project. No further analysis or assessment of potential effects is required to evaluate this future and independent relocation.

[238] Tr. Day 11 AM at 47 (Mr. Hebert agreed that everything having to do with the movement of the distribution lines in Newington would be permitted before the Town of Newington and that Eversource has already met with the Chair of the Newington Planning Board about the process).

D. The Applicant's Communications with NHDES and the Issuance of the Revised Final NHDES Decision Are Consistent with RSA 162-H and Prior Permitting Practice

Contrary to the arguments made by some of the intervenors, the Applicant's on-going discussions with NHDES and its issuance of a Revised Final Decision are fully supported by RSA 162-H and are consistent with standard practice before the Department. The Applicant fully incorporates the facts and arguments contained in the *Applicant's Objection to Join Motion to Strike NHDES's Recommendations and Related Testimony*, Docket 2015-04 (Nov. 2, 2018) and the *Applicant's Objection to Counsel for the Public's Motion to Strike NHDES's October 29, 2018 Revised Final Decision*, Docket 2015-04 (Nov. 9, 2018). *See also Order on Motions to Strike*, Docket No. 2015-04 (Nov. 20, 2018) (denying requests to strike NHDES Revised Final Decision).

E. Need and Project Alternatives

1. While Project Need is No Longer a Required Finding Under RSA 162-H:16, SRP will Support the Reliability of the Regional Electric Grid and Eliminate the Potential For Criteria Violations

Opponents argue that the Project is not "needed" in New Hampshire.[239] These arguments are factually[240] and legally wrong. As a factual matter, ISO-NE has determined that the electric transmission grid in the Seacoast Region is not meeting mandatory criteria and that the system is

[239] *See e.g.*, *Pre-Filed Testimony of Denis Hebert*, NEW Ex. 1 at 15–21.

[240] The evidence demonstrates that the Independent System Operator of New England ("ISO-NE") identified an "immediate need" for the Project in the early 2010 timeframe, Tr. Day 1 AM at 20; 27–29; 32–33, and that ISO-NE identified the "Seacoast Solution" to address that need. *Id*. at 24–25. Based on today's conditions and those identified by ISO-NE, Eversource must take measures to protect the electric grid and prevent it from collapsing. In certain circumstances, it may be necessary to reduce load by "load shedding or rolling blackouts or brown outs"; essentially customers may need to be shut off to keep load below the limits necessary to keep the grid intact. Tr. Day 1 PM at 19–20. To the extent this Project is not built, Mr. Quinlan testified that there would likely be a societal cost if there are brownouts or rolling blackouts. Tr. Day 1 PM at 41–42. ISO-NE reviews the status of the electric grid on an annual basis, Tr. Day 1 PM at 46–47, and plans for the ten year horizon. Tr. Day 4 AM at 8. Mr. Bowes testified that while other Seacoast Solution infrastructure has been built, which does help to alleviate certain overloads, there are other contingencies and criteria violations that still need to be fixed. Tr. Day 1 PM at 129–30.

susceptible to a number of criteria violations, both of which put the reliability of the system at risk. App. Ex. 3 at 3–4. As such, the Project is most certainly necessary to maintain grid stability.

From a legal perspective, the Legislature expressly repealed RSA 162-H:16, V (a), which required a finding of the present and future need for electricity. The Legislature's repeal of RSA 162-H:16, V (a) is a clear indication that "need" as a prerequisite for Certificate issuance is no longer necessary.

ISO-NE, a Regional Transmission Organization ("RTO"), is the independent, not-for-profit company authorized by the Federal Energy Regulatory Commission ("FERC") to operate the regional electric grid, oversee the wholesale electricity market, and ensure that New England's electricity needs are met.[241] ISO-NE is required to plan and operate the system to ensure that contingencies on the grid do not lead to blackouts.[242] To ensure the reliability of the electric grid, ISO-NE conducts comprehensive system analyses and planning.[243] As part of ISO-NE's regional system planning process, ISO-NE conducts ongoing engineering assessments that analyze and estimate New England's power system requirements 10 years into the future.[244] ISO-NE also identifies electricity consumption patterns and growth; adequacy of resources to meet demand; and issues related to power plant fuel supplies, fuel diversity, environmental requirements, and integration of new technologies.[245] This continuous process yields a biennial Regional System Plan that serves as a roadmap of system needs. *See June 2018 ISO-New*

[241] ISO-New England, *Our Three Critical Roles*, *available at* https://www.iso-ne.com/about/what-we-do/three-roles.
[242] ISO-New England, *What Is Reliability?*, *available at* https://www.iso-ne.com/about/what-we-do/in-depth/what-is-reliability.
[243] ISO-New England, *Power System and Planning*, *available at* https://www.iso-ne.com/about/what-we-do/three-roles/system-planning.
[244] Tr. Day 4 AM at 8.
[245] *Id.*

England Project Listing Update, App. Ex. 196 (listing the components of the Seacoast Reliability Project as "Planned" with projected in-service dates of December 2019).

ISO-NE has determined that additional transmission capacity is necessary in the Seacoast area to support the reliable delivery of electric power. *Application*, App. Ex. 1 at E-3. The ISO-New England 2020 Needs Assessment concluded that if the criteria violations are not addressed, the risk of system overloads could lead to potential power outages in the Seacoast Region and surrounding area.[246]

When ISO-NE identifies a need, a solution to address the need must be developed. In this instance, no other system alternatives or non-transmission alternatives came forward. Tr. Day 1 PM at 134.[247] Therefore, the transmission owner, Eversource, is obligated to come forward with a set of projects to address the 2020 Needs Assessment. Tr. Day 1 PM at 123. The ISO-NE Solutions Study assessed different proposed solutions to meet the identified need; initially, four potential options were put forward for review. Tr. Day 4 AM at 6–7. Through the ISO-NE Planning Advisory Committee ("PAC") process, two potential options were more fully examined and presented to the PAC. *Pre-Filed Testimony of Robert Andrew*, App. Ex. 3 at 5. The PAC considered a variety of different factors including benefits to the system and cost, and

[246] App. Ex. 3 at 4; s*ee also Stipulated Facts and Requested Findings of the Applicant and CFP*, App. Ex. 184 ⁋⁋ 37–38; Tr. Day 4 AM at 19–20, 23, 109–10 (Mr. Andrew testified that: (1) Transmission Operators must meet certain North American Electric Reliability "NERC" Standards for transmission planning; (2) in the Seacoast area "there are multiple sets of contingencies that cause line overloads and low-voltage violations"; (3) that the North American Electric Reliability Corporation ("NERC") requirements are currently being violated; and (4) "the ISO-New England report that justified this project had a critical load level of 18,500 megawatts in ISO peak load" and that "we reached that yesterday [September 17, 2018]" and "in the wintertime we go above . . . 20,000 MW.".

[247] Mr. Bowes testified that "ISO evaluated alternatives. No non-transmission alternatives came forward after their solicitation for them. We looked at a couple different transmission alternatives, families of them. ISO selected the Seacoast Reliability Project, as well as that whole family of projects." Tr. Day 3 PM at 145.

subsequently presented a "preferred solution". *Id.*; Tr. Day 4 AM at 8. Ultimately, the Seacoast Solution was selected as the preferred option.[248]

The PAC process is open to the public. Any interested party may receive notifications about the PAC process. Tr. Day 1 PM at 125–27. In fact, UNH and CLF are participants. *See* Tr. Day 1 PM at 126; Tr. Day 2 PM at 34. Moreover, the State of New Hampshire, through the Office of Consumer Advocate and Public Utilities Commission, is also involved in ISO-New England's planning process. Tr. Day 2 PM at 34.

It cannot credibly be argued that the Project is not necessary or needed.[249] ISO-New England updates its project list several times per year and the Seacoast Reliability Project remains on the list as of June 2018, *see* App. Ex. 196; ISO still expects the Project to be constructed.[250]

---

[248] *Pre-Filed Testimony of Robert Andrew*, App. Ex. 3 at 5; *see also Stipulated Facts and Requested Findings of the Applicant and CFP*, App. Ex. 184 ⁋⁋ 2–3, 36, 39.

[249] The only contravening evidence provided by any of the parties that would suggest the Project is not needed is the lay opinion of the Town of Newington's Chair of the Planning Board, Mr. Denis Hebert, who admittedly has no experience operating a regional electric grid. *See* Tr. Day 11 AM at 17 (without any concrete evidence, Mr. Hebert simply asserted that "I believe that there's enough power here in the region, in the Seacoast region to supply all the power we need including the 115 voltage down to lower voltages that's available that's on the grid."); Tr. Day 11 AM at 45 ("I said I think there's enough power in the region, and I think that the solution that is being chosen is incorrect). *But see* Tr. Day 11 AM at 47 (when asked whether the Project would address the technical issues regarding voltage concerns, Mr. Hebert said "I can't say I disagree with [Mr. Andrew] because I don't know those technical issues . . .. "I don't know what those technical issues are . . . ."). In addition, when questioned by the Subcommittee, Mr. Hebert conceded he is not qualified to analyze grid solutions that ISO-NE has presented, nor does he have "transmission line experience". Tr. Day 11 PM at 11–13. Attorney Geiger also clarified that she was "not proffering [Mr. Hebert] as an expert in transmission design or construction." *Id*. at 13. By contrast, when asked whether the Town of Durham questions whether the project is necessary to provide reliable electric service to the region by Subcommittee Member Shulock, Mr. Selig candidly admitted that the Town of Durham "take[s] Eversource and the ISO at their word" and that "[Eversource and ISO] are the experts in that area." Tr. Day 10 PM at 199. Mr. Selig also testified that if the Project were built and it achieved its stated goals of enhancing electric reliability for Durham and for UNH that it would be beneficial for businesses and residents in the area. Tr. Day 10 PM at 180.

[250] Tr. Day 3 PM at 184–85; App. Ex. 196; *see also* Tr. Day 4 PM at 9 (ISO has completed two other needs assessments and the solution that was identified is "not quite as dated as some people might think it is"); *June 2018 ISO-New England Project Listing Update*, App. Ex. 196 (listing the components of the Seacoast Reliability Project as "Planned" with projected in-service dates of December 2019).

In sum, the Applicant is not required to prove "need" as a matter of law. As a factual matter, there can be no doubt that this Project is necessary.

2. Other Alternative Projects Are Irrelevant to this Analysis

Opponents also argue that the Applicants should have pursued other alternatives.[251] In doing so, opponents fundamentally misconstrue the scope of the required alternatives analysis under RSA 162-H:7, V(b) and ignore the role of the ISO-NE under federal law. Applicants are required to "[i]dentify both the applicant's preferred choice and other alternatives *it considers available* for the site and configuration of each major part of the proposed facility and the reasons for the applicant's preferred choice." *Id*. (emphasis added). The statue unequivocally requires an applicant to identify locations that the *applicant* considers available for each *major part* of the proposed facility. The Applicant complied with that requirement here.

By contrast, opponents here argue for an alternatives analysis that is far beyond what the statute requires and, again, ignore ISO-NE. Specifically, they want a completely separate and distinct project—the so-called "Gosling Road" alternative—to be part of this assessment. The statute does not require the Applicant to assess other projects that parties think should have been considered if the Applicant has determined they are unavailable.[252] The SEC has unequivocally rejected that argument.

In Groton Wind, the SEC found that "RSA 162-H does not require the subcommittee to consider every possible alternative, including ones unavailable to the Applicant." *Decision Granting Certificate of Site and Facility,* Docket No. 2010-01, p. 27 (May 6, 2011). *See also,*

[251] *See e.g., Pre-Filed Testimony of Denis Hebert,* NEW-Ex. 1 at 15; *Pre-Filed Testimony of Todd Selig,* TD/UNH Ex. 1 at 2 (suggesting the Gosling Road alternative should be selected).
[252] *See* Tr. Day 4 PM at 50 (Mr. Andrew testified that once the Project was selected, Eversource was obligated to proceed to construct the Project and that Gosling Road could not have been chosen instead); *see also id*. at 18..

Laidlaw Berlin BioPower, *Decision Granting Certificate of Site and Facility*, Docket No. 2009-02, p. 37 (Nov. 8, 2010) (rejecting requests from intervenors to consider other alternative projects and stating that the SEC is not required to compare the efficacy of the Applicant and other potential facilities). Subsequent to restructuring, the SEC considered alternatives in terms of whether the applicant conducted a reasonable site selection process. Of further guidance in this regard is the SEC's decision in Granite Reliable Power, where the Subcommittee found that "the proposed site, its significant wind resources, its proximity to the transmission system and an already existing network of logging roads . . . render the proposed site the preferred location among the available alternatives for the construction of the proposed facility." *Decision Granting Certificate of Site and Facility*, Docket No. 2008-04, p. 28 (July 15, 2009).

The Subcommittee's practical analysis in these cases was confined to actual variations of the proposed facility that the applicant could construct. Similarly, the SEC expressly rejected consideration of alternative projects in both the Groton and Laidlaw cases, where interveners argued that other renewable energy projects were more efficient or caused less impact than the proposed facility. See *Decision Granting Certificate of Site and Facility with Conditions*, Docket No. 2010-01, pp. 26-27, 31 (May 6, 2011); *see also Laidlaw Decision Granting Certificate of Site and Facility with Conditions*, Docket No. 2009-02, pp. 37-38 (November 8, 2010). The lesson to be drawn from those cases is that an alternative is unavailable to the applicant if it is not something the applicant can implement,[253] and comparisons to such unavailable options, for any purpose, are irrelevant.

[253] Here, ISO-NE is ultimately responsible for the selection of the best and preferred solution to address the identified electric need in the region. The only available option to the Applicant is the Project selected by ISO-NE.

Notwithstanding the fact that the Gosling Road project is not relevant here, it was fully vetted by ISO-NE and was not selected as the preferred alternative:

> ISO evaluated alternatives. No non-transmission alternatives came forward after their solicitation for them. We looked at a couple different transmission alternatives, families of them. ISO selected the Seacoast Reliability Project, as well as that whole family of projects. They did not support Gosling Road. It did solve the electrical needs, but it also did more things that weren't needed at the time. . . . It was already and it is much more expensive than this project.

Bowes Testimony, Tr. Day 3 PM at 145–46.

Mr. Andrew testified that Gosling Road "provides far more capacity than the system needs." Tr. Day 4 AM at 11; Tr. Day 4 AM at 48-49 (stating that Gosling Road would provide 430 megawatts above what is needed).[254] Moreover, Gosling Road is significantly more expensive, estimated at around $200 to 210 million more.[255]

---

[254] The only information that suggests that Gosling Road is a "better" option is the lay opinion Mr. Hebert. Indeed, Mr. Hebert stated that while the so-called Gosling Road option would cost 22% more than SRP, Gosling Road would supply over 210% more power to the region. Tr. Day 11 AM at 17–18. Such a statement is entirely consistent with Eversource's and ISO-NE's position—the additional power above what is provided by SRP, and therefore the additional cost, is not needed and not warranted. When asked whether Mr. Hebert was aware if ISO-NE builds for the solution they need, and whether he was arguing ISO should ignore their normal practices, Mr. Hebert stated: "I think that ISO needs to look at the practice for the Seacoast region and make an exception." *Id*. at 45–46. Mr. Hebert's lay opinion on this matter should not be given any weight. If Mr. Hebert disagrees with ISO-NE's rules and practices, the Town should raise these issues with ISO-NE. Indeed, this Subcommittee has already ruled on this exact issue. *See Order on Motion Partially-Assented To Motion to Consult with ISO-New England,* Docket 2015-04, at 3 (April 24, 2018) ("The Subcommittee also decided that it does not have the authority, nor is it the Subcommittee's role, to request that ISO-NE modify its rules and proceedings. Newington's request that the Subcommittee ask ISO-NE to modify its rules and procedures is denied.").

[255] Tr. Day 4 PM at 25–26. *See also Applicant's Responses to the Town of Newington's First Set of Data Requests*, NEW Ex-4, at 5 ("In June of 2014, with the projected costs of the Project increasing, Eversource reexamined the proposed SRP suite of projects with the leading alternative, the Gosling Road projects. The revised estimates included the most recent actual costs for those projects in the selected suite of Seacoast Solutions. The results of the comparison confirmed the selected set of Seacoast Solutions remained a more cost-effective solution than the Gosling Road alternative with the differential between the overall project estimates increasing to near increasing to $90M."). Costs for the Gosling Road alternative, at $90 million more, are significantly higher than the cost of SRP. The Gosling Road suite of Projects goes well beyond what is required; if Gosling Road was built, it would be essentially "gold plating". Tr. Day 1 PM at 133.

Accordingly, for the reasons discussed above, including the unreliability of lay testimony,[256] this Subcommittee should not consider or entertain proposals for other projects or other alleged solutions[257] that are separate and distinct from the Application that is currently pending.

3. The Northern and Southern Routes are Not Available Options and Therefore Should Not Be Considered by the Subcommittee

A complete description of the Alternatives Analysis for the Applicant's preferred choice for each major part of the proposed facility is contained in the Application.[258] While Eversource initially analyzed two alternative routes in addition to the route currently proposed, the other two routes are not "available" as contemplated by RSA 162-H:7, V(b) for many reasons, described below.

As part of its route selection process, Eversource analyzed alternative routes within the area between the Madbury and Portsmouth substations. Eversource analyzed three different routes—a Northern, Middle, and Southern Route. *See* App. Ex. 42. When assessing the various routes, Eversource considered numerous factors to decide upon the optimal route.

The route selection objectives were to: (1) maximize the use of existing linear corridor (including the potential to co-locate within or along roads, railroad corridors, and existing natural gas pipeline corridors); (2) minimize the need to acquire new land or land rights; (3) minimize and avoid adverse impacts to environmental resources and limit permitting complexity to the

[256] ISO-NE is responsible for grid reliability, ensuring the lights stay on, and identifying solutions to identified needs. Tr. Day 1 AM at 75.
[257] During Subcommittee questions, Mr. Hebert attempted to demonstrate that there is enough power in the region. Mr. Hebert went on to describe a completely new and alternative project (i.e. installing a new transformer in Deerfield and a new transformer in Portsmouth) for the Committee to consider that "just dawned on [him] after Mr. Andrew spoke." Tr. Day 11 AM at 122–25. Mr. Hebert implied that he determined that the installation of these new transformers would solve the issues identified by ISO-NE and that the Project is not needed. *Id.*
[258] App. Ex. 1 at pages 48 to 5; *Pre-Filed Testimony of James Jiottis*, App. Ex. 6, at 5 to 9.

extent practicable; (4) maximize electrical reliability by correcting the identified voltage concerns at a reasonable cost and at the same time not causing additional voltage concerns that would require additional system fixes elsewhere; (5) maximize system operability while limiting maintenance activities associated with the line; (6) minimize cost; and (7) develop a route that would meet ISO-NE's preferred in-service date.[259]

The Applicant determined that the Northern Route was not available because it presented significant constructability, permitting, land rights, and cost issues. Primarily, the 12.5 mile long Northern Route was considered unavailable because 11.5 miles of the existing 115 kV and 345 kV transmission lines within the existing corridor would need to be relocated and rebuilt to accommodate the new line; and, the construction of the new line and relocation of existing transmission lines would have required the construction of approximately 24 miles of transmission lines. App. Ex. 1 at 49–50. The relocation and rebuild for a significant portion of the new line would increase cost, add one or more years to the overall Project schedule, and could potentially jeopardize the stability of the electric system in the region during construction because the existing transmission lines would have been removed from service for extended periods of time. *Id*. at 50. In addition, the Northern Route Alternative was determined unavailable in part because 11.8 miles of additional ROW would be needed. *Id*.

The Applicant determined that the Southern Route was unavailable because it would likely create more voltage and reliability issues than it would solve. *Id*. at 50–51. The Southern Route Alternative was almost twice the length of the Northern Route and the Middle Route, approximately seven (7) miles longer, which would result in greater "line-loss" and inefficiency. *Id*. Also, if the line were routed farther to the south of the Project area, the new 115 kV

[259] *Pre-Filed Testimony of James Jiottis*, App. Ex. 6 at 5.

transmission line would be further from the end point connections of the Madbury Substation and the Portsmouth Substation. As the length of the line increases, the cost of the Project increases significantly. *Id.* Further, costs would also be increased as this route would require construction of an additional capacitor bank at the Rochester or Madbury substation that would not be required for the other routes. The Southern Route also presented other technical issues associated with constructing the Project through the Portsmouth traffic circle, the need to secure additional land rights to construct the Project, and greater environmental impacts to wetlands and State-designated prime wetlands in the southern sections of the State. *Id.*

The middle route was determined to be the only available route and the preferred route because it maximizes the use of the existing linear corridor that already contains existing electric utility lines. *Id.* at 51. In addition, the Project, as originally proposed, did not require any additional land rights, minimizes and mitigates impacts to environmental and historical resources, maximizes the electrical reliability of the regional electrical system while addressing the needs in a cost-effective manner, and ensures that the Project is designed and constructed to meet ISO-NE's project requirements. *Id.*

4. Modifications to the Preferred Route, Such As, Additional Underground Are Not Warranted

Certain parties in this proceeding have argued that additional segments of the Project should be constructed underground. However, burying other segments of the Project is significantly more expensive and Eversource does not currently possess the legal rights to construct additional segments of the Project underground.

First, the cost of underground is approximately $8 million more per mile when compared to overhead (total cost per mile of underground is estimated at $10 million). Tr. Day 2 PM at 7; Tr. Day 3 AM at 6. The cost of which, would be borne by ratepayers.

Second, Eversource does not have the property rights to construct the Project underground in additional areas. To secure those rights, Eversource would have to engage in a costly and time-consuming process. Moreover, that process may not even be successful. Indeed, Mr. Bowes testified that Eversource that the owner on the Pickering land had no interest in the Project being underground there. Tr. Day 3 AM at 35; *see also* Tr. Day 2 PM at 12 (Eversource's attempt to relocate the transition structure on the Frink Farm property to outside of the Newington Center Historic District was rejected); *Tr. Public Statement Hearing* at 22–23 (Ms. Pickering stated publically that "[t]he Pickering Farm does not want underground lines on our farm because the damage from that would be much greater than the installation of four poles.").

F. Applicant's Responses to Conditions from Other Parties

Counsel for the Public Post-Hearing Brief Suggested Conditions at p. 68:

1. Pre-Construction surveys for all RTE species identified in the Project ROW or that may have habitat within the Project ROW.

   Response: Eversource and its contractors have already made multiple commitments that protect listed species more rigorously than the simple presence/absence surveys proposed by CFP; therefore, this suggested condition is not necessary. Examples of Eversource's commitments include the Project's BMPs and NHDES Wetland Condition 35, both of which require initial surveys of work areas by qualified personnel to remove any protected wildlife species prior to any impacts to the work areas. NHDES Wetland Condition 34 also requires the Environmental Monitor to conduct daily sweeps of work areas, and training of construction contractors to identify species of concern to provide additional survey capacity. These two steps will serve to both identify any individual animals within the work area, and to remove the animals from the work area. The BMPs also require coordination with NHDES and NHFG if a rare wildlife species is encountered, and NHDES and NHNHB if a rare plant is encountered. Both NHNHB and NHFG approved the Project's initial survey methodologies and results, and issued approvals of the draft BMP's in the latter half of 2017. They will also be able to comment or modify the BMPs with submittal of the final version in the winter of 2019-2020.

2. Pre-Construction aerial surveys for active raptor and bald eagle nests.

   Response: Eversource agrees that a combination of aerial and ground surveys is an effective monitoring method for pre-construction raptor nests. Aerial surveys are only effective for species that build large tree top nests, primarily eagles and ospreys, but have the advantage of being able to survey outside the right-of-way. Eversource will conduct ground surveys in the right-of-way to determine the presence of raptors that nest within the tree canopy. Eversource also agrees to conduct pre-construction aerial surveys for active raptor and bald eagle nests, which may not be visible from within the right of way corridor.

3. To the extent that construction activities are proposed in the winter in areas where RTE snake or turtle hibernacula may be present, the Applicant should be required to have environment monitors perform sweeps of construction areas, remove identified RTE specifies, and install exclusion fencing prior to applicable hibernation periods.

   Response: Eversource contends that additional surveys beyond what is already proposed for hibernating species are unnecessary. Based on habitat conditions within the right-of-way (ROW) and consultation with NHFG, the only protected species that could potentially use sections of the ROW for hibernation is northern black racer. At the request of NHFG, Eversource conducted surveys of several locations within the ROW that potentially supported hibernating black racers in October, 2016. Eversource did not observe congregations that would indicate a potential nearby hibernaculum. The pre-

construction surveys requested by CFP are not warranted because snakes would already be in the ground for the 2018-2019 winter, with construction potentially starting in Spring 2019 before the snakes emerge. Once construction begins, daily walk-downs of work areas will identify any snakes in the area, and construction staff will be specifically trained on the issue of black racers. If a hibernating black racer is observed during construction, work will be halted and NHFG contacted to determine next steps. The daily surveys will continue for the entirety of the construction period to remove any individual that enters the work area. Lastly, NHDES Wetland Condition 11 requires existing structures to be removed to be cut at the ground surface rather than pulled, in part to maintain underground structures to provide hibernating habitat for snakes.

Town of Durham / UNH Post-Hearing Brief Suggested Conditions at p. 35–36:

1. Make the Durham and UNH memoranda of understanding (MOU) conditions of the approval. App. Exh. 267 and 270.

   Response: The Applicant assents.

2. Require that the Applicant obtain the approval of Governor and Council and the Long Range Capital and Utilization Committee for an easement to install the transmission cable, fiber optic cable and concrete mattresses under Little Bay before issuing a certificate.

   Response: The Applicant objects. As discussed *supra* § IV.A.1–3, such approval is not necessary, nor is it required by law.

3. Require that the Applicant refile with the Public Utilities Commission for approval to cross Little Bay and that they include information about the concrete mattresses and obtain their approval before issuing a certificate.

   Response: The Applicant objects for the reasons discussed *supra* § IV.A.2–3.

4. Require that the Applicant and DES make available to the public all plans that are required to be filed with DES, including the results of the jet plow trial run.

   Response: To the extent parties wish to review the required NHDES plans, the Applicant agrees to submit the required plans to the SEC for posting to its website in the normal course.

5. Establish a process for the submission of public comment and a hearing before the SEC on all plans pertaining to Little Bay (including, but not limited to the following revised plans: Eelgrass Survey Plan, Benthic Habitat Monitoring Plan, Benthic Infaunal Community Plan, Mixing Zone Plan, Water Quality Monitoring and Adaptive Monitoring Plan, and Plan to assess shellfish tissue before and after the Little Bay Cable Crossing).

   Response: The Applicant objects to a public comment period and a hearing before the SEC on these NHDES required plans. To the extent parties wish to review the required NHDES plans, the Applicant agrees to submit the results to the SEC for posting to its

website in the normal course. Moreover, there is nothing stopping any party from submitting further comments to NHDES for their potential consideration, as they have in the past. Tr. Day 13 AM at 181–82.

6. Establish a process for making the results of the jet plow trial run available for review, comment, and a hearing before the SEC, making sure there is a reasonable/practical timeframe for thorough review, comments, and consideration, before jet plowing is allowed to proceed.

   Response: The Applicant objects to a public comment period and a hearing before the SEC on the results of the jet plow trial run. NHDES Revised Final Condition 60b already addresses this issue, provides adequate time for NHDES and SEC to review the jet plow trial results, and conditions the installation of the submarine cable crossing on the final authorization of NHDES and SEC. To the extent parties wish to review the jet plow trial results, the Applicant agrees to submit the results to the SEC for posting to its website in the normal course. Moreover, there is nothing stopping any party from submitting further comments to NHDES for their potential consideration, as they have in the past. Tr. Day 13 AM at 181–82.

7. Before issuing an order, hire an independent expert to look into HDD, and establish a process for a hearing and comments on the results of this review.

   Response: The Applicant objects. This proposed condition is unnecessary and has already been explicitly rejected by the Subcommittee. *See Order on Pending Motions*, Docket 2015-04 (July 31, 2018) (assessing whether the Subcommittee should retain an independent consultant to address HDD and concluding that "hiring another submarine construction consultant is unnecessary and would be duplicative of the efforts of Counsel for the Public" and that "[t]here is no reason to question either the qualifications or the independence of Counsel for the Public's consultants.").

Town of Newington Post-Hearing Brief Suggested Conditions at p. 56–60:

1. The high voltage transmission line must be buried in all areas where it passes through Newington's Residential and Historic Districts.

   Response: The Applicant objects. As discussed *supra* § IV.E.4, imposing such a requirement is not necessary based on the record.

2. The provisions of Newington's MOU and Amendment regarding construction and blasting should be included as Certificate Conditions.

   Response: The Applicant assents.

3. Property value guarantee.

   Response: The Applicant objects. As discussed *supra* § III.B.3.i, such a requirement is not necessary based on the record. Moreover, as discussed *supra* § III.A.2.ii, the Applicant and Counsel for the Public have jointly proposed a Mitigation and Dispute

Resolution Process, which also covers potential impact to property values. An additional so-called property value guarantee above and beyond what has already been committed to by the Applicant is not warranted.

4. The conditions listed in Site 301.17 should be included in the certificate in order to meet the objectives of RSA 162-H:

   Response: Site 301.17 speaks for itself and the Applicant takes no position.

5. The Subcommittee should require the Applicant to comply with RSA 4:40 and obtain permission from Governor and Council for laying cable and concrete mattresses under and on the shorelines of Little Bay.

   Response: The Applicant objects. As discussed *supra* § IV.A.1–3, such approval is not necessary, nor is it required by law.

6. The Subcommittee should require the Applicant to Inform the Public Utilities Commission of its Intent to Use Concrete Mattresses in Little Bay.

   Response: The Applicant objects for the reasons discussed *supra* § IV.A.2–3.

V. Conclusion

The record contains substantial evidence with respect to each of the criteria set forth in RSA 162-H:16, IV such that Eversource has more than met its burden of proof with respect to each of these requirements. Accordingly, Eversource respectfully requests that this Subcommittee issue a Certificate of Site and Facility for the Seacoast Reliability Project, subject to any conditions it deems necessary and appropriate.

Respectfully Submitted,

Public Service Company of New Hampshire d/b/a Eversource Energy

By its attorneys,

McLANE MIDDLETON
PROFESSIONAL ASSOCIATION

Dated: November 21, 2018

By: _____

Barry Needleman, Esq. Bar No. 9446
Adam Dumville, Esq. Bar No. 20715
11 South Main Street, Suite 500
Concord, NH 03301
(603) 226-0400
barry.needleman@mclane.com
adam.dumville@mclane.com

Certificate of Service

I hereby certify that on the 21st day of November, 2018, an electronic copy of this objection was filed with the NH Site Evaluation Committee and an electronic copy was sent to the Distribution List.

_____

Barry Needleman