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VIA ELECTRONIC MAIL

November 9, 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 Objection to Counsel for the Public's Motion to Strike NHDES'S
October 29, 2018 Revised Final Decision**

Dear Ms. Monroe:

Enclosed for filing in the above-referenced docket is the Applicant's Objection to Counsel for the Public's Motion to Strike NHDES'S October 29, 2018 Revised Final Decision.

Please call me with any questions.

Sincerely,

A handwritten signature in blue ink that reads "Adam Dumville".

Adam M. Dumville

AMD: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 OBJECTION TO COUNSEL FOR THE PUBLIC’S MOTION TO
STRIKE NHDES’S OCTOBER 29, 2018 REVISED FINAL DECISION**

NOW COMES Public Service Company of New Hampshire d/b/a Eversource Energy (“Eversource”) (the “Applicant”), by and through its attorneys, McLane Middleton, Professional Association, and objects to Counsel for the Public’s Motion to Strike NHDES’s October 29, 2018 Revised Final Decision (“the CFP Motion”). The Motion should be denied for four reasons: (1) the requested relief is contrary to RSA 162-H:7-a and RSA 162-H:16, I; (2) the Subcommittee specifically requested a single list of permit conditions during the final hearings; (3) there is no statutory prohibition against agencies amending their permit decisions in an SEC proceeding; and (4) the Parties had a full and fair opportunity to address the contents of the October 29, 2018 Revised Final Decision.

I. Background

1. On October 24, 2018, the Town of Durham/UNH, Town of Newington, and Conservation Law Foundation filed a Joint Motion to Strike NHDES’s “Post-Final” Decision Recommendations and Related Testimony (the “Joint Motion”). On November 2, 2018, the Applicant objected to the Joint Motion (the “Objection to Joint Motion”).

2. The Applicant incorporates and re-alleges the facts and arguments as stated in its Objection to Join Motion. In addition to the pertinent facts and circumstances described in ¶¶ 1

-9 to the Applicant's Objection to the Joint Motion, the following additional facts are relevant to this Objection.

3. Following the conclusion of the cross-examination of the Applicant's Environmental Panel, many parties, including the Town of Durham/UNH, Town of Newington, and CLF, asked the SEC to request that the New Hampshire Department of Environmental Services ("DES or the "Department") issue a final, integrated permit document containing all terms and conditions falling under DES permitting authority. Specifically, Attorney Ludtke representing CLF, stated that "I think it would benefit everyone in this proceeding if the Committee would make a request to DES to issue a final permit document so we would have a single document that would contain all the relevant conditions and all the relevant text corrections." Transcript Day 6 AM at 164. Many other parties, including the Applicant, concurred with the request.

4. The Presiding Officer, after hearing similar requests, stated that:

We actually have asked DES, because pieces are floating around in different documents, we have asked them for a single list of permit conditions. What we will do is -- and they were not receptive to that idea. We will ask again and try to be a little more persuasive and see if we can get a single document that everyone can use so that everything is in the same location.

Concerning the ever-evolving process here, it is a fairly typical process. And if someone feels at any point that they need to call a witness back, you can make a motion to do so and the Committee will consider it, but for me to make a decision right now on that would be premature.

Transcript Day 6 AM at 171.

5. Following a direct request from the SEC, the Department responded with a Revised Final Decision on October 29, 2018 that incorporates all of the February 28, 2018 and August 31, 2018 permit conditions into one document. While it has been argued that the Revised Final Decision alters the status of the permit conditions, it has not been alleged that the October

29, 2018 Revised Final Decision contains any significant additional changes or modifications to the contents of the permit that were not already made as of August 31, 2018.

II. Discussion

6. First, as described in the Applicant’s Objection to the Joint Motion, ¶¶ 10–15, striking the Revised Final Decision—which simply puts all terms and conditions of the February 28 permit and August 31 letter into one place—would be contrary to RSA 162-H:7-a and RSA 162-H:16, I. Also, as discussed in the Objection to Joint Motion, the SEC is required to consider “all relevant information” when assessing whether the Applicant has satisfied the requirements of RSA 162-H:16, IV. Pursuant to RSA 162-H, 16, I, the Subcommittee must “incorporate in any certificate *such terms and conditions* as may be specified to the committee by any of the state agencies having permitting authority.” (emphasis added). The Subcommittee is not free to reject permit conditions (or amended permit conditions), unless it employs its authority in RSA 162-H:7-a, I(e).

7. Here, the Department revised and modified its February 28, 2018 permit, in part, to make text corrections to its initial permit and in part to make minor modifications to certain conditions. *See Objection to Joint Motion*, ¶ 14; *see also* Transcript Day 6 AM at 161–62 (Attorney Iacopino clarifying that the February 28, 2018 permit contained incorrect permit numbers and that the August 31, 2018 letter, App. Ex. 183, contained DES’s acceptance of the text corrections). It cannot be credibly argued that changes to the permit to correct errors should not be considered by this Subcommittee.

8. Second, the Subcommittee made a specific request to the Department to combine all of its permit conditions into one document. *See supra* ¶ 4. Committee Exhibits 12c and 12d are directly responsive to the Committee’s request and therefore should not be struck from the

official record. *See* RSA 162-H:7-a, V (“All communications between the committee and agencies regarding a pending committee matter shall be included in the official record and be publicly available.”).

9. Third, the Applicant disagrees with Counsel for the Public’s characterization of the Department’s August 31, 2018 update and the NHDES Revised Final Decision. The changes made to the Department’s permits do not infringe upon the SEC’s express statutory authority to decide whether to grant a Certificate of Site and Facility. *CFP’s Motion to Strike*, at ¶ 3. Indeed, it is quite the opposite. Here, the Applicant has worked with DES to address concerns and/or issues with certain permit conditions. By working with the Department, the Applicant/permittee successfully obtained clarity in the permit conditions. The Subcommittee is still free to amend permit conditions if it feels necessary. Working with the Department to modify conditions of a Department-issued permit does not usurp the Subcommittee’s authority in anyway.

10. The Applicant agrees that the Subcommittee has the sole authority to decide whether to issue a Certificate of Site and Facility. However the Applicant disagrees that after the agency issues a decision that its role is limited, and also disagrees that the agency’s authority to propose terms and conditions ends. RSA 162-H:7-a, I(a)-(c) authorize state agencies with permitting or other regulatory authority to participate in SEC proceedings to:

- (a) Receive proposals or permit requests within the agency's permitting or other regulatory authority, expertise, or both; determine completeness of elements required for such agency's permitting or other programs; and report on such issues to the committee;
- (b) Review proposals or permit requests and submit recommended draft permit terms and conditions to the committee;
- (c) Identify issues of concern on the proposal or permit request or notify the committee that the application raises no issues of concern;

The Applicant submits that the underlying motion construes RSA 162-H:7, VI-c in isolation and is out of context with the entire siting statute. Indeed, it is well established in New Hampshire case law that “an interpretation of a statute by the agency charged with its administration is entitled to deference.” *In re Town of Seabrook*, 163 N.H. 635, 644 (2012); *see also Appeal of Weaver*, 150 N.H. 254, 256 (2003) (“[S]tatutory construction by those charged with its administration is entitled to substantial deference . . .”).

11. RSA 162-H:7-a does not contain any time restrictions on an agency’s participation. There are no limitations on an agency’s receipt of “proposals or permit requests within the agency’s permitting or other regulatory authority,” nor are there restrictions on when an agency can “identify issues of concern . . . or notify the committee that the application raises no issues of concern.” Here, the Department complied with its legal authority in RSA 162-H:7-a by receiving proposals and notifying the committee of its view on the Applicant’s proposals.

12. Lastly, Committee Exhibits 12c and 12d were submitted by the Department so that all permit terms are contained in one document. Counsel for the Public’s Motion to Strike does not allege that any additional and substantial changes were made to the permit conditions following the August 31, 2018 DES Response letter. Therefore, and as described more fully in the Applicant’s Objection to the Joint Motion ¶¶ 23–25, all parties had a full and fair opportunity to address the August 31, 2018 letter. As it has not been alleged that substantial additional changes have been made since August 31, all parties were able to respond to and present evidence on all issues that make up the October 29, 2018 NHDES Revised Final Decision, and there has been no prejudice or harm to any of the parties. *See* RSA 541-A:31, IV; *Counsel for the Public’s Response to the Joint Motion to Strike* ¶ 23 (stating that “CFP believes that the parties

have had an opportunity to address the August 31, 2018 NHDES response during the adjudicative hearings”).

13. The October 29, 2018 Revised Final Decision has been properly issued by the Department and the Subcommittee should incorporate its final terms and conditions into any Certificate of Site and Facility if issued. Should the Subcommittee wish to alter terms and conditions, of course, it is free to do so pursuant to RSA 162-H:7-a, I(e). However, the Subcommittee should not strike the Revised Final Decision from the record. To the extent the Subcommittee agrees with Counsel for the Public’s interpretation of RSA 162-H, which the Applicant challenges as discussed above, the Applicant would simply ask that the documents titled “Revised Final Decision” be clarified as requested by Counsel for the Public in its Prayer for Relief and in paragraph 13 of its Motion to Strike; however, Committee Exhibits 12c and 12d should not be struck.

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WHEREFORE, the Applicant respectfully asks that the Subcommittee:

- A. Deny the request to strike Committee Exhibits 12c and 12d from the official record; and
- B. Grant such other further relief as is deemed just and appropriate.


Respectfully Submitted,

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

By its attorneys,

McLANE MIDDLETON
PROFESSIONAL ASSOCIATION

Dated: November 9, 2018

By: 

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Certificate of Service

I hereby certify that on the 9th 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.



Adam Dumville