

**THE STATE OF NEW HAMPSHIRE
SITE EVALUATION COMMITTEE**

Joint Application of Northern Pass Transmission, LLC and Public Service Company of New Hampshire d/b/a Eversource Energy for a Certificate of Site and Facility for the Construction of a New High Voltage Transmission Line in New Hampshire

Docket No. 2015-06

**MUNICIPAL GROUPS 1 SOUTH, 2, 3 SOUTH AND 3 NORTH'S
OBJECTION TO MOTION FOR RECUSAL**

Municipal Intervenor Groups 1 South, 2, 3 South and 3 North respectfully object to the motion for recusal filed by the International Brotherhood of Electrical Workers and the Coos County Business and Employers Group (collectively, the “Business Intervenor Group”), stating as follows:

1. On April 20, 2018, the Business Intervenor Group filed a Motion for Recusal requesting Subcommittee Members Weathersby and Bailey to recuse themselves for the remainder of the proceedings in this matter. The undersigned municipalities object.

2. The Motion for Recusal not only fails to recognize the context in which the statements were made during deliberations, but it also does not adequately set forth the legal standard for recusal.

3. On the second day of deliberations, the Subcommittee members evaluated the evidence submitted on the various elements of the orderly development criteria. *See generally* Tr. 1/31/18 (Day 2 AM and PM Deliberations). The following day, in order to more concisely frame those discussions, Chairman Honiberg provided an overview of the legal framework and standards to apply when evaluating the various elements of orderly development. Tr. 2/1/18 at 3-6 (Day 3AM Deliberations) (discussing RSA 162-H:16, IV(b) and N.H. Admin. Rules, Site 301.15 and 301.09). The Subcommittee members were then polled and each concluded that,

after considering the various components of orderly development, that the Applicants failed to meet their burden. *See generally* Tr. 2/1/18, at 6-32 (Day 3AM Deliberations).

4. Later that day, after having found that the Applicants failed to meet their burden on the various components of orderly development, the Subcommittee took a vote on a motion to end deliberations in the above-referenced matter. Tr. 2/1/18 at 24 (Day 3PM Deliberations).

The Subcommittee then unanimously voted to approve a formal motion to find that the Applicants had failed to meet their burden of proof under RSA 162-H:16 to show that “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 the municipal and regional planning commissions and municipal governing bodies.” Tr. 2/1/18 at 24-26 (Day 3PM Deliberations).

5. The statements made by Subcommittee Members Weathersby and Bailey were made after the Subcommittee had unanimously found that the Applicants had failed to meet their burden on orderly development. The Subcommittee was then faced with deciding whether to continue deliberating on all of the other factors that would need to be reviewed in further consideration of the Application, or alternatively, to end deliberations on the basis that the orderly development standard had not been satisfied. All of the statements referenced by the Business Intervenor Group were made by Subcommittee Members Weathersby and Bailey regarding whether it would be appropriate and/or necessary to deliberate on the remaining factors. There is no reason to doubt the impartiality of those Subcommittee members based on their statements.

6. The Business Intervenor Group has further failed to reference any law to support recusal. Their reliance on the case *Appeal of Seacoast Anti-Pollution League*, 125 N.H. 465 (1984) is unavailing. That case relates to a whether the chairman of the Public Utilities

Commission should be recused based on a speech that was made before the Portsmouth Chamber of Commerce in which he expressed opinions about financing requests made by Public Service Company of New Hampshire (“PSNH”). At the time of his speech, he was aware that there would be future financing requests. The New Hampshire Supreme Court explained that

By making a speech containing his commendation of PSNH’s efforts to avoid bankruptcy and complete Unit I and by referring to the Merrill Lynch package as appearing to be in the best interest of New Hampshire, at a time when he was well aware that he would be deciding future financing requests which PSNH has characterized as crucial to the success of the “bail-out” plan, McQuade allowed his impartiality on the matters pending before the commission to be questioned. *It is the time, place and content of his speech that are the problem here.*

Id. at 471. Unlike that case, the “time, place and comments” of Subcommittee Members Weathersby and Bailey were not problematic.

7. The case *Appeal of Lathrop*, 122 N.H. 262 (1984) involved whether members of the New Hampshire Water Resources Board had determined the outcome of a petition before the hearing and decision. In that case, the Water Resources Board had taken votes to ensure that the project would be approved before the petition had been filed. Again, the facts of that case are easily distinguishable.

8. In short, there is no basis under the facts or law referenced by the Business Intervenor Group to require recusal of Subcommittee Members Weathersby and Bailey. No objective-reasonable person reviewing the record would have a reason to doubt their impartiality. WHEREFORE, the undersigned municipalities request that the Site Evaluation Committee:

- a. Deny the Motion for Recusal; and
- b. Grant such further relief as it deems appropriate.

Respectfully submitted,

By and through its attorneys,

CITY OF CONCORD

Dated: April 30, 2018

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TOWNS OF NEW HAMPTON, LITTLETON,
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WATER & SEWER DEPARTMENT

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Dated: April 30, 2018

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TOWNS OF BRISTOL, EASTON, FRANCONIA,
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CERTIFICATE OF SERVICE

I hereby certify that on this date, a copy of the foregoing was sent by electronic mail to persons named on the Service List of this docket.

Dated: April 30, 2018

By: /s/ Steven Whitley
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