

**THE STATE OF NEW HAMPSHIRE
SUPREME COURT**

No. 2019-0277

**PUBLIC SERVICE COMPANY OF NEW HAMPSHIRE D/B/A
EVERSOURCE ENERGY
SEACOAST RELIABILITY PROJECT**

**APPEAL OF CONSERVATION LAW FOUNDATION
APPEAL OF DONNA M. HEALD, ET AL.**

**CONSERVATION LAW FOUNDATION'S
MOTION FOR IMMEDIATE STAY OF
SITE EVALUATION COMMITTEE'S DECISION
AND CERTIFICATE OF SITE AND FACILITY**

Conservation Law Foundation (“CLF”), an appellant in the above-captioned proceeding, hereby moves for a stay of the New Hampshire Site Evaluation Committee’s (“SEC”) Decision and Order (“decision”) and associated certificate of site and facility (“certificate”) that are the subject of this appeal. In support of its motion, CLF states as follows:

Introduction

1. This appeal, which the Court accepted by order dated July 26, 2019, pertains to whether Public Service Company of New Hampshire

d/b/a Eversource Energy (“Appellee”) can lawfully install up to 8,681 square feet of concrete structures on tidal lands in Little Bay absent review and a grant of right by the Governor and Executive Council (“Governor and Council”). *See* Notice of Appeal (“NOA”) at 8, 15-19. Despite CLF’s filing of a motion with the SEC seeking a stay of its decision, and despite full knowledge of this appeal, Appellee has proceeded with construction and intends to commence construction activities in Little Bay in early September and complete installation of concrete structures in the bay in November. Because Appellee has not yet secured the legal right to install concrete structures in Little Bay, its ongoing and planned construction activities are not in the interest of justice. Accordingly, CLF seeks a stay of the SEC’s decision and certificate pending this appeal.

Procedural Background

2. On January 31, 2019, a subcommittee of the SEC (“Subcommittee”) issued a decision and certificate authorizing Appellee to construct and operate a project consisting of a 12.9-mile electric transmission line from Madbury, New Hampshire to Portsmouth (“project”). NOA Appendix (“App.”) Vol. I at 5. The project includes three transmission cables that are proposed to cross Little Bay, including

8,681 square feet of articulated concrete structures in Little Bay in places where a burial depth of 42 inches cannot be achieved. *See* NOA App. Vol. I at 18, 11, 117; NOA App. Vol. III at 303.

3. On April 11, 2019, the Subcommittee issued a decision and order denying timely motions for rehearing filed by CLF and other intervenors. NOA App. Vol. III at 200.

4. On April 19, 2019, Appellee notified the SEC's administrator of its intent to commence construction on portions of the project beginning on May 6, 2019. *See* Exhibit 1 in Appendix to this Motion ("Motion App.") at 13). The notice stated that construction activities would not occur in areas under the regulatory jurisdiction of the United States Army Corps of Engineers ("Army Corps"), including wetlands resources along the project route, until it had received approvals from the Army Corps. *Id.*

5. On May 1, 2019, CLF filed with the SEC Subcommittee a motion to stay the Subcommittee's decision and certificate. *See* Exhibit 2 (Motion App. at 15). In its motion, CLF stated its intent to seek judicial review of the Subcommittee's decision in the New Hampshire Supreme Court and further noted that Appellant had not obtained necessary federal approvals from the Army Corps. *Id.* (Motion App. at 16). CLF requested

that the Subcommittee stay its decision, including the effectiveness of the certificate and the commencement of construction, until such time as Appellee had a final, unappealable decision and certificate and had obtained all legally required permits. *Id.* (Motion App. at 19).

6. On May 8, 2019, Appellee filed an objection to CLF's motion to stay arguing, *inter alia*, that the SEC lacked authority to suspend the certificate and that the only tribunal that could suspend a final order of the Subcommittee is the New Hampshire Supreme Court. *See* Exhibit 3 (Motion App. at 21).

7. On May 13, 2019, CLF timely filed its Notice of Appeal commencing this action before the Court.

8. On May 20, 2019, the Subcommittee issued an order denying CLF's motion to stay. *See* Exhibit 4 (Motion App. at 26). In its order, the Subcommittee stated that it lacked statutory authority to stay the certificate and that only the New Hampshire Supreme Court has such authority. *Id.* (Motion App. at 29).

9. On May 30, 2019, CLF sent correspondence to Appellee's counsel stating its position that in light of its appeal to the Supreme Court, and given the Army Corps' then-ongoing permit review process, it was

premature for Appellee to proceed with construction. *See* Exhibit 5 (Motion App. at 30). CLF further stated its intent to request the Supreme Court to stay the effectiveness of the SEC’s decision and that construction costs incurred before Appellee obtained all final approvals would be at Appellee’s financial risk. *Id.*

10. On July 15, 2019, the SEC distributed to parties on its service list for the project’s docket, including CLF, correspondence from Appellee’s counsel, dated July 8, 2019, informing the SEC that the Army Corps had issued a permit for the project and notifying the SEC “of its intent to immediately commence construction in areas that have now been permitted by [the Army Corps].” *See* Exhibit 6 (Motion App. at 31, 32).

11. According to the most updated version of Appellee’s “Seacoast Reliability Project Anticipated Construction Schedule” posted on the SEC’s docket (updated July 17, 2019), Appellee commenced certain preconstruction and construction activities in July and intends to commence construction activities in Little Bay in early September and to install the associated concrete structures in November. *See* Exhibit 7 (Motion App. at 39, 40).

12. On July 26, 2019, the Court issued an order accepting this appeal for briefing and oral argument before the full court.

Argument

13. Appeals from decisions of the SEC are governed by RSA Chapter 541, including RSA 541:18, which states:

Suspension of Order. No appeal or other proceedings taken from an order of the commission shall suspend the operation of such order; provided, that *the supreme court may order a suspension of such order pending the determination of such appeal or other proceeding whenever, in the opinion of the court, justice may require such suspension*

Emphasis added.

14. This appeal involves matters of significance to the public. It involves a public resource of great importance (Little Bay, part of the Great Bay estuary, which has been designated an estuary of national significance), and it involves important legal questions about whether, under the state's public trust doctrine and relevant statutes, the Governor and Council have been unlawfully deprived of the ability to review and either grant or deny the right for Appellee to install concrete structures on tidally submerged lands in the bay, and whether Appellee has the legal right to proceed with construction on tidal lands held by the state in trust for the public. *See* NOA at 8, 15-19.

15. Importantly, the concrete structures at issue in this appeal are a significant part of the project's ability to cross Little Bay as currently contemplated and, therefore, to the project as a whole. If, as a result of this appeal and Governor and Council review, Appellee is unable to obtain the legal right to install concrete structures in the bay, Appellee will need to develop other alternatives. *See, e.g.*, NOA Vol. I at 151-152 ("The Applicant must install the [concrete] mattresses over the submarine cables to comply with the National Electrical Safety Code at the locations where the minimum burial depth (42 inches to the top of the cable) cannot be reached due to bedrock or other material.").

16. In light of the foregoing, and for the reasons that follow, Appellee's ongoing and future construction activities are contrary to the interest of justice and warrant a stay of the decision and certificate pending this appeal and any further review and approval process that may be determined by the Court to be required.

17. If a stay is not granted, Appellee's planned installation of concrete structures in Little Bay (scheduled to take place in November) will likely pre-date both the final disposition of this appeal and, should the Court agree that Governor and Council review is legally required, the

opportunity for the Governor and Council to engage in its review and decision-making. It would be contrary to the interest of justice to allow Appellee to proceed with the installation of concrete mattresses – implicating resources subject to the state’s public trust doctrine – before important public trust and related statutory considerations are fully considered by this Court. It would be equally contrary to the interest of justice to allow Appellee to proceed in a manner that deprives the Governor and Council of its ability to review and either grant or deny Appellee the right to install concrete structures in Little Bay. Because the concrete structures are an integral part of the overall project (the proposed cables in Little Bay will be inoperable without them, and an alternative project route may become necessary), it also would be contrary to the interest of justice to allow Appellee to proceed with its planned construction activities in Little Bay (proposed to begin in early September), and with its ongoing construction activities, without full, legally established authority to install the concrete structures in Little Bay. Such construction activities could lead to unnecessary, irreparable harm to the environment, as well as economic waste, should Appellee not obtain the right to use the concrete structures, necessitating an alternative approach to the project (*e.g.*, a

different approach to crossing Little Bay, or a different route to avoid Little Bay).

18. In addition to the foregoing, Appellee's current and ongoing construction activities, as well as its planned construction activities in Little Bay, could be used to the unfair advantage of Appellee in seeking a grant of right from the Governor and Council, should the Court agree that such grant of right is legally required. Specifically, having invested in construction activities and infrastructure during the pendency of this appeal and any further required process, it can be reasonably anticipated that Appellee, in urging the Governor and Council to grant the right to install concrete structures in Little Bay, would heavily emphasize project costs already incurred. It would be unfair both to the Governor and Council and to the public to allow Appellee to continue incurring project costs in the hopes of creating a foregone conclusion that the right to install concrete mattresses should be granted.

19. Appellants Donna M. Heald, Matthew and Amanda Fitch, Jeffrey and Vivian Miller, Thomas and Yael DeCapo, Lawrence Gans and Anne Darragh, Regis Miller, and Nick Smith assent to the relief requested in this motion. Appellee objects.

WHEREFORE, CLF respectfully requests that the Court enter an order immediately staying the effectiveness of the SEC Subcommittee's decision and certificate pending its determination of the issues raised in this appeal and pending any further proceedings required as a result of the Court's final decision.

Dated: July 30, 2019

Respectfully submitted,

CONSERVATION LAW FOUNDATION

By: /s/ Thomas F. Irwin
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(603) 225-3060
tirwin@clf.org

Certificate of Service

I hereby certify that a copy of this motion has this day been served electronically through ECF upon all counsel of record and by email to the service list in SEC Docket No. 2015-04.

/s/ Thomas F. Irwin
Thomas F. Irwin

APPENDIX

Exhibit 1	April 19, 2019 Correspondence from Appellee Notifying SEC of Intent to Commence Construction.....	13
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VIA E-MAIL

April 19, 2019

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 (“Eversource”) for a New 115k Transmission Line from Madbury Substation to Portsmouth Substation
Eversource’s Notification of Commencement of Construction**

Dear Ms. Monroe:

In accordance with its Certificate of Site and Facility issued by the Site Evaluation Committee on January 31, 2019, Eversource hereby provides you with notice of its intent to commence construction on portions of the Seacoast Reliability Project beginning on May 6, 2019. *See Order and Certificate of Site and Facility with Conditions*, Docket 2015-04, at 13. To support these construction activities, Eversource will begin mobilizing construction equipment on April 29, 2019.

To date, Eversource has not received a permit from the United States Army Corps of Engineers (“USACE”) for work in USACE jurisdictional wetlands. Therefore, until Eversource receives its permit from USACE, Eversource will not conduct any construction activities within any USACE jurisdictional areas, including wetland resources and the historic cable house, along the Project route.

In addition, the New Hampshire Department of Transportation (“NHDOT”) has not yet issued Eversource certain required permits for construction of the Project along and across state-maintained highways. Until Eversource receives its permits from NHDOT, Eversource will not conduct any construction activities that require NHDOT approval.

As soon as Eversource receives its permits from USACE and NHDOT, Eversource will provide you with a copy of those permits.

Please contact me directly should you have any questions.

Sincerely,



Adam M. Dumville

AMD:slb
Enclosure

**STATE OF NEW HAMPSHIRE
SITE EVALUATION COMMITTEE**

Docket No. 2015-04

Application of Public Service Company of New Hampshire
d/b/a Eversource Energy for a Certificate of Site and Facility for Construction of New
Transmission Line (Madbury to Portsmouth)

**MOTION OF CONSERVATION LAW FOUNDATION
TO STAY DECISION AND ORDER GRANTING
CERTIFICATE OF SITE AND FACILITY**

Conservation Law Foundation (“CLF”), an intervenor in this proceeding, hereby moves for a stay of the Decision and Order granting a Certificate of Site and Facility for the project that is the subject of this docket. In support of its motion, CLF states as follows:

Introduction

1. This proceeding concerns an application by Eversource (“Applicant”) for a certificate of site and facility to site, construct and operate a new 115kV transmission line from Madbury to Portsmouth (“project”). The project includes a proposal to install three cables across Little Bay using jet plow, hand-jetting, and trenching methods.

2. Following a lengthy adjudicatory process involving Applicant, Counsel for the Public, and several intervenors, including CLF, on January 31, 2019, the Committee issued a decision granting Applicant a certificate of site and facility.

3. Following the Committee's decision, CLF, the Durham Residents Group, and the Town of Durham timely filed motions for rehearing and/or reconsideration. On April 11, 2019, the Committee issued a decision denying such motions.

4. On April 19, 2019, without providing notice to the intervenors in this proceeding, Eversource submitted correspondence to the Site Evaluation Committee (Committee) notifying the Committee of its intent to commence construction of portions of the Seacoast Reliability Project on May 6, 2019.

Argument

5. The commencement of construction is premature for at least three reasons and, if permitted to proceed, could result in wasted resources, unnecessary environmental and community impacts, and practical constraints on other entities with decision-making authority.

6. First, commencement of construction is premature because the Committee's decision and order granting a certificate of site and facility remains subject to appeal and, as such, cannot be considered a final, unappealable decision. To the contrary, the time period for seeking judicial review of the Committee's decision and order does not expire until May 13, 2019. *See* RSA 162-H:11, RSA 541:6. CLF intends to petition the Supreme Court for judicial review within this time period and, upon information, believes other intervenors may as well. Unless and until appeals rights have been exhausted, the Committee's decision and order, including the certificate of site and facility, are not final and construction should not be permitted to proceed.

7. In addition to lacking a final, unappealable certificate, Eversource's intent to

commence construction also is premature because the U.S. Army Corps of Engineers (“Army Corps”) has not rendered a determination on Applicant’s application for a Section 404 permit under the Clean Water Act, relative to the project’s impacts on resources within the Army Corps’ jurisdiction. More specifically, on April 23, 2019, the Army Corps published a public notice of its Section 404 permitting process.¹ The public notice signals a significant departure from the Army Corps’ reliance primarily on the N.H. Department of Environmental Services for wetlands permitting purposes pursuant to a general permit issued by the Army Corps. Instead, the Army Corps is now proceeding with an *individual* permitting process for the project. Pursuant to this process, the Army Corps (a) has opened a public comment period, (b) has invited the requests for a public hearing, (c) will review the project’s impacts on aquatic resources and on the public interest, (d) will prepare either an Environmental Assessment or Environmental Impact Statement pursuant to the National Environmental Policy Act, and (e) will determine whether to grant required permits under Section 404 of the Clean Water Act and Section 10 of the Rivers and Harbors Act of 1899.² Unless and until this process results in the issuance of required permits, Applicant lacks authority to engage in work in wetlands and aquatic resources within the Army Corps’ jurisdiction, including but not limited to Little Bay.

8. In addition to lacking a final, unappealable certificate and required permits from the Army Corps, according to Applicant’s April 19, 2019 correspondence to the Committee, the project has not received required permits from the N.H. Department of Transportation.

9. Because Applicant has not obtained necessary approvals for the project, including

¹ See Public Notice, Army Corps, File No. NAE-2015-00665, at <https://www.nae.usace.army.mil/Portals/74/docs/regulatory/PublicNotices/2019/NAE-2015-00665-PN.pdf>.

² *Id.*

a final and unappealable certificate, there is a significant risk that the commencement of construction will result in wasted resources and unnecessary community and environmental impacts. For example, the New Hampshire Supreme Court and the Army Corps could each reach decisions affecting whether or how the project is constructed. Moreover, an important part of the Army Corps' analysis will be whether the project, as proposed, is the least environmentally damaging practicable alternative within the meaning of applicable regulations, including whether an alternative *other than* the proposed transmission line must be pursued.³ In light of future and pending decision-making – by the Supreme Court, the Army Corps, and NHDOT – proceeding prematurely with piecemeal construction of portions of the proposed project, on the assumption that the project will obtain all necessary and final approvals and will remain unchanged, may result in unnecessary construction-related impacts and costs.

10. The commencement of construction while the certificate is subject to appeal, and while the project is subject to further permitting, also should not be permitted because it could place practical constraints on decision-makers. For example, just as Applicant urged the Committee to approve the project as the last stage of its Seacoast Solutions suite of projects, Applicant could use completed and ongoing construction activity, and associated investments, as a means to persuade regulators, such as the Army Corps, not to render a decision that alters the project as currently proposed. Applicant should not be permitted to place decision-makers such as the Army Corps in the position of weighing already-constructed portions of the project, and already-incurred construction costs, in their decision-making.

³ See 40 C.F.R. § 230.10(a) (prohibiting the discharge of dredged or fill material “if there is a practicable alternative to the proposed discharge which would have less adverse impact on the aquatic ecosystem” and stating that “practicable alternatives that do not involve special aquatic sites are presumed to be available, unless clearly demonstrated otherwise.”).

11. In light of the foregoing considerations, it would not be in the public interest to allow project construction to proceed at this time. Accordingly, a stay of the Committee's decision and order is warranted.

12. The following parties concur in the relief requested herein: Donna Heald, Durham Residents Intervenor Group, The Durham Historic Association, Mr. Frizzell, The Smith Family, and The Durham Residents. The following parties object this motion: Eversource. Counsel for the Public takes no position.

WHEREFORE, Conservation Law Foundation respectfully requests that the Committee stay its decision and order, including the effectiveness of the certificate of site and facility and the commencement of construction, until such time as (a) Applicant has a final, unappealable decision and certificate authorizing the project, and (b) Applicant has obtained all legally required permits.

Respectfully submitted,

CONSERVATION LAW FOUNDATION

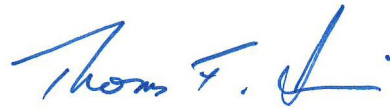
BY:  _____

Thomas F. Irwin, Esq.
V.P. and CLF New Hampshire Director
Conservation Law Foundation
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Concord, NH 03301
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tirwin@clf.org

Date: May 1, 2019

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing motion has on this 1st day of May 2019 been sent by email to the service list in Docket No. 2015-04.

A handwritten signature in blue ink that reads "Thomas F. Irwin". The signature is written in a cursive style with a large initial 'T' and 'I'.

Thomas F. Irwin, Esq.
Conservation Law Foundation

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VIA ELECTRONIC MAIL

May 8, 2019

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
Eversource’s Objection to Conservation Law Foundation’s Motion To Stay**

Dear Ms. Monroe:

Enclosed for filing in the above-referenced docket is Eversource’s Objection to Conservation Law Foundation’s Motion To Stay.

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**

**EVERSOURCE’S OBJECTION TO CONSERVATION LAW FOUNDATION’S
MOTION TO STAY**

Public Service Company of New Hampshire d/b/a Eversource Energy (“Eversource”) objects to the Motion to Stay (“Motion”) filed by the Conservation Law Foundation (“CLF”). CLF’s Motion and request for relief is contrary to the governing law. It should therefore be denied.

I. Background

On January 31, 2019, a Subcommittee of the Site Evaluation Committee issued a Decision and Order Granting Application for Certificate of Site and Facility for the Seacoast Reliability Project (the “Project”). On March 4, 2019, the Town of Newington and Eversource executed a settlement agreement. CLF, and others, filed motions for reconsideration on March 4, 2019, to which the Applicant objected on March 8, 2019. The Subcommittee convened on March 11, 2019 to deliberate on the requests for reconsideration. The Subcommittee unanimously denied all of the motions for reconsideration. *See Order on Motions for Rehearing*, Docket 2015-04 (April 11, 2019). On April 25, 2019, Eversource and the Town of Durham executed a settlement agreement.

On April 19, 2019, Eversource notified the SEC Administrator of its intent to begin construction on May 6, 2019. Eversource explicitly stated it will not begin construction within United States Army Corps of Engineers (“USACE”) jurisdictional areas, including wetland

resources and the historic cable house,¹ and that Eversource will not begin construction in areas that require New Hampshire Department of Transportation permits.²

On May 1, 2019, CLF filed an improper Motion to Stay with the SEC requesting that “the Committee stay its decision and order, including the effectiveness of the certificate of site and facility and the commencement of construction, until such time as (a) Applicant has a final, unappealable decision and certificate authorizing the project, and (b) Applicant has obtained all legally required permits.” Motion at 5.

II. CLF’s Motion and Request for Relief is Contrary to Governing Law

The Certificate of Site and Facility is a validly issued, final decision of the Subcommittee. CLF does not, and cannot cite to any law that would now permit the Subcommittee to act on the requested stay. Indeed, CLF’s approach here is directly contrary to established law.

First, there is nothing in RSA 162-H or RSA 541 authorizing the Subcommittee to issue the requested stay. While RSA 162-H:12, I–II permits the SEC to suspend a Certificate in certain extreme circumstances, that can only occur if the SEC determines that a term or condition has been violated, or that a material misrepresentation has been made. CLF has not made any such allegations. Therefore, the provisions of RSA 162-H:12, I–II do not apply.

¹ Eversource is awaiting a Section 404 Permit from USACE.

² CLF implies that Eversource was required to provide CLF with direct notification of its intent to commence construction. Eversource has, however, complied with all of the notice requirements of its Certificate. In addition, contrary to CLF’s assertion, Eversource’s commencement of construction is not “premature”. Eversource has all of its required permits and approvals to commence construction in upland areas. Pursuant to the preference of the University of New Hampshire, Eversource must begin construction on the UNH campus in May to complete construction by August 23, 2019 and prior to the start of the 2019-2020 school year. *See* Letter of Support for Eversource’s Request for Minor Modification from William Janelle, Associate Vice President of UNH (April 8, 2019). As described above, Eversource will not conduct work in USACE jurisdictional areas and will avoid any work in areas that require a NH DOT permit or approval.

RSA 541:5 governs motions for rehearing and provides that “[u]pon the filing of [a] motion for rehearing, the commission shall within ten days either grant or deny the same, or suspend the order or decision complained of pending further consideration, and any order of suspension may be upon such terms and conditions as the commission may prescribe.” (emphasis added). Since the rehearing process is now complete under RSA 541:5, the SEC has no authority under this statute to suspend the Certificate.

Second, once a motion for rehearing is denied, an affected party has no recourse before the Subcommittee (absent a certificate violation or misrepresentation). The affected party’s sole remedy is with the New Hampshire Supreme Court pursuant to RSA 541:6.

Third, RSA 541:18 provides that following a decision on a motion for rehearing “[n]o appeal or other proceedings taken from an order of the commission shall suspend the operation” of a final order issued by the Subcommittee. RSA 541:18 further makes clear that the only tribunal that may suspend a final order of the Subcommittee is the Supreme Court. *Id.* (“the supreme court may order a suspension of such order pending the determination of such appeal or other proceeding whenever, in the opinion of the court, justice may require such suspension”).

Lastly, CLF’s argument that the Order is not a “final” decision is contrary to well-established law. The New Hampshire Supreme Court specifically addressed the effectiveness and finality of administrative agency orders in *Appeal of Seacoast Anti-Pollution League*, 125 N.H. 708 (1984). In that case, the Court spoke to the differences between the statutory provisions of RSA 541:5 (which permits an agency to suspend an order while a motion for rehearing is pending) and RSA 541:18 (which provides that only the Supreme Court may suspend an order following a final decision on rehearing). In addressing both these statutes, the Court concluded that while a “commission’s initial order should not be deemed a valid

authorization until the rehearing is completed An unsuspended commission order becomes effective upon completion (or denial) of rehearing, unless a request for suspension is promptly filed with, and granted by, this court.” (emphasis added). In other words, only the Supreme Court may stay an administrative decision following a motion for rehearing.

III. Conclusion

Based on the foregoing, it is unequivocally clear that there is no legal authority supporting CLF’s Motion. In fact, the clear legal authority compels denial of that motion.

WHEREFORE, the Applicant respectfully asks that the Subcommittee:

- a. Deny Conservation Law Foundation’s Motion to Stay; 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: May 8, 2019

By: 

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Certificate of Service

I hereby certify that on this 8th day of May 2019, an electric copy of this Combined Objection was electronically sent to the New Hampshire Site Evaluation Committee and served upon the SEC Distribution List.


Barry Needleman

**STATE OF NEW HAMPSHIRE
SITE EVALUATION COMMITTEE**

Docket No. 2015-04

**Application of Public Service Company of New Hampshire
d/b/a Eversource Energy for Certificate of Site and Facility**

May 20, 2019

ORDER ON MOTION TO STAY
DECISION AND ORDER GRANTING CERTIFICATE OF SITE AND FACILITY

This Order denies the Motion of Conservation Law Foundation to Stay Decision and Order Granting Certificate of Site and Facility.

I. PROCEDURAL HISTORY

On January 31, 2019, the Subcommittee issued a written Decision and Order Granting the Application for a Certificate of Site and Facility (Decision) and an Order and Certificate of Site and Facility with Conditions (Certificate). The procedural history in this docket is discussed at length in the Decision.

On March 4, 2019, the Town of Durham, the Conservation Law Foundation (CLF), and the Durham Residents Group of Intervenors filed motions for rehearing. The Applicant objected. On March 11, 2019, the Subcommittee held a public hearing and deliberations on the pending motions. On April 11, 2019, the Subcommittee issued an Order Denying Motions for Rehearing.

On April 19, 2019, the Applicant notified the SEC Administrator of its intent to commence construction on May 6, 2019, of portions of the Seacoast Reliability Project. On May 1, 2019, CLF filed a Motion to stay the Decision. The Applicant objected.

II. POSITIONS OF THE PARTIES

CLF argues that it is premature for the Applicant to begin construction and that allowing the Applicant to proceed could result in wasted resources, unnecessary environmental and

community impacts, and practical constraints on other entities with decision making authority. In particular, CLF argues that the Subcommittee should stay the Decision and Certificate and prevent the Applicant from commencing construction of the Project because: (i) CLF intends to petition the Supreme Court for judicial review; (ii) the United States Army Corps of Engineers has not yet rendered a determination on the Project's pending application for a Section 404 Permit under the Clean Water Act; and (iii) New Hampshire Department of Transportation (DOT) has not issued permits required for the construction of the Project.

The Applicant argues that there is nothing in RSA 162-H or RSA 541 that authorizes the Subcommittee to issue the stay requested by CLF. RSA 162-H:12, I-II provides that the Certificate can be suspended by the Committee if the conditions of the Certificate are violated or upon a finding of a material misrepresentation. The Applicant states that CLF does not raise any fact warranting suspension of the Certificate under RSA 162-H:12, I-II. The Applicant also argues that RSA 541:5 does not apply because it authorizes the Subcommittee to suspend the Certificate only upon filing of a motion for rehearing and the rehearing process is complete. Finally, the Applicant asserts that RSA 541:18 specifically precludes the Subcommittee from taking the requested action as the only tribunal that may grant the relief requested is the Supreme Court.

III. STANDARD OF REVIEW

The motion raises a procedural claim that may be determined by the Presiding Officer. *See* RSA 162-H:4, V.

Rules of statutory interpretation are well-settled in New Hampshire:

When construing statutes and administrative regulations, we first examine the language used, and, where possible, we ascribe the plain and ordinary meanings to words used. Words and phrases in a statute are construed according to the common and approved usage of the

language unless from the statute it appears that a different meaning was intended. Additionally, we interpret disputed language of a statute or regulation in the context of the overall statutory or regulatory scheme and not in isolation. We seek to effectuate the overall legislative purpose and to avoid an absurd or unjust result. We can neither ignore the plain language of the legislation nor add words which the lawmakers did not see fit to include.

Bovaird v. N.H. Dep't of Admin. Servs., 166 N.H. 755, 758-759 (2014) (citations and quotations omitted). When interpreting two or more statutes that deal with a similar subject matter, the Courts construe them so that they do not contradict each other, and so that they will lead to reasonable results and effectuate the legislative purpose of the statutes. *Maroun v. Deutsche Bank Nat'l Trust Co.*, 167 N.H. 220, 225 (2014) (citation omitted).

IV. ANALYSIS AND FINDINGS

“[A] tribunal that exercises a limited and statutory jurisdiction is without jurisdiction to act unless it does so under the precise circumstances and in the manner particularly prescribed by the enabling legislation.” *Appeal of Campaign for Ratepayers' Rights*, 162 N.H. 245, 250 (2011) (quotation and citation omitted). The Committee is a tribunal with limited statutory jurisdiction.

RSA 541:5 and RSA 162-H:12 authorize the Subcommittee to suspend the Certificate. RSA 541:5 provides that: “upon the filing of . . . [a] motion for rehearing, the commission shall within ten days either grant or deny the same, or suspend the order or decision complained of pending further consideration, and any order of suspension may be upon such terms and conditions as the commission may prescribe.” RSA 162-H:12, authorizes the Committee to suspend the Certificate when it determines that: (i) any term or condition of the Certificate is being violated; (ii) the Applicant has made a material misrepresentation in the application or in the supplemental or additional statements of fact or studies required of the Applicant; or (iii) the Applicant has violated the provisions of RSA 162-H or any rule adopted under RSA 162-H. *See* RSA 162-H:12. The provisions of RSA 541:5 and RSA 162-H:12 do not apply in this case.

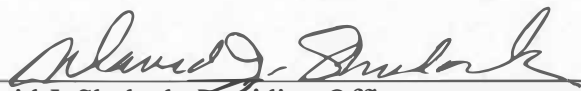
Motions for rehearing were filed, the Subcommittee held a public hearing, and issued a written order denying the motions. CLF does not allege that any condition of the Certificate or provisions of RSA 162-H have been violated. CLF does not argue that the Applicant has made a material misrepresentation in the Application or in the supplements to the Application.

Furthermore, RSA 541:18 specifically provides that “[n]o appeal or other proceedings taken from an order of the commission shall suspend the operation of such order; provided, that the supreme court may order a suspension of such order pending the determination of such appeal or other proceeding whenever, in the opinion of the court, justice may require such suspension.” According to the clear and unambiguous language of RSA 541:18, the New Hampshire Supreme Court, not the Subcommittee, is the tribunal that is authorized to suspend the Decision and Certificate pending the determination of the appeal.

As a tribunal with limited statutory jurisdiction, the Subcommittee is not authorized by its enabling statute (RSA 162-H) to suspend the Certificate under the circumstances asserted in the Motion to Stay.

The Motion of Conservation Law Foundation to Stay Decision and Order Granting Certificate of Site and Facility is denied.

SO ORDERED this twentieth day of May, 2019.


David J. Shulock, Presiding Officer
Site Evaluation Committee



CLF New Hampshire 27 North Main Street
Concord, NH 03301
P: 603.225.3060
F: 603.225.3059
www.clf.org

May 30, 2019

Barry Needleman, Esq.
McLane Middleton
11 South Main Street, Suite 500
Concord, NH 03301

Re: Seacoast Reliability Project

Dear Barry:

As you know, Conservation Law Foundation (“CLF”) recently appealed the New Hampshire Site Evaluation Committee’s decision and order granting a certificate of site and facility for the Seacoast Reliability Project (“project”). We also recently submitted comments to the U.S. Army Corps of Engineers (“USACE”) related to Eversource Energy’s (“Eversource”) application for a Section 404 permit under the Clean Water Act and necessary approval under Section 10 of the Rivers and Harbor Act. CLF’s comments to the USACE include a request for a public hearing, as well as a request that the USACE comply with the National Environmental Policy Act by preparing an Environmental Impact Statement for the project.

We understand that Eversource has commenced construction activities for the project. Although we understand that Eversource is not engaging in construction activities in Little Bay or that otherwise involve impacts to resources that are the subject of the USACE’s pending permit review, and that Eversource will not engage in such activities without obtaining necessary USACE approvals,¹ it is CLF’s position that Eversource should not be proceeding with construction. As set forth in CLF’s motion to stay the decision and order of the SEC, the certificate of site and facility remains subject to appeal and is therefore not a final decision. Moreover, in light of both CLF’s appeal to the Supreme Court and the USACE’s pending permitting process, construction activities could prove unnecessary and wasteful, rendering the costs thereof imprudently incurred.

In light of the foregoing, please be advised that CLF intends to request that the Supreme Court stay the effectiveness of the SEC’s decision and order, including the certificate of site and facility, and that construction costs incurred before the project has obtained all final approvals are at the financial risk of Eversource.

Sincerely,

Tom Irwin

¹ Please inform CLF if this understanding is incorrect or if Eversource’s construction plans change.

From: [Carmody, Jody](#)
To: [adam.dumville@mclane.com](#); [aropeik@nhpr.org](#); [Barry.needleman@mclane.com](#); [Aslin, Christopher](#); [Way, Christopher](#); [david.l.plante@eversource.com](#); [Shulock, David](#); [dawn.gagnon@mclane.com](#); [dbisbee@devinemillimet.com](#); [dena.champy@eversource.com](#); [denisann@comcast.net](#); [dhacurator@comcast.net](#); [Dhdesign1@gmail.com](#); [DPatch@orr-reno.com](#); [elizabeth.maldonado@eversource.com](#); [Muzzey, Elizabeth](#); [Garry.rayno@yahoo.com](#); [hfrink@keene.edu](#); [idore@brennanlenehano.com](#); [info@nhcommunityrights.org](#); [ischwartz@blaschwartz.com](#); [janet.mackie@comcast.net](#); [jbaker@fatdogshellfish.com](#); [jdfrink53@comcast.net](#); [jeggleton@orr-reno.com](#); [Jeremy.walker@mclane.com](#); [jim_obrien@tnc.org](#); [jlanzetta@wadleighlaw.com](#); [Jmiller@lydall.com](#); [jmoon@nhpr.org](#); [Carmody, Jody](#); [jratigan@dtclawyers.com](#); [jrichardson@uptonhatfield.com](#); [Johanne Van Rossum](#); [k.frizzell@msprops.net](#); [kaitlyn.woods@eversource.com](#); [Maynard, Laura](#); [lauren.cote@eversource.com](#); [Lindsey.E.Lefebvre@usace.army.mil](#); [ljiljl@comcast.net](#); [mab@nhbrownlaw.com](#); [maiya.benjamins@eversource.com](#); [mandymerrill60@gmail.com](#); [markjoyce@me.com](#); [Honigberg, Martin](#); [Melissa Birchard](#); [mcousineau@unionleader.com](#); [mfitch@cal-chem.com](#); [Iacopino, Michael J](#); [Fitzgerald, Mike](#); [mroy@townofnewingtonnh.com](#); [nancywestnews@gmail.com](#); [nick.smith@unh.edu](#); [onebyke2ryders@gmail.com](#); [Monroe, Pamela](#); [pickering@informagen.com](#); [regismiller@yahoo.com](#); [rkanoff@burnslev.com](#); [Robert.clarke@eversource.com](#); [sallen@normandeanu.com](#); [sandra.gagnon@eversource.com](#); [sduprey31@gmail.com](#); [sgeiger@orr-reno.com](#); [sheyne@nhgreatbayoysters.com](#); [Tom Irwin](#); [tselig@ci.durham.nh.us](#); [viggo.fish@mclane.com](#); [Vivtarazimiller@gmail.com](#); [weathersbylawpllc@gmail.com](#); [William.hinkle@eversource.com](#)
Subject: SEC 2015-04 Seacoast Reliability
Date: Monday, July 15, 2019 2:11:46 PM
Attachments: [2015-04 2019-07-09 srp cable house relocation methodology.PDF](#)
[2015-04 2019-07-08 notice construction dept army permit.PDF](#)
[2015-04 2019-07-10 historic stone features mngmnt plan.pdf](#)

Please see attached document(s) filed in the above mentioned docket(s). Website to be updated.

- Eversource Notification to Commence Construction in USACE Jurisdictional Areas
- Cable House Relocation Methodology
- Historic Stone Features Management Plan

Thank You

Jody Carmody
Docket Supervisor
NHPUC
21 S. Fruit St., Suite 10
Concord, NH 03301
603-271-6023



ADAM M. DUMVILLE
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11 South Main Street, Suite 500
Concord, NH 03301
T 603.226.0400
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VIA ELECTRONIC MAIL

July 8, 2019

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
Eversource’s Notification to Commence Construction in USACE Jurisdictional
Areas**

Dear Ms. Monroe:

On July 2, 2019 the United States Army Corps of Engineers (“USACE”) issued Permit Number NAE-2015-00665 for the above-referenced Project. *See Attachment.*

As a follow-up to Eversource’s Notification of Commencement of Construction sent to you on April 19, 2019, Eversource hereby notifies you of its intent to immediately commence construction in areas that have now been permitted by USACE.

Please call me with any questions.

Sincerely,

Adam M. Dumville

Enclosure

DEPARTMENT OF THE ARMY PERMIT

Permittee: Public Service Company of New Hampshire (PSNH) d/b/a Eversource Energy

Permit No: NAE-2015-00665

Issuing Office: New England District

NOTE: The term "you" and its derivatives, as used in this permit, means the permittee or any future transferee. The term "this office" refers to the appropriate district or division office of the Corps of Engineers having jurisdiction over the permitted activity or the appropriate official of that office acting under the authority of the commanding officer.

You are authorized to perform work in accordance with the terms and conditions specified below.

Project Description:

Dredge and fill a total of 607,777 square feet (14.0 acres) of wetlands, surface waters, and upland tidal buffer zone, including 598,307 square feet of temporary impacts for installation of timber access mats and stream crossings in freshwater wetlands (307,154 square feet), excavation within the upland tidal buffer zone (21,166 square feet), and hand trenching and jet plowing to install a submarine cable in the Little Bay estuary (269,987 square feet); 9,470 square feet of total permanent impacts for transmission structure installation in freshwater wetlands (778 square feet) and upland tidal buffer zone (11 square feet), and placement of concrete mattresses over shallow cable installation in Little Bay (8,681 square feet); for construction of the Seacoast Reliability Project (SRP), a new 12.9 mile 115Kv transmission line within the existing right-of-way (ROW) and designated cable crossing, extending from Madbury Substation, through the towns of Durham and Newington, to the Substation in Portsmouth.

The work is shown on the enclosed plans entitled "Seacoast Reliability Project," on 31 sheets, and dated "July 25, 2018."

Project Location: This work is proposed in wetlands and waters between the Madbury Substation to the Portsmouth Substation, New Hampshire.

Permit Conditions:

General Conditions:

1. The time limit for completing the work authorized ends on July 3, 2029. If you find that you need more time to complete the authorized activity, submit your request for a time extension to this office for consideration at least one month before the above date is reached.
2. You must maintain the activity authorized by this permit in good condition and in conformance with the terms and conditions of this permit. You are not relieved of this requirement if you abandon the permitted activity, although you may make a good faith transfer to a third party in compliance with General Condition 4 below. Should you wish to cease to maintain the authorized activity or should you desire to abandon it without a good faith transfer, you must obtain a modification of this permit from this office, which may require restoration of the area.
3. If you discover any previously unknown historic or archeological remains while accomplishing the activity authorized by this permit, you must immediately notify this office of what you have found. We will initiate the Federal and State coordination required to determine if the remains warrant a recovery effort or if the site is eligible for listing in the National Register of Historic Places.
4. If you sell the property associated with this permit, you must obtain the signature of the new owner in the space provided and forward a copy of the permit to this office to validate the transfer of this authorization.

5. If a conditioned water quality certification has been issued for your project, you must comply with the conditions specified in the certification as special conditions to this permit. For your convenience, a copy of the certification is attached if it contains such conditions.

6. You must allow representatives from this office to inspect the authorized activity at any time deemed necessary to ensure that it is being or has been accomplished in accordance with the terms and conditions of your permit.

Special Conditions:

1. The permittee shall ensure that a copy of this permit is at the work site (and the project office) authorized by this permit whenever work is being performed, and that all personnel with operational control of the site ensure that all appropriate personnel performing work are fully aware of its terms and conditions. The entire permit shall be made a part of any and all contracts and sub-contracts for work that affects areas of Corps jurisdiction at the site of the work authorized by this permit. This shall be achieved by including the entire permit in the specifications for work. The term "entire permit" means this permit (including its drawings, plans, appendices and other attachments) and also includes permit modifications.

If the permit is issued after the construction specifications, but before receipt of bids or quotes, the entire permit shall be included as an addendum to the specifications. If the permit is issued after receipt of bids or quotes, the entire permit shall be included in the contract or sub-contract. Although the permittee may assign various aspects of the work to different contractors or sub-contractors, all contractors and sub-contractors shall be obligated by contract to comply with all environmental protection provisions contained within the entire permit, and no contract or sub-contract shall require or allow unauthorized work in areas of Corps jurisdiction.

2. The permittee shall complete and return the enclosed Compliance Certification Form to this office at least within one month following the completion of the authorized work.

(special conditions continued on Page 4)

Further Information:

1. Congressional Authorities: You have been authorized to undertake the activity described above pursuant to:

- (X) Section 10 of the Rivers and Harbors Act of 1899 (33 U.S.C. 403).
- (X) Section 404 of the Clean Water Act (33 U.S.C. 1344).
- () Section 103 of the Marine Protection, Research and Sanctuaries Act of 1972 (33 U.S.C. 1413).

2. Limits of this authorization.

- a. This permit does not obviate the need to obtain other Federal, State, or local authorizations required by law.
- b. This permit does not grant any property rights or exclusive privileges.
- c. This permit does not authorize any injury to the property or rights of others.
- d. This permit does not authorize interference with any existing or proposed Federal project.

3. Limits of Federal Liability. In issuing this permit, the Federal Government does not assume any liability for the following:

- a. Damages to the permitted project or uses thereof as a result of other permitted or unpermitted activities or from Natural causes.
- b. Damages to the permitted project or uses thereof as a result of current or future activities undertaken by or on behalf of the United States in the public interest.
- c. Damages to persons, property, or to other permitted or unpermitted activities or structures caused by the activity authorized by this permit.
- d. Design or construction deficiencies associated with the permitted work.
- e. Damage claims associated with any future modification, suspension, or revocation of this permit.

4. Reliance on Applicant's Data: The determination of this office that issuance of this permit is not contrary to the public interest was made in reliance on the information you provided.

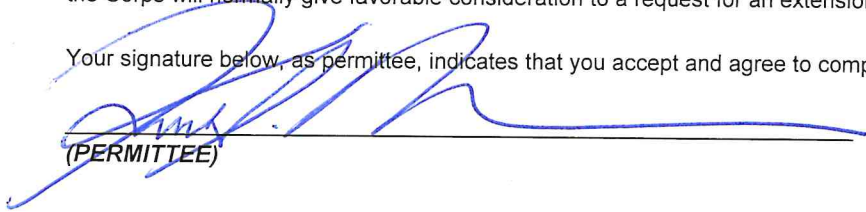
5. Reevaluation of Permit Decision. This office may reevaluate its decision on this permit at any time the circumstances warrant. Circumstances that could require a reevaluation include, but are not limited to, the following:

- a. You fail to comply with the terms and conditions of this permit.
- b. The information provided by you in support of your permit application proves to have been false, incomplete, or inaccurate (See 4 above).
- c. Significant new information surfaces which this office did not consider in reaching the original public interest decision.

Such a reevaluation may result in a determination that it is appropriate to use the suspension, modification, and revocation procedures contained in 33 CFR 325.7 or enforcement procedures such as those contained in 33 CFR 326.4 and 326.5. The referenced enforcement procedures provide for the issuance of an administrative order requiring you to comply with the terms and conditions of your permit and for the initiation of legal action where appropriate. You will be required to pay for any corrective measures ordered by this office, and if you fail to comply with such directive, this office may in certain situations (such as those specified in 33 CFR 209.170) accomplish the corrective measures by contract or otherwise and bill you for the cost.

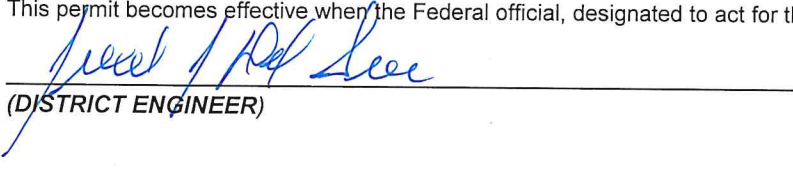
6. Extensions. General Condition 1 establishes a time limit for the completion of the activity authorized by this permit. Unless there are circumstances requiring either a prompt completion of the authorized activity or a reevaluation of the public interested decision, the Corps will normally give favorable consideration to a request for an extension of this time limit.

Your signature below, as permittee, indicates that you accept and agree to comply with the terms and conditions of this permit.



 (PERMITTEE) 7-3-2019
(DATE)

This permit becomes effective when the Federal official, designated to act for the Secretary of the Army, has signed below.

for 

 (DISTRICT ENGINEER) 7-2-2019
(DATE)

When the structures or work authorized by this permit are still in existence at the time the property is transferred, the terms and conditions of this permit will continue to be binding on the new owner(s) of the property. To validate the transfer of this permit and the associated liabilities associated with compliance with its terms and conditions, have the transferee sign and date below.

 (TRANSFEEE) (DATE)

DEPARTMENT OF THE ARMY PERMIT

Special conditions continued from page 2:

3. The permittee understands and agrees that, if future operations by the United States require the removal, relocation, or other alteration, of the structure or work herein authorized, or if, in the opinion of the Secretary of the Army or his authorized representative, said structure or work shall cause unreasonable obstruction to the free navigation of the navigable waters, the permittee will be required, upon due notice from the Corps of Engineers, to remove, relocate, or alter the structural work or obstructions caused thereby, without expense to the United States. No claim shall be made against the United States on account of any such removal or alteration.
4. All construction shall be completed in accordance with the limits of construction and construction sequences detailed on the attached plan drawings, entitled "Seacoast Reliability Project," on a total of 31 sheets, and dated "July 25, 2018". If you change the plans or construction methods for work within or adjacent to Waters of the United States (WoUS) please contact us immediately to discuss modification of this authorization. The Corps must approve any changes before you undertake them.
5. Mitigation shall be provided in the form of payment into the State of New Hampshire Aquatic Resource Mitigation Fund in the amount of \$349,834.26. The applicant shall remit payment to NHDES. Work shall not begin until this payment is made. Additional ILF may be required from NHDES to compensate for state regulated resources.
6. The permittee shall comply with the enclosed Memorandum of Agreement titled "MEMORANDUM OF AGREEMENT BETWEEN US ARMY CORPS OF ENGINEERS, NEW HAMPSHIRE STATE HISTORIC PRESERVATION OFFICER AND PUBLIC SERVICE COMPANY OF NEW HAMPSHIRE D/B/A EVERSOURCE ENERGY REGARDING THE SEACOAST RELIABILITY PROJECT FROM MADBURY SUBSTATION TO PORTSMOUTH SUBSTATION, NEW HAMPSHIRE." This is to avoid, minimize and/or mitigate for the adverse effect that the authorized work will cause at this historic property.
7. In accordance with recommendations for the US Coast Guard (USCG), Sector Northern New England, the contractor shall coordinate with the USCG at least 90 days prior to mobilization to discuss the navigation impact of the installation and the need for any potential waterway closings/restrictions. Should the contractor determine a need to use "blasting" as a methodology for install, those efforts should be closely coordinated with the USCG. Point of contact is LT Matthew Odom at 207-347-5015.4
8. We have sent a copy of this authorization to the National Ocean Service (NOS). You must notify NOS and this office in writing, at least two weeks before you begin work and upon completion of the activity authorized by this permit. Your notification of completion must include a drawing which certifies the location and configuration of the completed activity (a certified permit drawing may be used).
9. All submittals to the Corps and NOS shall be marked with the words "Permit No. NAE-2015-00665." Send NOS submittals to: Department of Commerce, NOAA; National Ocean Service, Nautical Data Branch; N/CS26; 1315 East-West Highway; Silver Spring, MD 20910; or email: ocs.ndb@noaa.gov. Send Corps submittals to: a) PATS Branch - Regulatory Division, Corps of Engineers, New England District, 696 Virginia Road, Concord, MA 01742-2751; or cenae-r@usace.army.mil. Documents which are not marked and addressed in this manner may not reach their intended destination and do not comply with the requirements of this permit. The Corps may note the location on future survey drawings and NOAA may use the information for charting purposes.
10. The notification of completion shall be done within 60 days of completing an activity that involves an aerial transmission line, submerged cable, or submerged pipeline across a tidal or non-tidal navigable water of the U.S. (i.e., Section 10 waters). The permittee shall furnish the NOS and this office with certified (professional engineer or land surveyor registered in the state the work is being performed) as-built drawings, to scale, with control (i.e., latitude/longitude, state plane coordinates), depicting the alignment and minimum clearance of the aerial wires above the MHW/OHW line at the time of survey or depicting the elevations and alignment of the buried cable or pipeline across the tidal or non-tidal navigable waterway. Authorization in writing and as-built documentation is required when: a) a new cable or pipeline (overhead or submerged) is installed; b) an existing pipeline or cable is moved to another location or is completely removed; c) an overhead cable or overhead pipeline clearance above

the MHW line is changed; d) there is a change in the type of cables (power, telephone, etc.) at a water crossing; or e) there is a change in elevation of the submerged pipeline or cable.

11. Temporary fill that is authorized herein shall adhere to the following:
 - a. All temporary fill shall be stabilized to prevent its eroding into portions of waters of the U.S., including wetlands, where it is not authorized.
 - b. Unconfined temporary fill authorized for discharge into waters of the U.S., including wetlands, shall consist of material that minimizes impacts to water quality (e.g. sandbags, clean gravel, stone, aggregate, etc.).
 - c. Temporary fill authorized for discharge into wetlands should be placed on geotextile fabric or other material (e.g., straw) laid on the pre-construction wetland grade where practicable to minimize impacts.
 - d. Temporary fill shall be removed as soon as it is no longer needed, disposed of at an upland site, and suitably contained to prevent subsequent erosion into waters of the U.S, including wetlands.
 - e. Waters of the U.S., including wetlands, where temporary fill was discharged shall be restored.
 - f. Appropriate measures must be taken to maintain normal downstream flows and minimize flooding to the maximum extent practicable, when temporary structures, work, and discharges, including cofferdams, are necessary for construction activities, access fills, or dewatering of construction sites. Temporary fills must be placed in a manner that will not be eroded by expected high flows.
12. Construction mats and corduroy roads are considered as temporary fill when they are removed immediately upon work completion. The area must be restored.
13. In areas of authorized temporary disturbance, if trees are cut they shall be cut at or above ground level and not uprooted in order to prevent disruption to the wetland soil structure and to allow stump sprouts to revegetate the work area, unless otherwise authorized.
14. Prior to being onsite, the contractor shall thoroughly inspect and remove seeds, plant material, soil, mud, insects, and other invertebrates on all equipment, including construction mats, to be used on the project site to prohibit introduction of invasive organisms. At a minimum, the following shall be inspected and cleaned on terrestrial vehicles where applicable:

Rubber Tired Vehicles - Crevices in upper surface and panels, tires, rims, and fender wells, spare tire mounting area, bumpers, front and rear quarter panels, around and behind grills, bottom of radiator vent openings, brake mechanisms, transmission, stabilizer bar, shock absorbers, front and rear axles, beds, suspension units, exhaust systems, light casings, and mirrors.

Tracked Land Vehicles - Crevices in upper surface and panels, top of axles and tensioners, support rollers, between rubber or gridded areas, beneath fenders, hatches, under casings, and grills.

Interiors of All Vehicles - Beneath seats, beneath floor mats, upholstery, beneath foot pedals, inside folds of gear shift cover.
15. Wetland areas where permanent disturbance is not authorized shall be restored to their original condition and elevation, which under no circumstances shall be higher than the pre-construction elevation. Original condition means careful protection and/or removal of existing soil and vegetation, and replacement back to the original location such that the original soil layering and vegetation schemes are approximately the same, unless otherwise authorized.
16. Upon completion of construction, all disturbed wetland areas (the disturbance of these areas must be authorized) shall be stabilized with a wetland seed mix containing only plant species native to New England and shall not contain any species listed in the "Invasive and Other Unacceptable Plant Species" Appendix D in the "New England District Compensatory Mitigation Guidance" found at [https://www.usace.army.mil/portals/74/docs/regulatory/Mitigation/2016 New England Compensatory Mitigation Guidance.pdf](https://www.usace.army.mil/portals/74/docs/regulatory/Mitigation/2016%20New%20England%20Compensatory%20Mitigation%20Guidance.pdf)

The following Special Conditions are to protect Essential Fish Habitat in accordance with the Magnuson-Stevens Fishery Conservation and Management Act and species listed under the Endangered Species Act:

17. All in water work shall occur from September 1 to March 14 in order to minimize potential impacts to federally listed endangered and threatened species, essential fish habitat, eelgrass, and other aquatic resources.
18. Appropriate soil erosion, sediment and turbidity controls should be used and maintained in effective operating condition during construction. Work capable of producing greater than minimal turbidity or sedimentation should be done during periods of low-flow or no-flow, when the stream or tide is water-ward of the work, or when controls are used to obtain dry work conditions. Work that produces greater than minimal turbidity or sedimentation should not be done during the TOY restriction referenced in Condition 7 in order to minimize impacts federally listed endangered and threatened species, essential fish habitat, eelgrass, and other aquatic resources.
19. Controls in streams should be installed and removed during the same TOY work window when practicable. Controls (e.g., cofferdams) should not encroach: i) >25% from OHW in diadromous streams during the TOY restriction; or ii) >25% from MHW in tidal waters during the TOY restrictions); or iii) >50% from MHW in tidal waters during the TOY windows. This is to protect upstream fish passage. Maintain downstream fish passage throughout the project. Controls should be removed upon completion of work, but not until all exposed soil and other fills, as well as any work waterward of OHW or the HTL, are permanently stabilized. Sediment and debris collected by these devices should be removed and placed at an upland location in a manner that will prevent its later erosion into a waterway or wetland.
20. Trenches should be backfilled immediately after installation with excavated, native sediment.
21. Utility lines installed using trenching or direct burial methods should reestablish pre-construction elevations. If additional backfill material is needed to restore elevations to pre-construction conditions, the material should be of consistent type and grain-size as the existing substrate sediment.
22. Submerged cables should be buried when possible, instead of resting on the surface, to allow an area to return to preexisting conditions.

Seacoast Reliability Project Anticipated Construction Schedule

All dates are in 2019 unless otherwise indicated

Schedule is subject to change and will be updated periodically

Property owners adjacent to the line will receive two weeks' advance notice for tree clearing and construction activities

Madbury

- Survey of power line corridor, stone walls, roadways and EMF readings: Complete
 - In some cases, stakes will need to be replaced periodically
 - Environmental surveys will be performed throughout the corridor just prior to tree clearing and construction activities
- Madbury Substation construction: May – November
- Tree clearing in residential areas: August
- Overhead line construction from Madbury Substation to UNH: October – December

Durham

- Survey of power line corridor, stone walls, roadways and EMF readings: Complete
 - In some cases, stakes will need to be replaced periodically
 - Environmental surveys will be performed throughout the corridor just prior to tree clearing and construction activities
- Eversource Cable House relocation (at 295 Durham Point Road): July 2019 – August 2020
 - Pre-construction activities: July
 - Relocation to temporary location: August
 - Relocation to permanent location (after construction): August 2020
- Tree clearing of access roads: June – August
- Tree clearing in residential areas: July, September
 - Foss Farm Road, Bennet Road, Route 108: July
 - Timberbrook Lane, Cutts Road, Ffrost Drive, Sandy Brook Drive, Longmarsh Road, Durham Point Road: September
- Overhead line construction: July – Early 2020
 - UNH to Mill Road: July - August
 - Foss Farm Road, Bennet Road, Route 108: September – October
 - Longmarsh Road, Timberbrook Lane, Cutts Road, Ffrost Drive, Sandy Brook Drive, Durham Point Road: October – December
 - Route 4 to UNH: October – December
 - Mill Road, Foss Farm Road, Bennett Road: Early 2020
- UNH underground construction: May – August

University of New Hampshire

- Tree clearing: June – July
- UNH underground construction: May – August
- Overhead line construction:
 - Mill Road: July – August

- Route 4 to UNH campus: October – December
- Foss Farm Road, Bennett Road: October – December

Little Bay

- Jet plow trial run: Early September
- Existing cable removal: Early – Mid September
- Trench excavation at shorelines: Early October
- Jet plow cable burial: October
- Hand jetting in Little Bay: October – November
- Concrete mattress installations: Late November

Newington

- Survey of power line corridor, stone walls, roadways and EMF readings: Complete
 - In some cases, stakes will need to be replaced periodically
 - Environmental surveys will be performed throughout the corridor just prior to tree clearing and construction activities
- Tree Clearing of access roads: June – October
- Tree clearing in residential areas: June – October
 - Gundalow Landing, Flynn Pit: Complete
 - Little Bay Road, Nimble Hill Road, Fox Point Road, Spaulding Turnpike: Mid-August – September
- Overhead line construction: August – November
 - Includes: Little Bay Road, Fox Point Road, the Crossings at Fox Run, Spaulding Turnpike, Woodbury Avenue, Gosling Road
- Underground line construction:
 - Gundalow Landing, Flynn Pit: July – October
 - Frink Farm, Hannah Lane: August – November

Portsmouth

- Survey of power line corridor, stone walls, roadways and EMF readings: Complete
 - In some cases, stakes will need to be replaced periodically
 - Environmental surveys will be performed throughout the corridor just prior to tree clearing and construction activities
- Tree Clearing for access roads: August – September
- Tree clearing between Portsmouth Substation and the Crossings at Fox Run: May – October
- Portsmouth Substation construction: May – Early 2020
- Overhead line construction: September – October