

Notes from SEC deliberations on Thursday, 12/7/18 – Day 5

By T. Selig

Chair Weathersby called the meeting to order at 9:06 AM.

Orderly Development – Toursim. Member Duprey walked the committee through the requirements outline in 162-H:16, III (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 various elements of this criterion as outlined in state law and administrative rules were outlined by Ms. Duprey. Member Way then outlined some of the elements. Member Duprey referenced applicant exhibit 185, page 5, paragraphs 32–35, "Construction and operation of the overhead portion of the project will occur entirely within the existing distribution and transmission rights of way ..." Member Way referenced the testimony of Robert Varney of Normandeau Associates referencing tourism impacts of the project, information from regional chambers of commerce, regional businesses, etc. Tourism attraction impacts were measured from the project route and visual impacts, temporary and long-term. Information offered by the applicant, intervenors, and residents was referenced by the committee.

Member Fitzgerald noted that the major impact to tourism would be aesthetic. Member Duprey mentioned that it's really an individual judgement if the project would negatively impact the use of trails, for example. Chair Weathersby agreed with what has been said thus far, that this area is of high importance for recreation and to some extent tourism, but that the proposed construction impacts are temporary. "People can still get to roads, businesses, the bay," she said. She believed the permanent impact of the project going across the ground and the bay are really temporary impacts and will not have a meaningful impact on the region. Weathersby uses the Piscataqua River herself and noted the large overhead power lines over the water, and while it does diminish the resource, people still use it for the recreation opportunities and are willing to look at a transition pole on the shore and still use the resource.

Orderly Development – Employment. Member Way walked the committee through this criterion, the impact on jobs, wages, expenditures, etc., the filings of the applicant from Dr. Lisa Shapiro, the estimated number of jobs created, the nature of those jobs by employment sector, etc. There was further discussion. There was discussion regarding the potential impact to local businesses, including Ms. Donna Heald McCosker in Durham. There was sensitivity to her concerns. At the same time, there was discussion of "buyer

beware" for people who chose to purchase properties under a power line and along an established ROW corridor.

There was discussion about the complaint resolution process if concerns arise during construction. Mitigation measures were also discussed regarding impacts to private property/local businesses. Extensive discussion ensued as well as a break with legal counsel. The mediation process for impacted businesses was discussed and process procedures clarified. The committee will look at a revised dispute resolution process to reflect their discussion in the future.

Lunch

Orderly Development – Construction. Member Duprey walked the members through the various stipulated conditions between the applicant and the Council for the Public, as well as the various agreements that have been negotiated between the applicant, NHDHR, the impacted communities, UNH, etc. Duprey mentioned the various concerns that the host communities have raised about construction impacts concerning the project. Impacts to roadways included blasting, time of day of construction, flagging of construction, road closure protocols, restoring roads to their previous condition, private roadway impacts, etc. has been addressed as part of these various agreements. Member Duprey acknowledged that the host communities, while they have executed MOU's, would still prefer the projects not to happen.

There was discussion that any disputes noted in MOU's between the applicant and host communities/UNH would be directed to the Dispute Resolution Coordinator, not the Administrator of the SEC. The Dispute Resolution Coordinator would be appointed by the Administrator of the SEC.

Member Duprey discussed issues that were brought up by intervenors such as the location of poles and conduits, transition structures, impact on private property and driveways, etc. She noted the applicant has met with each of the impacted owners/entities to address these matters to the extent possible, and remediation measures have also been discussed by the parties, with solutions found should the project move forward. Fat Dog Shellfish, Heald, Miller, Miller, Frink, Pickering properties were all referenced. Member Duprey did not believe based on her reading of the record that concerns raised by intervenors rise to the level of unduly interfering with the orderly development of the region in terms of construction.

Chair Weathersby noted that many disagreements noted between intervenors and the applicant go beyond just one particular area or issue and that everyone was working in

good faith to resolve the issues. She said there is a dispute resolution process in place if needed for the parties. Member Way agreed.

Orderly Development – Consistent with land use and long-rang planning for the region, land use, and views of municipalities.

Member Duprey asked, What is the region being referenced? She notes feedback received from the Strafford Regional Planning Commission and the Rockingham Planning Commission.

Member Duprey mentioned the testimony of experts Mr. Hebert (Planning Board Chair) from Newington and Mr. Selig (Administrator) from Durham, and other experts. The applicant has argued the project is in an existing corridor and therefore has to be consistent with existing land uses. Applicant argues a new corridor would be more disruptive than using the existing corridor. The applicant's expert, Mr. Varney, submitted testimony that the application is consistent with local planning and land uses. It was noted the numerous project modifications that the applicant made to address local community concerns. Duprey noted neither the Counsel for the Public nor anyone else has provided sufficient evidence that the project would be inconsistent. She notes Newington argues that the project is counter to local zoning and the master plan, and that Durham argues the project violates local zoning, the master plan, negatively impacts UNH and is adverse to the Little Bay, which was recognized as being a very important issue to Durham.

Member Duprey generally questions what the purpose of the legislature was in charging the SEC with reviewing regional projects, rather than leaving it with local communities.

Member Duprey explained that the project is almost 13 miles long. The project area is less than 1% of the land area in each community. She noted the communities have effectively zoned out this use through local zoning and master plans, etc. She noted that Mr. Varney's report, which Duprey believed was very thorough, concluded that overall the project is generally consistent with existing uses and will not have an impact over the project corridor. Duprey asks, Is this line, being put in the ROW, going to effect existing uses such that there would be an undue interference in the prevailing land use? Duprey believed that Mr. Varney's report was conclusory on this topic. She explained there was nothing introduced that would negate Mr. Varney's conclusions, other than "I don't like this pole placement, etc."

Member Fitzgerald mentioned the conversion of a distribution line to a transmission line with significantly larger structures, facilities, and so on. He said it has to do with growth of the region because growth of the electrical need is a natural phenomenon to meet the needs of a growing region. A growing region like the Seacoast requires additional electrical

capacity. Fitzgerald asks, Is the transmission line at 115 kV a consistent land use? Fitzgerald references Mr. Varney's conclusion that it is essentially an existing utility corridor.

Chair Weathersby questions whether this is an existing land use, and does it impact adjacent land uses. She felt that you can't simply conclude that moving from a distribution line to a transmission line means X. There was further conversation.

Member Muzzey indicated that with distribution lines versus transmission lines, she compares these to roads: a 2 lane local road versus an 8 lane interstate. A transmission corridor means additional clearing, more lines, taller poles, etc. The Varney report lists fairly extensive trails and conservation lands that are proximate to the ROW. There are some conservation and open space parcels in the vicinity of the project corridor, most of which are located in Durham and Newington. While Madbury and Portsmouth both offer many conservation lands and open space areas, none are located adjacent to the project ROW. Although portions of some trails will need to be closed temporarily during construction to ensure public safety, Varney concluded the project will not have a significant adverse impact on the continued management and use of conservation lands and trails. Duprey noted in the Durham zoning ordinance that if you go through an extensive process, you can put lines in the wetland overlay district. Member Muzzey did not believe the proposed use was inconsistent with existing uses.

Chair Weathersby noted that generally placing utilities in an existing ROW is a sound principle.

Member Duprey also noted the testimony of Mr. Selig and Mr. Hebert that both stated strongly that the proposal is inconsistent with the orderly development of the region and their towns in particular. Duprey stated she could not find anything in the record that could concretely prove this fact. Nothing, she explained, could show that if these lines were built, for example, you could not then build a library here or there. She referenced project filings from the applicant illustrating that in the SEC context, master plans and zoning ordinances should be considered as part of the background to understand land use and development in a community. For example, a review of local master plan and zoning may show that there is a better route, such as running a gas or electric line along an existing available corridor rather than creating a new one, or that an applicant should consider avoiding a parcel where the town proposes constructing a new town facility such as a school or library. With Newington, Duprey explained, it was clear that their master plan does not allow above ground lines. Duprey explained that Newington already believed their town had been overly impacted by the Federal government at Pease. The applicant, Duprey explained, argues the line is already here and you are not going to put anything else in the ROW corridor. In both

Durham and Newington, Duprey explained that there are numerous sections in both master plans that reference balanced development. She stated that both master plans referred the need for reliable and affordable energy. At the same time, Duprey explained that neither master plan nor zoning ordinance encouraged development where the proposed project is located. She noted that the Durham zoning ordinance in particular essentially zones out this type of development. In Newington, Duprey explained, a project like this would be allowed in an industrial zone. She noted that Durham's zoning is more restrictive than Newington's, but that Newington's master plan is more restrictive than Durham's regarding utility lines.

Duprey wanted to talk about how the SEC thinks about an individual town essentially zoning out or precluding a power line from its boundaries because she was not sure this is what the legislature was anticipating here.

Member Fitzgerald explained that the SEC needs to take into consideration what the legislature had intended the committee to do. It needs to give due consideration to the views of municipalities, so the SEC needs to find out what that balance is. How does the SEC weigh a project for a region that crosses multiple municipal boundaries? Fitzgerald explained that the legislature wanted the SEC to consider municipal views, but not to give them veto power over the project. Mr. Fitzgerald notes the many historic and cultural and environmental issues in Newington and Durham.

Member Duprey noted the outreach and mitigation that has been provided by the applicant. Communities have had a chance to voice their concerns with the applicant and the applicant has worked to accommodate local concerns, she said.

Chair Weathersby recognized the many ways in which the project is inconsistent with the master plans of Durham and Newington, but at the same time the SEC cannot allow individual towns to veto the process. The legislature has delegated that power to the SEC, so the committee needs to look at the region, not only the two towns, she said.

Member Fitzgerald raised the many discussions that have occurred during the proceedings concerning the Town of Newington's desire to bury additional parts of the line.

Member Way offered comments on the feedback from Newington. He asked, What do we do when the project is inconsistent with the local master plan of a community? He explained it does not necessarily result in a veto by the municipality.

Member Shulock indicated this is a difficult issue for him. He explained the importance of master plans and zoning locally and that this project would likely impact them negatively based on how the two local towns would like to see development occur.

Member Duprey asked, What happens if every town decides it does not want a utility line and zones it out? That would clearly be inconsistent with what the legislature intended, she explained. "Trust me, these communities talk with one another," stated Duprey. Duprey asks, What is it that would not be built if the line was constructed? She said she did not find anything.

Mr. Shulock agreed with Ms. Duprey. He explained the legislature has ensured that towns cannot act to zone out regional utility projects.

Member Fitzgerald also noted that ISO NE had concluded that this application before the committee was the most appropriate project to meet the power needs of the NH Seacoast.

The committee took a break and will address property taxes next.

Orderly Development – General Economics, Economy of the Region. Member Shulock walked the committee through this area in terms of impacts on local communities, the region, the state, tourism, the electric market, employment, etc. He noted the applicant is the only party that provided evidence — from Dr. Lisa Shapiro -- so it is uncontested in the record. Shapiro used the REMY (spelling?) model.

Member Duprey noted Dr. Shapiro's analysis on behalf of the applicant of the benefit of the project regarding local property taxes for impacted towns along the project route. Estimated tax impacts are as follows according to Shapiro in the first year of the project once complete:

Town Low High

Madbury - \$59,091 - \$88,091

Durham - \$748,000 - \$1,098,217

Newington - \$132,853 - \$194,851

Portsmouth - \$41,796 - \$61,300

"Particularly in terms of Durham," noted Member Duprey, "this is a significant add."

The question of whether property tax abatements by abutters to the corridor would reduce this amount was raised by Member Way. Chair Weathersby indicated the topic would be addressed Monday.

The meeting was adjourned at approximately 4:45 PM. The next session will resume at 10:15 AM on Monday, December 10, 2018.

Todd

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