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

DOCKET NO. 2024-02

PETITION REQUESTING JURISDICTION AND OVERSIGHT OF EVERSOURCE PROPOSED X-178 TRANSMISSION LINE REPLACEMENT PROJECT

MEMORANDUM IN SUPPORT OF ORDER DENYING PETITIONS TO INTERVENE

Public Service Company of New Hampshire d/b/a Eversource Energy ("Eversource"), by and through its attorneys, McLane Middleton, Professional Association, hereby submits this memorandum in support of the Site Evaluation Committee's ("SEC" or "Committee") October 1, 2024 Order on Pending Petitions to Intervene ("Order") denying the Office of the Consumer Advocate's ("OCA") and the Maine Office of the Public Advocate's ("MOPA") petitions to intervene. In their October 18, 2024 Motions for Rehearing, the OCA and MOPA essentially reassert the same arguments included in their original petitions to intervene and ask the SEC to make a different decision. They fail to demonstrate good cause for rehearing and their Motions for Rehearing should therefore be denied.

A. Procedural Background

1. The Towns of Easton and Bethlehem, New Hampshire ("Towns") filed a petition on June 3, 2024, asking the SEC to assume jurisdiction over replacement work planned by Eversource on its X-178 electric transmission line between Campton and Whitefield, New Hampshire ("X-178 Project").

2. On August 15, 2024, the OCA filed a petition to intervene. Eversource filed an objection to the OCA's intervention on September 10, 2024, arguing that the OCA was improperly seeking to expand the scope of the SEC proceeding and that the OCA had not

demonstrated a substantial or material interest affected by the proceeding.

3. On August 29, 2024, MOPA filed a petition to intervene. Eversource filed an objection to MOPA's intervention on September 10, 2024, arguing that MOPA had not demonstrated a substantial interest affected by the proceeding.

4. The SEC held a hearing on September 23, 2024, where it heard arguments from Eversource, the OCA, MOPA, and Counsel for the Public regarding the petitions to intervene. Based on those arguments and the pleadings, the SEC denied intervention to the OCA and MOPA, who now seek rehearing.

B. Standard for Rehearing

5. RSA 541:3 provides that a party may apply for rehearing by "specifying in the motion all grounds for rehearing" and, correspondingly, RSA 541:4 requires that "[s]uch motion shall set forth fully every ground upon which it is claimed that the decision or order complained of is unlawful or unreasonable." The SEC's rule on rehearing, Site 202.29, complements RSA Chapter 541, stating that a motion for rehearing must: "(1) Identify each error of fact, error of reasoning, or error of law which the moving party wishes to have reconsidered; (2) Describe how each error causes the committee's order or decision to be unlawful, unjust or unreasonable; (3) State concisely the factual findings, reasoning or legal conclusion proposed by the moving party; and, (4) Include any argument or memorandum of law the moving party wishes to file." Site 202.29 (d).

6. According to the New Hampshire Supreme Court, the purpose of rehearing "is to direct attention to matters said to have been overlooked or mistakenly conceived in the original decision." Dumais v. State Pers. Comm'n, 118 N.H. 309, 311 (1978) (internal quotations omitted). Rehearing may be granted when the Committee finds "good reason" or "good cause"

has been demonstrated. O'Loughlin v. New Hampshire Pers. Comm'n, 117 N.H. 999, 1004 (1977); Appeal of Gas Service, Inc., 121 N.H. 797, 801 (1981). For a rehearing motion to be granted, it "must do more than merely restate prior arguments and ask for a different outcome." Public Service Co. of N.H., Order No. 25,676 at 3 (June 12, 2014); see also Freedom Energy Logistics, Order No. 25,810 at 4 (Sept. 8, 2015).

C. Summary of Eversource Position

7. In their petitions to intervene, the OCA and MOPA expressed concerns about the adequacy of the ISO-New England review of so-called asset condition projects and the potential rate impacts of the X-178 Project on their constituents. They sought to remedy the situation as they saw it by having the SEC step in to exercise the type of financial and rate-related oversight they believed to be lacking. Correspondingly, they argued that their interests in the potential rate impacts on their constituents qualified them to intervene in this siting proceeding. The SEC, however, properly concluded that such interests were not sufficient grounds to grant intervention because the SEC lacks the authority to conduct the type of review urged by the OCA and MOPA.

8. The SEC is *required* to grant intervention, pursuant to RSA 541-A:32, if such party "states facts demonstrating that the petitioner's rights, duties, privileges, immunities or other substantial interests may be affected by the proceeding or that the petitioner qualifies as an intervenor under any provision of law." See also Site 202.11(b). Here "the proceeding" involves the determination of whether the X-178 Project constitutes a sizeable change or addition requiring a Certificate of Site and Facility. As the SEC recognized in its Order, this proceeding does not encompass rate-related issues. Therefore, the interests stated by the OCA and MOPA are not affected by this proceeding and the SEC was not required to grant their intervention. Alternatively, the SEC *may* grant intervention "upon determining that such intervention would

be in the interests of justice and would not impair the orderly and prompt conduct of the proceedings." The SEC reasonably determined not to grant such discretionary intervention to the OCA and MOPA.

9. The Motions for Rehearing do not identify any errors of fact, reasoning or law that require reconsideration. The OCA and MOPA fail to describe how any error caused the Order to be unlawful, unjust or unreasonable. First, neither the OCA nor MOPA stated facts that required the SEC to grant intervention pursuant to RSA 541-A: 32, I. Second, the SEC did not abuse its discretion by declining to grant intervention to either the OCA or MOPA pursuant to RSA 541-A:32, II. Third, the OCA did not demonstrate a material interest in the proceeding as required by RSA 162-H:7-a. On rehearing, the OCA and MOPA reiterate substantially the same arguments raised in their respective Petitions for Intervention and ask for a different outcome.

D. <u>The OCA does not qualify for intervention pursuant to RSA 541-A:32, I or RSA 162-H:7-a.</u>

10. To begin, the plain language of the OCA's enabling statute does not include the authority to intervene in this siting proceeding. <u>See</u> RSA 363:28, II (noting that the OCA may "intervene in any proceeding concerning <u>rates, charges, tariffs, and consumer services</u>."). (Emphasis supplied.) In addition, as noted by the SEC in its Order, the OCA focused in its petition to intervene on the cost of the X-178 Project and argued it had a substantial interest in the proceeding because the costs would be borne by New Hampshire ratepayers, but, as the SEC also noted, this proceeding is limited to reviewing whether the X-178 Project constitutes a sizeable change or addition. Order at pp. 1 and 2. It therefore follows that, because the costs of the X-178 Project are not within the scope of this proceeding, the OCA does not have a substantial interest affected by this proceeding.

11. As with any State agency, the OCA has only those powers expressly delegated to it by the Legislature. In re Campaign for Ratepayers' Rts., 162 N.H. 245, 250 (2011) (holding that an administrative body 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."). Despite the fact that its enabling legislation does not permit it to intervene in a siting proceeding, the OCA nevertheless asserts that it is "entitled to automatic intervenor status." OCA Motion at 4; see also RSA 162-H:7-a, III.

12. As noted above, the scope of this proceeding does not extend to the rate-related issues raised by the OCA. Moreover, the general language of 162-H:7-a, II, relied on by the OCA, cannot give the OCA authority that the Legislature did not give it in the express language of RSA 363:28, II. If the Legislature wished to give the OCA greater authority, it would have done so in RSA 363:28.

13. On rehearing, the OCA argues that the SEC lacks the authority to determine whether the OCA is acting *ultra vires* and it contends that the correct standard for intervention is whether the "interests of residential ratepayers are involved." OCA Motion at 5. The OCA's arguments miss the essential point. It has failed to demonstrate a "material interest" that would require the SEC to grant intervention in this siting proceeding because this proceeding is about siting and not about rates, which are the linchpin of its stated interest and statutory authority. To cite more fully to RSA 363:28, this is not a "proceeding concerning rates, charges, tariffs, and consumers services…in which the interests of residential consumers are involved."

E. MOPA does not qualify for intervention pursuant to RSA 541-A:32, I.

14. MOPA's enabling statute provides that it may make recommendations to the Maine Public Utilities Commission with respect to the reasonableness of rates, the adequacy of

service, any proposal by a public utility to abandon service, the issuance of certificates of public convenience and necessity, terms and conditions, mergers and consolidations, contracts with affiliates, and the issuance of securities. See 35-A M.P.S. §1702.

15. Consistent with its statutory duties before the Maine Public Utilities Commission, MOPA focused in its petition to intervene on ratemaking issues, particularly need and prudence. Consequently, as recognized by the SEC in its Order, MOPA failed to demonstrate a substantial interest affected by this siting proceeding that would require the SEC to grant intervention. Furthermore, because the SEC is a New Hampshire administrative agency with authority limited to energy facility siting matters, it does not have the authority to evaluate the cost impacts of a proposed energy facility on ratepayers in Maine. Accordingly, the SEC correctly determined that MOPA does not have a substantial interest affected by this proceeding.

F. Neither OCA nor MOPA should be granted discretionary jurisdiction pursuant to RSA 541-A:32, II.

16. In addition to mandatory intervention, the SEC may permit intervention under RSA 541-A:32, II when it would be in the interests of justice and would not impair the conduct of the proceeding. In its Motion for Rehearing, MOPA says that it is "in the interests of justice that those with financial responsibility for the costs of any of the SEC's findings have representation." MOPA Motion for Rehearing at 3. MOPA continues to disregard the scope of the SEC's jurisdiction and the scope of this proceeding. Neither MOPA, nor the OCA, meet the standard for discretionary jurisdiction because none of the interests they represent or cite as a basis for their intervention will be affected by this proceeding. It is difficult to see how it would be in the interests of justice for the SEC to grant intervention to parties concerned about issues beyond the authority of the SEC. The scope of this proceeding is simply incongruent with the scope of the OCA's and MOPA's stated interests and statutory remits.

17. The OCA takes exception in its Motion for Rehearing to comments of a Committee Member during deliberations and contends that it is an abuse of discretion for the SEC to rely on concerns about the orderly and prompt conduct of the proceeding. Rehearing pursuant to RSA 541:3, however, pertains to matters determined in a proceeding, or covered in an order, not to the comments of a single member made during deliberations. In its Order, the SEC concluded that the interests raised by the OCA and MOPA, i.e., rate-related issues, were not within the scope of the proceeding and that their inclusion would not lead to an orderly and prompt resolution of the proceeding. The SEC did not abuse its discretion; it simply recognized an obvious consequence of a particular course of action.

G. Conclusion

In summary, because the SEC does not have the authority to decide rate-related matters, and because the OCA's and MOPA's interests and authority are limited to rate-related matters, they do not have a substantial or material interest in this proceeding. The SEC did not overlook or mistakenly conceive anything. It considered the OCA's and MOPA's arguments and correctly concluded they did not meet the standards for intervention. In their Motions for Rehearing, the OCA and MOPA merely restate prior arguments and ask for a different outcome. Accordingly, they have not demonstrated good cause for rehearing.

For all the reasons articulated in this memorandum and consistent with the arguments raised previously in Eversource's objections to OCA's and MOPA's petitions for intervention, Eversource respectfully requests that the SEC affirm its Order on Pending Petitions to Intervene and deny the Motions for Rehearing.

Respectfully submitted,

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By Its Attorneys,

McLANE MIDDLETON
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By:_____

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