

## **Salem Harbor Task Force: Subcommittee on Demolition and Remediation Minutes**

Monday February 4, 2013  
Room 348  
State House, Boston MA

### **Attendees:**

Chairman John D. Keenan	Committee on Telecomm, Utilities and Energy
Paul Stakutis	Attorney General's Office
Lee Smith	MassDevelopment
Undersecretary Barbara Kates-Garnick	Energy and Environmental Affairs
James Simpson	IBEW Local 326
Chris Eicher	Committee on Telecomm, Utilities and Energy
Liam Holland	Committee on Telecomm, Utilities and Energy
Gary Davis	Energy and Environmental Affairs
George Chapman	Committee on Telecomm, Utilities and Energy
Becky Smith	Clean Water Action
Ron Gerwatowski	National Grid
Dan Burgess	Energy and Environmental Affairs
Zach Donah	Sen. Knapik's Office
Thomas Mills	Rep. Ehrlich's Office

Chairman Keenan called the meeting to order at 10:30 am.

### **Welcome from Chairman Keenan**

Chairman Keenan welcomed the attendees and welcomed feedback from the recent Footprint presentation. He noted that the report had seemed like good news and that there had not been any surprises so far. He also stated that Footprint had planned to begin demolition on certain parts by the end of the year and that would make Salem happy. He stated that he was concerned about taking down the structures, but that timeline might be dependent on building a new plant. He also noted that the Forward Capacity Auction was taking place, and that would impact the ongoing DPU proceeding.

### **Overview of Task Force Discussion**

Gary Davis from Energy and Environmental Affairs (EEA) stated that his impression was that Footprint had committed to remediate and demolish the old plant independent of developing a new plant. Paul

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Stakutis of the Attorney General's office noted that while Footprint could commit through the EFSB process, that commitment would not bind them if they did not build a new plant. He stated that while Footprint had made statements that they would remediate and demolish regardless of a new plant, those statements simply reflected their intentions, and that they planned on being successful in building a new plant. He stated that he was not sure how solid those statements were if a new plant were not being built.

Chairman Keenan stated that Footprint had promised him a number of times that they would demolish and remediate, but that they would need an anchor tenant to help finance those costs. He stated that if a new plant cannot be built in Salem than it would not be possible to build one anywhere in Massachusetts. He also stated that if a new plant is not built that Footprint would be left to pursue a plan B, and that they still promised to tear it down, but without a new plant there was a question as to when that would happen. He also confirmed that an EFSB commitment would not apply if a new plant was not built.

Paul Stakutis stated that while their intentions sounded good that they would not hold legal water. He mentioned that an outside contract or memorandum of understanding might be able to bind them to those commitments. Ron Gerwatowski of National Grid said he had a different impression. He stated that his understanding was that Footprint had unequivocally committed to tearing down the existing structures whether or not they received financing to build a new plant.

Red Simpson of IBEW Local 326 stated that the issue was the timeline. He said that Footprint had promised to demolish the structures and that if they were able to build a new plant they would demolish and build quickly. He stated that if a new plant was not built it would extend the timeline because Footprint would need to find new tenants, but that they had committed to not look for any state money for the remediation or demolition.

Paul Stakutis stated that Footprint's intention was clear but that there was nothing in writing, and asked how they could finance the demolition without a new plant. He stated that if a new plant is not built it will be a different situation. Red Simpson noted that there had been concern when Dominion owned the plant that they would simply padlock it and walk away when it closed.

Gary Davis believed that he recalled a meeting in the Attorney General's office almost a year earlier when Footprint had presented an alternative plan in case the plant was not built. Chairman Keenan did not recall that presentation and stated that Footprint would need an anchor tenant and that there were no requirements that they tear down the existing structures.

Ron Gerwatowski speculated that Footprint might have a requirement to remediate and demolish as part of their arrangement with Dominion and that if there was any doubt about their commitment they could ask Footprint to memorialize it in a letter.

Chairman Keenan asked if National Grid had more liability if the existing structures were torn down, and asked why they were opposed to the new power plant. Ron Gerwatowski replied that National Grid was not opposed to a new plant, but was simply opposed to a potential long-term contract and they wanted to give the market the opportunity to work. He stated that if the market was broken they should fix the market mechanism.

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Chairman Keenan noted that it would not be possible to change the ISO rules in time to prevent a capacity shortfall. Ron Gerwatowski replied that if there was any shortage it would be brief and that it could have short-term solutions. He also stated that if fixing the rules pushed back the financing a year that would not be a problem and that National Grid did not want their customers to finance a new power plant through a long-term contract. He stated that National Grid was not supposed to be financing new generation in a restructured environment. He also mentioned that it is hard to predict the market and that ratepayers could be stuck with a bad long-term contract.

Chairman Keenan asked should not the state have a role if the market was not sending the correct signals. Ron Gerwatowski stated that the market rules had a study showing that the current rules should allow for financing new generation, and if that was not true they should fix the market rules. He said they would need to see what price Footprint was able to clear at.

Chris Eicher from Chairman Keenan's office noted that they might want to wait to see how the DPU process played out. He also noted that the issue was when Footprint would tear down the existing structures and that Salem would not want to wait forever for the site to be redeveloped. He stated that the subcommittee should look to ways to make sure the turnaround and demolition happened quickly.

Ron Gerwatowski asked if they could ask Footprint for a letter stating a demolition and remediation timeline if a new plant was not built. Chairman Keenan responded that Footprint could not answer that question because they do not know their plan B yet. He also stated that his role was to make sure the structures were torn down. He also stated that Footprint had promised him they would tear it down no matter what, but that he would not expect them to give him any other answer. He said that he had asked Footprint, and they had promised to tear the plant down, but that they needed an anchor tenant.

Paul Stakutis stated that if they build a new plant then there is not much of an issue, but if not then it was a bigger lift and it was unclear how they would finance it or how they could be held to their commitments. Chairman Keenan stated that Sen. Knapik's subcommittee was looking into ways to create a mechanism for demolition going forward but that he hoped it would not be needed in Salem. He also stated that a power plant is a huge economic engine in a community.

Paul Stakutis stated that Footprint is a power plant developer, not a mall developer. Lee Smith of MassDevelopment asked if Footprint might just sell the property if they cannot build a plant. Chairman Keenan replied that he did not know but that Footprint has said they would develop the site even without a plant. He also stated that a power plant would provide more money for Salem than commercial and industrial use of the site.

Undersecretary Barbara Kates-Garnick of EEA asked what role MassDevelopment could play, and stated that DPU could go a number of ways in the proceeding. Lee Smith responded that it was still premature to discuss MassDevelopment's role and it could include expertise, Brownfields programs, master planning or funding and bonding. Undersecretary Barbara Kates-Garnick asked if there was an idea about timing, possibly after the March 15 DPU deadline. Lee Smith replied that they would need to know if a plant was going to be built.

Undersecretary Barbara Kates-Garnick opined that the DPU proceeding would not be determinative if there would be a new plant as ISO would still have a role to play. Chairman Keenan responded that DPU could make it very clear if a new plant would be built. He also noted that March 15 was simply the deadline for

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finding deficiency, but not if they would issue an RFP. He stated that it would be best to have all the information, to show the long-term benefits of a new plant.

Undersecretary Barbara Kates-Garnick noted that long-term contracts are not always best for ratepayers and Ron Gerwatowski replied that a state subsidy for Salem would be cheaper than a long-term contract. He also stated that a long-term contract was not the only option and that there are other ways to cross-subsidize a plant that might be better policy. Paul Stakutis noted that long-term contracts are not always best for ratepayers, but there were also potential environmental benefits. Chairman Keenan stated that DPU could put out an RFP and see the responses which he believed would benefit both ratepayers and the environment.

Ron Gerwatowski said that they would wait to see how things played out at DPU but that National Grid did not like the long-term contract and that the powers that be set the policy and they would try to do their best. He also noted that he understood that Chairman Keenan was looking out for Salem's interests. Chairman Keenan responded that he was also Chairman of the Energy Committee and that he believed the long-term contract was good for both his district and good policy to ensure generation. He then invited Ron Gerwatowski to present on National Grid's history on the property.

Ron Gerwatowski presented on the history of National Grid on the property, noting that they had been forced to divest the property, and that they had sold the plant to US Gen. As part of that sale US Gen had agreed to indemnify National Grid from remediation costs. He stated that after US Gen went bankrupt National Grid lost the indemnification protection, but that under agreements approved by FERC those remediation costs could be recovered from ratepayers.

Paul Stakutis stated that the Attorney General's Office would not necessarily agree that those costs could be recovered from ratepayers and Ron Gerwatowski replied that he was confident in National Grid's perspective about their ability to recover those costs. He also noted that National Grid was stuck with bad long-term contracts signed in the past. He went on to say that demolition costs would be the most expensive part and would not be National Grid's responsibility, just remediation costs under current law. He also noted that other parties, such as Carhill would have remediation responsibility on the site, but that he did not expect those to be huge costs.

Paul Stakutis said he agreed with 99% of the presentation, but not about the pass-through. Chairman Keenan, Ron Gerwatowski, Paul Stakutis and Chris Eicher all noted that Salem had commissioned a study regarding potential costs, that the demolition costs represented the biggest part of those costs, but that the study was based on rough estimates and might not be very accurate.

Ron Gerwatowski commented that the remediation costs were under current law and then they would sort out who would pay, and that they hoped to work collaboratively with Footprint and other parties on those issues. He also noted that National Grid would want to be involved from the start, and that while the law required remediation to a certain level, for which National Grid would be responsible for their share, that any remediation beyond that level would not be National Grid's responsibility. He asked if it would be worthwhile for the subcommittee to consider ways to help remediate the land to a higher level if that was what Salem wanted.

Chairman Keenan noted that Mayor Driscoll's subcommittee might be the appropriate place to discuss what level of remediation was desired. Chairman Keenan asked if National Grid had been in touch with Footprint regarding the Tetrattech study and whether they had any additional work to do on the

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substation. Ron Gerwatowski replied that they had reached out to Footprint and expected to get together with them. He also stated that only routine upgrades were scheduled for the substation, with those costs through passed through transmission rates. Undersecretary Barbara Kates-Garnick asked if that was local or regional and Ron Gerwatowski said he would have to take a closer look.

Chairman Keenan asked James Simpson if there was asbestos on the site and he responded that much of it had been removed through an asbestos removal program. He did say that there were some areas that had not been part of that process yet, so there might still be some problems with asbestos.

Undersecretary Barbara Kates-Garnick asked what the remediation process was and Ron Gerwatowski responded that DEP would be involved and they would try to work together. Gary Davis stated that they would assess the full costs and then it would be allocated to the responsible parties, including National Grid, he also asked about the indemnity agreement. Ron Gerwatowski responded that the indemnity agreement was gone due to the bankruptcy, and so National Grid was simply a responsible party under the law.

Gary Davis noted that the costs would be borne by many parties, including possibly Dominion, but that they did not know the details of their arrangement with Footprint. He also called demolition the elephant in the room, and that under current law no one was responsible for those costs, and so who would pay, the owners, community, ratepayers or something else. Ron Gerwatowski agreed and noted that he believes that Footprint got money from Dominion for demolition and remediation and that is why Footprint is so adamant about saying they would pay for it whether or not they built a new plant. Chairman Keenan noted that he did not believe Dominion would pay money for the demolition since they were not liable for the demolition under the law.

Paul Stakutis stated that National Grid would try to flow their cost and the Attorney General would intervene as they often do. Chairman Keenan asked if this would be a full hearing and Paul Stakutis remarked that they had a zillion hearings and that National Grid could not add to their bill without going to DPU and that is when the Attorney General could intervene.

Undersecretary Barbara Kates-Garnick noted that this was a very complex issue, but that they should not hang too much on the DPU since their decision might not provide much clarity. Paul Stakutis noted that the EFSB could provide a level of firm commitment but only if a new plant was built. Chairman Keenan asked if the EFSB could look into plant financing and Ron Gerwatowski responded that formerly the EFSB could look into financing but after restructuring it could only look into siting and environmental issues.

Chairman Keenan noted that the EFSB was the least of the new plants issues, and that with such broad community support it should be a slam dunk. Ron Gerwatowski agreed that the new plant should be able to get through the EFSB process.

### **Discussion of Future Meetings**

Chairman Keenan stated that Senator Knapik will hold a tour of Mt. Tom and ISO New England Headquarters on March 6<sup>th</sup>, and that it might be best to wait for the DPU process to end on March 15. He also asked if MassDevelopment could possibly provide more information after that. He also stated that the subcommittee should consider the June 15 deadline. Lee Smith stated that MassDevelopment would need more clarity to provide good insight, and that the issue was there was no responsibility to

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tear down the structure. Gary Davis remarked there was no legal requirement to tear down the structure, and Paul Stakutis remarked that the Decommissioning Subcommittee was looking into that issue. Gary Davis remarked that the decommissioning was prospective. Ron Gerwatowski said that they could not require an owner to decommission their plant, and Chris Eicher responded that they could not do so, yet. Chairman Keenan closed the meeting by noting that Cape Wind was required to decommission, and that decommissioning coal plants was a stranded cost in his mind, and that they would leave the decommissioning part to Senator Knapik's subcommittee. He thanked everyone for attending.

The meeting concluded at 11:50 pm.

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