

**THE STATE OF NEW HAMPSHIRE
before the
PUBLIC UTILITIES COMMISSION**

PUBLIC SERVICE COMPANY OF NEW HAMPSHIRE D/B/A EVERSOURCE ENERGY

Petition for Approval of Lease Agreement Between Public Service Company of New Hampshire
d/b/a Eversource Energy and Northern Pass Transmission LLC

Docket No. DE 15-464

**PUBLIC SERVICE COMPANY OF NEW HAMPSHIRE
D/B/A EVERSOURCE ENERGY'S PARTIAL OBJECTION
TO PETITIONS TO INTERVENE OF KEVIN SPENCER
AND MCKENNA'S PURCHASE UNIT OWNERS ASSOCIATION**

Pursuant to New Hampshire Code of Administrative Rules Puc 203.07 and RSA chapter 541-A, Public Service Company of New Hampshire d/b/a Eversource Energy ("PSNH" or the "Company") hereby submits a partial objection to the petitions to intervene filed by Kevin Spencer and the McKenna's Purchase Unit Owners Association (the "Association") in the above-captioned docket. In support of its objection, PSNH states the following:

1. On October 19, 2015, PSNH filed a petition for approval of a lease transaction between it and Northern Pas Transmission LLC ("NPT") whereby PSNH would lease to NPT certain real estate rights owned by PSNH. On November 17, 2015, the Commission issued a letter indicating that PSNH's petition was deficient. The Commission required that to remove the deficiency PSNH would be required to file copies of the deeds pertaining to each of the parcels covered by the proposed lease, as well as a legal opinion regarding PSNH's ability to convey its rights in the identified real estate. PSNH filed a responsive letter on the legal issues on December 4, 2015, and copies of the deeds on December 7, 2015. In its December 4, 2015 response, at page 2, PSNH stated its position that to the extent there might be a dispute or difference of opinion about the extent of

PSNH's rights or obligations under one or more of the deeds covered by the proposed lease, resolution of such disputes would be more appropriately handled in the courts, rather than by the Commission. Moreover, PSNH noted that by agreeing to provide the requested information it was not also agreeing that the Commission has jurisdiction over any decisions relating to the underlying real estate rights owned by PSNH. To date, the Commission has not issued an order of notice in this proceeding.

2. On January 19, 2016, Kevin Spencer, a landowner in Stark, New Hampshire filed a petition to intervene dated January 15, 2016. In that petition, Mr. Spencer noted that he owned property that is covered by one of the easements that would be affected by the proposed lease, should it be approved. In his motion, Mr. Spencer stated that he should be granted the right to intervene because "PSNH does not have the legal right to lease the easement to NPT because the easement did not grant such rights to PSNH. I (We) own the rights." Spencer Petition to Intervene at 1. On January 27, 2016, PSNH received a petition to intervene from the Association, which owns certain property in Concord covered by an easement that would be affected by the proposed lease. Using language substantially similar to Mr. Spencer, the Association contended that it is entitled to intervene because "PSNH does not have the legal right to lease the easement to NPT because the easement did not grant such rights to PSNH. McKenna's Purchase Unit Owners Association, own [*sic*] the rights." Association Petition at 1. Accordingly, both Mr. Spencer's and the Association's interventions are premised entirely upon their disagreement about the scope of PSNH's existing easement rights and PSNH's legal right to transfer those rights.

3. PSNH does not object to the intervention of either Mr. Spencer or the Association as landowners with property that is covered by the proposed lease. PSNH does, however, object to the scope of the intervention requests and the matters which they intend to address, should they be permitted to intervene. As PSNH stated in its response to the Commission's deficiency letter, a dispute over the scope of the easement is a matter for the courts, and not the Commission. "The PUC is a creation of the legislature and as such is endowed with only the powers and authority which are expressly granted or fairly implied by statute." *Appeal of Public Service Company of New Hampshire*, 122 N.H. 1062, 1066 (1982). Although the Commission may review private real property rights in a few limited circumstances (*see, e.g.*, RSA 371:1 relative to the use of eminent domain by public utilities), it does not have general authority to adjudicate such rights. Instead, that authority rests with the superior court. *See, e.g., Gray v. Seidel*, 143 N.H. 327, 330 (1999) (noting that the legislature has specifically provided for petitions to be brought in superior court to resolve disputes between persons claiming an interest in real property, and that granting regulatory authority to a state agency does not vest that agency with authority to determine the relative rights of property owners), *see also, Gordon v. Town of Rye*, 162 N.H. 144, 150 (2011) (stating that by granting town selectmen the authority to regulate public roads and sidewalks, the legislature was not also vesting towns with authority to determine the underlying rights of property owners). Though the Commission may possess regulatory authority over PSNH as a public utility, that authority does not create in the Commission the jurisdiction to decide private real property rights. Accordingly, to the extent that either Mr. Spencer or the Association seek to intervene to discuss or debate the breadth of the underlying easements, or PSNH's

legal rights relative to the easements it owns, intervention before the Commission is improper.

4. Pursuant to RSA 541-A:32, III, and Puc 203.17, the Commission may limit an intervention to, among other things, “designated issues in which the intervenor has a particular interest.” PSNH hereby requests that if the Commission grants either or both intervention petitions, it limit such interventions to the issues in which those persons or entities may have a particular interest and over which the Commission has jurisdiction, which would exclude any ruling upon the scope of the underlying easements, or the legal ability of PSNH to transfer the rights it owns.

WHEREFORE, PSNH respectfully requests that the Commission:

- (1) Limit Mr. Spencer’s and the Association’s participation as described if the petitions to intervene are granted; and
- (2) Order such further relief as may be just and equitable.

Respectfully submitted,

**Public Service Company of New Hampshire d/b/a
Eversource Energy**

January 28, 2016
Date

By: 

Matthew J. Fossum
Senior Counsel
780 North Commercial Street
Post Office Box 330
Manchester, New Hampshire 03105-0330
(603) 634-2961
Matthew.Fossum@eversource.com

CERTIFICATE OF SERVICE

I hereby certify that, on the date written below, I caused the attached Objection to be served pursuant to N.H. Code Admin. Rule Puc 203.11.

January 28, 2016
Date



Matthew J. Fossum

