

The State of New Hampshire

Public Utilities Commission

DE 15-464

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Public Service Company of New Hampshire dba Eversource Energy

Petition for Approval of Lease Agreement with Northern Pass Transmission LLC

Reply to the Public Service Company of New Hampshire dba Eversource Energy Partial
Objection to the Intervention Motion of Kevin Spencer and Mark Lagasse dba Lagaspence
Realty, LLC

Motion for Dismissal of this Docket Pending Adjudication by a Court of Competent
Jurisdiction of the Property Rights of Interveners

Parties

The Public Service Company of New Hampshire (PSNH) Petition identifies two parties to this docket: PSNH and Northern Pass Transmission LLC (NPT). PSNH is a New Hampshire corporation. NPT is a single purpose New Hampshire limited liability company.

The Petition was signed by Matthew J. Fossum, Senior Counsel for Eversource Energy Service Company. (EESC).

EESC is a Connecticut corporation. EESC is the operating company responsible for all aspects of the EE transmission system including operations, maintenance, engineering, planning, reliability compliance, project management and construction.

EESC controls and manages NPT and the Northern Pass, the proposed 192 mile transmission line project through New Hampshire.

The PSNH easements proposed to be used for the Northern Pass are controlled and managed by EESC

James A. Muntz, an EESC executive and employee, controls and manages the transmission business of Northern Pass and PSNH as it relates to the Northern Pass.

Mr. Muntz is the President of Northern Pass Transmission, LLC.

Eversource Energy, (EE), a public utility holding company incorporated in Massachusetts, owns PSNH, NPT and EESC.

Mr. Muntz is signatory to the Transmission Service Agreement (TSA) first dated October 4, 2010, (re-signed February 14, 2014), the agreement setting forth the terms and conditions of the transmission deal between Northern Pass and Hydro-Quebec, the Province of Quebec owned company needing the transmission lines through New Hampshire.

The TSA provides that Hydro-Quebec will pay NPT for the use of the easements, the subject of this docket. The payment is based on a formula rate detailed in Attachment B to the TSA. The formula rate calls for the Hydro-Quebec payment to NPT to be based on the NPT construction and related costs plus a return on equity of 12.56%.

The detailed description of the parties as set forth above is essential to Commission understanding of the issues in this docket.

The identification of the parties demonstrates that EESC controls both sides of the lease proposal that PSNH asks the Commission to approve.

The arrangement is a manifest conflict of interest.

The terms of the TSA and the potential income that NPT will receive from Hydro-Quebec must be discoverable in this docket to allow the Commission to weigh the fairness of the proposed lease payments.

The source of the funds that will form the basis of the payment by Hydro-Quebec to NPT must be discoverable in this docket.

The terms of the TSA must be examined by the Commission before the Commission can determine if the lease deal will be for the public good.

The Petition does not identify the current owners of the easements PSNH seeks to lease to NPT.

Reply

Interveners Spencer and Lagasse dba Lagasence Realty, LLC, timely filed to intervene in this docket as owners of property in Coos County, New Hampshire encumbered by an easement owned by Public Service Company of New Hampshire (PSNH). (The easement is attached to Motion to Intervene). Interveners' predecessor in title, Stella A. Lunn, granted the easement to PSNH on May 24, 1946.

PSNH has asked the Commission to approve a lease transaction whereby PSNH would lease the easement encumbering interveners' property to Northern Pass Transmission LLC (NPT) for the construction of high voltage direct current (HVDC) infrastructure to transmit electricity from Canada for sale in the New England wholesale market.

PSNH, in its petition, represented to the Commission that it has the right to lease the easement encumbering interveners' property to NPT for the construction of the Northern Pass.

PSNH does not own the right to lease the easement to NPT. That right is owned by interveners.

PSNH cannot enter the proposed lease without an express grant from interveners.

Memorandum In Support of Reply

PSNH asserts that the Commission does not have the jurisdiction to adjudicate property rights issues, that property rights issues must be determined by the courts. (December 4, 2015, Fossum letter to the Commission, page 2).

Intervenors agree. The property rights issue raised by their intervention must be heard and determined in a court of competent jurisdiction.

Notwithstanding the PSNH statement that only a court of competent jurisdiction can adjudicate property rights; the company argues that it has the right to enter the lease with NPT. In support, the company cites Lussier v. New England Power Co., 133 NH 753 (1990).

The PSNH argument is wrong.

The easement grant described in Lussier bears no similarity whatever to the easement granted to PSNH by Stella A. Lunn, intervenors' predecessor in title.

The Lussier grant expressly provided (Lussier, page 757), in broad language, that New England Power had the "...perpetual right and easement to construct, reconstruct, repair, maintain, operate and patrol, for the transmission of high and low voltage electric current and for telephone use, lines and towers or poles or both (which may be erected at different times) with wires and cables strung upon and from time to time, and all necessary foundations, anchors, guys, braces, fittings, equipment and appurtenances over, across and upon a strip of land *350 feet in width*... (emphasis added).

"Also the right and easement from time to time without further payment therefor...to remove, renew, replace, *add to and otherwise change the lines*, and each and every part thereof, and the location within said strip..." (emphasis added).

"It is the intention of the Grantors to convey to the Grantee the perpetual right and easement to construct, operate and maintain transmission lines as herein described..."

The Lunn grant to PSNH reads: "...the right to erect, repair, maintain, rebuild, operate and patrol electric *transmission and distribution lines*, consisting of suitable and sufficient poles and towers, with suitable foundations, together with wires strung upon and between for the transmission of electric current, together with all necessary cross-arms, braces, anchors, wires and guys, *over and across a strip of land 150 feet in width*..." (emphasis added).

The Lussier court, interpreting language distinguishable because of the broad and express terms of the grant, not only does not support the PSNH claim, the case supports intervenors' claim.

1. Lussier articulates the principal rule of interpretation of easements: the intent of the parties at the time of the grant must be ascertained. Lussier at page 756: "The beginning and end of our enquiry is found in the words of the easement deeds. Our task is to determine the parties' intent in light of the surrounding circumstances at the time the easements were granted. Bisson v. Laconia Investment Properties, Inc. 131 NH 704, 707 (1989); Sakansky v. Wein, supra 86 NH at 339..."

The grant language in the May, 1946, Lunn easement encumbering intervenors' property, expresses the intent of the parties at the time. The easement was entered by Stella A. Lunn and PSNH to bring necessary electricity to rural New Hampshire. The grant provides an easement for *transmission and distribution*. The parties' intent is evident from the language itself. The Lunn grant evidences the need

to bring electricity to New Hampshire homes, farms and businesses. The history of these easements that proves the intent of the parties, such as the Lunn easement, can be gathered from the records of the Commission itself. Many of the easements were secured because PSNH was constructing Schiller Station in Portsmouth, New Hampshire. Schiller went on-line in 1950. The additional generating capacity necessitated more and wider easements because the existing capability was strained.

A Commission eminent domain case, D-E 3247, Public Service Company of New Hampshire v. Harold A. Webster, filed April 13, 1953, proves the point. In that case, PSNH, in its pleadings, alleged that the 66 kV line through Mr. Webster's Holderness property was inadequate to meet the service requirements of PSNH customers. PSNH sought to acquire an additional 125 feet in order to construct a new 110 kV line. To acquire the additional land, PSNH had to prove to the Commission, under Chapter 294 of the New Hampshire Revised laws, that the condemnation was a public necessity. PSNH offered Mr. Webster a total of \$214 for his 5 ¾ acres of land, 5,000 feet of pine at \$15 per thousand board feet and \$2 per cord for 12 cords of wood. On May 29, 1953, the Commission granted the condemnation on the basis that it was necessary to meet the reasonable requirements of service to the New Hampshire public. The Commission ordered that PSNH pay Mr. Webster the \$214 plus an additional \$535, a total of \$749, recognizing that work had to be done to protect Mr. Webster's water supply.

The easement history demonstrated by the Webster case, that the easement was obtained because of public necessity, is manifestly different than purpose of the Northern Pass. The Northern Pass is a transmission only elective project with no distribution capability, not subject to ISO-NE dispatch, and not necessary to bring electricity to New Hampshire homes, farms and businesses.

2. The Lussier case is an important precedent in favor of interveners for another reason. The Lussier court, at page 758, held: "Lest our holding be interpreted to permit unlimited expansion by New England Power of its easement, we wish to emphasize that the parties involved must still act reasonably under the terms of the grant so as to not to interfere with the use and enjoyment of each other's estates. See Donaghey v. Croteau, 119 NH 320, 324-25 (1979)...." The Court went on to say that if a plaintiff alleged that the proposed use was an "unreasonable interference or encroachment" such use may be determined to be an unreasonable use of the easement. The question of unreasonable use is a question of fact to be determined by a jury. Arcidi v. Town of Rye, 150 NH 694, 702.

Motion

Intervenors move the Commission for an Order dismissing the PSNH Petition because a court of competent jurisdiction must first adjudicate the parties respective rights.

Wherefore

Intervenors request that the Commission dismiss the PSNH Petition together with such other relief proper in the matter.

2/10/16

Respectfully submitted,

Arthur B. Cunningham

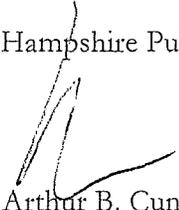
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Certificate

I certify that this document was filed and served in accordance with the New Hampshire Public Utilities Commission Rules.

2/10/16



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