

Before the New Hampshire Public Utilities Commission

DE 15-464

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

Petition for Approval of Lease Agreement between PSNH dba Eversource Energy and Northern Pass Transmission LLC

Motion to Intervene

Kris Pastoriza, representative for Ruth Ward, owner of 294 Gibson Road, Easton, NH. respectfully requests to intervene in the captioned docket.

Memorandum in Support of Motion

This property is encumbered by an easement that Public Service Company of New Hampshire (PSNH) will claim as leasable by precedent if the above petition to lease certain portions of its existing easements to Northern Pass Transmission, LLC (NPT) for the construction of high voltage transmission infra-structure for the importation of electricity from Canada, is granted by the PUC. This property is on the alternative route listed in NPT's current application with the SEC. Its 19 acres of easement were part of NPT's preferred route for five years. The easements are attached hereto. PSNH does not have the legal right to lease the easement to NPT because the easement did not grant such rights to PSNH. Ruth Ward owns these rights, therefore, I request that I be granted the right to intervene in this docket on her behalf. In addition, the PSNH easement crosses the right-of-way to my abutting property, 780 Gibson Road, (a right-of-way that pre-dates the siting of the line), is extensively within the viewshed of my property, and any violation of the easement contract will negatively affect my property.

From at least Woodstock, NH to at least Groveton, NH, the PSNH easement does not grant the right to construct any additional lines other than 115Kv lines (see attached condemnation deed for Ruskin property.)

Neither does the easement grant the right to place fiber optic cable. For NPT's intent to install fiber optic cable, see below p. 424

**Exhibit No. NPT-208**

Advanced Technology Materials

- Summary of HVDC Transmission
- Information Regarding Fiber Optic Cable: Optical Ground Wire Cable
- Description of Aluminum Conductor, Steel Supported (ACSS)
- Description of LIDAR Technology
- Articles Regarding Aerial Laser Survey Technology (LIDAR)
- Article Regarding IEC 61850

<http://northernpass.us/assets/ferctransmissionserviceagreementfiling.pdf>

Easement was granted in 1948 to PSNH, “it’s successors and assigns.” The purpose of this language, drafted by PSNH, was to allow them to be bought by Northeast Utilities, for example, and allow Northeast Utilities to then own the easement. This is no permission or provision for lease. If PSNH had intended them to be there, they would be there, given the broad wording of the majority of these easement deeds.

The application is incomplete: In their petition to the PUC Eversource states that the NPT line ends in Deerfield, NH and their petition does not list the towns of Candia, Raymond, Chester, Auburn, Derry and Londonderry, yet in its 2014 filing with ISO Eversource (then NU) lists the end of the route as Scobie Pond (Londonderry, NH.)

“NU-13-T24 - Transmission notification from NU on behalf of NPT for the installation of a 210 Mvar of 345 kV capacitor banks at the 345 kV Scobie Pond Substation. The capacitor banks will be connected to 345 kV Scobie Pond Bus #2 via five 345 kV, 50 kA circuit breakers. The capacitor banks will be divided into four separate banks, three 60 Mvar banks and one 30 Mvar bank with each bank having its own dedicated circuit breaker and will connect to the 345 kV bus via one new circuit breaker. The capacitor banks will be equipped with voltage protection. In addition to the capacitor banks, two 345 kV, 50 kA circuit breakers will be installed. One circuit breaker is to be installed in series with the existing 9126 circuit breaker, and the other circuit breaker installed in series with the 262 circuit breaker...

NU-13-T26 - Transmission notification from NU on behalf of NPT for the 345 kV AC transmission line 373, 345 kV Deerfield Substation to 345 kV Scobie Pond Substation, to be thermally up-rated to a minimum LTE thermal rating of 1435 MVA. To achieve this thermal rating, conductor sag limitations will be removed and the line’s connecting hardware will be replaced so that the line can be operated to 140 degrees C.”

[http://www.iso-ne.com/trans/pp\\_tca/isone\\_app\\_approvals/prop\\_plan/2013/dec/a\\_npt\\_i\\_3\\_9\\_rev1.pdf](http://www.iso-ne.com/trans/pp_tca/isone_app_approvals/prop_plan/2013/dec/a_npt_i_3_9_rev1.pdf)

And in its 2015 application to the SEC, these towns are included:

“Volume XX Appendix 22: Results of Phase I-A and Phase I-B Archeological Survey – Proposed Expansion of Deerfield Substation, Proposed Expansion of Scobie Pond Substation and AC System Transmission Line Upgrades (PSNH 373 Line): Deerfield, Candia, Raymond, Chester, Auburn, Derry and Londonderry, NH (2015)

[http://www.nhsec.nh.gov/projects/2015-06/application/2015-06\\_2015-10-19\\_nptllc\\_psnh\\_sec\\_application\\_certificate\\_site\\_facility\\_table\\_contents.pdf](http://www.nhsec.nh.gov/projects/2015-06/application/2015-06_2015-10-19_nptllc_psnh_sec_application_certificate_site_facility_table_contents.pdf)

“(1) Location and Site Address of Proposed Facility

Northern Pass is a linear electric transmission line that does not have a physical address for the Project as a whole. The location of the 192-mile transmission line and associated facilities is shown on the Project Maps submitted in response to Site 301.03 (c)(3) and 301.03 (g)(1). See Appendix 1.

The physical address of the Franklin Converter Station is 1079 South Main Street, Franklin, NH; the physical address of the Deerfield Substation is 27 Cate Road, Deerfield, NH; **and the physical address of the Scobie Pond Substation is 6 Brewster Road, Londonderry, NH.** “

p. 30: <http://www.northernpass.us/assets/filings/Volume%20I/Northern%20Pass%20Transmission>

In its application to the PUC Eversource states:

*“1.2 Leased Use. Lessee shall have the rights on, over and across the Leased Properties to install, construct, operate, maintain, patrol, inspect, repair, rebuild, replace, decommission and remove one overhead direct-current (DC) 320 kV electric power transmission line..with associated poles, towers, wires, cables, insulators, foundations, anchors, guys and appurtenant fittings and equipment, together with telecommunication wires, cables and appurtenant equipment affixed thereto for **transmitting data and communications related solely to the operation and maintenance of said lines**”* yet wording on many of the original easements is different, granting “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 extending between the same, for the transmission of electric current, together with all necessary cross-arms, braces, anchors, wires and guys, over and across a strip of land...” The earlier easement deeds give no permission for the transmission of data and communications. So even before asking for right to lease, the applicant is attempting to vastly broaden the terms of the original easement, and claiming rights it (Eversource) does not have.

Eversource requests permission from the PUC to grant to NPT: *“(b) the rights to pass and repass on, over and across the Leased Properties on any existing access drives, roads and ways, and on any new access drives, roads and ways lawfully constructed for the NPT Project, with personnel, vehicles and equipment for all purposes and at all times in the lawful exercise of the rights leased herein;”* These “roads and ways” need to be defined. Again Eversource claims rights they do not have; that game trails, on easements passable only by bronto mowers on tracks, and not passable in many stream locations, are “roads” which they have the right to upgrade to standards permitting the passage of the heavy equipment needed to construct NPT.

Eversource request that the PUC permit it to grant to NPT:

*“(d) the rights from time to time to access and use the Leased Properties on a limited, temporary, and non-disruptive basis where necessary to maintain operating permits for the NPT Project and/or the NPT Project Facilities, including but not limited to access and use for studies (e.g., biological surveys);*

*(e) the rights to conduct site tours on the Leased Properties for business, educational, or promotional purposes; and,*

*(f) the rights to undertake on the Leased Properties any other activities that Lessee determines are necessary, helpful, appropriate or convenient in connection with or incidental to the construction, operation, maintenance, inspection, patrol, replacement, repair, rebuild, removal or decommissioning of the NPT Project Facilities. “*

None of these is permitted in the original easement contracts. In addition, the language is far too broad (“from time to time”... “limited, temporary, non-disruptive basis”???) and a recipe for more of the abuse of power Eversource has made their hallmark.

*“1. 7 Access Roads. Lessee shall be entitled to the non-exclusive use of existing access roads or ways*

*for access to and from the Leased Properties to the same extent as Lessor is entitled to use such roads or ways. No representations or warranties by Lessor are given hereunder, and use of all such roads or ways is permitted at Lessee's sole cost and risk, and the use thereof and any improvements thereto shall be for the mutual benefit of Lessee and Lessor. All damages to and repairs of access roads and ways arising out of Lessee's use shall be at Lessee's sole cost and expense."*

Again, Eversource, through its lease request, indirectly attempts to get the PUC to grant it rights it does not have.

This looks like a contract written by a corporation that expects no serious opposition.

*"4.2 NPT Project Facilities. Lessee shall own, and shall have the right to install, construct, operate, maintain, patrol, inspect, repair, rebuild, replace, decommission and remove the NPT Project Facilities on the Leased Properties at Lessee's sole cost and expense, and at Lessee's sole risk.*

*4.3 Lessor's Facilities. Except as otherwise provided in Article 4.4 below, Lessor shall own, and shall have the right to install, construct, operate, maintain, patrol, inspect, repair, rebuild, replace and remove Lessor's existing and any future, or additional, overhead and underground electric power transmission, distribution and telecommunication lines, equipment and facilities used or useful in its electric utility operations on or within the Leased Properties, or on or within the Lessor's lands, easements and rights of way of which the Leased Properties are a part or portion ("Lessor's Facilities") at Lessor's sole cost and expense, and sole risk."*

p. 20, again, underlined activities are not permitted in many of the easement deeds. A detailed compilation of all original easement terms needs to be made.

Section 4.4, includes more of the un-permitted activities listed above.

*"8.1 Recordation of Notice of Lease. (a) Lessor and Lessee hereby agree that this Lease shall not be recorded in the public records of any County Registry of Deeds. Instead, there shall be recorded in each applicable County Registry of Deeds a notice of this Lease (the "Notice of Lease") that complies in content and form with New Hampshire RSA Section 477:7-a. Lessor and Lessee shall execute and deliver Notices of Lease in the form attached to this Lease as APPENDIX F- NOTICE OF LEASE for such purpose for each county in which the Leased Properties are located. Each fully executed Notice of Lease shall be held by Lessor for recording pending regulatory approval of this Lease and lease transaction, and shall be recorded only when such approval has been obtained. Lessor and Lessee agree to jointly execute and to record an amended Notice of Lease giving notice of the Lease Commencement Date and/or the Commercial Operation Date under this Lease when and if such dates are achieved."*

Why? Would this serve the interests of Eversource and NPT, or the public? How would any landowner or purchaser be aware of the conditions of their "revised" easement deed, given the substantial changes in them suggested by the Eversource? (I do not imply Eversource has the right to lease the easement.)

Article 11.1 Decommissioning. Is the PUC aware that Eversource is seeking a waiver from the SEC decommissioning requirements? If it is granted a waiver, would this clause still hold?

*"14.1 Lessee's Right to Encumber or Transfer. (a) Provided Lessee shall not then be in default under this Lease, Lessee, its permitted assignees, transferees or sublessees, may voluntarily mortgage,*

*pledge, grant a security interest in or encumber the Lessee's rights, title and interests under this Lease and in the NPT Project Facilities installed and constructed on the Leased Properties, at one time or at any time, without the express prior written consent of Lessor. Lessee, its permitted assignees, transferees or sub lessees, shall provide written notice to Lessor of each such mortgage, pledge, grant of security interest or encumbrance promptly upon its occurrence...”*

*(b) Provided Lessee shall not then be in default under this Lease, Lessee may, voluntarily, or by operation of law, assign, transfer, or sublease this Lease or sublease its rights under this Lease, in whole or any part thereof, to an affiliate or successor of Lessee as designated by Lessee, without the express prior written consent of Lessor, provided the assignee or transferee possesses the technical, operational, and financial capability to perform all of the covenants, duties, and obligations of Lessee hereunder, including but not limited to funding and carrying out the decommissioning plan .”*

I request that the PUC look carefully at the above. Where are the rights of the landowners in this petition? Should a contract signed by landowners, in good faith, with a utility, require later landowners to be able to pay a lawyer to defend it? Is the PUC going to throw this case to the highest bidder?

“Yes, it is my opinion that the Lease is representative of a fair and reasonable lease transaction, striking an appropriate balance of terms between the Lessor, PSNH, and the Lessee, NPT. “ Salvatore Giuliano, Eversource employee.

<https://www.puc.nh.gov/Regulatory/Docketbk/2015/15-464/INITIAL%20FILING%20-%20PETITION/15-464%202015-10-19%20EVERSOURCE%20PTESTIMONY%20S%20GIULIANO.PDF>

And none of the Eversource engineers spoke on the issue of the PNGTS 24 inch pipeline that runs in the PSNH 150 foot wide easement in Dummer, Stark and Groveton.

### **Certificate of Service**

I hereby certify that on this 9<sup>th</sup> day of April, 2016 a copy of this document was sent by electronic mail to the parties named in the distribution list for this docket.

Kris Pastoriza