

The State of New Hampshire Public Utilities Commission

DE 15-464

Public Service Company of New Hampshire dba Eversource Energy

Petition for Approval of Lease Agreement with Northern Pass Transmission LLC

**Motion for Reconsideration of Order Denying Motion to Dismiss of Interveners Kevin
Spencer and Mark Lagasse dba Lagaspence Realty LLC**

Motion

Interveners Kevin Spencer and Mark Lagasse dba Lagaspence Realty, LLC respectfully move that the New Hampshire Public Utilities Commission (Commission) reconsider its April 15, 2016, Order denying interveners' motion to dismiss the Public Service Company of New Hampshire (PSNH) Petition for Approval of Lease Agreement with Northern Pass Transmission LLC (NPT).

Memorandum in Support of Motion

The Commission, in its Order, reasoned that the PSNH Petition for approval of the NPT Lease Agreement could survive the interveners' motion to dismiss because the facts alleged in Petition, at the pleading stage of the case, must be assumed to be true. (Order, page 5).

As a matter of the sufficiency of pleadings, the Commission analysis may be correct, but the analysis misses the purpose of the PSNH Petition for Approval of Lease Agreement. The Lease Agreement is the predicate for the PSNH and NPT claim that it can build the Northern Pass on the easement burdening interveners' property. That claim is pending before the New Hampshire Site Evaluation Committee.

On October 19, 2015, NPT and PSNH filed their Application for Certificate of Site and Facility (Docket No.2015-06). In their Application NPT and PSNH represented to the Site Evaluation Committee (Committee) that: "NPT has executed an agreement with PSNH to lease approximately 100 miles of existing electric transmission ROW from PSNH pursuant to RSA 374:30 in three segments: Dummer to Bethlehem-approximately 41 miles; Bridgewater to Franklin-approximately 25 miles; and, Franklin to Deerfield-approximately 34 miles. PSNH will submit the lease to the New Hampshire Public Utilities Commission ("NHPUC") for approval pursuant to RSA 374:30." (Joint Application, page 6).

The Commission, at page 6 of the April 15, 2016, Order, suggests that interveners may bring an action in "superior court"¹ to adjudicate their property rights. The Commission, however, has

¹ The Superior Court is not the only court of competent jurisdiction. The United States District Court for the District of New Hampshire has jurisdiction based upon diversity of citizenship. The Commission should note that the real party in interest in this case is Eversource Energy Service Company. The Petition for Approval of the Lease Agreement was signed by Matthew J. Fossum, Senior Counsel for Eversource Energy Service Company. (EESC). EESC is a Connecticut corporation responsible for all aspects of the EE transmission system including operations, maintenance, engineering, planning, reliability compliance, project management and construction. The direction and control of the Northern Pass project does not come from the

misapprehended which party has the burden of proof in the regulatory body that matters. The body that must decide if PSNH and NPT are entitled to a Certificate of Site and Facility is the Site Evaluation Committee, not the Commission.

RSA 162-H:7 requires that a project developer own or have the right to acquire the property upon which it proposes to construct the project. See Site 301.03 (c) (1)-(2) and Site 301.03 (c) (6) a. Site 301.03(6) a. requires the project developer to produce:

“(E)vidence that the applicant has a current right, an option, or other legal basis to acquire the right, to construct, operate, and maintain the facility on, over, or under the site, in the form of: a. Ownership, ground lease, easement, or other contractual right or interest.”

PSNH and NPT have the burden of proof to establish by a preponderance of the evidence that they own the right to build the Northern Pass on interveners’ property. Site 202.19 Burden and Standard of Proof. Interveners do not have the burden of proof.

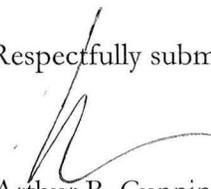
Until Petitioners satisfy their burden of proof of ownership, the pendency of the docket at bar is a waste of time and resources, both for the Commission and the parties. It is for that reason that interveners filed their motion to dismiss.

Wherefore

Interveners respectfully request that the Order denying their motion to dismiss be reconsidered and that the Petition for Approval of Lease Agreement be dismissed.

4/19/16

Respectfully submitted,


Arthur B. Cunningham

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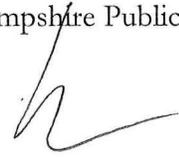
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Certificate

Eversource Energy wholly owned subsidiaries and affiliates PSNH and NPT, it comes from executives at EESC.

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

4/19/16



Arthur B. Cunningham