

**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**

**Objection of Kevin Spencer and Mark Lagasse dba Lagaspence Realty, LLC to Eversource Energy Motion to Establish a Procedural Schedule**

Intervenors Kevin Spencer and Mark Lagasse dba Lagaspence Realty, LLC, object to the May 5, 2017, Eversource Energy (Eversource) Motion to Establish a Procedural Schedule for the reasons set forth in the following Memorandum.

**Memorandum**

On October 19, 2015, Eversource Energy filed its Petition for approval of a lease between Northern Pass Transmission LLC and Public Service Company of New Hampshire (PSNH).

The Eversource Petition represented that the Public Utilities Commission had jurisdiction under RSA 374:30 to consider the lease. RSA 374:30 confers jurisdiction on the PUC to determine if it in the public good for a utility to lease its works or system to another entity.

The basis of the Petition was that PSNH owned certain real estate rights that would be the subject matter of the lease.

In Tab 7 of the docket filings, Eversource identified a number of easements that it represented to the PUC that it owned on which NPT could construct the Northern Pass.

Amongst those easements was the 1947 Lunn easement that burdens the Spencer and Lagasse property.

Kevin Spencer and Mark Lagasse intervened in this docket to protect their property rights on the basis that Eversource does not own the right to construct the Northern Pass on the easement.

On April 15, 2016, the PUC issued Order No. 25,882. The Order stated that property owners who wish a determination of their rights in the easements on their lands with respect to Eversource and NPT should seek redress in the courts.<sup>1</sup>

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<sup>1</sup> Eversource argued, as a predicate to the PUC Order, that the PUC did not have jurisdiction to determine property rights. Eversource now argues, with forked tongue, that intervenors' lawsuit should not be an impediment to proceeding in this docket. Further, Eversource conceded at Tab 6, the Attorney Fossum letter to the PUC, that property owners may have a right to claim unreasonable use of the easement under the authority of the Lussier case.

On August 4, 2016, interveners filed suit in the United States District Court for the District of New Hampshire to protect their property rights. Spencer et al. v. Eversource Energy Service Company, Case No. 16-cv-00353-PB. The case is pending.

Should interveners prevail in their federal case and appeals, if any, the PUC will not have RSA 374:30 jurisdiction over the easement on interveners' property and the many other property owners similarly situated. The jurisdictional basis for the PUC to consider the lease to NPT is Eversource ownership of the right to lease for the construction of the Northern Pass. Without such ownership, the PUC has no jurisdiction to proceed.

Until full adjudication of interveners property rights in federal court, proceeding forward in this docket will be a frivolous waste of time and resources.

### **Wherefore**

Interveners respectfully request that the Eversource Motion to Establish a Procedural Schedule be denied and that interveners be awarded attorney fees and costs for the prosecution of this Objection.

May 8, 2017

Respectfully submitted,

/s/ 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.

May 8, 2017

/s/ Arthur B. Cunningham

Arthur B. Cunningham