

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 OBJECTION
TO THE JOINT MOTION FOR RECONSIDERATION OF THE CITY OF CONCORD
AND THE SOCIETY FOR PROTECTION OF NEW HAMPSHIRE FORESTS

Pursuant to New Hampshire Code of Administrative Rules Puc 203.07 and RSA 541:3, Public Service Company of New Hampshire d/b/a Eversource Energy ("PSNH" or the "Company") hereby objects to the "Society for the Protection of New Hampshire Forests and the City of Concord Joint Motion to Rehear Order No. 26,001" (the "Motion") submitted on May 5, 2017. In support of this objection, PSNH states the following:

1. On October 19, 2015, PSNH filed a petition for approval of a lease transaction between it and Northern Pass Transmission LLC ("NPT") whereby PSNH would lease to NPT certain real estate rights owned by PSNH. Pursuant to a directive of the Commission PSNH supplemented that filing on December 4 and 7, 2015. Relevant to this objection, on September 15, 2016 the Commission issued Order No. 25,943 requesting legal memoranda relative to certain questions raised in that order pertaining to PSNH's ability to lease the rights it owns.¹ On October 28, 2016, PSNH and others submitted memoranda in response to the Commission's request.

¹ Order No. 25,943 was subsequently clarified through Order No. 25,946 (September 27, 2016).

2. On April 6, 2017, the Commission issued Order No. 26,001 where it identified the scope of its review in that order as follows:

We need only determine (1) whether to apply different level of review to easements obtained by eminent domain, (2) whether Eversource has made a prima facie showing that it owns the easements it intends to lease to NPT, and (3) whether anything on the face of the easement deeds would prohibit their divisibility and lease to NPT as a matter of law.

Order No. 26,001 at 13. Against this backdrop, the Commission concluded that it could not, and was not attempting to, determine the scope of the underlying property rights. It further concluded that:

we find that nothing in the easement deeds, on their face, bars Eversource from dividing and leasing a portion of its easement rights to NPT for the purpose of transmitting electricity. Therefore, we find no barrier to moving forward with our consideration of the terms of the proposed lease and the valuation of the easement rights granted thereby, to determine whether the lease is for the public good as required by RSA 374:30.

Id. at 15. As part of that order, the Commission required that Staff work with the parties to establish a procedural schedule for the docket with the goal of having a “final order” by the end of 2017.

3. On May 5, the City of Concord and the Society for Protection of New Hampshire Forests (collectively, the “Movants”) submitted the Motion seeking reconsideration of the Commission’s conclusions in Order No. 26,001. The Motion, which is substantially the same as the motion for reconsideration filed by the Deerfield Intervenors on May 3, 2017, is little other than a restatement of prior arguments and, to the extent it does not merely restate prior contentions, it assigns error based on erroneous conclusions. Accordingly, the Motion should be denied.
4. Pursuant to RSA 541:3, the Commission may grant rehearing or reconsideration when a party states good reason for such relief. *Public Service Company of New Hampshire,*

Order No. 25,361 (May 11, 2012) at 4. Good reason may be shown by identifying new evidence that could not have been presented in the underlying proceeding or by identifying specific matters that were overlooked or mistakenly conceived by the deciding tribunal. *Id.* at 4-5. A successful motion for rehearing does not merely reassert prior arguments and request a different outcome. *Id.* at 5.

5. The Motion first contends that the Commission erred because it did not provide the level of analysis the Movants desired in rendering its ruling on whether it ought to have different levels of analysis for different types of easements.² The Commission explained that nothing in the materials submitted convinced it that differing analyses were needed as between the types of easements. Longing for greater analysis does not mean that the Commission has erred. Moreover, and in keeping with its conclusion that it will not rule upon property rights, in reaching its decision that the different types of easements did not require a varied review, the Commission clearly stated that for any party who believed there was some need to further address specific elements of specific easements, the affected party could take up the matter in court. There is nothing about the Commission's decision that requires reconsideration.
6. Following on this argument, the Movants contend that the Commission's ruling on the treatment of the easements was in some way counter to established law. In making this assertion, the Movants rely entirely upon arguments already made in prior filings in this case and cite only to their own prior filing as support. The Movants cite no new law or facts and essentially argue that the Commission should have acted differently than it did. Such contentions provide no basis for reconsideration.

² In making this argument the Movants reference RSA 363:17(b), but it appears that they intend to reference RSA 363:17-b.

7. The Movants next argue that the Commission erred in its conclusion that PSNH had made a *prima facie* showing of its ability to lease the rights it owns. First, this point is simply a restatement of arguments made at length in prior filings and states nothing new or different for the Commission to consider.
8. Additionally, in making this argument the Movants contend that “The extensive case law cited in the Intervenor’s Memorandum demonstrates that the rule in a majority of jurisdictions is that an easement can only be apportioned if it does not increase the burden on the servient tenement,” and, therefore, “the PUC erred when it did not determine if the attempted apportionments result in additional burdens to the servient landowners.” Motion at 4-5.³ Putting aside that, yet again, the Movants are only rearguing points they already attempted to make, this contention indicates that the Movants would have the Commission render a decision that it has explicitly, and repeatedly, said it cannot, and will not, provide. The Commission was clear that it is not ruling, and cannot rule, on the rights of the underlying landowners. Rendering a determination on whether some act may, or may not, result in a burden on a given easement, and which burden may, or may not, be permissible, is not something the Commission can do, and it is not a decision required in this proceeding. The Commission sought to determine whether the face of the easement documents prevented the proposed transfer. Having determined that they do not, the Commission needed to go no further. There is no error in the Commission’s order.
9. Also, and similarly to the Deerfield Intervenor, the Movants argue that the Commission erred by failing to seek a ruling from the New Hampshire Supreme Court pursuant to

³ In making this argument the Movants reference RSA 343:30, but it appears that they intend to reference RSA 374:30.

RSA 365:20. RSA 365:20 is a permissive statute and no party requested that the Commission take any action under that statute. Further, even if such a request was made, seeking a ruling under that statute is unnecessary in this case. Because the Commission found nothing on the face of the deeds barring the lease, the Commission's review, as described in Order No. 26,001, is limited to the terms of a lease between PSNH and NPT, whether the terms of that lease are reasonable, and whether PSNH's customers are appropriately compensated for the leased property. No part of that decision requires a ruling from the Supreme Court.

10. Finally, the Movants argue, without elaboration, that the Commission has created "a presumption in favor of transferability and divisibility" and has, therefore, in some way, favored PSNH. Motion at 5. The Commission has done no such thing. As noted repeatedly,⁴ the Commission does not have jurisdiction to decide the property rights of the underlying landowners. This docket relates to the terms of a lease between PSNH and NPT, whether the terms of that lease are reasonable, and whether PSNH's customers are appropriately compensated for the leased property. Whether any presumption may exist has no bearing on this case.

11. As noted in PSNH's response to the Deerfield Intervenors' motion, in Order No. 26,001 the Commission was reviewing whether it appeared from the face of the various

⁴ See Order No. 25,882 (April 15, 2016) at 6:

We do not believe, as Lagaspence Realty argues, that the superior court must first adjudicate the property rights of Eversource vis-à-vis Lagaspence Realty and similarly situated property owners before we can complete our review of the Lease. Nor do we believe that this proceeding precludes Lagaspence Realty or other property owners from bringing an action in superior court, because we cannot and do not intend to adjudicate their respective property rights. ***Our review of the easements, their ownership, and transferability is necessary, but will be limited to whether the easements on their face appear to be broad enough to allow for construction of the NPT project, and are transferrable in the manner claimed by Eversource. As such, our review will not be binding on individual property owners. 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.***

(Emphasis added).

documents that PSNH was somehow prohibited from leasing its rights, and the Commission concluded that PSNH is not. The Commission was deciding solely whether there was a sufficient basis to expend its resources in pursuing this matter, which is an issue clearly with the Commission's discretion. Order No. 26,001, and previous orders, did not determine property rights, nor could they, but merely constituted a facial review for the purpose of deciding whether it was appropriate to address those issues within the Commission's jurisdiction, *i.e.*, whether the lease is in the public interest. Attempting to raise irrelevant issues about matters outside the jurisdiction of the Commission serves only to delay a docket that has already been delayed, and gives no reason for sustaining any request for rehearing. The Motion raises no new or different issues or evidence, and points to nothing that the Commission overlooked or misunderstood. Accordingly, the Motion should be denied.

WHEREFORE, PSNH respectfully requests that the Commission:

- (1) Deny the Motion for Reconsideration; 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**

By: 

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May 12, 2017
Date

CERTIFICATE OF SERVICE

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

May 12, 2017
Date


Matthew J. Fossum