

**ATTORNEY GENERAL
DEPARTMENT OF JUSTICE**

33 CAPITOL STREET
CONCORD, NEW HAMPSHIRE 03301-6397

KELLY A. AYOTTE
ATTORNEY GENERAL



MICHAEL A. DELANEY
DEPUTY ATTORNEY GENERAL

November 4, 2005

Debra A. Howland
Executive Director & Secretary
NH Public Utilities Commission
21 South Fruit Street, Suite 10
Concord, New Hampshire 03301-2429



Re: Public Utilities Commission Investigation - DM 05-172

Dear Ms. Howland:

Enclosed please find the original and eight copies of the State of New Hampshire Department of Transportation's Motion to Intervene to be filed with reference to the above-captioned case.

Thank you for your attention to this matter.

Very truly yours,

A handwritten signature in cursive script, appearing to read "Lynmarie C. Cusack".

Lynmarie C. Cusack
Assistant Attorney General
Transportation & Construction Bureau
(603) 271-3675

LCC:mc

Enclosures

cc: John Andrews, Esquire
Frederick J. Coolbroth, Esquire
Victor Del Vecchio, Esquire
Gerald M. Eaton, Esquire
Gary Epler, Esquire
Susan Geiger, Esquire

Debra A. Howland
November 4, 2005
Page 2

Tom Meissner
Scott Mueller, Esquire
Tom Newbauer
Douglas L. Patch, Esquire
Donald Pfundstein, Esquire
Meabh Purcell, Esquire
F. Anne Ross, Esquire
William T. Sherry
Seth Shortlidge, Esquire
Lisa M. Thorne.
Theodore Kitsis, Department of Transportation
Charles Schmidt, Department of Transportation

100813.doc

THE STATE OF NEW HAMPSHIRE
PUBLIC UTILITIES COMMISSION

Docket No. DM-05-172

**STATE OF NEW HAMPSHIRE DEPARTMENT OF
TRANSPORTATIONS' MOTION TO INTERVENE**

NOW COMES the State of New Hampshire Department of Transportation by and through its attorneys, the Office of the Attorney General and moves to intervene in the above-captioned proceeding pursuant to NH Admin Rule PUC 203.02 and RSA 541-A:32.

As grounds the State says as follows:

1. The Department of Transportation ("DOT") is a New Hampshire state agency responsible for, among other things, maintaining and constructing New Hampshire state highways and roads.

2. In carrying out its duties, the DOT interacts and coordinates with utility companies whose utility facilities are within the public highway.

3. Those facilities are either above or below ground and may be in the public highway or right-of-way by sufferance or through a license/permit.

4. The DOT in every instance attempts to accommodate utilities within the highway rights-of-way and has increasingly found it difficult to work with certain utilities that are required to make adjustments or relocation of their utility facilities that are incidental to highway construction.

5. The Department has, in fact, over the last several years, had cases where utilities provided inadequate time frames and shifted work schedules for the utility facilities removal/relocation work which in turn disrupted the construction schedule. Indeed, the State

has been sued in Superior Court by a contractor who alleges that unreasonable utility delays forced it to incur expenses beyond the contract bid and thus claims damages as a result thereof.

6. Where utility relocation delays impact the physical construction schedule of NH State highway/road projects, the public also suffers as construction projects are extended and the threat of additional expenditures is heightened.

7. As such, the Department's rights and interests are affected by the investigation that is being initiated.

8. The Department's participation in the proceedings would not impair the orderly and prompt conduct of the proceedings. Moreover, the Department's participation is in the interest of justice as the investigation will deal directly with pole installations, removals, and maintenance obligations, all of which directly effect the Department.

WHEREFORE, the State of New Hampshire Department of Transportation prays:

A. That it be allowed to intervene and become a party to the above-captioned action; and

B. For such other and further relief as may be just and appropriate.

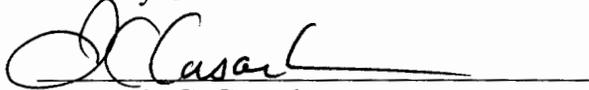
Respectfully submitted,

THE STATE OF NEW HAMPSHIRE

By its attorneys,

Kelly A. Ayotte
Attorney General

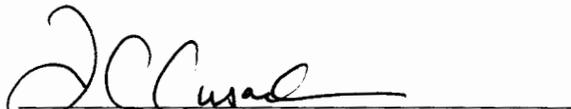
Date: Nov 4, 05



Lynmarie C. Cusack
Assistant Attorney General
Transportation & Construction Bureau
33 Capitol Street
Concord, New Hampshire 03301-6397
(603) 271-3675

Certificate of Service

I certify that a copy of the foregoing has on this 4th day of November, 2005 , been mailed, postage prepaid to John Andrews, Esquire; Frederick J. Coolbroth, Esquire; Victor Del Vecchio, Esquire; Gerald M. Eaton, Esquire; Gary Epler, Esquire; Susan Geiger, Esquire; Tom Meissner; Scott Mueller, Esquire; Tom Newbauer; Douglas L. Patch, Esquire; Donald Pfundstein, Esquire; Meabh Purcell, Esquire; F. Anne Ross, Esquire; William T. Sherry; Seth Shortlidge, Esquire; and Lisa M. Thorne.


Lynmarie C. Cusack