

THE STATE OF NEW HAMPSHIRE
BEFORE THE
PUBLIC UTILITIES COMMISSION

PUBLIC SERVICE COMPANY OF NEW HAMPSHIRE D/B/A
EVERSOURCE ENERGY

Docket No. DE 15-464

**MOTION FOR LEAVE TO REPLY AND REPLY TO OBJECTION OF KEVIN
SPENCER AND MARK LAGASSE DBA LAGASPENCE REALTY, LLC TO
EVERSOURCE ENERGY MOTION TO ESTABLISH A PROCEDURAL SCHEDULE**

Public Service Company of New Hampshire d/b/a Eversource Energy (“PSNH” or “Company”), hereby moves for leave to reply to the “Objection of Kevin Spencer and Mark Lagasse dba Lagaspence Realty, LLC to Eversource Energy Motion to Establish a Procedural Schedule” (the “Objection”) submitted by Kevin Spencer and Mark Lagasse dba Lagaspence Realty, LLC (“Lagaspence”) on May 8, 2017. The Objection is essentially a motion for rehearing in disguise, and, more relevant to the reason to grant this motion, contains an improper request for recovery of fees and costs in this proceeding, which should be addressed and rejected. In support of its motion and reply, PSNH states as follows:

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. Nearly a year later, 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. On October 28, 2016, PSNH and others submitted memoranda in response to the Commission’s request.

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 stated its intended goal of having a “final order” by the end of 2017.

3. On May 5, 2017, PSNH filed a motion to establish a procedural schedule noting that in the month following Order No. 26,001 the parties to the docket had not been able to negotiate a schedule and it was unclear whether or when the parties could agree to a schedule that would meet the Commission’s goal. On May 8, 2017, Lagaspence filed the Objection where it did more than merely object or respond to the motion PSNH filed, but actually challenged the basis for Order No. 26,001, and also requested recovery of fees and costs associated with the Objection. In general, the Commission permits the filing of motions and objections thereto, but not the filing of replies to objections absent specific authorization. *See Freedom Ring Communications LLC d/b/a BayRing Communications*, Order No. 25,327 (Feb. 3, 2012) at 8.

Given the Objection's request, and the substance of the Objection itself, such authorization should be granted here. PSNH's reply follows below.

4. In the Objection, Lagaspence notes the existence of a case presently pending in federal district court that Lagaspence brought relative to the NPT project. Without explaining the relevance of that case to this proceeding, Lagaspence contends that "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." Objection at 2. It then further contends that "Until full adjudication of interveners property rights in federal court, proceeding forward in this docket will be a frivolous waste of time and resources." *Id.* In other words, Lagaspence is arguing that the Commission's directive to establish a procedural schedule in Order No. 26,001 must be reconsidered in light of a pending case in federal court that may, or may not, be relevant to the issues in this matter, that may, or may not, be decided in the near future, and that may, or may not, be decided in favor of Lagaspence.

5. As the Commission is well aware, this case has already been pending for a substantial time. The Objection seeks to introduce another cause for delay and it demonstrates a disregard for the timely and efficient conclusion of this case. The Commission very recently concluded that the existence of unenacted legislation and a pending appeal of a prior order did not justify staying a proceeding. *Public Service Company of New Hampshire d/b/a Eversource Energy*, Order No. 26,008 (April 20, 2017) at 5. The same logic operates here. The Objection presents nothing other than rank speculation about the potential impact of a decision in a pending lawsuit as the basis for having the Commission stay its hand and reconsider its decision to move forward with this docket. Moreover, it requests not just that the Commission await an initial

decision in that case (whenever that may come), but that it stand by and await the completion of any appeals that may be taken. The Commission should not further delay this proceeding, and it should reject attempts to undermine the orderly and efficient processing of this case.

6. Beyond requesting that the Commission go back on its conclusion to move forward with this matter, the Objection takes the additional step of requesting that fees and costs be awarded. Such a request is improper and should be rejected outright. As a first matter, the Commission's order of notice in this docket, like all such orders, explicitly states that "Each party has the right to have an attorney represent the party *at the party's own expense*." January 29, 2016 Order of Notice in Docket No. DE 15-464 at 3 (emphasis added). Lagaspence was on notice that it would be required to bear its own legal expenses in this matter.

7. Furthermore, the statute permitting recovery of costs in utility proceedings, RSA 365:38-a, does not permit recovery of fees. *See SmartStart Energy Efficiency Pilot Programs*, Order No. 24,509 (September 2, 2005) at 5 ("RSA 365:38-a authorizes recovery of costs, which are distinguishable in New Hampshire law from fees, including attorneys['] fees.") Additionally, RSA 365:38-a does not apply to Lagaspence for recovery of costs. RSA 365:38-a provides, in relevant part, that "The commission may allow recovery of costs associated with utility proceedings before the commission, provided that recovery of costs for utilities and other parties shall be just and reasonable and in the public interest." In that Lagaspence is not a utility, it may only recover costs if it is an "other party." The statute defines "other party" by stating: "For purposes of this section, other parties shall be defined as retail customers that are subject to the rates of the utility *and who demonstrate financial hardship*; other parties shall not include New Hampshire municipalities." (emphasis added). Lagaspence has not demonstrated any financial hardship. Additionally, the statute provides that "Recovery by other parties shall be deemed to

be in the public interest when, in any commission proceeding, the other party substantially contributes to the adoption by the commission, in whole or in part, of a position advocated by the other party in that proceeding, or in a judicial review of that proceeding.” Lagaspence has done so such thing. The Objection’s request for fees and costs is contrary to Commission practice and existing law, and should be rejected.

WHEREFORE, PSNH respectfully requests that the Commission:

- (1) Grant leave to reply and consider this reply; 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**

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May 10, 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 10, 2017
Date


Matthew J. Fossum