

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 MOTION TO COMPEL RESPONSE
TO DATA REQUEST AMENDED AND REFILED

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 ("Eversource" or the "Company") hereby objects to the "Motion to Compel Response to Data Request Amended and Refiled" (the "Motion") submitted by Kevin Spencer and Mark Lagasse d/b/a Lagaspense Realty, LLC (the "Movants") on July 27, 2017. In support of this objection, Eversource states the following:

1. On October 19, 2015, Eversource 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. Following an extensive process reviewing certain legal issues, Eversource was served with discovery on June 19, 2017, including by the Movants. On June 29, 2017, Eversource timely objected to some of the questions of the Movants including the question that is the subject of the Motion. On July 7, 2017, the Movants filed a motion to compel seeking to have the Commission compel a response to the underlying request. On July 17, 2017, Eversource timely objected to the motion on procedural and substantive bases. On July 21, 2017, the

Commission issued a secretarial letter denying the motion “without prejudice” on the ground that the Movants had not sought to informally resolve the matter as required by the Commission’s rules. The Movants have now filed essentially the same motion as the prior motion. For the reasons explained below, the Motion continues to violate the Commission’s rules and, even if it did not, it is without merit and should be denied, with prejudice.

2. Pursuant to Puc 203.09(i)(2), motions to compel must be made “within 15 business days of receiving the applicable response or objection, or the deadline for providing the response, whichever is sooner.” Eversource objected to the Movant’s request on June 29, 2017 and the instant motion was filed on July 27, 2017, 19 business days after the objection. This motion is untimely and should be denied, with prejudice.
3. Should the Commission not deny the Motion for the reason stated above, the Motion is otherwise without merit. As pointed out in Eversource’s prior objection, the Commission has repeatedly made clear the scope of this docket:

The Commission emphasizes that this proceeding is not about the merits of the Northern Pass Project. The Site Evaluation Committee is charged with reviewing that project *and all of the associated issues*. Our review here, as we have consistently stated, will be about whether the terms of the proposed lease between Eversource and NPT are reasonable and in the public interest, and whether Eversource’s customers are appropriately compensated by NPT for the use of Eversource’s rights-of-way. We remind intervenors that we have limited our review, and we will not adjudicate property rights in this proceeding.

Order No. 26,020 (May 24, 2017) at 6 (emphasis added). Thus, the Commission is reviewing the terms of a lease and the valuation of and compensation for the leased property, and other matters are explicitly left to other bodies.

4. Despite this clear statement, the Movants are nonetheless seeking information that goes beyond the scope of the proceeding. In the underlying question, the Movants claim to be seeking information relative to the existence of an interstate natural gas pipeline and the potential co-existence of the Northern Pass project with that pipeline. More particularly, the Motion contends, relying on out of context information from the proceeding before the Site Evaluation Committee (“SEC”) that certain engineering requirements have not been met and that the “arbitrary and factually unsupported appraisal scope raises serious questions about the safety” of the pipeline co-location. The Movants’ arguments continue to have no relevance to the matters pending before the Commission in this case.
5. As a first matter, this is not a docket concerned with the engineering or construction of any project. This docket, as the Commission has made clear, is concerned with the terms of a lease agreement and the valuation of the property subject to that lease. Concerns about the engineering or co-location of facilities are to be addressed with the SEC or another body, or will be addressed through engineering at the time of construction.¹ The construction and operation of utility facilities are not in issue in this docket.² The attempt to inject construction-related issues into a review of the lease should be rejected.
6. Moreover, in addition to being irrelevant because it is a matter reserved to other bodies or other reviews, issues relating to the construction of the facilities are not relevant to the valuation of the leased property. The value of the relevant land rights does not depend on

¹ In fact, the document Movants included as Exhibit B to the Motion specifically states that “This project has always planned on an additional more detailed analysis closer to the Issued for Construction (IFC) stage of the Northern Pass HVDC Project.” Motion Exhibit B, page 3.

² Moreover, beyond being irrelevant it defies logic to suggest that the NPT project, or any project, would actually be built without first determining whether it could be constructed safely and completely in recognition of the existing conditions. In fact, the underlying lease specifically provides that NPT’s use of the leased property is subject to the presence of any existing facilities. *See* Lease Section 1.8.

the outcome of an engineering study relating to the manner or method of construction. In that the question is not relevant, the Motion should be denied, with prejudice.

7. Additionally, the Motion purports to interpret what a witness for Eversource said during a technical session and claims that some statement constituted a form of “admission.” The Motion then attempt to use that statement to argue for an unrelated conclusion that the Movant’s wish the Commission to make. The Commission should not accept the contentions of the Movants about their interpretations of what was said as indicating anything that is material to a decision on the Motion. What the Movants hope the Commission will conclude does not render their question relevant to any of the issues before the Commission as it reviews the lease.
8. Lastly, Eversource notes two additional concerns with the Motion. First, the Movants continue to both disregard the Commission’s rules in filing motions and continue to request awards of costs and fees. Such continuing indifference toward the Commission’s processes and precedents, and the additional burdens it places on parties and the Commission, warrants additional scrutiny on intervenor conduct in this docket. Second, in inquiring about whether this issue might be resolved informally, the Movants made clear that they believed Eversource was obliged to make an offer of resolution and that they bore no responsibility for doing anything other than simply asking if informal resolution was possible. Such an empty gesture, undertaken merely to be able to claim to have satisfied the Commission’s regulations, does not, in Eversource’s assessment, demonstrate a “good-faith effort,” as required by the Commission’s rules. It does, however, demonstrate that the Movants are unconcerned with abiding by the Commission’s requirements in this matter.

WHEREFORE, Eversource respectfully requests that the Commission:

- (1) Deny the Movant's Motion, with prejudice; 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**

August 1, 2017
Date

By: 

Matthew J. Fossum
Senior Counsel
780 North Commercial Street
Post Office Box 330
Manchester, New Hampshire 03105-0330
(603) 634-2961
Matthew.Fossum@eversource.com

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.

August 1, 2017
Date


Matthew J. Fossum