

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 FEBRUARY 10, 2016 SUBMISSION OF LAGASPENCE REALTY, LLC

Pursuant to New Hampshire Code of Administrative Rules Puc 203.07, Public Service Company of New Hampshire d/b/a Eversource Energy ("PSNH" or the "Company") hereby objects to the combined "Reply to the Public Service Company of New Hampshire dba Eversource Energy Partial Objection to the Intervention Motion of Kevin Spencer and Mark Lagasse dba Lagaspence Realty, LLC" and "Motion for Dismissal of this Docket Pending Adjudication by a Court of Competent Jurisdiction of the Property Rights of Interveners" (collectively, the "Motion") submitted by Kevin Spencer and Mark Lagasse through Lagaspence Realty, LLC (the "Movants") on February 10, 2016. In support of this objection, PSNH states the following:

1. As an initial matter, the Motion is procedurally improper. On January 19, 2016, the Commission received a motion to intervene from Kevin Spencer, as an individual, in this docket. PSNH submitted an objection to that motion on January 28, 2016 and contended that Mr. Spencer was seeking to intervene to address the underlying land and easement rights for property covered by the proposed lease – issues that were beyond the scope of the proceeding and the Commission's jurisdiction. On February 5, 2016 an additional

motion was filed requesting to rescind Mr. Spencer's individual request and replace it with one for the Movants collectively. No explanation was provided for the amendment. The substance of the Movants' intervention is the same as in Mr. Spencer's initial petition, and PSNH states that its objection to Mr. Spencer's intervention is equally applicable to the revised request. In that the Movants have sought to intervene to raise arguments about the rights relating to the easements underlying the petition, a matter beyond the Commission's jurisdiction, and because the Commission has yet to rule on requests for intervention, the Movants have no basis upon which to offer any objection to PSNH's petition. The Movants are not parties to the docket, and, should they become parties, it is not clear what the scope of their intervention may be, nor whether the matters discussed in the Motion would conform to that scope.

2. Also with respect to the procedural posture of the docket, the Motion raises various unsupported, unfounded, and inaccurate factual and legal assertions (addressed further below) in the course of a "reply" to PSNH's objection to Mr. Spencer's intervention request, and then makes a motion to dismiss that appears to rely upon those unfounded assertions and arguments. As for the reply itself, the Commission has previously held that "Our administrative rules specifically authorize the filing of motions and objections to those motions, *see* N.H. Admin. R. Puc 203.07, but **replies to objections are not authorized and we do not consider them absent specific authorization.**" *Freedom Ring Communications, LLC d/b/a BayRing Communications*, Order No. 25,327 (February 3, 2012) at 8 (emphasis added). The Movants moved to intervene and PSNH has objected (by way of its objection to Mr. Spencer's intervention request). The Movants have not sought, much less received, the specific authorization that would allow a reply

for the Commission's consideration. Accordingly, the Commission should not consider any information in the reply.

3. Despite the above, should the Commission choose to review the substance of the matters in the Motion, it will find inaccurate or unsupported factual and legal assertions that cannot justify any relief. Without providing an exhaustive list of such issues, PSNH notes the following. The Motion asserts, at page 1, that Eversource Energy Service Company is an "operating company" responsible for maintaining and operating the Eversource Energy transmission system. Eversource Energy Service Company is not an operating company, and is not responsible for the management and operation of the Eversource Energy transmission system.¹ Thus, it appears the Movants are attempting to raise various issues without understanding the proposed transaction, or the parties to it. Additionally, the Motion, at page 2, raises provisions of the Transmission Services Agreement ("TSA")² between Hydro-Quebec and Northern Pass Transmission, LLC ("NPT") and contends that that the "source of the funds that will form the basis of the payment by Hydro-Quebec to NPT must be discoverable."³ The Motion, therefore, seeks financial information about Hydro-Quebec, an entity not involved in the proposed lease, and it does so without explaining, in any way, why that entity's "source of funds" has any bearing on whether the proposed lease in this docket is in the public good. Furthermore, the Motion asserts, at page 2, that "The Petition does not identify the current owners of

¹ For reference, the corporate structure of the Eversource Energy group of companies is shown in Attachment C to the October 19, 2015 testimony of Michael J. Ausere in Docket No. DE 15-459, Northern Pass Transmission, LLC's Petition to Commence Business as a Public Utility in New Hampshire.

² PSNH notes that the TSA falls under the jurisdiction of the Federal Energy Regulatory Commission ("FERC") rather than this Commission.

³ Of note, the Movants make references to specific terms and provisions of the TSA yet still contend that it "must be discoverable." In that specific references to the terms of the TSA are included in the Motion, it appears that the Movants already have the TSA so discovery would be unnecessary. Furthermore, even if they did not have it, the TSA is available publicly from multiple sources, including NPT's website or from the FERC.

the easements PSNH seeks to lease,” but a single sentence later states that the Movants’ land is “encumbered by an easement *owned by Public Service Company of New Hampshire (PSNH)*.” (emphasis added). The Motion is attempting to create confusion where there is none, or to raise arguments based on issues that do not exist, and provides no meaningful information upon which the Commission could render any decision.

4. As a further matter, the Motion notes, at page 3, that in PSNH’s objection to Mr. Spencer’s intervention, PSNH contended that the Commission did not have authority to adjudicate the underlying property rights. The Movants explicitly agree with this position, and then argue at length about the underlying property rights. Putting aside the arguments raised in the Motion (though PSNH does not concede that they are accurate or applicable), the fact that the Movants agree with PSNH invites the question of why the Motion discusses the rights of the parties relating to the underlying property at all.
5. PSNH did contend, in its December 4, 2015 submission to the Commission, that it had the requisite authority to lease the identified easements. However, to the extent that PSNH made such arguments in its December 4, 2015 submission, it did so in response to a direct and specific Commission requirement, *see* November 17, 2015 Letter of Deficiency in Docket No. DE 15-464, and while explicitly noting that its response should not be construed as a concession that the Commission possessed the authority to adjudicate the underlying property rights. The Motion was not submitted in response to any requirement or request of the Commission, or anyone else, and only raises arguments relating to the easements after conceding that the Commission is not the proper forum for such arguments. The Commission should give no weight to the arguments in the Motion.

6. Lastly, in single sentence and with no argument demonstrating why such relief would be proper or appropriate, the Motion asks that the Commission dismiss this petition unless and until a court adjudicates the underlying property rights. The Commission should deny this request. As noted in PSNH's petition in this docket, the Commission's authority to review and approve this lease arises from RSA 374:30, and the Commission has such authority regardless of whether a case is, or may be, brought in the Superior Court to adjudicate the underlying property rights.⁴ Moreover, irrespective of the underlying property rights, the Commission would still need to determine, for example, whether PSNH is being appropriately compensated for the leased property and whether the proposed manner for passing the payments received by PSNH to customers is just and reasonable, issues that cannot be adjudicated by a court. Accordingly, the Commission should continue, and not dismiss, this proceeding.
7. In its initial response to Mr. Spencer's intervention request, PSNH noted that pursuant to RSA 541-A:32, III, and Puc 203.17, the Commission may limit interventions, and PSNH recommended that the pending intervention be limited to issues over which the Commission has jurisdiction. PSNH reiterates that request here. The Movants have clearly signaled that they are prepared to discuss and debate matters that they concede are beyond the Commission's jurisdiction and have, without justification, requested relief that would cause substantial and undue delay to this proceeding. The Commission should clearly define the scope of the docket and the scope of interventions to avoid such issues in the future.

⁴ PSNH notes that to the best of its knowledge, there is no existing or proposed proceeding in the Superior Court. It appears, then, that all the Movants truly seek is to delay to this proceeding based upon the speculative claim that they may, at some unknown future point, seek a court ruling.

WHEREFORE, PSNH respectfully requests that the Commission:

- (1) Deny the Movant's reply;
- (2) Deny the motion to dismiss this proceeding;
- (3) Issue an order appropriately limiting the scope of the docket and the scope of the Movants' intervention, if granted; and
- (4) Order such further relief as may be just and equitable.

Respectfully submitted,

**Public Service Company of New Hampshire d/b/a
Eversource Energy**

February 19, 2016

Date

By: 

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CERTIFICATE OF SERVICE

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

February 19, 2016

Date


Matthew J. Fossum