

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 FOR REHEARING OF DEERFIELD INTERVENORS

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 "Deerfield Intervenor – Motion for Rehearing" (the "Motion")¹ submitted May 3, 2017 by Jo Anne Bradbury, Robert Cote, Bruce Adami, Jeanne Menard, and Erick Berglund (collectively, the "Deerfield Intervenor"). 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

¹ The Motion is joined by the McKenna's Purchase Owners Association. In that the Association raises no arguments of its own, and that it shares counsel with the Deerfield Intervenor, PSNH will address only the Deerfield Intervenor's motion.

to lease the rights it owns.² 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.

3. On May 3, the Deerfield Intervenors submitted the Motion seeking reconsideration of the Commission's conclusions in Order No. 26,001. The Motion is little more 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

² Order No. 25,943 was subsequently clarified through Order No. 25,946 (September 27, 2016).

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 provides no good reason for reconsideration and is merely a reassertion of the Movants' prior arguments. In the first place, the Motion specifically states that the Deerfield Intervenors have already raised the various arguments that they make in the Motion, and the Motion explicitly, and repeatedly, states that the Deerfield Intervenors "continue to rely upon" those arguments. Motion at 2. Thus, the Motion is only a restatement of prior arguments, and on that ground alone should be rejected.
6. To the extent the Motion is not granted for the reason stated above, it provides no other reason for the Commission to reconsider its order. In the Motion, the Deerfield Intervenors contend that the Commission ignored relevant case law, citing to *Tanguay v. Biathrow*, 156 N.H. 313 (2007). Notably, despite their reliance upon it now, the Deerfield Intervenors did not refer to this case in their prior filings, though it was available to them. More importantly, however, even if they had referred to it, the case would not bolster their contentions. *Tanguay* pertains entirely to a dispute about the scope of an easement that had belonged to an individual person for his own use during his life and which was extinguished upon his death – it was not a commercial easement belonging to an existing corporate entity. The other cases cited and relied upon in the Motion, *Burcky v. Knowles*, 120 N.H. 244, and *Arcidi v. Town of Rye*, 150 N.H. 694, were discussed extensively in the memoranda of various parties, including the Deerfield Intervenors, and were noted in the Commission's Order. Thus, the Commission was

aware of the law and reached a decision on it with which the Deerfield Intervenors do not agree. Because the Commission did not ignore the law, but only reached a conclusion the Deerfield Intervenors wish was different, the Deerfield Intervenors have provided no basis for reconsideration.

7. The Deerfield Intervenors further argue that if the law in New Hampshire is unsettled, the Commission ought to have sought a ruling from the New Hampshire Supreme Court pursuant to RSA 365:20. As a first matter, and putting aside that RSA 365:20 is permissive and that no party requested that the Commission take any action under that statute, seeking such a ruling is unnecessary in this case. As quoted above, the Commission made clear the rulings it intended to make – do different deeds require a different level review by the Commission, has PSNH demonstrated that it owns the easements in issue, and is there anything on the face of the documents that would explicitly prohibit leasing the easement rights. The answer to each question was “no,” and answering those questions did not, and does not, require a ruling from the Supreme Court about the law in New Hampshire. The fact that the Commission could have done something different, but did not, does not support reconsideration. Moreover, this argument shows that the Deerfield Intervenors are attempting to “have it both ways.” Earlier in the Motion, they contend that the Commission was somehow incorrect in its analysis of the law, and then contend that the Commission did not have the authority to engage in such analysis in the first place. The Commission acted appropriately in issuing its order.
8. Finally, the Motion contends, without any basis, that the Commission has “created a presumption in favor of divisibility and alienability” and that it has in some way shifted

the burden of proof to disfavor various landowners. Motion at 4-5. The Commission has done nothing of the sort. As PSNH has repeatedly pointed out, and as the Commission has now repeatedly agreed,³ 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. It has never been about the rights of the underlying landowners and there is no burden of proof that any landowner must overcome relative to the divisibility or alienability of the property, nor of whether the construction of the NPT Line would result in some burden on the easement. Those issues have no relevance here.⁴

9. In Order No. 26,001, the Commission was reviewing whether it appeared from the face of the various 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 within the Commission's discretion. Order No. 26,001, and previous

³ 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).

⁴ Notwithstanding their contention that the Commission has no jurisdiction to decide property rights in the current docket, the Deerfield Intervenors assert that the Commission should permit them to "exercise their reserved right.....to contest the lease pursuant to the rule of reason." Motion at 5. This assertion is completely inconsistent with their claim that the Commission may not decide property rights. The rule of reason is only applicable to the use of a specific easement and would thus require the Commission to decide rights of a specific landowner, something that it has said it will not do, and that the Deerfield Intervenors say it cannot do.

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 Deerfield Intervenors' 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**

May 10, 2017
Date

By: 

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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