

STATE OF NEW HAMPSHIRE
BEFORE THE
PUBLIC UTILITIES COMMISSION

Docket No. DE 23-056

KRIS PASTORIZA

Petition for Request for Review of Eversource Transmission Line Projects

**BRIEF ON JURISDICTIONAL ISSUES OF PUBLIC SERVICE COMPANY OF NEW
HAMPSHIRE D/B/A EVERSOURCE ENERGY**

Pursuant to the New Hampshire Public Utilities Commission’s (the “Commission”) Procedural Order Re: Briefing Schedule issued on July 14, 2023, Public Service Company of New Hampshire d/b/a Eversource Energy (“Eversource” or the “Company”), submits this brief regarding the issue whether the Commission has jurisdiction to review the corrected petition (“Petition”) filed by Kris Pastoriza in light of the authorities cited in the Petition, the RSA 365:1-4 complaint procedures, including addressing whether the petition should be construed as a complaint and reviewed in the first instance by the Department of Energy (“DOE”), or any other relevant authority.

The Company asserts that jurisdiction over the various issues in the Petition lies exclusively with federal authorities, and therefore the Petition should be dismissed, and this docket closed. The Petition asks that the Commission open a docket to exercise regulatory review and oversight over 115 kV and 345 kV transmission facilities¹ being replaced or upgraded by Eversource based on their physical condition or changes in applicable electrical reliability standards and safety codes (i.e., “Asset Condition” transmission projects). But transmission resource planning, construction, installation, replacement, and maintenance are subject to review and approval through processes

¹ The Petition also seeks Commission evaluation of “all other Eversource *transmission line projects* in the category of Asset Management from 2018 to the present, including the proposed X-178, U-199, and Q-195 line replacements.” Petition at 1 (emphasis added).

developed by or in coordination with ISO New England Inc. (“ISO-NE”) under the ultimate and sole regulatory oversight of the Federal Energy Regulatory Commission (“FERC”), and no state commission or other utility regulatory authority has jurisdiction over that process.² The various New Hampshire statutes cited in the Petition³ do not change this basic fact, and in many cases the statutes cited have no bearing on the relevant issues that are the subject of the Petition. The allegations of right-of-way (“ROW”) easement scope violations implicate real property interests, and while not the subject of federal regulatory authority, nonetheless are outside the Commission’s jurisdiction, as they are within the jurisdiction of the courts. Moreover, the Petition is not styled as a complaint, nor does it allege any specific violation by the Company of state statutes or Commission rules to which it cites; therefore, the complaint procedures set forth in RSA 365:1-4 are not applicable, and the Petition should be dismissed with prejudice and this docket closed. The Company supports these conclusions with the following analysis of relevant jurisdictional issues.

1. The Asset Condition Transmission Projects Involve Facilities Subject to ISO-NE and FERC Jurisdiction and Are Not Subject to State Utility Regulatory Authority.

The Petition states that the relief sought includes a “complete assessment by the [Commission] of Eversource’s Asset Condition category projects for . . . necessity, cost/least cost, how they are booked for inclusion in the rate base, [for example] as capital costs to be depreciated; as operation and maintenance; environmental consequences; renewable energy goals, and any other standards required.” Petition at 1.

² Instead, as described further below, states are able to participate individually or collectively through the process as “Interested Parties,” but not as direct regulators.

³ The Petition cites the following New Hampshire statutory provisions: “RSA 365:1-7, 15, 18, 19, 29, and 37; RSA 374:7; RSA 371:17; RSA 374-A:8; RSA 125-O:23 (3)(c)(1) and (2); and RSA 374-G:5 9, II (a-i) and III.” Petition at 1.

Asset Condition transmission projects⁴ are reviewed and approved through a process implemented by the New England Participating Transmission Owners (“PTOs”), including Eversource, with involvement of ISO-NE and New England Power Pool (“NEPOOL”) committees and review by ISO-NE and stakeholders. The specific process followed depends on the size of the proposed project and its location and use on the regional or local electric transmission system. In general, for Asset Condition transmission projects located on regional Pool Transmission Facilities (“PTF”) with an estimated cost of \$5 million or more, the relevant PTO makes an informational presentation regarding the project to the regional Planning Advisory Committee (“PAC”),⁵ following which a Transmission Cost Allocation (“TCA”) application (and associated proposed plan application, if required) is submitted for review by the NEPOOL Reliability Committee (“RC”) and ISO-NE.⁶ The costs of the PTF-related Asset Condition projects are included in the Regional Network Service (“RNS”) rate, which is charged to all regional transmission Network Customers based on their relative shares of peak regional network load at specified times of coincident system peak demand. Those transmission Network Customers, most of which are Electric Distribution Companies (“EDCs”), then seek recovery of the RNS transmission charges

⁴ “Asset Condition” projects generally involve replacement, reconstruction, modification, or upgrade of existing transmission facilities based on the physical condition of the assets or the need to meet updated electrical safety codes or reliability standards such as those adopted by the North American Electric Reliability Corporation and/or the Northeast Power Coordinating Council, Inc.; Asset Condition projects are distinguished from Reliability Transmission Upgrades, Market Efficiency Transmission Upgrades, or Public Policy Transmission Upgrades, which are reviewed and approved through the Regional System Plan (“RSP”) public development process overseen by ISO-NE. See ISO-NE Open Access Transmission Tariff (“OATT”), Attachment K Regional System Planning Process (viewable at: https://www.iso-ne.com/static-assets/documents/2021/07/sect_ii_att_k.pdf) (“Attachment K”).

⁵ The PAC process is open to the public and represents a forum in which states and other interested stakeholders may ask questions and provide input.

⁶ This process is described in more detail in ISO-NE Planning Procedure 4 (“PP4”) Procedure For Pool-Supported PTF Cost Review, and in particular in Attachment G, Guidance for Submission of TCA Applications for Asset Condition Projects. ISO-NE PP4 may be viewed through this weblink: https://www.iso-ne.com/static-assets/documents/2020/02/pp_4_rev9.pdf.

they are assessed from their retail customers through rate mechanisms such as the Company's Transmission Cost Adjustment Mechanism ("TCAM").⁷ And while the TCAM rate is subject to annual Commission review and approval, that does not put the costs of the transmission projects themselves within the Commission's jurisdiction, as review of those costs remains exclusively with the various regional entities described in this section, all subject to FERC jurisdiction, as discussed more fully below.

With respect to Asset Condition transmission projects with an estimated cost of \$5 million or more that are located on the PTO's non-PTF system, the project is presented by the sponsoring PTO to the Transmission Owner Planning Advisory Committee ("TOPAC"),⁸ a transmission owner-led forum which discusses and solicits input on each PTO's Local System Plan ("LSP"). While ISO-NE is the transmission service provider for regional transmission service associated with PTF, the PTOs provide local transmission service over non-PTF facilities within the ISO-NE footprint.⁹ The PTOs rely on interested members of the PAC for advisory stakeholder input in the LSP development process that meet, as needed, at the conclusion of or independent of scheduled PAC meetings.¹⁰ Each PTO uses specific thresholds to determine which projects are presented to the TOPAC and then added to its LSP, and projects included in its LSP will be subject to cost recovery through its Local Network Service ("LNS") transmission service rate charged to its local

⁷ See, e.g., Docket No. DE 22-034, Eversource Energy 2022 Transmission Cost Adjustment Mechanism.

⁸ The TOPAC and its processes are described generally in Appendix 1 to Attachment K and at: <https://www.iso-ne.com/committees/planning/topac>.

⁹ See ISO-NE OATT Schedule 21, governing the terms and conditions of local transmission service taken by Transmission Customers over the transmission systems of the Company and other PTOs (viewable through this weblink: https://www.iso-ne.com/static-assets/documents/regulatory/tariff/sect_2/sch21/sch_21_com.pdf).

¹⁰ See Attachment K Section 2.5, Local System Planning Process, and Appendix 1, Attachment K – Local System Planning Process.

transmission customers, based on their relative shares of peak local network load at specified times of coincident system peak demand.¹¹ As with RNS charges, local transmission service customers, which are primarily EDCs, seek recovery of the LNS transmission charges they are assessed from their retail customers through rate mechanisms such as the TCAM.

Asset Condition transmission projects with an estimated cost of less than \$5 million are included in the RNS rate, if the facilities involve PTF, or in the PTO's LNS rate, if the facilities are local in nature, and then charged to the relevant regional or local transmission network customers. Such projects are described in exhibits provided in connection with the New England PTOs' Annual Update filing submitted to FERC pursuant to the provisions of Attachment F of the ISO-NE OATT, and the Commission and other Interested Parties may participate in an information exchange process related to the Annual Update in accordance with the protocols thereunder.¹²

It is critical to note that all transmission facilities are subject to FERC regulatory jurisdiction and come within the purview of ISO-NE and NEPOOL transmission planning processes and ISO-NE and/or PTO rate design parameters. Under the Federal Power Act, FERC has jurisdiction over the transmission of electric energy in interstate commerce and “over all facilities for such transmission . . . of electric energy . . .” *See* 16 U.S.C. §824(b)(1). The federal courts have long upheld this exclusive FERC jurisdiction over electric transmission facilities. *See, e.g., California ex rel. Bill Lockyer v. Dynegy, Inc.*, 375 F.3d 831, 851 (9th Cir. 2004) (“[O]ur cases specifying the nature and scope of exclusive FERC jurisdiction make clear that the interstate ‘transmission’ . . . of wholesale energy pursuant to a federal tariff – not merely ‘rates’ – falls within

¹¹ *See* Attachment K, Appendix 1, Section 4.

¹² *See* ISO-NE OATT, Attachment F, Appendix C – Formula Rate Protocols, which defines “Interested Parties,” who are able to participate in the information exchange process, as “Transmission Customers under the ISO-NE Tariff, New England state utility regulatory commissions, New England consumer advocacy agencies, NESCOE, New England state attorneys general, NEPOOL as an organization and including members of the NEPOOL Transmission Committee, and ISO-NE.”

FERC’s exclusive jurisdiction.”); *AEP Tex. N. Co. v. Tex. Indus. Energy Consumers*, 473 F.3d 581, 584 (5th Cir. 2006) (citation omitted) (“The Federal Power Act (‘FPA’) gives FERC exclusive jurisdiction to regulate the transmission and wholesale sale of electric energy in interstate commerce.”); *see also South Carolina Public Service Authority v. FERC*, 762 F.3d 41, 62-64 (D.C. Cir. 2014) (FERC order requiring electricity transmission providers to participate in regional planning process did not interfere with state regulation because planning mandate related wholly to electricity transmission, involved subject matter over which FERC has broad authority, and was directed at ensuring proper functioning of interconnected grid spanning state lines). Furthermore, the Commission has recognized this jurisdictional distinction in the context of utility Least Cost Integrated Resource Plans, stating that it views “assessment of transmission requirements, to be within the purview of ISO-New England . . .” *See* Order No. 25,459 (January 29, 2013) at 19-20.

The February 8, 2023 NESCOE memorandum¹³ referenced in the Petition further reinforces the jurisdictional distinction. In that memo, NESCOE, an organization representing state interests and managed by individual state representatives, asked the PTOs to engage in a more robust and transparent review and evaluation process for Asset Condition transmission projects through the PAC or other ISO-NE sponsored forums. Significantly, and in contrast to the relief requested in the Petition, NESCOE does not assert that the level of review it desires should occur through individual state-level regulatory dockets; instead, the focus of NESCOE’s recommendations is on enhancing the FERC-approved ISO-NE process and providing more opportunity for information-sharing with and input from states and other interested stakeholders.

¹³ “NESCOE” is an acronym for the New England States Committee on Electricity, a regional state committee recognized by FERC; its memorandum addressed to ISO-NE and the PAC dated February 8, 2023 may be viewed through this weblink: <https://nescoe.com/resource-center/memo-asset-condition-projects-feb8-2023>.

Most recently, NESCOE sent a follow-up memorandum to the PTOs dated July 14, 2023¹⁴ that expressed appreciation for “clarifying conversations with the [PTOs] and ISO-NE” and “preliminary stakeholder feedback at the [PAC],” and outlined next steps NESCOE recommends for modification of the processes for Asset Condition project planning, transparency, needs assessment, and stakeholder review and feedback.

As demonstrated above, electric transmission facility planning, construction, installation, replacement, and maintenance in New England are subject to review and approval through processes developed by or in coordination with ISO-NE under FERC’s regulatory jurisdiction, and states either individually or collectively are able to participate in those processes as prescribed by the ISO-NE OATT and ISO-NE’s planning procedures; however, neither the Commission nor any other state utility regulatory authority has the jurisdiction to review or regulate Asset Condition transmission projects proposed by the Company or any other PTO.

2. The Scope of Easement Rights Held by Eversource for Transmission Facilities is Not Within the Commission’s Jurisdiction but Within State Court Jurisdiction.

The Petition states that the relief sought includes a “complete assessment by the [Commission] of Eversource’s Asset Condition category projects for conformance to ROW easement deed conditions, . . .” Petition at 1. Elsewhere, the Petition asserts that replacement of existing installed ground wire with Optical Ground Wire (“OPGW”), which contains fiber optic cables, in connection with Asset Condition transmission projects “is not permitted in the terms of most of the ROW easements” because such easements do not “include transmission of ‘intelligence’ . . .” Petition at 1, 3.¹⁵

¹⁴ The July 14, 2023 memorandum may be viewed through this weblink: <https://nescoe.com/resource-center/asset-condition-process-improvements-next-steps>.

¹⁵ The Petition goes on to suggest that “if desired by the landowners whose easements have been violated, [there should be] compensation in the form of rental fees or other conditions they may negotiate with Eversource, such as

Eversource disagrees with the Petition’s characterization of its ROW easement rights and the assertion that OPGW used for intra-system communications to facilitate restoration and reliability is not permitted by those easements. However, those arguments are moot, as the Commission has clearly and definitively concluded that it does not have jurisdiction to determine private property rights, such as the scope of and extent of burden imposed by utility ROW easements. In Docket No. DE 15-464, *Petition for Approval of Lease Agreement Between Eversource and Northern Pass Transmission LLC*, the Commission stated:

We cannot, and do not, attempt to determine such matters as whether Eversource’s easements are exclusive, and whether the uses proposed in the lease would overburden the easements. Such determinations of individual property interests are the province of the Courts.

Order No. 26,001 at 13. The Commission further concluded that the owners of such “servient estates, like the owners of all other servient estates, remain free to establish their individual property rights and challenge the transfers in court.” *Id.*; see also Order No. 26,103 at 17 (February 12, 2018) (“only a court of competent jurisdiction may determine individual property owners’ rights”).

Accordingly, any issues regarding the scope of the Company’s ROW easements, and any alleged overburdening of the rights it holds under those easements, are subject to review and determination in state court and fall outside the jurisdiction of the Commission.

3. The Crossing License Statute, RSA 371:17, Does Not Require a State-Level Needs Assessment for Transmission Projects that Cross Public Waters or State Lands.

The Petition asserts that Eversource and the applicable state regulatory licensing authority (now the DOE but formerly the Commission) has “failed to determine that there was need for

lower structure heights, reduction in present ROW widths and limitations on conductor size and voltage.” Petition at 1.

Eversource's Asset Condition crossings, to meet the reasonable requirements of service to the public." Petition at 2. Moreover, according to the Petition, neither the DOE nor the Commission has defined "reasonable requirements of service to the public," and because "the transmission line ROWs were given, sold or taken to meet the reasonable requirements of service to the public, the PUC/DOE cannot violate the ROW easement terms by dispensing with need in assessing river/public land crossing applications." *Id.* The Petition seeks the "suspension of action on any river or public land crossing applications submitted by Eversource to DOE, for Asset Condition projects, until the conclusion of this docket." Petition at 1.

RSA 371:17 provides that: "Whenever it is necessary, in order to meet the reasonable requirements of service to the public, that any public utility should construct a pipeline, cable, or conduit, or a line of poles or towers and wires and fixtures thereon, over, under or across any of the public waters of this state, or over, under or across any of the land owned by this state, modify a previously licensed installation, or license a previously constructed installation, it shall apply to the [DOE] for a license to construct and maintain the same." Previous versions of that statute designated the Commission as the state licensing authority.

The DOE, and the Commission before it, have routinely found that necessity "to meet the reasonable requirements of service to the public" is met when a proposed transmission project is located such that it must cross a river or other public waters or a state-owned parcel of land which are regularly encountered given the inherent length and linear properties of transmission corridors; conversely, the "service to the public" requirement of the crossing does not call into question the whole of a given transmission project. Consideration of crossing applications under RSA 371:17 has not included a needs assessment for the entire project, but has focused only on the jurisdictional point of the crossing itself, with a focus on safety and compliance of the engineered crossing design

with National Electrical Safety Code clearance requirements. Other relevant criteria relied upon by the DOE, and Commission before it, to establish the statutory standard in orders issuing crossing licenses fall into three other main categories: (1) other regulatory requirements – finding that the utility is required to obtain any other federal, state, and local permits and approvals associated with the crossing location sought to be licensed; (2) property rights – finding that the interests of the public in such crossing locations will not be affected because safety precautions are undertaken during construction and the work will be performed within existing transmission corridors; and (3) service to the public – finding that because the original line was constructed to meet the reasonable requirements of service to the public, subsequent asset maintenance, repair, and replacement similarly meet that same need. *See, e.g.*, DOE License No. CRE 2023-016 (July 25, 2023); DOE License No. CRE 2023-012 (June 20, 2023); DOE License No. CR 2021-008 (October 15, 2021); Commission Order No. 26,417 (Docket DE 20-066, October 16, 2020); Commission Order No. 25,870 (Docket DE 15-235, March 7, 2016).

Accordingly, the crossing license statute does not provide any authority for broad Commission review and evaluation of the entirety of an Asset Condition transmission project by virtue of some portion of the project including crossing locations coming within the scope of RSA 371:17. Nor is there any basis for the DOE to suspend¹⁶ its licensing activities with respect to any public water or state land crossing applications submitted by the Company for Asset Condition transmission projects, where the DOE continues to utilize well established principles and precedent in evaluating whether the statutory standards under RSA 371:17 have been met.

¹⁶ It is unclear whether the Commission has the authority to suspend the issuance of crossing licenses by the DOE, as a sister state agency.

4. The Utility Eminent Domain Authority Under RSA 374-A:8 Does Not Provide a Basis for Commission Review and Evaluation of Asset Condition Transmission Projects.

The Petition asserts that the Company “did not petition the DOE/PUC to take rights for transmission of intelligence on the 115kV and 345kV asset condition projects in which it replaced ground wire with OPGW, which contains fiber optic, not permitted in the terms of most of the ROW easements.” Petition at 3. The Petition implies that such a petition was necessary under RSA 374-A:8.

RSA 374-A:8 provides as follows (emphasis added):

Electric generating stations, electric substations, and lines for transmission of electricity which are electric power facilities, irrespective of the destination and ultimate use of the electricity to be so generated and transmitted, shall be electric generating stations, electric substations, and lines for transmission of electricity for which an electric utility, domestic or foreign, may petition under RSA 371 for permission to take lands, rights or easements by eminent domain or for a license to construct and maintain facilities over, under or across public waters or state lands, provided that the commission shall find that such facilities will provide a substantial benefit to the public in this state.

It is important to note that this statutory authorization for an electric utility to seek eminent domain condemnation of property necessary to site transmission projects is *permissive* and not *mandatory* (i.e., the utility “may” seek such eminent domain approval but is not required to do so). Eversource has not sought any such eminent domain authority to construct Asset Condition transmission projects. Moreover, the premise of the Petition seems to be that eminent domain action is necessary because the relevant ROW easements do not permit the replacement of ground wire with OPGW. But that is an issue of the scope of and limitations on those ROW easements, which, as discussed in Section 2 above, is factually incorrect and exclusively a matter for a state court to decide.

Accordingly, RSA 374-A:8 does not provide any authority for the Commission review and evaluation of Asset Condition transmission projects sought under the Petition.

5. The Commission’s Investigation and Ordering Authority Under RSA 374:7 Cannot Infringe on Federal Jurisdiction Over Transmission Projects.

The Petition claims that the Commission and the DOE under RSA 374:7 “may investigate Eversource’s method of using Asset Condition as a means of building new transmission lines without oversight or conformance to any standard of need, cost-effectiveness, abuse of ratepayers or environmental damage.” Petition at 3. Under RSA 374:7, both the Commission and the DOE

shall have power to investigate and ascertain, from time to time, . . . the methods employed by public utilities in manufacturing, transmitting or supplying . . . electricity for light, heat or power, . . . and, after notice and hearing thereon, the commission shall have power to order all reasonable and just improvements and extensions in service or methods.

The authority to investigate and remediate provided under this statute does not supersede the respective limits of state and federal authority; the statute must be read within that larger context. As discussed in Section 1 above, transmission facilities used in interstate commerce – including essentially all such transmission facilities in the New England region – are subject to planning, review, evaluation, and approval processes developed by or in conjunction with ISO-NE, under the regulatory oversight of FERC pursuant to its authority provided by Congress in the Federal Power Act.

Accordingly, this state statutory provision cannot infringe upon exclusive federal jurisdiction to provide authority for the Commission to review and evaluate Asset Condition transmission projects as sought under the Petition.

6. The Energy Efficiency Program Selection Provisions of RSA 125-O:23, III(c)(1), (2), and (6) are Not Relevant to Any Transmission Projects.

Citing RSA 125-O:23, III(c)(1), (2), and (6), the Petition claims that the Commission has “failed to assess Eversource’s non-renewable inputs (CO₂) into its Asset Condition projects, thus [it has] failed to assess Eversource’s ‘fuel neutral program’ and the real validity of Eversource’s

‘energy saving assumptions.’” Petition at 4. RSA 125-O:23, III(c) provides that the DOE will allocate the remaining proceeds received from the state from the sale of Regional Greenhouse Gas Initiative (“RGGI”) allowances to energy efficiency programs, including

all-fuels, comprehensive energy efficiency programs administered by qualified parties which may include electric distribution companies as selected through a competitive bid process. The funding shall be distributed among residential, commercial, and industrial customers based upon each customer class's electricity usage to the greatest extent practicable as determined by the department of energy. Bids shall be evaluated based on, but not limited to, the following criteria:

- (1) A benefit/cost ratio analysis including all fuels.
- (2) Demonstrated ability to provide a comprehensive, fuel neutral program.
- * * * * *
- (6) The validity of the energy saving assumptions described in the bid.

This statute contains a directive to the DOE, and not the Commission, to allocate certain RGGI allowance sales proceeds to fund energy efficiency programs that meet the specified criteria. Energy efficiency programs involve *retail* customers served through the Company’s *distribution* system and have no bearing on any transmission infrastructure investments, including, without limitation, the Asset Condition transmission projects for which the Petition seeks Commission review and evaluation. Simply put, RSA 125-O:23, III(c) is completely irrelevant to those transmission projects.

7. RSA 374-G:5, II and III Set Standards for Commission Approval of Utility Distributed Energy Resource Investments Not Relevant to Transmission Projects.

Citing RSA 374-G:5, II and III, the Petition claims that the Commission and/or DOE “have failed to assess how Eversource’s Asset Condition projects may be connected to distributed generation and if so, are in the public interest in the categories listed above,” and also that they

“have improperly allowed cost recovery of any Eversource Asset Condition projects connected with distributed generation.” Petition at 6. The cited sections of RSA 374-G:5 provide as follows:

II. Prior to authorizing a utility's recovery of investments made in distributed energy resources, the commission shall determine that the utility's investment and its recovery in rates, as proposed, are in the public interest. Determination of the public interest under this section shall include giving a balanced consideration and proportional weight to each of the following factors:

- (a) The effect on the reliability, safety, and efficiency of electric service.
- (b) The efficient and cost-effective realization of the purposes of the renewable portfolio standards of RSA 362-F and the restructuring policy principles of RSA 374-F:3.
- (c) The energy security benefits of the investment to the state of New Hampshire.
- (d) The environmental benefits of the investment to the state of New Hampshire.
- (e) The economic development benefits and liabilities of the investment to the state of New Hampshire.
- (f) The effect on competition within the region's electricity markets and the state's energy services market.
- (g) The costs and benefits to the utility's customers, including but not limited to a demonstration that the company has exercised competitive processes to reasonably minimize costs of the project to ratepayers and to maximize private investment in the project.
- (h) Whether the expected value of the economic benefits of the investment to the utility's ratepayers over the life of the investment outweigh the economic costs to the utility's ratepayers.
- (i) The costs and benefits to any participating customer or customers.

III. Authorized and prudently incurred investments shall be recovered under this section in a utility's base distribution rates as a component of rate base, and cost recovery shall include the recovery of depreciation, a return on investment, taxes, and other operating and maintenance expenses directly associated with the investment, net of any offsetting revenues received by the utility directly attributable to the investment. The utility may recover all reasonable costs

associated with the filing, whether or not the application is approved by the commission.

This statute provides authority for electric utilities to invest in certain distributed generation projects and other “distributed energy resources,” and specifies the standards for Commission approval of such proposed utility investments. The term “distributed energy resources” is defined as “energy storage, electric generation equipment including clean and renewable generation, energy efficiency, demand response, load reduction or control programs, or technologies or devices *located on or interconnected to the local electric distribution system . . .*” RSA 374-G:2, I (b) (emphasis added).

The statutory definition does not include *transmission* facilities, nor does it include any generation, storage, energy efficiency, demand response, load reduction or control programs, or technologies or devices located on or interconnected to the electric *transmission* system, whether local or regional. Accordingly, the statutory provisions of RSA 374-G cannot provide authority for the Commission to review and evaluate Asset Condition transmission projects as sought under the Petition.

8. The Cited Complaint and Inspection Provisions of RSA 365 Either are Not Applicable or Cannot Authorize the Commission to Exceed its Jurisdiction.

The Petition does not specify how the cited provisions of RSA 365¹⁷ are applicable to the review and evaluation of Eversource Asset Condition transmission projects sought. The provisions of RSA 365:1-4 describe the process to be followed, by the DOE in the first instance and then potentially the Commission, in the case of customer complaints regarding “any thing or act claimed to have been done or to have been omitted by any public utility in violation of any provision of

¹⁷ The Petition cites RSA 365:1-7, 15, 18, 19, 29, and 37. Petition at 1, 5.

law, or of the terms and conditions of its franchises or charter, or of any order of the commission.” RSA 365:1. RSA 365:29 provides limited authority for the Commission to order payment of reparations for an illegal or unjustly discriminatory rate, fare, charge, or price collected by a public utility. RSA 365:18 states that “[n]othing herein contained shall give to any corporation immunity of any kind.” None of these provisions contain obligations that the Company could have violated.

The Petition is not styled as a complaint nor does it allege any violation by the Company of the state statutes or Commission rules or orders it cites or list any impermissible charge collected by the Company. Accordingly, the complaint and reparations provisions of RSA 365 cited in the Petition and described above are not applicable to the actions sought by the Petition.

The provisions of RSA 365:5-7 and RSA 365:19 provide broad authority for the Commission and the DOE to conduct inspections and independent investigations regarding public utility matters. RSA 365:15 authorizes the Commission to “require any public utility to make specific answers to questions upon which the commission may need information.” And RSA 365:37 authorizes special utility assessments to cover expenses incurred by the Commission and the DOE in the context of certain investigations or other regulatory proceedings.

That broad statutory authority to investigate utilities does not, however, enable the Commission to take any regulatory action that lies beyond the limits of its jurisdiction. As demonstrated above, the Commission lacks jurisdiction to regulate the planning, construction, installation, replacement, and maintenance of electric transmission facilities. Instead, it is FERC that has regulatory jurisdiction over these activities, with implementation provided by ISO-NE and other FERC-regulated public utilities. States and their individual commissions and agencies have the opportunity to participate within the FERC jurisdictional annual protocols process, as described in Section 1 above. The New Hampshire statutory provisions cited in the Petition do not provide

any basis for the Commission to review and evaluate Asset Condition transmission projects within this state proceeding, as sought under the Petition.

9. Conclusion Regarding Jurisdictional Issues.

Based on the forgoing analysis, the Company has demonstrated that the Commission lacks jurisdiction to engage in the regulatory review and oversight of Eversource's Asset Condition transmission projects as requested in the Petition. Instead, that review and oversight is within the purview of ISO-NE, NEPOOL, and ultimately FERC, with an appropriate opportunity for participation by the Commission, and the relevant processes are currently under active review and discussion within that federal jurisdictional context. Accordingly, the Petition should be dismissed with prejudice, and this docket should be closed.

Respectfully submitted,

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

Date: August 4, 2023



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.



Date: August 4, 2023

Jessica A. Chiavara