

**STATE OF NEW HAMPSHIRE
BEFORE THE PUBLIC UTILITIES COMMISSION**

DE 23-056

Kris Pastoriza

Petition for Request for Review of Eversource Transmission Line Projects

New Hampshire Department of Energy's Brief on Jurisdiction

On July 14, 2023, the Commission issued a procedural order in this docket requesting that the Department of Energy (DOE or Department) brief whether the Commission has jurisdiction to review the petition in the above-captioned matter in light of the authorities cited in the petition, RSA 365:1-4's complaint procedures, or any other relevant authority. The Commission also requested that the DOE address whether the petition should be construed as a complaint pursuant to RSA 365:1-4 and first reviewed by the DOE.

After reviewing the petition and supplement filed on June 29, 2023, as well as the other filings by the petitioner in this docket, the DOE has determined that neither the Commission nor the DOE have jurisdiction to review the petition in light of the cited authorities or grant the relief requested. Further, the petition does not constitute a complaint under which the DOE has jurisdiction pursuant to RSA 365:1-4.

The petition asks that the Commission investigate Public Service Company of New Hampshire d/b/a Eversource's (Eversource) updates to transmission lines listed in the petition, as well as all other Eversource Asset Condition transmission projects. The Commission does not have jurisdiction to conduct such an investigation.

Under federal law, the Federal Energy Regulatory Commission (FERC) has regulatory authority over interstate transmission lines. All of the transmission lines listed in the petition are interstate lines, and thus fall under the jurisdiction of FERC. States and state public utility commissions, except for the limited exceptions described below, do not have authority to preempt federal jurisdiction over interstate transmission lines.

Further, Asset Condition projects are approved by the Independent System Operator-New England (ISO-NE), which oversees the regional transmission planning process for New England states and assesses whether transmission facilities are able to meet reliability needs for the region. ISO-NE's authority is granted through a tariff approved by FERC. As referenced in the filings, ISO-NE approves or denies applications for Asset Condition projects after review by the Planning Advisory Committee (PAC) of ISO-NE. The Commission and the DOE do not have jurisdiction over ISO-NE, and thus do not have jurisdiction over these Eversource Asset Condition project approvals or the ISO-NE project approval process.

By similar reasoning, the Commission cannot examine the prudence of Eversource's Asset Condition projects or related spending. The costs of these projects are included in customer rates through transmission charges authorized by FERC and ISO-NE, over which the Commission does not have jurisdiction. The Commission therefore does not have the authority to review as part of a rate case docket the prudence of these projects or related transmission rates and charges through which the project costs are recovered.

To the extent that the petition describes Least Cost Integrated Resource Planning (LCIRP) issues, the New Hampshire legislature recently passed a bill, HB281, repealing

the LCIRP-enabling statutes, RSA 374:38-40. The bill has been enrolled and is awaiting the Governor's signature. Repeal of the LCIRP statutes will end the LCIRP as a mechanism under which the Commission currently considers certain utility planning. Additionally, the most recently filed Eversource LCIRP, Docket No. DE 20-161, is still an open docket. Even if the LCIRP statutes are not repealed, the petitioner's request for the Commission to review Eversource's Asset Condition category projects through a least cost lens and/or LCIRP docket, is better suited for consideration in Docket No. DE 20-161. It appears the petitioner did file a Petition to Intervene in that docket on May 23, 2023, and that petitioner's intervention is centered around concerns with Eversource's Asset Condition projects. It does not appear that the petitioner's Petition to Intervene in Docket No. DE 20-161 has yet been ruled on.

The DOE does have some specific authority under RSA 371:17 regarding installations that pass through public land or waters in the state. The statute states that, "[w]henver 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..." that implicate public land or waters as described in the statute, the utility must petition the Department, "for a license to construct and maintain the same." The statute allows the Department to condition any license issued pursuant to RSA 371:17 so that, "the license may be exercised without substantially affecting the public rights in public waters or state-owned lands." The Department reviews such applications consistent with the statute and issues orders either approving or denying the requested license. The Department's authority under RSA 371:17 does not permit it to examine the cost-effectiveness of transmission projects.

Additionally, RSA 371:17 requires the DOE to either issue or deny a license within 90 days of receiving a complete application. Thus, the DOE does not have the authority to suspend action on applications submitted by Eversource to the DOE, as requested in the petition.

Additionally, rights of appeal under RSA 371:20 to license decisions made by the Department under RSA 371:17 are limited to, “[a]pplicants and other persons directly affected” by the Department’s decision. Such appeals must be made to the Commission within 30 days of the DOE’s decision. As the petition does not indicate that the petitioner is a person directly affected by any such license issued or denied by the Department, and the petition does not indicate that it is meant to be an appeal to such a decision, filed within 30 days of a DOE decision, the Commission does not have the authority to review any such license decisions referenced in the petition.

The petitioner also cites RSA 374-A:8, which allows electric utilities to petition the Commission under RSA 371 to take lands, rights or easements by eminent domain or construct and maintain facilities that implicate public waters or state lands. The petitioner specifically claims that Eversource did not petition the DOE or the Commission for permission to replace ground wire with Optical Ground Wire (OPGW) in certain projects, which the petitioner states was not permitted in the terms of most of the Right of Way (ROW) easements. RSA 371 allows public utilities to petition the Commission for permission to take lands or rights if it cannot agree with the owner on necessity or price. The statute deals with the rights of the owners of the ROW easements. As the petitioner does not indicate that they are an owner of a ROW easement for which Eversource

violated the terms of the easement, the petitioner does not have standing to pursue this argument in the petition on behalf of the owners of ROW easements.

The petition also requests that the Commission review the environmental consequences of Eversource's Asset Condition projects. In connection with its construction and maintenance of its transmission assets, Eversource is required to obtain any and all necessary permits from federal, state, and local authorities, including the New Hampshire Department of Environmental Services (NHDES), which is responsible for, among other things, the control of water pollution, air pollution, and waste disposal in New Hampshire. Eversource is thus responsible for obtaining any necessary NHDES permits for its Asset Condition projects.

Along similar lines, the petition requested that the Commission assess the Asset Condition projects for renewable energy goals. The petition states that the Commission, "failed to assess Eversource's non-renewable inputs (CO₂) into its Asset Condition projects..." and cites RSA 125-O:23, which establishes an energy efficiency fund through which the Department of Energy awards funding for energy efficiency projects and programs. The Commission does not have jurisdiction over the fund outlined in RSA 125-O:23 to assess the Asset Condition projects in the context of renewable energy goals. Further, the petition does not state how or whether any of Eversource's Asset Condition projects are included in any energy efficiency programs presented or approved by the Department for funding under RSA 125-O:23.

The petition states that the Commission and the Department have failed to assess how Eversource's Asset Condition projects may be connected to distributed generation, per RSA 374-G:5. RSA 374-G:5 allows a utility to file with the Commission for rate

recovery of its investments in distributed energy resources as part of the utility's base distribution rates. As described above, the Commission is not authorized to examine Eversource's Asset Condition projects as part of approving Eversource's base distribution rates, and therefore does not have jurisdiction to examine the projects under RSA 374-G:5. Eversource also did not file for rate recovery of its Asset Condition projects as distributed energy resources under RSA 374-G:5, so there is no rate filing under this statute for the Commission to review.

The petition also requests public release by Eversource of all pole inspection reports on its 345kV and 115kV transmission lines. Eversource is a private company and thus their reports are not public records available for public inspection under RSA 91-A. RSA 374:4 and RSA 374:34-a allow the Commission and the DOE to regulate the safety of utility poles, but do not grant the Commission or the DOE authority to compel Eversource to publicly release its pole inspection reports.

As the Commission and the DOE do not have jurisdiction to regulate the transmission lines listed in the petition, and do not have authority over Asset Condition project approvals, for all of the reasons described above, neither the Commission nor the DOE have the jurisdiction to investigate the projects listed in the petition or grant the requested relief.

Regarding the question of whether the petition should be construed as a complaint to the DOE, the DOE also does not have the authority to investigate the petition as a complaint under RSA 365:1-4. RSA 365:1 grants the DOE jurisdiction to review individual complaints to the DOE that allege an act or omission by a utility, "in violation of any provision of law, the terms and conditions of its franchises or charter, or of any

order of the commission.” The petition in the above-captioned matter does not fall into that category. First, the petition was not filed as a complaint to the DOE. Second, the petition does not allege an act or omission committed by Eversource in violation of a law, Eversource’s terms and conditions, or order of the Commission. Rather, the petition outlines concerns over Eversource’s Asset Condition projects and asks the Commission and/or the DOE to conduct a review of Eversource’s projects and related matters. As these do not concern a violation of law, the terms and conditions of Eversource’s franchise or charter, or of any order of the commission; and the petition was not filed as a complaint to the DOE, the petition does not qualify as a complaint over which the DOE has jurisdiction pursuant to RSA 365:1-4. Even if the petition could be construed as a complaint to the DOE, the DOE still would not have jurisdiction over the requested relief, for the reasons described above.

Sincerely,

/s/ Alexandra K. Ladwig

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