

State of New Hampshire
Public Utilities Commission
Docket DE-23-056
In the Matter of the RSA 365 Petition of Kris Pastoriza

Motion

Petitioner Kris Pastoriza respectfully moves the New Hampshire Public Utilities Commission for the following Orders:

1. A Procedural Order that establishes a timeline for Petitioner Pastoriza to submit Data Requests on the parties to this docket including Public Service Company of New Hampshire dba Eversource; the New Hampshire Department of Energy; and the Office of the Consumer Advocate. The Order should provide for Technical Sessions and all necessary discovery procedures to ensure that Petitioner has the information necessary to fully present her substantive case to the Commission in a hearing on the merits;
2. An Order requiring Public Service Company of New Hampshire to order Eversource to provide the funds to Petitioner retain an independent expert up to \$325,000 to assist Petitioner and interveners to develop data requests¹ to evaluate the information about the projects detailed in the Pastoriza Petition to determine: (1) if the projects involve the high voltage transmission of electric energy in interstate commerce and to the sale of electric energy at wholesale in interstate commerce within the meaning of 16 USC Section 824 (Federal Power Act); (2) to determine if the projects are integral to distribution and retail sales in the Eversource service area; (3) for technical accuracy and credibility of the project presentations; (4) to develop a disclosure protocol to ensure that Eversource provides timely, useful, and accurate information for the Commission on the projects that will have rate impacts on New Hampshire ratepayers; and, (4) to recommend an accounting system that requires Eversource to timely and transparently account for the costs of projects that will have rate impacts on New Hampshire ratepayers.

¹ Petitioner Pastoriza has developed proposed data requests that are attached hereto in Appendix.

3. An Order requiring Public Service Company of New Hampshire to provide the Petitioner and Interveners the funds up to \$25,000 necessary to retain an independent expert to provide testimony to the Commission at the hearing on the merits of the Pastoriza Petition; and,
4. A Procedural Order that establishes the general timeline for this docket including the dates for discovery, technical sessions, discovery deadline and the hearing on the merits.

Memorandum in Support of Motion

The Passage of Chapter 374-F Electric Utility Restructuring Did Not Divest the New Hampshire Public Utilities Commission of Its Plenary Jurisdiction to Ensure That Utility Customers Have Just and Reasonable Rates

The enactment of Chapter 374-F electric restructuring was intended to require utilities to divest the vertical ownership of its generation and transmission assets in order to reduce costs for all consumers of electricity by harnessing the power of competitive markets with the overall public policy goal to develop a more efficient industry structure and regulatory framework that results in a more productive economy by reducing costs to consumers while maintaining safe and reliable electric service with minimum impacts on the environment. RSA 374-F:1 and RSA 374-F:3. Chapter 374, General Regulations empowers the Commission to supervise utilities. RSA 374:1; RSA 374:2 requires utilities to charge just and reasonable rates; RSA 374:5-a empowers the Commission to hire consultants to evaluate the costs of utilities; RSA 374:8 empowers the Commission to establish utility accounting systems²; RSA 374:18 requires utilities to produce their books and records; RSA 378:7 empowers the Commission to fix rates that are just and reasonable; and, RSA 363:22 empowers the Commission to investigate existing and interstate rates and charges a particularly useful authority in the case at bar.

² RSA 374:8 is the Commission's authority to order funds for Petitioner's expert to examine the projects and the applicability of federal and state regulatory authority as more fully developed in this Motion; require full and timely disclosure and prudence of project costs; and, to recommend an accounting protocol that accurately demonstrates rate impacts.

Eversource Asks the Commission to Establish a Binding Precedent That the Commission Has No Jurisdiction Over Any Line That Eversource Describes as a “Transmission” Line

Eversource Materially Misrepresents the Applicable Law Regarding the Jurisdiction of Federal and the State Regulatory Authorities Over Power Lines

Eversource in its Brief demanding dismissal of the Pastoriza Petition makes the sweeping assertion that “transmission planning, construction, installation, replacement, and maintenance are subject to review and approval through processes 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 has jurisdiction over that process.”

Should the Commission accept the Eversource argument the Commission would be reduced to a rubberstamp clerk for the billions of dollars of transmission project costs Eversource wants rolled into the rate base.

The arrogance of the Eversource assertion is breathtaking. Eversource materially misrepresented the law in its filing.

The federal jurisdiction over high voltage transmission projects is predicated on the Federal Power Act 16 (FPA) USC, Section 824(b) and applies to “the transmission of electric energy in interstate commerce and to the sale of electric energy at wholesale in interstate commerce.” The FPA does not preempt state regulatory review of power lines that do not fit the FPA definition.

Eversource, in its Brief, cites California v. Dynegy, Inc. 375 F.3d 831 (2004) for its federal preemption argument. The case grew out of the Enron like fraud that grievously damaged the California energy markets. The main thrust of the case concerns the conflict between federal regulatory authority and the powers reserved to the states under the 11th Amendment to the United States Constitution and whether federal or state courts have jurisdiction over the dispute. That conflict is not material to the issues raised by the Pastoriza Petition.

Eversource misrepresents the case to the Commission. Dynegy is not dispositive of the jurisdictional issue in the case at bar.

Indeed, Dynegy, had Eversource represented the case correctly, is helpful to understand the reach of the FPA and the lack of federal jurisdictional reach. The Dynegy court, at page 849 provides a brief summary of federal preemption principles. The court notes that the federal legislation may expressly preempt state law which the FPA did not. It provided only for federal jurisdiction over high-voltage transmission lines transmitting electricity in interstate commerce and to the sale of electricity in interstate wholesale markets. The other federal preemption claim rests on the premise that if federal and state law conflicts, federal law prevails. There is no claim of such conflict in the case at bar.

The Dynegy case makes a critical point that Eversource improperly failed to mention in its Brief.

The Dynegy court at page 881 states: "...States do, of course, have jurisdiction over certain sales, but we have enunciated a bright line distinction between wholesale sales, which fall within FERC's plenary jurisdiction, and retail sales, over which the states exercise jurisdiction...."

The Pastoriza Petition requires the Commission to confront and resolve the jurisdictional issue on the facts after full discovery and a hearing on the merits.

Ms. Pastoriza's Petition Raises Serious and Substantial Questions About the Eversource Effort to Eliminate the Jurisdiction of the New Hampshire Public Utilities Commission to Examine the Prudence of Utility Projects and the Cost Impacts on Ratepayers

The New Hampshire Department of Energy with Scant Analysis or Reason Advises the Commission That It Must Surrender to Federal Authority Decades of Prudence and Cost Review Jurisdiction Over Projects Costing in the Billions

The New Hampshire Department of Energy (Department) with a shocking degree of carelessness about the consequences of the question before the Commission declares that the Commission has no jurisdiction over the prudence and cost of projects that

Public Service Company of New Hampshire (Eversource) describes as “Asset Condition” transmission projects.³

The Department’s blithe filing reflects a willingness to forfeit decades of Commission jurisdiction over New Hampshire utilities to federal authority. The filing manifests an unacceptable degree of disregard for the Commission and its responsibilities to New Hampshire ratepayers.

The Department’s filing reflects a disregard for the gravity of the Pastoriza Petition and its implications for New Hampshire ratepayers. The Department filing is a manifestation of politization of its policy positions on energy issues.

The Commission must demand answers from the Department as it weighs the Department demand to dismiss the Pastoriza Petition.

Critical questions: Did Eversource present the “Asset Condition” projects listed in the Pastoriza Petition to the Planning Advisory Committee, ISO-NE (PAC)? Identify the filings. Did the Department participate in any of the filings? If yes, identify the filings. If yes, did the Department analyze the filings? If yes, specifically describe Eversource presentations and the analysis done by the Department of those presentations. Did the Department examine the veracity of the Eversource claim that the projects were “Asset Condition” projects? By what methodology? Did the Department examine the prudence of the costs of the projects? By what methodology?

At minimum, in the Department’s filing demanding that the Commission dismiss the Pastoriza Petition, the Department should have explained to the Commission the due diligence that it conducted in the PAC process.

Further, the Department filing manifests an unconscionable disregard towards Kris Pastoriza, an ordinary New Hampshire citizen, who has raised important energy issues that the Department itself should have presented to the Commission in its Petition dismissal demand. The Department’s arrogance reeks of bad faith.

Rather than jealously guard the long-established statutory framework of utility oversight by New Hampshire agencies, the Department punted. For example, while it mentions

³Ms. Pastoriza lists almost a billion dollars of such projects at pages 10-13 of her Petition.

a recent Eversource LCIRP docket DE:20-161, the Department does not say what, if any, of the Eversource “Asset Condition” projects were described in that docket or in any earlier LCIRP dockets. Instead, the department advises that the legislature has repealed the LCIRP statute and the repeal is awaiting the Governor’s signature as if to applaud the repeal.⁴

The Department’s repeal argument violates the duty of forthrightness that the Department and its attorneys owe to an adjudicative body such as the Commission. Many of the Eversource projects listed in the Pastoriza Petition were conceived, planned and constructed before the legislature repealed the LCIRP statutes.

It is fundamental law that statutes operate prospectively, not retroactively. Each of the projects should have been included in an LCIRP docket.

The Department does not comment in its filing on or examine what, if any, Commission dockets Eversource presented the costs of the projects and how the costs were booked for addition to the rate base.

Petitioner notes that the Department participated in Eversource rate case DE 19-057 and retained the services of River Consulting, Inc.((RCC) to examine concerns about Eversource’s approach to distribution system capital projects.

The concern that must be addressed by the Commission is what criteria separates “transmission” projects from “distribution” projects. The projects specified in the Pastoriza Petition include 115 kV projects and 345 kV projects. Are some of the 115 kV projects integral to distribution to New Hampshire retail customers? Are the lines connected to substations for voltage reduction for retail distribution? Or are some true transmission projects constructed to transmit electricity from generation facilities serving greater New England?

The Department argues that all transmission lines are in interstate commerce and beyond the jurisdiction of the Commission. This is nonsense. No project, however labeled, should escape Commission review for prudence and cost.

⁴ Petitioner notes that the Commission has recently recognized the legal efficacy of the LCIRP statutes. See DE 20-002, Unitil Energy Systems, Inc.

Petitioner will ask her expert to develop a utility project disclosure, cost and accounting protocol that establishes a bright-line between interstate “transmission lines” and those integral to utility distribution systems that are subject to New Hampshire regulatory authority.

The Department in its filing does not mention any filings that may have been required with the Site Evaluation Committee or the New Hampshire Department of Environmental Services such as alteration of terrain permits or wetlands permits

The Department’s expectation is that ordinary citizens such as Kris Pastoriza must step forward to raise the important questions she raised in her Petition.

Conclusion

Petitioner Pastoriza requests the Commission issue the following Orders:

1. An Order denying the requests filed by Eversource and the New Hampshire Department of Energy that the Pastoriza Petition be dismissed;
2. A Procedural Order that establishes a timeline for the conduct of the case in including full discovery and the Hearing on the Merits;
3. An Order requiring Eversource to provide Petitioner up to \$325,000 to retain an expert to assist in the preparation of her case; and,
4. An Order requiring Eversource to provide Petitioner up to \$25,000 to retain an expert for present testimony on her behalf at the hearing on the merits.

Respectfully Submitted,

August 13, 2023

/s/ Arthur B. Cunningham

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Service

I certify that that this filing was served on the parties to this docket in accordance with Commission Rules.

/s/ Arthur B. Cunningham

Arthur B. Cunningham

Appendix

Preliminary Data Requests re Prudence of Eversource Projects

1) Length of 115 kV and 345kV transmission line inspection intervals (i.e., five-year interval, seven-year interval.)

2) The power carrying capacity of 336 kcmil ASCR conductor, 795 kcmil ASCR conductor, 1292 kcmil ASCC conductor and 636 kcmil ACCC conductor, for simultaneous HVAC/HVDC transmission.

Please provide, for each New Hampshire transmission project on the ISO June Final Asset Condition list:

2) All structure inspection reports on 115kV and 345 kV transmission lines (structures, cross-bars, ground wire, conductor, etc.) including, but not limited to:

“Structure Inspections:

- Foot Patrol – line crews walk/drive along line to observe general condition of structures above ground level and general ROW conditions
- Structure Ground Line – specialized crews excavate ~18” below grade at each structure to determine subsurface integrity of pole and apply treatment as necessary
- High Resolution Aerial – entire system flown with detail hover review at most structures resulting in high resolution photos
- Thermography – infra-red camera (typically on helicopter) observes line for hot-spots
- Comprehensive Drone – combines foot patrol and high resolution aerial aspects of inspection”

3) A spreadsheet showing the total number of poles and the number of poles in each category described below:

Structures are Graded in Accordance with EPRI Guidelines

- A: Nominal Defect - No action required.
- B: Minimal Defect - Monitor degradation
- C: Moderate Defect - Repair or replace under next maintenance.
- D: Severe Defect - Repair, reinforce, or replace immediately

4) Reliability studies by ISO-NE or FERC showing the need for Eversource's replacement of 528 amp and 907-amp conductor with 2,200-amp conductor on its 115kV lines.

5) Documentation of presentation of projects to the PAC and all comments on the presentations made by the PAC, ISO-NE or any other entity or person.

6) Any project changes made as a result of PAC, ISO-NE input; or input by any other entity.

7) Documentation of presentation of projects to FERC and any comments on these projects by FERC.

8) A cost comparison of replacement of existing 795 kcmil ASCR (907 amp) and 336 kcmil (528 amp) ASCR conductor, with 1272 kcmil ASCC (2,200 amp) conductor vs. 636 kcmil ACCC (1280 amp) conductor, per mile.

9) Documentation of ISO inclusion of project expenses into the rate base.

10) Forensic pole inspection reports (of poles removed and replaced.)

11) Profile drawings (showing poles, conductor, ground, clearance and sag) for all removed lines and rebuilt lines, giving required clearances for both lines.

12) Cost breakdowns for each project showing heavy equipment (each type) and wetlands matting rental costs, rental method (by hour, day, week, month), percentage

of worker hours that were overtime, costs for conductor, OPGW (Optical Ground Wire), steel structures, gravel, insulators, bridges, helicopters, lay-down yard rentals, culverts, gas and other fuels, restoration, etc.

13) Payments to DES for wetlands damage.

14) Cost/benefit analyses of alternatives considered.

15) Detailed description of construction methods and equipment used by PSNH for the 1986 rebuild of a portion of the X-178 line.

16) Alteration of Terrain applications and drawings.

17) Final construction plans showing grade; including construction pads and roads; with 2' lidar-derived contour lines

18) As-built construction drawings for each line showing grade; including construction pads and roads; with 2' lidar-derived contour lines.

19) Plans and descriptions of the restoration of ROW terrain after construction.

12) The amount of gravel/aggregate dumped and spread on each line.

21) The amount (length and weight) of 1292 conductor on reels used by Eversource.

22) Construction and AOT plans for helicopter pads in White Mountain National Forest.

23) Documentation of the increased reliability provided by OPGW compared to regular ground wire, and cost/benefit calculations for this reliability vs. the higher costs of OPGW and the larger structures needed to support it,

24) Documentation of pole preservative treatments applied to the former and existing wood poles on (e.g., Cu-Bor; Pentachlorophenol) for the last three treatment cycles.

25) List of shield wire failures over the past ten years on lines with regular (not OPGW) ground wire.