

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

OBJECTION OF PUBLIC SERVICE COMPANY OF NEW HAMPSHIRE  
d/b/a EVERSOURCE ENERGY TO PETITIONER'S MOTION

Pursuant to N.H. Code Admin. Rules Puc 203.07(e), Public Service Company of New Hampshire d/b/a Eversource Energy (“Eversource” or the “Company”) hereby objects to the motion filed by Petitioner Kris Pastoriza (“the Petitioner”) on August 14, 2023 (the “Motion”). The Motion requests that the New Hampshire Public Utilities Commission (the “Commission”) take the following actions: (1) set a timeline for the Petitioner to submit data requests to Eversource, the Department of Energy (“DOE”), and the Office of the Consumer Advocate (“OCA”); (2) order Eversource to provide the Petitioner with up to \$325,000 to allow her to retain an independent expert to conduct discovery; (3) order Eversource to provide both the Petitioner and any possible intervenors with up to \$25,000 to retain an independent expert who would testify at hearing on the merits; and (4) issue a procedural order establishing a general timeline for the docket, including dates for discovery, technical sessions, discovery deadlines, and a hearing on the merits.

As demonstrated below, the Petitioner’s requests (1) and (4) are at best premature until the Commission has decided the threshold jurisdictional issues implicated by the Petition, and her requests (2) and (3) lack any statutory support and should be rejected outright. Accordingly, the Motion should be denied and this matter dismissed.

**1. No Procedural Schedule Should be Established Until the Relevant Federal Jurisdictional Issues Have Been Decided by the Commission.**

The Motion asks the Commission to deny the requests by Eversource and the DOE that the Petition be dismissed, and to issue a procedural order establishing a timeline for the docket, including full discovery and a hearing on the merits. But any such actions would be premature before the critical issues of federal and state jurisdiction have been decided by the Commission. The Motion fails to refute the arguments regarding jurisdiction made by Eversource and the DOE in their initial briefs, instead including only conclusory statements and inflammatory rhetoric. Even the OCA, while recommending the Commission consider opening an investigation, effectively concedes that transmission projects are within the purview of federal authority rather than Commission authority. As this position is uncontested in this docket, the Motion and Petition should be dismissed and this docket closed.

The Motion also reveals a fundamental misunderstanding regarding the difference between transmission projects and distribution projects. The original Petition filed by the Petitioner in this docket lists Eversource asset condition projects involving lines at voltage levels of 115 kV and 345 kV; in New England these are unquestionably transmission facilities, whether they are regional or local in nature. As described in the Company's initial brief, all such transmission projects are subject to review processes defined in the ISO New England ("ISO-NE") Open Access Transmission Tariff and implemented through postings made and committees organized by ISO-NE, the New England Power Pool ("NEPOOL"), and the Participating Transmission Owners ("PTOs"), all subject to the sole and exclusive regulatory jurisdiction of the Federal Energy Regulatory Commission ("FERC") under the Federal Power Act ("FPA"). The FPA gives the FERC exclusive jurisdiction over the transmission of electric energy in interstate commerce and

over all facilities for such transmission of electric energy. 16 U.S.C. §824(b)(1). It is only utility distribution system projects that fall within the jurisdiction of the Commission.

Exclusive federal jurisdiction over transmission includes the setting of rates for transmission service, and therefore any “prudency” review may occur only at the federal and not at the state level. A determination of prudency is typically a prerequisite to including recovery of and on utility capital investments in rates charged to customers, and, in the case of transmission facilities, those rates are set through processes subject to FERC regulation and not Commission regulation. State commissions are also preempted from “trapping” costs authorized by FERC to be collected; “cost trapping” occurs when a state agency sets retail rates that prevent a utility from fully recovering its costs at FERC-approved rates, including transmission service rates. *See Nantahala Power & Light Co. v. Thornburg*, 476 U.S. 953 (1986); *Old Dominion Elec. Coop. v. PJM Interconnection, LLC*, 24 F.4th 271, 275 (4th Cir. 2022). Arguments that the Commission should examine the prudency of asset condition transmission projects therefore are wholly unavailing.

Eversource and the DOE have provided conclusive and undisputed support for the position that the Commission lacks jurisdiction to undertake the detailed review of transmission projects sought by the Petition, and that the Petition should be dismissed as a result of that lack of jurisdiction. Those jurisdictional issues must be decided by the Commission prior to the contemplation of a procedural schedule for an adjudication that does not yet exist, and so the Motion must be dismissed in its entirety.

**2. No Statutory Authority Exists for the Commission-Directed Funding of Independent Expert Engagement Requested by the Petitioner in the Motion.**

In the Motion, the Petitioner requests that the Commission order Eversource to provide her with funding in the amount of up to \$325,000 to engage an independent expert to assist her and interveners in developing data requests to evaluate information about the projects detailed in the Petition to determine if those projects involve high voltage transmission of electric energy in interstate commerce, to determine if the projects are integral to distribution and retail sales, “for technical accuracy and credibility of the project presentations,” 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 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.” In addition, the Petitioner requests that the Commission issue an order requiring Eversource to provide her and interveners up to \$25,000 in funds “necessary to retain an independent expert to provide testimony to the Commission at the hearing on the merits” of the Petition. No statutory authority exists for the Commission to issue any such funding orders and these two requests therefore must be denied.

The Motion cites RSA 374:8 as the Commission’s authority to order funds for the Petitioner’s expert to examine the asset condition projects and the applicability of federal and state regulatory authority, to “require full and timely disclosure and prudence of project costs,” and to “recommend an accounting protocol that accurately demonstrates rate impacts.” RSA 374:8 does not support this request, as it does not provide a funding mechanism for any party or the authority for the Commission to issue funding; instead, RSA 374:8 gives the Commission authority over the manner in which utilities account for their own costs, specifically to “establish a system of accounts

and records to be used by public utilities for their business within this state, . . . classify them and prescribe a system of accounts for each class, and . . . prescribe the manner in which said accounts shall be kept.” The Commission’s authority in RSA 374:8 over utility accounting treatment provides no basis for utilities to be directed to fund participant or intervenor efforts in adjudicative or investigative proceedings.

In fact, New Hampshire has no statutory provision for general intervenor funding of the type sought by the Petitioner in the Motion. A limited basis for reimbursement of a party’s costs is provided for under RSA 365:38-a, but only up to \$10,000 and subject to a number of specific conditions. Any such reimbursement is available only to “retail customers that are subject to the rates of the utility and who demonstrate financial hardship,” and only if the recovery is found to be “just and reasonable and in the public interest.” Recovery shall be deemed to be in the public interest when, in any Commission proceeding, “the other party substantially contributes to the adoption by the Commission, in whole or in part, of a position advocated by the other party in that proceeding, or in a judicial review of that proceeding.” The utility shall pay the other party an award of such costs if it is subsequently approved by the Governor and Executive Council, and the entire amount of such approved cost award will be recoverable by the utility from its customers. Because the Petitioner is not even an Eversource retail customer subject to retail electric rates, the inquiry even in regard to this very limited funding need go no further.

In short, there is no reason for the Commission to entertain any request to fund the Petitioner’s hiring of independent experts in this matter, if it were to proceed, even if there were a statutory basis for such funding, which there is not. The two funding requests therefore must be denied, along with the request to establish a procedural schedule before the Commission has decided the threshold jurisdictional questions before it.

WHEREFORE, Eversource objects to the Petitioner's Motion and requests that the Commission deny the Motion in its entirety along with the original Petition, both with prejudice, and dismiss this proceeding by closing the docket.

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

Date: August 24, 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 24, 2023

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Jessica A. Chiavara