

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 SUPPLEMENT TO 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 “Supplement to Motion” filed by petitioner Kris Pastoriza (the “Petitioner”) on September 18, 2023 (the “Supplement”). The Supplement contains an extensive list of “technical questions” that the Petitioner asserts “must be adjudicated by the Public Utilities Commission in the current docket,” and requests that the Commission “open this docket” for:

1. A full and comprehensive evidentiary examination of the Eversource Energy “Asset Condition” projects to determine which projects are within the jurisdiction of the Federal Energy Regulatory Commission and those that are within the jurisdiction of the New Hampshire Public Utilities Commission all as requested in Petitioners’ Motion heretofore filed; and,
2. Whatever the jurisdictional reach of Federal Energy Regulatory Commission and the New Hampshire Public Utilities Commission issue an Order that the New Hampshire Department of Energy and the Office of the Consumer Advocate ensure that each and every Eversource Energy “Asset Condition” or other project that has impacts on New Hampshire ratepayers be subjected to careful prudence and cost scrutiny.

As support for those requested actions, the Petitioner attempts to make additional arguments regarding the X-178 transmission line in Northern New Hampshire. The Supplement argues that the X-178 line is not for transmission in interstate commerce because it was originally constructed “to deliver electricity to customers in rural New Hampshire’s Grafton and Coos

counties,” citing earlier Company condemnation proceedings before the Commission. Supplement at 2-4. The Supplement also argues that the easements for the X-178 line were purchased or taken by eminent domain as a “public necessity,” and that the easements “by their terms were to provide electricity to the rural customers who signed them and their neighbors” and “were not intended to provide a transmission corridor for the interstate sale of wholesale electricity.” According to the Petitioner, the Commission therefore “must examine the “Asset Condition” projects to determine their public necessity.” Supplement at 4-5. Finally, the Supplement argues that the proposed “complete replacement” of the X-178 line requires approval by the New Hampshire Site Evaluation Committee (“NHSEC”) because it represents a “sizeable change” under RSA 162-H:5, I.¹ Supplement at 5-6.

As an initial matter, Eversource notes there is no procedural basis for permitting a “supplement” to a motion that has been filed, objected to, the window for objection has closed, and the matter is currently pending before the Commission for decision. Nor is there any basis for proceeding with any further adjudicative process in this docket, including the consideration of any “technical questions” regarding “asset condition” transmission projects, before the Commission has decided the threshold jurisdictional questions on which it requested briefs from the parties, and has ruled on the Petitioner’s motion and the Company’s objection to it. As emphasized in the Company’s objection to the Petitioner’s motion filed on August 24, 2023, establishing a procedural schedule for this docket “would be premature before the critical issues of federal and state jurisdiction have been decided by the Commission.” Objection at 2. Nothing in the Supplement changes this basic premise, and therefore the additional demands in the supplement are equally premature.

¹ It is noteworthy that these arguments all focus on the X-178 transmission line, but the extensive list of technical questions appearing on Supplement pages 6-15 seems to cover all Eversource asset condition projects in the state.

With respect to substantive issues raised in the Supplement, Eversource notes that the 115 kV X-178 line is unquestionably a looped transmission line that is part of the regional transmission system subject to ISO New England oversight and Federal Energy Regulatory Commission jurisdiction. In fact, the X-178 line is listed in the ISO New England Pool Transmission Facilities (“PTF”) catalog as an Eversource “Lower Voltage PTF” line.² The X-178 line is a PTF subject to federal jurisdiction notwithstanding the fact that some of the power carried by it is stepped down through transformation for ultimate delivery to retail electric customers in Northern New Hampshire. The fact that the Commission found many years ago a public necessity for any portion of the related right-of-way to be acquired through eminent domain does not change the fact that the line’s primary purpose is the long-distance transmission of electric power at relatively high voltage. This argument therefore does not affect the fundamental jurisdictional analysis, which compels a conclusion that the state has no jurisdiction over the X-178 line or any transmission rate impacts of its proposed upgrade or modification.

The Petitioner’s argument that the scope of easements for the X-178 line were premised on power transmission for local retail customer service rather than regional wholesale sales is similarly unavailing.³ As stated in Eversource’s brief filed on August 4, 2023, 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 right-of-way easements, as such determinations of individual property interests are the province of the state courts. Eversource Brief at 8 (citing *Petition for Approval of Lease Agreement Between*

² The ISO New England PTF catalog may be viewed through this weblink: <https://www.iso-ne.com/static-assets/documents/2023/03/2023-final-ptf-catalog.pdf>.

³ Eversource does not concede that its easement rights related to the X-178 transmission line right-of-way do not permit the upgrade or modification of that line for any purpose; the focus of this objection, however, is on the jurisdictional question and not on any particular factual circumstances.

Eversource and Northern Pass Transmission LLC, Order No. 26,001 (April 6, 2017) at 13).⁴ The lack of Commission jurisdiction to determine property rights applies regardless of whether the property interest was originally obtained by negotiated easement or pursuant to a Commission eminent domain order issued under RSA 371. *See* Order No. 26,001 at 13.

Finally, the Petitioner asserts that the proposed modifications to the X-178 transmission line would represent a “sizeable change” under RSA 162-H:5, I and suggests that approval under that statute would be required prior to making the modifications. Without conceding that the proposed upgrades to the X-178 transmission line, or those to be made in connection with any other “asset condition” transmission project, would require prior approval under RSA 162-H:5, it is most relevant in the current context that any such approval, even if it were necessary, would be required from the *NHSEC* and not from the *Commission*. It is the *NHSEC* that has authority under RSA 162-H, and the Commission lacks jurisdiction to make any relevant determinations under that statute. The Supplement therefore provides no basis for the Commission to exercise oversight over any such energy facility siting decisions, even if they were required.

WHEREFORE, Eversource objects to the Petitioner’s Supplement and to the underlying motion to which it relates, and respectfully requests that the Commission deny the underlying motion and the Supplement in their entirety, along with the original Petition, both with prejudice, and dismiss this proceeding by closing the docket.

⁴ Even the New Hampshire Supreme Court case cited in the Supplement, *Lussier v. New England Power Company*, 133 N.H. 753 (1990), involved an appeal from decisions of the superior court regarding utility easement rights and not an appeal of orders or findings of the Commission.

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

Date: September 22, 2023



By: _____
Jessica A. Chiavara
Senior Counsel, Public Service Company of New
Hampshire d/b/a Eversource Energy
780 North Commercial Street
Post Office Box 330
Manchester, NH 03105-0330
(603) 634-2972
Jessica.Chiavara@eversource.com

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: September 22, 2023

Jessica A. Chiavara