

**STATE OF NEW HAMPSHIRE  
PUBLIC UTILITIES COMMISSION**

**DE 23-056**

**KRIS PASTORIZA**

**Petition for Request for Review of Eversource Transmission Line Projects**

**Order Declining to Investigate and Denying Petition**

**ORDER NO. 26,925**

**January 5, 2024**

In this order, the Commission declines to initiate an investigation into Public Service Company of New Hampshire d/b/a Eversource's (Eversource) transmission line projects (also referred to as "Asset Condition" projects) and denies the other alternative forms of relief requested in either the petition or subsequent filings.

**I. PROCEDURAL HISTORY**

On June 28, 2023, the petitioner in this matter, a New Hampshire resident, filed a petition and attachments (Petition). The Petition requested "[a] complete assessment by the [Commission] of Eversource's Asset Condition category projects . . . ." Petition at 1. The Petition cited a number of New Hampshire statutes as authorizing the Commission to undertake this assessment.

On July 14, 2023, the Commission requested that Eversource and the New Hampshire Department of Energy (DOE) brief whether the Commission has jurisdiction to review the Petition under the identified authorities.

On July 17, 2023, the petitioner filed a motion (July 17 Motion). The July 17 Motion requested a particular attorney representing Eversource be recused, that at least one person from the DOE involved in responding the Commission's jurisdictional brief be off-the-grid in order to assure objectivity, and clarifying that the relief requested in the Petition include an audit by the DOE's audit division.

On July 21, 2023, the petitioner filed a letter and attachments (July 21 Letter). The letter requested that the Commission “place all Asset Condition projects on hold” for an indeterminate period.

In early August 2023, Eversource and the DOE filed briefs arguing that the Commission lacked the jurisdiction to investigate Eversource’s Asset Condition projects. In contrast, the Office of the Consumer Advocate (OCA) filed a brief asserting that the Commission did have jurisdiction and urging the Commission to open an investigation in this docket per the Petition. (These three briefs will be referred to as the Eversource Brief, DOE Brief, and OCA Brief, respectively).

On August 14, 2023, the petitioner filed a motion (August 14 Motion). The August 14 Motion requested that the Commission authorize the petitioner to propound discovery on Eversource, the DOE, and the OCA; order Eversource to provide \$325,000 to the petitioner for the petitioner and intervenors<sup>1</sup> to engage an independent expert to assist in discovery; order Eversource to provide \$25,000 to the petitioner and intervenors to engage an independent expert to provide testimony; and establish a procedural schedule to govern this proceeding. The August 14 Motion included an incorporated memorandum of law and appendix.

On August 18, 2023, the OCA filed a Rely Brief. On August 24, 2023, Eversource filed an objection to the August 14 Motion. On September 18, the petitioner filed a supplement to the August 14 Motion. On September 22, Eversource filed an objection to the September 18 supplement.

The Petition and all subsequent filings are posted on the Commission’s website at: <https://www.puc.nh.gov/Regulatory/Docketbk/2023/23-056.html>.

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<sup>1</sup> A Petition to Intervene was filed by Terry Cronin on August 7, 2023.

## **II. COMMISSION ANALYSIS**

At the outset, we construe this matter as a petition to investigate. It is captioned as a petition; the DOE concluded that it is not a complaint, DOE Brief at 6–7; and the primary relief requested throughout the filings is an assessment of Asset Condition projects.

In essence, the petitioner and the OCA argue that the Commission has the authority, through a number of New Hampshire statutes, to conduct an investigation into Eversource’s Asset Condition projects, and that the Commission should conduct this investigation because Eversource’s spending on Asset Condition projects is a major cause of New Hampshire ratepayers’ high transmission costs and there is evidence that not all expenditures have been reasonably incurred. In response, Eversource and the DOE contend that the Commission lacks the authority under New Hampshire law to conduct this investigation into Eversource’s spending on interstate transmission lines. They further argue that, even if the Commission did have this authority under state law, it would nonetheless be preempted by the Federal Power Act.

As more fully explained below, the Commission concludes that it does have the authority to conduct an investigation into Eversource’s Asset Condition projects in New Hampshire under state law. However, that authority is discretionary, and the Commission declines to exercise that discretion to open an investigation in this docket. Finally, because the Commission has declined to exercise its authority under state law, it will not address whether this authority is preempted by federal law.

### **1. Authorities Cited**

N.H. Code Admin R. 203.05(a)(3) requires that each pleading include the statutory provision or legal precedent that authorizes the Commission to provide the

relief sought. The Petition identifies the following statutory provisions: RSA 365:1-7, 15, 18, 19, 29, 37; RSA 374:7; RSA 371:17; RSA 374-A:8; RSA 125-O:23, III(c)(1)-(2); and RSA 374-G:5, II(a)-(i) and III. Following the Commission's request for jurisdictional briefs, additional pleadings were filed in various forms, including motions, supplements, and replies. The Commission's request for jurisdictional briefs did not convene an adjudicative proceeding, rather it sought briefs to aid the Commission's determination of whether to do so. Therefore, to the extent that any subsequent pleading raises new authorities to support the relief sought, those authorities will be addressed in this order.

The OCA Brief cites RSA 374:1, 3-4, and discusses jurisdictional issues related to the Federal Power Act, in support of the Commission's authority to investigate Eversource's Asset Condition expenditures.

The memorandum of law appended to the August 14 Motion as supplemented on September 18 cites additional statutory provisions or legal precedents for the relief sought: RSA 374-F:1; RSA 374-F:3; RSA chapter 374, RSA 374:2; RSA 374:5-a; RSA 374:8; RSA 374:18; RSA 378:7; RSA 363:22; and RSA 162-H. In addition, these filings address jurisdictional issues related to the Federal Power Act, the Federal Energy Regulatory Commission, and various other administrative and judicial orders related to utility lines owned by Eversource in New Hampshire.

In total, the record to date identifies the following state laws: RSA 125-O:23, III(c)(1)-(2); RSA 162-H; RSA 363:22; RSA 365:1-7, 15, 18, 19, 29, 37; RSA chapter 374 in its entirety; RSA 371:17; RSA 374-A:8; RSA 374-F:1; RSA 374-F:3; RSA 374-G:5, II(a)-(i) and III; and RSA 378:7. The Commission will analyze each statute to determine what authority it provides the Commission to deliver the relief requested in the Petition.

RSA 125-O:23, III(c)(1)-(2). These provisions relate to energy efficiency programs administered by qualified parties as determined by the DOE. The provisions do not confer the Commission authority to take any of the actions requested in the Petition.

RSA chapter 162-H. This chapter relates to siting for energy facilities and confers authorities to the Site Evaluation Committee. This chapter does not confer authority on the Commission to take any of the actions requested in the Petition.

RSA 363:22. This provision authorizes but does not require the Commission to investigate interstate rates, fares, charges, classifications and rules and regulations where any act thereunder may take place within this state. This provision supports that the Commission may commence an investigation based on the Petition.

RSA 365:1-7, 15, 18, 19, 29, 37. Sections 1-4 relate to complaints that a public utility violated a provision of law, the terms and conditions of its franchise, or an order of the Commission; requires that complaints be filed with and investigated in the first instance by the DOE. These sections do not confer the Commission authority to take any of the actions requested in the Petition. Sections 5-7 authorize but do not require the Commission to investigate or make inquiry as to any rate charged or proposed or as to any act or thing having been done, or having been omitted or proposed by any public utility; in addition, these sections require the Commission to hear complaints under sections 1-4 under certain circumstances after the DOE completes its review. Section 15 permits the Commission to require utilities to make specific answers to questions. Section 18 clarifies that corporate immunity is not granted to utilities by RSA chapter 365. Section 19 permits the Commission to conduct an independent investigation in any case in which it may hold a hearing. Section 29 authorizes the Commission to order reparations in response to a finding that any illegal or unjustly discriminatory rate, fare, charge, or price has been collected. Section 37 relates to

expenses of investigations in certain matters incurred by the Commission or the DOE. A subset of these provisions support that the Commission may commence an investigation based on the Petition, but otherwise do not confer authority to take any of the actions requested or compel the Commission to act on the Petition.

RSA 371:17. This provision relates to the DOE's licensing process for utility assets that cross state waters and lands. This provision does not confer authority on the Commission to take any of the actions requested in the Petition.

RSA chapter 374 is titled "General Regulations," and establishes, among other things, that utilities shall furnish service and facilities that are reasonably safe and adequate and in all other respects just and reasonable, and that the Commission and DOE have general supervisory authority over all public utilities and the plants owned, operated or controlled by utilities, and that the Commission and DOE shall have power, and it shall be their duty, to keep informed as to all public utilities in the state including the manner in which the lines and property controlled or operated by them are managed and operated. Section 7 authorizes the Commission and the DOE to investigate the methods employed by public utilities in transmitting or supplying electricity, and authorizes the Commission to order reasonable and just improvements and extensions in service or methods. A subset of these provisions support that the Commission may commence an investigation based on the Petition, but otherwise do not confer authority to take any of the actions requested or compel the Commission to act on the Petition.

RSA 374-A:8. This provision relates to utility-initiated requests to utilize eminent domain to acquire property or property rights for electric power facilities. This provision does not confer authority on the Commission to take any of the actions requested in the Petition.

RSA 374-F:1. This section is the purpose statement applicable to the electric utility restructuring statute. This statement does not confer authority on the Commission to take any of the actions requested in the Petition.

RSA 374-F:3. This section lists interdependent policy principles applicable to the electric utility restructuring statute. These principles do not confer authority on the Commission to take any of the actions requested in the Petition.

RSA 374-G:5, II(a)-(i) and III. This chapter relates to stimulating utility investment in distributed energy resources that benefit the transmission and distribution system under state regulatory oversight. Proceedings under section G:5 must be initiated by utilities. Therefore, these provisions do not confer authority on the Commission to take any of the actions requested in the Petition.

RSA 378:7. This section relates to fixing rates by the Commission in proceedings initiated on its own motion, upon the motion of the DOE, or on a complaint that the rates, fares or charges demanded or collected, or proposed to be demanded or collected, by any public utility for service rendered or to be rendered are unjust or unreasonable, or that the regulations or practices of such public utility affecting such rates are unjust or unreasonable. This provision generally relates to rate cases where a utility's revenue requirement and rate schedules are established. The Commission does not construe the Petition to be a request to convene a full rate case or to allege that Eversource's existing rate structure is unjust and unreasonable.

It is worth noting that the petitioner does seek various forms of monetary relief. *See, e.g.*, Kris Pastoriza Request for Prompt Issuance of an Order at 1 (November 29, 2023) (characterizing relief requested as including refunds to ratepayers with compounding interest, attorney fees, and expenses). Furthermore, the Petition also contains requests for declaratory judgments that are outside the authority of this

Commission, including interpretation of easement terms. The Commission has previously determined that only a court of competent jurisdiction may determine individual property owners' rights. Order No. 26,001 (April 6, 2017).

In light of this review of the statutes cited by the petitioner and the OCA, the Commission concludes that it does have the discretion to investigate Eversource's Asset Condition projects in New Hampshire. The authorities do not, however, compel the Commission to do so.

## **2. Determination Not to Investigate**

As noted above, the determination whether to investigate is discretionary to the Commission. The Commission declines to exercise this discretion and commence an investigation pursuant to the Petition. The Commission appreciates the issues raised in the Petition. As both the petitioner and the OCA state in their filings, transmission costs are a major contributor to New Hampshire ratepayers' high energy costs. Likewise, the Commission agrees that expenditures on Asset Condition projects—to the extent they relate to transmission costs—are a potentially worthy topic for the Commission to consider. But the scope of issues presented in the Petition, which relates to Eversource's transmission and Asset Condition projects in the state generally, is exceedingly broad. The Commission does not agree that such a far-ranging investigation into Eversource's transmission and Asset Condition projects is warranted. The Commission notes that the petitioner seeks \$350,000 to conduct the investigation sought in this docket. Not only is this extraordinary relief, but it speaks to the broad scope of the assessment sought. For these reasons, the Commission will not open an investigation into Eversource's asset condition projects in this docket or provide the alternative relief sought in the Petition.



That said, the Commission notes that both the OCA and the DOE play a role in energy and policy advocacy at the New England regional level. *See* RSA 374-F:8; RSA 363:28, IV. The Commission understands this role to include some level of oversight of transmission related Asset Condition projects. The need for such participation is supported by the New England States Committee on Electricity letter filed by both the petitioner and the OCA, discussing the need for process improvements related to Asset Condition projects. Attachment to July 21 Letter; Attachment to OCA Motion. Accordingly, the DOE and OCA may have greater access to data and information relating to utility Asset Condition projects that could help both narrow the issues and justify an investigation on behalf of New Hampshire ratepayers. The Commission takes the OCA and DOE's views on this matter seriously. If these agencies presented a narrowly-tailored investigation with clear relevance to New Hampshire ratepayers, the Commission may be open to commencing an investigation. Of course, members of the public, such as the petitioner, would be able to participate in such an investigation.


Finally, because the Commission is declining to exercise its discretion to open an investigation in this docket under state law, the Commission need not address the question of whether such an investigation would be preempted by federal law, as argued by the DOE and Eversource.

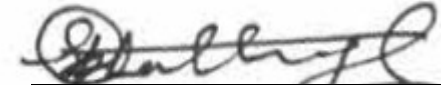
**Based upon the foregoing, it is hereby**


**ORDERED**, that the Petition and all of the Petitioner's subsequent requests for relief are **DENIED**; and it is

**FURTHER ORDERED**, that any remaining motions, petitions to intervene, and objections are **MOOT**.

By order of the Public Utilities Commission of New Hampshire this fifth day of  
January, 2024.

  
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Daniel C. Goldner  
Chairman

  
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Pradip K. Chattopadhyay  
Commissioner

  
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Carleton B. Simpson  
Commissioner

# Service List - Docket Related

Docket#: 23-056

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