

**STATE OF NEW HAMPSHIRE
PUBLIC UTILITIES COMMISSION**

DE 23-056

KRIS PASTORIZA

Petition for Request for Review of Eversource Transmission Line Projects

Order Denying Motion for Rehearing

ORDER NO. 26,946

February 12, 2024

On January 5, 2024, the Commission issued Order No. 26,925, which dismissed Petitioner Kris Pastoriza’s petition (Petition) for the Commission to launch an investigation into Public Service Company of New Hampshire d/b/a Eversource’s (Eversource) asset condition expenditures on electric line infrastructure in New Hampshire and provide various forms of injunctive relief against Eversource. On January 12, 2024, the Petitioner moved for rehearing of Order No. 26,925, arguing that the Commission is obligated under state law to open an adjudicative docket with respect to the Petition. Eversource objects. For the following reasons, the Commission DENIES the motion for rehearing. All docket filings, other than any information subject to confidential treatment, are available on the Commission’s website at <https://www.puc.nh.gov/Regulatory/Docketbk/2023/23-056.html>.

I. BACKGROUND

The Petition listed a number of Eversource’s projects to repair or replace existing “115kV and 345kV transmission lines” in New Hampshire, which the Petition refers to as asset condition projects. *See* Corrected Pet. at 10–13. The Petition requested that the Commission open a docket to examine the identified asset condition projects, as well as any other asset condition projects Eversource has completed or initiated since 2018. *Id.* at 1. Specifically, the Petition requested that the

Commission determine whether the projects were necessary, whether they were completed at the least cost to Eversource, and whether they were correctly “booked” in Eversource’s rate base. *Id.* at 1. The Petition also sought Commission review of the projects to ensure they conformed to easement deeds and environmental standards. *Id.* The Petition further sought various forms of injunctive relief. *Id.*

In Order No. 26,925, the Commission dismissed the Petition. The Commission first concluded that the Petitioner had not cited any statutory authority for the Commission to provide the majority of the relief sought in the Petition. The only exception was that the Commission concluded it had the authority to conduct a fact-finding inquiry into Eversource’s asset condition projects to the extent they affect New Hampshire ratepayers. The Commission further concluded, however, that its ability to initiate an investigation lies within its own discretion. *See, e.g.*, RSA 363:22 (“The commission *may* investigate all existing or proposed interstate rates, fares, charges, classifications, and rules and regulations relating thereto, where any act thereunder may take place within this state.” (emphasis added)). Given the broad scope of review the Petitioner sought, the Commission declined to initiate an investigation based on the Petition.

II. SUMMARY OF ARGUMENTS

As noted above, the Petitioner filed a motion for rehearing of Order No. 26,925 and Eversource filed an objection. Although they are both parties to this docket, neither the New Hampshire Department of Energy (DOE) or the Office of the Consumer Advocate (OCA) filed a response to the Petitioner’s motion.

A. Petitioner

In the motion for rehearing, the Petitioner essentially argues that the Commission erred in concluding that the only form of relief it could provide based on

the Petition was a fact-finding investigation. Rather, the Petitioner maintains that the Commission is obligated under state law to conduct an investigation into Eversource's asset condition projects to ensure they were prudent. As an initial matter, the Petitioner emphasizes that the Petition lists asset condition projects for electric lines used in both the interstate transmission of electricity at wholesale, which the federal government regulates, *see* 16 U.S.C. § 824(b), and the distribution of electricity at retail, which the Commission regulates. The Petitioner argues that RSA chapter 374's requirement that all rates charged by New Hampshire utilities be just and reasonable and RSA 378:7's requirement that the Commission investigate and set rates at just and reasonable levels compel the Commission to investigate Eversource's asset condition projects and determine whether they were prudent and thus correctly added to Eversource's rate base. *See also* RSA 378:28 ("The commission shall not include in permanent rates any return on any plant, equipment, or capital improvement which has not first been found by the commission to be prudent, used, and useful."). The Petitioner argues that the Commission is required to undertake this review of both transmission lines and distribution lines, albeit to different degrees.

With respect to the Petition, the Petitioner argues that the Commission must review all asset condition projects identified and make a determination as to whether they are an interstate transmission line used for the sale of electricity at wholesale or an intrastate distribution line used for the retail sale of electricity. If the electric lines at issue are used in interstate wholesale transmission, the Petitioner acknowledges that the Federal Power Act vests authority over these rates in the Federal Energy Regulatory Commission (FERC). *Mot. for Reh'g* at 3. However, the Petitioner maintains that state law still compels the Commission to determine whether Eversource, the DOE, and the OCA "responsibly participated in the project prudence and just and

reasonable cost review at the federal level and will certify in accord with Chapter RSA 374 that the project is prudent” and “that the costs are just and reasonable and the cost allocation is proper.” *Id.*

On the other hand, the Petitioner argues that if the asset condition projects are “used for the transmission of electricity to retail customers,” the Commission “has sole jurisdiction under the Federal Power Act to determine the prudence of the project, if the costs are just and reasonable and the cost allocation is proper.” *Id.*

As a first step in this docket, the Petitioner requests that the Commission order the DOE and the OCA to investigate all past and proposed asset condition projects identified in the Petition and produce and present a report to the Commission.

B. Eversource

In its objection to the motion for rehearing, Eversource reiterates its position from its earlier briefing that the Federal Power Act vests sole authority over rates for interstate wholesale transmission of electricity in the FERC and that the Commission therefore lacks the authority to conduct any prudency review on interstate transmission lines. It appears to be Eversource’s position that all of the electric lines listed in the Petition are transmission lines used in the interstate transmission of electricity at wholesale and thus properly under the FERC’s jurisdiction. *See* September 22, 2023, Obj. at 3; January 19, 2024, Obj. at 3–4.

III. COMMISSION ANALYSIS

The Commission may grant rehearing or reconsideration for “good reason” if the moving party shows that an order is unlawful or unreasonable.” RSA 541:3, RSA 541:4; *Rural Telephone Companies*, Order No. 25,291 (November 21, 2011); *see also Public Service Company of New Hampshire d/b/a Eversource Energy*, Order No. 25,970 at 4–5 (December 7, 2016). A successful motion must establish “good reason” by

showing that there are matters that the Commission “overlooked or mistakenly conceived in the original decision,” *Dumais v. State*, 118 N.H. 309, 311 (1978) (quotations and citations omitted), or by presenting new evidence that was “unavailable prior to the issuance of the underlying decision,” *Hollis Telephone Inc.*, Order No. 25,088 (April 2, 2010). A successful motion for rehearing must do more than merely restate prior arguments and ask for a different outcome. *Public Service Co. of N.H.*, Order No. 25,970, at 4–5 (citing *Public Service Co. of N.H.*, Order No. 25,676 at 3 (June 12, 2014); *Freedom Energy Logistics*, Order No. 25,810 at 4 (September 8, 2015)).

In the Commission’s view, the Petitioner has failed to show good cause for rehearing. Nonetheless, there are certain issues raised in the motion for rehearing that merit further discussion. Specifically, the Commission did not directly address the Petitioner’s argument, which she clarified in her motion for rehearing, that RSA chapter 374 and RSA 378:7 require the Commission to determine whether the electric lines at issue were prudent. Accordingly, we will now address this issue. Because the motion for rehearing addresses the Commission’s statutory obligations with respect to both intrastate distribution lines and interstate transmission lines, the Commission considers each in turn. The Commission acknowledges Eversource’s representation that all of the lines at issue are interstate transmission lines but will accept the Petitioner’s allegation that at least some of the lines are used in the distribution of electricity at retail for the purpose of ruling on the Petition at the pleading stage. See *Charter Comms., Inc. , Cogeco US Finance, LLC d/b/a Breezeline, and Comcast Cable Communications, LLC*, Order No. 26,764, at 3 (January 23, 2023).

First, the Commission will address the Petitioner’s argument that the Commission is obligated to open a docket to review all asset condition projects on

distribution lines included in Eversource's distribution rate base. As a starting point, the Commission agrees that it has plenary authority to set Eversource's distribution rates based, in part, on Eversource's distribution infrastructure. But Eversource cannot recover the costs associated with any investment to its distribution system unless the Commission approves recovery of the investment as part of Eversource's rate base during a ratemaking proceeding. *See* RSA 378:7; RSA 378:28. Therefore, the Commission has already found any project for which Eversource is recovering through its current distribution rates to be prudent, used, and useful in ratemaking proceedings, including Docket No. DE 19-057 and subsequent step adjustments. *See* RSA 378:28. The Petitioner can review that docket and the filings therein. Likewise, if Eversource seeks to recover for any investments in its distribution system not already approved, it will need to seek Commission approval in its next rate case, at which point the Commission will have to determine whether the projects were prudent, used, and useful. *Id.* The Petitioner may participate in that docket as a member of the public. Accordingly, the proper time to adjudicate the prudence of investments in a utility's distribution system is during a rate case, which members of the public can participate in. For this reason, the Commission will not convene a separate adjudicative docket to review investments in the distribution system.

Second, the Commission will address the Petitioner's arguments with respect to asset condition projects on interstate transmission lines. As mentioned above, the Petitioner acknowledges that the Federal Power Act vests authority over the transmission of electricity at wholesale in the FERC. *See* Mot. for Reh'g at 3-4; *see also* 16 U.S.C. § 824(b). Nevertheless, the Petitioner argues that the Commission must determine whether Eversource, the DOE, and the OCA have "responsibly participated in the project prudent and just and reasonable cost review at the federal level and will

certify in accord with Chapter RSA 374 that the project is prudent; that the costs are just and reasonable and the cost allocation is proper.” Mot. for Reh’g at 4.

The Commission disagrees. The Petitioner has cited no statute requiring these parties to certify, or the Commission to verify, that rates the FERC approved under a federal standard also comport with New Hampshire’s standard for rates set by the Commission. FERC-approved rates do not need to conform to RSA chapter 374’s standards for justness and reasonableness and the federal government may apply different standards than this Commission. The Petitioner’s reliance on RSA chapter 374 and RSA 378:7 is unavailing. Both facially and logically, these statutes only apply to rates regulated by the Commission. In short, no statute requires the Commission to ensure FERC-approved transmission rates, and any underlying determinations as to the prudence of investments in transmission infrastructure, are consistent with New Hampshire law and doing so would be futile because New Hampshire law is inapplicable to these rates.

In sum, the Petitioner has not shown that the Commission was compelled to open a separate investigative docket to review all of Eversource’s asset condition projects and ensure they were prudent.

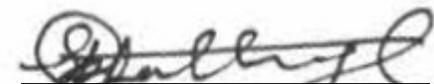
Based upon the foregoing, it is hereby

ORDERED, that Petitioner Kris Pastoriza’s Motion for Rehearing is DENIED.

By order of the Public Utilities Commission of New Hampshire this twelfth day of February, 2024.



Daniel C. Goldner
Chairman



Pradip K. Chattopadhyay
Commissioner



Carleton B. Simpson
Commissioner

Service List - Docket Related

Docket#: 23-056

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