

Electricity as distinct from intelligence --- PSNH states that it does not own the land.

Easements for the X-178 do not include "intelligence" thus do not include permission for the installation of OPGW (Optical Ground Wire.)

Tel. Ped. 21/2 - 21/8

KNOW ALL MEN BY THESE PRESENTS that New England Fellowship of Evengelicals, Incorporated, having a mailing address of Box 99, Rumney, New Hampshire 03266, hereinafter referred to as Grantor, in consideration of One Dollar and other valuable considerations to it paid by New England Telephone and Telegraph Company, a New York corporation having its principal place of business at 185 Franklin Street, Boston, Massachusetts 02107 and the New Hampshire Electric Cooperative, Inc., a New Hampshire corporation having a mailing address of RFD #4, Tenney Mountain Highway, Box 2100, Plymouth, New Hampshire 03264, hereinafter referred to as Grantees, the receipt of which is hereby acknowledged, hereby grants, bargains, sells and conveys unto said Grantees, their successors, assigns, licensees and permittees, with quitclaim covenants, the right to lay, construct, reconstruct, operate, maintain, inspect, replace and remove lines for the transmission of intelligence and for the transmission and distribution of electricity, buried, upon, and across land and private ways as are now laid out or as may be laid out in the future in the Town of Rumney, County of Grafton, State of New Hampshire, said property being more particularly described and located as follows, to wit:

Our property on Main Street and Gilford Street and being a portion of the premises described by a deed recorded in Volume 483, Page 318 of the Grafton County Registry of Deeds.

The above granted rights may be more particularly described as the exclusive right within said private ways to construct, reconstruct, operate, inspect, replace and remove poles with the terminals, wires and/or cables thereon, with the necessary guys, anchors, supports, fixtures and appurtenances thereon and lamp connections, also the right and easement to renew, replace and to otherwise change said lines and each and every part thereof and the location thereof; also the right to lay, construct, reconstruct, operate, maintain, inspect, replace and remove underground cables, pipes, conduits, and such surface testing terminals, pedestals, repeaters, markers and other appurtenances with wires and/or cables therein as the Grantees may from time to time desire within said private ways and within strips of land ten feet (10') in width abutting said private ways and on said premises.

STATE OF NEW HAMPSHIRE

BK 1783 PG 0955

PSNH's assertions in the [SegTel](#) fiber optic case contradict Eversource's assertion that it is the owner of record for the property across which its easements were granted and is allowed by law to sign the X-178 Alteration of Terrain and Dredge and Fill Wetlands permit applications as the owner.

PSNH's assertions in the SegTel case contradict Eversource's assertion that it has the right to install OPGW (Fiber Optic Ground Wire) on the X-178 transmission line:

"PSNH further asserted that there is no reported case in New Hampshire that overrides the private property ownership rights of the underlying landowners whose land I encumbered by a power line right-of-way. According to PSNH, New Hampshire law recognizes the basic premise that an easement is distinct from ownership...<sup>12</sup>.

PSNH stated that the leading case in New Hampshire on the interpretation of the scope and permissible use of electric utility easements holds that the question of permissible use of an easement is one of determining the intent of the parties at the time of the original easement grant.

It urged that the words used in the easement deed control, and where the words used are clear and unambiguous, there is no need to resort to outside facts or circumstances, or to rely upon the interpretive test of the "rule of reason" to ascertain whether the use is a reasonable one.<sup>13</sup> PSNH also claimed that the words used in the applicable deeds reflect that the purpose and intent of the easement grant does not go beyond lines for the transmission of electric current...

PSNH asserted that the clear and unambiguous wording specifying the allowable uses of PSNH's easement rights ends the inquiry under the New Hampshire Supreme Court's Lussier holding... PSNH stated that because it owns the poles, but does not own the land upon which those poles have been placed, it has only the rights to use that land for the purposes of its power lines and its related facilities consistent with its easement rights.

PSNH contended that the law of easements in New Hampshire is devoid of any reported case that holds that a particular use of an easement is permissible simply because that use or purpose has not been expressly prohibited, or because the wording in an easement is silent on the subject...

12. An easement is a nonpossessory right to the use of another's land; it merely grants the easement holder the right to enter and make use of the property of another for a particular purpose. Arcidi v. Town of Rye, 150 N.H. 694 (2004).

13. Lussier v. N. E Power Co., 133 N.H. 753 (1990)...

16. (Cable Holdings of Georgia, Inc. v. McNeil Real Estate Fund VI, Ltd., 953 F. 2d 600 (11th Cir. 1992), cert den, 506 U.S. 862 (1992), reh, en banc, den, 988 F. 2d 1071 (11th Cir. 1993)...

### **Commission Analysis:**

The following conveyance language contained in the 1915 deeds, is representative of the language contained in the earlier deeds:

. . . do hereby give, grant bargain, sell and convey unto the second party, its successors and assigns, the perpetual right and easement to erect, repair, maintain, operate and patrol a line of poles or towers and wires strung upon the same, and from pole to pole and tower to tower *for the transmission of high or low voltage electric current* with all necessary anchors, guys and braces to properly support and protect the same, over and across the lands owned by the first party... (emphasis added)

In reviewing this language, we find that the words of the earlier deeds are clear and their meanings unambiguous. Therefore, to decide this matter we need not go beyond the words of the earlier easement deeds. *Id.* The earlier deeds unambiguously convey rights-of-way “for the transmission of high or low voltage electric current.” **We do not construe the phrase “transmission of high or low voltage electric current” to encompass “telecommunications and information services”** [emphasis added]

Comment DE-24-087 and SEC 2024-02