

**STATE OF NEW HAMPSHIRE
PUBLIC UTILITIES COMMISSION**

DE 15-464

**PUBLIC SERVICE COMPANY OF NEW HAMPSHIRE d/b/a EVERSOURCE
ENERGY**

Petition for Approval of Lease Agreement with Northern Pass Transmission LLC

**Prehearing Conference Order
Granting and Denying Petitions to Intervene and
Denying Motion to Dismiss**

ORDER NO. 25,882

April 15, 2016

In this Order, the Commission grants petitions to intervene filed by Northern Pass Transmission LLC (NPT), Mark Lagasse and Kevin Spencer d/b/a Lagaspence Realty, LLC (Lagaspence Realty), McKenna's Purchase Unit Owners Association (McKenna's Purchase), and New England Power Generators Association (NEPGA). The Commission also denies the Motion to Dismiss filed by Lagaspence Realty.

I. PROCEDURAL HISTORY/ POSITION OF THE PARTIES

On October 19, 2015, Public Service Company of New Hampshire d/b/a Eversource Energy (Eversource) filed a petition for approval of a lease agreement (Lease) between Eversource and NPT pertaining to the lease of easement rights held by Eversource to NPT for the construction, operation, and maintenance of transmission lines by NPT. Eversource filed supporting testimony and related exhibits with the petition. Eversource subsequently supplemented its filing at the direction of the Commission. Commissioner Robert R. Scott recused himself from participation in the docket.

The Commission issued an Order of Notice on January 29, 2016, scheduling a prehearing conference and setting forth deadlines for the filing of petitions to intervene. The Office of the Consumer Advocate (OCA) filed a letter indicating its participation in the docket consistent with RSA 363:28. Petitions to intervene were timely filed by NPT, Lagaspence Realty, McKenna's Purchase, NEPGA, and William and Kathryn Palmer. Eversource did not object to NPT's motion to intervene, but objected to intervention by NEPGA and the Palmers. With respect to the petitions of Lagaspence Realty and McKenna's Purchase, Eversource requested that in the event the Commission granted the petitions, such intervention be limited.

On February 10, 2016, Lagaspence Realty filed a motion to dismiss the petition, to which NPT and Eversource objected. Lagaspence Realty filed a supplemental memorandum in support of its motion on March 4, 2016.

The Commission held a prehearing conference on February 19, 2016. The Commission denied the Palmer's motion to intervene at the prehearing conference.

II. POSITIONS OF THE PARTIES

A. Petitions to Intervene

NPT requested full intervenor status on the basis that it is the counter-party to the Lease. McKenna's Purchase and Lagaspence Realty both stated that they own property encumbered by one of the easements which Eversource wishes to lease to NPT.

NEPGA asserts that its members have a substantial and specific interest in a fully competitive generation market and in maintaining a level playing field within that market. It also asserts that it has a direct and substantial interest in ensuring that NPT is not unfairly advantaged to the detriment of companies that are not affiliated with Eversource. Specifically, NEPGA claims that it has a direct and substantial interest in ensuring that the Commission's affiliate

transaction rules (Puc Chapter 2100) are complied with, that the valuation of the Lease is based on fair market value, and in the effect of these and related issues on the competitive wholesale electricity market.

Eversource did not object to the intervention of Lagaspence Realty or McKenna's Purchase as landowners with property that is covered by the Lease. Instead, Eversource asked the Commission to limit these intervenors to the issues in which they have a particular interest and over which the Commission has jurisdiction. Eversource argues that the Commission lacks the jurisdiction to adjudicate property rights. Eversource therefore believes that Lagaspence Realty and McKenna's Purchase should be precluded from litigating the scope of the underlying easements and Eversource's legal ability to transfer the rights that Eversource owns.

Eversource objected to intervention by NEPGA. Eversource characterizes NEPGA's interests as "general expressions of interest" that "do nothing to demonstrate why rights, duties, privileges, immunities or other substantial interests of NEPGA are at stake."

B. Motion to Dismiss

Lagaspence Realty agrees with Eversource that the Commission lacks jurisdiction to adjudicate property rights. Lagaspence Realty argues that the Commission must dismiss Eversource's petition because a court of competent jurisdiction must first adjudicate Lagaspence Realty's and Eversource's respective rights. Otherwise, according to Lagaspence Realty, Eversource cannot establish the facts necessary for the Commission to consider the Petition.

Eversource objects to dismissal, arguing that the issues raised by Lagaspence Realty go beyond the scope of the proceeding and beyond the Commission's jurisdiction. Eversource also argues that we should not consider any information contained in Lagaspence Realty's reply to Eversource's objection. In essence, Eversource says we should not consider the motion to

dismiss, because it was made in one document as part of a reply regarding intervention, and (a) replies are not allowed without Commission authorization, and (b) it is inappropriate to make a new motion in a reply. In addition, Eversource argues that the motion contains factual and legal inaccuracies. Last, Eversource argues that, even though the Commission lacks jurisdiction to adjudicate property interests between the parties, the Commission must determine other matters under RSA 374:30. In particular, Eversource argues that it has demonstrated a right to lease its easements to NPT that the Commission may not question, and that the Lease is in the public interest because it is not illegal.

NPT also objects to dismissal. NPT argues that Eversource has presented a *prima facie* case for approval, and that, therefore, there is no basis to dismiss. Further, NPT argues that the Commission need not decide what rights Eversource must have to convey the easements, because the conveyance is by its own terms limited to whatever rights Eversource may have.

III. COMMISSION ANALYSIS

A. Petitions to Intervene

The statute governing intervention provides that the Commission “shall” grant intervention if the petitioner’s “rights duties, privileges, immunities or other substantial interest may be affected by the proceeding.” RSA 541-A:32, I(b). NPT satisfies this standard because it is a party to the Lease Agreement. Lagaspence Realty and McKenna’s Purchase satisfy this standard because they own property over which the easements that PSNH intends to lease are located. Accordingly, we grant full intervention to NPT, Lagaspence Realty and McKenna’s Purchase.

NEPGA’s competitive interests are not sufficient to support intervention under RSA 541-A:32, I; the statute, however, provides that we may grant intervention “upon determining that ...

intervention would be in the interests of justice and would not impair the orderly and prompt conduct of the proceedings.” RSA 541-A:32, II. The statute also grants authority to condition or limit the intervening parties’ participation:

If a petitioner qualifies for intervention, the presiding officer may impose conditions upon the intervenor’s participation in the proceedings, either at the time that intervention is granted or at any subsequent time. Such conditions may include, but are not limited to:

(a) Limitation of the intervenor’s participation to designated issues in which the intervenor has a particular interest demonstrated by the petition.

(b) Limitation of the intervenor’s use of cross-examination and other procedures so as to promote the orderly and prompt conduct of the proceedings.

(c) Requiring 2 or more intervenors to combine their presentations of evidence and argument, cross-examination, and other participation in the proceedings.

RSA 541-A:32, III.

We will grant limited intervention to NEPGA. Specifically, we impose the following conditions to ensure “the orderly and prompt conduct” of this docket: NEPGA shall be limited to litigating issues regarding compliance with our affiliate transaction rules and the fair market value of the Lease.

B. Motion to Dismiss

In ruling on a motion to dismiss, we determine whether the facts alleged in the petition, and all reasonable inferences, could support the relief sought. Decisions on such motions are made before a factual record is developed. This requires us to assume that all of Eversource’s assertions are true. *Public Serv. Co. of N.H.* Order No. 25,213 at 71 (Apr. 18, 2011).

We decline to dismiss Eversource’s petition. We find that Eversource has made sufficient allegations, both legal and factual, to go forward with its petition for approval of the

Lease under RSA 374:30. Eversource's allegations will be tested through the course of this proceeding. We do not believe, as Lagaspence Realty argues, that the superior court must first adjudicate the property rights of Eversource vis-à-vis Lagaspence Realty and similarly situated property owners before we can complete our review of the Lease. Nor do we believe that this proceeding precludes Lagaspence Realty or other property owners from bringing an action in superior court, because we cannot and do not intend to adjudicate their respective property rights. Our review of the easements, their ownership, and transferability is necessary, but will be limited to whether the easements on their face appear to be broad enough to allow for construction of the NPT project, and are transferrable in the manner claimed by Eversource. As such, our review will not be binding on individual property owners. Property owners who wish a determination of their rights in the easements on their lands with respect to Eversource and NPT should seek redress in the courts.

Based upon the foregoing, it is hereby

ORDERED, that petitions to intervene of Northern Pass Transmission LLC (NPT), Mark Lagasse and Kevin Spencer d/b/a Lagaspence Realty, LLC, McKenna's Purchase Unit Owners Association, are granted; and it is

FURTHER ORDERED, that the petition to intervene of New England Power Generators Association is granted on a limited basis under the conditions listed above; and it is

FURTHER ORDERED, that the Motion to Dismiss is denied; and it is

FURTHER ORDERED, that Commission Staff is hereby directed to work with the parties to develop a procedural schedule for the proceeding.

By order of the Public Utilities Commission of New Hampshire this fifteenth day of
April, 2016.

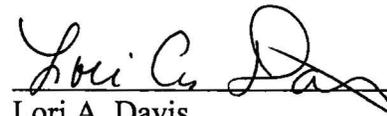


Martin R. Honigberg
Chairman



Kathryn M. Bailey
Commissioner

Attested by:



Lori A. Davis
Assistant Secretary