

DE 03-187

NEW HAMPSHIRE ELECTRIC COOPERATIVE, INC.

Petition Requesting Easement Rights Across Property
of Philip J. Ferneau

Order Approving Stipulation

O R D E R N O. 24,285

February 20, 2004

On September 26, 2003, the New Hampshire Electric Cooperative, Inc. (NHEC) filed with the New Hampshire Public Utilities Commission (Commission) a Petition Requesting Easement Rights Across the Property of Philip J. Ferneau in Canaan, New Hampshire (Petition). Pursuant to RSA 371:1, the Commission may authorize the taking of private property when it is "necessary to meet the reasonable requirements of service to the public."

In its petition, NHEC stated that property owners Thomas and Marjorie Hudgens, who are building a house on Hinkson Brook Road in Canaan, could not obtain electric service from their franchised provider, NHEC, unless NHEC was able either to overbuild on poles owned by Granite State Electric Company (GSEC) which serves areas of the eastern portion of the Town of Canaan, or to cross the property of an abutter, Philip J. Ferneau, approaching from the west. NHEC recounted its efforts to negotiate an easement with Mr. Ferneau for a line of poles and wires, which he refused, and to negotiate use of GSEC's existing poles to reach the Hudgens property from the east, which GSEC

refused. NHEC asserted that, with the refusal of GSEC to use its poles and Mr. Ferneau to grant the easement, taking an easement over Mr. Ferneau's property pursuant to RSA 371:1 was the only way to serve the Hudgens and others who are likely to build along that section of Hinkson Brook Road. NHEC, therefore, sought a Commission finding that such a taking was necessary in accordance with RSA 371:1.

By order of Notice dated October 27, 2003, the Commission established deadlines for intervention and discovery and scheduled a prehearing conference for November 14, 2003 and a hearing on the merits for February 4, 2004. The Hudgens moved to intervene on October 30, 2003, as did GSEC on November 5, 2003.

Mr. Ferneau, on November 3, 2003, asked that the prehearing conference be rescheduled due to schedule conflicts. NHEC and GSEC had no objection and the Commission granted the request on November 12, 2003.

Commission Staff (Staff) propounded data requests to NHEC and GSEC on November 26, 2003 in accordance with the procedural schedule but on December 30, 2003 notified the Commission that settlement discussions had been taking place and that data responses had appropriately been held in abeyance. Because it was difficult to ascertain whether these discussions would ultimately be productive, however, Staff notified the Parties that the data responses should be filed within 10 days of

the Staff's letter, consistent with N.H. Admin. Rules, Puc 204.04(c) and that the case should proceed to hearing on a date to be established by the Commission.

Staff then reported, on January 26, 2004, that agreement had reached between NHEC and Mr. Ferneau. Staff informed the Parties they did not have to respond to the data requests.

Finally, on February 2, 2004 the Commission notified Parties that the February 4, 2004 hearing on the merits would not take place. Instead the Commission instructed the Parties that if, indeed, the issues were being resolved, that they file final documents by February 9, 2004. On February 11, 2004, NHEC filed a Stipulation and Consented to Motion for Entry of Order Approving Stipulation. NHEC, Mr. Ferneau, the Hudgens and GSEC are all signatories to the Stipulation.

On February 20, 2004, the Commission Staff (Staff) filed with the Commission a memorandum recommending approval of the Stipulation. Staff noted that NHEC had explored an alternate approach to serve the Hudgens, overbuilding on GSEC's existing poles but GSEC refused permission to do so as it does not allow overbuilding on any of its poles. Staff concurred that NHEC's use of Mr. Ferneau's property was necessary to provide utility service to the Hudgens and others who likely will develop houses along that portion of Hinkson Brook Road. Staff also noted that

paragraph 5 of the Motion for Entry of Order Approving Stipulation indicates that the parties have entered into the stipulation to eliminate uncertainty and to avoid the needless expenditure of further resources on this matter. Staff averred that NHEC had demonstrated the need for the taking to meet the reasonable requirement of service to the public, under RSA 371:1 and, therefore, the Petition should be granted.

The Commission finds an easement for the construction and maintenance of poles and wires over the property of Mr. Ferneau is necessary to "meet the reasonable requirements of service to the public" pursuant to RSA 371:1. There is no reasonable alternate route for NHEC to provide service to the present and future customers in this particular part of NHEC's franchise area. Because there is no compensation being paid for the easement, we are not required to establish the value of such an easement, as would otherwise be the case pursuant to RSA 371:4-a. We note the Stipulation's terms, allowing Mr. Ferneau input as to the location of the line and removal of old poles and wires that are no longer needed. This appears to be a reasonable accommodation for someone who preferred that his land not be used for utility service to another property.

Finally, we will grant the intervention requests of the Hudgens and GSEC. We appreciate the efforts of all parties to resolve this matter efficiently.

Based upon the foregoing, it is hereby

ORDERED, that New Hampshire Electric Cooperative, Inc. is granted an easement to construct and maintain a line of poles and wires over the property of Philip J. Ferneau of Canaan, New Hampshire, as more specifically delineated in the Stipulation attached hereto, and it is

FURTHER ORDERED, that the intervention requests of Thomas and Marjorie Hudgens and Granite State Electric Company are granted.

By order of the Public Utilities Commission of New Hampshire this twentieth day of February, 2004.

Thomas B. Getz
Chairman

Susan S. Geiger
Commissioner

Graham J. Morrison
Commissioner

Attested by:

Lori A. Legerstee
Assistant Secretary