

**STATE OF NEW HAMPSHIRE  
PUBLIC UTILITIES COMMISSION**

**DE 15-464**

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

**Petition to Lease Rights-of-Way to Northern Pass Transmission, LLC**

**Order Requesting Legal Memoranda**

**ORDER NO. 25,943**

**September 15, 2016**

The Commission has determined that it cannot complete its facial review of the leases in this docket without considering certain legal issues. Accordingly, in this order, the Commission requires legal memoranda addressing the scope of some of Eversource Energy's easements and their transferability to Northern Pass Transmission, LLC.

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 between Eversource and Northern Pass Transmission, LLC (NPT). Eversource is a public utility operating under the laws of the State of New Hampshire. NPT is a limited liability company organized under the laws of the State of New Hampshire and engaged in the business of developing, designing, constructing, owning and maintaining a high voltage electric transmission line and related facilities in New Hampshire. NPT and Eversource are both subsidiaries of Eversource Energy, a utility holding company.

The NPT transmission line would run approximately 192 miles from the New Hampshire border with Canada to the Eversource substation in Deerfield, New Hampshire.

As part of its business of transmitting and distributing electric energy, Eversource has acquired certain interests in real property located throughout New Hampshire on which its

facilities have been constructed. The proposed lease between Eversource and NPT is the agreement whereby portions of Eversource's rights-of-way would be leased to NPT for construction of the NPT line. The Eversource rights-of-way that are the subject of the lease are located in 19 municipalities and are principally comprised of Eversource easements from private property owners and land owned by Eversource. The lease provides that NPT would have exclusive use of 781 acres of the easement rights, while approximately 472 acres would be designated for shared use between Eversource and NPT. There are approximately 74 acres of remaining land also included in the Lease that have not been assigned a specific use.

The easement deeds establishing Eversource's rights-of-way can be found at Tab 7 at the following link: <http://puc.nh.gov/Regulatory/Docketbk/2015/15-464.html>. The wording of the deeds raises several questions that the Commission may need to resolve to complete its facial review of the transferability of the utility rights-of-way from Eversource to NPT. Consequently, we require the parties to provide legal memoranda on certain of those issues. The parties are directed to brief the following questions:

1. Does the language "heirs and assigns" in a utility easement deed, without any additional prohibition or express grant, allow the lease of the easement to a third party?
2. Does the holder of a utility easement have the right to lease less than all of the easement rights to a third party?
3. Does a grant of a utility easement "over and across" a parcel of land grant the right to install an underground electric transmission line?<sup>1</sup>

The next five questions refer to the following orders, pursuant to which Eversource obtained easements through eminent domain. The case files for those dockets are posted at Tabs 52-54 in the link above.

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<sup>1</sup> As part of this order, we direct Eversource to notify the Commission no later than September 23, 2017, whether underground lines are planned within any easement for which the deed contains "over and across" language and no specific mention of rights to place structures underground.

D-E 3231, PSNH v. Kelley (1953), Report (3/3/53), Order No. 6196 (3/3/53), *Public Service Company of N.H. v. Bernice D. Kelley*, 35 N.H.P.U.C. 55 (1953)

D-E 3232, PSNH v. Sanborn/Truelson (1953), Report (3/3/53), Order No. 6195 (3/3/53), *Public Service Company of N.H. v. L.T. Sanborn, A. Truelson, D. Ryan*, 35 N.H.P.U.C. 51 (1953)

D-E 3314, PSNH v. Sleeper (1954), Report (5/10/54), Order No. 6392 (5/10/54), *Public Service Company of N.H. v. William H. Sleeper*, 36 N.H.P.U.C. 122 (1954)

4. Does the scope of the rights granted pursuant to the three orders permit Eversource to construct more than one transmission line within the physical boundaries of the right-of-way?
5. May Eversource construct a transmission line that is not for the purposes stated during the conduct of the proceedings in D-E 3231, D-E 3232, and D-E 3314 and upon which the Commission based its findings of public necessity in the three orders?
6. Does the scope of the rights granted pursuant to the three orders permit Eversource to construct a transmission line in any location within the physical boundaries of the right-of-way or only as depicted on plans submitted to the Commission to obtain a grant of eminent domain?
7. If the answers to questions 4, 5, or 6, are in the affirmative, does Eversource have the right to lease some or all of the rights it holds by virtue of eminent domain to a third party?
8. Does the term “heirs and assigns” in a utility easement deed obtained by eminent domain differ in construction and effect from the term “heirs and assigns” in a utility easement deed obtained through agreement of the parties?


The Commission directs that the legal memoranda be filed no later than October 7, 2016.

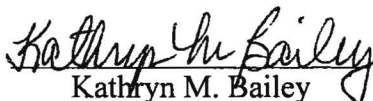
**Based upon the foregoing, it is hereby**

**ORDERED**, Eversource shall notify the Commission no later than September 23, 2017, whether underground lines are planned within any easement for which the deed contains “over and across” language and no specific mention of rights to place structures underground; and it is

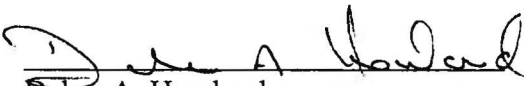
**FURTHER ORDERED**, that the parties shall provide legal memoranda on the questions stated herein, to be filed no later than October 7, 2016.

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

  
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Martin P. Honigberg  
Chairman

  
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Kathryn M. Bailey  
Commissioner

Attested by:

  
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Debra A. Howland  
Executive Director