

**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 Clarifying Order No. 25,943, Denying Rehearing, and Granting Intervention**

**ORDER NO. 25,946**

**September 27, 2016**

On September 23, 2016, Public Service Company of New Hampshire d/b/a Eversource Energy (Eversource) filed a Motion for Clarification and/or Reconsideration of Order No. 25,943. Order No. 25,943 directed the parties to file legal memoranda addressing eight legal issues of importance to the Commission's facial review of the easement rights Eversource wishes to lease in part to Northern Pass Transmission, LLC (Northern Pass). Eversource argued that the issues upon which the Commission directed briefing (1) are unclear because they refer to the terms "heirs and assigns" when the easement deeds under review refer to "successors and assigns," (2) have already been briefed and decided in this case, (3) are beyond the Commission's jurisdiction, and (4) are not relevant to the issues pending before the Commission. Eversource requested clarification of the issues raised, and clarification of how the issues raised in Order No. 25,943 differ from the Commission's November 17, 2015, request for legal opinion. Eversource also asked for reconsideration, essentially requesting that the Commission withdraw its directive.

Upon review, the Commission finds that questions 1 and 8 in Order No. 25,943 should have referred to "successors and assigns." We therefore amend questions 1 and 8 to read:

1. Does the language “successors and assigns” in a utility easement deed, without any additional prohibition or express grant, allow the lease of the easement to a third party?
8. Does the term “successors and assigns” in a utility easement deed obtained by eminent domain differ in construction and effect from the term “successors and assigns” in a utility easement deed obtained through agreement of the parties?

Eversource requested that the Commission extend the time for filing legal memoranda to October 21, 2016. On September 26, 2016, pro se intervenors, Jo Anne Bradbury, Jeanne Menard, and Eric and Kathleen Berglund, filed a motion to extend the time for filing legal memoranda by four weeks. In order to facilitate various parties’ participation in this docket, the Commission extends the deadline for filing legal memoranda until October 28, 2016.

With regard to whether the issues raised in Order No. 25,943 have been decided, the Commission has not ruled on them. Even if the questions had been decided, the decisions would be merely law of the case which could be revisited. With regard to whether the issues have been briefed, the Commission is willing to accept Eversource’s December 4, 2015, letter to the Executive Director as a legal memorandum to the extent Eversource decides to rely on it. The Commission finds, however, that Eversource’s December 4 letter does not directly or adequately address all of the issues identified by the Commission in Order No. 25,943.

The Commission cautions that while we made provision for the filing of legal memoranda, we did not authorize replies. Replies to the legal memoranda will be permitted only if requested by the Commission; consequently, parties should not expect to add additional arguments in reply or on rehearing.

With regard to the Commission's jurisdiction, the Commission has repeatedly stated that it will not be adjudicating the property rights of individual property owners. However, nothing prohibits the Commission from applying, and indeed we must apply, some level of legal review to the face of the easement deeds. The Commission finds that briefing of the general legal issues identified in Order No. 25,943 is necessary to that facial review. Although Eversource's motion did not raise the issue directly, the Commission also finds that such a jurisdictional limitation may not apply to Commission interpretation of Commission orders granting easement rights by eminent domain. Regarding relevance more generally, the Commission would not have asked for legal memoranda if it believed that the issues raised were not relevant to the issues in this docket.

On September 23, the City of Concord filed a late petition to intervene. The City stated that Northern Pass's proposed transmission line is projected to be located on several lots that the City owns in fee simple and also on other lots on which the City owns and manages conservation easements. 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). The City satisfies this standard because it owns property over which the easements that PSNH intends to lease are located. Eversource did not object to the City's intervention, but requested that the Commission limit the City's intervention to matters within the scope of this proceeding. The Commission finds that the City meets the relevant criteria for intervention and that the City's intervention at this time will not interfere with the orderly conduct of the proceeding. Because all parties are limited to the scope of the proceeding, the Commission finds it unnecessary to limit the City's intervention. Accordingly, the Commission grants the City's petition to intervene.

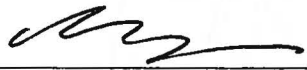
**Based upon the foregoing, it is hereby**

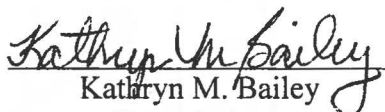
**ORDERED**, that questions 1 and 8 in Order No. 25,943 are clarified as set forth above;  
and it is

**FURTHER ORDERED**, that the parties shall provide legal memoranda on the questions  
stated in Order No. 25,943, with questions 1 and 8 as clarified above, no later than October 28,  
2016, and it is

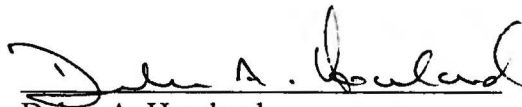
**FURTHER ORDERED**, the petition to intervene by the City of Concord is hereby  
**GRANTED**.

By order of the Public Utilities Commission of New Hampshire this twenty-seventh 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