

**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 with Northern Pass Transmission, LLC

Order Denying Amended Motion to Compel

ORDER NO. 26,052

September 1, 2017

In this Order, the Commission denies intervenor Lagaspence's amended motion to compel Eversource to respond to a data request regarding the safe use of easements to be leased by Eversource to NPT for the construction of the Northern Pass Project. The Commission has determined that the safety of the proposed construction of the Northern Pass Project is a matter under the jurisdiction of the Site Evaluation Committee, which has an ongoing proceeding pertaining to the Northern Pass Project. The Order also denies Lagaspence's request for attorney fees and expenses.

I PROCEDURAL BACKGROUND

On October 19, 2015, Public Service Company of New Hampshire d/b/a Eversource Energy (Eversource) filed a petition for approval of a lease of certain of its rights-of-way extending from Pittsburg to Deerfield. The proposed lease would allow Northern Pass Transmission, LLC (NPT), to construct a transmission project (the Northern Pass Project) in rights-of-way owned by Eversource. For the full procedural schedule, including all documents and orders filed in this proceeding, see <http://www.puc.nh.gov/Regulatory/Docketbk/2015/15-464.html>.

In a separate concurrent proceeding, the Site Evaluation Committee (SEC) is considering the merits of issuing a certificate of site and facility for the Northern Pass Project, pursuant to its jurisdiction under RSA 162-H. *See* SEC Docket 2015-06, <https://www.nhsec.nh.gov/projects/2015-06/2015-06.htm>.

As provided for in a procedural schedule approved on June 20, 2017, Staff and intervenors served discovery on Eversource. On June 29, 2017, Eversource timely objected to a number of questions proffered by intervenor Kevin Spencer and Mark Lagasse d/b/a Lagaspence Realty, LLC (Lagaspence), including the question at issue in this Order, identified as Lagaspence 1-003. The text of the question follows.

Lagaspence 1-003. Are the easement categories chosen by Colliers International in Table 1 of the September 18, 2015, consistent with the safe use of the easements? Are the easement categories consistent with the safe use of the easements presently occupied by the Portland Natural Gas Transmission System high pressure gas pipeline? If yes to either or both of the data requests, please provide each and every data point or other information that supports the response.

Lagaspence filed a motion to compel Eversource to respond to Lagaspence 1-003 on July 7, 2017. Eversource objected on the grounds that Lagaspence failed to certify that it had attempted to resolve the dispute informally as required by Puc 203.09(i)(4); and, citing Order No. 26,020 (May 25, 2017), that the subject matter of the question is outside the scope of the docket.¹ The Commission issued a secretarial letter on July 21, 2017, denying Lagaspence's motion to compel without prejudice for failing to comply with Puc 203.09(i)(4).

On July 27, 2017, Lagaspence filed an Amended Motion to Compel (Amended Motion) regarding Lagaspence 1-003, to which Eversource filed a timely objection.

¹ In Order No. 26,020, the Commission determined that the scope of this proceeding is whether the terms of the proposed lease between Eversource and NPT are reasonable and in the public interest, and whether Eversource's customers are appropriately compensated by NPT for the use of Eversource's rights-of-way. *See* Order No. 26,020 at 6.

II. POSITIONS OF THE PARTIES

A. Lagaspence

In the Amended Motion, Lagaspence repeated its argument that the Commission cannot find that the lease is in the public good as required by RSA 374:30 without determining that the Northern Pass Project will be safely constructed. Amended Motion at 2-3 (citing RSA 162-H:16, IV(c)).²

In addition, Lagaspence suggested that statements made by Eversource's witness at a July 24, 2017, technical session, that a real estate appraisal of the rights-of-way did not include any input on existing structures in the rights-of-way, constitutes an admission that the Northern Pass Project received no engineering input. Lagaspence concluded that this information raised questions about the safety of the entire Northern Pass Project, as well as the portion of the right-of-way referenced by Lagaspence 1-003. Amended Motion at 2.

To overcome the procedural defect noted in the Commission's July 21, 2017, letter, Lagaspence stated that it asked counsel for Eversource whether the discovery dispute could be resolved informally and was informed that Eversource would continue its objection. Claiming to have satisfied the requirement to informally consult with Eversource, Lagaspence again asked that the Commission compel Eversource to respond to data request Lagaspence 1-003. In addition, Lagaspence asked for attorney's fees pursuant to RSA 365:38-a, claiming that its inquiry regarding engineering safety is a "substantial contribution" to this proceeding.

² RSA 162-H:16,IV (c) is a statutory provision that applies to the SEC. The statute requires that prior to issuing a certificate of site and facility, the SEC must find (among other things) that "(c) The site and facility will not have an unreasonable adverse effect on aesthetics, historic sites, air and water quality, the natural environment, and public health and safety."

B. Eversource

In its objection, Eversource first argued that the Amended Motion should be denied as untimely. Eversource noted that Puc 203.09(i)(2) requires motions to compel to be made within 15 business days of the receipt of the applicable objection or response, or the deadline for providing the response, whichever is sooner. Eversource objected to Lagaspence 1-003 on June 29, 2017, and the Amended Motion was filed on July 27, 2017, 19 business days after the objection was made. Objection at 2.

Eversource repeated the argument from its earlier filing that the subject matter of Lagaspence 1-003 is not within the scope of the docket, and that the information sought by Lagaspence pertains to issues that are within the SEC's jurisdiction and are not relevant to the valuation of the proposed lease. Eversource urged the Commission to deny Lagaspence's effort to inject construction-related issues into a review of the lease, and asked the Commission to deny the Amended Motion with prejudice. *Id.* at 3-4.

Eversource disagreed with Lagaspence's claim that a statement made at a technical session constituted a form of "admission" that should persuade the Commission to grant the Amended Motion. Eversource said that the Commission should not accept Lagaspence's contention that a witness statement at a technical session somehow demonstrates the merits of its Amended Motion. *Id.* at 4.

Finally, Eversource noted that Lagaspence continues to disregard the Commission's rules in filing motions and requesting costs and fees, thereby creating additional burdens for the parties and the Commission. In addition, Eversource claimed that Lagaspence clearly believes that only Eversource, and not Lagaspence, was obliged to make an offer in resolution of the

discovery dispute upon request, and did not demonstrate the requisite “good faith” required by the Commission rules for a motion to compel. *Id.*

III. COMMISSION ANALYSIS

Under RSA 374:30, the Commission has authority to approve a lease of utility facilities provided it finds that it is in the public good to do so. Typically, such a public good finding would involve the consideration of numerous issues, including public safety, if applicable. As noted by both Lagaspence and Eversource, however, the SEC is conducting a concurrent proceeding on the Northern Pass Project. Pursuant to statute, to issue a certificate of site and facility, the SEC would have to find that the Northern Pass Project would not have an unreasonable adverse effect on the public health and safety (among other criteria). RSA 162-H:16, IV(c). We believe it is reasonable and consistent with the legal authority of the SEC to allow that body to examine public safety as part of its review of the Northern Pass Project. Therefore, we deny the motion to compel.

In its motion to compel, Lagaspence requested attorney fees and expenses pursuant to RSA 365:38-a, alleging it made a “significant” contribution to the docket by highlighting the safety issue in its data request Lagaspence 1-003 and its Amended Motion. As stated in the Order of Notice in this proceeding, parties intervene at their own expense. Furthermore, RSA 365:38-a does not apply here. The issue being pursued by Lagaspence is outside the scope of this proceeding. Therefore, the request for attorney fees and expenses is denied.

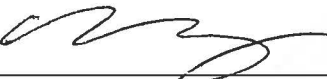
All parties are strongly advised that any attempt at informal resolution of a discovery dispute be made in good faith. To facilitate the resolution of any future discovery disputes in this docket, parties are advised to seek the assistance of General Counsel F. Anne Ross.

Based upon the foregoing, it is hereby

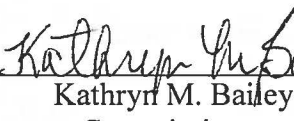
ORDERED, that Lagaspence's amended motion to compel Eversource to respond to Lagaspence 1-003 is hereby DENIED; and it is

FURTHER ORDERED, that Lagaspence's request for attorney fees and expenses is hereby DENIED.

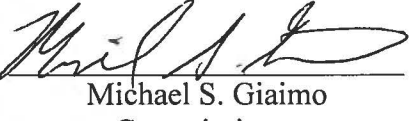
By order of the Public Utilities Commission of New Hampshire this first day of September, 2017.



Martin P. Honigberg
Chairman

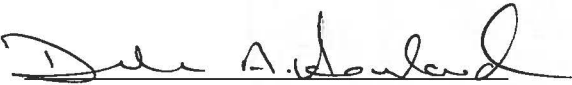


Kathryn M. Bailey
Commissioner



Michael S. Giaimo
Commissioner

Attested by:



Debra A. Howland
Executive Director