

LAW OFFICES
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March 20, 2016

Pamela G. Monroe
Administrator
Site Evaluation Committee
21 South Fruit Street, Suite 10
Concord, NH 03301

Re: Joint Application of Northern Pass Transmission LLC and Public Service Company of New Hampshire d/b/a Eversource Energy for a Certificate of Site and Facility

Docket 2015-06

Dear Administrator Monroe:

On March 18, 2016, my clients Kevin Spencer and Mark Lagasse dba Lagaspence Realty were granted full intervener status in the captioned docket.

Request to Fix Deadline to File Dispositive Motions Regarding Applicants Claimed Right to Construct the Northern Pass on Easements

On behalf of interveners Spencer and Lagasse dba Lagaspence Realty, I request that the Site Evaluation Committee fix a deadline of May 20, 2016, for filing dispositive motions regarding the issue of the right of Applicants to construct the Northern Pass on the easement burdening my clients' property.

Procedural History

On October 19, 2015, Northern Pass Transmission LLC (NPT) and Public Service Company of New Hampshire (PSNH) filed their Application for Certificate of Site and Facility. At page 6 of the Application, applicants represent that NPT executed an agreement with PSNH to lease approximately 100 miles of existing electric transmission right of way for the construction of the Northern Pass. The pre-filed testimony of Applicant witness Kenneth Bowes states that that the lease between NPT and PSNH was submitted to the New Hampshire Public Utilities Commission (NHPUC) for approval pursuant to RSA 374:30 at NHPUC Docket DE 15-464. (Bowes testimony, page 19).

On October 19, 2015, PSNH petitioned the NHPUC for approval of the lease between NPT and PSNH. In its Petition, PSNH asserted that the NHPUC has no jurisdiction to determine disputed property rights and that property rights disputes can only be determined by a court.

My clients Kevin Spencer and Mark Lagasse filed to intervene in NHPUC docket DE 15-464 asserting that PSNH did not have the right to lease the easement burdening their

property to NPT for the construction of the Northern Pass because PSNH does not own such right.¹

On February 10, 2016, interveners Spenser and Lagasse moved to dismiss the PSNH petition for approval of the lease to NPT.

The basis of interveners' motion to dismiss the PSNH petition to lease is that PSNH does not own the rights to construct the Northern Pass on the easement burdening their property and, therefore, cannot lease such rights to NPT.²

The SEC has no more jurisdiction to adjudicate property rights than the NHPUC does.

Therefore, until Applicants acquire the rights to construct the Northern Pass on interveners' property by purchase from interveners or adjudication by a court of competent jurisdiction, the SEC must reject the applicants' representation that a lease has been entered for that satisfies the requirements under RSA 162-H: 7 and Site 301.03(c) (6) a. for failure of proof.

RSA 162-H:7 requires that a project developer own or have the right to acquire the property upon which it proposes to construct the project. See Site 301.03 (c) (1)-(2) and Site 301.03 (c) (6) a. Site 301.03(6) a. places the *burden of proof* of the project developer to produce:

“(E)vidence that the applicant has a current right, an option, or other legal basis to acquire the right, to construct, operate, and maintain the facility on, over, or under the site, in the form of: a. Ownership, ground lease, easement, or other contractual right or interest.”

The SEC cannot cut off interveners' property rights through the regulatory process.³

Wherefore

The Applicants' claim in their Application for Certificate of Site and facility that the existing easement burdening interveners' property allows the construction of the infrastructure for the Northern Pass is a damaging misrepresentation of the interests granted by the easement.⁴

¹ In the NHPUC docket, PSNH did not identify the current owners of the properties burdened by easements it claims it can lease to NPT. This omission evidences why PSNH has not filed a lawsuit to establish its claim that the easements allow the construction of the Northern Pass. PSNH will be required in such suit to join each and every current property owner as necessary and indispensable parties to such an action. Neither PSNH nor NPT can claim rights in the many easements without joinder. However, each landowner is free to assert property rights in the docket at bar and in a court of competent jurisdiction without mandatory joinder.

² Interveners' motion to dismiss is pending before the NHPUC.

³ Absent a resolution of the property rights issue, continuing to proceed with the docket at bar with its multiplicity of interveners, thousands of pages of exhibits, expensive experts, the time consumed by the SEC and the permitting agencies, the regulatory process is a waste of time, money and private and public resources.

⁴ At paragraph 1.5 of the Lease Agreement presented to the NHPUC, PSNH expressly disclaimed any warranties of title to the easements and stated that the Lease is “AS IS”. This highly unusual disclaimer of title warranties bolsters interveners' position that that PSNH does not have the rights it claims. While PSNH and NPT, in paragraph 1.6 of the Lease, posit that the title disclaimer is not an admission, the unusual character of this lease language will provide the SEC with the basis to dismiss the Application for Certificate of Site and Facility.

If NPT and PSNH have not acquired the rights to construct the Northern Pass by purchase or adjudication on or before May 20, 2016, the interveners will file a motion to dismiss the Application for Certificate of Site and Facility for failure of proof of the facts of ownership required by law.

Therefore, interveners Spencer and Lagasse request that the Site Evaluation Committee fix a deadline of May 20, 2016, for filing dispositive motions regarding the issue of the right of Applicants to construct the Northern Pass on the easement burdening their property.

Very truly yours,

Arthur B. Cunningham

Cc: Service list