

**The State of New Hampshire**

**Site Evaluation Committee**

**Docket No. 2015-06**

**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 to Construct a New Voltage Transmission Line and  
Related Facilities in New Hampshire**

**Motion to Postpone the Merit Hearing on the Joint Application for Certificate of Site and  
Facility**

**Motion**

Interveners Kevin Spencer and Mark Lagasse dba Lagaspence Realty, LLC, move the Site Evaluation Committee (SEC) for an Order postponing the scheduled merit hearing on the Joint Application for a Certificate of Site and Facility of Applicants Public Service Company of New Hampshire (PSNH) and Northern Pass Transmission LLC (NPT) until such time as Applicants' claim of property right to build the Northern Pass has been finally adjudicated by the Courts, including any appeals.

**Status of Case**

**Factual Background**

Interveners, Kevin Spencer and Mark Lagasse, dba, Lagaspence Realty, LLC, own 98 acres of real estate in historic Stark, New Hampshire. The property has views of Percy Peak and Long Mountain with frontage on the east to west flowing Upper Ammonoosuc River. Plaintiffs are rebuilding the old George Smith boarding house on their property for a year-round lodge and small convenience store. The lodge lies close to the clear and beautiful Christine Lake. Christine Lake has fishing and paddling access. On the river side of the property, plaintiffs provide a campground with paddling, fishing and swimming access. The Upper Ammonoosuc, a tributary of the Connecticut River, provides fine fishing, with brook trout, rainbow trout and brown trout. The Upper Ammonoosuc watershed area includes the northern Crescent Range, eastern Pliny Range and the northern Pilot

range, all in the White Mountains. Tributaries of the river are Nash Stream, Phillips Brook, the North Branch of the Upper Ammonoosuc and the West Branch of the Upper Ammonoosuc rising on the eastern slope of Mount Cabot. The area is stunningly beautiful and abounds in the visual and outdoor recreational opportunities that make New Hampshire special.

Spencer and Lagasse have invested substantial funds, over \$400,000, and countless hours of work in Percy Lodge and Campground. They intend it to be a retirement plan.

When Spencer and Lagasse began the assembly of the Percy Lodge and Campground parcels, the property was encumbered by a power line easement granted to PSNH by predecessor in title Stella A. Lunn on May 24, 1946.

The easement was acquired, like many others acquired in the late 1940s and early 1950s, by PSNH to provide needed electricity to rural New Hampshire including Grafton, Coos and Carroll Counties.

The publicity described the project as the transmission of high voltage electricity to greater New England from Quebec, Canada, over existing Public Service Company of New Hampshire (PSNH) easements.<sup>1</sup>

The proposed NP transmission infrastructure through Percy Lodge and Campground will run parallel to the existing 115 kV alternating current (AC) power line that occupies the easement.

The existing power line is part of the transmission and distribution infrastructure that delivers electricity to Coos County.

Percy Lodge and Campground is burdened by 2955.34 lineal feet of the existing PSNH transmission and distribution power line easement. The easement is 150 feet wide.

The easement is currently occupied by a 115 kV alternating current (AC) transmission line.

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<sup>1</sup> The line will transmit +/- 320 (up to 640) volts on the direct current (HVDC) section of the line through plaintiffs' property and 345 volts from Franklin, New Hampshire to Deerfield, New Hampshire, on the alternating current (HVAC) section of the line. In Deerfield the line connects to the New England grid. The NP has no distribution capacity.

There are nearby distribution substations that reduce the voltage of the electricity for distribution to local customers.

The existing lines are mounted on wooden poles approximately 40 feet in height. The structures and lines are below tree height and are unobtrusive.

Prior to 1939, the Town of Stark did not have electricity except that generated by battery or gas generator. People used candles and kerosene lamps for lighting which had been the source of lighting for 150 years. In 1939, Public Service Co. from Lancaster, New Hampshire, installed a line from Groveton into Stark and Percy. The electric power was secured largely through the efforts of a lady named Ida Stone Cook. Consumers absorbed most of the labor costs for the installation which, rather than sharing poles with telephone lines, followed the road.

That historic background made it easy for PSNH in the late 1940s and early 1950s to persuade people to sign easements to upgrade the power availability. Easement grantors such as Stella A. Lunn were induced to enter the grant upon the PSNH representation that the easement was necessary to bring needed electricity to homes, farms and local businesses.

The easement terms expressly set forth the intention of the parties at the time of the execution of the easement, that is, the easement was necessary for the transmission and distribution of electricity.

The Northern Pass will cause irreparable damage to the aesthetics of the property and ruin its market value. See [www.percylodgeandcampground.com](http://www.percylodgeandcampground.com)

### **Site Evaluation Committee**

### **Applicants Have Not Established That They Have the Property Rights to Build the Northern Pass**

Applicants NPT and PSNH claim the right to construct the Northern Pass on a 1946 power line easement crossing interveners' property.<sup>2</sup>

Interveners Spencer and Lagasse claim that applicants NPT and PSNH do not have the right to construct the Northern Pass on their property.

Spencer and Lagasse dba Lagaspence Realty, LLC timely filed to intervene in this docket on the basis of their property rights claim.

Applicants, in their October 19, 2015, Joint Application, represented to the SEC that NPT has entered a lease agreement with PSNH in which PSNH will lease power line easements to NPT for the construction of the Northern Pass. Applicants represented that the lease agreement will be submitted to the New Hampshire Public Utilities Commission ("NHPUC") for approval pursuant to RSA 374:30. (Joint Application, page 6).

### **Public Utilities Commission**

#### **The Public Utilities Commission Ruled That the Issue of Property Rights Must Be Adjudicated in Court**

On October 19, 2015, the same date that the Joint Application for Certificate of Site and Facility was filed, PSNH filed a Petition with the NHPUC asking that the lease between PSNH and NPT be approved. (NHPUC docket DE 15-464, the "lease docket").<sup>3</sup>

PSNH, in a December 4, 2015, letter to the NHPUC stated that should its claimed right to construct the Northern Pass on the easements be disputed that the NHPUC did not have the jurisdiction to determine those rights. PSNH contended that the resolution of a disputed property right is a matter for the courts.

In the December 4, 2105, letter, PSNH acknowledged that New Hampshire law supports a cause of action for landowners if the use of an easement interferes with the use and enjoyment of the owner of the servient estate and is unreasonable.

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<sup>2</sup> The easement is attached to Interveners' Motion to Intervene. Interveners' predecessor in title, Stella A. Lunn, granted the easement to PSNH on May 24, 1946.

<sup>3</sup> PSNH did not identify the current owners of the properties encumbered by the easements it claims the right to lease to NPT.



On February 9, 2016, interveners Spencer and Lagasse filed to intervene in the lease docket. Interveners, as the basis for their intervention, stated that PSNH does not own the right to lease the easement to NPT because that right is owned by interveners and that PSNH cannot enter the proposed lease with NPT without an express grant from interveners.

PSNH objected to interveners' motion arguing that the NHPUC does not have the authority to adjudicate property rights, that property rights must be determined by the Courts.<sup>4</sup>

The NHPUC granted interveners Motion to Intervene.

On February 10, 2016, Spencer and Lagasse filed a Motion to Dismiss the PSNH Petition for Approval of the Lease Agreement on the basis that the NHPUC does not have the authority to adjudicate property rights.

In other words, Spencer and Lagasse agreed with PSNH that the NHPUC cannot adjudicate property rights and that until such time those rights are adjudicated by a Court, the lease docket should be dismissed.

On April 15, 2016, the NHPUC denied plaintiffs' Motion to Dismiss the PSNH Petition.

The Order stated that the NHPUC cannot adjudicate property rights, that property owners who wish a determination of their rights in the easements on their lands should seek redress in the courts. (Exhibit A attached hereto, page 6). The NHPUC noted specifically that the Order is "not binding on individual property owners".

On May 9, 2016, the NHPUC denied plaintiffs' Motion for Reconsideration.

**On September 15, 2016, the NHPUC Ordered That Interveners File Memorandum of Law So That It Could Complete a "Facial Review" of the Transferability of the Easements from PSNH to NPT**

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<sup>4</sup> The SEC has no more right to adjudicate property rights than does the NHPUC.

**The Phrase “Facial Review” Is an Artificial Construct That Has No Meaning Whatever in Property Law and Is Inconsistent with the April 15, 2016, Order That the Property Rights Issue Must be Adjudicated in the Courts**

On September 15, 2016, the NHPUC ordered that interveners file a memorandum of law so that the NHPUC could complete a “facial review” of the easements transferability from PSNH to NPT. The memorandum of law was due on October 7, 2016.

Spencer and Lagasse timely filed their Memorandum of Law.

A grant of an interest in real estate cannot be determined “facially” by the NHPUC. Property rights are granted by written instruments that convey an interest in real estate. If the interest conveyed is in dispute, the dispute must be adjudicated in the Courts.

The NHPUC Order requiring legal briefs so that it can conduct a “facial review” of the easements is inconsistent with its April 15, 2016, Order that property rights must be determined by a court. The Order appears calculated to short circuit property owners right to full court adjudication of their property rights to meet the SEC timeline.

NHPUC has not yet ruled if the easements are “facially” transferable from PSNH to NPT.

**Intervenors Have Sought Adjudication of Their Property Rights in Court in Accord with the Order of the NHPUC**

On August 4, 2016, Spencer and Lagasse filed suit in the United States District Court, District of New Hampshire, Spencer et al. v. Eversource Energy Service Company, No. 16-cv-353-PB. The suit asks the court for declaratory relief asserting that the easement burdening their property does not permit the construction of the Northern Pass and that the use by Northern Pass will be unreasonable.

The suit is pending.<sup>5</sup>

### **The Northern Pass Cannot Be Constructed on Property That Applicants Do Not Own**

As noted above, PSNH asserts that the NHPUC does not have the jurisdiction to adjudicate property rights issues, that property rights issues must be determined by the courts. (December 4, 2015, Fossum letter to the NHPUC, page 2).

Intervenors agree. The property rights issue raised by their intervention must be heard and determined in a court of competent jurisdiction.

Notwithstanding the PSNH statement that only a court of competent jurisdiction can adjudicate property rights; the company argued in NHPUC filings that it has the right to enter the lease with NPT. In support, the company cited Lussier v. New England Power Co., 133 NH 753 (1990).

The PSNH argument is wrong.

The easement grant described in Lussier *bears no similarity whatever* to the easement granted to PSNH by Stella A. Lunn, intervenors' predecessor in title.

The Lussier grant expressly provided (Lussier, page 757), in broad language, that New England Power had the "...perpetual right and easement to construct, reconstruct, repair, maintain, operate and patrol, for the transmission of high and low voltage electric current and for telephone use, lines and towers or poles or both (which may be erected at different times) with wires and cables strung upon and from time to time, and all necessary foundations, anchors, guys, braces, fittings, equipment and appurtenances over, across and upon a strip of land *350 feet in width*..."(emphasis added).

"Also the right and easement from time to time without further payment therefor...to remove, renew, replace, *add to and otherwise change the lines*, and each and every part thereof, and the location within said strip..."(emphasis added).

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<sup>5</sup> The jurisdictional basis of the suit in federal court is diversity of citizenship. The defendant in the suit is Eversource Energy Service Company, a Connecticut corporation. The choice of defendant was driven by the fact that all the major decisions about the Northern Pass were driven by James A. Muntz, an Eversource Energy executive based in Connecticut. Rather than address the suit on the merits, Eversource filed a motion to dismiss, challenging the Court's diversity jurisdiction in the expectation that the property rights issue will be decided in the New Hampshire courts. The motion is pending.



“It is the intention of the Grantors to convey to the Grantee the perpetual right and easement to construct, operate and maintain transmission lines as herein described...”

The Lunn grant to PSNH reads: “...the right to erect, repair, maintain, rebuild, operate and patrol electric *transmission and distribution lines*, consisting of suitable and sufficient poles and towers, with suitable foundations, together with wires strung upon and between for the transmission of electric current, together with all necessary cross-arms, braces, anchors, wires and guys, *over and across a strip of land 150 feet in width...*” (Emphasis added).

The Lussier court, interpreting language distinguishable because of the broad and express terms of the grant, not only does not support the PSNH claim, the case supports interveners’ claim.

Lussier articulates the principal rule of interpretation of easements: the intent of the parties at the time of the grant must be ascertained. Lussier at page 756: “The beginning and end of our enquiry is found in the words of the easement deeds. Our task is to determine the parties’ intent in light of the surrounding circumstances at the time the easements were granted. Bisson v. Laconia Investment Properties, Inc. 131 NH 704, 707 (1989); Sakansky v. Wein, supra 86 NH at 339...”

The grant language in the May, 1946, Lunn easement encumbering interveners’ property, expresses the intent of the parties at the time. The easement was entered by Stella A. Lunn and PSNH to bring necessary electricity to rural New Hampshire. The grant provides an easement for *transmission and distribution*. The parties’ intent is evident from the language itself. The Lunn grant evidences the need to bring electricity to New Hampshire homes, farms and businesses. The history of these easements that proves the intent of the parties, such as the Lunn easement, can be gathered from the records of the NHPUC. Many of the easements were secured because PSNH was constructing Schiller Station in Portsmouth, New Hampshire. Schiller went on-line in 1950. The additional generating capacity necessitated more and wider easements because the existing capability was strained.

A NHPUC eminent domain case, D-E 3247, Public Service Company of New Hampshire v. Harold A. Webster, filed April 13, 1953, proves the point. In that case, PSNH, in its pleadings, alleged that the 66 kV line through Mr. Webster’s Holderness property was inadequate to meet the service requirements of PSNH customers. PSNH sought to acquire an additional 125 feet in order to construct a new 110 kV line. To acquire the additional land, PSNH had to prove to the NHPUC, under Chapter 294 of the New Hampshire Revised laws, that the condemnation was a public



necessity. PSNH offered Mr. Webster a total of \$214 for his 5 ¾ acres of land, 5,000 feet of pine at \$15 per thousand board feet and \$2 per cord for 12 cords of wood. On May 29, 1953, the Commission granted the condemnation on the basis that it was necessary to meet the reasonable requirements of service to the New Hampshire public. The NHPUC ordered that PSNH pay Mr. Webster the \$214 plus an additional \$535, a total of \$749, recognizing that work had to be done to protect Mr. Webster's water supply.

The easement history demonstrated by the Webster case, that the easement was obtained because of public necessity, is manifestly different than purpose of the Northern Pass. PSNH, at the time of the Webster case, was a vertically integrated public utility, legally obligated to deliver electricity to its customers in New Hampshire. The company had the right of eminent domain and upon a demonstration of necessity to serve its customers, the company could condemn rights of way. The historic record shows that most people signed easements voluntarily because they wanted electricity. PSNH rate payers footed the cost of the right of way purchases. The Northern Pass bears no resemblance whatever to the reason the old easements were obtained. The Northern Pass is a transmission only, privately funded, elective project, with no distribution capability, not necessary to serve New Hampshire customers or for the capacity and reliability of the New Hampshire transmission and distribution system.

### **The Site Evaluation Committee Has No Jurisdiction to Adjudicate Property Rights**

The SEC must reject the applicants' representation to the Committee that a lease has been entered that satisfies the requirements under RSA 162-H: 7 and Site 301.03(c) (6) a.

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 Joint Applicants cannot prove that they own the right the construct the Northern Pass on interveners' property because they do not own such right.

As with the NHPUC, the SEC has no jurisdiction to adjudicate property rights. The authority to litigate property rights rests with courts. Therefore, unless and until the Joint Applicants establish the right to construct the Northern Pass on interveners property in a court, the Joint Applicants have not met the burden of proof imposed by RSA 162-H and Site 303 (c).

The SEC cannot move forward without the required judicial determination that PSNH has the legal right to lease the easements to NPT and whether the proposed use of the easements for the purpose of constructing transmission facilities is reasonable.<sup>6</sup>

Intervenors have timely challenged Joint Applicants' claim of right to construct the Northern Pass on their property in court. The suit prevents the Committee from moving forward on the Joint Application for Certificate of Site and Facility.

### **Wherefore**

Intervenors request that the SEC postpone the merit hearing on the Joint Application for Certificate of Site and Facility together until such time as the property rights issue is resolved in court, including any appeals.

January 17, 2017

Respectfully submitted,

/s/ Arthur B. Cunningham

Arthur B. Cunningham

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<sup>6</sup> Continuing with this docket based upon the PSNH representation (Joint Application at page 6) that it has sought to have the lease approved in the NHPUC, will be an immense waste of regulatory resources and time, not to mention private resources, only to learn by a court ruling that PSNH cannot lease the easements to NPT and that the proposed use is not within the scope of the easements or that the proposed use is unreasonable.

Bar # 18301

Certificate

I certify that this document was filed and served in accordance with the New Hampshire Site  
Evaluation Committee Rules

January 17, 2017

/s/ Arthur B. Cunningham

Arthur B. Cunningham



**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 Agreement with Northern Pass Transmission LLC**

**Prehearing Conference Order  
Granting and Denying Petitions to Intervene and  
Denying Motion to Dismiss**

**ORDER NO. 25,882**

**April 15, 2016**

In this Order, the Commission grants petitions to intervene filed by Northern Pass Transmission LLC (NPT), Mark Lagasse and Kevin Spencer d/b/a Lagaspence Realty, LLC (Lagaspence Realty), McKenna's Purchase Unit Owners Association (McKenna's Purchase), and New England Power Generators Association (NEPGA). The Commission also denies the Motion to Dismiss filed by Lagaspence Realty.

**I. PROCEDURAL HISTORY/ POSITION OF THE PARTIES**

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 (Lease) between Eversource and NPT pertaining to the lease of easement rights held by Eversource to NPT for the construction, operation, and maintenance of transmission lines by NPT. Eversource filed supporting testimony and related exhibits with the petition. Eversource subsequently supplemented its filing at the direction of the Commission. Commissioner Robert R. Scott recused himself from participation in the docket.

**EXHIBIT A**

The Commission issued an Order of Notice on January 29, 2016, scheduling a prehearing conference and setting forth deadlines for the filing of petitions to intervene. The Office of the Consumer Advocate (OCA) filed a letter indicating its participation in the docket consistent with RSA 363:28. Petitions to intervene were timely filed by NPT, Lagaspence Realty, McKenna's Purchase, NEPGA, and William and Kathryn Palmer. Eversource did not object to NPT's motion to intervene, but objected to intervention by NEPGA and the Palmers. With respect to the petitions of Lagaspence Realty and McKenna's Purchase, Eversource requested that in the event the Commission granted the petitions, such intervention be limited.

On February 10, 2016, Lagaspence Realty filed a motion to dismiss the petition, to which NPT and Eversource objected. Lagaspence Realty filed a supplemental memorandum in support of its motion on March 4, 2016.

The Commission held a prehearing conference on February 19, 2016. The Commission denied the Palmer's motion to intervene at the prehearing conference.

## **II. POSITIONS OF THE PARTIES**

### **A. Petitions to Intervene**

NPT requested full intervenor status on the basis that it is the counter-party to the Lease. McKenna's Purchase and Lagaspence Realty both stated that they own property encumbered by one of the easements which Eversource wishes to lease to NPT.

NEPGA asserts that its members have a substantial and specific interest in a fully competitive generation market and in maintaining a level playing field within that market. It also asserts that it has a direct and substantial interest in ensuring that NPT is not unfairly advantaged to the detriment of companies that are not affiliated with Eversource. Specifically, NEPGA claims that it has a direct and substantial interest in ensuring that the Commission's affiliate

transaction rules (Puc Chapter 2100) are complied with, that the valuation of the Lease is based on fair market value, and in the effect of these and related issues on the competitive wholesale electricity market.

Eversource did not object to the intervention of Lagaspence Realty or McKenna's Purchase as landowners with property that is covered by the Lease. Instead, Eversource asked the Commission to limit these intervenors to the issues in which they have a particular interest and over which the Commission has jurisdiction. Eversource argues that the Commission lacks the jurisdiction to adjudicate property rights. Eversource therefore believes that Lagaspence Realty and McKenna's Purchase should be precluded from litigating the scope of the underlying easements and Eversource's legal ability to transfer the rights that Eversource owns.

Eversource objected to intervention by NEPGA. Eversource characterizes NEPGA's interests as "general expressions of interest" that "do nothing to demonstrate why rights, duties, privileges, immunities or other substantial interests of NEPGA are at stake."

#### **B. Motion to Dismiss**

Lagaspence Realty agrees with Eversource that the Commission lacks jurisdiction to adjudicate property rights. Lagaspence Realty argues that the Commission must dismiss Eversource's petition because a court of competent jurisdiction must first adjudicate Lagaspence Realty's and Eversource's respective rights. Otherwise, according to Lagaspence Realty, Eversource cannot establish the facts necessary for the Commission to consider the Petition.

Eversource objects to dismissal, arguing that the issues raised by Lagaspence Realty go beyond the scope of the proceeding and beyond the Commission's jurisdiction. Eversource also argues that we should not consider any information contained in Lagaspence Realty's reply to Eversource's objection. In essence, Eversource says we should not consider the motion to



dismiss, because it was made in one document as part of a reply regarding intervention, and (a) replies are not allowed without Commission authorization, and (b) it is inappropriate to make a new motion in a reply. In addition, Eversource argues that the motion contains factual and legal inaccuracies. Last, Eversource argues that, even though the Commission lacks jurisdiction to adjudicate property interests between the parties, the Commission must determine other matters under RSA 374:30. In particular, Eversource argues that it has demonstrated a right to lease its easements to NPT that the Commission may not question, and that the Lease is in the public interest because it is not illegal.

NPT also objects to dismissal. NPT argues that Eversource has presented a *prima facie* case for approval, and that, therefore, there is no basis to dismiss. Further, NPT argues that the Commission need not decide what rights Eversource must have to convey the easements, because the conveyance is by its own terms limited to whatever rights Eversource may have.

### **III. COMMISSION ANALYSIS**

#### **A. Petitions to Intervene**

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). NPT satisfies this standard because it is a party to the Lease Agreement. Lagaspence Realty and McKenna’s Purchase satisfy this standard because they own property over which the easements that PSNH intends to lease are located. Accordingly, we grant full intervention to NPT, Lagaspence Realty and McKenna’s Purchase.

NEPGA’s competitive interests are not sufficient to support intervention under RSA 541-A:32, I; the statute, however, provides that we may grant intervention “upon determining that ...

intervention would be in the interests of justice and would not impair the orderly and prompt conduct of the proceedings.” RSA 541-A:32, II. The statute also grants authority to condition or limit the intervening parties’ participation:

If a petitioner qualifies for intervention, the presiding officer may impose conditions upon the intervenor’s participation in the proceedings, either at the time that intervention is granted or at any subsequent time. Such conditions may include, but are not limited to:

(a) Limitation of the intervenor’s participation to designated issues in which the intervenor has a particular interest demonstrated by the petition.

(b) Limitation of the intervenor’s use of cross-examination and other procedures so as to promote the orderly and prompt conduct of the proceedings.

(c) Requiring 2 or more intervenors to combine their presentations of evidence and argument, cross-examination, and other participation in the proceedings.

RSA 541-A:32, III.

We will grant limited intervention to NEPGA. Specifically, we impose the following conditions to ensure “the orderly and prompt conduct” of this docket: NEPGA shall be limited to litigating issues regarding compliance with our affiliate transaction rules and the fair market value of the Lease.

#### **B. Motion to Dismiss**

In ruling on a motion to dismiss, we determine whether the facts alleged in the petition, and all reasonable inferences, could support the relief sought. Decisions on such motions are made before a factual record is developed. This requires us to assume that all of Eversource’s assertions are true. *Public Serv. Co. of N.H.* Order No. 25,213 at 71 (Apr. 18, 2011).

We decline to dismiss Eversource’s petition. We find that Eversource has made sufficient allegations, both legal and factual, to go forward with its petition for approval of the

Lease under RSA 374:30. Eversource's allegations will be tested through the course of this proceeding. We do not believe, as Lagaspence Realty argues, that the superior court must first adjudicate the property rights of Eversource vis-à-vis Lagaspence Realty and similarly situated property owners before we can complete our review of the Lease. Nor do we believe that this proceeding precludes Lagaspence Realty or other property owners from bringing an action in superior court, because we cannot and do not intend to adjudicate their respective property rights. Our review of the easements, their ownership, and transferability is necessary, but will be limited to whether the easements on their face appear to be broad enough to allow for construction of the NPT project, and are transferrable in the manner claimed by Eversource. As such, our review will not be binding on individual property owners. Property owners who wish a determination of their rights in the easements on their lands with respect to Eversource and NPT should seek redress in the courts.

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

**ORDERED**, that petitions to intervene of Northern Pass Transmission LLC (NPT), Mark Lagasse and Kevin Spencer d/b/a Lagaspence Realty, LLC, McKenna's Purchase Unit Owners Association, are granted; and it is

**FURTHER ORDERED**, that the petition to intervene of New England Power Generators Association is granted on a limited basis under the conditions listed above; and it is

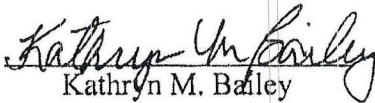
**FURTHER ORDERED**, that the Motion to Dismiss is denied; and it is

**FURTHER ORDERED**, that Commission Staff is hereby directed to work with the parties to develop a procedural schedule for the proceeding.

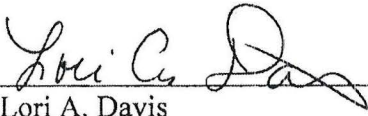


By order of the Public Utilities Commission of New Hampshire this fifteenth day of  
April, 2016.

  
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Martin R. Honigberg  
Chairman

  
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Kathryn M. Bailey  
Commissioner

Attested by:

  
\_\_\_\_\_  
Lori A. Davis  
Assistant Secretary