

**STATE OF NEW HAMPSHIRE
PUBLIC UTILITIES COMMISSION**

DE 15-459

NORTHERN PASS TRANSMISSION LLC

Petition to Commence Business as a Public Utility

**Order Approving Settlement Agreement
And Granting Petition to Operate as Public Utility**

ORDER NO. 25,953

October 14, 2016

APPEARANCES: McLane Middleton by Thomas B. Getz, Esq., on behalf of Northern Pass Transmission LLC; the Office of Consumer Advocate by Donald M. Kreis, Esq., on behalf of residential ratepayers; and Suzanne G. Amidon, Esq., on behalf of Commission Staff.

In this Order, the Commission approves a Settlement Agreement between Commission Staff and Northern Pass Transmission LLC (NPT). The Commission finds that it would be for the public good to grant NPT authority to operate as a public utility subject to the conditions in the Settlement Agreement. Those conditions include the following: NPT must obtain all necessary permits, licenses and approvals to build the Northern Pass Transmission line, including a certificate of site and facility from the Site Evaluation Committee (SEC); NPT must contribute \$20 million over a ten-year period to be allocated by the Commission to energy efficiency programs and other clean energy initiatives; and NPT must hold New Hampshire electric ratepayers harmless from costs associated with the possible regional allocation of costs for a portion of the Northern Pass transmission line. As explained further below, the Commission authorizes NPT to commence operations as a public utility subject to the conditions in the Settlement Agreement.

I. PROCEDURAL HISTORY

On October 19, 2015, Northern Pass Transmission LLC (NPT), a limited liability company registered in New Hampshire, filed a petition to commence business as a public utility. NPT is wholly-owned by Eversource Energy Transmission Ventures, Inc., which in turn is a wholly-owned subsidiary of Eversource Energy, a public utility holding company with a principal place of business in Connecticut.

NPT intends to construct, operate and maintain a 192-mile, high-voltage electric transmission line from the international border between New Hampshire and Canada to a substation in Deerfield, New Hampshire (Northern Pass Project). NPT's petition listed the following municipalities in which it was seeking public utility status: Pittsburg, Clarksville, Stewartstown, Dixville, Millsfield, Dummer, Stark, Northumberland, Lancaster, Whitefield, Dalton, Bethlehem, Sugar Hill, Franconia, Easton, Woodstock, Thornton, Campton, Plymouth, Ashland, Bridgewater, New Hampton, Bristol, Hill, Franklin, Northfield, Canterbury, Concord, Pembroke, Allenstown, Deerfield, Raymond, Candia, Chester, Auburn, and Londonderry. NPT has separately petitioned the Site Evaluation Commission (SEC) for a certificate of site and facility.

The proposed construction is related to a transmission service agreement between NPT and Hydro Renewable Energy, Inc. (HRE), a subsidiary of Hydro-Quebec. Under the transmission service agreement, NPT is to develop, site, finance, construct, own, and maintain the electric transmission line, and sell firm transmission service to HRE over a 40-year period. Because NPT intends to own, operate, or manage facilities in the State for the transmission or sale of electricity ultimately sold to the public NPT meets the definition of public utility as set forth in RSA 362:2, I. Pursuant to RSA 374:26, the Commission shall grant a franchise

whenever it finds that such would be for the public good. NPT has asserted that it has the financial, managerial, and technical capacity to operate as a public utility in New Hampshire, and requested that the Commission approve its petition.

The Office of Consumer Advocate (OCA) filed a letter of participation on November 12, 2015, pursuant to RSA 363:28. An Order of Notice was issued on November 24, 2015. On April 12, 2016, the Society for the Protection of New Hampshire Forests (Forest Society) filed a petition to intervene which was denied by the Commission by secretarial letter dated April 25, 2016.

NPT and Commission Staff filed a Settlement Agreement on June 10, 2016. On June 30, 2016, the Commission issued a secretarial letter scheduling a hearing for July 20, 2016.

Terry Cronin petitioned to intervene on July 19, 2016. At the hearing, the Commission denied Mr. Cronin's petition. Mr. Cronin moved for reconsideration of the decision to deny him intervenor status, alleging in part that the OCA did not participate in the negotiation of the Settlement Agreement, and that, without the OCA representation, his rights "have been nullified in this case." The OCA filed a letter explaining its involvement in this proceeding. The Commission issued Order No. 25,936 on August 18, 2016, denying Mr. Cronin's motion for reconsideration.

At the hearing, the Forest Society offered comments. Specifically, the Forest Society requested that any Commission order approving NPT's petition to commence business as a public utility include an "explicit statement" that the Commission is not adjudicating any property rights. Hearing Transcript (Tr.) 7/20/2016 at 10-11. Second, the Forest Society requested that the Commission require that regardless of its public utility status, NPT may at no time avail itself of the eminent domain process "regardless of whether the law changes."

Id. at 11. Third, the Forest Society asked that the Commission affirmatively find that any public benefit does not violate any rules governing affiliate transactions. *Id.*

II. SETTLEMENT AGREEMENT BETWEEN NPT AND STAFF

A. Commencing Business as a Public Utility

The Settlement Agreement states that, based on the testimony presented by NPT, written discovery, and discussions at technical sessions, NPT possesses the financial, managerial, and technical capability to operate as a public utility. The Agreement expressly provides that NPT may not commence business as a public utility until such time as it has obtained all necessary federal and state permits. The Agreement further states that NPT may not commence business as a public utility until such time as the Commission has approved the petition for lease by NPT of certain rights-of-way owned by Public Service Company of New Hampshire d/b/a Eversource Energy (Docket No. DE 15-464).

B. Scope of Regulation

Staff and NPT agree that the scope of regulation to be applied to NPT will include the following:

- NPT shall be subject to the annual assessment requirements of RSA 363-A. The assessment will be calculated based on NPT's gross utility revenue pursuant to RSA 363-A:2.
- With the exception of RSA 365:8-a, which applies to suppliers of natural gas, and RSA's 365:22, 365:24, 365:24-a, which apply to railroads, NPT shall be subject to the provisions of RSA 365, Complaints and Proceedings before the Commission.
- NPT shall be subject to N.H. Code Admin. Rules Puc 200, which implement RSA 365 and govern proceedings before the Commission.

- NPT shall be subject to RSA 366, Affiliates of Public Utilities, and N.H. Code Admin. Rules Puc 2100.
- NPT shall be subject to RSA 369, Issuance of Stock and Other Securities.
- NPT shall be subject to the provisions of RSA 371.
- NPT shall be subject to RSA 374:1, 2-a, 3, 4, 5, 5-a, 7 through 19, and 30 through 47-a.
- NPT shall participate in the underground utility damage prevention program set forth in RSA 374:48-56, and N.H. Code Admin Rules Puc 800.

In addition, NPT shall comply with the following provisions of N.H. Code Admin.

Rules Puc 300, rules for Electric Service Utilities:

- Puc 306, Equipment and Facilities in its entirety, including 306.10, Physical and Cyber Security Plans, Procedures and Reporting;
- Puc 307, Records and Reports;
- Puc 308.06, Accident Reports;
- Puc 308.09, FERC Quarterly Financial Reports;
- Puc 308.10, Annual FERC Form No. 1;
- Puc 308.12, Authority to Issue Securities;
- Puc 308.13, Information Sheet;
- Puc 308.15, Transmission Crew Reports during Wide Scale Emergencies; and
- Puc 308.17 Quarterly Report of Equipment Theft, Sabotage and Breaches of Security.

C. Public Interest Programs

Upon the initial operation of the Northern Pass Project, NPT will contribute \$2 million to support programs that advance clean energy innovation, community betterment, and economic

development in New Hampshire, including the “Core” energy efficiency programs operated under the Commission’s authority. NPT agrees to make an annual contribution of \$2 million for such programs for 10 years. Final allocation of the funds shall be determined by the Commission.

D. Contact Information

NPT agrees to provide the Commission’s Electric and Safety Divisions, every six months, with updated names and contact information, as well as an organizational chart and a list of persons designated with the responsibility for construction, operations, and maintenance activities, and management and resolution of electric safety complaints. This section of the Settlement Agreement contains specific requirements for NPT to provide the identity of and contact information for individuals who are responsible for regulatory, legal, design, operations, construction, maintenance, right-of-way acquisition, vegetation management, training, electric control, dispatch of field personnel, and emergency response.

E. Technical Training Requirements

NPT agrees to make ongoing training available to the Electric and Safety Divisions as needed. The training is intended to provide education on construction, operations, maintenance, and other issues related to high voltage direct current (DC) lines, including converter station issues, to increase Commission in-house expertise relative to DC facilities.

F. As Built Information

NPT agrees to provide the Safety Division with as-built locations, including GPS coordinates, within one year of completion of the Northern Pass Project. The form of such data will be determined by discussions between the Director of the Safety Division and NPT, and subject to critical information infrastructure protection requirements.

G. Electronic Access to Operations Manuals and Procedures

NPT agrees to provide Safety Division personnel access to electronic versions of Maintenance Manuals, Emergency Plans, quality assurance and other electric safety related procedures maintained by NPT. This provision identifies the various media by which such access could be offered.

H. Rate Treatment¹

The 345 kV radial AC line portion of the Northern Pass Project (the AC line), which extends from Franklin to Deerfield, could be included in regional rates in the future if ISO-NE identifies a specific reliability need and incorporates the AC line into the regional grid as a component of the most cost effective solution to meet reliability needs.² If FERC designated the AC portion of Northern Pass as a reliability upgrade, the costs would be recovered through regional transmission rates from all New England ratepayers, including New Hampshire ratepayers. Thus far, FERC has not determined whether to include the costs of the AC line into regional transmission rates. In the Settlement Agreement, NPT agrees that it will not initiate a proceeding to seek recovery of the AC portion of the Northern Pass Project through regional transmission rates. If ISO-NE determines that the AC line should be included in regional rates, NPT commits to work with Staff and the OCA to limit as much as possible any potential rate effect on New Hampshire ratepayers.

For the DC portion of the Northern Pass Project, which extends from the Canadian border to Franklin, NPT agrees to not seek cost recovery from New Hampshire retail electric customers, whether under the ISO-NE tariff or any other future cost mechanism that allocates costs to New

¹ Section III in the Settlement Agreement sets forth the agreement regarding NPT rate recovery for the Northern Pass Project from New Hampshire ratepayers.

² A Reliability Upgrade is a transmission project identified by the ISO-NE that is necessary for the New England grid reliability. Projects designated as Reliability Upgrades are eligible for cost recovery from all New England ratepayers, including New Hampshire ratepayers, based on each state's load.

Hampshire electric ratepayers. Further, if the DC portion of the Northern Pass Project becomes eligible for regional cost allocation through the FERC Order 1000 process or any other regional cost-sharing mechanism, NPT agrees to hold harmless New Hampshire retail electric customers from New Hampshire's regionally allocated share of the costs.³ NPT commits to this agreement so long as Northern Pass Project costs are being recovered through any such regional cost-sharing process or mechanism.

III. POSITIONS OF THE PARTIES AND STAFF

A. NPT

According to NPT, the Settlement Agreement represents a compromise and a negotiated settlement to secure the approval for NPT to commence business as a utility in the State of New Hampshire. NPT repeated its assertion that the Company has the financial, managerial and technical capability to commence business as a public utility.

NPT also addressed the three issues raised by the Forest Society. With respect to the affiliate contract rules, NPT stated that it is committed to complying with the affiliate contract rules and statutes, and that the Forest Society request was unclear. Regarding the Forest Society's request that the Commission affirm that NPT will not be able to use eminent domain even if the current statute were to change, NPT affirmed that the Company has no intention of seeking eminent domain. Finally, with respect to clarifying that "no property rights are affected by this proceeding," NPT said that the Company did not ask that property rights be affected, and found the request difficult to understand. Tr. 7/20/2016 at 81-82.

³ Order No. 1000 is a Final Rule that reforms the Federal Energy Regulatory Commission's electric transmission planning and cost allocation requirements for public utility transmission providers. Pursuant to Order 1000, local and regional transmission planning processes must consider transmission needs driven by public policy requirements established by state or federal laws or regulations. Each public utility transmission provider must establish procedures to identify transmission needs driven by public policy requirements and evaluate proposed solutions to those transmission needs.

B. OCA

The OCA said that the Commission typically evaluates the managerial, technical, and financial expertise of an entity seeking to commence business as a public utility. Further, the OCA pointed out that FERC is the body that regulates the finances of transmission projects, and that transmission rates are set by and through the regional transmission organization. Based on that understanding, the OCA concluded that the financial implications of the Northern Pass Project are FERC's responsibility.

The OCA referred to the benefits to ratepayers provided by the Settlement Agreement and the power purchase agreement between Eversource and Hydro-Quebec that was recently filed with the Commission, and characterized them as part of a "piecemeal offering of various benefits to the state." *Id.* at 70. While the OCA stated that it did not mean to suggest that those benefits should not be seriously considered, it was "concerned about the sort of piecemeal process of offering various benefits in various forums to the people of the state, and at what point the acceptance of those benefits become a sort of tacit agreement that the project should go forward." *Id.* at 74. According to the OCA, it would be easier to say that NPT has the managerial, financial, and technical capability to operate as a public utility without muddling the issue by requiring a utility to do other things as a "good citizen." *Id.* at 72. On that basis, the OCA took no position on NPT's petition for public utility status, or on the Settlement Agreement. The OCA addressed the Forest Society's request for certain findings from the Commission. The OCA opined that the Commission had no authority to require NPT to abide by a statute under its current terms if the statute is later amended or repealed. The OCA said that the Forest Society's request that the Commission state in its order that approval of NPT's request for utility status would not constitute adjudication of any property rights is reasonable. Finally,

the OCA said that it was appropriate for the Commission to state that it expected vigilant compliance with affiliate transaction rules between Northern Pass and Eversource and all their affiliates. *Id.* at 74-75.

C. Staff

Staff explained that the rate treatment and the public interest payments in the Settlement Agreement are necessary to comply with the terms of RSA 374:26, which states that the Commission shall grant permission to an entity to operate as a public utility if such approval would be “for the public good, and not otherwise.” RSA 374:26. Staff said that the contribution to clean energy and the transmission rate treatment are significant benefits to New Hampshire ratepayers. Staff opined that the Settlement Agreement is in the public interest and satisfies the requirement that granting the right to NPT to operate as a public utility is in the public good, and recommended that the Commission approve the Settlement Agreement.

With respect to the Forest Society’s requests for certain findings in the Commission order, Staff agreed with the OCA that the Commission could not restrict NPT from using eminent domain if the law is changed to allow such use. Staff said that this docket did not include any property issues and opined that the Commission shouldn’t make a finding regarding anything that was not part of this proceeding. Finally, with respect to requiring NPT’s adherence to affiliate transaction rules, Staff said that NPT would have to comply with affiliate transaction rules and laws pursuant to the Settlement Agreement and in the normal course of business. *Id.* at 76-79.

IV. COMMISSION ANALYSIS

The “applicable standards” governing NPT’s petition appear in RSA 374:22, I and 374:26. RSA 374:22, I provides that no person or entity shall commence business as a public

utility in New Hampshire “without first having obtained the permission and approval of the Commission.” RSA 374:26 requires the Commission to grant such permission “whenever it shall, after due hearing, find that such engaging in business ... would be for the public good, and not otherwise.” RSA 374:26 authorizes the Commission to “prescribe such terms and conditions for the exercise of the privilege granted under such permission as it shall consider for the public interest” a term that we construe to be commensurate with the public good.

At the outset, our precedent would have us determine whether NPT has the technical, managerial, and financial expertise to operate as a public utility. *Florida Power & Light*, Order No. 24,321 (May 7, 2004) 89 NH PUC 267. NPT is a subsidiary of Eversource, a major electric utility holding company in New England. No party disputed its expertise. We find that NPT has the necessary technical, managerial, and financial expertise to operate as a public utility.

Next, we must determine whether granting NPT authority to operate as a public utility will be for the public good. RSA 374:26. For this purpose, we consider the terms and conditions stipulated to by NPT and Staff. RSA 374:26; RSA 541-A:31, V(a); and Puc 203.20(b). We have reviewed the Settlement Agreement and the testimony presented at the hearing, and find that the terms and conditions of the Agreement ensure that granting NPT authority to commence business as a public utility is for the public good. First, we find that the public will benefit from the certainty of the applicable regulations set forth in the Agreement. Identifying the applicable statutes and rules provides transparency to the public, and is no less than we would apply to NPT in the absence of the Agreement. Similarly, we find that the \$20 million public interest payment, to be paid in installments of \$2 million per year over the first 10 years of the operation of the Northern Pass Project, will benefit customers by allowing the Commission to direct the use of this payment to energy efficiency programs and clean energy projects under its supervision. We

note that the grant of public utility status is conditioned on NPT procuring all necessary approvals for the Northern Pass Project, including obtaining a certificate of site and facility from the SEC. Finally, we believe that the rate treatment provision applicable to the DC portion of the line could constitute a significant benefit to ratepayers in the event the ISO-NE designates this portion as eligible for regional cost recovery. We therefore approve the Agreement in its entirety, adopt the conditions set forth therein as our own, and find that commencement of business as public utility subject to those terms and conditions will be for the public good.

Because NPT's petition states that the Northern Pass Project extends from the Canadian border to Deerfield, New Hampshire, and no further, we limit the authority of NPT to operate as a public utility to those towns from Pittsburg to Deerfield as identified in NPT's petition. In addition to those towns, NPT requested authority to operate as a public utility in the towns of Raymond, Candia, Chester, Auburn, and Londonderry, five towns between the Deerfield Substation and the Scobie Pond Substation that extend beyond the terminus of the Northern Pass Project. According to the filing, the reliability study conducted by the Independent System Operator-New England (ISO-NE) analyzed the impact of a new 1,200 MW transmission project on the AC lines extending from Deerfield to Scobie Pond. The ISO-NE study identified two Eversource-owned 345 kV lines between Deerfield and Scobie Pond that need to be thermally upgraded to ensure that minimum clearance criteria is not violated. This involves replacement of certain structures (AC Upgrades) along the path to allow the line to transmit a greater level of power. NPT Petition at 574-575. Pursuant to the FERC-approved Transmission Service Agreement between NPT and Hydro-Quebec, NPT has agreed to pay for those upgrades on existing structures (*Id.* at 55-56) but will not be building additional structures or operating new

transmission facilities in the Eversource right-of-way between Deerfield and Scobie Pond. The lines will continue to be owned and operated by Eversource.

Based on our review, it appears that NPT, out of an abundance of caution, asked for authority to operate as a public utility in Raymond, Candia, Chester, Auburn, and Londonderry to permit the installation of the AC Upgrades on Eversource lines. We do not find this activity to constitute the operation of a public utility. *See* RSA 374:22. We view NPT's payment for the installation of the AC Upgrades to constitute just that—payment for the costs of installation on existing lines between Deerfield Substation and Scobie Pond that are owned and operated by Eversource. NPT will not operate or have any ongoing legal interest or responsibility for the maintenance of those lines. That being the case, we deny NPT's request to operate as a public utility in the towns of Raymond, Candia, Chester, Auburn, and Londonderry. This ruling does not prevent the installation of the AC Upgrades required by the ISO-NE, or interfere with NPT's obligation to pay for the associated costs.

The OCA expressed concern that the public interest payment and the rate treatment provided for in the Agreement are part of a series of benefits that NPT will offer to the State in exchange for permission to construct the Northern Pass Project. The OCA seems to be worried that NPT will continue to offer such benefits in connection with its applications for various regulatory permissions such that it will be inevitable that the regulatory agencies will support the Northern Pass Project. While we understand the thought process that produces such concerns, in the instant proceeding the Commission is determining whether permitting NPT to operate as a public utility in New Hampshire will be for the public good, *assuming* the Northern Pass Project is completed. We are not making a decision on the merits of that Project. The Settlement Agreement expressly states that NPT's status as a public utility is conditioned upon the approval

of the Northern Pass Project by the SEC, and the receipt of the approvals and permits required by all the regulatory agencies involved in the SEC proceeding. In addition, Staff testified that its decision to enter this agreement should not be construed to express support for the Northern Pass Project.

We now consider the request of the Forest Society that we make specific statements on property rights, eminent domain, and affiliate transaction rules. Our granting of permission to NPT to operate as a public utility is not an adjudication of real property rights. NPT's status of a public utility subjects it to the full array of applicable laws and regulations identified in the Settlement Agreement, which include RSA 366 and N.H. Admin. Code Puc 2100. Like any other public utility, NPT will be required to diligently comply with our affiliate transaction rules. Lastly, whether amendments to the State's eminent domain law will apply to NPT and its proposed transmission facilities is a matter we must leave to the legislature. Based on the foregoing, we decline to issue the findings requested by the Forest Society.

Based upon the foregoing, it is hereby

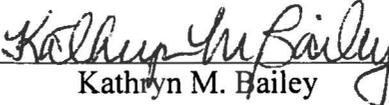
ORDERED, that the Settlement Agreement between Staff and Northern Pass Transmission LLC is hereby APPROVED; and it is

FURTHER ORDERED, that Northern Pass Transmission LLC is conditionally authorized to operate as a public utility in Pittsburg, Clarksville, Stewartstown, Dixville, Millsfield, Dummer, Stark, Northumberland, Lancaster, Whitefield, Dalton, Bethlehem, Sugar Hill, Franconia, Easton, Woodstock, Thornton, Campton, Plymouth, Ashland, Bridgewater, New Hampton, Bristol, Hill, Franklin, Northfield, Canterbury, Concord, Pembroke, Allenstown, and Deerfield, subject to the terms and conditions set forth in the Settlement agreement and adopted in this Order.

By order of the Public Utilities Commission of New Hampshire this fourteenth day of
October, 2016.

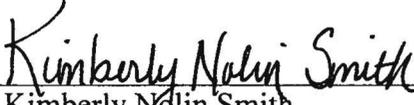


Martin P. Honigberg
Chairman



Kathryn M. Bailey
Commissioner

Attested by:



Kimberly Nolin Smith
Assistant Secretary