

**STATE OF NEW HAMPSHIRE
PUBLIC UTILITIES COMMISSION**

**DOCKET NO. DE 15-460
NORTHERN PASS TRANSMISSION LLC**

**DOCKET NO. DE 15-462
PUBLIC SERVICE COMPANY OF NEW HAMPSHIRE
D/B/A EVERSOURCE ENERGY**

OBJECTION TO MOTIONS FOR REHEARING

NOW COME Northern Pass Transmission LLC (“NPT”) and Public Service Company of New Hampshire d/b/a Eversource Energy (“PSNH”) (jointly the “Petitioners”), and respectfully submit their Objections to Motions for Rehearing filed by the City of Concord (“City”) and the Society for Protection of New Hampshire Forests (“SPNHF”). The City and SPNHF fail to demonstrate any good reason for granting their motion as described below.

1. On June 28, 2016, the Public Utilities Commission (“Commission” or “PUC”) issued its order determining the scope of its review in the above-captioned proceedings pursuant to RSA 371:17 and 371:20 (“Scoping Order”). The Scoping Order addressed memoranda of law filed by the Petitioners, the City, SPNHF, and Commission Staff on May 2, 2016. The Commission determined: first, that the NPT Project would constitute a public utility service pursuant to RSA 362:2; second, that NPT is eligible to request a license to cross public waters and lands owned by the state; third, that the test for granting a license is whether the crossing may be exercised without affecting public rights in waters or lands; and, fourth, that it would focus on the functional use and safety of the proposed crossings.

2. On July 28, 2016, the City and SPNHF filed a joint motion for rehearing reprising arguments from their memoranda of law. Among other things, they repeat the argument that the NPT Project may not pursue a crossing under RSA 371:17 because it is not required for purposes

of system reliability.¹ The City and SPNHF continue to conflate the eminent domain provisions under RSA Chapter 371 with the crossing provisions in the same chapter. In its Scoping Order, the Commission, at pp. 9-10, analyzed the “reliability” argument and dismissed it. Furthermore, the Commission, at p. 7 of the Scoping Order, contrasts the “stark” differences between the standards for a crossing under RSA 371: 20 and a taking under RSA 371:4.

3. While the City and SPNHF offer no new legal argument here, they do make the unfounded assertion at p. 3 of their motion that:

The power transported over the new transmission line will not be available for distribution to New Hampshire residents, but, rather, New Hampshire utility companies will be required to purchase some of the power and have it transported back to New England to sell to its retail customers.

Their assertion fundamentally misconceives the NPT Project and the operation of the regional electric grid. Power from the NPT Project will be delivered into the grid at Deerfield, New Hampshire. See, for example, the Power Purchase Agreement filed in Docket No. DE 16-693.

4. The City and SPNHF also substantially restate their argument concerning legislative history, with a twist. In its May 2, 2016 memorandum of law, at p. 6, the City said:

A review of the legislative history reveals that this amendment [to RSA 371:1] was adopted to prevent Northern Pass Transmission, LLC from taking private land by eminent domain. Laws 2012, 2:6; N.H.S. Jour. 120-157 (2012) (discussing that the purpose of amendment was to clarify and ensure that private property could not be taken for the Project). The same analysis applies to RSA 371:17 (Underlining added and internal footnote omitted.)

In their joint motion on July 27, 2016, the City and SPNHF, at p. 3, say:

A review of the legislative history reveals that this latter amendment was adopted *to clarify and confirm* that Northern Pass Transmission, LLC is prohibited from taking private land by eminent domain because the project does not meet the requirement of providing “service to the public.” Laws 2012; 2:6; N.H.S. Jour. 120-157 (2012) (discussing that the purpose of amendment was to clarify and ensure that private property

¹ RSA 371:1 does not specifically reference system reliability but provides in pertinent part that no public utility may petition to take private land for a transmission project if it is not eligible for regional cost allocation by the ISO-New England.

could not be taken for the Project). The same analysis applies to RSA 371:17. (Italics in original.)

In the first instance, the City characterized the amendment as being adopted to prevent NPT from taking private land, but now the City and SPNHF characterize the amendment as being adopted to clarify and confirm that NPT is prohibited from taking private land. The refashioning appears designed to support an attenuated argument that NPT was never eligible to take property, that the amendment to RSA 371:1 was unnecessary, and that the Commission should view the lack of an amendment to RSA 371:17 as proof that NPT is not eligible to request a license to cross public waters and lands owned by the state. Most important, the Commission made its determination based on the plain language of the statute and legislative history is not relevant here; however, a review of the legislative history does not, in any case, lead to a conclusion that the Legislature's non-action somehow evinces an intent to preclude projects like NPT from making a licensing request under RSA 371:17.

5. The purpose of rehearing “is to direct attention to matters that have been overlooked or mistakenly conceived in the original decision ...” *Damais v. State*, 118 N.H. 309, 311 (1978) (internal quotations omitted). A rehearing may be granted when the Committee finds “good reason” or “good cause” has been demonstrated. *See O’Loughlin v. NH Pers. Comm.*, 117 N.H. 999, 1004 (1977); *Appeal of Gas Service, Inc.*, 121 N.H. 797, 801 (1981). “A successful motion for rehearing must do more than merely restate prior arguments and ask for a different outcome.” *Public Service Co. of N.H.*, Order No. 25,676 at 3 (June 12, 2014); *see also Freedom Energy Logistics*, Order No. 25,810 at 4 (Sept. 8, 2015).

6. The City and SPNHF fail to demonstrate any good reason for the Commission to grant their motion. Rather, they repackage arguments made previously, and rejected, that NPT's ineligibility to take private land equates to an ineligibility to cross public waters and lands. They add

nothing, however, that would support a conclusion that the Commission acted unlawfully or unreasonably in its analysis of RSA 371:17 and 371:20. Furthermore, the Commission has not mistakenly conceived or overlooked anything. Therefore, rehearing of the Commission's Scoping Order should be denied.

WHEREFORE, the Petitioners respectfully request that the Subcommittee:

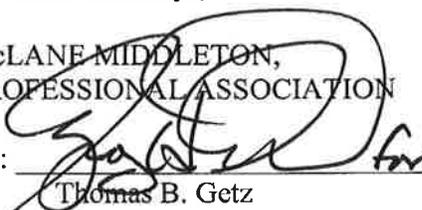
- A. Deny the City's and SPNHF's motion for rehearing; and
- B. Grant such further relief as is deemed just and appropriate.

Respectfully submitted,

Northern Pass Transmission LLC and
Public Service Company of New Hampshire d/b/a
Eversource Energy
By Their Attorneys,

McLANE MIDDLETON,
PROFESSIONAL ASSOCIATION

Dated: August 4, 2016

By: 

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Dated: August 3, 2016

PUBLIC SERVICE COMPANY OF NEW
HAMPSHIRE D/B/A EVERSOURCE ENERGY

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Certificate of Service

I hereby certify that on the ~~4th~~ of August , 2016, an original and six copies of the foregoing Objection was hand-delivered to the New Hampshire Public Utilities Commission and an electronic copy was served upon the service list.



Thomas B. Getz