

**STATE OF NEW HAMPSHIRE
PUBLIC UTILITIES COMMISSION**

DE 15-460 and DE 15-462

**NORTHERN PASS TRANSMISSION, LLC and PUBLIC SERVICE COMPANY OF
NEW HAMPSHIRE d/b/a EVERSOURCE ENERGY**

Petitions for License to Cross Public Waters and Public Lands

Order Denying Motion for Rehearing

ORDER NO. 25,939

August 24, 2016

In this order, the Commission denies the Joint Motion for Rehearing filed by the City of Concord and the Society for the Protection of New Hampshire Forests. The joint motion requested reconsideration of Order No. 25,910, which established the scope of the review in Dockets No. DE 15-460 and DE 15-462.

I. PROCEDURAL BACKGROUND

On October 19, 2015, Northern Pass Transmission, LLC (NPT), filed an application with the New Hampshire Site Evaluation Committee (SEC) for a certificate of site and facility to allow the construction and maintenance of a high-voltage electric transmission line and related facilities in New Hampshire (Northern Pass Project). NPT is a limited liability company organized under the laws of the State of New Hampshire engaged in the business of developing, designing, constructing, and owning the Northern Pass Project. NPT plans to construct the Northern Pass Project for the purpose of transmitting hydroelectric power produced in Canada to customers in the New England energy market. The proposed Northern Pass Project will run approximately 192 miles from the New Hampshire border with Canada to a Public Service

Company of New Hampshire d/b/a Eversource Energy (Eversource) substation in Deerfield, New Hampshire.

As part of its application to the SEC, NPT included petitions for licenses to cross public waters at twenty-five locations (DE 15-460) and public lands at fourteen locations (DE 15-461). The SEC application also included petitions of Eversource for licenses to relocate existing crossings over public waters at fifteen locations (DE 15-462) and public lands at thirteen locations (DE 15-463). According to NPT, approval of all four petitions is necessary for the Northern Pass Project to proceed.

The Commission held prehearing conferences on all four petitions. Based on the initial positions presented at the prehearing conferences, the Commission requested briefs addressing how RSA 371:17 and RSA 371:20 apply to the petitions, including whether the Commission is required to consider whether the crossings are necessary to meet “service to the public.” Briefs were filed by NPT, the City of Concord (an intervenor in DE 15-460 and DE 15-462), the Society for the Protection of New Hampshire Forests (Forest Society), an intervenor in DE 15-460), and Commission Staff.

Following deliberations, the Commission issued Order No. 25,910 on June 28, 2016. In its Order, the Commission determined that NPT is eligible to receive a license to cross public waters and lands owned by the State, that the test for granting the license is whether the crossing may be exercised without affecting public rights in waters or lands, and that the Commission’s review would focus on the functional use and safety of the proposed crossings. Order No. 25,910 at 11.

On July 28, 2016, Concord and the Forest Society filed a Joint Motion for Rehearing of Order No. 25,910 as it relates to Dockets No. DE 15-460 and DE 15-462. NPT filed a timely Objection.

II. POSITIONS OF THE PARTIES

A. Concord and the Forest Society

Concord and the Forest Society argue that the Commission erred in ruling that the necessity language in RSA 371:17 “does not preclude [the statute’s] use by transmission projects that are not needed for system reliability and/or are necessary to deliver services to a customer within a territory.” Motion for Rehearing at 2. Specifically, they argue that the Commission’s reliance on its earlier decision in *EnergyNorth Natural Gas, Inc.*, Order No. 23,657 (March 22, 2001) was misplaced. *EnergyNorth* involved a request for a license to cross public water to serve a customer in the public utility’s territory. Motion for Rehearing at 2 and 3. According to Concord and the Forest Society, because the Northern Pass Project is not intended to meet any identified need for additional power in New Hampshire, to address system reliability issues in New England generally or to serve any particular customer, *EnergyNorth* does not apply. *Id.*

In addition, Concord and the Forest Society claim that the Commission’s reliance on amendments to RSA 371:1 was incorrect. They believe the 2012 amendments to RSA 371:1 clarified that a public utility is not allowed to take private land or property rights “for the construction or operation of an ... electric transmission project not eligible for regional cost allocation, for either local or regional transmission tariffs, by ISO-New England or its successor regional system.” Motion for Rehearing at 3. According to Concord and the Forest Society, the legislative history of the 2012 amendments indicates that the amendments were adopted “to clarify and confirm” that NPT is prohibited from taking private land by eminent domain because

the project does not meet the requirements of providing service to the public, the same standard that applies to the crossing statute. They argue that the same legislative intent applies to RSA 371:17. According to Concord and the Forest Society, the fact that the legislature did not amend RSA 371:17 “reaffirms that merchant or participant funded projects that do not serve any specific customers do not meet the threshold requirement that the crossing is *necessary* to meet the reasonable requirements of service to the public.” Motion for Rehearing at 3-4 (emphasis in original).

B. NPT

NPT’s position is that Concord and the Forest Society have made no new argument in support of their claim that a merchant transmission plant is not able to obtain a license to cross public waters and public lands because the proposed service must be required for service to the public. Objection at 2-3. NPT argues that instead of offering missed or misunderstood facts or legal authority, Concord and the Forest Society have merely restated the same arguments they presented in their briefs. Citing the standard for granting motions for rehearing, NPT concludes that the Motion for Rehearing fails to demonstrate any good reason for the Commission to reconsider its decision. *Id.* at 3-4.

III. COMMISSION ANALYSIS

The Commission may grant rehearing or reconsideration for “good reason” if the moving party shows that an order is unlawful or unreasonable. RSA 541:3, RSA 541:4; *Rural Telephone Companies*, Order No. 25,291 (November 21, 2011). A successful motion must establish “good reason” by showing that there are matters the Commission “overlooked or mistakenly conceived in the original decision,” *Dumais v. State*, 118. N.H. 309, 311 (1978) (quotations and citations omitted), or by presenting new evidence that was “unavailable prior to the issuance of the

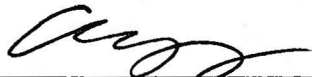
underlying decision,” *Hollis Telephone Inc.* Order No. 25,088 at 14 (April 2, 2010). A successful motion for rehearing must do more than merely restate prior arguments and ask for a different outcome. *Public Service Co. of N.H.* Order No. 25,676 at 3 (June 12, 2014); *see also Freedom Energy Logistics*, Order No. 25,810 (September 8, 2015).

Based on our review of our original Order, the Motion for Rehearing and the Objection, we find that the Motion for Rehearing does not present any new information that would change our original decision on the scope of this docket. Further, the Motion for Rehearing does not suggest that the Commission overlooked or mistakenly conceived the meaning of RSA 371:17. On that basis, we deny the motion for rehearing.

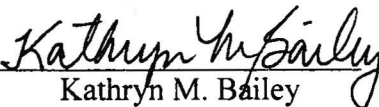
Based upon the foregoing, it is hereby

ORDERED, the Joint Motion for Rehearing of Order No. 25,910 is hereby DENIED.

By order of the Public Utilities Commission of New Hampshire this twenty-fourth day of August, 2016.

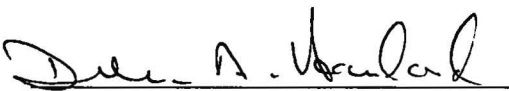


Martin P. Honigberg
Chairman



Kathryn M. Bailey
Commissioner

Attested by:



Debra A. Howland
Executive Director

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Pursuant to N.H. Admin Rule Puc 203.11 (a) (1): Serve an electronic copy on each person identified on the service list.

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FILING INSTRUCTIONS:

- a) Pursuant to N.H. Admin Rule Puc 203.02 (a), with the exception of Discovery, file 7 copies, as well as an electronic copy, of all documents including cover letter with:**
- DEBRA A HOWLAND
EXEC DIRECTOR
NHPUC
21 S. FRUIT ST, SUITE 10
CONCORD NH 03301-2429
- b) Serve an electronic copy with each person identified on the Commission's service list and with the Office of Consumer Advocate.**
- c) Serve a written copy on each person on the service list not able to receive electronic mail.**