

**STATE OF NEW HAMPSHIRE  
PUBLIC UTILITIES COMMISSION**

**DE 15-462 and DE 15-463**

**PUBLIC SERVICE COMPANY OF NEW HAMPSHIRE d/b/a EVERSOURCE ENERGY**

**Petition for License to Cross Public Waters and Public Lands Associated with the  
Relocation of Existing Facilities**

**Staff Legal Position on Application of RSA 371:17 and 371:20**

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On April 4, 2016, the Commission held a prehearing conference in the above-captioned dockets concerning the petition of Public Service Company of New Hampshire d/b/a Eversource Energy (Eversource) for a license to cross public waters and public lands. Eversource asked for the license in order to move existing facilities at the crossings, most of which were previously licensed by the Commission, in order to provide space in existing rights-of-way for Northern Pass Transmission LLC (NPT) to build the Northern Pass Project. These two dockets are part of the application by NPT for a Certificate of Site and Facility, currently pending before the Site Evaluation Committee (SEC) (SEC Docket No. 2015-06).

At the prehearing conference in Docket No. DE 15-462, Staff said that the Commission must make a finding that the construction of the crossing is needed to meet service needs. Hearing Transcript at 6. In response, Eversource said the Commission Staff looks at public safety, public uses of the water body or the land involved, and whether the proposal will affect either adversely in any way. *Id.* at 8. Eversource acknowledged that the existence of the necessity for relocation the Eversource line is the construction of the Northern Pass Project. Eversource also said it expected that the approval of the licensing petitions would be premised on the condition that the Northern Pass Project be approved by the SEC. *Id.* at 9.

The Commission directed that these two dockets proceed along a parallel path with Dockets No. DE 15-460 and DE 15-461, NPT's requests for the Commission to license crossings over public waters and public lands related to the construction of the Northern Pass Project. In those proceedings, the Commission ordered briefs on the application of RSA 371:17 and 371:20 on the license requests.

RSA 371:17 states that “[w]hen it is necessary, in order to meet the reasonable requirements of service to the public, that any public utility” should construct a crossing over public waters or land, the utility shall petition the Commission for a license to do so. This statute applies to the petition to cross public waters (DE 15-462) and public lands (DE 15-464) filed by Eversource. The Commission has applied this statute in its review of petitions for crossings related to relocation of facilities. *See* Order No. 25,780 (April 24, 2015) and Order No. 25,817 (Sept. 24, 2015) (regarding requests for license to relocate facilities to provide more timely and economical repairs and maintenance to facilities); and Order No. 25,508 (May 10, 2013) and Order No. 25,627 (February 5, 2014) (regarding relocation of crossings to accommodate bridge construction and road improvements). In all of these Orders, the Commission determined that the crossings were necessary to meet the “reasonable requirements of service to the public” consistent with RSA 371:17. Regarding relocation of crossing facilities, the Commission must find that the crossing is necessary as the statute requires.

RSA 371:20 requires the Commission to determine that crossings may be approved if the crossings can be exercised without substantially affecting the public rights in the waters or lands. The Commission applies this statute to the relocation of crossings as well. This statute also applies to relocation of crossings that are necessary to meet the needs of public service as, cited above. The Commission must make the findings required by RSA 371:17 and 371:20 in the

subject proceedings. Staff does not find any basis for the notion that the Commission has to use a different standard of reviewing these crossings because they are associated with a SEC filing. The SEC makes findings and issues certificates of site and authority according to its statutory authority. The Commission bases its decisions on crossing licenses pursuant to its authority under RSA 371.

As Eversource stated, the Commission will not have to issue a license for the crossings proposed in Docket No. DE 15-462 and No. 15-463 if the SEC denies approval of the Northern Pass Project. But for the proposed construction of Northern Pass, Eversource does not need to relocate its poles and wires to provide the reasonable requirements of service to the public. Instead of conditioning the license on SEC approval of the Northern Pass Project, the Commission could delay issuance of the license until such time as the SEC approves the Northern Pass Project. Staff does not intend to delay its review of the filings; it merely points out that the actual grant of a license can be delayed based on the condition articulated by Eversource.

In summary, Staff concludes that RSA 371:17 and 371:20 apply to the Eversource filings because Eversource proposes to relocate existing crossings.

Respectfully Submitted

A handwritten signature in black ink, appearing to read 'Suzanne G. Amidon', written over a horizontal line.

Suzanne G. Amidon on behalf of Staff

May 2, 2016