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**The State of New Hampshire****Public Utilities Commission**

DE 15-464

**Public Service Company of New Hampshire dba Eversource Energy****Petition for Approval of Lease Agreement with Northern Pass Transmission LLC****Objection of Kevin Spencer and Mark Lagasse dba Lagaspence Realty, LLC to Eversource Energy Motion for Leave to Reply to Objection to Eversource Motion to Establish a Procedural Schedule**

Intervenors Kevin Spencer and Mark Lagasse dba Lagaspence Realty, LLC, object to the May 10, 2017, Eversource Energy (Eversource) Motion for Leave to file a Reply to intervenors' Objection to the Eversource Motion to Establish a Procedural Schedule. reasons set forth in the following Memorandum.

**Memorandum**

The New Hampshire Public Utilities Commission (PUC) is a statutory creation with no inherent power flowing from the New Hampshire Constitution or the common law.

The PUC was created by the New Hampshire legislature and has the power and responsibilities set forth in Title XXXIV, Public Utilities. Chapter 374, General Regulations at RSA 374:3 provides that the public utilities commission shall have the general supervision of all public utilities and the plants owned, operated or controlled by the utilities. (Emphasis mine).

Unless a utility owns a plant and related facilities, the PUC is without jurisdiction to consider any claim the utility makes regarding the matter.

This ownership concept is expressly recognized in RSA 374:30, the statute that Eversource cites to invoke the jurisdiction of the PUC

The Eversource Petition represented that the Public Utilities Commission had jurisdiction under RSA 374:30 to consider the lease. RSA 374:30 confers jurisdiction on the PUC to determine if it in the public good for a utility to lease its works or system to another entity.

The PUC recognized this fundamental jurisdictional principle in its April 15, 2016, Order in which it declared that it cannot adjudicate property rights, that property owners must seek adjudication of those rights in court.

The April 6, 2017, PUC Order also recognized the principle that the PUC is without jurisdiction to adjudicate property rights. The PUC determination that Eversource made a *prima facie* showing of the right to lease easements, including the easement on the Spencer/Lagasse property, to its affiliate

Northern Pass Transmission, LLC, is an artificial construct calculated to allow the New Hampshire Site Evaluation Committee to proceed on the Eversource Application for a site permit. There is no such thing as *prima facie* property rights. Property is owned or it is not.

Until the property rights of interveners, and others similarly situated, are fully adjudicated in the courts, including any appeals, the PUC has no jurisdiction to proceed in the instant docket.

The Eversource determination to press the PUC to proceed in this docket, notwithstanding its predicate and contradictory position that the PUC cannot adjudicate property rights, is a frivolous imposition on the PUC and interveners time and resources. This Eversource conduct entitles interveners to their attorney fees and expenses under RSA 365:38-a because their position is a substantial contribution to the proceeding.

**Wherefore**

Interveners respectfully request that the Eversource Motion to for Leave to file a Reply to interveners' Objection to the Eversource Motion to Establish a Procedural Schedule be denied together with their attorney fees and expenses.

May 11, 2017

Respectfully submitted,

/s/ Arthur B.  
Cunningham

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**Certificate**

I certify that this document was filed and served in accordance with the New Hampshire Public Utilities Commission Rules.

May 11, 2017

/s/ Arthur B.  
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Arthur B. Cunningham