



Central Maine Power

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April 22, 2009

Karen Geraghty
Administrative Director
Maine Public Utilities Commission
State House Station #18
242 State Street
Augusta, Maine 04333-0018

Re: CENTRAL MAINE POWER COMPANY and PUBLIC SERVICE COMPANY OF
NEW HAMPSHIRE, Request for Certificate of Public Convenience and Necessity for
Maine Power Reliability Program Consisting of Construction of Approximately 350
miles of 345 kV and 115 kV Transmission Lines
Docket No. 2008-255

Dear Ms. Geraghty:

Enclosed for filing in the above-captioned proceeding please find the Exceptions to the
Examiner's Recommendation to Deny PSNH Motion to Dismiss being submitted on behalf of
CMP and PSNH.

Sincerely,

Debra J. Mills
Analyst, Regulatory & Tariffs

Enclosure

cc: All Parties

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CENTRAL MAINE POWER COMPANY
and PUBLIC SERVICE OF NEW
HAMPSHIRE Request for Certificate of
Public Convenience and Necessity for the
Maine Power Reliability Program
Consisting of the Construction of
Approximately 350 Miles of 345 kV and 115
kV Transmission Lines (“MPRP”)

EXCEPTIONS TO EXAMINER’S
RECOMMENDATION TO DENY
PSNH MOTION TO DISMISS

On April 6, 2009, the Hearing Examiner recommended that the Commission deny the motion filed by Public Service of New Hampshire (“PSNH”) in this proceeding to dismiss PSNH as a petitioner. The motion was grounded in the fact that, with changes in scope to the subject of the application, the Maine Power Reliability Program (“MPRP”), PSNH no longer sought approval to construct a transmission line, and thus required no CPCN from the Commission. The Hearing Examiner, however, in an entirely novel reading of 35-A M.R.S.A. § 3132, recommends that the motion be denied on the theory that when the legislature said “transmission line,” it meant “transmission line and substations.” The Hearing Examiner’s reading of the statute is wrong as a matter of plain language and contradicts the Commission’s own precedent as well as the statutory history of § 3132. PSNH and CMP urge that the Commission reject the Hearing Examiner’s recommendation and grant PSNH’s motion.

I. The Commission Must Apply the Plain Meaning of the Statute

“To determine the intent of the Legislature, ‘we look first to the statute’s plain meaning and, if there is ambiguity, we look beyond that language to the legislative history’” *Town of Eagle Lake v. Comm’r, Dep’t of Educ.*, 2003 ME 37, ¶ 7, 818 A.2d 1034, 1037 (Me. 2003)

(citing *Great N. Paper, Inc. v. Penobscot Nation*, 2001 ME 68, ¶ 15, 770 A.2d 574, 580 (Me. 2001)).

Here, both the statute and the Commission's own rules applying the statute consistently use the term "transmission *line*." (Emphasis added) While the Hearing Examiner suggests that the absence of a definition of "line" in the statute creates an ambiguity that would support his inclusion of other facilities within the scope of § 3132, a more plausible explanation for the absence of a definition of "line" is that it is a well understood term in the industry.

For example, NERC's Glossary of Terms defines "transmission line" as follows:

A system of structures, wires, insulators and associated hardware that carry electric energy from one point to another in an electric power system. Lines are operated at relatively high voltages varying from 69 kV up to 765 kV, and are capable of transmitting large quantities of electricity over long distances. North American Electric Reliability Corporation, Glossary of Terms Used in Reliability Standards, *available at* http://www.nerc.com/files/Glossary_12Feb08.pdf (approved by FERC in *North American Electric Reliability Corp.*, 116 FERC ¶ 61,062, *order on reh'g and compliance*, 117 FERC ¶ 61,126 (2006)).

The Vermont Department of Public Service's publicly available glossary similarly defines a transmission line as:

Facility for transmitting electrical energy at high voltage from a power generation source to a substation. Transmission lines carry power at higher voltages than distribution lines, generally at 34,500 volts or more. Vermont Department of Public Service, Lamoille County Transmission Upgrade Project, Technical Glossary, *available at* <http://publicservice.vermont.gov/Lamoille/glossary-technical.htm>

Finally, and consistently, the Transmission Line Statistics portion of FERC Form 1, submitted annually to the Commission, specifically excludes information concerning substations. FERC Form 1, p. 422. None of these well established uses of the term "transmission line" includes substations.

Contrary to the Hearing Examiner's assertion, substations do not have the same relationship to transmission lines as poles upon which the wires are attached. Transmission lines cannot be built without poles (unless they are placed underground); thus it would be nonsensical to separate the two for analytical or CPCN application purposes. On the other hand, while both transmission lines and substations form essential components of the transmission infrastructure, it is entirely possible – and, indeed, common – to build a transmission line without also building a substation, or to build a new substation without building a new line. There is thus nothing anomalous in declining to infer that the term “line” should, in this context, include substations. As shown below, the Commission has already expressly rejected such an expansive interpretation.

II. The Commission Has Already Concluded That the CPCN Statute Applies Only to Transmission Lines, Not Substations

The Commission has explicitly stated that its CPCN authority only applies to transmission lines, and not substations. In *Central Maine Power Co., Re: Application for Certificate of Public Convenience and Necessity to Erect a Transmission Line Carrying 100 kV or More in York County*, Docket No. 93-147, Order (Me. P.U.C. Dec. 14, 1993), the Commission reviewed CMP's application for a CPCN for construction of a 115 kV transmission line. In the first paragraph of its order granting the CPCN, the Commission stated:

The project includes new substations and a 34.5 kV transmission line in addition to the 115 kV line. Only the 115 kV line requires Commission approval. *Id.* slip op. at 1.

The Commission's precedent holding that its CPCN authority applies only to transmission lines is consistent with the plain meaning of the law. Tellingly, the Hearing Examiner cites no Commission precedent to the contrary.

Transmission line construction or upgrades are often – though not always – accompanied by construction or upgrade of substations. Yet in CPCN cases in which a proposed transmission line upgrade was accompanied by substation and other improvements, the Commission has, consistent with *Re Central Maine Power Co.*, scrupulously limited its ordering language to approval of the transmission line alone. See e.g. *Bangor Hydro-Electric Co., Petition for Finding of Pub. Convenience & Necessity to Construct a 115 kV Transmission Line & Substation in Hancock County*, Docket No. 2006-686, Order (Me. P.U.C. Oct. 2, 2007) (“Bangor Hydro is granted a Certificate of Public Convenience & Necessity to construct the 115 kV transmission line described above”); *Bangor Hydro-Electric Co., Re: Request to Construct Transmission Line of 100 or More Kilovolts Between the Chester Substation & the East Millinocket Substation*, Docket No. 2002-343, Order (Me. P.U.C. Apr. 23, 2003) (approving a transmission line between two new substations); *Central Maine Power Co., Request to Construct Transmission Line of 100 or More Kilovolts to Connect With Rumford Power Assoc’s Generating Facility*, Docket No. 98-863, Order (Me. P.U.C. Mar. 12, 1999) (approving a transmission line only, though construction required construction of two new substations and upgrades to three others).

III. The Legislative History of CPCN Statute Reflects Legislators’ Concerns About the Impact of Transmission Lines, Not Other Facilities

The legislative origin of 35 M.R.S.A. § 3132 supports the conclusion that “line” does not encompass “substation.” The modern CPCN statute has its roots in a 1971 bill, L.D. 1264, “An Act Relating to Public Utility Transmission Lines.” L.D. 1264 (105th Legis. 1971). As originally proposed, L.D. 1264 would have modified the language of 35 M.R.S.A. § 2306, which required Commission approval prior to taking land for transmission lines by eminent domain, to also require Commission approval to purchase land for this purpose. *Id.* In effect the

amendment would have required Commission approval for the construction of any transmission line greater than 5 kV.

The impetus for the amendment was growing concern about the aesthetic impacts of transmission lines. The Statement of Fact noted that “Present law contains no restrictions regarding their width, character, appearance or maintenance.” *Id.*, Statement of Fact. To remedy this perceived deficiency, the bill gave the PUC authority “to scrutinize the necessity for, and the location character and appearance of a proposed line for the purpose of lessening any harmful effects it might have on the environment.” L.D. 1264 (105th Legis. 1971). The debate surrounding the bill reflected legislators’ concerns with the visual impact of transmission lines¹ Me. Legis. Rec. 2862 (1971). At no point in the extensive floor debate on the bill did any of the legislators express concern about the impact, visual or otherwise, of substations.

After debate and amendment, the law as enacted left § 2306 unchanged and created a new section, 35 M.R.S.A. §13-A.² P.L. 1971 ch. 476. The new law required Commission approval “when any electrical company or companies propose to erect . . . transmission lines carrying 125 kilovolts or more,” regardless of how the land for such lines was to be acquired, and required the Commission to issue a “certificate of public convenience and necessity” after making specific findings of public need. *Id.*, § 1-2. The increase in voltage from 5 kV to 125 kV reflected legislators’ primary concern with the visual impact of transmission lines, as did language

¹ Legislators noted examples of lines that had been placed in ways that failed to take the viewscape into consideration, and contemplated “a transmission line running up and over Cadillac Mountain or Mount Katahdin.” *Id.* at 2865.

² Section 13-A emerged from the reorganization of Maine’s utility laws in 1987 as 35-A M.R.S.A. § 3132, the current CPCN law.

directing the Commission to “make such orders regarding its location, character, size, width installation, maintenance and appearance.”³ *Id.* § 2.

The subsequent history of § 2306, the eminent domain law that L.D. 1264 was originally intended to modify, makes clear that the legislature has used different language to refer to substations. Whereas § 3132 mentions only transmission lines, § 2306 (now 35 M.R.S.A. § 3136) applied to “transmission lines that are designed to carry voltages of 5,000 volts or more and of *necessary appurtenances*.” (Emphasis added) In *Rangeley Power Co., Re: Application for Approval, Pursuant to 35 M.R.S.A. 2306, as amended, for Location of 115-kV Transmission Line to Be Taken by Petitioner Pursuant to 35 M.R.S.A. §§ 3241-3252* U. 3062, Order (Me. P.U.C. Oct. 22, 1974), issued shortly after enactment of the CPCN law, the Commission interpreted “necessary appurtenances” to include substations.⁴

IV. The Hearing Examiner has Misstated the Extent of PSNH’s Construction

In addition to the foregoing, PSNH wishes to clarify a statement in the Hearing Examiner’s recommendation. In the last paragraph of the Hearing Examiner’s Recommendation, the Hearing Examiner states that PSNH is adding a transformer at the Three Rivers Substation. However, PSNH is not installing a transformer at the Three Rivers Substation; rather, PSNH will install a 345 kV switching station without any additional transformers for step down.

³ The law also modified what is now 38 M.R.S.A. § 488 to explicitly include review of transmission lines carrying 125 kV or more by the Environmental Improvement Commission (now Department of Environmental Protection (DEP)) under Maine’s Site Development Law. P.L. 1971, ch. 476, § 3. The Maine DEP has consistently interpreted this language and other portions of the Site Development Law pertaining to transmission lines as applying to only transmission lines, and not substations. Substations are subject to DEP review only when they trigger the law’s other standards. *See e.g.* 38 M.R.S.A. § 487-A.

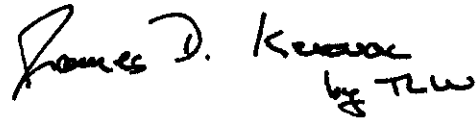
⁴ “ORDERED, ADJUDGED and DECREED 1. That the easements hereinafter set forth and to be taken by Rangeley Power Company by right of eminent domain are reasonably necessary for the proper location of its proposed 115,000 volt transmission line, and necessary appurtenances thereto, including a proposed substation...”*Id.* slip. op. at 3.

Conclusion

The Hearing Examiner’s interpretation of “transmission line” is contrary to the plain language of the statute, contrary to the Commission’s own precedent, and contrary to the intent of the legislature. “Transmission line” means what it says: the line itself, and not the associated substations. The Commission should reject the Hearing Examiner’s recommendation and grant PSNH’s motion to dismiss.

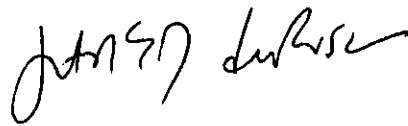
Respectfully submitted,

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