

TOWN OF RUMNEY
SELECTMEN'S MEETING
PUBLIC HEARING TO AMEND POLE AND CONDUIT LICENSES
FEBRUARY 17, 2014

Selectmen: Cheryl Lewis, Ed Haskell, Dan Kimble
Administrative Assistant: Anne Dow
Clerk: Diana Kindell

Ed Haskell opened the Public Hearing at 7:06 pm.

The Petition to Amend Pole and Conduit Licenses was presented to the Board on January 20, 2014 by Diana Kindell, Planning Board Clerk. The basis of the petition is to require all utility companies that have poles within the Town to notify the town of locations of their poles and all other companies that are attached to them, such as; Fairpoint lines attached to a New Hampshire Electric Coop. pole. This information is for the proper assessment of and equal payment liability of the property taxes due to the Town on the poles.

There was no public present at this hearing; however, a letter was sent to the Board of Selectmen from Public Service of New Hampshire stating their concerns regarding this petition. The letter reads as follows:

“Dear Board of Selectmen:

The undersigned is legal counsel to Public Service Company of New Hampshire (PSNH). PSNH viewed a notice of a public hearing which was published in the Laconia Daily Sun which stated that the Town of Rumney will take up the matter of the universal amendment of existing pole and conduit licenses in the Town, to require the payment of properly assessed property taxes, and to require licensees to provide information pertaining to entities attached to their poles or conduits. This is to advise that, to the extent the proposed amendment seek to make language changes to the pole licenses of PSNH consistent with RSA 72:23, and the rulings of the New Hampshire Supreme Court in *N. E. Tele. & Tel. Co. v City of Rochester*, 144 N.H. 118 (1999) and *Verizon New England v. City of Rochester*, 1551 N.H. 263 (2004), PSNH does not intend to raise a legal objection to the amendments. However, this should not be construed as a waiver of PSNH's rights to protest, seek an abatement of, or otherwise legally challenge as excessive or disproportionate the assessment by the Town of Rumney of any incremental property tax upon PSNH's use or occupancy of the public right of ways in Rumney, and PSNH fully reserves all such rights.

PSNH does, however, object to the proposed amendments to include the requirement or condition that the licensee (1) notify within 90 days of the date of amendment each attacher to the licensee's poles or conduit, by serving a copy of the petition, (2) submit to the Town Clerk a complete list of attachers to each pole or conduit, listing the pole or conduit locations of each, and (3) update annually on or before May 1st the information provided to the Town Clerk, including the location of additional attachers, and any attachers that have removed or added new attachments. These requirements are not revisions required under RSA 72:23, or the New Hampshire Supreme Court cases interpreting that statute, in order to legally assess and tax either the facilities or equipment of the named licensee, or the use and occupancy of the public right of way by the named licensee. Furthermore, such other attachers, to the extent they may exist, are required to license or permit their facilities located within the public rights of way with the Town of Rumney pursuant to RSA 231:159, et seq., just as PSNH is. Consequently, the identity of attachers utilizing the public rights of way, whether by attachment to existing utility poles, conduit or otherwise, should be obtainable from Rumney's own public highway licensing records.

PSNH is not aware of any statute or other provision of law in New Hampshire which authorizes the Town of Rumney to compel PSNH to provide this information as a requirement or conditions of a pole or conduit license.

We also bring to your attention that, in accordance with the requirements of RSA 374:34-a, public utilities such as PSNH must provide non-discriminatory access to the distribution poles and conduit to certain third parties seeking to use them for attachment of their own lines, cables and appurtenances. Under existing regulations of the New Hampshire Public Utilities commission (Puc 1303.08), such third parties are required to clearly label their attachments with owner identification. This affords another means by which the Town may obtain its own information pertaining to attachers utilizing the public rights of way.

Under the above circumstances, PSNH maintains it is neither legally necessary, nor fair or reasonable, to require a licensee to provide or report to the Town information about others using the licensee's poles or conduits licensed in the public right of way. Such a license amendment is not required in the public good.

As PSNH is unable to send a representative to your hearing, PSNH respectfully requests that this letter be included in and made a part of the record of the minutes of the hearing of this matter on February 17, 2014. Thank you. Christopher J. Allwarden, Senior Counsel, Legal Department."

As there was no further discussion at 7:20 pm Cheryl Lewis made a motion to close the public hearing, seconded by Dan Kimble and agreed to by all.

Respectfully submitted,

Diana Kindell
Clerk