

**STATE OF NEW HAMPSHIRE**  
**SITE EVALUATION COMMITTEE**

Joint Application of Northern Pass Transmission, LLC and Public Service  
Company of New Hampshire d/b/a Eversource Energy for a Site and Facility for  
the Construction of a New High Voltage Transmission Line in New Hampshire

Docket No. 2015-06

**Post-Hearing Memorandum of Municipal Group 1 North**

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**I. Background:**

The Towns of Pittsburg, Clarksville and Stewartstown and Coos County Commissioner, District three, Richard Samson submit this joint post-hearing Memorandum in opposition to the Application of Eversource Energy and Northern Pass Transmission LLC to site and construct their proposed transmission facility. Pittsburg, Clarksville, Stewartstown Commissioner Samson are all intervenors in this proceeding.

The Site Evaluation Committee ("SEC") directed the Northern Towns and Commissioner Samson to be grouped together as "Municipal Group 1 North." (Subcommittee Order on Review of Intervention dated May 20, 2016) The Town of Colebrook was originally included in Municipal Group 1 North, but it withdrew. (Letter from Colebrook dated June 27, 2017)

Representatives of Municipal Group 1 have appeared in this matter and given testimony as intervenors before the SEC. (Pre-filed testimony marked Exhibit MuniNorth1 Ex. 1; Transcript 10/20/17, Day 49 am, pp. 108 to 165.). Commissioner Samson and former Pittsburg Selectman Ellis have also both given statements in this matter at a public information session (App. Ex. 1, Vol III, Transcript Coos County, 09/09/15, pp. 22 to 28) and at a combined hearing before the SEC and the United States Department of Energy (Transcript 03/07/16, pp. 82-85, 142-147).

The Municipal Group 1 North intervenors oppose the application of Northern Pass and Eversource for the reasons set forth in their testimony, statements and various filings, all of which are incorporated by reference. This Brief will emphasize certain points of our opposition; but by and large we will be adopting and joining the positions taken by other municipal groups, public

counsel, the NGOs and SPNHF where their positions and arguments are applicable to our circumstances and our opposition.

**II. The Northern Pass Application is fatally flawed for failure to seek or obtain permits to use our town roads.**

In the Northern Pass Application for Certificate of Site and Facility, at pp. 82-84, the Applicants claim that the SEC alone has the power and authority to permit the use of locally maintained town roads to site the Northern Pass transmission line project. This contention is not only without any supporting authority, it is contrary to controlling state law as set forth in RSA 231:160 and provisions of its subsection immediately following.

The Northern Pass applicants says they want to not only cross our town roads with overhead HVDC transmission lines, but that they also plan to seize the underground portion of several miles of our town roads in Clarksville and Stewartstown to install their transmission lines longitudinally down the roads. (Project Maps App. Ex. 201) This proposal not only dramatically impacts our town roads, but it also impacts the property rights and interests of abutters on our town roads as well as the public health and safety of the traveling public and those who reside in our towns.

We have maintained our town roads for 200 years, yet the applicants seem to think that they can push all that history and local knowledge aside. Instead, the applicants say they want the SEC to delegate our authority and responsibilities to the Department of Transportation ("DOT") and to rely on permits and supervision being issued and exercised by the DOT. Specifically, the applicants propose undergrounding their project in several miles of Old County Road, North Hill Road and the eastern section of Bear Rock Road, all of which are town roads.

The applicants' stated authority for being able to seize and utilize our town roads for burial of their transmission line is RSA 231:160. It states:

**Authority to Erect.** – Telegraph, television, telephone, electric light and electric power poles and structures and underground conduits and

cables, with their respective attachments and appurtenances may be erected, installed and maintained in any public highways and the necessary and proper wires and cables may be supported on such poles and structures or carried across or placed under any such highway by any person, copartnership or corporation as provided in this subdivision and not otherwise. (Emphasis added.)

The first thing to note is that this is a mandate of the General Court which is subordinate only to the State Constitution and Bill of Rights. It is not a municipal ordinance that might be preempted by state law. And importantly it evidences a clear and unequivocal legislative intent that it not be subordinated to any other statute or body of law governing the same subject matter. It states explicitly that the placement of electric lines, poles and underground conduits and cables in “any public highways” must be done in accordance with its subdivision’s provisions “and not otherwise.” (Our emphasis added.)

RSA 231:161 goes on to spell out different procedures that must be used for roads maintained by the state as opposed to roads that are locally maintained by municipalities such as our towns. For state roads, a petition for a permit or license to use the road for an electric transmission project must be addressed to the Commissioner of Transportation, as spelled out in RSA 231:161-I(c). For town maintained highways, RSA 231:161-I(a) provides as follows:

**Procedure.** – Any such person, copartnership or corporation desiring to erect or install any such poles, structures, conduits, cables or wires in, under or across any such highway, shall secure a permit or license therefor in accordance with the following procedure:

I. Jurisdiction.

(a) Town Maintained Highways. Petitions for such permits or licenses concerning town maintained highways shall be addressed to the selectmen of the town in which such highway is located; and they are hereby authorized to delegate all or any part of the powers conferred upon them by the provisions of this section to such agents as they may duly appoint. (Our emphasis added.)

So here we have the General Court explicitly designating the selectmen of the town as the exclusive authority for licensing or permitting of the use of town roads for an



electric transmission project. According to RSA 231:161, it is the selectmen who will have to issue any license or permit necessary for the Northern Pass project to use town roads—not the DOT or the SEC. This is logical. It is the local taxpayers and residents who must be protected, and it is the town selectmen who understand the history, use, condition and maintenance requirements of local town roads. The health and safety of the people of our towns will be affected by the use of our local roads and therefore licensing authority for utilities within our roads has been specifically and unconditionally assigned to the towns. The town must be allowed to protect itself and the health and safety of its residents when it comes to such an invasive use of town roads as that proposed by the applicants. Great financial havoc might otherwise be inflicted on our local residents, their health and safety and their taxpayer pocketbooks.

To make it explicitly clear, we do not consent or agree to delegate our authority for such licensing to the applicants or the SEC or the DOT. We intend to abide by the statute. Should we choose to delegate any authority, that decision must be determined by us once we have an application before us from the applicants—if they chose to file one. So far, the applicants have known for over 4 years that they wanted to dig up our town roads for installation of their project. Yet they have stubbornly refused to follow the explicit and exclusive mandate of the very statute they claim to be using.

We understand that our discretion in licensing such electric transmission uses in town roads is not unbridled. It must be done under the guidance of the RSA 231:168 entitled “Interference with Travel.” That provision states in part that:

The location of poles and structures and of underground conduits and cables by the selectmen shall be made so far as reasonably possible so that the same and the attachments and appurtenances thereto will not interfere with the safe, free and convenient use for public travel of the highway or of any private way leading therefrom to adjoining premises or with the use of such premises or of any other similar property of another licensee. (Our emphasis added.)

We will exercise our licensing and permitting powers as spelled out in the RSAs. But we will not sign any one-sided “memorandum of understanding” drafted by the applicants and their many lawyers. We await the filing of a petition for a permit or license under the statute if the applicants seriously want to use our local town roads.

Importantly, the applicants have failed to comply with SEC rules in the filing of their application. Site 301.03(c)(6) requires each application before the SEC to provide:

“Evidence that the applicant has a current right, an option, or other legal basis to acquire the right to construct, operate and maintain the facility on, over, or under the site, in the form of:

- a. Ownership, ground lease, easement, or other contractual right or interest;
- b. A license, permit, easement, or other permission from a federal state or local government agency, or an application for such a license, permit easement, or other permission from a state governmental agency that is included with the application; or
- c. The simultaneous filing of a federal regulatory proceeding or taking of other action that would if successful, provide the applicant with a right of eminent domain to acquire control of the site for the purpose of constructing operating and maintaining he facility thereon[.]”

(Our emphasis added.) This failure to follow the rules and obtain a necessary license or permit from our towns was not mere forgivable oversight. It was clearly an intentional strategy to cut the local towns out of their statutorily mandated role in overseeing the use, care and maintenance of town roads for such an invasive project where several miles of town roads are proposed to be excavated and utilized for the siting of a high voltage transmission line.

Without any statutory authority, the applicants have asked the SEC to “delegate” town road construction oversight and authority to the DOT. (Letter and attachment from applicants’ attorney Getz to the SEC Administrator dated 12/12/2017). Quite correctly, the DOT has declined that request for delegation with its letter to the SEC Administrator of 12/22/2017 in which it states in paragraph A on the first page that it “does not believe

it should be approving and overseeing construction and making decisions that may impact long term operations and maintenance” on local town roads. Indeed, the DOT goes on to state in paragraph B that it simply has “no jurisdiction on municipally maintained roadways.” That is the key take away from the DOT letter declining the applicants request for delegation.

The DOT correctly believes that the General Court knew what it meant when it drafted and passed what is now RSA 231:160 and its following subdivision. On the other hand, the Northern Pass applicants want to use only those provisions of the RSA 231:160 subsection which benefit them while ignoring its mandate when it comes to local town roads. In short, the applicants want us to blindly ignore the explicit jurisdictional provisions of the very statutory scheme which they claim gives them the authority to underground transmission lines in town roads in the first place.

It must also be noted that the Applicants had the option to plan use of state highway Route 3 all the way to Northumberland or to Whitefield NH to bury their transmission line project. This would have avoided town roads all together. Exploration of this Route 3 alternative was originally recommended by our DES (NHDES Progress Report 05/16/2016, p. 2 paragraph 1) and it is still the subject of a 09/26/2017 recommendation of the U.S. EPA Region 1 to the Army Corps of Engineers. (App. Ex. 224a) This alternative would have completely avoided the proposed use of local town roads and it would have done far less environmental damage to our wetlands according to DES and the EPA.

The applicants may argue that the Public Service of New Hampshire v. Town of Hampton, 120 NH 68 (1980) (“PSNH v. Hampton”) case calls for its hoped-for result. That case, however, is not applicable. PSNH v. Hampton dealt with an attempt by a town to enforce a new town ordinance to frustrate a prior decision of the SEC. It was a clear situation where the Court found that a local town ordinance had to give way to



state law under the doctrine of pre-emption. But that case did not alter or amend the provisions of the RSA 231:160 *et seq.*; nor could it. 231:160 was passed by the General Court, not a local town planning agency. The General Court cannot be said to have intended to alter the exclusivity provisions of 231:160 when it did not explicitly amend that law when it enacted RSA 162-H or its predecessor 162-F. Indeed RSA 231:160 and its subdivision were not even mentioned in the PSNH v. Hampton case so it surely cannot stand for the propositions asserted by the applicants.

Northern Pass may also claim that RSA 162-H somehow overrides the legislative mandate of the RSA 231:160 *et seq.* However, one statutory scheme cannot automatically preempt the mandate of another statutory scheme passed by the same legislative authority without explicitly stating that as the legislative intent. There certainly is no explicit direction given in RSA 162-H to ignore or override the provisions in the RSA 231:160 *et seq.* Just the opposite is true. There is explicit legislative intent that the procedures outline in the RSA 231:160 subdivision must be followed “and not otherwise.” (Our emphasis added.)

It appears that the Northern Pass Applicants are simply making up the procedure for approval of its use of town maintained roads for its transmission line project. Here the Applicants would import NH DOT specifications and procedures into the process and have the SEC supervise the implementation, monitoring and oversight of the digging up miles of town maintained roads—in direct violation of 231:160. This is another example of Northern Pass making up its own rules as it goes and trying to justify them by ignoring the law it doesn't like. Thus, the applicants cannot demonstrate site control as required by Site 301.03(c)(6) and their application should, for that reason alone, be dismissed.

**III. The Northern Pass Application should be denied because it will unduly interfere with the orderly development of the region.**



One of the mandatory findings this SEC must make for approval of any energy facility is that it “will not unduly interfere with the orderly development of the region with due consideration having been given to the views of municipal and regional planning commissions and municipal governing bodies.” (RSA 162-H:16 IV(b))

Our regional planning authority is the North Country Council. It has consistently opposed the applicants proposed project, especially the applicants’ plans for above ground transmission line construction in our region. The North Country Council (“NCC”) issued its original position on the Northern Pass in 2011 with its Board of Directors adopting the following resolution:

“To express the opposition of the Board of North Country Council to the Northern Pass Project based on a survey of our member communities, the preponderance of negative impacts which may result from construction, and the lack of regional benefit.”

(CS Exhibit 101)

The survey results (CS Exhibit 102) showed overwhelming opposition to the applicants’ project from the NCC member towns. (CS 103; Transcript of Public Hearing 03/14/2016 Barbara Robinson Exec Dir. NCC pp. 157-158) The position of the NCC on Northern Pass has not changed. On March 14, 2016, Barbara Robinson, Executive Director of NCC, testified before the SEC and the US DOE in Holderness NH. Her statement included these words:

“Our current regional plan was adopted in 2014. The plan was developed after two years spent asking residents of the region what their highest priority need was, and what qualities of the region were most important to them. We asked in many different ways, in many different settings. Through this process, we were able to generate a consensus-based regional plan aimed at addressing the region’s highest priority need: Livable wage jobs with benefits that are built on, or at least compatible with, stewardship of the region’s scenic natural environment and recreational opportunities. The plan emphasizes taking care of what we have and building on our strengths, such as our scenic natural environment, to increase prosperity, while reducing the cost of living through such means as local energy production.

The regional plan contains the following strategy statement:  
“Protect the region’s iconic and popular viewshed from undue adverse

impacts associated with incompatible land use, such as large transmission lines, like Northern Pass, through such means as legislative restriction and participation in EIS and permit reviews."

(Our emphasis added. Transcript 03/14/2016 pp. 157-158) There can be little doubt that the NCC has taken a strong position against the damage that would be done to our iconic landscapes and natural environment by the applicants' project; and the SEC must take that view into consideration. The NCC has labeled this project "an incompatible land use." This same view was expressed in a letter from the NCC to the SEC and DOE. (CS Exhibit 102)

The SEC will also take into consideration the nonbinding votes of our town citizens on warrant articles expressing the view that they disapprove the use of our scenic resources for above ground high voltage transmission lines. (Muni1North Ex 2) Given the similar opposition of the vast majority of other host communities to this project, as well as the overwhelming public comment against the project, there can be little doubt that this project will interfere with the orderly development of the region.

**IV. The Northern Pass Application should be denied because it would have an unreasonable adverse effect on aesthetics, historic sites, natural resources, public health and safety and property values within our communities.**

The applicants have the burden of demonstrating that their proposed transmission line “will not have an unreasonably adverse effect on aesthetics, historic sites, air and water quality, the natural environment, and public health and safety.” (RSA 162-H:16 IV(c) We assert that the applicants have failed to meet their burden. We rely on the opposition and testimony of Counsel for the Public, other Municipal Groups, the Society for the Protection of New Hampshire Forests and the NGOs to demonstrate how the applicants have failed to meet each of these burdens. We will not belabor these points.

Because we represent the residents of the northernmost towns in New Hampshire, however, it is important for us to point out some of the more unreasonable damage that this project would do to our local aesthetics, historic sites and natural environment. It is in our towns that the Northern Pass applicants propose to construct an entryway into the United States for a transmission line that would import electric power into this country from Canada. Our residents at town meetings have made it clear that they disapprove of the applicants’ proposed plans to erect above ground transmission towers through our scenic resources, historic sites and recreational properties. (Muni1North Ex. 1 and 2) As detailed in our testimony and statements, and the testimony of many of our residents and property owners before the SEC, we and our citizens are concerned about the unreasonable adverse effect that this project would have on our way of life, our aesthetics, our natural environment, our historic sites and



heritage, our tourism economy and our local property values. (Muni1North Exhibits 1 & 2; CS Group Exhibits 1 through 3 and 12 through 16)

The transmission line from Canada is now planned to arrive at our border as an underground facility. (CFP Ex. 646) It is hard to accept as reasonable that the applicants expect us to bear the burden of having the project emerge on our side of the border on lattice towers erected high over our beautiful Halls Stream valley, the Connecticut River Scenic Byways and the Connecticut River itself. Currently, there are no high voltage transmission line towers in our towns. The only electric line structures here are distribution lines. (Commissioner Samson, 03/16/2016 Transcript p. 144, lines 18-21)

The applicants in fact plan to erect 20 towers through the southern reaches of the historic area of Pittsburg known as the Indian Stream Republic. (CS Exhibits 86 through 93; testimony of Steve Ellis Transcript 10/20/2017 AM, pp 122-129) As detailed in our pre-filed testimony (MuniNorth1 Exhibit 1) and our cross-examination testimony on 10/20/2017, the Indian Stream Republic is a unique historic site where the local inhabitants actually declared themselves to be independent of Canada and the United States in response to a border dispute where their lands between Halls Stream and the Connecticut River were orphaned. Luther Parker helped compose a separate Constitution for the Indian Stream Republic more than 175 years ago. Parker has also been recognized as one of the original Pioneers of the area by the Quebec Pioneer Trail. The Northern Pass project will absolutely devastate the visual significance of the area and its adverse impact would be totally unreasonable on the tourism value and

historic value of this unique area. The applicants' experts have wholly failed to properly consider or assess this area of Pittsburg which the DHR and Pittsburg have laid out and documented on their websites. (CS Exhibits 86-90)

Above ground towers and two transitions stations of the project would also be highly visible on either side of the Route 3 Connecticut River Scenic Byway on the Pittsburg side and on the Clarksville side. (Project Maps App. Ex. 201) The same unreasonable conditions would exist looking west from the Moose Path Scenic and Cultural Highway on Route 145 in Clarksville where you would see a string of up to 23 transmission towers and a transition station. These two scenic and cultural highways are the entry ways to Pittsburg from the south. The project would create unreasonable adverse impacts on the entire area, including the Indian Stream Republic and the Connecticut River Headwaters Conservation area to the North. (Muni1North Ex. 1; testimony of Ellis, Transcript 10/20/2017 AM, pp 122-129; testimony of John Petrofsky, Transcript 12/14/2017, pp. 75-78) The project also plans to erect transmission towers along the entire southern boundary of the Washburn Forest Conservation area in Clarksville, and along the entire southern boundary of Coleman State Park in Stewartstown. (App. Ex. 201) These transmission towers with insulators and conductors would have an unreasonable and unnecessary adverse effect on those beautiful state and local resources. The transmission line is proposed to be buried until it reaches the area of Coleman State Park. If this is the best route (a highly doubtful proposition) then it could and should be continued underground for the few miles it would take to pass by Coleman State Park on land owned by an affiliate of the

applicants or under Heath Road. (Project Maps App. Ex. 201; testimony of Rod Moore, Transcript 12/14/2017 PM, pp. 104-106).

The project would also cross the Coos Trail with transmission towers and conductors as it exits out of Dixville and winds its way west and north through Stewartstown. Again, the adverse impact on the Coos Trail cannot be understated. It is also unreasonable given the total absence of transmission towers anywhere in the area. (cross-examination testimony of John Petrofsky, Transcript 12/14/2017, pp. 14-81; Comment letter of President of The Cohos Trail Association dated 09/23/15)

The applicants' construction plans for the project may also disturb at least one cemetery burial site under Old County Road in Clarksville (Transcript 08/31/2017 PM, pp.13-22 Testimony of Victoria Bunker in response to questions of Commissioner Bailey and Mr. Way) As noted by Ms. Bunker, Clarksville has declined to enter into any agreements with the applicants. Clarksville's position on such a request is that the applicants have so far declined to apply for any permit to use Clarksville town roads to bury their project. Until such time as it is engaged by a permit application process for use of its roads, Clarksville is not willing to give what the applicants may claim is tacit approval to a project that can only be permitted in compliance with the utility road use statutes, RSA 231:160 and following. If the applicants had filed such an application, then Clarksville could assess the project plans and engage in setting conditions designed to affirmatively determine the status of that under-road section containing the suspected burial site. Whatever the outcome, however, Clarksville would insist



that all parties involved respect the provisions of state law, including provisions restricting construction activities within 25 feet of any known burial site. (RSA 289:3 III)

In summary, the applicants proposed transmission corridor through our three towns would run a distance of approximately 16 miles on an entirely new energy corridor that they propose to build—a corridor that will be controlled and solely used to transmit power generated by Hydro Quebec to markets in Massachusetts, Rhode Island and Connecticut. Essentially, the applicants want to take our environmental resources, property and local roadbeds for the benefit of a foreign government that may or may not transmit power over the transmission line depending on market conditions, political considerations, and a pricing policy that will not be constrained by limitation of its monopoly power or by public interest concerns for those who might consume it in the United States. Hydro Quebec has made it clear that it will not be paying for the applicants' project. (CFP Ex. 22) Hydro Quebec, however, expects to have the exclusive use of the proposed transmission line for its benefit and profit. As stewards of our Town resources, we object to this proposed taking of our property and the unreasonable adverse effect that it would have on our local resources.

Half of the 16-mile distance proposed to be traversed in our towns would be constructed using three separate above ground segments. These above ground segments would involve construction of new access roads and clear cutting of corridors up to 120 feet wide through our forests, farms and scenic areas. Moreover, excavation and pouring of concrete for massive foundations

would be required for the erection of four transition stations and over 70 above ground transmission towers up to 120 feet high. A great deal of our wetlands would also be directly impacted and damaged.

**V. The Northern Pass Application should be denied because it will not serve the Public Interest.**

We adopt the positions of other opposition intervenors on this “public interest” issue. The evidence in the case shows little or no ultimate benefit to New Hampshire. Indeed, one of the original selling points for the project was that Hydro Quebec would take all the risk and assume the expense for building the transmission extension cord in New Hampshire. Now it appears that Hydro Quebec is only going to proceed if New England ratepayers take all the risk on the costs of construction through a long term over-market contract. (CFP Ex. 22, 23 and 646). It certainly has the potential of benefitting Hydro Quebec and the applicants if their project attracts a long term contract, but it will not benefit the towns and property owners who will have to live with the undoubted damage to regional development and our scenic viewsheds and historic and cultural sites.

We conclude by raising an issue of social justice and economic discrimination. The applicants insist on using older above ground transmission line technology in our communities to construct an entirely new energy transmission corridor. At the same time, the applicants have modified their project to propose using underground construction technology for 50 miles in the more affluent and politically influential White Mountain Region to our south even though there is an existing above ground transmission line corridor that could have been used—albeit by making the existing transmission line scar look twice

as ugly and by making it much higher and visible. The applicants say they made this change in the White Mountain Region because they recognize the value of preserving New Hampshire's scenic resources and landscapes. We therefore ask why the applicants don't apply the same logic and value to our untouched landscapes and resources that have no existing transmission line scars? Our scenic resources and landscapes are the essence of who we are. They define our communities and our sense of place. They drive the economy of the area through tourism and the building, maintenance and repair of second homes and vacation properties. We therefore demand that the Applicants employ the same standards and modern technologies in our communities as those that they have now applied in their proposal for the White Mountain Region. We would hope that the Site Evaluation Committee will see to it that our local community interests and concerns are respected in full without further discrimination and social injustice. The application must be denied.

Representatives for the Towns of Pittsburg, Clarksville, Stewartstown and Coos County District Three.

Steve Ellis

Richard J. Samson