

April 21, 2016

*Via Email and U.S. Mail*  
Department of Environmental Services  
Attn: Craig D. Rennie  
craig.rennie@des.nh.gov  
29 Hazen Drive  
Concord, NH 03301

**Re: Wetland File No. SEC-2-15-02817  
Northern Pass Transmission, LLC and Public Service Company of  
New Hampshire d/b/a Eversource Energy  
Request for More Information**

Mr. Rennie,

We write on behalf of our client, the Society for the Protection of New Hampshire Forests (“Forest Society”), to respectfully request that the joint applicants of the “Application for State of New Hampshire Department of Environmental Services Wetlands Permit For Major Dredge and Fill Project for the Northern Pass Transmission Project New Hampshire” (“Wetlands Application”) provide more information. The information provided to date falls short of what is required to assess whether this proposed project satisfies the laws protecting wetlands. Enclosed for your reference are proposed requests for more information. Following is an explanation of the inadequacies.

***I. The Society for the Protection of New Hampshire Forests***

By way of background, the Forest Society is a private, non-profit membership organization dedicated to protecting the state’s most important landscapes while promoting the wise use of its renewable natural resources. The Forest Society is duty-bound to protect its private property rights: having acquired them as part of Conservation Easements, and/or through philanthropic contributions; in keeping with its nonprofit status; and finally, to fulfill its mission to “perpetuate the forests of New Hampshire through their wise use and their complete reservation in places of special scenic beauty.” The Forest Society has over 10,000 member households.

The Forest Society holds property interests in over 191,000 acres throughout New Hampshire, including certain parcels of land included in the proposed Northern Pass route, including Conservation Easements that the Forest Society has a perpetual obligation to enforce and monitor to ensure the protection of conservation values, and fee-owned forest reservations which the Forest Society manages for natural resource



protection, sustainable forestry, and public recreation. The following properties are some of those in which the Forest Society owns the fee interest and are directly affected by the proposed Northern Pass route:

<b>From Northern Pass Application:</b>			
<b>Sheet Number</b>	<b>Property Owner Identification Number</b>	<b>Property Name</b>	<b>Town</b>
2 of 180	401.01, 400.01	Washburn Forest	Clarksville
43 of 180	12519, 12527	Kauffmann Forest	Stark
44 of 180	12528, 12541		
45 of 180	12547, 12548		
77 of 180	3215	The Rocks Estate	Bethlehem
78 of 180	3159, 3220		

The following properties are some of those in which the Forest Society owns a Conservation Easement interest and are directly affected by the Northern Pass route:

<b>From Northern Pass Application:</b>			
<b>Sheet Number</b>	<b>Property Owner Identification Number</b>	<b>Fee Owner Name</b>	<b>Town</b>
9 of 180	10649	McAllaster	Stewartstown
7 of 180	10644	Green Acre Woodlands	Stewartstown
11 of 180	10673	Lynne Placey	Stewartstown
11 of 180	10676	Brad & Daryl Thompson	Stewartstown
44 of 180	12535	Percy Summer Club	Stark
56 of 180	2293	Bartow & Baker, J. & Baker, L.	Lancaster
78 of 180	3160.01, 3221	Russell	Bethlehem
56 of 180	2294	Campen, E. & E.	Lancaster
79 of 180	3416	Hannah	Sugar Hill
88 of 180	3825, 3828	Daarvid	Easton
157 of 180	7995	Spear	Concord
179 of 180	9712	Menard	Deerfield
179 of 180	9714	Geddes Trust, Melinda L.	Deerfield

In addition to those properties directly affected by the proposed route, the Forest Society owns interests in several properties located in the vicinity of the project, including within the viewshed of the proposed project.

Because of its extensive property holdings and duty to protect those property and conservation interests, the Forest Society is an intervenor in the application for Certificate



and Site pending before the Site Evaluation Committee (SEC Docket No. 2015-06). For those same reasons, the Forest Society would like to request more information.

## ***II. Requests for More Information***

Before any assessment of the Wetlands Application can be completed to determine if the project satisfies the legal requirements set forth in Env-Wt 302.01 through 302.04 to avoid, minimize, and mitigate wetlands impacts, several deficiencies in the information provided should be addressed.

This is not meant to be an exhaustive list; the Forest Society presumes that the Department of Environmental Services (“Department”) will identify additional information beyond what is addressed here. In particular, both the Department and the Environmental Protection Agency have recently provided comments to the Department of Energy in connection with its Draft Environmental Impact Statement. Those two comment letters raise numerous concerns and seek further information with respect to water quality, drinking water and watershed protection, need, consideration of alternatives, and more.

### **a. Wetlands Functions & Values Assessment**

The wetlands functions and value assessment contained in the joint applicants’ proposed Mitigation Plan summarized in Appendix B is inadequate for a project impacting over 800 wetlands.<sup>1</sup> The joint applicants used the U.S. Army Corps of Engineers “Highway Methodology” (USACE, 1999) to evaluate fourteen functions and values for each wetland in the proposed project area. The wetlands functions and values assessment must be redone, as described in the following paragraphs.

First, the joint applicant misapplied the Methodology when it used the following rating:

... based on a cumulative score where principal functions or values = 2 and suitable functions or values = 1. Any wetland with a score of 14 or greater was considered of high quality.<sup>2</sup>

The Methodology states clearly that principal functions and values should be evaluated individually and that numerical methods should not be used. Further, it states

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<sup>1</sup> Normandeau Associates Inc., *Northern Pass Transmission Project Wetlands, Rivers, Streams, and Vernal Pools Resources Report and Impact Analysis*, Appendix B-Summary of Delineated Wetlands and Proposed Impacts, October, 2015, page 1-41.

<sup>2</sup> Normandeau Associates Inc., *Northern Pass Transmission Project Wetlands, Rivers, Streams, and Vernal Pools Resources Report and Impact Analysis*, October, 2015, pp. 2-3.



that “[i]n no case, however, should arbitrary weighting be applied to wetlands functions, or should dissimilar functions be ranked.”<sup>3</sup>

Second, the joint applicants failed to include the entire wetland complex, and instead included merely a small portion of most wetlands, primarily the portions located in the utility right-of-way. However, the Methodology is clear that the assessment of functions and values must include the entire wetland complex, including all portions of the wetland complex regardless of whether they are located within the proposed project route. For example, a wetland in Lancaster near the Northumberland town line (Wetlands #LC57) is shown to be only 0.3 acres in size and not a high value wetland.<sup>4</sup> However, looking at the revised wetland delineation on the new Project Maps, Wetland #LC57 is in fact part of a vast wetland complex that is several hundred acres large and exhibits high functional values.

Accordingly, the functions and values assessment contained in Appendix B, Summary of Delineated Wetlands and Wetland Impacts, must be redone to include entire wetland complexes, and each wetland complex must be evaluated individually without numerical methods, arbitrary weighting, or ranking of dissimilar functions.

#### **b. Wetlands Delineation**

The joint applicants provided additional information to the SEC on 2/26/15 including revised “Project Maps.” The revised project maps show additional new wetlands and stream categories identified as “photo-estimated wetlands, ponds, and streams” and “approximate wetlands, waterbodies, and streams.” If the opportunities for avoidance and minimization are to be clearly understood and evaluated as legally required by Env-Wt 302.03, all of the wetlands along the proposed route should have been “field delineated.” Nothing in the law permits such estimation of natural resources in this situation.

Additionally, the plans submitted by the joint applicants which show the wetlands impact areas<sup>5</sup> have not been amended—only the “Project Maps” have. This requires cumbersome cross-referencing of data-intensive documents and sometimes yields inconsistent results. In connection with their Wetlands Application, the joint applicants

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<sup>3</sup> US Army Corps of Engineers New England District, *The Highway Methodology Workbook Supplement*, September, 1999, page 8.

<sup>4</sup> Normandeau Associates Inc., *Northern Pass Transmission Project Natural Resources Mitigation Plan Appendix B. Summary of Delineated Wetlands and Proposed Impacts*, October, 2015, page 1-41. (Note that Appendices B through G of the Wetlands Application are also part of the application the Site Evaluation Committee, located at Appendices 31 through 36 and 41.)

<sup>5</sup> NHDES & US Army Corps of Engineers Section 404/10 Permit Application Plans, NPT Project Maps Preliminary Design, October, 2015, sheets 1-180.



should prepare and provide one set of maps (plans) that show all of the wetlands and water resources present, based exclusively on field delineation, and the extent of impacts.

### **c. Restoration Plan**

Assuming that 139 acres is an accurate measure of the temporary impacts to wetlands, restoring them to pre-construction conditions will be a tremendously substantial undertaking. Importantly, unless such restoration is done right, the project will result in permanent wetlands impacts to much of the area proposed to be impacted only temporarily. Yet, the joint applicants have not provided any specific plans for restoring each wetland proposed to be impacted temporarily.

Instead, the joint applicants have provided a shockingly short so-called restoration plan, stating that “final specifications” will be developed after the permit is issued. In its purported restoration plan, the joint applicants state that “[d]isturbed wetland soils will be mulched with straw for final restoration in accordance with the NHDES *“Best Management Practices Manual For Utility Maintenance In and Adjacent to Wetlands, Waterbodies in NH.”*<sup>6</sup> The Wetlands Application indicates “final specifications” will be developed after the permit is issued.<sup>7</sup> However, the introduction to this manual states clearly the manual is to be used for maintenance only and not for “New construction of utility assets” or “Establishing new access roads.”<sup>8</sup>

### **d. Off-Right-of-Way Access Roads**

To reduce wetlands impacts, off-right-of-way access roads (“ORAR”) can be used to divert heavy equipment around wetlands rather than constructing right-of-way roads directly between adjacent structures. While several sections of the Wetlands Application discuss the need for additional ORARs to avoid and minimize temporary wetlands impacts,<sup>9</sup> the Wetlands Application lacks information about where ORARs should be

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6 Northern Pass Transmission, LLC and Public Service Company of New Hampshire, *Application for State of New Hampshire Department of Environmental Services Wetland permit for Major Dredge and Fill Project for the Northern Pass Transmission Project New Hampshire*, October, 2015, section 6.1.18, page 65.

7 Normandeau Associates Inc., Northern Pass Transmission Project, Natural Resources Mitigation Plan, October, 2015, page 4-1.

8 New Hampshire Department of Resources and Economic Development, *Best Management Practices Manual For Utility Maintenance In And Adjacent To Wetlands and Waterbodies In New Hampshire Interim*, January, 2010, page 2.

9 Normandeau Associates Inc., *Application for State of New Hampshire Department of Environmental Services Wetland Permit for Major Dredge and Fill Project for the Northern Pass Transmission Project New Hampshire*, sections 6.1.15.2 and 6.1.19.2; Normandeau Associates Inc., *Northern Pass Transmission Project Wetlands, Rivers, Streams, and Vernal Pools Resource Report and Impact Analysis*, October, 2015, Section 3.13.



proposed because they will reduce wetlands impacts. Further, the joint applicants identified wetlands only along ORARs in the six northern project towns. The joint applicants state that if additional ORARs are needed "... appropriate permit amendments would be requested."<sup>10</sup> Proposed locations for alternative accesses to structures should be part of the application, not the subject of permit amendments.

**e. Change of Use Could Trigger Re-Permitting Requirement**

As noted, many of the ORARs shown on the plans are located in the northern sections of the project. These are mainly existing logging roads constructed for commercial forestry operations and "... used by timber management companies ..."<sup>11</sup> Any wetlands permitting of existing wetlands impacts (wetlands crossings, stream crossings, wet ditches, etc.) on these roads was most likely done under a forestry management wetlands permit and the use of these roads for uses other than forestry would constitute a change in use and could require re-permitting. See Env-Wt 303.04(g).

**f. Change of Use Could Trigger Re-Permitting Requirement**

The need for storage, staging, and laydown areas is discussed in the Wetlands Application, including Sections 6.1.12.1 and 6.1.16.<sup>12</sup> But detailed plans of all sites, including wetlands delineations and impact areas, have not been provided.

**III. Conclusion**

The joint applicants have failed to provide the several types of information identified in this letter. The joint applicants' statements that information will be provided later, whether during the permitting process or when the plan is further developed, do not excuse the joint applicants from providing this information now. Unless the information identified is provided now, the Department's review of the Wetlands Application and the public's knowledge of and ability to participate in the process will be needlessly restricted.

Significantly, the Department will not have the information required to assess avoidance, minimization, and mitigation. All impacts that the proposed project is likely to

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<sup>10</sup> Normandeau Associates Inc., *Northern Pass Transmission Project Wetlands, Rivers, Streams, and Vernal Pools Resource Report and Impact Analysis*, October, 2015, page 4-3.

<sup>11</sup> Normandeau Associates Inc., *Northern Pass Transmission Project Wetlands, Rivers, Streams, and Vernal Pools Resource Report and Impact Analysis*, October, 2015, page 3-40.

<sup>12</sup> Normandeau Associates Inc., *Application for State of New Hampshire Department of Environmental Services Wetland Permit for Major Dredge and Fill Project for the Northern Pass Transmission Project New Hampshire*, Section 6, pp 53, 64.



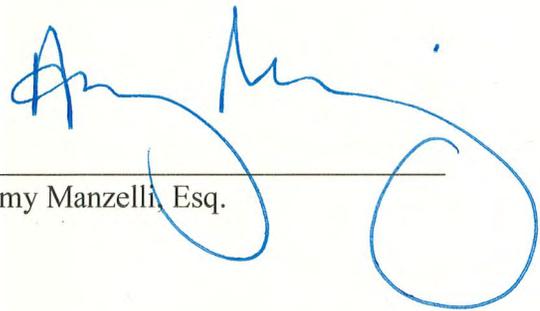
have on all water resources should be evaluated at the same time, when the Department is reviewing the permit application. Absent sufficient information on all impacts on all water resources, the Department should not move forward in its review, and instead should request more information.

We respectfully request to meet with you next week to discuss the concerns we have raised. We would welcome any member of the Department's team you see fit to include in the meeting. Please contact Amy at the phone number listed or at [manazelli@nhlandlaw.com](mailto:manazelli@nhlandlaw.com) to arrange the meeting.

Very truly yours,



Ray D. Lobdell, CWS, CSS



Amy Manzelli, Esq.

Cc:

Client

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Suggested Requests for More Information Regarding Application Deficiencies

1. Provide an assessment of wetlands functions and values that depicts and includes in your determination the entire wetland complex, not just the portion of the wetland within the project area, and evaluate each wetland complex individually without numerical methods, arbitrary weighting, or ranking of dissimilar functions.
2. Provide one set of maps (plans) that show, for all areas in which statutes and regulations require applicants to identify water resources (including wetlands), all of the water resources present (including wetlands) based only on field delineation of qualified professionals.
3. Provide a comprehensive and specific plan to restore wetlands proposed to be impacted temporarily. To the extent the plan is based on guidance documents, those documents should be for new construction of utility assets and/or establishing new access roads. The plan should not be based on the “Best Management Practices Manual for Utility Maintenance In and Adjacent to Wetlands, Waterbodies in NH.”
4. For the entire proposed line, identify all proposed locations of off-right-of-way access roads.
5. Identify what existing logging roads proposed to be used as off-right-of-way access roads are currently permitted pursuant to forestry management wetlands permit, and for those provide information and analysis about which of those roads will need to be re-permitted given the change of use from a logging road to an off-right-of-way access road.
6. Provide detailed plans and information for storage, staging, and laydown areas.

