

STATE OF NEW HAMPSHIRE

SITE EVALUATION COMMITTEE

SEC DOCKET 2015-06

**JOINT APPLICATION OF NORTHERN PASS TRANSMISSION LLC & PUBLIC
SERVICE COMPANY OF NEW HAMPSHIRE D/B/A/ EVERSOURCE ENERGY**

FOR A CERTIFICATE OF SITE AND FACILITY

**GRAFTON COUNTY COMMISSIONER'S RESPONSE TO THE NORTHERN PASS
OBJECTION TO THE GRAFTON COUNTY COMMISSIONER'S
MOTION TO SUSPEND THE ADJUDICATORY HEARING UNTIL
THE PLANS SUBMITTED BY NORTHERN PASS ARE DETERMINED TO BE
ACCURATE AND RELIABLE AND THE RIGHTS OF WAY FOR THE UNDERGROUND
BURIAL OF LINES IS DEFINED FOR THE SITE EVALUATION COMMITTEE AND
INTERVENORS AND MOTION TO RECALL THE CONSTRUCTION PANEL**

NOW COMES the Grafton County Commissioners, hereinafter intervenors, and respectfully request the Site Evaluation Committee consider this response to the Applicants and in support states as follows:

1. The Grafton County Commissioners filed a Motion to Suspend the Adjudicatory Hearing until the Plans Submitted by the Northern Pass are Determined to be Accurate and Reliable and The Rights of Way for the Underground Burial of the Lines is Defined or the Site Evaluations Committee and Intervenors. It is pending.
2. After the filing, the New Hampshire Department of Transportation issued a letter (on August 11, 2017) to Mr. Jerry Fortier, Project Director – Transmission, Northern Pass Transmission, LLC. See Exhibit A (copy of the letter). In this letter, DOT confirms that the survey reports submitted in response to SEC general condition requiring certification that the right-of-way lines on the plans are inadequate.
3. In addition the Town of Bethlehem, joining with the Towns of Franconia and Easton, submitted a request to Commissioner Sheehan regarding NH RSA

228:35. See Exhibit B (the Town of Bethlehem joining Easton and Franconia's request that the Department of Transportation enact RSA 228:35.) Applicant's objection discusses DOT's response.

4. Applicant's objection quotes the NH DOT letter in response to the Towns of Easton and Franconia's request under NH RSA 228:35 as follows: "Formal reestablishment of the ROW in this manner is typically only considered when, after thorough investigation, the location of the ROW is not defined and/or there are questions on its location." Applicant's objection at para 8. That appears to be the exact current situation. Northern Pass has reached out to NH DOT for specific information about the rights of way. Landowners have provided NH DOT and the SEC with extensive research on the rights of way. The statute's prerequisites have been met.
5. In its objection, the Applicant notes that the Grafton County Commissioners "continue to misapprehend the permitting role of the DOT in the SEC process" and the DOT process lets an applicant to refine its design over time and conform it to DOT's specific requests. This is not an accurate statement.
6. Northern Pass maintains that the public can go through years of public hearings and an entire SEC hearing, be told one thing, provide testimony on one thing, and then the design can be changed with only NH DOT approval. That is simply not the law and makes a mockery of the statute and the SEC process. One abutting landowner recently noted the following, quoting the record of the mandated public hearing at Loon Mountain on September 8, 2015:

"The underground portion of the project, as described at the legally required Public Info Session (Loon Mountain, Sept 8 2015), was materially different than what the Company now plans to build. Abutting property owners could have walked away from that meeting thinking that because the project would be almost entirely under the pavement, that it would not affect their usable property. They were told that "for over 99.9 percent of the Project we have no plans to trim any trees, that we will try to stay in the shoulder and travel lane of the road itself." (p.60 of transcript, Loon Mountain Public Hearing, Sept 8th, 2015)

These landowners could have found that type of project acceptable, but because of the "iterative" process, they could wake up some morning in 2019 with loggers clear-cutting twenty feet of timber in their front yard and digging a 4-, or perhaps now 7-, foot deep trench and filling it with backfill containing coal fly ash. Coal fly ash, which can contain contaminants such as mercury, lead and cadmium, was not mentioned in the Public Info

Session at all." Email to counsel for the Grafton County Commissioners, from Barbara Meyer dated August 22, 2017.

7. Taking Northern Pass' argument, the project can be described in one way, for years, at all the mandated public hearings. Everyone can rely on this description to evaluate the factors that need to be evaluated under New Hampshire law: the "welfare of the population, private property, the location and growth of industry, the overall economic growth of the state, the environment of the state, historic sites, aesthetics, air and water quality, the use of natural resources, and public health." See NH RSa 162-H:1 (purpose clause for the SEC). And then, late in the game, after all the evaluations of those factors, the project can completely be redesigned, with only NH DOT approval. It can completely change for individual, private landowners, with no recourse.
8. Northern Pass' proposed design changes and exceptions are not the minor construction details that are rightly in the DOT's purview. Rather, Northern Pass wants the SEC to abdicate its responsibility to decide the big question of whether the underground transmission plan causes undue adverse impact on the multiple factors noted above and defer it to the DOT to decide after the permit is granted.
9. Northern Pass' interpretation of the statutes and regulations is illogical. Under New Hampshire caselaw, the courts do not interpret a statute to achieve an illogical or unjust result. See *State v. Farrow*, 140 N.H. 473, 476 (1995) ("This court will avoid construing statutes in a manner that would produce an unjust and seemingly illogical result.")
10. What is the purpose of the entire statutory scheme and process if Applicant's interpretation is correct? At the mandated public hearings, it does not appear that the public was told that the representations being made to the public, in the Application and at these hearings, could be dramatically changed at any time. Private landowners along the route do not appear to have been told that they need to be aware that the project can be dramatically changed late in this process. After public statements were made that the vast majority of the underground burial would be under the roadway, now Northern pass claims they have the right to dig up twenty feet from the current roadway into a private landowner's front yard, and the line can be permanently buried in the private

landowner's front yard, near or requiring moving of septic systems and wells, and the backfill being spread under their front yard can contain coal fly ash.¹

11. Accordingly, the Grafton County Commissioners dispute Northern Pass' interpretation of the statute.

WHEREFORE, the State requests that this Honorable Court:

- A. GRANT the Grafton County Commissioner's Motion and suspend the administrative hearing until the SEC can obtain assurances from the NH Department of Transportation that the plans are accurate and can be relied upon; and
- B. RECALL the construction panel so the construction panel can be questioned about the exceptions presented, as well as past inaccuracies and
- C. ADJUST other deadlines accordingly, or
- D. HOLD a hearing on the matter; and
- E. GRANT any other relief deemed proper and just.

August 4, 2017

Respectfully Submitted,
THE GRAFTON COUNTY
COMMISSIONERS



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NH Bar # 9683
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3785 Dartmouth College Highway, Box 7
North Haverhill, NH 03774
(603) 787-6968

CERTIFICATE OF SERVICE

¹ A review of the SEC hearing transcript, Day 9, p.m. on pages 103-112, Testimony of Mr. Kenneth Bowes, shows Northern Pass does not dispute that some private landowners reached out to Northern Pass about the scope of the project and, at the time, that the plan was for the project to be under the roadway and thus the Applicant told the private landowners the project was under the roadway and their property would not be impacted. Kenneth Bowes' further testified that they had not informed landowners to otherwise corrected these statements when Northern Pass presented a changed design to DOT that would include impacts on private land. Testimony indicates that the Applicant did not plan on correcting the now incorrect information until after final approval of the plan. This would arguably be when it is too late for the private landowners to do anything about this situation.

I hereby certify that a copy of the foregoing has this day been forwarded to all parties on the service list.

Respectfully Submitted,
GRAFTON COUNTY

August 23, 2017



Lara Joan Saffo, Esq.



Victoria F. Sheehan
Commissioner

THE STATE OF NEW HAMPSHIRE
DEPARTMENT OF TRANSPORTATION



William Cass, P.E.
Assistant Commissioner

Bureau of Highway Design
Room 200
Tel. (603) 271-2171
Fax (603) 271-7025

August 11, 2017



Mr. Jerry P. Fortier
Project Director – Transmission
Northern Pass Transmission, LLC
PO Box 330
780 North Commercial Street
Manchester, NH 03105-0330

Dear Mr. Fortier:

The Department has reviewed the survey reports received May 4, 2017 prepared by Meridian Land Services Inc. dated April 12, 2017 and BL Companies dated April 19, 2017. These were submitted in response to the SEC general condition of approval #4 which required certification that the right-of-way lines shown on the plans are accurate locations defined by ground survey and all pertinent research.. As stated in the attached memo from the Bureau of Right of Way, neither of the reports submitted have met that requirement. The Department expects that the survey team for the project would follow a similar process as the Bureau of Right of Way staff would follow to determine the location of the right of way within the project limits. It is critical that the right-of-way information on the plans is accurate as this is the basis for the Department to evaluate the proposed alignment of the facility as it relates to the Department's infrastructure.

If you have any questions, please do not hesitate to contact me.

Sincerely,


Melodie A. Esterberg, P.E.
Chief of Design Services

MAE/me

CC: D. Rodrigue
C. Schmidt
A. Hanscom
P. Beaulieu

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report

STATE OF NEW HAMPSHIRE
INTER-DEPARTMENT COMMUNICATION

FROM: Robert E. Talon, LLS *RET* **DATE:** August 1, 2017
Land Titles
Bureau of Right of Way

SUBJECT: Northern Pass Transmission **AT:** Department of Transportation
NHSEC Docket #2015-06 Bureau of Right-of-Way

TO: Melodie A. Esterberg, PE Department of Transportation
Chief of Design Services Bureau of Highway Design

Paragraph 4 of the NHDOT General Conditions of Approval for the Northern Pass project states:

"The Applicant shall provide a certified survey report delineating means and methods of determining the right of way shown on the plans. The report shall include notations on all records and plans used and the monumentation held to control the right-of-way lines. The report will be certified by the Licensed Land Surveyor in charge that the right-of-way lines shown on the submitted plans are accurate locations defined by ground survey and all pertinent research."

The Department received survey reports from Meridian Land Services Inc. dated April 12, 2017 and from BL Companies, dated April 19, 2017. Both of these reports indicate that the majority of the right-of-way shown on the plans is approximate location only. The condition of approval requires an accurate location defined by ground survey; neither of these reports has met that requirement.

The survey reports need to be in compliance with New Hampshire Code of Administrative Rules Board of Licensure for Land Surveyors. Specifically Lan 503.03 and 503.04.

RET/ret



TOWN OF BETHLEHEM



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August 21, 2017

Commissioner Victoria Sheehan
New Hampshire Department of Transportation
John O. Morton Building
P.O. Box 483 / 7 Hazen Drive
Concord, NH 03302

Re: Letters from the Easton and Franconia Selectboards
regarding RSA 228:35 and Northern Pass

Dear Commissioner Sheehan:

The Bethlehem Board of Selectmen requests that you enact RSA 228:35 "Reestablishment of Highway Boundaries" for the roads conditionally permitted by the New Hampshire Department of Transportation for use as burial corridors by the Northern Pass Project. We support the requests of the towns of Easton and Franconia in this regard in their letters to you of July 17 and July 31, 2017 respectively (Enclosures 1 and 2).

As they mention in their letters, the Right-of-Ways (ROW) along the proposed route are not standard and are often not clearly established and it seems that significant portions of the proposed underground route are of undetermined width.

The Bethlehem Selectboard believes that Bethlehem property owners along the underground route in Bethlehem do not understand the ramifications this could have on their property.

We are concerned that a survey submitted by Northern Pass claiming the ROW width it needs to install its underground transmission line could involve removing stone walls, trees, lawns, fences and gardens that private property owners believe are outside of the ROW.

We certainly agree with the Easton Selectboard's assessment of the issue: "At issue here is a private project proposing to use public roads for a highly invasive project. Its size and length are unprecedented in New Hampshire and the majority of road abutters do not know what the road width is, and therefore are unable to defend their property rights, when they even know that there is an issue of unknown width. Likely many people assume that when the State took over these roads they set a standard ROW width, which is not true. Abutters and travelers have a right to a clear determination of road widths, yet what is being proposed is a permit of a project which has not provided adequate proof of ROW widths. Even with all the relevant information in hand, some roads on the proposed route were laid out without the width of the road being specified, so there is inescapable uncertainty about the road boundaries."

We are also aware of minutes of a July 18, 2017 conference (Enclosure 3) attended by members of the Department of Transportation and Northern Pass, which highlight several troubling issues related to the accuracy of diagrams provided by Northern Pass, namely:

- a) "The right-of-way layout in Exception Request #42 does not match that shown on the previous DOT project plans."
- b) "It was identified that several Exception Request locations, had existing facilities that were incorrectly shown/described or not shown on the plans."
- c) "Ms. Esterberg noted that these errors make Department personnel wonder about the accuracy of existing facilities and the right-of-way throughout the entire route."
- d) "Mr. Rodrigue stressed that Highway Maintenance and Design Services personnel have been told to make NPT review a priority but errors and inaccuracies are making the review take longer and diverting resources from personnel's normal job responsibilities hinders highway maintenance and project development activities."
- e) "Several rejections were related to incorrect right-of-way shown on the plans with the NHDOT understanding that additional right-of-way exists which provides additional area to construct the conduct system outside the pavement."
- f) "At several locations, the plans showed conflicts with existing facilities without resolution to the conflict."

We also want to call your attention to a letter to you dated October 16, 2015 (Enclosure 4) from the law office of Mark P. Hodgdon, PLLC regarding "Petition for Aerial Road Crossings, Railroad Crossings and Underground Installations in State Maintained Highways." On page 10, which is marked at the bottom NPT_DIS 030076, it calls out Rt. 302 in Bethlehem: "The relevant portion of Rt. 302 in Bethlehem has no defined right of way width....."

We would like to direct you as well to the August 11, 2017 following motion to the SEC from the Grafton County Commissioners (Enclosure 5): "Motion to suspend the Adjudicatory Hearing until (1) the plans submitted by Northern Pass are Determined to be accurate and (2) the procedure set forth in NH RSA 228:35 to reestablish lost, uncertain or doubtful boundary limits (rights of way) for the roads associated with the underground burial of lines is followed....."

Finally, we call your attention to DOT communications of August 1 (an Inter-Department Communication) and August 11, 2017 (a letter from DOT's Melodie Esterberg to Northern Pass's Jerry Fortier) (Enclosure 6): These say that the majority of the ROW locations shown on the plans are "approximate locations only," whereas the conditions of approval require them to

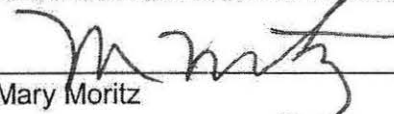
be "accurate locations defined by ground survey and all pertinent research." The August 11 letter states: "It is critical that right-of-way information on the plans is accurate as this is the basis for the Department to evaluate the proposed alignment of the facility as it relates to the Department's infrastructure."

Again, because the Bethlehem Selectboard believes that Bethlehem property owners along the underground route in Bethlehem do not understand the ramifications this could have on their property, we join the other boards to urge DOT to follow the process outlined under RSA 228:35 (below) to give property owners an opportunity to petition for redress of grievances if the determined easement width is disputed:

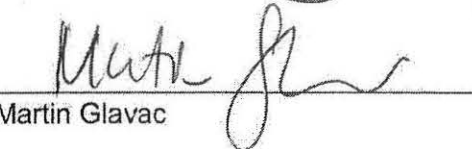
RSA 228:35 Reestablishment of Highway Boundaries. – Whenever in the opinion of the commissioner the boundary lines, limits, or location of any class I or class II highway, or any part thereof, shall have become lost, uncertain, or doubtful, he may reestablish the same as, in his opinion, they were originally established. He shall give in hand to, or send by registered mail to the last known address of, all persons claiming ownership of or interest in the land adjoining such reestablished highway and to the owners of property within the limits thereof, and file with the town clerk of the town in which the highway is located, and with the secretary of state, maps showing the boundary lines, limits, or location of such reestablished highway and such lines, boundaries, limits and location as reestablished shall be the lines, boundaries, limits and location of such highway. Any person aggrieved by the reestablishment of such lines, boundaries, limits and location may petition for the assessment of damages to the superior court in the county where the reestablished highway is located within 60 days from the date of filing of such maps with the secretary of state, and not thereafter, and the court shall assess the damages, if any, by jury, provided such reestablished lines, boundaries, limits or location are not the same as originally established. The commissioner shall pay from the funds of his department all expenses incurred hereunder and the amount of final judgment and costs.

Sincerely,

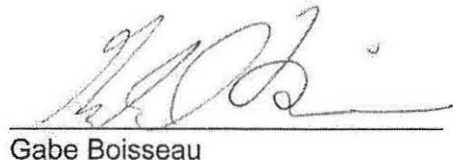
The Bethlehem Board of Selectmen


Mary Moritz


Linda Moore


Martin Glavac


Richard Ubaldo


Gabe Boisseau

8/21/17
Aime A.
Notary Public
exp 9/19/2017

- Enclosure 1: Letter of July 17, 2017 Easton Selectboard
- Enclosure 2: Letter of July 31, 2017 Franconia Selectboard
- Enclosure 3: Minutes of a July 18, 2017 conference meeting between the Department of Transportation and Northern Pass
- Enclosure 4: Letter of October 16, 2015 from the law office of Mark P. Hodgdon, PLLC
- Enclosure 5: Grafton County Commissioners August 11, 2017 "Motion to suspend the Adjudicatory Hearing until....."
- Enclosure 6: DOT communications of August 1 and August 11, 2017