

Lara J. Saffo  
COUNTY ATTORNEY  
3785 Dartmouth College Highway, Box 7  
North Haverhill, NH 03774  
603-787-6968 • Fax 603-787-2026  
email: countyattorncy@co.grafon.nh.us  
Victim/Witness Program • 603-787-2040 • viainwitnessco.grafon.nh.us

VIA EMAIL AND US MAIL

January 12, 2018

Ms. Pamela G. Monroe, Administrator  
New Hampshire Site Evaluations Committee  
21 South Fruit Street  
Suite10  
Concord, NH 03301-2429

Re: NH Site Evaluation Committee Docket No, 2015-06  
**Correction to Brief.**

Dear Ms Monroe:

Today I filed the Grafton County Commissioners closing statement. I have discovered an error that I feel I need to correct. Specifically, on page 24, I attribute a quote to the Applicant that should be attributed to a Grafton County citizen.

The relevant page is 24. The paragraph, as it currently reads, is as follows:

On April 27, 2016, the Applicant wrote the Society for the Protection of NH Forests, in response to SPNHF's letter to DES. In this letter the Applicant noted "Only a highly disturbed road location, like I-93, could accommodate burial while reducing effects of that burial and infrastructure on aquifers and wetlands."

Instead of the two times it reads "Applicant," it should read "a Grafton County resident." Accordingly, the paragraph should read:

"On April 27, 2016 a Grafton County resident wrote the Society for the Protection of NH Forests, in response to SPNHF's letter to DES. In this letter, the Grafton County resident . . . ."

Can you confirm the best manner to make this correction for the record? Should I fix it in the original and send you a new copy or should I file a motion (or both)?

Copies of this letter has been forwarded via email to all parties on the Service List.

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

Sincerely,

Lara J Saffo /s/

Lara Saffo

Cc: Thomas Getz, Esquire  
Docket No 2015-06 Service List

# OFFICE OF THE GRAFTON COUNTY ATTORNEY

**Paul V. Fitzgerald**  
DEPUTY COUNTY ATTORNEY

**OFFICE ADMINISTRATOR**  
Alison Z. Farina

**VICTIM/WITNESS PROGRAM**  
Carin E. Sillars  
Sabra K. Stephens  
Stacey D. Cass

**INVESTIGATOR**  
Wayne H. Fortier



**Lara J. Saffo**  
COUNTY ATTORNEY

3785 Dartmouth College Highway, Box 7  
North Haverhill, NH 03774  
603-787-6968 • Fax 603-787-2026  
email: countyattorney@co.grafton.nh.us

Victim/Witness Program • 603-787-2040 • victimwitness@co.grafton.nh.us

## ASSISTANT COUNTY ATTORNEYS

John A. Bell  
Mariana C. Pastore  
Tara J. Heater  
Viktoriya A. Kovalenko  
Nicholas A. Chong Yen

VIA EMAIL AND US MAIL

January 12, 2017

Ms. Pamela G. Monroe, Administrator  
New Hampshire Site Evaluations Committee  
21 South Fruit Street  
Suite 10  
Concord, NH 03301-2429

Re: NH Site Evaluation Committee Docket No, 2015-06

Dear Ms Monroe:

I attach the Final Brief of the Grafton County Commissioners for filing in the above matter.

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

Sincerely,

Lara Saffo

cc: Docket No 2015-06 Service List  
Iryna Dore, Esquire

**STATE OF NEW HAMPSHIRE  
SITE EVALUATION COMMITTEE**

**Docket No. 2015-06**

Joint Application of Northern Pass Transmission, LLC  
and Public Service Company of New Hampshire  
d/b/a Eversource Energy for a Certificate of Site and Facility

**THE GRAFTON COUNTY COMMISSIONERS' CLOSING ARGUMENT**

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## I. INTRODUCTION

The Grafton County Commissioners (hereinafter “Grafton Commissioners”) have many concerns about the Northern Pass Transmission Project. They urge the Site Evaluation Committee to deny this Application. The concerns range from financial capability concerns to the failure of the Applicants to show that the project will not have adverse effects on private rights, the environment, aesthetics, historic sites, public health and safety and the orderly development of the towns and region. Moreover, reasonable alternatives exist that would not devastate our communities.

This memorandum is designed to make points about a feature unique to Grafton County: the 52 mile burial of transmission lines throughout residential and commercial communities. This focus is not intended to minimize the significance of many other deficiencies in the Application; on the contrary, the Grafton County Commissioners have relied on other intervenors, including but not limited to the towns and citizens of Grafton County, to brief those issues and incorporate those briefs by reference.

**I. CONSTRUCTION PLANS WITH THE NECESSARY DETAIL TO EVALUATE THE IMPACT OF THE PROJECT IN GRAFTON COUNTY HAVE NOT BEEN PRESENTED TO THE SEC AS PART OF THE APPLICATION; ACCORDINGLY THE APPLICATION MUST BE DENIED.**

- a. **Once Northern Pass’ “Plan” to Bury 52 miles of Transmission Lines Under Pavement Proved Unworkable, Northern Pass Did Not Have a New Plan in Place.**

Prior to filing the Application, Northern Pass envisioned constructing above ground powerlines through all of Grafton County. When overhead powerlines through the White

Mountain National Forest proved unfeasible<sup>1</sup>, Northern Pass submitted an application stating that it would bury fifty two (52) miles of the transmission lines under the pavement of existing roads. See Application at page 8, referencing Appendix 1. At the public hearing, Northern Pass (Johnson) represented to the SEC and the public that the transmission lines would travel under the roadway stating, “Yeah, I would say for over 99.9 percent of the Project we have no plans to trim any trees, that[sic] we will try to stay in the shoulder and travel lane of the road itself.” Grafton Public Hearing (Sept. 8, 2015) 60:3-17.<sup>2</sup> Northern Pass (Johnson) also represented that the construction would easily fit within one lane of the pavement: “Yeah, the width that we’re planning on constructing is about 4 feet wide and about 4-1/2 feet deep overall. So the impact will sawcut the road or the shoulder, and we will trench it 4-feet wide and then restore it back to its capabilities once we’re completed.” Id. 60:11-17.<sup>3</sup> As it turned out, Northern Pass’ “plan” was more of a statement; the information provided with the Application was basically a line down the roadway.

While this statement/plan initially caused some Grafton County residents to breathe a sigh of relief, that relief was short lived when it became evident that this “plan” was not going to occur. Transcript Testimony of Kris Pastoriza, Day 64, PM.

Indeed, Grafton residents soon learned that when Northern Pass filed the Application on October 19, 2015, it knew its plan to bury the transmission lines under the pavement violated New Hampshire’s Utility Accommodation Manual (hereinafter “UAM”), a fact Northern Pass failed to mention in the Application or at any of the public hearings. Three days before filing the

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<sup>1</sup> Northern Pass discusses its decision to bury part of the transmission lines in the Public Hearing at Loon Mountain See Transcript to the Public Information Session, 9/8/15, 71:9-19.

<sup>2</sup> 60:11-17 references page 60, lines 11-17. This shorthand will be used throughout this memorandum.

<sup>3</sup> This faulty assumption, created by Northern Pass – that the underground portion of the project would consist of a 4 foot wide trench, underneath the pavement – has tainted the entire process, including reviews by agencies. See discussion below.



Application, Northern Pass submitted a “Petition for Aerial Road Crossings, Railroad Crossings, and Underground Installations in State Maintained Highways” to the New Hampshire Department of Transportation, asking for permission to violate the UAM by burying the powerlines under the roadway. *See* Grafton Exhibit 36, at p. 4 - 8 (NPT application 30070-77). After this Petition was denied, Northern Pass’ “Plan B” was to bury along the roadway, as opposed to under the roadway. Transcript, Day 43, AM, 79:10-11. As before, this was more a statement than a “plan.” Actual design plans were not available, and ultimately preliminary plans were not available until December of 2016, over a year after the Application was filed. *See* Application. Construction Plans dated December 2016. These plans remain so preliminary that they were completed redone the following summer. Even though they were re done, they are still considered preliminary and subject to change

**b. Under the New “Plan,” Private Landowners Along the Route Went From Being Abutters to Citizens Whose Front Yards Were Targeted for the Project.**

Under the new proposal to bury the lines along the road, private landowners went from being “abutters” (people adjacent to the road construction) to citizens whose front yards were targeted to permanently bury transmission lines.

Northern Pass has failed to acknowledge this changed status. The fact that a private individual owns the land that may<sup>4</sup> be subject to an easement or right of way does not seem to have any significance to Northern Pass. In the words of one landowner, Barbara Meyer, the current situation is worse than eminent domain because they are not even being consulted or compensated. Transcript Day 68 PM (Dec 18, 2017) 19:4 – 19. That is not New Hampshire law,

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<sup>44</sup> The legal authority Northern Pass claims it is entitled to use is in dispute, yet another reason to deny this Application.

practice or policy. Impacts on private landowners is one factor evaluated by the Site Evaluation Committee. NH RSA 162-H:1. Moreover, it is NH DOT's practice to work closely with private landowners when DOT considers expanding a roadway; fully informing the landowner of the plan before seeking approval, and always considering alternatives to negative impacts on private landowners along a route.

**c. The New "Plan B" Does Not Have Sufficient Detail to (1) Qualify as "Full and Complete Disclosure to the Public" and (2) Enable the SEC to Evaluate and Balance the Impacts.**

It is hard to imagine that the Site Evaluation Committee (hereinafter SEC) has held seventy (70) days of adjudicatory hearings and so little is known about what is going to happen in Grafton County. The amount of resources devoted to this process is staggering. Yet, when all is said and done, for 52 miles in Grafton County, reasonably adequate design plans do not exist. The ever changing "preliminary" plans provided to date lack basic details, such as boundaries and infrastructure. Landowners still do not even know how far from the pavement into their frontyards Northern Pass plans on encroaching. Over 100 Exception Requests were pending but, as of October 2, 2017, they were in a "time out stage with the DOT while [Northern Pass goes] out and re[does] the survey work." Transcript Day 43 PM October 2, 2017 at 54:5 – 9. Northern Pass is clear that even these limited details and the side of the road the transmission lines are being buried on can change. Transcript Day 43, AM, 75:3-6; 90:10-15.

The impact of Exception Requests being in "time out" is monumental. The time out made it impossible to evaluate the impacts of proposed construction. For example, some Exception Requests were shown over forests, presumably requiring the clearing of a forest. When an intervenor attempted to question Northern Pass' construction panel about this Exception Request, Northern Pass simply said that the request is withdrawn: ". . .So as I

mentioned earlier, the Project has effectively withdrawn the exception requests while we update the documents with the revised survey. So the answer would be, only those that have been approved by the DOT would be ones that you could look at." Johnson, Day 43, PM, 19:21- 20:3 (10/2/17).

Indeed, the plan, when it is out of its "time out" stage, needs to be re-presented not only to the SEC for evaluation<sup>5</sup>, but for approval to DES, because Northern Pass told previously told DES that all construction would be under previously disturbed areas. Now that the proposal extends outside of previously disturbed areas, environmental impacts, such as wetland impact, needs to be reevaluated for the entire project. *Id* at 52:22 – 24. This alone is a monumental undertaking, and reason to deny the petition as the current (required) DES approval was on a dramatically different plan. The plan to now venture into disturbed areas also needs to be re-presented to other agencies, but this can only be done once Northern Pass identifies the areas they will be disturbing. For example, NH DOT is clear that Stone Walls are an important aesthetic and cultural part of the landscape in NH. *See* Grafton Exhibit 63 (NH DOT website addressing the importance of stone walls). The stone walls need to be surveyed, but this still has

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<sup>5</sup> NH RSA 162-H established the Site Evaluation Committee and defined its purpose and procedure. NH RSA 162-H:1 states "The legislature recognizes that the selection of sites for energy facilities may have significant impacts on and benefits to the following: 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 and safety. Accordingly, the legislature finds that it is in the public interest to maintain a balance among those potential significant impacts and benefits in decisions about the siting, construction, and operation of energy facilities in New Hampshire; that undue delay in the construction of new energy facilities be avoided; that full and timely consideration of environmental consequences be provided; that all entities planning to construct facilities in the state be required to provide full and complete disclosure to the public of such plans; and that the state ensure that the construction and operation of energy facilities is treated as a significant aspect of land-use planning in which all environmental, economic, and technical issues are resolved in an integrated fashion. In furtherance of these objectives, the legislature hereby establishes a procedure for the review, approval, monitoring, and enforcement of compliance in the planning, siting, construction, and operation of energy facilities.

not been done. Day 27, 8/03/2017, AM, 99: 16-24, 100:1-24, 101: 1-5. Accordingly, the plan has not been properly vetted.<sup>6</sup>

The Application was filed in October of 2015. Over a year later, in May of 2017, when the construction panel first testified at the adjudicatory hearings, the representation was that the plans were 30% complete. Day 6, 5/01/2017, PM, 123:13-20). By October of 2017, when the construction panel was recalled, Northern Pass maintained that the underground portion of the construction plans were in the 60% design phase. Day 43 PM (Oct 2, 2017) at 51:14 – 52:21. It is impossible to understand where Northern Pass is even getting these percentages, especially since survey information is still not included in the plans that would identify how much of the non-disturbed areas are needed for construction, and the DES has not been able to evaluate a plan that involves construction in non-disturbed areas.

**d. Northern Pass' Decision Not To Obtain Surveys Made It Impossible To Draft Appropriate Construction Plans and Evaluate Impacts Properly; This Deficiency in the Application is Fatal.**

Northern Pass cannot take land by eminent domain; it is not a state actor. Thus, its construction work cannot encroach on private property without the permission of the landowner.

Northern Pass plans to construct the transmission line within the Right of Way, but has failed to properly and clearly establish this boundary on the design plans or in a survey<sup>7</sup>, a requirement under NH Law for the Application. *See also* NH DOT Right of Way Manuals (citing Pre-filed Testimony of Steven Nix 11:17 – 12:15 (referencing a requirement for a Standard

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<sup>7</sup> Whether there even is a right of way will be discussed in the next section.

Property survey)). Because SEC still cannot ensure construction is planned in a Right of Way, this Application must be denied.

Information contained in a survey is also required as part of the Application. Pursuant to SEC Rule 301.03<sup>8</sup>, the application must contained the following information “with respect to the site of the proposed energy facility and alternative locations the applicant considers available for the proposed facility” :

- (1) The location and address of the site of the proposed facility;
- (2) Site acreage, shown on an attached property map and located by scale on a U.S. Geological Survey or GIS map; [and]
- (3) The location, shown on a map, of property lines, residences, industrial buildings, and other structures and improvements within the site, on abutting property with respect to the site, and within 100 feet of the site if such distance extends beyond the boundary of any abutting property.

Northern Pass may have dodged this requirement by claiming that the project would be under pavement (which is already well defined). When the realized they needed to utilize the Right of Way in landowners’ front yards, Northern Pass hired Meridian Land Services company well qualified to complete a survey. However, Northern pass chose to limit the information for Meridian to collect. Instead of asking them to complete a survey, Northern Pass asked them to complete a document with only two lines: one line representing the edge of the pavement, and a second line representing the right of way. *See Exhibit 43* (document provided by Meridian).

Northern Pass then called it a survey, even though it does not meet the basic requirements if a

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<sup>8</sup> Northern Pass also promised to provide this information in its answers to the Grafton County Commissioners Interrogatories, specifically a promise to have a survey that would determining “the exact alignment in relations to roads, sidewalks, and buildings” and the location of existing underground utilities such as water, sewer, storm, gas, electrical where applicable. Grafton Exhibit 47. This is yet another failed representation of Northern Pass.

survey under NH law<sup>9</sup>. See NH RSA 310-A:53-74; Surveyor's Board NH Code Admin. Rules 302.

A glance at this document, Grafton Exhibit 43, shows that no one could use this document to identify Right of Ways and other necessary boundaries. The NH DOT raised this issue at the September 19, 2017 NH DOT/Northern Pass conference. See Grafton Exhibit 44. Northern Pass promised to complete and forward surveys on a rolling basis, starting in two weeks (mid October), and noted that the surveys could be completed within 6 – 8 weeks (by the end of November). Day 43 am 65:20-24; 66:1 – 24; 67:1-8.; 11:11-23; 17:2-6; 44:12 - 18. The surveys were not presented; when the record closed in December, the information was not submitted. See also CS#67, Nix PFT 12/30/2106 5:1-5).

This deficiency in the Application is notable: without this information Northern Pass can dodge the actual, factual impacts of this project. A view of the roads in the underground route shows that it is logical to presume that the survey, when finally completed, will show significant portions of property beyond the paved road and disturbed areas will be permanently impacted: it is common sense and is obvious from photographs. See Grafton Exhibit 19 & 20; see also NAPO-BP Exhibit 22, 24, 26, 29, 30, & 32 (depicting the sides of the roadways under which Northern Pass intends to bury its equipment). But Northern Pass has been able to dodge this reality by simply not completing the survey in time. This in turn dodges a concrete, realistic evaluation and discussion of all the other impacts: to the environment, aesthetics, property values, cultural resources, the list goes on and on.

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<sup>9</sup> Steven Nix PFT outlines deficiencies and blatant inaccuracies. PFT 14:16 – 20:8.

The Applicants have further not satisfied 301.03(c)(3) requiring the Applicant to provide a map showing improvements on abutting property within 100' of the site. This simply has not been done, even though the project envisions encroaching on fifty two miles of private landowners and businesses. *See e.g.* Grafton Exhibit 51 (Franconia resident has sewer and water lines that go under the road); Day 49, afternoon, 34:19-24; 35:1-9; 36:1-8 (cemetery not reflected on map). This requirement is vital; the SEC must be informed of the improvements that will be impacted by this project, such as the wells, water lines, sewer lines, septic fields, etc. Northern Pass' decision not to comply with the rules means their Application should be denied.

This Application cannot be approved without a survey, as there is no way the SEC can evaluate the extent of the impacts on private landowners otherwise. Indeed, surveys should have been provided when the application was modified to request burial along the roads, in undisturbed areas in land owned by citizens, using a DOT easement.

## **II. THE APPLICATION SHOULD BE DENIED BECAUSE THE LEGAL AUTHORITY TO CONSTRUCT, OPERATE AND MAINTAIN IN THE LOCATION REQUESTED HAS NOT BEEN ESTABLISHED.**

Pursuant to SEC Rule 301.03(6), the application must contain:

“ 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 the facility thereon. . .”

Northern Pass has simply not sustained its burden of showing that it has the legal basis to construct these lines, and has not provided a survey (or any other reliable information) that meets the requirements of the NH Survey's Board of Licensure or the NH DOT General Conditions Number 4 (Day 49, pm, 12:6-15; CFP Exhibit 493.) Northern Pass testified, without any individual testifying about the source of this information, that the layout of Route 116 was 4 rods, and the plans were made with that assumption. Day 42, PM, 16:17-19; 15:20-22. However, Northern Pass' own attorneys and the NH DOT are on the record saying portions of the Right of Way were not defined on Route 116. As just one example, regarding Route 116 in Easton and Franconia, Northern Pass' attorney stated: "the overwhelming length of Rt. 116 from Franconia to the Rt 112 intersection dates to an 1833 four rod (66') layout. However, the layout has significant gaps in description and is not well defined. Grafton Commissioners Exhibit 36, NPT DIS 030076.

Northern Pass claims that it stands ready to fight this issue in court, however being willing to fight individual landowners in court does not satisfy the requirements of Site 301.03(6); that regulation requires Northern Pass must present to the SEC sufficient evidence that location they propose to install these transmission lines are public highways or within the width of public easements<sup>10</sup>. (CS#67, Nix PFT, December 30, 2016 3:21-28; 4:5-27.) This information was not included in the initial Application<sup>11</sup>, and over two years later it still has not been provided. Day 49, PM, 45:20-24; 46:1-17; App Exhibit 130. Like the other deficiencies, this is reason alone to deny on the Application.

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<sup>10</sup> It also is indicative of how individual landowners are being treated. In order to assert their rights, they have to fight Northern Pass in court. In order to defend their residences, most resident's primary asset, they have to hire an attorney (which they cannot afford) and face the litany of Northern Pass' attorneys.



Town agree that the rights of way are unclear and have sent to the NH DOT specific requests under NH RSA 228:35 for unclear rights of way to be established, following the statutory scheme, with no response. This appears to be the legal mechanism to establish the boundaries, especially since not only have private landowners submitted good data to back their claims that Northern Pass' representations are incorrect, but NH DOT has specifically stated that it finds the rights of way to be unclear. Northern Pass could have availed itself of the NH RSA 228:35 process, but chose not to request clarity of these rights of way, again at its peril.

### **III. THE IMMENSE SCOPE OF THE PROJECT IN GRAFTON COUNTY NECESSITIES RELIABLE CONSTRUCTION PLANS BEFORE APPROVAL**

It goes without saying, but the Grafton County Commissioners would be remiss if they did not comment on the immense scope of the project. Impacts caused by the construction period, such as traffic delays, noise, and dust are glossed over by Northern Pass as "temporary." But the term temporary has new meaning when applied in the context of this Project. At a minimum, construction will be occurring for over two years at multiple sites in Grafton County. This will significantly disrupt businesses, including but not limited to tourism, and commuters for two years. Overhead lines, underground lines, transition stations, over 125 splice vaults, horizontal diagonal drilling. Each landowner and town are experiencing significant impacts individually, the cumulative effect on Grafton County cannot be overlooked as well. See Day 58 AM (Linda Lauer Pre-filed testimony at 5). The large scale construction will dramatically impact the character of the county. *Id.* Tourism will be impacted. *Id.* Commuter traffic will be disrupted. *Id.*

Property value decreases will impact Grafton County's tax base. While Northern Pass lauds its temporary increase in tax revenue, it not only is temporary, it may be nonexistent if

costly roadwork needs to be completed after Northern Pass finishes construction. This is not a hypothetical concern: Northern Pass proposes using new, yet unproven in cold weather, technology when it buries the transmission lines. Heat will dissipate from the powerlines. If this causes uneven freezing under the roadway, which seems likely it will do, the roads will need significant work.

Northern Pass' best case scenario is that they will "try" "when possible" to construct within 6 feet past the disturbed area. Putting aside that constructing within 6 feet appears unlikely, even if Northern Pass could operate within this best case scenario, it would have devastating consequences. Northern Pass' own words acknowledge the following impacts on the following roads:

A. Route 18 from the Route 302 intersection in Bethlehem to the Intersection of Route 116 in Franconia:

"... it is a narrow, rural two lane highway. Dense mature woods and old stone walls line the roadway through most of Sugar Hill. South of Streeter Pond, Route 18 is bounded to the west by Coffin Pond and the Gale River, which it follows south making work outside the roadway non-viable. As Route 18 passes Route 117, it becomes Franconia's main street, lined closely with numerous businesses and residents. Signs, fences, walls, landscaping, walkways and likely a few structures would be impacted by any attempt to utilize the margins of the right of way in this area. Due to its age, historic and archeologic features are located adjacent to this stretch, most notably the last iron works in New Hampshire."

NPT Dis 030076. This is Northern Pass' own words; the residents would note this minimizes the impact.

B. Route 116 Franconia and Easton

"Ancient layout issues aside, the road is a narrow two lane highway with modest traffic. Numerous wetlands, historic resources, water course and ponds sporadically adorn the roadside. Mature trees crowd much of its length. Stonewalls and existing utilities occupy the land just past the ditch lines and shoulders." *Id.*

C. Route 112, Easton to Woodstock

“...the road’s scenic quality would invariably be altered by the additional widening, tree removal and terrain changes necessary to place the NPT underground facility in the undisturbed areas.”

D. Route 3, Woodstock, Thornton, Campton, Plymouth and Bridgewater

“Extending south from the center of Woodstock, Rt. 3 has a long established presence in the communities it serves. This importance is reflected in a relatively densely built roadside with numerous residences, institutions, and businesses crowding the right of way along its length. Innumerable signs, landscaping, trees, curbs, parking spaces, walls and fences lie just beyond the travelled surface. A variety of water sources and rivers weave across and along the highway.

Attempting to construct a utility of this nature outside the disturbed area of the roadway is highly problematic. Construction outside the roadway’s disturbed area would unnecessarily impact these abutting properties, several of which undoubtedly have historic significance. Locating the power line in the roadway will greatly reduce impacts, construction time and public inconvenience.

Id. at NPT\_DIS 030077. Again, this is Northern Pass’ own words; residences have repeatedly voiced even more concerns. *See* Grafton Exhibit 38; *see also* countless public comments, and the testimony of all of the Grafton towns and residents. None of the towns support the Northern Pass; all have expressed serious temporary and long term impacts. *Id.*

If this was a road construction project by the NH DOT, the NH DOT would consider alternatives, and follow any alternative that would avoid the impacts on these areas. Northern Pass has not been so considerate; refusing to discuss alternatives, only willing to discuss traffic control plans and dates of construction.

**IV. GRAFTON COUNTY COMMISSIONERS REPEATEDLY RECOMMENDED BY MOTION TO DELAY THIS PROCEEDING UNTIL NORTHERN PASS COLD RECTIFY (1) THE LACK OF MEANINGFUL CONSTRUCTION PLANS AND (2) THE LACK OF ADQUATE SURVEYS; NORTHERN PASS REPEATEDLY FAILED TO TAKE ADVANGAGE OF THE OPPORTUNITY TO CORRECT THESE DEFICIENCIES.**

From the beginning of this process, the Grafton County Commissioners have had a simple question: where does Northern Pass propose to bury these lines? The answer to that question is essential in the commissioners evaluating the temporary and permanent impacts. Grafton County has asked such seemingly simple questions as, “Do you plan on digging a hole along the left side of the road, or the right?” This information was needed to analyze the criteria under NH RSA 162-H. The Commissioners requested this information in its interrogatories. Grafton Exhibit 47, *see e.g.* GCC1-1 and 1-2. In response Northern Pass provided misleading information that implied the information would be forthcoming:

The Applicants of the Northern Pass Transmission Project (“Project”) have created preliminary designing alignments for the underground route within Grafton County. These can be found in the Project’s Application: Volume X-Appendix #9 Petition for Aerial Road Crossings and underground installations in state-maintained Public Highways, pages 331-733.

It should be noted that this alignment is preliminary in nature. The Project is currently conducting geotechnical investigations and utility and ground survey which will help refine the overall project design including determining the exact alignment in relation to roads, sidewalks and buildings. Part of this engineering survey will also determine the location of existing underground utilities such as water, sewer, storm, gas, electrical, etc where applicable.

The final design will be developed over the next several months in accordance with the NH Department of Transportation Utility Accommodation Manual and will include comments received from the NH DOT during the design process. The design will include locations of the splice pits, specific distances between the pits and the depths of the line. It is expected that the detailed design will be completed by late 2016/early 2017.

Exhibit 47 GCC 1-1 (emphasis added).

At that time, the schedule called for an SEC decision before late 2016/early 2017. So the Commissioners made a reasonable request through motions: to adjourn the process. How long? The Grafton County Commissioners felt the process could begin as soon as Northern Pass provided accurate construction plans, which presumably would include surveys since that is what was represented in the answers to Interrogatories. See Grafton Exhibit 23, Motion to Order Further Responses and to Extend Intervenor Deadlines. The SEC extended the dates, with the expectation that the detailed plans and the information promised in the interrogatories would be forthcoming. Unfortunately, even with the extension of time, Northern Pass to date still has failed to provide sufficient information to Grafton County residents. The promised surveys still have not been provided.

**V. NORTHERN PASS' PROPOSAL TO DELEGATE THE SEC AUTHORITY TO A VARIETY OF NH AGENCIES IS MERELY AN EFFORT TO GET AROUND ITS FAILURE TO PROVIDE FULL AND COMPLETE DISCLOSURE AND SURVEY INFORMATION; THEY SHOULD NOT BE REWARDED FOR ITS DEFICIENCY AND SUBTERFUGE.**

**A. Northern Pass Had Every Opportunity To Comply With The SEC Rules And Provide The Surveys And Details Needed To Evaluate The Impacts Of Their Application**

Northern Pass had every opportunity to comply with the SEC rules and provide the surveys and details needed to evaluate the impacts of their Application. Having refrained from doing so, they should not be rewarded by putting this responsibility on already overburdened state agencies.

This approach puts these agencies in an untenable position. It is undisputed that DES and DOT often have varying interests. What if they disagree? Who prevails? This was expressed by the panel during testimony, when Mr Oldenberg posted this question:

Specifically for your questions around this, the example you gave is actually a very good one to talk about. How do we strike the balance between DOT's requirements to move off the road and DES requirements to keep us within the road, specifically through this aquifer. That is one of the exceptions we have asked for is to stay within the road there. We realize that that limits DOT's ability in the future, but it also maintains the environment through that aquifer. (p. 174, 10-20)

The reality is the Application's current proposal requires either impact on wetlands, or an exception to be granted to permit the burial in the roadway. However, if the burial is in the roadway, the roadway will likely be closed for significant periods of time. Northern Pass makes it sound as if DES and DOT have to reach an agreement as to who loses out in the process:

“So it is a balance, and like I say, I think these discussions will continue. Ultimately, the DOT will give us a set of conditions that we'll go back to the DES with and say, maybe this is a three-way meeting that we should have with other interested stakeholders, potentially the SEC, and decide what is the best thing overall here”. (p. 174 line 24-p. 175 lines 5-12) (Day 10)

However, that is not the case. The Application can be rejected as requiring, among other failings, too many Catch-22 choices among agencies. Since a reasonable alternative exists, i.e. using the energy coordinator down I-93, there is no reason to require New Hampshire agencies representing significant public interests to have to choose who loses out.

## **VI. ASKING THE TOWNS AND RESIDENTS IN GRAFTON COUNTY TO RELY ON NORTHERN PASS WOULD AGAIN BE ASKING THE HENS IN THE HENHOUSE TO TRUST THE FOX; IT ALSO WOULD IGNORE NORTHERN PASS' PAST TREATMENT OF TOWNS AND CITIES**

### **a. Northern Pass' Outreach To Individual Landowners Has Been Without Substance And Misleading.**

Northern Pass has lauded its outreach efforts, for reasons that are unclear to the Grafton County Commissioners. In Grafton County, the majority of this “outreach” has been to mail a

form letter to landowners and towns. *See* NPT\_DIS 183111 “Forward NH Plan letter dated March 22, 2017”. Northern Pass apparently counts each time they mailed a form letter as a contact. The form letter provides no substantive information whatsoever, but does offers to meet with landowners. *Id.* Unfortunately, the meetings have proven to be discouraging and of little substance.

When they conducted geoborings on private land, Northern Pass did not give the landowners any notice whatsoever. Day 19 AM, 12:24-13:22. Northern Pass claims they did not need to because said that the activity occurred within what Northern Pass considers to be DOT’s Right of Way. Even if that were the case, it shows a disregard of the landowners and/or abutters that makes it impossible to rely on them to protect these landowners.

Resident meetings with Northern Pass raise even more concerns. Kevin Johnson of the Gale River Motel met with the Northern Pass representatives. While they were pleasant to talk to, they knew little about the project’s impact on Mr. Johnson’s property, even though it was two years after the Application had been filed:

Of the questions that I posed to them about the scope of the work, impact and management of traffic patterns, compensation to business and property owners for damages and lost revenue, and management and drainage of water from the trench during construction; the only concrete fact that they were able to offer to me was that the trench would be between five and seven feet deep and would be 2’ 9” wide at the bottom with a width of approximately 4’ a the surface.

They were unable to answer questions about Right of Way access on my property. Being close to the Gale River Motel, they were unable to answer questions how water flooding into the construction trench would be discharged. They had no information as to the management of traffic patterns during construction. They had no information as to how commercial or residential property owners would be compensated for lost revenue or damages to property . . . other than to promise to send me a copy of the “Claim Form”. The representatives were unable to answer questions with regard to the source of the aggregate that [sic] would be used to re-fill the trench and were unable to provide any details about the ‘fluid thermal backfill’ that would be poured into the trench.

In fact, I provided more detailed information about the project to your representative pointing out a sewer line that runs under the roadway to the septic tank located eight feet from the roadway which services my residence and the water line crossing under the roadway serving my neighbors. None of these details were noted in your plans.

\* \* \*

The complete lack of knowledge and the inability to answer even the most basic questions about this project left me with even greater concerns about this project. It appears that Northern Pass and Eversource are trying to give the impression of reaching out to communities with no real substance behind the effort, I am as much in the dark about the impact of the project and the impact it will have on my business, livelihood and community-at-large as I was prior to my visit with the representatives. Grafton Exhibit 51, *Letter from Kevin Johnson, Franconia NH to Jerry Fortier, Project Director, Northern Pass Project dated October 2017.*

Northern Pass responded to this letter, again causing even more concerns. All panelists agree that as of the date of their testimony, they have received no information. Easton/Franconia Panel Day 64, PM.12/5/17.

What little information that is provided in this outreach cannot be trusted. Northern Pass admits that, in addition to telling residents in the Application and Public Hearings that the lines were being buried under the pavement, it also informed individual residents in face to face meetings that their property would not be impacted by the underground route because the transmission lines were being buried under the pavement in the road. When Northern Pass learned that these transmission lines would not be buried under the pavement, but instead in these landowner's front yards, Northern Pass did not contact them to correct the earlier statements made in these individual meetings. Northern Pass was unapologetic, and yes arrogant, testifying that it would not correct the statements they made in the meeting after the project was approved. Northern Pass did not care that their misleading information could deny these individuals the opportunity to voice their concern to the SEC about the negative impact on their property. Transcript Day 4, PM, 119:4-6. It is stunning that senior management did not even appreciate, to the slightest degree, the need to provide timely correct information to landowners,



and to correct information Northern Pass knows was incorrect. This is how Northern Pass treated the landowners that responded to their letter and arranged for a meeting. How could any landowner be expected to trust Northern Pass with their home?

**b. Northern Pass' Outreach With Towns Consists Of Offering A Memorandum Of Understanding That Had No Substance Or Protection For The Town.**

Northern Pass has complained that towns along the route are unwilling to work with them. However, the reverse is the case. Northern Pass' definition of cooperation is for towns to identify preferred dates and times for construction, as well as preferred traffic control plans. When towns wish to discuss real solutions to minimizing the negative impacts on towns, Northern Pass refuses to do so.

Northern Pass has asked towns to sign a memorandum of understanding, but a review of the proposed document shows that it is mere fluff. Moreover, towns have received incorrect information from Northern Pass. In sum, towns would be operating unwisely if it put its trust in Northern Pass.

**c. Northern Pass' Caveats And Refusal To Discuss Any Alternatives Made Discussions With Towns One Sided And Ineffective.**

Throughout the process, Northern Pass has made it clear that they refuse to consider alternative to the plan they are presenting. It is their route, or no route. This has been Northern Pass' choice, not the towns and county.

Town have reasonable solutions that would enable Northern Pass to transmit its energy without devastating the towns; simply use New Hampshire's energy corridor, which is often within eyeshot of Northern Pass' proposed route. Northern Pass has refused to even discuss this with the town; not meaningful dialogue.

The towns and county has attempted to consider alternatives that would provide a path for the energy and promote employment in NH, as well as tax increase, the alleged benefits of the project. It has been Northern Pass that has refused to engage in these discussions. Northern Pass now has to live with the consequences of restricting discussion.

**d. Northern Pass' plan for private landowners in Grafton to be compensated again is to trust them, when they have done nothing to earn this trust.**

It is undisputed that private landowners will be negatively impacted. Northern Pass' plan is for the SEC and the public to trust Northern Pass to properly evaluate proper compensation to private landowners whose land is negatively impacted. The process is simple: landowners requesting compensation fill out a claim form from Northern Pass. See Grafton Exhibit 54 (Northern Pass claim form). If a landowner contests Northern Pass's evaluation, the proposed process is to trust Northern Pass in the appeal process. It is the classic fox determining the damage to the henhouse. If a landowner is dissatisfied with Northern Pass' valuation, the resource is to hire an attorney and file a lawsuit against Northern Pass, an unreasonable option for obvious reasons.

**VII. ENVIRONMENTAL RISKS ARE SIGNIFICANT AND REASON TO DENY THIS APPLICATION.**

One significant aspect of the SEC process is a full and timely consideration of environmental consequences. NH RSA 162-H:1; NH RSA 169-8:1; see also Transcript Day 19 am (June 23, 2017) 5:20-23. This consideration has been made impossible as, after review, the Applicant continues to significantly change the plans, necessitating further review which has yet to occur.

When asked at the adjudicatory hearing whether there would be a different environmental impact if the construction went from the left side of the road to the right side of the road, Northern Pass (Carbonneau) stated the following:

“If the work is taking place in the road, in the disturbed road bed, there will be very little difference between one side of the road and the other as to what the environmental impacts are. If you’re already in disturbed road bed the environmental impacts are really minimal.”

Transcript, Day 19 am (June 23, 2017) 7:15-21. She then went on to say “most of the Project is in the disturbed road bed which may not be under tar but could be in the shoulder.” *Id.* 7:24 – 8:2. This is yet another problem with Northern Pass’ plans to date and yet another reason why this Application should be denied. Northern Pass keeps evaluating impacts to the underground route as if this project is going to be either under the pavement or in a disturbed area, and that simply is not the case. Their underlying assumption is incorrect and they know it. Significant amounts of undisturbed land will be impacted by the underground portion of the project; significant activity is going to occur in adjoining, currently undisturbed area as the adjoining disturbed area in these rural roads is simply not large enough to accommodate the project.

Because Northern Pass specifically chose NOT ask for a survey to be completed until AFTER the record closes, the true extent of undisturbed land that they propose to compromise is still unknown. Northern Pass should not be rewarded for failing to provide essential information. By not providing surveys, they are dodging the reality – that a survey will show significant impacts, including environmental impacts. Everything falls from there.

Northern Pass is saying they will “try to minimize impacts to the extent possible. If that can be done through a minor modification in the design, then certainly that would take place.”

Transcript Day 19 am 11:5-8. What is never addressed by Northern Pass is what will happen if

the Project design cause an impact, and Northern Pass can't make a minor modification? Northern Pass certainly does not expect to be precluded from continuing to construct its transmission lines. Northern Pass repeatedly makes promises to try, but the unsaid correlation is if a minor design change does not work, then the private landowner, the environment, orderly development, the historic cultural landscape, the endangered species, whatever is in the way, is out of luck. That is not how projects are evaluated.

The Commissioners know that the impact of the plan to use fluidized thermal backfill with coal fly ash will be addressed in other closing statements. It is frightening that the test case for this new technology will be 52 miles of Grafton County's land, including multiple rivers, streams, wetlands, residences with wells and businesses. See Day 37, am 9/21/17 and Day 58 11/8/17 26:17. It is of enormous concern that the use of potential contaminants was introduced so late in the game. At the January 21, 2016 Public Hearing at Loon Mountain, Northern Pass represented to the public that just sand was being used to dissipate heat. Transcript at 90-92. Specifically Attorney Iacopino specifically asked "What chemicals are in the hear-dispersing under-the-road fill? And the answer from Northern Pass was "it's sand. That's it. Just sand." Attorney Iacopino followed up: "So basically, the question is about: how do you know it won't leach-the chemicals will not leach into towns and people's older water pipes?" and Northern Pass' answer was "Right, So the answer again is there are no chemicals that will surround the cables themselves." Once again, misleading information from Northern Pass. They were either completely unfamiliar with the technology they were presenting, or they were hiding the need to use thermal Fluidized backfill, with fly ash, to dissipate heat. Either scenario does not bode well for this Project.

Regarding wetlands, the overhead and underground burial is slated to occur through wetlands. Regarding the underground burial, in issuing its permit to Northern Pass, DES assumed burial would take place within a disturbed corridor and a known right-of-way. Since neither the corridor itself, an unbuilt road, nor the roadside, is disturbed, and since the ROW width is not shown on the AOT permit, the DES permit and assessment of wetlands impacts is based on invalid assumptions in a number of areas.

On April 27, 2016, the Applicant wrote the Society for the Protection of NH Forests, in response to SPNHF's letter to DES. In this letter the Applicant noted "Only a highly disturbed road location, like I-93, could accommodate burial while reducing effects of that burial and infrastructure on aquifers and wetlands."

4/27/16 Applicant's response to SPNHF 4/21/16 letter to DES confirms this assumption:

"Even if complete burial of the Project were practicable, impacts would be less only if the burial occurred in the disturbed roadbed or shoulder of a transportation corridor. Outside of a disturbed road footprint, burial impacts could be greater than overhead structure impacts in existing transmission ROW. This would be the case, for example, along interstate highways like I-93, where DOT restrictions require infrastructure, if allowable, to be located at the edge of highway corridor far outside the disturbed roadbed."

[https://www.nhsec.nh.gov/projects/2015-06/letter-memos-correspondance/2015-06\\_2016-04-27\\_ltr\\_des\\_reply\\_spnhf\\_comments.pdf](https://www.nhsec.nh.gov/projects/2015-06/letter-memos-correspondance/2015-06_2016-04-27_ltr_des_reply_spnhf_comments.pdf)

An Evaluation of All Underground Alternatives, by Burns and McDonnell (May 31, 2016) (below), also confirms this assumption: "An all underground route has significantly more environmental impacts compared to an all overhead when when not in already disturbed roadways." Exhibit JT MUNI 1, NPT DIS 010384). It is clear by their own expert's statement that permanent disruption would occur.

JT MUNI 1, NPT DIS 010386.

**VIII. In Sum**

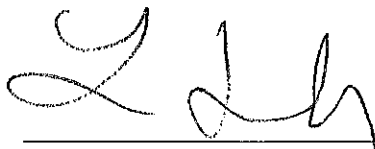
The Applicants have not met the criteria under New Hampshire law and have failed to show that the project will not have adverse effects on aesthetics, private landowners rights, the environment, historic sites, public health and safety and the orderly development of the town.

If Northern Pass would agree to bury the transmission lines down New Hampshire's energy corridor, their project would continue, energy would be transmitted, and the negative impacts would be avoided.

The Grafton Commissioners urge the SEC to consider the negative consequences, and protect the Granite State.

Respectfully Submitted,

THE GRAFTON COUNTY COMMISSIONERS



By: Lara Saffo, Grafton County Attorney  
3785 Dartmouth College Highway  
North Haverhill, NH 03774  
(603) 787-6968  
lsaffo@co.grfaton.nh.us