

Society for the Protection of New Hampshire Forests

v.

Northern Pass Transmission LLC

**PETITION FOR DECLARATORY JUDGMENT
AND PERMANENT INJUNCTIVE RELIEF**

I. Introduction

1. The Petitioner asks the Court to rule on the Respondent's purported right to excavate and permanently occupy and use a parcel of the petitioner's land in Clarksville, New Hampshire for the installation and operation of an electric power transmission line.

II. The Parties

2. Petitioner, the Society for the Protection of New Hampshire Forests (the "Forest Society") is a non-profit, publicly-supported 501(c)(3) corporation. Its mission includes protecting New Hampshire's landscapes and promoting the wise use of renewable natural resources. Among other activities, the Society acquires fee simple and conservation easement interests in real property, to offer a measure of protection to the natural environment for the benefit of the public and the state's economy. The Forest Society's headquarters is at 54 Portsmouth Street, Concord, N.H. 03301.

3. Respondent, Northern Pass Transmission LLC ("NPT") is a New Hampshire limited liability company wholly owned by Eversource Energy Transmission Ventures, LLC, which is itself a wholly-owned subsidiary of public utility holding company Eversource Energy (which also owns the Connecticut Light and Power Company, NSTAR Electric Company, Public

Service Company of New Hampshire, Western Massachusetts Electric Company, NSTAR Gas Company, and Yankee Gas Services Company). NPT's principal place of business is at Energy Park, 780 North Commercial Street, Manchester, N.H. 03101.

III. Jurisdiction and Venue

4. Venue is appropriate in the Coos County Superior Court, as the property in question is located in that county.

5. This Court has jurisdiction pursuant to RSA §§ 491:7; 491:22; and 498:1.

IV. The Northern Pass Project

6. The Northern Pass Project (the "Project") is a \$1.6 billion scheme to build a 192-mile power transmission line from the Canadian border through New Hampshire to southern New England. The proposed line would carry 1,090 megawatts of direct current ("DC") power generated by Hydro-Quebec, a Canadian power producer owned by the government of the Province of Quebec. The power would be transmitted to Franklin, New Hampshire, where a converter terminal substation would convert the electricity to alternating current ("AC"). The power would then be transmitted to a substation in Deerfield, and from there to wholesale buyers in southern New England.

7. The Project is not a traditional public utilities development. It is an "elective" merchant transmission project that is not intended to meet any identified need for additional power in New Hampshire, or to address any system reliability issues in New England generally.

8. The power transported over the new transmission line would not be available for distribution to New Hampshire residents, although in theory New Hampshire utility companies could purchase some of the power in southern New England and have it transmitted back to New

Hampshire to sell to retail customers. However, New Hampshire is a net exporter of electric power and does not need additional supply.

9. On October 19, 2015 Northern Pass submitted an application to the New Hampshire Site Evaluation Committee (“SEC”), the administrative body charged with the review, approval, monitoring and enforcement of compliance in the planning, siting, construction and operation of energy facilities. The SEC does not have authority, however, to determine private property rights. To protect its rights, the Forest Society therefore has no choice but to seek relief from this Court.

V. The Washburn Property and Route 3

10. In conjunction with its SEC application, NPT has applied to the New Hampshire Department of Transportation for an excavation permit and a license to extend a buried section of the power line within the Route 3 right-of-way in Clarksville, immediately south of the Connecticut River. The Forest Society owns the fee interest in the land located on both sides of that segment of Route 3 (the “Washburn Property”), extending south from the thread of the river approximately 443.9 feet on the easterly side of the road, and approximately 5,481.45 feet on the westerly side of the road. Under New Hampshire law, the owner of land on both sides of a road established as a public right-of-way owns all the land under the road.

11. The segment of Route 3 that passes through the Washburn Property is a four-rod road laid out by the Town of Clarksville in 1931, establishing a public right-of-way for highway use, rather than a fee interest. It is currently maintained as a Class II state road. NPT intends to bury the power line approximately fifty to seventy feet beneath the surface of the road, including underneath the river bed of the Connecticut River. Absent a deed provision to the contrary, under New Hampshire law the owner of land bounded by a river owns to the thread of the river.

12. The Forest Society has not granted NPT or any of its affiliates permission to install, use or maintain the line through the Washburn Property, either above or below ground.

VI. The Dispute

13. The proposed installation exceeds the scope of the public right-of-way in Route 3. Unlike the road itself, and unlike traditional electric transmission and distribution lines, the Northern Pass Project is not designed to serve the needs of local residents or even the needs of New Hampshire residents generally. It is a private commercial undertaking almost entirely unregulated by the New Hampshire Public Utilities Commission, and is dependent in part upon NPT using the property of others without seeking their permission or compensating them for that use. The Project will impose a permanent intrusion and physical occupation of private property without compensation.

14. The State's authority to license the installation of a utility facility within the highway right-of-way does not entitle NPT to install whatever facilities it wishes. The public easement for Route 3, as established in 1931, was never contemplated to allow excavation fifty to seventy feet beneath the surface of the ground for the sole benefit of a private business, regardless of whether the purpose of the excavation is to mine minerals or to lay an enormous extension cord across the state. NPT's proposed use is unrelated to the viatic purposes for which the road was laid out, and for which damages were paid to landowners. It would require an unreasonable expansion of the scope of the existing public easement, and constitute an entirely different and additional servitude on the land.

15. Other options exist. For example, NPT could have sought to use the interstate highway corridors, Spaulding Turnpike and part of Route 101, as the Department of Transportation recommended in a document it submitted to the SEC on September 17, 2015.

Instead, NPT chose to maximize the use of property owned or controlled by its affiliates (Eversource/PSNH), to allow those affiliates to charge Hydro-Quebec for the use of their properties and rights-of-way. Private landowners should not be forced to subsidize a scheme that would result in unjust enrichment for NPT and its affiliates.

16. For the SEC to find that NPT's application is complete, the application must show that NPT has obtained all property rights needed for the entire 192 miles of line across New Hampshire. In that application, NPT represents to the SEC that it has an indisputable legal right to use the Washburn Property. The claim against the Forest Society's rights is not merely hypothetical; it is sufficiently mature and imminent to warrant a grant of relief. It would be an unreasonable use of administrative and judicial resources to wait until the SEC has conducted what will undoubtedly be extensive hearings before a determination is made as to whether construction along the proposed route would violate existing property rights.

17. NPT's SEC application provides details and diagrams of the planned excavation of a tunnel at least 500 feet in length underneath the Connecticut River and the Washburn Property. Once executed, the excavation would irreparably harm the Forest Society's interest in the Washburn Property. The threat of harm is a present one. If it occurs, the Forest Society will have no adequate remedy at law.

COUNT I

Request for Declaratory Judgment

18. NPT's assertion of a right to install its proposed power line along Route 3 through the Washburn Property is an assertion of an adverse claim against the Forest Society's property rights. That claim is sufficiently ripe to warrant a request for a judicial determination of the parties' respective rights.

COUNT II

Request for Permanent Injunctive Relief

19. The Forest Society faces a present threat of irreparable harm, and has no adequate remedy at law.

WHEREFORE, the Forest Society requests that the Court:

A. Find and rule that NPT's proposed use of Route 3 through the Washburn Property, whether it involves a buried line or above-ground towers, exceeds the scope of the public right-of-way and cannot be lawfully undertaken without the Forest Society's permission; and

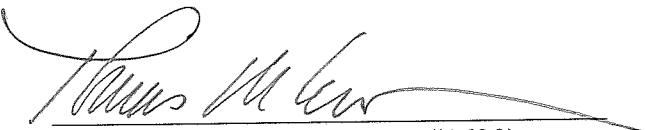
B. Issue a permanent injunction preventing NPT from conducting any activities on the Washburn Property to advance or implement the Project, without first obtaining the Forest Society's permission.

Respectfully submitted,

SOCIETY FOR THE PROTECTION OF NEW
HAMPSHIRE FORESTS

By Its Attorneys,
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Dated: November 19, 2015

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