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October 13, 2017

Sent by Email 10/13/17 to: objections-eastern-region@fs.fed.us

Mary Beth Borst, Reviewing Officer
USDA Forest Service
626 East Wisconsin Avenue, Suite 700
Milwaukee, WI 53202

Dear Ms. Borst:

This letter serves as a formal response to the Draft Record of Decision (ROD) issued August 31, 2017 by Thomas G. Wagner, then Supervisor of the White Mountain National Forest (WMNF), on the matter of issuing a Special Use Permit (SUP) for the Northern Pass Transmission project to use and occupy land owned by the Forest Service.

The Forest Society was founded in 1901, in part to assure that the large scale liquidation of New Hampshire forests in the White Mountains region never happened again. With the active engagement of the Forest Society, the Weeks Act was adopted by the U.S. Congress in 1911, creating the authority for the US Forest Service to acquire private lands for the purpose of protecting the headwaters of major river systems east of the Mississippi River. Ever since the first parcel of land was acquired for the WMNF in 1918 in the town of Benton, New Hampshire, the Forest Society has been an active partner with the Forest Service as “the people’s forest” in the White Mountains matured. We greatly value this one hundred years of collaboration. We believe that the partnerships the WMNF has established with municipalities, land owners, the forest products industry, state government and other non-government organizations like ours have been critical to what today makes the WMNF a flagship in the national forest system.

The Forest Society is filing this objection as constructive criticism from a 100 year-old partner. We have three major concerns, each detailed below, and each accompanied by a suggested remedy for curing the deficiency cited. The Forest Society concludes that the Draft ROD issued August 31 should be remanded to the WMNF Forest Supervisor for reconsideration.

1. Faulty and Incomplete Consideration of Available Alternatives

REASON FOR OBJECTION: The draft ROD fails to consider alternatives which could transmit electric power from Hydro-Quebec to consumers in New England with little or no impact on the White Mountain National Forest. For this reason alone, the Regional Forester should return the draft ROD to the WMNF Supervisor for reconsideration.

As the draft ROD notes, the Final Environmental Impact Statement (FEIS) is one factor in the larger set of issues that inform a Record of Decision. The Supervisor has the capacity to look beyond the FEIS to fully inform his/her decision. Nothing in the National Environmental Policy Act limits the Forest Supervisor to the alternatives considered in the FEIS. The draft ROD cites market supply considerations in support of its claim that the project meets three primary needs for electricity in New England: diversity of supply, low-carbon supply, and non-intermittent supply. Yet, the draft ROD avoids applying market considerations to its consideration of alternatives.

For example, one market alternative is the New England Clean Power Link (NECPL) project, which would bring the same volume of electricity from Quebec to the New England grid without crossing any land in New Hampshire. This project has all the needed federal and state permits to proceed to construction. It would completely avoid the White Mountain National Forest, and would also avoid all of the unreasonable adverse impacts that Northern Pass as proposed would have on New Hampshire.

Another market alternative is the Granite State Power Link project, which would bring 1200 megawatts of electricity to the New England grid using existing transmission line infrastructure in New Hampshire. It would not require a Forest Service SUP, and would avoid all of the unreasonable adverse impacts that Northern Pass as proposed would have on New Hampshire (including the WMNF).

These two projects are among the 46 proposals for a long term renewable electricity supply contract currently under consideration by the State of Massachusetts. Of these 46 proposals, at least six propose to use Hydro-Quebec as a supplier, including the NECPL project. Of the 46, only Northern Pass requires a Special Use Permit from the WMNF. If the marketplace is actively considering market alternatives to Northern Pass, it would seem entirely rational for the WMNF Supervisor to consider them as well in rendering this decision.

An added concern regarding the incomplete consideration of alternatives is the failure of the FEIS itself to look at alternative crossings of the international boundary. For purposes of the Department of Energy's review under NEPA, the DOE should have considered more than one border crossing to fulfill its NEPA obligation to look at practicable alternatives for the decision DOE is charged with making on the Presidential Permit. Had DOE considered other border crossings in its review, and not limited its consideration to the sole crossing the applicant requested (in Pittsburg, NH, at Hall's Stream), it is very likely that corridor alternatives completely bypassing the White Mountain National Forest may have been more thoroughly considered in the NEPA review process. For example, a crossing in Derby, Vermont, using the Interstate 91 and Interstate 93 corridors would result in an alternative that would have significantly less impact on the WMNF than the alternative proposed by the draft ROD.

REMEDY: Return the draft ROD to the WMNF Supervisor for reconsideration of alternatives that would have no impact or substantially less impact to the White Mountain National Forest than the alternatives supported by the draft ROD.

2. Faulty Assessment of Interstate 93 Corridor In Decision Rationale

Reason for Objection: The draft ROD's rationale goes to some length to debunk the feasibility of using Interstate 93, particularly through Franconia Notch, while simultaneously acknowledging that burying the line in the Interstate 93 corridor would have significantly less impact on the WMNF than the specific alternatives the draft ROD recommends be the subject of a Forest Service SUP.

This analysis is faulty on several counts:

- The land in Franconia Notch is owned by the State of New Hampshire where the WMNF Forest Supervisor has no jurisdiction. If the State of New Hampshire believes that it is inappropriate to use the Franconia Notch Parkway for co-locating a high voltage transmission line, then it should say so.
- The draft ROD states that “both the FHWA and NH DOT have expressed safety and traffic concerns with this [I-93] potential route.” The draft ROD provides no evidence of such claims. If there are written communications to WMNF or DOE from FHWA and/or NH DOT making such claims they should be referenced. If there are no such communications this language should be deleted from the ROD.
- In June 2016 the Governor of New Hampshire signed into law House Bill 626 (copy attached). This law establishes energy transmission corridors in each of four highway rights of way owned in fee by the State of New Hampshire (Interstate 93, Interstate 95, Interstate 89 and Route 101 between Manchester and I-95). In addition, this law instructs the NH DOT to update its Utility Accommodation Manual (note highlights) to streamline the process for making these facilities accessible to utility projects. The WMNF Supervisor goes to great lengths in the draft ROD to explain why alternatives “utilizing I-93 are not consistent with my understanding of NH DOT policies.” But there is no mention of HB 626 or the re-write of the Utility Accommodation Manual to accommodate the use of I-93 for project like Northern Pass.

REMEDY: The final ROD should remove all references to the suitability of Interstate-93 through Franconia Notch State Park as an inappropriate location for the Northern Pass project because 1) this is not the jurisdiction of the US Forest Service and 2) the State has adopted a new law that actually encourages I-93 to be considered by energy developers as an appropriate corridor for the location of a project like Northern Pass. The Forest Supervisor is certainly entitled to opine that he would prefer to have a project like Northern Pass disrupt 10 miles of roads on Forest Service land (as is the case with his preferred alternatives) rather than have the project only disturb 1.7 miles of Forest Service land (as would be the case if NP were to be buried within I-93 instead of Routes 18, 116 and 112). However, the draft ROD should limit its recommendations to land owned by the US Forest Service and leave siting recommendations on all other lands in the state to the NH Site Evaluation Committee.

3. **Faulty Public Interest Determination**

Reason for Objection: The draft ROD Public Interest Determination (Section 1.4.2.1) suffers from three major errors.

- The statement that “there is not currently any broad energy transmission routing policy at the federal or state level that evaluates energy transmission on a broader geographic scale” is only half true. It is accurate that there is no federal policy. As cited above, the State of NH adopted such a policy in 2016 with enactment of HB 626.
- Conclusions that the power from Quebec is low-carbon and low cost, and that it will diversify the electricity supply in New England, are not supported by presentation of facts that support such claims.

- The public interest determination totally ignores the strong public opposition that has bedeviled Northern Pass since it was first introduced to New Hampshire in October 2010. It is hard to imagine how any discussion of “public interest” and Northern Pass could exclude such broad and strong public sentiments.

We agree with the WMNF Supervisor that a buried line through the White Mountain National Forest is preferable to an overhead line. We believe the Supervisor’s initial efforts to have the EIS review buried options are commendable. However, we believe the Supervisor failed to fully address the question as to whether this proposed use of WMNF land is in the public interest.

The draft ROD Public Interest Determination concludes that the project “will benefit the public by providing low-carbon, cost-effective and diversified source of electricity for the people of New Hampshire and New England.”

- The claim that the project is “low carbon” may be accurate if the comparison is to coal or some other fossil fuel. However, carbon is not the only greenhouse gas, and there has never been a full greenhouse gas accounting for this project over its 40 year life cycle, listing all credit and all debits, and properly accounting for the time over which they accrue. The draft ROD should recognize this fact.
- The claim that this project is “cost effective” is not borne out by the facts. If NECPL can build an extension cord from Quebec to New England for \$1.2 billion, and NP can build an extension cord for \$1.6 billion, and the price of the Quebec power is the same regardless of which line carries the electrons, how is NP “cost effective”? The draft ROD should explain what it means by “cost-effective.”
- Hydro power may diversify the portfolio of New England electricity generation, but price is what drives the wholesale power market in New England. If a particular source of electricity generation cannot compete on price, it does not succeed in the ISO-NE managed wholesale market. By ignoring this essential element of how electricity is sold at the wholesale level in New England, the draft ROD concludes that the power from Quebec will actually be competitive without any consideration or analysis of how natural gas prices are currently driving the New England electricity markets.
- Northern Pass and the FEIS both argue that the carbon and cost benefits of Northern Pass as proposed are reasons for advancing the project. The New Hampshire Site Evaluation Committee has received considerable evidence calling these claims into question. Before issuing a final ROD the WMNF Supervisor should review the NH SEC record on these issues and use this review to reconsider claims made in the draft ROD.

Another shortcoming of the public interest determination in the draft ROD is the absence of any discussion about the public opposition to the project. It says nothing about how the people and communities most directly impacted by Northern Pass strongly oppose the project as proposed. It says nothing about the substantive concerns that led thousands of people to attend public scoping sessions and hearings on the EIS and to provide public comments. It says nothing about the fact that 26 of the 31 affected communities overwhelmingly passed resolutions at town meetings opposing Northern Pass. Given the decades of emphasis that the WMNF has placed on building strong community and partner

relationships, it is really quite astonishing that this 17 page draft ROD is totally silent on the public interest as the public sees it.

REMEDY: Remand the draft ROD to the WMNF Supervisor to reconsider the conclusion that low-carbon, low-cost and diversification of supply issues are thoroughly and properly assessed. In addition, the final ROD should include consideration of the strong public opposition to Northern Pass in the ROD's Public Interest Determination.

We believe this draft ROD needs considerably more work before it is finalized. We strongly encourage the Regional Forester to remand the draft decision to the WMNF Supervisor for further consideration for the reasons cited above. The WMNF, the "land of many uses," is a public asset. We should all think long and hard before we encourage these lands to be used to host and enable such an enterprise.

Sincerely,



Jane A. Difley, President/Forester

cc: Clare R. Mendelsohn, Forest Supervisor, WMNF

Enclosure: New Hampshire House Bill 626, Introduced 2015, Enacted 2016

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6Jan2016... 2326h
23Mar2016... 1080h
04/28/2016 1506s
19May2016... 1990EBA

2016 SESSION

15-0030
09/04

HOUSE BILL **626-FN-A**

AN ACT authorizing energy infrastructure development and designating energy infrastructure corridors and requiring the department of transportation to adopt an updated and revised utility accommodation manual.

SPONSORS: Rep. Suzanne Smith, Graf 8; Rep. Moffett, Merr 9; Rep. Ford, Graf 3; Rep. R. Brown, Graf 2; Rep. Chandler, Carr 1; Sen. Forrester, Dist 2; Sen. Fuller Clark, Dist 21; Sen. Bradley, Dist 3

COMMITTEE: Science, Technology and Energy

AMENDED ANALYSIS

This bill establishes procedures for approval of proposals for energy infrastructure development and designates energy infrastructure corridors. This bill is contingent upon the adoption and approval of an updated and revised department of transportation utility accommodation manual.

Explanation: Matter added to current law appears in ***bold italics***.
 Matter removed from current law appears [~~in brackets and struckthrough.~~]
 Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

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15-0030
09/04

STATE OF NEW HAMPSHIRE

In the Year of Our Lord Two Thousand Sixteen

AN ACT authorizing energy infrastructure development and designating energy infrastructure corridors and requiring the department of transportation to adopt an updated and revised utility accommodation manual.

Be it Enacted by the Senate and House of Representatives in General Court convened:

1 218:1 Statement of Purpose. The legislature recognizes that high and volatile energy costs
2 increasingly threaten the competitiveness of New Hampshire’s businesses and industries and the
3 financial resources of its electric ratepayers, and that new low-cost sources of energy are needed in
4 order to stabilize and lower wholesale and retail electric rates in New Hampshire and New
5 England. At the same time, as the state’s citizens have become more aware of the value, to
6 themselves and others, of New Hampshire’s scenic natural landscapes, clean air, and unspoiled
7 environment, it has become increasingly difficult to site and develop large-scale above-ground
8 energy transmission lines from lower-cost neighboring regions. Such projects often face
9 unacceptably high development costs, regulatory delays, and public opposition resulting from their
10 potential adverse impacts on the state’s most scenic natural landscapes, the value of adjoining and
11 nearby private properties, and the comfort, health, and safety of adjacent homeowners. The general
12 court therefore finds that it may be in the public interest for the state to designate certain “energy
13 infrastructure corridors” along, within, and under major state-owned transportation routes, for the
14 underground collocation of major energy transmission lines necessary to promote balanced economic
15 growth, reduce or mitigate high energy prices, and contribute to a cleaner and more natural
16 environment, while providing the state highway fund with market-based revenues from private
17 energy transmission companies in return for the use of such designated energy infrastructure
18 corridors. The general court intends that the energy infrastructure corridors designated under this
19 act are simply options for the siting of energy infrastructure and nothing in this act shall be
20 construed as limiting the historic accommodation of utilities in all public rights of way.

21 218:2 New Chapter; Energy Infrastructure Development and Corridors. Amend RSA by
22 inserting after chapter 162-Q the following new chapter:

CHAPTER 162-R

ENERGY INFRASTRUCTURE DEVELOPMENT AND CORRIDORS

162-R:1 Definitions. In this chapter:

26 I. “Energy infrastructure” includes high voltage DC or AC electric transmission facilities of
27 115 kV or greater, natural gas transmission lines, carbon dioxide pipelines, petroleum pipelines,

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1 and other energy transport pipelines or conduits.

2 II. “Energy infrastructure corridor” means an existing state-owned transportation right-of-
3 way within which energy infrastructure could potentially be sited underground.

4 III. “Developer” means a person or legal entity that can demonstrate to the state the
5 financial, technical, and managerial capability to engage in the development and construction of
6 energy infrastructure.

7 IV. “Project” means the development or construction of energy infrastructure subject to site
8 evaluation committee jurisdiction under RSA 162-H within an energy infrastructure corridor.

9 V. “Site evaluation committee” means the site evaluation committee established in
10 RSA 162-H:3.

11 VI. “State-owned transportation right-of-way” means a highway or railroad right-of-way on
12 land owned in fee by the state or a state agency or state authority.

13 VII. “Sufferance” means that the owner of energy infrastructure has no real property
14 interest in the right-of-way, but merely occupies and uses the public right-of-way subject to terms
15 and conditions established by the New Hampshire department of transportation.

16 162-R:2 Energy Infrastructure Corridors Designated.

17 I. In accordance with RSA 236:18, the state has the exclusive rights, insofar as they do not
18 conflict with any federal statute, rule, or regulation, to build, lease, or utilize for any public purpose
19 the space adjacent to (excluding the median) and below the toll highways and the interstate system
20 highways within the state.

21 II. The following areas, owned by the state, are designated as energy infrastructure
22 corridors:

23 (a) I-89 (between the intersection of I-93 and the Vermont border).

24 (b) I-93 (between the Massachusetts border and the Vermont border, excepting
25 approximately 1.7 miles located in the White Mountain National Forest north of Franconia Notch
26 state park).

27 (c) I-95 (between the Massachusetts border and the Maine border).

28 (d) N.H. Route 101 (between the intersection of I-93 and the intersection of I-95).

29 III. Nothing in this chapter shall require a developer of energy infrastructure to site or
30 propose to site energy infrastructure, or any part thereof, within an energy infrastructure corridor
31 designated under this chapter.

32 162-R:3 Energy Infrastructure Proposal Application Process.

33 I.(a) To initiate the application process, a developer may file with the department of
34 transportation, a request for a preliminary conceptual feasibility study, including such project-
35 specific information as the department may specify in accordance with the department’s utility
36 accommodation manual.

37 (b) Within 30 days after such study request is filed, the department shall provide

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1 written notice to the developer, with a copy to the site evaluation committee, either accepting such
2 study request as sufficiently complete to allow the department to evaluate the conceptual feasibility
3 of the proposal and submit its recommendation to the committee, or specifying the additional
4 information needed to complete its evaluation.

5 (c) Upon notice to the developer that the study request is deemed sufficiently complete
6 for its purposes under subparagraph (a), the department shall have 60 days to determine whether
7 and to what extent the proposed project route would be conceptually feasible within the applicable
8 state-owned transportation right-of-way or rights-of-way, based on department standards and
9 regulations.

10 (d) Within 60 days after notice to the developer that its submission has been deemed
11 complete, the department shall submit its report on the conceptual feasibility of the project to the
12 developer and the site evaluation committee, specifying any concerns or issues it believes the
13 committee should consider in its review of the application.

14 II. The site evaluation committee shall determine whether the application is complete, and
15 shall proceed to review a completed application under RSA 162-H.

16 162-R:4 Energy Infrastructure Proposal; Decision Criteria.

17 I. The site evaluation committee shall evaluate and render a decision on an energy
18 infrastructure proposal which chooses to use one or more designated energy infrastructure corridors
19 pursuant to the provisions of this chapter.

20 II. The site evaluation committee may approve an energy infrastructure proposal for a
21 project to be sited in whole or in part within one or more energy infrastructure corridors only if it
22 finds that the project meets the criteria set forth in RSA 162-H.

23 162-R:5 Use of Energy Infrastructure Corridors; Requirements. Development and construction
24 of energy infrastructure within an energy infrastructure corridor are governed by this section. No
25 person shall engage in development or construction of energy infrastructure within an energy
26 infrastructure corridor, unless such person is in compliance with applicable state and federal laws,
27 rules, and regulations. Any development, construction, maintenance, or use of energy
28 infrastructure within an energy infrastructure corridor shall be at the sufferance of the department
29 of transportation. All costs associated with installation, alteration, relocation (whether or not
30 required by the department), and/or protection of energy infrastructure within an energy
31 infrastructure corridor shall be the responsibility of the energy infrastructure developer or owner.

32 162-R:6 Revenues.

33 I. The department of transportation, right-of-way (ROW) appraisal bureau section, shall
34 identify an initial estimate of the range of value for the use of state-owned land or assets within a
35 designated energy infrastructure corridor and negotiate a value for such use with the developer.
36 The actual and final value shall be subject to approval by the long range capital planning and
37 utilization committee.

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1 II. All revenues generated from the use of state-owned land or assets within energy
2 infrastructure corridors designated under this chapter shall be deposited in the highway fund for
3 use solely in state transportation programs funded in whole or in part by the Federal Highway
4 Administration or other federal agencies and included in the state's 10-year transportation plan.
5 Nothing in this section shall be deemed to affect the responsibility of a developer to pay separately
6 to the site evaluation committee the fees required under RSA 162-H.

7 **218:3 Updated and Revised Utility Accommodation Manual. The department of transportation**
8 **shall update and revise its utility accommodation manual in order to provide for the optional use of**
9 **the energy infrastructure corridors designated pursuant to RSA 162-R:2. The updated and revised**
10 **manual shall be approved by the Federal Highway Administration no later than June 1, 2017.**

11 218:4 Contingency. If the updated and revised utility accommodation manual required by
12 section 3 of this act is adopted and approved by June 1, 2017, sections 1 and 2 of this act shall take
13 effect July 1, 2017. If the updated and revised utility accommodation manual is not adopted and
14 approved by June 1, 2017, sections 1 and 2 of this act shall not take effect. The commissioner of the
15 department of transportation shall certify the date of approval of the manual to the secretary of
16 state and the director of legislative services.

17 218:5 Effective Date.

18 I. Sections 1 and 2 of this act shall take effect as provided in section 4 of this act.

19 II. The remainder of this act shall take effect upon its passage.

20
21 Approved: June 9, 2016

22 Effective Date: I. Sections 1 and 2 shall take effect as provided in section 4.

23 II. Remainder shall take effect June 9, 2016