

John T. Alexander  
Biron L. Bedard <sup>1</sup>  
Ronald E. Cook <sup>2</sup>  
Arthur W. Hoover *of counsel*  
Jennifer A. Hoover <sup>3</sup>  
Frank E. Kenison  
Garry R. Lane <sup>4</sup>  
Andrew B. Livernois <sup>5</sup>  
Paul H. MacDonald <sup>6</sup>  
Michael J. Malaguti  
Thomas N. Masland  
Daniel J. Mullen  
John C. Ransmeier  
Lawrence S. Smith

# Ransmeier Spellman P.C.

ATTORNEYS AT LAW

One Capitol Street • PO Box 600  
Concord, NH 03302-0600  
*tel* 603.228.0477 • *fax* 603.224.2780  
*toll free* 800.367.0477

Profile Professional Building  
31 Mooney Street • PO Box 817  
Alton, NH 03809  
*tel* 603.875.2800 • *fax* 603.875.3394

[www.ranspell.com](http://www.ranspell.com)

February 25, 2016

Joseph S. Ransmeier  
1915-2010  
Lawrence E. Spellman  
1924-2001

<sup>1</sup> Also admitted  
in Maine

<sup>2</sup> Also admitted  
in Rhode Island

<sup>3</sup> Also admitted  
in Massachusetts

<sup>4</sup> Also admitted  
in Maine and  
Connecticut

<sup>5</sup> Also admitted  
in New York

<sup>6</sup> Also admitted  
in Vermont

## VIA FEDERAL EXPRESS

Clerk David P. Carlson  
Coos County Superior Court  
Courthouse, Suite 301  
55 School Street  
Lancaster, NH 03584

**Re: Society for the Protection of New Hampshire Forests v.  
Northern Pass Transmission LLC  
Docket No. 214-2015-CV-114**

Dear Mr. Carlson:

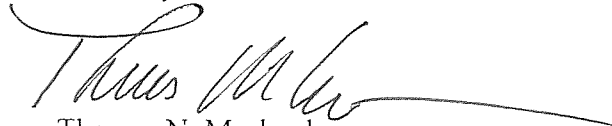
Please find enclosed a "Motion for Joinder of the State of New Hampshire Department of Transportation as Party and to Amend Petition," together with an accompanying "First Amended Petition for Declaratory Judgment and Permanent Injunctive Relief." Both of these are submitted for filing in the above-captioned matter on behalf of my client, the Society for the Protection of New Hampshire Forests.

A copy of same has been forwarded to counsel for the Respondent, Northern Pass Transmission, LLC this same day via first class mail.

Clerk David P. Carlson  
Coos County Superior Court  
Re: Society for the Protection of New Hampshire Forests v. Northern Pass Transmission LLC:  
Docket No. 214-2015-CV-114  
February 25, 2016  
Page 2

Thank you for your attention and assistance with respect to this submission.

Sincerely,

A handwritten signature in black ink, appearing to read "Thomas N. Masland", with a long horizontal flourish extending to the right.

Thomas N. Masland  
tom@ranspell.com

Enclosure/7404 069  
cc: Bruce W. Felmly, Esq.  
Mr. Will Abbott, SPNHF  
4827-1567-0062, v. 1

COÖS, SS.

SUPERIOR COURT

**Society for the Protection of New Hampshire Forests**

**v.**

**Northern Pass Transmission LLC**

**DOCKET NO. 214-2015-CV-114**

**MOTION FOR JOINDER OF THE  
STATE OF NEW HAMPSHIRE DEPARTMENT OF TRANSPORTATION  
AS PARTY AND TO AMEND PETITION**

**I. Introduction**

1. The Petitioner asks the Court for leave to join a party and to amend its Petition for Declaratory Judgment and Permanent Injunctive Relief (hereinafter the “Petition”) with respect to 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. The 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 Forest 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. The 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.

4. The Petitioner seeks leave to join the State of New Hampshire Department of Transportation (the “DOT”) as a party necessary to this action, and attaches hereto the proposed First Amended Petition for Declaratory Judgment and Permanent Injunctive Relief (the “Amended Petition”).

### **III. Procedural Position**

5. On October 19, 2015 NPT 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, with respect to the “Project” described at ¶¶ 6-9, *inter alia*, of the Petition. In conjunction with its SEC application, NPT has applied to the DOT for an excavation permit and a license to extend a buried section of a power line within the Route 3 right-of-way in Clarksville, immediately south of the Connecticut River. As NPT concedes, the Forest Society owns the fee interest in the land located on both sides of that segment of Route 3 (the “Washburn Family Forest”), 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 holds the fee interest in the land underlying the right-of-way. The proposed installation exceeds the scope of the public right-of-way in Route 3. The Forest Society has not granted NPT or any of its affiliates permission to install, use or maintain the line through the Washburn Family Forest, either above or below ground.

6. Because the SEC does not have authority to adjudicate private property rights such as use of the fee interest underlying the public right-of-way, the Forest Society is forced to seek relief from this Court in order to ascertain and protect its rights in the land lying under that segment of Route 3. For that purpose the Forest Society filed its Petition for Declaratory Judgment and Permanent Injunctive Relieve with this Court on November 19, 2015. The Petition asserts that NPT's claim of a right to install its proposed power line along Route 3 through the Washburn Family Forest, without more, exceeds the scope and is an unreasonable expansion of the public easement, and constitutes an entirely different and additional servitude on the land. As such, NPT is asserting an adverse claim against the Forest Society's property rights. Moreover, because the Forest Society faces a present threat of irreparable harm, and has no adequate remedy at law, the Forest Society's Petition seeks injunctive relief.

7. NPT filed its Answer to the Petition on December 3, 2015, and a Motion for Summary Judgment on January 4, 2016. Thereafter the Forest Society propounded upon NPT a series of Requests for Admission. NPT filed Respondent's Objections and Responses to Petitioner's Requests for Admission on January 25, 2016.

#### **IV. Request to Join the DOT as a Third Party**

8. The facts necessary to determine that the DOT is a necessary party to this action arose and became available only after NPT's filing of its Objections and Responses to Petitioner's Requests for Admission. Review of NPT's Objections and Responses reveals that

NPT specifically refers and ascribes all authority and power to the DOT for NPT's planned installation within the Route 3 right-of-way adjacent to the Washburn Family Forest. It is NPT's clear position, repeated several times throughout its Objections and Responses, that the DOT possesses "the exclusive power to authorize installation of utilities in state-maintained highways." *See, e.g.,* Objections and Responses to Petitioner's Requests for Admission at 2 (italics original; citation omitted). This contention effectively seeks to foreclose any argument by the Forest Society that the Project's installation in the Route 3 right-of-way exceeds the scope of the public easement, and is a new, different, and additional burden on the Forest Society's fee-owned land. If NPT claims that the DOT is the sole arbiter of its "right" to construct the Project as it proposes, the DOT must be joined as a party respondent so that the Court may address and resolve the fundamental property rights issue in this action.

9. In addition, NPT has conceded that "as is the normal practice of any project developer, NPT has periodically met with . . . DOT . . . to ensure that NPT understands all" of the DOT's application requirements. *See* Objections and Responses to Petitioner's Requests for Admission at 12. In order to explore and develop the scope of the DOT's authority to license the installation of the Project in the Forest Society's fee-owned land – its sole and exclusive authority, as NPT claims – it is necessary to bring the DOT into this action in order that the Court may fully and fairly rule on the Forest Society's request for equitable relief in its Petition.

10. In this case joinder of a necessary third party such as the DOT is governed by statute. RSA 514:9 provides that

Amendments in matters of substance may be permitted in any action, in any stage of the proceedings, upon such terms as the court shall deem just and reasonable, when it shall appear to the court that it is necessary for the prevention of injustice; but the rights of third persons shall not be affected thereby.

It lies within the court's discretion to allow amendments to a petition. Keshishian v. CMC Radiologists, 142 N.H. 168 (1997); McCloud v. Chalet Susse International, Inc., 119 N.H. 238 (1979). In the Keshishian case, the Court stated "the court need only allow substantive amendments if necessary to prevent injustice." While a court may deny a substantive amendment to a pleading when it introduces an entirely new cause of action or calls for substantially different evidence, that is not the case here. Due to NPT's repeated assertion that determination of the scope of its proposed actions within and under the Route 3 right-of-way – in land owned by the Forest Society – lies solely and exclusively with the DOT, it is incumbent upon this Court to grant leave to join the DOT as a necessary party to this action. See National Marine Underwriters, Inc. v. McCormick, 138 N.H. 6 (1993) (substantive amendments to pleadings are permitted when necessary for prevention of injustice).

11. RSA 514:10 speaks directly to the issue of joinder:

No action shall be abated by the plea that there are other plaintiffs or defendants who ought to be joined therein, but such persons may be made parties to the action upon such terms *as the court shall order*, and may be summoned by scire facias, or notified by publication, as the court may order; and the action shall thereafter proceed as if their names were inserted in the original writ.

(Emphasis added); *see also* Super. Ct. R. 15 (Civ.). Pursuant to RSA 514:10, it would be appropriate for the Court to grant leave to join the DOT as a party respondent to the pending action so that the present parties, as well as the DOT, should have their respective rights and obligations with respect to the proposed Project be determined and made binding. Joinder does not depend on consent. Reid v. Spadone Machine Co., 119 N.H. 198, 200 (1979).

12. Inasmuch as the Court has stayed further proceedings in the underlying action in its Order dated January 27, 2016, there is no likelihood of prejudice to NPT in granting this Motion.

13. Counsel for the Petitioner has contacted the Respondent's counsel, Attorney Bruce W. Felmly, who cannot assent to this motion.

WHEREFORE, the Forest Society respectfully requests that the Court:

A. Grant leave to the Petitioner to join the DOT as a necessary party Respondent to this action in order to determine whether NPT's proposed use of Route 3 through the Washburn Family Forest exceeds the scope of the existing public right-of-way and constitutes a new, different and additional servitude on the land, and cannot be lawfully undertaken without the Forest Society's permission; and

B. Permit the Petitioner to amend the Petition as set forth in the First Amended Petition to join the DOT as a necessary party Respondent to this action, and issue Orders of Notice to allow the Petitioner to serve the same upon the DOT; and

C. Grant such other relief as is just and equitable.



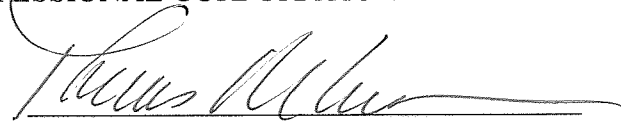
Respectfully submitted,

**SOCIETY FOR THE PROTECTION OF NEW  
HAMPSHIRE FORESTS**

By Its Attorneys,  
RANSMEIER & SPELLMAN  
PROFESSIONAL CORPORATION

Dated: *February 25, 2016*

By:



Thomas N. Masland (NHBA #1630)  
Frank E. Kenison (NHBA #1346)  
One Capitol Street  
P.O. Box 600  
Concord, NH 03302-0600  
Tel. (603) 228-0477  
[tmasland@ranspell.com](mailto:tmasland@ranspell.com)

**CERTIFICATE OF SERVICE**

I hereby certify that on this 25<sup>th</sup> day of February, 2016, a copy of the foregoing pleading was sent by first class mail to counsel for the Respondent, Bruce W. Felmly and Adam M. Hamel, McLane Middleton, Professional Association, 900 Elm Street, P.O. Box 326, Manchester, NH 03105-0326.



Thomas N. Masland

COÖS, SS.

SUPERIOR COURT

**Society for the Protection of New Hampshire Forests**

**v.**

**Northern Pass Transmission LLC**

**and**

**State of New Hampshire Department of Transportation**

**DOCKET NO. 214-2015-CV-114**

**FIRST AMENDED 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.

4. The New Hampshire Department of Transportation (“DOT”) is a governmental agency of the State of New Hampshire, with a business address of 7 Hazen Drive, Concord, N.H. 03301.

### **III. Jurisdiction and Venue**

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

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

### **IV. The Northern Pass Project**

7. 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.

8. 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.

9. 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.

10. 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**

11. 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.

12. 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 I 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.

13. 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**

14. 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.

15. 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.

16. 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.

17. 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.

18. 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.

## **VII. The Department of Transportation**

19. In a November 13, 2015 letter to the SEC, the DOT states that: “The Department has had numerous meetings with representatives of Northern Pass Transmission, LLC and their consultants. Given the complex nature of this project, the Department anticipates executing a Use and Occupancy Agreement for the entire project within state-maintained rights-of-way.” (*Compare* NPT’s denial of Request for Admission 11.)

20. NPT has made clear its view that the New Hampshire Department of Transportation has “the *exclusive* power to authorize installation of utilities in state-maintained highways.” *See* Objections and Responses to Request for Admission, p. 2 (emphasis in original); *see also* Answer, ¶¶ 7, 8, 10, 11, 12, 14, 15. If accepted at face value—given the DOT’s lack of jurisdiction to resolve disputes involving property rights—this contention would foreclose any landowner from attempting to protect his rights by arguing that the Project’s installation in the highway right-of-way exceeds the scope of the existing public easement.

21. In light of NPT’s insistence that the DOT is solely responsible for all decisions about placing electric transmission lines in the public way, the Forest Society must add the DOT as a respondent in this action. The Forest Society alleges that the excavation and installation of the proposed electric merchant transmission line on Forest Society land will exceed the scope of the Route 3 highway easement. If that is correct, the DOT will effectively be exercising eminent domain authority on NPT’s behalf, contrary to both constitutional and statutory provisions.

22. The 2006 amendment of the New Hampshire State Constitution provides : “No part of a person’s property shall be taken by eminent domain and transferred, directly or indirectly, to another person if the taking is for the purpose of private development or other private use of the property.” N.H. Constitution, Pt. 1, Art. 12-a. New Hampshire RSA 371:1

provides: “No public utility may petition for permission to take private land or property rights for the construction or operation of . . . an electric transmission project not eligible for regional cost allocation, for either local or regional transmission tariffs, by ISO--New England or its successor regional system operator.”

23. To the extent that granting NPT a license results in a use that exceeds the scope of the highway easement and thereby imposes a new and additional servitude on the land, that action will constitute a taking of private property that must be compensated by the DOT pursuant to RSA §§ 231:167, 231:15-20, and 498-A:1. By so doing, the DOT will be exercising the power of eminent domain for NPT’s benefit which authority NPT itself does not lawfully possess.

### **COUNT I**

#### **Request for Declaratory Judgment**

23. 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**

24. 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:



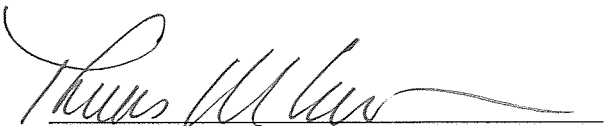
- A. Find and rule that NPT's proposed use of Route 3 through the Washburn Property, whether it involves a buried line or above-ground towers, exceeds the scope of the public right-of-way and cannot be lawfully undertaken without the Forest Society's permission;
- B. Issue a permanent injunction preventing NPT from conducting any activities on the Washburn Property to advance or implement the Project, without first obtaining the Forest Society's permission;
- C. Issue an order enjoining the DOT from helping NPT circumvent Pt. 1, Art. 12-a of the New Hampshire Constitution and RSA 371:1 by issuing NPT a license to excavate on the Washburn Property to install an electric transmission line, and paying condemnation damages that NPT itself cannot lawfully pay; and
- D. Grant such other relief as may be just and equitable.

Respectfully submitted,

SOCIETY FOR THE PROTECTION OF NEW  
HAMPSHIRE FORESTS

By Its Attorneys,  
RANSMEIER & SPELLMAN  
PROFESSIONAL CORPORATION

Dated: February 25, 2016

By: 

Thomas N. Masland (NHBA #1630)  
Frank E. Kenison (NHBA #1346)  
One Capitol Street  
P.O. Box 600  
Concord, NH 03302-0600  
Tel. (603) 228-0477  
[tmasland@ranspell.com](mailto:tmasland@ranspell.com)