

COÖS, ss.

THE STATE OF NEW HAMPSHIRE

SUPERIOR COURT

Docket No. 214-2015-CV-114

Society for the Protection of New Hampshire Forests

v.

Northern Pass Transmission, LLC

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

The Respondent, Northern Pass Transmission, LLC (“NPT”), through its counsel, McLane Middleton, Professional Association, answers the Petition of the Society for the Protection of New Hampshire Forests (“SPNHF”) for Declaratory Judgment and Permanent Injunctive Relief as follows:

**I. Introduction**

1. No response is required to this introductory paragraph. To the extent that a response is required, the Petition speaks for itself.

**II. The Parties**

2. NPT admits the allegations in this paragraph relating to the location of SPNHF’s headquarters and its status as a non-profit 501(c)(3) corporation. NPT is without sufficient information to admit or deny the remaining allegations in this paragraph.

3. Admitted.

**III. Jurisdiction and Venue**

4. Admitted.

5. Admitted.

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

6. NPT denies the characterizations in Paragraph 6 of the Northern Pass Transmission Project as a “scheme.” NPT admits that Paragraph 6 contains a very basic, but incomplete, description of the elements of the proposal to transmit power, including the projected costs.

7. NPT denies the allegations in Paragraph 7 as stated, including the claim that the Northern Pass Transmission Project is not a “traditional” public utilities development. By way of further answer, NPT states that, pursuant to well-established New Hampshire legal principles, the approval of its proposed use of the public right-of-way in the portion of Route 3 at issue, which is within the exclusive jurisdiction of the Department of Transportation, is not dependent upon the proposed project addressing specified needs for additional power supplies or system issues.

8. NPT denies the allegations in Paragraph 8 as stated. By way of further answer, NPT states that, pursuant to well-established New Hampshire legal principles, the approval of its proposed use of the public right-of-way in the portion of Route 3 at issue, which is within the exclusive jurisdiction of the Department of Transportation, is not dependent upon a specific need for or the flow of power over the proposed transmission line.

9. NPT admits that it submitted an application to the New Hampshire Site Evaluation Committee (“SEC”) on October 19, 2015. The authority of the SEC is a matter of law, prescribed by statute. *See RSA 162-H:1, et seq.* The SEC’s review of NPT’s application is not before this Court. The remaining allegations in this paragraph are denied.

## V. The Washburn Property and Route 3

10. NPT admits that it has made an application to the Department of Transportation to install an electric transmission line in the portion of Route 3 at issue here, and elsewhere. That application, which is not before this Court, speaks for itself. NPT admits the allegations in the second sentence of Paragraph 10. The last sentence in this paragraph states a conclusion of law, which NPT denies as stated. By way of further answer, NPT states that utilities have long been recognized as appropriate users of public highway easements, and the use of public highways for the installation of underground conduits and cables is expressly authorized by statute, subject to the exclusive jurisdiction in the Department of Transportation to license such uses. *See* RSA 231:160 & 161.

11. NPT admits that the section of Route 3 at issue is a four-rod road laid out by the Town of Clarksville in 1931 as a public highway easement, and not fee simple ownership. NPT denies that Route 3 is a Class II state road. By way of further answer, NPT states that Route 3 is a Class I highway, and that the Department of Transportation has jurisdiction to authorize the erection or installation of utility poles, structures, conduits, cables or wires in, under or across Class I and state maintained portions of Class II highways. RSA 231:161, I (c). NPT admits that it intends to install a power line under the section of Route 3 at issue. The last sentence in this paragraph states a conclusion of law, which NPT denies as stated.

12. NPT admits that SPNHF has not granted NPT or its affiliates permission to install underground electric utilities on the property at issue. By way of further answer, NPT states that SPNHF's permission is not required, as the New Hampshire Department of Transportation is the sole authority for granting permission to install the utilities at issue within the public right-of-way.

## VI. The Dispute

13. Denied. By way of further answer, NPT states that, under New Hampshire law, the use of a public right-of-way by utilities is not dependent on abutting landowners approving of the use, or directly benefitting from it. *See King v. Town of Lyme*, 126 N.H. 279 (1985). Regardless, the Northern Pass Transmission Project provides a substantial benefit to New Hampshire through the increased availability of clean, low cost hydro-electric power to the entire New England power grid, among other substantial New Hampshire-specific benefits. Finally, the Northern Pass Transmission Project, and its use of a public right-of-way is completely consistent with New Hampshire law, and is not a taking or occupation of private land without compensation.

14. Denied. By way of further answer, NPT states that the Petitioner's commentary on the intentions of the original highway construction, and the supposed permitted uses, is completely at odds with New Hampshire law, which expressly authorizes the installation of underground conduits and cables in public highways, and vests exclusive jurisdiction in the Department of Transportation to license such uses. *See RSA 231:160 & 161*.

15. Denied. By way of further response, NPT states that the availability of other possible alternatives for placement of the proposed transmission lines does not affect the issue of whether the Department of Transportation has the exclusive authority to license NPT's proposed use of the right-of-way at issue, which authority the Department of Transportation clearly has. Even if the availability of alternatives were relevant, interstate highways, Route 101 and the Spaulding Turnpike are not appropriate or viable alternatives to the subject location under Route 3.

16. Denied. By way of further response, NPT states that the SEC's consideration of NPT's application to that body is not before this Court. NPT admits that the Court has jurisdiction to adjudicate SPNHF's request for declaratory judgment. NPT denies that there is any legal basis for permanent injunctive relief in favor of SPNHF.

17. Denied. By way of further answer, NPT states that its application to the SEC, the determination of which is not a matter before this Court, speaks for itself. NPT further states that there is no legal basis for permanent injunctive relief in favor of SPNHF.

**COUNT I**  
**Request for Declaratory Judgment**

18. NPT admits that SPNHF has alleged that there is a dispute as to the parties' present legal or equitable rights bearing on the property at issue, such that the Court has jurisdiction to adjudicate SPNHF's request for declaratory judgment.

**COUNT II**  
**Request for Permanent Injunctive Relief**

19. Denied.

**AFFIRMATIVE DEFENSES**

NPT asserts the following as its affirmative defenses to SPNHF's claim for permanent injunctive relief:

1. SPNHF has failed to state a claim for which injunctive relief can be granted.
2. SPNHF's claim for injunctive relief is barred by the doctrines of waiver and estoppel.
3. SPNHF has failed to exhaust its administrative remedies.
4. SPNHF's claim for injunctive relief is barred by the doctrine of unclean hands.
5. SPNHF's claim for injunctive relief is barred by laches.

WHEREFORE, Northern Pass Transmission, LLC respectfully requests that the Court:

- A. Adjudicate SPNHF's request for declaratory judgment, on an expedited basis, by scheduling a structuring conference at the Court's earliest convenience, and setting an expedited schedule for briefing, oral argument and determination of the issue;
- B. After briefing and hearing, grant judgment for NPT on SPNHF's request for declaratory judgment, confirming and declaring that the New Hampshire Department of Transportation has the exclusive authority to grant NPT the permission to make the use proposed, and that SPNHF's permission is not required;
- C. Deny SPNHF's request for permanent injunctive relief; and
- D. Grant such other relief as is just.

Respectfully submitted,

NORTHERN PASS TRANSMISSION, LLC

By their Attorneys,

McLANE MIDDLETON,  
PROFESSIONAL ASSOCIATION

Dated: 12/3/2015

By:   
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**Certificate of Service**

I hereby certify that on this 3<sup>rd</sup> day of December, 2015, a copy of the foregoing pleading was sent by First Class Mail to counsel for the Petitioner, Thomas N. Masland and Frank E. Kenison, Ransmeier & Spellman, Professional Corporation, One Capitol Street, P.O. Box 600, Concord, NH 03302-0600.

  
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Bruce W. Felmly