

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

**NORTHERN PASS TRANSMISSION, LLC'S
MOTION FOR SUMMARY JUDGMENT**

NOW COMES the Respondent, Northern Pass Transmission, LLC (“NPT”), through its attorneys, McLane Middleton, Professional Association, and hereby moves for summary judgment in its favor as to all claims asserted by the Petitioner, the Society for the Protection of New Hampshire Forests (“SPNHF”), in its Petition for Declaratory Judgment and Permanent Injunctive Relief. In favor of this Motion, NPT states as follows:

1. This action arises out of NPT’s plan, known as the Northern Pass Project (the “Project”), to deliver 1,090 MW of clean, renewable electricity to New England and New Hampshire through a transmission line (and related facilities) extending approximately 192 miles from the international border between Canada and Pittsburg, New Hampshire to Deerfield, New Hampshire.

2. The Petitioner, SPNHF, is the owner of land on both sides of a portion of Route 3 in Clarksville, New Hampshire. As part of the Project, NPT plans to bury a portion of the transmission line in the bedrock fifty to seventy feet below the portion of Route 3 that runs through SPNHF’s property, underneath the existing bridge footings in the segment of Route 3 at issue.

3. In its Petition, SPHNF is seeking a declaratory judgment that NPT's proposed use of Route 3 exceeds the scope of the public right-of-way easement, and cannot be legally undertaken without SPNHF's permission. SPNHF also seeks a permanent injunction preventing NPT from conducting activities on the portion of Route 3 running through its property in furtherance of the Project without first obtaining SPNHF's permission.

4. As explained in more detail in the supporting memorandum of law being filed with this Motion, there is no genuine issue as to any material fact, and NPT is entitled to judgment as a matter of law. NPT's proposed use is squarely within the scope of the easement because New Hampshire statutory law specifically permits the use of state highway rights-of-way for underground utilities. Moreover, SPNHF's permission for the proposed use is not required because state statute endows the New Hampshire Department of Transportation ("DOT") with the exclusive authority to grant permission to make such use of state highway right-of-ways.

5. Accordingly, the Court should grant NPT's Motion for Summary Judgment, and rule that, as a matter of law, NPT's proposed use of the state highway right-of-way within the portion of Route 3 that runs through SPHNF's property is within the scope of the easement, and that SPHNF's permission is not required, because the DOT has the exclusive power to authorize the proposed use.

6. NPT attaches hereto, and incorporates herein by this reference, its supporting Memorandum of Law, and Affidavit of Marvin P. Bellis, Esquire, with exhibits.

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

- A. Grant NPT's Motion for Summary Judgment, and rule that NPT's proposed use of Route 3 is within the scope of the easement, and that SPNHF's permission is not required because the DOT has exclusive power to authorize the proposed use;
- B. Deny SPHNF's requests for declaratory judgment and permanent injunctive relief; and
- C. Grant such other relief as is just.

Respectfully submitted,

NORTHERN PASS TRANSMISSION, LLC

By its Attorneys,

McLANE MIDDLETON,
PROFESSIONAL ASSOCIATION

Dated: Jan. 4, 2016

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Certificate of Service

I hereby certify that on this 4 day of January, 2016, 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.

Bruce W. Felmly
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