COMMENTS OF NORTHERN PASS TRANSMISSION LLC
ON DRAFT ENVIRONMENTAL IMPACT STATEMENT
WHITE MOUNTAIN NATIONAL FOREST
AND FRANCONIA NOTCH

In October 2015, Northern Pass Transmission, LLC ("Northern Pass" or the "Project") advised the U.S. Department of Energy ("DOE") and the U.S. Forest Service ("Forest Service") that its now proposed transmission route through the White Mountain National Forest ("WMNF" or "Forest") is the route that has been designated Alternative 7 in the Supplement to the Draft Environmental Impact Statement ("Supplement"). Northern Pass supports Alternative 7 in lieu of its previously proposed route design, which the Draft Environmental Impact Statement ("DEIS") designates as Alternative 2. Northern Pass is no longer pursuing Alternative 2. Under Alternative 7, within the WMNF, the transmission line would be located aboveground for less than a mile in an existing transmission line corridor held by Public Service Company of New Hampshire dba Eversource Energy ("PSNH"), near Stark, and underground within the New Hampshire Route 112 and Route 116 corridors for the remainder of the route through the WMNF. The purpose of this Comment is to address those matters in the DEIS and the Supplement that relate specifically to the portion of the Project that is proposed to be located within the Forest.

A. Alternative 7 of the Supplement Should Be the Forest Service's and DOE's Preferred Alternative Through the WMNF

1. Alternative 7 Is Consistent with the WMNF Forest Plan

Alternative 7 should be the Forest Service's preferred alternative for the Project because Alternative 7 is consistent with the WMNF Forest Plan. The same cannot be said of many of the other alternatives, which would require either amendments to the WMNF Forest Plan or revisions to the alternative in order for the Forest Service to adopt the alternative. Specifically, within the WMNF, the route alignment for Alternative 7 is almost entirely underground along an existing right-of-way ("ROW") containing public highways and has only a small portion located aboveground within an existing ROW held by PSNH in Stark, New Hampshire. Thus, Alternative 7 is consistent with the requirements of the WMNF Forest Plan's Management Standards ("Management Standards"), including those regarding recreation,[1] because: (i) activities and uses within the existing PSNH ROW are subject only to the deed restrictions that pre-date the WMNF; and (ii) Management Standard S-3, which relates to traversing the Appalachian Trail ("AT"), does not apply to an *underground* utility line in an existing roadway that does not impair or implicate the aesthetic and recreational experience of the AT.

[1] *See* Recreation General Standard S-2 and Management Standard S-3 (specific to traversing the AT, including those under Management Area 8.3 ("MA 8.3"). *Compare* Supplement at 11; DEIS Appendix F at F-27–30.

i. Management Standards Do Not Apply in the Area of the Existing PSNH ROW

Northern Pass agrees with the conclusion in the DEIS that Management Standards do not apply to the portion of the Project that would be located in the area of the existing, private PSNH ROW – i.e., the portion of the proposed transmission line near Stark. The Forest Service purchased the WMNF pursuant to its Weeks Act authority, and under the Weeks Act, the Forest Service cannot regulate activities within the scope of an outstanding right. An outstanding right is a right that existed prior to the time of the Forest Service's acquisition of the relevant lands. *See Minard Run Oil Co. v. United States Forest Service*, 670 F.3d 236, 251 (3d Cir. 2011); *see also* Forest Service Manual 2734.2 ("[t]he holder of outstanding rights perfected on acquired land prior to Forest Service acquisition . . . may exercise those rights without obtaining a special use authorization, unless the document creating the rights provides for an additional authorization").

Because the PSNH ROW, a private interest held by PSNH, pre-dates the United States' acquisition of the WMNF under the Weeks Act and the creation of the WMNF Forest Plan, all activities and uses occurring within the ROW are governed by the existing deed or other governing document. *See* DEIS at 3-115; *see also* DEIS at F-27 (stating that portions of the existing PSNH transmission route are managed consistent with deed transfer language, not with Management Standards). Northern Pass agrees with the Forest Service that, when an "existing line was constructed on private land that subsequently was purchased by the Federal government to become part of the [National Forest Service] . . . the line is an easement (property right) that remains in effect," and the "standards and guidelines in the Forest Plan would not apply." DEIS at F-1.

ii. As the DEIS Acknowledges, Management Standard S-3 Related to the AT Does Not Apply to An Underground Utility

In developing the WMNF Forest Plan Management Standards, the Forest Service crafted Management Standards applicable to the AT (e.g., MA 8.3) with the purpose of maintaining the recreational experience and visual character of the setting.[2] Specifically, the Forest Service's purpose in developing the specific Management Standards applicable to the AT was to "[p]rovide for the conservation and enjoyment of the nationally significant scenic, historic, natural, and cultural qualities of the land through which the trail passes; [p]rovide opportunities for high quality outdoor recreation experiences, including a sense of remoteness and solitude; and [r]ecognize and strengthen the level of partnership, cooperation and volunteer efforts integral to AT management."[3]

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[2] WMNF Forest Plan at 3-45; *see also* MA 8.3, Management Standard S-1, S-2, S-3.

[3] *See* WMNF Forest Plan at 3-45.

To effectuate this purpose, the Forest Service manages the AT to maintain the desired condition of the lands by assessing the appropriate "development levels and levels of use" on a case-by-case basis. *See id.* ("Development levels and levels of use will vary by location, but the management area will emphasize a remote backcountry recreation experience in a predominantly natural or natural-appearing landscape."). With respect to utility development, the WMNF Forest Plan states that "new utility lines or rights-of-way are prohibited [in WMNF MA 8.3] unless they represent the only feasible and prudent alternative to meet an overriding public need."[4] Importantly, however, as the Forest Service itself noted in the DEIS, the Forest Service's intended purpose behind Management Standard S-3 "is to maintain the recreational experience and visual character of the *setting and therefore it only relates to aboveground utility lines and clearing of rights-of-way*." DEIS at F-28 (emphasis added); *see* WMNF Forest Plan, at 3-46 ("Recreation impacts will be managed to protect cultural and natural resources and to minimize visual disturbance."). By ensuring "burial on the WMNF," and by ensuring that any "aboveground portions would be in areas authorized under an existing easement that gives the easement holder the right to construct new utility lines," Alternative 7 will not permanently alter or disturb the landscape, and thus Management Standard S-3 does not apply. DEIS at F-28.

Importantly, the underground utility line will be located in an existing ROW, not a new one. Following construction, the underground utility line will not be visible, and the appearance of the existing roadway corridor will be restored to pre-construction conditions. Thus, any construction impacts will be of limited duration and occur in an existing roadway with existing traffic and its related impacts to the recreational and aesthetic benefits of the AT. For these reasons, as noted in the DEIS, Management Standard S-3 does not apply to Alternative 7. DEIS at F-30.

[4] WMNF Forest Plan, at 3-48 (Management Standard S-3). As Northern Pass has previously explained, even if Management Standard S-3 applied, the Project would satisfy the Standard because an overriding public need exists to provide clean, reliable, and low-carbon energy to New England. Alternative 7 will provide 1,090 megawatts ("MW") of clean, low-carbon, base-load power to New England. The 1,090 MW of power the Project will be able to deliver is approximately 98 percent hydropower. Thus, the Project will reduce New England's GHG emissions by reducing the region's reliance on fossil fuel-fired power. DEIS at S-4. Additionally, Alternative 7 will provide reliably sourced, diversified baseload power to the New England electric grid,[4] reducing congestion, mitigating overloads, and diversifying power resources. *High Sierra Hikers Assn. v. Weingardt*, 521 F. Supp. 2d 1065, 1079 (N.D. Cal. 2007); *Northern Pass Transmission LLC*, 134 FERC ¶ 61,095 at P26, Dkt. No. ER11-2377-000 (2011). *See also First Iowa Hydro-Electric Cooperative v. FPC*, 328 U.S. 152, 171−74, 180 (1946) (holding that there was an overriding public interest in implementing the Federal Power Act, and the federal interests identified in the Act included reduced energy costs); 33 C.F.R. § 320.4(j)(2) (identifying "national energy needs" as a significant issue of overriding national importance for the U.S. Army Corps of Engineers).

B. Alternative 7 Has the Same or Lower Potential Impacts in the WMNF As Many of the Other Alternatives

As noted above (and discussed in further detail below), among the reasonable alternatives,[5] Alternative 7 is the most environmentally protective.

Visual impact reductions. In its separately submitted Comment on the Visual Impact Analysis contained in the DEIS, Northern Pass has outlined the many ways in which the DEIS and the Supplement overstate the visual impact of the Project. This is particularly true with respect to Alternative 7 as it affects the WMNF given that Alternative 7 entails placing virtually the entire portion of the line that passes through the WMNF underground. This all but eliminates any meaningful visual impact in the Forest. As the DEIS and Supplement recognize, Alternative 7 is "consistent with all [Scenery Integrity Objectives] because it would be buried within the WMNF," significantly decreasing the Project's impact in the WMNF and near the AT. *See* DEIS at 4-370; s*ee also* Supplement, Table 2, at 5.

Land Use Impacts. Impacts on land use under Alternative 7 would be "similar to or less than" the impacts of the other Alternatives. Supplement at 11. Northern Pass agrees with the DEIS that, in the WMNF, there would be no long-term impacts on land use because Alternative 7 "would traverse the WMNF within roadway corridors" and "these areas would be restored to their pre-construction condition and would continue their existing use as roadway corridors." DEIS at 4-402 (discussing the same route under Alternative 4b through the WMNF); *see also* Supplement at 11. Alternative 7 also eliminates the need to construct a helicopter landing pad in the WMNF to facilitate construction and maintenance of the Project.[6] The projected number of acres subject to land use conversion under Alternative 7 is identical to that projected under five (5) of the other Alternatives. Supplement, Table 9. Further, Alternative 7 is consistent with the Management Standards for the WMNF. Supplement, Table 9, at 11. Northern Pass likewise agrees with the conclusion of the DEIS that Alternative 7 would have no impacts on conservation lands or protected rivers. DEIS at 4-402 (discussing the same route under Alternative 4b through the WMNF).

Recreation impact reductions. Recreational impacts under Alternative 7 would be "similar to or less than" the impacts of the other Alternatives. Supplement at 7. Alternative 7 includes a greater length of underground cable, resulting in a reduced above-ground effect on recreational sites and activities. Overall, other proposed Alternatives – including Alternatives 3, 5a, 5b and 5c – would have significantly greater impacts across-the-board, including increased potential for short-term construction impacts and long-term visual impacts from an increased number of above-ground structures. Supplement, Tables 5 and 6, at 8. Again, because the

[5] As Northern Pass has explained on numerous occasions, an all-underground option is not financially feasible.

[6] *Compare, e.g.*, DEIS at 2-14, 4-2, 4-91, 4-219, 4-226.

Project will be underground in public roadways through the WMNF, there will be no meaningful impact on recreation, other than a potential short-term impact during construction.

AT impact reductions. Alternative 7's impact on the AT would be "similar to or less than" the impacts of the other Alternatives. Supplement at 7. Alternative 7's minimally invasive underground cable would only impact small portions of the AT, and even those areas of limited disturbance would be appropriately co-located within already-impacted areas. *See* DEIS at 4-383, F-29 (requiring new utility lines to be "co-located" with areas already impacted by roads and utility lines). The construction impacts on the AT from Alternative 7 would be short-term and identical to the impacts of all other Alternatives. Supplement, Table 5, at 8.

Other environmental considerations/reduced impacts. Other environmental impacts under Alternative 7 are likewise similar to or less than those under several of the other Alternatives. For example, Alternative 7's increased use of underground cables reduces impacts on wildlife and vegetation when compared to other alternatives. Supplement at 16–17. Additionally, out of all the alternatives, Alternative 7's underground lines provide the least amount of impairment to river crossings and vernal pools. Supplement, Table 19, at 21. Further, the underground cable would produce no corona noise. Supplement at 12. Importantly, Alternative 7 also provides CO_2 reductions related to operations that identical to all but two of the other action Alternatives (both of which are overhead alternatives and would cause more impacts to recreation, visual aesthetics, and the AT than Alternative 7), while simultaneously imposing significantly less construction emissions of NOx, CO, and CO_2 than other alternatives. Supplement, Table 14, at 15. Overall, the underground portions of Alternative 7 "would impose the fewest environmental impacts due to the lack of visual impacts and use of previously-disturbed roadways." Supplement at 23.

In short, Northern Pass agrees with and supports the conclusion in the Supplement that "[t]he portions of Alternative 7 that would be constructed underground along existing roadways [within the WMNF] would impose the fewest environmental impacts due to the lack of visual impacts and use of previously-disturbed roadway corridors." Supplement at 23.

C. Alternatives Involving Construction Along I-93 Should Not Be Selected

Certain stakeholders have argued that, if the Project is approved, DOE and the Forest Service should select Alternative 4a, 5a, or 6a, each of which places the transmission line underground along existing route I-93 through the Franconia Notch (the "Franconia Notch Parkway"). This routing is not feasible, would impose higher impacts, and should not be selected.

As Northern Pass explained in detail in a previously submitted Comment, the Franconia Notch Parkway alternatives suffer from multiple significant flaws:

- The Franconia Notch Parkway is governed by a 1977 Consent Decree that expressly prohibits "additional major construction" through the Parkway, without approval of the many signatories to the Consent Decree.[7] Northern Pass is confident that such approval could not be obtained for underground placement of transmission. Thus, selection of this alternative would result in an inability to construct the Project.

- Construction along the Franconia Notch Parkway would have significant impacts on roadside vegetation, scenic pull offs, parking areas, traffic, wetlands, scenic qualities and overall aesthetics of the Notch, which is a profoundly sensitive cultural and environmental area. Northern Pass does not support imposing such impacts. And, even if directional drilling were employed, as some have proposed, it is estimated that 20 to 30 jacking and receiving stations along the Franconia Notch Parkway would be required to accommodate the construction. Construction of these stations alone would have major impacts on the Franconia Notch area.

- The New Hampshire Department of Transportation ("NHDOT") prohibits construction of utilities within I-93 absent a showing of "extreme hardship," which includes demonstrating that no other alternatives exist. Alternative 7 plainly establishes that there is an alternative to I-93.

- NHDOT standards would require installation of any transmission line to occur outside the roadway near the edge of the right of way, causing additional environmental impacts. The impact on wetlands, trees, vegetation and scenic aesthetics from construction of any transmission line would be unacceptably large, requiring permanent road access sufficient for necessary maintenance.

For all these reasons, alternatives involving the use of I-93 are substantially inferior to the proposed action, Alternative 7.

[7] Previously, even the placement of guard rails essential to public safety was deemed "additional major construction," the approval of which was difficult to obtain.