

## STATE OF NEW HAMPSHIRE

## PUBLIC UTILITIES COMMISSION

April 1, 2016 - 1:40 p.m.  
Concord, New Hampshire

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RE: DE 15-461

NORTHERN PASS TRANSMISSION, LLC:  
Petition to Cross Land Owned by the  
State in Stark, Northumberland, Lancaster,  
Dalton, Bethlehem, New Hampton, Hill,  
Franklin, Canterbury, Pembroke and  
Allenstown. (*Prehearing conference*)

PRESENT: Chairman Martin P. Honigberg, Presiding  
Commissioner Kathryn M. Bailey

Adele Leighton, Clerk

APPEARANCES: Reptg. Northern Pass Transmission, LLC:  
Thomas B. Getz, Esq. (McLane Middleton)  
Christopher J. Allwarden, Esq. (Eversource)  
Ovid Rochon (Burns & McDonnell)

Reptg. the Adjutant General's Department and  
Department of Resources and Economic  
Development (DRED):

Anne Edwards, Esq. (Atty. General's Office)  
Elizabeth Mulholland, Esq. (AG's Office)  
Casey Stanton, Intern (AG's Office)  
Zachary Boyajian, Adjutant General's Dept.  
Lt. Colonel Al Bridgham, Adjutant Gen. Dept.  
Robert Spoerl, DRED

Reptg. PUC Staff:

Suzanne G. Amidon, Esq.  
Randall S. Knepper, Director/Safety Division  
Thomas C. Frantz, Director/Electric Division  
Robert Wyatt, Asst. Dir./Safety Division  
Jason List, Safety Division

Court Reporter: Steven E. Patnaude, LCR No. 52

ORIGINAL

**I N D E X****PAGE NO.****STATEMENTS BY:**

Ms. Amidon 6, 11, 15

Ms. Edwards 8

Mr. Getz 9, 17

***QUESTIONS/COMMENTS FROM THE BENCH:***

Chairman Honigberg 9, 11, 12

Commissioner Bailey 13

**P R O C E E D I N G**

CHAIRMAN HONIGBERG: Good afternoon, everyone. We're here in Docket DE 15-461, which is a Northern Pass related docket. This is the second of four crossings dockets. We did the Northern Pass water crossings prehearing conference this morning. This afternoon we're here on Northern Pass Transmission, LLC's Petition to Cross State Lands. I could read from the Order of Notice, but none of you wants me to do that. It's in the record, and anybody can see the Order of Notice whenever they like.

Before we go any further, let's take appearances.

MR. GETZ: Good afternoon, Mr. Chairman and Commissioner. I'm Tom Getz from the law firm of McLane Middleton. I'm here this afternoon on behalf of Northern Pass Transmission, LLC. And, with me is Ovid Rochon, who's an engineer from Burns McDonnell, and Chris Allwarden, an attorney with Eversource Energy.

MS. EDWARDS: Good afternoon, Your Honor. Anne Edwards, from the Attorney General's Office. I'm going to allow the State's officials to introduce themselves, if that's all right?

CHAIRMAN HONIGBERG: Sure.

1 MR. BOYAJIAN: And, good afternoon. I'm  
2 Zachary Boyajian. I am with the Adjutant General's  
3 Department.

4 LT. COLONEL BRIDGHAM: Chairman and  
5 Commissioner, my name is Lieutenant Colonel Bridgham. I'm  
6 also with the Adjutant General's Department in the  
7 Facilities Office.

8 MR. SPOERL: Bob Sproel, the Department  
9 of Resources and Economic Development.

10 CHAIRMAN HONIGBERG: I'm sorry, what's  
11 your last name, sir?

12 MR. SPOERL: Spoerl.

13 MS. MULHOLLAND: Good afternoon. I'm  
14 Liz Mulholland, from the Attorney General's Office. I  
15 also have an intern, Casey Stanton, also from the Attorney  
16 General's Office.

17 CHAIRMAN HONIGBERG: Welcome,  
18 Ms. Stanton.

19 MS. AMIDON: Thank you. Suzanne Amidon,  
20 for Commission Staff. With me is Randy Knepper, the  
21 Director of the Safety Division; Tom Frantz, the Director  
22 of the Electric Division; and Bob Wyatt, who's the  
23 Assistant Director of the Safety Division; and in the back  
24 of the room is Jason List, who is the master of the maps.

1 CHAIRMAN HONIGBERG: The room is out of  
2 balance. Everyone is over here.

3 Ms. Mulholland, who are you  
4 representing?

5 MS. MULHOLLAND: I am here with Attorney  
6 Edwards, DRED and the Adjutant General.

7 CHAIRMAN HONIGBERG: I thought maybe  
8 there was another party here. It's nice to see you, too,  
9 here, Ms. Edwards.

10 MS. EDWARDS: It's nice to see you, too,  
11 Mr. Commissioner.

12 CHAIRMAN HONIGBERG: Are there any -- do  
13 we expect any other intervenors in this proceeding?

14 *[No verbal response]*

15 CHAIRMAN HONIGBERG: I know the towns  
16 all received notice, right?

17 MR. GETZ: That's correct. And, I'm not  
18 aware of any responses.

19 CHAIRMAN HONIGBERG: Okay. Well, we  
20 don't have to deal with that then. I assume that you have  
21 no objection to DRED and the Adjutant General's Office  
22 participation in this proceeding?

23 MR. GETZ: No objection.

24 CHAIRMAN HONIGBERG: So, we'll grant

1       those intervention motions.

2                       MS. EDWARDS:   Thank you.

3                       CHAIRMAN HONIGBERG:   What do we want to  
4       talk about?   Ms. Amidon, why don't you start.

5                       MS. AMIDON:   What we want to talk about  
6       is to describe the process that we normally use with  
7       respect to petitions for crossing state land, and how, in  
8       this particular instance, this is different, because we  
9       have intervenors who are going to be part of this  
10      proceeding.

11                      Typically, the Safety Division reviews  
12      anywhere from six to twelve crossing petitions a year.  
13      And what they do is they look at numerous things, such as  
14      whether it meets the Electrical -- the National Electrical  
15      Safety Code, whether there are abutters, and what the  
16      easements are for the Company to construct a crossing at  
17      that particular site, whether there are any wetlands  
18      permits involved, whether there will be any disruption of  
19      the public's enjoy -- enjoyment of the public waters, and  
20      what the public good is or what is the necessity in the  
21      crossing, in terms of reliable service to the public.

22                      In this case -- in those cases, we  
23      typically have no intervenors, because the abutters are  
24      contacted directly by the Company, and, most often and

1 frequently, the abutters want to have the crossing,  
2 because it improves service for their particular residence  
3 or summer home.

4 And, so, this is a bit different here,  
5 because there are intervenors. And, as we discussed this  
6 morning -- oh, pardon me. Generally, we take advantage of  
7 the provision of the statute that allows the Commission to  
8 proceed without a hearing, because we don't have  
9 intervenors. For example, the Office of Consumer Advocate  
10 does not get involved in water crossing dockets. And, so,  
11 typically, the Commission will issue an order *nisi* and  
12 allow that *nisi* order to go into effect, unless someone  
13 requests a hearing.

14 In this particular instance, we decided  
15 to conduct it differently. First of all, the Northern  
16 Pass constitutes well over 100 miles. The crossings, I  
17 think, total over 60 crossings. And, there are some  
18 instances where Northern Pass is claiming the use of  
19 easements that really now are solely the property of  
20 Eversource/PSNH, and because, as I said, there are  
21 intervenors in this docket.

22 So, we're going to have this prehearing  
23 conference. My expectation is that the Engineering Staff,  
24 led by Mr. Knepper, will conduct its typical review. But

1 I believe that the intervenors should be afforded an  
2 opportunity to participate through -- whether it's by  
3 legal brief or whether it is by asking questions of NPT  
4 about the effects of its proposed crossing. And, once we  
5 get those issues resolved, the Commission could probably  
6 proceed to a decision fairly readily.

7 CHAIRMAN HONIGBERG: Ms. Edwards, do you  
8 have any thoughts now, as to what -- what level of  
9 participation DRED and the Adjutant General's Office would  
10 like to have?

11 MS. EDWARDS: I have to admit we're at a  
12 bit of a disadvantage, as this is --

13 CHAIRMAN HONIGBERG: Just go off the  
14 record for a second.

15 *[Brief off-the-record discussion*  
16 *ensued.]*

17 CHAIRMAN HONIGBERG: I'm sorry to break  
18 the flow.

19 MS. EDWARDS: Thank you. Well, Your  
20 Honor, we're at a slight disadvantage, since this is not  
21 our typical place of practice. So, I'm not completely  
22 sure what we expect our level of participation to be.

23 I know, for both agencies, there are  
24 concerns about some of the issues with respect to the

1 crossings. But these easements already exist. So, as a  
2 result, they probably have less concerns than in an area  
3 where a new easement is going to go in place or a new  
4 corridor is going to be put.

5 So, we are here, we would like to  
6 have -- we presented a preliminary statement that had  
7 questions about several of the concerns that we have.  
8 We'd like to reserve the right to be able to file both  
9 legal pleadings and to be able to ask questions. But it  
10 may very well be that we're able to solve many of our  
11 concerns outside of this.

12 CHAIRMAN HONIGBERG: Well, after we're  
13 done with the prehearing conference, there will be a  
14 technical session where we won't be here, and the parties  
15 can talk about the process that you'll follow, schedule  
16 for data requests, and how we can get this docket  
17 resolved.

18 Mr. Getz, Ms. Amidon, do we expect the  
19 kind of scoping discussion that we had this morning to be  
20 relevant here as well?

21 Mr. Getz, why don't you. You seem ready  
22 to go.

23 MR. GETZ: Thank you, Mr. Chairman.  
24 Well, theoretically, there could be. And the preliminary

1 statement in the Petition to Intervene mentions concerns  
2 that we believe are beyond the scope of this proceeding.  
3 But I do also believe that a lot of these issues, concerns  
4 that are raised, are really non-regulatory, and could  
5 probably be worked out.

6 So, whether they're -- you want to apply  
7 the same procedures here as were -- as we discussed at the  
8 morning hearing, which I don't know if you want that on  
9 the record now, but the agreement was, or if Ms. Amidon  
10 wants to --

11 CHAIRMAN HONIGBERG: It will be news to  
12 Commissioner Bailey and me. So, if someone wants to share  
13 it with us, that wouldn't be the end of the world. If  
14 you're ready to go, Mr. Getz, if you have it, why don't  
15 you.

16 MR. GETZ: Well, as I understand it, the  
17 agreement, Mr. Chairman, is that the parties will file  
18 legal memoranda by April 11th on the scope. And that --  
19 well, in that case, in that particular proceeding, I think  
20 the City of Concord is inclined to file a motion to stay  
21 or defer. But that the Staff would be conducting its  
22 normal review in parallel. But that, at some point, when  
23 the Committee -- or, the Commission rules on the scope  
24 that's subsequent to that date, there could be discovery

1 by the intervenors.

2 CHAIRMAN HONIGBERG: So, under the  
3 schedule that was discussed this morning, the intervenors  
4 are not expected to engage in discovery prior to the  
5 resolution of the scoping issues?

6 MS. AMIDON: I was going to say, Mr.  
7 Chairman, it was more of a coincident of the time. That,  
8 for example, we have -- the City of Concord agreed to file  
9 its motion to stay or suspend by August 8th --

10 CHAIRMAN HONIGBERG: April.

11 MR. KNEPPER: April.

12 MS. AMIDON: I always miss my -- this is  
13 not the first time. I called Friday "February", okay?

14 CHAIRMAN HONIGBERG: Ms. Amidon, that  
15 was worse.

16 MS. AMIDON: I have --

17 CHAIRMAN HONIGBERG: You were fine with  
18 "August" and "April". I don't know that you want to  
19 confess to anything else right now.

20 MS. AMIDON: In any event, April 8th,  
21 she was going to file a motion to stay or suspend, and  
22 then there was ten days that follow where NPT could file  
23 an objection. April 11th, it was set as the deadline for  
24 legal memorandum on the scope. And, then, we did look

1       into May, I believe, to commence discovery, I believe it  
2       was May 13th. The reason being, the attorney for the City  
3       of Concord is not available for part of the time at the  
4       end of April. The second being, Mr. Knepper and his Staff  
5       need to prepare questions for NPT. And, we determined  
6       that, because this is unlike a typical crossing, that the  
7       questions should be provided to all copies [parties?], as  
8       is typically done in an adjudicative case, and that will  
9       forgo the formality for Staff, but we'll just make sure  
10      the email with the questions goes to everybody. Staff  
11      will continue to file its questions until it has  
12      responses, and the responses due to intervenors' questions  
13      would be May 27th.

14                       That being said, it is likely that the  
15      Commission will have ruled on the scope and may obviate  
16      the need for the intervenors to ask questions at that  
17      point.

18                      CHAIRMAN HONIGBERG: Ms. Edwards, is any  
19      of this making sense to you, with respect to the scoping  
20      discussion, the references that we're making to it?

21                      MS. EDWARDS: Your Honor, Attorney Getz,  
22      very graciously, explained before the hearing sort of the  
23      general parameters of the scoping discussion this morning.  
24      So, I am somewhat familiar with it. I do have to admit

1       it's just -- I'm not familiar with the statute enough to  
2       understand really what the scope is.

3                       CHAIRMAN HONIGBERG:  Commissioner  
4       Bailey.

5                       COMMISSIONER BAILEY:  Well, I was at the  
6       conversation, and I'm not really sure what you're talking  
7       about.  So, I thought we were going to get legal briefs on  
8       two questions, regarding 371:17 and 371:20, whether we  
9       needed to make a finding that the service was necessary  
10      for reasonable service to the public, and whether -- and  
11      what "the public" means.  Whether it -- I mean, we have  
12      some precedent that "the public" could be one customer,  
13      and, Attorney Getz, you said that "the customer was  
14      Hydro-Quebec, but that they were ultimately going to serve  
15      the public".  And, then, the next question was "well, are  
16      they serving the public in New Hampshire or are they  
17      serving the public somewhere else?"

18                      So, that's a legal question, not really  
19      a scope thing, I think.

20                      MS. AMIDON:  Well, Commissioner Bailey,  
21      I think what happened is Mr. Getz, for one reason or  
22      another, is calling this scoping -- scope.  In other  
23      words, the provision of legal memorandum on the two  
24      issues, 371:17 and 371:20, should afford the Commission

1 sufficient information, hopefully, to make a decision  
2 whether you want to open the hearing to hear more about  
3 the service to the public or the enjoyment of the waters.

4 I don't know if Mr. Getz is also  
5 interested in addressing some of the items he raised this  
6 morning, such as the audio or -- you know, the audio  
7 impairment or the visual impairment, things of that  
8 nature.

9 CHAIRMAN HONIGBERG: Well, in fairness,  
10 I don't think it was Mr. Getz who raised that, I think it  
11 was Attorney Pacik who was speaking of those things.

12 MS. AMIDON: Okay. My apologies. But  
13 whether he planned to address those and advise the  
14 Commission whether it's the Company's position they should  
15 be in or out of this docket, I don't know if we really got  
16 that far.

17 COMMISSIONER BAILEY: That, to --

18 CHAIRMAN HONIGBERG: Go ahead.

19 COMMISSIONER BAILEY: That, to me, seems  
20 like scope.

21 MS. AMIDON: Right.

22 CHAIRMAN HONIGBERG: There's  
23 definitely -- I mean, we're talking a little bit semantics  
24 here. There's what the Applicant needs to provide and

1 prove will help determine the scope of the factual inquiry  
2 and what proof they will need to put forward. And 371:20  
3 has a bunch of phrases in it. Some of them have been  
4 interpreted, at some levels, by the Commission, perhaps  
5 elsewhere, and they mean things, and that will determine  
6 what the Petitioner needs to prove to get their license,  
7 the permission to cross state lands and what that means.

8 That's what we're talking about. I  
9 think that, as you talk about this in the technical  
10 session, as you go through it further, I think the AG's  
11 Office, on behalf of its clients, can make a determination  
12 about whether it wants to file and offer its view as to  
13 what this statute -- what these statutes require.

14 Does that make sense?

15 MS. AMIDON: Yes. I just want to point  
16 out, Attorney Edwards did note that "the easements already  
17 exist". But, as I understand it, the entity that holds  
18 the right to those easements is Eversource and not  
19 Northern Pass. And, that being the case, while Eversource  
20 may have existing construction, and therefore its rebuild  
21 or whatever may be necessary for the continuation of  
22 reliable service to the public, I think Northern Pass's  
23 new construction still has that burden to prove that it's  
24 necessary for service to the public, and that the

1       enjoyment of the public waters will not be interfered  
2       with.

3                       CHAIRMAN HONIGBERG: Well, we're not in  
4       waters right now. We're state land.

5                       MS. AMIDON: Oh, you're right. Thank  
6       you.

7                       CHAIRMAN HONIGBERG: That's all right.  
8       It's going to be confusing. There are multiple dockets,  
9       and you made a reference obliquely to the "lease docket",  
10      which is out there as well. It's all out there, and we're  
11      going to get all of them resolved at some point. We're  
12      going to crab walk along and get the various issues  
13      resolved in one place or another.

14                      I'm not sure there's really much else  
15      for us to do, is there? Mr. Getz or Ms. Amidon, is there  
16      anything else you want to talk about?

17                      Ooh, Mr. Knepper grabbing the  
18      microphone. Yes?

19                      DIRECTOR KNEPPER: Yes. Good afternoon.  
20      I've reviewed, you know, probably, since the ten or twelve  
21      years that I've been here, probably 50 or 60 crossings.  
22      These crossings in this docket are, specifically, in this  
23      docket, the land crossing docket, is much different. Most  
24      of them we're doing a single span between two poles, and

1 we're looking at the impacts. These are large chunks of  
2 land. We're talking about multiple spans.

3 So, I think some of the -- some of the  
4 issues are different in this docket than we would  
5 normally. So, I'm glad we're having a hearing and I'm  
6 glad we're having intervenors be part of that process.  
7 Because I think it is important, because we want to make  
8 sure those rights of the land are not being diminished.

9 And, so, I think it was good  
10 pre-thinking to not just do these with *nisi* orders and to  
11 get the intervenors in here. That's my comment.

12 CHAIRMAN HONIGBERG: The word  
13 "unprecedented" has been used many times associated with  
14 the Northern Pass Project, and this will not be the last.

15 Other than that, noting that, is there  
16 anything else we need to do? I think we know,  
17 essentially, where you all are, in terms of the positions.  
18 So, I don't think we need to go through that.

19 Is there anything else we need to do,  
20 Mr. Getz?

21 MR. GETZ: No, Mr. Chairman. I think  
22 our positions this afternoon are pretty much identical to  
23 this morning, and I expect Monday it will play out pretty  
24 much the same way.

1 CHAIRMAN HONIGBERG: I can't wait.

2 Ms. Amidon, anything else we need to do?

3 MS. AMIDON: No, I don't think so.

4 CHAIRMAN HONIGBERG: Ms. Edwards?

5 MS. EDWARDS: I don't believe so, Your  
6 Honor, Your Commissioner, Your Chairmanship. Sorry.

7 I suddenly realized I don't know how to  
8 refer to you. We are so out of our element here.

9 CHAIRMAN HONIGBERG: Ms. Edwards, as you  
10 know, there's a long history of some of the finest lawyers  
11 from the Attorney General's Office appearing before the  
12 Public Utilities Commission, is there not?

13 MS. EDWARDS: There certainly is.

14 CHAIRMAN HONIGBERG: All right. I  
15 think, with that, we'll adjourn and leave you to your  
16 technical session. Thank you all very much.

17 MS. EDWARDS: Thank you.

18 ***(Whereupon the prehearing conference was***  
19 ***adjourned at 1:59 p.m., and a technical***  
20 ***session was held thereafter.)***

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