

STATE OF NEW HAMPSHIRE

PUBLIC UTILITIES COMMISSION

April 1, 2016 - 9:07 a.m.  
Concord, New Hampshire

NHPUC APR25'16 PM 4:01

RE: DE 15-460

NORTHERN PASS TRANSMISSION, LLC:  
Petition to Cross Public Waters In  
Pittsburg, Clarksville, Stark, Lancaster  
Dalton, Bethlehem, Franconia, Easton,  
Plymouth, Woodstock, Ashland, Bridgewater,  
New Hampton, Hill, Bristol, Franklin,  
Northfield, Concord, Pembroke, Allenstown,  
and Deerfield. (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)  
Marvin Bellis, Esq. (Eversource Energy)  
Christopher J. Allwarden, Esq. (Eversource)  
Ovid Rochon (Burns & McDonnell)

Reptg. the Town of Franconia:  
Peter Grote

Reptg. the City of Concord:  
Danielle L. Pacik, Esq. (Dep. City Solicitor)  
William Allaire, pro se

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

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

1  
2 CHAIRMAN HONIGBERG: We're here this  
3 morning in Docket DE 15-460, which is one of four  
4 crossings dockets related to the Northern Pass Project.  
5 This first one is a filing by Northern Pass Transmission,  
6 LLC, to cross public waters in a number of places. I  
7 could read from this Order of Notice, but everybody would  
8 be bored if I did that. I assume you've all seen it.

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

11 MR. GETZ: Good morning, Mr. Chairman,  
12 Commissioner. I'm Tom Getz, of the law firm of McLane  
13 Middleton, on behalf of Northern Pass Transmission, LLC.  
14 At counsel's table today also are Marvin Bellis, who is  
15 Senior Counsel with Eversource Energy; and Ovid Rochon,  
16 who's an engineer with Burns McDonnell; and Christopher  
17 Allwarden, who is also a Senior Counsel with Eversource  
18 Energy.

19 CHAIRMAN HONIGBERG: I know we have some  
20 intervenors. But, Ms. Amidon, why don't you enter your  
21 appearance, and then we'll deal with intervenors.

22 MS. AMIDON: Thank you. Suzanne Amidon,  
23 for Commission Staff. With me today is Randy Knepper,  
24 who's the Director of the Safety Division; Tom Frantz, the

1 Director of the Electric Division; and Bob Wyatt, who's  
2 the Assistant Director of the Safety Division; and, in the  
3 back of the room, we have Jason List, who also works for  
4 the Safety Division. Thank you.

5 CHAIRMAN HONIGBERG: I know we had a  
6 timely intervention petition from Franconia. Is anyone  
7 here from Franconia?

8 MR. GROTE: Yes. Good morning. I'm  
9 Peter Grote representing -- I'm not a lawyer, I'm  
10 representing the Selectmen of the Town of Franconia.  
11 Unfortunately, our attorneys were not able to attend  
12 today. So, they have asked me to sit in for them. Thank  
13 you.

14 CHAIRMAN HONIGBERG: I'm aware of one  
15 late Petition to Intervene. Ms. Pacik?

16 MS. PACIK: Good morning. Danielle  
17 Pacik, from the City of Concord. I did file a Petition to  
18 Intervene this morning that Northern Pass does not object  
19 to. I have given copies to everybody. I apologize, it  
20 wasn't put on the service list, because I was unable to  
21 find it. But I will send it this afternoon.

22 CHAIRMAN HONIGBERG: We have it.

23 MS. PACIK: Excellent.

24 CHAIRMAN HONIGBERG: I don't know how we

1 got it, but we did get it about 15 minutes ago. So,  
2 that's how I was aware of you.

3 MS. PACIK: Thank you.

4 CHAIRMAN HONIGBERG: Are there other  
5 intervenors? Are there other that people are aware of?  
6 Sir, who are you?

7 MR. ALLAIRE: Hi. My name is William  
8 Allaire. I'm from Pembroke, New Hampshire. I'm a private  
9 residence. I got this in the mail. I just wanted to  
10 state the fact that I'm against this crossing at this  
11 waterway, and that it's going to greatly depreciate my  
12 land value. My attorney said --

13 CHAIRMAN HONIGBERG: Sir, just a minute.

14 MR. ALLAIRE: Okay.

15 CHAIRMAN HONIGBERG: All I want to know  
16 is who you are right now.

17 MR. ALLAIRE: William --

18 CHAIRMAN HONIGBERG: And you're from  
19 Pembroke. And what you're saying is that you own property  
20 that is affected by this --

21 MR. ALLAIRE: Yes.

22 CHAIRMAN HONIGBERG: -- by this  
23 crossing?

24 MR. ALLAIRE: Yes, Your Honor.

1                   CHAIRMAN HONIGBERG: All right. Then,  
2 I'll circle back to you in a few minutes.

3                   MR. ALLAIRE: Okay.

4                   CHAIRMAN HONIGBERG: Is there anyone  
5 else? Ms. Pacik.

6                   MS. PACIK: I would just note that on  
7 the Site Evaluation Committee distribution list I did see  
8 something this morning from Ashland Conservation  
9 Commission about intervening, but I'm not sure whether  
10 that's been actually filed.

11                   CHAIRMAN HONIGBERG: Okay. That's not  
12 one who's here and not anything we're aware of.

13                   Ms. Amidon, Mr. Getz, do you have  
14 anybody else who's intending to intervene in this matter?

15                   MR. GETZ: I have a copy of a Petition  
16 to Intervene that was emailed by Kris Pastoriza, I  
17 believe, for this project.

18                   CHAIRMAN HONIGBERG: I have heard rumors  
19 of such a thing that was only emailed, and therefore what  
20 has not been filed here. So, if it didn't make it through  
21 the Clerk's office and didn't make it up to us, as far as  
22 I'm concerned, it doesn't exist. And, I don't see  
23 Ms. Pastoriza here. So, if she intends to participate,  
24 she's going to have to comply with the rules and get

1 something in here, or show up, which would have been nice  
2 as well.

3 Anybody else?

4 MS. AMIDON: Mr. Chairman, the only  
5 thing I want to point out is the OCA is not participating  
6 in this docket. And, I just wanted to state that. That  
7 was an affirmative decision on their part not to  
8 participate. Thank you.

9 CHAIRMAN HONIGBERG: Okay. I'll take  
10 that representation.

11 All right. Mr. Allaire, let me circle  
12 back to you. Is it your desire to participate in this  
13 proceeding, from now until it is resolved, through  
14 taking -- take what's called "discovery", getting  
15 information from the Company or Staff or the other  
16 intervenors, or is instead your desire just to provide  
17 comments and your position on the wisdom of this project?

18 MR. ALLAIRE: Do you have to push a  
19 button or --

20 CHAIRMAN HONIGBERG: Yes. Off the  
21 record.

22 *[Brief off-the-record discussion*  
23 *ensued.]*

24 CHAIRMAN HONIGBERG: So, you may

1 proceed.

2 MR. ALLAIRE: I wanted to, you know, to  
3 state the fact that I want to intervene. My attorney was  
4 going to come, but he said, if you're going to get some  
5 information and some people to contact, that we can  
6 contact legally to, you know, file whatever we have to  
7 file for -- I'm just opposed to it. It's going to greatly  
8 depreciate my land value. And, they're, on the  
9 right-of-way going through, I think they're taking more  
10 land than they're supposed to.

11 CHAIRMAN HONIGBERG: I gather you have a  
12 substantive position. I really --

13 MR. ALLAIRE: Yes.

14 CHAIRMAN HONIGBERG: We'll be interested  
15 in it.

16 MR. ALLAIRE: Okay.

17 CHAIRMAN HONIGBERG: Just not right this  
18 second. I understand then your desire is to intervene and  
19 participate in this proceeding. Do you expect that your  
20 lawyer will be representing you in this proceeding?

21 MR. ALLAIRE: He won't be here today,  
22 but at some point in time he will be.

23 CHAIRMAN HONIGBERG: I mean, he doesn't  
24 have to be.



1 MR. ALLAIRE: Okay.

2 CHAIRMAN HONIGBERG: You are free to do  
3 it yourself. It's just people have lives and work, and I  
4 understand it's not possible for everybody to be at  
5 everything. So, as long as you understand, you have a  
6 right to do what you have a right to do. You also have a  
7 right to do it through an attorney, and it's going to be  
8 up to you. Do you understand that?

9 MR. ALLAIRE: Well, today I'll be  
10 without an attorney.

11 CHAIRMAN HONIGBERG: Okay. All right.  
12 Mr. Getz, do you have a position? I understand Ms. Pacik  
13 has made a representation about your position. But do you  
14 have a position on the prospective intervenors?

15 MR. GETZ: Yes, Mr. Chairman. So, NPT  
16 does not object to the participation of the Town of  
17 Franconia or the City of Concord in this proceeding. We  
18 do, however, at the appropriate time, have some comments  
19 about the issues that they have listed in their Petitions  
20 to Intervene, which we believe goes to the scope of this  
21 proceeding, that we would like to address.

22 We don't object to Mr. Allaire, who I  
23 believe is one of the individuals who is identified as  
24 abutter, an abutter. So, we don't object to his

1 participation.

2 I understand Ms. Pastoriza's petition  
3 has not been formally filed. But we would object to that  
4 petition, because it just doesn't identify any rights,  
5 privileges, substantial interests affected by the  
6 proceeding, and is not one of the abutters or one of the  
7 formal entities that were identified in the notices.

8 CHAIRMAN HONIGBERG: All right. We  
9 probably will not deal with interventions formally from  
10 the Bench here. It sounds like you want to file something  
11 regarding scope. Or, do you want to have a -- we're  
12 probably going to need to have a discussion about the  
13 scope of this proceeding.

14 But, Ms. Amidon, this is a little  
15 different for a crossing. We don't usually do this for  
16 crossings. We don't usually have hearings, you know,  
17 prehearing conferences and proceedings. These are usually  
18 done, really, on papers, in the office, between Staff and  
19 the petitioner for the crossing.

20 Do you want to give everyone really a  
21 brief explanation for why this is different?

22 MS. AMIDON: I'd be happy to. Just for  
23 the record, customarily, I believe the Safety Division may  
24 deal with six to twelve crossings a year, and Randy will

1 correct me if I'm wrong, but it's not a substantial  
2 number. In that instance, Randy, who is an engineer --  
3 Mr. Knepper, who is an engineer, will review the filing,  
4 or he'll have Mr. Wyatt review the filing. And the  
5 principal issue has to do with whether the proposed filing  
6 meets the engineering standards of the National Electrical  
7 Safety Code; whether the crossing, if it's a crossing of  
8 water, would interfere with the public use of the water;  
9 and whether the crossing is necessary to meet the  
10 reasonable requirements of service to the public.

11 And often, for example, it will involve  
12 replacement of aging cable under a lake that goes to an  
13 island. The Company will have inspected the crossing and  
14 determined that that crossing has to be reconstructed, or  
15 maybe relocated. And, in some event, it's to an area that  
16 hasn't previously been served by the utility. So, it's a  
17 new crossing.

18 So, what is unique in this instance is,  
19 there really hasn't -- there is more than an engineering  
20 review needs to be done, and I believe it's incumbent on  
21 the Petitioner to be able to address the issues, whether  
22 or not the crossing affects the public use and enjoyment  
23 of the water, and whether the project is necessary to meet  
24 the reasonable requirements of service to the public.

1                   Those are -- while the engineering  
2 aspects of this could be resolved by Staff, either using  
3 their own resources or through a consultant, I think that  
4 the legal issues regarding public use and whether or not  
5 the requirements -- the crossing is necessary to serve the  
6 public are issues which have to be addressed separately in  
7 this proceeding, because it's not a pre-existing crossing,  
8 it's a new element.

9                   The other interesting thing is, if you  
10 look at the history of what the Commission did previously  
11 with the Site Evaluation Committee, under a different  
12 statute, the Commission acted more closely with the Site  
13 Evaluation Committee. And, so, a lot of these decisions,  
14 whether an entity was a public utility, whether a crossing  
15 was necessary, was made concurrently with a review by that  
16 prior committee, as it existed, as to whether or not there  
17 was a need for that particular line, or whether it  
18 involved crossings or otherwise.

19                   In this instance, the Site Evaluation  
20 Committee is really the entity, I think, that has this  
21 duty to determine whether or not to go ahead with the  
22 project, whatever criteria that they use, and also may  
23 condition the crossing, in this instance, the crossings,  
24 on conditions other than what we see in the current

1 Petition.

2 So, if you follow me, what I'm trying to  
3 say is, the conditions that the Site Evaluation Committee  
4 might put on the construction of these various crossings  
5 could affect whether these crossings remain at the same  
6 location, or whether they're constructed differently,  
7 whether they're trenched differently, all kinds of  
8 engineering aspects, which we are -- we don't know. So, I  
9 think there's an element of uncertainty there as well.

10 CHAIRMAN HONIGBERG: I would ask you to,  
11 I guess, agree with me or disagree with me, that a couple  
12 of other -- there are a couple of other differences  
13 between this and what is the six to twelve crossings that  
14 we typically see a year, in that we actually anticipate,  
15 and anticipated correctly, opposition to this crossing.

16 MS. AMIDON: That's correct.

17 CHAIRMAN HONIGBERG: Correct?

18 MS. AMIDON: That is correct.

19 CHAIRMAN HONIGBERG: Set of crossings,  
20 sorry. There's multiple crossings in this one filing.

21 MS. AMIDON: Correct. Because,  
22 normally, let's say, I'll use Eversource, Eversource will  
23 contact the abutters. The abutters are aware of the  
24 crossing. And, if they have no opposition to it, the

1 crossing is modified or it's constructed. And, so, you  
2 have only a limited amount of property owners that are  
3 involved. In many cases, Eversource owns the easements  
4 outright, and the abutters don't have that much input into  
5 the decision-making process.

6 In this instance, there are new  
7 crossings. In this, I forget with this filing exactly how  
8 many. But, yes, you're right. There's more members of  
9 the public who own private property near these crossings  
10 that are affected. And, as you can see, many towns that  
11 are affected by this crossings as well.

12 So, yes, the Commission did anticipate  
13 opposition and set up this prehearing conference today,  
14 and the other ones related to the three other filings, in  
15 order to consider how to proceed with these, in light of  
16 the opposition that many people have made to these  
17 crossings.

18 CHAIRMAN HONIGBERG: And, in some  
19 instances, the crossings are affirmatively wanted by the  
20 people who are affected by the crossing, correct? I mean,  
21 I think the most recent crossing order we issued was to  
22 provide service on one of the Twin Islands, right?

23 MS. AMIDON: That's exactly the kind of  
24 thing I was trying to illustrate earlier. Usually, it's

1 something where, "yes, please build this line or repair  
2 the line or replace it, so I could have service at the  
3 island."

4 CHAIRMAN HONIGBERG: Mr. Getz, do you  
5 want to comment at all on what Ms. Amidon said? For  
6 example, do you want to address that legal standard that  
7 she articulated, with respect to "necessary for service to  
8 the public"?

9 MR. GETZ: Yes, please, Mr. Chairman.  
10 Well, first of all, I disagree that this -- with  
11 Ms. Amidon's approach in a couple of respects.

12 First, these crossings are no different  
13 from any other crossing. The one difference in this  
14 proceeding, as you noted, is the Commission has  
15 anticipated that there would be a request for a hearing.  
16 I think that's the only distinction between this case and  
17 any other crossing case.

18 And, I have -- I would like to speak to  
19 a recommended process. But, first, let me speak to what I  
20 believe are the two legal issues that emanate from the  
21 statute.

22 First, with respect to, in 371:17, when  
23 it refers to "meeting the reasonable requirements of  
24 service to the public", that standard is well-developed by

1 the Commission over the decades. And, I've addressed it  
2 in the Petition. And, I think one of the best discussions  
3 of that issue is in the Twin dockets, DG 00-145 and 207,  
4 with EnergyNorth Natural Gas. Which makes it clear, it's  
5 not only utilities can apply, but non-utilities can apply  
6 for petitions to cross public waters and state lands.  
7 And, there are many instances of -- where it's been  
8 determined that service to a single entity constitutes  
9 "service to the public".

10 This is not a "necessity" review, as if  
11 there were a public convenience, a necessity requirement,  
12 or, I think what Ms. Amidon was referring to, is in the  
13 "need" requirement, that used to be in the Site Evaluation  
14 Committee statutes that no longer applies.

15 And, so, for this line, the fact that  
16 it's a FERC-approved transmission line, and that it will  
17 be transmitting power to the -- basically, the customer of  
18 Northern Pass, which is Hydro-Quebec, and that it will be  
19 delivering power ultimately to the public, which is the  
20 definition of a transmission line under RSA 362:2. So, I  
21 think that standard is easily met. And, I don't know why  
22 that standard would be reexamined in the case of Northern  
23 Pass.

24 So, that's the issue with respect to the



1 standard in 371:17.

2 CHAIRMAN HONIGBERG: I think  
3 Commissioner Bailey has a question for you about that.

4 COMMISSIONER BAILEY: I understand your  
5 argument. And, I'm wondering who the customer is that is  
6 the one customer that would be the public?

7 MR. GETZ: Well, the language is, in  
8 317 -- 371:17, "to meet the reasonable requirements of  
9 service to the public".

10 COMMISSIONER BAILEY: Right. And you  
11 said the public -- the Commission has determined that the  
12 public could be even one customer, like in the case that  
13 you -- in the case that you cited, I think AES  
14 Londonderry, the gas -- the generating plant was the  
15 public, that was the one customer.

16 So, where is the one customer?

17 MR. GETZ: There's two ways of looking  
18 at this. One is, the transmission line, which is approved  
19 by FERC, the service by Northern Pass is to Hydro-Quebec.  
20 And, if you look also at the definition in 362:2 of what  
21 constitutes a "public utility", it speaks to "transmission  
22 of electricity ultimately sold to the public". So, this  
23 project will be delivering energy, that will ultimately go  
24 into the regional grid at Deerfield, and serving the

1 entire State of New Hampshire as -- when it goes into the  
2 grid and to the region.

3 COMMISSIONER BAILEY: How does it serve  
4 the entire State of New Hampshire? Just in the general  
5 sense that energy into the grid can't, you know, you can't  
6 divide the electrons? Or, I mean, do you have to have a  
7 customer?

8 MR. GETZ: The sale of electricity is  
9 ultimately to "the public". And it doesn't require the  
10 identification, in the definition of a "transmission  
11 utility", to any particular customer.

12 COMMISSIONER BAILEY: Do you think "the  
13 public" should be the public of New Hampshire?

14 MR. GETZ: I don't think there's really  
15 a necessary distinction between the public of New  
16 Hampshire or the public generally here, because the  
17 electricity is being ultimately sold to the public. The  
18 statute doesn't make a distinction.

19 COMMISSIONER BAILEY: Okay. Thank you.

20 CHAIRMAN HONIGBERG: All right. Is  
21 there another issue you want to address, Mr. Getz?

22 MR. GETZ: Well, and I guess it goes to  
23 this, and I think the Commission has been very clear on  
24 this, again, in the EnergyNorth Natural Gas, that the

1 standard, and the approach in that case was, in essence,  
2 that the 371:17 language is tantamount to the purpose, and  
3 the standard to be applied is "and the license be  
4 exercised without substantially affecting the public  
5 rights in said waters". And, in such case, you know, the  
6 Commission shall render judgment granting the license.

7 So, I think the focus of this  
8 proceeding, as it has been for decades, is "is the  
9 standard in 371:20 satisfied?" And that arguing for a  
10 different type of review, with respect to service to the  
11 public, is not relevant. It's beyond the procedures that  
12 the Commission has applied.

13 CHAIRMAN HONIGBERG: I understand your  
14 argument. Is it correct that there's no State Supreme  
15 Court precedent on this? That you're talking about  
16 Commission orders, which I'm aware of, you've cited, but  
17 there's no Supreme Court precedent on this, is there?

18 MR. GETZ: I'm not aware of anything on  
19 point.

20 CHAIRMAN HONIGBERG: All right. So, if  
21 someone were unhappy -- if the Commission were to follow  
22 the AES precedent, as I think you will be arguing we  
23 should, someone who disagreed with that would be able to  
24 take it to the Supreme Court, as they always could, and

1 argue that a different standard should have applied, in  
2 the event that we go down that route. That's correct,  
3 isn't it?

4 MR. GETZ: Lots of people can argue lots  
5 of things.

6 CHAIRMAN HONIGBERG: Let's talk about  
7 the interventions. I know you want to say something about  
8 the scope of the interventions by Franconia and Concord.  
9 I want to deal with one issue, with respect to the  
10 Franconia petition first. I understand or I think I  
11 understood the Franconia petition to be saying that the  
12 line -- the proposed line is somehow moved from how it was  
13 originally filed until today.

14 Mr. Grote, was I reading that correctly?

15 MR. GROTE: Yes, you were. And I'm very  
16 glad you mentioned that. We prepared this, the paperwork  
17 for the proceeding, in three hours. And we were confused,  
18 our Board was confused with the language. They looked at  
19 some of the maps that had been provided to us. And they  
20 weren't sure whether this 100-foot distance that was  
21 mentioned in the appendix, I think it was Section B of the  
22 appendix, on the last page, our Board was not certain what  
23 that meant. And, in the interest of filing, we assumed  
24 perhaps it was there.

1 I would like to amend that. Last night,  
2 I was given a much more detailed description in Appendix A  
3 of project maps, which clearly shows, absolutely clearly,  
4 that there's been no change in the direction. And, we'd  
5 like to amend, whatever process it takes, amend our  
6 intervention description to reflect that.

7 CHAIRMAN HONIGBERG: I understand that.  
8 You can discuss with your attorney whether anything needs  
9 to be filed. I understand what you've done here, which is  
10 on the record. And, so, we've got it. I think Mr. Getz  
11 hears it, I think Staff hears it. So, I'm glad we were  
12 able to resolve that little issue quickly.

13 Mr. Gets, do you want to comment orally  
14 on the interventions? And, maybe there's a discussion  
15 that would be beneficial to the prospective intervenors  
16 regarding scope.

17 MR. GETZ: I just want to make this  
18 essential point. There's a long list, and I'll use the  
19 Franconia petition as an example, that points out concerns  
20 about the crossing: Construction risks, vibration, noise,  
21 maintenance, highway safety, loss of tourism, unduly  
22 interfering with the orderly economic activities. So,  
23 there's a whole list of items that are really issues to be  
24 decided by the Site Evaluation Committee.

1 I think what is pertinent to this  
2 proceeding is the -- are the arguments that the Town puts  
3 forth that they are concerned about, "is it necessary to  
4 meet the reasonable requirements of service to the  
5 public", which is 371:17. And, then, in 371:20, "can the  
6 license be exercised without substantially affecting the  
7 public rights?" So, those are the issues.

8 And those issues, and using Franconia  
9 and the crossing under the Gale River, for example, it's  
10 from one side of the Gale River to the other side of the  
11 Gale River, and that applies to all of the crossings.  
12 That is the extent of the jurisdiction for a "crossing".  
13 What happens east/west/north/south of those crossings,  
14 those are issues for the Site Evaluation Committee.

15 This case is solely focused to, in my  
16 position, whether the crossing can be done so that it  
17 doesn't interfere with the public's rights, which is --  
18 basically means it's done according to Code.

19 CHAIRMAN HONIGBERG: Mr. Grote, do you  
20 have anything else you want to add?

21 MR. GROTE: I would like to disagree  
22 with that. But, since I'm not an attorney, I would like  
23 to defer my response or the Town of Franconia's response  
24 to the gentleman's assertion at the appropriate time.

1                   CHAIRMAN HONIGBERG: Okay. I'm not sure  
2 what the appropriate time would be that isn't now. But  
3 we'll think about that further in a minute.

4                   Do you want to say anything about  
5 Concord? We've -- I've only had a chance to skim  
6 Concord's petition. My sense was that it did not have the  
7 same litany of concerns expressed by Franconia. But, like  
8 I said, I only read it very quickly.

9                   Do you have anything you want to say  
10 about Concord's?

11                  MR. GETZ: Well, one example would be,  
12 they do point, in Paragraph 5, to "visual and audio  
13 impacts". So, analogously, the same concerns we would  
14 have with the Franconia position I think arise in their  
15 petition. That the review should be limited to "the  
16 crossing".

17                  CHAIRMAN HONIGBERG: Ms. Pacik?

18                  MS. PACIK: Good morning. We have filed  
19 our Motion to Intervene. We don't think it should be  
20 limited at this point at this hearing.

21                  The issue with Turtle Pond is that this  
22 is a recreational area that is used by a lot of  
23 individuals in the City of Concord. The aesthetic and the  
24 visual impacts are certainly items that should be

1 considered when determining whether there is going to be a  
2 substantial impact on the public.

3 I would also note that the City of  
4 Concord owns parcels that border the Turtle Pond --

5 CHAIRMAN HONIGBERG: Ms. Pacik, you  
6 can -- you should assume you're going to be granted  
7 intervenor status. So, you don't have to argue why you're  
8 here.

9 MS. PACIK: But in terms of --

10 CHAIRMAN HONIGBERG: We're talking scope  
11 right now.

12 MS. PACIK: In terms of scope, I would  
13 think it would be inappropriate at this point to limit the  
14 scope. I would note that it would be our request that any  
15 decision be issued until after the Site Evaluation  
16 Committee makes a determination on approval, but I could  
17 talk about that later, if you'd prefer.

18 CHAIRMAN HONIGBERG: It's fair to say  
19 that any grant of crossing on this would be conditioned on  
20 approval ultimately by the SEC of the Certificate of Site  
21 and Facility. You're not going to do a crossing, if you  
22 don't have a project that runs from Pittsburg to  
23 Deerfield, right?

24 MR. GETZ: That's correct, Mr. Chairman.



1 And I don't think there's any basis under the overarching  
2 statue, 162-H, for deferring. That statute requires a  
3 progress report within five months of application and a  
4 decision issued within eight. And I think this issue has  
5 been raised some -- in some other forums of what's the  
6 interconnection among these, the SEC and PUC or DES  
7 approvals. And they all go hand-in-glove, if -- that,  
8 ultimately, the SEC has to issue its certificate or this  
9 crossing would be moot.

10 MS. PACIK: May I --

11 CHAIRMAN HONIGBERG: Yes, Ms. Pacik.  
12 Who do you want to, Ms. Pacik -- Ms. Pacik, why don't you  
13 go ahead.

14 MS. PACIK: If I could just respond? In  
15 terms of the statute, it does talk about "damages to  
16 bordering property owners". At this point, we don't know  
17 what conditions are going to be placed by the Site  
18 Evaluation Committee. We don't know whether the lines  
19 will need to be moved, if they're going to need to be  
20 buried, we don't know whether the project needs to be  
21 trenched, whether there's going to be direct drilling.  
22 There are so many issues that ultimately need to be  
23 determined by the Site Evaluation Committee, to determine  
24 the impact of this project at this point is premature, and

1 we would ask that it get deferred until --

2 CHAIRMAN HONIGBERG: You're going to  
3 need to file a motion.

4 MS. PACIK: Okay.

5 CHAIRMAN HONIGBERG: You're going to  
6 need to file a real motion making that argument. You ask  
7 for a deferral orally at the prehearing conference, that's  
8 not going to work. I get your position. But, you know,  
9 there's a recognized statutory process in 162-H and this.

10 MS. PACIK: If I could just comment?  
11 I'm raising it because of the -- because I understand that  
12 scheduling items are going to be addressed at this  
13 conference. And I would note that the EnergyNorth case  
14 that was referenced in the Petition for a Public Crossing,  
15 when I did review it, that permit was issued after the  
16 Site Evaluation Committee had already issued and approved  
17 that project.

18 CHAIRMAN HONIGBERG: Mr. Getz, one of  
19 the things Ms. Pacik talked about was "affecting the  
20 public rights in said waters or lands". And she's -- I  
21 think she's going to be making an aesthetics argument that  
22 affects the public rights in those waters. Correct,  
23 Ms. Pacik? You're going to be going in that direction?

24 MS. PACIK: That is one of our

1 arguments.

2 CHAIRMAN HONIGBERG: Do you have any --  
3 is that a legitimate issue for this docket?

4 MR. GETZ: No, I don't believe so. I  
5 think that's --

6 CHAIRMAN HONIGBERG: Why not?

7 MR. GETZ: That's an issue for the Site  
8 Evaluation Committee, to look at the aesthetic effects of  
9 "the project". This project, as the Commission has, in  
10 every case, applied the standard for affecting the public  
11 rights, the standard they apply emanates from the Code,  
12 and whether the actual sag in the line is going to prevent  
13 a sailboat from going down a river. So, it -- and these  
14 places are also, in Turtle Pond, for instance, there's an  
15 existing easement across that property owned by Public  
16 Service Company of New Hampshire. It's hard to imagine  
17 that there would be any real interference with the public  
18 rights along that easement. And, so, I don't think the  
19 statute was intended to basically replicate what would be  
20 the findings required by the Site Evaluation Committee.

21 And I do have a point on compensation at  
22 the appropriate time.

23 CHAIRMAN HONIGBERG: Commissioner  
24 Bailey.

1                   COMMISSIONER BAILEY: Ms. Pacik, do any  
2 of your arguments have to do with the public's right to  
3 use the water? I mean, I think my vision of Turtle Pond  
4 is that the crossing is in an area that's kind of swampy,  
5 and the poles are set on islands of earth, I guess. And,  
6 so, my question to you is, can people fish over there?  
7 Can people swim over there? How will it affect that kind  
8 of public use?

9                   MS. PACIK: We would need to look at  
10 that, in terms of that particular area, and whether it  
11 would impact fishing, whether the operations and the  
12 construction ultimately would have an impact on the actual  
13 use of that area. But, in terms of the visual impact and  
14 the noise, there are concerns about those issues.

15                   COMMISSIONER BAILEY: So, your argument  
16 is pretty much limited to visual impacts --

17                   MS. PACIK: There is --

18                   COMMISSIONER BAILEY: -- at this point?

19                   MS. PACIK: At this point, obviously, we  
20 need to do discovery and I'd need more information. I do  
21 apologize. I was just recently notified about the  
22 filings. I haven't had a lot of time to do research on  
23 the issue. But, certainly, one of the issues may be on  
24 the use of that particular portion of the area.

1                   CHAIRMAN HONIGBERG: I understand that  
2 you just saw this recently. But you are aware that this  
3 filing was part of the Northern Pass filing in -- was it  
4 October or November? October, right?

5                   MR. GETZ: Yes.

6                   CHAIRMAN HONIGBERG: This is part of a  
7 filing that was made in October in the Northern Pass  
8 docket -- SEC docket, where you are an intervenor and have  
9 been for some time. Is that right? That's right, isn't  
10 it?

11                  MS. PACIK: That is correct. Yup.

12                  CHAIRMAN HONIGBERG: So, it's not a  
13 great argument to say that you "just saw this", because  
14 you've had this for many, many months.

15                  MS. PACIK: Right. In terms of  
16 preparing for this particular hearing.

17                  CHAIRMAN HONIGBERG: Okay. I understand  
18 that. I just, I think, please be careful in making such  
19 an argument going forward.

20                  Mr. Getz, you wanted to say something  
21 about "damages", right? Is that what you just said a  
22 minute ago?

23                  MR. GETZ: Yes.

24                  CHAIRMAN HONIGBERG: Or compensation?

1 Yes. Go ahead.

2 MR. GETZ: Yes. And, this is with  
3 respect to RSA 371.21, I believe Ms. Pacik suggested that  
4 that statute would be applied much more broadly than I  
5 read the statute.

6 The provision is that "the commission  
7 shall determine the compensation, if any, to be paid to  
8 the owners of lands bordering on such public waters for  
9 any damage thereto occasioned by the continuation and  
10 maintenance of any such structures". So, there's two  
11 pieces to this. It's the -- the only abutters that I  
12 believe are included here are the abutters on the actual  
13 location where the line crosses the water. So, it's not  
14 somebody who may be somewhere else on a pond, for  
15 instance, but we're talking about the -- well, in this  
16 case, for Turtle Pond, there's a PSNH easement. So, it's  
17 that land that the easement is on where the -- and then  
18 the structures, and the two structures, what damage going  
19 forward is caused by those two structures, and, in this  
20 case, where there's an existing easement? So, I think  
21 it's very limited in terms of "who are the abutters that  
22 are covered?" And it's very limited in terms of "what the  
23 type of damage?" It's not the type of taking type of  
24 damage that you might hear in another case.

1                   CHAIRMAN HONIGBERG: I'm confident that  
2 there are people who disagree with you about that. And  
3 would you agree with me that precedent on that statute is  
4 sparse?

5                   MR. GETZ: I am only aware of one PUC  
6 proceeding in which compensation was made. And it didn't  
7 appear to be specifically under this statute, but there  
8 was a crossing of state land, where there was an agreement  
9 between DRED and PSNH, and where PSNH made a payment to  
10 basically pay for some gates and a lock.

11                   CHAIRMAN HONIGBERG: Is that  
12 Seabrook-related?

13                   MR. GETZ: No.

14                   CHAIRMAN HONIGBERG: Oh, because I think  
15 we found one, having to do with Seabrook. But I don't --  
16 but I think we can agree, because we're not going to  
17 resolve this today, I suspect there's going to be  
18 litigation about it, but you -- there's not a lot of  
19 precedent on this statute, right?

20                   MR. GETZ: That's fair to say.

21                   CHAIRMAN HONIGBERG: Yes. All right.  
22 Do you want to say anything about Mr. Allaire's  
23 intervention?

24                   MR. GETZ: We have no objection to his

1 intervention.

2 CHAIRMAN HONIGBERG: All right.

3 Ms. Amidon.

4 MS. AMIDON: Thank you. And Staff has  
5 no objections to any of the interventions either.

6 I do want to point out something that  
7 Mr. Getz said, which sort of puts a little bit more of a  
8 contingency on this whole -- the crossings. The easements  
9 he referred to at Turtle Pond are owned by Eversource.  
10 The Commission has a separate proceeding before it to  
11 determine whether or not Northern Pass Transmission, LLC,  
12 is eligible to lease or share the use of any easements  
13 owned by Eversource with Eversource. So, there is a  
14 further contingency, in other words. The crossings, while  
15 they may be approved in terms of their engineering  
16 structure, cannot be effected unless NPT has the right to  
17 use those easements.

18 So, it's a further contingency. I only  
19 point it out because this project, as you know, although  
20 it's FERC-approved, it's participant-funded and it's not  
21 designated as a "reliability project". Hence, there was  
22 no finding about the necessity of this project being  
23 integral to the reliability of the ISO-NE grid.

24 So, again, it goes back to Ms. Pacik's



1 argument about, you know, which -- what should this  
2 Commission wait for? Should you wait for a determination  
3 by the SEC addressing the aesthetics, the noise, all the  
4 other issues potentially affecting whether these crossings  
5 occur at all, or whether they occur in the same manner as  
6 in -- as depicted in the Petition filed by NPT, or whether  
7 they go forward at all.

8 And, it's just -- I just want to point  
9 out that I think the intervenor should be allowed to make  
10 some discovery here with respect to both the manner in  
11 which the construction may affect the use of public waters  
12 and whether or not it's necessary to meet the reasonable  
13 requirements of service to the public.

14 And, I would argue that "the public", it  
15 is a statute passed by the New Hampshire Legislature, and  
16 "the public" is "the public in New Hampshire".

17 CHAIRMAN HONIGBERG: Well, I don't know  
18 that we're going to resolve that right now. I know that  
19 you guys have a technical session scheduled for when we  
20 leave. You can talk about that. And, if you can't agree,  
21 we may have to issue some sort of ruling, if there's a  
22 dispute about discovery, the scope of discovery. So, I  
23 assume there will be a conversation about that after we  
24 leave.

1                   Mr. Getz, do you want to say anything?  
2                   You seem to be leaning toward the microphone.

3                   MR. GETZ: Yes, Mr. Chairman. In terms  
4                   of process, our position is that this process should  
5                   nearly replicate what's the standard process for any  
6                   crossing. It's not clear to me the need for discovery at  
7                   this point. I think there are two things that we're  
8                   certainly prepared to discuss in the technical session.  
9                   But, I think, in terms of the "technical review", to the  
10                  extent that Staff can proceed in its normal way and do its  
11                  investigation and issue a report or recommendation on the  
12                  technical issues, that I'm not sure why we wouldn't follow  
13                  that approach.

14                  To the extent there are other legal  
15                  issues, they may be more ripe for, you know, a legal  
16                  argument. I'm not sure what a open discovery accomplishes  
17                  at this point, and --

18                  CHAIRMAN HONIGBERG: I think, Mr. Getz,  
19                  what I anticipate anyway, based on what I'm hearing, is  
20                  that there's going to be requests for information, data  
21                  requests that you're going to object to as being beyond  
22                  the scope of the proceeding, and that's going to queue up  
23                  a legal argument. Because, you know, maybe, after we  
24                  leave, there will be a meeting of the minds on all of

1 that. It would be wonderful if there were such a meeting  
2 of the minds. But, if not, there's a way -- there's a  
3 mechanism to resolve that, and it is exactly that. It's a  
4 legal memorandum on what the scope is, with -- in the  
5 context of, probably, data requests. Would you agree?

6 MR. GETZ: I think that's -- I would  
7 agree that that could play out that way. And we'll see if  
8 there's any agreement.

9 *[Chairman and Commissioner conferring.]*

10 CHAIRMAN HONIGBERG: Commissioner Bailey  
11 has suggested perhaps that legal memoranda up front could  
12 be useful. It is true that, in all of our crossing  
13 orders, we include a discussion about use of the waters,  
14 that "the project will not disturb the public's use of the  
15 waters". And it goes beyond the technical/safety,  
16 compliance with the code provisions that the Safety  
17 Division goes through. And there's also a finding  
18 regarding "necessary for the provision of service to the  
19 public". And I clearly see how that second legal argument  
20 is going to play out and what the arguments are going to  
21 be.

22 I'm a little less certain about the  
23 first one. Because there is, I mean, if you go through  
24 the crossings dockets, you will see, dealt with in the

1 Staff recommendation, use of the water by the public as an  
2 issue that needs to be addressed. It's clearly part of  
3 the statute. And, if it only has a very limited meaning,  
4 maybe we need to get that fleshed out right away.

5 And no one -- and, as Commissioner  
6 Bailey says, "no one ever objects", so it never gets  
7 queued up. But here we're going to have that dispute.  
8 Can we get that brief right away and find out what the  
9 scope -- what the scope of the statute is going to be that  
10 way?

11 I don't know, do people see a benefit to  
12 that?

13 Mr. Getz is shrugging his shoulders.

14 MR. GETZ: We're happy to provide legal  
15 memorandum very quickly responding to that issue, whether  
16 it's ten days, two weeks, we would try to work things out.  
17 It seems to me they should be simultaneous filings by the  
18 parties addressing the issue.

19 CHAIRMAN HONIGBERG: I agree with that.  
20 Do others have a different view? Simultaneous filings on  
21 the scope of the proceeding? It's really what we're  
22 talking about, right?

23 MR. GETZ: Yes, Mr. Chairman.

24 CHAIRMAN HONIGBERG: Yes. I'll tell you

1 what. Rather than have to do this on the fly with  
2 Ms. Pacik trying to frantically look through her schedule,  
3 you can deal with that in the technical session, because  
4 you're going to need to set some other deadlines as well,  
5 you can talk about, and it should be quick. I'm telling  
6 you, this is going to be a quick filing of memoranda.  
7 "Ten days or two weeks" is probably the right answer. If  
8 there's some unique scheduling problem that somebody has,  
9 we can work with that. But that should be the  
10 expectation.

11 And, then, as you set whatever other  
12 deadlines need to be set in the technical session, assume  
13 this process is going forward. I know, Ms. Pacik, you may  
14 want to file a motion to suspend or do something, in light  
15 of what 162-H and the SEC process, but that's -- you're  
16 going to do that separately. If you want to, as part of  
17 the technical session and the setting of deadlines, set a  
18 deadline for the filing of that motion, feel free. But  
19 we're not going to dictate that.

20 Are there other issues we need to deal  
21 with, before we leave you to your technical session?

22 *[No verbal response]*

23 CHAIRMAN HONIGBERG: It seems like we've  
24 dealt with everything. How exciting.

1 All right. Thank you all very much.  
2 The technical session will begin as soon as we leave, and  
3 everybody can do what they need to do. And, we will  
4 adjourn. Thank you.

5 ***(Whereupon the prehearing conference was***  
6 ***adjourned at 9:53 a.m., and a technical***  
7 ***session was held thereafter.)***

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