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November 1, 2012

Senator Jeanie Forrester, Chair
Commission to Study the Feasibility of Establishing Energy Infrastructure
Corridors within the Existing Transportation Rights of Ways
State House
107 North Main Street, Room 105-A
Concord, NH 03301

Dear Madame Chair:

I write on behalf of Northern Pass Transmission "Northern Pass" to express serious concerns with the 361 Commission Draft Report dated October 24, 2012. By way of background, I have nearly two decades of experience managing the New Hampshire legal teams (and have personally tried the SEC cases) which have permitted, sited, and constructed several large energy facilities and related infrastructure including both linear and footprint projects in the electric and natural gas sectors.

Initially, I would like to briefly review the context in which the 361 Commission was created by the Legislature. Earlier during the same session, House Bill 648 which limited the use of eminent domain was passed. While Northern Pass never intended nor stated an intention to use eminent domain, this Legislation created a higher standard for the project. This Legislation mandated that Northern Pass develop the project and acquire the necessary right-of-way by negotiations with willing sellers. In fact, at each step of the way during the HB 648 debate, we were repeatedly told that it was all about property rights and that negotiating with willing sellers was the way in which to develop the project. Northern Pass complied with that legislative mandate and has acquired a right-of-way by engaging in negotiations with willing sellers.

We have repeatedly been told that the 361 Commission is not about stopping Northern Pass and that it is not directed at any specific project. Yet, when you read the recommendations contained in the Draft Report, there is no other conclusion to be drawn than that they are specifically designed to promote legislation to stop Northern Pass.

Prior to signing the Report or voting to adopt its terms, each Commission member should consider the following:

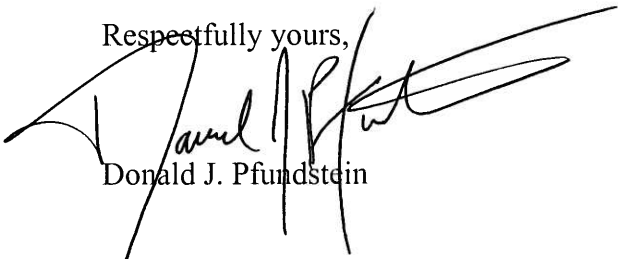
1. If you vote to approve the report you must acknowledge that its recommendations are designed to legislatively attack Northern Pass.
2. Commission members representing State Agencies should realize that the lobbyists and proponents of the legislation (who oppose Northern Pass) will be reporting to the Legislature that your agency is also a proponent of their legislation.
3. What changes in direction will result from the new government we will have in Concord shortly.

I need to address only two specific recommendations in order to illustrate my point.

1. Moratorium. One does not need to enact a moratorium to develop a regulatory structure for an option. The moratorium is designed to prevent Northern Pass from exercising the property rights it has acquired by following the Legislature's directive to negotiate with willing sellers. Perhaps, the true goal is to delay Northern Pass in an attempt to force it into a state-controlled, public right-of-way. At a minimum, the moratorium is specifically designed to delay the project which may create an advantage for a competitive project that wishes to use transportation corridors. We question whether the State's role is to select winners and losers in the development of energy infrastructure.
2. Underground mandate. The mandate to underground transmission lines is designed to attack Northern Pass by attempting to undermine its economic foundation. In effect, the mandate to underground transmission lines imposes a new tax or surcharge on electric transmission development equal to the difference between the cost of overhead and underground construction. It does this without regard to the effect of its mandate on the price of electricity. The record in the Commission's proceedings established the case against such a mandate. In fact, the Department of Administrative Services specifically commented that it should be an option. The Department of Environmental Services specially noted that the Commission should not be prescriptive with respect to technologies, i.e. undergrounding. Moreover, the Commission's own draft finding #4 specifically notes that questions of technical and financial feasibility of undergrounding technology are typically site and project specific. There is no reason why one would universally mandate undergrounding transmission lines unless the recommendation is specifically designed to attack Northern Pass.

I respectfully urge you to reject the Draft Report.

Respectfully yours,

A handwritten signature in black ink, appearing to read 'Donald J. Pfundstein', written over the typed name below.

Donald J. Pfundstein

cc: Rep. Laurence Rappaport, Coos County District 1, NH House of Representatives
Rep. Paul Simard, Grafton County District 8, NH House of Representatives
Rep. Jacqueline Cali-Pitts, Rockingham District 16, NH House of Representatives
Susan Thorne, Administrator, NH Office of Energy & Planning
Karen Rantamaki, designee of the Commissioner of Administrative Services
Michael P. Pillsbury, Deputy Commissioner NH DOT, designee of the NH DOT
Commissioner
Timothy Drew, Administrator, NH Dept. of Environmental Services, designee of
Commissioner
Tom Frantz, Director to NH PUC, designee of NH PUC Commission Chairman
Stephan Hamilton, Director of Property Appraisal Division, designee of Commissioner of
Dept. Revenue Administration
Benoit Lamontagne, NH DRED Industrial Agent, designee of NH DRED Commissioner