



Pittsburg

NEW HAMPSHIRE

New Hampshire's Northernmost Town

December 20, 2016

TO: New Hampshire Boards of Selectmen
New Hampshire City Mayors and Governing Boards
New Hampshire Town Councils

FROM: Steve Ellis, Chair, Town of Pittsburg, Board of Selectmen

SUBJECT: Local Control of Municipal Roads

I write on behalf of the Boards of Selectmen in Pittsburg, Clarksville and Stewartstown, to share with you a concern we have about the legal control of municipal roads and how the established principle of home rule applies to the continued ability of municipalities to retain control over municipal roads. I also write to ask you to consider writing a letter to defend the principle of home rule as it relates to municipal roads.

Our concern arises over a claim by the region's largest electric utility (Eversource) that they have the right to appropriate municipal transportation rights of way without any consultation or approval from the municipal governing authority to build a high voltage electric transmission line within the right of way. In fact, RSA 231:161 (copy enclosed) clearly provides that municipal governing bodies have the exclusive authority to permit and license such uses of municipally owned rights of way. Eversource, the developer of the Northern Pass project, claims that the New Hampshire Site Evaluation Committee has the power to preempt this statute. Nothing in the statute authorizing the Site Evaluation Committee (RSA 162-H) sets aside the statutory provisions in RSA 231:161. Eversource lamely argues that a prior Supreme Court case with an entirely different set of facts supports their claim. An excerpt from the Northern Pass application to the SEC making this claim is enclosed. Follow this link to the Supreme Court decision cited by Northern Pass: <https://www.courtlistener.com/opinion/2111618/public-serv-co-v-town-of-hampton/>.

Our three towns have joined with a number of other intervenors in the Northern Pass docket at the SEC to ask the SEC to initiate a new docket to specifically address this dispute. Under SEC rules, any party can file a request for a declaratory ruling for the purpose of addressing matters within the SEC's jurisdiction. A copy of our filing made December 19 is enclosed for your review.

Whether one is for, against or agnostic on the issue of Northern Pass, it is the height of arrogance (not to mention against the law) for a large domestic utility partnering with a large foreign utility to commandeer for their exclusive financial benefit a municipal transportation corridor without the acquiescence of the municipality. In the six years since Northern Pass was first announced,

Town of Pittsburg | 1526 Main St | Pittsburg, NH 03592 | 603-538-6697 voice & fax

TownOffice@Pittsburg-NH.com www.Pittsburg-NH.com

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project developers have never formally or informally asked our towns' permission to use town roads for their project. Their application to the SEC has a single blank license form for the locations within our three towns where they propose to bury their facility along more than 8 miles of municipally maintained roads. The Legislature has precluded Northern Pass from having access to eminent domain for the purpose of condemning private property for their project. However, RSA 231:167 provides that if a landowner has suffered damage as a result of the installation, the landowner may *apply to the Selectmen* to assess damages in the same manner as laying out a new road. In other words, the Town would be liable for the taking and responsible for paying the damages assessed, not Northern Pass. Northern Pass is thus shifting the burden of eminent domain – a power it does not possess - to the Towns, while arguing that the towns have no say in the matter.

This back-door condemnation of municipal roads must not be allowed to stand. I ask you to consider writing a letter to the SEC in support of our petition, opposing the Eversource attempt to secure through the back door what they cannot achieve through the front door. Please direct your comments to: Ms. Pamela Monroe, Administrator, NH Site Evaluation Committee, 21 Fruit Street, Concord, NH 03301. Or e-mail your comments to Pamela.Monroe@sec.nh.gov.

Thank you for your consideration of this request.