

December 20, 2011

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Anthony I. Blenkinsop, Director
Sr. Assistant Attorney General
Charitable Trusts Unit
NH Department of Justice
33 Capitol Street
Concord, NH 03301

Re: Neil Tillotson Trust -- Purchase and Sale Agreement for Reserved Right-of-Way
Easement

Dear Mr. Blenkinsop:

In follow up to our meeting on December 13, 2011, and on behalf of Northern Pass Transmission, LLC ("Northern Pass") and its subsidiary, Renewable Properties, Inc. ("RPI"), this letter provides more detailed support for our request that the Attorney General reject the executed purchase and sale agreement between the Neil Tillotson Trust (the "Trust") and/or Tillotson Corporation (the "Corporation") and the Society for the Protection of New Hampshire Forests ("SPNHF") insofar as it includes the conveyance of a right-of-way ("ROW") easement (the "Agreement") across a portion of the Balsams property that was conveyed to Balsams View, LLC on December 6, 2011.

As you know, RPI has offered the Tillotson Trustees \$2.2 million for the transmission ROW. The Tillotson Trustees have rejected that offer and instead have accepted SPNHF's offer of \$850,000 for a conservation easement that includes these same rights. The Tillotson Trustees' action constitutes an abuse of their discretion and lacks any legal or rational explanation. In short, there is no reasonable basis for the Trustees to reject RPI's offer for the narrow ROW corridor that RPI fully negotiated with representatives of the Trust while at the same time the Trust retains rights for very similar transmission facilities that could be placed anywhere on the Balsams property to support the Trust's own electricity generation and transmission activities. I want to emphasize that our only concern is the proposed conveyance of the ROW easement to SPNHF. RPI and Northern Pass support the conveyance of the conservation restrictions so long as the reserved ROW easement for the transmission of electricity is not included in the transaction with SPNHF.¹ Conveying a conservation easement to SPNHF is fully consistent with the conveyance of the

¹ I also want to stress that Northern Pass applauds the sale of the property to Balsams View as a very positive development for the North Country and the state as a whole.

ROW easement to RPI. Utility easements often coexist with and complement conservation easements and the promotion of conservation and recreational values.

The crux of this matter is that the Trustees, in bowing to what we know to be focused political and personal pressure in opposition to Northern Pass, have failed to carry out their fiduciary duties properly at the expense of an additional \$2.2 million for the Trust and the Trust's charitable beneficiaries. We ask simply that you reject the sale of the ROW interests to SPNHF, so the Trust can consider anew the RPI offer to acquire those interests.

The following are what we know or believe to be the background facts:

- From October 14, 2011 through December 6, 2011, RPI negotiated for the purchase of the transmission ROW across the very northern tip of the Balsams property and a separate parcel of land in West Stewartstown (collectively, the "Property"). Over this seven week period RPI negotiated in good faith with the Trust's representatives (Managing Trustee Tom Deans, and attorneys John Cornish and Frank Giso of Choate Hall) the terms of the sale of a ROW easement across the Property.² The specific terms of the needed ROW easement and its precise location were fully and finally negotiated and ultimately included in the deed conveying the entirety of the Balsams property to Balsams View. I enclose a copy of the quitclaim deed from the Tillotson Corporation to Balsams View, recorded on December 7, 2011, that incorporates a reserved ROW easement in Exhibit 3 and Section 7 of the deed, just as it was negotiated with RPI. (Exhibit B)³ Section 7 of the deed specifically provides for a sale of the ROW "to any other party, including, but not limited to, any electric utility or electric transmission provider."
- The quitclaim deed to Balsams View also reserved conservation restrictions set forth in Paragraph 6 and Exhibit 2 of the deed. The ROW easement is specifically excluded from the conservation restrictions.

² RPI's Offer and Letter of Intent to acquire a ROW was modified or extended five (5) times, at the request of Mr. Deans. To illustrate the tenor of the negotiations, I am enclosing a copy of RPI's Offer and Letter of Intent in effect on December 6, 2011. (Exhibit A) In the covering e-mail dated December 1, 2011 Tom Prieto on behalf of RPI extended the offer "with the continued understanding the Tillotson Trust is working with us in good faith to achieve our mutual objectives."

³ We are also enclosing a copy of a plan of the Property that denotes where the ROW easement would be located. (Exhibit C) This location is in a remote section of the Balsams property and no transmission line would be visible from any of the resort facilities.

- Also excluded from the conservation easement, and reserved to the Corporation are (1) two substantial parcels of land that are potential wind farms, and (2) the right of the Corporation to place access roads and electric transmission lines across the Property in connection with development of the Wind Farm Parcels.
- The morning after the sale to Balsams View, RPI learned from Mr. Deans that the ROW easement rights RPI had in good faith negotiated were instead included in the proposed Agreement to SPNHF. That was also executed, we understand from public reports, on the evening of December 6, 2011. We understand further that the Agreement calls for the payment of \$850,000 from SPNHF for both the conservation easement and the ROW easement.⁴
- By entering into the Agreement with SPNHF that includes the possible conveyance of the transmission ROW easement, the Trust rejected the offer of \$2.2 million from RPI for those same rights. Specifically, RPI proposed to pay \$2 million for the ROW easement and an additional \$200,000 for healthcare initiatives at Colebrook Hospital or as otherwise determined by the Trust.

As the Director of Charitable Trusts and in supervising the Neil Tillotson Trust, you must determine whether the Trust's action in rejecting RPI's offer was reasonable.⁵ Your

⁴ SPNHF has stated publicly that the price it would pay for the conservation easement and ROW is a "bargain" compared to other recent transactions in which it paid far more per acre for a conservation easement. See 12/12/11 article entitled *Pair from Colebrook Buys the Balsams for \$2.3 million*, at <http://www.nashuatelegraph.com/newsstatenewengland/942476-227/pair-from-colebrook-buys-the-balsams-for.html>. While this bargain price may provide great benefits to SPNHF, it comes at the expense of the essential health, social, and economic services that could have been provided to North Country citizens if the Trust were to receive the additional revenue generated from the sale of a ROW easement to the Northern Pass project.

⁵ The Attorney General, through the Director of Charitable Trusts, has the authority to review and act on the proposed sale to SPNHF. Under both RSA Ch. 7 and common law, the AG represents and protects the public interest in charitable trust. See RSA 7:19, I; see also *Attorney General v. Rochester Trust Co.*, 115 N.H. 74 (1975). In reviewing a question of a potential breach of fiduciary duty, the Attorney General must determine whether the actions taken were reasonable under the terms of the trust and the law, or whether their actions constitute an abuse of discretion. *Bartlett v. Dumaine*, 128 N.H. 497, 512-513 (1986). See also Restatement (2nd) of Trusts (2011) § 187, Control of Discretionary Powers, comment (d) ("*Factors in determining whether there is an abuse of discretion*"). In determining the question whether the trustee is guilty of an abuse of discretion in exercising or failing to exercise a power, the following circumstances may be relevant: (1) the extent of the discretion conferred upon the trustee by the terms of the trust; (2) the purposes of the trust; (3); the nature of the power; (4) the existence or non-existence, the definiteness or indefiniteness, of an external standard by which the reasonableness of the trustee's conduct can be judged; (5) the motives

office's prior decisions with respect to other significant asset sales by the Trust compel the conclusion that the Trust's actions -- reserving rights to put their own transmission lines across the Balsams property and rejecting \$2.2 million for another discrete utility ROW in the process -- lack any reasonable or supportable basis.

Your letter dated December 2, 2011 to John Cornish sets forth the reasoning behind your approval of the sale of the Balsams Hotel and surrounding property to Balsams View. In that letter, like the prior approvals of other offers of sale that did not come to fruition, you made two essential findings: that the proposed sale is consistent with the settlor's intent in creating the Trust and that the proposed sale "results in the best deal for the Trust". The Trust's actions in rejecting RPI's \$2.2 million offer implicate in particular the second element-- the Trust's actions are plainly not the "best deal" for the Trust. What is more, the Trustees' rejection lacks any rational explanation of how the RPI offer is inconsistent with the Trust purposes. Up until December 6, 2011 RPI had every indication that the Trustees would in fact accept its offer. By way of explanation for the rejection, in a phone conversation on the morning of December 7, 2011, Mr. Deans stated only that the Trustees based their decision on what was believed to be in the best interests of the North Country.

The Trustees have offered no further explanation for their action. What has become clear, however, is that during the entire seven weeks of negotiations the Trustees felt pressured by phone calls and e-mail communications to reject any sale of transmission rights across the Balsams property. In the end, it appears that the Trustees acted consistent with public pressure and not their fiduciary obligations. Had the Trustees acted consistent with their fiduciary obligations, they would have looked past any public pressure in carrying out the wishes of the Trust's settlor, and preserving Trust assets for the beneficiaries.⁶ (The \$2.2

of the trustee in exercising or refraining from exercising the power; (6) the existence or nonexistence of an interest in the trustee conflicting with that of the beneficiaries.")

⁶ The Tillotson Trustees are bound in the first instance to the requirements of the New Hampshire Uniform Trust Code ("NHUTC") that governs all trusts, including charitable trusts. RSA 564-B:1-102. Among other requirements imposed on the Trustees imposed under the NHUTC are:

- The "duty...to act...in accordance with the terms and purposes of the trust in the interests of the beneficiaries." RSA 564-B:1-105(b)(2);
- The trustees "shall act in the best interests of the beneficiaries." RSA 564-B:8-802(h)(2);
- "If a trust has two or more beneficiaries, the trustee shall act impartially in administering, investing, managing, and distributing the trust property, giving due regard to the beneficiaries' respective interests." RSA 564-B:8-803; and
- "A trustee shall administer, invest and manage the trust and distribute the trust property as a prudent person would, by considering the purposes, terms, distributional requirements and other circumstances of the trust. In satisfying this standard, the trustee shall exercise reasonable care, skill and caution." RSA 564-B:8-804. RSA 564-B:9-901 requires further

million obviously would allow the Trust to provide additional meaningful benefits in any of the areas that Mr. Tillotson most sought to promote -- from conservation and sustainable forestry practices to the health, education, and economic well-being of the residents of the North Country.⁷

To be sure, the Northern Pass project has evoked concern among a committed group of opponents in the North Country.. Yet, the Trustees have given no indication that a transmission ROW is inconsistent with Mr. Tillotson's wishes in setting up the Trust. Those wishes are not amorphous and undefined; to the contrary, as the Probate Court Order of January 2, 2003 reveals, they are plainly identified. The Order observes that the Special Trustees are under several obligations in voting the Tillotson Corporation's stock, including the decisions on the sale of Trust assets. First and foremost in § D, they must vote "in the best interests of the Trust beneficiaries," and must properly carry out "their fiduciary responsibilities and good business judgment." The directives to the Special Trustees require that they exercise "good corporate citizenship," bestow "economic benefit upon the North Country... by maximizing productive use of Tillotson Corporation's facilities," "[maintain] shareholder value and [yield] long-term sustainable profits" and retain the Tillotson Corporation stock "for ultimate distribution to charitable beneficiaries." See §§ C & D of the Agreement and Consent Order. Mr. Tillotson, as we have all come to appreciate, was motivated not simply to conserve the natural resources of the Tillotson property in the North Country. He was a businessman -- and his business interests and motivations are strongly reflected in the purposes of the Trust.

The use of a small corridor across the tip of the Balsams property and a non-contiguous parcel in West Stewartstown is fully consistent with those purposes. If this is not self-evident, you need look no further than the Trustees' actions in the sale of the Balsams property to Balsams View and the proposed sale of the transmission ROW to SPNHF. The

that in managing the trust assets, the trustee owes a duty to the beneficiaries to comply with the "prudent investor rule."

The Trustee's rejection of an offer that provides a certain return of \$2.2M on the assets under their management violates the requirement that the Trustees "exercise reasonable care, skill, and caution" in fulfilling their fiduciary obligations.

⁷ See the January 2, 2003 Agreement and Consent Order entered by the Coos County Probate Court in the "Special Trustee" litigation. (Copy enclosed as Exhibit D.) Although the designation of charities to receive the benefit of the Trust assets in beneficial distributions set forth in § E of the Consent Order is not directly relevant to the Trustees' obligations to manage the Trust assets in the first instance, the list of charitable purposes is nevertheless instructive. Various charitable purposes are listed, including the "conservation and sustainable utilization of the natural resources of the North Country," furtherance of economic development and enhancement of the North Country economy, and support of "health, education, cultural advancement and economic well-being of the residents of the North Country."

Trustees cannot plausibly suggest that allowing a transmission ROW is inconsistent with the Trust purposes when transmission corridors and access to them are fully allowed anywhere on the Balsams property to allow the transmission of electricity from two specific areas retained by the Trust for wind energy development in the future. The rights to build access roads and corridors for electricity transmission are more far reaching and could have substantially greater impact on the land than the possible single transmission line specifically located across the farthest reaches of the property. In addition, at no time during seven weeks of discussions with representatives of the Tillotson Trust did those representatives ever state or suggest that a ROW would be impermissible under the terms of the Trust. To the contrary, up until December 6, 2011 -- the date to the Corporation rejected RPI's proposal -- Tillotson representatives gave no indication other than that the ROW was acceptable under the Trust. Furthermore, a reservation for a transmission ROW -- potentially for an electric utility -- was, in fact, included in the deed conveying the property Balsams View. In short, in view of these actions, the Trustees cannot now sustain the argument that a narrow ROW across the northern tip of the property is somehow inconsistent with Mr. Tillotson's wishes.

The facts as we understand them compel the conclusion that the Trustees have failed to exercise properly their fiduciary duties and abused their discretion in rejecting the sale of a ROW easement to RPI and foregoing the additional \$2.2 million for the ultimate use of the Trust beneficiaries. We ask that you so find. We hope that this will be resolved appropriately through the exercise of the Attorney General's supervisory authority over the Tillotson Trust and that litigation over this important issue can be avoided.

Thank you for your consideration of our concerns. We also want to extend our thanks to you and Terry Knowles again for taking time with me and representatives of Northern Pass and RPI on December 13, 2011. We appreciated your taking the time to meet with us, to listen to our concerns, and to sort through the questions involved in this proposed transaction.

Very truly yours,


George Dana Bisbee

GDB:kaa

cc: Terry Knowles, Assistant Director
Attorney General Michael A. Delaney
Thomas Deans
John Cornish, Esq.