

April 12, 2011

By Electronic Mail

Mr. Brian Mills
Office of Electricity Delivery and Energy Reliability
United States Department of Energy
1000 Independence Avenue, SW
Washington, D.C. 20585

Dear Mr. Mills:

**Re: Northern Pass Transmission LLC, Docket No. PP-371
EIS Scoping Comments**

On October 14, 2010, Northern Pass Transmission LLC (“Northern Pass”) filed an Application for a Presidential Permit (“Application”) to build electrical transmission facilities at the border crossing between Québec and New Hampshire, as part of a project to build a high voltage direct current (“HVDC”) transmission line and associated facilities from the Canadian border to southern New Hampshire (the “Project”). On February 11, 2011, DOE issued a notice of its intent to prepare an environmental impact statement (“EIS”) on the Project pursuant to the National Environmental Policy Act (“NEPA”), and from March 14 through March 20, 2011, DOE held a series of scoping meetings in New Hampshire to solicit public comment on issues that should be addressed in the EIS. During those scoping meetings, many residents of New Hampshire expressed strong opposition to the Project, focusing their concern in particular on various segments of the preferred and alternative routes Northern Pass identified in its

Application. Northern Pass makes this submission in an effort to respond to the expressions of concern.

In this submission, Northern Pass withdraws its support for certain alternatives it previously concluded were practical alternatives to its preferred route, and it requests a 60-day extension of the scoping period to allow Northern Pass time to explore whether there might be additional routing alternatives, particularly in the North Country, that would meet the needs of the Project. Northern Pass also suggests that the public be given an opportunity to comment on any new routing alternatives Northern Pass may identify, within such reasonable comment period that DOE may establish following the proposal by Northern Pass of any such routing alternatives.

In identifying any new routing alternatives, Northern Pass will continue its project-wide utilization of existing rights-of-way where available and practicable. Northern Pass will also use all the siting and design skills at its disposal to minimize viewshed impacts to the greatest extent feasible. Northern Pass will seek to minimize landowner impacts as it explores whether other feasible routing options could achieve broader landowner and host community support. In sum, Northern Pass is committed to siting, designing, and building a transmission facility that minimizes impacts as much as practicable, and that delivers low carbon power to New Hampshire and New England.

This filing also responds to the March 17, 2011, submission of Alexandra and James Dannis requesting, among other things, that DOE reject the Northern Pass Application as incomplete for failure to identify a more complete range of alternatives (hereinafter, the “Dannis Submission”). Likewise, Northern Pass responds to the March 31, 2011, joint letter of the

Conservation Law Foundation and several other environmental organizations requesting, among other things, that DOE allow for a public comment period on the scoping report that DOE has stated it will issue (hereinafter, the “Joint Letter”).

I. Northern Pass Withdrawal of Support for Certain Alternatives

Over the course of the seven scoping meetings DOE held in New Hampshire during the week of March 14, it became apparent to Northern Pass that several of the alternatives that Northern Pass identified in its Application as practical alternatives to the preferred route for the Project are so lacking in public support that they should no longer be deemed practical alternatives. Specifically, Northern Pass hereby notifies DOE that it no longer supports the designation of the following segments, as described and depicted on Exhibit C of the Application, as practical alternatives to the preferred route:

North Section, Second Alternative, which would have gone around the Cape Horn State Forest, but through the Potter Farm conservation area, and through Northumberland and Lancaster;

North Section, Third Alternative, which would have gone through Whitefield, Dalton, Littleton and Sugar Hill;

Central Section, First Alternative, which would have gone around the White Mountain National Forest and through the towns of Easton, Landaff, Bath, Haverhill, Piermont, Orford, Wentworth, Dorchester, Groton, Rumney, Plymouth, Bridgewater and Ashland; and

South Section, First Alternative and Second Alternative, which would have gone through Canterbury, Concord, Loudon, Pembroke, Chichester, Pittsfield, Epsom, Deerfield and Northwood.

These potential alternatives to the preferred route were labeled as such, and not designated as parts of the preferred route, because, while they appeared to be feasible as a practical matter, they had certain disadvantages relative to the preferred route. The

disadvantages, which varied for each alternative segment, were described in the Application. When those disadvantages are considered in combination with both the strong opposition these routing options have engendered from the communities they would traverse and the fact that they are not necessary to complete the Project, Northern Pass concludes that it can no longer support them as alternatives. Northern Pass provides herewith a replacement to the maps contained in Exhibit C of the Application showing that it has removed these segments from the routing alternatives it deems practical.

In addition, as explained in the addendum to its application filed on February 15, 2011, if the Federal Aviation Administration (“FAA”) approves the use of existing right-of-way in the vicinity of the Concord Airport, Northern Pass will designate that right-of-way as its preferred route. And, if Northern Pass obtains that FAA approval, Northern Pass will withdraw its support for the current preferred route (which would be located in Concord, Pembroke and Chichester) and will not identify it as an alternate route.

DOE or one of the cooperating agencies in the NEPA process may still wish to evaluate one or more of these various route segments in the EIS. Northern Pass, however, does not believe they are viable alternatives, and thus it does not support construction of the Project along these route segments.

II. Request to Extend Scoping Period

Northern Pass recognizes that requesting that the segments listed above be removed from consideration as practical alternatives does not address all of the portions of the Project that have given rise to strong public opposition. Specifically, Northern Pass understands that there are portions of the preferred route for the Project that are strongly opposed by communities that they

would traverse. Northern Pass is committed to exploring whether there might be other feasible routing options, particularly in the North Country, that could prove capable of achieving broader community support. Thus, Northern Pass requests that DOE hold the scoping period open for an additional 60 days to enable it to pursue the identification of different potential routing options for portions of the preferred route for the Project and, if that effort succeeds, to afford the public a full and fair opportunity to comment on those routing options once they have been identified.

III. Northern Pass Properly Omitted from Its Application Impractical Alternatives.

While Northern Pass seeks to do whatever it reasonably can to modify the Project route and to use transmission tower structures that will minimize the Project's impacts on the communities it traverses, there are some alternatives that were suggested during the scoping meetings and in the Dannis Submission that are not practical or that would not serve the purpose for the Project. Northern Pass had no obligation under DOE's regulations or otherwise to describe such alternatives in its Application,¹ and the Application was not deficient because of the omission of those alternatives.

A. Northern Pass Met Its Obligation to Identify Alternatives.

In identifying alternatives that it deemed practical at the time it filed its Application, Northern Pass did not take the position that no other alternatives might subsequently be identified by DOE, one or more cooperating agencies, or members of the public that might be considered as part of the environmental review process under the National Environmental Policy Act ("NEPA"), 42 USC § 4321 et seq. (2006). Northern Pass understands that identification and

¹ The pertinent DOE regulation requires an Applicant to describe "all practical alternatives to the proposed facility." 10 C.F.R. § 205.322(d).

consideration of alternatives is central to the NEPA process. The opportunity to present alternatives is one that NEPA provides not only to the applicant, but also to the public, other interested agencies and DOE itself. *See* CEQ, Guidance Regarding NEPA Regulations, 48 Fed. Reg. 34263, 34267 (1983) (in determining the range of alternatives to be considered in an EIS, the agency must take into account “comments from the public, other agencies, and the agency’s own environmental data”).

It is also true, however, that DOE cannot “disregard the applicant’s purposes and needs and the common sense realities of a given situation in the development of alternatives.” *Id.* Several courts have recognized that, in considering the range of reasonable alternatives to address in an EIS, an agency may “accord substantial weight to the preferences of the applicant and/or sponsor in the siting and design of the project.” *E.g., Env’tal Law and Policy Ctr. v. NRC*, 470 F.3d 676, 682 (7th Cir. 2006); *City of Grapevine v. Dep’t of Transp.*, 17 F.3d 1502, 1509 (D.C. Cir. 1994) (*quoting Citizens Against Burlington v. Busey*, 938 F.2d 190, 197-98 (D.C. Cir. 1991)).²

Thus, for example, the First Circuit found the consideration of alternatives in an EIS sufficient where the agency limited its evaluation to the alternatives that were deep water ports where the applicant’s purpose and need was to build a refinery at a port that could accommodate supertankers, accepting the applicant’s position that sites that lacked deep water would be

² The applicant’s notion of what is reasonable is, of course, not all-controlling, particularly insofar as it concerns the means of achieving the applicant’s project purpose. *Dubois v. Dep’t of Ag.*, 102 F.3d 1273, 1288 (1st Cir. 1996) (rejecting the applicant’s suggestion that the agency should not consider the option of requiring the applicant to create artificial water storage ponds in lieu of an existing pond to meet its water needs for an expanded ski resort), but the alternatives considered should exclude those that are “fanciful or hypothetical,” *Grazing Fields Farm v. Goldschmidt*, 626 F.2d 1068, 1074 (1st Cir. 1980).

economically infeasible. *Roosevelt Campobello Int'l Park Comm'n v. EPA*, 684 F.2d 1041, 1047 (1982). Likewise, *Env'tal Law and Policy Ctr. v. NRC*, *supra*, upheld the failure of the Nuclear Regulatory Commission to consider energy efficiency options as part of an EIS on a proposed nuclear plant where the applicant defined its purpose as "generating baseload energy." In its Application, Northern Pass presented the alternatives that it believed were practical for its purpose. That is all DOE's regulations require of it.

After extensive analysis, Northern Pass presented in its application the geographic and design alternatives that it believed were practical for its proposed participant-funded transmission Project, which in order to succeed must be able to deliver competitively priced power to New Hampshire and the New England market. It considered many hundreds of routing alternatives and gave brief consideration to underground (including partial underground) and underwater alternatives.

In making its initial determination as to what were practical alternatives, Northern Pass considered routes that would maximize the use of existing transmission rights-of-way ("ROW"), minimize encroachment upon conservation areas, minimize the environmental impacts of both construction and operation of the line, promote reliability, and minimize the viewshed impacts that it anticipated would be of concern to many New Hampshire communities. While the public comment during the scoping meetings clearly suggests that the initial determinations Northern Pass made fell short of the mark on issues of public acceptability, its Application nevertheless described the alternatives it concluded were practical. Those options that it concluded were impractical or that it concluded would not serve the purposes for the Project, it did not describe.

B. Placing the Line Underwater Is Not a Reasonable Alternative.

Pointing to the example of the Champlain Hudson Power Express, Inc. (“CHPEI”) project, several members of the public have argued that Northern Pass should have included in its Application the alternative of an underwater line. The underwater option is not practical because, unlike Lake Champlain and the portions of the Hudson River that the CHPEI project is designed to traverse, the Connecticut River is not navigable for anything but shallow draft vessels above Enfield, Connecticut. Because of the size and installation requirements for underwater cable, equipment that will make it feasible for CHPEI to develop an underwater line could not be used in the New Hampshire portion of the Connecticut River.³

A vessel named the Skagerrak, which is uniquely designed for laying cable under water, illustrates the impracticability of the underwater approach for the Northern Pass line. The Skagerrak is owned and operated by Nexans, a manufacturer of electric cable. It has a deadweight of 9,373 tons, a beam of 32 meters, and is 112.25 meters long. A vessel of such proportions cannot navigate the Connecticut River in New Hampshire, and there is no other potential underwater route.

C. Placing the Line Underground Is Not a Reasonable Alternative.

Some commenters have suggested that the Project should be installed underground. This option is not practical because it would require the use of heavy equipment that could not practically be moved to the remote locations along significant portions of the route, it would involve much more extensive and permanent disruption of the environment, it is not practicable

³ The CHPEI Presidential Permit Application, DOE Docket No. PP-362, at 7-10, describes the equipment needed to lay and then maintain an underwater cable at the required depths, which CHPEI explains generally range from 3-4 feet to 15 feet beneath the bed surface.

given the terrain and geology along significant portions of the route,⁴ and it would have a prohibitive cost.⁵ In addition, to avoid placing too much tension on the underground cable and to maintain an acceptable cable-bending radius, installing such a line may require drilling or tunneling through areas of steep grades in order to keep the underground cable sufficiently flat and level. An underground cable in such terrain would also present much greater maintenance challenges, thus creating the risk that, in the event of trouble on the line, the line would be out of service for extended period to allow for diagnosis and repair of the problem.

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- ⁴ Installing an underground transmission cable system requires:
- Excavation of a trench along the entire route;
 - Installation of a duct bank (including conduits) with a dimension of approximately 2' by 5' with the top of the duct bank located 30" below finish grade;
 - Encasement of the conduits in concrete;
 - Installation of cable splice vaults approximately 35' long, 20' wide and 10' tall and located approximately every 1800';
 - Use of large pieces of equipment, including:
 - flat bed trucks to deliver the cable reels (approximately 14 feet high and weighing approximately 25-30 tons each)
 - cranes needed to lift and place the splice vaults into the ground; and
 - cable pulling rig needed to install the cable into the completed duct bank system;
 - ROW terrain that is accessible by the foregoing construction equipment along the entire length of the ROW to allow the cables reels to be placed in the proper position for pulling into the duct bank system, and allow the cable splice trailers to access the cable splice vaults; and
 - Use of construction techniques such as jack and bore, horizontal directional drilling, and micro-tunneling to go under rivers, streams, or wetlands, or to go through mountains.

It should be apparent from this partial description of the requirements for underground installation that the mountainous, hilly, and rocky terrain that characterizes much of northern New Hampshire makes this alternative completely impractical or as noted in the case law "too fanciful or hypothetical" to require detailed analysis. *Grazing Fields Farm v. Goldschmidt*, 626 F.2d at 1074.

⁵ The Dannis Submission attempts to generalize from publicly available information about the costs of CHPEI project to suggest that the underground option is financially viable based on an erroneous estimation of incremental costs in which the Dannis Motion conflates the CHPEI's underground and underwater costs, and overlooks the very different geography of New Hampshire. That analysis is highly speculative and has no relevance to this Project.

Unlike low-voltage lines, the partial underground option that the Dannis Submission suggests could be used “in areas of heightened sensitivity” has the further problem that it would require a “transition station,” at each location where the line would connect the overhead and underground portions of the line. A transition station is similar to a substation, requires below-grade construction, is surrounded by a chain link fence, and occupies an area roughly the size of four tennis courts or one football field. Northern Pass concluded that an alternative that had all of the other problems associated with underground transmission and would also require such a facility at each transition point hardly meets the objective of minimizing impact in sensitive areas, and thus was not a practical alternative.⁶

D. Placing the Proposed New Capacity in New York Would Not Fulfill the Project’s Purpose.

Northern Pass acknowledges that it did not seriously consider the alternative of switching the capacity to the CHPEI line, which some have suggested as an alternative. The CHPEI project is designed to deliver 2,000 MWs of power into the New York area to meet power requirements there. Even if an additional 1,200 MW of transmission capacity could reasonably be accommodated in that corridor, such an alternative would not meet the Project’s purpose of delivering power into New Hampshire and New England.⁷

⁶ A design that was partially underwater would require the same kind of transition stations at each point where the line went from overhead to under water.

⁷ CHPEI originally proposed extending the line to Bridgeport, Connecticut, but it subsequently announced that the line will terminate in New York City.

E. A Different Financing Structure Would Not Fulfill the Project's Purpose.

The Dannis Submission takes issue with the fact that Northern Pass is structured as a participant-funded project, and in that connection, it suggests that Northern Pass has avoided otherwise applicable ISO-NE review of the Project. First, far from avoiding ISO-NE review of the Project, Northern Pass has applied, under Section II.47.5 of the ISO-NE Transmission, Markets and Services Tariff, for approval to interconnect the Project to the New England transmission system. That interconnection process is fully underway.

Second, as DOE fully understands, the Federal Energy Regulatory Commission ("FERC") regulates the terms and conditions, including the financing structure, under which Northern Pass can provide and be compensated for transmission services. FERC has now reviewed and approved the Northern Pass proposal to develop a participant-funded transmission line. *Northeast Utils. Serv. Co.*, 127 FERC ¶ 61,179, *reh'g denied*, 129 FERC ¶ 61,279 (2009). It has also approved the Transmission Services Agreement, establishing the economic terms under which Northern Pass will provide those services. *Northern Pass Transmission LLC*, 134 FERC ¶ 61,095 (2011), *petition for reh'g pending*. Among other things, FERC concluded that the Project "will be appropriately vetted through the ISO-NE stakeholder process and that ISO-NE will play a key role in ensuring that the transmission line will not adversely affect reliability or operations." 129 FERC at P 46.

While these FERC decisions do not constrain DOE's ability to review project alternatives that it believes may be environmentally preferable, the financial structure is central to the Project purpose of bringing a new source of competitively priced low-carbon power into New

Hampshire and New England. Northern Pass does not deem other financing alternatives practical or consistent with its purpose and need. Thus, it had no obligation to include them its Application.⁸

IV. A Post-Scoping Public Comment Period Is Unwarranted.

The Joint Letter suggests that, after DOE concludes the scoping period and issues its scoping report identifying the issues and alternatives that the EIS will consider, DOE should allow for a period of public comment on whether an appropriate range of alternatives has been identified for consideration. There is no provision in the DOE rules or in the NEPA rules of the Counsel on Environmental Quality (“CEQ”) for such a step in the process. In fact, the CEQ rules specify that the draft EIS should evaluate reasonable alternatives, explain alternatives that were considered and rejected as impractical or unreasonable, and allow for a period of public comment. 40 C.F.R. § 1502.14(a). See also *Sierra Club v. Marsh*, 976F.2d 763, 771 (1st Cir. 1992). The function of the post-scoping comment period, as described in the Joint Letter, seems to simply duplicate the function of the draft EIS. Moreover, given the robust public participation in the numerous scoping meetings DOE has held and the extended period for scoping comments, providing for still another comment period would seem to be particularly unnecessary here.

Nevertheless, a decision on this issue may be premature given that Northern Pass is requesting an extension of the public scoping period and intends to explore whether there might

⁸ In *Citizens Against Burlington v. Busey*, 938 F.2d 190, 197-99 (D.C. Cir. 1991), the court recognized that, where the City of Toledo sought to expand its airport to create a large cargo hub, the agency performing a NEPA analysis had no obligation to consider alternatives, other than the no action alternative, that would not meet that purpose: “Congress did not expect agencies to determine for the applicant what the goals of the applicant’s proposal should be.” *Accord Roosevelt Campobello Int’l Park Comm’n v. EPA*, 684 F.2d at 1047 (limiting the consideration of alternatives to the deep water ports that met the applicant’s objective of being able to serve super tankers).

be a better route for the Project. DOE may, therefore, wish to defer for now what additional comment opportunity should be provided in the event Northern Pass proposes new routing options during the requested extended scoping period.

V. Conclusion.

Northern Pass appreciates this opportunity to respond to some of the comments that have been made in the scoping process to date, and it believes this submission reflects its good faith effort to be responsive to concerns members of the public have identified. The requested extension of the scoping period may assist Northern Pass further in that effort and help to assure that the final proposed routing for the Project is the result of a thorough investigation of all feasible options.

Very truly yours,

A handwritten signature in cursive script that reads "Mary Anne Sullivan".

Mary Anne Sullivan

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cc: Service List (sent electronically)