

October 14, 2011

BY ELECTRONIC MAIL

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U.S. Department of Energy  
1000 Independence Avenue, S.W.  
Washington, D.C. 20585

**Re: Northern Pass Transmission, LLC, Presidential Permit Application  
OE Docket No. PP-371  
Second Supplemental Scoping Submission**

Dear Brian:

The Conservation Law Foundation (“CLF”) offers the following additional scoping comments and information for inclusion in the administrative record for the above-referenced docket to be considered as part of the U.S. Department of Energy’s (“DOE”) review of the Presidential Permit application of Northern Pass Transmission, LLC (“NPT”) for the Northern Pass transmission project under Executive Order 10,485, as amended by Executive Order 12,038, and pursuant to the National Environmental Policy Act (“NEPA”). This submission is intended to supplement, and hereby incorporates by reference, CLF’s prior submissions in the above-referenced docket.

This letter and its attachments concern several important issues: (1) DOE’s announcement of the contractor team for the preparation of the Environmental Impact Statement (“EIS”), (2) the Northeast Energy Link (“NEL”) project, (3) recent statements by NPT’s parent company regarding the source of power for the Northern Pass project, and (4) the potential impacts of the Northern Pass project on migratory birds.

**I. Announcement of Contractor Team for EIS Preparation**

CLF has renewed concerns about the integrity, thoroughness, and independence of the NEPA process in the wake of DOE’s announcement of the contractor team and DOE’s release of the Memorandum of Understanding (“MOU”) among NPT, the contractor team, and DOE regarding preparation of the EIS. Specifically:

- DOE has not publicly released the so-called Consulting Services Agreement (“CSA”) between NPT and the contractor team referenced in the MOU, *see* MOU at ¶¶ II.3, and DOE is not a party to this contract. The MOU indicates that, at a minimum, the budget and schedule for preparation of the EIS is specified in the CSA. *See* MOU at ¶¶ II.3, II.8. Without access to the CSA, it is impossible for the public to know whether the CSA violates the MOU’s prohibition

that NPT “neither have control over, nor direct” the contractor team’s activities. *See* MOU at ¶ II.4. CLF also is concerned about the possibility that the CSA (or NPT’s directions to the contractor team under the CSA) could trump the MOU, in violation of DOE regulations and of the public’s interest in a robust, comprehensive EIS in compliance with NEPA. The MOU is not styled as a binding “agreement,” and states that it is “not legally enforceable.” *See* MOU ¶ II.1. Despite DOE’s apparent intent to maintain control over preparation of the EIS, this arrangement of a non-enforceable MOU and a separate CSA to which DOE is not a party does not appear to provide effective DOE control over the contractor team in a manner consistent with DOE regulations.<sup>1</sup>

- The MOU fails to safeguard the legitimacy and independence of the EIS because NPT has been granted extraordinary rights, not shared by any other stakeholders, to influence the schedule, form, and content of the EIS:
  - NPT is “responsible for developing and negotiating the Scope of Work . . . for SE Group’s preparation of the EIS” in the first instance and for “managing the performance of SE Group with respect to the budget.” *See* MOU at ¶ II.3.
  - The schedule for the EIS is subject to NPT approval. *See* MOU at ¶ II.7.
  - NPT apparently will be privy to preliminary drafts of the draft and final EISs before they are released to the public and other stakeholders. In this regard, NPT has “the opportunity to meet with and present its views to DOE,” whenever there “is a difference of opinion between DOE and Northern Pass with respect to the content, relevance or inclusion” of “statements, data, analyses, and conclusions” in the draft or final EIS. *See* MOU at ¶ II.6. DOE “shall consider” NPT’s views before making decisions about what the draft and final EISs will contain. *Id.*
  - Similarly, the contractor team, NPT, and DOE must take part in “coordination meetings, as needed and as appropriate, in order to review the status of the preparation of the EIS or to conduct real-time in-person working sessions.” *See* MOU at ¶ III.5.

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<sup>1</sup> Indeed, this arrangement appears to fall short of the requirement of DOE regulations that there be a comprehensive “agreement” governing the preparation of the EIS, to which DOE is a full and necessary party. *See* 10 C.F.R. § 205.328(b) (“[DOE], the applicant, and the independent third party . . . shall enter into an agreement in which the applicant will engage and pay directly for the services of the qualified third party to prepare the necessary environmental documents,” which “agreement shall outline the responsibilities of each party and its relationship to the other two parties regarding the work to be done or supervised” (emphasis added)).

CLF objects to NPT having this level of day-to-day participation in the drafting of the EIS, as it threatens to undermine the public's confidence that the EIS will reflect DOE's impartial and independent judgment. The process of preparing the EIS should be an iterative collaborative process open to all stakeholders, using readily available mechanisms that have been formally requested by CLF and others, such as the public release and solicitation of comments on a post-scoping, pre-draft EIS report identifying (i) the specific alternatives to be studied in detail in the EIS, including the rationales both for the selection of such alternatives, and for the exclusion of any others from the reasonable range of alternatives to be carried forward in the EIS review, and (ii) the specific categories of environmental impacts to be studied for each alternative in the EIS (what the MOU plainly calls the EIS "Scope of Work"). See Requests for Additional Post-Scoping, Pre-Draft-EIS Report and for Written Decisions on Pending Protests, Objections, Motions, and Comments, dated March 31, 2011; Scoping Comments of Conservation Law Foundation, dated April 12, 2011 ("CLF Scoping Comments"), at 24; MOU at ¶ III.4 (scope of work consists of scope of EIS, including "purpose and need for agency action, the range of reasonable alternatives, impacts to be considered, the issues to be analyzed, and responses to comments by the public and cooperating agencies").<sup>2</sup>

- The MOU does not address the extent to which the contractor team may rely on data gathered and analyses prepared by NPT and its contractors. While there is no question that DOE's contractor team should accept and consider information provided by NPT to the extent that information is included in publicly available submissions supplementing NPT's Presidential Permit application, DOE's contractor team should conduct its own, independent data gathering and analytical work on all issues to be addressed in the EIS. NPT should not be communicating with the contractor team outside the public eye, such as by "providing project specific data and information" directly to the contractor team without releasing that information simultaneously to DOE and the public. See, e.g., MOU at ¶ II.5.B(i).

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<sup>2</sup> CLF is deeply concerned that the MOU sanctions a process by which NPT will have access to, and continual updates regarding, DOE's and contractor team's deliberations during the development of the EIS. In denying other stakeholders similar access, DOE's approach calls the objectivity and legitimacy of the EIS process into question. See DOE, Northern Pass Frequently Asked Questions, at 7, at [http://www.northernpasseis.us/Document\\_Library/documents/DOE\\_Issued\\_Northern\\_Pass\\_FAQs.pdf](http://www.northernpasseis.us/Document_Library/documents/DOE_Issued_Northern_Pass_FAQs.pdf) (stating that DOE will not answer individual emails or telephone calls and that sole public document to be released by DOE before the draft EIS, the so-called scoping report, "will not identify alternatives or describe the environmental impacts to be studied").

- It is not clear to CLF that the potential conflict of interest that led to NPT's withdrawal of the original EIS contractor could not also occur under the MOU. The MOU merely provides the contractor team "shall not engage in activities that would constitute a conflict of interest pursuant to 40 C.F.R. § 1506.5(c)." This provision begs the question. The MOU should have barred the SE Group from being engaged by NPT in any future proceedings with respect to the Northern Pass project, including state permitting proceedings, as any such engagement would constitute a "financial or other interest in the outcome of the project." See *Objection to Selection of EIS Contractor*, dated February 9, 2011.

## II. Northeast Energy Link Project

We call DOE's attention to the recently announced Northeast Energy Link ("NEL") proposal, which is being jointly advanced by National Grid, Bangor Hydro Electric Company (a subsidiary of Emera, Inc.), and First Wind Holdings, LLC. According to the July 11, 2011, press release announcing the project, NEL would utilize the same participant funding approach proposed for the Northern Pass project and would seek to bring electricity from renewable energy projects, including resources in eastern Canada, to southern New England. See *Press Release, National Grid, Bangor Hydro Seek FERC Approval on Funding Approach for Proposed New Transmission Line to Bring Renewable Energy from Maine to Massachusetts* (attached hereto as **Exhibit A**). On July 11, 2011, National Grid and Bangor Hydro filed a petition for approval of its funding approach with the Federal Energy Regulatory Commission ("FERC"). See *Petition for Declaratory Order, FERC Docket No. EL11-49-000* (attached hereto as **Exhibit B**). As reflected in NPT public statements regarding NEL, NEL is a regional transmission project that will compete with the Northern Pass project and will share several of the same features, including the overall intent of linking renewable resources in Eastern Canada with electric customers in southern New England. See *Regarding the Announced Northeast Energy Link* (including a "comparison table"), Project Journal, at <http://www.northernpass.us/project-journal/index.php/2011/08/05/regarding-the-announced-northeast-energy-link/> (visited Oct. 14, 2011) (attached hereto as **Exhibit C**). In preparing the EIS, DOE must take into account the cumulative environmental and energy-related impacts associated with the Northern Pass and NEL projects. See *CLF Scoping Comments at 2-5, 23; Motion to Stay and for Preparation of Comprehensive Regional Energy Assessment*, dated April 28, 2011, at 11-12.

The NEL proposal also underscores the importance of a robust analysis of reasonable alternatives to the current Northern Pass proposal during the NEPA process. As currently conceived, NEL would utilize underground HVDC transmission lines located in existing transportation corridors. Both NEL and the Champlain Hudson Power Express ("CHPE") project proposed for New York provide potential alternative routes and technological options for facilitating additional Canadian imports. Moreover, capital cost information filed by the developers of CHPE with the New York Public Service Commission ("NYPSC") demonstrates that underground HVDC technology is commercially available at a cost reasonably comparable to overhead transmission costs. See, e.g.,

Supplement to Application of Champlain Hudson Power Express, Inc. for a Certificate of Environmental Compatibility and Public Need, Attachment J, Updated Exhibit 9, NYPSC Case No. 10-T-0139 (July 22, 2010), at <http://documents.dps.state.ny.us/public/Common/ViewDoc.aspx?DocRefId={F3EC199D-3941-4DAC-9B17-97AEB617DAED}> (visited Oct. 14, 2011) (attached hereto as **Exhibit D**) (providing construction cost estimate of \$304.1 million for 89.7 miles of underground cable supply, installation, and engineering costs, or \$3.39 million per mile).<sup>3</sup> Thus, NEL and CHPE serve to confirm that burial of HVDC lines in existing transportation corridors is likely to be viable for the NPT project, and deserves full consideration by DOE as a reasonable and potentially less impacting alternative to overhead lines in new or expanded transmission-only rights of way. See CLF Scoping Comments at 9, 12.

More broadly, the NEL proposal provides further support for the motion filed by CLF and others in April advocating a comprehensive, regional assessment of the nature and extent of the need for Canadian energy imports and of the most appropriate, least impacting strategies to meet any such need. The motion's request has languished without response by DOE for nearly six months. Indeed, with the scoping period still open pending additional routing information from NPT, the NEPA process remains stalled, leaving open DOE's opportunity to coordinate a regional analysis without adding any additional time to its project-specific review. Given the NEL announcement and NPT's continued delay of its own permitting process, CLF renews its request for a regional study.

### **III. Northeast Utilities' Statements Regarding Project Power Source**

On July 28, 2011, the Chief Financial Officer of NPT parent Northeast Utilities provided sworn testimony before the Massachusetts Department of Public Utilities regarding the Northern Pass project. Of relevance to DOE's consideration of the environmental impacts from the Hydro-Québec generating projects that will provide power for import via the Northern Pass project, Mr. McHale testified:

We already know for a fact that the utility Hydro-Quebec has initiated the construction of dams, and we've already entered into

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<sup>3</sup> NPT has not provided detailed construction cost estimates of the current proposal that would enable a precise comparison. Assuming that a per-mile cost for NPT would be in the same range as the construction cost estimate for CHPE and that much of the NPT project could be located in transportation corridors (as has been proposed for CHPE), it is reasonable to expect that construction costs for an underground alternative to NPT would be approximately \$600-700 million, which is presumably within the same range as the transmission component of the \$1.1 billion estimate for NPT's total capital costs. Thus, NPT's statements that underground technology for the NPT project is cost-prohibitive are plainly inaccurate and should not be credited by DOE during the NEPA analysis of reasonable alternatives to the current proposal.

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the record a discussion about the [Eastmain] Water Reservoir that will provide the water source. So this is not speculative. They're building the dams and they will go into service; and that will be the primary source, if not the exclusive source, of energy that will flow over that line. . . . [T]hat is the full expectation.

See Testimony of David R. McHale, Joint Petition for Approval of Merger Between NSTAR and Northeast Utilities, Mass. DPU Docket No. 10-170, at 1,568-69 (Jul. 28, 2011) (attached hereto as **Exhibit E**). This testimony confirms that the Northern Pass project is intended to transmit power from new projects under construction in Canada, consistent with the published plans of Hydro-Quebec and the Province of Quebec. See CLF Scoping Comments, dated Apr. 12, 2011, at 16-17. However, the testimony is at odds with NPT's public statements that the NPT will transmit power from existing Hydro-Québec facilities, including statements in NPT's Presidential Permit Application. See "About Hydroelectricity," at <http://www.northernpass.us/project-overview/about-hydroelectricity> (visited on Oct. 14, 2011, and attached hereto as **Exhibit F**) ("Hydro-Québec does not need to build any new generation to support The Northern Pass project."); NPT Presidential Permit Application at 4 n.1 ("The electricity delivered by H.Q. Hydro Renewable Energy, Inc. over the Project would consist of 'system' power comprised of approximately 98% hydroelectric generation, with the balance made up of a combination of other sources of generation.").

Mr. McHale's testimony also acknowledges that, according to Hydro-Québec's own research, there are significant greenhouse gas emissions following hydropower project development that are nearly equivalent to a combined-cycle natural gas plant during the first decade of project operation. See Testimony of David R. McHale, *supra*, at 1,572. In its application to the Federal Energy Regulatory Commission for approval of its Transmission Service Agreement with Hydro-Québec, NPT submitted an article summarizing this same research, which addresses greenhouse gas emissions measured and projected at the Eastmain-1 Reservoir. See CLF Supplemental Scoping Submission dated June 13, 2011, at Reference A.1 (Exhibit No. NPT-207). The cited research, together with Mr. McHale's testimony, strongly suggests that, relative to the natural gas-fired generation that is predicted to be displaced, the project will result in the same or even additional greenhouse gas emissions through 2021. Thus, NPT cannot credibly claim, as it has to public audiences and the United States Forest Service, that the NPT project will "reduce CO<sub>2</sub> emissions in New England by up to 5 million tons per year, equal to the emissions of nearly one million cars." See NPT, Special Use Permit Application (SF-299), at 2 (June 28, 2011), at [http://www.northernpasseis.us/Document\\_Library/documents/NP\\_SUP/SUP%20Application%20with%20Cover%20Letter%206-28-11.pdf](http://www.northernpasseis.us/Document_Library/documents/NP_SUP/SUP%20Application%20with%20Cover%20Letter%206-28-11.pdf). See also "Environmental Benefits," at <http://www.northernpass.us/environmental-commitment/environmental-benefits> (visited on Oct. 14, 2011, and attached hereto as **Exhibit G**) ("Bringing 1,200 megawatts of hydroelectric energy

into New England will reduce carbon dioxide emissions by up to five million tons a year—equivalent to the annual emissions of nearly 900,000 cars.”).<sup>4</sup>

In preparing the EIS, DOE must fully investigate and characterize the impacts of the new projects in Québec that will serve the Northern Pass project, along with Hydro- Québec’s export-related plans more generally. *See* CLF Scoping Comments, *supra*, at 15-17; Motion to Stay and for Preparation of Comprehensive Regional Energy Assessment, *supra*, at 9-11.

#### IV. Impacts on Bird Migration

CLF also wishes to highlight and urge DOE to devote substantial consideration to an important potential environmental impact of the Northern Pass project – the project’s potential effects on migratory birds, including without limitation the effect of electro-magnetic fields generated by the project on species that utilize the Earth’s magnetic field for orientation. *See also* CLF Scoping Comments, *supra*, at 22 (listing impacts of project that must be considered in EIS). NPT’s preferred route for the project intersects two major migration pathways that were documented in a noteworthy study providing a census of migratory birds traveling through the White Mountain National Forest. *See* Williams et al., Bird Migration Through a Mountain Pass Studied with High Resolution Radar, Ceilometers, and Census, *THE AUK* 118(2):389-403 (2001) (attached hereto as **Exhibit I**). DOE should take this and other research literature on this issue into account to fully characterize the potential adverse effects of the project on migratory birds and to assess the relative impacts of potential alternative routes that avoid or minimize impacts to the documented migration pathways.

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<sup>4</sup> DOE should also be aware that, on October 12, 2011, NPT’s parents asserted to the Massachusetts Department of Public Utilities that they will not make any commitments regarding which current power sources that the Northern Pass project would displace. *See* Initial Brief of the Joint Petitioners, Joint Petition for Approval of Merger Between NSTAR and Northeast Utilities, Mass. DPU Docket No. 10-170, at 86 (attached hereto as **Exhibit H**) (“[I]t is impractical if not impossible for the Joint Petitioners to guarantee that the power being delivered from the NPT project will only displace oil and coal generation. Restructuring laws in various states across the region have indicated that a market based approach will govern how energy is produced, as well as policies and practices of ISO-NE. The Joint Petitioners cannot make commitments as to how a free market will function. . . .”). Despite NPT’s claims that the proposed project will reduce carbon dioxide emissions by up to 5 million tons per year, *see, e.g., id.* at 39, this statement amounts to an admission that the developers do not intend to assure that any particular level of climate benefits from the project will ever be realized.

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We appreciate DOE's consideration of this supplemental scoping submission, which we provide without prejudice to any and all legal rights CLF may have, each of which is hereby expressly reserved.

Respectfully submitted,

**Conservation Law Foundation**



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