

UNITED STATES OF AMERICA
BEFORE THE
DEPARTMENT OF ENERGY
OFFICE OF ELECTRICITY DELIVERY AND ENERGY RELIABILITY

Northern Pass Transmission LLC
Application for Presidential Permit

OE Docket No. PP-371

**COMMENTS OF CONSERVATION LAW FOUNDATION,
APPALACHIAN MOUNTAIN CLUB, AND SOCIETY FOR THE PROTECTION OF
NEW HAMPSHIRE FORESTS ON AMENDED APPLICATION**

In response to the Notice of Amended Application from the U.S. Department of Energy (“DOE”), dated August 19, 2013 (78 Fed. Reg. 50,405), Interveners Conservation Law Foundation, Appalachian Mountain Club, and Society for the Protection of New Hampshire Forests (“Environmental Interveners”) file the following comments on the Amended Application (“Amended Application”) of Northern Pass Transmission LLC (“Applicant”) in the above-captioned proceeding.¹

Despite the passage of three years, thousands of public comments questioning many aspects of the project, and millions of the Applicant’s dollars spent on property acquisitions and public relations, the Amended Application is incomplete and inconsistent with DOE regulations—defects that plagued the Applicant’s original application. Indeed, the Applicant has submitted what amounts to a poorly cited legal brief that is utterly lacking in factual support, in lieu of the detailed technical and environmental document that DOE’s regulations and the

¹ In December 2010, the Environmental Interveners each filed motions to intervene and comments in response to DOE’s first notice of the Applicant’s Presidential Permit application. In the Notice of Amended Application, DOE confirmed that all similarly situated parties that sought to intervene at that time “will continue to be considered parties to this proceeding and need not reapply.” 78 Fed. Reg. 50,405, 50,406 (Aug. 19, 2013). The Environmental Interveners offer these comments in addition and without prejudice to their previous respective and joint comments in this proceeding and during the National Environmental Policy Act (“NEPA”) process for the project. The Environmental Interveners reserve their respective rights to raise additional concerns regarding the Amended Application, the project proposal, and DOE’s administration of this proceeding to the extent that the permitting and NEPA processes for the project continue.

circumstances of this particular project require. Therefore, the Environmental Interveners urge DOE to strike and reject the Amended Application with prejudice to any further application or amendment.

I. THE AMENDED APPLICATION FAILS TO OFFER A SINGLE PRACTICAL ALTERNATIVE TO THE APPLICANT’S PROPOSED PROJECT.

Separate and distinct from the requirement that DOE consider all reasonable alternatives to the project during its National Environmental Policy Act (“NEPA”) review of the project, DOE regulations require that Presidential Permit applications contain “a brief description of *all* practical alternatives to the proposed facility and a discussion of the general environmental impacts of each alternative.” 10 C.F.R. § 205.322(d) (emphasis added).² This requirement serves to surface a preliminary set of practical alternatives to the proposed project, well in advance of DOE’s own analysis of reasonable alternatives under NEPA, to inform DOE’s plans for the NEPA review as well as the public’s comment on the permit application and during the scoping phase of the project’s NEPA review.³

While the original Application offered a small number of routing alternatives, the Amended Application presents a single proposal: the Applicant’s preferred 187-mile route.⁴

² On June 2, 2011, DOE issued “interpretative guidance” that purports to interpret the requirements of 10 C.F.R. § 205.322, including the requirement that Presidential Permit applicants provide a description of practical alternatives. See Interpretive Guidance on the Requirements of 10 C.F.R. § 205.322, at http://northernpasseis.us/media/documents/interpretive_guidance_final.pdf (“Interpretative Guidance”). To the extent that this guidance asserts that the regulations can be read to waive the requirement that the applicant present practical alternatives to the project in a Presidential Permit application, the guidance is *ultra vires*, and the Environmental Interveners reserve the right to challenge such a reading. Indeed, the Applicant has conceded to the public that it was required to present practical alternatives in its application. See *Northern Pass Says State Could Overrule Forest Society Land Claims*, New Hampshire Public Radio, Aug. 8, 2013, at <http://nhpr.org/post/northern-pass-says-state-could-overrule-forest-society-land-claims> (alternative segment through Connecticut Lakes Headwaters Conservation Easement “was only included due to a regulatory requirement to list alternatives”).

³ See, e.g., Interpretative Guidance at 2 (“The early availability of information and identification of potential alternatives by the applicant facilitates development of the EIS.”).

⁴ The Amended Application includes a brief description of one alternative segment that the Applicant apparently supports. See Amended Application at 57. Siting the project in this segment would require (i) use of conservation land protected by the Connecticut Lakes Headwaters Conservation Easement, which a legal analysis by the Society for the Protection of New Hampshire Forests and statements from a wide range of political leaders in

Given the geographic extent of the Northern Pass project, the Applicant's apparently significant pre-application "routing efforts" (see Amended Application at 28-29), and the wide range of alternatives presented by stakeholders during the ongoing NEPA scoping process, the Amended Application could and should have included brief descriptions of many practical alternatives, including different routes, converter and terminal station locations, border crossings, and technological options, even if they were not the Applicant's preferred approach.⁵ The Amended Application remains incomplete and deficient without this information.

II. THE AMENDED APPLICATION FAILS TO PROVIDE REQUIRED INFORMATION PERTAINING TO THE IMPACTS OF THE PROPOSED PROJECT.

Although an improvement over the original application, the section of the Amended Application regarding the "environmental impacts" of the project (Amended Application at 27-53) fails to include a reasonable level of detail and information for a project of Northern Pass's scale and impact. *See* 10 C.F.R. § 205.322(c). Moreover, neither the Amended Application nor its attachments provide the voluminous information in the Applicant's possession regarding

New Hampshire have ruled out as inconsistent with the terms and spirit of the easement, and (ii) judicial partition of another parcel of land in which the Society for the Protection of New Hampshire Forests holds an interest. *See, e.g.*, Congressional Delegation Letter to Secretary Vilsack (Aug. 16, 2013), *available at* <http://goo.gl/vjXMmM>. Given these impediments, it is clear that this one alternative segment is not, in fact, a practical alternative; it also is impossible to square the Applicant's implication that this route segment is practical with its refusal to provide full information on other alternatives that it deems unreasonable due to potential impacts on conserved land, such as co-location with the Phase I/II HVDC corridor (see Amended Application at 61).

⁵ In this regard, a recent white paper by the New England States Committee on Electricity described four concrete proposals for facilitating new imports of electricity from Canada to New England, including the Northern Pass project, Northeast Energy Link, the Green Line, and Champlain Hudson Power Express. *See* New England States Committee on Electricity, Incremental Hydropower Imports Whitepaper 29-36 (Fall 2013), *at* http://nescoe.com/uploads/Incremental_Hydropower_Imports_Whitepaper_Sept._2013.pdf. With these proposals, other approaches under consideration in Vermont, and a pending regional economic study of increasing energy deliveries on the existing Phase I/II HVDC transmission tie, it is clear that the Northern Pass transmission project is not the only practical alternative to fulfilling the project's objective of increasing imports. *See id.* at 48-56; *Shumlin Explores More Power From Hydro-Québec*, Vermont Public Radio, Sept. 9, 2013, *at* <http://digital.vpr.net/post/shumlin-explores-more-power-hydro-quebec>.

those impacts, despite at least four years of extensive environmental study and analysis and coordination with federal and state resource agencies.⁶

In addition to these deficiencies, the Amended Application provides virtually no information on the environmental impacts associated with the power sources for the Northern Pass project, other than to repeat that that the power will be “clean” and “low-carbon” power from Québec. *See, e.g.*, Amended Application at 1, 6, 9, 27, 55, 71, 73, 76, 77, 78, and 79. Despite these representations, the Amended Application provides no analysis regarding the net carbon impact of the project. Especially given the Applicant’s efforts to tout the environmental attributes of the project’s proposed power sources, the Applicant was required to describe the full set of environmental impacts of those power sources, including the hydropower facilities planned or under construction in Québec to facilitate electricity exports that are at least in part to be delivered through the Northern Pass project.⁷

⁶ Given the Applicant’s description of these environmental assessment efforts in the Amended Application, information presented at the Applicant’s recent “open houses,” and the Environmental Interveners’ own inquiries, the Applicant’s environmental inventories and studies include many reports and analyses that could and should have been included in the Amended Application for immediate public review, among them the Applicant’s “wetland and stream delineations; vernal pool surveys; threatened and endangered species surveys; wildlife habitat assessments and tracking; and archeological Phase I-A surveys” (Amended Application at 31), as well as a full collection of visual simulations (compare Amended Application Exhibit 13 with <http://www.northernpass.us/visual-simulations.htm>).

⁷ *See, e.g.*, Motion to Stay Proceedings and for Preparation of Comprehensive Assessment of Need for Imports of Canadian Energy into Northeastern United States at 3-5 (Apr. 28, 2011), available at http://northernpasseis.us/media/documents/SCI_CCOu_42811.pdf (motion of Environmental Interveners and other parties, discussing plans for new Canadian hydropower facilities to serve export markets). In this regard, it appears that the unsupported five-million ton figure for carbon emissions reductions described in the Amended Application (at 1, 79) relies on the construction of new hydropower facilities in Québec. *See* Charles River Associates, LMP and Congestion Impacts of Northern Pass Transmission Project at 2, 28 (Dec. 7, 2010), available at <http://goo.gl/j8RE8f>. As discussed in prior comments of Conservation Law Foundation, the figure is also at odds with unambiguous science, including the work of Hydro-Québec itself, regarding the greenhouse gas emissions of large-scale hydropower and ignores other factors that may substantially reduce the potential climate benefits associated with imports through the Northern Pass project. *See* Third Supplemental Scoping Submission (Feb. 14, 2012), available at http://northernpasseis.us/media/comments/SCI_CCOu_21412.pdf.

III. THE AMENDED APPLICATION INAPPROPRIATELY CONTAINS UNSUBSTANTIATED FACTUAL ASSERTIONS REGARDING PROJECT BENEFITS AND ALTERNATIVES AND IMPROPER LEGAL ARGUMENTS.

Instead of fulfilling the informational requirements of DOE's Presidential Permit regulations, the Amended Application advances a set of factual claims regarding the supposed benefits of the Northern Pass project, including enhanced electric system reliability, job creation, greenhouse gas emissions reductions, energy cost savings, and increased property tax revenues for communities. *See, e.g.*, Amended Application at 1-2, 9-13. For some claims, no citation or supporting information is provided; for others, the Amended Application cites outdated consultant reports that were commissioned by the Applicant but that were not attached to the Amended Application.⁸ In both cases, the Amended Application fails to provide DOE and the public with relevant information to substantiate the benefits on which the Amended Application extensively relies.

The Amended Application also engages in a lengthy discussion of why numerous alternatives suggested by the public during the NEPA process are "unreasonable." *See* Amended Application at 54-80.⁹ This section of the Amended Application surveys a series of alternative routes, technologies, and energy resources, alternatively providing conclusory factual assertions about their generalized deficiencies and various legal arguments that such alternatives are

⁸ The Amended Application directs readers who wish to access the studies supporting the Applicant's estimates of job benefits, increased tax revenues, energy cost savings, and greenhouse gas emissions reductions to defunct website addresses. *See* Amended Application at 11 n.9, 13 nn. 15, 16. Most of these studies were submitted to the Federal Energy Regulatory Commission in 2010 but have not been submitted to DOE by the Applicant in this proceeding. Conservation Law Foundation lodged several of these studies in this proceeding's docket through a scoping submission. *See* Supplemental Scoping Submission (Jun. 13, 2011), available at <http://northernpasseis.us/comments/1833/> (Exhibit A-1).

⁹ The Amended Application appears to confuse the *Applicant's* obligation to present "all practical alternatives" to its proposal—an obligation the Amended Application fails to fulfill—with NEPA's requirement that *DOE* assess all "reasonable alternatives" to the project in the Environmental Impact Statement.

unreasonable under NEPA.¹⁰ In stark contrast with the intended function of a Presidential Permit application—to inform the public regarding the project proposal, its potential impacts, and its practical alternatives, and to facilitate DOE’s review of the project under NEPA and in the Presidential Permit process—the Applicant’s aim here is to *avoid* any genuinely comprehensive and rigorous review of the many reasonable alternatives suggested in public comments, rendering DOE’s review of the Northern Pass project a hollow if not meaningless exercise. The Environmental Interveners particularly object to the Applicant’s narrow construction of NEPA and DOE’s Presidential Permit regulations, which would effectively require DOE to accept all of the Applicant’s preferences regarding the geographic location, design, and cost of the project.¹¹ DOE should reject the Amended Application’s summary dismissals of alternatives as premature, inappropriate, and irrelevant to DOE’s independent analysis of alternatives to the Northern Pass project.¹²

¹⁰ See, e.g., Amended Application at 65-66 (“For a project like Northern Pass that is designed to deliver competitively priced power to the market, these additional costs are economically infeasible if they affect any substantial portion of the line. In NEPA terms, these considerations render the construction of an underground line for the Project over any significant distance an unreasonable alternative.”); *id.* at 67 (“The challenges for construction seem to be nearly insurmountable in certain state roads...”); *id.* at 73 (“The courts have already rejected the claim that energy efficiency measures represent a practical alternative to a major new addition of baseload power supply. As noted above, *Envtl. Law & Policy Ctr. v. NRC*, 470 F.3d at 682, upheld an agency’s refusal to consider energy efficiency alternatives as part of an EIS where the applicant defined its project purpose as ‘generating baseload energy.’”).

¹¹ A full response to the many factual assertions and legal arguments contained in the Amended Application is beyond the scope of these comments. The Environmental Interveners reserve the right to make appropriate responses to the extent that DOE’s permitting and NEPA processes for the project proceed.

¹² The Amended Application’s inadequate discussion of alternatives illustrates why DOE, if it proceeds with the NEPA review of the Northern Pass project, should prepare and release for public comment a post-scoping and pre-draft Environmental Impact Statement report describing the alternatives that will be addressed in detail in DOE’s Environmental Impact Statement. This is a step that the Environmental Interveners, among others, requested in March 2011 and that New Hampshire Congressional delegation recently asked DOE to pursue. See Letter Requesting Post-Scoping, Pre-Draft EIS Report (Mar. 31, 2011), available at http://northernpasseis.us/media/comments/SCI_Tlrv_33111.pdf; Congressional Delegation Letter to Secretary Moniz (Aug. 16, 2013), available at <http://goo.gl/1sOuGT>.

IV. THE DEFECTS OF THE AMENDED APPLICATION UNDERMINE DOE'S REVIEW OF THE PROJECT AND PUBLIC INVOLVEMENT IN THE PERMITTING PROCESS.

DOE should recognize that the Amended Application's deficiencies come at a heavy cost to DOE's own review of the Northern Pass project and the public's ability to participate in the permitting and NEPA processes. Without a complete set of initial information from the Applicant, including reasonably detailed descriptions of and technical information regarding the proposed project's environmental impacts and the practical alternatives, DOE lacks a crucial starting point from which to begin its NEPA and public interest reviews of the project. For its part, the public has less than a complete picture of the project, confounding the public's ability to participate meaningfully in public commenting opportunities like this one, as well as in NEPA scoping meetings and written scoping comments.

The project is one of the largest and most significant energy infrastructure projects in New Hampshire history, and stakeholder confidence in the federal permitting process is critical to ensure a legitimate and publicly acceptable outcome. For the Environmental Intervenors and the public at large, the Amended Application's failure to provide the required information on the Northern Pass project, its environmental impacts, and the alternatives to the project is the latest in a series of disappointments with DOE's and the Applicant's approaches to the Presidential Permit and NEPA processes.¹³ In this instance, DOE has a renewed obligation to enforce its own regulations and reassert its control over the permitting process in the face of the Applicant's ongoing refusal to take DOE's permitting and NEPA requirements seriously.

¹³ See, e.g., Conservation Law Foundation Fourth Supplemental Scoping Submission (Oct. 9, 2012), available at http://northernpasseis.us/media/comments/sci_ccou_10912.pdf (requesting termination of third-party contractor team in light of concerns with integrity and fairness of permitting process following flawed third-party contractor team selection process and excessive Applicant role in NEPA process); Request to Terminate Third-Party Contractor Team, at http://northernpasseis.us/media/comments/sci_ccou_102412_1.pdf (Oct. 24, 2012) (same, filed by nine grassroots and environmental organizations and dozens of individuals).

* * *

For all of the reasons above, the Environmental Interveners urge DOE to strike and reject the Amended Application with prejudice to any further application or amendment.

Respectfully submitted,

CONSERVATION LAW FOUNDATION

/s/ Christophe G. Courchesne
Christophe G. Courchesne
Staff Attorney
Conservation Law Foundation
27 North Main Street
Concord, NH 03301-4930
(603) 225-3060
ccourchesne@clf.org

APPALACHIAN MOUNTAIN CLUB

/s/ Susan Arnold
Susan Arnold
Vice President for Conservation
Appalachian Mountain Club
5 Joy Street
Boston, MA 02108
(603) 664-2050 or (617) 391-6595
sarnold@outdoors.org

SOCIETY FOR THE PROTECTION OF NEW HAMPSHIRE FORESTS

/s/ Will Abbott
Will Abbott
Vice President for Policy and Land Management
Society for the Protection of New Hampshire Forests
54 Portsmouth Street
Concord, NH 03301
(603) 224-9945
wabbott@forestsociety.org

Dated: September 17, 2013