



October 16, 2012

Mr. Brian Mills  
Office of Electricity Delivery and Energy Reliability  
U.S. Department of Energy  
1000 Independence Avenue, S.W.  
Washington, D.C. 20585

Re: Northern Pass Transmission LLC  
Presidential Permit Application, Docket No. PP-371  
Response to Conservation Law Foundation 10/9/2012 Submission

Dear Mr. Mills:

Northern Pass Transmission LLC submits this response to the latest allegations by the Conservation Law Foundation (CLF) concerning the Department of Energy's (DOE's) NEPA process and set the record clear about the selection of the NEPA contractor in this matter. Based on selective quotations from what is likely a highly skewed choice of documents received through a Freedom of Information Act request, CLF argues that DOE relinquished control of the NEPA process, allowing Northern Pass to control the selection of NEPA contractor and the structuring of the relationship. The facts are quite different.

### **The NEPA Contractor Search Process Was Entirely Proper**

As DOE knows, Northern Pass conducted the search process for a new NEPA contractor, subject to DOE supervision and control, including rejection of Northern Pass's initial recommendation for the new contractor. In so doing, DOE and Northern Pass were both following standard NEPA practice that is entirely consistent with 40 CFR 1506.5(c). DOE does not differ from other agencies in requiring an applicant for agency action that requires NEPA review to conduct the search for candidates for a NEPA contractor, but to reserve to itself the final decision. Here, DOE not only retained decision-making authority over the final selection, but it also subjected the search and selection to strict standards far beyond what NEPA requires.

Specifically, after Northern Pass requested and DOE agreed to the termination of Normandeau as the NEPA contractor, DOE directed Northern Pass to conduct a search for candidates for a new NEPA contractor for the Northern Pass project subject to three criteria,<sup>1</sup> criteria far stricter than those imposed by the CEQ regulations:

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<sup>1</sup> DOE articulated the first criterion at the outset of the search. As Northern Pass proposed various candidate contractors to DOE informally, it became apparent that DOE was likewise applying the remaining two criteria as well.

- The candidates could have no current *or past* relationship with Northern Pass, Northeast Utilities or any of its affiliates, or NSTAR or any of its affiliates;
- The candidates had to have demonstrated NEPA experience specifically in transmission projects; and
- The candidates had to have sufficient capability, taking into account other work they had underway, to be able to handle a large, complex NEPA review.

It quickly became apparent that the first of these three criteria ruled out virtually all of the large, national firms that routinely handle complex NEPA projects. Among the firms excluded applying the three criteria were all of the firms on DOE's pre-approved list of NEPA contractors for DOE's own projects requiring NEPA and all of the firms that had responded to the Request for Proposals that Northern Pass had issued prior to selecting Normandeau. The criteria also ruled out: AECOM, ESS Group Inc., Environmental Resources Management, Inc., HDR, Inc., CH2MHill, The Louis Berger Group, TRC Environmental Corporation, The Shaw Group, SAIC (because of work performed for Northeast Utilities by SAIC subsidiary Patrick Energy Services, Inc.), Environ Inc., and SWCA Environmental Consultants. Included on the disqualified list were firms DOE suggested to Northern Pass and firms that Northern Pass found through its own research.

After conducting the extensive search, Northern Pass recommended that DOE consider SE Group, based on its excellent reputation for managing complex NEPA projects, its presence in New England, and the very strong reference it received from the US Forest Service, a cooperating agency in the Northern Pass NEPA process. As DOE will recall, it asked for additional information concerning SE Group's transmission experience. In the end, DOE concluded that SE Group's transmission experience was insufficient, and that additional resources to support SE Group were needed. CLF Exhibits 1, 6 and 7.

The search resumed. Lucy Swartz was identified by DOE as someone familiar with DOE's approach to NEPA. Northern Pass can find no record of how E&E came to Northern Pass's attention, but it is not a firm with whom anyone on the Northern Pass team had any prior experience. However, E&E met the DOE criteria, including experience with transmission projects. Thus, Northern Pass decided it would recommend the team of SE Group, E&E and Lucy Swartz.<sup>2</sup> Again as DOE knows, when Northern Pass made its recommendation to DOE of the team of SE Group, E&E and Lucy Swartz, it was in effect an identification of the only firms that Northern Pass had identified that did not have a conflict of interest, as DOE had defined it for purposes of the Northern Pass project, and that collectively seemed to meet DOE's other criteria.<sup>3</sup>

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<sup>2</sup> Contrary to CLF's characterization, and as demonstrated by the document CLF purports to rely on, Northern Pass's counsel took no position on whether Lucy Swartz's work for Champlain Hudson Power Express was disqualifying. The record shows that DOE had ruled out HDR, Inc. on that basis and that the question needed to be resolved before Northern Pass would include Swartz on the team it proposed to DOE. DOE approved Swartz, and so she was included on the team Northern Pass recommended. CLF Exhibit 2.

<sup>3</sup> DOE had advised Northern Pass that some of the DOE national laboratories occasionally do NEPA work, but DOE also advised Northern Pass that the laboratories were very expensive. Northern Pass called one or more DOE laboratories to explore the feasibility of using them. They were the only potential candidates Northern Pass ruled out, and they were ruled out solely on the grounds DOE had identified: they were very substantially more expensive than any of the private providers of NEPA services with whom Northern Pass spoke during its lengthy search.

In short, Northern Pass conducted an extensive culling process based on DOE's criteria for selection and the recommendations of DOE and others. Northern Pass did not advocate for the team. Rather, it advised DOE that, after an extensive search based on its contacts and DOE's suggestions, it had finally identified a group of contractors that satisfied all of the criteria DOE had established..

### **Northern Pass Did Not Structure DOE's Relationship with the NEPA Contractor**

CLF contends that Northern Pass structured DOE's relationship with the NEPA contractor. The record shows nothing of the sort. To the contrary, Northern Pass simply followed DOE's instructions regarding the documentation it wanted regarding the NEPA contractor selection and work plan.

When Northern Pass made its recommendation of the SE Group, E&E and Swartz to DOE, it forwarded their respective statements of credentials. In response, DOE will recall that it insisted that, in order to make a decision, DOE needed the team to prepare a proposed work plan, presumably to demonstrate that the team had thought through how the members of the team would work effectively together. Northern Pass advised the team of DOE's request, and the team formulated that work plan, which Northern Pass forwarded to DOE.

Thereafter, DOE indicated that it wanted a one-page summary of the roles and responsibilities of the team for posting on the project web site. CLF Exhibit 4. SE Group, not Northern Pass, prepared that document, which Northern Pass then forwarded to DOE. CLF Exhibit 3 and 5. DOE also asked Northern Pass to document the process it had followed to ensure that the members of the proposed NEPA team met the conflict of interest test DOE had instructed Northern Pass to apply. Northern Pass did so. CLF Exhibit 8. Only after it had received and reviewed that information, did DOE make its decision to select SE Group, E&E and Swartz as the NEPA team for the Northern Pass NEPA process.

DOE then directed Northern Pass to prepare an MOU in DOE's standard form setting out the relationship of DOE, the NEPA contractor and Northern Pass. Closely adhering to a template for the MOU that DOE had previously provided to Northern Pass, a form DOE has used for many other NEPA projects, Northern Pass prepared the MOU. When it received the Northern Pass draft of the MOU, DOE made detailed changes to the language that appeared in its own template, changes that underscored DOE's control and direction over the NEPA contractor. Northern Pass accepted DOE's changes, and the document was then executed by all parties. CLF Exhibits 11-13.

### **CLF's Other Claims Are Irrelevant.**

CLF makes a number of other miscellaneous, but essentially irrelevant attacks on DOE's NEPA process.

Northern Pass did, as CLF asserts, respond to DOE requests for documents that Northern Pass thought were relevant (or thought others might deem relevant) to the Northern Pass NEPA process. CLF Exhibits 20 and 21. Northern Pass did not control DOE's decisions about which of those documents to post on the project web site, but surely there is no violation of any NEPA regulation or other injury to the NEPA process for an applicant to bring potentially relevant information to the attention of the decision-maker.

Likewise, at DOE's request, Northern Pass drafted a description of its proposal for inclusion in DOE's Notice of Intent to Prepare an EIS (NOI). As the record reflects, Northern Pass followed the model of DOE's previously published NOI for the Champlain Hudson Power Express project. CLF Exhibit 19. The document was entirely factual. It included, as CLF notes, a description of the proposed project that was based closely on the previously submitted Application for a Presidential Permit. Since the document description was purely factual in nature, it made sense for Northern Pass, with its much better knowledge of the proposal, to prepare the first draft describing the proposal for DOE's consideration and possible use.

CLF makes the specious suggestion that "DOE effectively signed off on the form and content" of the Northern Pass Presidential Permit Application before it was filed. This totally fabricated claim is based on the fact that Northern Pass had a routine pre-filing courtesy meeting with DOE. CLF Exhibit 18. Nothing that transpired in that meeting constituted a sign-off on the form or content of the Presidential Permit Application, and it is irresponsible of CLF to even make such a claim.

CLF's complaint that DOE asked Normandeau to perform a "binning" of public scoping comments after Normandeau's role in the NEPA process had otherwise been terminated is utterly without relevance. As we understand it, the binning is an entirely ministerial function that allows DOE to more efficiently proceed with its analysis of the proposal, and to enable DOE to better exercise its judgment on the public scoping comments.

We understand that the foregoing facts are known to DOE, but Northern Pass cannot stand by silently in the face of CLF's misrepresentations of what has been (and what Northern Pass expects will continue to be) an extremely rigorous NEPA process. There is absolutely no justification for the CLF request to terminate the NEPA contractor team.

Respectfully submitted,

  
Anne Bartosewicz  
Project Director - Transmission  
Northeast Utility Service Company