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

Northern Pass Transmission, LLC — OE Docket No. PP – 371
Application for Presidential Permit

MOTION TO STAY PROCEEDINGS AND FOR PREPARATION OF COMPREHENSIVE ASSESSMENT OF NEED FOR IMPORTS OF CANADIAN ENERGY INTO NORTHEASTERN UNITED STATES

Consistent with Rule 212 of the Federal Energy Regulatory Commission's ("FERC") Rules of Practice and Procedure, 18 C.F.R. § 385.212, the Conservation Law Foundation, Inc. ("CLF"), the Ammonoosuc Conservation Trust, the Appalachian Mountain Club, the Appalachian Trail Conservancy, the Coos Community Benefits Alliance, the North Country Council, Owl's Nest Resort & Golf Club, the Society for the Protection of New Hampshire Forests, and the undersigned individuals, all interveners in the above-captioned docket (hereinafter, the "Interveners"), hereby move the U.S. Department of Energy ("DOE") (i) to prepare a comprehensive Environmental Impact Statement ("EIS") providing a regional assessment of the need for imports of Canadian energy into the northeastern United States (the "Northeast") and the best means of meeting any such need, as discussed herein; (ii) to stay all proceedings and National Environmental Policy Act ("NEPA") review of the application of Northern Pass Transmission, LLC ("NPT") for a Presidential Permit (the "Application") pending the completion of such comprehensive EIS; and (iii) to render a written decision on such motion within thirty (30) days. As grounds therefor, the Interveners state as follows:

Background

1. The Application seeks a Presidential Permit from DOE to construct an international electric transmission line (the "Project") that would cross the Québec-New

Hampshire border and transmit up to 1,200 megawatts ("MW") of electric power from Québec utility Hydro-Québec and its subsidiaries and affiliates (collectively or individually, "HQ") into the New England electric grid.[1] The Project—both on its own, and in combination with other projects involving importation of electricity generated in Canada—has significant environmental, economic, and energy implications in both the United States and in Canada.

2. DOE is currently in the "scoping" phase of its NEPA review of the Application. *See* 76 Fed. Reg. 7,828 (Feb. 11, 2011) (announcing intention to prepare an EIS, conduct public scoping meetings, and accept written scoping comments from the public); 76 Fed. Reg. 21,338 (Apr. 15, 2011) (reopening scoping period through June 14, 2011). On information and belief, following the withdrawal of DOE's former contractor, Normandeau Associates, DOE does not currently have a contractor to assist the agency with preparation of the EIS.

3. As a practical matter, DOE's preparation of the EIS cannot begin in earnest until the scoping phase of its NEPA review has concluded and it has engaged a contractor to assist with preparation of the EIS. Several of the movants here have requested that, before DOE begins to work on the EIS in earnest, DOE issue and accept public comment on a pre-scoping, pre-draft-EIS report to describe the alternatives and categories of impacts that will be addressed in detail in the EIS. *See* Letter from CLF et al., dated March 31, 2011, *at* http://www.northernpasseis.us/ comments/ScopingInterveners/ SCI_TIrw_33111.pdf.

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[1] NPT intends to construct and operate the Project in accordance with the terms of a Transmission Service Agreement between NPT and HQ that has been filed with and accepted by FERC, whereby HQ will pay all costs associated with developing the line in exchange for the priority rights to transmission service through the Project over the agreement's forty-year term. *See* Order Accepting Transmission Service Agreement, 134 FERC ¶ 61,095 (Feb. 11, 2011) ("[NPT] will develop, site, finance, construct, own and maintain the NPT Line. It will sell 1,200 MW of firm transmission service over the NPT Line to HQ Hydro over a 40-year term. [HQ] will be responsible for providing approximately $1.1 billion in initial construction costs and return on such costs, necessary additional capital expenditures and return, and other expenses associated with the line over the 40-year operating term of the TSA. [HQ] plans to recover these costs through competitive sales of wholesale power in the New England market.").

Projects, Plans, and Considerations Related to the Importation of Canadian Power into the United States

4. DOE is currently considering the Presidential Permit application of another international transmission project—the Champlain Hudson Power Express ("CHPE")—which is proposed to import 1,000 MW of electric power from Canada into the New York grid via underground and submerged High Voltage Direct Current transmission lines. DOE has completed the scoping phase of its NEPA review of CHPE.

5. The Project is an element of a long-term, large-scale strategy, advanced by HQ, a crown corporation wholly owned by the Province of Québec,[2] and by the provincial government of Québec itself, to expand hydro-electric and other generation in Québec and increase exports to the United States. Specifically:

a. The Province of Québec's ten-year energy strategy (2006-2015) calls for increasing generation capacity through new hydroelectric and other projects totaling 4,500 MW and, with this increased capacity, stepping up exports of power to neighboring control areas, including New England and New York. *See* Québec Energy Strategy (2006-2015), English summary at 9-10, *available at* http://www.mrnf.gouv.qc.ca/english/publications/energy/strategy/energy-strategy-2006-2015-summary.pdf ("The 4,500 MW added capacity will be sufficient to meet Québec's long-term demand, promote wealth-creating industrial development, and support exports. . . . The Government also intends to ensure that Québec is able to increase its electricity exports, once its own needs have been met. It has therefore mandated [HQ] to begin discussions with potential partners in view of signing electricity export agreements.").

[2] *See* NPT Addendum to Application at 6 (Feb. 15, 2011).

b. Québec has also announced an economic development plan for its northern territory through 2035—"Plan Nord"—that emphasizes new generation projects totaling an additional 3,500 MW, including 3,000 MW of hydroelectric capacity, to support Québec's energy strategy. *See, e.g.*, Plan Nord Working Document (Nov. 2009), *available at* http://www.plannord.gouv.qc.ca/english/documents/plan-nord.pdf.

c. A major objective of HQ's strategic plan (2009-2013) is to expand generation capacity to increase exports to New York and New England. *See* Hydro-Québec Strategic Plan (2009-2013) at 19-27, *available at* http://www.hydroquebec.com/ publications/en/strategic_plan/pdf/plan-strategique -2009-2013.pdf ("As a result of recent and ongoing hydroelectric development projects, Hydro-Québec Production expects to have the generating capacity needed to ensure export growth. By 2013, we will have nearly 24 TWh at our disposal. This margin of flexibility will enable us to increase the volume of our exports."); *id.* at 42 ("We will continue our initiatives to increase interconnection capacity with the U.S. Northeast and neighboring Canadian provinces. Furthermore, subject to confirmation of requests for transmission services, we plan to build a 1,200 MW interconnection with New England by 2014. . . . We also plan to upgrade the New York interconnection (Châteauguay substation). With import and export capability, this interconnection plays a major role in energy interchanges between Québec and the United States. We will coordinate the work with the U.S. operators to reduce impacts on service. We are considering other projects to ensure long-term operability and are keeping up our efforts to maintain or increase the exploitable capacity of all our interconnection facilities."). HQ also envisions using

increased interconnections with the Ontario grid to extend the reach of its exports to western New York and the U.S. Midwest. *See id.* at 26.

6. The Application, Québec's and HQ's broader strategy to increase generation capacity and exports to the United States, and the CHPE project also arise in the context of other planning and considerations in the United States pertaining to Canadian imports, including the following:

a. Since 2009, DOE and Canadian officials have been engaged in a "U.S. – Canada Clean Energy Dialogue" (the "Dialogue"). One of the principal objectives of the Dialogue's Electric Grid working group is "increasing opportunities for trade in clean electricity." *See* U.S. – Canada Clean Energy Dialogue Strategic Plan at 5 (Sept. 2009), *available at* http://www.energy.gov/news/documents/CED_Action_Plan_(color)_pdf_2_(2).FINAL_9-15-09.pdf. A final report on the Dialogue is forthcoming this year.

b. In April 2010, Maine enacted legislation intended to promote new transmission infrastructure along designated highway and other corridors, which could be used to increase Maine's capacity for imports from New Brunswick. *See* 2010 Me. Laws ch. 655 (L.D. 1786). A new transmission line between New Brunswick and Maine has been the subject of significant recent study. *See, e.g.*, U. S. – Canada Clean Energy Dialogue, Increasing Trade in Clean Electricity, Presentation of Gordon van Welie, President and CEO, Independent System Operator New England ("ISO-NE"), at 12 (May 20, 2010), *at* http://www.iso-ne.com/pubs/pubcomm/ pres_spchs/2010/post_uscanada_may2010.pdf; Phase III of Maine Power Connection project, *at* http://www.mainepowerconnection.com/program_background.aspx.

c. In August 2010, Vermont agreed to a long-term power purchase agreement with HQ that allows Vermont to purchase up to 225 megawatts of power, predominantly hydroelectricity, starting in November 2012 and ending in 2038. *See* Press Release, Vermont and Québec reach new energy agreement (Aug. 12, 2010), *available at* http://www.hydroquebec.com/ 4d_includes/headlines/PcAN2010-129.htm. The Vermont Public Service Board approved this agreement on April 15, 2011. *See* Vermont Public Service Board, Order No. 7670, *at* http://psb.vermont.gov/sites/psb/files/ orders/2011/7670FinalOrder.pdf.

d. New Hampshire has recognized the potential role of Canadian imports in its Climate Action Plan ("CAP"), clearly stating that imports from HQ could play a role in achieving the goals of the CAP provided that encouraging such imports would be "complementary" to "developing non-CO_2-emitting generation in New Hampshire," would "facilitate retiring or curtailing the operation of fossil fuel-fired plants in New England," and would be undertaken only "with consideration for the broader environmental impacts of the power sources as well as the impacts that this imported power would have on the development of in-state renewable resources." *See* N.H. CAP at 44-45, *available at* http://des.nh.gov/organization/divisions/air/tsb/ tps/climate/action_plan/nh_climate_action_plan.htm.

e. Massachusetts has incorporated "clean energy imports" from Canada, including through the Project and additional projects, into its "Clean Energy and Climate Plan for 2020." *See* Massachusetts Executive Office of Energy and Environmental Affairs, Massachusetts Clean Energy and Climate Plan for 2020 (Dec. 29, 2010) at ES-10, 38, 45-46, *available at* http://www.mass.gov/Eoeea/docs/ eea/energy/2020-clean-

energy-plan.pdf (providing for an "expanded policy" encouraging the Project and additional imports).

7. In addition to specifically addressing the issue of Canadian energy imports, states across the Northeast have adopted policies and goals to promote renewable energy, energy efficiency, conservation, and the reduction of greenhouse gas emissions associated with the generation and consumption of electricity.[3] The nature and extent of Canadian imports into the Northeast will have significant implications for these policies and goals.

DOE Must Conduct a Broad, Public Interest Review of the Nature and Extent of the United States' Need for Canadian Imports into the Northeast

8. The Presidential Permit process requires DOE to decide whether the Project is "consistent with the public interest" of the United States and may impose on the Project "such conditions as the public interest may in its judgment require." *See* Executive Order 10,485, as amended by Executive Order 12,038. In connection with this Project and more broadly as a matter of the United States' foreign energy policy, it is imperative that DOE proactively and critically assess whether Québec's and HQ's strategy to increase generation capacity and exports to the United States is consistent with the "public interest," including the energy needs of the

[3] *See, e.g.*, New England Governors' Renewable Energy Blueprint at 5 (Sept. 2009), *at* http://www.nescoe.com/uploads/September_Blueprint_9.14.09_for_release.pdf (identifying development of "significant quantity of untapped renewable resources" as significant policy goal that would enable New England to meet renewable energy goals, reduce reliance on carbon-emitting generation resources, and potentially export clean power to neighboring systems); N.H. CAP, *supra*, at 3-8 (describing planned actions to achieve goal of long-term reduction in greenhouse gas emissions of 80 percent below 1990 levels by 2050); Final Report and Recommendations of the Governor's Commission on Climate Change at 3-9 (2007), *at* http://www.anr.state.vt.us/ anr/climatechange/Pubs/GCCC%20Final%20Report_pages%201-10.pdf (describing recommendations, including "building on Vermont's energy efficiency leadership and renewable energy potential," to achieve 75% reduction in greenhouse gas emissions below 1990 levels by 2050); Maine Department of Environmental Protection, Third Biennial Report on Progress toward Greenhouse Gas Reduction Goals at (Feb. 1, 2010), *at* 10-18, *at* http://www.maine.gov/dep/air/greenhouse/pdf/Third%20Biennial%20Report%20FINAL%20ALL%20PAGES%20CORRECTED%2002192010.pdf (describing greenhouse gas emission mitigation efforts underway or projected for 2010 – 2020, including policies and investments in energy efficiency and renewable and low-carbon energy sources, such as wind and ocean energy); Massachusetts Clean Energy and Climate Plan for 2020, *supra*, at ES-5 to ES-8 (describing portfolio of policies, including policies relating to electric supply, to achieve state cap on greenhouse gas emissions of 25% below 1990 levels by 2020).

Northeast (including a robust and reliable regional electric transmission system); national, regional and state clean energy policies and goals; national, regional, and state economic interests; and the protection of natural resources and the environment. This is a critical analysis that DOE, as the nation's lead agency on energy policy, must conduct to proactively guide important decision-making to advance the public's interest (as opposed to merely reacting to individual, piecemeal projects advanced by private entities).

9. To ensure that DOE is making decisions that are truly in the best interests of the United States and the Northeast, DOE must evaluate (i) the nature and extent of the Northeast's need for Canadian imports of predominantly hydroelectric power, taking into account the nation's, region's, and states' energy policies and goals, and (ii) the most efficient, least impacting means of transmitting Canadian power to meet any such need. This evaluation requires a broad regional review that considers all the projects, plans, and considerations related to the Application, including the CHPE project, HQ's and Québec's strategy to increase exports to the Northeast, and all the other related developments, considerations and implications of Canadian imports discussed *supra*.

10. To ensure sound decisions in the best public interest of the United States, it is essential that DOE undertake this public interest and policy review before it proceeds with the environmental review and decision-making associated with the Application. Indeed, proceeding with the pending Application before first determining the United States' needs as they relate to Canadian imports into the Northeast region would be putting the proverbial "cart before the horse." The broader, regional review requested herein would effectively establish a master plan for the region's importation of Canadian power, including whether and how that power fits into

the region's broader energy needs and policies, and would lead to better informed, sound decision-making on individual projects, such as the one at issue in this proceeding.

DOE Should Undertake Its Public Interest Review of Canadian Imports in a Comprehensive EIS

11. Under NEPA, DOE's review of the Project and any similar projects (including CHPE) must fully analyze and characterize the environmental, economic, and energy implications of Québec's strategy and related developments discussed *supra*, including impacts in the United States and in Canada, and examine all reasonable alternatives to increasing Canadian imports through the Project and any similar projects (including CHPE). *See, e.g.*, Scoping Comments of the Conservation Law Foundation (Apr. 12, 2011), *available at* http://www.northernpasseis.us/comments/ScopingInterveners/SCI_TIrw_41211.pdf.

12. A comprehensive EIS is the appropriate mechanism for ensuring an adequate NEPA analysis of the overall energy, economic, and environmental context (including the nature and extent of the Northeast's need for Canadian imports, and the best way to accommodate any such need) for the Project, the CHPE project, and future projects requiring Presidential Permits or other federal action by DOE or other agencies. *See* Forty Most Asked Questions Concerning CEQ's National Environmental Policy Act Regulations, 46 Fed. Reg. 18,026, 18,033 (Mar. 23, 1981) ("Forty Questions") ("The preparation of an area-wide or overview EIS may be particularly useful when similar actions, viewed with other reasonably foreseeable or proposed agency actions, share common timing or geography. For example, when a variety of energy projects may be located in a single watershed. . . the overview or area-wide EIS would serve as a valuable and necessary analysis of the affected environment and the potential cumulative impacts of the reasonably foreseeable actions under that program or within that geographical area.").

13. The preparation of a comprehensive EIS also would provide an important opportunity for key stakeholders, including each of the state and regional authorities and bodies in the Northeast, such as ISO-NE, the New England Governor's Conference, and the Eastern Canadian Premiers, to provide important input in determining the nature and extent of the need for Canadian imports and the ways to effectively meet those needs with the least adverse environmental impacts.

14. Likewise, to ensure that DOE's environmental reviews are efficient, consistent, rational, and compliant with NEPA, it is essential that DOE not merely react to project proposals from HQ and/or other entities in piecemeal fashion but instead address them in a single EIS. *See, e.g.*, *Kleppe v Sierra Club*, 427 U.S. 390, 410 (1976) (Where several projects or potential projects "will have a cumulative or synergistic environmental impact upon a region . . . their environmental consequences must be considered together. . . . Only through comprehensive consideration of pending proposals can the agency evaluate different courses of action" (emphasis added).). As the First Circuit stated in *Jones v. Lynn*:

> [O]ne initial comprehensive study, which could be referred to and supplemented by less comprehensive individual studies. . . would appear to reflect a better use of scarce resources. In such a case it would not seem sensible to adopt the piecemeal approach which [the agency] seeks to adopt, whereby it will prepare a modified impact statement separately for each proposed [project], an approach akin to equating an appraisal of each tree to one of the forest. . . . [I]t seems a perversion of NEPA for [the agency] to approach each parcel, wholly depending in its timing of environmental review on the filing of applications. . . and considering anew the scene as it is changed by each subsequent approval. Not only would this be wasteful of bureaucratic resources, but the plurality of possible appeals would suggest a wasteful prolongation of time spent in litigation.

Jones v. Lynn, 477 F.2d 885, 890 -91 (1st Cir. 1973).

15. Moreover, NEPA always requires a thorough assessment of cumulative impacts of past, present, and future projects and of all reasonable project alternatives. *See* 40 C.F.R. § 1508.25 (requiring EISs to address cumulative impacts); *City of Carmel-by-the-Sea v. United States Dep't of Transp.*, 123 F.3d 1142, 1160 (9th Cir. 1997) (EIS must include "useful analysis of the cumulative impacts of past, present and future projects"). A piecemeal review of each proposed project would frustrate DOE's compliance with its obligations to consider cumulative impacts in a rigorous, meaningful manner.[4]

16. The Council on Environmental Quality's ("CEQ") NEPA regulations provide that DOE's review of "cumulative" and "similar" actions should be undertaken in a single EIS. *See* 40 C.F.R. § 1508.25. The proposed and reasonably foreseeable projects that will import electric energy from Canada, including the Project and CHPE, are "cumulative" because, when viewed together, they are likely to have "cumulatively significant impacts" on the environment, the regional economy, and the region's energy future. *See* 40 C.F.R. § 1508.25(a)(2) (agency should analyze "cumulative" actions in single EIS). They are also "similar" because they "have similarities that provide a basis for evaluating their environmental consequences together, such as common timing or geography." *See* 40 C.F.R. § 1508.25(a)(3) (agency "should [analyze similar actions in the same impact statement] when the best way to assess adequately the combined impacts of similar actions or reasonable alternatives to such actions is to treat them in a single impact statement"). *See also Citizens for Responsible Area Growth v. Adams*, 477 F. Supp. 994, 1002 (D.N.H. 1979) (holding that, to evaluate cumulative environmental impacts

[4] To the extent DOE does not prepare a comprehensive EIS, the Interveners maintain that DOE must nevertheless undertake the regional review and assessment of the projects, plans, and considerations described *supra* in the context of the EIS for the Project and hereby reserve all legal rights to demand such analysis.

properly, three air terminal-industrial park projects at Lebanon, New Hampshire airport must be addressed in one EIS).

17. A comprehensive EIS here would provide analysis similar to what is required in a "programmatic EIS," which is an important decision-making tool for agencies to use in making decisions on broad, long-term issues. *See City of Tenakee Springs v. Clough*, 915 F.2d 1308, 1312 (9th Cir. 1990) ("Where there are large scale plans for regional development, NEPA requires both a programmatic and site-specific EIS."); *see also LaFlamme v. FERC*, 852 F.2d 389, 401-02 (9th Cir. 1988) (rejecting FERC decision not to produce a EIS addressing cumulative impacts because "the foreseeability of future development underscores the importance of performing a comprehensive cumulative impact analysis of the project's effects on the environment"). DOE recently acknowledged the tremendous utility of programmatic EISs addressing major agency activities and policy directions with long-term implications. *See* Carol Borgstrom, Director of DOE Office of NEPA Policy and Guidance, Integrating NEPA into Long-Term Planning at DOE at (Mar. 23, 2009), *at* http://www.eli.org/pdf/seminars/NEPA/Borgstrom.NEPA.pdf. In DOE's experience, "a programmatic EIS [('PEIS')] is likely to be broader in perspective and more suitable for integration with long-term planning" when contrasted with a project-specific EIS. *Id.* at 1. Likewise, DOE believes that "a PEIS process that includes good public involvement may serve to garner public support and forge consensus, resulting in sustainable decisions." *Id.* at 6. Overall, "in general and in the long run—PEISs appear to be worthwhile" to DOE. *Id.* A comprehensive EIS will be similarly useful to promote sound and appropriately long-term decision-making in this and other Presidential Permit proceedings relating to importation of Canadian power into the Northeast region.

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18. While a comprehensive EIS is being completed, DOE must stay all proceedings in this docket and project-specific NEPA review of the Project, and the Interveners so move.

19. Based on the analysis contained in the comprehensive EIS described *supra*, DOE could then engage in project-specific "tiered" environmental reviews and Presidential Permit determinations (and other federal agencies could likewise address projects within their respective jurisdictions) with a broader view of how each project fits within—and either advances or hinders—an established comprehensive regional energy plan, including plans specifically pertaining to Canadian imports.

WHEREFORE, the Interveners move for DOE (i) to prepare a comprehensive EIS as discussed herein; (ii) to stay all proceedings regarding, and NEPA review of, the Application pending the completion of such comprehensive EIS; and (iii) to issue a written decision on this motion within thirty (30) days.

Respectfully submitted,

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Dated: April 28, 2011

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing submission has this day been sent via electronic mail, and by U.S. Mail, to Anne Bartosewicz (bartoab@nu.com), Northeast Utilities, 107 Selden Street, Berlin, CT 06037 and Mary Anne Sullivan, Esq. (maryanne.sullivan@hoganlovells.com), Hogan Lovells, LLP, 555 13th Street, NW, Washington, D.C. 20004.

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