



## **NEPGA Position Paper on the Northern Pass Transmission Project**

### **Overview**

The Northern Pass Transmission Project (NPTP or the Project) is a proposed high-voltage direct-current transmission line running through New Hampshire to connect government-owned hydroelectric power in Quebec to markets across New England. Many parties, especially in New Hampshire, have questioned NPTP's benefits citing, in particular, concerns about the Project's impact on the economy, the landscape and affected communities. While many of NPTP's details are still emerging or evolving, NEPGA is especially concerned about the potential impacts of NPTP on the New England economy and environment, as well as on the region's competitive electric market.<sup>1</sup> While the adverse impacts are significant, any benefits of the Project are unknown. Project developers have characterized the resultant power as "low cost," a claim not substantiated by actual data or prices. Given the magnitude of these adverse impacts, and the uncertainty of the benefits, policymakers and government and civic leaders must carefully consider and balance all these factors and the alternatives to determine if the economic and environmental impacts of NPTP are justified.

### **Background**

Over the past 20 years the electricity market has been restructured from a vertically integrated, monopolistic system which placed energy infrastructure investment risk upon captive ratepayers, to a market-based system in which private generators risk their own capital with the expectation of participating in a well-functioning, competitive wholesale energy marketplace. This restructured system attracts private capital, fosters innovation and efficiency, and frees consumers from the harmful consequences of monopolies' bad energy investment decisions. In large part due to the nearly 10,000 megawatts (MW) of new, efficient generating capacity built over the last decade by competitive generating companies, New England has an ample surplus of generating capacity above that needed to provide system reliability, a surplus expected to persist for years to come.

### **Issues**

Hydro Quebec (HQ), a crown corporation owned by the Province of Quebec, is one of the ten largest electric utilities in the world, combining its mostly hydroelectric power with imports from Ontario and other regions to serve its customers in Quebec and to export to markets in the U.S. and Canada. NPTP is a proposed direct-current transmission line that will stretch nearly 140

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<sup>1</sup> The views in this position paper reflect the views of the New England Power Generators Association and not necessarily the positions of each individual member.

miles from the northern border of New Hampshire south to Deerfield, New Hampshire, and will enable HQ the exclusive right to export an additional 1,200 MW of electricity over the transmission line into the New England market. The portion of the NPTP transmission line that is in the United States will be constructed by a consortium of Northeast Utilities (NU), the parent company of Public Service of New Hampshire (PSNH), and NSTAR, a Boston based electric distribution company. The potential opportunities the Project offers to the region must be balanced against impacts to the environment, the economy and the competitive wholesale electricity market. NPTP is now in the early stages of seeking various regulatory approvals from state and federal agencies. The NPTP is also working through a very challenging siting process, requiring acquisition of new rights of way, expansion of existing rights of way, as well as changes to easements and land use approvals from numerous municipalities and private land owners.

NEPGA has particular concerns that in its current form, NPTP seeks special treatment creating an unlevel playing field which would provide unfair advantages in the marketplace, ultimately harming consumers. Only with a level playing field on which all participants operate under the same rules, will consumers see the breadth of investments, efficiencies and innovations that are the hallmarks of a well-functioning wholesale electricity market. NEPGA's specific concerns with the structure of NPTP include the issues of eminent domain, potential changes to the Renewable Energy Portfolio Standards (RPS) in the region, the use of sole source no-bid contracting, and unfair subsidies from the regulated utility. Each of these concerns is addressed in greater detail below.

### ***Eminent Domain***

NPTP's developers have stated they will attempt to acquire the property rights they need through negotiations with landowners, but have made clear they believe they can, and will, resort to the use of eminent domain if negotiations fail.<sup>2</sup> Contrary to the NPTP developers' position, however, the New Hampshire Constitution appears to prohibit the use of eminent domain in connection with the Project.<sup>3</sup> As NPTP is a private purpose development to enable HQ to increase its export sales into the U.S. market, it is not a public facility for the broader common good, and thus fails to meet the criteria for using eminent domain. Developers of power plants within New England who must compete with NPTP cannot take private property through eminent domain for their own infrastructure needs. Instead, in developing power plants and the transmission lines needed to interconnect with the electric power grid, competitive electric generators must negotiate with landowners to either purchase land or obtain easements. Thus this special treatment of HQ not only violates the New Hampshire Constitution, but also unfairly disadvantages the region's electric generators.

Other points to consider related to eminent domain include:

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<sup>2</sup> <http://www.seacoastonline.com/articles/20110309-NEWS-110309728>

<sup>3</sup> [Art.] 12-a. [Power to Take Property Limited.] No part of a person's property shall be taken by eminent domain and transferred, directly or indirectly, to another person if the taking is for the purpose of private development or other private use of the property. (November 7, 2006)

- Because the NPTP developers made a business decision to structure this Project as a private, limited access facility for HQ's use and control, it is not a traditional common carrier public utility. Any rights to take private property for a public good that a more traditional utility might use *do not* apply in the case of the NPTP.
- All of the high voltage transmission lines in New England have been placed under the operating control of an independent, non-profit corporation known as the Independent System Operator of New England (ISO-NE). ISO-NE ensures all power companies access to the New England transmission system on an open, non-discriminatory basis on terms and conditions regulated by the federal government. ISO-NE also ensures reliability across the region through a system planning process that is open to all market participants. Overseeing transmission investments on a regional level and not on a state-by-state basis recognizes the regional nature of the system and guards against disruptive or duplicative state-specific processes. While NPTP is free to develop a transmission line at its own expense to import Canadian power without the ISO-NE including the line as a reliability project in its system plan, it does so as a business proposition, independent of any public need or public purpose. In short, NPTP is a private development, no different than any of the power plants developed by the members of NEPGA.

### ***Changes to the Renewable Energy Portfolio Standards (RPS)***

NU executives have publicly stated that they would like to change state laws in New England to qualify the power from HQ as “renewable energy” for the purpose of receiving ratepayer subsidies and supports associated with state RPS programs.<sup>4</sup> While this stated desire suggests the Project may require subsidies and therefore raises questions about its financial viability, it also undermines the fundamental premise of RPS programs which were designed to foster the development of emerging technologies such as solar and wind within the New England region. Qualifying large-scale hydro projects, which are already a mature technology, will overwhelm the RPS programs in New England, undermine the value of the subsidies, and hinder the development of local renewable power projects. In the long run, the loss of these investments will negatively affect electricity consumers and the New England economy. Further, while much of the generation occurring inside HQ is hydro generation, HQ imports significant quantities of energy from other regions’ fossil generation making the shade of “green” of this energy questionable.

### ***Sole Source, No-bid Contracting***

In public statements regarding NPTP, PSNH has indicated that it intends to enter into a 40-year purchase power agreement with NPT/HQ for an estimated 120 MW of power.<sup>5</sup> This is presumptuous and ill-advised for a variety of reasons.

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<sup>4</sup> <http://www.masshightech.com/stories/2010/10/18/daily49-Northeast-Utilities-Add-hydropower-as-renewable-energy.html>  
<http://www.bizjournals.com/boston/news/2010/10/21/utility-wants-clean-energy-law-changed.html>

<sup>5</sup> <http://www.nashuatelegraph.com/news/923870-196/debate-tackles-power--issues.html>

- The best method of pricing long-term contracts for energy is through a competitive bidding process, which is the industry standard. As electricity enjoys a vibrant, competitive market, sole source, no-bid contracts for long-term commitments will not ensure the best price and best terms. If in the end the HQ power is the best deal for consumers, it will prevail in an open and fair bidding process. Without such a robust competitive bidding process, however, consumers have no guarantee that this is the best deal.
- In order for a utility in New Hampshire to enter into a long-term contract with HQ, state law will need to be amended. In the case of renewable energy for the purpose of meeting the RPS requirements, specific statutory authority has been created for long-term contracts; however, no such authority exists for non-RPS power.

There are serious questions as to whether PSNH needs any additional base load power. The success of the growing retail market in New Hampshire has led most business customers to shop for lower prices and more flexible terms and they no longer require energy service from PSNH. The New Hampshire Public Utilities Commission (PUC) has conducted lengthy proceedings to address this migration issue (DR 10-160) and it is now apparent that PSNH has an excess supply problem, not an impending need for additional power.<sup>6</sup>

#### ***Subsidies from the Regulated Utility***

PSNH is a monopoly electric *distribution* company with state-regulated rates paid by captive distribution ratepayers. However, PSNH is not intended to be a monopoly electric *generation* company and as such should work to ensure a level playing field for all market participants who use or may want to use the distribution system for supply and purchases. As a consequence, it is questionable if the distribution company should be promoting one generation option over another, particularly if they and their parent company have financial interests in a particular project they are promoting. A basic principle of the proper role of the distribution company, as part of its rights and responsibilities associated with a monopoly franchise, suggest the regulated utility should not be playing any role in the development of this private commercial project. Unless they are offering this type of service to all generators, they should not offer it to any generator. In addition, particularly given the controversy surrounding NPTP, it is unclear to consumers if PSNH advocacy is on their behalf or on behalf of HQ and NPTP.

#### **Conclusion**

NEPGA does not oppose the development of new sources of energy for the region, when such new resources are needed or would lower consumer costs. However, as currently structured, NEPGA has significant concerns with the Project in that it seeks special, preferential treatment that would afford it unfair competitive advantages in the marketplace and ultimately harm consumers. If new resources were necessary for the region, NEPGA believes that policy makers and civic and governmental leaders would have a responsibility to consider the economic and environmental impacts of NPTP, comparing it to other alternatives including the construction of

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<sup>6</sup> <http://www.puc.state.nh.us/Regulatory/Orders/2011orders/25256e.pdf>

efficient, clean generation inside New England which produces jobs and property and income tax revenues in the New England states.

NPTP:

- produces few, if any, permanent U.S. jobs and may lead to a net reduction of jobs at other New England power facilities;
- degrades the New England renewable energy market and harms the development of renewable energy in New England;
- has a permanent, negative impact on the landscape in northern New Hampshire;
- establishes a damaging precedent of the use of eminent domain for private power development, and
- adds to the region's already heavy dependence on an energy source whose long term price and availability are outside of federal or state control.

The potential adverse impacts of NPTP on the New England economy and environment, as well as on the region's competitive energy market are significant. While the adverse impacts are significant, any benefits of the project are unknown. Project developers have characterized the resultant power as "low cost," a claim not substantiated by actual data or prices. Given the magnitude of these adverse impacts, and the uncertainty of the benefits, policymakers and government and civic leaders must carefully consider and balance all these factors and the alternatives to determine if the economic and environmental impacts are justified.

### **Who We Are**

The New England Power Generators Association (NEPGA) is the largest trade association representing competitive electric generating companies in New England. NEPGA's members' represent 85%, or nearly 27,000 megawatts (MW), of all the available generating capacity in New England. NEPGA's mission is to promote sound energy policies which will further economic development, jobs, and balanced environmental policy. We believe that sustainable competitive markets are the best means to provide long-term reliable and affordable supplies of electricity for consumers.