

## *Northern Pass's Section 106*

### **"The Proposed APE for Indirect Effects is Inadequate... The Culture of Secrecy Undermines Meaningful Public Input."**

According to Brian Mills at the DOE: "The two mile wide indirect APE was determined based on NH DHR guidance on the indirect APE for wind farms which specifies a three mile wide indirect APE for wind farms. DOE considered that wind turbines may extend as much as 500 feet in height above the ground surface, including the tower and tip of blade when extended to its full vertical height, such that there was a ratio of approximately 0.6 miles of APE width for every 100 feet of vertical height. "

(letter to Richard Boisvert, March 19<sup>th</sup>, 2015)

This is astonishing. Rather than suggest an APE from another Section 106 proceeding for a transmission line, DOE solicited NHDHR for guidance. NHDHR suggested Antrim Wind, a 2.5 mile long proposed project in Antrim. No consideration was given to the fact that NPT's proposal was for a 212 mile route through varied terrain, most of which is not similar, geographically, to Antrim. No consideration was given to a more sophisticated extrapolation of visual effects than Brian Mills' simple division and multiplication!

No consideration was given to the testimony Jean Vissering, witness for Counsel to the Public in the Antrim Wind docket:

"The applicant's viewshed maps appear to be accurate but were limited to a five-mile radius around the project site. While in most cases the most significant impacts will occur within 5 miles of a project, this is not always the case. Generally a 10-mile radius is recommended for all but very small wind projects (3 turbines)."

In addition, a year ago the NH SEC adopted new rules which require a 10 mile visual impact assessment for industrial wind turbines and rural area transmission lines in existing corridors where there is an increase in pole height.

The PA reiterates the DOE's Antrim story and adds that the Indirect APE was developed "to conduct **initial** cultural resources investigations to identify cultural resources for the NPT's proposed Project." (my emphasis) It also stated that the APE was predicated on the "restricted access for the Project." The only access restricted so far has been eminent domain. The initial cultural resources investigation have presumably been finished, cultural landscapes recognized, yet DOE has not expanded the APE.

Following are summaries of eight letters from Consulting Parties received by DOE in the month of August, 2014, in response to DOE's request for input on the APE. Parties were given five days notice for this.

**Letter 1:** "We feel that the proposed one-mile width on either side of the center line is inadequate to cover potential indirect effects. In order to appropriately assess the adverse impacts, we see a need to include all areas within sight of the transmission line, not just those adjacent to the ROW's..."

Your request to keep the most recent material secret seems counter to an open and transparent process

and undermines the public involvement as required by the Section 106 regulations. See 36 C.F.R. 800.2(d)(1)-(2)...

Is there any new information to share of new efforts on your part to obtain broader participation by affected cities and towns?"

**Letter 2.** "The inordinately short timeframe for providing comments...does not suggest an interest on the Department of Energy's ("DOE") part in full an fair consulting party engagement..."

It is highly likely that the indirect APEs identified for assessing visual impacts on historic properties on either side of the proposed project will be inadequate in many cases and will not capture adverse effects on historic properties from which the project or related disruptions would be visible...

**(Redacted)** strongly objects to the condition that documents such as these may not be shared with non-consulting parties. The document does not disclose sensitive information regarding historic and cultural resources in any way and would clearly be subject to disclosure under the Freedom of Information Act....

**As previously discussed and requested with respect to the consulting parties, please provide a legal justification in writing for DOE's decision to impose these conditions on information provided to consulting parties."**

**Letter 3:** "Please explain what criteria was used to determine the indirect APE for the above ground lines in Alternative 2 (1 mile), 5a, 5b, 5c, (1 mile) and 6a and 6b (1.5 miles) ...These distances are inadequate for visual impacts...In other transmission projects of similar tower scale a more appropriate visual impact APE of at least 5 miles from the centerline was used to assess impacts to Section 106 resources." (Gateway West Transmission Line.)

**(Redacted)** understands the need for confidentiality in the Section 106 process... However, such confidentiality is not warranted for this document and other previous section 106 documents that have been shared with consulting parties."

**Letter 4:** "**The Proposed APE for Indirect Effects (Limited to One Mile on Each Side of the Centerline) is Inadequate. ...**

The proposed APE for indirect effects...is an arbitrary, rigid line...where the viewsheds are sweeping and historic landscapes have a high degree of integrity, the adverse visual impacts would extend for many miles, well beyond the proposed APE."

**The Culture of Secrecy Undermines Meaningful Public Input...**This emphasis on secrecy is not only intimidating to the consulting parties, but it fundamentally violates the whole spirit of the Section 106 regulations..."*The agency official, must, except where appropriate to protect confidentiality concerns of affected parties, provide the public with information about an undertaking and its effects on historic properties and seek public comment and input.*"

**Letter 5:** "Our primary concern... is that the 106 analysis of alternatives with overhead towers and lines still fails to fully recognize the value of historic natural landscapes that are considerably more expansive than a 1 mile APE allows to be considered. ..We believe that DOE is confining its depth of view for this Section 106 review much too narrowly."

**Letter 6:** " I would like to disagree with the one-mile APE for indirect effects. The APE should be the viewshed. Existing wooden pole heights are 55'. Proposed two new lines have metal towers heights from 75' to 115' in Easton. The existing line is visible from the historic Jericho Trail from approximately 3 miles...from the Appalachian Trail on south Kinsman Mt...from a distance of 2.5 miles, from Bald Knob from a distance of two miles...from where the Appalachian Trail crosses under it (Lincoln) from a distance of two miles and beyond, ..from Mt. Pemigewasset (Lincoln) from a distance of 1.5 miles and beyond...This is only a skimming, as it were, of two towns on the proposed route."

**Letter 7:** "A climate of intimidation has developed regarding the Section 106 process for Northern Pass. For example, the notice for the consulting party meetings in June was unnecessarily monitory, tinged with suspicion. It almost discouraged me from any further association with the process and possibly warned others off. As professionals whose job it is to work with the public, surely you (DOE) can find a way to create a positive impression..The intent of Section 106 confidentiality restrictions is to protect sensitive sites, not to hamper informed discussion of broad and extremely important policy matters such as the APE..."

I find no explicit consideration of different land covers and terrains in the blanket 1-mile APE. One size does not fit all in a valley town, like mine of Easton, which is also bordered on both sides by the White Mountain National Forest with many vantage points of the existing easement in Easton proposed for Northern Pass. There is scant reassurance in the document that the APE will be adjusted accordingly...

I request...The Consulting Parties distribution list. Since this is a public, federal process, I assume this information is available."

No change in APE followed these comments.

On October 2, 2015, Brian Lusher of ACHP (American Council on Historic Preservation) submitted comments on the Draft Programmatic Agreement to DOE. These comments included the following:

"Area of Potential Effects: Describe more clearly the circumstances in which DOE may change the APE. This is important, in light of the recently proposed amendment to the application for a Presidential Permit and the proposed supplement to the DEIS and also because DOE does not have siting authority..."

The DEIS does not address the presence of Traditional Cultural Properties or Rural Historic Districts, which the DOE proposes to identify and evaluate for National Register Eligibility in "Phase 5-Landscape Inventory" in the draft PA. Please provide a status update on how the DOE has considered information it has received from consulting parties on historic properties. Knowledge of historic properties may be useful in considering alternatives in the NEPA process."

Still no change in the APE, or any word on circumstances that would lead to change.

So, Section 106 began with a poorly conceived APE, justified by the most rudimentary equations. There are clear implications that DOE set this APE, since it has resisted all efforts by consulting parties to widen it. Though Cultural Heritage Landscapes and Rural Historic Landscapes were mentioned in minutes from NH DHR, DOE, NPT and SEARCH as early as March 28, 2013, they remain undrawn on any map, perhaps because this would make clear the manifest inadequacy of the APE.

The press has been kept away from the process and consulting parties are sloughed off and intimidated. The public has been entirely marginalized and has essentially no knowledge of the Section 106 process or the Consulting Party documents citing the inadequacy of this process submitted to DOE, while the applicant has these documents. Whose interests does this ignorance serve?

The APE needs to be extended. The public needs to be solicited for identification of Rural Historic Landscapes/Districts and Cultural Heritage Landscapes.

The Draft PA 2 states that one process for amending the APE is that “DOE determines that consultation with Consulting Parties, additional field research or literature review, tribal consultation, or other factors require reconsideration of the currently defined APE.” All these conditions are present.

Section 106 Consulting Party site says: “Under the terms of the PA (in development), NPT will be responsible for the remaining identification work. The below document identifies the members of the NPT Study Team who may contact Consulting Parties. If you have any questions about the NPT Study Team, please contact Mark Doperalski (mark.doperalski@eversource.com) AND Caitlin Callaghan (caitlin.callaghan@hq.doe.gov).”

Susan Arnold summed up another issue in the Section 106 process, as regards NPT:

1. There is a significant disjunction between the federal "Section 106" process for assessing impacts to historic and cultural resources, and the timeline for the SEC process. The evolving Section 106 "Programmatic Agreement" (PA) currently proposes a 5 year timeframe for completing the Section 106 process. The SEC, which must make a determination as to whether "the proposed energy facility will have an unreasonable adverse effect on historic sites" before it can issue a certificate, will not have the full benefit of considering information emerging from the Section 106 process because of this extended timeline. Even though the draft PA includes in its stipulations the appropriate hierarchy of avoid, minimize, and mitigate as part of the Historic Properties Treatment Plan (IV (B)), the project as proposed could potentially be certified by the SEC before this treatment plan is in full effect. Given that the single best method to avoid impacts on these resources is complete underground burial of the project in existing transportation corridors, application of this mitigation hierarchy would be moot if the project has already been certified by the SEC as proposed. Considering that this project was submitted to the US DOE in 2010, more than 5 years ago, an extension of an additional 5 years is unwarranted, and leaves unanswered the question what information the SEC will actually use within the next year to determine whether Project's impacts on historic sites are or are not unreasonably adverse before issuing its decision

(The comment is midway down in the file of comments from the Deerfield public info session, 3/16/2016: [http://www.nhsec.nh.gov/projects/2015-06/public-comments/2015-06\\_2016-03-16\\_deerfield\\_public\\_information\\_session.pdf](http://www.nhsec.nh.gov/projects/2015-06/public-comments/2015-06_2016-03-16_deerfield_public_information_session.pdf)

Below are APE's for other Section 106 reviews of transmission line projects:

**Plains and Eastern Clean Line:** “APE for indirect effects is the area measured up to 0.5 miles from

above-grade features of the Project, or within the extend of the viewshed, whichever is closer.”

<http://www.achp.gov/docs/tx.ok.ar.tn.doe.plains%20&%20eastern%20clean%20line%20transmission%20project.pa.07dec15.pdf>

***Mountain States Transmission Intertie:*** ” This process will use viewsheds of 5-10 miles to identify areas, based on terrain and distance, from which the transmission line could possibly be seen (without taking vegetation into account).”

[http://www.achp.gov/news\\_05032011.html](http://www.achp.gov/news_05032011.html)

### ***Transwest Express:***

“5.3.12 Visual Resources

5.3.12.1 Physical and Temporal Boundaries of Cumulative Impacts

- Physical – **Viewsheds of the Project alignments or locations out to 20 miles where aboveground structures and associated ROWs are located in, or cross tree-covered landscapes, and out to 5 miles in shrub, grassland, and cropland landscapes ...**
- Physical – Developed and dispersed recreation; historic and recreation trails – **The defined boundary of designated recreation areas, or the specific locations of historic and recreation trails within the viewsheds defined from visual resources (see Section 5.3.12).**

[https://www.blm.gov/style/medialib/blm/wy/information/NEPA/hddo/twe/FEIS/3.Par.66139.File.dat/5-0\\_CumulativeImpacts.pdf](https://www.blm.gov/style/medialib/blm/wy/information/NEPA/hddo/twe/FEIS/3.Par.66139.File.dat/5-0_CumulativeImpacts.pdf)

***Sigurd to Red Butte #2:*** “The visual resource inventory and impact assessment were focused within a 6-mile-wide visual resource study corridor centered on the reference centerline for each alternative route under consideration within this EIS.”

[https://www.blm.gov/style/medialib/blm/ut/cedar\\_city\\_fo/planning/feis\\_documents0.Par.14133.File.dat/FEIS%20Volume\\_I\\_EIS\\_Body.pdf](https://www.blm.gov/style/medialib/blm/ut/cedar_city_fo/planning/feis_documents0.Par.14133.File.dat/FEIS%20Volume_I_EIS_Body.pdf)

---

***Boardman to Hemingway:*** “The indirect effects APE includes any cultural resource located more than 250 feet from the reference centerline up to the extent of the 4-mile-wide study corridor (i.e., up to 2 miles on either side of the reference centerline).

The indirect effects APE for historic properties will include the visual, audible, and atmospheric elements that could adversely affect NRHP-listed or eligible properties. Consideration will be given to all qualifying characteristics of a historic property, including those characteristics that may have been identified after the original evaluation of the property’s eligibility for the NRHP.

**The indirect effects APE for cultural resources that may be subject to visual effects generally is 5 miles on either side of the reference centerline or to the visual horizon, whichever is closer. “**

[http://www.boardmantohemingway.com/documents/feis/Volume1B/02\\_Chapter\\_3\\_Part\\_3\\_3.2.13\\_to\\_3.2.19.pdf](http://www.boardmantohemingway.com/documents/feis/Volume1B/02_Chapter_3_Part_3_3.2.13_to_3.2.19.pdf)

Hydro-Quebec Phase II:

### 3.6.1 Visual Resources Study Area and Landscape Classifications

p.

A 3.2-km (2-mi) corridor centered on the proposed transmission line route initially was selected for evaluation of visual resources. This selection was based on the assumption that construction of the proposed transmission line within an established right-of-way occupied by one or more existing transmission lines would not significantly degrade viewsheds from the boundary of the study area corridor. However, during field surveys, boundaries of the study corridor were expanded to encompass viewsheds from particularly sensitive areas. In other instances, the boundaries of the study corridor were narrowed in accord with landscape features that would preclude observation of the proposed transmission line.

102 <http://energy.gov/sites/prod/files/2015/06/f24/EIS-0129-DEIS.pdf>

The APE needs to be extended to at least five miles from the centerline of the proposed project.

The public needs to be involved in the identification of Historical Landscapes.

Kris Pastoriza  
Easton, 12/13/16