

**MEMORANDUM OF UNDERSTANDING
BETWEEN
U.S. FISH AND WILDLIFE SERVICE
NiSOURCE GAS TRANSMISSION AND STORAGE COMPANY
AMEC
FEDERAL ENERGY REGULATORY COMMISSION
THE U.S. ARMY CORPS OF ENGINEERS
USDA FOREST SERVICE, EASTERN AND SOUTHERN REGIONS
AND
NATIONAL PARK SERVICE
FOR THE
NiSOURCE MULTI-SPECIES HABITAT CONSERVATION PLAN**

I. INTRODUCTION

NiSource Gas Transmission and Storage Company (NiSource) proposes to develop a multi-species, multi-state habitat conservation plan (HCP) that will provide conservation benefits to certain species listed under the Endangered Species Act (ESA). The HCP is intended to support the issuance of an incidental take permit (ITP) by the U.S. Fish and Wildlife Service (Service). The ITP would provide “take” coverage to NiSource for future construction, operation, and maintenance of their natural gas pipelines and ancillary facilities. A map showing the general location of NiSource’s existing facilities is attached as Figure I (Attachment A).¹

The Service and NiSource have determined that an Environmental Impact Statement (EIS) should be prepared consistent with the requirements of the National Environmental Policy Act (NEPA) as part of the Service’s review of NiSource’s application for an ITP. Because certain NiSource activities proposed to be covered by the ITP may require authorization from the Federal Energy Regulatory Commission (FERC), U.S. Army Corps of Engineers (Corps), Forest Service, and/or the National Park Service, FERC, the Corps, the Forest Service, and the National Park Service will participate in the preparation of the EIS as cooperating agencies. *See* 40 C.F.R. § 1501.6 (federal agencies with jurisdiction by law shall be cooperating agencies upon the request of the lead agency).

NiSource has agreed to provide financing for the preparation of the EIS by a contractor that has been selected by the Service, AMEC Earth & Environmental, Inc. (AMEC). Although AMEC will be funded by NiSource, the EIS will be prepared under the direct supervision and control of the Service (lead federal agency). This Memorandum of Understanding (MOU) sets forth the roles and responsibilities of the Service, NiSource, AMEC, FERC, the Corps, the Forest Service, and the National Park Service (hereafter the “Parties”) and procedures that will lead to independent, effective and timely NEPA compliance, including preparation of an EIS. The

¹ Only ESA species under the jurisdiction of the Service will be addressed by the HCP and ITP. Marine species under the jurisdiction of the National Marine Fisheries Service (NMFS) will not be included.

Service, FERC, Corps, Forest Service, and National Park Service will be referred to collectively as the “Agencies”.

The HCP and ITP would provide a variety of benefits to both covered species and the Parties. These benefits are discussed in Section II.

II. BENEFITS OF THE HCP and ITP

A. Benefits to Covered Species

Numerous government agencies are vested with some regulatory authority over NiSource activities. Unfortunately, most regulatory programs are not carried out in the context of a coordinated strategy. Cumulative impacts on natural resources, arising from various activities subject to the jurisdiction of separate agencies, often escapes the attention of any single agency resulting in degradation of the resources. The NiSource HCP will focus and enhance natural resource conservation, through a comprehensive and coordinated approach, one that is designed to complement existing regulatory authorities.

An ITP and HCP that covers the majority of NiSource’s construction, operation, and maintenance activities on its entire onshore system will provide significant conservation benefits to covered species by addressing the needs of species and their habitats on a pro-active, regional basis, rather than on a localized, project-by-project basis. Conservation activities will be coordinated and aggregated on a broad geographic scale consistent with species communities and focused on achieving broad species recovery goals, providing certainty and continuity in how cooperative conservation measures are applied across the landscape. This approach has the potential to better account for and address cumulative impacts to species associated with multiple projects over time, and lead to more meaningful and effective conservation and recovery efforts, consistent with species-specific recovery plans.

B. Benefits to the Federal Agencies

The Agencies would benefit from a comprehensive HCP and ITP by allowing the Agencies to use their staff and other resources more efficiently and productively without sacrificing the protection of listed species. The upfront planning efforts undertaken to develop a system-wide HCP and ITP would significantly reduce the Agencies’ administrative burden over the permit term by eliminating the need for multiple, and often redundant, project-by-project consultations between the Agencies and the Service for approximately 400 NiSource operations, maintenance, and construction projects per year. Given the anticipated fifty year duration of the requested ITP, 400 projects per year equates to approximately 20,000 project reviews over the life of the ITP. The Agencies would be able to redirect time and money traditionally spent on ESA compliance obligations to other agency activities, including conservation of listed species.

In addition, the Agencies’ participation in this HCP/ITP planning effort, including its associated NEPA process, furthers the goals and objectives of two interagency agreements regarding natural gas pipeline activities: (1) the 2002 Interagency Agreement on Early Coordination of Required

Environmental and Historic Preservation Reviews Conducted in Conjunction with the Issuance of Authorizations to Construct and Operate Interstate Natural Gas Pipelines Certificated by the Federal Energy Regulatory Commission (“Interagency Agreement”); and (2) the 2004 Memorandum of Understanding on Coordination of Environmental Reviews for Pipeline Repair Projects (Pipeline Repair MOU). The Service, the FERC, and the Corps, among others, are participating agencies in both the Interagency Agreement and the Pipeline Repair MOU.

The Interagency Agreement “emphasizes the importance for the lead agency to receive specific information from the other Participating Agencies at key stages of [natural gas pipeline] project development to foster an efficient procedure to develop documentation to meet all agencies’ requirements.” In particular, the intent of the Interagency Agreement is to establish a process to facilitate the timely development of needed natural gas pipeline projects, whereby participating agencies will:

- Work together and with applicants and other stakeholders, as appropriate, including before complete applications for the necessary authorizations are filed;
- Identify and resolve issues as quickly as possible;
- Attempt to build a consensus among governmental agencies and their stakeholders; and
- Expedite the environmental permitting and review for natural gas pipeline projects.

The Pipeline Repair MOU similarly “enhances coordination of the processes through which agencies with environmental and historic preservation review responsibilities under various statutes meet those responsibilities in connection with the authorizations required to repair natural gas and hazardous liquid pipelines that have been identified by pipeline operators as in need of repair on a timely basis to protect life, health or physical property.”

The Agencies’ coordination on the development of the HCP/ITP and its associated NEPA analysis represents the type of consensus-building and streamlining described in and encouraged by the Interagency Agreement and Pipeline Repair MOU.

C. Benefits to NiSource

From a business planning perspective, a comprehensive HCP and ITP will provide NiSource greater certainty as to when and how it conducts pipeline operations and maintenance work. It will also help NiSource better predict costs associated with permitting new or existing pipeline expansions, thus streamlining and reducing the administrative burden for certain environmental compliance obligations, without reducing the conservation status of protected species. Ultimately, this streamlining will allow NiSource to redirect funds currently expended on administrative compliance obligations to tangible on-the-ground conservation projects for listed species.

III. PURPOSE

The purpose of this MOU is to establish a mutual understanding among the Service, NiSource, AMEC, the FERC, the Corps, the Forest Service, and the National Park Service regarding the roles and responsibilities of the Parties and the conditions and procedures to be followed in the development and preparation of the EIS.

IV. AUTHORITY

The Service has principle trust responsibility for the conservation and protection of threatened and endangered species under the ESA. Section 10 of the ESA, 16 U.S.C. § 1539, establishes a program whereby persons seeking to pursue activities that otherwise could give rise to liability for unlawful “take” of federally-protected species may receive an ITP, which protects them from such liability. To obtain an ITP, the applicant must submit an HCP and the taking must be incidental to, and not the purpose of, an otherwise lawful activity. *Id.* §§ 1539(a)(1)(B), 1539(a)(2)(A). Once the Service has determined that the applicant has satisfied these and other statutory criteria, it may issue an ITP consistent with Service’s regulations governing HCPs/ITPs (50 C.F.R. §§ 17.22(b)(1) and 17.32(b)(1)).

FERC is an independent agency that regulates the interstate transmission of natural gas under the Natural Gas Act (NGA), 15 U.S.C. § 717 *et seq.* FERC has the authority to grant “certificates of public convenience and necessity” allowing construction and operation of facilities used in interstate gas transmission. FERC may grant an individual certificate of public convenience and necessity for a specific project, or it may grant blanket certificates. Under a blanket certificate, a natural gas company may undertake a restricted array of routine activities without the need to obtain a case-specific certificate for each individual project. The NGA also requires that an applicant receive FERC approval prior to abandonment of any interstate natural gas pipeline facility or services. NiSource’s activities that will be addressed in the ITP may require additional reporting or approval by FERC and guidance for these would be described in detail in the HCP and/or EIS.

The Corps is responsible for the administration of laws for the protection and preservation of waters of the United States. Pursuant to the requirements of the Rivers and Harbors Act of 1899, Section 10 (33 U.S.C. § 403) and the Clean Water Act, Section 404 (33 U.S.C. § 1344), the Corps may issue authorizations for the discharge of dredged or fill material into navigable waters, including wetlands. Permitting program requirements and conditions for Section 404/10 permits are set forth in 33 C.F.R. Parts 320-330. NiSource activities that will be addressed in the ITP and that are the subject of this MOU may require Section 404/10 or other Corps authorization.

The Forest Service is responsible for managing public lands in national forests and grasslands, which encompass 193 million acres nationwide. There are 14 statutes authorizing special uses on National Forest System lands. These authorities, which are listed at 36 CFR 251.53, include statutes of broad application, such as the Mineral Leasing Act of 1920, the Federal Land Policy and Management Act of 1976, and the Bankhead-Jones Farm Tenant Act of 1937. Requirements of the National

Environmental Policy Act, the Wilderness Act of 1964, the Endangered Species Act, the Archaeological Resources Protection Act of 1979, additional requirements of the Federal Land Policy and Management Act of 1976, and Executive Order Nos. 11990 (Floodplains) and 11998 (Wetlands) bear directly on the issuance of special use authorizations. These directives and statutory authorities require extensive analysis and documentation of the impacts of use and occupancy on a wide array of environmental, cultural, and historical resources. The practical effect of these requirements has been to lengthen the time required and the costs involved in processing applications for special use authorizations or reissuing authorizations for existing uses. The time and cost impacts weigh on both the Forest Service and applicants and holders of authorizations. NiSource activities that will be addressed in the ITP and that are the subject of this MOU may require a Special Use Permit from the Forest Service, when those activities occur on National Forest System lands.

The National Park Service is responsible for promoting and regulating the use of Federal areas that comprise the National Park System by such means and measures as to conserve the scenery and the natural and historic objects and wildlife within and to provide for their enjoyment in such a manner as will leave them unimpaired for the enjoyment of future generations. Like the Forest Service, there are a number of statutes authorizing special uses on national park system land. NiSource activities that will be addressed in the ITP and that are the subject of this MOU may require a Special Use Permit from the National Park Service when those activities occur on National Park System lands.

The Agencies must comply with NEPA, 42 U.S.C. § 4321 *et seq.*, and related requirements including the Council on Environmental Quality (CEQ) regulations for implementing the procedural provisions of NEPA, 40 C.F.R. Parts 1500-1508. The CEQ regulations provide that a lead agency shall supervise the preparation of an EIS if more than one Federal agency proposes or is involved in the same action. *Id.* § 1501.5. They also emphasize agency cooperation early in the NEPA process and state that any other Federal agency which has jurisdiction by law shall be a cooperating agency. *Id.* § 1501.6. The regulations further provide that cooperating agencies may, for the purposes of their decision-making, adopt the EIS for which they are cooperators, if after independent review of the statement they determine that their comments and suggestions have been satisfied. *Id.* § 1506.3(c).

The Service shall serve as the lead federal agency for preparation of the EIS. FERC, the Corps, the Forest Service, and the National Park Service shall serve as cooperating agencies. The Agencies shall jointly participate in the development of the EIS to ensure that, to the maximum extent possible, the EIS will be legally sufficient to support determinations regarding the issuance of an ITP, and will streamline any ESA consultations necessary for any permits or other authorizations related to the activities covered by the ITP that are within their respective jurisdictions.

The Service will make the decision concerning the issuance of an ITP, and will issue a Record of Decision on the EIS. FERC, the Corps, the Forest Service, and the National Park Service shall make decisions concerning other such permits or authorizations

related to the activities covered by NiSource's HCP that are committed to their jurisdiction by law (i.e., FERC Certificates; Corps Section 404 Permits, Forest Service/National Park Service Special Use Permits).

V. ENVIRONMENTAL DOCUMENT

The EIS must comply with all provisions of NEPA and its implementing regulations. The EIS is intended to fulfill NEPA requirements, and those of other Federal laws and regulations which may require the preparation of an EIS.

The Service has chosen AMEC, in accordance with the provisions of 40 C.F.R. § 1506.5, to prepare the EIS. AMEC has no conflict of interest prohibited by regulations of CEQ, the Service, or any cooperating agency with NEPA responsibilities, as indicated by the Disclosure Statement required by 40 C.F.R. § 1506.5.

NiSource has entered into a contract with AMEC consistent with the terms of this MOU. The Service shall assume complete final control over the scope, content, and the determination of adequacy of the EIS.

VI. RESPONSIBILITIES

A. Service Responsibilities. The Service shall:

1. Determine and allocate the appropriate personnel for NEPA compliance, including reviewing/completing the EIS, and other matters as required.
2. Prepare a Project Management Plan with the assistance of AMEC, FERC, the Corps, the Forest Service, the National Park Service and NiSource. The Project Management Plan will describe the EIS process, issues to be addressed in preparing the EIS, schedule for completion of the EIS, items requiring review/approval of the Agencies, public involvement, an EIS document outline, and other pertinent issues relevant to the format and scope of the EIS. The Project Management Plan is intended to be a general, non-binding outline and checklist for EIS preparation.
3. Be responsible for the development and issuance of all notices and publications required of the Service or a lead agency, including the issuance in the Federal Register of a Notice of Intent to Publish an EIS for the NiSource HCP. The Service shall ensure copies of such notices and publications are provided in draft form to NiSource, FERC, the Corps, the Forest Service, and the National Park Service at least 10 calendar days prior to their issuance, and shall consider any comments thereon received from the Parties prior to their finalization.

4. Conduct public scoping meetings to receive comments on the proposed action and alternatives as described in the Notice of Intent.
5. Be responsible for overall coordination of the EIS and for ultimate compliance with NEPA, CEQ regulations, Department of the Interior and Service guidance, and other Federal laws and regulations applicable to the conduct of all aspects of the NEPA process.
6. Direct and monitor the work of AMEC in the preparation of the EIS to ensure compliance with the requirements of NEPA and CEQ regulations, as well as other applicable Federal laws and regulations.
7. Independently evaluate all information, environmental data, and analyses submitted by AMEC, or others, and revise or cause additional study and analyses to be performed as necessary to comply with NEPA and applicable implementing regulations, and other applicable Federal laws and regulations.
8. Conduct meetings as needed with AMEC, NiSource, FERC, the Corps, the Forest Service, and the National Park Service to review the progress of the EIS. AMEC has projected the need for four such meetings. If the Service requests AMEC's attendance at additional meetings of this nature, AMEC will prepare and submit a change order request to NiSource for such additional meeting(s).
9. Make the final determination on the inclusion or exclusion of material, in all instances involving questions as to the content or relevance of any material (including all data, analyses and conclusions) in the EIS, in accordance with Federal laws and regulations.
10. Determine the adequacy of the EIS; assure that all pertinent environmental issues and impacts, and reasonable alternatives and their impacts, are treated in the EIS; and assume ultimate responsibility for compliance with the requirements of NEPA.
11. Receive all comments during the draft EIS review period and identify issues and comments submitted that will require response in the final EIS. The Service shall direct those comments to AMEC for preparation of proposed responses.
12. Maintain confidentiality of all information, documents and materials used in the development of the EIS in accordance with the Freedom of Information Act (FOIA), Service policies, legal decisions, related regulations and any other applicable federal laws.

The Service will treat specific data provided by NiSource as confidential or proprietary to the fullest extent permitted by the FOIA and related regulations (43 C.F.R. § 2.23). In the event that the Service is required by law to release any confidential or proprietary information, the Service shall provide NiSource with written notice of the proposed release.

B. AMEC Responsibilities. AMEC shall:

1. Assist the Service in all aspects of the Project Management Plan.
2. Prepare all EIS-related documents, reports, and notices required by the Service. If the number of hard copies required by the Service exceeds the number designated in AMEC's scope of work, AMEC will prepare and submit a change order request to NiSource for such additional hard copies. In addition to paper copies, all materials must be provided to the Service on compact disks in Microsoft Word format, or as otherwise agreed to by the Service. Any required databases (such as mailing lists) must be Microsoft Access compatible. The camera-ready draft environmental impact statement (DEIS) and final environmental impact statement (FEIS) will be provided as Microsoft Word and pdf files as specified by the Service in addition to hard copies.
3. Assist in the preparation and management of the administrative record for the NEPA analysis. While the Service is the sole arbiter of the content of the administrative record and other matters related to the record, AMEC is responsible for developing and implementing a protocol, in consultation with the Service, for retaining all documents and records related to the EIS, that is consistent with Department of the Interior guidance. AMEC is also responsible for maintaining an electronic database for the administrative record to minimize the time and effort required for location and retrieval of record materials. The administrative record must be organized and consistent, and must minimize the duplication of materials. AMEC must update the administrative record continually throughout the project and must transfer the record to the Service upon request by the Service and once the EIS is complete.
4. Prepare notices and presentation materials for public scoping meetings and public comment meetings on the EIS. These tasks will require close coordination with Service staff. Required work will include arranging for meeting places, placing notices/announcements in the appropriate news media (local newspapers, radio stations, etc.), developing materials for

meetings, participating in meetings, and preparing reports summarizing the results of the scoping meetings/process and public meetings on the EIS.

5. Prepare a summary of agency scoping comments/issues for subsequent agency review and concurrence and revise as requested. The summary of comments will be provided to the cooperating agencies.

6. Prepare and maintain a computerized mailing list of agencies, officials, community/environmental groups, concerned citizens, affected property owners, and known interested parties. The Service and NiSource will provide AMEC an initial agency and affected-property-owners list.

7. In preparation of the EIS, characterize existing environmental conditions, incorporate issues identified during scoping, assess the significance of the potential environmental effects of the proposed project and its alternatives (both locally and regionally), and identify measures to minimize or mitigate such environmental effects consistent with the requirements of NEPA and its implementing regulations. The use of any data sources not in the public record must be approved by the Service.

8. Under the direction of the Service, assist in identifying and developing potential alternatives to the proposed HCP/ITP that are capable of supporting HCP goals and objectives, and are sufficient to meet the requirements of NEPA, including reducing potentially-significant effects associated with the proposed HCP/ITP and fostering informed decision-making.

9. Review the accuracy of existing available information and determine its adequacy to meet the needs of NEPA for the preparation of the EIS.

10. With NiSource's assistance, prepare maps (primarily based on existing ENSR maps) showing the location of all project facilities and related areas of disturbance, and pertinent biological resource data. Service staff will identify the scale of the maps as that becomes necessary through the normal processing of the EIS. At this time the normal quad sheet range of maps as indicated (1:24,000) is what the Service contemplates as being needed. Therefore, AMEC should focus on that normal quad sheet range unless directed otherwise by the Service.

11. Maintain ongoing review of potential environmental issues and assessment of adequacy of overall scope of the environmental

analysis. Service staff shall be advised immediately of any potential data gaps or analysis shortcomings.

12. Submit monthly reports to the Service and NiSource updating project status and expenditures to-date. These reports shall describe the current status of each aspect of the work, any problems encountered, and any recommendations for changes in personnel, methodology, or schedule for completion.

13. As needed, arrange with NiSource any participation in inspections of the proposed covered areas, facility locations, etc., and with Service staff. This may occur in conjunction with the scoping meetings.

14. At the direction of and to the extent requested by the Service, analyze all public comments and prepare draft responses to comments on the preliminary draft environmental impact statement (PDEIS), DEIS, PFEIS, and FEIS, and related documents.

15. Prepare camera-ready copies of the PDEIS, DEIS, PFEIS and FEIS and any required notices for submission to Service staff for printing and mailing.

16. Develop and maintain a formal project management system to allow for weekly or biweekly, as mutually agreed, tracking of schedule and budget status for AMEC and any subcontractors.

17. AMEC requests for information will be accommodated by NiSource and Agencies as soon as possible.

C. FERC Responsibilities. FERC shall:

1. Identify any actions or communication requirements applicable to the action early in the NEPA process.

2. Participate as a cooperating agency in the development of the EIS, which shall include providing data within FERC's areas of expertise; providing meaningful and early input in defining the purpose and need, determining the range of alternatives, and the methodologies and level of detail required in alternative analysis; participating on planning team conference calls, coordination meetings, and other joint activities; and timely review and comment on the administrative DEIS, PDEIS and PFEIS to reflect FERC's views and concerns on the adequacy of the EIS document, alternatives considered, and the anticipated impacts and mitigation.

3. Determine and allocate appropriate personnel for such participation, including a lead official responsible for participating in the EIS process.
4. Make a good faith effort to raise any issues or concerns early in the NEPA process to avoid delay and inefficiency.

D. Corps Responsibilities. The Corps shall:

1. Identify any actions or communication requirements applicable to the action early in the NEPA process.
2. Participate as a cooperating agency in the development of the EIS, which shall include providing data within the Corps areas of expertise; providing meaningful and early input in defining the purpose and need, determining the range of alternatives, and the methodologies and level of detail required in alternative analysis; participating on planning team conference calls, coordination meetings, and other joint activities; and timely review and comment on the administrative DEIS, PDEIS, and PFEIS to reflect the Corps' views and concerns on the adequacy of the EIS document, alternatives considered, and the anticipated impacts and mitigation.
3. Determine and allocate appropriate personnel for such participation, including a lead official responsible for participating in the EIS process.
4. Make a good faith effort to raise any issues or concerns early in the NEPA process to avoid delay and inefficiency.

E. Forest Service Responsibilities. The Forest Service shall:

1. Identify any actions or communication requirements applicable to the action early in the NEPA process.
2. Participate as a cooperating agency in the development of the EIS, which shall include providing data within the Forest Service areas of expertise; providing meaningful and early input in defining the purpose and need, determining the range of alternatives, and the methodologies and level of detail required in alternative analysis; participating on planning team conference calls, coordination meetings, and other joint activities; and timely review and comment on the administrative DEIS, PDEIS, and PFEIS to reflect Forest Service views and concerns on the adequacy of the EIS document, alternatives considered, and the anticipated impacts and mitigation.

3. Determine and allocate appropriate personnel for such participation, including a lead official responsible for participating in the EIS process.
4. Make a good faith effort to raise any issues or concerns early in the NEPA process to avoid delay and inefficiency.

F. National Park Service Responsibilities. The National Park Service shall:

1. Identify any actions or communication requirements applicable to the action early in the NEPA process.
2. Participate as a cooperating agency in the development of the EIS, which shall include providing data within the National Park Service areas of expertise; providing meaningful and early input in defining the purpose and need, determining the range of alternatives, and the methodologies and level of detail required in alternative analysis; participating on planning team conference calls, coordination meetings, and other joint activities; and timely review and comment on the administrative DEIS, PDEIS, and PFEIS to reflect National Park Service views and concerns on the adequacy of the EIS document, alternatives considered, and the anticipated impacts and mitigation.
3. Determine and allocate appropriate personnel for such participation, including a lead official responsible for participating in the EIS process.
4. Make a good faith effort to raise any issues or concerns early in the NEPA process to avoid delay and inefficiency.

G. NiSource Responsibilities. NiSource shall:

1. Comply with Federal, State and local laws, as applicable.
2. Be responsible for all costs incurred by AMEC in connection with the preparation of this EIS due and payable under the contract entered into between NiSource and AMEC and consistent with this MOU.
3. Hold harmless and indemnify the Agencies, their officers, agents and employees with respect to any and all judgments or settlements arising from claims, demands, or causes of action which may arise from the performance of AMEC or any services utilized by AMEC in the preparation of the EIS. This indemnification by NiSource does not extend to costs associated with judgments, settlements, claims, demands, or causes of action by third-parties (other than AMEC and its Subcontractors) against

the Agencies, including those involving the legality or adequacy of the Agencies' compliance with NEPA or any other law or regulation. NiSource shall ensure that AMEC similarly holds harmless and indemnifies the Agencies in its contract with AMEC.

4. Provide to AMEC or the Service relevant technical or environmental information it may have that is needed for EIS preparation.

5. Review and provide comments on EIS documents when requested to do so by the Service, and provide other data, as necessary, in a timely fashion.

6. Provide advice, assistance, and support at public scoping meetings as requested by the Service.

7. Attend meetings for, and participate to the extent required under NEPA in, the development of mitigation measures, as requested by the Service.

H. Joint Responsibilities.

1. The Service, in consultation with FERC, the Corps, the Forest Service, the National Park Service, and NiSource, shall establish, and the Parties shall adhere to, a mutually-acceptable time schedule for the EIS process and for the review of significant parts of the EIS as it is being developed as provided for by 40 C.F.R. § 1501.8.

2. The Parties shall each designate a single point of contact for the EIS preparation and NEPA compliance activities.

3. The Parties shall determine and allocate the appropriate personnel for reviewing/completing the EIS, field examinations, and other details as required.

4. The Parties shall ensure coordination of efforts and exchange of information among the Parties.

5. The Parties shall attend (if necessary) regular and other meetings with Federal, State, Tribal, regional, and local agencies, and concerned environmental groups, if any are held, as appropriate.

VII. PROCEDURES

1. The EIS Project Management Plan will be used by AMEC as an outline and checklist for EIS scoping and preparation along with the Service's current EIS guidelines and CEQ's NEPA regulations.
2. Within the established time schedule, AMEC will provide the Agencies opportunities to review and comment on the EIS and intervening documents, such as administrative drafts thereto, to the extent allowable under NEPA and applicable regulations. Comments will be provided in a timely manner. AMEC shall incorporate these comments and changes into the sections, parts, or chapters of the EIS as required by the Service.
3. Once the Service has accepted the draft EIS, the Service may release the EIS to the public and Federal, State, Tribal, and local agencies for review and comment. AMEC will be responsible for mailing draft and final copies of the EIS as directed by the Service. If the number of copies the Service directs AMEC to mail exceeds the number designated in AMEC's scope of work, AMEC will prepare and submit a change order request to NiSource for such additional copies.
4. Joint meetings between the Agencies, NiSource, and AMEC may be held to coordinate the EIS preparation. However, discussions between NiSource and AMEC regarding the scope and content of the EIS will not occur without Service participation.

VIII. COMMUNICATION AND COOPERATION

1. The Parties shall appoint and maintain designated representatives as the primary contact for actions relating to the preparation of the EIS. Notice to any such representative shall constitute notice to that Party.
2. A protocol for communication among the Parties will be developed and included as Attachment B to this MOU. Representatives, at the time of MOU signature, are:

Fish and Wildlife Service: Lisa Mandell

NiSource: John Shafer

AMEC: Patrick Mullen

Federal Energy Regulatory Commission: Medha Kochhar

Army Corps of Engineers: Margaret Gaffney-Smith

U.S. Forest Service: Rebecca Ewing

National Park Service: Steven M. Wright

3. The Parties shall provide maximum cooperation between the Agencies, NiSource, and AMEC in order to fulfill the requirements of the MOU in a timely manner.

IX. ADMINISTRATIVE AND LEGAL PROVISIONS

A. Applicable Law

The Parties agree to comply with all applicable laws governing activities under this MOU. The Parties acknowledge that any information furnished to the Agencies under this instrument is subject to the Freedom of Information Act (5 U.S.C. 552) and may be protected to the extent possible by statute.

B. Commencement and Expiration

This MOU shall take effect upon the signature of the Parties. Unless terminated in accordance with paragraph IX.D, this MOU shall expire 60 days after the approval of the final EIS document and execution of the Record of Decision, unless an appeal of the Record of Decision is made and litigation occurs.

C. Modification and Amendment

This MOU may be modified or amended in writing by the mutual agreement of the Agencies and NiSource.

D. Termination

1. This MOU may be terminated by any party upon giving 30-day advance written notice to the other Parties of its intention. During that 30-day period, the Parties agree to actively attempt to resolve any outstanding issues or disagreements.

2. In the event of termination of this MOU, it is agreed as follows:

a. This MOU shall be void.

b. AMEC shall submit to the Agencies a written report on the environmental work and analyses it has completed prior to termination of this MOU.

c. Preparation of an EIS for similar purposes may be reinitiated by the Parties to this MOU, or others, and the terms of this MOU shall not be applicable to such effort.

E. Participation in Similar Activities

This instrument in no way restricts any of the Parties from participating in similar activities with other public or private agencies, organizations, and individuals.

F. Responsibilities of Cooperating Agencies

The U.S. Fish and Wildlife Service, Federal Energy Regulatory Commission, U.S. Army Corps of Engineers, Forest Service, and the National Park Service, and their respective offices, will handle their own activities and utilize their own resources, including the expenditure of their own funds, in pursuing these objectives. Each party will carry out its separate activities in a coordinated and mutually beneficial manner.

The Service will develop subsequent agreements with cooperating agencies, as necessary, that specify terms for funding reimbursement to cover salary and travel costs needed to complete cooperating agency responsibilities if anticipated time requirements exceed basic information transfer and review of documents.

G. Establishment of Responsibility

This MOU is not intended to, and does not create, any right, benefit, or trust responsibility, substantive or procedural, enforceable at law or equity, by a party against the United States, its agencies, its officers, or any person.

H. Non-Fund Obligating Document

Nothing in this MOU shall obligate any of the Cooperating Federal Agencies to obligate or transfer any funds. Specific work projects or activities that involve the transfer of funds, services, or property among the agencies will require execution of separate agreements and must be contingent upon the availability of appropriated funds. Such activities must be independently authorized by appropriate statutory authority. This MOU does not provide such authority. Negotiation, execution, and administration of each such agreement must comply with all applicable statutes and regulations.

I. Limitations

In executing this MOU and taking any other action contemplated hereby, NiSource reserves the right to contest, in any administrative or judicial proceedings, any and all decisions concerning issues in the EIS or any other Federal requirements related to the proposed project. NiSource recognizes that nothing in this MOU commits the Agencies to permit the project or otherwise take action favorable to NiSource upon all or any part of the proposal.

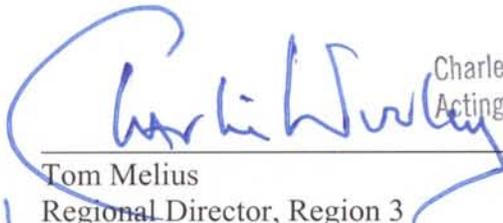
J. Severability.

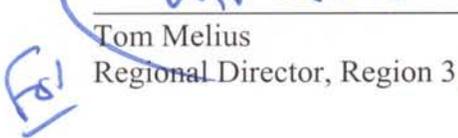
Should any portion of this MOU be determined to be illegal or unenforceable, the remainder of the MOU will continue in full force and effect, and any party to the MOU may renegotiate the terms affected by the severance.

K. Third-Party Beneficiary Rights.

This MOU does not create in any other individual or entity the status of third-party beneficiary. The rights, duties, and obligations contained in this MOU operate only between the Parties to the MOU, and inure solely to their benefit. The provisions of this MOU are intended only to assist the parties in determining and performing their obligations under this MOU. Only Parties signatory to this MOU will have any legal or equitable right to seek to enforce this MOU, to seek any remedy arising out of a Party's performance or failure to perform any term or condition of this MOU, or to bring an action for the breach of this MOU.

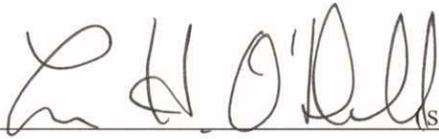
U.S. FISH AND WILDLIFE SERVICE


Charles M. Wooley
Acting Regional Director


Tom Melius
Regional Director, Region 3

Dated: 7/1/09

FEDERAL ENERGY REGULATORY COMMISSION

 (sign)

Dated: 7/16/09

Lauren H. O'Donnell (print)
Director, Div. of Gas - Environment
and Engineering

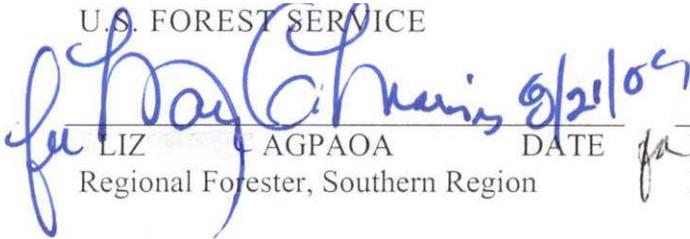
U.S. ARMY CORPS OF ENGINEERS

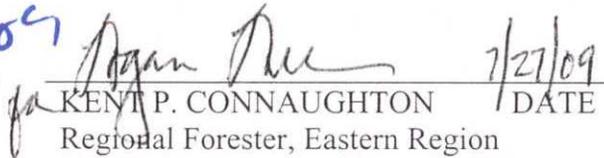
 (sign)

Dated: 9/11/09

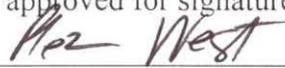
STEVEN L. STOCKTON (print)
DIRECTOR, CIVIL WORKS

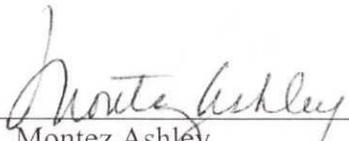
U.S. FOREST SERVICE


LIZ AGPAOA
Regional Forester, Southern Region


KENT P. CONNAUGHTON
Regional Forester, Eastern Region

The authority and format of this instrument has been reviewed and approved for signature.

 8-21-09
DATE
R8 Grants & Agreement Specialist

 6/30/09
DATE
R9 Grants & Agreements Coordinator

NATIONAL PARK SERVICE

David Vela

Dated: 7-22-09

David Vela
Regional Director
Southeast Region

NISOURCE GAS TRANSMISSION AND STORAGE COMPANY

Victor Gaglio (sign)

Dated: 7/27/09

Victor Gaglio (print)

AMEC

Douglas A. Smith (sign)

Dated: 7-14-09

Douglas A. Smith (print)
Sr. Vice President

ATTACHMENT A

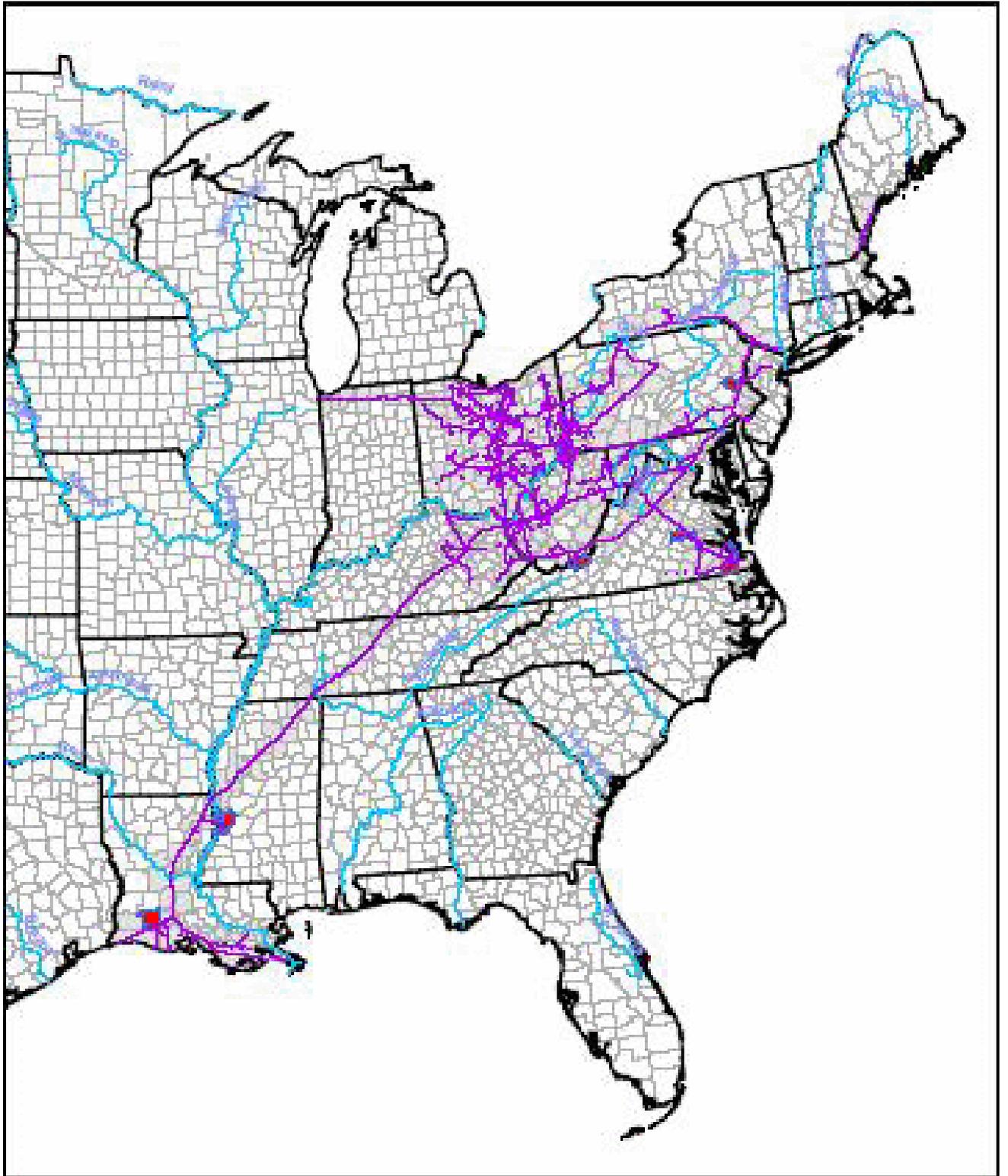


Figure 1 - NiSource System Map

ATTACHMENT B

COMMUNICATION PLAN FOR PREPARATION OF THE NiSOURCE HCP EIS

NiSource Gas Transmission and Storage Company (NiSource) proposes to develop a multi-species, multi-state habitat conservation plan (HCP) that will provide significant conservation benefits to certain species listed under the Endangered Species Act (ESA). The HCP is intended to support the issuance of an incidental take permit (ITP) by the U.S. Fish and Wildlife Service (Service). The ITP would provide “take” coverage to NiSource for future construction, operation, and maintenance of their natural gas pipelines and ancillary facilities. Issuance of an ITP by the Service requires compliance with the National Environmental Policy Act (NEPA). The Service has selected AMEC Earth & Environmental, Inc. (AMEC) as the third-party contractor to prepare an Environmental Impact Statement (EIS) for this project. Certain activities proposed to be covered by the HCP and ITP may require future authorization by the Federal Energy Regulatory Commission (FERC), the Army Corps of Engineers (Corps), USDA Forest Service (FS), and/or the National Park Service (NPS). As such, the FERC, Corps, FS, and NPS are cooperating agencies for the preparation of the EIS. This document describes the communications protocol that the Service, NiSource,² AMEC, FERC, the Corps, FS and NPS (the Parties) will follow during the EIS preparation process. The Service, FERC, the Corps, FS, and NPS are collectively referred to as “the Agencies.”

Point of Contact

- The Parties will appoint and maintain designated representatives as the primary points of contact for actions relating to the preparation of the EIS.
- Notice to any such representative will constitute notice to that Party.

Meetings in General

- The Service will notify the Agencies and AMEC in advance of meetings between the Service and NiSource, AMEC, other Federal agencies, or other groups, which are intended to discuss significant aspects of the EIS. In the event any of the Agencies are unable to attend any such meetings, an attending agency will provide such agency or agencies a written summary of the meeting and its results.

EIS Preparation

² ENSR is NiSource’s environmental consultant for the HCP. For purposes of this plan, ENSR may participate in any meeting, directly correspond with and provide data to AMEC, and review and comment on the EIS to the same extent as NiSource.

- While the Service is responsible for the content of the EIS, AMEC will have responsibility for writing or rewriting all sections, parts, or chapters of the EIS and for developing a schedule for completion of chapters consistent with the overall general time schedule agreed to by the Parties.
- Generally, joint meetings between the Agencies, NiSource, and AMEC may be held to coordinate issues and information needs that arise during the preparation of the EIS.
- In general, the Parties should communicate freely to facilitate the transfer of information relevant to the development of the HCP and EIS. However, substantive discussions between NiSource and AMEC regarding the EIS will not occur without Service participation.
- Agencies' staff may, at times, work directly with AMEC without the participation of all Agencies, but all Agencies will be informed of such meetings and given the opportunity to participate. NiSource may attend such meetings only at the request of the Service.
- When significant meetings or conversations between one or more of the Agencies and AMEC occur, AMEC will provide written documentation of such meetings or conversations to the other Agencies.
- AMEC requests for information will be accommodated by NiSource and the Agencies as soon as possible.
- AMEC will provide the Parties opportunities to review and comment on the EIS and intervening documents, such as drafts thereto, to the extent allowable under NEPA, applicable regulations, and as provided for in the Project Management Plan and NEPA schedule developed pursuant to the Memorandum of Understanding Among U.S. Fish and Wildlife Service, NiSource, Federal Energy Regulatory Commission, the Army Corps of Engineers, Forest Service, and National Park Service.
- AMEC will incorporate these comments and changes into the sections, parts, or chapters of the EIS as instructed by the Service.

Public Comments

- The Service will receive all comments during the draft EIS review period and identify issues and comments submitted that will require response in the final EIS.
- The Service will identify substantive comments that require a response and will direct those comments to AMEC for preparation of proposed responses.

- In consultation with the FERC, Corps, FS, and NPS, the Service will review and modify the responses to comments, as appropriate.

EIS Contract Administration

- NiSource and AMEC may communicate directly without participation by the Service regarding matters pertaining to the administration of NiSource's contract with AMEC for the preparation of the EIS, such as billing or payment issues, that do not address the substance of the EIS.