



EARTHJUSTICE

ALASKA CALIFORNIA FLORIDA MID-PACIFIC NORTHEAST NORTHERN
ROCKIES
NORTHWEST ROCKY MOUNTAIN WASHINGTON, DC INTERNATIONAL

September 13, 2011

Via U.S. Mail and Electronic Mail:

U.S. Fish and Wildlife Service
Ecological Services
Attn: Lisa Mandell, Regional Coordinator, Midwest Region
Tom Magnuson, HCP Coordinator, Midwest Region
5600 American Blvd. West, Suite 990
Bloomington, MN 55437-1458

Email: lisa_mandell@fws.gov
tom_magnuson@fws.gov
permitsR3ES@fws.gov

Re: U.S. Fish & Wildlife Service's Draft Environmental Impact Statement Concerning the
NiSource Gas Transmission & Storage, Inc.'s Draft Habitat Conservation Plan

Dear Ms. Mandell and Mr. Magnuson:

On behalf of the undersigned organizations, I am writing to you regarding the draft environmental impact statement ("EIS") prepared by the U.S. Fish & Wildlife Service ("FWS") for the NiSource draft habitat conservation plan ("HCP"). Because of the unprecedented nature of NiSource's request, the amount of material to be reviewed, and the absence of a memorandum of understanding ("MOU") incorporated by reference into the EIS, I am formally requesting: (1) that the public comment period be extended for a minimum of an additional 60 days, until no earlier than December 12, and (2) that the MOU be released for public scrutiny at least 30 days before the close of the comment period.

I. The NiSource Application

As the EIS acknowledges, NiSource's request for an incidental take permit is unique. EIS at 1-28. The requested permit would last for 50 years. The area that would be covered by the permit encompasses almost 9.8 million acres, spans 14 states ranging from Louisiana to New York, and includes 23 distinct ecoregions—from the "swamps of the Mississippi delta, to the fields of the central plains, to the parklands of the central Appalachians, and into the heavily

urbanized northeastern states.” *Id.* at 3-1. Within this area, the EIS and HCP studied the possible direct, indirect, and cumulative impacts on 89 species of plants and animals.

The HCP, EIS, and their appendices collectively comprise more than 2,900 pages. When combined with “The NiSource Approach to Mitigation Planning,” the documents requiring public review and comment are nearly 3,500 pages in length. The present comment period of 90 days is insufficient for serious review of so much material.

NiSource and the FWS have been planning and working on this proposal for nearly six years. The public should be given a substantial amount of time to consider these massive and highly technical documents. The undersigned organizations therefore request an extension of the public comment period for a minimum of an additional 60 days, until no earlier than December 12, 2011.

II. The Missing MOU

Extending the time for comment also is appropriate because a key document referred to in the EIS has not been made available for public review. As you know, materials incorporated by reference into an EIS must be made “reasonably available for inspection by potentially interested persons within the time allowed for comment.” 40 C.F.R. § 1502.21. The FWS has not met this requirement.

The EIS incorporates by reference an MOU to be entered into by the FWS and cooperating agencies responsible for ongoing compliance with NEPA in connection with this application:

In furtherance of their continuing NEPA obligations, the agencies intend to enter into a memorandum of understanding (MOU), which will further identify their respective regulatory authorities and process for undertaking coordinated NEPA reviews through the duration of the ITP. Incidental take coverage under the terms of the permit will be conditioned on NiSource having obtained all necessary governmental approvals, permits or licenses, which will include any required NEPA compliance prior to undertaking a covered activity.

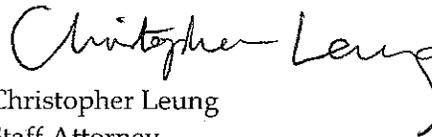
EIS, at 4-2–4-3. In other words, the terms of the MOU will be crucial to ensuring the agencies’ future NEPA compliance as well as the validity of NiSource’s incidental take permit over a period of as much as 50 years.

To date, however, the FWS and its cooperating agencies have not entered into an MOU, much less made such document “reasonably available” for inspection. 40 C.F.R. § 1502.21. The time for comment expires, however, on October 11, 2011. Given the MOU’s importance, it is essential that the comment period remain open until the public has a fair opportunity to review and comment on the MOU.

III. Conclusion

In sum, we respectfully urge the FWS to extend the comment period on the NiSource EIS and HCP for a minimum of an additional 60 days. In addition, the public review period should be held open until 30 days after the MOU has been released for public inspection and comment, to ensure that the EIS and MOU can be adequately considered together. The full and fair opportunity for public review and comment required under NEPA demands no less.

Very truly yours,



Christopher Leung
Staff Attorney

On behalf of signatory organizations listed on the following pages

Bill Belitskus
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Allegheny Defense Project

Jennafer Waggoner-Yellowhorse
Co-organizer
Big Mountain Coalition

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