

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW HAMPSHIRE**

ALLCO RENEWABLE ENERGY
LIMITED,
1745 Broadway, 17th floor,
New York, NY 10019,

Plaintiff,

v.

USDA FOREST SERVICE,
1400 Independence Avenue, S.W.,
Washington, DC 20250,

Vicki Christiansen, Interim Chief, USDA
Forest Service,
1400 Independence Avenue, S.W.,
Washington, DC 20250,

And

Claire R. Mendelsohn, Forest Supervisor,
White Mountain National Forest,
71 White Mountain Drive
Campton, NH 03223,

Defendants.

Civil Case No. 1:18-cv-445

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

Plaintiff, Allco Renewable Energy Limited (“Allco”), by and through its undersigned attorneys, hereby demands declaratory and injunctive relief, stating as follows in support:

1. This case challenges the United States Forest Service’s approval of the proposed Northern Pass Transmission Project. It asks the Court to set aside those approvals as violating the National Environmental Policy Act (“NEPA”), 42 U.S.C. §§4321-4370h, 36 C.F.R. Part 251, 43 U.S.C. §1761, 43 U.S.C. §15926, and the rules and regulations of the United States Forest

Service (“USFS”), and to ensure that federal review of the proposed project complies with the law.

JURISDICTION AND VENUE

2. This action arises under NEPA, 42 U.S.C. §§ 4321-4370h, 36 C.F.R. Part 25, 43 U.S.C. §1761, 43 U.S.C. §15926, and the Administrative Procedure Act (“APA”), 5 U.S.C. §§ 701-706.

3. Jurisdiction is proper in this Court pursuant to 28 U.S.C. § 1331 because the action raises a federal question. The Court has authority to issue the requested declaratory and injunctive relief pursuant to 28 U.S.C. §§ 2201, 2202, and 5 U.S.C. §§ 705, 706.

4. This action reflects an actual, present, and justiciable controversy between Allco and the Federal Defendants within the meaning of the Declaratory Judgment Act, 28 U.S.C. § 2201. Allco’s interests will be adversely affected and irreparably injured if Federal Defendants continue to violate NEPA and other federal law as alleged herein, and if they affirmatively implement the decisions challenged herein. These injuries are concrete and particularized, and fairly traceable to Federal Defendants’ challenged decisions, providing the requisite personal stake in the outcome of this controversy necessary for this Court’s jurisdiction.

5. The requested relief would redress the actual, concrete injuries to Allco caused by Federal Defendants’ failure to comply with duties mandated by NEPA and its implementing regulations and federal law.

6. The challenged agency actions are final and subject to judicial review pursuant to 5 U.S.C. §§ 702, 704, & 706.

7. Allco has exhausted administrative remedies.

8. Venue in this Court is proper pursuant to 28 U.S.C. §1391(e) because an officer of the United States is named as a Defendant in his official capacity and resides in this judicial district, and a substantial part of the events or omissions giving rise to this suit occurred in this district, and the proposed Northern Pass transmission project would be located in this district.

THE PARTIES

9. Plaintiff, Allco, is the owner, operator, and developer of various solar electric generating facilities that are Qualifying Facilities located in Connecticut, Vermont, Massachusetts, and New York, as well as other States. *See* section 3(17) of the Federal Power Act § 3(17), 16 U.S.C. § 796(17). Allco is a “qualifying small power producer” within the meaning of section 3(17) of the Federal Power Act, 16 U.S.C. §796(17)(D).

10. Part of Allco’s corporate mission is to combat climate change by developing sustainable and economically viable renewable energy generation in the United States, while maximizing the creation of United States jobs and minimizing the impact to the environment.

11. As part of its corporate mission to combat climate change, Allco also seeks to enforce rights of a special type of renewable energy generators called Qualifying Facilities or “QFs” generally. It engages in that part of its mission by participating in various proceedings to enforce laws that benefit United States developers of renewable energy QFs on a broad scale, so as to open up markets broadly to QFs by overcoming the traditional reluctance of utilities to purchase renewable energy from QFs.

12. Defendant USFS is an agency of the Department of Agriculture. It and its officers are responsible for the lawful management of the national forest system.

13. Defendant Vicki Christiansen is the interim Chief of the USFS.

14. Defendant Claire R. Mendelsohn is the Forest Supervisor of the White Mountain National Forest.¹

LEGAL AND FACTUAL BACKGROUND

I. National Environmental Policy Act

15. NEPA is our “basic national charter for the protection of the environment.” 40 C.F.R. § 1500.1(a). It was enacted—recognizing that “each person should enjoy a healthful environment”—to ensure that the federal government uses all practicable means to “assure for all Americans safe, healthful, productive, and esthetically and culturally pleasing surroundings,” and to “attain the widest range of beneficial uses of the environment without degradation, risk to health or safety, or other undesirable and unintended consequences,” among other policies. 42 U.S.C. § 4331(b), (c).

16. NEPA regulations explain, in 40 C.F.R. § 1500.1(c), that:

Ultimately, of course, it is not better documents but better decisions that count. NEPA’s purpose is not to generate paperwork – even excellent paperwork – but to foster excellent action. The NEPA process is intended to help public officials make decisions that are based on understanding of environmental consequences, and take actions that protect, restore, and enhance the environment.

17. NEPA achieves its purpose through “action forcing procedures. . . requir[ing] that agencies take a hard look at environmental consequences.” *Robertson v. Methow Valley Citizens Council*, 490 U.S. 332, 350 (1989) (citations omitted).

18. “Agencies shall integrate the NEPA process with other planning at the earliest possible time to insure that planning and decisions reflect environmental values, to avoid delays later in the process, and to head off potential conflicts.” 40 C.F.R. § 1501.2.

¹ Defendants collectively referred to as “Federal Defendants.”

19. Federal agencies must comply with NEPA before there are “any irreversible and irretrievable commitments of resources which would be involved in the proposed action should it be implemented.” 42 U.S.C. §4332(C)(v); *see also* 40 C.F.R. §§ 1501.2, 1502.5(a).

20. NEPA requires the Federal Defendants to consider “any adverse environmental effects which cannot be avoided.” 42 U.S.C. § 4332(C)(ii). In so doing, the Federal Defendants must “identify and develop methods and procedures . . . which will insure that presently unquantified environmental amenities and values may be given appropriate consideration in decision-making along with economic and technical considerations.” *Id.* § 4332(B).

21. To accomplish these purposes, NEPA requires that all federal agencies prepare a “detailed statement” regarding all “major federal actions significantly affecting the quality of the human environment.” 42 U.S.C. § 4332(C). This statement, known as an Environmental Impact Statement (“EIS”), must, among other things, rigorously explore and objectively evaluate all reasonable alternatives, analyze all direct, indirect, and cumulative environmental impacts, and include a discussion of the means to mitigate adverse environmental impacts. 40 C.F.R. §§ 1502.14, 1502.16. The scope of the analysis must include “[c]umulative actions,” or actions that “when viewed with other proposed actions have cumulatively significant impacts and should therefore be discussed in the same impact statement,” and “[s]imilar actions,” or actions that “when viewed with other reasonably foreseeable or proposed agency actions, have similarities that provide a basis for evaluating their environmental consequences together.” 40 C.F.R. §§ 1508.25(a)(2), (3).

22. Direct effects include those that “are caused by the action and occur at the same time and place.” 40 C.F.R. § 1508.8(a). Indirect effects include effects that “are caused by the action and are later in time or farther removed in distance, but are still reasonably foreseeable.”

40 C.F.R. § 1508.8(b). Cumulative effects are “the impact on the environment which results from the incremental impact of the action when added to other past, present, and reasonably foreseeable future actions regardless of what agency (Federal or non-Federal) or person undertakes such other actions.” 40 C.F.R. § 1508.7. “Effects” are synonymous with “impacts.” 40 C.F.R. § 1508.8.

23. These effects include “ecological (such as the effects on natural resources and on the components, structures, and functioning of affected ecosystems), aesthetic, historic, cultural, economic, social, or health, whether direct, indirect, or cumulative” effects. 40 C.F.R. §1508.8.

24. The cumulative impact requirement ensures that agencies consider effects that result from individually minor but collectively significant actions taking place over a period of time. 40 C.F.R. § 1508.7).

25. The Federal Defendants’ analysis must do more than merely identify impacts; it must also “evaluate the severity” of effects. *Robertson v. Methow Valley Citizens Council*, 490 U.S. 332, 352 (1989); 40 C.F.R. § 1502.16(a)-(b) (recognizing that agency must explain the “significance” of effects).

26. “NEPA is ‘essentially procedural,’ designed to ensure ‘fully informed and well-considered decision[s]’ by federal agencies.” *Del. Riverkeeper Network v. FERC*, 753 F.3d at 1309-10 (quoting *Vt. Yankee Nuclear Power Corp. v. NRDC*, 435 U.S. 519, 558 (1978)). The statute serves that purpose by requiring federal agencies to take a “hard look” at “their proposed actions’ environmental consequences in advance of deciding whether and how to proceed.” *Sierra Club v. U.S. Army Corps of Eng’rs*, 803 F.3d 31, 37 (D.C. Cir. 2015). NEPA “does not dictate particular decisional outcomes, but ‘merely prohibits uninformed—rather than unwise—agency action.’” *Id.* (quoting *Robertson v. Methow Valley Citizens Council*, 490 U.S. 332, 351

(1989)). Under NEPA regulations, agencies must consider all reasonable alternatives, *including those not specifically under their authority to implement*. See

<https://ceq.doe.gov/nepa/regs/40/1-10.HTM>. See also *NRDC v. Morton*, 458 F.2d 827 (D.C. Cir 1972).²

II. The Proposed Northern Pass Transmission Project

27. The proposed Northern Pass Transmission Line Project (the “Project” and “Northern Pass”) is a proposed electrical power transmission line that would cross the international border from Canada into the United States in Pittsburg, NH. It would extend up to approximately 192 miles, depending on the final siting, through the State of New Hampshire to an existing electricity substation in Deerfield, NH. The proposed Project would include both overhead and underground lines, along with the installation and operation of up to six new transition stations, one new converter station, and two upgraded substations. The proposed line would be constructed and owned by Northern Pass Transmission, LLC.³ Portions of the proposed Project would cross the White Mountains National Forest (the “WMNF”), requiring authorization for use and occupancy of National Forest Service (“NFS”) lands through a special use permit (“SUP”) from the USFS. Additional details regarding the selected alternatives are presented in Section 1.4.1 of the Record of Decision issued January 8, 2018 (the “ROD”), which is attached hereto as **Exhibit 1**.

28. On October 14, 2010, Eversource applied to the Department of Energy (“DOE”) for a Presidential permit pursuant to Executive Order (“EO”) 10485, as amended by the EO

² Allco gratefully acknowledges the contributions of the Institute for Policy Integrity at New York University School of Law.

³ Northern Pass Transmission, LLC is owned by Eversource Energy Transmission Ventures, Inc. (formerly NU Transmission Ventures, Inc.), a wholly-owned subsidiary of Eversource Energy (formerly Northeast Utilities), which is a publicly-held public utility holding company and collectively referred to herein as “Eversource”. Public Service of New Hampshire (PSNH) is also a wholly-owned subsidiary of Eversource Energy, and does business as Eversource Energy.

12038, and the regulations codified at 10 C.F.R. § 205.320 *et seq.* (2000), “Application for Presidential Permit Authorizing the Construction, Connection, Operation, and Maintenance of Facilities for Transmission of Electric Energy at International Boundaries.” The Presidential permit for the Applicant (OE Docket Number PP-362), if issued, would authorize Eversource to construct, operate, maintain, and connect facilities at the international border of the U.S. for the transmission of electrical energy across the U.S./Canada border in northern New Hampshire. The DOE does not have siting or project alignment authority for projects proposed in applications for Presidential permits.⁴ The New Hampshire Site Evaluation Committee (“NH SEC”) has siting authority on state and private lands in New Hampshire. The USFS has siting authority on NFS lands.

29. The DOE began preparation of an EIS under NEPA and the Council of Environmental Quality (CEQ) regulations for implementing the NEPA (40 CFR Parts 1500–1508), and other applicable federal laws.

30. The EIS considered and disclosed certain projected impacts from the entire transmission line.

31. The final EIS was issued on August 18, 2017. *See* U.S. DOE, *Final Northern Pass Transmission Line Project Environmental Impact Statement* (Aug. 2017) [hereinafter, Final EIS, DOE/EIS-0463].

III. Legal Framework for Issuing a Special Use Permit in the White Mountains National Forest

32. Eversource applied to the USFS on June 28, 2011, for a SUP that would authorize use and occupancy of NFS lands in the WMNF for Eversource to construct, own, operate, and maintain an electrical transmission line. On September 5, 2013, Eversource submitted an

⁴ The DOE approved the Presidential permit on November 16, 2017.

amended SUP application to the USFS to reflect proposed changes to the route of the Project. The USFS has been a cooperating agency in the preparation of the draft, supplement, and final EIS since December 22, 2010.

33. There are five conditions precedent to the USFS approving the proposed Northern Pass Project, none of which have been met.

34. *First*, an EIS must be prepared that rigorously explores and objectively evaluates all reasonable alternatives, and analyzes all direct, indirect, and cumulative environmental impacts, of the proposed action.

35. *Second*, the applicant must submit and disclose the plans, contracts, agreements, or other information reasonably related to the use, or intended use, of the right-of-way, *including its effect on competition*. See 43 U.S.C. § 1761(b).

36. *Third*, the proposed use cannot reasonably be accommodated off of NFS lands. In this connection, the Forest Service Manual (“FSM”) states that authorization for the use of NFS lands is not to be given “solely because it affords the applicant a lower cost or less restrictive location.” See Forest Service Manual § 2703.2 [hereinafter FSM].

37. *Fourth*, the proposed use must meet the public interest “best needs” test, *i.e.*, “[t]he proposed use is consistent with the mission of the Forest Service to manage National Forest System lands and resources in a manner that will *best* meet the present and future needs of the American people.” (emphasis added.) See FSM § 2703.2.

38. *Fifth*, the “applicant shall also comply with all applicable requirements of the Federal Energy Regulatory Commission under the Federal Power Act, including part 1 thereof (41 Stat. 1063, 16 U.S.C. 791a–825r).” See 43 U.S.C. § 1761.

IV. The USFS's Approval of Northern Pass.

39. The ROD states that the USFS considered only “three things” in giving its approval: “[1] the USFS’s responsibility under the Energy Policy Act of 2005 to facilitate energy transmission on NFS lands, [2] whether the proposed use is consistent with managing NFS lands in a manner that will best meet the present and future needs of the American people, and [3] whether the proposed use can be reasonably accommodated off of NFS lands.” *See* Record of Decision, at ¶ 1.4.2.1 [hereinafter “ROD”].⁵

40. With respect to the USFS’s responsibility under the Energy Policy Act of 2005 to facilitate energy transmission on NFS lands, the USFS simply misinterpreted 43 U.S.C. § 15926(c). The USFS applied it here as a broad policy favoring the Northern Pass. But that is erroneous for two reasons. *First*, section 15926 does not authorize unilateral action of the USFS, which the Northern Pass approval is. What section 15926 does require is for the Secretary of Agriculture, the Secretary of Commerce, the Secretary of Defense, the Secretary of Energy, and the Secretary of the Interior (collectively, “the Secretaries”), in consultation with the Federal Energy Regulatory Commission (the “FERC”), affected utility industries, and other interested parties, to establish procedures under their respective authorities providing that corridors for electricity transmission and distribution facilities on Federal land are promptly identified and designated *as necessary*; and to expedite applications to construct or modify electricity transmission and distribution facilities *within such corridors*, taking into account prior analyses and environmental reviews undertaken during the designation of such corridors. *Id.* § 15926 presupposes the designation of corridors first, which has simply not occurred.

⁵ Also attached as Exhibit 1.

41. *Second*, section 15926 requires yet another determination—that the transmission corridor is “necessary.” *See*, 43 U.S.C. § 15926(c)(1). No analysis was performed, and certainly no conclusion was made, justifying the conclusion that the proposed Project meets the high bar that its existence is “necessary.” Further, the USFS has failed to address the three mandated criteria that must be considered in the determination of a corridor as “necessary”—reliability, congestion, and capability of the national grid to deliver electricity. *See* 43 U.S.C. § 15926(d).

42. With respect to whether the proposed use is consistent with managing NFS lands in a manner that will *best* meet the present and future needs of the American people, the Federal Defendants simply failed to offer any explanation as to why Northern Pass meets the “best” needs test. Instead, the ROD merely offers a half-baked mention of a few alleged characteristics of the proposed Project. *See*, ROD, at ¶ 1.4.2.1.

43. With respect to whether the proposed use could be reasonably accommodated off of NFS lands, the USFS side-stepped the issue by stating that neither it nor any other agency had done any work analyzing the issue. While acknowledging that “[p]ublic comment suggested that other alternatives be considered to completely avoid locating the line in New Hampshire,” the Federal Defendants blamed their inability to analyze the issue on the absence of “broad programmatic energy transmission routing policy at the federal or state level that evaluates energy transmission on a broader geographic scale.” *Id.*

44. But then, contradicting its commentary regarding federal energy policy, the ROD proceeds to conclude that no real analysis of non-NFS alternatives is needed because of “existing federal energy policy.” *Id.* Further illuminating the lack of analysis, the ROD concedes that it only considered the “range of alternatives considered in the FEIS,” which all involve the WMNF. In the ultimate tail-wagging-the-dog logic, the ROD then concludes that “there is no

reasonable way to transmit power from the border crossing to the substation in Deerfield, NH without crossing lands administered by the WMNF.” Yet that logic lays bare the failure of the Federal Defendants to take a hard look at alternatives in the best interest of the American people. There is no justification for limiting delivery of power within ISO-NE electricity grid to a single substation in New Hampshire. Further, there are many other alternatives for delivering hydro-electric power from Canada to ISO-NE, as the many proposed alternatives from Northern Pass competitors firmly establish.

V. Administrative Procedure Act and Administrative Exhaustion

45. The proposed Project was subject to the USFS objection process pursuant to 36 CFR Part 218, subparts A and B. *See*, USFS Draft ROD at ¶1.9; ROD at ¶1.5. The USFS accepted objections only from those who had previously submitted specific written comments regarding the proposed project during scoping or the draft EIS public review and comment period.

46. Allco submitted timely comments on the draft EIS on April 4, 2016.

47. Allco submitted timely comments on the draft ROD on October 3, 2017.

48. Allco has satisfied the USFS administrative exhaustion requirements. *See* 36 C.F.R. § 218.14.

49. The APA provides a right to judicial review for any “person suffering legal wrong because of agency action.” 5 U.S.C. §702. Actions that are reviewable under the APA include final agency actions “for which there is no other adequate remedy in a court.” 5 U.S.C. § 704.

50. Under the APA, a reviewing court shall “hold unlawful and set aside agency action . . . found to be arbitrary, capricious, an abuse of discretion, or otherwise not in

accordance with law.” 5 U.S.C. §706(2)(A). A court must also compel agency action unlawfully withheld or unreasonably delayed. 5 U.S.C. § 706(1).

**COUNT I:
FAILURE TO TAKE A HARD LOOK AT THE SEVERITY OF DIRECT,
INDIRECT, AND CUMULATIVE
IMPACTS OF GREENHOUSE GAS POLLUTION
(VIOLATION OF NEPA)**

51. Plaintiff re-alleges and incorporates by reference the allegations contained in each of the foregoing paragraphs as though fully set forth herein.

52. Climate change has been intensively studied and acknowledged at the global, national, and regional scales. Climate change is fueled by the human-caused release of greenhouse gas emissions, in particular carbon dioxide and methane.

53. Pursuant to NEPA and NEPA’s implementing regulations, the Federal Defendants must take a hard look at the direct, indirect, and cumulative environmental consequences of their proposed actions. 42 U.S.C. §§ 4332(2)(C)(i)-(v); 40 C.F.R. §§ 1502.14(a), 1502.16, 1508.7, 1508.8, and 1508.14.

54. The Federal Defendants failed to take the required hard look at the direct, indirect, and cumulative greenhouse gas (“GHG”) emissions and the impacts of those emissions on climate change. The Federal Defendants failed to sufficiently quantify and account for direct GHG emissions, and failed to analyze the effect of those emissions on other resource values.

55. The Federal Defendants failed to address the foreseeable indirect impacts from upstream flooding of lands, and the construction of the hydroelectric generating resources, which would not need to be built but for the purported, but unsubstantiated, need for Canadian hydroelectricity to be delivered to the United States.

56. The Federal Defendants failed to address the foreseeable indirect impacts from downstream displacement of United States based renewable energy resources. The Federal Defendants also failed to discuss the cumulative effects of these emissions.

57. The Federal Defendants also failed to analyze the cumulative environmental effects of the proposed Project while recognizing that other transmission projects that have either been approved, such as TDI-New England, or proposed, such as the Granite State Power Link, serve the exact same purpose as the proposed Project—the purported need to bring hydroelectricity from Canada to the United States.

58. To comply with NEPA, the Federal Defendants were required to take a hard look at the direct, indirect, and cumulative GHG emissions and the severity of the impacts of those emissions on climate change for the proposed Project. The Federal Defendants have never taken a comprehensive hard look at the climate impacts of the proposed Project, which NEPA requires it to do.

59. Combined, it is reasonably foreseeable that the proposed Project, together with the other hydroelectric projects approved or proposed, could result in millions of acres of forest being flooded to create the perceived capacity needed, adding significant levels of GHG emissions to the atmosphere and further endangering the Earth's climate, as it nears the tipping point.

60. Where information relevant to foreseeable adverse impacts is unavailable, agencies must nonetheless evaluate “such impacts based upon theoretical approaches or research methods generally accepted in the scientific community.” 40 C.F.R. § 1502.22(b)(4).

61. Specifically, the EIS and the Federal Defendants failed to analyze the GHG and other impacts of its decision that will occur as the result of massive additional flooding of land

and construction of dams in order for Hydro-Québec or other Canadian hydro producers to deliver the energy. Although those impacts are initially in Canada, GHG emissions cannot be neatly segregated by country. Higher GHG emissions in Canada from flooding or from higher use of fossil fuel generation because of hydropower being diverted to the United States, has the same impact on the United States as if the plant were located in the United States.

62. The EIS fails to analyze the cumulative and life cycle GHG impacts of hydro. The EIS assumes without analysis that the ability of utilities within ISO-NE to purchase “renewable” hydropower electricity from Canada is desirable and is a solution to the strawman used by the EIS of diversity and “baseload” power supply of the ISO-NE region. The EIS assumes, without analysis, that the hydroelectric generation that Northern Pass would carry is renewable, sustainable, and does not emit atmospheric pollutants. Such an assumption does not pass the muster of informed decision making. New reservoirs and dams are rarely proposed in North America, outside of Québec and Labrador. Impoundment of hydroelectric reservoirs induces decomposition of the flooded biomass (forests, peatlands and other soil types), raising GHG emissions. In addition, there are ongoing net differences between the carbon uptake and respiration of the pre-flooding and post-flooding biomes and water columns. The result is higher greenhouse gas emissions after impoundment, mainly CO₂ and a small amount of CH₄ (methane). Hydro-Québec even states on its website that GHG emissions generated by creating reservoirs used to produce electricity are not considered when calculating emissions or Hydro-Québec’s carbon footprint, nor do they include a life cycle analysis in their carbon footprint calculations. *GHG Emissions and Hydro-Quebec Electricity*, HYDRO-QUEBEC (<http://www.hydroquebec.com/sustainable-development/documentation-center/ghg-emissions.html> (last visited May 22, 2018)).

63. The EIS and the Federal Defendants failed to consider the potential for other adverse effects including mass extinction of species from dams that would need to be constructed or maintained as the result of Northern Pass.

64. The Federal Defendants failed to take a hard look at the direct, indirect, and cumulative impacts to the climate from GHG emissions, and failed to discuss the severity of these impacts, when authorizing the proposed Project.

65. The Federal Defendants' failures are "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law," in violation of NEPA, 42 U.S.C. § 4332(C)(ii), its implementing regulations at 40 C.F.R. §§ 1508.7, 1508.8, 1508.25, 1508.27, and the APA at 5 U.S.C. § 706(2)(A).

COUNT II
**FAILURE TO TAKE A HARD LOOK AT THE NO-ACTION ALTERNATIVE
(VIOLATION OF NEPA)**

66. Allco re-alleges and incorporates by reference the allegations contained in each of the forgoing paragraphs as though fully set forth herein.

67. NEPA requires all federal agencies to consider the potential environmental impacts of their actions and to identify and evaluate reasonable alternatives to proposed actions and those alternatives' environmental impacts, including taking no action.

68. The EIS's assumption that, compared to No Action, approving the proposed Project would have a positive impact on total greenhouse gas emissions is wrong and departs from basic economic principles and vastly overstates the proposed Project's relative climate impacts.

69. The Summary of the EIS states:

S.8.5 ALTERNATIVE 1 – NO ACTION ALTERNATIVE

Under the No Action Alternative, there would be no impacts to any of the environmental resources analyzed. The local taxing jurisdictions would not realize any increases in tax revenues as a result of the Project and no direct or indirect economic impacts would occur within the region. No additional short-term or permanent jobs would be created. There would be no change in the wholesale price of electricity in New Hampshire or the ISO-NE region and no project related change in the level of CO2 emissions.

70. The EIS's and the Federal Defendants' assumption that the No Action will have no net effect on renewable energy generation, economic benefits or climate benefits contradicts fundamental economic principles. Significant changes in renewable energy supply will affect renewable energy's price and, therefore, consumption and emission levels.

71. The proposed Project would bring approximately 10 GWs of electricity per year to ISO-New England. It is a serious error to assume that under the No Action Alternative, all 10 GWs would not be completely replaced by renewable energy generation from other sources, with no effect on overall consumption or emissions.

72. Indeed, the results of the section 83D Massachusetts solicitation in which Northern Pass was initially selected establishes beyond doubt that the Northern Pass would be displacing other renewable generation.

73. The EIS and the Federal Defendants fail to analyze how electricity from the Northern Pass directly competes with other renewable energy resources in electricity generation, such that increasing the supply of Canadian hydro-electricity results in less American renewable energy generation in ISO-New England.

74. The EIS and the Federal Defendants also ignore how overall greenhouse gas emissions will vary among substitute sources of renewable energy generation. The EIS and the

Federal Defendants should have—and easily could have—evaluated the No Action Alternative’s climate effects.

A. Basic Economic Principles Provide That Any Significant Change in Supply Will Change Price and Demand and, Therefore, Total Generation and Emissions

75. The basic economic principles of supply and demand provide that significant changes in renewable energy supply will affect renewable energy’s price and, therefore, consumption levels. Increasing the supply of any normal good (including renewable energy) puts downward pressure on that good’s market price; this is a basic tenant of the law of supply and demand. N. Gregory Mankiw, *Principles of Economics* 74–78, 80–81 (5th ed. 2008). Lower renewable energy prices can result in lower electricity costs, which in turn encourage higher levels of electricity consumption, while higher renewable energy and electricity prices discourage consumption. *See id.* at 67–68.⁶

76. Approving the proposed Project increases the supply of Canadian hydro-electricity, lowering demand for U.S.-based renewable energy generation.

77. Alternatively, in the No Action Alternative, the demand for U.S.-based renewable energy generation would be higher; and unlike the proposed Project, the U.S.-based generation would reduce greenhouse gas emissions.

78. Similarly, in the No Action Alternative, the higher demand for U.S.-based renewable energy generation would result in increased economic benefits for the United States, as compared to the proposed Project’s economic benefits, which are largely in Canada.

⁶ The Court may take notice of basic economic principles of supply and demand, as well as classic economic textbooks and peer reviewed articles. *See Citizens for Alternatives to Radioactive Dumping v. U.S. Dep’t of Energy*, 485 F.3d 1091, 1096 (10th Cir. 2007) (“In dealing with scientific and technical evidence, extra-record evidence ‘may illuminate whether an [environmental impact statement] has neglected to mention a serious environmental consequence, failed adequately to discuss some reasonable alternative, or otherwise swept stubborn problems or serious criticism . . . under the rug.’”) (alterations in original).

79. The Northern Pass is one of many projects either approved or in process of approval through which Hydro-Québec intends to decimate U.S. renewable energy producers and other generators in the United States, including Allco.

80. The Northern Pass, quite simply, would export thousands of American jobs to Canada, and result in New England ratepayers sending billions of dollars to Canada to support Canadian jobs, schools, and economic development.

81. Hydropower from Canada is the largest source of U.S. electricity imports. In total, according to the Congressional Research Service, “the value of electricity imports from Canada to the United States rose (overall) from approximately \$1.9 billion in 2011 to about \$2.95 billion in 2015.” The total value going the other way equaled approximately \$300 million. Now Hydro-Québec through the Northern Pass and similar projects seeks to be the dominant generator in ISO-New England, decimating U.S. renewable energy producers, including Allco.

82. The EIS acknowledges the massive increase in Canadian imports, *see* Final EIS, S-24, and acknowledges that electricity generation from natural gas, oil, coal, and domestic hydropower would be expected to fall if the proposed Project were approved. The EIS fails to analyze, however, the impacts on other renewable energy forms of generation. The EIS also acknowledges that Canadian hydropower would become the dominant source of electricity in ISO-NE supplying approximately 26 percent of the total electricity supply to ISO-NE. *Id.* That total would likely substantially increase if the other Canadian Hydro transmission projects are factored in, which the EIS should have but did not do. The failure to analyze wind and solar, with or without storage, as a reasonably foreseeable alternative is clear error.

83. The failure of the EIS to analyze the potentially devastating impacts on United States renewable energy producers is clear error.

84. Canadian hydro-electricity directly competes with other forms of renewable energy resources in the generation of electricity. Economists measure how coal, natural gas, and other fuels act as substitutes in the electricity market by analyzing “cross-price elasticity” (that is, how responsive producers are in swapping inputs when relative prices change). *See* Mankiw, *supra* at 99. For example, the United States Energy Information Administration (“EIA”) found that for the U.S. market, a ten-percent increase in the ratio of the price of coal to the price of natural gas leads to a 1.4-percent increase in the use of natural gas over coal. EIA, *Fuel Competition in Power Generation and Elasticities of Substitution 1* (2012). In other words, in that example, the cross-price elasticity of demand for natural gas is 0.14 with respect to coal’s price. *Id.* Other economists reach similar conclusions. James Ko & Carol Dahl, *Interfuel Substitution in U.S. Electricity Generation*, 33 APPLIED ECONOMICS 1833, 1835 (2001) (analyzing “average” cross-price elasticity). *See also* Nate Blair et al., *Long-Term National Impacts of State-Level Policies* (Nat’l Renewable Energy Lab. Conf. Paper 620-40105, June 2006) (discussing how “higher coal prices would dramatically increase” use of renewable wind energy). These estimates represent short-run elasticities; over time, substitution effects become more pronounced as power plants make technological changes that facilitate fuel-switching, and as long-term investments favor renewable energy. *See* Mankiw, *supra* at 105–106.

85. Changes in the relative amounts of coal, natural gas, renewable sources, and nuclear energy used to generate electricity—as well as changes in total energy demand—would, in turn, change total greenhouse gases emissions. In short, the EIS’ and ROD’s unexamined and unsupported assumption that the No Action Alternative would have no effect on greenhouse gas emissions is contradicted by fundamental economics and market analyses. The EIS and the ROD fail to meet NEPA’s requirements, and should be revised.

86. Considering the size and nature of the Northern Pass, it is a fallacy to assume that under the No Action Alternative there would be no substitution with no effect on price, consumption, or emissions.

87. Moving beyond theory to the specific proposed project at issue, given the size and characteristics of the Northern Pass and the ISO-New England market, it is clear error to not analyze the substitutions that would occur if the Northern Pass were not built.

88. The EIS' and the Federal Defendants' assumption that there would be no substitution simply bears no relationship to reality. The Northern Pass represents an enormous amount of renewable energy that affects hundreds of miles of forest and other resources.

89. If the Northern Pass is not approved, utilities in ISO-New England will acquire other renewable energy production to satisfy their respective renewable energy goals and standards, and therefore, lower greenhouse gas emissions. In the No Action Alternative, any renewable energy substituting for the Northern Pass may provide a more positive impact on emissions and climate change. Yet, the EIS does not analyze this environmental impact in its alternatives analysis.

90. In short, the EIS' flawed economic assumptions render its alternatives analysis ineffective and misleading, and the EIS and ROD must be revised.

B. Other Federal Agencies—during Previous NEPA Reviews—Properly Analyze the Supply and Demand of Resources and Resulting Climate Effects

91. In NEPA reviews for over the past 35 years, the Department of the Interior (the "Interior") has consistently understood that a decision not to take action related to energy production will affect that energy resource's supply and price and thus trigger other actions. The Interior has further analyzed how such triggered actions generate different consequences for air pollution, climate change, and overall environmental quality. The U.S. Court of Appeals for the

D.C. Circuit has praised the Interior’s analysis of these substitution effects. As far back as 1979, the Interior has assessed the different environmental effects of energy substitutes under a No-Action Alternative—including different levels of carbon dioxide emissions.

92. Other agencies, such as the Surface Transportation Board, the USFS, the State Department, the Office of Surface Mining Reclamation and Enforcement (another Interior sub-agency), the FERC, and the Nuclear Regulatory Commission, have also properly analyzed the effects of their energy management decisions in NEPA reviews, consistent with the advice of the U.S. Court of Appeals for the Eighth Circuit and the U.S. District Courts of Colorado and Minnesota. DOE’s mistaken assumption that taking no action on the Northern Pass would have, compared to approving it, no net effects on greenhouse gas emissions represents a substantial break with a 35-year history of proper analysis by DOE’s sister agencies, and inconsistent with the USFS’s actions in other reviews.

C. Other Federal Agencies Analyze the Connections between Supply, Price, Substitutes, Conservation, and Emissions

93. Before the 1982 creation of a sub-agency within Interior responsible for offshore resources, the Office of the Secretary of the Interior developed the federal offshore oil and gas leasing program, and the Bureau of Land Management (“BLM”) prepared environmental impact statements on leasing actions (then called simply “environmental statements”). In BLM’s 1979 Final Environmental Statement on a proposed lease sale off the coast of Southern California, the agency analyzed the No Action Alternative of withdrawing the sale:

[I]f the subject sale were cancelled, the following energy actions or sources might be used as substitutes: Energy Conservation; Conventional oil and gas supplies; Coal; Nuclear power; Oil shale; Hydroelectric power; Solar energy; Energy imports; . . . Vigorous energy conservation is an alternative that warrants serious consideration. The Project Independence Report of the Federal Energy Administration claims that energy conservation alone can

reduce energy demand growth by 0.7 to 1.2 percent depending on the world price of oil. . . . The environmental impacts of a vigorous energy conservation program will be primarily beneficial.

Final Environmental Statement, OCS Sale No. 48, Proposed 1979 Outer Continental Shelf Oil and Gas Lease Sale Offshore Southern California, 1508–09 (1979). See also BLM, Draft Environmental Statement, Proposed Five-Year OCS Oil and Gas Lease Sale Schedule 63 (1980) (“An alternative . . . to cease leasing . . . would result in the need to meet national energy needs through other sources, or to reduce energy consumption . . .”).

94. Thus, as early as 1979, DOE’s and the USFS’s sister agency recognized that canceling even a single oil and gas lease would cause the market to respond by substituting not just oil and gas from other sources, but alternative fuel types as well as increased energy conservation. BLM further recognized that the extent of energy conservation as a response depended on the price of the resource being replaced. BLM explained in 1979 to decision-makers and the public, over the course of 25 pages of analysis, how each possible substitute for the foregone offshore leasing carried its own environmental effects: net beneficial to the extent increased energy conservation or renewable energy offset the lost offshore oil and gas; a more mixed or net negative effect on environmental quality with switches to other types and sources of fossil fuels. BLM, *Final Env’tl. Stmt. on Sale No. 48, supra* at 1508– 1532. BLM even noted in this 1979 analysis that different energy substitutes generated different carbon dioxide emissions: “A number of gases are associated with geothermal systems and may pose health and pollution problems. These gases include . . . carbon dioxide However, adverse air quality impacts are generally less than those associated with fossil-fuel plants.” *Id.* at 1525.

D. Interior Uses Sophisticated Tools to Assess the Environmental Consequences of Substitutes, and the D.C. Circuit Has Praised Its Modeling

95. Interior develops Five-Year Programs to manage the leasing of offshore (or “Outer Continental Shelf” (“OCS”)) oil and gas resources. Its current Program covers the years 2012–2017; development of that Program and the related Environmental Impact Statement first began in 2009. *See* BOEM, *Outer Continental Shelf Oil and Gas Leasing Program: 2012–2017—Final Programmatic Environmental Impact Statement*, 8-1 (2012). In the decision document for the current offshore Program, Interior’s Bureau of Ocean Energy Management (“BOEM”) explained:

In an environment of strong worldwide demand for oil and natural gas, a domestic supply cut equivalent to the production anticipated to result from a new Five Year Program would lead to a slight increase in world oil prices and a relatively larger increase in U.S. natural gas prices. All other things being equal, this would lead to a market response providing . . . a slight reduction in oil and natural gas consumed, a substantial increase in oil imports, and added supplies provided by onshore hydrocarbon resources.

96. BOEM uses its *Market Simulation Model (MarketSim)* to estimate the amount and percentage of substitutes that the economy would adopt should a particular program area not be offered to lease. MarketSim is based on authoritative and publicly available estimates of price elasticities of supply and demand and substitution effects. . . .

[I]n the event the NAA [No-Action Alternative] were implemented. . . . 68 percent of the oil and natural gas production foregone from this program would be replaced by greater imports, 16 percent by increased onshore production, [10 percent by other energy sources] . . . and 6 percent by a reduction in consumption.

BOEM, *Proposed Final Outer Continental Shelf Oil & Gas Leasing Program 2012–2017*, 110 (2012)13; *see also* BOEM, *2012–2017 Final Programmatic Environmental Impact Statement*, *supra* at 4-643 (“With less oil and gas available from the OCS under the No Action Alternative,

consumers could obtain oil and gas from other sources, substitute to other types of energy, or consume less energy overall.”).

97. BOEM explained in its Final Environmental Impact Statement that, compared to leasing offshore oil and gas, the energy substitutes anticipated under a No Action Alternative will have different environmental consequences, including for climate change. For example, BOEM detailed how “Coal consumed in place of gas under the No Action Alternative will result in environmental costs The combustion of coal in power plants or industrial boilers produces higher emissions . . . than the combustion of natural gas and results in greater CO₂ [carbon dioxide] emissions.” *Id.* at 4-647. Similarly, BOEM’s Economic Analysis Methodology calculates:

[T]he emissions for carbon dioxide and nitrous oxide [another greenhouse gas] are greater under the NSOs [No-Sale Options] than from the program. However, there is more methane from the program than the NSOs. Though these impacts are not monetized, *they are not identical between having an OCS program and having the impacts of the NSOs.*

BOEM, *Economic Analysis Methodology for the Five Year OCS Oil and Gas Leasing Program for 2012–2017*, 29–30 (2012) (emphasis added).

98. In a recent case challenging Interior’s 2012–2017 offshore oil and gas leasing program, the D.C. Circuit favorably reviewed Interior’s modeling of how “forgoing additional leasing on the OCS would cause an increase in the use of substitute fuels . . . and a reduction in overall domestic energy consumption from greater efforts to conserve in the face of higher prices.” *Ctr. for Sustainable Economy v. Jewell*, 779 F.3d 588, 609 (D.C. Cir. 2015). Importantly, nothing in BOEM’s modeling is unique to the offshore oil and gas context. According to BOEM, “MarketSim’s economics-based model representation of U.S. energy markets . . . simulates end-use domestic consumption of oil, natural gas, coal and electricity in

four sectors (residential, commercial, industrial and transportation); primary energy production; and the transformation of primary energy into electricity.” BOEM, *The Revised Market Simulation Model (MarketSim): Model Description 2* (2012).

99. Interior’s sophisticated modeling of the environmental effects of energy substitutes under No Action Alternatives is the culmination of 35 years of analysis. Interior has used the MarketSim model since at least its 2002–2007 Program for offshore leasing. *See* Minerals Mgmt. Serv. (“MMS”), *Energy Alternatives and the Environment*, 10 (2001)16 (“MMS employs the MktSim2000 model to evaluate the impact of decreased OCS production resulting from no action.”). Since at least the 1990s, Interior’s Environmental Impact Statements have calculated the percentage of offshore production expected to be substituted by various energy alternatives under a No Action scenario. MMS *Energy Alternatives and the Environment*, 13 (1996)17 (“[F]or each unit of OCS gas not produced because of no action . . . conservation will account for about 0.14 units”); *see also id.* at 15 (“Significant environmental impacts associated with expanded importation of oil include: the generation of greenhouse gases”). And going back to the first Five-Year Program in 1980 (when BLM prepared the Environmental Statements), Interior has recognized that not all sources of the same fuel type present the same environmental effects—for example, offshore oil drilling presents lower spill risks than imported oil substituted under the no action alternative. Interior, *5-Year OCS Leasing Program* 13b (1980).

100. Similarly, in a 2001 report on its offshore oil leasing program, Interior declared in no uncertain terms that “Examining other energy sources is an important aspect of the No Action Alternative” under NEPA reviews. MMS, *Energy Alternatives and the Environment* 1 (2001).

101. The EIS just brushes aside alternative generation resources that would fill the void on the basis of a suspicious rationale: that other generation resources are not the subject of the permit application itself. Such a rationale is absurd and defeats the entire purpose of analyzing viable replacements when the No Action alternative is selected. It is also a rationale that has been rejected by the courts.

E. The EIS' Description of the Effects of the No-Action Alternative is Manifestly Erroneous

102. Local taxing jurisdictions would realize increases in tax revenues as a result of the renewable generators that would be built instead of the proposed Project. Similarly, direct or indirect economic impacts for those alternative renewable United States-based generators would occur within the region under the No Action Alternative, and indeed would *far exceed* those from the Northern Pass. There would also be a reduction in the wholesale price of electricity for those alternative United States-based generators, and a far greater decrease in CO2 emissions.

103. Quite simply, the conclusions used for the No Action Alternative baseline are preposterous, fail to use accepted substitution analysis used by the USFS and other federal agencies in conducting environmental impact statements, and are the type of uninformed review that has been rejected by the courts.

104. Under NEPA regulations, agencies must consider all reasonable alternatives, including those not specifically under their authority to implement. *See* 40 C.F.R. §1502.14; *see also NRDC v. Morton*, 458 F.2d 827 (D.C. Cir 1972) (explaining that it is the essence and thrust of NEPA that impact statements serve to gather in one place discussion of relative environmental impact of alternatives, and although alternatives required for discussion are those reasonably available, they should not be limited to measures which particular agency or official can adopt; when proposed action is integral part of coordinated plan to deal with broad problem, range of

alternatives which must be evaluated is broadened). Thus, the failure to consider other generation resources because they would not require a Presidential Permit within DOE's jurisdiction or require a permit from the USFS is clear error.

105. As mentioned in the EIS, the results from the recent Multi-State clean energy RFP of the states of Connecticut, Massachusetts, and Rhode Island clearly establish that the Northern Pass line is not needed. Proposals for multiples of the renewable energy requirements of the New England States were received without the need for the Northern Pass. Those results prove beyond doubt that the Northern Pass is simply not needed.

106. The reality shown by those RFP results and the Massachusetts section 83D RFP is that the Northern Pass would displace other United States-based renewable energy projects. The New England States that are part of the ISO-New England electricity grid would only select a limited amount of renewable energy for that and future solicitations, and the Northern Pass would displace United States-based generation. The Multi-State RFP bids and the Massachusetts section 83D RFP proves that. If the Northern Pass were selected, that would mean that renewable energy projects located in the United States would not be selected, resulting in, among other things, the loss of American jobs and revenue.

107. Therefore, the "Socioeconomic" impacts of the No Action Alternative are manifestly wrong. The No Action Alternative would result in different renewable energy projects filling its place. And because those alternative projects would be located entirely in the United States, they would far surpass the Northern Pass in economic benefits to the United States. The estimated full-time equivalent job years would exceed 80,000 in the first three years for alternate renewable energy projects as compared to 6,700 for Northern Pass.

108. The Northern Pass would result in Canadian hydropower finding its way to the United States. But Canadian hydropower means more Canadian jobs and less American jobs. The overwhelming bulk of the economic benefits from such generation will be realized in Canada, not the United States. In sharp contrast, if the Northern Pass were not built, then as the Multi-State RFP and the Massachusetts section 83D RFP results indisputably show, renewable energy projects *in the United States* would take its place.

109. Similarly, the analysis of the No Action Alternative for Air Quality is incorrect. As the Multi-State RFP bids and the Massachusetts section 83D RFP prove, the Northern Pass would be replaced with renewable energy projects located closer to the actual electrical load. Those projects would have the higher air quality benefits and GHG benefits compared to the Northern Pass because they would be more efficient and would not require the adverse GHG impacts caused from flooding and new dam construction. Further, the farther generation is from actual load, the more electrical losses incurred.

110. The No Action Alternative must also take into account the fact that American jobs and tax revenues to the United States would be lost if Northern Pass were built. To be sure, there would be construction jobs from the construction of the Northern Pass; but all the generation facility jobs and economic benefits will be in Canada, resulting in a net loss of tens of thousands of full-time job years.

111. As the Multi-State RFP bids and the Massachusetts section 83D RFP prove, the Northern Pass will displace American jobs related to construction and operation of renewable energy projects in the United States that would fill any void if the Northern Pass were not built. The EIS and the USFS have not analyzed those economic impacts and the loss of American jobs and tax revenues if the Northern Pass were built.

112. The EIS' description of the effects of the No Action Alternative is manifestly erroneous.

113. The EIS does not properly and adequately analyze the No Action Alternative. Northern Pass will result in the loss of thousands of American jobs by displacing other renewable energy projects in New England.

114. The EIS bases its entire analysis on conjecture. The EIS assumes without adequate support that hydroelectric energy is needed to diversify electricity sources, a need that was never analyzed. There surely cannot be informed decision making when the threshold question—need for the proposed Project—is based merely upon conjecture.

115. For the foregoing reasons, the EIS and the Federal Defendants have failed to comply with NEPA, and the EIS and the Federal Defendants' approval should be vacated.

116. The Federal Defendants' failures are "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law."

COUNT III
FAILURE TO ANALYZE THE COMPETITIVE EFFECTS OF THE PROPOSED PROJECT
(VIOLATION OF 43 U.S.C. §1761(B))

117. Plaintiff re-alleges and incorporates by reference the allegations contained in each of the foregoing paragraphs as though fully set forth herein.

118. An applicant for a SUP must submit and disclose the plans, contracts, agreements, or other information reasonably related to the use, or intended use, of the right-of-way, *including its effect on competition*. 43 U.S.C. § 1761(b).

119. As described in the preceding paragraphs of this Complaint, Federal Defendants did not to analyze the proposed Project's effects on competition violating the requirement that the proposed Project's effect on competition must be reviewed and analyzed.

120. For the foregoing reasons, the EIS and the Federal Defendants have failed to comply with 43 U.S.C. § 1761(b), and the EIS and the Federal Defendants' approval should be vacated.

121. The Federal Defendants' failures are "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law."

COUNT IV
FAILURE TO TAKE A HARD LOOK AT ALTERNATIVES
ON NON-NFS LANDS
(VIOLATION OF FOREST SERVICE RULES)

122. Plaintiff re-alleges and incorporates by reference the allegations contained in each of the forgoing paragraphs as though fully set forth herein.

123. For the USFS to approve its portion of proposed Project, the USFS must conclude that the proposed use cannot reasonably be accommodated off of NFS lands. In this connection, the FSM states that authorization for the use of NFS lands is not to be given "solely because it affords the applicant a lower cost or less restrictive location." *See* FSM, at ¶ 2703.2.

124. The Federal Defendants did not engage in any analysis of, much less take a hard look at, whether the proposed Project could be accommodated on non-NFS lands.

125. While acknowledging that "[p]ublic comment suggested that other alternatives be considered to completely avoid locating the line in New Hampshire," the Federal Defendants simply stated that the absence of "broad programmatic energy transmission routing policy at the federal or state level that evaluates energy transmission on a broader geographic scale," effectively absolved it from looking at any alternatives other than those presented in the EIS.

126. But the EIS was prepared by the DOE, who has its own criteria related to issuing a Presidential Permit. The criteria for the USFS's action, however, are above, and indeed have a higher threshold than, the DOE criteria.

127. As the ROD concedes, it only considered the “range of alternatives considered in the FEIS,” which all involve the WMNF. It, therefore, made no effort to determine whether the proposed Project could reasonably be accommodated on non-NFS lands.

128. Perhaps realizing the glaring error in its approval, the ROD abandoned the purported need for the proposed Project (*i.e.*, to address New England’s electricity supply) and concluded that the real need is to transmit power to one single substation in ISO-NE—the substation at Deerfield, New Hampshire. Based upon that backwards logic, the ROD then concludes that “there is no reasonable way to transmit power from the border crossing to the substation in Deerfield, NH without crossing lands administered by the WMNF.”

129. Yet that logic lays bare the failure of the Federal Defendants to take a hard look at non-NFS lands alternatives. There is no justification for limiting delivery of power within ISO-NE electricity grid to a single substation in New Hampshire, when the alleged justification for the proposed Project is the alleged needs of the entire New England grid. *See*, ROD at 1.32.

130. Further, there are many other alternatives for delivering hydro-electric power from Canada to ISO-NE, as the many proposed alternatives from Northern Pass competitors firmly establishes.

131. The Federal Defendants violated the USFS rules by not taking a hard look—indeed they took no look—at the proposed Project being able to be accommodated on non-NFS lands.

132. For the foregoing reasons, the EIS and the Federal Defendants’ approval should be vacated.

133. The Federal Defendants’ failures are “arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law.”

COUNT V
FAILURE TO TAKE A HARD LOOK AT WHETHER THE PROPOSED PROJECT
SATISFIES THE “BEST NEEDS” TEST
(VIOLATION OF FOREST SERVICE RULES)

134. Plaintiff re-alleges and incorporates by reference the allegations contained in each of the forgoing paragraphs as though fully set forth herein.

135. For the USFS to approve the proposed Project, the proposed use must meet the public interest “best needs” test, *i.e.*, “[t]he proposed use is consistent with the mission of the Forest Service to manage National Forest System lands and resources in a manner that will *best* meet the present and future needs of the American people.” (emphasis added.) *See* FSM, at ¶ 2703.2.

136. The Federal Defendants simply failed to offer any explanation as to why Northern Pass meets the “best” needs test. Instead the ROD merely offers a passing mention of a few alleged characteristics of the proposed Project. *See*, ROD, at ¶ 1.4.2.1.

137. In order to have taken a hard look at whether the proposed Project meets the best needs test, the Federal Defendants would have needed at the very least to conduct a thorough review of the ISO-NE electricity supply and alternatives to meet that in the future, including from renewable energy QFs, such as Plaintiff’s. The Federal Defendants made no such effort.

138. Moreover, in order to determine that the proposed Project meets the best needs test, a thorough review of its potential competitive effects on United States based generators must be conducted. The Federal Defendants made no such effort.

139. The Federal Defendants’ failure to take a hard look at whether the proposed Project satisfies the best needs test requires that the USFS’ approval be vacated.

140. The Federal Defendants’ failure to expressly conclude that the proposed Project satisfies the best needs test requires that the Federal Defendants’ approval be vacated.

141. The Federal Defendants’ failures are “arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law.”

COUNT VI
**FAILURE TO COMPLY WITH ALL APPLICABLE REQUIREMENTS OF THE FERC
(VIOLATION OF 43 U.S.C. §1761)**

142. Plaintiff re-alleges and incorporates by reference the allegations contained in each of the forgoing paragraphs as though fully set forth herein.

143. 43 U.S.C. § 1761 imposes a broad requirement on applicants for a SUP on NFS lands: the “applicant shall also comply with all applicable requirements of the Federal Energy Regulatory Commission under the Federal Power Act, including part 1 thereof (41 Stat. 1063, 16 U.S.C. 791a–825r).” *See* 43 U.S.C. § 1761.

144. The applicant here, Eversource, is not complying with all of the obligations imposed by FERC. Specifically, the FERC has issued a declaratory order that Eversource is not complying with its obligations to Plaintiff. *Windham Solar LLC*, 157 FERC ¶ 61,134 (2016). Until Eversource complies with FERC’s requirements as regards to the Plaintiff, the USFS has no authority to designate the transmission corridor for Northern Pass.

145. The Federal Defendants’ failures are “arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law.”

146. As a result, the Federal Defendants’ approval should be vacated.

COUNT VII
**FAILURE TO ANALYZE AND DETERMINE WHETHER THE PROPOSED PROJECT
MEETS THE “NECESSARY” TEST OF 43 U.S.C. §15926**

147. Plaintiff re-alleges and incorporates by reference the allegations contained in each of the forgoing paragraphs as though fully set forth herein.

148. 43 U.S.C. § 15926 requires that the proposed Project’s transmission corridor must be “necessary.” *See* 43 U.S.C. § 15926(c)(1).

149. No analysis was performed, and certainly no conclusion was made, justifying the Northern Pass as meeting the high bar that its existence is “necessary.”

150. Further, the Federal Defendants have failed to address the three mandated criteria that must be considered in the determination of a corridor as “necessary”—reliability, congestion and capability of the national grid to deliver electricity. *See* 43 U.S.C. § 15926(d).

151. The Federal Defendants’ failures are “arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law.”

152. As a result the Federal Defendants’ approval of the Northern Pass must be vacated.

COUNT VIII
**THE FOREST SERVICE’S CONCLUSION THAT THE PROPOSED PROJECT WAS IN
THE PUBLIC INTEREST WAS ARBITRARY AND CAPRICIOUS, AN ABUSE OF
DISCRETION, AND NOT BASED UPON SUBSTANTIAL EVIDENCE**

153. Plaintiff re-alleges and incorporates by reference the allegations contained in each of the forgoing paragraphs as though fully set forth herein.

154. For the Federal Defendants to approve its portion of the proposed Project, the Federal Defendants must have conducted the proper NEPA analysis (which has not been done) and it must determine that the whole of the Project satisfies the best needs test. The proposed Project does not satisfy the best needs test.

155. The proposed Project would result in the loss of thousands of American jobs and billions of dollars of economic activity in the United States because the Project will displace renewable energy projects located in the United States, such as Allco’s.

156. The proposed Project would raise GHG emissions in the early years of the Project as compared to natural gas generation, and overall as compared to renewable energy substitutes.

157. The proposed Project would create vulnerabilities to the New England electric grid by concentrating so much electricity from one source. No analysis has been conducted to compare the Northern Pass to distributed generation sources near load that could form the basis for local micro-grids and reduce the grid's risk to severe weather events as well as criminal acts.

158. Making matters worse, the proposed Project's proponent, Eversource, is trying to create the purported demand for the Northern Pass project by violating its obligations to the Federal Power Act's special class of renewable energy generators—Qualifying Facilities—in the New England states. *See, e.g., Windham Solar LLC*, 157 FERC ¶ 61,134 (2016).

159. Neither the best needs nor the public interest can be served when a project's proponent, such as this Project's proponent, Eversource, ignores federal law, and it seeks an approval to further that purpose.

160. The Federal Defendants' failures are "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law."

161. As a result the Federal Defendants' approval of the Northern Pass must be vacated.

COUNT IX
**THE IMPACTS OF THE NORTHERN PASS ARE OVERESTIMATED, INACCURATE,
FLAWED, AND INADEQUATELY ANALYZED
(VIOLATION OF NEPA)**

162. Plaintiff re-alleges and incorporates by reference the allegations contained in each of the forgoing paragraphs as though fully set forth herein.

163. The EIS assumes that taking no action on the Northern Pass would have, compared to approval, no net effects on carbon dioxide emissions, methane emissions, or climate change. The preceding paragraphs of this Complaint have explained why that assumption is entirely inconsistent with economic theory, real market conditions, and past agency practices. Consequently, the EIS presents a deeply inaccurate and misleading comparison of the approval options and No Action Alternative. However, even if DOE and the Federal Defendants were to start from the proposition that the No Action Alternative resulted in no impacts, the EIS and ROD would be inaccurate and misleading in a different but equally problematic way.

164. The EIS calculates the “economic benefits” and climate impacts of Northern Pass by assuming that no other renewable energy facilities would be built to take its place if it were not built. As explained above, that is simply not true. Because other sources of renewable energy generation would substitute for the Northern Pass, the EIS must subtract from its calculation of the Northern Pass’ economic, energy supply and climate benefits, the lost benefits from all those would-be sources of renewable energy generation that would no longer be built.

165. Once that is done, Northern Pass may (and likely would) have a net negative impact on economics or climate benefits compared to its substitutes. That is particularly so when it comes to economic benefits because all the economic benefits from the hydro-generation facility are realized in Canada, not the United States. And the United States would lose thousands of American jobs related to the United States-based substitutes. The EIS and the ROD do not comply with NEPA because they fail to analyze those effects.

166. The Federal Defendants’ failures are “arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law.”

167. As a result, the Federal Defendants' approval of the Northern Pass must be vacated.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully requests that this Court:

- A. Declare that Federal Defendants' authorizations challenged herein violate NEPA and its implementing regulations;
- B. Vacate Federal Defendants' authorizations and void the approval of the proposed Northern Pass project;
- C. Enjoin Federal Defendants from approving or otherwise taking action on any applications for permits in the WMNF until Federal Defendants have fully complied with NEPA and its implementing regulations, and prepared an EIS comprehensively analyzing the all direct, indirect, and cumulative effects of the authorizations challenged herein;
- D. Retain continuing jurisdiction of this matter until Federal Defendants fully remedy the violations of law complained of herein, in particular to ensure Federal Defendants take a meaningful hard look at the direct, indirect, and cumulative impacts of the proposed Northern Pass project;
- E. Award Allco its fees, costs, and other expenses as provided by applicable law;
- F. Issue such relief as Allco subsequently requests or that this Court may deem just, proper, and equitable.

Respectfully submitted,

ALLCO RENEWABLE ENERGY LIMITED

By its attorneys,

Dated: May 24, 2018

/s/ Amy Manzelli

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