

APPENDIX N

MITIGATION PANEL CHARTER

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CHARTER

I. Glossary

ITP	Incidental Take Permit under Section 10 of the Endangered Species Act, 16 USC 1539.
MSHCP	Multi-Species Habitat Conservation Plan; an integral component of NiSource's ITP
NFWF	National Fish and Wildlife Foundation
NiSource	Columbia Gas Transmission, LLC; Columbia Gulf Transmission Company; Crossroads Pipeline Company; Central Kentucky Transmission Company; and NiSource Gas Transmission and Storage Company
Service	U.S. Fish and Wildlife Service; the federal agency responsible for implementing the ESA and issuing NiSource's ITP

II. Background

On [date] , the Service issued an ITP to NiSource related to its natural gas transmission activities over 15,500 miles and including approximately 10 million acres of covered lands. The ITP mandates that NiSource implement its MSHCP, including obligations to mitigate for the take of ESA-listed species. Required mitigation is identified in Chapter 6 of the MSHCP. Chapter 6 includes mandatory sideboards and parameters for all mitigation projects. NiSource may directly conduct mitigation on its own. But it also has the option of contributing monies to a trust fund maintained by NFWF, to be disbursed for mitigation projects in the future. To assist it in selecting those future mitigation projects, Section 5.3.4 of the MSHCP requires NiSource to convene a mitigation panel.

III. Charge and Purpose

The NiSource MSHCP Mitigation Panel (Panel) is established and authorized to solicit and review mitigation proposals and/or make recommendations regarding mitigation proposals to NiSource, consistent with the mitigation requirements in Chapter 6 of its MSHCP.

IV. Roles and Responsibilities

The Panel does not decide which projects will be eventually undertaken. Rather, it serves in a technical advisory capacity to NiSource. Panelists will be expected to provide both their individual expertise and independent perspectives, but also collaborate, where appropriate. Consistent with Sections XIII and XIV, the Panel may solicit mitigation proposals from third-parties; evaluate the proposals; and, recommend to NiSource which proposals to pursue. NiSource in turn will make its recommendations to the Service, which will retain authority to approve or disapprove the recommendations. Once projects are approved, NiSource will request a disbursement from the NFWF trust fund.

V. Panel Composition

The Panel is comprised of NiSource and five or more representatives from: governmental wildlife agencies or an association of them; environmental non-governmental organizations; and/or the scientific community. NiSource shall elect to designate some of these representatives as “primary” members of the panel and others as “secondary” members of the Panel. Secondary members would be called upon to attend meetings only if one or more of the primary members could not attend or was prevented from attending because of a conflict. At least three Panel members (primary or secondary) other than NiSource must be in attendance at all Panel meetings. Currently, membership includes the following: [insert affiliations]

NiSource shall act as the Chair of the Panel and shall preside at and facilitate all meetings. NiSource shall make a draft agenda available to Panel members at least 7 calendar days prior to each Panel meeting.

VI. Conflicts; Recusal

Panel members shall be screened for conflicts of interest or the appearance of conflict prior to appointment. Panel members shall complete a disclosure form (to be developed and approved by Service) that will identify individual and family financial interests, other interests, and affiliations with, among others: NiSource, The Conservation Fund or the National Fish and Wildlife Foundation. Panel members will also be required to identify any affiliations or financial interests with entities that are likely to propose mitigation projects to be evaluated. NiSource and Service will evaluate the disclosures to determine eligibility or needed conditions on membership.

In the event that a particular mitigation proposal raises a conflict of interest or an appearance of conflict, the affected Panel member shall recuse him or herself from participation in any discussions or evaluations of that mitigation proposal or any competing proposal. The Panel member shall inform NiSource, which in turn will timely inform Service.

The Panel shall maintain a record of disclosures, to be available for inspection by Service at any time.

VII. Regularity of Meetings

The Mitigation Panel shall meet at least one time per calendar year, but may meet more frequently if needed. Panel meetings occurring by phone or video-conference will carry the same weight as business conducted in person.

VIII. Conduct

Input from all Panel members will be given equal time and consideration during discussions and deliberations. Unanimity of opinion is not required; the Panel, however, shall note any differences of opinion in the report referenced in Section XIV.

Panel members will adhere to the following ground rules:

- Everyone participates; no person dominates
- Respect each other's personal integrity, viewpoints and interests; no ad hominem attacks
- Listen actively without interrupting
- Focus on communicating
- Share relevant information
- Make good faith effort to fulfill Panel charge and purpose
- Strive to attend all meetings
- Prepare for meetings and participation
- All members are responsible to keep meetings on-track

IX. Consultation with Species Experts

Subject to approval by NiSource and Service, the Panel may solicit the technical advice of wildlife experts familiar with the species for which mitigation is required. Any such expert must be vetted to ensure that he or she has no real conflict(s) or appearance of conflict(s). Technical experts may attend Panel meetings at the discretion of the Panel.

X. NiSource's Role

NiSource shall chair the Panel. NiSource is in the best position to provide the Panel its perspective and answer any questions regarding the MSHCP implementation, pipeline activities and impacts, mitigation debts, and the availability of funds. NiSource shall ensure that each Panel member is provided the most recent version of Chapter 6 of the MSHCP and Appendix P, each year.

XI. Service' Role

The Service shall serve as a technical advisor to the Panel. The Service will not act as a member of the Panel, nor will it make any recommendations. Because it retains oversight over NiSource's ITP, it must remain independent. The Service, however, is in the best position to provide the Panel its perspective and answer any questions on the requirements of the NiSource ITP, the applicable mitigation criteria to be satisfied, and species status. A Service representative shall attend all of the Panel meetings.

XII. NFWF's Role

NFWF shall play no role in the Panel. NFWF's responsibility is to disburse funds at the request of NiSource for mitigation projects that are approved, and to keep an accurate accounting of funds throughout the duration of the ITP. Any questions that the Panel has regarding available funds shall be directed to NiSource.

XIII. Mitigation Project Solicitation

The Mitigation Panel shall solicit proposals from various NGOs, states within the MSHCP area, tribes, federal agencies, academics, and others for projects to be funded by the Mitigation Fund. The proposals must conform to the mitigation requirements identified in Chapter 6 for the particular take species at issue. These proposals must also relate to the take species impacted by the MSHCP covered activities and must be conservation and science-based. At a minimum, each mitigation proposal should set forth the following information:

- The entity or entities responsible for undertaking the proposal, a contact person for that entity or those entities, and the particular individuals who would undertake the activities described in the proposal;
 - i. Whether the entity(ies) has any pending business before the Service or any financial ties or affiliations with Panel members, their sponsoring organizations, TCF or NFWF;
 - ii. Resume (Curriculum Vitae) describing relevant experience conducting the described work;
 - iii. Entity will have any necessary State/Service endangered species permits to conduct the work or will be in the process of obtaining such permits;
- Specific geographic location of the proposal;
 - i. Project-specific information such as habitat type, length/width of riparian corridor, and other pertinent features;
 - ii. Current and future proposed ownership of parcel if land-based mitigation, results from title search or title insurance identifying any encumbrances, reserved rights or rights-of-way on real property to be protected, and how that mitigation parcel will be protected and for how long;¹
- The nature of the mitigation activity (e.g., conservation easement, habitat restoration, research, species reintroduction, etc.) and the anticipated timeframe for such activity;
 - i. Explanation of how the project falls within the mitigation criteria in Chapter 6 the MSHCP and any conditions of the ITP;
- The take species that will benefit from the proposal and how such species will benefit (e.g., relationship to other projects in the area);
- The amount of funding sought for the proposal and a breakdown of costs used to derive such amount, including costs associated with management and monitoring of the mitigation effort;

¹ This will allow Panelists, NiSource and the Service to determine whether existing rights-of-way or other encumbrances (e.g., mineral estates) interfere with the conservation value of the proposal. Assuming they do not, it will be the responsibility of the third parties exercising their rights under these pre-existing interests to independently ensure compliance applicable local, state and federal laws and permits, including the ESA. Such uses would not be covered activities under the MSHCP, and NiSource would therefore not be responsible for the actions of third-parties.

- A monitoring protocol, that is consistent with Service protocols, that will be used to track the effectiveness of the mitigation proposal, and
- Specific reporting obligations that satisfy the needs of the Service and NiSource.

XIV. Panel Recommendations: Mitigation Requirements Satisfied; Other Considerations

Each species varies in the compensatory mitigation required. Chapter 6 of the MSHCP identifies the mandatory mitigation criteria for each species. These include, but are not limited to the type, quality, amount and general location of habitat to be conserved. Chapter 6 also provides a working definition of the term “protect” as it relates to mitigation. For mitigation, habitat or land protection means the acquisition of a real property interest in perpetuity, with appropriate restrictions to conserve the species and its habitat. Land protection may be accomplished through fee acquisition with restrictions and subsequent donation to a third party conservation steward, or a conservation easement.² Appendix P to Chapter 6 of the MSHCP contains mandatory provisions to be included in any legal device used to convey property interests. Mitigation proposals must be consistent with all the above requirements.

Provided that the Chapter 6 mitigation criteria are first satisfied, the Panel may consider other factors when evaluating proposals. For instance, The Conservation Fund is developing a Strategic Conservation Planning Tool that will extend beyond the covered lands to encompass the adjacent counties, ecoregions, and watershed units within the 14-state area. Part of this planning process includes a comprehensive assessment, covering more than 10 million acres, to identify the location of species-specific conservation opportunities to maximize conservation benefits to the affected species. Panel members may consider this tool, as well as established species recovery plans, state guidelines and/or other information. Although available to Panel members to consider, these tools serve only as guidance and should not be viewed as outcome determinative.

At the initial meeting of the Panel, NiSource will identify the process by which Panelists will evaluate proposals. This process will enable a fair evaluation process and ensure that Panelists have a predictable means to record their perspectives regarding proposals received. To standardize results, NiSource will prepare a written form that accounts for the criteria in the preceding two paragraphs.

At the end of each meeting, the Panel shall prepare written meeting notes pursuant to Section XV.

² Unless used in connection with a fee acquisition or conservation easement, deed restrictions and restricted covenants are disfavored as a land protection tool. In many states, deed restrictions or restrictive covenants are of limited duration, can be readily invalidated, and do not afford third-party beneficiary rights. Only under the most extenuating circumstances would they be considered, and then only with Service approval after consultation with the Office of the Solicitor.

XV. Record Keeping

The Panel will prepare minutes of each meeting and will distribute copies to each Panel member and the Service. The minutes shall include a record of the members present and complete and accurate description of the matters discussed, the individual perspectives articulated, conclusions reached, and copies of all related reports, correspondence, solicitations, completed proposal evaluation forms, proposals whether ultimately recommended or dismissed, members' completed standardized proposal evaluation forms, or other written materials documenting members' review of individual proposals, and, technical advice received, prepared or approved by the Panel. Where members share differing opinions or perspectives, these too must be recorded with specificity. Draft meeting notes will be circulated and all members will have an opportunity to review and amend the draft before finalizing.

Because NiSource will rely on the meeting notes to evaluate the Panel's recommendation, it is important that the meeting minutes be comprehensive and accurate.

XVI. Expenses and Compensation

NiSource will bear all expenses associated with the operation of the Panel, its meetings, and reporting. Expenses of any kind must be approved by NiSource in advance. Federal and state governmental employees shall be bound by their own agency ethics and administrative rules governing the augmentation of compensation and travel reimbursement.

XVII. Disclosure of Records

Any materials provided to Service may be subject to release pursuant to the Freedom of Information Act or as part of judicial discovery or litigation.

XVIII. Amendment

The Charter shall only be amended with the written approval of both NiSource and Service. The Panel is not empowered to unilaterally amend the Charter. It may however, suggest desired modifications to NiSource and Service.