



Town of Amherst, New Hampshire
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June 8, 2015

Kimberly D. Bose, Secretary
Federal Energy Regulatory Commission
888 First Street, NE, Room 1A
Washington, DC 20426

Comments of the Town of Amherst, NH

Re: Tennessee Gas Pipeline Company, L.L.C. ("TGP")
Docket No. PF14-22-000: Proposed Northeast Energy Direct
("NED")

Dear Ms. Bose:

The Board of Selectmen of the Town of Amherst, as the duly elected officials responsible for directing the municipal government of the Town of Amherst in line with the wishes of its residents, and as specifically empowered by Warrant Article of the voters to intervene on behalf of the Town and residents in all issues pertaining to the Northeast Energy Direct (NED) natural gas transmission pipeline project (FERC Docket No. PF14-22) proposed by Kinder Morgan (KM), continue to have strong reservations about the project. We have already documented some of the sources of our concern in previous letters to the Federal Energy Regulatory Commission (FERC).

An additional area of concern stems from the widespread citation of "regional energy needs" as the main justification for the pipeline under the FERC process. We believe discussion has reached a critical point where confusion over the true status of the State of New Hampshire's energy needs — or rather, the lack thereof — requires clarification to our residents before this process continues any further under such justification, especially since Amherst homeowners are already concerned about negative economic impacts on property values as speculation about the proposed pipeline increases.

Clarifying whether any New Hampshire energy needs will be served by the pipeline is not only common courtesy to the people of the State of New

Hampshire, but a legal requirement, since the authority under which the FERC is allowed to permit companies like KM to potentially seize private land through the exercise of eminent domain rests on a determination of "public necessity" for the energy under discussion¹. In light of this, we the representatives of the residents of Amherst call on the FERC, our elected state leaders and federal representatives to conduct an objective and transparent, data-based analysis of the real power needs of the residents of New Hampshire. To put it simply, **we do not believe that the proposed NED pipeline serves the energy needs of either New Hampshire or of the Town of Amherst.** In support of this assertion we present the following information gathered by our Pipeline Task Force.

I. The Phony Problem: New Hampshire's Power Generation Need

One of the most disconcerting factors that this proposed pipeline project has brought to light is that New Hampshire's power needs and related issues are rarely, if ever, discussed directly or taken into consideration. There is much talk in the media and from KM about "New England's power needs"^{2 3}, and how the NED gas pipeline will meet those power needs *if* adequately subscribed⁴. These assertions stem from the comments of a "non-governmental organization" created in 2008 - the New England State Committee on Electricity (NESCOE) - that actually has taken quasi-governmental authority (while rejecting any form of governmental accountability to the people) in making regional power decisions⁵. In the NESCOE context, there is much talk about Massachusetts'⁶ and Maine's power needs⁷; however, New Hampshire's own power situation is little discussed.

Even though New Hampshire is a smaller state, the Constitution does not distinguish between small states' rights and large states' rights. New Hampshire is a distinct entity with its own economy, not simply a convenient pass through corridor for power demands from other states. And in fact, New Hampshire has a very different power situation than its neighbors. Specifically:

- 1. New Hampshire is a net exporter of power⁸.** New Hampshire's net generation of power in 2012 (the most recent EIA data available) was 19,264 thousand megawatthours, while direct use was only 10,870 thousand megawatthours. This means that New Hampshire had one of the highest ratios of power generation versus consumption in the country in 2012⁹ (tied for 5th with Alabama).

2012 Electricity Generation and Usage by NE State			
NE State	Net Generation	Total Retail Sales	Surplus / (Deficit)
Connecticut	36,118	29,492	6,625
Maine	14,429	11,561	2,868
Massachusetts	36,198	55,313	(19,115)
New Hampshire	19,264	10,870	8,394
Rhode Island	8,309	7,708	601
Vermont	6,570	5,511	1,059
Totals:	120,887	120,456	431
Thousands of Megawatthours From EIA website -- State Pages Revised: June 19, 2014 http://www.eia.gov/electricity/state/[state name] /			

2. **New Hampshire already has 63 operating power plants.** This means that we as a state host the noise, byproducts, safety risk, and road traffic that goes into maintaining these plants' generation capacity. We as a citizenry absorb the many impacts of their location in our state¹⁰.

While we understand that power needs in the region cannot be completely separated from New Hampshire, and that those regional needs may impact power prices *within* New Hampshire, we think it important to note that New Hampshire itself does not have the same power dynamic as its neighboring power customers. We are, in fact, more than self-sufficient in power production to the point where we export a substantial share of the power we produce to other economies.

This distinction is important because the issue of power generation — from whatever source the power is generated — gets conflated and confused with power consumption as part of the justification for this pipeline. There are many, many steps between the laying of a natural gas transmission pipeline and the consumption of, and payment for, electricity by ratepayers, and each step has its own impact on retail electricity prices. Yet the justification for this project never includes a realistic look at New Hampshire's power needs, or lack thereof.

The simplistic view is that if there is more gas available in New Hampshire, more power will be produced here, thereby driving down costs. This view is refuted by New Hampshire's current status as a major power exporter, one which (somehow) also has very high electric rates. In New Hampshire, there is no need for even more power generation, nor is there any proof — which is required by FERC from an applicant — that this pipeline will result in reduced retail power prices, as has been claimed.

II. The Real Problem: New Hampshire's Power Distribution Needs

As most New Hampshire residents know first-hand, while New Hampshire supplies sufficient power and transmission for its own citizenry and then some, it does have a distribution problem for all power types — including electrical and natural gas. Older power lines, heavily forested land, high winds, ice storms, and heavy snow totals make distribution a challenging issue for electrical power. The environmental conditions are also part of why so few natural gas laterals feed off current transmission pipelines in New Hampshire.

As New Hampshire seeks to grow its industry and business environment, expanded and reliable distribution systems for electricity and for natural gas will be critical. Thus, the immediate public need for energy infrastructure improvement in New Hampshire lies in improved power distribution not in greater regional power generation. The proposed NED Pipeline is therefore a distraction from the capital improvements we need in our state to improve the reliability of energy supply for our residents and industries.

Addressing the state's actual need, the New Hampshire Public Utilities Commission's recent (17-April-2015) Order of Notice (IR 15-124) "Investigation into Approaches to Ameliorate Adverse Wholesale Electricity Market Conditions in New Hampshire"¹¹ is a welcome analysis. It reflects a reasoned recognition of the fact that regulatory and financial practices have as much impact on price as supply and demand metrics.

When the point about the need for better power distribution rather than more generation is raised with KM, as it has been in many town meetings throughout New Hampshire, their answer is that any distribution (be it electrical or natural gas) is the problem and responsibility of the private utilities that own those lines or laterals, or the citizens using that power. However, their answer is directly undercut by the fact that the KM natural gas transmission pipeline proposal would potentially be funded using a tariff proposed by NESCOE as an addition to New Hampshire (and other states') residents' power bills to meet part of their demonstration of financial backing for this pipeline project¹².

We want to emphasize this point again: a *quasi-governmental interstate organization* has proposed to *tax electric rate payers in six states* to demonstrate to the federal government part of the proof of financial backing for the *private enterprise* that is the NED gas transmission pipeline in order to justify the potential seizure of *private property*.

We understand that the status of this proposed tariff is still uncertain, but that fact in and of itself is part of the problem. The FERC Statement of Policy, issued September 15, 1999 (Docket No. PL99-3-000) makes clear that pipeline expansions — which this one appears to be — are not to be subsidized by existing customers to ensure that there is a market need for the project. We

realize that electric ratepayers are not direct customers of transmission pipeline companies — they are more like customers of the customers of the customers of transmission pipeline companies. However, quoting the FERC Statement of Policy referenced above: “If one of the benefits of a proposed project would be to lower gas or electric rates for consumers, then the applicant’s market study would need to explain the basis for that projection. Vague assertions of public benefits will not be sufficient.”

FERC’s policy is that existing customers can have their rates increased if the pipeline can demonstrate that the expansion will improve service to existing customers. As we noted, the distribution service problem faced by New Hampshire retail electric customers is clearly *not* addressed. A NESCOE tariff¹³ — proposed or confirmed — *undermines the whole purpose of the pre-filing and need determination phase* of the NED project by giving New Hampshire residents the impression that even if needs analysis falls through later in the NED pipeline review process, an ex-post-facto tariff hangs out there ready to ‘rescue’ it.

Any method of raising the cost of electricity to retail customers in order to subsidize the proposed NED pipeline — whether through a tariff or through some even more creative and less transparent scheme — in hypothetical service to the goal of “lower gas or electric rates for customers” would appear to be a direct violation of the FERC’s Statement of Policy.

III. The Cost / Benefit Analysis is Unclear — At Best

To summarize: New Hampshire’s primary public need is for enhanced electric power and natural gas distribution, not added power generation or gas transmission. Yet the FERC is seriously considering a proposal championed by NESCOE to not only ask New Hampshire residents to potentially fund through tariffs / taxes a private enterprise that provides little to no demonstrated New Hampshire public power benefit, but also to give up portions of their town conservation lands, private property, and chosen life styles to build it. How is this project — in any way — either a public benefit or public necessity for New Hampshire and the residents of the Town of Amherst?

This latter question is not rhetorical. The Town of Amherst would like to better understand from the FERC how it will calculate the direct benefits to be provided by this project and offset them against the direct costs to individuals in its path. We need this information so that we can educate our elected state officials and federal representatives on whether this pipeline — and specifically its recently proposed rerouting through 71 miles of New Hampshire — is truly justifiable, especially when we know that there are multiple pipeline proposals for the region (not just New Hampshire) under consideration¹⁴. If there are a number of different proposed pipelines for the New England region before the FERC right now, and the benefits of those lines accrue primarily to Massachusetts, shouldn't

those pipelines be built in Massachusetts — as was originally proposed for the NED Pipeline project? Under what conceivable justification might the FERC and the United States Government impose burdens and taxation on the residents of New Hampshire for the ease, benefit, and convenience of residents of Massachusetts?

We ask these questions on behalf of our residents in order to allow people to make informed decisions, and to provide accurate and useful feedback to the FERC. We appreciate that the FERC process takes into account many different impacts from pipeline construction — and seeks to mitigate those impacts. However, as pipeline proposals are approved and scoped, we are concerned that the initial, fundamental question of public need and public benefit is not being addressed in a way that recognizes quantifiable and qualitative differences within and between the New England member states and how those differences align — or do not — with the many pipeline proposals for the New England region.

Before the proposals you are asked to approve result in disrupting homes, potentially seizing hard-earned property, and fundamentally altering people's lives, we ask you to engage with us and our elected state and federal representatives in an open and honest analysis about the real benefits, the real costs, and how the recipients of the benefits align with those being asked to bear the burden of the costs, from these proposals.

IV. Conclusion: New Hampshire is *Not* a Utility Conduit for New England

The information gathered by the Town of Amherst and cited in this letter strongly suggests that the State of New Hampshire's true needs are not accounted for in the NED pipeline proposal. What this data does indicate is that KM, using NESCOE regional data as a cover, proposes to subject New Hampshire property owners to potential losses in value, use, and enjoyment due to easements “negotiated” under the background threat of seizure by eminent domain.

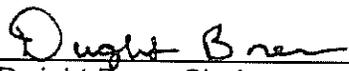
The proposed NED project's original route through Massachusetts — only entering New Hampshire with a lateral pipeline to supply the sole confirmed customer in New Hampshire — was a much better attempt to assign the burdens caused by the project onto the residents of the state that would receive the majority of the benefits of the NED pipeline. The decision to reroute this proposed pipeline through 71 miles of New Hampshire, to the detriment, harm and potential taxation of New Hampshire residents, and for the ease, comfort, and convenience of residents of Massachusetts would, if approved by the FERC, potentially represent an unconstitutional taking from residents of New Hampshire for the benefit of residents of another state.

Should FERC condone, encourage, and permit such an abuse of power to take place, we, the governing body of the Town of Amherst, either alone or in

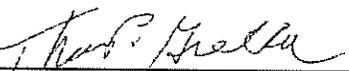
combination with the other New Hampshire towns whose residents would be similarly exploited for the benefit of residents in other states, would feel compelled to seek full constitutional redress, including injunctive relief, to ensure that the U.S. Constitution's provisions related to takings, equal protection, and state's rights (federalism) are properly followed.

We understand that as of yet there has been no formal filing by KM with the FERC for the NED project, and that in the pre-filing phase the route proposed by KM may change. Indeed, it already has. However, if the FERC finds the issues we have raised in this letter to be substantive, then it would seem that the FERC has an obligation to inform KM that its recently proposed route change for the NED pipeline — through 71 miles of New Hampshire — may be neither justifiable, nor legally supportable. In which case, the sooner KM is made aware of this, the sooner it can revise its plans and, when it actually files the application for the NED pipeline, KM can propose a route that more accurately matches the burdens imposed with the potential benefits to be received.

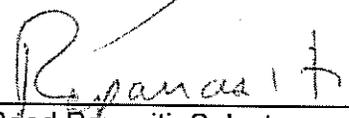
Respectfully,


Dwight Brew, Chairman


John D'Angelo, Vice Chairman


Tom Grella, Selectman


Nate Jensen, Selectman


Reed Panasiti, Selectman

cc: Allen Fore, Kinder Morgan
Lucas Meyer, Kinder Morgan

Maggie Hassan, Governor of New Hampshire
Joseph Foster, Attorney General of New Hampshire
Shawn Jasper, Speaker of the New Hampshire House of Representatives
Chuck Morse, President of the New Hampshire State Senate

Kelly Ayotte, U. S. Senator
Jeanne Shaheen, U. S. Senator
Frank Guinta, U. S. House of Representatives
Ann McLane Custer, U. S. House of Representatives

Amherst Citizen, Manchester Union Leader, Nashua Telegraph

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- ¹ The Natural Gas Act of 1938,
http://www.eia.gov/oil_gas/natural_gas/analysis_publications/ngmajorleg/ngact1938.html
- ² Kinder Morgan, January 2015 presentation to the town of Milford, NH; discussion of need begins on slide 13; <http://www.milford.nh.gov/documents/ned-nh-project-presentation>
- ³ "New England's Energy Brokers Must Look Beyond Natural Gas." *The Boston Globe*. April 9, 2015. <http://www.bostonglobe.com/opinion/editorials/2015/04/09/new-england-energy-brokers-must-look-beyond-natural-gas/axqBhlpv0yDBxii0GKoJO/story.html>
- ⁴ "Energy Project Finding Support." Bakken. April 19, 2015.
<http://bakken.com/news/id/237238/energy-project-finding-support/>
- ⁵ New England States Committee on Electricity,
http://www.nescoc.com/uploads/WhatIsNESCOE_Sept2014.pdf
- ⁶ "Anatomy of a Pipeline Decision: A Scheme of Dubious Legality." By Mary Douglas, *The Berkshire Edge*, October 20, 2014. <http://theberkshireedge.com/anatomy-pipeline-decision-scheme-dubious-legality/>
- ⁷ "Eye on Augusta: Legislature Goes Big for Natural Gas." By Andy O'Brien, *Maine Free Press*, August 1, 2013.
<http://www.freepressonline.com/main.asp?Search=1&ArticleID=27545&SectionID=96&SubSectionID=541&S=1>
- ⁸ "New Hampshire State Energy Profile." U.S. Energy Information Administration.
<http://www.eia.gov/state/print.cfm?sid=NH>
- ⁹ "New Hampshire Electricity Profile 2012." U.S. Energy Information Administration.
<http://www.eia.gov/electricity/state/NewHampshire/>
- ¹⁰ "New Hampshire Power Plants."
<http://www.powerplantjobs.com/ppj.nsf/powerplants1?openform&cat=nh&Count=500> and the Global Energy Observatory Power Plant list at
<http://globalenergyobservatory.org/constructNetworkIndex.php>
- ¹¹ The State of New Hampshire Public Utilities Commission, IR 15-124, April 17, 2015
<http://www.puc.nh.gov/Regulatory/Orders%20of%20Notice/041715onIR15-124%20Elec%20Distribution%20Utils.PDF>
- ¹² "Anatomy of a Pipeline Decision: A Scheme of Dubious Legality." By Mary Douglas, *The Berkshire Edge*, October 20, 2014. <http://theberkshireedge.com/anatomy-pipeline-decision-scheme-dubious-legality/>
- ¹³ <http://www.clf.org/blog/clean-energy-climate-change/breaking-news-nescoc-suspends-vote-tariff-proposals/>
- ¹⁴ "Pipeline Expansion Projects." *Northeast Gas Association*. March 2015.
http://www.northeastgas.org/pipeline_expansion.php