

**BEFORE THE UNITED STATES
FEDERAL ENERGY REGULATORY COMMISSION**

Tennessee Gas Pipeline,)	Docket No. CP16-21-000
a subsidiary of Kinder Morgan)	
)	
Northeast Energy Direct Pipeline)	

**MOTION OF THE TOWN OF MASON, NEW HAMPSHIRE TO INTERVENE
IN OPPOSITION TO THE TENNESSEE GAS NORTHEAST ENERGY
DIRECT (NED) PIPELINE**

I. INTRODUCTION

On November 20, 2015, Tennessee Gas Pipeline, a subsidiary of Kinder Morgan filed an application under Section 7(c) of the Natural Gas Act, 15 U.S.C. § 717f(c), for authorization to construct and operate the Northeast Energy Direct (NED) project, a \$5.2 billion enterprise consisting of a (1) Supply Path Component, comprised of 40 miles of looped pipeline in northeast Pennsylvania, a 132-mile, 30inch pipeline that runs from Troy, Pennsylvania to Wright, New York and one modified and three new compressor stations and a (2) Market Path Component comprised of 188 miles of pipeline from Wright, New York to Dracut, Massachusetts, six new compressor stations and five delivery laterals in Massachusetts and New Hampshire, including a lateral that will cut through the center of the Town of Mason, New Hampshire.¹

As the pipeline winds its way from Northeast Pennsylvania to New England, it will slash through dozens of streams, hundreds of acres of wetlands and forests as well as lands held in conservation trust and set aside from development. All told, construction and operation of the pipeline will utilize

¹ NED Application at 5-7.

10,957 acres of land, with an additional 2397 acres for above-ground compressor stations.² Meanwhile, dozens of rural communities in the project's path will be forced to serve as involuntary hosts to high-pressure pipelines or pollutant-emitting compressor stations, and put up with heightened safety risks, increased liability, diminished property values and added stress on fire and rescue services which will act as first responders in the event of a pipeline incident. In particular, the Town of Mason is disproportionately impacted by 3.91 miles of 30-inch mainline pipe passing through the north section, a 5.08 mile extension of a 12-inch lateral line bisecting the middle, and plans to site two appurtenant facilities, a mainline valve and pig launcher within Town Limits.³

As of the date of the application, the NED Project is woefully undersubscribed. According to the Application, the Market Path Component of the NED Project has a total capacity of 1,332,500 dt/day, but only 552,261 dt/day -- or 41 percent -- is committed under what the Applicant claims are binding precedent agreements. For the Supply Path Component, the Applicant claims to have executed precedent agreements for 751,650 dt/day -- or roughly 61 percent of the Supply Path Component's capacity of 1.2 million dt/day. And while Tennessee Gas asserts that it is "confident" that it will be able to attract additional customers from electric distribution companies, additional firm contracts have yet to materialize.⁴

² NED Application at 56.

³ See Resource Report 1, Table 1.1.1 (describing project facilities and intended locations).

⁴ NED Application at 6-7.

Given the lack of need for the project coupled with the extensive adverse impacts, the Town of Mason seeks to intervene in opposition to the NED Project. This motion to intervene is timely filed pursuant to Rule 214 of the Commission’s Rules of Practice and Procedure, 18 C.F.R. § 385.214 (stating that interventions are timely when filed within period specified in public notice) and 18 C.F.R. § 157.10(a)(2) (permitting intervention to challenge environmental impacts through deadline for comment on the draft environmental impact statement (DEIS)).

II. CONTACT INFORMATION

Notice and communications should be addressed to the following:

<p>Carolyn Elefant LAW OFFICES OF CAROLYN ELEFANT PLLC 2200 Pennsylvania Ave. N.W. Fourth Floor E. Washington D.C. 20036 202-297-6100 Carolyn@carolynelefant.com</p>	<p>Bernard J. O’Grady, Chair Board of Selectmen 16 Darling Hill Road Mason, NH 03048 (603) 878-2070 selectmen@masonnh.us</p> <p>Charles V. Moser 102 Meeting House Hill Road Mason, NH 03048 (603) 878-3363 cvmoser@earthlink.net</p> <p>Louise M. Lavoie 35 Brookline Road Mason, NH 03048 (603) 878-2960 lmlavoie@myfairpoint.net</p>
---	--

III. STATEMENT OF INTEREST FOR MOTION TO INTERVENE

A. Description of the Town of Mason

The Town of Mason is located in Hillsborough County, New Hampshire, just north of the Massachusetts state line.

The Town of Mason, a small town with a population of 1363, is a rural community by design, with no commercially zoned district. The town encompasses 24 square miles of heavily forested land which raises concerns for forest fires. The Town's 2015 operating budget was \$1.884M with \$65,314 funding for the all-volunteer Fire Department and Emergency Medical Services. The small Police Department is budgeted at \$322,069. The nearest hospital is 15 miles away and the nearest exit ramp to an interstate highway is 18 miles. The largest businesses include three restaurants and one gun shop.

B. Grounds for Intervention

1. Description of pipeline impacts to the Town.

The NED Project will directly and adversely impact the Town. A 3.91 mile segment of the mainline pipeline will cross through the Town between mileposts 8 and 11, while the 5.08 mile Fitchberg Lateral extension runs right through the center. In addition, two appurtenant facilities, a mainline valve and pig launcher within Town Limits.⁵ The pipeline will pass through heavily forested areas, residential properties and farms, and in close proximity to many homes – which

⁵ See Resource Report 1, Table 1.1.1 (describing project facilities and intended locations).

raises safety concerns sufficiently serious to warrant their disclosure by Tennessee Gas in its 2014 SECT 10-k filing.⁶

Not only will the NED Project jeopardize the health and safety of Town residents, but it will also damage natural resources and recreational sites in and around the Town. Both the mainline and lateral pipelines will cross parcels of Land Conservation Investment Program ("LCIP") lands and other lands held in conservation trust. The following conservation lands are impacted:

Affected Conservation Land (references to Hillsborough County Registry of Deeds Book/Page):

Fifield Tree Farm Conservation Easement	508.1 acres	Book 7992 page 0276
Spaulding Brook Conservation Land	163.3 acres	Book 5301 page 0868
Mason Railroad Trail	94.4 acres	Book 3438 page 0422
Mitchell Hill Conservation Land	93 acres	Book 6188 page 0843
Doonan Conservation Easement	12.5 acres	Book 5301 pages 0874

Land conservation has long been a goal of the town of Mason. The town's 1981 Comprehensive Plan set forth these policies:

- to preserve, protect and improve, where appropriate, the historic, recreational and scenic resources of the town;

⁶ From Tennessee Gas' 10-k filing: Our operations are subject to the inherent risks normally associated with those operations, including pipeline ruptures, explosions, pollution, release of toxic substances, fires and adverse weather conditions, and other hazards, each of which could result in damage to or destruction of our facilities or damages to persons and property. In addition, our operations face possible risks associated with acts of aggression on our assets. If any of these events were to occur, we could suffer substantial losses. *See* TGP SEC 10-K Filing (2014) at 10, online at 10, <http://www.sec.gov/Archives/edgar/data/97142/000095012904001309/h11515e10vkpdf.pdf>.

- to provide for the recognition, management and protection of agricultural, forest and water resources that are vital to an overall land use plan and the well-being of the community;
- to provide for the preservation of those natural resources which give the town much of its beauty and rural atmosphere;
- to provide opportunities for recreation commensurate with the developing needs of the town by encouraging gifts of private land or the public use of open spaces by private owners.⁷

These goals were re-affirmed in the 2007 Mason Master Plan Update (at 6), in particular the goal to “encourage the use of conservation easements with willing landowners to protect high priority lands.”

Ironically, these lands which have been set aside and protected from commercial developments will now be ravaged by a pipeline -- which is far worse than a shopping mall or townhouse enclave. The pipeline will cross the Mason Rail trail several times, a recreational corridor used for hiking, biking, horseback riding, snow shoeing, cross country skiing and snowmobiling.

The NED project will also saddle the Town with added financial costs. It is unlikely that the NED project will have staff on the ground monitoring the pipeline 24/7,⁸ and therefore, the Town’s small volunteer fire and rescue departments may be called upon to serve as first-responders, which in turn may require specialized training to enable them to address the catastrophic damage

⁷ Town of Mason 1981 Comprehensive Plan, (Vol.II, pages 5,7).

⁸ The Town has inquired about Tennessee Gas’ plans for emergency response, but has yet to receive any answers.

caused by a ruptured 30-inch pipeline.⁹ Moreover, because Tennessee Gas – by its own admission (albeit in its SEC 10-k filing and not the Certificate Application) - does not carry sufficient insurance coverage against “the inherent risks normally associated with those operations, including pipeline ruptures, explosions, pollution, release of toxic substances, fires and adverse weather conditions,”¹⁰

In exchange for increased risk, the Town derives no benefits whatsoever from the NED Project. The Fitchberg Lateral Line that cuts through the Town will deliver gas to Massachusetts, and does not supply either the Town or the state of New Hampshire. Nor will the Town benefit from the 3000 new jobs that Tennessee claims will be created: even assuming that local workers will actually fill these positions,¹¹ at best, they are short-term and do not outweigh the long-term cost of irreparable destruction of conservation lands, reduced property values and decreased tax-base.

2. The Town Satisfies the Standard For Intervention

Given the NED Project’ considerable direct impacts on and within the Town, the Town satisfies the criteria for intervention under Rule 214(b) of the Commission’s Rules of Practice and Procedure, 18 C.F.R. §214(b). Intervention

⁹ The San Bruno, California catastrophe of 2010 involved the explosion of a 30-inch natural gas pipeline. See https://en.wikipedia.org/wiki/2010_San_Bruno_pipeline_explosion

¹⁰ See TGP SEC 10-K Filing (2014) at 10, online at 10, <http://www.sec.gov/Archives/edgar/data/97142/000095012904001309/h11515e10vkpdf.pdf>.

¹¹ In many instances, pipelines hire out-of-state pipeline workers rather than local workers. See e.g., WTAE News Report, October 2015, online at <http://www.wtae.com/news/more-local-gas-industry-jobs-going-to-outofstate-workers/36057140>.

will enable the Town to protect its interests and avoid or minimize harm to its residents. The Town's unique interests – particularly its interest in preserving the rural character of the community under its comprehensive plan, protecting its conservation lands and ensuring property rights and safety of its residents which are compromised by the pipeline -- are not adequately represented by any other parties in this proceeding. Absent a grant of party status, the Town's interests will go unprotected. Finally, as a public governmental body, the Town's participation is in the public interest under Rule 214(b)(2)(iii).

Accordingly, the Town asks the Commission to grant its intervention in the NED Pipeline Proceeding.

IV. GENERAL COMMENTS

The Town is currently undertaking a detailed review of the Application, Resource Reports and maps and plans to file a set of more detailed comments in the next six to eight weeks. For now, the Town will briefly describe some of its most significant objections to the NED Project.

A. The Applicants Have Not Demonstrated A Need for the Project Under the Commission's Certificate Policy Statement.

The Commission's Certificate Policy Statement requires an applicant to demonstrate a need for the proposed project.¹² Where a proposed project – such as the NED Project -- has significant adverse effects on the environment and private and municipal property rights, the amount of evidence necessary to

¹² *Certification of New Interstate Natural Gas Pipeline Facilities*, 88 FERC ¶ 61,227 (1999), order on clarification, 90 FERC ¶ 61,128, order on clarification, 92 FERC ¶ 61,094 (2000) (Certificate Policy Statement) at 25.

establish the need for a proposed project is heightened.¹³ Under the Certificate Policy Statement, a showing that project capacity is fully subscribed under precedent agreements with unaffiliated entities will satisfy the test for need under the Certificate Policy Statement.¹⁴

As noted earlier, the NED Project is far from fully subscribed. In fact, for the Market Path Component – which runs through the Town - only 41 percent of the capacity is under contract.¹⁵ Moreover, several of the contracts – including the one with Liberty Utilities, the company supposedly supplying gas to New Hampshire – are not probative of need under the Certificate Policy Statement because the customers are affiliates of the pipeline sponsors, and thus have incentive to subscribe to the pipeline because they stand to benefit financially if the project is built.¹⁶

Where a pipeline is not fully subscribed, the Certificate Policy statement allows a showing of need through alternative evidence of market demand for the project. Here too, the NED Project falls short. According to a 2015 Department of Energy Report, only 54 percent of current pipeline capacity is being used – and higher utilization of existing interstate natural gas pipelines will reduce the need

¹³ *Id.*

¹⁴ *Certificate Policy Statement* at 25-26 (“Certificate Policy Statement at 25-26 (“A project that has precedent agreements with multiple new customers may present a greater indication of need than a project with only a precedent agreement with an affiliate.”)

¹⁵ See NED Application at 5-6.

¹⁶ See NED Application at 20 (describing that the pipeline is a venture between Kinder Morgan, Liberty Utilities and UIL, which owns the three Connecticut utilities that are also project subscribers listed in Exhibit I, Summary Table of Precedent Agreements).

for new pipelines.¹⁷ Moreover, while the DOE Report finds that at most, 8.4 bcf/d are needed, the Commission is currently considering applications for 48 bcf/d.¹⁸ Even the Commission's own projections from its March 2015 State of the Market Report likewise show that by 2016, sufficient pipeline capacity will be in place to handle Marcellus production.

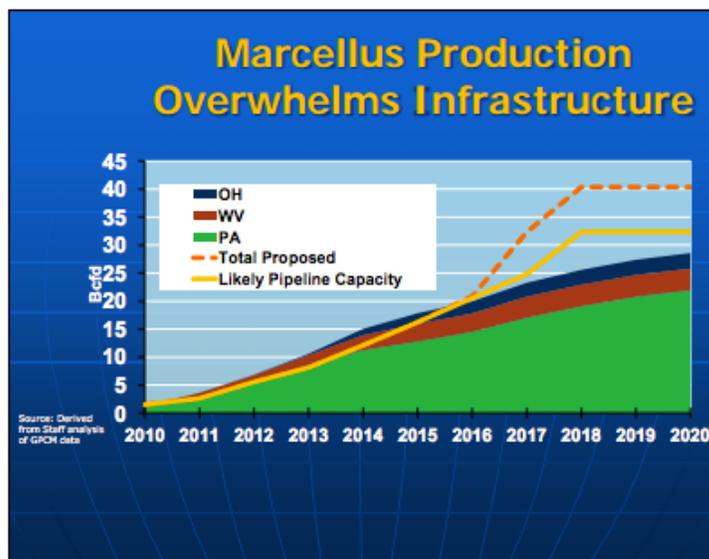


Chart from FERC State of Markets Presentation (March 2015) at 8 online at <http://www.ferc.gov/CalendarFiles/20150319162231-A-3.pdf> (lines show growth in pipeline capacity)

Because Tennessee Gas failed to demonstrate a need for the project – either in New Hampshire specifically, or throughout the region, the Commission must reject the proposed pipeline.

See Department of Energy report (“Natural Gas Infrastructure Implications of Increased Demand from the Electric Power Sector” (February 2015), online at http://energy.gov/sites/prod/files/2015/02/f19/DOE%20Report%20Natural%20Gas%20Infrastructure%20V_02-02.pdf).

¹⁸ *Id.*

B. Collocation Does Not Offer Any Benefits

The Commission encourages collocation when doing so will minimize project impacts.¹⁹ Here, Tennessee Gas' proposal to collocate the pipeline within powerline easements will exacerbate rather than mitigate project impacts.

Tennessee Gas states that the 71 miles of pipeline in New Hampshire will be co-located within an existing utility powerline easement.²⁰ According to Table 8-1.3 in Resource Report 8, the EVERSOURCE right-of-way (ROW) is 170 feet wide, and Tennessee Gas will use 30 feet of the existing ROW for construction of the pipeline, and 20 feet of the existing ROW as the permanent easement for operation of the pipeline. However, because a standard easement for a 30-inch pipeline is 50 feet, placement of 20 feet of the easement within the existing EVERSOURCE ROW still leaves a full 30-feet *outside* the EVERSOURCE easement. In other words, Tennessee Gas' scheme would expand the existing 170-foot wide easement to 200 feet – thus encumbering an even larger portion of the impacted parcels.

Yet bad as Tennessee Gas' purported collocation proposal is, it gets worse – because Tennessee Gas cannot even guarantee that it will be able to place even 20 feet of the pipeline easement in the EVERSOURCE right-of-way. This is because Tennessee Gas is still negotiating with EVERSOURCE and other power companies the potential overlap of the pipeline easement with the powerline ROW.²¹ Tennessee Gas does not explain what will happen if EVERSOURCE

¹⁹ See generally 18 C.F.R. §385.15(d).

²⁰ Application, Resource Report 1 at 1-1.

²¹ See Resource Report 8, Table 8.1.3, nt. 3.

refuses to share its ROW, but it is not difficult to guess what Tennessee Gas' Plan B would be:²² to lay the full, 50-foot pipeline easement parallel to the power line ROW, thereby creating a 220-foot easement. The "co-location" plan will impact every residence abutting the powerline easement by reducing the vegetation between homes and the power lines. Some residents will lose all the visual screen between their home and the power lines.

After nearly two years since the inception of the pre-filing process, there is no excuse for Tennessee Gas' failure to negotiate an agreement with EVERSOURCE to secure use of the ROW. Unless Tennessee Gas can demonstrate that its proposed collocation route is feasible, the Commission should simply reject the Tennessee Gas' application as it is a waste of both the Commission's and the public's time to review an option that is ultimately infeasible.

C. **Kinder Morgan's Financial Problems**

Since the Application was filed, reports have emerged of TGP's parent, Kinder Morgan's financial difficulties, including sharp drop in stock prices and decreased dividends to investors.²³ Because the Natural Gas Act requires the Commission to find that a company "is able and willing properly to do the acts and to perform the service proposed (15 U.S.C. §717f(e)), the Applicant must

²² Generally, under existing Commission practice, project sponsors are allowed to move the pipeline location anywhere within a 200-foot study corridor even after the certificate is issued.

²³ See *Critics Worry Over the Financial Viability of NED Pipeline*, Union Leader, December 11, 2015, online at <http://www.unionleader.com/apps/pbcs.dll/article?avis=UL&date=20151211&category=NEWS05&lopenr=151219832&Ref=AR&template=printart>

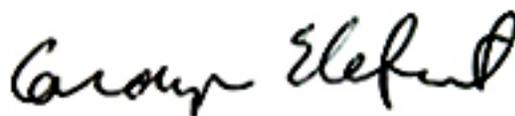
provide additional information regarding its ability to finance this project without subsidization by ratepayers. In addition, recent concerns about Kinder Morgan's financial performance raises the question of whether it will have the ability to adequately pay for the extensive remediation for damage to property and crops caused by pipeline construction or to fund removal of the pipeline in the event that it is no longer needed for service – a scenario that is more likely than not given that the pipeline is undersubscribed. The Commission should therefore direct Tennessee Gas to develop a plan – either posting a bond, or creating and funding a “Remediation and Decommissioning Fund” as assurance that these costs will be covered.²⁴ Without these assurances, the Commission must deny the application.

²⁴ The Commission has stated that it will consider requiring creation of a decommissioning fund for hydroelectric projects on a case by case basis. *See* Policy Statement on Project Decommissioning at Relicensing,” 60 Fed. Reg. 340 n.1 (Jan. 4, 1995). The Commission could consider extending this practice to gas pipeline certificates.

V. CONCLUSION

For the foregoing reasons, the Town of Mason, New Hampshire asks the Commission to (1) GRANT its motion to intervene in opposition and (2) REJECT or DENY Tennessee Gas' application for the NED Project. The Town of Mason reserves the right to supplement this motion to intervene with additional comments, and to request a formal hearing on the application if it is not summarily rejected.

Respectfully submitted,



Carolyn Elefant
LAW OFFICES OF CAROLYN ELEFANT
2200 Pennsylvania Avenue N.W. 4th Flr. E
Washington D.C. 20037
(202) 297-6100
Carolyn@carolynelefant.com
FERC Counsel to TOWN OF MASON, NH

Bernard J. O'Grady, Selectman
16 Darling Hill Road
Mason, NH 03048
(603) 878-2070
bernieogrady3@gmail.com

Charles V. Moser, Selectman
102 Meeting House Hill Road
Mason, NH 03048
(603) 878-3363
cvmoser@earthlink.net

Louise M. Lavoie
35 Brookline Road
Mason, NH 03048
(603) 878-2960
lmlavoie@myfairpoint.net

Dated: January 15, 2016

CERTIFICATE OF SERVICE

Wherefore on this 15th day of January I caused to be served the foregoing Motion to Intervene electronically on all parties on the Commission's electronic service list in this proceeding, in accordance with Commission regulations.

/Carolyn Elefant/

Carolyn Elefant

Document Content(s)

TownofMasonIntervene1152016FINAL.PDF.....1-15