



October 6, 2014

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

Re: Docket No. PF 14-22-000  
Tennessee Gas Pipeline Company, L.L.C., Proposed Northeast Energy Direct (NED) Project,  
Objection to Request to Use Pre-filing Procedures

Dear Secretary Bose:

On behalf of Mass Audubon, I request that the Federal Energy Regulatory Commission (FERC) undertake a thorough and transparent review of Tennessee Gas Pipeline Company's (TGP) proposed NED Project in relation to project need and alternatives for meeting the regional energy demand; project alignment and alternatives to avoid and minimize impacts to protected conservation lands and other sensitive natural resources; and mitigation including full costs of meaningful and adequate mitigation for any unavoidable impacts. Mass Audubon also requests that FERC involve Massachusetts state agencies fully in this review, including the Energy Facilities Siting Board (EFSB), Department of Public Utilities, and the Executive Office of Energy and Environmental Affairs and its agencies. Every effort should be made to ensure that a gas pipeline expansion project, if approved, complies with state laws to the maximum extent feasible including compliance with the Massachusetts Global Warming Solutions Act (GWSA) and avoidance of impacts to land permanently protected under Article 97 of the Massachusetts State Constitution, state-listed rare and endangered species, wetlands and water resources, and other sensitive natural features.

Mass Audubon is a directly impacted landowner, as the owner of properties in Plainfield and Ashburnham, Massachusetts within the proposed pipeline corridor. Mass Audubon strenuously objects to the proposed placement of new gas pipelines on its properties and other permanently protected lands owned by the federal, state, or municipal governments or private land trusts.

The NED Request to use the FERC's voluntary pre-filing process and expedited review of the certification proceedings describes the scope and extent of what is truly a massive, extremely significant proposed project in its scope, complexity, impacts to natural resources, and effects on literally hundreds of people and their communities. As set forth, in relevant part, in NED's September 15, 2014 filing:

The proposed NED Project,..., consists of approximately 167 miles of new and co-located pipeline, two pipeline looping segments on Tennessee's existing 300 Line in Pennsylvania, and compression facilities designed to receive gas from Tennessee's 300 Line for deliveries [of fracked gas] to Tennessee's system near Wright, New York, Iroquois Gas Transmission System, LP, and/or

[t]he proposed Constitution Project (referred to as the supply path component of the NED Project), and approximately 177 miles of new and co-located pipeline facilities extending from



Wright, New York to an interconnect with the Joint Facilities of Maritimes & Northeast Pipeline System and Portland Natural Gas Transmission System (“Joint Facilities”) at Dracut, Massachusetts and Tennessee’s existing 200 Line near Dracut, Massachusetts (referred to as the market path component of the NED Project).

In addition, the Project includes the construction of eight (8) new compressor stations, modifications at an existing compressor station, and approximately 73 miles of market delivery laterals and pipeline looping segments located in the states of Pennsylvania, New York, Massachusetts, Connecticut, and New Hampshire.

NED is, in reality, requesting the right to impose enormous alterations and disruptions in five states, over hundreds of miles, to install over 344 miles of pipeline and compressor stations (excluding the required 100 foot construction right-of-way and the operational 50 foot width throughout the length of the pipeline) and to expose the public and the environment to the attendant construction risks posed by compressed gas, leaks, blasting, and extensive excavation. This process, NED goes on to request, should be “processed” by the FERC as expeditiously as possible, as if this was the installation of a new set of traffic lights.

NED has requested this approval as part of a pre-filing application that is deficient in several important respects:

It does not recognize that the Commonwealth of Massachusetts is presently reviewing the need for and alternatives to major new gas pipeline infrastructure, threshold inquiries when considering the impacts imposed by a project of this scope.<sup>1</sup>

The maps presented in the pre-filing application are outdated and do not include numerous natural resources and structures despite the fact that abundant, accurate mapping information is freely available through the MassGIS system. Several commenters brought these inaccuracies to the attention of the NED proponent, pointing out that no credible, forthright inquiry or discussion with the oversight agencies and the stakeholders affected by the proposed project could be initiated without true, accurate, and complete information.<sup>2</sup>

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<sup>1</sup> As set forth in the September 16, 2014 correspondence from the Massachusetts Secretary of Energy and Environmental Affairs, Maeve Vallely Bartlett:

Massachusetts is conducting its own study to determine whether additional infrastructure is required to meet projected demand, and how to account for environmental, reliability, and cost considerations should new infrastructure be needed. Given the Commonwealth’s climate goals, it is critical that any efforts to build additional natural gas infrastructure are limited to only what is determined to be necessary.

The interests of the Commonwealth include, but are not limited to:

1. Ensuring a full analysis of the need for the project in Massachusetts and regionally;
2. Ensuring a full environmental review and consideration of environmental permitting requirements for the proposal; and
3. Ensuring a full examination of the proposed routing and seeking ways to avoid or minimize the impacts to important natural resources...

<sup>2</sup> See, for example, comments submitted and docketed at Ascension Nos. 20240919-5100, 2014929-5025, 20140924-5081, 20140926-5125, 2014929-5027, 20140930-5298, 20141001-5049, 20141001-5098, 20140923-5040, and 20140925-5061.

The very purpose of providing accurate and complete maps at the initiation of the pre-filing process is to provide the basis upon which all affected parties and participants may engage in analysis and informed discussion, exchange and suggest relevant data, and develop a full understanding of what is being proposed, as required by the Natural Gas Act, 15 U.S.C. §§ 717 et. seq. and the National Environmental Policy Act, 42 U.S. C. §§ 4321 et. seq.

NED filed a response to these comments with the FERC, stating:

Recently, some individuals filed comments asserting that the maps that Tennessee filed with its Pre-Filing Request are inadequate and do not show certain roads or structures. Tennessee recognizes that the maps filed as part of its Pre-Filing Request are basic topography maps that do not depict all extant roads and structures. However, at this early juncture in the project review process, the Commission's regulations do not require such a high level of detail.<sup>3</sup>

It is not the intent of these comments to debate the interpretation of FERC's regulations. Rather, the NED response would appear to be a harbinger, an indication that the NED proponent desires to acquire FERC certification without any interest in stakeholder understanding or engagement, and with disregard of the fundamental importance of transparency and truth as to what is being proposed and why.

18 CFR § 157.21 (d)(4), describes the mapping component of a complete and comprehensive pre-filing application as, "A detailed description of the project, including location maps and plot plans to scale showing all major plant components, that will serve as the initial discussion point for stakeholder review."

Review of the maps and plans filed by NED fail, even using NED's own description of its filing, to satisfy this basic FERC requirement.

The company should not be allowed to expedite review of the project when it has failed to make use of extensive, available information in its pre-filing. Although TGP has indicated that more up to date maps and other information will be utilized when it files its Resource Report 1, its plan to submit a draft Resource Report 1 by October 31, 2104 is unrealistic given the amount of updated information that needs to be considered and incorporated. Mass Audubon informed company representatives several times, beginning with an April 9, 2014 meeting, regarding the availability of MassGIS datalayers, yet that information was not utilized or presented in the pre-filing. By failing to use this information, the company has developed a fatally flawed proposed route that will need to be reconsidered extensively. Mere minor refinements in routing are not acceptable.

The pre-filing also does not reveal whether the company intends to utilize the new gas pipeline infrastructure to transport natural gas for export markets – this information is crucial for proper evaluation of project need as well as cost, since gas prices overseas are significantly higher than in the U.S. The selection of language used in the pre-filing is concerning the end-consumers of the gas to be transported. It mixes the issue of forecasted energy resource requirements in New England with descriptions about the project, but nowhere does it state that the pipeline proposed will provide and sell the gas directly to New England consumers instead of re-selling it after

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<sup>3</sup> Comments submitted by Tennessee Gas Pipeline Company, LLC, Ascension No. 2014925-5107 (September 25, 2014).

export prices are first realized. Such a strategy would significantly increase energy costs for end-use customers in Massachusetts and regionally.

### **Project Need**

The NED pre-filing indicates the project will provide scalable capacity up to 2.2 billion cubic feet per day (Bcf/day). The Commonwealth of Massachusetts is presently conducting a study, to be completed before the end of 2014, regarding energy supply and demand, specifically whether additional gas supply capacity is needed and if so the appropriate amount.<sup>4</sup> Massachusetts has a commitment under the Global Warming Solutions Act to reduce its Greenhouse Gas (GHG) emissions by 80% compared to 1990 levels, by 2050. In considering potential new construction of gas pipeline supplies into Massachusetts, the effect on that goal and alternatives for meeting regional energy supplies need to be carefully evaluated.<sup>5</sup> Mass Audubon urges FERC to carefully and transparently work with Massachusetts state agencies including the EFSB, the Massachusetts Department of Energy Resources (DOER), the state agency who forecasts energy resource needs and evaluates long-term forecast and supply plans, and the PUC in reviewing the project. We request that TGP fully and accurately disclose any potential future use of the proposed new pipeline facilities for export markets.

### **Corridor Alignment, Article 97 Protected Lands, Critical Resources**

TGP has selected a proposed route for the 127 mile long NED project across Massachusetts and associated lateral pipelines and related equipment that has extensive, unacceptable, and avoidable environmental impacts. The company indicated in an “NED Project Questions and Answers” document to the Franklin Regional Council of Governments that it selected the proposed route in order to avoid developed areas and infrastructure due to cost considerations associated with placing the pipeline along less environmentally sensitive routes such as existing road corridors. This utterly ignores the very real

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<sup>4</sup> The proposed 2.2 billion cubic feet of scaled capacity is dramatically inconsistent with project capacity forecasts for the region, which have been estimated, through 2020, to grow to approximately 600,000 mcf/day from 2012 supplies. EIA Monthly (June, October 2013).

<sup>5</sup> Reliance on natural gas in New England has grown to 63% throughout the region. That reliance can be particularly acute in during the winter. New England, Arctic winter temperatures simultaneously drive high heating *and* electricity demand, straining supply. This supply scarcity results in gas price spikes and even supply shortages. Natural gas is typically the marginal generator—the last generator dispatched to meet peak demand, which therefore sets the wholesale electricity price for all generators, according to market rules. So when gas prices jump, electricity prices skyrocket, too. That is exactly what happened this winter. A Thanksgiving cold snap drove power prices over \$100/MWh, more than 10 times normal. On January 24th, wholesale power prices jumped above \$200/MWh on spot gas prices over \$30/MMBtu.

The fact that natural gas is the fuel dominating New England’s energy portfolio is particularly worrisome. Natural gas has a history of price volatility, which in the past has turned seemingly smart investments in new natural gas capacity upside down. While an oversupply of unconventional shale gas has kept prices low and stable for the past few years, a number of mechanisms can cause volatility to return: rapid demand growth surpassing supply, LNG exports causing prices to link to global markets, and regulations limited the supply or raising the cost of gas produced through hydraulic fracturing, to name a few. Energy Information Administration, Office of Oil and Gas, Natural Gas Division, Gas Transportation Information System (January 2014).

costs to the Commonwealth of Massachusetts, municipalities, private land trusts, and landowners of constructing a new gas pipeline corridor through some of the most pristine and sensitive lands in the state.

Massachusetts is the third most densely populated state in the nation. It has invested hundreds of millions of dollars in planning and protection for its natural resources. This investment must be respected. In partnership with the state, federal and local governments, private land trusts, and thousands of residents have worked together to protect an interconnected network of highly diverse natural lands representing many of the best remaining examples of every natural community type native to the state. TGP now enters the scene and proposes to carve this carefully protected landscape into fragments dissected by a 100 foot wide construction easement.

The selected route would impact at least 17 BioMap2 Critical Natural Landscape Blocks, several large forest core and vernal pool core areas, lands designated as Forests Reserves by the Department of Conservation and Recreation, habitat for approximately 15% of all state-listed rare or endangered species, and several state-designated Areas of Critical Environmental Concern.

The company claims that the land along this easement will be “restored” following construction, despite ample scientific evidence that such utility corridors have permanent, irreversible negative impacts. This includes permanent destruction, fragmentation, and degradation of pristine natural communities; introduction and spread of invasive plant species; attractive nuisance including illegal access by Off Road Vehicles (ORVs); and impediments to land management for ecological, forestry, or agricultural purposes. The same concerns apply to privately owned lands that may be protected in the future, or where the landowner desires to maintain land-based activities like forestry and agriculture. Properties that are protected under Article 97 of the Massachusetts Constitution enjoy the highest level of protection, which typically can only be overturned by 2/3 majority vote in both houses of the state Legislature. The Commonwealth did not create this statewide network of protected lands for the convenience of an energy infrastructure project and this high level of protection should not be overturned lightly and without thorough consideration of every available alternative.

The true cost of compensating for these losses and degradation need to be considered. In instances where the last, best, remaining examples of natural habitats will be impacted, no amount of money can compensate for the loss. And landowners all along the corridor will forever bear the costs of managing invasive plants and illegal OHVs while experiencing reduced ability to manage their own lands.

### **Mass Audubon Properties Impacted**

The proposed pipeline alignment would cross two of Mass Audubon’s wildlife sanctuaries: Cheshire Pond in Ashburnham and West Mountain in Plainfield. At Cheshire Pond, the project would cut across more than a mile of the most pristine portion of the property, and would also impact adjoining property owned by the Department of Conservation and Recreation. The western portion of the proposed route on Mass Audubon’s land (more than 1,600 feet) is a healthy natural wetland complex, with a spruce/fir/hardwood swamp, beaver meadows, and shrub swamp. This land is also protected by a Conservation Restriction held by Mt. Grace Land Trust, and is protected under Article 97.<sup>6</sup>

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<sup>6</sup> It should be noted here that the oft-repeated statement that the Natural Gas Act preempts state law is not entirely accurate when the areas of subject to oversight are distinctly different. Federal “occupation of the field” does not override state law addressing a distinctly different area or scope of authority. Article 97 and its attendant rights in enhancement and preservation of Massachusetts natural resources and the right of any Massachusetts citizen to enjoy and partake of those resources does not offer the scenarios embraced by federal preemption doctrine, where express or field preemption. As determined by the United States Supreme Court in Medtronic, Inc. Lohr, 518 U.S. 475, 485 (1996):

The proposed route in Plainfield parallels the northern edge of the existing powerline corridor at West Mountain, crossing about 4,700 feet of Mass Audubon's sanctuary. This corridor crosses the sanctuary over a series of bedrock-defined ridges and valleys, with an elevation range of up to 200 feet. Exposed ledge is common in this terrain, and extensive blasting would likely be required to construct the pipeline in this area. We are concerned regarding impacts to water resources such as changes in rock fracturing that may divert water away from existing seeps and springs feeding the area's coldwater fishery streams.

Although the proposed route no longer directly impacts Mass Audubon's Pleasant Valley Wildlife Sanctuary in Lenox, it would cross adjoining watershed lands owned by the Town of Lenox as well as the town's Kennedy Park. Mass Audubon is concerned about these and other impacts to parklands and sensitive areas such as water supply protection lands. We urge that if a pipeline must be built, every effort be made to avoid sensitive resources, and where that is physically impossible, to place it at the edge of natural areas rather than cutting through and fragmenting intact habitats.

Mass Audubon has denied TGP permission to survey its lands, and not only because alternative routes should be considered. We are also concerned about the impacts associated with surveying activities (cutting vegetation, equipment access, geotechnical drilling) and the risk that hard-to-observe features such as rare species may be overlooked and recorded as being absent when they are in fact present.

We request that:

FERC consider the benefit to all of requiring from TGP complete, comprehensive, transparent, and credible information from the outset. That begins with providing accurate, complete mapping as a component of the prefiling application, without defaulting to a subsequent draft filing (Draft Resource Report 1) as TGP has proposed;

FERC recognize that the prefiling process; intended as it is to increase process efficiencies and decrease delays and extended procedural duration; direct TGP to provide current, accurate, science-based information and data for consideration of the affected landowners, the resource agencies, and the public, such that the need for, the public purpose to be served by, the existence of physical and non-physical alternatives for, and the true scope and extent of the impacts imposed by the NED; and

FERC direct that TGP provide a direct response to the question of whether the company intends to use the proposed pipeline to transport natural gas to be sold directly to Massachusetts end-use

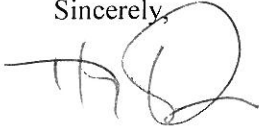
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[b]ecause the States are independent sovereigns in our federal system, we have long presumed that Congress does not cavalierly pre-empt state-law causes of action. In all pre-emption cases, and particularly in those in which Congress has "legislated . . . in a field which the States have traditionally occupied," *Rice v. Santa Fe Elevator Corp.*, 331 U. S. 218, 230 (1947), we "start with the assumption that the historic police powers of the States were not to be superseded by the Federal Act unless that was the clear and manifest purpose of Congress." *Ibid.*; *Hillsborough Cty.*, 471 U. S., at 715-716; cf. *Fort Halifax Packing Co. v. Coyne*, 482 U. S. 1, 22 (1987).. Although dissenting Justices have argued that this assumption should apply only to the question of whether Congress intended any pre-emption at all, we use a "presumption against the pre-emption of state police power regulations." That approach is consistent with both federalism concerns and the historic primacy of state regulation of matters of public health, public welfare, and public safety.

customers or whether the transported gas is destined for export and re-sale, and if so, the volume of transported natural gas to be directly sold to citizens of the Commonwealth.

Finally, we request that FERC not force surveys on landowners without first requiring the company to more carefully consider alternatives to routing pipelines through protected lands and sensitive resource areas.

Sincerely,

A handwritten signature in black ink, appearing to read 'HT', with a large, stylized flourish extending from the end of the signature.

Henry Tepper  
President

cc: EEA Secretary Maeve Vallely Bartlett  
EFSB  
NHESP  
Mount Grace Land Trust