

NH Municipal Pipeline Coalition

January 7, 2016

NH Attorney General Joseph Foster
Office of the Attorney General
33 Capitol Street
Concord, NH 03301

Re: Filing for Intervention with the Federal Energy Regulatory Commission for Kinder Morgan's Northeast Energy Direct (NED) Gas Pipeline

Dear Attorney General Foster:

The NH Municipal Pipeline Coalition is comprised of 15 New Hampshire towns and was formed last January following Kinder Morgan's proposal to build a high-pressure gas pipeline across about 80 miles of southern New Hampshire. We are closely monitoring project developments and will be involved as both federal and state review and permitting processes are pursued.

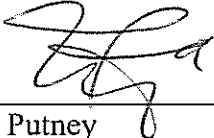
A critical first step for ensuring involvement in the federal review process – and protecting New Hampshire residents' interests – involves filing a request to be an intervenor with the Federal Energy Regulatory Commission. We are filing for intervention as individual towns and as a Coalition.

Yesterday, the New York Attorney General filed for intervention with FERC (see attachment) for the NED project. The Massachusetts Attorney General similarly filed back in December.

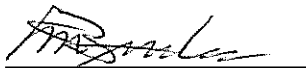
We have not been able to confirm if your office has filed for intervention with FERC for the NED project. If you have not, we respectfully request that you do so by the January 15th 5pm deadline in order to allow for your office to be involved in this critical process.

The proposed project would have significant impacts on our communities should it be approved. As a result, we look forward to working with you in the coming months as the state and federal review processes for the project get fully underway.

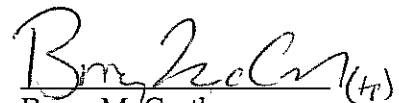
Sincerely,



Tad Putney
Town Administrator
Brookline

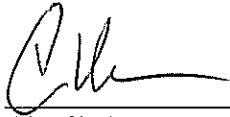


Mark Bender
Town Administrator
Milford

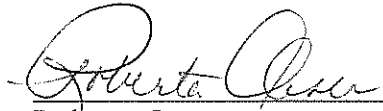


Brian McCarthy (tr)
Town Administrator
Pelham

Amherst
Brookline
Fitzwilliam
Greenville
Litchfield
Mason
Merrimack
Milford
New Ipswich
Pelham
Richmond
Rindge
Temple
Troy
Winchester




Charlie Moser
Selectman
Mason



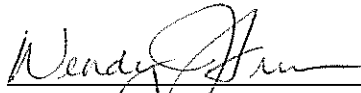
Roberta Oeser
Selectman
Rindge



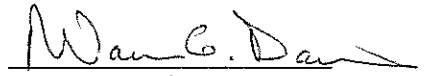
Susan Silverman
Selectman
Fitzwilliam




Kelley Collins
Town Administrator
Greenville



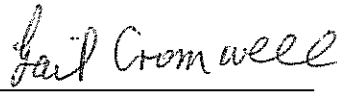
Wendy Juchnevics-Freeman
Pipeline Task Force
New Ipswich



Warren Davis
Conservation Commission
Troy



Chris Steadman
Pipeline Task Force
Winchester



Gail Cromwell
Selectman
Temple



John Boccalini
Pipeline Task Force
Richmond

**UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION**

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In the Matter of: Docket No.: CP16-21-000

Tennessee Gas Pipeline Company, LLC Docket No.: PF14-22-000

For a Certificate of Public Convenience and Necessity
for Permission to Construct and Operate
a Pipeline and Support Facilities Known as the

Northeast Energy Direct Project. January 6, 2015

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**MOTION TO INTERVENE
OFFICE OF THE NEW YORK STATE ATTORNEY GENERAL**

In response to a Notice of Application published in the Federal Register on December 11, 2015 (80 Fed. Reg. 76969) by the Federal Energy Regulatory Commission (FERC or Commission) and pursuant to the Natural Gas Act (NGA), the National Environmental Policy Act (NEPA), the Administrative Procedure Act (APA), and their implementing regulations, the Office of the New York State Attorney General (N.Y. Attorney General) hereby moves to intervene in this proceeding. Intervention by the N.Y. Attorney General would promote the public interest.

SUMMARY OF PROPOSAL AND PROCEDURAL HISTORY

Tennessee Gas Pipeline Company, LLC (Company) seeks a certificate of public convenience and necessity for permission to construct and operate a natural gas pipeline and related facilities including, but not limited to, compressor stations. According to the Company's application, if granted authorization, the Company will create a new interstate high-pressure transmission pipeline network, called the "Northeast Energy Direct" (the Project) that is designed to transport up to 2.2 billion cubic feet of natural gas per day from northeastern Pennsylvania through eastern New York State and into neighboring New England states. According to the notice, the Project includes two components: (1) the Supply Path Component, which is comprised of facilities from Troy, Pennsylvania, to Wright, New York, and (2) the Market Path Component, which is comprised of facilities from Wright, New York, to Dracut, Massachusetts. Approximately 150 miles of the proposed Project will run through New York State.

On November 20, 2015, the Company filed an application under Section 7(c) of the NGA and Part 157 of the Commission's Rules and Regulations requesting authorization to construct and operate the Project. FERC staff began a preliminary review of the proposed project in a "pre-filing process" (Docket No. PF14-22-000), which started on September 15, 2014, when the Company filed its request to initiate a NEPA pre-filing review of the Project pursuant to 18 C.F.R. § 157.21(b) of the Commission's regulations. On October 2, 2014, FERC staff approved the Company's request to utilize the pre-filing process. On June 30, 2015, FERC staff issued a Notice of Intent to Prepare an Environmental Impact Statement and solicited comments on environmental issues. FERC staff received numerous comments from citizens,

municipalities, and federal and state agencies, including the U.S. Army Corps of Engineers, the U.S. Environmental Protection Agency, and the New York State Department of Environmental Conservation. During the pre-filing review phase, FERC staff did not release a draft environmental impact statement. As such, the public has not yet had an opportunity to review, analyze, and comment on FERC's environmental impact analysis.

On December 11, 2015, the Commission published its Notice of Application in the Federal Register. 80 Fed. Reg. 76969. Among other things, the notice stated that the Pre-Filing Process had ended and that the proceeding shall be conducted on a going-forward basis under Docket Number CP16-21-000. In its request for pre-filing review, the Company describes the Project as the construction of approximately 135 miles of new 30-inch diameter pipeline and related facilities beginning from Troy, Pennsylvania to points of interconnection with the existing Iroquois Gas Transmission Pipeline and the Tennessee Gas Pipeline in the Town of Wright in Schoharie County, New York, and the construction of 177 miles of new 36-inch diameter pipeline and related facilities from Wright, New York to Dracut, Massachusetts. In addition, the Project calls for the construction of eighteen compressor stations, and associated meter station valves, piping, and project facilities to facilitate the transportation of gas from Pennsylvania to through eastern New York, New Hampshire and ultimately Massachusetts.

REGULATORY FRAMEWORK

The National Environmental Policy Act, 42 U.S.C. §§ 4321-37, requires all federal agencies to examine environmental impacts that could be caused by their discretionary actions. As a federal agency, the FERC must comply with NEPA. *Calvert Cliffs Coordinating Comm. v. U.S. Atomic Energy Commission*, 449 F.2d 1109 (D.C. Cir. 1971); 18 C.F.R. Part 380. As made clear in the regulations promulgated by the President's Council on Environmental Quality (CEQ), NEPA was designed to "provide a full and fair discussion of significant environmental impacts and shall inform decision makers and the public of the reasonable alternatives which would avoid or minimize adverse impacts or enhance the quality of the human environment." 40 C.F.R. § 1502.1. NEPA directs all federal agencies, "to the fullest extent possible" to comply with this policy and, *inter alia*, to use a systematic and interdisciplinary approach in considering environmental issues, and, before taking any major federal action significantly affecting the quality of the human environment, to generate a detailed environmental impact statement. 42 U.S.C. § 4332(2)(A), (C) and (E). NEPA also requires a comparative analysis of the environmental consequences of the alternatives before the agency. 42 U.S.C. § 4332(2)(C)(iii); 40 C.F.R. § 1502.14(d).

An environmental impact statement under NEPA is intended to guarantee that the relevant information regarding the costs and benefits of federal action and its alternatives will be made available to the larger audience that may also play a role in both the decision-making process and the implementation of that decision. *Center for Biological Diversity v. U.S. Dept. of Interior*, 623 F.3d 633 (9th Cir. 2010), *citing Dep't of Transp. v. Pub. Citizen*, 541 U.S. 752, 768 (2004). Publication of an environmental impact statement, both in draft and final form, also

serves a larger informational role. It gives the public the assurance that the agency has indeed considered environmental concerns in its decision making process, and, perhaps more significantly, provides a springboard for public comment. *See Robertson v. Methow Valley Citizens Council*, 490 U.S. 332, 348-349 (1989). NEPA requires federal agencies to stop and objectively identify the environmental effects of their discretionary actions and consider alternative means to mitigate those effects – before taking any action that may affect the environment.

CEQ has promulgated regulations pursuant to NEPA (40 C.F.R. Parts 1500-1508), as has FERC (18 C.F.R. Part 380). Although FERC allows applicants to prepare an initial draft of the environmental review documents, the duty to comply with NEPA rests with the federal agency itself. Under FERC's procedural regulations, any motion to intervene should state the movant's interest in sufficient detail to demonstrate that (i) the movant's right to participate is expressly conferred by statute or by FERC rule, order, or other action; (ii) the movant has or represents an interest which may be directly affected by the outcome of the proceeding; or (iii) the movant's participation is in the public interest. 18 C.F.R. § 385.214(b)(2). Such motion must also state the movant's position and its basis in fact and law. 18 C.F.R. § 385.214(b)(1). Persons seeking permission to intervene shall also state whether they seek a formal hearing on the application. 18 C.F.R. § 157.10(a)(1). Any person may also file a motion to intervene in a Commission proceeding dealing with environmental issues under 18 C.F.R. § 385.214. *See* 18 C.F.R. § 380.10(a)(1).

REASONS SUPPORTING INTERVENTION

In support of this timely motion to intervene, the N.Y. Attorney General submits the following:

1. The N.Y. Attorney General is the chief legal officer of the State of New York. The N.Y. Attorney General intervenes in various types of administrative and legal proceedings to advance the interests of the State, enforce federal and state environmental laws such as the National Environmental Policy Act, and to protect the public health, the environment, and the economic interests of New York citizens. The N.Y. Attorney General's request for leave to intervene in this proceeding is in furtherance of these overall responsibilities and in the public interest.

2. The N.Y. Attorney General has experience with environmental review and energy laws (such as NEPA, the Energy Policy Act, the Energy Policy and Conservation Act, and the Clean Water Act) as well as climate change issues (such as methane emissions) and technical matters (such as cathodic protection of pipelines).

3. Approximately 150 miles of the proposed Project's natural gas transmission pipeline would be located in New York State. If approved, the pipeline will traverse New York towns and counties and cross State-owned lands and water bodies, and will likely have environmental and economic consequences for the citizens of New York. The N.Y. Attorney General seeks to ensure that, if approved, the proposed pipeline is properly constructed, monitored, inspected, and maintained, that its ultimate route and operation avoids or minimizes adverse impacts to New York's environmental resources. Among other things, the N.Y. Attorney General seeks to ensure that FERC's review of the proposed project under NEPA and

NGA objectively identifies and considers alternatives to the proposed Project (including the no-action alternative), squarely addresses the cumulative impacts of the Project, minimizes contested condemnation procedures against New York citizens, and allows for an orderly review of such actions before irreversible actions take place. The N.Y. Attorney General also seeks to ensure that FERC conducts a comprehensive review of long-term supply contracts related to the proposed Project as well as the public need for this and other related natural gas pipeline proposals.

4. Additionally, the N.Y. Attorney General seeks to ensure that FERC addresses the potential methane emissions from the project. Unless properly constructed, operated, maintained and monitored, natural gas pipelines and associated infrastructure can be a significant source of methane emissions, which, in turn, contributes to climate change and its attending economic costs, damage to physical infrastructure, disruption of natural ecosystems, and threats to public health within the State. Recently, the President of the United States acknowledged the need to ensure natural gas pipelines minimize the amount of methane they release as part of the federal government's goal to reduce methane emissions from the oil and gas sector by 40 - 45% from 2012 levels within the next 10 years.

5. Furthermore, the N.Y. Attorney General seeks to ensure that any permit conditions concerning the construction and operation of the proposed pipeline are binding and enforceable.

6. The interests that the N.Y. Attorney General seeks to protect by intervening in this proceeding are not represented by other parties to the proceeding; and there will be no prejudice to the existing parties that might result from permitting the intervention.

7. At this juncture, the N.Y. Attorney General neither opposes nor supports the Project, and makes this motion to gain party status and protect the State of New York's participation in the review process, including the ability to seek judicial review of any final decision on the underlying the application.

8. At this early juncture before the release of the proposed draft environmental impact statement, the N.Y. Attorney General does not now request a formal hearing on the application, but instead reserves the right to request a formal hearing later in the process as allowed by the Commission's rules and regulations.

CONTACT AND SERVICE INFORMATION FOR MOVANT

All communications and service of all pleadings, motions, or other documents in this proceeding should be directed to the following persons:

Siobhan Blank Legal Assistant New York State Office of the Attorney General The Capitol State Street Albany, NY 12224 (518) 776-2419 Siobhan.Blank@ag.ny.gov	Jeremy Magliaro Policy Analyst New York State Office of the Attorney General The Capitol State Street Albany, NY 12224 (518) 776-2385 Jeremy.Magliaro@ag.ny.gov
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Mihir A. Desai Assistant Attorney General New York State Office of the Attorney General The Capitol State Street Albany, NY 12224 (518) 776-2398 Mihir.Desai@ag.ny.gov	John J. Sipos Assistant Attorney General New York State Office of the Attorney General The Capitol State Street Albany, NY 12224 (518) 776-2380 John.Sipos@ag.ny.gov
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CONCLUSION

Based upon the above, the Office of the New York State Attorney General respectfully requests that it be granted intervention in this proceeding with full rights as a party.

Respectfully submitted,

John J. Sipos

John J. Sipos
Assistant Attorney General
New York State Office of the
Attorney General
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Albany, New York 12224
518-776-2380