

Request for Evidentiary Hearing and Programmatic Environmental Impact Statement

MEMORANDUM

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

From: The Mason Pipeline Committee
PO Box 46
Mason, NH 03048

Date: April 15, 2016

Re: Tennessee Gas Pipeline Company, L.L.C., Docket No. CP16-21

Subject: An Evidentiary Hearing and Comprehensive NEPA review (Programmatic EIS) are Necessary in Response to Tennessee Gas Pipeline's (TGP's) March 22, 2016 Motion for Leave to Answer (FERC comment no. 20160322-5188)

Dear Secretary Bose:

The TGP Motion of March 22, 2016 provides clear evidence of the necessity for FERC to hold a formal Evidentiary Hearing on the Northeast Direct (NED) pipeline. Among other things, in this motion, TGP continues to make unsupported allegations about the need for the NED pipeline while sweeping all manner of costs of the NED pipeline away as meaningless. In particular, while TGP relies upon studies that have been funded by those in line to profit handily from the NED pipeline, TGP has no trouble at all dismissing credible studies that contradict its "experts". For example, TGP discredits the Massachusetts Attorney General's study on Power System Reliability in New England on the basis of an unspecified "false premise". TGP faults the Skipping Stone and Energyst studies, which address New England's winter peak deliverability issue, on the basis of unspecified "untested assumptions". These types of unbiased studies should be the bases for FERC's decision about the NED pipeline certificate of convenience, NOT the studies paid for and cited by the industry that FERC regulates. Therefore, such unsubstantiated accusations such as TGP has levied *call out* for a formal Evidentiary Hearing where each side gives sworn evidence on its position.

There are strong legal precedents where FERC has been required to hold Evidentiary Hearings. For example:

Cajun Elec. Power Coop v. FERC, 28 F.3d 173, 177 (D.C. Cir. 1994)(requiring hearing to resolve disputed factual issues that cannot be resolved based on written submissions); and

General Motors v. FERC, 656 F.2d 791, 795 (D.C. Cir. 1981)(reversing FERC for failure to hold a formal hearing on issue of adequate need to support increase in peak day service under certificate where issue is disputed).

TGP's claim that "the need for NED outweighs any adverse effects" must be examined in the light of an Evidentiary Hearing. There are certainly material facts at issue here. For example, the only hard data TGP provides in its Motion is the total amount of gas contracted for in its precedent agreements. For NED Market Path, this quantity (751,650 Dth) amounts to only 42% of NED's capacity of 1.3 billion cf/day. This minor level of subscription, despite more than two years of intensive marketing, shows the

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need for NED is decidedly NOT significant.

Further, TGP is being misleading when it touts its precedent agreements as evidence of load growth. Some of the limited NED capacity that TGP has been able to get subscribed does not represent new need but is already supplied. In fact the majority of NED's only precedent agreement in NH is not new demand. Liberty Utilities, **a partner in NED as an Algonquin subsidiary**, has a contract for 115,000 Dth that represents only 50,000 Dth of new supply: 65,000 Dth is presently contracted for on an existing pipeline. TGP's assertions of NED's "significant market support" are highly overblown.

An evidentiary hearing can bring to light the stark contrast between the facts surrounding the NED pipeline and the fiction presented by TGP. An evidentiary hearing, not a public meeting such as the scoping sessions that have taken place in the NED pipeline region of New Hampshire, is required. The scoping sessions had no such cross examination aspect as an evidentiary hearing should have. Seeking the truth should be the goal of FERC's entire pipeline approval process, and an evidentiary hearing can shine a light on facts and put fabrication and fiction to rest.

In addition to the evidentiary hearing, **a programmatic EIS comprehensively comparing the impacts of all the pipeline projects proposed for New England would also shine a much-needed light on the complete picture of pipeline overbuilding in New England.** TGP's claim that there is "no geographic or other connection between the projects" defies logic.

In addition to NED, Spectra Atlantic Bridge, Spectra Access Northeast, Portland Natural Gas "C2C" all propose to supply gas to the New England market. Adding the Spectra AIM project approved March 2015, all these pipelines total close to 3 Bcf/d of additional gas capacity into New England, far in excess of any potential shortfall in even the most aggressive demand scenario. They are redundant solutions to the same potential need and must be reviewed as such under NEPA.¹

On December 18, 2014, the Council on Environmental Quality (CEQ) issued guidance on the effective use of programmatic NEPA reviews, when "making decisions on common elements or aspects of a series or suite of closely related projects;" and as a way to "avoid 'segmenting' the overall program from subsequent individual actions and thereby avoid unreasonably constricting the scope of environmental review."²

Specific actions were listed in the December guidance as appropriate for a programmatic NEPA review, as follows:

Approving Multiple Actions. Decision to proceed with multiple projects that are temporally or spatially connected and that will have a series of associated concurrent or subsequent decisions. Programmatic examples include:

- * Several similar actions or projects in a region or nationwide (e.g., a large scale utility corridor project); or
- * A suite of ongoing, proposed or reasonably foreseeable actions that share a common geography or timing, such as multiple activities within a defined boundary (i.e., Federal land or facility).³

Certainly NED, Spectra Atlantic Bridge, Spectra Access Northeast, Portland Natural Gas "C2C" are all similar projects in a region that share a common timing.

¹ Carolyn Sellars letter to FERC Sept. 10, 2015

² December 2014 CEQ Guidance, p.15-16

³ December 2014 CEQ Guidance, p.14

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Without a programmatic EIS, FERC lacks guidance on how to best fill a possible need, if indeed there is a need based on current information, not the outdated statistics frequently appearing in TGP's literature and the literature funded by TGP to support its position. If FERC intends to approve all the proposed pipelines, the Commission will be guilty of causing such over-building that New England's residents, environment, landowners and ratepayers will be inflicted for decades with the results of FERC's flawed and reckless oversight of human health and natural resources.

But before FERC can cause such over-building, according to the precedents cited herein, any decision by FERC to deny an evidentiary hearing will be challenged and overturned because there are genuine issues of material fact involved in the citing of the NED pipeline, in particular concerning the case for need that outweighs the protection of private property rights, human health, and the environment.

In summary, the entire New England region demands and deserves, from the federal agency whose job it is to oversee "environmental matters related to natural gas and hydroelectricity projects" (<https://www.ferc.gov/about/ferc-does.asp>) (i.e. FERC), at least the following:

(1) at least one evidentiary hearing that at least addresses need; and

(2) a programmatic EIS to address the entire set of New England pipeline proposals together.

The TGP Motion of March 22, 2016 is only one of many examples of why the NED project begs for both.

Sincerely,

Liz Fletcher and Kathy Chapman, Esq.

for Mason Pipeline Committee, Mason, New Hampshire

Cc: Governor Maggie Hassan
NH Site Evaluation Committee
Executive Councilor David Wheeler
Executive Councilor Colin van Ostern
Executive Councilor Christopher Sununu
Executive Councilor Christopher Pappas
Executive Councilor Joseph Kenney
Senator Shaheen
Senator Ayotte
Representative Kuster
Senator Avar
Representative Jack Flanagan
Representative Chris Adams