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VIA EMAIL AND FEDERAL EXPRESS

New Hampshire Site Evaluation Committee
c/o Pamela G. Monroe, Administrator
21 South Fruit Street, Suite 10
Concord, NH 03301-2429

RE: Advance Public Comment on Possible Rulemaking in Connection with High Pressure Pipelines—Site 300, *Certificates of Site and Facility*

Dear Administrator Monroe:

Nixon Peabody (“NP”) represents Tennessee Gas Pipeline Company, L.L.C. (“TGP”), the developer of the interstate Northeast Energy Direct natural gas pipeline project (“NED”) regulated by the Federal Energy Regulatory Commission (“FERC”). On behalf of TGP, we respectfully submit the following advance public comments on the future possibility of the New Hampshire Site Evaluation Committee (“SEC”) commencing another rulemaking specifically relative to the siting of high pressure pipelines.

Recognizing that the SEC recently completed an in depth twenty-two month rulemaking in connection with Chapters Site 100-300, we thank you for the SEC’s continued efforts to make improvements in the consistent, efficient and unambiguous application of rules for the siting of high pressure pipelines in New Hampshire. The Request for Public Comment specifically seeks input for new or amended rules on the following topics: appropriate setbacks to mitigate potential health and safety impacts, pipeline decommissioning plan requirements, specific criteria to maintain property owners’ ability to use and enjoy their property, project related sound and vibration impact assessments, and application requirements to ensure quality construction and to minimize safety issues.

TGP’s input on these topics is provided below.

1. Rule Application—General Preemption by FERC

The siting and approval of interstate high pressure gas pipelines proposed by private companies, such as TGP, is governed by FERC. FERC alone approves the location and construction of interstate pipelines, related facilities and storage fields involving moving natural gas across state

boundaries. In the event that any state or municipal law or ordinance conflicts with a FERC requirement, FERC's requirement will prevail. For this reason, TGP respectfully suggests that for the preservation of scarce state resources, any new or amended rules need to incorporate the overarching concept of FERC preemption over SEC and state agency requirements. We commend to the committee the approach taken by the Massachusetts Energy Facilities Siting Board ("EFSB") on this topic.

With regard to siting a high pressure pipeline, the FERC process includes an exhaustive analysis of alternative routes to avoid or minimize damage to the environment and to reduce effects on every factor pertinent to the SEC, such as: buildings, crops, water supplies, soil, vegetation, wildlife, air quality, noise and many other landowner interests. On the issue of safety in particular, FERC has exclusive oversight with regard to ensuring that interstate pipelines and related facilities are safely constructed and installed in accordance with stringent standards set by the U.S. Department of Transportation.¹ Given that (i) the FERC process provides a thorough examination of every conceivable siting concern important that might come before the SEC, and (ii) FERC's requirements preempt the SEC's rules, similar to the EFSB, we respectfully urge with respect to interstate pipelines that the SEC or its member agencies participate in the FERC process itself and avoid incorporating into Site 300 further requirements that are duplicative or, if not, likely preempted by federal law.

Specifically, the following input sought in the Request for Public Comment is duplicative and/or preempted by federal law:

A. Appropriate Setbacks to Mitigate Potential Health and Safety Impacts:

The rules, restrictions and FERC guidelines (made applicable to projects via certificate orders) governing the FERC process already set forth such appropriate setbacks. Specifically, (i) the requirements set forth within 18 C.F.R. §380.15(a-g), (ii) FERC's *Upland Erosion Control, Revegetation and Maintenance Plan* (governing construction in non-wetland areas), (iii) FERC's *Wetland and Waterbody Construction and Mitigation Procedures* (governing construction in wetlands areas), and (iv) FERC's *Guidance Manual for Environmental Report Preparation* combine to create a comprehensive regulatory scheme. These existing federal regulations and guidelines governing the siting and maintenance of pipelines provide for appropriate setbacks based on various geographic features (e.g., environmentally sensitive and densely populated areas and cultural or historic sites) which properly mitigate against potential health and safety impacts. Any conflicting setbacks enacted by the SEC will be preempted by the FERC process.

B. Criteria to Maintain Property Owners' Ability to Use and Enjoy Their Property: This concern also is already covered in the FERC process. Specifically, the

¹ After construction, during the operational life of the pipeline, the U.S. Department of Transportation's Pipeline and Hazardous Materials Safety Administration is responsible for ensuring that all federal safety standards are followed.

requirements set forth within 18 C.F.R. §380.15(b), as well as the other plans and procedures identified above, properly mitigate against any unreasonable restraint on an abutters' ability to use and enjoy their property. Any conflicting criteria enacted by the SEC will be preempted by the FERC process.

C. Project Related Sound and Vibration Impact Assessments: The rules and restrictions governing the FERC process already set forth such appropriate noise restrictions.² Specifically, the requirements set forth within 18 C.F.R. §380.12(k)(4)(v)(A) provide noise limitations for new compressor stations or compression added to new compressor stations, or any modification, upgrade or update to a compressor station. The noise associated with these improvements shall not exceed 55 dBA (day-night sound level (Ldn)) at any pre-existing noise sensitive area (e.g., a school, hospital or residence). This federal requirement appropriately mitigates noise emanating from such improvements. Any conflicting sound restrictions enacted by the SEC will be preempted by the FERC process.

D. Requirements to Ensure Quality Construction and Minimize Safety Issues: As stated above, FERC and the U.S. Department of Transportation's Pipeline and Hazardous Materials Safety Administration has exclusive oversight with regard to implementing pipeline safety laws and regulations, which establish requirements to ensure that pipelines are constructed and operated safely. The above-referenced plans and procedures governing the FERC process, as well as the Natural Gas Pipeline Safety Act of 1968 and subsequent amendments to this statute in the Pipeline Safety, Regulatory Certainty and Job Creation Act of 2011 already set forth exhaustive construction requirements for the purpose of minimizing safety issues. Any conflicting requirements enacted by the SEC will be preempted by the FERC process.

2. **Site 301.08(c)(2): Decommissioning Plan**

Currently Site 300 requires developers of high pressure pipelines to include a decommissioning plan and a provision of including financial assurance in the form of a letter of credit or performance bond. Site 301.08(c)(2) must incorporate an exemption from this requirement as (i) FERC does not require decommissioning plans for proposed projects or require financial assurance, and (ii) as any decommissioning is in the first instance a FERC regulated event, action by the state is both unnecessary and unenforceable. Any FERC-certificated project can only be abandoned (whether in place, removed, or through sale to another entity) after receipt of abandonment approval from FERC. Abandonment is governed by Section 7(b) of the Natural Gas Act (codified as 15 U.S.C. §717(f)), as well as, 18 C.F.R. §157.18 (case-specific abandonment) and 18 C.F.R. §157.216 (blanket certificate). TGP may only abandon facilities pursuant to the appropriate FERC authorization. Although FERC may require certain input from

² FERC has no specific regulations on vibration. Such regulation is unnecessary given that no significant vibration emanates from these improvements.

the State of New Hampshire, there is no delegation of responsibility to the SEC for this function and therefore any conflicting requirements are preempted.

3. Site 301.08(c)(3): Fire Safety Plan

Site 300 currently includes an ambiguous requirement that the applicant provide a “. . . plan for fire safety prepared by or in consultation with a fire safety expert.” As written, this requirement could be interpreted differently by the applicant, the SEC and the State Fire Marshall. It should be made clearer to the applicant whether the Site 300 requires a fire prevention plan (actions to prevent a fire) or a fire safety plan (relating to fire protection systems and emergency egress). Further, requiring preparation by a third party would by-pass the technical skills, abilities, and relevant experience that applicants may have on this subject. Given that these plans will be reviewed and approved by the Fire Marshall and the safety professionals at the PUC, this requirement provides limited, if any, benefit. We respectfully request that this requirement be deleted.

4. Site 301.03(c)(4): Emergency Response Plan

The emergency response plan requirement is also ambiguous and lacks the specificity needed to ensure that the applicant and first responders can agree on a suitable plan of action. For example, this requirement needs to include whether the plan is for the construction period or during operation of the pipeline. Additionally, Site 300 must include an exemption to submit redacted (i) plans (as allowed by FERC) where certain sensitive safety-related information must be kept confidential, (e.g., drawings and instructions that would enable the facilities to be shut down), and (ii) the applicant’s personnel contact information.

5. Site 301.03(c)(5): Construction Safety Plan

Recently it has come to TGP’s attention that a “construction safety plan” is also interpreted to be required by some as part of Site 301.03(c)(5). If this is in fact accurate, this new requirement must be further clarified.

We appreciate the SEC’s consideration of these comments.

Sincerely,



W. Scott O’Connell, Esq.
Partner

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