

Richard M. Husband
10 Mallard Court
Litchfield, NH 03052

March 1, 2016

To: Members of the Ways and Means Committee (via e-mail)
cc: The New Hampshire State Legislature (via e-mail)

RE: HB 1101, “AN ACT prohibiting charges to New Hampshire residents for the construction of high pressure gas pipelines”

Dear Committee Members:

My understanding is that the above-referenced legislation, HB 1101, will be before the Ways and Means Committee for consideration tomorrow morning, March 2, 2016, at 10:00 a.m. Please forgive the lateness of this letter. But please recommend that HB 1101 “Ought to Pass.”

To the list of reasons supporting such a recommendation, I will add two:

- 1) Please see the attached Exhibit “A”: it tells us all that we need to know about trying to deal in good faith with these people;
- 2) Please see the attached Exhibit “B,” just filed with the New Hampshire Site Evaluation Committee (“SEC”), in reply to the SEC’s request for public input on SEC rules. Without a shred of case law or other supporting authority to prop the bald claim that there is any “federal preemption” or currently existing “FERC requirement” prohibiting the applicability of the SEC’s rules, this letter is essentially just a *digitus impudicus*¹ back at the SEC and State of New Hampshire: “_____ New Hampshire’s laws and concerns!”²

¹ See http://www.wired.com/images_blogs/threatlevel/2010/03/middlefinger.pdf.

² I do not believe that there is any issue of federal preemption here, or any existing “FERC requirement” that would preclude application of the SEC’s rules at this time, *if ever*, as such would seem to occur *if and only if* FERC actually certifies the project by issuing a Certificate of Public Convenience and Necessity, and if there is an actual issue of preemption, with the burden being heavy to prove it. See 15 U.S.C. § 717f; *Midwestern Gas Transmission Co. v. Baker*, 2006 WL 461042, *9 (Tenn.Ct.App. 2006); *Loqa*, 79 F.Supp.2d 49 (D.R.I. 2000)(preemption raised after certification); *State v. Exxon Mobil Corp.*, 2013-0591, 2013-0668 (N.H., October 2, 2015)(proponent of obstacle preemption bears a heavy burden). The project is only in the FERC reviewing stage—a long way from certification.

Speaker of the House Shawn Jasper was absolutely right when he said a week or so ago: “People should not be forced through any type of a tariff to pay for the cost of this pipeline. If this project is economically viable, there should be no reason to pass the cost to ratepayers through a tariff.” But, seeing the arrogance and attempted intimidation that is the attached Exhibit “B”—it should now be said all the louder.³

The heavy-handed approach clearly coming down the pike to meet New Hampshire citizens, concerns and rights, should be dealt with appropriately by New Hampshire legislators⁴—please support HB 1101, and other similarly-purposed legislation coming before you.

I request that Administrator Monroe add this letter to the public comments for SEC Docket No. 2016-01.

Sincerely

//s//Richard Husband
Richard Husband

Accompanying documents

cc: Pamela Morse (Pamela.Monroe@sec.nh.gov)
Governor Margaret Wood Hassan
Executive Councilor David K. Wheeler

³ There should be no preemption/FERC concern with HB 1101: if anyone claims that there is—again, *where is your authority?*

⁴ And other New Hampshire representatives and state agencies: I hope that the SEC’s response to attached Exhibit “B” is: “The wall just got 10 feet higher!” New Hampshire values citizens’ rights and the first part of our state constitution—our state Bill of Rights—was amended specifically to prohibit *precisely what is happening*:

“**[Art.] 12-a. [Power to Take Property Limited.]** No part of a person's property shall be taken by eminent domain and transferred, directly or indirectly, to another person if the taking is for the purpose of private development or other private use of the property.”

Id. Our citizens’ property is being taken for private use and profit.

EXHIBIT “A”

February 26, 2016

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

Re Tennessee Gas Pipeline Co.,
Connecticut Expansion Project, Docket No. CP14-529-000

Dear Secretary Bose,

We are Sandisfield, Mass., landowners and intervenors that will be directly and profoundly affected by the TGP expansion “loop” that is proposed to run through our properties. We are writing to comment on the Company’s letter to the Commission dated Thursday, February 25, 2016, less than 24 hours ago, that demands a certificate be granted by this Monday.

To say that we were shocked to learn of this blatant end-run to circumvent their legal and moral responsibilities is an understatement. It is a total outrage and just plain wrong. Under threat of eminent domain we were forced to negotiate ROW agreements. Nevertheless, we did it in good faith and accepted the Company’s representations that it would abide by all governmental policies and rules and proper work procedures. Whatever trust and goodwill that may have existed here is destroyed by this betrayal. TGP’s disregard and contempt for the residents, for our small town and for the State of Massachusetts is on display and speaks for itself.

The Company still lacks any number of official approvals including a legislative waiver to Massachusetts Constitutional Article 97, an Agreement with the Town and, we understand, one or more Clean Water Act certificates. Moreover, our attorneys are also troubled by the question of possible improper “segmentation.”

Our worst fears may now come to pass; namely, crews come in here in a big rush, without sufficient oversight, and destroy trees and wetlands with chain saws leaving behind a tangled mess until some indefinite future point. And what happens then if due to changing circumstances in the company or, say, a loss in court, the project does not go forward? We property owners are then left with our beautiful forests decimated for absolutely no reason. Avoidance of such a scenario is precisely why all these procedures are needed, isn't that right?

It boggles the mind that a private corporation would have the audacity to demand that a Federal regulatory agency engage in such duplicity when that very body is charged with protection of the environment and overseeing a long-accepted system of procedures. If this company is behind schedule it only has itself to blame for poor planning, misjudgment and incompetence.

Please do not issue the certificate

Sincerely,

Ronald M. Bernard
182 Cold Spring Road
Sandisfield, Mass.

Jeffrey Friedman, M. D.
Hammertown Road
Sandisfield, Mass.

Heather B. Morrical
Hammertown Road
Sandisfield, Mass.

Cc:

Governor Charlie Baker
Lt. Governor Karyn Polito
Attorney General Maura Healey
United States Senator Elizabeth Warren
United States Senator Edward Markey
United States Congressman Richard Neal
Massachusetts State Senator Benjamin Downing
Massachusetts State Representative Smitty Pignatelli
Town of Sandisfield Select Board Chair, Alice Boyd

EXHIBIT “B”



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February 29, 2016

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

WSO/meb