

MILFORD N.H. PIPELINE TASK FORCE REPORT

JUNE 8, 2015



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Milford Pipeline Task Force

June 8, 2015

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Chapter One

Milford Pipeline Task Force Executive Summary

Members of the Milford Pipeline Task Force:

Steve Duncanson, Chair	Planning Board
Mark Bender	Town Administrator
Herb Adams	Heritage Commission
Don Jalbert	EDAC
Andy Hughes	Conservation Commission
Carolyn Halstead	Town Resident
Steve Bonczar	Town Resident

The proposed NED Project pipeline by Kinder Morgan will run approximately 3.1 miles through Milford at its present course. It will go under two scenic roads and will pass 32 residential properties within 300 feet of the pipeline, and 185 within a 1/4 mile and 392 within 1/2 mile.

Documentation of need for NED Project pipeline.

The proposed NED Project pipeline will transport 2.2 billion cubic feet (BCF) per day of natural gas across 70 miles of New Hampshire including 3.1 miles in Milford, NH. Liberty Utilities is the only natural gas distributor in New Hampshire that has signed a contract with Kinder Morgan (KM). Their commitment represents 115 million cubic feet per day or 5.2% of the total project capability. KM has stated that they will sell gas to power generators, but it should be noted that the Granite Ridge Plant in Londonderry is the only power plant they serve in NH.

It seems illogical to route the pipeline from Massachusetts into New Hampshire and then back to its end terminus in Massachusetts when less than 6% of the gas will be used in New Hampshire. That volume could be served by a lateral line from Massachusetts at a lower cost to KM and with less socio-economic and environmental impacts to New Hampshire.

FERC should consider if the NED Project is the right size for the demand and ensure that they have accounted for the unsubscribed capacity. FERC should also consider alternate pipeline plans like the Spectra Access North Project that is targeted to meet the demand of power generators. Spectra presently serves over 70% of New England power generators.

The Milford Pipeline Task Force recognizes the need for additional natural gas to generate electricity in New Hampshire and all of the New England states. The New England Governors have made natural gas sourcing a priority item for the next few

years. Our residential and non-residential electric rates are among the highest in the country. We understand that natural gas pipelines will play a critical role in providing a guaranteed gas supply for power generators. We must also recognize that Spectra Energy and Portland Natural Gas Transmission System (PNGTS) have proposed alternatives to the NED Project. Both Spectra and PNGTS would utilize existing pipeline ROW and increase capacity to the New England states by either replacing pipe with a larger diameter or adding compressor stations. The overall socio-economic disruption and environmental and construction impact should be much less than would be experienced with NED. Additionally, Dstrigas, a leading importer of liquefied natural gas, signed a long-term agreement in May 2015 to supply LNG to a large New England utility company to meet peak demand periods through 2024.

The route will leave a permanent open space at least 50 feet wide in its path and 100 to 150 feet wide during construction.

NH will utilize approximately 6% of the gas proposed to be transported through our town. New England will utilize approximately 22% of the proposed capacity of a 36" pipe.

Milford will only see approximately \$428,000 in tax revenue for the 36" pipe and maybe lower gas and electrical bills. The impact on property taxes is debatable, but some residential properties could see lowered valuations.

Milford and all surrounding towns will need training and emergency planning in case of a problem during and after the construction.

Milford and all surrounding towns should request that bonds be put into place for the construction phase and a five year period after, for roads, bridges, wells, septic and foundations.

Character of the Town

The Milford Master Plan adopted in 1999 and updated in 2012 documents the Community Vision Survey indicating that:

- People live in Milford because of its rural character, community feel and it's a good place to raise a family.
- Residents feel it is important to *preserve* and *protect* the rural character, the historic character and a clean environment.
- Residents feel it is important to *enhance* and *improve* the rural character, a clean environment, the historic character and the Town's natural resources.
- Milford citizens believe the Town needs stronger regulations to control and enhance development, presumably to protect and enhance rural character, and protect the environment.

The NED Project would traverse two scenic roads, Federal Hill Road and Ponemah Hill Road, and several residential developments, significantly impacting the rural nature of our Town and neighborhoods.

Milford Water Resources Philosophy

As stated in The Milford Master Plan, “The community of Milford recognizes that protection of surface water and groundwater resources is fundamental to its continued health, safety and well-being, both at local and regional levels. The Town must continue to ensure that water resources are protected for current and future residents, through *community supported* regulatory and education efforts that increase awareness and action on protecting drinking water, conservation, the economy, and recreation.”

During the 1970's the Town converted its water sources to three gravel-packed wells, known as the Kokko Well, the Savage Well and the Keyes Well. In 1983 And 1984 the Savage and Keys wells were abandoned due to industrial contamination and replaced with two wells located across from Kaley Park. The Kokko well was taken off-line in 1995 due to high manganese and iron levels. As you can see, the Town has reacted to the many issues that threatened our water sources. Additionally, many residents outside of the immediate downtown area are served by private wells. The Town considers **all** of these water resources to be its most precious natural resource.

The NED Project could impact over 100 property owners in the Comstock, Federal Hill and Federal Pointe developments that are within approximately 400 feet of the proposed route. All are served by private wells and septic systems. As stated in the Milford Master Plan and the 2001 Water Master plan, we need to protect these critical water resources.

Additionally, The residents of the Comstock, Federal Hill and Federal Point neighborhoods should consider petitioning the Town to act as an Intervener on their behalf to preserve the right to comment and challenge decisions. We should also request that FERC conduct site visits to these neighborhoods during the scoping process.

The Pipeline Task Force's primary impact concern is with the residents and property owners in the Federal Pointe neighborhoods near Federal Hill and Ponemah Hill Roads, both are designated scenic roadways. Considering the rural nature of Milford, this is a fairly high density development served by private wells and septic systems. There are also numerous roads in the neighborhood that would have limited or no egress in an emergency. We would ask that TGP research alternate routes that would avoid this area and have less impact to residents.

The Milford Pipeline Task Force approved the letter dated May 6, 2015 drafted by the NH Municipal Pipeline Coalition to our Governor, Congressional Delegation, NH

Senators & Representatives we urge the Town Administration or Board of Selectmen's Representative to sign this letter.

Based on our finding, the impacts to Milford and the minimal benefits to Milford and New Hampshire, the Milford Pipeline Task Force recommends that the Board of Selectmen affirm their opposition to the NED Project.

Additionally, the BOS should request that TNG research alternative routes that would avoid the relatively high density neighborhoods between Federal Hill and Ponemah Hill roads in the event that FERC grants approval to the NED Project.

Finally, this report is a summary of our findings based on the information available as of June 8, 2015. The NED Pipeline review and approval process is ongoing. There will likely be developments, updates and revisions by FERC, TGP, various state agencies, and others as the process continues. Some of these updates and revisions could materially alter the impacts and findings presented in this report. We intend to monitor FERC filings and other NED related information as released. The Milford Pipeline Task Force may provide updates to this report as deemed necessary.

Chapter Two

Town of Milford Pipeline Task Force Charge

Scope

The Task Force shall review the proposal by the Kinder Morgan Tennessee Gas Pipeline Company LLC to install a Natural Gas Pipeline known as the Northeast Energy Direct (NED) Project that will traverse across approximately 3.1 miles of public and private property in the Town of Milford. The project has been filed with the Federal Regulatory Energy Commission (FERC) as Docket # PF14-22-000 and is expected to be filed with the New Hampshire Site Evaluation Committee (NH SEC) as established by RSA 162-H.

RSA 162-H was established to balance the impacts of site selection on the welfare of the population, private property, location and growth of industry, economic growth, the environment, historic sites, aesthetics, air and water quality, natural resources and public health and safety. The SEC serves as a statewide planning board for energy projects to ensure that the construction and operation of energy facilities is treated as an aspect of land use planning in which all environmental, economic and technical issues are resolved in an integrated fashion. The SEC is comprised of the DES Commissioner, The DOT Commissioner, the DRED Commissioner, the Commissioner, Cultural Resources or Director of Division of Historical Resources and two Public Members, one of whom must be an attorney.

General Course of Action

The Task Force shall evaluate available information on the NED proposed pipeline to see if the project complies with the NH Site Evaluation Committee's goals and that the project will not have an unreasonable adverse impact on the Town's aesthetics, welfare of the population, economy, infrastructure, historic sites, air and water quality, the natural environment and public health and safety.

Specifically, the Task Force shall:

1. Identify the various policies and goals identified by the Town and the Nashua Regional Planning Commission as detailed in Master Plans and/or Zoning Ordinances. The Task Force should also identify the specific districts that are established to meet those goals and priorities, i.e. the Aquifer Protection Overlay District, Wetlands Conservation Overlay District, etc.

2. Study the hydrological and/or hydrogeological impacts on wetlands and drinking water sources in the Town.
3. Study the impacts on forestry, scenery and the rural character on the Town.
4. Study the economic impact both in the form of harm and benefit to residential property owners, businesses, and the overall economy for the Town.
5. Study the impacts of the project on Historic Districts and historic sites for the Town.
6. Study the impacts on transportation, bridges and road systems in the Town.
7. Study the impacts on Town safety, security and emergency response systems.
8. Monitor the NH SEC permitting progress and provide updates to the Board of Selectmen.
9. Provide regular reports to the Board of Selectmen on the progress of the Task Force and its recommendations. The Task Force Final Report will be submitted no later than six months from their first meeting.

Structure

The Task Force will be comprised of one member from each of the following:

- Planning Board appointed by the Planning Board Chairman
- Conservation Commission appointed by the Conservation Commission Chairman
- Heritage Commission appointed by the Heritage Commission Chairman
- Traffic Safety Committee appointed by the Traffic Safety Committee Chairman
- Economic Development Advisory Council appointed by the EDAC Chairman
and
- Two residents appointed at large by the Board of Selectmen at their next regular Meeting scheduled for February 9, 2015. One resident should be in favor of the pipeline and one opposed to the pipeline.
and
- Town Administrator

Town staff will provide support and assistance as needed.

Chapter Three

The Need

The Need; Where the Natural Gas is going; and Eminent Domain in regards to Milford.

In order to understand this, it is important to start with the overall picture. So, let us start with what we are using Natural Gas for today and how do we get it. Natural Gas is used for gas generated electrical plants and for heating homes and businesses in the winter. This gas is supplied by importing gas from pipelines, and tankers because we have no ability to provide this gas locally. In fact, not even regionally in New England. The Natural Gas that New Hampshire sees is from that flowing through New Hampshire and into New Hampshire. There is not enough capacity to supply the desires of the New England people, so NH doesn't actually see a lot of Natural Gas actually staying here. For example, in 2014, of the 1232 MMcf/d (Million cubic feet per day) that came through NH, only 232MMcf/d (about 17%) actually stayed and was consumed in NH. The rest went to Canada, Massachusetts, and Maine. Of the gas used in NH, some of it went to Milford in the form of gas used to heat homes and businesses. Also in NH, there are other gas companies that use gas as well as a NH gas generator plant that provides electricity for the NE region. If we look at New England, we had 15,858 MMcf/d come through, with New England using 11,935 MMcf/d and the rest passing through to Canada, Midwest, and the Southeast.

Currently, on peak demand days, we import 40% of LNG that New England uses via the Everett LNG Terminal in Massachusetts. On average it is 20% of our Natural Gas needs. According to the US EIA (Energy Information Administration), our pipelines are at 90% capacity on peak days. So between the two transportation modes (pipelines and tankers), we are at capacity and the need for more transmission lines is there.

The other need factor is that over the next few years, 1368 MWh of electrical generators will retire. If we translate these units into volume then this is 46678.0 therms which in terms of gas would be 4.666695 MMcf. - about a third of the volume of gas we currently use. There are about 7 projects proposed to try and meet this need of which, the pipeline through Milford is one of them. While not all of them need to be approved, a certain number of them do need to be approved. So if the pipeline through Milford is deemed necessary, where will that gas go?

First of all, Liberty Utilities is a local company. While they are headquartered in Londonderry, they serve Milford and Amherst with gas for homes and businesses. Currently there is not enough supply for these towns to expand their natural gas consumption. Liberty is the second largest contractor of supply on the pipeline. It will buy a minimum of 115000 Dth/d. This translates to approximately 1150 MMcf/d. The proposed pipe is expected to provide up to 2.2 Bcf/d but is starting with half that. This

would mean that Liberty, at its minimum buying capacity, has contracted for 1/10 of the initial pipeline throughout. Other NH companies have not been able to do a purchase agreement which is better explained on page 4 of the Natural Gas Whiter Paper found at http://.iso-ne.com/static-assets/documents/committees/comm_wkgrps/strategic_planning_discussion/materials/natural_gas_white_paper_draft_july_2012.pdf

They would certainly utilize the pipeline before using imported LNG from tankers. 40% of Liberty's Contracted amount will be used to reduce customer cost and 60% will be used for growth.

As long as this pipeline is not deemed necessary, eminent domain does not come into play. Who says it is necessary really is not up to Milford, and really not even up to the state. What the state and, to a lesser degree, the town does have some say over is the route, but if the route still winds up going through places we would rather not have it go, we will need to deal with the issues associated with that. One of which, in the case of the pipeline, could be eminent domain easements. So how does this work? It seems that a homeowner or business is actually in a better position to negotiate if they do not bring in the costs associated with fighting the eminent domain easements. Once that is invoked, there is little that the owner can do. There are things that should be considered in either a friendly settlement or in eminent domain cases.

Under eminent domain law, you are entitled to just compensation. What this usually means in pipeline cases (since you will have some use of the land once the pipeline is in) is an eminent domain easement. The value of easements is analyzed by the impact to the surface of the land with the easement in place. Having to keep the land clear of trees or not being able to build something on that land, either now or in the future, would be considered an impact to the surface of the land. If it restricts the use in any way, this is damage to the surface of the land and the owner is entitled to compensation. It seems that often, the severance damages are greater than the value of the easement itself. Another possible negative impact is the perception of the threat of explosions. This is certainly something that more people are considering because of the number of Distributive line explosions. These should not be confused with Transmission line explosions or accidents, but often are, (which according to data from the US Department of Transportation <http://www.phmsa.dot.gov>. is extremely low), That perception seems to temporarily cause a negative impact on the value of the easement and may be considered in the compensation package if an owner is selling during the period of building. For more information about New Hampshire Eminent Domain laws, you can look in RSA Chapter 498.

Mcf = 1.028 MMBtu or 10.28 therms.

1 MMBTU = 10 Therms = 1 dekatherm (dth)

1 MMBTU* 1 BCF = 1 billion cubic feet = 1 million MMBTU*

1 MCF = 1000 cubic feet

Chapter Four

Construction Impacts

Pipeline construction is well regulated by federal and state agencies. All project facilities must comply with FERC and USDOT regulations under the Transportation of Natural and Other Gas by Pipeline: Minimum Federal Safety Standards and Siting and Maintenance Requirements. Additionally, Tennessee Gas Pipeline Company, L.L.C. has stated in the March 2015 Environmental Report, Northeast Energy Direct Project, Resource Report 1, General Project Description that they would comply with The Upland Erosion Control, Revegetation and Maintenance Plan; The Wetland and Waterbody Construction and Mitigation Procedures; Unanticipated Discovery Plan for cultural resources; Waste Management Plan; and typical construction workspace layout drawings.

Despite these regulation and assurances, we must recognize that many construction details are “TBD - to be determined” as noted in the March 2015 Environmental Report, Northeast Energy Direct Project, Resource Report 1, General Project Description (ER RR1). Many of these details will be resolved as surveys are completed and the route, if the project is approved, is finalized. We must monitor the ER RR1 regularly for issues and updates.

During our review of construction processes, we discussed industry best practices with Main Drilling and Blasting Company, Auburn NH and Continental Paving, Londonderry NH. We also worked with the Nashua Regional Planning Commission (NRPC).

Specific Concerns & Recommendations

1. Due to the nature of the construction equipment, materials and supplies required for pipeline construction, the Town should require that Tennessee secure the required Town permits and bond all roads, bridges and railroad crossings for damages caused during the construction process. See Milford “Street Opening Permit Instructions”, Attached.
2. The pipeline at all road and railroad crossings completed with either standard open cut or conventional boring methods should be protected within a tube that extends under the entire roadway including shoulders.
3. The current route passes through densely populated residential neighborhoods near Federal Hill Road. There are numerous cul-de-sacs and roads that the

proposed pipeline route would intersect leaving limited or no access and egress in case of emergency.

4. Tennessee is evaluating corrosion protection systems including fusion bonded epoxy coatings, abrasion resistant overlays (ARO), concrete coatings, cathodic protection systems, etc. We must monitor their progress on these systems and set an expectation that the best system(s) be utilized in high consequence areas (HCAs), adjacent to the high voltage electric power lines, through sensitive environmental areas, through steep slopes and through rocky terrain.
5. The proposed route between Federal Hill Road and Ponemah Hill Road should be considered a Class 3 location. Tennessee will be using remote controlled valves (RCVs) as part of the NED design and should strategically locate these RCVs and sectionalizing block valves to protect residents. Block valves have a means to vent the pipe to reduce the internal pressure in an emergency situation. Class 3 locations also require an increase to pipe wall thickness. Class locations are categorized by the extent and type of development within the boundaries and are detailed below:
 - Class 1. Locations with 10 or fewer buildings intended for human occupancy.
 - Class 2. Locations with more than 10 but fewer than 46 buildings intended for human occupancy.
 - Class 3. Locations with 46 or more buildings intended for human occupancy or where the pipeline lies within 100 yards of any building or small, well-defined outside area occupied by 20 or more people during normal use.
 - Class 4. Locations where buildings with four or more stories above ground are prevalent.
6. The proposed route would directly impact the private drinking water wells and private septic systems of 32 residential properties within 300 feet of the pipeline. There are 185 residential properties within $\frac{1}{4}$ mile of the pipeline and 392 residential properties within $\frac{1}{2}$ mile of the pipeline all served by private wells and septic systems. Ledge and rocky soil conditions may require blasting, drilling and heavy excavating. Tennessee must inspect and document wells, septic systems (including leach fields) and building foundations for quality and serviceability for all property owners located within $\frac{1}{4}$ mile of the pipeline prior to and during construction, maintenance and operation of the pipeline. Drinking water should be checked quarterly for any change in quality or flow during the first year of pipeline operation. Property owners should be compensated by Tennessee for all

costs associated with any change in quantity or quality of drinking water, any damage to septic systems or foundations and “made whole”.

7. Many residents along the proposed route have mature trees that block the view of the high voltage power lines from their homes. Tennessee should work with homeowners to select and then plant fast growing trees to restore this tree lined border.

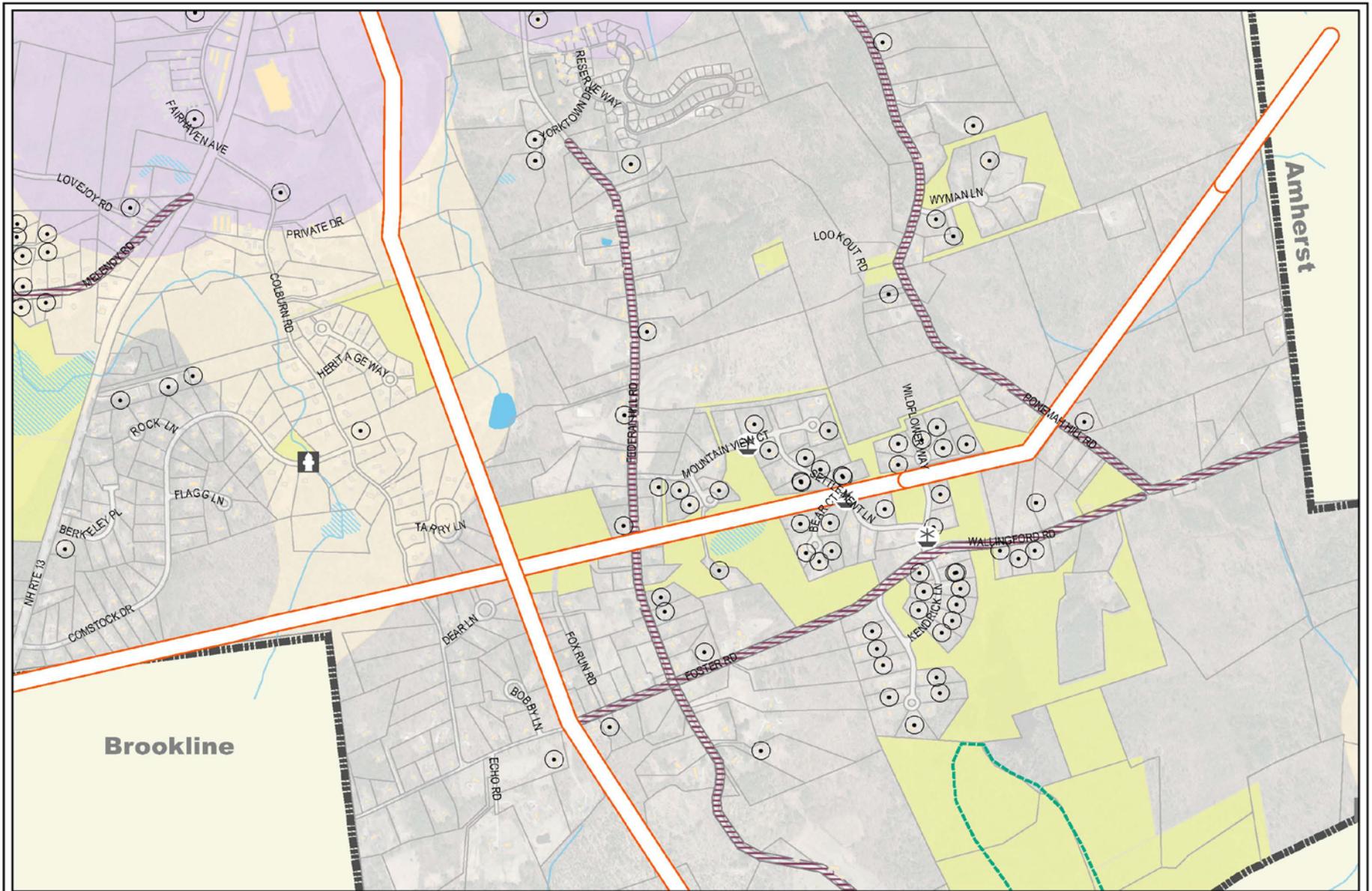
NOTE – The map on the following page clearly shows the roads, neighborhoods and private wells that will be impacted by the NED Project.

An alternate thought regarding surveys - From the law offices of Carolyn Elefant

“Refusing to let a pipeline come on your property for surveys won’t do much to deter the project. Most pipeline companies allocate millions of dollars for the certification process and have already factored in the cost of dealing with uncooperative landowners. Moreover, by denying access, you may hurt your own interests, because the company will go ahead using the best available information and assumptions. As a result, the pipeline may choose a route that places the pipeline closer to your residence than you might have preferred or requires removal of trees because the pipeline was unable to perform an accurate survey due to lack of access.

Understandably, from a landowner’s perspective, granting access to a pipeline company is the equivalent of sleeping with the enemy. And many companies are notorious for abusing the privilege of access, which is why you should memorialize any terms of access in a written agreement you sign with the company.

Nonetheless, if you feel strongly about keeping the pipeline off your property, you have the right to do so unless (1) the pipeline already has access to the property via an existing right-of-way or (2) state law empowers the pipeline to gain access. In addition, once FERC issues a certificate, your ability to object to access diminishes because the pipeline can simply go to court to condemn the necessary property.”



-  Buildings
-  Level 1 Protection Area
-  Scenic Roads
-  Level 2 Protection Area
-  Open Water
-  Sanitary Radius
-  Wetlands
-  Conservation Land/Other Protected Land

-  Cistern
-  Dry Hydrant
-  PSNH Easement
-  Approximate Location of Residential Well

TENNESSEE GAS PIPELINE NORTHEAST ENERGY DIRECT PROJECT

March 2015



Street Opening Permit Instructions

The following steps **SHALL** be completed

BEFORE submitting your application.

1. Application must be filled out completely; submit completed application along with payment of \$55 to the Public Works Department – 289 South Street or it will not be processed.
2. Provide sketch/plan of work to be done.
3. Provide Certificate of Insurance if not already on file with DPW.
4. Provide road bond - \$5,000 per job, \$25,000 for blanket coverage or as deemed appropriate by the Director of Public Works.
5. Should construction possibly interrupt traffic/pedestrian traffic, a traffic control plan must be submitted with the application. The traffic control plan will be submitted to the Chief of Police or his designee for review and approval/denial by DPW.
6. If the Chief of Police or his designee determines that a traffic control officer is required during construction the applicant shall be required to contact the police department for the proper coverage and procedures associated with detail coverage.
7. All costs associated with a traffic control officer shall be the responsibility of that applicant to be paid to the police department.
8. DPW will notify all departments for their approval.

9. **NO WORK** is to be performed without an **approved Street Opening Permit**.

Chapter Five

Economic Impacts

While much of what is presented in this dissertation is speculative at best, we have tried to anticipate possible economic impacts on the community of Milford based on information that we have discovered independently or information that has been made available to us. Referring to language in the document titled *Pipeline Task Force Charge*, “that the project will not have an unreasonable adverse impact on the town”, and specifically focused on “the economic impact both in the form of harm and benefit to residential property owners, businesses and the overall economy of the town”, the following is submitted for consideration:

TAX ADVANTAGE:

One “given” that has been considered is the projected tax revenue that will be generated. Based on the current 3.1 mile route of 36” inside diameter pipe as has been proposed, it is anticipated that the “owner” of the pipeline will be assessed an estimated \$428,000 to install the pipeline in the town. According to the Town Administrator, the property tax revenue would have to become part of the general fund – shared proportionately between the schools & town. Though the amount of this assessment may vary over the years based on valuation and other factors, it is anticipated that this revenue source would continue in perpetuity.

JOBS:

There has been speculation recently that the Milford community might experience increased employment opportunities directly related to this project. Whether short-term OR long-term, it now appears that this might NOT be the case. Apparently the company has entered into agreements in Massachusetts stipulating that only union labor will be used in the construction of the pipeline. How pervasive is this stipulation? It seems highly doubtful that the company will be seeking employees or even sub-contractors in this community to complete the work associated with this project. It has been further “suggested” that small businesses (restaurants, corner stores, etc.) would reap economic benefit as construction workers would be in the community to purchase food and other personal needs. While extremely difficult to quantify, suffice it is to say that this potential impact would appear to be minimal at best and extremely short-lived. It would not appear that local businesses would likely need to “hire” additional staff to accommodate. In the longer term, it might be anticipated that more plentiful supplies of natural gas and perhaps lower overall energy costs could possibly have a positive

impact on jobs and job development in Milford? One additional speculation might include a discussion of whether job growth in the surrounding communities (according to KM, both a compressor station and a metering station will be located somewhere in Hillsborough County) would have a positive impact on the employment opportunities, or related economic advantages for Milford, including increased sales of residential properties / possible small business start-ups?

CLEAR CUT / TREE REMOVAL:

It has been estimated that perhaps as much as 55 acres of forest would need to be clear cut to accommodate the construction zone that would be required to construct the pipeline. While it might be reasonable to expect that local companies could possibly be contracted to complete this phase of the project, this is yet another area of speculation. An additional question that has been raised on this topic is the disposition of the “timber tax” as well as what will become of the trees that are removed. Could this be a source of some financial gain for the town or individual residents that have trees removed from their properties?

PROPERTY VALUES:

The question of what happens to property valuations for property owners in the vicinity of the pipeline has been open to great debate. While nobody has asserted that there is a major positive impact on individual properties, there is conflicting information as to whether property values decline or whether there is negligible impact. Related to the question of property values is tax impact. It has not been determined exactly how or if individual property owners would be “compensated” for real estate “lost” to the project when tax rates are calculated. There is also speculation that individual property owners would pay “income” tax on any payments that they would receive from the company as payment (rental income) for property that is traversed by the pipeline.

REAL ADVANTAGES FOR MILFORD:

It is projected that Liberty Utilities will deliver between 5 - 10 % of the “capacity” of the NED project directly to its customers throughout New Hampshire as a whole (NOT specifically Milford). It is possible that Liberty Utility customers could see a reduction in natural gas prices as a result of this project. Might there be other developers to eventually take advantage of the increased capacity available from NED? Kinder Morgan suggests that this project could save New Englanders 3 billion dollars a year in energy costs. It is further suggested that gas from the NED Project would afford electric utilities the option to build gas fired generation plants to replace coal fired, oil fired or nuclear plants? The numbers are difficult to comprehend. Has an adequate study been conducted to determine that energy prices will go down and by how much to substantiate the claims of the company? The question continues to be whether this is

the right-sized project at the right time for the region. Who else gains economically from the project at what “expense” to the towns and residents? While it may be nearly impossible to accurately quantify a great deal of DIRECT “economic impact”, it appears equally as difficult to adequately define “unreasonable adverse impact”. Again, there seems to be far more speculation than factual data to consider.

While perhaps beyond the scope of the task force as constituted, and realizing that there are significant costs associated with these as well, another question to consider is whether the town would be better served economically and environmentally/ecologically pursuing alternative and renewable energy options as opposed to this proposed project?

Chapter Six

ENVIRONMENTAL IMPACT

Purpose and scope

Summary conclusions

Construction information status at time of writing

General Description of Route from an environmental perspective

Existing Land Protection and Land Types

- *Wildlife Habitat Land Cover along the Powerline ROW*
- *Wildlife Habitat importance along the Powerline ROW*

Ecological costs and benefits of ROW clearance

- Short Term
- Long Term

Recommendations

Follow-up Activity

Drinking Water Quality

APPENDIX Specific sites of note along the ROW

Purpose and scope

The purpose of this section is to review the environmental impact of the proposed pipeline construction within the environs of Milford, addressing the site impacts both during construction and beyond. It does not address environmental issues that are regional or global in scope, such as climate change, or other topics relevant to the existential justification for pipeline.

Comments here are based on information available at the time of writing. While it is known that Tennessee intend to “co-locate” the pipeline along the powerline corridor that runs across the southern part of Milford, at this time no detailed information is available on exactly what “co-location” means; will it be wholly or partially within the powerline ROW (Right Of Way) or wholly outside? What information there is leans toward the latter. There is also no any site-specific data such as wetland crossing methods and erosion control. When Tennessee release their more detailed route and site information these will then be assessed by the Task Force and/or Conservation Commission.

The environmental review of information here is approximately of a level commensurate with the review of any development in Milford at an equivalent tentative stage i.e. when general plans are known but site specifics are not available.

Summary conclusions

In the long-term the ecological impact of pipeline construction will be little different from a logging operation with the exception that succession will be permanently prevented along the 50' ROW.

The Dadoly property and the Federal Point easement are areas set aside for permanent conservation. If the Pipeline is routed through those areas, it would constitute a breach of promise inherent in the set-aside of those areas from further development. It could be argued that timber operations are relatively routinely conducted on conservation lands, and therefore there is precedence for such activity. However once those operations are completed, all the land is allowed to revert back to forest. This would not be the case for pipeline where a minimum 50'-wide strip centered on the pipe would be kept clear.

From an environmental perspective the only major difference between this and a residential or commercial development proposal on previously undeveloped land is that wetlands must be crossed below ground rather than above. Other than that, development of undeveloped lands in most of Milford all carry similar impacts i.e. temporary and/or permanent deforestation, access road creation, stormwater drainage management both during and after construction, soil and wildlife disturbance, water pollution arising from local chemical treatments (herbicides, lawn fertilizers etc.). In many ways residential and commercial development is more disruptive. Once pipeline construction is complete, and if construction has been carried out with best practice, the areas affected will revert, albeit over decades, to their previous state with the exception of the 50' cleared strip, and even that will re-vegetate. Compare this with a residential or commercial development, which adds permanent non-porous surfaces, wildlife casualties due to road traffic and loose pets (cats, dogs), nitrogenous runoff due to landscape treatments, daytime noise and nighttime illumination that significantly alter wildlife behaviour. Note that the above comments are not advocating for the pipeline, merely pointing out that other less controversial development has as much, if not more, environmental impact per acre of disturbance than the post-construction effect of the proposed pipeline.

With that being said, the considered opinion of the author is that if best practices are observed during the construction phase, then while there will obviously be major short-term impact from tree removal, ground clearance for machinery access, digging and noise, the long-term environmental impact of a pipeline installation as current plans locate it i.e. immediately adjacent to the existing powerline ROW, will be minor if there is any long-term impact at all,.

The above summary comments should not be seen as a detraction from the real concerns of Milford residents living close to the proposed route. While both the nature of the construction being done, if timed correctly, is in all probability, not ecologically significant in the long-term, that is only because we as humans do not largely consider temporary and recoverable disruption to non-human species as an issue. However animals and plants do not have to concern themselves with property values, blight, or the potential safety hazards of the pipeline.

Construction information – state of current knowledge

As best understood at the time of writing the proposed Pipeline route is parallel, and immediately to the southern side of, the existing powerline cut [1].

- Only a maximum of 20' width of the existing cleared powerline route will be used.
- The permanent cleared width for the pipeline will be 50' centred on the pipe (i.e. 25' on either side)
- The construction phase will require a 150' wide swath, assumed to be centred on the power line.

The above leads to the conclusion that construction will likely require a 130' wide clearance added to the edge of the existing powerline route. A 130' strip over the 3.2 miles that the pipeline travels through Milford is an area of 50 acres, implying a required timber cut of up to that acreage.

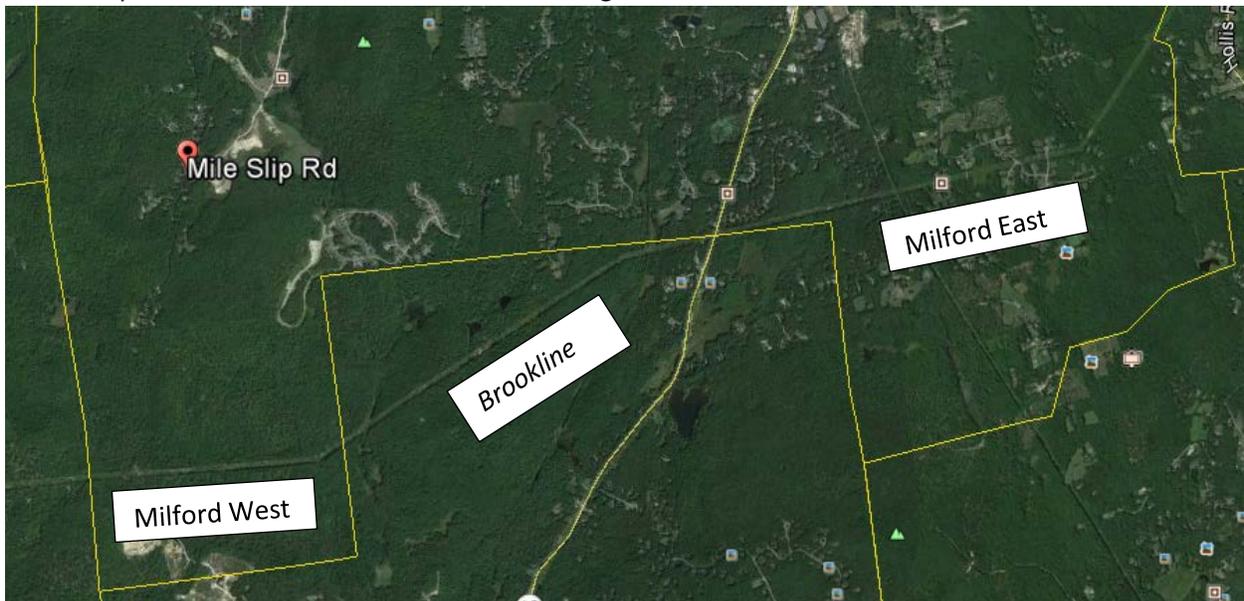
Assuming the 50' strip of permanent clearance is wholly outside the existing powerline ROW, then that means a permanent loss of 21 acres of forest to open land.

It is not yet known if any access roads will be required that do not lie along the proposed pipeline ROW.

At the time of writing it is not known what technique will be used to cross each of the affected wetland areas in Milford [2]. Tennessee have declared they will identify these in a future filing.

General Description of Route from an environmental perspective

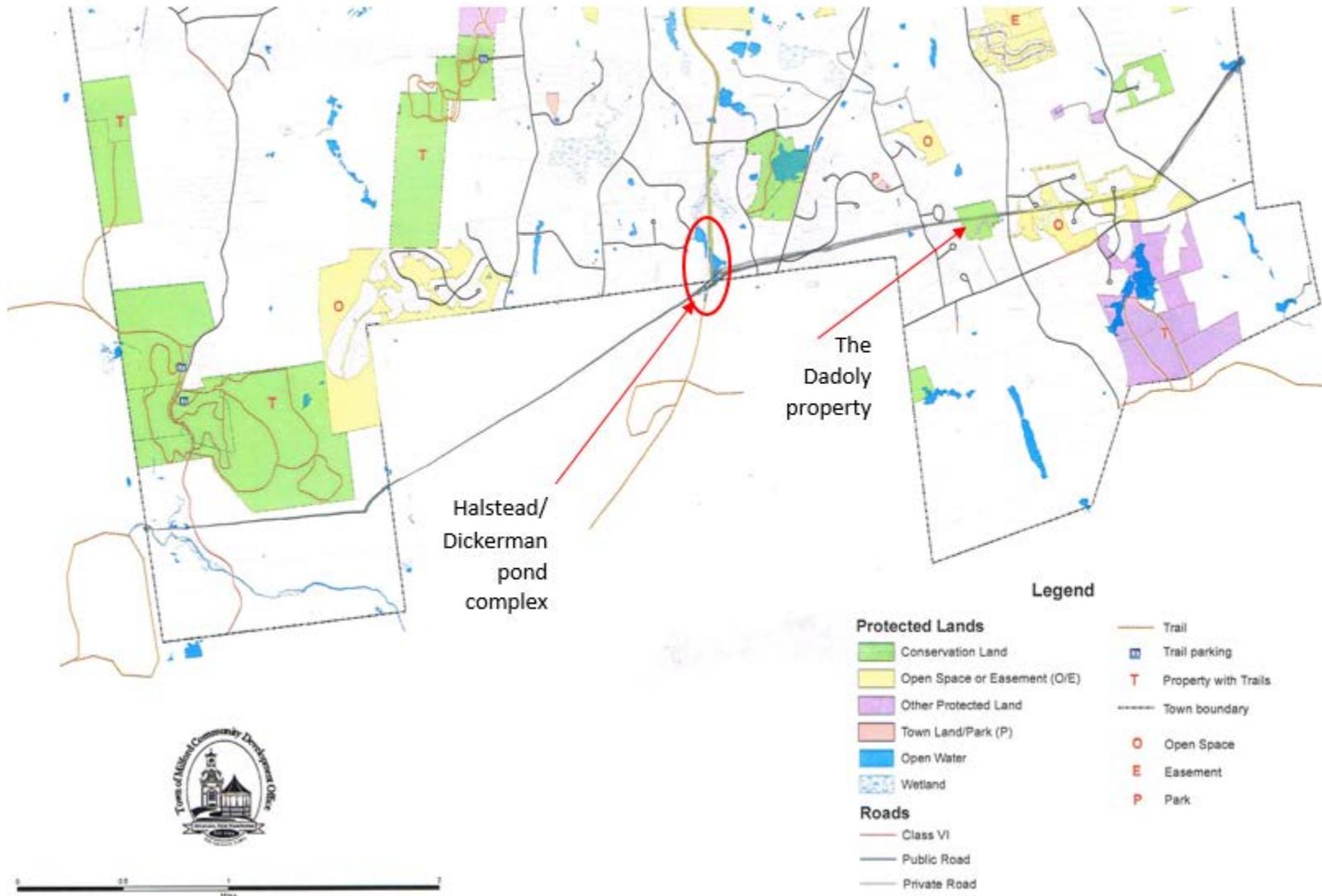
The pipeline is proposed to be “co-located” with the existing powerline ROW that runs through the southern portions of Milford, as shown in the Google Earth view below.



The route traverses mostly dry upland forested areas. The Milford-West portion has no residential properties near it. The same cannot be said for much of the Milford East portion. The route also crosses three wetlands in Milford, plus another just on the edge of the Milford-Brookline border. These sites are discussed in detail in the Appendix.

Existing Land Protection and Land Types

The map below shows protected lands in the southern part of Milford (as of 2012). The pipeline is drawn as a grey/black line.



As can be seen, the powerline route crosses or falls along several areas of conservation interest:

- Two streams and small open water areas at the western edge
- The southern-most edge of the Halstead/Dickerman pond complex located at the intersection of the powerline with the Milford-Brookline border (map center).
- The Dadoly property, a forested sloped area west of Federal Hill Rd. Note that this is the only land owned by the town that the route crosses.
- The center of the Federal Point development area, a lot owned in common by the area residents.
- The open water area where the powerline crosses the Town's eastern border.

In addition, and not marked on the map above, there is a marsh wetland immediately south of Coburn Rd. There are two streams feeding it from the south side of the ROW, at least one vernal pool on the south side of the ROW, and a ~900 sq.ft body of open water immediately to its north.

Wildlife Habitat Land Cover along the Powerline ROW

The map below, created by the NH Fish and Game Department, shows Wildlife Habitat Land Cover in the area of Milford of the proposed route. The powerline ROW is marked by a white-beaded line. The pipeline route runs through a mix of Appalachian oak-pine forest and Hemlock-hardwood pine, with the former dominating in the western section, and the latter dominating in the eastern.



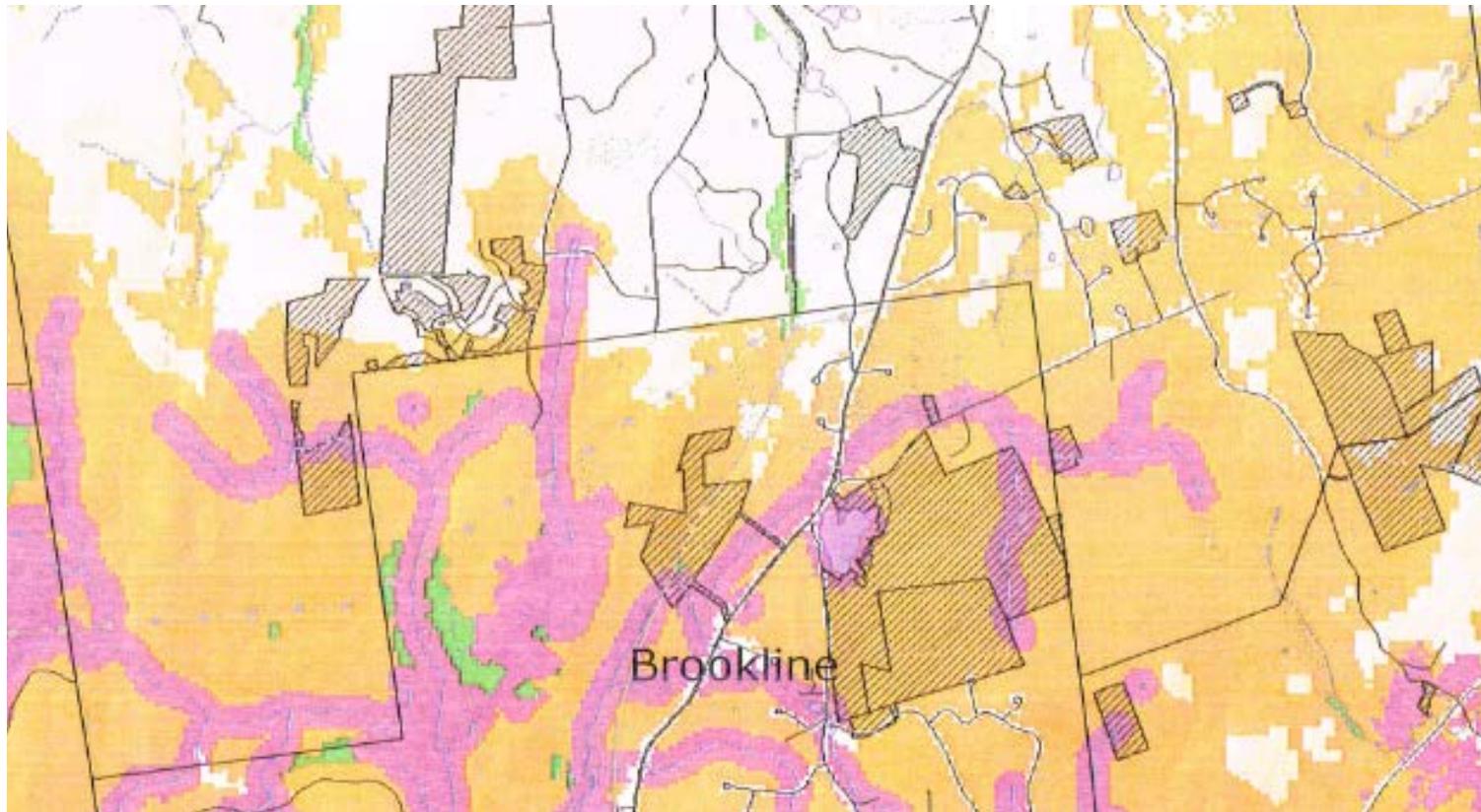
It is worth mentioning that south-western New Hampshire is the northern-most extent of Appalachian oak-pine forest that, as its name implies, is more characteristic of the forests further south in the mountain areas that form the Appalachians.

Wildlife Habitat importance along the Powerline ROW

The map below, created by the NH Fish and Game Department, shows Wildlife Habitat, ranked by importance, along the proposed route. The powerline ROW is marked by a blue-beaded line.

**2010 HIGHEST RANKED
WILDLIFE HABITAT BY
ECOLOGICAL CONDITION**

- Highest Ranked Habitat in NH
- Highest Ranked Habitat in Biological Region
Biological region = TNC ecoregional subsection
for terrestrial habitats or watershed group for
wetlands and forest floodplain.
- Supporting Landscapes
- Conservation land



In the west of the Western section the ROW traverses an area of highest ranking. This is a stream with surrounding forest riparian habitat.

Where the pipeline runs just south of the Milford border with Brookline, it crosses the stream supplying the Halstead/Dickerman pond complex and skirts the southern tip of the wetland. That complex is ranked as of Highest importance.

It can readily be seen that the Highest Ranked Habitats are riparian. Over almost all the rest of its route, the powerline POW traverses 'Supporting Landscape' that supply the waters to those riparian systems.

Any construction work undertaken along the entire route must include measures to prevent:

- flow of exposed and excavated material off the construction zone
- changes in water flow patterns off construction zone site, as compared with pre-existing conditions
- ensure no long-term erosion issues resulting from the construction
- No disposal or leakage, of contaminants (e.g. machine oils)
- Any permanent alteration in wetland drainage
- Soil compaction in wet areas
- Accidental introduction of invasive species. This problem can be particularly acute in areas of water flow as this introduces the possibility for colonization of the species along the all the downstream length from the point of introduction.

Ecological costs and benefits of timber clearance

Short Term

The immediate loss of forest by clearance for construction will (obviously) result in the loss of that habitat type, resulting in loss of associated breeding habitat and forage for forest animals and birds and, in the vicinity of wetland, upland winter habitat for amphibians.

It is recommended that timber clearance work should not be performed during the bird breeding season of mid-March to July to avoid nestling mortality due to nest destruction.

If construction work at wetland crossings coincides with springtime amphibian breeding cycles it will likely result in significant decline or even complete failure of breeding activity. However the populations should recover at the site in the years following construction, assuming best construction practice prevents permanent damage to the wetlands both onsite and downstream.

Long-term

After construction is complete, then assuming the general description of pipeline ROW described in the 'Construction information' section, there will be gradual reforestation (tree growth)

- a) Of a 50' strip from the far edge inward
- b) Of a 30' wide strip between the pipeline and the powerline

The reversion to forest of the temporary 80' clearance width {150 - (20 +50) } required for construction will result in successional habitat that will benefit a range of plants and creatures. The succession will take places over several decades.

Successional habitat is important for many animal and bird species. Examples of such species are Eastern Towhee, Ruffed Grouse, American Woodcock, New England Cottontail, and Bobcat. This ecological species group have suffered declines in population in New England as a successional re-forestation of previously cleared farmland is now largely complete.

Fragmentation of habitat through clearance has resulted in the decline of some forest-dwelling species. However in this case, since the cleared corridor already exists, the widening of the strip is unlikely to have any significant effect.

If there is a 30' 'median' strip between the powerline and pipeline it would provide additional edge habitat which is useful to many species. It would also be beneficial, in comparison with the case of a permanent widening of the powerline cut, by providing mid-distance cover to species crossing the 'power line + pipeline' path, increasing their chances of crossing without being predated.

RECOMMENDATIONS

General

- To minimize disturbance the entire pipeline and its associated work area should be located wholly within the existing powerline corridor. It is the opinion of the author, a professional electrical engineer, that the installation can be engineered, and construction executed, to locate the pipeline within the current powerline ROW. It may cost more to do this but that is not the concern of this report.
- The current plans do not call for any significant above-ground installations in Milford. Should this change the Taskforce should review the new proposal.
- Once the detail of exactly where the pipeline is centered, and the working strip is known, a survey should be conducted along the entire length to identify any and all wetlands and vernal pools that may be impacted.

Construction phase:

- Timber removal for the project should not take place within the avian breeding season i.e. from mid-March through end of July. To do so would result in destruction of nests and mortality of nestlings directly through nest destruction or indirectly through abandonment by the brooding adults due to gross disturbance.
- Amphibians as a whole are suffering declines at all geographic scales. The creation of wide clear open access routes liable, on warm wet spring evenings both to attract breeding adult amphibians to use the open exposed areas for vocal display, and to leave them vulnerable to injury or death by passing vehicles when they attempt to traverse from their upland wintering sites to nearby wetlands to breed. Any construction activity occurring during spring should cease from dusk till dawn to avoid mortality of amphibian species.
- Flow of exposed and excavated material off the construction zone must be prevented.
- Water flow patterns off construction zone sites should not change compared with pre-existing conditions.
- No disposal or leakage, of contaminants (e.g. machine oils) into the soils. Any spills should be promptly cleaned up. A plan should be prepared by the Tennessee/Kinder Morgan defining how to deal with accidental spillage of hazardous substances.
- Soil compaction in wet areas must be avoided.
- There is a risk of accidental introduction of invasive species. This problem can be particularly acute in areas of water flow as this introduces the possibility for colonization of the species along the all the downstream length from the point of introduction. When equipment is brought into Milford that could carry invasive species' seeds or eggs, such as could be transported tire treads, tracks of tracked vehicles, digging equipment (e.g. excavator buckets), or just the muddy deposits on vehicles, the contractor should undertake to ensure the vehicles are thoroughly cleaned of such deposits before entering Milford.
- Whenever the construction process requires abstraction of water from, or discharge of water to, a local water body, there is a risk of introducing invasive species. When such actions are planned, the Conservation Commission should first be consulted to ensure that local interest is protected.

- In the event of any permanent soil displacement, the contractor shall ensure that if it is to be disposed of on the ROW, then it will not adversely affect water drainage.

Post-construction phase:

- Kinder Morgan, or whoever's responsibility it is to guarantee the environmental integrity of the projects should guarantee to repair any disruptions in natural water flows arising from terrain modification, modifications to underground water flow including, but not restricted to, blasting.
- There should be no permanent alteration in wetland flow or drainage after construction.
- Ensure no long-term soil erosion issues resulting from the construction
- Herbicides or other chemical treatments for vegetation control should not be used anywhere. All clearance should be mechanical.
- Where possible post-construction revegetation should be allowed to naturally reestablish itself. Where slopes are such that they must be re-seeded quickly to prevent erosion, the Conservation Commission should be consulted on the the seed mix to be used.

FOLLOW-UP ACTIVITY

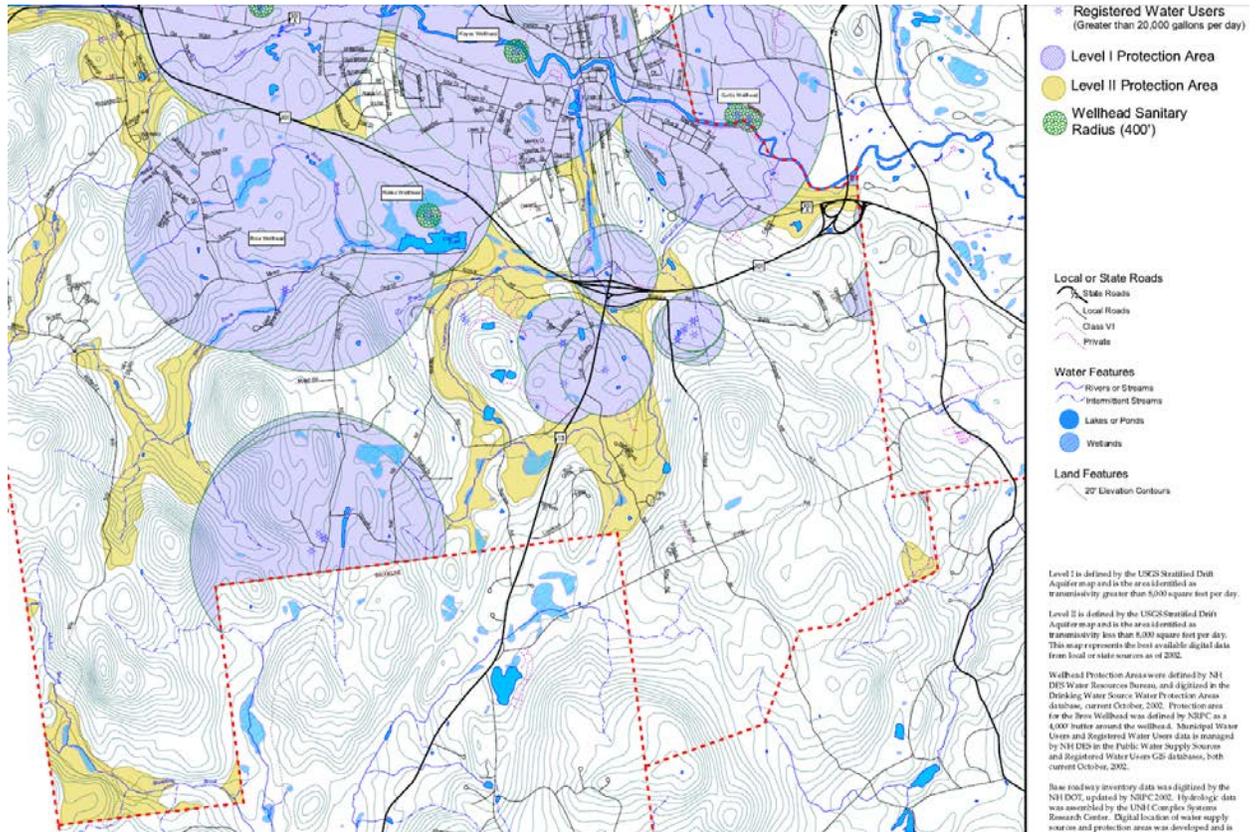
If and when detailed site plans become available for proposed pipeline, The Conservation Commission will examine them using the criteria with which they review all development proposals brought before them, paying particular regard to all aspects of proposed activities that impact water, wetlands and their buffers. The Commission will make further recommendations based on those reviews.

REFERENCES

1. Tennessee Gas Pipeline Company LLC, Northeast Energy Direct Project section maps, created by Hatch Mott MacDonald (Holyoke MA), revision date 11/17/2014
2. Tennessee Gas Pipeline Company LLC, Northeast Energy Direct Project (FERC Docket# PF14-22-000), Draft Environmental Report, Resource Report 1 'General Project Description' sects 1.3.2.7 (Wetland Crossing Construction, p.1-68) & 1.3.2.8 (Waterbody Crossing Construction, p.1-69)
3. Natural Resources Conservation Service, "Early Successional Habitat", Jan 2007 #41 (http://www.nrcs.usda.gov/Internet/FSE_DOCUMENTS/nrcs143_010001.pdf)

WATER QUALITY

Below is a map of the southern portion of Milford showing the Groundwater protection areas. The pipeline impacts two short sections of Level II Protection. Although not shown on the map below, it also impacts a Level I Protection Area that extends into north Brookline.



RECOMMENDATION:

It is unknown what effects if any the construction will have on residential and municipal wells. It is recommended that Tennessee/Kinder Morgan:

- pay for well inspections, for all landowners with wells within a ¼ mile radius of the pipeline ROW, to have water quality testing conducted on their wells shortly before commencement of construction work in their area, so that any change in water quality during or after construction can be more confidently attributed to the pipeline construction. They should also undertake to pay for quarterly testing over the 12 months following completion of construction, to detect any changes.
- If water quality is impacted by the work, either temporarily or long-term, Tennessee should agree to make good the situation, a) providing clean water supply until b) the situation is permanently corrected, and c) providing just compensation for the inconvenience caused and any harm done arising from the diminution in water quality.

-

APPENDIX

Specific sites of note along the ROW

Milford West Section

As can be seen below the Pipeline in route in the Milford West section traverses forest land devoid of residential development. Note that the cleared area toward the western end of the route is where Mile Slip Rd, a Class VI road at this point, meets the pipeline.



In this section The ROW crosses through forest of Appalachian oak-pine forest with some Hemlock-hardwood pine.

In more detail at the western edge, there is wetland present just west of the Mile Slip intersection as highlighted below. This is highlighted in the previous 'Land Protection' and 'Wildlife Habitat Ranking' maps shown previously and in the Groundwater protection map (shown later).



Note in particular the presence of wetland even within the existing ROW (at 42°46'37.5"N, 71°42'45.0"W), on the northern edge of the existing powerline route just east of the powerline intersection with Mile Slip Road. – see photos below.

Google Earth aerial view – wetland area highlighted

Ground view: (looking west from cleared area at Mile Slip Rd exit)



This is only wetland area on the western section. The rest of the route in that section is undulating upland dry forested terrain.

Milford East Section

In general the ROW traverses almost entirely Hemlock-hardwood pine forest throughout this section, with a few short stretches of Appalachian oak-pine.



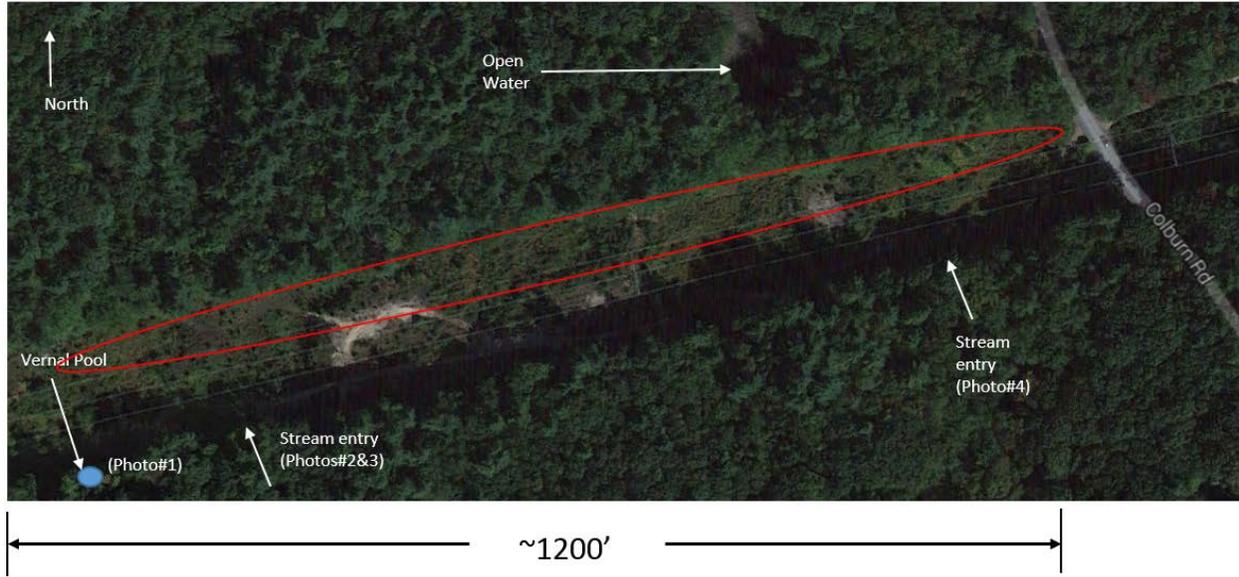
The Halstead/Dickerman pond complex (photo left)

As the ROW reaches its eastern crossing from Brookline into Milford crosses the southernmost tip of the edge of the Halstead/Dickerman pond complex – see left.

The water flow is northward. Although the ROW is not within Milford, pipeline construction in that area is obviously of concern. Any significant disturbance to the water flow or adverse effects on water quality (e.g. elevated silt levels) has the potential to impact the wetland complex.

South of Colburn Road

There is a marsh wetland immediately south of Coburn Rd, with two streams feeding it from the south side of the ROW. One vernal pool has been identified on the south side of the ROW, and a ~900 sq.ft body of open water immediately to it's north. Their locations are marked on the map below, as the locations and viewlines of the photos that follow.



Photo#1



Photo#2



Photo #3



Photo #4



The Dadoly property

This is a 15 acre property, located immediately west of the intersection of Federal Hill Rd and the powerline ROW. The property is wholly forested, except for the ROW, being a mix of Appalachian oak-pine forest with some Hemlock-hardwood pine, and is protected by a Conservation Easement. There is a small wetland, with the characteristic cat-tail rushes, approximately half way along the route. The property has a steady slope running downhill in a northwesterly direction and there is a watercourse (in blue below) that runs in that direction through the property.



Below is a view from the powerline crossroads, toward the southeastern corner of the property, looking up the ROW to Federal Hill Rd.



The common undeveloped lot through the Federal Point development

The pipeline crosses a lot through the Federal Point development which is held in common by the area residents.

Though there is an indication, from the aerial view, of a probable wet area, the residents had requested that no members of the Taskforce enter this area. Therefore it was not possible to verify the presence of a wetland and consequently no comments are proffered here of any wetland impact of the pipeline on the environment in that locale.

Wetland at the very eastern edge of Milford

Just inside the easternmost intersection of the powerline ROW with Milford town border there is a small area of open waters.

It was not possible to verify this wetland through a site visit as the access point on Ponemah Hill Road was fenced off but the wetland it is identified on the 'Land Protection' and 'Wildlife Habitat Land Cover' maps shown previously, and in the Groundwater protection map (shown earlier).



Chapter Seven

Safety Impacts

With the major shift from oil and coal to natural gas, new sources of gas are being pursued to generate electricity across the country, including New England. With this shift come proposals of new gas transmission lines to supply the gas such as the Kinder Morgan NED project. These new transmission lines transverse the countryside and in the case of NED, is proposed to cut through the town of Milford, NH.

Like all volatile gases and liquids, the natural gas carried through NED pipeline poses additional risks to the community. Currently Milford does have several locations in both the eastern and western areas of the town that store hazardous and volatile substances, such as large quantities of propane and home heating oil, therefore Milford is not without risk. The NED Pipeline without question does raise that risk substantially which will require careful planning to mitigate such risk as much as possible.

It is critical the community and first responders understand the level of risk the NED Pipeline poses, and work closely with Kinder Morgan to mitigate those risks.

The Town of Milford needs to be fully engaged in the planning and coordination for any emergencies pertaining to the operation of the NED Pipeline. Federal regulations require pipeline operators to develop response plans and share them with first responders of the communities that the pipelines reside. These plans define the procedures by which the pipeline operator and the community's first responders will interact and handle the emergency at hand. It is imperative that Milford's first responders (Fire, Police, and EMTs) participate in the development and refinement of these plans. There needs to be a clear and unmistakable understanding of the roles of Kinder Morgan personnel and Milford's first responders during an emergency. Once the plans are finalized there should be an agreed upon schedule as to when the plans are jointly reviewed and a determination made if any changes are necessary in the execution of the safety and emergency response procedures for the NED pipeline.

Federal regulations require natural gas pipeline operator's plans to include information on the required equipment, training, and personnel required in emergency scenarios. Milford should obtain this information and review to determine if any gaps within Milford's first response teams exist. Plans should be drafted on what needs to be done to close these gaps. It is recommended that any costs associated with closing these gaps should be borne by Kinder Morgan. This includes any specialized equipment, training material, and training time required from Milford's first responders.

Milford Fire, Police, EMTs should collectively agree on the frequency of required training delivered by Kinder Morgan (Annually, Semi-annually). The town's first responders should also establish, as part of the emergency procedures, the communication path between them and Kinder Morgan and the definition of the types of events which trigger

communications and level of response by the Milford first responders to ensure preparedness.

Information regarding system specific characteristics of the NED Pipeline should be made available to the town officials by Kinder Morgan. This information such as pipeline size, pressure, access points, etc. can be used by Milford's first responders to plan for emergencies that may occur.

As the proposed NED Pipeline traverses through many southern New Hampshire communities, it would be advantageous for the Milford first responders to collaborate with other area towns to share and coordinate emergency plans to assist in the case that mutual aid is needed.

Chapter Eight

Historical Site Impact

In review of Historical Sites and how many may be impacted by the prospective route through Milford, NH, area, it is noted that both Federal Hill Road and Ponemah Hill Road will be impacted.

The total impact is to be determined, but particular concern is the stonewalls bordering Ponemah Hill Road. It is recommended that the stonewalls be rebuilt using the original stones to the extent as best possible.

There are other historical sites that are presently considered “low risk”, but should be alternate pipeline routes or construction activities, ie: blasting, digging, heavy equipment movement, tree removal, etc, there is concern for both short and long term possible impacts.

<u>Impact</u>	<u>Site</u>	<u>Location</u>
High	Ponemah Hill Rd	Pipeline to cross road; stonewalls
Low	Ponemah Hotel	Carriage house cornerstones-1/8 mile from pipeline route
Low	Former area Milford Spring Co.	Former Ponemah Hotel site
High	Federal Hill Road	Pipeline to cross road
Low	Moses Foster Homestead	Federal Hill Road-1/4 mile from pipeline route
Low	Daniel Goodwin House	Federal Hill Road-1/4 mile from pipeline route
Low	Foster Road	Foster Road ¼ mile from pipeline route; stonewalls
Low	Nehemiah Barker Homestead	Foster Road-1/4 mile from pipeline route
Low	James Johnson House	Ruonala Road-1/4 mile from pipeline route
Low	Former town of Monson	Traverse small portion of former town (Monson Place)

Milford, NH Town Questions
Kinder Morgan Responses
April 2, 2015

1. How does KM plan to address contamination of surface and ground water from blasting emulsions and compounds from drilling, blasting, rock crushing and excavation using heavy equipment?

Response:

Tennessee has engineering and construction standards that address these issues. Construction procedures and standards are discussed in the draft Resource Report 1 (General Project Description), provided in the March 13, 2015 filing of the Environmental Report (http://www.kindermorgan.com/pages/business/gas_pipelines/east/neenergydirect/ferc.aspx).

Tennessee does not anticipate the Project to have any impact on groundwater or surface water quality or supply. Further details can be found in Resource Report No. 2 (Water Use and Quality). Resource Report No. 6 (Geological Resources) contains additional details on blasting impacts and mitigation measures.

2. What is done with ledge that is crushed and/or removed?

Response:

Tennessee is in the process of developing a construction management plan to address rock management. Options being considered include using rock crushers to create material for roadways, backfilling compressor and meter station foundations, facility yard gravel, concrete aggregate, railroad ballast and using rock as authorized by landowners for rock boulder barricades across the easement along property lines.

Please refer to the draft Resource Report 1 (General Project Description) filed with the Federal Energy Regulatory Commission (FERC) on March 13, 2015 as part of the draft Environmental Report for further specifics regarding rock removal.

3. What is the source of fill, if used? How is it tested for possible invasive contamination?

Response:

Please refer to the draft Resource Report 1 (General Project Description) filed with the Federal Energy Regulatory Commission (FERC) on March 13, 2015 as part of the draft Environmental Report for further specifics regarding backfill.

4. Will the pipeline being (sic) located within the existing powerline corridor timber cut?

- **If yes, will additional width have to be cut, and if so how much?**
- **If no, how wide will the new corridor timber cut have to be?**

Response:

The current route of NED Project, in part, is proposed to be located parallel and adjacent to, and, may, in some cases, overlap with existing utility easements (pipeline or electric

utility). Refinement to the pipeline alignment will continue to occur as the Project is developed through the FERC's pre-filing and certificate processes, which will incorporate information gained from field surveys, landowners, and other stakeholder input.

Tennessee's current pipeline alignment for the Project along utility corridors is proposed to be generally located five (5) feet outside the existing utility easement. Tennessee's permanent easement will generally be centered on the proposed pipeline. Depending on final field surveys and discussions with landowners, utility easement owners, and other stakeholders, the location and configuration of temporary work spaces will be determined.

Tennessee continues to have discussions with utility companies regarding co-location opportunities near/along utility corridors. Although exact alignments have not been finalized, Tennessee anticipates that additional right-of-way (ROW) clearing will be required for Project construction.

In new areas where there is no existing utility corridor, the new permanent easement, or ROW, for operation and maintenance of the pipeline would likely be 50 feet wide, generally 25 feet on either side of the centerline of the pipeline. In addition to the permanent easement, an additional 50 to 75 feet of temporary workspace would be needed for use during construction. Some site-specific areas, like road crossings, will require additional temporary workspace to allow for specialized construction techniques and to allow safe construction of the Project facilities.

The width of the ROWs may differ depending on the location and topography of the land. This will be discussed with each individual landowner during easement discussions.

Please refer to the draft Resource Report 1 (General Project Description) filed with the FERC on March 13, 2015 as part of the draft Environmental Report for further discussion regarding clearing, grading, and fencing.

5. How long will the work in Milford take?

Response:

The construction duration in Milford, including clean-up, is not yet determined, since several factors will dictate such, including anticipated receipt of environmental permits, landowner agreements and integration with the construction schedule for the entirety of the pipeline through New Hampshire. The actual construction duration likely will take 3-4 month total from start to finish, yet the actual construction time may be as little as a few weeks from start to finish, with clean-up, restoration and revegetation to be completed three days or less after final grading, as weather and site conditions allow.

6. When will the work be executed?

Response:

The currently proposed construction start date for the Project is January 2017, assuming receipt of necessary authorizations. ROW clearing and horizontal directional drills (HDD's) are anticipated to occur during 2017. Mainline pipeline construction in New Hampshire is anticipated to begin in the spring of 2018.

7. Timing of work (breeding season disturbance)?

Response:

Pipeline construction in general results in temporary impacts to wildlife and the environment. Construction planning and permitting includes consideration of the effects on wildlife and the environment. During construction, Tennessee would comply with all requirements imposed by FERC and other federal and state agencies, as well as its own industry-standard procedures, to avoid and minimize the effects of construction on the environment. Wildlife protection and environmental measures are further addressed during post-construction site restoration. The FERC will monitor and inspect Tennessee's ROW restoration activities to ensure compliance with all applicable conditions and requirements.

Please refer to the draft Resource Report 1 (General Project Description) and Resource Report 3 (Fish, Wildlife, and Vegetation) filed with the FERC on March 13, 2015 as part of the draft Environmental Report for further discussion regarding the anticipated Project construction schedule.

8. Wetland crossings - What crossing method(s) are proposed?

Response:

Wetland crossings construction techniques are being evaluated. Tennessee will consider open cut dry, open cut wet, and trenchless technologies. The final determination of the wetland crossing technique will be set forth in applicable permits.

Please refer to the draft Resource Report 1 (General Project Description) and Resource Report 2 (Water Use and Quality) filed with the FERC on March 13, 2015 as part of the draft Environmental Report for further discussion regarding proposed wetland crossing construction.

9. Drainage/run-off control measures during work

Response:

Please refer to the draft Resource Report 1 (General Project Description) filed with the FERC on March 13, 2015 as part of the draft Environmental Report for further discussion regarding erosion and sediment control.

10. What will be done with the soil displaced by the pipeline

Response:

Please refer to the draft Resource Report 1 (General Project Description) filed with the FERC on March 13, 2015 as part of the draft Environmental Report for further discussion regarding backfilling and grade restoration.

11. Will all excavations return the disturbed terrain to its previous form?

Response:

Please refer to the draft Resource Report 1 (General Project Description) and Resource Report 8 (Land Use, Recreation, and Aesthetics) filed with the FERC on March 13, 2015 as part of the draft Environmental Report for further discussion regarding backfilling and grade restoration.

Roads

1. Will any new permanent roads or vehicular access trails be required? If so, where?

Response:

New and temporary and permanent access roads will be required for the Project. These are being evaluated and they will be identified and included in the certificate application for the Project that will be filed with the FERC.

Please refer to the draft Resource Report 1 (General Project Description) and Resource Report 8 (Land Use, Recreation, and Aesthetics) filed with the FERC on March 13, 2015 as part of the draft Environmental Report for further discussion regarding access roads.

2. Will any temporary roads or vehicular access trails be required? If so:

- **Where?**
- **Will tree removal be required?**
- **What restoration work will be performed when job is complete?**

Response:

Temporary roads and vehicular access trails will be required. The locations of these are being evaluated and they will be identified and included in the certificate application for the Project that will be filed with the FERC,.

Please refer to the draft Resource Report 1 (General Project Description) and Resource Report 8 (Land Use, Recreation, and Aesthetics) filed with the FERC on March 13, 2015 as part of the draft Environmental Report for further discussion regarding temporary roads and vehicular access trails.

Access

1. Will there be any public access restrictions where previously there were none?

Response:

There should not be any public access restrictions where previously there were none.

Please refer to the draft Resource Report 1 (General Project Description) and Resource Report 8 (Land Use, Recreation, and Aesthetics) filed with the FERC on March 13, 2015 as part of the draft Environmental Report for further discussion regarding land requirements.

Permanent changes

1. If there are any significant permanent changes to local hydrological conditions as evidenced by wetland changes or surface erosion, will KM undertake to ensure restoration of the original conditions?

Response:

Tennessee does not anticipate any significant permanent changes to local hydrological conditions as a result of the Project.

Please refer to the draft Resource Report 1 (General Project Description). Resource Report 2 (Water Use and Quality), and Resource Report 3 (Fish, Wildlife, and Vegetation) filed with the FERC on March 13, 2015 as part of the draft Environmental Report for further discussion regarding backfilling and grade restoration.

2. Are there areas requiring known period or aperiodic maintenance?

Response:

Tennessee is required to maintain its ROW on a periodic basis.

Please refer to the draft Resource Report 1 (General Project Description) filed with the FERC on March 13, 2015 as part of the draft Environmental Report for further discussion regarding post-construction maintenance requirements.

3. How will the pipeline course be permanently marked?

Response:

In compliance with federal regulations, signs, marker posts, aerial markers, and decals will be installed and maintained to ensure that the pipeline locations will be visible from the air and ground.

4. Any structural installations above ground? If so:

- **Area and height**
- **Area of paved surface**
- **Operating Noise level and constant or intermittent?**

Response:

One new compressor station, one meter station, rectifier stations and mainline block valve sites are currently proposed for Hillsborough County, New Hampshire. The locations of these facilities are not final and are being evaluated.

Please refer to the draft Resource Report 1 (General Project Description) filed with the FERC on March 13, 2015 as part of the draft Environmental Report for further discussion regarding land requirements, buildings, and noise.

5. Monitoring equipment to be installed?

Response:

Please refer to the draft Resource Report 1 (General Project Description) filed with the FERC on March 13, 2015 as part of the draft Environmental Report for further discussion regarding infrastructure facilities.

6. Radio antenna masts/towers? If so, how tall?

Response:

The communications system for the Project is being evaluated and the need for radio antenna masts/towers has not been determined.

Please refer to the draft Resource Report 1 (General Project Description) filed with the FERC on March 13, 2015 as part of the draft Environmental Report for further discussion regarding infrastructure facilities.

7. Any illumination anywhere along the route or at installations? All-night? Motion-triggered?

Response:

The new compressor stations will have low illumination lighting, with hoods to direct the light downward. The low illuminating lighting will be installed above the doors and possibly the building corners. These will remain on throughout the night. In addition, station yard lighting will be installed. That lighting will be manually lit as needed.

8. Any vegetative maintenance (brush clearance) other than that routinely conducted for the power lines?

Response:

For the majority of its system, Tennessee maintains its easements by mechanical means (e.g., tractor with mower or bush hog). In some instances, as approved by landowners and regulatory agencies, herbicides may be applied in certain fenced locations (typically at compressor stations or above-ground sites such as valves, pig launchers or pig receivers).

9. Any chemical control of vegetation? If so what chemicals? Frequency of application? Area (sq. ft.) affected?

Response:

See above response to Question 8.

10. Any fencing?

Response:

Above ground facilities such as compressor stations, meter stations, mainline valve settings will be fenced and locked.

Please refer to the draft Resource Report 1 (General Project Description) filed with the FERC on March 13, 2015 as part of the draft Environmental Report for further discussion regarding fencing.

In the event of malfunction

1. Are there additive chemicals in the gas stream? If so what are they?

Response:

Natural gas is colorless and odorless. Tennessee will add a distinctive and pungent odorant (Mercaptan) to the natural gas to help people detect its presence. A new odorization facility will be constructed as part of one of the New York compressor stations. No odorization facilities are planned for New Hampshire.

2. In the event of a leak will all contents eventually evaporate close to the leakage point?

Response:

Leaks or inadvertent releases are very rare. Natural gas is lighter than air and if it escapes, it will rise and dissipate.

Please refer to the draft Resource Report 11 (Reliability and Safety) filed with the FERC on March 13, 2015 as part of the draft Environmental Report for further discussion regarding reliability and safety issues.

3. In case of breach/rupture

- **Who are the first responders?**
- **What is the estimated arrival time of response teams equipped to undertake repairs**

Response:

Please refer to the draft Resource Report 11 (Reliability and Safety) filed with the FERC on March 13, 2015 as part of the draft Environmental Report for further discussion regarding emergency response.

Other

1. How many HCAs (high consequence areas) are long the pipeline?

Response:

The exact number of HCAs continues to be evaluated. Information regarding identified HCAs will be included in future submittals of the Environmental Report to the FERC.

2. Will there be meter stations or other facilities within the HCAs?

Response:

The exact number of HCAs has not yet been determined. Currently, there is one planned meter station in Hillsborough County, New Hampshire but it cannot be determined at this time if it is within an HCA.

3. Do you plan on installing any compressor stations along this route?

Response:

As set forth in the March 13, 2015 draft Environmental Report filing, Tennessee is proposing to construct nine new compressor stations and 15 new meter stations as part of the NED Project, as well as modifications to existing compressor and meter stations along the route. One of the proposed compressor stations would be an approximately 80,000 horsepower (hp) station that would be located along the proposed pipeline route in Hillsborough County, New Hampshire.

The exact final location of this compressor station, like all other proposed new compressor stations for this project, have not yet been determined, but will be identified in further submittals of the Environmental Report to the FERC.

4. What will be your assessment method under 49CFR192 Subpart O for these HCAs?

Response:

An HCA can be identified by using either of the two methods below. Tennessee exclusively employs Method 2 to identify High Consequence Areas.

Method 1 is an area defined as either:

- a) A Class 3 or Class 4 location
- b) Any area in a Class 1 or Class 2 location where the potential impact radius is greater than 660-feet (200-meters) and the area within a potential impact circle contains 20 or more buildings intended for human occupancy

- c) The area in a Class 1 or Class 2 location where the potential impact circle contains an identified site.

Method 2 is the area within a potential impact circle containing either:

- a) Twenty or more buildings intended for human occupancy
- b) An identified site.

5. What is the MAOP of the pipeline and the operating stress?

Response:

The maximum allowable operating pressure (“MAOP”) and maximum operating pressure (“MOP”) varies for the proposed pipeline, with some laterals operating at different pressures. The approximately 71 miles of 36-inch diameter pipeline proposed for New Hampshire will be designed for a MAOP and MOP of 1,460 pounds per square inch (“psig”). Approximately 1.99 miles of the 7.71-mile, 20-inch Haverhill Lateral and 5.08 miles of the 13.98-mile, 12-inch Fitchburg Lateral Extension will also be located in New Hampshire. Haverhill Lateral will have an MAOP of 1,460 psig and a MOP of 750 psig. The Fitchburg Lateral Extension will have a MAOP and MOP of 1,460 psig. The operating stress depends on the area classification established. Area classifications are being evaluated.

6. How often will RCV be utilized?

Response:

Tennessee will be using remote controlled valves (RCV’s) as part of the design. Valve spacing is determined by many factors but minimum spacing is defined in 49 CFR 192. In areas of low population density (Class 1), valves may be up to 20 miles apart. In areas of medium population density (Class 2), valves may be up to 15 miles apart. In areas of high population density (Class 3), valves may be up to 8 miles apart. The locations of the RCVs are being determined as part of the route evaluation including the area classifications.

Please refer to the draft Resource Report 1 (General Project Description) filed with the FERC on March 13, 2015 as part of the draft Environmental Report for further discussion regarding facility siting.

7. What is the burial depth of the pipeline?

Response:

The pipeline will generally have three (3) feet of cover. The burial depth will vary depending on the area and land use. For example, the pipeline will be buried deeper in agricultural areas under active cultivation and across rivers and stream, roads, and railroads.

8. Will you be utilizing HDD technologies to install the pipeline and if so what are the HDD lengths?

Response:

Tennessee will be using HDD and other proven construction techniques. The HDD lengths vary at specific locations along the pipeline route. Two HDDs are planned in nearby Amherst, but none are planned in Milford at this time.

Please refer to the draft Resource Report 1 (General Project Description) filed with the FERC on March 13, 2015 as part of the draft Environmental Report for further discussion regarding HDD and other construction methods.

9. How often do you plan to do leak surveys and how will they be completed? By foot or by air?

Response:

The safety of the nation's interstate natural gas pipeline network is regulated by the U.S. Department of Transportation's Pipeline and Hazardous Materials Safety Administration (PHMSA), which administers the Natural Gas Pipeline Safety Act of 1968 and subsequent amendments. PHMSA is responsible for implementing pipeline safety laws and regulations, which establish requirements to ensure that pipelines are constructed and operated safely. Tennessee closely monitors pipeline operations, including line pressure and surveillance of the pipeline to detect leaks and protect against third-party damage. Tennessee also uses state of the art, in-line inspection tools, known as smart pigs, to periodically internally inspect the pipeline in accordance with PHMSA requirements for potential damage, erosion or corrosion. Any damage or corrosion detected through this process is repaired or replaced.

On Tennessee's existing system, the company currently performs aerial patrols every other week from April through October and once per month from November through March. Such patrol frequency exceeds the requirements set forth in CFR Part 192.706.

Please refer to the draft Resource Report 11 (Reliability and Safety) filed with the FERC on March 13, 2015 as part of the draft Environmental Report for further discussion regarding reliability and safety issues.

10. What is your plan for third party damage prevention? Considering the residential route and shared easement would you consider patrolling the pipeline daily?

Response:

Tennessee obtains an approximately 50-foot wide permanent ROW to distance third party construction activities from accidentally damaging pipelines. This gives the company room to safely operate and maintain the pipeline. A safety feature being installed by Tennessee to help prevent third party damage over and above CFR Part 192 requirements is to install 1-foot wide yellow warning tape 2-feet above the pipeline to alert third parties of the presence of the pipeline and to immediately contact Tennessee Gas.

Tennessee also actively participates in all applicable One Call programs to help prevent third-party damage. Company representatives will meet landowners and contractors to discuss excavation and mark all pipelines prior to excavation when provided with notification by state One Call programs. Tennessee also will have a company employee on site to observe digging operations around its pipelines.

As noted in the response to question 9 above, aerial patrols are done periodically and one of the responsibilities of this is to identify unusual activity near the pipeline including new construction.

Please refer to the draft Resource Report 11 (Reliability and Safety) filed with the FERC on March 13, 2015 as part of the draft Environmental Report for further discussion regarding reliability and safety issues.

11. What type of coating system are you planning to use on the pipeline?

Response:

The primary corrosion protective coating will be fusion bonded epoxy coating. Other protective coatings such as abrasion resistant overlay (ARO) and concrete coating are being evaluated.

Please refer to the draft Resource Report 1 (General Project Description) filed with the FERC on March 13, 2015 as part of the draft Environmental Report for further discussion regarding pipeline coating.

12. Considering the rocky environment of your route will you be using additional coatings such as an ARO (abrasion resistant overcoat) along with select backfill?

Response:

Tennessee will evaluate the use of ARO, concrete coating, or other protective coating(s) and will also provide select backfill around the pipe as means of protecting the pipe coating from damage through rocky areas.

13. What type cathodic protection system (corrosion protection) are you planning to use? Impressed current or galvanic system?

Response:

Tennessee has hired a specialist engineering firm to design the cathodic protection system. Impressed current using ground beds and rectifiers and galvanic systems are being considered. The system selected will be established based on many factors including soil resistivity.

Please refer to the draft Resource Report 1 (General Project Description) and Resource Report 11 (Reliability and Safety) filed with the FERC on March 13, 2015 as part of the draft Environmental Report for further discussion regarding cathodic protection.

14. Will you need additional easements outside of the shared easement for your cathodic protection systems?

Response:

Additional easements outside of the currently identified permanent easement may be required depending on the cathodic protection system selected. If additional easements are required, they will be identified as part of the certificate application to be filed with the FERC.

15. If utilizing HDD technologies, how do you plan to cathodically protect these sections?

Response:

Impressed current and sacrificial anodes are being evaluated by the specialty design engineering firm, referred to in the response to question number 13 above, to protect the pipeline installed using HDD technology.

16. Considering HDD sections how do you plan to install test facilities on these sections in order to monitor cathode protection effectiveness?

Response:

Test stations will be installed immediately upstream and/or downstream of an HDD section.

17. Will your cathodic protection designs consider interference effects on other metallic structures? If interference effects exist or damage occurs to other structures due to your system, what is your action plan?

Response:

The cathodic protection detailed design will include minimizing impacts to the environment including interference affects to/from foreign underground structures. If interferences are determined, Tennessee will work with the owner of the other structure to resolve the issue.

18. Considering the shared easement with high voltage AC what is your plan to protect you personnel and the public from induced AC effects? How do you plan to mitigate AC corrosion?

Response:

A portion of the proposed pipeline will be located adjacent to or co-located with high voltage electric power lines. Tennessee has hired a specialist design engineering firm to design an alternating current ("AC") mitigation system that will protect the pipeline facilities and operations personnel from induced voltage. It is anticipated that the design will include installation of zinc ribbon installed in the pipeline trench, grounding mats at aboveground facilities and other appurtenant equipment, most of which will be buried.

Please refer to the draft Resource Report 1 (General Project Description) and draft Resource Report 11 (Reliability and Safety) filed with the FERC on March 13, 2015 as part of the draft Environmental Report for further discussion regarding cathodic protection.

19. Do you plan to monitor AC voltages once a mitigation system is installed for the pipeline?

Response:

Tennessee will regularly monitor AC voltages on the pipeline once the mitigation system is installed.

Please refer to the draft Resource Report 1 (General Project Description) and Resource Report 11 (Reliability and Safety) filed with the FERC on March 13, 2015 as part of the draft Environmental Report for further discussion regarding cathodic protection.

20. Considering the nature of shale gas, what is your mitigation plan for internal corrosion?

Response:

All natural gas delivered to the Tennessee system for transportation is required to comply with Tennessee's pipeline quality standards, set forth in its FERC Gas Tariff.

Tennessee Gas has a comprehensive internal corrosion monitoring and mitigation program that includes the following:

- Gas filtering by the producers and Tennessee at receipt points and Tennessee compressor stations (filter separators).
- Gas quality monitoring on Tennessee system by chromatographs.
- Liquid and solid sampling program and analysis to identify the potential for internal corrosion.

- Internal corrosion monitoring by corrosion coupons installed at receipt points, compressor stations, and other locations.
- Maintenance cleaning pigs run on a regular basis to internally clean the pipeline
- Tennessee conducts annual internal corrosion reviews at all Tennessee locations.
- PHMSA prescribed periodic in-line inspections with “smart pig” devices.

21. It appears to me, that the pipeline would only need to be buried 18" deep on sections of the power line that have ledge. Over time with erosion, if sections of the pipeline are exposed to snowmobile traffic, today's aggressive ski carbides pose a risk.

Response:

See response to question number 4 above regarding burial depth for pipelines.

Tennessee closely monitors pipeline operations, including line pressure and surveillance of the pipeline to detect leaks and protect against third-party damage. Tennessee also uses state of the art, in-line inspection tools, known as smart pigs, to periodically internally inspect the pipeline, in accordance with U.S. Department of Transportation, Pipeline and Hazardous Materials Safety Administration (PHMSA) requirements for potential damage, erosion or corrosion. Any damage or corrosion detected through this process is repaired or replaced. In addition, Tennessee intends to install an additional safety feature to help prevent third party damage, in addition to PHMSA requirements set out in 49 CFR Part 192. This additional feature is the installation of one-foot wide yellow warning tape two feet above the pipeline to alert third parties of the presence of the pipeline and to provide notice to immediately contact Tennessee Gas.

In accordance with Tennessee’s Operations and Maintenance Procedures (which comply with applicable PHMSA regulations), the pipeline may be inspected on the ground or by air, with a minimum frequency of once per 12 months, not to exceed 15 months. In the northeast U.S., aerial patrol frequency for Tennessee’s pipeline system is generally every two weeks, April through October, and monthly from November through March. This frequency exceeds federal requirements.

22. Can either sections of the pipeline (above ground) or any part of the pump stations be at risk from a high powered rifle (ex. 30-06). Below shows the towns that are limited to shotguns in this area (ex. Milford, Amherst). Towns such as Mason allow high powered rifles for deer hunting.

It is unlikely, but possible, for the aboveground piping to be pierced by a high-powered rifle. It would depend on numerous factors such as distance, caliber, angle of impact, etc. Since the pipeline presents such a low profile it is unlikely that a stray shot would impact the aboveground facilities.



MILFORD N.H. PIPELINE TASK FORCE

The letter from the NH Municipal Pipeline Coalition was mailed to the US Senators and House Representatives from NH, the Governor and the State Senators and House Representatives representing the seventeen impacted towns in New Hampshire.

NH Municipal Pipeline Coalition

May 5, 2015

Governor Maggie Hassan
Office of the Governor
State House
107 North Main Street
Concord, NH 03301

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

**Re: Kinder Morgan/Tennessee Gas Pipeline Co.
Federal Energy Regulatory Commission Docket No. PF-14-22-000**

Dear Governor Hassan:

We are elected officials and/or town administrators from 10 New Hampshire towns affected by the proposed Northeast Energy Direct (NED) high-pressure gas pipeline project. The pipeline, proposed by Kinder Morgan Company and Tennessee Gas Pipeline Company, originates in New York, passes through western Massachusetts, and then traverses 17 New Hampshire towns before terminating in Dracut, Massachusetts.

We believe that the proposed NED pipeline is wrong for New Hampshire, is unnecessary to meet the projected energy needs of New England, is an inappropriate use of eminent domain for the benefit of a private corporation, and is an insult to the conservation efforts of the state, municipalities, and conservation easement holders given the existence of better alternatives.

The NED pipeline project is currently in the pre-filing stage at the Federal Energy Regulatory Commission. Kinder Morgan is expected to file an application for a "certificate of public convenience and necessity" in September 2015. Once the certificate is granted, Kinder Morgan/Tennessee will have the ability to use federal eminent domain to acquire rights of way for the pipeline. We believe that 1) the "necessity" or need for this project is better addressed by competing projects that would require less taking of private and public land, 2) the capacity of the NED pipeline far exceeds the utility needs of New England, such that taking of land for NED is more for the benefit of its owners than to the benefit of New England gas consumers, and 3) the proposed pipeline route impacts protected conservation land, watersheds, and aquifers.

New England has an acknowledged need for additional energy sources to meet peak demand. In response, several companies have proposed projects to bring more natural gas to New England. These include Spectra Energy's Algonquin Incremental Market (AIM) line, which received FERC certification on March 3, 2015, their pending Atlantic Bridge line, increasing capacity to Maine and Canada, and the Kinder Morgan NED proposal. Taken together, the capacity of these proposed pipelines far exceeds New England's projected energy needs. The projects that truly use existing gas pipeline rights of way, such as Algonquin, should be favored over the projects that require extensive acquisition of new rights of way, such as NED.

Kinder Morgan describes the NED pipeline as mostly "co-located" with an existing power line easement owned by Eversource (formerly Public Service of NH). The term co-location falsely implies the pipeline will be entirely within the power line right of way, and thus have little impact on adjacent land. This is not the case. For technical reasons, the pipeline must be adjacent to, not under, the

350,000 volt powerline. Kinder Morgan must acquire approximately 100 feet of land *parallel* to the existing powerline easement. Therefore, the "co-location" of the pipeline has the same impact on private and public lands as it would if not co-located. In addition, about 10 miles of pipeline, such as the Mason lateral line, would not be "co-located" with any existing easement, increasing further the amount of private and public land that will have to be acquired.

Eminent domain is an extraordinary power that must be used sparingly. Other projects, such as the Spectra Energy's proposal to enlarge an existing pipeline, can bring a significant amount of natural gas to New England with far less impact to public and private landowners than the NED project. As a matter of public policy, projects requiring heavy use of eminent domain, such as NED, should be discouraged.

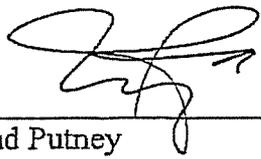
Most of the municipalities in the proposed NED pipeline route are rural communities that highly value their open space, rural character, and conservation land. The NED pipeline is routed through many tracts of land conserved by town conservation commission ownership, or conservation easements held by groups such as the Society for the Preservation of New Hampshire Forests. The taking of land through such parcels directly violates the terms of conservation easements, and contravenes the intent of the donors of conservation land.

The NED project will more deeply and directly impact wetlands and aquifers on the route than the existing powerlines do. Rivers must be tunneled under. Mats must be laid down in wetlands to support the weight of the excavating equipment. Herbicides, among other methods, will be used in the long-term to control vegetative growth, particularly in wetlands that machine mowing would damage. Public policy should discourage projects that heavily impact conservation lands, water resources, and environmentally sensitive areas.

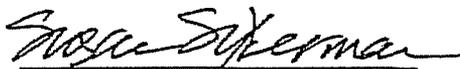
For the foregoing reasons, we oppose the Kinder Morgan/Tennessee NED proposal. We urge you to contact the Federal Energy Regulatory Commission, Docket PF-114-22-000, and challenge the need for the NED pipeline in light of other less impactful pipeline proposals.

Is the proposed NED project "right" for New Hampshire? We do not believe so. If you do, please help us understand why. If not, please advise us of the steps you can take to ensure that it does not unnecessarily damage our state.

Sincerely,



Tad Putney
Town Administrator
Brookline



Susan Silverman
Chair, Board of Selectmen
Fitzwilliam

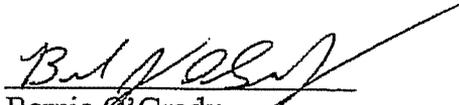


Jason Hoch
Town Administrator
Litchfield

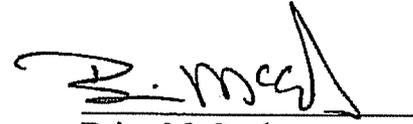
Governor Maggie Hassan

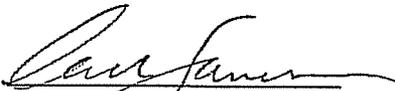
May 5, 2015

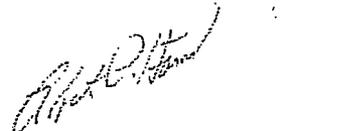
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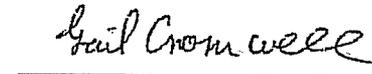

Bernie O'Grady
Chair, Board of Selectmen
Mason


Eileen Cabanel
Town Manager
Merrimack


Brian McCarthy
Town Administrator
Pelham


Carol Jameson
Chair, Board of Selectmen
Richmond


Robert Hamilton
Chair, Board of Selectmen
Rindge

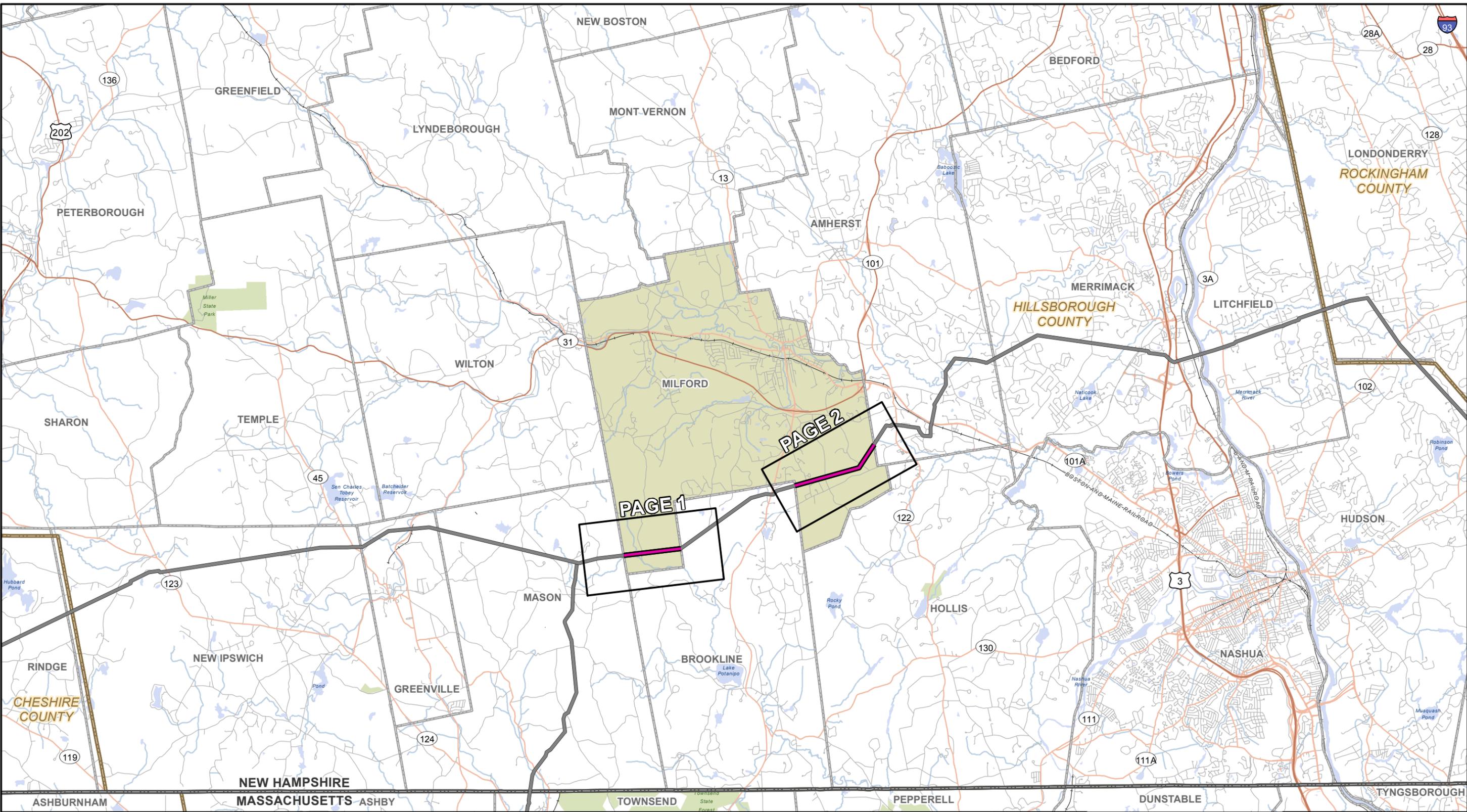

Gail Cromwell
Chair, Select Board
Temple


Warren Davis
Conservation Commission
Troy

APENDIX 1-A

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	NED EAST PIPELINE CO-LOCATION		RAILROAD		MUNICIPAL BOUNDARY
	NED EAST PIPELINE CENTERLINE OUTSIDE TOWN LIMITS		PAGE INDEX		COUNTY BOUNDARY
	HIGHWAY		WATER		STATE BOUNDARY
	MAJOR ROAD		PARK / FOREST BOUNDARY		
	LOCAL ROAD				

TENNESSEE GAS PIPELINE COMPANY, L.L.C.
NORTHEAST ENERGY DIRECT PROJECT

MILFORD, NEW HAMPSHIRE
HILLSBOROUGH COUNTY

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ABSOLUTE SCALE:
1:120,000

REFERENCE SCALE:
1 IN = 10,000 FEET

Tennessee Gas Pipeline Company, L.L.C.
a Kinder Morgan company

Hatch Mott MacDonald

150 Lower Westfield Rd.
Holyoke, MA 01040
Ph: (413) 535-0135 Fax: (413) 535-0136

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REV. DATE:	11/17/2014
REVISION:	0
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PAGE:	OVERVIEW



SEE PAGE 2

NED EAST POWERLINE CO-LOCATION	STUDY CORRIDOR (400FT)
NED EAST POWERLINE CO-LOCATION OUTSIDE TOWN LIMITS	STUDY CORRIDOR - OUTSIDE TOWN LIMITS (400FT)
CENTER EXISTING POWERLINE	MUNICIPAL BOUNDARY
ROAD CENTERLINE	

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TENNESSEE GAS PIPELINE COMPANY, L.L.C.
NORTHEAST ENERGY DIRECT PROJECT

MILFORD, NEW HAMPSHIRE
 HILLSBOROUGH COUNTY

ABSOLUTE SCALE: 1:12,000
 REFERENCE SCALE: 1 IN = 1,000 FEET

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ABSOLUTE SCALE:
1:12,000

REFERENCE SCALE:
1 IN = 1,000 FEET

Tennessee Gas Pipeline Company, L.L.C.
 a Kinder Morgan company

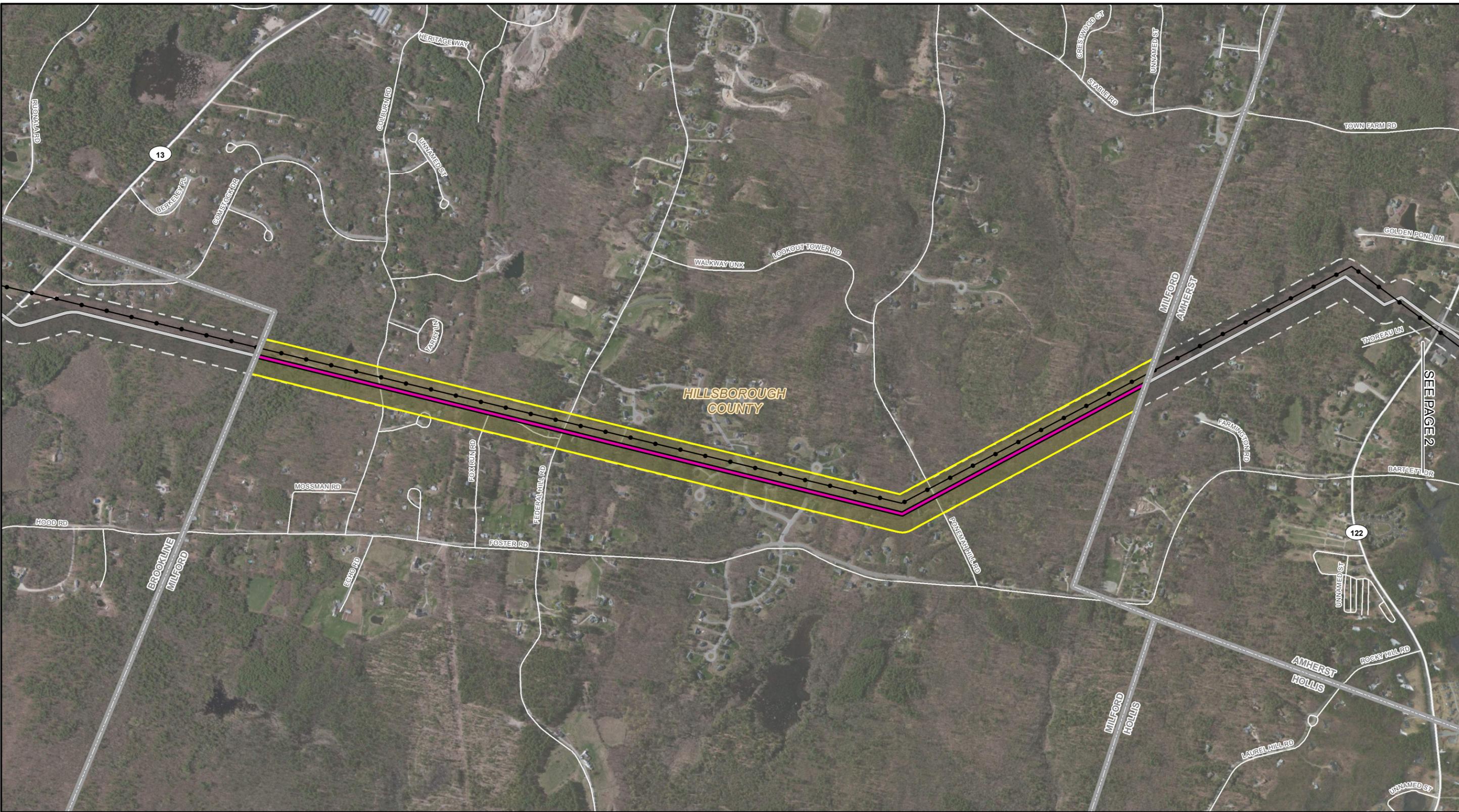
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11/17/2014-1117-AMS-000



	NED EAST POWERLINE CO-LOCATION		STUDY CORRIDOR (400FT)
	NED EAST POWERLINE CO-LOCATION		STUDY CORRIDOR - OUTSIDE TOWN LIMITS (400FT)
	OUTSIDE TOWN LIMITS		MUNICIPAL BOUNDARY
	CENTER EXISTING POWERLINE		
	ROAD CENTERLINE		

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TENNESSEE GAS PIPELINE COMPANY, L.L.C.
NORTHEAST ENERGY DIRECT PROJECT

MILFORD, NEW HAMPSHIRE
HILLSBOROUGH COUNTY

FEET

ABSOLUTE SCALE:
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REFERENCE SCALE:
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Tennessee Gas Pipeline Company, L.L.C.
a Kinder Morgan company

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Holyoke, MA 01040
Ph: (413) 535-0135 Fax: (413) 535-0136

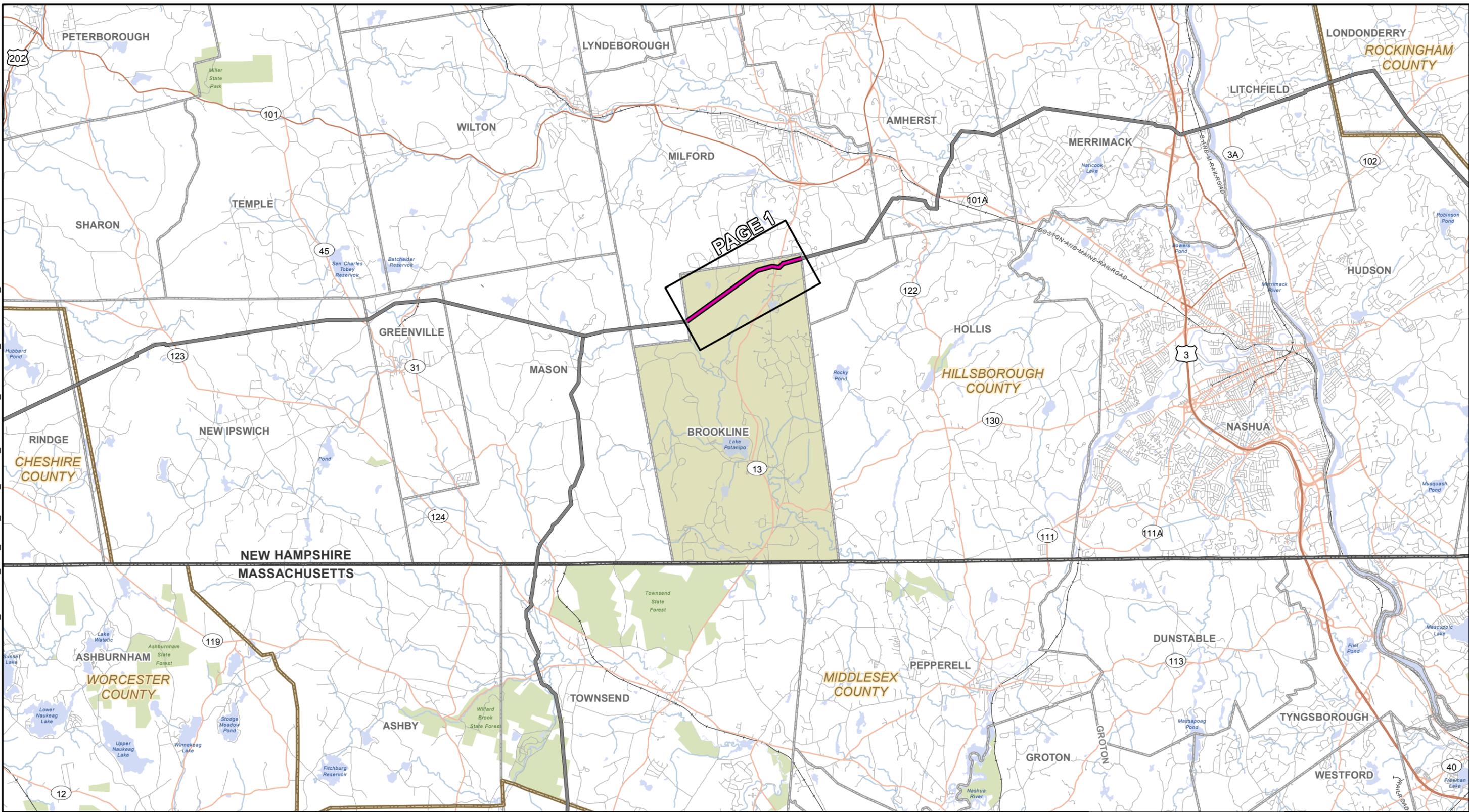
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SEE PAGE 2

APENDIX 1-B

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NED EAST PIPELINE CO-LOCATION	RAILROAD	MUNICIPAL BOUNDARY
NED EAST PIPELINE CENTERLINE OUTSIDE TOWN LIMITS	PAGE INDEX	COUNTY BOUNDARY
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MAJOR ROAD	PARK / FOREST BOUNDARY	
LOCAL ROAD		

TENNESSEE GAS PIPELINE COMPANY, L.L.C.
NORTHEAST ENERGY DIRECT PROJECT

BROOKLINE, NEW HAMPSHIRE
HILLSBOROUGH COUNTY

ABSOLUTE SCALE: 1:120,000
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ABSOLUTE SCALE:
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Tennessee Gas Pipeline Company, L.L.C.
a Kinder Morgan company

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NED EAST POWERLINE CO-LOCATION	STUDY CORRIDOR (400FT)
NED EAST POWERLINE CO-LOCATION OUTSIDE TOWN LIMITS	STUDY CORRIDOR - OUTSIDE TOWN LIMITS (400FT)
CENTER EXISTING POWERLINE	MUNICIPAL BOUNDARY
ROAD CENTERLINE	

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TENNESSEE GAS PIPELINE COMPANY, L.L.C.
NORTHEAST ENERGY DIRECT PROJECT

BROOKLINE, NEW HAMPSHIRE
HILLSBOROUGH COUNTY

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ABSOLUTE SCALE:
1:12,000

REFERENCE SCALE:
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Tennessee Gas Pipeline Company, L.L.C.
a Kinder Morgan company

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REV. DATE:	11/17/2014
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PAGE:	1 OF 1

APENDIX 2



Business and Industry Association
New Hampshire's Statewide Chamber of Commerce

Relieving the Energy Crisis: Update on New Hampshire Infrastructure Projects

April 17, 2015



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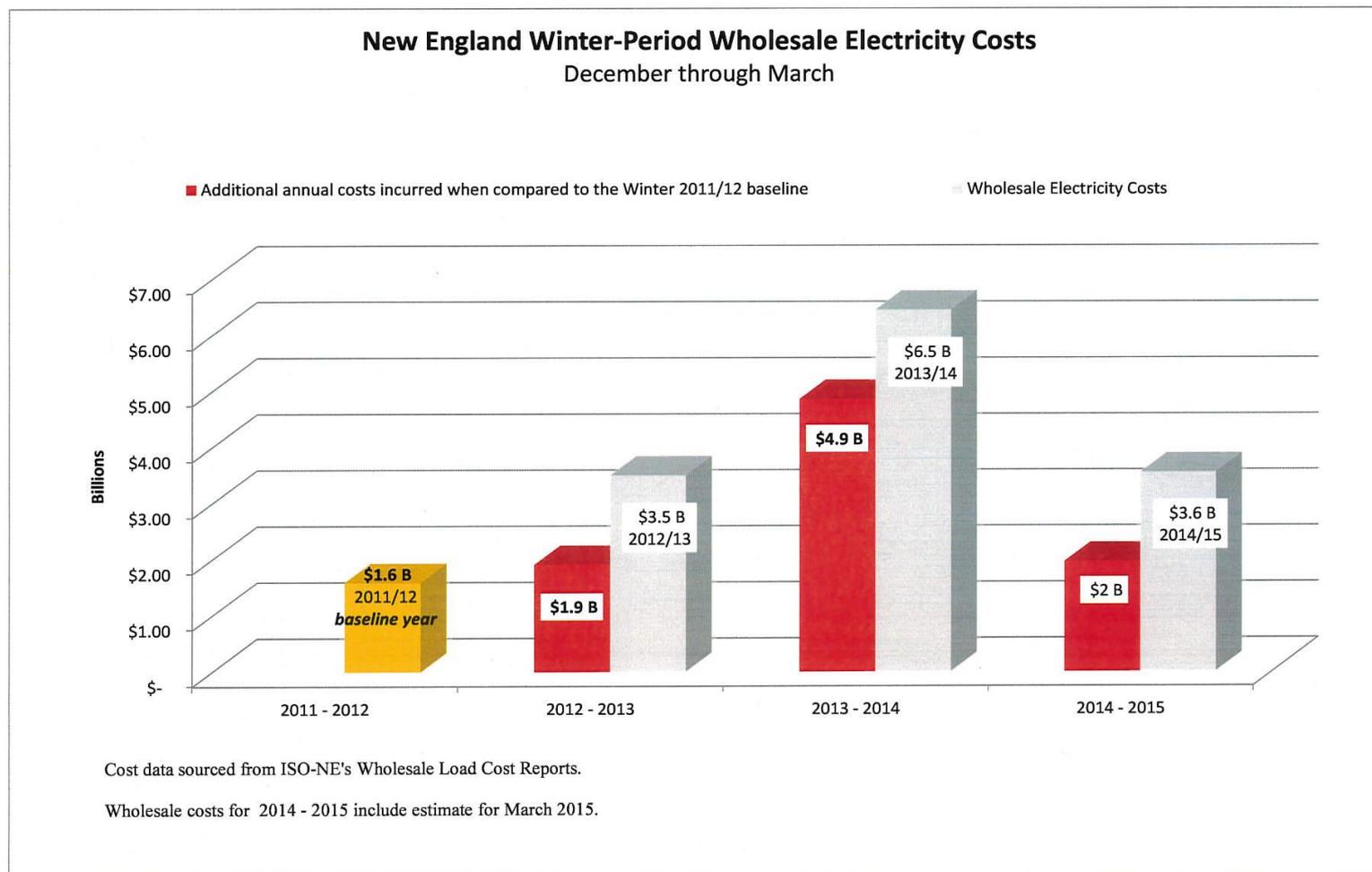
2015/2016 Public Policy Priorities

Energy and Telecommunications

Priority: BIA will advocate for policies that ensure reliability and lower the long- and short-term costs of energy. Positions include:

- To alleviate the current regional energy *crisis*, advocate for state and regional policies and initiatives that enable the development of low cost, reliable sources of energy, *e.g. expanded natural gas pipeline capacity and increased electrical transmission into the region*
- Support clear, consistent and balanced state siting policies that allow for the development of energy infrastructure projects that diversify fuel supply, bring new energy sources to market, stimulate growth and reduce costs to consumers

New England Wholesale Electricity Costs compared to baseline* with few pipeline access constraints



**2011/12 was a mild winter and natural gas-fired electric generating units had relatively ready access to pipeline capacity - additional pipeline capacity for electric generation could produce similar results in colder winters*

Energy Solutions for New Hampshire

Bill Quinlan, President
NH Electric Operations
April 17, 2015

New England Shares One Electric Grid



Electricity is pooled and shared among all New England consumers



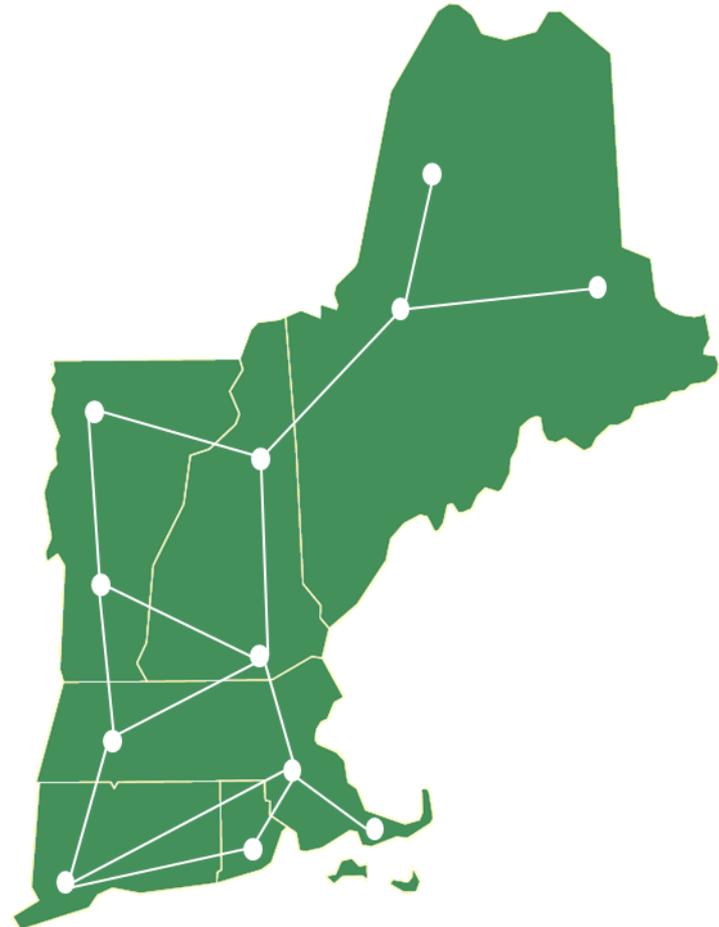
Regional system can supply about 31,000 MW of power



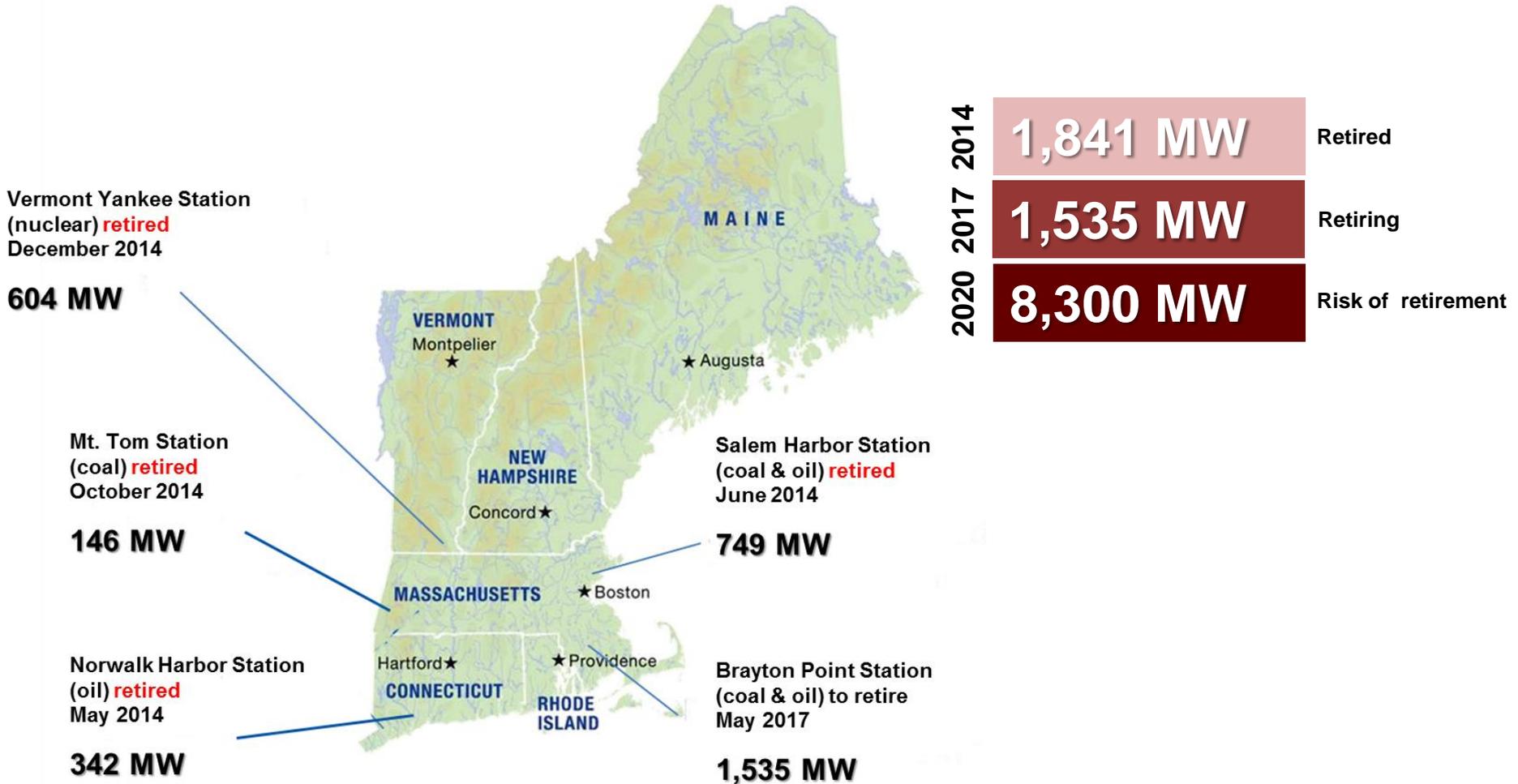
Energy market and grid reliability is overseen by ISO-NE



Supply and price volatility affects all New England customers



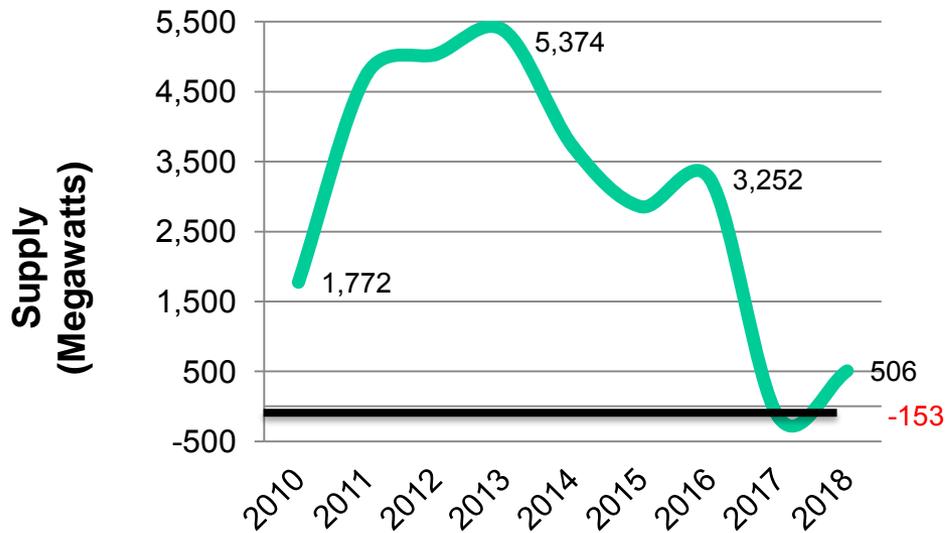
Non-Gas-Fired Plants Are Retiring



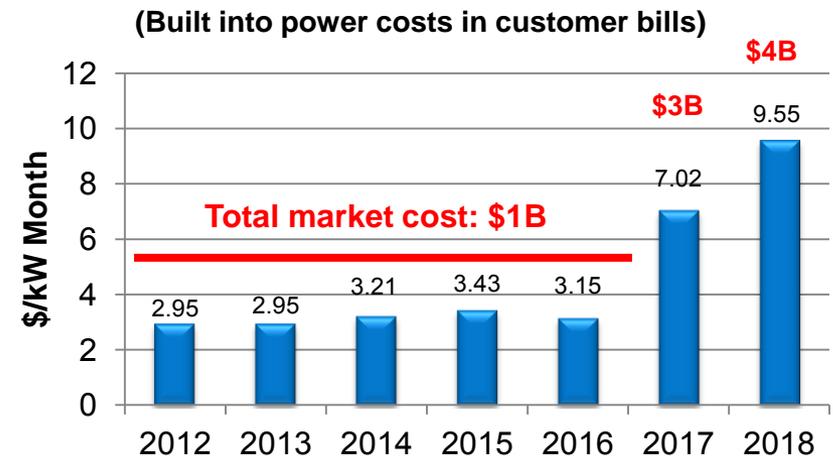
Source: ISO-New England

Diminishing Energy Supply = Higher Prices

Supply/Demand



Incentive Payouts to Power Plants

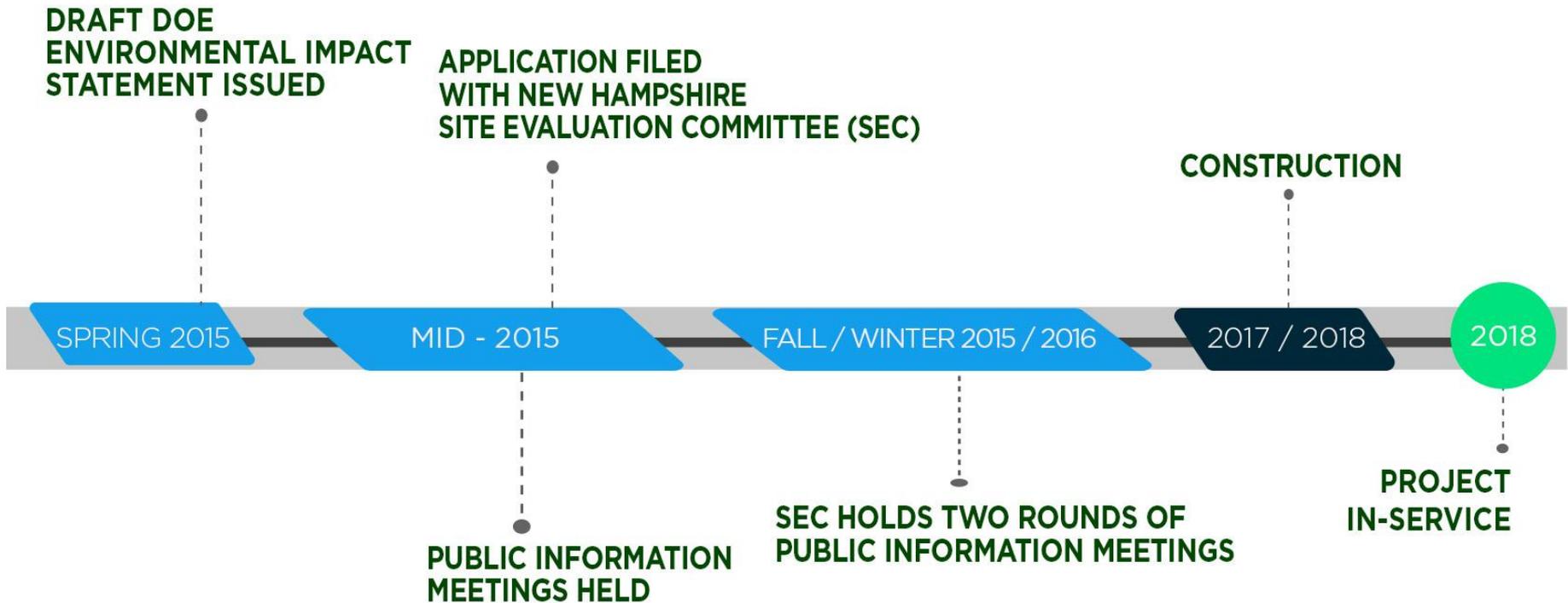


Will Help Stabilize Prices and Diversity of Energy Supply

- Partnership between Eversource and Hydro-Québec
- Clean, abundant hydro power
- Significant energy market price reductions
- Developing a solution to address concerns and deliver substantial NH benefits
- Targeted completion: 2018



Project Timeline



A Different Kind of
ENERGY COMPANY



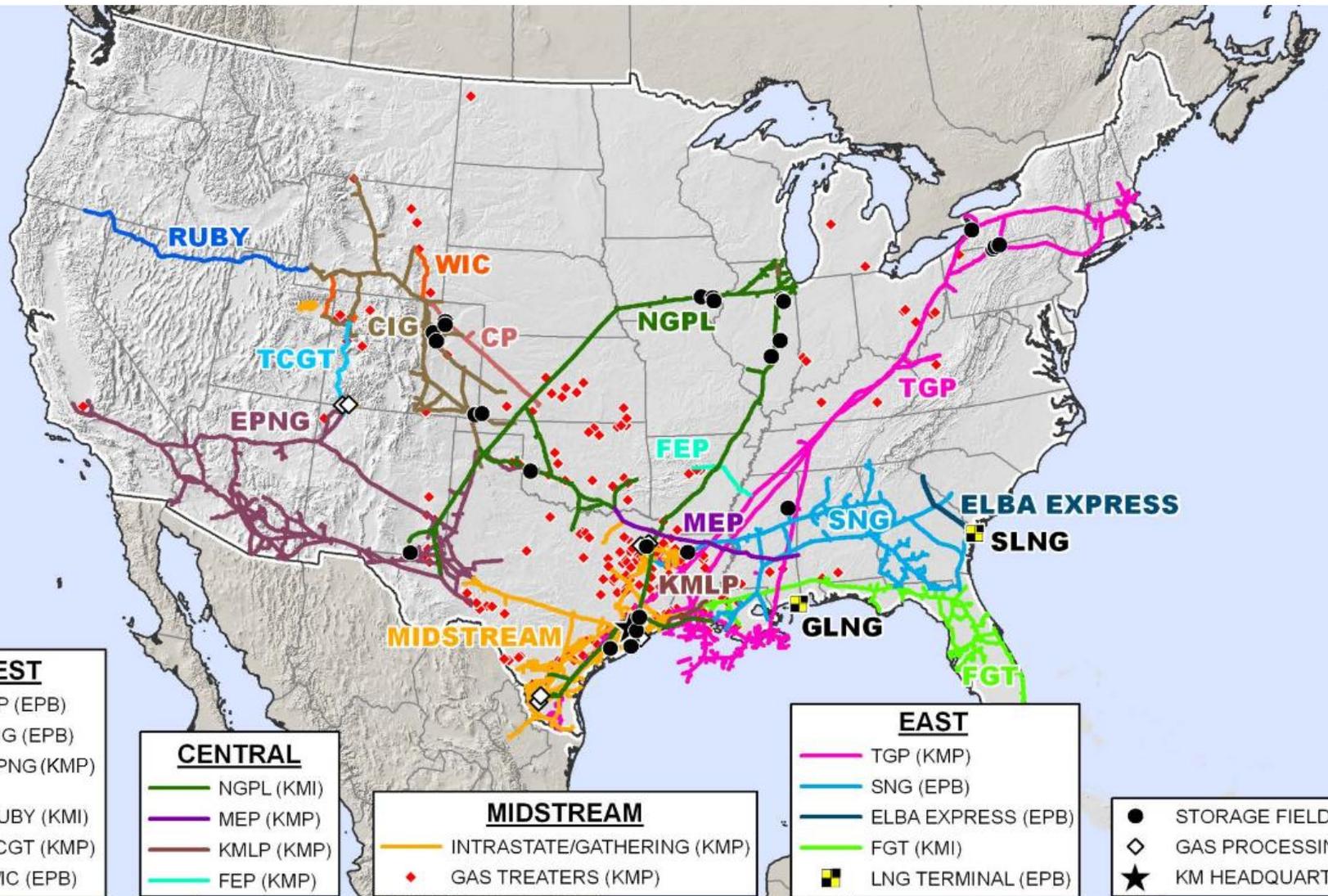
KINDER MORGAN

Northeast Energy Direct Project

***New Hampshire BIA
Relieving the Energy Crisis
April 17, 2015***



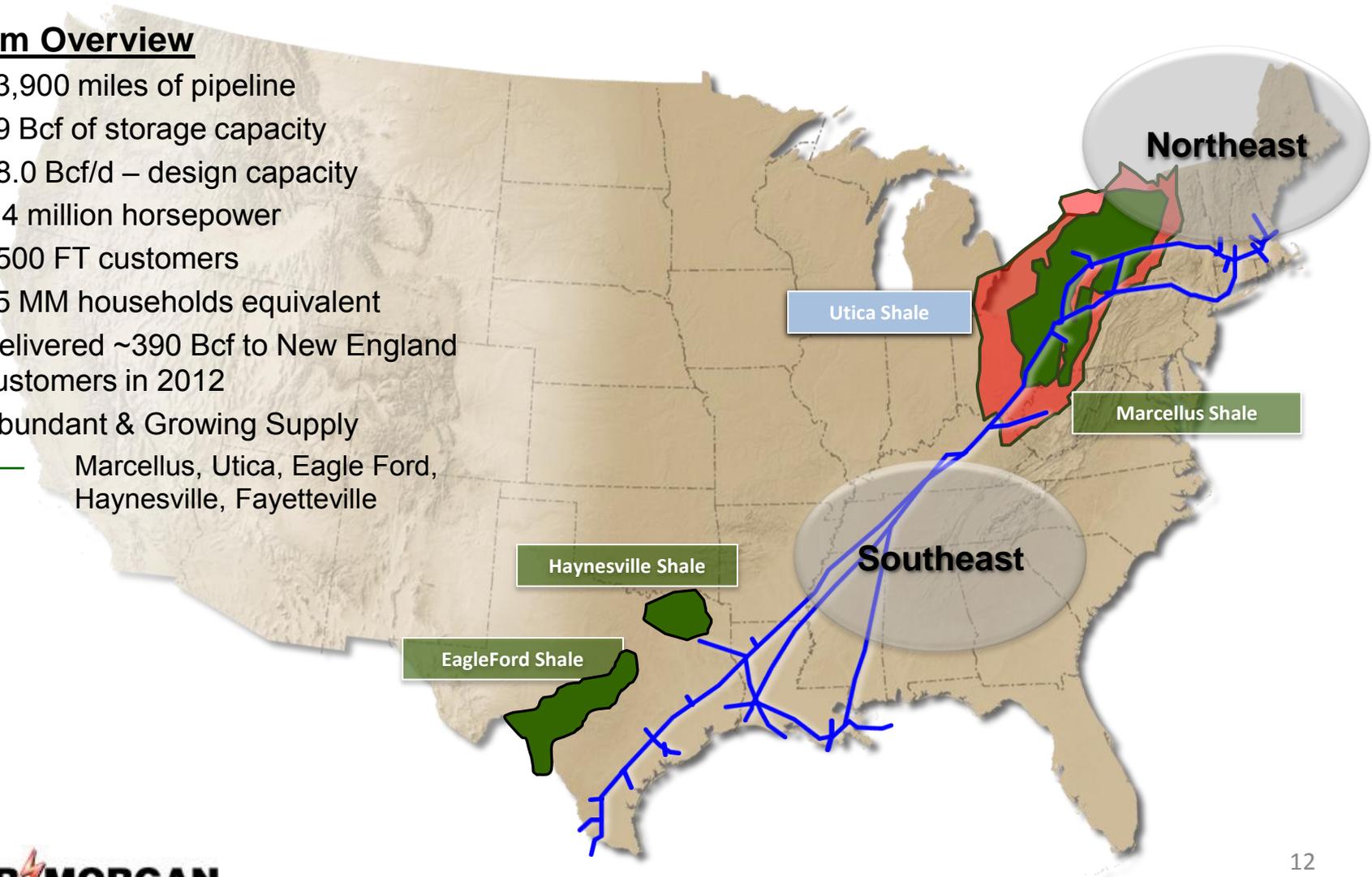
Kinder Morgan's Natural Gas Pipelines



Tennessee Gas Pipeline

System Overview

- 13,900 miles of pipeline
- 79 Bcf of storage capacity
- ~8.0 Bcf/d – design capacity
- 1.4 million horsepower
- >500 FT customers
- 35 MM households equivalent
- Delivered ~390 Bcf to New England customers in 2012
- Abundant & Growing Supply
 - Marcellus, Utica, Eagle Ford, Haynesville, Fayetteville



NH Municipalities with Existing TGP Lines

TGP has existing pipelines in 10 municipalities and three counties in New Hampshire.

Hillsborough County:

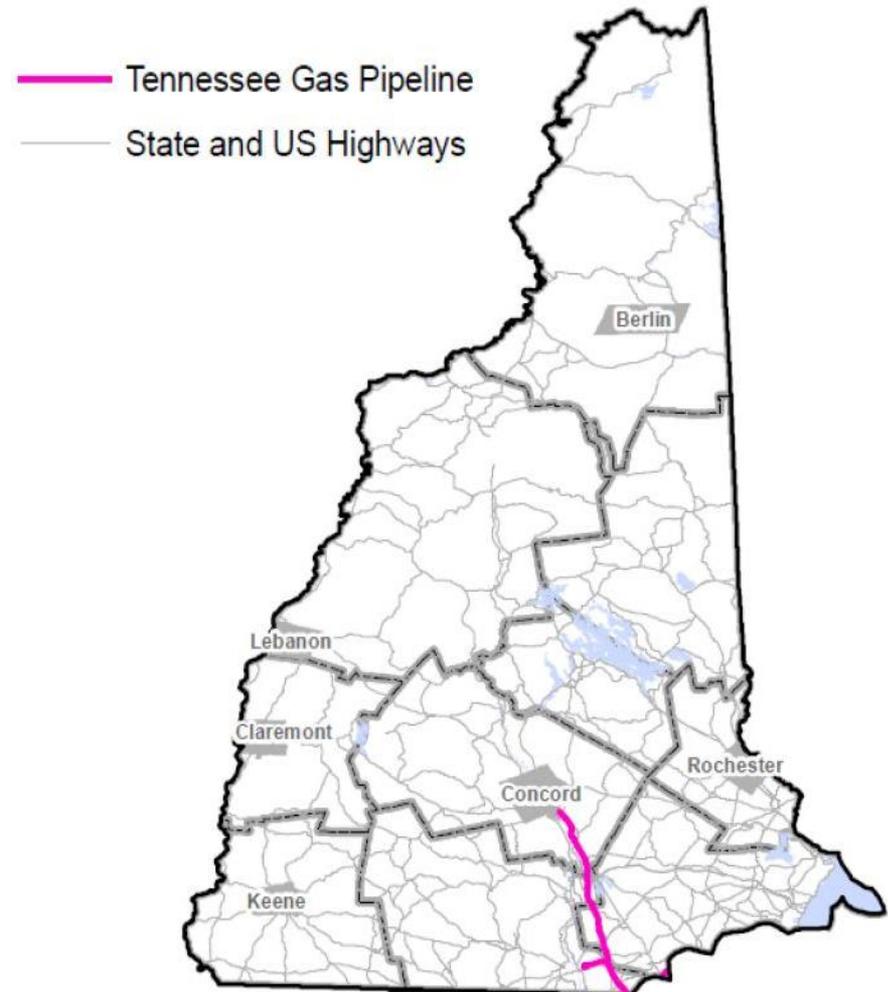
- Hudson
- Manchester
- Pelham

Merrimack County:

- Allenstown
- Concord
- Hooksett
- Pembroke

Rockingham County:

- Londonderry
- Salem
- Windham



Proposed Northeast Energy Direct Route



Legend

- Proposed Pipeline Laterals
- Existing TGP
- Proposed Supply Path Component
- Proposed Market Path Component

GISMS-556, Northeast Energy Direct, Mar10, 2015, Public Affairs, Edition

NED Route in New Hampshire



Natural Gas Demand in New England

New England's Gas Needs:

- In 2013, New England relied on natural gas for **52%** of its electricity produced, more than any other source. (Source: ISO-NE)
- Tennessee Gas Pipeline and Algonquin Gas Pipeline are the two major pipelines transporting natural gas to New England. (Source: U.S. Energy Information Administration)

"In New England, increasing pressure on an already-constrained natural gas infrastructure is our most pressing and urgent challenge... New England's pipeline infrastructure is inadequate to serve demand by local distribution companies (for home heating) and power generators in the winter period. This constraint has led to significant electric reliability challenges."

- Gordon van Welie, President and CEO of ISO-NE.

Current Supply:

- Competitive Energy Services (CES) estimates that New England currently has the capacity to import **2.7 Bcf/d** on existing pipelines (not including Canadian imports, LNG and proposed new pipelines.)

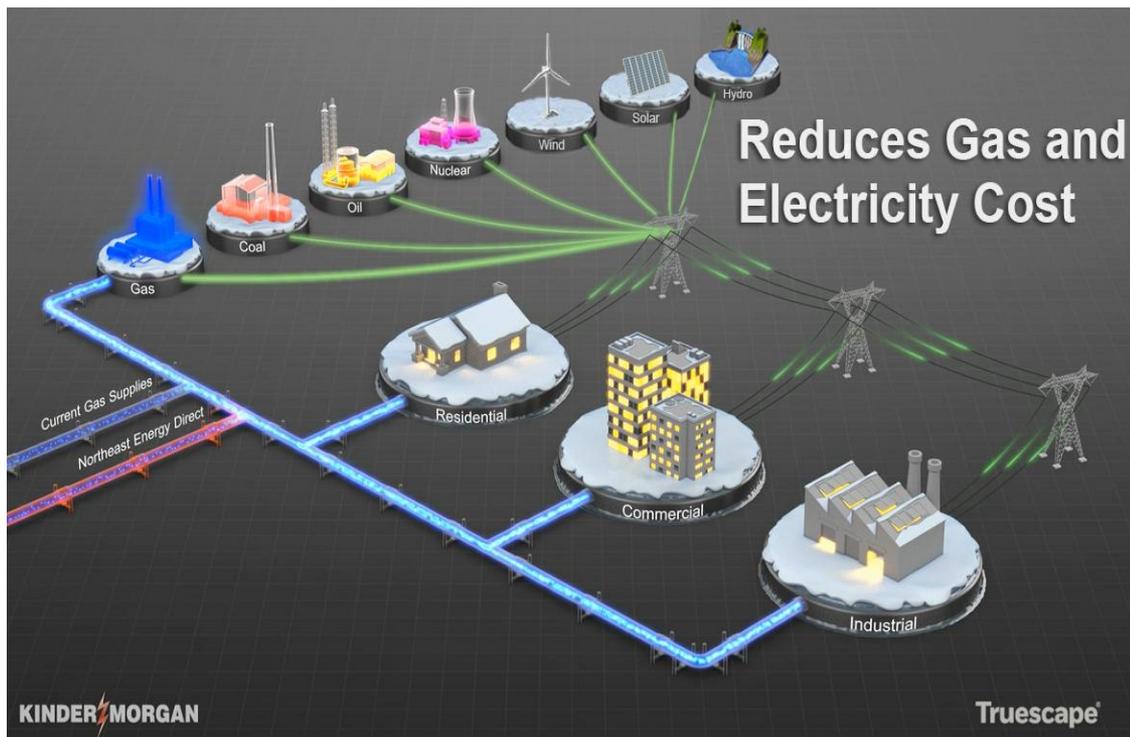
Current and Future Needs:

- Natural gas demand for heating and industrial processes in New England can exceed **4.5 Bcf/d** on the coldest winter days. This does **NOT** include the needs of the electric system.

New England – Power Challenges

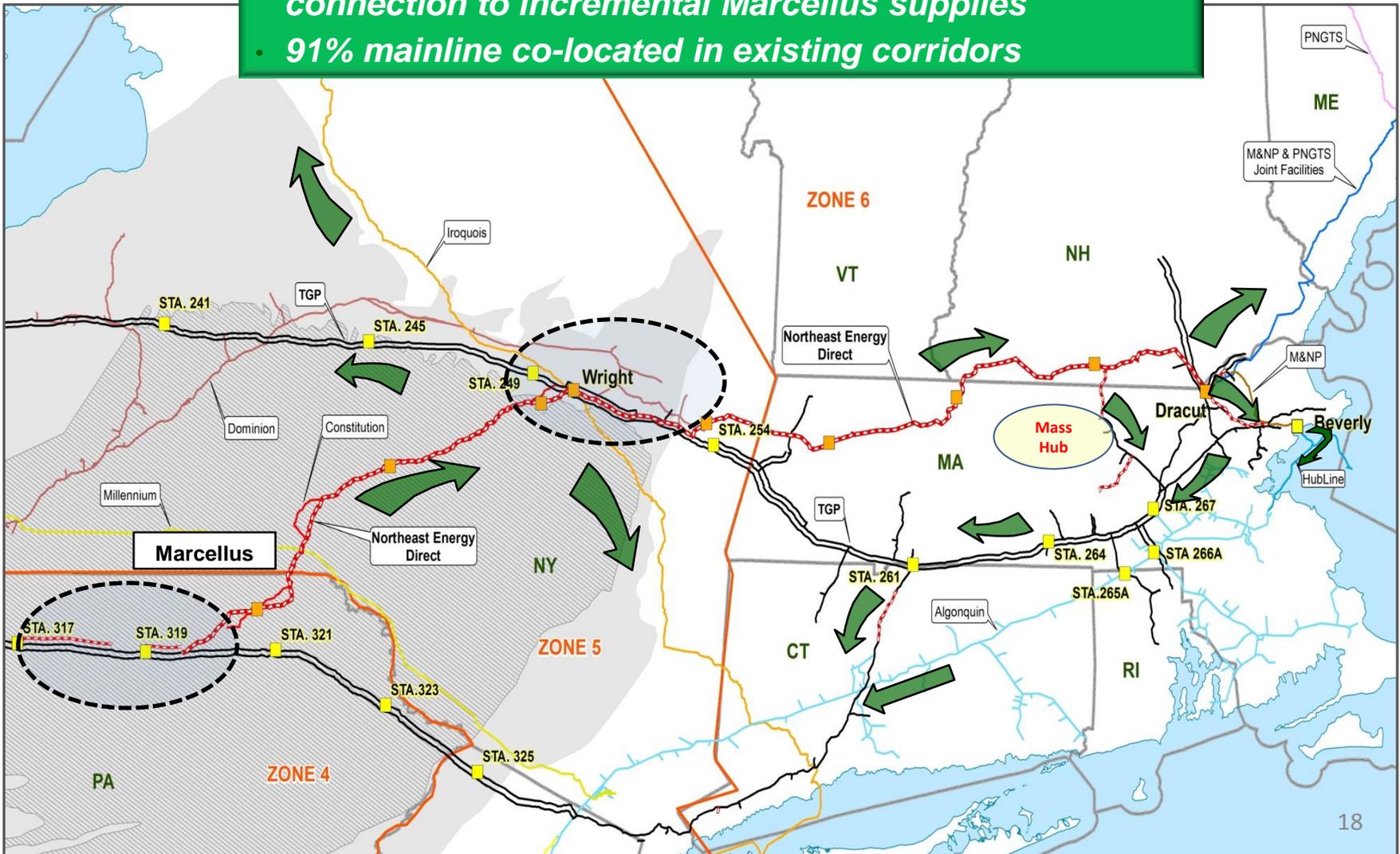
“New England could face significant reliability issues when natural gas-fired power generators are not able to dispatch as a result of the gas pipeline capacity constraints.” - NESCOE Phase III Study, Fall 2013.

- Electric generation, in New England and elsewhere, is increasingly dependent on natural gas, due to a combination of market forces, environmental regulations, and improvements in technology, but the natural gas infrastructure is trailing behind the construction of new gas-fired capacity
- The New England region is in a precarious operating position as there is inadequate pipeline infrastructure leading to high prices and reliability concerns; the long term solution is to expand natural gas infrastructure to meet demand



NORTHEAST ENERGY DIRECT (NED)

- *Transformative NED Project provides physical, direct connection to incremental Marcellus supplies*
- *91% mainline co-located in existing corridors*



Northeast Energy Direct Project Overview

- The Northeast Energy Direct Project will expand the existing Tennessee Gas Pipeline system within Pennsylvania, New York, Massachusetts, New Hampshire and Connecticut.
- The expansion will help meet increased demand in the U.S. Northeast for transportation capacity for natural gas.
- Following completion, the proposed project could bring an estimated increased capacity of up to 2.2 Bcf/d to the Northeast, which is equivalent to an additional 1.5MM households.
- The pre-filing process allows for open and transparent interaction between FERC Staff and stakeholders regarding the Project before the formal certificate application is filed, and is intended for early identification and resolution of environmental and other important issues. During pre-filing, TGP will file detailed draft environmental resource reports with FERC for review and comment.
- FERC Docket #: PF14-22-000

Estimated Project Schedule

Action	Timing
Outreach Meetings	Ongoing
Route Selection and Permit Preparation	Ongoing
Agency Consultations	Ongoing
Filed for FERC Pre-Filing	Sept. 15, 2014
Participate in FERC Pre-filing Process (including filing of draft resource reports)	4 th Quarter 2014 to 4 th Quarter 2015
File Certificate Application with FERC	4 th Quarter 2015
Anticipated FERC Approval	4 th Quarter 2016
Proposed Start of Construction Activity	January 2017
Proposed In-Service	November 2018

KM Confirms Anchor Shippers



Kinder Morgan Confirms Anchor Shippers for Northeast Energy Direct Project

Thursday, March 5, 2015 10:01 am EST

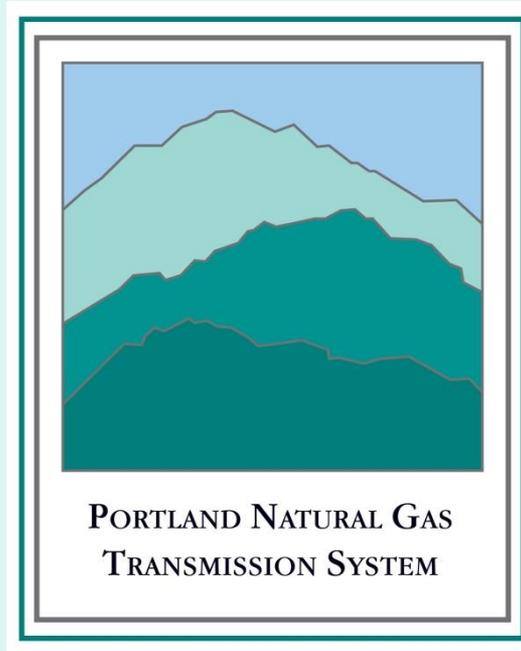
HOUSTON--([BUSINESS WIRE](#))--Kinder Morgan, Inc. (NYSE: KMI) today announced that its subsidiary, Tennessee Gas Pipeline Company (TGP), has finalized its anchor shippers for the market path component of the proposed Northeast Energy Direct Project (NED) following the formal close of the anchor shipper period in February. Collectively, the anchor shippers have executed agreements to transport approximately 500,000 dekatherms per day (Dth/d) of incremental natural gas supplies sourced from the prolific Marcellus Shale region to meet New England's growing consumer and industrial gas needs, as well as helping to bolster electric reliability. NED's market path component, from Wright, New York, to Dracut, Massachusetts, and beyond, is scalable to 1.2 billion cubic feet per day (Bcf/d), or ultimately 2.2 Bcf/d. A project in-service date of November 2018 is planned.

Anchor shippers that have executed binding precedent agreements include: National Grid, 186,963 Dth/d; Liberty Utilities, 115,000 Dth/d; Columbia Gas of Massachusetts, 114,300 Dth/d; and Connecticut Natural Gas Corporation, Southern Connecticut Gas Corporation, The Berkshire Gas Company, The City of Westfield Gas & Electric Light Department and others. TGP is continuing to negotiate with potential shippers on the NED Project, including electric distribution companies (EDCs) and others, and expects to announce additional commitments at a later date.

On March 5, 2015, Kinder Morgan announced it had reached agreement with key local natural gas distribution companies (“LDCs”) throughout New England to transport approximately 500,000 Dth/d of long-term firm transportation on the Northeast Energy Direct Project route.

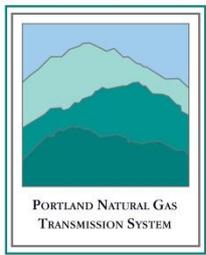
These LDC's include;

- National Grid (186,963 Dth/d)
- Liberty Utilities (115,000 Dth/d)
- Columbia Gas of Mass. (114,300 Dth/d)
- Connecticut Natural Gas Corporation
- Southern Connecticut Gas Corporation
- Berkshire Gas Company
- The City of Westfield Gas & Electric Light Department



New Hampshire's Natural Gas Pipeline

***NH BIA
April 17, 2015***



Forward Looking Statement

Forward-Looking Information

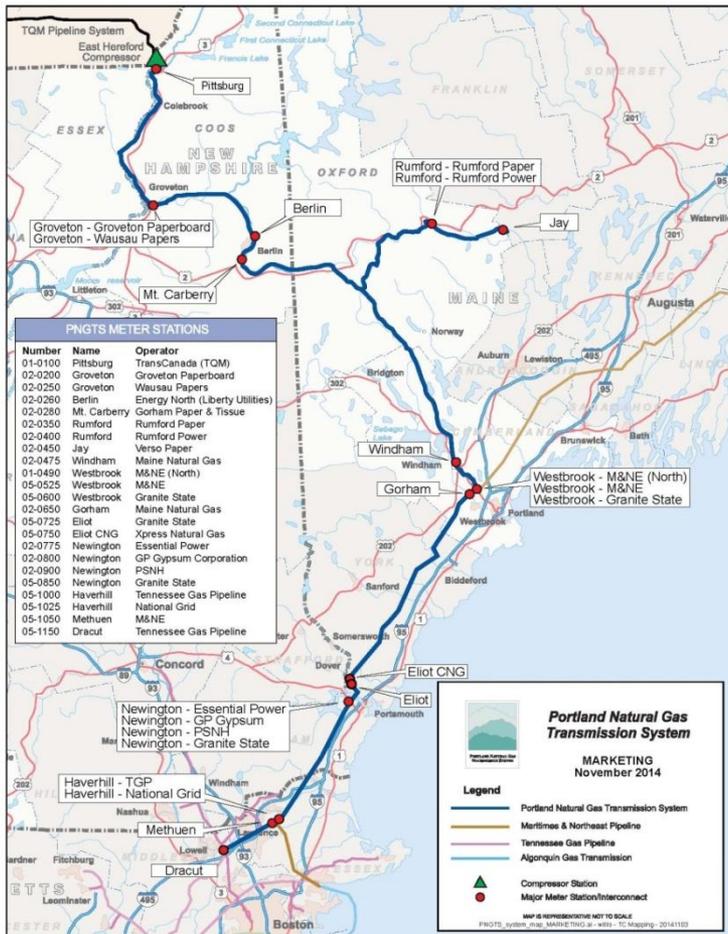
This presentation may contain certain information that is forward-looking and is subject to important risks and uncertainties. The words "anticipate", "expect", "believe", "may", "should", "estimate", "project", "outlook", "forecast" or other similar words are used to identify such forward-looking information. Forward-looking statements in this presentation are intended to provide information regarding TransCanada and its subsidiaries, including management's assessment of PNGTS' future financial and operations plans and outlook. Forward-looking statements in this document may include, among others, statements regarding the anticipated business prospects and financial performance of PNGTS, expectations or projections about the future, and strategies and goals for growth and expansion. All forward-looking statements reflect TransCanada's beliefs and assumptions based on information available at the time the statements were made. Actual results or events may differ from those predicted in these forward-looking statements. Factors that could cause actual results or events to differ materially from current expectations include, among others, the ability of PNGTS to successfully implement its strategic initiatives and whether such strategic initiatives will yield the expected benefits, the operating performance of PNGTS, the availability and price of energy commodities, capacity payments, regulatory processes and decisions, changes in environmental and other laws and regulations, competitive factors in the pipeline and energy sectors, construction and completion of capital projects, and the current economic conditions in North America. By its nature, forward looking information is subject to various risks and uncertainties, which could cause actual results and experience to differ materially from the anticipated results or expectations expressed.. PNGTS undertakes no obligation to update publicly or revise any forward-looking information, whether as a result of new information, future events or otherwise, except as required by law.

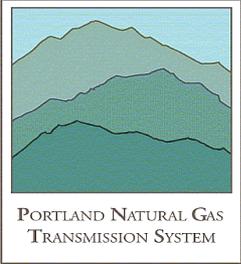
Portland Natural Gas Transmission System

PORTLAND NATURAL GAS
TRANSMISSION SYSTEM

Pipeline Overview

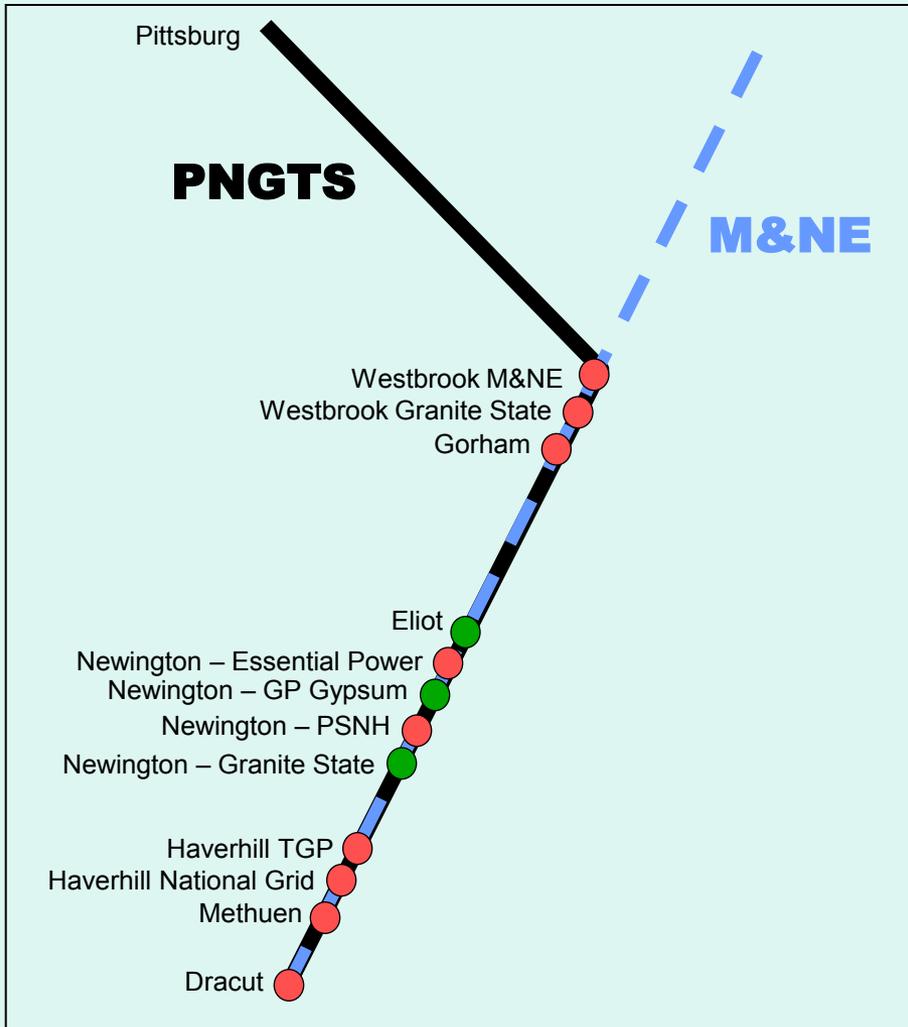
- In-Service 1999
 - 1,440 psi MAOP
 - No Compressors on system; All pressure provided upstream by TCPL
 - Approximately 300 miles of mainline and lateral pipe thru NH, ME, MA
- Ownership: 62% TransCanada, 38% GazMetro



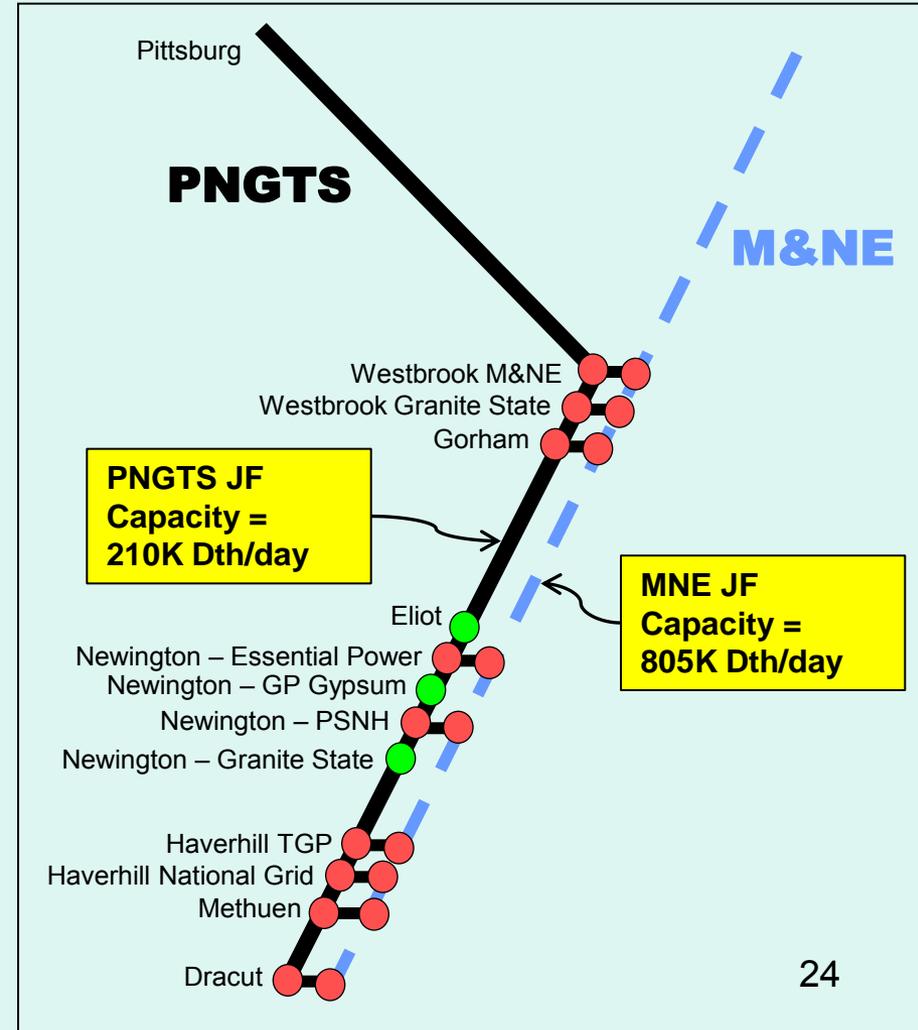


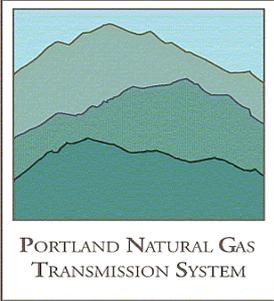
PNGTS/MNE Joint Facilities

One Physical Pipe



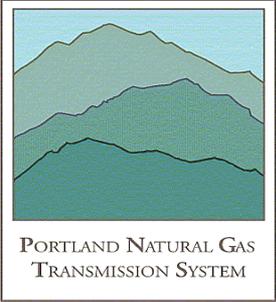
Two Commercially Separate Pipelines, each with their own capacity



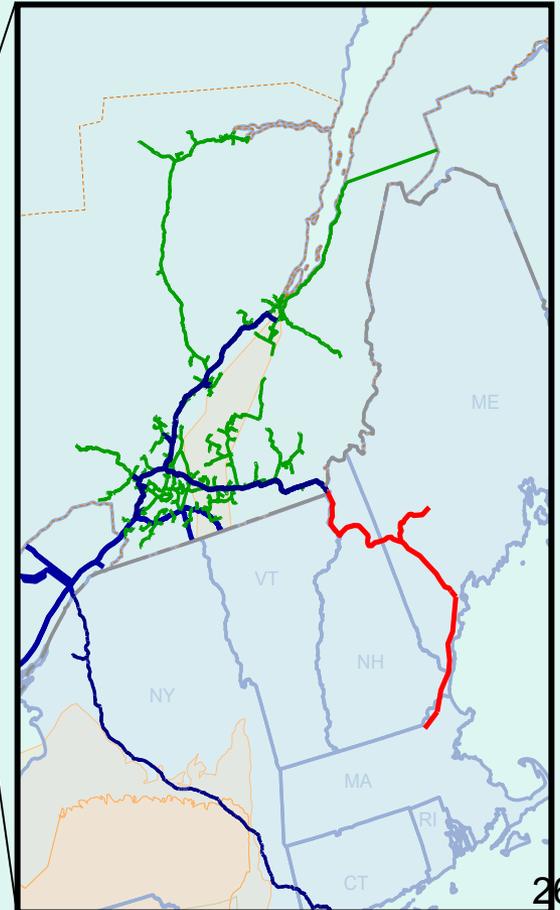
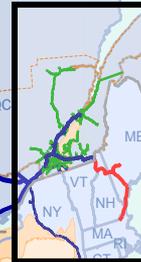
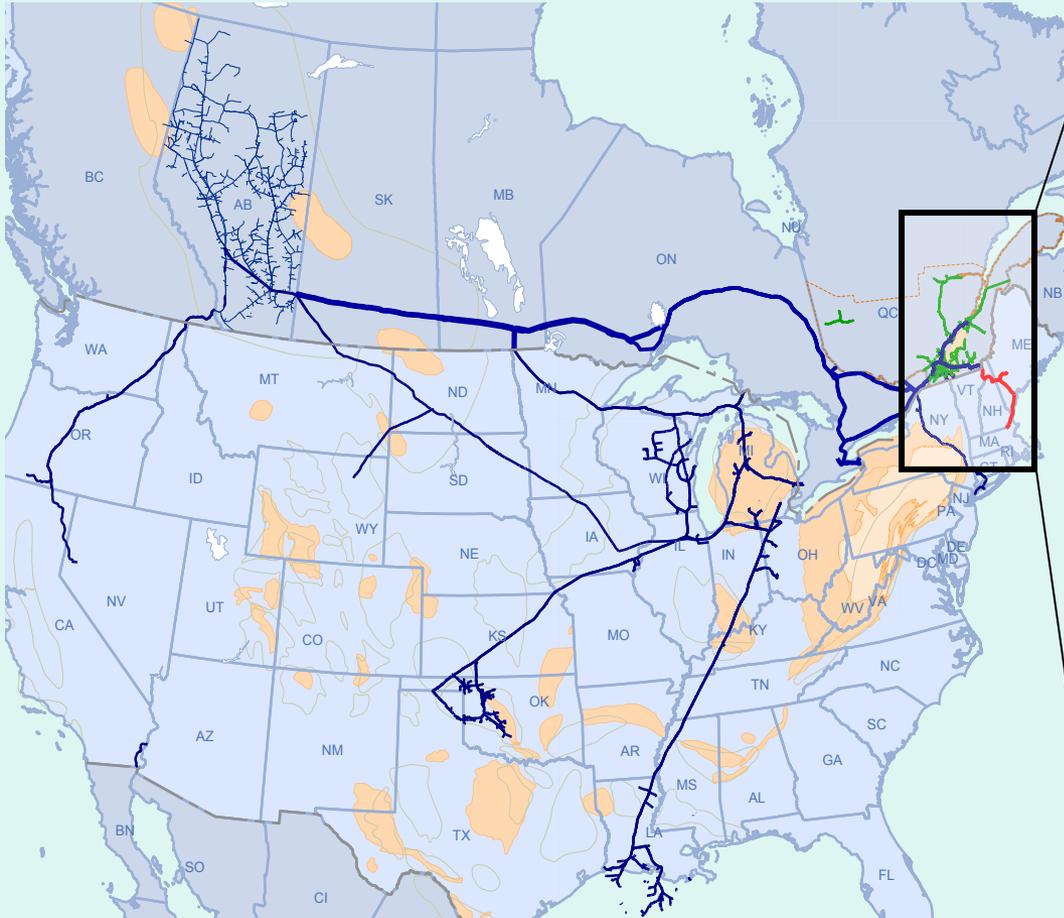


PNGTS' New Hampshire Markets

Meter Name	LDC or Direct Customer	Meter - Max. Design Capacity (Dth/day)
Groveton Paperboard	-	9,237
Groveton - Wausau Papers	-	11,245
Berlin	Liberty Utilities	1,506
Mount Carberry	Gorham Paper & Tissue	6,052
Newington - PSNH	Eversource Energy	80,320
Newington - Essential Power	Unitil	60,240
Newington - Granite State	Unitil	60,240
Newington - GP Gypsum	GP Gypsum	4,819



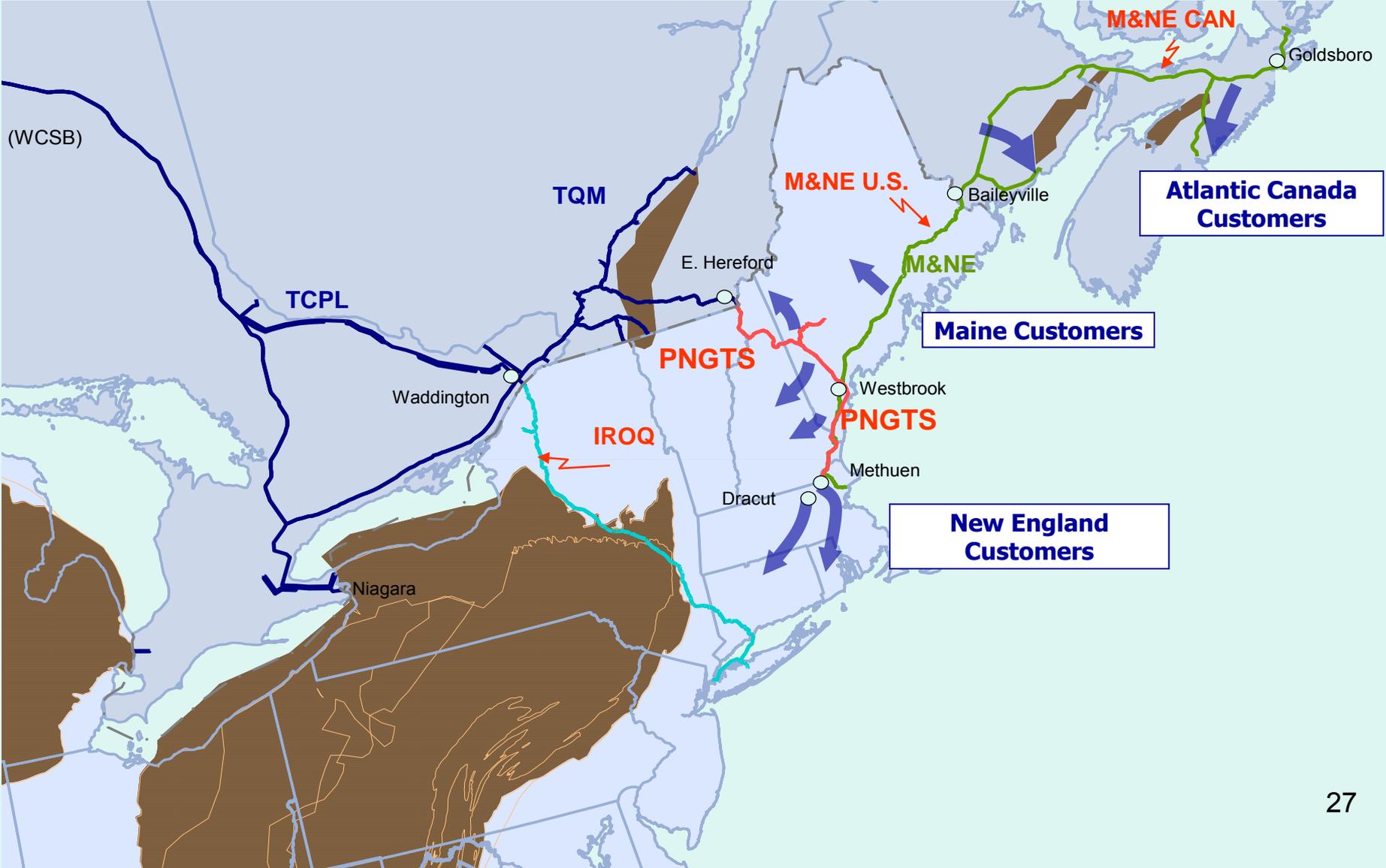
TransCanada's Natural Gas Pipeline Network



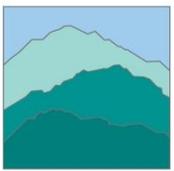


PORTLAND NATURAL GAS
TRANSMISSION SYSTEM

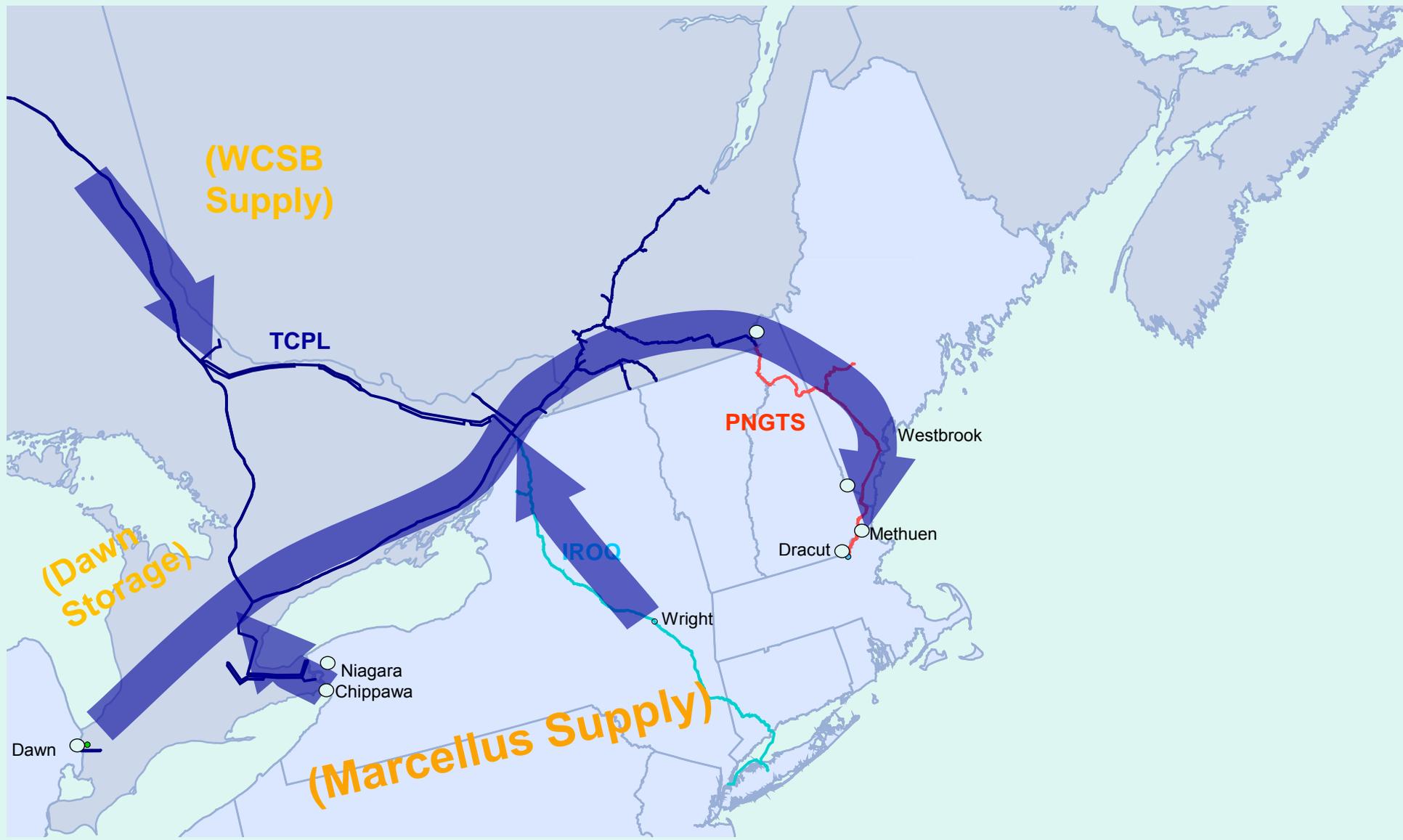
Other PNGTS Markets



PNGTS Supply, Storage Access Options



PORTLAND NATURAL GAS
TRANSMISSION SYSTEM



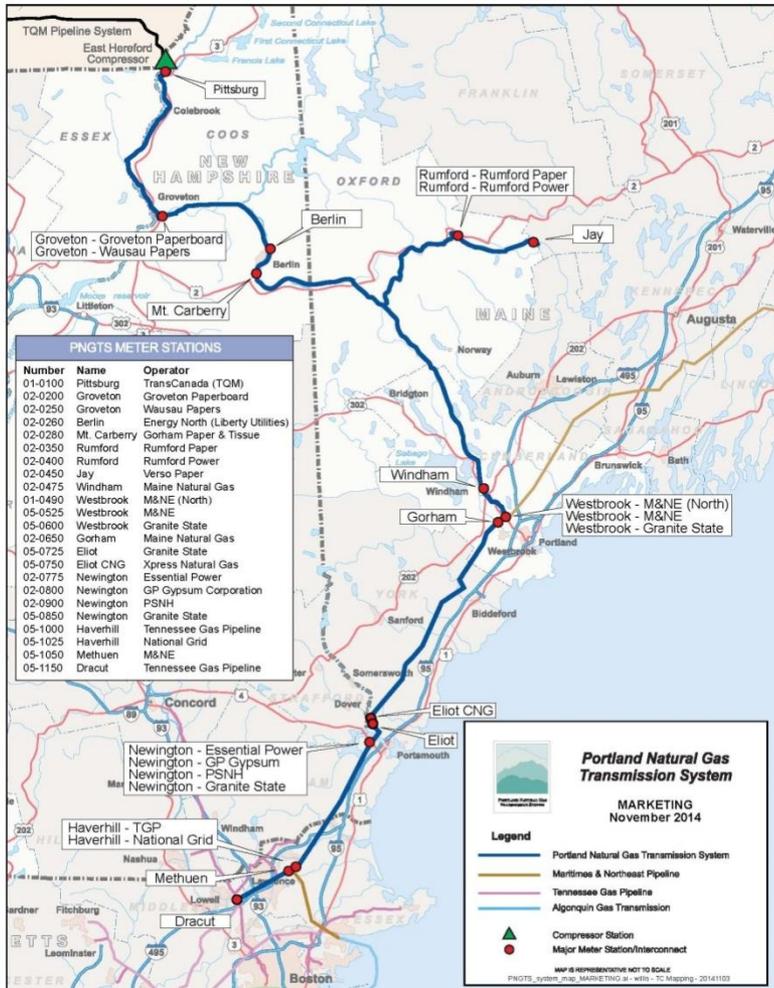
"C2C" Expansion Project Status

• Moving ahead

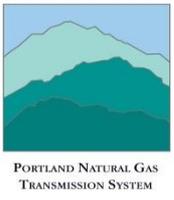
- C2C Open Season opportunity closed 2/27/15
- In Contract negotiations now
 - Volumes TBD
- Nov 2017 Start Date

• Next project

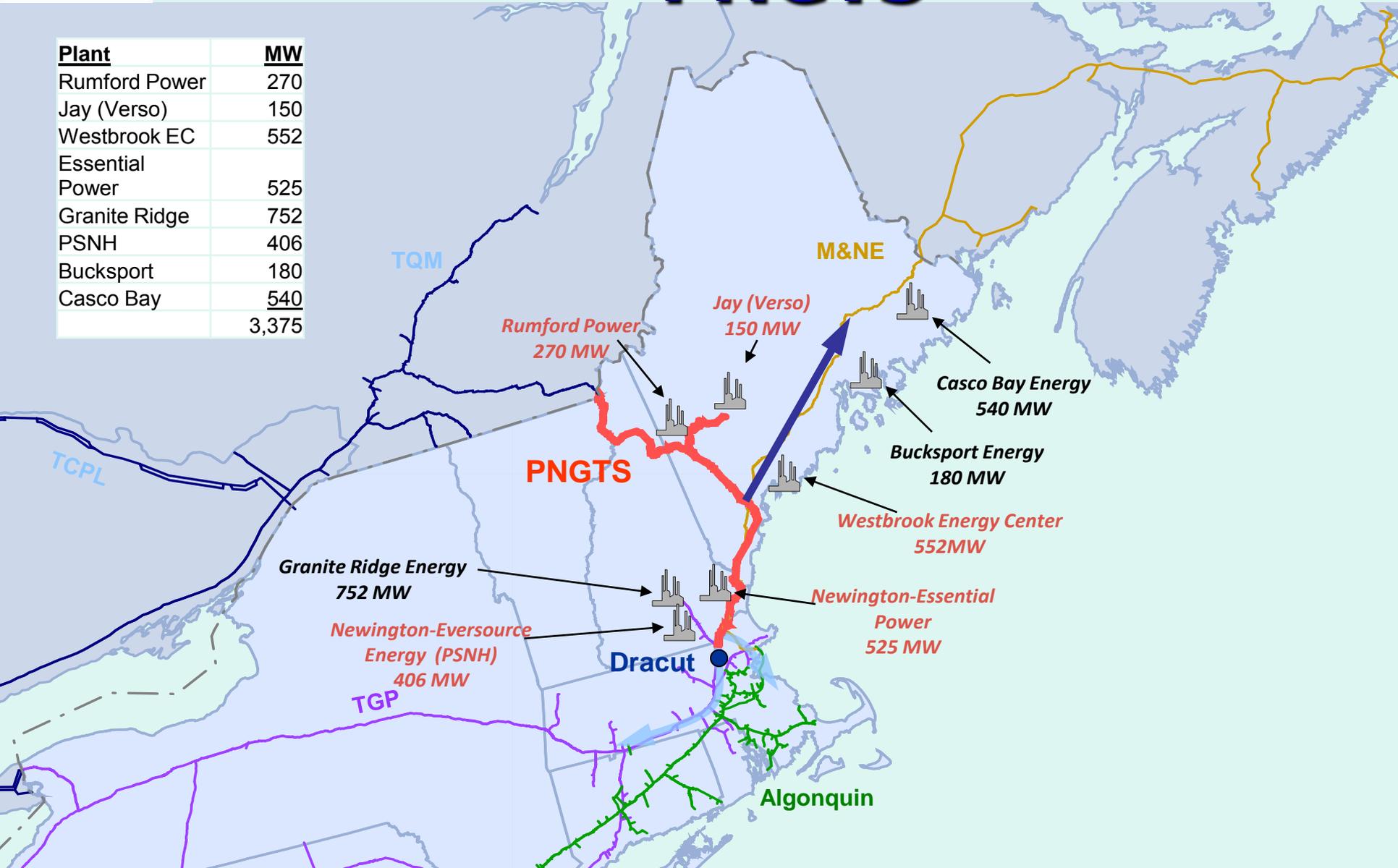
- Late 2015, early 2016
- May involve build
 - Depends on volume interest
- November 2018 Start Date
- Discussions with interested parties

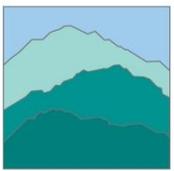


Electric Generation On/Near PNGTS



Plant	MW
Rumford Power	270
Jay (Verso)	150
Westbrook EC	552
Essential Power	525
Granite Ridge	752
PSNH	406
Bucksport	180
Casco Bay	540
	3,375

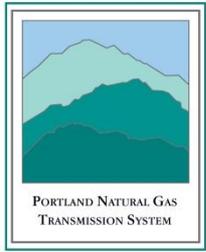




PORTLAND NATURAL GAS
TRANSMISSION SYSTEM

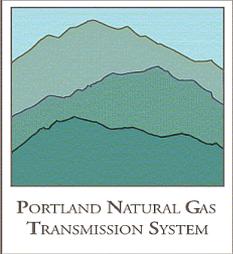
Groveton Opportunity

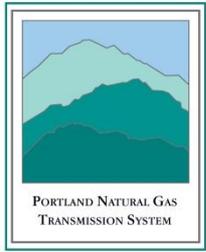




Groveton Site Specs

- Existing multi-use brownfield site
- Existing /tap meter station on PNGTS;
 - 1,440 PSIG natural gas
 - 0.72 mile, 8" lateral across site
- 137 Acres; Rail and Internet access
- 480 Volt power lines (Co-gen plant in the works as well)
- 35 miles to Canadian Border
- Skilled Workforce within 30 miles; 200+ machinists, welders, assemblers, papermakers
- 2 warehouses on site: a 28,000 sq ft, 30' ceilings, 8 bay loading docks, 10 railcar access in building, a 40,000 sq ft, 30' ceilings, office building: 24,000 sq ft
- 240,000 sq ft cement pad ready for industrial use
- Co-gen facility 14,000 sq ft, 40 ft ceilings
- Leasing and financing options available through owner
- Property tax abatement program by the state HB-1651 on new construction, loan guarantees
- More info available at: nheconomy.com





For more information contact:

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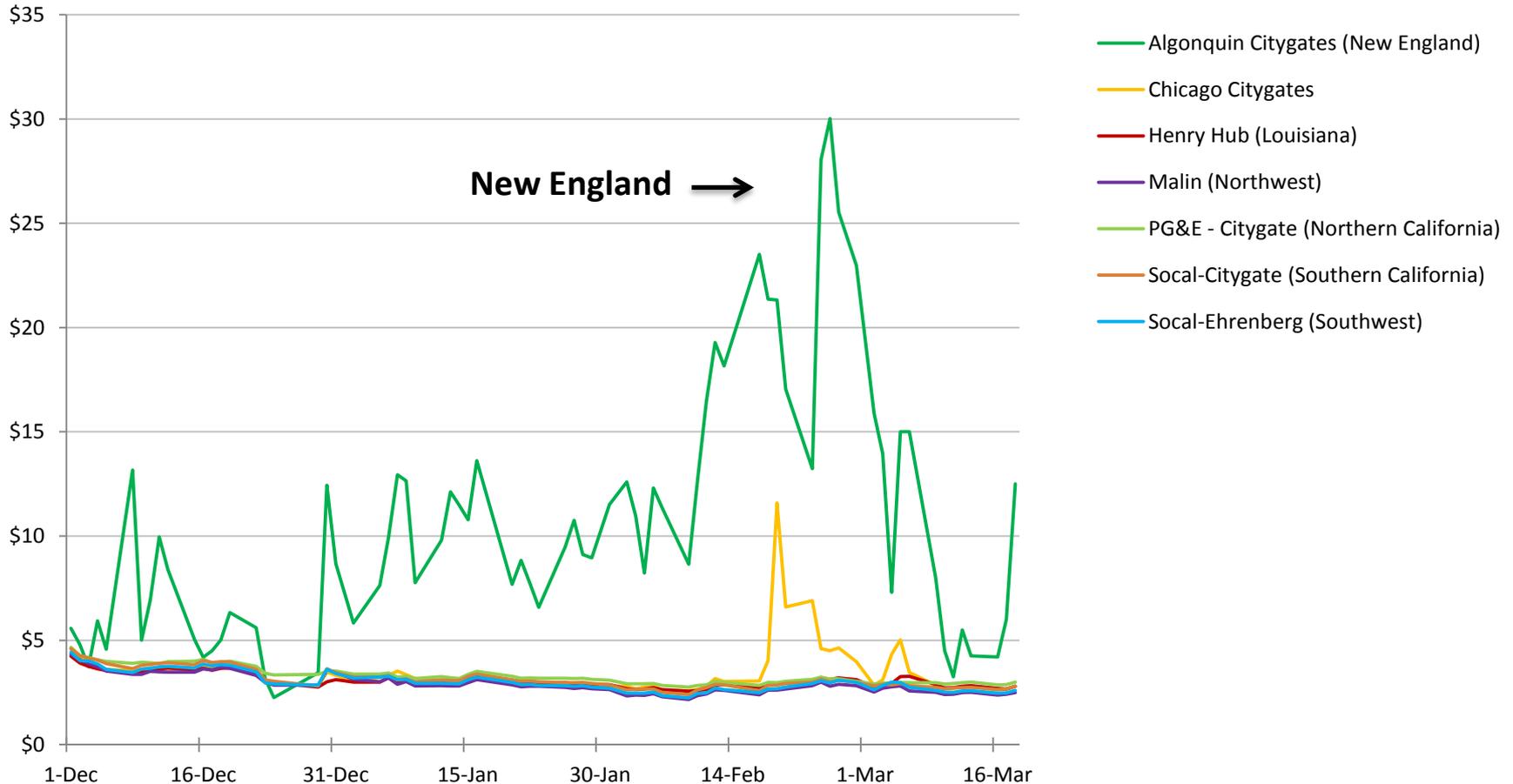


Access Northeast:
Meeting New England's Energy Needs

BIA Energy Infrastructure Forum
April 17, 2015

New England Gas Prices This Winter ~175% Higher Than Rest Of Country

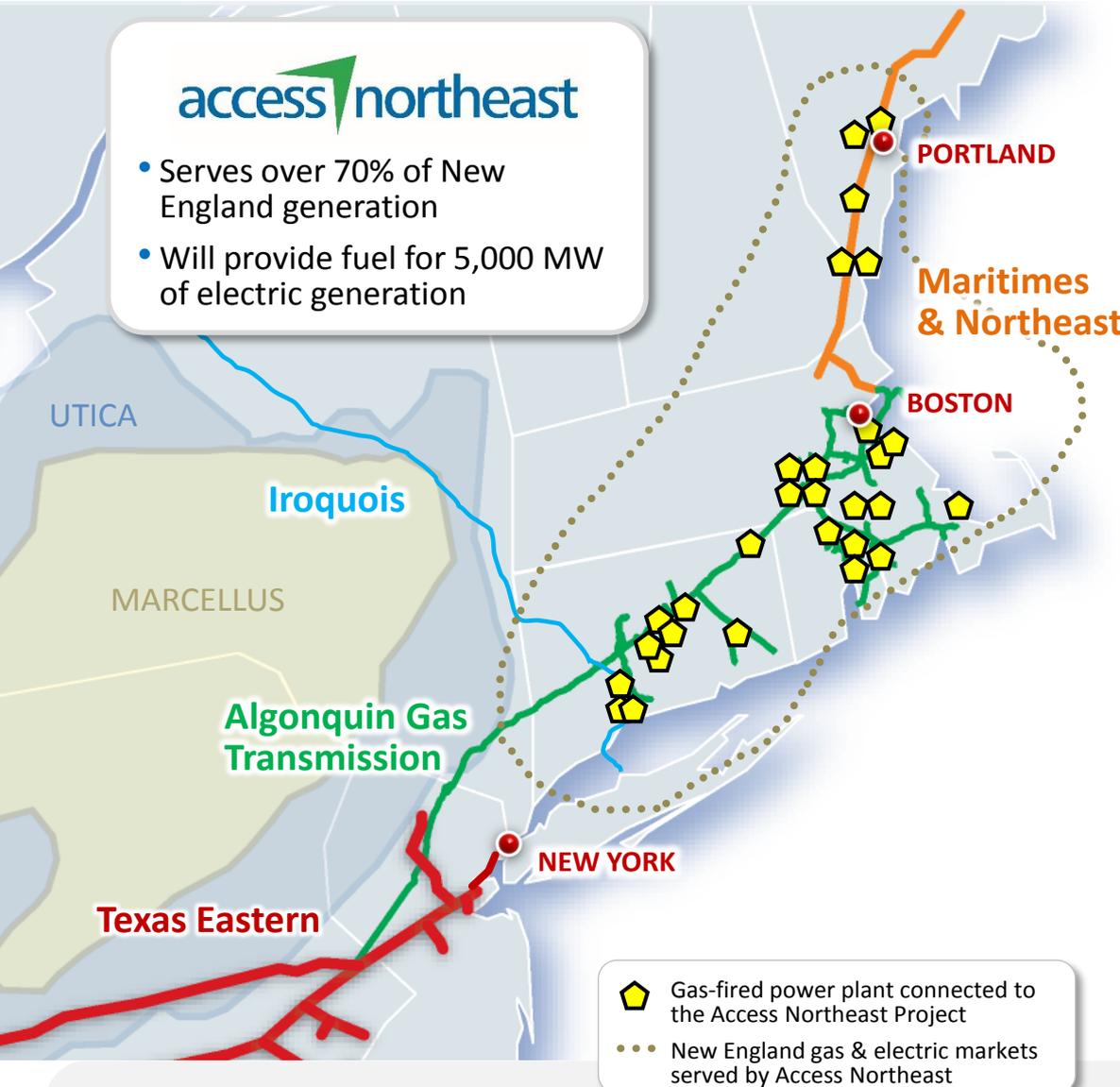
Winter 2014-15 Natural Gas Market Prices at Selected U.S. Hubs (ICE Reported Data Republished by U.S. EIA - \$/MMBtu)



Access Northeast is a Tailored Solution for the Region's Electric Energy Needs

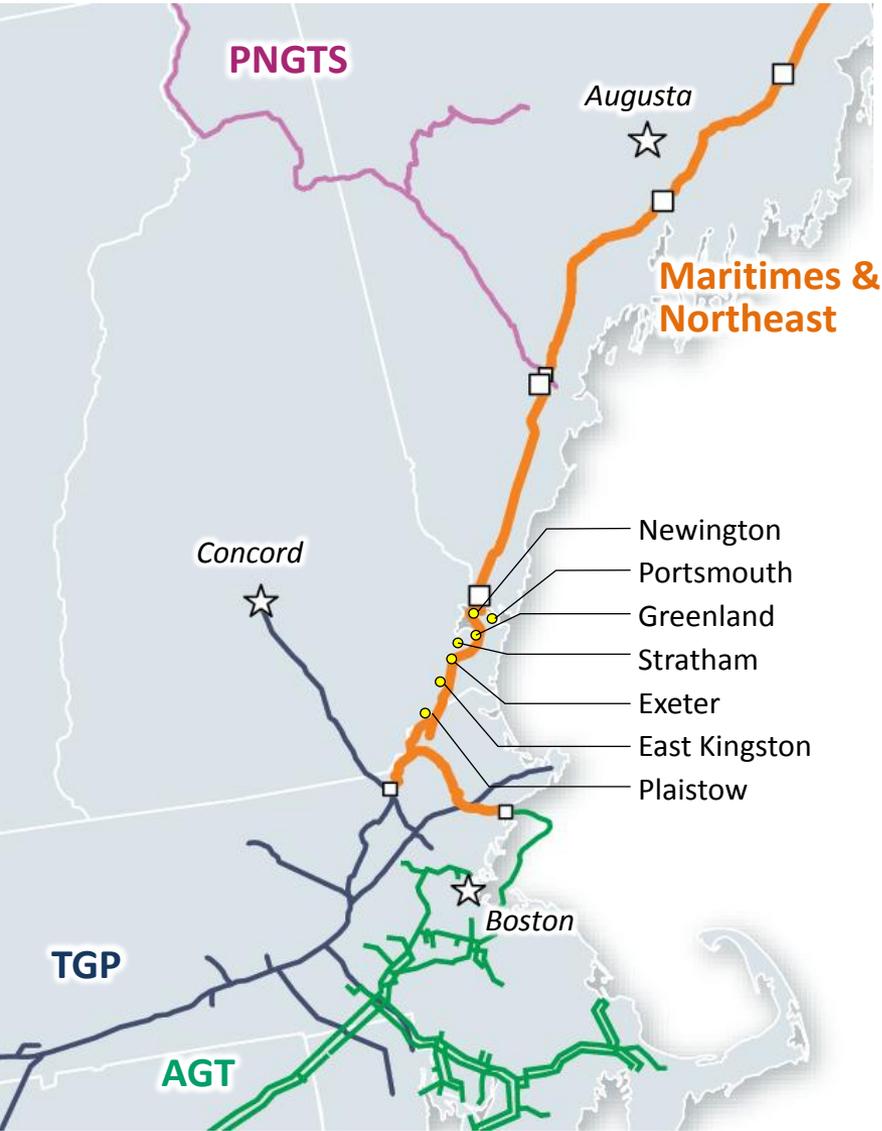
access northeast

- Serves over 70% of New England generation
- Will provide fuel for 5,000 MW of electric generation



- Upgrades Existing Pipelines
 - Innovative
 - Cost effective
 - Environmentally responsible approach
- Utilizes local natural gas storage
- Increases natural gas supplies to power plants by 0.9 Bcf /day
 - Ensuring energy security
 - Lowering electric costs
 - Reducing carbon emissions
- Provides rapid response capability – a first of its kind service to electric generators that will:
 - Meet peak winter day needs
 - Back stop intermittent solar and wind – renewable power
- Is quick to market, with a planned November 2018 in-service date

Key Benefits to New Hampshire



- \$54 - \$189 million annual net savings for New Hampshire
- Addresses winter gas constraints in the state and region without new construction in New Hampshire

Est. reduction in wholesale power costs	Normal winter	2013/14 winter
NE: gross savings	\$1 B	\$2.5 B
NE: net savings	\$600 M	\$2.1 M
NH: gross savings	\$90 M	\$225 M
NH: net savings	\$54 M	\$189 M

APENDIX 3

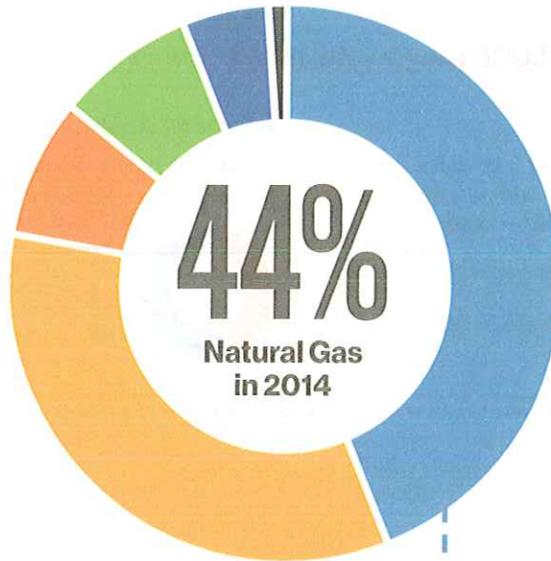
New England Power Grid 2014-2015 Profile

A rapid transformation of the region's electric power resource mix is underway

Sources of Electricity Production

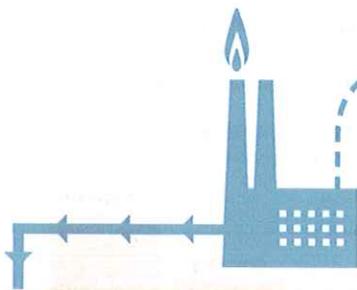
Major shift from oil and coal to natural gas over the past 15 years

View the real-time fuel mix at iso-ne.com



NET ENERGY
2000 2014

	2000	2014
NATURAL GAS	15%	44%
NUCLEAR	31%	34%
RENEWABLES	8%	9%
HYDRO	7%	8%
COAL	18%	5%
OIL	22%	1%



Region's growing dependence on natural gas has multiple impacts:

Reliability

Existing natural gas pipelines are inadequate to serve growing peak demand for heating and power generation needs in winter.

Coal and oil resources are essential during winter, but the rapid retirement of these resources will increase the region's dependence on natural gas.

Pricing

Wholesale electricity prices track power plant fuel prices, which in New England is typically natural gas.

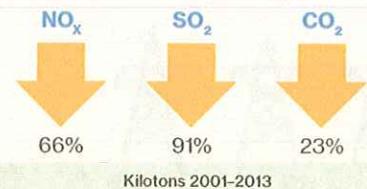
Natural gas pipeline constraints have increased natural gas prices and, in turn, wholesale electricity prices in recent winters.

Wholesale Energy Market Value

\$12 BILLION 2008	\$7 BILLION 2010	\$5 BILLION 2012	\$9 BILLION 2014
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Environmental

The transition from coal and oil to natural gas has reduced emissions.



The New England states are evaluating potential solutions to address infrastructure constraints in the region.

However, because of natural gas pipeline constraints, oil- and coal-fired electricity production has risen in recent winters, driving up emissions.

Electricity Demand

Demand for electricity peaks in the summer; a smaller peak occurs in the winter.
Records: 28,100 MW in summer and 22,800 MW in winter.

State-sponsored energy-efficiency (EE) programs are slowing growth in peak demand, and overall demand is flat; states are projected to spend \$6 billion on EE between 2017 and 2023.

Forecasted annual growth rates for New England through 2023 →	PEAK DEMAND:	1.3%	0.7%
	OVERALL DEMAND:	1.0%	0.1%
		Without EE	With EE

- Increased penetration of plug-in electric vehicles will increase demand for electricity

Demand Resources

In 2014, energy-efficiency projects provided 1,400 MW, and active demand response (load management, distributed generation) provided 700 MW of the region's total capacity needs.

New England has been a leader in providing opportunities for demand resources to participate in the region's wholesale electricity markets.

New England has approximately **31,000 megawatts (MW)** of installed electricity generating capacity

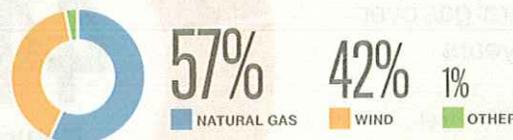
Generation Retirements

Coal- and oil-fired power plants make up nearly 30% of the region's electricity generating capacity but tend to be used only during peak demand periods and are retiring rapidly.

- Over 3,000 MW, or 10%, of capacity is retiring by mid-2017
- Another 5,000 MW of retirements are expected by 2020

Proposed Generation

Developers have proposed 9,500 MW of new generating resources as of January 2015.



With the retirement of coal and oil resources, New England is transitioning to a resource mix powered by natural gas, nuclear energy, renewable energy, and imported power.

Imported Power

New England is generally a net importer of electricity via interconnections to neighboring power systems in New York, Quebec, and New Brunswick.

Percentage of net energy from imports that serves New England's annual electricity demand

10% 2012	15% 2013	16% 2014
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Merchant transmission companies are proposing several projects to deliver low- or non-carbon-emitting resources into the New England market.

Wind Power

More than 800 MW of wind power is operational in New England.

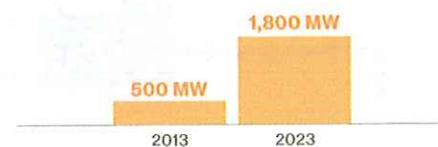
Developers are proposing almost 4,000 MW of additional wind power, primarily in northern New England and offshore in southern New England.

Additional transmission will be needed to successfully integrate large-scale wind resources in New England.

Solar Power

State policies are promoting development of behind-the-meter distributed resources, specifically solar photovoltaic (PV) resources.

ISO-NE 2014 Solar PV Forecast
AC NAMEPLATE CAPACITY



About ISO New England

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APENDIX 4

Knowing and Protecting Your **Rights** When an Interstate Gas Pipeline Comes to Your Community

A Legal and Practical Guide for States, Local
Government Units, Non-Governmental Organizations
and Landowners On How the FERC Pipeline
Certification Process Works and How You Can
Participate



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About the Author



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Legal Notice

This Primer was designed to provide information about the FERC pipeline permitting process. The information herein should be used only as general guide, and should not be relied upon as legal advice. You are encouraged to consult an attorney for specific advice regarding the facts of your particular situation.

The information you obtain in this document is not, nor is it intended to be, legal advice. Any information provided in this document is not intended to create a lawyer-client relationship.

This Primer cites to or summarizes statutes, regulations and caselaw in effect as of the date of publication. Be aware these legal sources are all subject to change and thus, you should check the current status of these resources. This Primer contains an Appendix with links to websites where current versions of these legal sources may be found.

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Summary and Need for Guidance

A. The Importance of Understanding the FERC Process

The Federal Energy Regulatory Commission (FERC) is a federal agency with authority to issue companies a “certificate of necessity and convenience” for pipelines that transport gas in interstate commerce. Because FERC is headquartered in Washington D.C. and outside the communities impacted by pipeline proposals, not surprisingly, most residents and local officials have little familiarity with the FERC process. As a result, they miss out on important opportunities to participate in, and potentially influence the outcome of the certification process.

Now, more than ever, it is critical for states, counties, non-governmental organizations (NGOs) and landowners to understand how the FERC process works and to learn best practices to protect their rights:

- *Two pipelines in Chester County, with more on the way:* In the past two years, FERC approved certificates for two pipeline projects – the Transcontinental (Transco) Gas Company’s Sentinel Project and the AES Sparrows Point LNG/Mid-Atlantic Express pipeline -- in Chester County, Pennsylvania.¹ Notwithstanding this recent activity, additional pipeline projects are under consideration.²

¹ See *FERC Website, Approved Pipeline Projects*, <http://www.ferc.gov/industries/gas/indus-act/pipelines/approved-projects.asp>. The Transco pipeline has since gone into service, while the certificate for the AES/Mid-Atlantic Express project is being challenged at the United States Court of Appeals for the District of Columbia Circuit by several parties to the case.

² On May 4, 2010, a notice appeared in the Federal Register publicizing FERC’s intent to conduct an environmental assessment of an application for the Eastern Shore Natural Gas Pipeline Mainline Extension Project, Docket No. CP10-76 located in Lancaster and Chester Counties, Pennsylvania. Dominion Keystone is also exploring a possible pipeline from Marcellus Shale to Chester County. See <http://www.pipelineandgastechnology.com/Construction/ForecastsReviews/item55708.php>; also *Projects on the Horizon*, FERC Website, www.ferc.gov/industries/gas/gen-info/horizon-pipe.pdf.

- ***Marcellus Shale likely to drive new development:*** Many companies are eyeing Marcellus Shale in Western Pennsylvania as a promising gas resource. As the gas in Marcellus Shale is tapped, additional pipelines will be required to transport it, which could necessitate new construction within Chester and surrounding counties, or expansion of existing pipelines.
- ***FERC is expediting the pipeline process:*** Though FERC makes a variety of handbooks and informational resources available to landowners at its website,³ at the same time, FERC has “steadily decreased the time it takes to act on proposed projects such as LNG facilities and natural gas pipelines.”⁴ In 2009, FERC processed 100 percent of *protested* pipeline projects (with no precedential issues) within 304 days of the application filing, and processed 94.7% of protested cases with “issues of first impression” within 365 days of filing. *Id.* This time frame includes the various period for public comment, completion of an environmental assessment or environmental impact statement (which may be several hundreds of pages depending upon the size of the project) and issuance of a decision on novel issues.

Given the pending new pipeline development coupled with the pace at which FERC moves on applications, stakeholders who are unfamiliar with the process are at a significant disadvantage.

B. Contents of this Guide

This multi-part Guide is intended to familiarize affected stakeholders – state and local agencies, municipalities and landowners -- with the FERC process. The Guide will explain how the FERC process works, the relationship between the many agencies that participate in the FERC process and most importantly, what your legal rights are and what you must do to protect them.

³ FERC Website, <http://www.ferc.gov/for-citizens/citizen-guides.asp> (includes guides on certificate process and landowners’ rights).

⁴ FERC FY 2011 Budget Request at 59, 100, online at www.ferc.gov.

In addition, the Handbook will also dispel many of the misconceptions you may have heard about the FERC process from well meaning, but inaccurately informed friends or professional colleagues.

For your convenience, the Guide is separated into different parts so you can skip forward to the sections of most relevance to you. Below is a summary of the topics covered.

- I. Overview of the FERC Process**
 - A. Summary of the Natural Gas Act and FERC Certificate Process [p.4]**
 - B. Busting the Myths of the FERC Process [p.5]**
- II. The Role of the Parties and Opportunities to Participate**
 - A. Each Stakeholder's Role in the FERC Process [p.11]**
 - B. The Different Phases of the FERC Process [p.13]**
- III. State and Local Permitting Requirements and Preemption Issues [p.14]**
- IV. Practical Tips**
 - A. Getting Information About a Proposed Pipeline [p. 18]**
 - B. Tips and Best Practices for Participating in the FERC Process [p. 21]**
 - C. Sample Intervenor Forms and FERC Rules for Intervention [p.24]**
- V. Memo on Legal Issues Related to Eminent Domain [p.28]**

Part I: Overview of the FERC Process

A. Summary of FERC's Authority to Issue Certificates Under the Natural Gas Act

1. Types of Projects Subject to FERC Jurisdiction

Under Section 7 of the Natural Gas Act, 15 U.S.C. § 717f (c), the Federal Energy Regulatory Commission (FERC) has the power to issue a “certificate of public necessity and convenience” for the construction and operation of natural gas companies pipelines used to transport gas in interstate commerce, *i.e.*, across state lines. FERC also has jurisdiction to issue certificates for liquefied natural gas (LNG) facilities under Section 3 of the Natural Gas Act, as well as for the associated LNG pipelines, which are certified under Section 7. *See, e.g., AES Sparrows Point*, 126 FERC ¶ 61,019, *reh'g denied*, 129 FERC ¶ 61,295 (2009).

FERC does not have jurisdiction over siting of local gas pipelines used for purely in intrastate commerce. Nor does FERC have jurisdiction over facilities used for production or gathering of natural gas, such as a 30 mile gathering pipeline system which would gather Marcellus Shale natural gas from wells for transport to interconnections with interstate pipelines and storage facilities.⁶

2. Factors Considered When Issuing A Certificate

In determining whether to issue a certificate for a pipeline, FERC must find that the project is in the public interest, and that overall, the benefits of the project outweigh the adverse impacts. In addition, FERC's *Policy Statement on Pipeline Certificates*, directs FERC to consider several specific factors, including (1) the enhancement of competitive transportation alternatives; (2) the possibility of overbuilding; (3) subsidization by existing customers; (4) the applicant's responsibility for unsubscribed capacity; (5) avoidance of unnecessary

⁶ Laser Marcellus has also applied for status a public utility in Pennsylvania, presumably to acquire eminent domain rights for the project. In April 2010, the Pennsylvania PUC conducted a hearing to explore the implications of granting public utility status to independently owned gathering companies and other legal issues related to potential state regulation of gathering companies.

disruptions to the environment; and avoidance of the unnecessary exercise of eminent domain.⁷

In addition, under the National Environmental Policy Act (NEPA), FERC must consider project alternatives, as well as a wide range of potential impacts, including socio-economic and cumulative impacts. Cumulative impacts are impacts that result from the proposed action as well as past, present and foreseeable actions, which may be minor individually but collectively, are significant.

As for pipeline safety, FERC's role is subordinate to the Department of Transportation (DOT). Applicants for a pipeline certificate are required to certify to FERC that they will "design, install, inspect, test, construct, operate, replace and maintain" a gas pipeline facility under those standards and plans contained in the Pipeline Safety Act, 49 U.S.C. § 60104(d)(2), *also* 18 C.F.R. § 157.14(a)(9)(vi). FERC will typically consult with DOT regarding compliance with standards, however, many times, final plans are not completed until after the certificate issues. Once a pipeline is operational, safety is regulated, monitored and enforced by the Department of Transportation, and any safety violations should be reported to the Department of Transportation's Office of Pipeline Safety.⁸

B. Eight Common Misconceptions About the FERC Process

Subsequent chapters of this Guide will explain how the FERC process works and how stakeholders can participate to increase their chances of achieving their goals. But before going into further into the nuts and bolts of the certification process, we begin by dispelling some of the commonly held misconceptions about the FERC process.

⁷ *Certification of New Interstate Natural Gas Pipeline Facilities (Policy Statement)*, 88 FERC ¶ 61,227 (1999), orders clarifying policy, 90 FERC ¶ 61,128 and 92 FERC ¶ 61,094 (2000).

⁸ See FERC Website, <http://www.ferc.gov/industries/gas/safety.asp> with link to DOT site at <http://www.phmsa.dot.gov/pipeline>.

1. I've been told that if a pipeline asks to access my property to survey a possible route, my neighbors and I should put up a big fuss and make the process so costly that the pipeline will go away.

Refusing to let a pipeline come on your property for surveys won't do much to deter the project. Most pipeline companies allocate millions of dollars for the certification process and have already factored in the cost of dealing with uncooperative landowners. Moreover, by denying access, you may hurt your own interests, because the company will go ahead using the best available information and assumptions. As a result, the pipeline may choose a route that places the pipeline closer to your residence than you might have preferred or requires removal of trees because the pipeline was unable to perform an accurate survey due to lack of access.

Understandably, from a landowner's perspective, granting access to a pipeline company is the equivalent of sleeping with the enemy. And many companies are notorious for abusing the privilege of access, which is why you should memorialize any terms of access in a written agreement if you agree to deal with the company.

Nonetheless, if you feel strongly about keeping the pipeline off your property, you have the right to do so unless (1) the pipeline already has access to the property via an existing right-of-way or (2) state law empowers the pipeline to gain access. In addition, once FERC issues a certificate, your ability to object to access diminishes because the pipeline can simply go to court to condemn the necessary property.

2. Filing hundreds of landowner comments and petitions will convince FERC to reject the pipeline.

FERC is an executive agency, not a legislative body. As such, it is not influenced by hundreds of identical letters or petitions urging rejection of the pipeline. See Part IV of this Primer for tips and best practices for preparing persuasive comments to file at FERC.

3. The County doesn't need to intervene in the proceeding – the pipeline is located right in the community and so the County is entitled to participate in the process as a matter of right.

The county where the proposed pipeline is located has a right to participate in the FERC process. However, the right is not self-executing. Like any other participant, affected counties and local government units must file a timely motion to intervene in accordance with FERC's rules (*See* Part II.A and IV.C) in order for FERC to fully consider their comments and to preserve their ability to challenge the FERC ruling on rehearing and potentially in court.

4. The pipeline route that I saw at the pipeline's open house goes through my next-door neighbor's property, but it bypasses mine so I don't need to intervene at FERC.

Even if early maps suggest that a pipeline route will not cross your property, you should intervene to protect your interests if your home is within the vicinity of the route. Pipeline routes change frequently during the certification process (for various reasons, such as minimizing impacts to environmentally sensitive areas or residential structures) and could be re-routed through your property. Unless you intervene, you may lose the ability to challenge a new route configuration.

5. There's no point for the state or county to waste time on pipeline process because FERC is a federal agency and it can ignore or preempt state or local action.

FERC's authority to grant a certificate for pipelines is broad, but it neither preempts all state requirements nor renders state and local participation irrelevant. Generally only state and local permitting processes that duplicate the FERC process – such as siting or zoning requirements – will be deemed preempted by federal law. Where state or local agencies require environmental permits or propose conditions to protect local resources, FERC frequently makes

compliance with these requirements a condition of the certificate. In addition, some state certification programs such as issuance of a Section 401 Water Quality Certificate (WQC) or a consistency finding under the Coastal Zone Management Act (CZMA) are authorized by federal law, and are never subject to preemption.

Sometimes, FERC gives the appearance of ignoring state or local laws, since resource-strapped government agencies do not involve themselves in the FERC process until it is too late. But FERC has no obligation to consider state and local input after FERC imposed deadlines for filing comments have passed.

6. FERC says that the pipeline meets safety standards, but my neighbor who is pipeline engineer disagrees and can prove it at trial.

There are no court room trials, or even live hearings before an administrative law judge in a FERC pipeline certification case. Instead, FERC holds “paper hearings,” where parties submit written arguments and evidence to FERC. Parties can submit testimony from experts and indeed, on matters that require special expertise such as pipeline safety or environmental impacts, an expert may bolster the case.

FERC is free to disregard expert testimony submitted by parties, and rely on its own experts or those of the pipeline. Moreover, unless FERC rejects the expert’s evidence without any discussion or rationale, its decision is likely to withstand judicial review. FERC is required to support its decisions with “substantial evidence.” Courts have found that even those FERC orders which reflect a split of opinion between experts satisfy the substantial evidence standard so long as FERC adequately explains its decision for choosing one expert’s view over another.

7. If I hold out long enough on the price for the pipeline to acquire my property, I’ll get more money for it.

While you may disagree with the pipeline’s proposed purchase price to acquire your property, holding out will not get you a better offer. Pipelines have the power of eminent domain and therefore, they have no incentive to give in to

hold outs because they can simply go to court to condemn the property. The court process may cost the pipeline more in the short run, but by standing strong, the pipeline will save in the long run by deterring hold outs.

Nevertheless, if you have a bona-fide disagreement over the price offered for your property, don't feel compelled to settle for the offered amount. You can, either on your own or through counsel, try to negotiate a better price by submitting your own appraisal information or disputing the pipeline's assumptions. In addition, though you shouldn't hold out just for the sake of doing so, it may be prudent to put off selling any property to the pipeline until after the pipeline's route is more settled so that you have a better idea of the exact tract required for the project.

8. The pipeline hasn't satisfied all of the conditions to the permit, and that may take years, so I don't have to worry about eminent domain until that point.

Most of the conditions contained in a FERC certificate affect a pipeline's ability to commence project construction, not its ability to initiate eminent domain. The sole exception is with regard to conditions related to site specific plans, where FERC will often prohibit the pipeline from exercising eminent domain power until it provides site specific plans to landowners whose residences are 50 feet or less from the pipeline. In most other cases, federal district courts hold that a company may proceed with condemnation notwithstanding its failure to obtain necessary permits or comply with other conditions of the certificate – even if denial of the permits might necessitate reconfiguration of the project and avoidance of the property subject to condemnation.⁹ This is one of the most serious drawbacks of the FERC process

⁹ One exception to these rulings was the recent "Brandywine Five" matter here five landowners opposed Transco Pipeline's eminent domain action, arguing that Transco's inability to obtain a water quality permit might force a change in the pipeline route and avoid the landowners' property. Ultimately, Transco was unable to secure a permit for its desired work, and the judge directed Transco to dismiss the eminent domain proceedings. *Transcontinental*

because in the absence of permits, landowners are subject to eminent domain for a project which may never go through their property.

Pipeline, Docket No. 09-1385, 09-1396, 09-1402 (E.D. PA 2009)(disclosure – this Guide’s author represented the landowners in this matter).

Part II: The Role of the Parties and Opportunities to Participate

A. Each Stakeholder's Role in the FERC Process

When a pipeline cuts through a community, it impacts different constituencies in different ways. Each affected stakeholder – from a state resource agency charged with protecting natural resources within the region to landowners, whose property may be damaged or taken during the pipeline process – represents a unique interest, and plays unique role in the process. Although participants can and should challenge all aspects of a pipeline that they find objectionable, stakeholders enjoy the most credibility when they address issues within their zone of expertise.

The table on the following page lists the categories of stakeholders common to most pipeline proceeding and the role they play in the process:

TABLE SHOWING ROLE OF STAKEHOLDERS

	Role	Intervention Required?	Waivable by FERC?	Preempted?
State agency carrying out federal program	Has authority under federal law to implement federal program (e.g., Clean Water Act Section 401, CZMA consistency)	Yes, to challenge FERC Order, no to act on permits.	No, unless state fails to act on permits within deadlines required by federal statute.	No.
State agency carrying out state program	Authority under state law to ensure compliance with state programs for environmental protection or safety.	Yes to challenge FERC order, no to act on permits	No, unless state law provides for waiver.	No if obtaining state permit is condition of FERC certificate; yes, if permit duplicates or conflicts w/ FERC process and requirements.
County or municipality	Empowered by state law or constitution to carry out county or municipal provisions to protect environment or safety.	Yes to challenge FERC order, no to act on permits	No, unless state or local law provides for waiver.	No if complying with local requirements are condition of FERC certificate; yes, if permit duplicates or conflicts with FERC process and requirements.
Non-governmental organization (NGO)	Protects special interests (environment, business, etc...) that are subject of its charter	Yes. But note – some NGOs may not have standing to seek judicial review because of indirect nature of interest.	Intervention and ability to file comments waived if untimely.	N/A
Landowner w/lands directly affected	Protecting property.	Yes to preserve ability to seek rehearing and judicial review.	Intervention and ability to file comments waived if untimely.	State eminent domain preempted.

B. The Different Phases of the FERC Process

The FERC process is comprised of several phases, each offering varying levels of opportunity for participation. The FERC process also resembles a funnel: at the beginning of the process, opportunities to submit comments and seek modifications are broadest, however, they narrow as the process continues. By the time a certificate is issued and the pipeline brings landowners to federal court to condemn their land, there are very limited opportunities to challenge the taking itself. *See* Part V for additional information. The primary focus of the eminent domain proceeding is determining the value of the property.

The FERC process is essentially divided into two main phases. First, is the **pre-certificate activity**, which involves the filing of the application, public participation and intervention, environmental review FERC website contains a flowchart of the certificate process, beginning with either the pre-filing stage or formal application filing. Once the certificate issues, the **post-certificate** phase begins which includes opportunities for rehearing and judicial review of the FERC certificate, pipeline compliance with conditions, eminent domain and construction and ongoing operation.

What follows are several checklists and charts depicting the different phases of the FERC process and opportunities for input.



List of Steps in the Pre-Filing Process, from FERC Website

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EA Pre-Filing Environmental Review Process

1. Applicant assesses market need and considers project feasibility
2. Applicant requests use of FERC's Pre-Filing Process
3. FERC receives Applicant's request to conduct its review of the project within FERC's NEPA Pre-Filing Process
4. FERC formally Approves Pre-Filing Process and issues PF Docket No. to Applicant
5. Applicant studies potential site locations
6. Applicant identifies Stakeholders
7. Applicant holds open house to discuss project
8. FERC Participates in Applicant's open house
9. FERC issues Notice of Intent for Preparation of an EA opening the scoping period to seek public comments.
10. FERC may hold public scoping meeting(s) and site visits in the project area. Consults with interested stakeholders
11. Applicant conducts route studies and field surveys. Develops application.
12. Applicant files formal application with the FERC
13. FERC issues Notice of Application
14. FERC analyzes data and prepares EA
15. FERC - If no scoping comments are received, EA is placed directly into eLibrary. If substantive comments are received, EA is mailed out for public comment.
16. FERC responds to comments
17. **Commission Issues Order**
18. Parties can request FERC to rehear decision
19. Applicant submits outstanding information to satisfy conditions of Commission Order
20. FERC issues Notice to Proceed with construction.

Use of pre-filing is required for pipelines associated with LNG facilities; voluntary for other, non-LNG pipelines. FERC strongly encourages use of pre-filing process.

Post-certificate activity starts here (between 17 & 18)



List of Post-Construction Activities
from FERC Website

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PROCESSES FOR NATURAL GAS CERTIFICATE

Construction Process

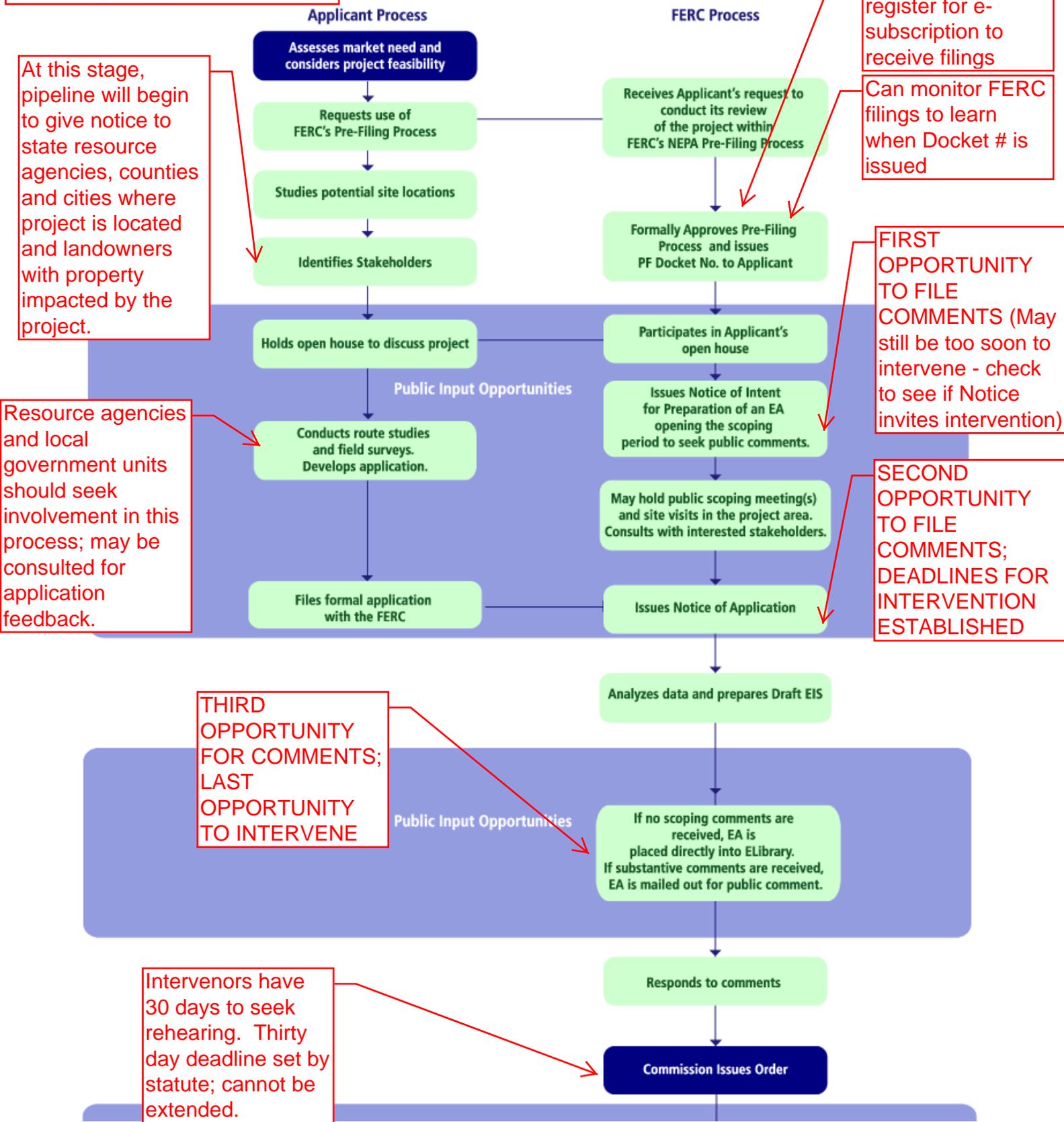
1. Finalize project design
2. File plans, surveys, and information required prior to construction by Commission order
3. Complete right-of-way acquisition
4. Pipeline construction
5. Right-of-way restoration
6. PROJECT IN SERVICE
7. Department of Transportation Office of Pipeline Safety

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Marked Up Version of Certificate Process Flow Chart Identifying Opportunities for Public Input and Relevant Deadlines

EA Pre-Filing Environmental Review Process



Pipeline not likely to move ahead quickly with design until rehearing is resolved. Once certificate is approved on rehearing, pipeline will move ahead even if court review is filed.

Mark Up of Post-Certificate Activities (Graphic from FERC Website)

Text Only

PROCESSES FOR NATURAL GAS CERTIFICATES Construction Process

Finalize Project Design

File Plans, Surveys, and Information Required Prior to Construction by Commission Order

Complete Right-of-Way Acquisition

Pipeline Construction

Right-of-Way Restoration

Project In Service

Dept. of Transportation
Office of Pipeline Safety

Opportunity to review plans and provide feedback and comments. Certificate conditions may require compliance with state and local permitting requirements.

At this stage, pipeline will begin to up the pressure on ROW acquisition start condemnation proceedings (likely in federal court) if unresolved.

Stakeholders can monitor construction to make sure that pipeline complies with terms of certificate and report violations to FERC Hotline.

Stakeholders must report any failure to restore ROW (for landowners, damages may be possible if provided for as part of easement agreement)

Issues regarding pipeline compliance and/or violation with safety standards must be brought to DOT Office of Pipeline Safety.

Part III: State and Local Permitting Requirements and Preemption Issues

A. Preemption

1. Explanation of Preemption

“Preemption” refers to the result when federal law supersedes or overrides state laws or rules governing the same subject. The preemption doctrine derives from the Supremacy Clause of the Constitution, which provides that the laws of the United States “shall be the supreme law of the land...any Thing in the Constitution or laws of any state to the Contrary notwithstanding.”¹⁰

There are several variants of preemption. “**Field preemption**” refers to a scenario where a federal statute provides a comprehensive scheme of regulation and thus, displaces state law entirely irrespective of any actual conflict.¹¹ A second variant is “**conflict preemption**” which may arise in cases where federal and state authorities share regulatory responsibility.¹² Under the doctrine of conflicts preemption, when federal and state authority conflict, state law must give way.

Courts hold that in enacting the Natural Gas Act, Congress intended for federal authority – FERC – to occupy the field of siting gas pipelines, to the exclusion of state law.¹³ Likewise, federal authorities -- both FERC and the

¹⁰ U.S. Const. art. VI, §2.

¹¹ See, e.g., *Rice v. Santa Fe Elevator Corp.*, 331 U.S. 218, 67 S. Ct. 1146 (1947) (finding that the Warehouse Act preempted a state statute, even where no actual conflicts existed, since Congress intended to eliminate dual state-federal regulatory system and assume jurisdiction over entire storage scheme).

¹² *La. Pub. Serv. Comm’n. v. FCC*, 476 U.S. at 368-369, 106 S. Ct. at 98 (describing conflicts preemption doctrine).

¹³ See *Schneidwind v. ANR Pipeline*, 485 U.S. 293 (1988), *Northern Natural Gas Co. v. Utilities Board*, 377 F.3d 817, 821 (8th Cir. 2004).

Department of Transportation -- together regulate the field of pipeline safety and displace state regulation.¹⁴

2. Practical Effects of Preemption

Even though the Natural Gas Act preempts the field of pipeline regulation, state and local government units are not without authority. State and local governments can intervene in, and participate in the FERC process by working with the pipeline on routing, making environmental recommendations and preparing and submitting studies on impacts that may be relevant to FERC's public interest findings. State and local bodies that intervene in the FERC process can also seek rehearing of FERC's certificate and challenge it on judicial review. At a minimum, state and local entities should intervene in the FERC process to protect their constituencies and preserve the right to comment and challenge a decision.

In addition, FERC Commission encourages cooperation between pipelines and local authorities. FERC often makes compliance with certain state and local permits a condition of the certificate – provided that state and local recommendations are consistent with the terms of the certificate.¹⁵ State and local actions are typically most vulnerable to preemption when they duplicate the siting process or unreasonably delay construction and operation of facilities.

Finally, and most significantly, state agencies that implement federally authorized programs, such as the Clean Water Act or Coastal Zone Management Act are not subject to preemption. These statutes “effect a federal-state partnership...so that state standards approved by the federal government become a federal standard for that state” and cannot be overridden by FERC.¹⁶ However,

¹⁴ *ANR Pipeline Co. v. Iowa State Commerce Comm'n*, 828 F.2d 465 (8th Cir. 1987)(preempting Iowa statute creating environmental and safety permitting process for pipelines)

¹⁵ *See NE Hub Partners, L.P. v. CNG Transmission Corp.* (3rd Cir. 2001).

¹⁶ *Islander E. Pipeline Co. LLC v. McCarthy*, 525 F.3d 141 (2nd Cir 2008) (affirming Connecticut's denial of water quality certification for pipeline and holding that it is not preempted).

sometimes states waive their rights under these federal statutes by failing to act within the required time frame for making a decision (for example, Section 401 of the Clean Water Act requires states to act on an application within one year of the date that it is filed or the need for the approval is deemed waived).

The next page contains a chart showing the types of federal, state and local statutes that apply in a typical pipeline case and indicates whether these programs are subject to preemption. (NOTE – not all states will have a version of the state laws listed, nor will all these laws apply in all cases).

Table of Potentially Applicable Federal, State & Local Laws and Preemption Status

Permit/Approval	Agency	Preempted?
Section 106, National Historic Preservation Act (federal)	State Historic Preservation Offices (SHPOs) – must consult with FERC on impacts to historic structures.	No (though FERC may defer consultation until after issuance of permit but before construction can commence).
Section 7, Endangered Species Act (federal)	US Fish and Wildlife Service	No (though FERC may defer consultation until after issuance of permit but before construction can commence).
Essential Fish Habitat Clearance (federal)	National Marine Fisheries Service	No.
Water Quality Certificate, Section 401 Clean Water Act	State environmental or water quality agency	No, but if state fails to act in a year permit is deemed waived.
Section 404 Permit (dredge / fill) (federal)	U.S. Army Corps of Engineers	No.
Coastal Zone Management Act consistency determination (federal)	State office (likely a division of an environmental protection branch.	No, but adverse finding can be overturned by Secretary of Commerce.
Clean Air Act (emissions compliance – federal)	State environmental agency	No but may be deferred post-certificate
Pipeline Safety Act (federal)	Dept. of Transportation	No.
State endangered species statutes (state)	State environmental or game agencies	Preemption not likely since only consultation is required. Proposed mitigation subject to preemption (again, not likely)
Certificate of Necessity and Convenience (state)	State public utility commission	Preempted as duplicative
NPDES Discharge Permit (state)	State water quality	Issued under Section 402 of water quality act, not likely to be preempted (but may be deadlines for action to avoid waiver)
Soil erosion control plans (local)	Local agencies	FERC may require submission of plan but may preempt certain recommendations in the plan
Zoning laws (local)	State zoning board	Preempted as duplicative or obstructive

Part IV: Practical Tips

A. Getting Information About a Proposed Pipeline

Communities may learn of a proposed pipeline in a variety of ways, discussed below. As a general matter, landowners and communities that are *directly* affected (*e.g.*, pipeline crosses through the town or will be located on landowner's property) will receive some form of direct notice or contact.

All other entities that are indirectly affected by the pipeline (*e.g.*, recreational users of streams that may be contaminated by pipeline construction, adjacent municipalities or landowners within vicinity but not necessarily abutting the right-of-way) cannot expect a direct contact, and must rely on notices in the Federal Register and local newspaper to learn about a project. **Publication in the Federal Register and local paper suffices as notice for due process concerns. Where such publication occurs, FERC does not accept an excuse of "I did not know about the pipeline" as a justification for late intervention.**

1. Contact by pipeline

In some instances, you may first learn about a pipeline from the company itself. A company official may contact a state or local agency to obtain information about permitting requirements, or may try to acquire easements in advance of filing its application. If you learn about a proposed pipeline, try to gather as much information as you can and if possible spread the word within your community.

2. Pre-Filing

For LNG facilities and pipelines associated with LNG facilities, a pipeline must engage in FERC's pre-filing process. 18 C.F.R. § 157.21. Pre-filing is optional, but not mandatory for non-LNG related pipelines. Pre-filing process is initiated with a pre-filing application (or request to use the pre-filing process for

a non-LNG pipeline). An applicant may or may not contact state and local agencies or landowners prior to submitting the pre-filing application, nor is it required to supply notice of the pre-filing application. FERC will issue notice of filing of a pre-filing application which will be published in the Federal Register or posted on the FERC website. Once the pre-filing stage begins, the company must hold a series of open house, and must supply notice directly to affected agencies and landowners in accordance with FERC's rules (*see* notice requirements described below).

3. Notice of Application

Once a pipeline files an application at FERC, or A pipeline must written notice of a proposed pipeline application to county and local government bodies where the pipeline will be located as well as to landowners who own property within, or abutting the proposed right-of-way. The notice must include the docket number, information about the proposed route, instructions on obtaining additional information and for landowners, information regarding the FERC's resources for landowners located at the FERC website. 18 C.F.R. § 157.6.

FERC will also publish notice of a pipeline application in the Federal Register and in local news publications.

4. I've been given notice...what now?

The notice of the pipeline application is **VERY** important because it will inform you of (1) where the pipeline will be located, (2) how to get a copy of the application (usually on the FERC website), (3) upcoming scoping sessions, public meetings or open houses and (4) deadlines for comments and interventions.

Below are the steps to take when you receive notice:

If the notice includes a deadline for intervening, mark it on your calendar and prepare a timely motion to intervene (*see* samples, Part C). An intervention grants you the right to receive copies of filings and to appeal a decision in court. Once you miss the application deadlines, you will lose out on important rights.

If the notice does not include a deadline yet, sign up to e-subscribe to the docket at the FERC website. By e-subscribing, you will receive all notices of deadlines that are filed, so you will not miss any deadlines.

B. Getting Information on Substantive Issues

As you read the pipeline application or attend meetings, you may not understand certain issues. Or, the pipeline representatives may explain that a procedure works one way, but you would prefer independent corroboration. Below are tools for getting substantive information about the pipeline and FERC procedures so that you can represent yourself or your organization in an informed manner:

Information Sought	Source
Information about FERC NGA Process, future pipeline development	FERC Website, www.ferc.gov - Industries (gas)
Copies of federal laws that apply to the process	U.S. Code online, www.law.cornell.edu/uscode/
Federal regulations	www.gpoaccess.gov/ecfr/
Tracking/ searching the Federal Register	http://www.archives.gov/federal-register/
Learning about public hearings and site visits by FERC	FERC Website - Calendar
Check pipeline's maps	Google Maps
Researching cases or substantive information about pipelines	Google Scholar http://scholar.google.com/schhp?hl=en&tab=ws (caselaw, journal articles and academic reports)
Researching federal agency decisions	FERC websites (e-library), www.regulations.gov
Complaints about pipeline treatment of landowners	*New - per FERC Order 4/15/2010, Office of Dispute resolution now handles landowner complaints 877-337-2237 (FERC Website)
Safety related complaints and violations	Office of Pipeline Safety (DOT) http://www.phmsa.dot.gov/pipeline

B. Tips and Best Practices for FERC Filings

Below are a list of tips and best practices for the FERC pipeline process:

1. Pre-Application/Early Application Stage

- Obtain as much information about the proposed route as possible.
- Register to subscribe to assigned docket to receive information or intervene if deadlines have been established.
- Create groups (landowners) or taskforces (agencies) to stay abreast of the application process.
- For landowners, filing comments as a unified group on common issues is preferable to filing dozens of comments (though all landowners should intervene as individuals as well as part of a group).
- For municipal and county groups, sometimes intervention requires approval or authorization. Obtain approval *as early as possible!*

2. Scoping Process

- Participate in scoping process to identify issues that require study.
- File comments on completed scoping process.
- Obtain copies of studies performed and review them; if budget permits, hire experts to review and comment on studies.
- Ask FERC to make site visit and conduct siting meeting in the community.
- Propose alternative routes for review.

3. Environmental Review

- File comprehensive comments on environmental assessment (EA) or environmental impact statement (EIS). Reference specific pages of EA or EIS for comment.
- File comments within deadline provided.

- If you have not intervened by this stage, you **MUST** do so by deadlines set in environmental document.
- Emphasize impacts to property and specifically ask FERC to consider alternatives.

4. Certificate Issuance by FERC

- Review order and determine whether to seek rehearing.
- Time for rehearing is 30 days after order, so public bodies should seek authorization to file rehearing as soon as possible.
- If rehearing is filed, raise *all* possible issues. If issues are not raised on rehearing, they are deemed waived.
- Seek stay of order if properties are subject to eminent domain or where state and local permits have not yet been issued (unlikely that stay will issue, but ask for it anyway)
- If order is seriously problematic, contact legislators for assistance in influencing the FERC process.
- FERC order will contain multiple conditions. *Review order and determine which conditions apply to you or your constituency so that you can monitor pipeline's compliance.*

5. Post-Certificate Activities Compliance

- Monitor pipeline's compliance with conditions of certificate.
- Report any violations of certificate conditions to FERC (if FERC related – *e.g.* premature construction), state authorities (*e.g.*, violation of applicable state or local requirements) or DOT Office of Pipeline Safety (for violations of safety standards).
- For affected landowners or NGOs, stay involved in remaining state and local permit processes and intervene/ participate as necessary to protect rights.
- If entitled to state specific plans, review and comment.
- Once certificate is issued, pipeline can seek access. Negotiate agreements to allow terms of access and report violations to FERC, Dispute Resolution Office.
- Document all pipeline activity on property with photos or memos to file.

6. Rehearing & Judicial Review

- Determine whether to challenge pipeline action in court (challenge goes to federal district court).

7. Easement Acquisition and Eminent Domain

- Retain an attorney to advise on easement acquisition.
- Draft terms of easement to contemplate potential changes to route and concomitant changes in terms of easement.
- Include provisions for damages and restoration in easement agreement.
- For substantial tracts of land of large value, seek independent consultant.
- Determine whether to litigate eminent domain disputes; cooperate with other landowners to share costs and possibly extract better deal (but realize that holding out will not necessarily result in substantially more dollars).

C. Sample Intervention

Sample intervention follows.

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

Name of Pipeline Company) **Docket No.** _____
Name of Project

**SAMPLE FORM MOTION TO INTERVENE OF [LANDOWNER/PRIVATE
CITIZEN/MUNICIPALITY/NGO (Non-Governmental Organization)]¹⁷**

[NAME OF POTENTIAL INTERVENOR] is a [BRIEF DESCRIPTION OF INTERVENOR, RELATIONSHIP TO MATTER AND SUMMARY OF POTENTIAL IMPACT/EFFECT ON PROPERTY].

(Example #1: John and Jane Doe live in Deer County, Pennsylvania. The Does' residence stands 25 feet from the XYZ Company's proposed new pipeline on property located within the anticipated right of way and subject to condemnation if a certificate is granted).

(Example #2: The City of Rock is a municipality incorporated under the laws of Pennsylvania. Four miles of the XYZ pipeline will cross properties located within the municipal limits of the City of Rock, including Central Park, a city owned property).

Pursuant to Commission Rules 385.214(b) and 157.10, [NAME OF INTERVENOR] move(s) to intervene [and file comments, if intervenors are also filing comments – see n. 1 below] in the above captioned proceeding. This intervention is timely filed.¹⁸

¹⁷ If you are filing a motion to intervene along with comments on the Draft Environmental Assessment, the above caption should read “Motion to Intervene and Comments.”

¹⁸ Note – the Commission is cracking down on interventions that are filed late. If the intervention is filed out of time, your motion MUST show good cause or

[NOTE: If intervenors landowners who are part of a group, consider adding the following language: The members of [NAME OF GROUP] file this motion jointly, as part of [NAME OF GROUP] and individually [LIST INDIVIDUAL NAMES IN A FOOTNOTE].¹⁹

I. CONTACT INFOFRMATION

Please enter the [NAME OF INTERVENOR] below on the official service list for [Docket No._____]. All pleadings, filings and correspondence in this proceeding should be served on the following:

[Provide contact information for intervenor, including address, phone number and email]

II. MOTION TO INTERVENE

[NAME OF INTERVENOR] seeks to intervene to [PURPOSE OF INTERVENTION].

(Example #1: The Does are directly impacted by the proposed pipeline. The Does' residence stands 25 feet from the pipeline, and is therefore vulnerable to structural damage during construction, as well as ongoing safety hazards after the project is completed. Further, the Does' land lies within the right of way corridor for the XYZ pipeline, thus exposing the property to condemnation if the certificate is granted)

extraordinary circumstances for the untimely filing. The longer the delay, the more difficult it is to meet the “good cause” or “extraordinary circumstances” standard.

¹⁹ Naming the individual members of a group is advisable in the following situations: (1) the group is newly formed to pool resources, and there is no guarantee that the group will remain intact; (2) the group members are each landowners whose property is subject to condemnation – each landowner will want to preserve an individual right to appeal or (3) there is a potential for conflicts of interest among group members.

(Example #2: The City of Rock and its residents are directly impacted by the proposed pipeline. The pipeline will cross three miles of property within city limits, impacting 26 residential homeowners and 3 business owners. The pipeline will result in a devaluation of residential property and will limit the businesses ability to expand, thus diminishing the City's tax base. Further, the pipe line, as currently proposed, will cut through the southern portion of the City-owned Central Park, which will necessitate removal of 10 acres of trees and a taking of City lands.)

(Example #3: The City of Rock Running Club is a group in the City of Rock founded in 1970 and comprised of 200 members. The City of Rock Running Club meets regularly in the City of Rock part and uses paths throughout the City which may be affected by XYZ's pipeline construction. City of Rock Running Club seeks to intervene to monitor this proceeding and address potential effects to running paths within or in the vicinity of the proposed right of way]

[NAME OF INTERVENOR] [oppose/do not oppose//do not have enough information to take a position] on the proposed project.

(Example #1: The Does do not oppose the proposed pipeline. However, they believe that the pipeline can and should be re-routed to avoid their property entirely. By intervening in this proceeding, the Does will have access to XYZ Company's filings, which will enable the Does to provide more detailed comments on alternative routing scenarios.)

(Example #2: The City of Rock opposes the proposed pipeline.. If constructed, the XYZ pipeline will be the fourth pipeline to be routed through the City in five years. None of these pipelines benefit local resident since they transport gas to XYZ's Midwest Customers, yet the City and its residents are forced to absorb the adverse environmental

and economic impacts, not to mention the intrusion on individual landowners' property.

Intervention is necessary to enable the City of Rock to protect its park and natural resources and to defend its taxpaying residents and businesses and their property from encroachment by XYZ Pipeline.)

(Example #3: The City of Rock Running Club takes no position on the project at this time, but reserves the right to do in later comments so as more information on the right of way boundary emerges).

III. COMMENTS

[If the intervention is filed as part of comments on the DEIS, add Section III and include comments here]

WHEREFORE, for the foregoing reasons, the [NAME of INTERVENOR] requests that the Commission GRANT this motion to intervene.

Respectfully submitted,

[NAME OF INTERVENOR and contact information – address, phone #, email]

DATE OF INTERVENTION

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EDITORIAL NOTE: For FEDERAL REGISTER citations affecting § 157.6, see the List of CFR Sections Affected, which appears in the Finding Aids section of the printed volume and on GPO Access.

§ 157.7 Abbreviated applications.

(a) *General.* When the operations sales, service, construction, extensions, acquisitions or abandonment proposed by an application do not require all the data and information specified by this part to disclose fully the nature and extent of the proposed undertaking, an abbreviated application may be filed in the manner prescribed in § 385.2011 of this chapter, provided it contains all information and supporting data necessary to explain fully the proposed project, its economic justification, its effect upon applicant's present and future operations and upon the public proposed to be served, and is otherwise in conformity with the applicable requirements of this part regarding form, manner of presentation, and filing. Such an application shall (1) state that it is an abbreviated application; (2) specify which of the data and information required by this part are omitted; and (3) relate the facts relied upon to justify separately each such omission.

[Order 280, 29 FR 4876, Apr. 7, 1964]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting § 157.7, see the List of CFR Sections Affected, which appears in the Finding Aids section of the printed volume and on GPO Access.

§ 157.8 Acceptance for filing or rejection of applications.

Applications will be docketed when received and the applicant so advised.

(a) If an application patently fails to comply with applicable statutory requirements or with applicable Commission rules, regulations, and orders for which a waiver has not been granted, the Director of the Office of Energy Projects or the Director of the Office of Energy Market Regulation may reject the application within 10 business days of filing as provided by § 385.2001(b) of this chapter. This rejection is without prejudice to an applicant's refiling a complete application. However, an application will not be rejected solely on the basis of:

(1) Environmental reports that are incomplete because the company has not been granted access by the affected landowner(s) to perform required surveys; or,

(2) Environmental reports that are incomplete, but where the minimum checklist requirements of part 380, appendix A of this chapter have been met.

(b) An application which relates to an operation, sale, service, construction, extension, acquisition, or abandonment concerning which a prior application has been filed and rejected, shall be docketed as a new application. Such new application shall state the docket number of the prior rejected application.

(c) The Director of the Office of Energy Projects or the Director of the Office of Energy Market Regulation may also reject an application after it has been noticed, at any time, if it is determined that such application does not conform to the requirements of this part.

[Order 603-A, 64 FR 54536, Oct. 7, 1999, as amended by Order 699, 72 FR 45325, Aug. 14, 2007; Order 701, 72 FR 61054, Oct. 29, 2007]

§ 157.9 Notice of application and notice of schedule for environmental review.

(a) Notice of each application filed, except when rejected in accordance with § 157.8, will be issued within 10 business days of filing, and subsequently will be published in the FEDERAL REGISTER and copies of such notice sent to States affected thereby, by electronic means if practical, otherwise by mail. Persons desiring to receive a copy of the notice of every application shall so advise the Secretary.

(b) For each application that will require an environmental assessment or an environmental impact statement, notice of a schedule for the environmental review will be issued within 90 days of the notice of the application, and subsequently will be published in the FEDERAL REGISTER.

[Order 653, 70 FR 8724, Feb. 23, 2005, as amended by Order 687, 71 FR 62920, Oct. 27, 2006]

§ 157.10 Interventions and protests.

(a) Notices of applications, as provided by § 157.9, will fix the time within

which any person desiring to participate in the proceeding may file a petition to intervene, and within which any interested regulatory agency, as provided by §385.214 of this chapter, desiring to intervene may file its notice of intervention.

(1) Any person filing a petition to intervene or notice of intervention shall state specifically whether he seeks formal hearing on the application.

(2) Any person may file to intervene on environmental grounds based on the draft environmental impact statement as stated at §380.10(a)(1)(i) of this chapter. In accordance with that section, such intervention will be deemed timely as long as it is filed within the comment period for the draft environmental impact statement.

(3) Failure to make timely filing will constitute grounds for denial of participation in the absence of extraordinary circumstances or good cause shown.

(4) Protests may be filed in accordance with §385.211 of this chapter within the time permitted by any person who does not seek to participate in the proceeding.

(b) A copy of each application, supplement and amendment thereto, including exhibits required by §§157.14, 157.16, and 157.18, shall upon request be promptly supplied by the applicant to anyone who has filed a petition for leave to intervene or given notice of intervention.

(1) An applicant is not required to serve voluminous or difficult to reproduce material, such as copies of certain environmental information, to all parties, as long as such material is publicly available in an accessible central location in each county throughout the project area.

(2) An applicant shall make a good faith effort to place the materials in a public location that provides maximum accessibility to the public.

(c) Complete copies of the application must be available in accessible central locations in each county throughout the project area, either in paper or electronic format, within three business days of the date a filing is issued a docket number. Within five business days of receiving a request for a complete copy from any party, the appli-

cant must serve a full copy of any filing on the requesting party. Such copy may exclude voluminous or difficult to reproduce material that is publicly available. Pipelines must keep all voluminous material on file with the Commission and make such information available for inspection at buildings with public access preferably with evening and weekend business hours, such as libraries located in central locations in each county throughout the project area.

(d) *Critical Energy Infrastructure Information.* (1) If this section requires an applicant to reveal Critical Energy Infrastructure Information (CEII), as defined in §388.113(c) of this chapter, to the public, the applicant shall omit the CEII from the information made available and insert the following in its place:

(i) A statement that CEII is being withheld;

(ii) A brief description of the omitted information that does not reveal any CEII; and

(iii) This statement: "Procedures for obtaining access to Critical Energy Infrastructure Information (CEII) may be found at 18 CFR 388.113. Requests for access to CEII should be made to the Commission's CEII Coordinator."

(2) The applicant, in determining whether information constitutes CEII, shall treat the information in a manner consistent with any filings that applicant has made with the Commission and shall to the extent practicable adhere to any previous determinations by the Commission or the CEII Coordinator involving the same or like information.

(3) The procedures contained in §§388.112 and 388.113 of this chapter regarding designation of, and access to, CEII, shall apply in the event of a challenge to a CEII designation or a request for access to CEII. If it is determined that information is not CEII or that a requester should be granted access to CEII, the applicant will be directed to make the information available to the requester.

(4) Nothing in this section shall be construed to prohibit any persons from voluntarily reaching arrangements or

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agreements calling for the disclosure of CEII.

[Order 603-A, 64 FR 54536, Oct. 7, 1999, as amended by Order 643, 68 FR 52095, Sept. 2, 2003]

§ 157.11 Hearings.

(a) *General.* The Commission will schedule each application for public hearing at the earliest date possible giving due consideration to statutory requirements and other matters pending, with notice thereof as provided by § 1.19(b) of this chapter: *Provided, however,* That when an application is filed less than fifteen days prior to the commencement of a hearing theretofore ordered on a pending application and seeks authority to serve some or all of the markets sought in such pending application or is otherwise competitive with such pending application, the Commission will not schedule the new application for hearing until it has rendered its final decision on such pending application, except when, on its own motion, or on appropriate application, it finds that the public interest requires otherwise.

(b) *Shortened procedure.* If no protest or petition to intervene raises an issue of substance, the Commission may upon request of the applicant dispose of an application in accordance with the provisions of § 385.802 of this chapter.

[17 FR 7386, Aug. 14, 1952, as amended by Order 225, 47 FR 19057, May 3, 1982]

§ 157.12 Dismissal of application.

Except for good cause shown, failure of an applicant to go forward on the date set for hearing and present its full case in support of its application will constitute ground for the summary dismissal of the application and the termination of the proceedings.

[17 FR 7386, Aug. 14, 1952]

§ 157.13 Form of exhibits to be attached to applications.

Each exhibit attached to an application must conform to the following requirements:

(a) *General requirements.* Each exhibit must be submitted in the manner prescribed in §§ 157.6(a) and 385.2011 of this chapter and contain a title page showing applicant's name, docket number

(to be left blank), title of the exhibit, the proper letter designation of the exhibit, and, if of 10 or more pages, a table of contents, citing by page, section number or subdivision, the component elements or matters therein contained.

(b) *Reference to annual reports and previous applications.* An application may refer to annual reports and previous applications filed with the Commission and shall specify the exact pages or exhibit numbers of the filing to which reference is made, including the page numbers in any exhibit to which reference is made. When reference is made to a previous application the docket number shall be stated. No part of a rejected application may be incorporated by reference.

(c) *Interdependent applications.* When an application considered alone is incomplete and depends vitally upon information in another application, it will not be accepted for filing until the supporting application has been filed. When applications are interdependent, they shall be filed concurrently.

(d) *Measurement base.* All gas volumes, including gas purchased from producers, shall be stated upon a uniform basis of measurement, and, in addition, if the uniform basis of measurement used in any application is other than 14.73 p.s.i.a., then any volume or volumes delivered to or received from any interstate natural-gas pipeline company shall also be stated upon a basis of 14.73 p.s.i.a.; similarly, total volumes on all summary sheets, as well as grand totals of volumes in any exhibit, shall also be stated upon a basis of 14.73 p.s.i.a. if the uniform basis of measurement used is other than 14.73 p.s.i.a.

[17 FR 7387, Aug. 14, 1952, as amended by Order 185, 21 FR 1486, Mar. 8, 1956; Order 280, 29 FR 4877, Apr. 7, 1964; Order 493, 53 FR 15029, Apr. 27, 1988]

§ 157.14 Exhibits.

(a) *To be attached to each application.* All exhibits specified must accompany each application when tendered for filing. Together with each exhibit applicant must provide a full and complete explanation of the data submitted, the manner in which it was obtained, and the reasons for the conclusions derived

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days after the filing of the pleading or amendment, unless otherwise ordered.

(e) *Failure to answer.* (1) Any person failing to answer a complaint may be considered in default, and all relevant facts stated in such complaint may be deemed admitted.

(2) Failure to answer an order to show cause will be treated as a general denial to which paragraph (c)(3) of this section applies.

[Order 225, 47 FR 19022, May 3, 1982; 48 FR 786, Jan. 7, 1983, as amended by Order 376, 49 FR 21705, May 23, 1984; Order 602, 64 FR 17099, Apr. 8, 1999; Order 602-A, 64 FR 43608, Aug. 11, 1999]

§ 385.214 Intervention (Rule 214).

(a) *Filing.* (1) The Secretary of Energy is a party to any proceeding upon filing a notice of intervention in that proceeding. If the Secretary's notice is not filed within the period prescribed under Rule 210(b), the notice must state the position of the Secretary on the issues in the proceeding.

(2) Any State Commission, the Advisory Council on Historic Preservation, the U.S. Departments of Agriculture, Commerce, and the Interior, any state fish and wildlife, water quality certification, or water rights agency; or Indian tribe with authority to issue a water quality certification is a party to any proceeding upon filing a notice of intervention in that proceeding, if the notice is filed within the period established under Rule 210(b). If the period for filing notice has expired, each entity identified in this paragraph must comply with the rules for motions to intervene applicable to any person under paragraph (a)(3) of this section including the content requirements of paragraph (b) of this section.

(3) Any person seeking to intervene to become a party, other than the entities specified in paragraphs (a)(1) and (a)(2) of this section, must file a motion to intervene.

(4) No person, including entities listed in paragraphs (a)(1) and (a)(2) of this section, may intervene as a matter of right in a proceeding arising from an investigation pursuant to Part 1b of this chapter.

(b) *Contents of motion.* (1) Any motion to intervene must state, to the extent known, the position taken by the mov-

ant and the basis in fact and law for that position.

(2) A motion to intervene must also state the movant's interest in sufficient factual detail to demonstrate that:

(i) The movant has a right to participate which is expressly conferred by statute or by Commission rule, order, or other action;

(ii) The movant has or represents an interest which may be directly affected by the outcome of the proceeding, including any interest as a:

- (A) Consumer,
- (B) Customer,
- (C) Competitor, or
- (D) Security holder of a party; or

(iii) The movant's participation is in the public interest.

(3) If a motion to intervene is filed after the end of any time period established under Rule 210, such a motion must, in addition to complying with paragraph (b)(1) of this section, show good cause why the time limitation should be waived.

(c) *Grant of party status.* (1) If no answer in opposition to a timely motion to intervene is filed within 15 days after the motion to intervene is filed, the movant becomes a party at the end of the 15 day period.

(2) If an answer in opposition to a timely motion to intervene is filed not later than 15 days after the motion to intervene is filed or, if the motion is not timely, the movant becomes a party only when the motion is expressly granted.

(d) *Grant of late intervention.* (1) In acting on any motion to intervene filed after the period prescribed under Rule 210, the decisional authority may consider whether:

(i) The movant had good cause for failing to file the motion within the time prescribed;

(ii) Any disruption of the proceeding might result from permitting intervention;

(iii) The movant's interest is not adequately represented by other parties in the proceeding;

(iv) Any prejudice to, or additional burdens upon, the existing parties might result from permitting the intervention; and

(v) The motion conforms to the requirements of paragraph (b) of this section.

(2) Except as otherwise ordered, a grant of an untimely motion to intervene must not be a basis for delaying or deferring any procedural schedule established prior to the grant of that motion.

(3)(i) The decisional authority may impose limitations on the participation of a late intervener to avoid delay and prejudice to the other participants.

(ii) Except as otherwise ordered, a late intervener must accept the record of the proceeding as the record was developed prior to the late intervention.

(4) If the presiding officer orally grants a motion for late intervention, the officer will promptly issue a written order confirming the oral order.

[Order 225, 47 FR 19022, May 3, 1982; 48 FR 786, Jan. 7, 1983, as amended by Order 376, 49 FR 21705, May 23, 1984; Order 2002, 68 FR 51142, Aug. 25, 2003; Order 718, 73 FR 62886, Oct. 22, 2008]

§ 385.215 Amendment of pleadings and tariff or rate filings (Rule 215).

(a) *General rules.* (1) Any participant, or any person who has filed a timely motion to intervene which has not been denied, may seek to modify its pleading by filing an amendment which conforms to the requirements applicable to the pleading to be amended.

(2) A tariff or rate filing may be amended or modified only as provided in the regulations under this chapter. A tariff or rate filing may not be amended, except as allowed by statute. The procedures provided in this section do not apply to amendment of tariff or rate filings.

(3)(i) If a written amendment is filed in a proceeding, or part of a proceeding, that is not set for hearing under subpart E, the amendment becomes effective as an amendment on the date filed.

(ii) If a written amendment is filed in a proceeding, or part of a proceeding, which is set for hearing under subpart E, that amendment is effective on the date filed only if the amendment is filed more than five days before the earlier of either the first prehearing conference or the first day of evidentiary hearings.

(iii) If, in a proceeding, or part of a proceeding, that is set for hearing under subpart E, a written amendment is filed after the time for filing provided under paragraph (a)(3)(ii) of this section, or if an oral amendment is made to a presiding officer during a hearing or conference, the amendment becomes effective as an amendment only as provided under paragraph (d) of this section.

(b) *Answers.* Any participant, or any person who has filed a timely motion to intervene which has not been denied, may answer a written or oral amendment in accordance with Rule 213.

(c) *Motion opposing an amendment.* Any participant, or any person who has filed a timely motion to intervene which has not been denied, may file a motion opposing the acceptance of any amendment, other than an amendment under paragraph (a)(3)(i) of this section, not later than 15 days after the filing of the amendment.

(d) *Acceptance of amendments.* (1) An amendment becomes effective as an amendment at the end of 15 days from the date of filing, if no motion in opposition to the acceptance of an amendment under paragraph (a)(3)(iii) of this section is filed within the 15 day period.

(2) If a motion in opposition to the acceptance of an amendment is filed within 15 days after the filing of the amendment, the amendment becomes effective as an amendment on the twentieth day after the filing of the amendment, except to the extent that the decisional authority, before such date, issues an order rejecting the amendment, wholly or in part, for good cause.

(e) *Directed amendments.* A decisional authority, on motion or otherwise, may direct any participant, or any person seeking to be a party, to file a written amendment to amplify, clarify, or technically correct a pleading.

[Order 225, 47 FR 19022, May 3, 1982, as amended by Order 714, 73 FR 57538, Oct. 3, 2008]

§ 385.216 Withdrawal of pleadings and tariff or rate filings (Rule 216).

(a) *Filing.* Any participant, or any person who has filed a timely motion to intervene which has not been denied,

Part V. MEMO ON ISSUES RELATED TO EMINENT DOMAIN

[attached]

MEMORANDUM OF LAW

RE: Condemnation Proceedings Under the Natural Gas Act

DATE: Prepared by Carolyn Elefant, Law Offices of Carolyn Elefant and Attorney Kimberly Alderman, January 28, 2009; Sections on Compensation (#8) updated as of May 1, 2010

Companies that transport natural gas in interstate commerce have the power of eminent domain under the Natural Gas Act to condemn landowner property necessary for construction, operation and maintenance of the pipeline. This memo briefly explains when eminent domain attaches, then subsequently addresses the specific issues below:

In which court does a pipeline company file eminent domain actions under the NGA?

1. What law applies in NGA condemnation proceedings?
2. What is the scope of the court's jurisdiction in an NGA condemnation proceeding?
3. Whether a pipeline company must negotiate with landowners in good faith prior to filing an eminent domain action under the NGA.
4. Whether a pipeline company may proceed in an eminent domain action under the NGA where a FERC certificate is pending on rehearing at FERC or on appeal at a court.

5. Whether a pipeline company may proceed in an eminent domain action under the NGA when they have not complied with the pre-conditions in the FERC certificate (specifically, securing required permits).
6. May pipeline companies engage in “quick-takes” where they receive immediate possession of the property, prior to valuation?
7. Once property has been condemned under the NGA, how does the court determine compensation due the landowner (in Pennsylvania in particular)?
8. Under what circumstances have courts either rejected or modified a pipeline company’s eminent domain action under the NGA?

OVERVIEW: The Natural Gas Act and Eminent Domain

Under the Section 717f(h) of the Natural Gas Act, 15 U.S.C. § 717f(h), a pipeline company that receives a certificate from the Federal Energy Regulatory Commission (FERC) to construct, operate and maintain a pipeline for transportation of gas in interstate commerce may exercise the power of eminent domain to acquire lands necessary for the pipeline. To condemn property, a company must show (1) that it holds a certificate of public convenience and necessity from FERC authorizing the project; (2) the land to be taken is necessary for the project and (3) the company has been unable to acquire the property through negotiation. A company has the option of bringing a condemnation action in federal or state court if the property is valued at \$3000 or more. Most companies favor the federal court procedures and choose this process, even going so far as to offer a minimum \$3000 all property involved simply to qualify for the federal process.

As discussed below, once a certificate is issued and a company files for eminent domain, a property owner's ability to challenge the underlying basis for the certificate is constrained. The appropriate time and forum for objecting to a certificate is during the FERC proceeding, as well as through an appeal of the FERC action in a federal appellate court.

ISSUE #1: In which court does a pipeline company file eminent domain actions under the NGA?

The Natural Gas Act provides for choice of forum in 15 U.S.C. § 717f(h):

[A FERC certificate holder] may acquire the [land necessary] by the exercise of the right of eminent domain in the district court of the United States for the district in which such property may be located, or in the State courts.

The pipeline company must choose between state and district court, and may not file in both concurrently.¹

In the overwhelming majority of cases, the pipeline company files the condemnation action in district court. The exception is *Transcontinental Gas Pipe Line Corp. v. 65.47 Acres of Land*, 778 F. Supp. 239 (E.D. Pa. 1991), where the pipeline company first filed for condemnation in state court, which set a hearing date. The company then filed an identical action in district court, arguing choice of forum under the NGA. The

¹ *Guardian Pipeline, L.L.C. v. 295.49 Acres of Land*, 2008 U.S. Dist. LEXIS 35818, 28 (E.D. Wis. 2008), see also *Transcontinental Gas Pipe Line Corp. v. 65.47 Acres of Land*, 778 F. Supp. 239, 241 (E.D. Pa. 1991).

District Court of the Eastern District of Pennsylvania held that because the company chose the state forum, the federal forum no longer had jurisdiction over the matter, and thus the federal action had to be dismissed.

ISSUE #2: What law applies in NGA condemnation proceedings?

It is well settled that federal condemnation law applies in NGA condemnation actions.² All courts that have considered the issue have so held, including the Sixth and Seventh Circuit Courts of Appeal.³ The basis for this application is that Federal Rule of Civil Procedure 71.1 on federal condemnation law, which was adopted in 1951, supercedes §717f(h) of the NGA, which was enacted in 1938.⁴

FRCP 71.1, at least in part, obviates the relevant provision of the NGA, which reads:

The practice and procedure in any action or proceeding for that purpose in the district court of the United States shall conform as nearly as may be with the practice and procedure in similar action or proceeding in the courts of the State where the property is situated[.]”⁵

² *Guardian Pipeline L.L.C. v. 295.49 Acres of Land*, 2008 U.S. Dist. LEXIS 35818 (E.D. Wis. 2008). See also *N. Border Pipeline Co. v. 64.111 Acres of Land*, 344 F.3d 693 (7th Cir. 2003), see also *Kan. Pipeline Co. v. 200 Foot by 250 Foot Piece of Land*, 210 F. Supp. 2d 1253, 1257 (D. Kan. 2002) (dismissing counterclaims on the basis that FRCP 71A (now 71.1) does not provide for them). See also *Maritimes & Northeast Pipeline, L.L.C. v. Decoulos*, 146 Fed. Appx. 495, 496 (1st Cir. 2005) (applying federal condemnation law to evaluate sufficiency of complaint). See also *East Tennessee Natural Gas v. 1.28 Acres in Smyth County*, 2006 U.S. Dist. LEXIS 24450 (W.D. Va. 2006).

³ *Northern Border*, 344 F.3d 693 (7th Cir. 2003). See also *Columbia Gas Transmission Corp. v. Exclusive Natural Gas Storage Easement*, 962 F.2d 1192 (6th Cir. 1992).

⁴ *Northern Border*, 344 F.3d at 694. See also *Steckman Ridge GP v. Exclusive Easement Beneath 11.078 Acres*, 2008 U.S. Dist. LEXIS 71302, 39 (W.D. Pa. 2008). See also *Williston Basin Interstate Pipeline Co. v An Exclusive Gas Storage Leasehold*, 524 F3d 1090, footnote 1 (9th Cir. 2008).

⁵ 15 U.S.C. §717f(h).

It is worth noting, however, that some courts use state law to determine compensation due landowners in NGA condemnation actions (see further discussion under Issue #8).

Since FRCP 71.1 applies as to procedure, there is *no* right to a jury trial in an NGA condemnation proceeding, either under the constitution⁶ or federal condemnation law.⁷ FRCP 71.1(h) explains, “In an action involving eminent domain under federal law, the court tries all issues[.]” However, for jurisdictions that apply state law at the compensation stage, there may be a right to a jury to determine valuation.

ISSUE #3: What is the scope of a court’s jurisdiction in an NGA condemnation proceeding?

The court’s authority in Natural Gas Act eminent domain cases is limited *solely* to enforcement jurisdiction.⁸ The court is to evaluate the scope of the FERC certificate and determine whether the property at hand falls within that scope and, if so, the amount of compensation due landowner.⁹

⁶ Fed. R. Civ. P. 71.1(h) note (citing to *Bauman v. Ross*, 167 U.S. 548, 42 L. Ed. 270, 17 S. Ct. 966 (1897)). See also *Alabama Power Co. v 1354.02 Acres*, 709 F2d 666 (11th Cir. 1983).

⁷ *Guardian Pipeline v. 295.49 Acres of Land*, 2008 U.S. Dist. LEXIS 35818, 21 (E.D. Wis. 2008) (holding there is no right to jury trial under FRCP 71.1).

⁸ *Kansas Pipeline*, 210 F. Supp. 2d at 1255-1256.

⁹ *Steckman Ridge*, 2008 U.S. Dist. LEXIS 71302. See also *Northwest Pipeline v. Franciscos*, 2008 US Dist LEXIS 83566, 12 (W.D. Wa. 2008). See also *Maritimes*, 146 Fed. Appx. at 496.

Under the approach set forth in *East Tennessee Natural Gas Co. v. Sage*, 361 F3d 808 (4th Cir. 2004), which was adopted by the District Court of Delaware in *Steckman Ridge*, 2008 U.S. Dist. LEXIS 71302, as proper, the initial issue to be examined is whether the pipeline company has a substantive right to condemn the subject properties.¹⁰ The FERC certificate establishes the right of the pipeline company to exercise eminent domain under the Natural Gas Act in accordance with the certificate.

In order for a pipeline company to establish the right to condemn, it must show:

1. It has been issued a certificate of public convenience and necessity;
2. The subject land is within the scope of the certificate;
3. The company has been unable to acquire the needed land by contract with the defendants; and
4. The value of the subject property claimed by the owner exceeds \$ 3,000.00.¹¹

In the process of evaluating whether the subject land may be seized, the court looks to the certificate itself. The pipeline company may not condemn property that is not specifically described in the certificate since the land covered should be designated in map exhibits attached to the application for the certificate.¹²

¹⁰ *Steckman Ridge*, 2008 U.S. Dist. LEXIS 71302 at 38-39.

¹¹ 15 U.S.C. § 717f(h).

¹² *Williston Basin*, 524 F3d 1090. See also *Columbia Gas Transmission Corp. v Exclusive Gas Storage Easement*, 578 F Supp 930 (N.D. Ohio 1983) (holding power of eminent domain given to holder of certificate under NGA extends only to property located within geographical area designated on map or maps attached to application for certificate.)

When considering whether condemnation for underground gas storage is covered under the NGA, courts have asked whether the condemnation is “necessary and integral” for the pipeline project. In *Columbia Gas Transmission Corp. v. Exclusive Gas Storage Easement*, 776 F.2d 125 (1985), the Sixth Circuit Court of Appeals held that although underground storage is not specifically mentioned as a reason to condemn in § 717f(h) of the Natural Gas Act, underground storage fields are “an integral part of its natural gas transmission function,”¹³ and “the use of condemnation for underground facilities is within the spirit and intent of the Act.”¹⁴ The Court reasoned that underground gas storage areas are a “necessary and integral” part of the operation of pipelines and that the NGA grants eminent domain authority to “insure the operation of stations or equipment necessary to the proper operation of natural gas pipelines.”¹⁵

Similarly, in *Northwest Pipeline G.P. v. Franciscos*, 2008 U.S. Dist. LEXIS 83566, the Western District of Washington ordered further briefing as to whether a restoration project was “necessary and integral” to the construction and maintenance of a pipeline. The court stated that, if so, condemnation for that purpose would be covered under the FERC certificate.

In *Transcontinental Gas Pipe Line Corp. v 118 Acres of Land*, 745 F Supp 366 (1990), the District Court of the Eastern District of Louisiana required that the pipeline company demonstrate necessity and public purpose of chosen site as gas storage reservoir. The court held that while the FERC certificate is presumptive evidence that

¹³ *Columbia Gas*, 776 F.2d at 126.

¹⁴ *Id.* at 128-29.

¹⁵ *Id.* at 129.

the taking is affected with a public purpose, it is not conclusive on the issue of the right to expropriate property. The court further held that a plaintiff must produce evidence, along with the FERC certificate, that the expropriation will further the public interest.¹⁶

The Northern District of Illinois criticized *Transcontinental* in *Guardian Pipeline, L.L.C. v. 529.42 Acres*, 210 F Supp 2d 971 (2002), as having incorrectly permitted a collateral attack on the validity of the FERC certificate. Specifically, the court explained:

[*Transcontinental*] suggests that the [FERC certificate] holder must present some evidence of public necessity other than the FERC determination.

USG Pipeline Co. v. 1.74 Acres in Marion County, Tennessee, 1 F. Supp. 2d 816, 820 (E.D. Tenn. 1980), concludes that is just plain wrong, and we agree.

The jurisdiction of this court is limited to evaluating the scope of the FERC Certificate and ordering condemnation as authorized by that certificate [citations omitted].¹⁷

In *USG Pipeline*, the District Court of the Eastern District of Tennessee explained:

Defendants largely rely on *Transcontinental* in support of their argument district courts have authority to review the FERC's determination of public benefit... From the above excerpts it is clear *Tenneco* [which the *Transcontinental* court relied upon] provides no support for the

¹⁶ *Transcontinental Gas Pipe Line Corp. v 118 Acres of Land*, 745 F Supp 366, 370 (E.D. La. 1990) (citing to *Tenneco, Inc. v. Harold Stream Inv. Trust*, 394 So. 2d 744 (La. Ct. App. 3d Cir. 1981) (affirming lower court's dismissal of action without prejudice where plaintiff pipeline company relied on 20-year-old FERC certificate and failed to present any additional evidence of entitlement to right of way)).

¹⁷ *Guardian Pipeline, L.L.C. v. 529.42 Acres of Land*, 210 F. Supp. 2d 971, 973-974 (N.D. Ill. 2002).

proposition a plaintiff possessing an FERC Certificate granting the power of eminent domain must prove to a federal district court the exercise of eminent domain would be in the public interest. Accordingly, the Court does not accept the cited language from *Transcontinental* as an accurate statement of federal law.¹⁸

It is worth noting, however, that the *Transcontinental* holding was consistent with an earlier holding from the Court of Appeal in Louisiana. In *Texas Gas Transmission Corp. v. Soileau*, 251 So 2d 104 (1971), the Court of Appeal in Louisiana affirmed the lower court's holding that the plaintiff satisfied the burden of proving the public convenience and necessity of this right-of-way by way of the certificate and expert testimony.

ISSUE #4: Whether a pipeline company must negotiate with landowners in good faith prior to filing an eminent domain action under the NGA.

For the most part, courts have held that there is no requirement under the text of FRCP 71.1(h) or the NGA that the pipeline company negotiate in good faith prior to filing for condemnation.¹⁹ Instead, the only prerequisite for initiating a condemnation

¹⁸ *USG Pipeline Co. v. 1.74 Acres in Marion County, Tennessee*, 1 F. Supp. 2d 816, 820-821 (E.D. Tenn. 1980).

¹⁹ *Maritimes*, 146 Fed. Appx. at 496 (1st Cir. 2005) (holding plain language of NGA imposes no obligation to negotiate in good faith). See also *Kansas Pipeline*, 210 F. Supp.

action is that the pipeline company is unable to acquire the land.²⁰ The only third circuit case on point *Steckman Ridge*, 2008 U.S. Dist. LEXIS 71302 (2008) wherein the District Court of the Western District of Pennsylvania court adopted the analysis and holding of *Kansas Pipeline Co.*, 210 F. Supp. 2d 1253 (2002), that the plain language of the NGA does not mandate good faith on the part of the pipeline company.

The District Court of the Eastern District of Louisiana, on the other hand, held in *Transcontinental*, 745 F. Supp. 366, that there is a good faith requirement, but that "a single offer to purchase the right may be sufficient to constitute good faith."²¹ *Transcontinental* is the only case that holds outright there is a requirement of good faith. In defining good faith, the court stated:

When evaluating whether a condemnor engaged in good faith negotiations, the central question is whether the condemnor make a good faith attempt to acquire the property or rights by conventional agreement before the expropriation suit was filed. When measuring good faith, the amount offered to the landowner is material only insofar as it may have

2d at 1257 (D. Kan. 2002) (holding plain language of NGA renders no good faith requirement, only rejected offer to purchase). See also *Guardian Pipeline, L.L.C. v. 529.42 Acres of Land*, 210 F. Supp. 2d at 973 (N.D. Ill. 2002) (holding neither the NGA or FRCP 71.1 have a good faith requirement). See also *East Tenn. Natural Gas*, 2006 U.S. Dist. LEXIS 24450 (W.D. Va. 2006) (holding that neither the NGA nor FRCP 71A require the condemnor negotiate in good faith).

²⁰ *Northwest Pipeline*, 2008 US Dist LEXIS 83566, at 8 (W.D. Wa. 2008).

²¹ *Transcontinental*, 745 F. Supp. at 369.

some bearing on the question of whether the condemnor was in good faith.²²

When the District Court of the Northern District of Illinois considered the issue of good faith in *Guardian Pipeline, L.L.C. v. 529.42 Acres of Land*, 210 F. Supp. 2d 971 (2002), it said of *Transcontinental*:

[There] is a judicial gloss that the holder must engage in good faith negotiations with the landowner before it can invoke the power of eminent domain, e.g., *Transcontinental Gas Pipe Line Corp. v. 118 Acres of Land*, 745 F. Supp. 366, 369 (E.D. La. 1990), although the statutes have no such specific requirement and we are unaware of any case in which condemnation has been denied or even delayed because of an alleged failure to engage in good faith negotiations.²³

The *Guardian* court then went on to find *Transcontinental* “just plain wrong” for requiring the pipeline company to present evidence of public use.²⁴

There are several cases that support the proposition that *some* courts impose a requirement of good faith negotiations, although none of them holds the same. *Guardian Pipeline v. 295.49 Acres of Land*, 2008 U.S. Dist. LEXIS 35818, for example, proposed that the federal courts are split on the issue of good faith. The District Court of the Eastern District of Wisconsin explained:

²² *Transcontinental*, 745 F. Supp. at 369.

²³ *Guardian Pipeline*, 210 F. Supp. 2d at 973-974.

²⁴ *Id.*

The first issue the Landowners' argument raises, of course, is whether the NGA includes the requirement that the condemnor negotiate in good faith as a prerequisite to exercising its eminent domain powers. On this issue, federal courts are divided. *See e.g. Guardian Pipeline, L.L.C. v. 529.42 Acres of Land*, 210 F. Supp. 2d 971, 973 (N.D. Ill. 2002)... *see also Transcontinental Gas Pipe Line Corp. v. 118 Acres of Land*, 745 F. Supp. 366, 369 (E.D. La. 1990); *Kern River Gas Transmission Co. v. Clark County, Nev.*, 757 F. Supp. 1110, 1113-14 (D. Nev. 1990). Other courts, however, have reached the opposite conclusion.²⁵

The court went on to hold “that the NGA does not obligate the condemnor, **as a jurisdictional prerequisite**, to negotiate in good faith with the landowner [emphasis supplied].”²⁶

In *Kern River Gas Transmission Co. v. Clark County, Nevada*, 757 F. Supp. 1110 (1990), the defendants argued there is a good faith requirement in condemnation actions under the NGA. The District Court of Nevada considered this argument, analyzed the facts of the case, and concluded, “The Court finds that negotiation attempts were sufficient to fulfill Plaintiff’s statutory obligations under the Natural Gas Act.”²⁷ As mentioned, this was construed in *Guardian v. 295.49 Acres of Land* to support a good faith requirement.²⁸

²⁵ *Guardian Pipeline*, 2008 U.S. Dist. LEXIS 35818, at 47-49.

²⁶ *Id.* at 60.

²⁷ *Kern River*, 757 F. Supp. at 1114.

²⁸ *Guardian Pipeline*, 2008 U.S. Dist. LEXIS 35818, at 47-49.

Kansas Pipeline Company, 210 F. Supp. 2d at 1255-1256, also supports this reading of *Kern River*. The District Court of Kansas explained:

The court, in its own research, found that some federal district courts have imposed a good faith negotiation requirement. *See, e.g., USG Pipeline Co.*, 1 F. Supp. 2d at 822 (citations omitted) ("Courts have imposed a requirement that the holder of the FERC Certificate negotiate in good faith with the owners to acquire the property."); *Transcon. Gas Pipe Line Corp.*, 745 F. Supp. at 369 ("In addition to satisfying the requirements of β 717f(h), federal law requires the condemnor to have conducted good faith negotiations with the landowners in order to acquire the property"); *see also Kern River Gas Transmission Co. v. Clark County, Nev.*, 757 F. Supp. 1110, 1113-14 (D. Nev. 1990). These courts gave no explanation why they adopted such a requirement. None of them refused to authorize condemnation because a holder of a FERC certificate failed to negotiate in good faith before seeking condemnation.

The District Court of Kansas went on to hold that "[t]he plain language of the NGA does not impose an obligation on a holder of a FERC certificate to negotiate in good faith before acquiring land by exercise of eminent domain[.]"²⁹

²⁹ *Kansas Pipeline Company*, 210 F. Supp. 2d at 1257.

ISSUE #5: Whether a pipeline company may proceed in an eminent domain action under the NGA where a FERC certificate is pending on rehearing at FERC or on appeal at a court.

Yes, a pipeline company may proceed in a taking pursuant to a FERC certificate even if that certificate is pending on rehearing at FERC or on appeal at court. The Natural Gas Act states plainly in *15 U.S.C. § 717r(c)* the following:

The filing of an application for rehearing under subsection (a) of this section shall not, unless specifically ordered by the Commission, operate as a stay of the Commission's order. The commencement of proceedings under subsection (b) of this section shall not, unless specifically ordered by the court, operate as a stay of the Commission's order.

In *Tennessee Gas Pipeline Co. v. 104 Acres of Land*, 749 F. Supp. 427 (1990), the pipeline company filed a condemnation action while requests for rehearing at FERC were still pending. The District Court of Rhode Island explained that the Natural Gas Act at *15 U.S.C. § 717r(c)* directs that an application for a rehearing shall not operate as a stay of the Commission's order unless *specifically* ordered by FERC or by a reviewing Court of Appeals.³⁰ The court explained that defendants must seek a stay from FERC or the Court of Appeals, and ordered that condemnation pursuant to the certificate may proceed.³¹

³⁰ *Tenn. Gas Pipeline Co. v. 104 Acres of Land*, 749 F. Supp. 427, 430 (D. R.I. 1990)

³¹ *Id.*

Tennessee Gas is consistent with the Fifth Circuit Court of Appeals' decision in *Ecee, Inc. v. Federal Power Commission*, 526 F.2d 1270, 1274 (1976), wherein the court held:

A complete resolution of matters before an administrative or judicial tribunal does not wait for finality until an appeal is decided; it is final unless and until it is stayed, modified, or reversed. This basic concept is further bolstered by the unequivocal language of § 717r(c) of the Natural Gas Act that "the commencement of proceedings [for review] shall not, unless specifically ordered by the court, operate as a stay of the Commission's order". In the absence of a stay, the [Federal Power Commission's] orders are entitled to have administrative operation and effect during the disposition of the proceedings.³²

ISSUE #6: Whether a pipeline company may proceed in an eminent domain action under the NGA when they have not complied with the pre-conditions in the FERC certificate (specifically, securing required permits).

Yes, a pipeline company may proceed in an NGA condemnation even if they have not complied with the pre-conditions of the FERC certificate, including securing required permits. It is outside of the jurisdiction of the district court to determine whether a pipeline company has complied with the preconditions of a FERC

³² *Ecee, Inc. v. Federal Power Comm'n*, 526 F.2d 1270, 1274 (5th Cir. 1976).

certificate.³³ The only prerequisite to filing a condemnation action under the NGA is the pipeline company being unable to acquire the land.³⁴

In *Tennessee Gas Pipeline v. 104 Acres of Land*, 749 F. Supp. 427 (1990), the District Court of Rhode Island held:

[W]hile failure to comply with the terms of the order may delay or prevent construction of the pipeline, absent a stay of the FERC order by the Commission the lack of a required permit does not prevent condemnation of land in preparation for construction.”³⁵

The District Court of New Hampshire approved of the *Tennessee Gas* holding in *Portland Natural Gas Transmission System v. 4.83 Acres of Land*, 26 F. Supp. 2d 332, at 335 (1998).

Issue #7: May pipeline companies engage in “quick-takes” where they receive immediate possession of the property, prior to valuation?

Immediate possession is usually granted in condemnation actions under the NGA, prior to resolving the issue of compensation.³⁶ This process is known as a “quick take.” In *Steckman Ridge*, 2008 U.S. Dist. LEXIS 71302 (2008), for instance, the District Court for the Western District of Pennsylvania concluded that the pipeline company

³³ *Portland Natural Gas*, 26 F. Supp. 2d at 335. See also *Tennessee Gas*, 749 F. Supp. 427.

³⁴ *Northwest Pipeline*, 2008 US Dist LEXIS 83566, at 8 (W.D. Wa. 2008).

³⁵ *Tennessee Gas*, 749 F. Supp. at 433.

³⁶ *Guardian Pipeline v. 295.49 Acres of Land* 2008 U.S. Dist. LEXIS 35818, at 70-77 (E.D. Wis. 2008), see also *Kern River Gas Transmission Company v. Clark County, Nevada*, 757 F. Supp. 1110 (D. Nev. 1990), at 1115, see also *Portland Natural Gas Transmission System v. 4.83 Acres of Land*, 26 F. Supp. 2d 332 (D. N.H. 1998).

established equitable interest in the properties via the FERC certificate, and then used the injunction standard to determine that immediate possession was justified.³⁷

The Fourth Circuit Court of Appeals held in *East Tennessee Natural Gas Co. v. Sage*, 361 F3d 808 (2004), that although there was no provision for immediate possession under the NGA or federal condemnation law, the district court properly granted the pipeline company's motion for preliminary injunction for immediate possession by way of its equitable power.³⁸ The Court of Appeals approved of the district court's determination that the pipeline company has a substantive right to condemn, that it would have caused substantial harm to the pipeline company to delay possession, and that expeditious completion of pipeline was in the public interest.

Compare the case of *Transwestern Pipeline Co. v. Various Tracks of Land*, 544 F Supp 2d 939 (2008), wherein the District Court of Arizona denied the plaintiff pipeline company's motion for immediate possession. The court reasoned that the NGA included no explicit provision stating that a FERC certificate holder had a right to immediate possession of property, and that FRCP 71.1 was a procedural rule that could not be used to enlarge substantive rights. The case of *Transwestern* is an anomaly, however, and it is unclear whether the case represents an upcoming shift in policy or whether the court just "got it wrong."³⁹

³⁷ *Steckman Ridge*, 2008 U.S. Dist. LEXIS 71302, at 43.

³⁸ *Sage*, 361 F3d at 828.

³⁹ Lela M. Hollabaugh, *Has a court stopped pipeline construction?*, Pipeline & Gas Journal, July 2008, http://findarticles.com/p/articles/mi_m3251/is_/ai_n27984493. ("This is one of the first courts to take this position despite a long line of cases led by the U.S. Court of Appeals for the Fourth Circuit's decision in *Sage v. East Tennessee Natural Gas*. Does this signal a change in the law or is this simply one court that got it wrong?")

In immediate possession cases, the pipeline company is required to put down a deposit with the court for the value of the property. If the deposit proves insufficient, the company must pay the difference or else they become trespassers and are liable as such. If the project is abandoned, then the company is liable to the landowner for damages to the land.⁴⁰

Issue #8: Once property is condemned under the NGA, how does the court determine compensation due the landowner (in Pennsylvania in particular)?

The circuits are split as to whether federal condemnation law or state condemnation law applies for determining compensation due the landowners under the NGA. The Seventh and Eleventh Circuit Courts of Appeals have applied FRCP 71.1 in determining compensation, while the First, Fifth, and Sixth Circuit Courts of Appeals have applied state law, as did a district court in the Tenth Circuit. Moreover, recently in a federal district court case in the Eastern District of Pennsylvania, the court concluded that federal standards for compensation apply. *See Transcontinental Pipeline*, Docket No. 2:09 cv-1044 (January 19, 2010).

Section 717f(h) of the Natural Gas Act provides:

The practice and procedure in any action or proceeding for that purpose in the district court of the United States shall conform as nearly as may be with the practice and procedure in similar action or proceeding in the courts of the State where the property is situated.

⁴⁰ *Steckman Ridge*, 2008 U.S. Dist. LEXIS 71302, at 35.

The issue is whether this clause was superceded by FRCP 71.1 as to the procedure to determine compensation.

In *Northern Border Pipeline Company v. 64.111 Acres of Land in Will County*, 344 F.3d 693 (2003), the Seventh Circuit Court of Appeals applied federal condemnation law to determine whether the landowner was entitled to a jury or a commission as to the valuation of seized property.

In *Southern Natural Gas Co. v. Land, Cullman County*, 197 F.3d 1368 (1999), the Eleventh Circuit Court of Appeals held that the district court judge did not abuse his discretion when he denied defendants request for a jury and instead applied FRCP 71.1 and appointed a commission.

Those cases do not analyze and address the issue squarely, however, and more courts have held the opposite to be true: that state condemnation law applies as to valuation of seized property.

In *Portland Natural Gas Transmission Systems v. 19.2 Acres of Land*, 318 F.3d 279 (2003), the First Circuit Court of Appeals affirmed the district court's decision as to just compensation, wherein the judge applied Massachusetts law. The Court of Appeals did state that, since neither party was contesting that state law applied, it was "accept[ing] this premise without necessarily endorsing it."⁴¹

In *Georgia Power Co. v. Sanders*, 617 F.2d 1112 (1980), the Fifth Circuit Court of Appeals applied state substantive law under "materially identical" language in the Federal Power Act, 16 U.S.C. § 814, i.e., that the proceeding shall conform to the practice

⁴¹ *Portland Natural Gas*, 318 F.3d at 282.

and procedure of the state where the property is situated.⁴² In *Mississippi River Transmission Corp. v. Tabor*, 757 F.2d 662 (1985), the Fifth Circuit Court of Appeals summarily applied state substantive law as to compensation due in a Natural Gas Act condemnation proceeding.

The Sixth Circuit Court of Appeals held in *Columbia Gas Transmission Company v. Easement Beneath 264.12 Acre Parcel*, 962 F.2d 1192 (1992), that "although condemnation under the Natural Gas Act is a matter of federal law, § 717f(h) incorporates the law of the state in which the condemned property is located in determining the amount of compensation due."⁴³

In the Tenth Circuit, when the District Court of Kansas was faced with the issue in *Julius Spears v. Williams Natural Gas Company*, 932 F. Supp. 259 (1996), the court applied the rationale from *Columbia Gas* and *Georgia Power*, and held that the state post-judgment interest rate would apply. The court explained it did not think Congress intended to create a situation that would encourage gas companies to "forum shop," by taking condemnation actions to federal court in order to take advantage of lower interest rates.⁴⁴

There is no Third Circuit Court of Appeals ruling on this issue. The District Court of Delaware did approve of and apply the Sixth Circuit's *Columbia Gas* rationale in an analogous, non-condemnation case.⁴⁵ However, more recently, Judge Timothy

⁴² *Georgia Power Co. v. Sanders*, 617 F.2d 1112, 1115-24 (5th Cir. 1980).

⁴³ *Columbia Gas Trans. Co.*, 962 F.2d at 1199.

⁴⁴ *Julius Spears v. Williams Natural Gas Company*, 932 F. Supp. 259, 261 (D. Kan. 1996)

⁴⁵ *In re Columbia Gas Sys.*, 1992 U.S. Dist. LEXIS 9460 (D. Del. 1992) (reversed in part on other grounds).

Savage concluded that federal standards govern compensation for eminent domain in federal court. Order, Docket No. 2:09 cv-1044 (January 19, 2010).

Judge Savage's order is not precedential, but will most likely influence other federal district courts. Thus, even without Third Circuit precedent, it is likely that Pennsylvania federal district courts will apply federal common law practices rather than Pennsylvania law to determine compensation due landowners.

In the event that Pennsylvania law does apply (or where a pipeline chooses to file condemnation in state court, as it may do under the NGA), Pennsylvania's Eminent Domain Code, 26 P.S. § 1-101 et seq. applies to valuation of the condemned property. Pennsylvania is one of the 23 states⁴⁶ that determines just compensation in condemnation cases by commission with a right to appeal to and trial de novo before a jury.⁴⁷ In Pennsylvania, this commission is called a "Board of Viewers."

As to just compensation, the code provides in 26 Pa. § 702:

Just compensation shall consist of the difference between the fair market value of the condemnee's entire property interest immediately before the condemnation and as unaffected by the condemnation and the fair market

⁴⁶ Fed. R. Civ. P. 71.1(h) notes.

⁴⁷ *Lauxmont Holdings v. County of York*, 2008 U.S. Dist. LEXIS 45932 (D. M.Pa. 2008). See also *In re Property of Fox*, 234 F. Supp. 241, footnote 1 (D. E.D. Pa. 1964), wherein it is explained:

The Pennsylvania statute involved is the third-class city code, which provides, 53 P.S. §§ 37819 and 37842, that to have a determination of the amount of damages for the taking, either the property owner or the city may petition the state court to appoint three viewers. After the viewers have made their award either party has the right to appeal to the local state court to have the issue of the amount of damages determined in a jury trial [citations omitted].

value of the property interest remaining immediately after the condemnation and as affected by the condemnation.

Of the fair market value, the code provides in 26 Pa. § 703:

Fair market value shall be the price which would be agreed to by a willing and informed seller and buyer, taking into consideration but not limited to the following factors:

- (1) The present use of the property and its value for that use.
- (2) The highest and best reasonably available use of the property and its value for that use.
- (3) The machinery, equipment and fixtures forming part of the real estate taken.
- (4) Other factors as to which evidence may be offered as provided by
- (5) Chapter 11 (relating to evidence).

On the other hand, if the court finds that FRCP 71.1 has superceded Section 717f(h) entirely, then federal condemnation law will apply. FRCP 71.1(h)(2)(A) provides:

If a party has demanded a jury, the court may instead appoint a three-person commission to determine compensation because of the character, location, or quantity of the property to be condemned or for other just reasons.

In the two circuit cases where federal condemnation law was applied at the compensation stage, each district court appointed a commission despite the demand for a jury trial, and those decisions were upheld on appeal.⁴⁸ However, in the *Transcontinental* matter in the Eastern District Court for Pennsylvania (Docket No. 2:09-cv-1044), Judge Savage allowed a jury trial on damages in accordance with the landowner's demand.

In *Guardian Pipeline v. 295.49 Acres of Land*, 2008 U.S. Dist. LEXIS 35818, the District Court for the Eastern District of Wisconsin noted that FRCP 71.1 has no fee-shifting provision that would allow the owner to recover his expenses, including attorney's fees, from the condemnor.⁴⁹

ISSUE #9: Under what circumstances have courts either rejected or modified a pipeline company's eminent domain action?

Courts routinely grant requests to condemn made pursuant to the NGA. They most often grant immediate possession, leaving the issue of compensation open.

In the case of *Williston Basin Interstate Pipeline Co. v An Exclusive Gas Storage Leasehold*, 524 F3d 1090 (2008), the Ninth Circuit Court of Appeals upheld the district court's dismissal of a pipeline company's eminent domain action for lack of a FERC certificate authorizing the condemnation. The pipeline company did not allege that the land was covered under the FERC certificate, nor did they submit any maps to show which land they were entitled to condemn. Instead, the pipeline company merely

⁴⁸ *Northern Border Pipeline Co.*, 344 F.3d 693 (7th Cir. 2003). See also *Southern Natural Gas Co. v. Land, Cullman County*, 197 F.3d 1368 (11th Cir. 1999)

⁴⁹ *Guardian Pipeline, L.L.C.*, 2008 U.S. Dist. LEXIS 35818, at 21.

alleged that they were losing gas due to the subject wells. The court found this insufficient for a taking.

In *Tennessee Gas Pipeline Co. v. 104 Acres of Land*, 749 F. Supp. 427 (1990), the District Court of Rhode Island modified the pipeline company's requested easement. The court held that the pipeline company requested the easement include two rights that were outside of the scope of the FERC certificate: (1) to increase the size of the pipeline in the future, and (2) to transport petroleum products through the pipeline.⁵⁰ The court granted the easement, but without these requested rights.

Finally, in *Kern River Gas Transmission Company v. Clark County, Nevada*, 757 F. Supp. 1110 (1990), the District Court of Nevada abstained from ruling on the pipeline company's request for condemnation because the subject properties were not named as parties to the suit. Instead, the court granted plaintiffs leave to amend complaint.

Most recently, in a *Transcontinental Pipeline* involving a group of five landowners (the Brandywine Five) represented by Carolyn Elefant (Dockets No. 9-CV-1385, 1396 and 1402), on the day of the condemnation hearing, the parties reached a settlement whereby the pipeline agreed to refrain from condemning the Brandywine Five's property until it received a permit authorizing open cut construction of the pipeline. The permit never issued, and the court required Transco to dismiss its condemnation action. The parties filed a motion for attorneys fees under the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970), as amended, 42 U.S.C. § 4601 *et seq.* (2009), which remains pending before the court.

⁵⁰ *Tennessee Gas*, 749 F. Supp. at 431-432.

APENDIX 5



MILFORD N.H. PIPELINE TASK FORCE

Master Plan link

http://milford.nh.gov/sites/milford.nh.gov/files/MasterPlan_Rev2012.pdf