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The Honorable Stanley C. Rosenberg
President of the Senate
State House, Room 332
Boston, MA 02133

***Re: DOCKET NO. PF14-22-000 (Senate President Stan Rosenberg's
Regional Comment Session)***

Dear Senator Rosenberg:

Northeast Energy Solutions, Inc. ("NEES"), through its founding members, represents over 101,850 individuals in Massachusetts and its founding members collectively own or hold conservation restrictions on over 50,000 acres of land in the Commonwealth. On behalf of NEES, kindly accept these comments concerning the Tennessee Gas Pipeline Company's ("TGP") proposed Northeast Energy Direct Project (the "Project").

On Friday, August 28, 2015, the United States of America began enforcing the **Waters of the United States Rule** ("Rule") which expands federal jurisdiction over small waterways, like streams and wetlands.¹ Unfortunately, the potential impact of the new Rule was never disclosed, discussed or raised by TGP during the previous scoping hearings. The Rule opens numerous questions as to federal jurisdiction and landowner responsibilities. In fact, as a result of the Rule, a landowner in your Senate district and elsewhere in the Commonwealth could potentially be

¹ The Clean Water Rule: Definition of "Waters of the United States" published in the Federal Register on June 29, 2015. The Rule became effective on August 28, 2015.

liable for nearly \$40,000 per incident per day in the form of a fine by the Environmental Protection Agency for a pipeline breach attributable to TGP. As such, the scoping process is defective and must be continued until all aspects of the potential impact of the Rule are addressed.

Moreover, the failure of TGP to disclose the Rule and its potential impact during the public process further discredits TGP's self-purported transparency and assertions of governmental and public cooperation. This is a pattern of the company. TGP and Berkshire Gas have continually misrepresented data to elected officials and regulators. Most recent was the lack of disclosure to the Department of Public Utilities. Berkshire Gas went through an entire evidentiary proceeding claiming that their moratorium on new customers could only see its demise if Northeast Energy Direct is built. Berkshire Gas summarily dismissed all alternatives and assured accuracy of their testimony to state regulators. Not until the evidentiary proceeding of that hearing was closed did Berkshire Gas reveal their investment interest in the proposed pipeline. At a minimum, this is a breach of the companies fiduciary responsibility as a regulated utility. In fact, as NEES charged in a letter earlier this month to Attorney General Maura Healey, Berkshire Gas' investment in the proposed Tennessee Gas Pipeline project without disclosing it publicly until mentioned by NEES needs to be closely examined. Further, it is certainly time that Berkshire Gas explains to the public the impact of the moratorium on present and potential future demand of natural gas in Hampshire and Franklin Counties and identify more reasonable options.

As indicated, this pattern of smoke and mirrors is evident again by the developers lack of disclosure concerning the Waters of the United States Rule. That Rule broadens the

Environmental Protection Agency's scope under the Clean Water Act and essentially defines "waters of the U.S." to include virtually any wet area, including rain-fed, temporary pools and areas close to any other body of water with a connection to a navigable waterway. The Rule expands federal jurisdiction over many landscape features found on land potentially impacted throughout the Commonwealth.

Here are a few items the scoping process must cover:

- 1) Can landowners be liable under the Rule and what actions is TGP taking to protect such landowners?
- 2) Which lands affected by the proposed project are impacted by the Rule?
- 3) Are there additional permit requirements under the Rule, if so, who pays for the full application costs?
- 4) Where can landowners go for additional information regarding the new Rule?
Please note that as of this writing, not all government websites have been fully updated to reflect the new Rule.
- 5) Which businesses are at risk by the proposed Project under the new federal requirements?

6) Should the developer or landowners immediately request a Jurisdictional Determination from the Corps of Engineers?

In addition to continuing the scoping process to address the new Rule, another concern ineffectually addressed and relatively undisclosed during the process is the Connecticut Expansion Project (“CEP”). CEP is related to the Project and should not be subject to a separate review by the FERC. Separate permitting for the CEP amounts to unlawful segmentation of the two projects. The Project and CEP should receive joint environmental consideration due to their connectedness and financial interdependence. Currently, there is enough publically available information to conclude that TGP is in fact combining CEP’s reported shipper contract total with the Project’s total. The fact that the service areas of the three CEP shippers, Connecticut Natural Gas Corporation, Southern Connecticut Gas Corporation, and Yankee Gas, are not in the vicinity of the Project’s proposed paths strongly supports this conclusion.

Further, the safety of the proposed Project needs additional scoping. Even though there were appropriate inquiries, TGP failed to provide adequate answers with respect to the Project’s safety, including detailed information regarding design, testing, cathodic protection, encroachment, monitoring and inspection. The crucial economic and environmental cost of inadequate pipeline safety response and preparedness cannot be underestimated.

Ultimately, despite what TGP and Berkshire Gas have been trying to sell to this region, the issue is not one of supply, it is one of targeted, micro-capacity. And, TGP’s pipeline is not

the solution for Berkshire Gas. The spur pipeline, delivering gas from Southwick, the Northampton lateral, is a solution. In fact, an August 24, 2011 Order Issuing Certificate, the Northampton Expansion Project was expressly intended to serve Berkshire Gas.

TGP and Berkshire Gas want to build a bazooka when all that is needed is a peashooter.

Until all of these questions and concerns are fully addressed the FERC should not proceed with an EIS.

Thank you for the opportunity to provide these comments.