

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

**Tennessee Gas Pipeline Company, LLC**

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**Docket No. CP16-21-000**

**PROTEST OF  
NORTHEAST ENERGY SOLUTIONS, INC.**

Pursuant to Rules 212 and 214 of the Federal Energy Regulatory Commission (“Commission”) Rules of Practice and Procedure, 18 C.F.R. §§ 385.212 and 385.214, Northeast Energy Solutions, Inc. (“NEES”) timely moved to intervene in the above-captioned proceeding. As opposition was not filed to NEES’ motion within 15 days after it was filed, NEES is a party to the above-captioned proceeding. Further, pursuant to Rule 211 of the Commission’s Rules of Practice and Procedure, 18 C.F.R. § 385.211, NEES herewith: (1) protests the Commission’s acceptance of Tennessee Gas Pipeline Company, LLC’s (“TGP”) defective application (the “Application”); and, (2) requests a formal hearing on the Application.

1. In support of this motion, NEES states, as follows: The exact legal name of the Movant is as set forth in the above, unnumbered paragraph. NEES is a multi-jurisdictional nonprofit corporation compromised of energy, land, environmental, end-user, and related economic interests. Uniquely, NEES, through its founding members, represents over 101,000 individuals in Massachusetts and New York who collectively own or hold conservation restrictions on over 46,211 acres of land in the Massachusetts. NEES also includes municipalities

and a state legislator among its members. NEES is an educational resource and advocacy group (before state and federal government officials) that works to ensure that economically viable and environmentally responsible energy projects account for its member's collective and respective interests. NEES was founded to represent its members in providing energy infrastructure analysis and advocacy regarding the economics of energy projects and transactions in the Northeastern United States.

2. The name and mailing address of the person upon whom all communications concerning the proceeding should be served is:

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3. On or about November 20, 2015, TGP filed the Application pursuant to sections 7(b) and 7(c) of the Natural Gas Act, and the Commission regulations thereunder, seeking authority to: (i) construct, install, modify, and operate certain pipeline and compression facilities to be located in Pennsylvania, New York, Massachusetts, New Hampshire, and Connecticut; and (ii) to abandon certain facilities, all as part of a proposed Northeast Energy Direct Project ("NED"). The proposed NED is comprised of two components:

a. Supply Path Component: Comprised of the proposed facilities from Troy, Pennsylvania to Wright, New York, including approximately 174 miles of pipeline facilities in Pennsylvania and New York, the proposed construction of three new compressor stations and

modifications to one existing compressor station, further construction of two new meter stations, and purported appurtenant facilities.

b. Market Path Component: Comprised of proposed facilities from Wright, New York to Dracut, Massachusetts. These proposed facilities include approximately 188 miles of mainline pipeline facilities in New York, Massachusetts, and New Hampshire, laterals located in Massachusetts and New Hampshire, and Connecticut), proposed construction of six new compressor stations, 13 new meter stations and modification of 14 existing meter stations, and purported appurtenant facilities.

4. The Commission issued a Notice of Application for the Application on December 7, 2015.

5. NEES respectfully requests that this proceeding be terminated and the Application be dismissed as the Application is incomplete and inaccurate for the reasons more fully set forth herein.

6. The Application is not minimally commensurate with the complexity of the proposal and its potential for environmental impact and does not meet the minimum mandates of 18 C.F.R. § 380; therefore, the Application must be rejected More specifically the Application lacks the following:

a. A detailed description and thoroughly location map of the project facilities;

b. A description of all facilities not under the Commission's jurisdiction that would be built in connection with the proposed project;

- c. Current and original U.S. Geological survey topographic maps showing the project facilities;
- d. Plot or site plans of compressor stations showing the location of the nearest noise-sensitive areas, within 1 mile;
- e. A complete description of construction and restoration methods;
- f. A full list of the permits required for construction across surface waters.
- g. A complete list of the names and address of all affected landowners and certify that all affected landowners will be notified as required in § 157.6(d);
- h. An accurate list of perennial surface waterbodies crossed by the proposed project and their water quality classification;
- i. An accurate list of waterbody crossings that may have contaminated waters or sediments;
- j. A complete list of watershed areas, designated surface water protection areas, and sensitive waterbodies crossed by the proposed project;
- k. An accurate table identifying all wetlands crossed by the project, and the total acreage and acreage of each wetland type that would be affected by construction;
- l. A thorough discussion of the construction and restoration methods proposed for crossing wetlands, accompanied by a comparison to the Wetland and Waterbody Construction and Mitigation Procedures;

m. A comprehensive description of the proposed waterbody construction, impact mitigation, and restoration methods to be used to cross surface waters accompanied by a comparison to the Wetland and Waterbody Construction and Mitigation Procedures;

n. Original National Wetlands Inventory (“NWI”) maps or the equivalent state wetland maps that show all proposed facilities and include milepost locations for proposed pipeline routes;

o. A full list of all U.S. Environmental Protection Agency or state-designated aquifers crossed;

p. An accurate classification of the fishery type of each surface waterbody that would be crossed, including fisheries of special concern;

q. A complete description of terrestrial and wetland wildlife and habitats that would be affected by the project;

r. A full description of the major vegetative cover types that would be crossed and the acreage of each vegetative cover type that would be affected by construction;

s. An accurate description of the effects of construction and operation procedures on the fishery resources and proposed mitigation measures;

t. A thoughtful evaluation of the potential for short-term, long-term, and permanent impact on the wildlife resources and state-listed endangered or threatened species caused by construction and operation of the project and proposed mitigation measures;

- u. A complete list of all federally listed or proposed endangered or threatened species that potentially occur in the vicinity of the project accompanied by a discussion of the results of the consultations with other agencies and survey reports;
- v. A full list of all federally listed essential fish habitat (“EFH”) that potentially occurs in the vicinity of the project and the results of consultations with NMFS;
- w. A significant description of biological resources that would be affected, accompanied by a description of the impact and any mitigation proposed to avoid or minimize that impact;
- x. An accurate discussion of cultural resources consultations;
- y. A full description of existing socioeconomic conditions within the project area for major aboveground facilities and major pipeline projects that require an EIS;
- z. An accurate description quantifying the impact on employment, housing, local government services, local tax revenues, transportation, and other relevant factors within the project area for major aboveground facilities;
- aa. A complete list of mineral resources and any planned or active surface mines crossed by the proposed facilities;
- bb. A full list of any geologic hazards to the proposed facilities;
- cc. A thoughtful discussion of the need for and locations where blasting may be expected;

dd. A comprehensive description of how drilling activity by others within or adjacent to the facilities would be monitored;

ee. A complete list, description and grouping of the soils affected by the proposed pipeline and aboveground facilities;

ff. An accurate determination of the acreage of prime farmland soils that would be affected by construction and operation;

gg. A thoughtful description of potential impacts on soils;

hh. A full list of proposed mitigation to minimize impact on soils, accompanied by a comparison with the Upland Erosion Control, Revegetation, and Maintenance Plan;

ii. An accurate classification of and quantification land use affected by:

i. Pipeline construction and permanent rights-of-way.

ii. Extra work/staging areas.

iii. Access roads.

iv. Pipe and contractor yards; and

v. Aboveground facilities

jj. Identification of all locations where the pipeline right-of-way would at least partially coincide with existing right-of-way, where it would be adjacent to existing rights-of-way, and where it would be outside of existing right-of-way;

- kk. Detailed of typical construction right-of-way cross-section diagrams showing information such as widths and relative locations of existing rights-of-way, new permanent rights-of-way, and temporary construction rights-of-way;
- ll. A complete list of all planned residential or commercial/business development and the time frame for construction;
- mm. An accurate list of special land uses;
- nn. A full list of all land administered by Federal, state, or local agencies, or private conservation organizations;
- oo. An accurate list by of all natural, recreational, or scenic areas, and all registered natural landmarks crossed by the project;
- pp. A complete list of all facilities that would be within designated coastal zone management areas and the necessary consistency determination or evidence that a request for a consistency determination has been filed with the appropriate state agency;
- qq. A list of all residences that would be within 50 feet of a construction rights-of-way or extra work area;
- rr. A list of all designated or proposed candidate National or State Wild and Scenic Rivers potentially crossed;
- ss. A detailed description of measures to visually screen aboveground facilities, such as compressor stations;



tt. A demonstration that applications for rights-of-way or other proposed land use have been or soon will be filed with Federal land-managing agencies with jurisdiction over land that would be affected by the project;

uu. An accurate description of existing air quality in the vicinity of the project;

vv. An accurate quantification of the existing noise levels at noise-sensitive areas and at other areas covered by relevant state and local noise ordinances;

ww. A full list of any nearby noise-sensitive area by distance and direction from the proposed compressor unit building/enclosure;

xx. A thorough list of any applicable state or local noise regulations;

yy. An accurate calculation of the noise impact at noise-sensitive areas of the proposed compressor unit modifications or additions, specifying how the impact was calculated, including manufacturer's data and proposed noise control equipment;

zz. A thoughtful and sincere explanation or discussion of the effect of energy conservation or energy alternatives to the project;

aaa. A comprehensive examination of system alternatives considered during the identification of the project, accompanied by detailed and documented rationale for rejecting each alternative;

bbb. An accurate list of major and minor route alternatives considered to avoid impact on sensitive environmental areas, accompanied by a sufficient comparative data to justify the selection of the proposed route;

ccc. A detailed description of how the project facilities would be designed, constructed, operated, and maintained to minimize potential hazard to the public from the failure of project components as a result of accidents or natural catastrophes;

ddd. A complete and detailed list of all the engineering materials.

7. The Application does not meet the mandates of Waters of the United States Rule.<sup>1</sup> More specifically, on Friday, August 28, 2015, the federal government began enforcing the Waters of the United States Rule (“Rule”) which expands federal jurisdiction over small waterways, like streams and wetlands. The 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. Unfortunately, the potential impact of the new Rule was never disclosed, discussed or raised by TGP during the scoping hearings. The Rule opens numerous questions as to federal jurisdiction and landowner responsibilities. In fact, as a result of the Rule, a landowner could potentially be 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 Application is defective and must be rejected until the potential impact of the Rule is addressed. Moreover, the failure of TGP to disclose the Rule and its potential impact during the public process and in the Application further discredits TGP’s self-purported transparency and assertions of governmental and public cooperation. For this reason alone, the Application must be rejected.

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<sup>1</sup> While the Waters of the United States Rule is currently under judicial review, the Application must take its requirements into account as it the Rule may be judicially effectuated during this proceeding.

8. The Application does not meet the mandates of the Commission's Policy Statement in Cost Recovery Mechanisms for Modernization of Natural Gas Facilities, Docket No. PL15-1-000, 151 FERC ¶ 61,047 (2015). More specifically, the Policy Statement, which became Effective October 1, 2015, is largely ignored in the Application. Among other items, the Application does not fully define a proposed cost recovery mechanism that will protect captive customers from cost shifts if the pipeline loses shippers. As such, and for other reasons, ratepayers are not potentially protected from recovery mechanisms that would produce unjust and unreasonable rates, or shift costs to captive customers. That notwithstanding, the Application boldly requests significant flexibility and procedural advancement based only upon forward statements, conjecture, and yet to be filled promises of a better Application in the future. The Application must be rejected.

9. NEES respectfully requests that a formal hearing on the Application be scheduled in accordance with 18 C.F.R. § 157.10(a)(1).

10. The material facts raised in this Protest are in dispute and cannot be resolved on the basis of a written record. The enormity of the written record in this matter does not allow for the same level of efficient and targeted deciphering of precise material facts that would be available in a trial-type evidentiary hearing. In fact, the comprehensive stitching together of material facts required for analysis of the Application is nearly impossible without direct, in-person, party interaction, beyond of a paper chase. For instance, in recent responses to the Commission's request for additional information, TGP frequently stated that further information will be provided in the future and that the Application should be accepted on that vaporous promise. Doing so will result in the proceeding becoming an avalanche of paper accommodating TGP's strategy of processing paper in which material facts can be lost, blanked and contradicted.

The intervenors are not on equal footing to develop and produce the equivalent enormity of a written record as TGP. However, a trial-type evidentiary hearing would put NEES on equal footing with TGP. A paper record cannot supplant an oral narrative in this proceeding. The numerous aspects of material facts that are of jurisdictional import to the Commission cannot be judiciously and artfully presented by mere pleadings. Naturally, FERC could narrow or tailor any such hearing in accordance with the Commission's substantial discretion.<sup>2</sup> Alternatively, the Commission should set the issues raised by NEES for a technical conference, with staff participation, to determine whether an evidentiary hearing is required.

**WHEREFORE**, for all of the aforementioned reasons, NEES respectfully requests the relief sought herein be granted.

Respectfully submitted,

*/s/ Vincent DeVito*

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January 12, 2016

cc: Governor Charles D. Baker (MA)  
Governor Daniel Malloy (CT)  
Governor Andrew M. Cuomo (NY)  
Senator Lisa A. Murkowski (AL)  
Congressman Peter T. King (NY)  
Congressman James P. McGovern (MA)  
Commissioner Tony Clark, FERC

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<sup>2</sup> See, e.g., *Questar Pipeline Company*, 140 FERC ¶ 61,040 at P 11), *Southern Union Gas Co. v. FERC*, 840 F.2d 964, 970 (D.C. Cir. 1988)

Commissioner Cheryl A. LaFleur, FERC  
Chairman Norman C. Bay, FERC  
Commissioner Philip D. Moeller, FERC  
Commissioner Colette D. Honorable, FERC  
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State Representative Bradley H. Jones, Jr. (North Reading, MA)  
Matthew A. Beaton, Secretary, Office of Energy and Environmental Affairs (MA)  
Rob Klee, Commissioner, Department of Energy and Environmental Protection (CT)  
Basil Seggos, Acting Commissioner, Department of Environmental Conservation (NY)  
Rebecca Tepper, Chief, Energy and Telecommunications, Attorney General (MA)

**CERTIFICATE OF SERVICE**

I hereby certify that I have this day served the foregoing document on all parties listed on the official service list compiled by the Secretary in this proceeding and attached hereto.

Dated at Boston, Massachusetts this 12<sup>th</sup> day of January, 2016.

By: */s/ Vincent DeVito*

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