

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

In the Matter of _____) **Docket No. CP16-21-000**
Tennessee Gas Pipeline Company, L.L.C.) Northeast Energy Direct Project _____)

MOTION TO DISMISS
OF THE NEW HAMPSHIRE MUNICIPAL PIPELINE COALITION

I. INTRODUCTION

The New Hampshire Municipal Pipeline Coalition (“Coalition”) hereby moves to dismiss the Tennessee Gas Pipeline Company, L.L.C.’s (“TGP” or “Company”) application for a certificate under Section 7 of the Natural Gas Act for the Northeast Energy Direct pipeline project (“NED Project”) filed on November 20, 2015 (the “Application”).¹ The Coalition’s motion to dismiss is filed pursuant to Rules 211 and 212 of the Federal Energy Regulatory Commission (“Commission” or “FERC”) Rules of Practice and Procedure (18 C.F.R. §§ 385.211, 385.212). On January 15, 2016, the Coalition timely filed its motion to intervene and protest (“Motion”) with the Commission in this proceeding without objection, and, accordingly, the Coalition is a full party to this proceeding.

On April 20, 2016, TGP and its parent company, Kinder Morgan, Inc., announced the suspension of all work and expenditures on the NED Project. Among other things, TGP cited the

¹ The Coalition consists of thirteen towns in New Hampshire: Brookline, Fitzwilliam, Greenville, Litchfield, Mason, Milford, New Ipswich, Pelham, Richmond, Rindge, Temple, Troy and Winchester (collectively, the “Towns”).

lack of contractual commitments and uncertainty surrounding state regulatory approvals, concluding that further action was unacceptable to shareholders.

In its Application, and as a significant element in support of its request for approval of the NED Project, TGP alleged that it had contractual commitments for the Market Path and the Supply Path segments of the NED Project from “key New England [local distribution companies] and other market participants.” Application at 6. Specifically, the Company referenced its executed precedent agreements with Massachusetts and New Hampshire local gas distribution companies (“LDCs”), *i.e.*, Boston Gas Company, Bay State Gas Company d/b/a Columbia Gas (“Columbia Gas”), The Berkshire Gas Company (“Berkshire”), and EnergyNorth/dba Liberty Utilities (“Liberty”) in the amount of 417,262 dekatherms per day (“Dth/day”) in the Market Path portion of the NED Project.² Similarly, the Company referenced its contracted commitments with Columbia Gas and Berkshire for 89,650 Dth/day of capacity for the Supply Path segment of the NED Project.³ Moreover, in its respective state filings, the Company highlighted its precedent agreements with Liberty for 78,000 Dth/day of capacity for Supply Path³, and with Massachusetts Electric Company and Nantucket Electric Company, (together “National Grid”), in an amount up to 100,302 Dth/day for capacity on the Market Path and 60,900 Dth/day for capacity on Supply Path. These contracts form the legal and factual foundation of this filing under well-established precedent.⁴

² See Exhibit I, Precedent Agreements at: http://elibrary.ferc.gov/idmws/file_list.asp?accession_num=20151120-5227³
Id.

³ See Massachusetts Electric Company and Nantucket Electric Company d/b/a National Grid, Exhibit NG-TJB/JEA-1, D.P.U. 16-07 at 19 (January 15, 2016).

⁴ The Coalition does not concede as noted in its Motion that these contracts demonstrate any need for the NED Project. See fn 10, *infra*.

Notwithstanding its Application, TGP has now terminated the NED Project. As discussed more fully below, as part of its announced suspension, TGP delivered a notice to each LDC and National Grid (“Notice”) exercising its right to terminate the respective precedent agreements with each distribution company. In this Notice, TGP notified the distribution companies that it was “suspending further work on the NED Project, pending contractually required discussions pursuant to Section 12(b) and 12(e) of the NED [precedent agreements], to determine if an alternative arrangement can be developed.” See Massachusetts Electric Company and Nantucket Electric Company d/b/a National Grid, Motion to Withdraw Petition, D.P.U. 16-07 (April 26, 2016).⁵

In response to the Notice, two major distribution companies have already withdrawn their applications in state regulatory proceedings for approval of NED contracts—signaling that any negotiations with TGP were over and that the precedent agreements had been terminated. See Liberty Utilities (EnergyNorth Natural Gas) Corp. d/b/a Liberty Utilities, DG 15-494 (May 2, 2016) (Liberty withdrew its application with the New Hampshire Public Utilities Commission (“NH PUC”) for approval of the Supply Path portion of the NED Project);⁷ See also Liberty Utilities (EnergyNorth Natural Gas) Corp. d/b/a Liberty Utilities, DG 15-380 (May 2, 2016) (Liberty notified the NH PUC that the Market Path Precedent Agreement in DG 14-380 had been terminated “given that [TGP] will not be pursuing the Northeast Energy Direct Project”);⁸ See also National Grid, D.P.U. 16-⁶⁷ (April 26, 2016) (National Grid withdrew its application with

⁵ See http://web1.env.state.ma.us/DPU/FileRoomAPI/api/Attachments/Get/?path=16-%2fGranted_Motion_Withdraw_42716.pdf⁷

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⁷ Link presently unavailable.

the Massachusetts Department of Public Utilities (“MA DPU”) for approval of both Market Path and Supply Path).⁸

Others have filed motions, which have been granted, to stay ongoing state regulatory proceedings for approval of the NED Project precedent agreements pending negotiations. These distribution companies explained however, that although Section 12(e) of the NED precedent agreements required them to commence “good faith negotiations” with TGP, that the likely outcome would be a subsequent filing from the distribution companies withdrawing their petitions. See Bay State Gas Company d/b/a Columbia Gas of Massachusetts, Hearing Officer Ruling on Request to Stay, D.P.U. 16-12 (April 22, 2016) (The MA DPU suspended the procedural schedule until May 21, 2016);⁹ See The Berkshire Gas Company, LLC, Hearing Officer Ruling on Request to Stay, D.P.U. 15-178 (April 26, 2016) (The MA DPU suspended the procedural schedule until May 21, 2016);¹⁰ See Tennessee Gas Pipeline Company, L.L.C., Hearing Officer Ruling on Motion for Stay of Proceedings, D.P.U. 16-01/16-02/16-03 (April 21, 2016) (Proceedings were stayed until May 26, 2016 and all current procedural deadlines were terminated until further notice).¹¹

In short, TGP has irrevocably terminated the underlying contractual commitments that provide the fundamental legal basis for this proposal and the required legal contractual

⁸ See http://web1.env.state.ma.us/DPU/FileRoomAPI/api/Attachments/Get/?path=1607%2fGranted_Motion_Withdraw_42716.pdf

⁹ See http://web1.env.state.ma.us/DPU/FileRoomAPI/api/Attachments/Get/?path=1612%2fHO_Ruling_42216.pdf

¹⁰ See http://web1.env.state.ma.us/DPU/FileRoomAPI/api/Attachments/Get/?path=15178%2fHO_Ruling_42616.pdf

¹¹ See <http://web1.env.state.ma.us/DPU/FileRoomAPI/api/Attachments/Get/?path=1603%2fRulingonTNrequestforstay.pdf>

prerequisite for the Commission’s approval. Under these circumstances, and as a matter of law for the reasons set forth below, the Company’s Application should be dismissed and this docket closed and terminated with prejudice.

II. THERE IS NO LEGAL BASIS FOR THE COMMISSION TO APPROVE THIS APPLICATION.

TGP’s failure to maintain contractual commitments for NED warrants immediate dismissal of the Application. Under long standing precedents, the Commission indisputably considers these contracts an essential component of its determination of the viability of a project¹² and views service commitments for new capacity as “important evidence of demand for a project”.¹³ Executed contracts are fundamental to the Commission’s review: when “an applicant has entered into contracts or precedent agreements for the proposed capacity,” this is taken as “significant evidence of demand for the project.”¹⁴ It is axiomatic that the Notice to the

¹² “The contractual commitments by the foundation shippers to purchase capacity on the new projects provide essential support for the sponsor to proceed with the project. *For example, these contractual commitments help the project sponsor to obtain financing for the construction of the project, and may reduce the cost of that financing by reducing the perceived risk of the investment in the new facilities...An essential component of the Commission’s certificate policy has been to provide both the project sponsor and project participants the opportunity to obtain greater certainty concerning the rate that the participants will pay, so that all parties can make an informed decision as to whether to go forward. See Revisions to the Blanket Certificate Regulations and Clarification Regarding Rates*, 115 FERC ¶61,338 at P 98 (2006) (emphasis added).

¹³ See Certification of New Interstate Natural Gas Pipeline Facilities (Policy Statement on New Facilities), 88 FERC ¶ 61,227 at 61,748 (1999).

¹⁴ Id.

LDCs and the demonstrated lack of sufficient contractual commitments obviates the need for the NED Project, and accordingly, the Commission should not continue to devote additional time and resources to its review process.

TGP cannot offer a rational explanation as to how, given its Notice, and the absence of capacity contracts necessary for even the minimum facility design, further review of the NED Project in this proceeding would be warranted. In its submittal to FERC requesting that “FERC not take any further action,” it unequivocally states: “as a result of inadequate capacity commitments from prospective customers and a determination that the [NED] Project is uneconomic, [the Company is suspending] further work and expenditures on the [NED] Project. At this time, Tennessee is in the process of determining how best to proceed consistent with *existing contracts*.” See TGP Letter to FERC (April 22, 2016) (emphasis added).

Notwithstanding this unsupported claim about moving forward with existing contracts, there are no existing contracts to consider—at least from a FERC regulatory perspective. TGP has effectively terminated the NED Project and associated contracts, key utility counterparties have accepted the termination, and state regulators have stayed proceedings expecting withdrawal, all thereby precluding any valid basis for further review. On its face, and as a matter of law, in the absence of valid contracts for capacity, there is no demonstrated need for the project—at best, TGP has only provided vague and generalized assertions of speculative need based upon a future “process.” See e.g., *Turtle Bayou Gas Storage Co., LLC*, 135 FERC ¶ 61,223 (2011) (which found the applicant did not demonstrate need where it did not have precedent agreements and provided only vague and generalized evidence of need). Moreover, to what extent TGP would be able to secure additional contractual commitments, if any, remains

purely speculative at this stage. Simply put, in this Application, there is no longer a “project” or contracts to be reviewed, and the Commission should dismiss the Application forthwith.¹⁵

III. THE COMPANY’S REQUEST FOR THE COMMISSION TO NOT TAKE ANY ACTION CREATES UNNECESSARY TAXPAYER EXPENSE TO THE TOWNS.

In its Motion, the Coalition noted its concerns about the unnecessary damage the NED Project would create if approved and constructed. The construction, operation and maintenance of the NED Project would, among other things, damage water resources and aquifers, create unwarranted health and safety problems, and damage property values. Moreover, the damage to communities from the construction and operation of compressor stations is even greater, with threats of significant air and noise pollution and additional health risks. See Motion at 12-18.

Towns are charged, as municipal corporations and governmental entities, to protect, in coordination with state officials, the public health and safety, including, public and private drinking water supplies in the region, air quality, and water resources. The Towns are required to enforce all applicable state and local provisions relating to construction and operation of the

¹⁵ In its Motion, the Coalition requested, among other things, that the Commission dismiss the application because of a lack of need for the project as evidenced by “the meager market response of the Project Shippers (“Shippers”) to the Applicant’s proposal” and the availability of “alternatives for the project.” See Motion at 8. The Coalition further noted noting that “overall, actual new, non-replacement, state-approved capacity contracted for by Shipper Liberty and other LDCs is only 264,302 Dth/day, a totally insignificant level of demonstrated need on a 1.3 Bcf/d pipeline.” See Motion at 8, ft. 9. The Coalition was well aware, even if TGP/Kinder Morgan was not, that the NED Project was not necessary in New Hampshire or required to serve any regional need. The termination of the NED Project as discussed in Section II above has long been warranted and serves the public interest.

NED Project, and ensure that TGP complies with all health, safety and environmental requirements.

Given their responsibilities to protect the health and welfare of their citizens, the Towns have had to allocate and expend funds to evaluate the prospective impacts of the NED Project and ensure that TGP will proceed in compliance with local ordinances and with New Hampshire laws.¹⁶ Specifically, the Towns have had to evaluate, among other things, the NED Project's expected adverse impacts on drinking water supplies, conservation lands (including mitigation), protected areas, air quality, sensitive receptors from sound, and emergency resources. The Towns have actively participated in this regulatory proceeding and related dockets at FERC, in state proceedings evaluating precedent agreement filings, and in New Hampshire Siting Evaluation Commission proceedings. The Towns have had to appropriate funds and engage, at taxpayer expense, experts, legal counsel, and consultants to undertake the evaluations and advocacy necessary to protect their interests and the health and safety of their communities. See Motion at 2.¹⁷

The Towns are unfairly compelled to continue to expend taxpayer funds while this project remains in suspended animation (as noted above) and TGP seeks to preserve shareholder dollars. By necessity, and until FERC terminates this proceeding, the Towns must engage in vigilant watchfulness and continue to fund consultant contracts, undertake seasonal resource assessments (evaluation of vernal pools and other sensitive areas, for example) and appropriate

¹⁶ This was a particularly challenging task given the significant informational gaps in TGP's Application. Motion at 14.

¹⁷ The Towns remain confident that their experts would demonstrate that the NED Project is not needed, that viable and less impactful alternatives are available, and that the significant health and environmental impacts associated with the NED Project outweigh any alleged benefits. The Coalition had respectfully requested a formal hearing on the Application, including the environmental impacts of and public need for the NED Project pursuant to 18 C.F.R. § 157.10(a)(1).

and allocate funds necessary to protect their interests and safeguard their communities from NED Project implications. The Towns are obligated to sustain these important and necessary activities until FERC denies the Application. The Coalition should be able to focus (and budget appropriately) on matters of concern to its residents that do not involve this ill-advised, illconceived and unnecessary gas infrastructure project.

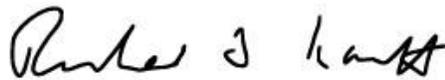
Accordingly, TGP's request that FERC "not take any further action in processing the Application, pending Tennessee submitting a status report to the Commission no later than May 26, 2016" should be rejected and the Application should be dismissed immediately. TGP's unprecedented request is not supported by law and places an undue financial obligation on Towns (and taxpayers) in the continued expenditure of time, resources and funds related to the review and evaluation of a project that TGP concedes is no longer needed or viable.

IV. CONCLUSION

For the reasons stated above, the Application should be dismissed forthwith.

**NEW HAMPSHIRE MUNICIPAL
PIPELINE
COALITION**

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