Massachusetts Association of Conservation Commissions
protecting wetlands, open space and biological diversity through education and advocacy

Electronically filed with FERC

February 6, 2015

Kimberly D. Bose, Secretary
Federal Energy Regulatory Commission
888 First Street, NE
Room 1A
Washington, DC 20426

Re: Tennessee Gas Pipeline Company, L.L.C., Docket No. PF14-22-000
Northeast Energy Direct Project

Dear Ms. Bose:

I am writing for the Massachusetts Association of Conservation Commissions (MACC) regarding the above referenced project of Tennessee Gas Pipeline Company, a Kinder Morgan company. We have reviewed Resource Reports 1 and 10 filed by Kinder Morgan with the Federal Energy Regulatory Commission (FERC) in November 2014 and the revised Resource Report 1 filed by Kinder Morgan in December 2014. We have also read Kinder Morgan's January 5, 2015, letter to you in which it reported that it would file newly revised Resource Reports 1 and 10 with the FERC in March 2015. In that letter, Kinder Morgan also encouraged affected landowners and members of the public to file comments on the revised Resource Report 10 it would file in March 2015, rather than on the alternative analysis in the November 2014 Resource Report 10.

The purpose of this letter is to point out serious methodological flaws in the alternatives analysis included in Kinder Morgan's November 2014 Resource Report 10 and to request that Kinder Morgan correct those flaws before it files revised Resource Reports. If Kinder Morgan does not correct those flaws, it will file reports in March 2015 that fail to include an adequate alternatives analysis of routes and siting, thus violating the standard required for such a report and the review of alternatives required by the National Environmental Policy Act (NEPA). We also request that revised Resource Reports 1 and 10 include maps, charts, and data reflecting that cities and towns, not counties, are the primary unit of local government in Massachusetts.

For background, MACC is the professional association of Massachusetts conservation commissions. Each of the 351 cities and towns in Massachusetts has a conservation commission and almost every conservation commission is a dues-paying voting member of MACC. Conservation commissions are the municipal government wetlands, wildlife and open space boards exercising the Police Power, Home Rule power, and public ownership of conservation, park, and natural resource properties as well as public easements, land restrictions, and other rights. Conservation commissions protect conservation lands and other natural resources in their communities under the Massachusetts Conservation Act (G.L. c.40, § 8c) and administer and enforce the Massachusetts Wetlands Protection Act (G.L. c.131, § 40) and local home-rule municipal wetlands laws and regulations. MACC's mission is to protect Massachusetts natural

resources by supporting conservation commissions through education and advocacy. We have been doing that work since 1961. More than 2,000 conservation commissioners are members of MACC.

Because Kinder Morgan will file revised Resource Reports 1 and 10 in March 2015, we do not comment on the factual details and routing options found in the earlier Resource Reports or on its choice of a preferred alternative. As Kinder Morgan suggested in its January 5, 2015, letter, we will comment on the revised reports it will file in March 2015. Our comments in this letter instead are focused on the analytical shortcomings of the earlier Resource Reports for the portion of the pipeline, including laterals and compressor stations, which would be located in Massachusetts.

First, the reports fail to discuss or analyze the ecological quality, value, and services of the lands and waters the pipeline would cross. Instead, the reports compare bare numbers of acres, streams, or wetlands the pipeline would cross. For example, Table 10.3-5 in Resource Report 10 simply adds up the total number of wetland complexes, water bodies, or forested acres, etc., crossed without any analysis of the ecological qualities, values, and services provided by each of those resources. Kinder Morgan has resorted to bean counting rather than determining that wetlands, rivers, and streams, and conservation lands have ecological qualities and values that may differ from parcel to parcel and crossing to crossing. For example, instead of any analysis, Kinder Morgan reported at page 10-34 in Resource Report 10 that a reason for rejecting an alternative route included a "greater number of stream and wetland crossings." Kinder Morgan did no analysis whatsoever of the ecological quality, value, and services of those streams and wetlands as compared to other potential routes. It also made the conclusory statement of "significantly more extensive cultural and environmental impacts" without any analytical support for such statement.

There are resources available in Massachusetts that should be consulted and referred to in determining and reporting the ecological value of the lands and waters a pipeline would cross. BioMap 2, a project of the Massachusetts Department of Fish and Game and the Nature Conservancy, combines thirty years of rigorously documented rare species and natural community data with special data identifying wildlife species and habitats, and is integrated with an assessment of large, well-connected, and intact ecosystems and landscapes across Massachusetts, incorporating concepts of ecosystem resilience.[1] BioMap 2 identifies 1,242,000 acres of Core Habitat, key areas that are critical for the long-term persistence of rare species and other species of conservation concern as well as a wide diversity of natural communities and intact ecosystems across Massachusetts. It also identifies 1,783,000 acres of Critical Natural Landscape, large natural landscape blocks that provide habitat for wide-ranging native species, support intact ecological processes, maintain connectivity among habitats, and enhance ecological resilience, as well as buffering land around coastal, wetland, and aquatic Core Habitats to help ensure their long-term integrity. BioMap 2 explains that, "protection and stewardship of BioMap 2 Core Habitat and Critical Natural Landscape is essential to safeguard the diversity of species and their habitats, intact ecosystems, and resilient natural landscapes across Massachusetts."

Another resource that should be consulted and referred to in determining and reporting the ecological value of the lands and waters a pipeline would cross is the Conservation Assessment and Priority System (CAPS) developed at the University of Massachusetts.[2] CAPS is an ecosystem-based approach for assessing the ecological integrity of lands and waters and subsequently identifying and prioritizing land

[1] http://www.mass.gov/eea/agencies/dfg/dfw/natural-heritage/land-protection-and-management/biomap2/ (accessed February 3, 2015).
[2] http://www.umasscaps.org/ (accessed February 3, 2015).

for habitat and biodiversity conservation. It defines ecological integrity as the ability of an area to support biodiversity and the ecosystem processes necessary to sustain biodiversity over the long term. CAPS is a computer software program that offers an approach to prioritizing land for conservation, based on the assessment of ecological integrity for various ecological communities (*e.g.,* forest, shrub swamp, headwater stream) within an area. CAPS combines principles of landscape ecology and conservation biology with the capacity of modern computers to compile spatial data and characterize landscape patterns. This process results in establishing an Index of Ecological Integrity for each point in the landscape based on models constructed separately for each ecological community. The approach is landscape-oriented and focused on a comprehensive valuation of the entire landscape. It attempts to combine many complex spatial relationships in the landscape that drive ecological processes, including population persistence and community dynamics. The CAPS approach seeks to evaluate the ecological integrity of the entire landscape mosaic, not just the rare species and community locations. It assumes that by conserving intact, ecologically-defined communities of high integrity, we can conserve most species and the ecological processes that shape and maintain ecosystems over time.

That Kinder Morgan's analyses and reports have been exceedingly and unacceptably coarse and lacking in adequate detail is shown by the January 22, 2015, letter to you from the Town of Wilmington, MA, Water & Sewer Department. In that letter, the Water & Sewer Department explained that the lateral Kinder Morgan has proposed for Wilmington would pass through Massachusetts Department of Environmental Protection designated Zone I Areas for two town well fields, the primary drinking water sources of the town, as well as a Watershed Protection District Zone II, a drinking water wellhead protection area. As the town explained, current and future land uses within Zone I areas are limited to those directly related to the provision of public drinking water or will have no significant adverse impact on water quality. It is simply unacceptable for Kinder Morgan to have chosen a pipeline route through public drinking water supply protected areas without providing information in its Resource Reports about the public drinking water supply resources the pipeline would cross and without a comparison of that route to alternative routes that would not cross or impact public drinking water supply protection areas.

In addition, Massachusetts designates lands as Areas of Critical Environmental Concern (ACEC) for special recognition because of the quality, uniqueness, and significance of their natural and cultural resources; those lands are worthy of a high level of concern and protection. 301 CMR 12.00. Massachusetts also affords special protection to state and municipal conservation land under Article 97 of the Massachusetts Constitution, allowing a change in use or removal of such land from protection only with a two-thirds vote of each house of the state legislature. The Article 97 land disposition policy is that there be no net loss of Article 97 land and that land be removed from Article 97 protection only in extraordinary circumstances.[3] A proposal to place a pipeline, lateral, compressor station, etc., on or through Article 97 land would trigger the Article 97 requirements. Massachusetts also allows conservation and agricultural restrictions to be placed on land to maintain such lands in conservation or agricultural use. Resource Report 10, at 10.3.3.2, acknowledged that such lands have ecological value and stated that Kinder Morgan would look at alternative routes to avoid or minimize traversing ACECs within or adjacent to Article 97 lands or lands with conservation restrictions. Resource Report 10, however, failed to analyze the ecological qualities and values of the protected lands the pipeline would cross. Also, Kinder Morgan inexplicably made no commitment to avoid or minimize traversing Article 97 lands or lands with conservation or agricultural restrictions without ACEC designation, even though the

[3] http://www.mass.gov/eea/agencies/mepa/about-mepa/eea-policies/eea-article-97-land-disposition-policy.html (accessed February 3, 2015).

ACEC designation often is not sought for lands already protected by Article 97 or conservation restrictions.

Second, and related to the first point above, the Resource Reports failed to analyze the impact of construction and long-term maintenance of the pipeline and right of way, including laterals and compressor stations, on the areas the pipeline would cross. Such analysis would require analyzing the current ecological qualities, values, and services of the lands and waters the pipeline would cross (as explained above) and the impacts expected on those ecological qualities, values, and services. For example, there is no analysis of the impact of cutting and maintaining a right of way through previously intact ecosystems that are core habitat. As another example, there is no analysis of the impact of the noise that would be generated from compressor stations on preexisting noise-sensitive areas such as schools, hospitals, or residences, or on wildlife. BioMap 2 and CAPS are available resources for completing those analyses.

Kinder Morgan also failed to assess the impact of constructing and maintaining a pipeline and right of way on greenfield land[4] as compared to on previously disturbed lands. In most circumstances, a pipeline crossing conservation land, wetlands, or rivers in greenfield land would have a greater impact on the ecosystem than would the same crossing in already disturbed lands and waters. Interestingly, Kinder Morgan acknowledged as much in its December 8, 2014, letter to you that accompanied revised Resource Report I, where it wrote,

> One of primary reasons that led to Tennessee's decision to adopt the New York Powerline Alternative and New Hampshire Powerline Alternative for the Project is that they will enable a very substantial portion of the proposed new pipeline construction to be located adjacent to, and parallel with, existing utility corridors in the states of New York, Massachusetts and New Hampshire. By increasing the percentage of co-location for the proposed pipeline segment, the revised route will reduce the construction of new pipeline facilities in undeveloped portions of the Market Path region, thus reducing environmental impacts and avoiding habitat fragmentation. In addition, the proposed route change will enable Tennessee to avoid (in certain cases) and to minimize (in other cases) the crossing of Article 97 properties and Areas of Critical Environmental Concern in Massachusetts.

One would thus expect Kinder Morgan to do the same review and analysis of alternatives for the entire pipeline route, including laterals and compressor stations. Yet, it failed to do so in comparing the preferred route to the Massachusetts Turnpike (I-90) alternative, instead defaulting to bean counting the number of stream, wetland, and forest crossings, without any analysis of the ecological impact of putting the pipeline on a major highway right of way as compared to through greenfield lands.

We do not express an opinion in this letter about the ecological impacts of the New Hampshire Powerline Alternative or of other areas where Kinder Morgan may choose to co-locate the pipeline with an existing utility right of way. We will review the Resource Reports that Kinder Morgan will file next month and comment thereafter. We do note, however, that in some locations there could be substantial ecological impacts of widening an existing right of way or building parallel to an existing right of way, depending on the ecological qualities, values, and services of the lands being crossed as well as

[4] Greenfield land is undeveloped land in a city or rural area used for agriculture, landscape design, or left to evolve naturally.

any resources that are adjacent to or nearby the right of way, such as drinking water wells or archeological or historical resources.

Our comments in this letter are informed in part by our meeting last year with representatives of Kinder Morgan concerning their pipeline proposal. During that meeting they said Kinder Morgan chose the most direct route for the pipeline from its entrance into Massachusetts to its connection into the existing pipeline in Dracut, Massachusetts, and would consider changes to the route only within a narrow geographic band in northern Massachusetts. Kinder Morgan expanded that band with the New Hampshire Pipeline Alternative but has yet to do so for the entire pipeline. It appears to us that Resource Reports 1 and 10 were written to justify the pipeline routing chosen by Kinder Morgan without the serious, detailed, and fact based alternatives analysis required by FERC and NEPA.

To facilitate public and government review of the project, and in addition to requesting that Kinder Morgan provide the information and analyses we discuss above, we request that the revised Resource Reports and Environmental Analyses:

- Indicate and show on maps the location of each Article 97 land that the pipeline, including laterals and compressor stations, would cross.
- Indicate and show on maps the location of each ACEC that the pipeline, including laterals and compressor stations, would cross.
- Indicate and show on maps the location of each wetland and wetland resource area that the pipeline, including laterals and compressor stations, would cross.
- Indicate and show on maps the location of each Core Habitat and Critical Natural Landscape that the pipeline, including laterals and compressor stations, would cross.
- Indicate and show on maps the location of each land with a conservation or agricultural restriction that the pipeline, including laterals and compressor stations, would cross.
- Indicate and show on maps the location of wellhead protection areas, reservoirs, and other public drinking water supplies through which the pipeline, including laterals and compressor stations, would cross.
- For each of the above areas, an analysis of alternative routes and siting that would avoid those areas.
- For each area where the pipeline would be located adjacent to, and parallel with, existing utility corridors, a description of any widening or additional right of way that would be required and the location of that widening or additional right of way.
- Recognizing that municipal governments, not counties, are the primary local government in Massachusetts, include a map of each municipality that the pipeline, including laterals and compressor stations, would cross, showing the precise proposed location of the pipeline, lateral, compressor station, etc., in that municipality, as well as the location of the lands and waters noted above. Similarly, charts, graphs, and other details that are provided should be at the municipal as well as county and state level.

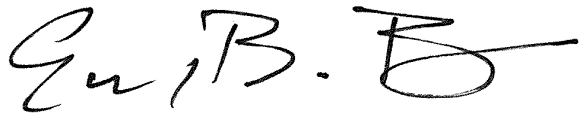
Our understanding is that such information is available in GIS data layers maintained by the State of Massachusetts.

The proposed pipeline is a major project that will have significant short and long term impacts on the environment, even using standard construction techniques and other mitigation. Those impacts will be exacerbated by the amount of greenfield land, wetlands and wetland resource areas, conservation

lands, and other protected lands the pipeline will cross. It is incumbent upon Kinder Morgan to provide the information and analyses necessary to evaluate the proposed preferred route and alternatives as well as its proposed mitigation. It has not done so yet.

We appreciate the opportunity to provide these comments and look forward to our further participation in the process.

Sincerely,



Eugene B. Benson
Executive Director
Email: eugene.benson@maccweb.org

Copy:

United States Senator Elizabeth Warren
United States Senator Edward Markey
Massachusetts Secretary of Energy and Environmental Affairs Matthew A. Beaton
Massachusetts Department of Environmental Protection Commissioner Martin Suuberg