UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

Tennessee Gas Pipeline Co., LLC Docket No. CP16-21-000

MOTION TO INTERVENE, INITIAL COMMENTS, AND REQUEST FOR PROGRAMMATIC ENVIRONMENTAL IMPACT STATEMENT OF CONSERVATION LAW FOUNDATION

Tennessee Gas Pipeline Company, LLC ("Tennessee Gas") has filed an Application under Sections 7(b) and 7(c) of the Natural Gas Act ("NGA") requesting, among other things, that the Federal Energy Regulatory Commission issue a certificate of public convenience and necessity authorizing the construction and operation of the proposed Northeast Energy Direct pipeline to transport up to 1.3 billion cubic feet per day ("Bcf/day") of natural gas over a designated Market Path and 1.2 Bcf/day of natural gas over a designated Supply Path. The project is proposed to extend from Pennsylvania through Wright, New York, to Dracut, Massachusetts, at a total estimated cost of $5.2 billion. Pursuant to Rules 203, 212 and 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. §§ 385.203, .212 and .214, Conservation Law Foundation ("CLF") moves to intervene with full rights as a party in the above-captioned proceeding and provides the following initial comments on the Application. In addition, CLF requests that the Commission carry out a Programmatic Environmental Impact Statement to assess regional need in light of the Application's extraordinary reliance on assertions regarding regional electric rates to allege pipeline demand.

CONSERVATION LAW FOUNDATION

Founded in 1966, CLF is a non-profit advocacy organization with members across New England, including over 2,000 members in Massachusetts and approximately 500 in New Hampshire. CLF works to solve the environmental problems threatening the people, natural resources, and communities of New England. CLF's advocates use law, economics and science to design and implement strategies that conserve natural resources, protect public health, and promote vital communities in our region.

CLF and its members are concerned with the potential environmental and health impacts of meeting the region's current and future energy needs. CLF strives to enhance the clean energy public policies of the New England states to facilitate the development of clean energy sources. For decades, CLF has been active at state utility commissions, ISO-New England ("ISO-NE"), and before this Commission advocating for policies that advance clean energy including demand-side resources, non-transmission alternatives, and renewables including solar and wind.

CLF previously filed scoping comments in PF14-22-000 on October 16, 2015.[1] CLF has also been an active participant in relevant state dockets in Massachusetts and New Hampshire.

MOTION TO INTERVENE

CLF requests that the Commission grant this Motion to Intervene pursuant to Rule 214 of the Commission's Rules of Practice and Procedure. CLF, on behalf of itself and its members across New England, has a direct and substantial interest in this

[1] Elibrary no. 20151016-5317.

proceeding and will be directly affected by its outcome. Further, CLF's interests cannot be appropriately represented by any other entity and its participation is in the public interest.

CORRESPONDENCE & COMMUNICATIONS

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COMMENTS ON THE CERTIFICATE APPLICATION

I. Introduction

The Northeast Energy Direct pipeline project ("NED Project") is a massive new pipeline proposed to transport natural gas from Pennsylvania to Massachusetts. Although subscriptions are currently lacking for much of the planned pipeline's capacity, Tennessee Gas intends that the pipeline will transport up to 1.3 Bcf/day of natural gas over its Market Path, and 1.2 Bcf/day over the Supply Path.[2] Tennessee Gas acknowledges that the project's size dwarfs that of others in recent memory, calling it a "transformative long-term solution,"[3] a "high-priced expansion project,"[4] and stating that there "is no doubt that its impact on the capacity available to the New York and New England markets will be extraordinary."[5]

[2] 1.3 Bcf per day is equivalent to 1,332,500 dekatherms ("Dth") per day. 1.2 Bcf per day is equivalent to 1,230,000 Dth per day.
[3] Application at 9.
[4] *Id.* at 38.
[5] Application of Tennessee Gas at 38.

The Application comes at a time when global agreement has just been reached to keep dangerous climate warming to well below 2 degrees Celsius above pre-industrial levels, with a goal of limiting warming to no more than 1.5 degrees.[6] There is broad recognition of the economic impacts of climate warming, and there is no doubt that both public health and economic impacts will worsen if the proliferation of climate-warming gases, including power plant emissions, cannot be checked.

Tennessee Gas provides the following three main justifications for the pipeline. First, that the additional supply of natural gas it transports will make electricity more reliable and affordable in New York and New England. Second, that it will increase access to natural gas for thermal uses – i.e. to heat homes and businesses. Third, that the pipeline will benefit the environment by advancing clean air policy, helping New England states to meet their climate change goals, and supporting the transition from coal and oil to natural gas. In addition, the company suggests that the portion of the pipeline that is not subscribed at all will be needed and beneficial – if not now, then potentially sometime in the future.

CLF opposes each of Tennessee Gas's stated justifications. As explained below, CLF submits that the proposed pipeline exceeds any reasonable expectation of need for either electricity or thermal uses, and comes when the region has already moved beyond the need for major costly fossil fuel infrastructure investments to reduce reliance on coal and oil.

[6] *See* Article 2 of the December 12, 2015 UNFCC Paris Agreement at http://unfccc.int/resource/docs/2015/cop21/eng/l09.pdf.

Significantly, this project proposal is not like any other the Commission has reviewed before for the New England region. It relies heavily on oversized contracts with local distribution companies, many of which are currently the subject of appeal, and still lacks contracts for 60% of the Market Path segment of the Project. Tennessee Gas hopes to fill a portion of that gap with illegal out-of-market, state-supported long-term contracts with electricity companies that would impose unprecedented obligations on electric ratepayers.

The rush to overbuild natural gas pipelines in New England, and policymaker support for overbuilding, owes its momentum to a particular year's high peak wholesale electricity rates. During the unusually frigid polar vortex that took hold of the eastern United Stated during winter 2013/2014, New England's excessive reliance on natural gas, combined with poor planning and coordination, resulted in high demand for home heating fuels and serious price spikes for natural gas to serve power plants. New England's grid operator, ISO-NE, called on demand response resources to help balance supply and demand, as well as other resources including available coal and oil.

Since the winter of 2013/2014, the region has responded in an effective manner to this trifecta. Though gas storage and deliverability mechanisms can stand further improvement, improved gas/electric coordination, market adjustments, demand-reducing state energy efficiency programs, the effective use of more readily available liquefied natural gas ("LNG"), occasional fuel-shifting to help meet the most extreme demand spikes, and better use of renewables and demand response have enabled the region to meet its winter peak needs at wholesale electricity prices that were nearly half those experienced in the winter of 2013/2014.

But the real result of this unusual event was that sticker shock and fear of future volatility prompted state regulators in New England to seek to exert authority over regional electricity rates by putting in place long-term contracts for natural gas capacity. Indeed, initially the states sought to revise the OATT on file with ISO-NE to authorize regional charges to electric ratepayers to make those ratepayers pay directly for pipeline capacity. Realizing that revising the tariff in such a way was legally untenable, the states continue to seek other means by which to exert control over the wholesale electricity and gas markets. One effect of this popular misapprehension as to the cause of the 2013/2014 winter gas prices has been for state public utility commissions to hastily approve oversized contracts between local distribution companies and pipeline companies. Another has been for the same public utility commissions to sanction experiments with state-supported long-term capacity contracts with electric distribution companies ("EDCs"). While Tennessee Gas has not yet secured an EDC contract, it is clear that it hopes to fill at least some of the remaining capacity of the project with out-of-market arrangements, either with EDCs or states themselves. The NED Project is the result of fear-driven manipulation of the energy markets by regional political representatives,[7] although in fact many of the region's political representatives nonetheless are lukewarm or opposed to the NED Project itself.[8]

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[7] Governor Malloy of Connecticut, for instance, has openly supported state government intervention in the energy markets, stating, "The marketplace itself has not resolved this issue." Bruce Mohl, "New England governors vow to boost natural gas capacity," Commonwealth Magazine, April 23, 2015, available at http://commonwealthmagazine.org/environment/new-england-governors-vow-to-boost-natural-gas-capacity/.

[8] Various political representatives have submitted letters of concern or opposition in this proceeding. *E.g.*, Letter of Representative Ann McLane Kuster, Dec. 2, 2015, elibrary no. 20151204-0018 ("I have concluded that this project does not provide sufficient

Despite its efforts over the past two years to secure shippers for its proposed capacity, Tennessee Gas still has only received subscriptions for 552,262 Dth per day of firm transportation service for the Market Path component of the line, and 751,650 Dth per day for the Supply Path component. That leaves 780,238 Dth per day of unsubscribed capacity on the Market Path – or almost 60% of the total capacity that Tennessee Gas requests permission to build and operate. Capacity unspoken for on the Supply Path amounts to 478,350 Dth per day, or almost 40% of the total capacity on that component of 1.23 million Dth per day. Apart from the potential for export, it is unclear how Tennessee Gas will be able to fill the remaining 60% of capacity on the pipeline, though it states a hope that additional precedent agreements and long-term contracts with EDCs may be forthcoming.[9]

The pipeline that Tennessee Gas proposes is at base opportunistic, taking advantage of the willingness of political leaders to make a faulty bet at the expense of ratepayers that further increasing reliance on natural gas could help the states to take control over the rates of regional electricity markets. It fails the test for need, imposing the costs of speculative expansion on local gas delivery customers under the contracts it

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benefits to New Hampshire…"); Letter of Senator Kelly A. Ayotte, Dec. 10, 2015, elibrary no. 20151216-0008 ("Unless and until…the concerns of local residents are meaningfully addressed, I oppose this project going forward."); Letter of Governor Margaret Wood Hassan, Dec. 4, 2015, elibrary no. 20151207-0091 ("I again encourage FERC to carefully consider whether the potential negative impacts of the project would disproportionately outweigh the benefits…"); Letter of Senator Stan Rosenberg, Dec. 30, 2015, elibrary no. 20160105-0022 ("FERC should consider the interest of Massachusetts' citizens in establishing an energy sector based substantially on reduced emissions and clean and renewable energy as an initial test…").

[9] To the extent that Tennessee Gas intends to construct excess pipeline to support export, that capacity should be supported by contracts with export facilities—and the costs should not be borne by ratepayers.

has secured to date and upon electricity customers under the contracts with states or EDCs that it hopes to secure. Moreover, as the region moves to stem climate change, this pipeline can only become an albatross. Either the pipeline falls into disuse as energy efficiency, demand response, and renewables supplant demand for fossil fuels, or its continued use serves as an insurmountable obstacle to achieving state and regional climate goals. The energy landscape holds no happy ending if this pipeline is constructed and operates as proposed. New England would lose money and resources on the bet Tennessee Gas asks the Commission to approve.

Before granting any certification for this proposed "high-priced expansion project,"[10] the Commission should either conduct a hearing as to the contested issue of need that lies at the heart of this proceeding, or should exert its authority under the National Environmental Policy Act ("NEPA") to conduct a cumulative review of major energy infrastructure projects planned throughout the region and their purported benefits relative to prospective impacts on state and regional climate goals.[11] Absent a thorough analysis of regional needs and climate impacts, an accurate assessment as to the public benefits of the proposed project is impossible, and any certification would not meet the standard of reasoned decision-making.

II. Standards to Be Applied

Under the Natural Gas Act, the Commission must determine whether the proposed Northeast Energy Direct pipeline "is or will be required by the present or future

[10] Application at 38.

[11] While the logical approach is to first conduct a PEIS as to overall regional need and then a hearing in this docket as to contested facts specific to this proceeding, we are mindful of the Commission's time as well as the overlap in these two areas, in that the Application is based on a generalized assertion of regional need.

public convenience and necessity."[12] The Commission "will approve an application for certificate only if the public benefits from the project outweigh any adverse effects."[13] The first prong of the Commission's balancing test assesses the present and future need for the proposed pipeline. To this end, the Commission considers "all relevant factors reflecting on the need for the project."[14] The second prong of the balancing test requires the Commission to identify and weigh the project's adverse impacts against its potential benefits.[15] The Commission "will consider the effects of the project on all the affected interests."[16]

The applicant bears the burden of establishing the need for the project, and must also show public benefits that outweigh the project's adverse impacts. Under the Commission's balancing test, "[t]he amount of evidence necessary to establish the need for a proposed project will depend on the potential adverse effects of the proposed project on the relevant interests."[17] Cost-shifting and financial risk as well as potential overbuilding and risk to consumers may all be factors.[18] Although the public benefits balancing test that precedes the Commission's NEPA analysis "will largely focus on economic interests such as the property rights of landowners,"[19] the Commission's policy states that it may also consider related and additional factors such as "clean air

[12] 15 U.S.C. § 717f(e).
[13] Certification of New Interstate Natural Gas Pipeline Facilities, 88 FERC ¶ 61,227 at 28 (1999) ("Certificate Policy"), *clarified*, 90 FERC ¶ 61,128 (2000), *further clarified*, 92 FERC ¶ 61,094 (2000).
[14] Certificate Policy at 23.
[15] *See id.*
[16] *Id*. at 22.
[17] *Id*. at 24. *See also id.* at 25.
[18] *See id.* at, *e.g.*, 2, 20, 27.
[19] *Id*. at 26.

objectives"[20] and "environmental interests."[21] Ultimately, "the Commission will approve an application for certificate only if the public benefits for the project outweigh any adverse effects."

In addition to evaluating the potential public benefits and adverse effects of a proposed pipeline pursuant to the Natural Gas Act, before any certificate is issued, the Commission takes up an environmental review under NEPA.[22] Together with the "public benefits" test applied under the NGA, NEPA requires the Commission to take a "hard look" at the environmental consequences of the pipeline. The Commission evaluates whether a project "can be constructed and operated in an environmentally acceptable manner" and has the discretion to reject a proposed project on the grounds that there is no way to construct or operate it in such a manner.[23] The Commission may also impose conditions on certification that include environmental mitigation measures developed through its NEPA analysis.[24]

[20] *Id.* at 25.
[21] *Id.* at 22. We note that these statements in the Certificate Policy Statement are in some tension with the Commission's application of that policy in *Millennium Pipeline Co., LLC*, 141 FERC ¶ 61,198 (2012), where the Commission found that, "[a]pplication of the Certificate Policy Statement involves an examination *solely* of the economic effects of a proposed project." *Id.* at 18 (emphasis added). We cannot readily reconcile these two positions given the economic interests of landowners, local communities, states, and regions are necessarily intertwined with the health of the land, water, air, and climate upon which life, wealth, and commerce depend.
[22] *See id.* at 26.
[23] *Millennium Pipeline Co.*, 141 FERC at P27.
[24] *See, e.g., Dominion Transmission, Inc.*, 153 FERC ¶ 61,203, P41 (2015).

III. Project Need and the Public Benefits Test

A. A Pipeline of this Size Cannot Be Justified Based on Regional Electricity Needs or Thermal Uses, and the Harms Outweigh Any Benefits.

The Commission should reject the application for certificate under the Natural Gas Act public benefits test because need cannot be established for electricity or thermal uses. The proposed NED Project is an oversized investment with poor timing, as the region's transition to clean energy is already underway. Tennessee Gas has not met the fundamental burden of establishing project need. Moreover, the harms associated with the project militate against a finding of adequate public benefits. These harms include elevated costs and risks for electric and thermal ratepayers, entrenched regional over-reliance on natural gas to the exclusion of other market solutions, and elevated costs to meet state and regional climate goals, as well as economic harms associated with the loss of coastlines and other economically quantifiable environmental impacts implicated by unchecked greenhouse gas ("GHG") emissions.

1. Thermal need fails to justify this project.

As Tennessee Gas acknowledges, the pipeline remains significantly undersubscribed, including for thermal uses. Agreements for thermal uses currently constitute only about 40% of the total planned capacity of the Market Path. Furthermore, the Commission should not assume that state-approved precedent agreements between Tennessee Gas and local distribution companies ("LDCs") constitute qualifying evidence

of need under the Commission's standard of evidence, because state approval standards for this purpose do not necessarily require the same analysis of need.[25]

Tennessee Gas speculates at length in its application that if natural gas were used more widely for residential heating purposes in New England, it would bring consumer and environmental benefits. Yet Tennessee Gas does not claim or demonstrate that the NED Project will make natural gas widely available to New England's residential heating customers. It merely speculates that if the natural gas were available, it would be beneficial.[26] The Application concedes that "it is not feasible for all northeast U.S. oil consumers to convert to natural gas."[27] This speculation does not constitute evidence of need.

2. The pipeline is not needed to keep the electricity running or to contain electricity costs.

Recent expert analyses refute the premise of Tennessee Gas's request for certification: that New England cannot meet its electricity needs year-round without the proposed pipeline. While it is not disputed that the region experiences winter peak deliverability constraints, the question is whether a massive pipeline expansion project makes sense to address a deliverability problem affecting only a few hours of a handful of days each year. The answer to that question is no.[28]

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[25] *See* Exhibit 1, containing testimony and exhibits prepared by Skipping Stone analyst Greg Lander in state contract proceedings. In addition, state approvals of these contracts are now under judicial review, or are anticipated to be appealed.
[26] Application at 88-89.
[27] *Id.* at 89.
[28] CLF is confident that a balanced analysis will reach the conclusion that there is insufficient need for this project. However, to the extent that the Commission finds that there are disputed facts as to the need for the pipeline, CLF requests that the Commission conduct a hearing on this subject. *See Millennium Pipeline Co.*, 141 FERC at P85.

i. A reliability study commissioned by the Massachusetts Attorney General shows that building a pipeline the size of the NED Project to address regional electric needs would be like swatting a fly with a sledgehammer.

On November 18, 2015, the Massachusetts Attorney General's Office released a study entitled *Power System Reliability in New England: Meeting Electric Resource Needs in an Era of Growing Dependence on Natural Gas*.[29] The study, carried out by Analysis Group, Inc., evaluates options to address regional electricity reliability, including new natural gas capacity, through 2030.[30]

The study also modeled whether deficiencies would occur under certain stressed conditions. As the study explains, Analysis Group assumed a scenario in which New England becomes even more reliant on natural gas power than expected and experiences a short-term disruption in other fuels—causing the electric system to be more stressed than expected on very cold days. Under these stressed conditions, the region could need approximately 2,400 MW for a few hours on a few very cold days (around 9 days) by 2029/2030. This is the energy-equivalent of an additional 0.42 Bcf/d of new gas capacity. That amount is equal to about one-third of the NED Project.

Thus, even based on the stressed system analysis that assumes the persistence of excessive reliance on natural gas, even by 2029/2030, regional needs would not justify a project of this size. Constructing the proposed pipeline to address New England's

[29] Available at http://www.mass.gov/ago/docs/energy-utilities/reros-study-final.pdf.
[30] While the aim of the study was to assess the region's electricity reliability needs and not its thermal gas capacity needs, the study did assume a generous rate of growth in thermal demand in its deficiency analysis. *See* Analysis Group Study at 8, n.25.

electricity reliability needs is far in excess of reasonable necessity, and accords with common sense no more than using a sledgehammer to swat a fly. ISO-NE's load forecasts, which indicate declining total electric load through 2023, once energy efficiency is considered,[31] likewise belie the need for this project.

ii. The Skipping Stone white paper commissioned by Conservation Law Foundation proposes a targeted solution to a problem that occurs during only a few hours on the coldest days of winter.

Analysis released by Skipping Stone in August of 2015 under commission with Conservation Law Foundation draws similar conclusions, finding that any new "big pipeline" solution to the region's winter deliverability problems would result in dramatic underutilization of the pipeline the large majority of the year, and would not be cost-effective.[32] The Skipping Stone white paper not only indicates that a massive pipeline such as the NED Project is unnecessary for electricity purposes, it points to a significant current underutilization of LNG storage facilities in the region. It proposes the increased use of LNG storage as a more cost-effective means to further ease the winter peak deliverability problem while limiting the risk of stranded costs and providing for a nimble alternative from which we can pivot as new, cleaner alternatives are developed.

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[31] *See* http://www.iso-ne.com/static-assets/documents/trans/celt/fsct_detail/2014/pac_29apr2014_iso_state_energy_peak_forecast.pdf at slide 31.

[32] The white paper is available at http://www.clf.org/wp-content/uploads/2015/09/Solving-New-Englands-Gas-Deliverability-Problem.pdf, and is included as Exhibit 2 to this filing. Appendix B of the white paper discusses prospective utilization of a theoretical large pipeline solution to address regional deliverability constraints.

As currently managed, New England's natural gas delivery system – its pipelines, storage and import facilities – do not deliver sufficient quantities of natural gas to meet demand during the limited winter peak period. During these peak periods of demand, when high volumes of gas are consumed to simultaneously meet the region's heating and electric power generation needs, management and operation of the current system fails to make the necessary gas deliverable. Numerous corporate and governmental entities have thus begun to urge a large infrastructure solution such as the NED Project: building more pipelines into and across New England to increase regional pipeline capacity. New pipelines, they argue, are needed to address a structural problem of constrained gas supply and the high wholesale energy prices experienced during the winter of 2013/2014.

But New England's problem is not a structural pipeline capacity problem, as the Skipping Stone report shows – the primary issue is deliverability. On those portions of the 50 coldest winter days each year when the near-simultaneous and high demands of regional heating and electric generation loads are not being met efficiently, New England has an issue of "deliverability," or the ability to provide a certain quantity of gas to a certain location at a certain time. Importantly, not only are new pipelines not the only solution – they are also the least cost-effective one. For the majority of the year, the region's system of natural gas pipelines and LNG deliverability already operate at less than 50% capacity. It is a waste of resources to build massive new capacity when capacity is widely under-utilized for the vast majority of the year.

Once New England's current "gas problem" is properly understood as one of deliverability, rather than insufficient pipeline "capacity," the solution that most rapidly, efficiently, and cost-effectively enhances deliverability in New England would be

increased use of the region's existing LNG infrastructure. It also likely requires the least new regulation, and can be easily modified as cleaner energy sources and storage solutions become available.

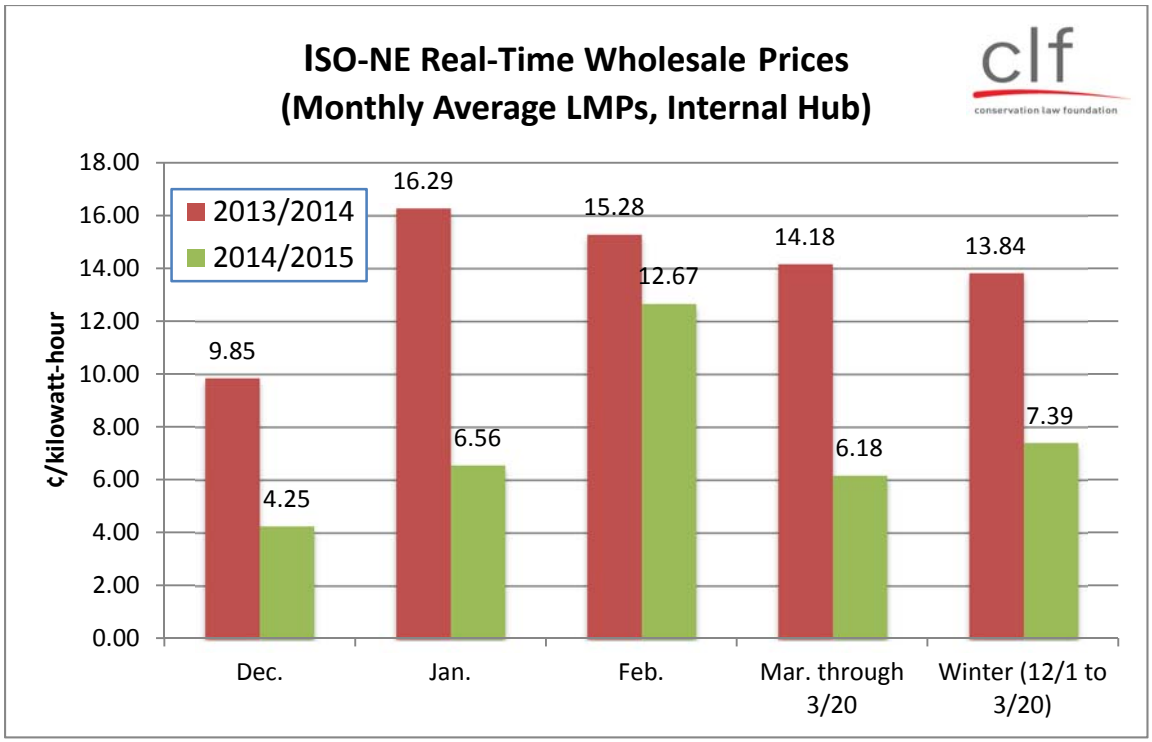
For New England, the best means of solving the winter gas issue from a cost of use approach is better utilization of existing natural gas infrastructure and, specifically, existing LNG infrastructure. The Skipping Stone report calls this the Winter-Only LNG "Pipeline" approach. This approach suffers from none of the weaknesses of a year-round pipeline capacity solution.

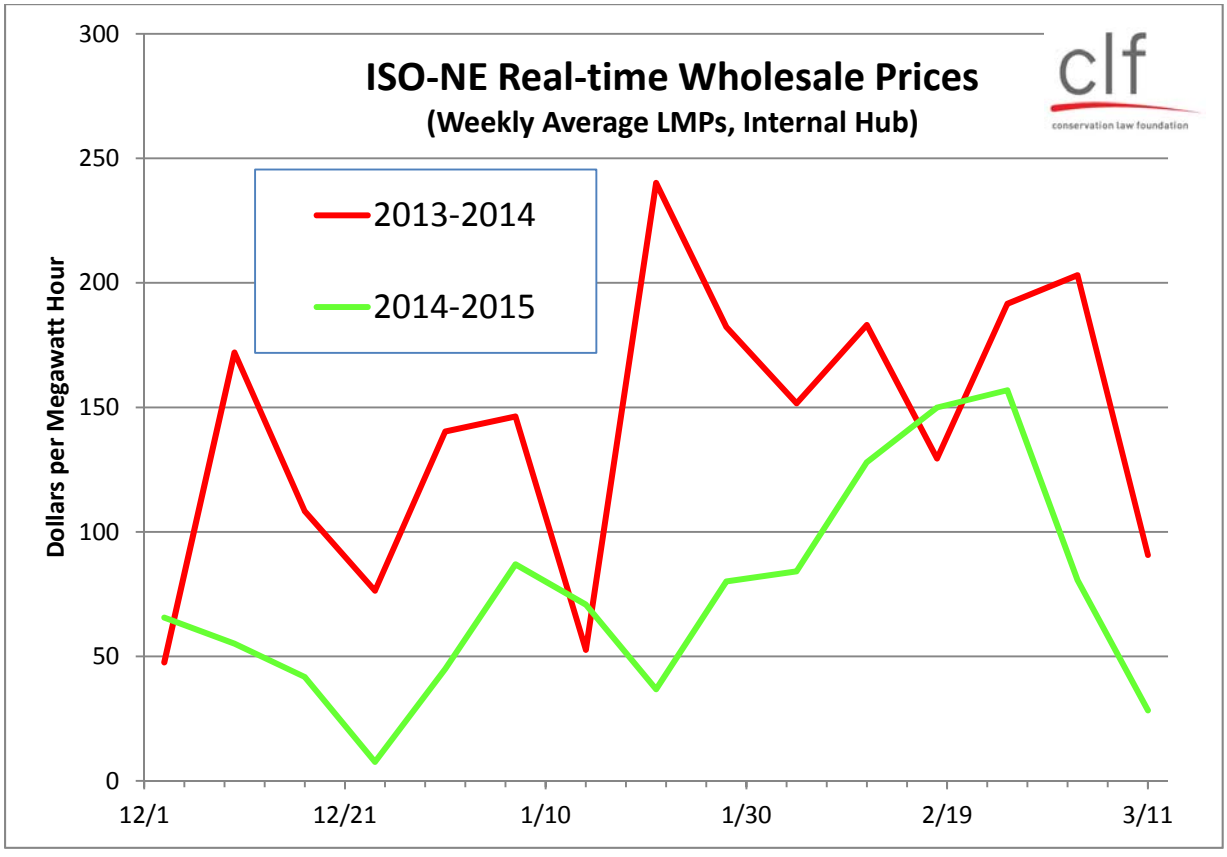
New England has both LNG vaporization capacity from large import terminals as well as from LNG storage facilities owned by the local gas distribution utilities, or "LDCs." The Skipping Stone white paper shows that if LDCs were to contract for a baseload level of LNG vaporization during the December 15 to March 15 winter period, and for more frequent truck refills of their existing LNG storage facilities, local gas reliability could be maintained while freeing up existing pipeline capacity for sale on the secondary market to power plants.

For these reasons, the Winter-Only LNG "Pipeline" option outlined in the Skipping Stone white paper would be less costly and more effective than building major new gas pipeline capacity. However, this approach to addressing New England's winter peak deliverability issues requires a break from pipeline-centric management of the region's gas transmission and distribution system.

iii. Declining regional electricity rates further undermine the assertion that a massive pipeline is needed to serve electrical load and constrain electricity costs.

Recent electricity prices in New England do not support a need to flood the market with gas. While prices during periods of constraint are a concern, the extreme price spikes of the polar vortex have not recurred. Although February 2015 was the coldest month in decades and the winter was colder overall, average wholesale electric prices were well below the prior winter's prices, as reflected in the charts below. Average wholesale electric prices for the winter as a whole were down 45%. Absent February 2015's historic cold, in a more typical winter, winter prices would likely have been much lower, consistent with the prices in January and March. Even accounting for February and excluding the warm month of December, wholesale prices for the first five months of 2015 were down 40% from the first five months of 2014, averaging approximately 6 ¢/kwh, which is less than the average price in 2014 as a whole. Wholesale prices in the spring of 2015 have continued this lower trend, averaging 2.6 ¢/kwh in April and May of 2015.


ISO-NE Real-Time Wholesale Prices
(Monthly Average LMPs, Internal Hub)
clf
conservation law foundation
¢/kilowatt-hour
18.00
16.00
14.00
12.00
10.00
8.00
6.00
4.00
2.00
0.00
2013/2014
2014/2015
9.85
4.25
16.29
6.56
15.28
12.67
14.18
6.18
13.84
7.39
Dec.
Jan.
Feb.
Mar. through 3/20
Winter (12/1 to 3/20)


ISO-NE Real-time Wholesale Prices
(Weekly Average LMPs, Internal Hub)
clf
conservation law foundation
Dollars per Megawatt Hour
300
250
200
150
100
50
0
2013-2014
2014-2015
12/1
12/21
1/10
1/30
2/19
3/11

Critically, these price reductions occurred without any additional regional energy infrastructure and despite the retirement of four large non-gas power plants (Vermont Yankee, Norwalk, Mount Tom, and Salem Harbor) and several significant outages or downrates of non-gas resources (the Phase I/II line, Pilgrim, and Brayton Point).

In recent months, prices have not only not risen, moderate weather has resulted in price drops of more than 40% compared with last year. The average monthly wholesale power price during November was $26.12 per megawatt-hour ("MWh"), 41.8% below the November 2014 price of $44.86/MWh.

This is not to say that nothing should be done to ward against future extreme situations like the polar vortex. Not only is it wise to learn from the past and plan for multiple contingencies, climate change is known to increase the frequency of weather aberrations. But increased use of existing infrastructure, smarter electric-gas coordination, heavier investment in energy efficiency and demand resources, strategic use of LNG and LNG storage capability, and winter reliability measures including fuel diversity and outage management comprise a common sense cohort of tools to ensure reliability.[33] Massive infrastructure buildout that ensures more over-reliance on a single fuel source is not sound energy management. On the contrary, it makes the system more

[33] The Commission's own investigation into the winter of 2013/2014 revealed a number of factors that are unlikely to repeat, such as inadequate hedging and market psychology, both of which were partly due to the unprecedented nature of the extreme and widespread cold. *See* Powerpoint in Docket No. AD14-8, "Commission and Industry Actions Relevant to Winter 2013-14 Weather Events," Item No.: A-4 at slide 10 (Oct. 16, 2014), elibrary no. 20141016-3038. The North American Electric Reliability Corporation ("NERC") found that more than half of all outages experienced during the polar vortex were caused by frozen equipment, controls, and coal, and recommended improvements such as winterization to reduce the likelihood of recurrence. *See id.* at slide 15.

vulnerable to the contingencies associated with single-fuel use[34] including the price fluctuations that struck in the winter of 2013/2014.

3. The precedent agreements contemplated between Tennessee Gas and New England EDCs are the fruit of state efforts to interfere in the electricity markets, are preempted, and cannot constitute proper evidence of need.

As part of its certificate review, the Commission should address whether the efforts of the New England states to interfere with regional electricity markets by supporting novel "precedent agreements" between EDCs and pipeline companies is properly preempted. As the Tennessee Gas certificate application states, "New England states have initiated public proceedings to bring additional pipeline capacity to the region in order to reduce energy costs and enhance electric reliability in the region."[35] The out-of-market character of the capacity contracts that Tennessee Gas may enter into with EDCs would mean that those contracts are regulatory constructs of the New England states.

The states launched their efforts to influence the electricity markets with a proposal to modify the OATT on file with ISO-NE to permit electric ratepayers to directly assume the costs of additional pipeline capacity.[36] Deterred from this course (presumably by its obvious

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[34] ISO-NE repeatedly has acknowledged that increasing reliance on natural gas entails significant reliability risks for the region, due to factors including potential supply interruptions and the "just-in-time" nature of the resource. *See, e.g.*, ISO-NE Strategic Planning Initiative white paper, "Addressing Gas Dependence," at 1 (July 2012), discussion draft available at http://www.iso-ne.com/static-assets/documents/committees/comm_wkgrps/strategic_planning_discussion/materials/natural_gas_white_paper_draft_july_2012.pdf.

[35] Application at 7.

[36] *See, e.g.*, Governors' Infrastructure Initiative Update of the NEPOOL Transmission Committee, at slides 1-3, 12-19 (June 20, 2014), available at http://nescoe.com/uploads/NESCOE_RegionalInfrastructureUpdate_20June2014.pdf.

illegality), the states next initiated state-level proceedings to provide an avenue for the establishment of "precedent agreements" between pipeline companies and EDCs, and have supported the realization of such arrangements.[37]

The naked intent of these actions is to reduce electricity rates. For instance, the Maine legislature enacted the Maine Energy Cost Reduction Act with explicit legislative findings that "[i]t is in the public interest to decrease prices of electricity and natural gas for consumers in this State," and speculation that "[t]he expansion of natural gas transmission capacity into this State and other states in the ISO-NE region could result in lower natural gas prices and, by extension, lower electricity prices for consumers in this State."[38]

Tennessee Gas now justifies the need for the NED Project with an unprecedented expectation that electric utilities may contract for a significant portion of capacity. Tennessee Gas states that it hopes to make up its persistent subscription shortfall by securing precedent agreements with EDCs with the support of the governments of Maine, Connecticut, and New Hampshire.[39] Thus the potential "precedent agreements" that states are urging EDCs to enter with Tennessee Gas are at the heart of the question of "need."

By acting to ameliorate wholesale market conditions, the states tread on the Commission's exclusive jurisdiction over wholesale rate-setting as established by the Federal Power Act ("FPA") and the Natural Gas Act. Congress has vested in FERC the

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[37] *See* New Hampshire Public Utilities Commission Docket No. IR15-124; Massachusetts Department of Public Utilities Docket No. 15-37; Maine Public Utilities Commission Docket No. 2014-00071. *See also* Connecticut Public Act 15-107, An Act Concerning Affordable and Reliable Energy.

[38] 35-A Me. Rev. Stat. Ann. § 1901 et seq., § 1903 (2015). *See also*, Affordable Clean Energy Security Act, R.I.G.L. Chapter 39-31-1(1) ("The state and New England face significant short and long-term energy system challenges that may undermine the reliability operation of the bulk electric system and spur unsustainable levels of price volatility…").

[39] *See* Application at 7-8.

exclusive authority to regulate wholesale energy rates.[40] The FPA and NGA together have long been recognized as a comprehensive scheme of federal regulation of all wholesale sales of energy in interstate commerce that serves, pursuant to the Supremacy Clause of the U.S. Constitution, to preempt state regulation of the same.[41] Not only is "direct state regulation of the prices of interstate wholesales of [energy]" preempted, "state regulations which would indirectly achieve the same results" are likewise infirm.[42] Whether a state action falls within a preempted field of regulation depends on "the target at which the state law aims."[43]

As the regulatory approach that the New England states have pursued is expressly intended to affect interstate wholesale markets, it is impermissible. The federal wholesale rate scheme "leaves no room either for direct state regulation of the prices of interstate wholesales of [energy], or for state regulations which would indirectly achieve the same result."[44] The Commission need not tolerate the states' infringement upon its exclusive jurisdiction, and in any event bears the burden of regulating the energy markets without arguably improper delegation to the states. Further, the fact that Tennessee Gas justifies what may be a significant portion of the NED Project primarily on the basis of these out-of-market "precedent agreements" with EDCs underscores the importance of a rigorous needs analysis as part of the Commission's certificate review.

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[40] *See* 16 U.S.C § 824(a) and 15 U.S.C. § 717 *et seq.*; *New York v. FERC*, 535 U.S. 1, 20 (2002).
[41] *See Public Utils. Comm'n v. Attleboro Steam & Elec. Co.*, 273 U.S. 83 (1927); *Schneidewind v. ANR Pipeline Co.*, 485 U.S. 293, 300 (1988).
[42] *N. Natural Gas Co. v. State Corp. Comm'n*, 372 U.S. 84, 91(1963).
[43] *Oneok Inc. v. Learjet, Inc.*, 135 S. Ct. 1591, 1599 (2015).
[44] *N. Natural Gas Co. v. State Corp. Comm'n*, 372 U.S. 84, 91 (1963).

4. Tennessee Gas's claim of public benefits relies on false assertions of the environmental attributes that natural gas offers the region, and the extent to which natural gas will assist in reaching regional climate goals.

Tennessee Gas alarmingly asserts that the NED Project provides public benefits and merits certification because natural gas will advance climate goals and improve markets for renewables, when the opposite is true. Tennessee Gas's claims about natural gas's benefits[45] lag far behind regional realities and global technologies.

Tennessee Gas claims that its project is needed to avoid "reversion to coal and oil,"[46] but this is incorrect. As Tennessee Gas elsewhere acknowledges, the transition away from coal for electric power generation is virtually complete in New England. By the time the NED Project would come into service, the region will have, at most, just over 1,000 MW of coal-fired generation,[47] which is just 3.2% of all ISO-NE generation. As for oil-fired generation, it accounts for only approximately 0.8% of total generation.[48] The use of oil for electric generation during limited peak winter hours will diminish with increases in demand-side management including energy efficiency, in combination with greater penetration of renewables and the application of new storage technologies.

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[45] *See, e.g.,* Application at 65-90.
[46] *Id.* at 66.
[47] Comprised of 400 MW at Bridgeport Harbor Station in Bridgeport, Connecticut; 460 MW at Merrimack Station in Bow, New Hampshire, and 150 MW at Schiller Station in Portsmouth, New Hampshire. Additional generation may also be eliminated shortly thereafter.
[48] *See* http://www.iso-ne.com/about/what-we-do/key-stats/resource-mix.

New England's system-wide average greenhouse gas emissions are already lower than the emissions from the most efficient new natural gas plant.[49] Any action that would further entrench natural gas with massive new pipeline infrastructure is thus not a positive contribution for achieving the reductions in carbon emissions from the electric sector that are needed to reach New England's climate goals.

Tennessee Gas asserts that "if" natural gas is available for thermal needs (which it does not claim to guarantee, and which would not be ensured by the instant project) then there will be a "drastic" GHG reduction benefit.[50] But contrary to this logic, fuel-switching will not enable the region to meet its long-term climate goals; it will hinder those goals by impeding markets for true clean technologies.[51] In response to the claim that Tennessee Gas makes here – that "natural gas is the cleanest fossil fuel available" – it merely bears reiterating that fossil fuels are not clean.

The region has also begun a shift toward renewable energy to meet thermal needs. Co-generation, geothermal- and water-based heat pumps,[52] district heating, as well as solar and other renewable technologies are increasingly making clean thermal energy a

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[49] *See generally* 2013 ISO-NE Electric Generator Air Emissions Report, at http://www.iso-ne.com/staticassets/documents/2014/12/2013_emissions_report_final.pdf (average system-wide emissions in 2013 of 730 lbs CO_2/MWh). The new Footprint Power combined cycle gas facility in Salem, Massachusetts, will be subject to an initial annual average CO_2 emissions limit of 895 lbs/MWh.

[50] Application at 88.

[51] In the Application (at 89-90), Tennessee Gas states that the Massachusetts Department of Public Utilities has found Tennessee Gas's precedent agreements with Massachusetts LDCs to be consistent with the state's Global Warming Solutions Act. However, an appeal at the Massachusetts Supreme Judicial Court is pending in that case.

[52] In March 2013, the Rocky Mountain Institute published a report containing compelling conclusions discussing the financial and GHG emissions savings that heat pumps offer over expanded natural gas transportation and distribution infrastructure in New England. The report is available at http://www.rmi.org/Knowledge-Center/Library/2013-05_HeatPumps.

reality. In general, job growth across New England in the clean energy sector grew by 48% between 2010 and 2014.[53] This growth is expected to continue. However, flooding the markets with natural gas would hinder the region's emerging markets for residential and community-scale renewables.

Tennessee Gas claims that the natural gas it intends to transport will facilitate and "support" renewables by maintaining a "symbiotic relationship." However, the scale of the NED Project is far larger than any project that ostensibly might be needed to "support" renewables. To the contrary, a project of this size risks deferring and displacing the market for renewables at a moment when the time to act on climate is spare, and costs to achieve required GHG emissions reductions are already anticipated to be high.

5. Under the Natural Gas Act, the Commission must consider that the project as planned would increase the costs of meeting state and regional climate goals, and result in direct costs in the form of climate impacts.

The Commission's evaluation of the economic value of this project, as well as its overall public benefits, cannot reasonably exclude consideration of the costs of planned GHG emissions.[54] The applicant itself seeks to count clean air policy as a need or benefit in its favor. Tennessee Gas asserts that, although GHGs will be emitted, at the regional level they will be reduced overall, thereby advancing state and regional climate goals.[55]

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[53] The New Hampshire Cleantech Market Report, February 2015, available at http://www.nhsea.org/sites/default/files/NHCleantechMarketRep%20FINAL.pdf.
[54] As noted earlier, the Commission's Certificate Policy (at 24) contemplates the consideration of clean air objectives.
[55] *See* Application at 86-88.

The issue of GHG emissions and climate impacts is thus squarely before the Commission.

Climate change and the reduction of associated costs have long been important issues throughout the region. The New England states that will be affected by the pipeline have sought to reduce the costs of GHG emissions reductions through the early adoption of emissions-reduction strategies, including under the Regional Greenhouse Gas Initiative. In the interests of constraining the direct costs of climate change, some states have established statutory GHG reduction requirements. The Massachusetts Global Warming Solutions Act requires that GHG emissions be reduced at least 80% below 1990 levels by 2050.[56] A similar law in Connecticut requires that GHG emissions be reduced at least 80% below 2001 levels by 2050.[57] The New England Governors and Eastern Canadian Premiers have adopted a policy goal of reducing carbon emissions by 75-85% of 2001 levels by 2050.[58] These levels of emissions reductions are not compatible with long-term investments in massive fossil fuel infrastructure like the project proposed by Tennessee Gas in this proceeding.

That the New England states suffer real and tangible harms with economic impacts as a result of climate change is well-established. The harms to Massachusetts and its coastlines have been recognized by the Supreme Court.[59] That there are costs associated with the region's efforts to combat climate change is indisputable. That it is technically feasible to estimate the GHG emissions from natural gas combustion is also

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[56] Chapter 298 of the Acts of 2008, codified in main part at M.G.L. c. 21N.
[57] Public Act No. 08-98, codified at Gen. Stat. c. 446c §§ 22a-200 - 22a-200b.
[58] *See* NEG/ECP Resolution 39-1, available at http://www.coneg.org/Data/Sites/1/media/39-1-climate-change.pdf.
[59] *Massachusetts v. EPA*, 549 U.S. 497 (2007).

inarguable – indeed, it is on this basis that Tennessee Gas touts the dubious honor of being the "the cleanest fossil fuel available."[60] That no one source alone causes climate change provides no reasoned basis to ignore the impacts of a given project.[61] For these reasons, the costs of climate impacts must be included in the Commission's economic analysis of this project, and in the Commission's ultimate balancing of the benefits versus the harms of the proposed project.

The only means to conceivably cabinet the harms that would result from the NED Project would be to reduce its size dramatically and to impose sunset provisions on the use of the pipeline. Sunset provisions were included in a February 2014 settlement concerning the construction and operation of a natural gas-fired power plant in Massachusetts, which otherwise would have been in conflict with the Massachusetts Global Warming Solutions Act.[62] A pipeline project of the scope and ambition of the instant project, however, is surely too large an investment to reasonably build with the express understanding of a future sunset date.

6. The risks of this project must fall on Tennessee Gas and not New England ratepayers.

As noted at the outset of these comments, this Application arrives at a time when the region and the world stand at a point of change, raising the risk of abandonment for

[60] Application at 86.
[61] *See, e.g.*, Council on Environmental Quality, Revised Draft Guidance for Greenhouse Gas Emissions and Climate Change Impacts, at 9 (Dec. 18, 2014), available at https://www.whitehouse.gov/administration/eop/ceq/initiatives/nepa/ghg-guidance; *Massachusetts v. EPA*, 549 U.S. at 523-24.
[62] Settlement Agreement between Conservation Law Foundation and Footprint Power Salem Harbor, *Footprint Power LLC*, E.F.S.B. 13-01, Final Decision, Ex. A (Certif. of Envt'l. Impact and Pub. Necessity; Attach. 4) (Feb. 25, 2014).

any major fossil fuel infrastructure investment. This is not something the Commission has regularly contended with in the climate context in the past, but it is a concern that the Commission has the means to address.[63] The Commission's Certificate Policy addresses the subject of shifting the costs of undersubscription to existing customers, and finds such cost-shifting to be impermissible.[64] Similar directives should ensure that ratepayers do not bear the cost of a future reduction in need for the proposed pipeline, which reduction in need is fully foreseeable.

The risk is clear. In its Application, Tennessee Gas acknowledges that the natural gas it transports will likely be used less, and for different purposes, in the future. Tennessee Gas asserts that "as more renewable energy is integrated into the grid, natural gas-fired generators will be increasingly important for their capacity and decreasingly important for their energy production."[65] The applicant further projects that "some natural gas will likely be displaced by renewable energy" – though it asserts that this will only occur "on the margin."[66] The reality of our time is that fossil fuel companies are increasingly being held to task for not disclosing to their investors the substantial risk of loss associated with major fossil fuel projects. Financial institutions and universities are being called on to divest from fossil fuels. A massive investment like this one on the basis of mere *possible* need – now or in the future – is speculation that carries a significant risk.

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[63] Among other things, as indicated *supra*, the Commission has the authority to impose conditions on the grant of any certificate.
[64] Certificate Policy at 27.
[65] Application at 88.
[66] *Id.*

Ratepayers should not be left holding the check. The Commission must protect ratepayers from unjust and unreasonable rates, and costs arising from high-risk investments should not fall to ratepayers.[67] The proposed NED Project is undersubscribed from the get-go, and Tennessee Gas predicts declining future need.[68] Tennessee Gas asserts that the Commission should nonetheless certify it to be built and operated at full planned capacity[69] on an apparent "build it and they will come" theory – including speculation on the possibility that additional distribution lines could someday make it possible for the project to serve new thermal demand. While CLF objects to the certification of the project, to the extent that the Commission approves it, the Commission should ensure that the risks of this self-described "high-price expansion project" fall solely on the shoulders of Tennessee Gas and its investors, not on New England ratepayers.

The risks to the region of this project are potentially exacerbated by the uncertain financial health of Kinder Morgan, the parent company of Tennessee Gas. Kinder Morgan operates a large network of natural gas and refined petroleum product pipelines across the country. Although the negotiated rates associated with the precedent agreements for the proposed NED Project are not publicly available, one assumes that the NED Project is designed to bring in much-needed positive cash flow to Tennessee Gas and Kinder Morgan. Kinder Morgan recently has suffered rising debt costs, was

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[67] The extent to which ratepayers should financially underwrite speculative pipeline expansion is the subject of considerable discussion and controversy at the state level. For instance, proposed New Hampshire House Bill 1101 would "prohibit[] charges to New Hampshire residents for the construction of high pressure gas pipelines."
[68] *See supra.*
[69] *See* Application at 8.

temporarily placed on a negative outlook by one rating agency, was forced to cut its dividend by 75%, and its stock value has declined. Kinder Morgan and the health of the instant project continue to face a number of risks going forward, including rising interest rates, low gas prices, contract renewal risk, and volume risk on contracts and sales that are not take or pay, as well as contract defaults from its natural gas liquids pipeline and processing and gathering pipeline customers. A combination of these risks coming to fruition could exacerbate Kinder Morgan's financial woes and potentially cause inadequate cash flow to sustain the NED Project. Given these risks are foreseeable at the project proposal stage, appropriate ring-fencing and other conditions should be imposed on any grant of certificate, or the requested certificate should be denied.

REQUEST FOR PROGRAMMATIC ENVIRONMENTAL IMPACT STATEMENT OR OTHER COMPREHENSIVE REVIEW

I. The Commission has the Authority to Conduct a Comprehensive Review.

The Commission has the authority to conduct a comprehensive review of regional need, including through a programmatic Environmental Impact Statement ("EIS"). NEPA requires federal agencies to prepare an EIS on major actions significantly affecting the quality of the human environment.[70] The Supreme Court has held that "[a] comprehensive impact statement may be necessary in some cases for an agency to meet this duty."[71] Thus, "when several proposals for [] actions that will have cumulative or synergistic environmental impact upon a region are pending

[70] *See* 42 U.S.C. § 4322(2)(C).
[71] *See Kleppe v. Sierra Club*, 427 U.S. 390, 409-410 (1976).

concurrently before an agency, their environmental consequences must be considered together."[72] The Commission therefore recognizes that "[p]roposed actions with potential cumulative impacts may mandate the preparation of a regional or comprehensive impact statement."[73]

Support for region-wide consideration of multiple correlated proposals is found in NEPA's implementing regulations, which define the scope of government actions requiring review to include both "[c]umulative actions"—defined as those with "cumulatively significant impacts" when considered with "other proposed actions"—as well as "[s]imilar actions, which when viewed with other reasonably foreseeable or proposed agency actions, have similarities that provide a basis for evaluating their environmental consequences together, such as common timing or geography."[74] Accordingly, the Council on Environmental Quality has determined that a regional or programmatic EIS is appropriate where there are "[s]everal similar actions or projects in a region or nationwide (e.g., a large scale utility corridor project)," or where there exist "[a] suite of ongoing, proposed or reasonably foreseeable actions that share a common

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[72] *Kleppe* at 410; *see Churchill Cnty. v. Norton*, 276 F.3d 1060, 1077 (9th Cir. 2001) ("[A]n agency must prepare both a programmatic EIS and a site-specific EIS where there are large scale plans for regional development. At least when the projects in a particular geographical region are foreseeable and similar, NEPA calls for an examination of their impact in a single EIS.") (internal quotations and citations omitted); *Nat'l Wildlife Fed'n v. Appalachian Reg'l Comm'n*, 677 F.2d 883, 888 (D.C.Cir. 1981) ("the environmental consequences of proposed actions must all be considered together in a single, programmatic EIS when their impacts will have a compounded effect on a region.").

[73] *Columbia Gas Transmission, LLC*, 148 FERC ¶ 61,138, P 27 (Aug. 22, 2014) (emphasis omitted) (citations and quotations omitted).

[74] 40 C.F.R. § 1508.25(a)(2), (3).

geography or timing."[75] NEPA thus authorizes a region-wide EIS for proposed pipelines or expansion projects now pending before the agency, including but not limited to the NED Project, the Access Northeast Project, and the Atlantic Bridge Project.

II. A Comprehensive Assessment is Necessary to Enable the Meaningful, Regional Review of the Need for, and Impacts of, the Proposed NED Project and Other Projects.

A comprehensive regional review is particularly important in this case because the Application relies substantially on claims that the project will positively affect regional electricity rates. A comprehensive review would give the Commission the tools that it needs to adequately address this claim. The Application also makes claims as to the regional climate impacts of the project – impacts that it again asserts will be positive. Without an environmental impact statement that addresses the question of regional energy resources, including other planned projects in the region, as well as non-build-out alternatives such as those recommended in the Skipping Stone white paper attached as Exhibit 2, the Commission's capacity to evaluate these claims will be limited.

The Commission should exert its authority to identify and evaluate alternatives to the NED Project, and to evaluate and better address the energy needs of the region. NEPA authorizes a region-wide EIS for proposed pipelines or expansion projects now pending before the agency, including the NED Project, the Access Northeast Project, and the Atlantic Bridge Project. Given the Commission's recent action on several other projects in the region, any region-wide EIS should also include a detailed cumulative impacts analysis that evaluates the collective environmental impacts of pending projects

[75] *See* Michael Boots, Council on Environmental Quality, Memorandum: Effective Use of Programmatic NEPA Reviews, at 14 (Dec. 18, 2014).

in conjunction with those newly approved or pending final approval, including the Algonquin Incremental Market Project, the Connecticut Expansion Project, and the Constitution pipeline.

Here, adequate assessment of both regional need and the significant potential environmental harms of the NED Project must account for the fact that the Commission is considering several proposals in the New York/New England region—including the Access Northeast Project, and the Atlantic Bridge Project—all of which impact the same geographic area within roughly the same timeframe.[76] Standing alone, these projects, and those "reasonably foreseeable," will have the "cumulative or synergistic environmental impact upon [the New York/New England] region" that warrants their review as either a cumulative or similar action.[77] It is also important for the Commission to consider that these projects come on the heels of several more recently approved by or awaiting final approval the agency—including the Algonquin Incremental Market Project, the Connecticut Expansion Project, and the Constitution pipeline—that are within the same geographic area. The Constitution line runs on a parallel and often nearly identical course with the proposed NED pipeline for more than a hundred miles. Under these circumstances, a region-wide EIS should also have a thorough cumulative impacts analysis that considers the combined impacts of these projects in the context of all recent or anticipated Commission-approved infrastructure in the region.

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[76] *See Peshlakai v. Duncan,* 476 F. Supp. 1247, 1258 (D.D.C. 1979) (recognizing that "space and time" are important considerations in evaluating a request for a regional EIS).
[77] *See Kleppe* at 410.

Holistic consideration of the environmental impacts of proposed and approved infrastructure is also key to adequate identification and evaluation of alternatives that minimize cumulative impacts for the region.[78] As the Supreme Court recognized in *Sierra Club v. Kleppe*, "*[o]nly* through comprehensive consideration of pending proposals can the agency evaluate different courses of action."[79] When multiple proposals are pending for the same region, separate environmental review for each project presents the serious risk that a federal agency will overlook important alternatives that could avoid or minimize impacts for the region as a whole. The Commission can only rationally evaluate any viable alternative in the context of a complete understanding of the demand for natural gas, the capacity of existing pipelines, and the proposed capacity of new pipelines—in other words, a regional EIS.

The existence of alternatives that could avoid or minimize the impacts to the region as a whole is also closely tied to the need for the project, which, as detailed above, is questionable given the existence of other recently approved infrastructure, existing and native capacity, and the availability of more cost-efficient means to meet peak regional electricity demand during the coldest winter months. Region-wide consideration of pending projects in light of recently approved infrastructure will enable the agency to identify alternatives that minimize environmental impacts through elimination of projects or project-components that are simply unneeded. Accordingly, such consideration would not only assist in appropriate assessment of a "no-action"

[78] *Cf. Churchill Cnty* at 1080 (holding that the purpose of the cumulative impacts analysis is "to assist the decisionmaker in deciding whether, or how, to alter the program to lessen cumulative impacts") (quotations omitted).
[79] *Kleppe* at 410 (emphasis added).

alternative for a particular project, but also allow the agency to consider alternatives including non-gas alternatives as well as co-location of elements of proposed projects with existing infrastructure or other proposed projects.

CLF urges the Commission to comprehensively examine these alternatives in a region-wide EIS that incorporates all recently approved, pending, and reasonably foreseeable pipelines in the region.

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WHEREFORE, Conservation Law Foundation should be permitted intervention with full rights in this proceeding, the initial comments contained herein and attached as Exhibits 1 and 2 should be accepted, and the Commission should conduct a comprehensive regional review as set forth above.

Respectfully submitted,

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