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November 23, 2015

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

Re: **Docket No. CP14-529-000 – Tennessee Gas Pipeline Company, L.L.C. Environmental Assessment (EA) for Connecticut Expansion Project and Objection to Segmentation of Review from Docket No. CP16-21-000 (formerly PF14-22-000), Northeast Energy Direct Project**

Dear Secretary Bose:

On behalf of Mass Audubon, I submit the following comments on Tennessee Gas Pipeline's application for a certificate of public convenience and necessity for over 13 miles of new pipeline facilities and associated equipment in southeastern New York, southwestern Massachusetts and northern Connecticut known as the Connecticut Expansion Project (CEP). The CEP would impact over 216 acres of land for construction, with 52.8 acres being permanently converted for pipelines and associated facilities. The EA does not adequately address the purpose and need, environmental impacts, alternatives, and mitigation for this project. It also does not adequately consider the cumulative effects of this project in conjunction with other planned gas transmission projects in the region, particularly the Northeast Energy Direct (NED) Project planned by the same company. Mass Audubon requests that a full Environmental Impact Statement (EIS) be prepared and that the review of the CEP be combined with the review of the NED Project. The need for these projects should be carefully and objectively evaluated, particularly in light of the *Power System Reliability in New England* study released by the Massachusetts Office of the Attorney General on November 8, 2015¹.

The project as proposed crosses two miles within the Otis State Forest, impacting 29 acres of state-owned parklands, including six acres of permanent impact where new permanent easements are sought. Mass Audubon assisted the Massachusetts Department of Conservation and Recreation (DCR) in protecting the affected state forest lands and surrounding land, and we object to the proposed conversion of land permanently dedicated to park and conservation purposes to a pipeline easement. This diversion of use is contrary to the intended purposes of this land acquisition. While Mass Audubon's direct land acquisition costs were reimbursed by

¹ <http://www.mass.gov/ago/doing-business-in-massachusetts/energy-and-utilities/regional-electric-reliability-options-study.html>

the state, associated costs incurred including staff time and due diligence costs estimated in value at \$100,000 were not reimbursed.

Mass Audubon has submitted comments to FERC previously under these dockets (Docket PF14-22-000: October 6, 2014, January 15, 2015, July 22, 2015, and September 10, 2015; Docket CP14-529-000: September 4, 2014, November 7, 2014, and April 10, 2015; combined comments on both dockets, October 16, 2015). We request that the following comments be considered in addition to previously filed comments.

Purpose, Need, and Project Segmentation

Tennessee and its parent company, Kinder Morgan, are proposing other gas transmission pipeline projects in the region, including the NED project that would traverse Massachusetts from the New York border to Dracut, Massachusetts. These projects are physically connected and the NED project includes an additional loop segment on the 300 line immediately south of the proposed CEP project. We request that the FERC carefully consider whether the application for the CEP improperly segments project review, including in light of the Delaware Riverkeeper case (DC Circuit Court of Appeals, No. 13-1015). That decision noted that FERC may not segment review under the National Environmental Policy Act (NEPA) when “it divides connected, cumulative or similar federal actions into separate projects and thereby fails to address the true scope and impact of the activities that should be under consideration.”

The Final Environmental Impact Report (FEIR) filed with the Massachusetts Environmental Policy Act office this year on the CEP project contains contradictory statements claiming on the one hand that it is a stand-alone project serving only three specific customers in Connecticut, but then also stating, “Construction of the Project will help to alleviate the natural gas pipeline constraints in the northeast United States by increasing capacity in these high-demand markets.”² The physical and temporal proximity of these projects along with the cumulative impacts to the environment within the region all point to a need for combined, cumulative review.

Alternatives Analysis

Further review should be required of alternatives to avoid, minimize, and mitigate the impacts of the CEP and NED. This analysis should consider the potential roles of increased energy efficiency programs, modifications to gas marketing and sales mechanisms, alternative energy sources including renewables, and alternative routes that further avoid and minimize impacts to land and water resources. The AG’s Energy Reliability Study found that energy efficiency and demand management would meet the reliability needs of the system at the lowest costs to the customers. As noted in previous comments, FERC should also address the impacts of expanded gas transmission pipelines on state, regional, and national goals for reducing Greenhouse Gas emissions. Alternatives should be pursued to meet those targets as well as energy needs.

Impacts and Mitigation – Additional Information Needed in an EIS

The EA summarizes the impacts of the CEP to various categories of resources such as wetlands, but does not adequately address site-specific impacts and mitigation. For example, at specific

² P. 1-3 Purpose and Need Statement, CEP FEIR, March, 2014

locations there may be particular features such as trees with cavities, stream banks supporting animal burrows, or locations within wetlands that are particularly productive for breeding of amphibians or as fish habitat. The Massachusetts Wetlands Protection Act recognizes fish and wildlife habitat as public interests. The state regulations promulgated under that law and the associated *Massachusetts Wildlife Habitat Protection Guidance for Inland Wetlands*³ produced by the Massachusetts Department of Environmental Protection call for site-specific identification and protection of specific habitat features. Similar site-specific analyses and planning are also applicable under the federal Clean Water Act and 401 Water Quality Certification permitting. The standardized construction methodologies referenced in the EA are an inadequate substitution for site-specific planning.

Several studies have documented a high failure rate for wetlands mitigation in Massachusetts, New England, and nationwide. Recently, the University of Massachusetts and Department of Environmental Protection conducted a review of wetlands replication in Massachusetts that confirmed little progress has been made in the success rate of wetlands replication compared to previous studies (*Compensatory Wetland Mitigation in Massachusetts* by Stephen Brown and Peter Veneman, 1998). Less than half of the replication projects meet minimal standards, while even fewer produce wetlands of similar size and vegetative character of the area lost. While gas pipelines may claim that the construction impacts are temporary, factors such as the long period of time (often decades) required to re-grow woody vegetation in wetlands, as well as introduction of invasive species, indicate that the impacts are much more widespread and long-lasting.

For state and federally-listed rare species, avoidance, minimization and mitigation are highly sensitive to site-specific planning, and again the EA is incomplete and inadequate in that regard.

The EA requires the company to conclude consultations with state and federal environmental agencies including the Massachusetts Department of Environmental Protection and Massachusetts Division of Fisheries and Wildlife prior to construction. Mass Audubon objects to this procedure for addressing additional detailed planning required for the project. Deferring those details to future consultations with individual agencies deprives the public of the opportunity to review and comment. It also has the potential for creating conflict between protection of one resource vs. another – for example a proposed rare species mitigation measure approved by wildlife officials may have additional water quality impacts. Coordinated review, with public input, is important and is an essential function of the NEPA process.

The EA inadequately addresses cumulative environmental impacts. In describing impacts to rare species, for example, the EA repeatedly states that the impacts at a specific location will not cause a species to trend toward federal listing, or that impacts will be local and temporary. The cumulative effects of impacts across multiple sites should be considered in the context of other existing and planned projects (including projects by others) that will also impact the same species. If a species is already in decline and state-listed, any impact should be taken seriously and avoided if at all possible. One example of inadequate consideration of impacts to rare species is the proposed mitigation for American Bittern and Wood Turtle at the Tyringham pipeyard. The EA states that the Bittern habitat will be covered in construction matting before

³ <http://www.mass.gov/eea/docs/dep/water/laws/i-thru-z/wldhab.pdf>

the bird breeding season begins, and turtles will be excluded from the area by construction fencing. This may prevent direct harm to individual animals, but also excludes them from necessary habitat during important points in their lifecycle. This may impact their survival and/or breeding success, and will at a minimum have some temporary effect on the local population. More should be done to avoid impacting such sensitive habitats, or if the impacts are truly unavoidable, mitigation should include positive measures such as creation and protection of additional habitat to benefit the affected local populations.

The cumulative impacts of the CEP and NED projects taken together are very significant and warrant combined review through a comprehensive EIS.

Conservation Lands and Article 97 of the Massachusetts Constitution

The project as proposed would traverse two miles within the Otis State Forest, impacting 29 acres of state-owned parklands, including proposed acquisition by the company of a new easement across 6 acres of parkland. Disposition of permanently protected parklands in Massachusetts requires approval by both branches of the state Legislature under Article 97 of the state constitution.

In 2007, Mass Audubon assisted DCR in protecting over 900 acres of land at Otis State Forest, including areas around Lower Spectacle Pond that include an old growth hemlock forest stand, intact large blocks of forest, cold water fishery habitat, and other important natural resources. The Lower Spectacle Pond property is part of an interconnected area of protected open space encompassing more than 8,500 acres. It includes *BioMap2* Core Habitat mapped by the Massachusetts Division of Fisheries and Wildlife, and supports myriad plants and animals including rare turtles and dragonflies. The property includes diverse intact natural communities that contain features such as bedrock outcrops, large cavity trees, mature forest, and numerous seeps and springs in addition to the perennial streams mentioned in the FERC filing. Mass Audubon transferred its interests in land affected by this project to the state with the understanding that the land would be permanently protected under Article 97. The Executive Office of Energy and Environmental Affairs (EEA) Article 97 Land Disposition Policy states that EEA may only consider supporting Article 97 dispositions when several conditions are met including: "the disposition of a parcel is not contrary to the express wishes of the person(s) who donated or sold the parcel or interests therein to the commonwealth." **Mass Audubon objects to and opposes the proposed Article 97 disposition.**

The assessment of impacts as described in the FERC filing are superficial and incomplete. Fragmentation of mature forest and associated habitat will occur, impacting the ecosystem well beyond the footprint of impact. Disturbances of plants and soils will promote the spread of invasive species, and the impacts are far more than temporary. The company should be required to undertake further detailed analysis of alternatives to avoid and minimize impacts to these precious parklands. Any unavoidable impacts should be fully mitigated, including ongoing (permanent) commitments to invasive species management and enforcement of Off-Road Vehicle (ORV) restrictions. DCR does not have adequate resources to manage or prevent existing ORV violations let alone take on new responsibilities for keeping vehicles off a private company's expanded easement.

In the event that proposed construction is allowed in Otis State Forest, mitigation should include specific commitments to protection of land of comparable natural resource and scenic value. The mere payment of money into a land acquisition fund does not ensure that land with similar, diverse, old forest characteristics and other natural and recreational values will be protected.

Ongoing Maintenance – Habitat and Invasive Species Control

In addition to routine mowing and vegetation control, access by maintenance vehicles along the easement will continually disturb soils, present hazards to wildlife such as turtles, and facilitate the spreading of invasives through seeds and propagules adhering to vehicles. Alternatives analysis, project cost estimates, and mitigation commitments should include the cost to the public of lost or degraded ecosystem services, along with permanent, ongoing commitments to manage invasive species and ORVs.

The Invasive Species Management Plan for this and other gas pipeline projects should include permanent, ongoing provisions for monitoring and control of all invasive plants⁴ along the pipeline corridor and at associated facilities. A five year program of limited management for a few species, as proposed, is grossly inadequate considering the role of utility rights-of-way as vectors for the spread of invasive plants across Massachusetts and the region.

In conclusion, Mass Audubon requests that a full EIS be prepared, and that the CEP and NED project reviews be combined and coordinated. If the project proceeds, Mass Audubon reiterates its request that it be re-routed outside of Otis State Forest.

Sincerely,



John J. Clarke
Director of Public Policy & Government Relations

cc (via email):

DCR
NHESP
DEP

Mass Audubon works to protect the nature of Massachusetts for people and wildlife. Together with more than 100,000 members, we care for 35,000 acres of conservation land, provide school, camp, and other educational programs for 225,000 children and adults annually, and advocate for sound environmental policies at local, state, and federal levels. Founded in 1896 by two inspirational women who were committed to the protection of birds, Mass Audubon has grown to become a powerful force for conservation in New England. Today we are respected for our science, successful advocacy, and innovative approaches to connecting people and nature. Each year, our statewide network of wildlife sanctuaries welcomes nearly half a million visitors of all ages, abilities, and backgrounds and serves as the base for our work. To support these important efforts, call 800-AUDUBON (283-8266) or visit www.massaudubon.org.

Protecting the Nature of Massachusetts

⁴ <http://www.mass.gov/eea/agencies/agr/farm-products/plants/massachusetts-prohibited-plant-list.html>