



January 27, 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  
Response to Comments Regarding Information Request Letters

Dear Ms. Bose:

On September 15, 2014, Tennessee Gas Pipeline Company, L.L.C. (“Tennessee” or “TGP”) filed a request to use the Federal Energy Regulatory Commission’s (“Commission”) pre-filing procedures for the proposed Northeast Energy Direct Project (“Project”). By notice issued October 2, 2014, the Commission approved Tennessee’s request to use the pre-filing procedures for the Project. On November 5, 2014, Tennessee filed drafts of Resource Report 1 and Resource Report 10. An updated Resource Report 1 that adopted two route alternatives (the New York Powerline Alternative and the New Hampshire Powerline Alternative) as its proposed route as part of the Market Path component of the Project was filed on December 8, 2014. In that filing, Tennessee discussed the ongoing development of the resource reports for the Project and the schedule for submitting the first and second drafts of the Environmental Report (Resource Reports 1 through 13) for the Project. Tennessee will submit the first draft of the Environmental Report in March 2015, with the second draft of the Environmental Report anticipated to be filed with the Commission in June 2015.

As part of the preparation of the resource reports for the Project, Tennessee’s environmental consultant, AECOM, has sent information request letters to affected townships, counties, and planning boards to gather information to determine if the proposed Project facilities cross or would be within 0.25 miles of sensitive environmental areas, including federal, state or local designated aquifers or aquifer protection areas; surface waters that provide public drinking water supplies; surface water protection areas; public or private drinking water wells, reservoirs or springs in or within 300 feet of the proposed alignment; open space/natural areas; locally significant roads, scenic areas or rivers; and schools, parks, ballfields, and trails. In addition, the information request letters sought information regarding planned residential subdivision developments and planned commercial or industrial developments within 0.5 miles of the proposed Project facilities. The letters requested that the townships, counties, and planning boards review their records relative to these areas and provide written comments to AECOM’s attention for use in the development of the Environmental Report for the Project. These

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information request letters are a commonly used tool to gather this important information from townships, counties, and planning boards that will be used as part of the Commission's National Environmental Policy Act ("NEPA") review of the Project.

On January 22, 2015, a letter from Cristobal Bonifaz, an attorney representing the Town of Deerfield, Massachusetts, addressed to AECOM, Tennessee's environmental consultant for the Project, was submitted in the pre-filing proceeding for the Project. In the letter, dated January 14, 2015, Mr. Bonifaz discusses the information request letter sent by AECOM to the Deerfield Board of Health and the Deerfield Planning Board and states that the Town of Deerfield will be providing the requested information to Tennessee under the Freedom of Information Act as it falls outside the October 23, 2014 order of the Deerfield Board of Health under which the construction and installation of the Project facilities was banned by the Deerfield Board of Health. The letter also discusses Tennessee's position that it plans to request an appropriate authority to overturn this ban and Tennessee's failure to respond to Mr. Bonifaz's request regarding agency jurisdiction over the Project.

Over the past several months, Tennessee has been in communication with the Town of Deerfield and Mr. Bonifaz regarding the Deerfield Board of Health's October 2014 order. As noted in correspondence previously directed to the Town of Deerfield (see attached), Tennessee has denied the claims and allegations asserted by Deerfield, disputed the validity of the Order issued by the Deerfield Board of Health and has reserved the right to challenge the Order in an appropriate forum. While this issue remains to be resolved, Tennessee acknowledges that the Town of Deerfield will be providing the information requested by AECOM to assist in the ongoing development of the record in this proceeding. Tennessee has encouraged the Town of Deerfield to participate in the review of the NED Project in the pre-filing process and the certificate application process by submitting comments to the Commission and attending open houses hosted by Tennessee and scoping meetings conducted by the Commission and continues to encourage the town's participation in the Commission's process.

In separate comments filed on January 16, 2015 in the pre-filing proceeding, MassAudubon filed a letter regarding the information request letters submitted by AECOM on behalf of Tennessee to gather information from Massachusetts municipalities. MassAudubon objects to these letters as appearing "to direct municipal officials to gather, interpret, and provide information to AECOM/TGP regarding the proposed Northeast Energy Direct (NED) gas pipeline corridor," and claims that these requests may violate the Commission's regulations regarding disclosure of Critical Energy Infrastructure Information ("CEII").

As discussed above, Tennessee is seeking the requested information in order to develop the Environmental Review for the Project, which will be submitted to the Commission in the pre-filing and certificate processes to assist in the NEPA review of the Project. Tennessee, through its environmental consultants, is not requesting Massachusetts municipalities to interpret data or to provide information that would violate CEII requirements, but is requesting information, as is done for all Commission-regulated interstate natural gas pipeline projects, regarding the sensitive environmental areas identified above. The information provided by Massachusetts municipalities will be used by Tennessee and AECOM for evaluating the potential impact of the

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Project on these resources and in assessing potential cumulative impacts on these resources of the Project with other identified projects in the area of impact. If any Massachusetts municipality or other entity that received an information request letter from AECOM on behalf of Tennessee has any concerns regarding the letter, Tennessee requests that the entity contact Tennessee or the AECOM contact identified in the information request letter.

In accordance with the Commission's filing requirements, Tennessee is submitting this filing with the Commission's Secretary through the eFiling system. Tennessee is also providing this filing to the Office of Energy Projects. A copy of this letter will also be sent to all affected stakeholders. Any questions concerning the enclosed filing should be addressed to Ms. Jacquelyne Rocan at (713) 420-4544 or to Ms. Shannon Miller at (713) 420-4038.

Respectfully submitted,

TENNESSEE GAS PIPELINE COMPANY, L.L.C.

By:           /s/          J. Curtis Moffatt            
J. Curtis Moffatt  
Deputy General Counsel and Vice President  
Gas Group Legal

Enclosures

cc: Mr. Rich McGuire (Commission Staff)  
Mr. Michael McGehee (Commission Staff)  
Mr. Eric Tomasi (Commission Staff)

LAW OFFICE OF CRISTÓBAL BONIFAZ

180 Maple Street P. O. Box 180 Conway, Massachusetts 01341

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January 14, 2015

Lori Ferry Project Manager  
Aecom Technology Corporation  
10 Oms Street, Suite 405  
Providence, RI 02904

*In Re: Order Dated October 22, 2014 of the Board of Health of Deerfield Regarding  
Kinder Morgan and all its Subsidiaries and/or Affiliated Companies.*

Dear Lori Ferry:

This office represents the Town of Deerfield Massachusetts in all matters concerning the Kinder Morgan and all its subsidiaries and/or affiliated companies' proposed fracked gas pipeline designed to cross the Town of Deerfield Massachusetts (hereinafter jointly KM). Please direct all future communications to my attention.

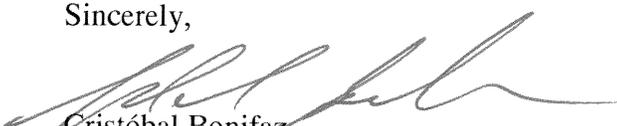
The Town of Deerfield is in receipt of your letters dated December 30, 2014 directed to the Board of Health of Deerfield and the Planning Board of Deerfield.

Aecom Technology Corporation (AECOM) needs to be aware that the construction and installation of the proposed KM pipeline was banned by the Board of Health of Deerfield after an extensive adjudicatory hearing on October 23, 2014.

KM has taken the position on this ban that they plan to request an "appropriate" authority to overturn the ban. KM has failed to respond to my request as to why Massachusetts does not have joint jurisdiction with FERC on the proposed pipeline given that a great portion of the fracked gas projected to be transported through Massachusetts is for export.

The Town of Deerfield will provide the information you requested under the Freedom of Information Act it falling outside the October 23 ruling of the Board of Health of Deerfield.

Sincerely,

  
Cristóbal Bonifaz

Cc: Cheryl A. LaFleur Chairperson Federal Energy Regulatory Commission  
Representative Stephen Kulik  
Senator Elizabeth Warren  
James L. Messenger, Esq. Attorney for Kinder Morgan

CB/mj

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December 30, 2014

James L. Messenger, Esq.  
LeClairRyan  
One International Place  
Eleventh Floor  
Boston, Massachusetts 02110

RE: *In the Matter of the Deerfield BOH Regarding Kinder Morgan and Affiliated Companies and/or Subsidiaries.*

Dear Mr. Messenger:

Please allow me to first wish the best for you and your family for the New Year.

I am responding to your letter to me dated December 24, 2014. The BOH of Deerfield has asked me to forward to you the enclosed Op-Ed provided in draft form to BOH by David Gilbert Keith a well-known environmental researcher. The piece concludes after a detailed analysis that the inescapable conclusion is that most of the gas to be transported through Massachusetts by Kinder Morgan is for export to foreign countries rather than for exclusive use in the North East of the United States.

If this is correct I would appreciate any legal citations to the effect that FERC has exclusive jurisdiction over the installation and operation of the pipeline as you have asserted in your previous two letters. I believe it is uncontested that if all the gas to be transported was exclusively for export to foreign countries the installation and operation of such a pipeline would fall outside FERC's jurisdiction. The question BOH wants to raise with you is whether or not Massachusetts has joint jurisdiction with FERC on the proposed pipeline given that a portion of the gas projected to be transported through the pipeline is for export.

I thank you in advance for the attention you will give to this letter.

Sincerely,

  
Cristóbal Bonifaz  
CB/mj

41 Old Main St. (Box 304)  
Deerfield, MA 01342  
PHONE: 413/773-8235  
[dbgkeith@comcast.net](mailto:dbgkeith@comcast.net)  
December 30, 2014

Justin Abelson, Editorials Editor  
Greenfield Recorder  
Greenfield, MA 01301

### **Pipeline's Public Cost for Private Profit**

Kinder Morgan, Inc., is proposing to build a pipeline to transport “fracked” natural gas from the New York border to Dracut in eastern Massachusetts, all to be paid for by us. The gas, however, is not intended for us. New England cannot use that much gas. For Kinder Morgan pretending the region needs so much more natural gas is crucially important to government mandated increases in utility rates and takings by eminent domain.

Kinder Morgan is, if I may risk being honest, lying about the purpose of the pipeline. It is really about getting a glut of gas to foreign markets—and the destination matters.

As proposed, the pipe will carry 2.2 billion cubic feet per day (bcf/day). The “net inflow” capacity of natural gas to the state (amount coming into the state minus what we send back out) is about 2.1 bcf/day, so this single pipeline could more than double the amount of gas available, far more than we have ever used.

We are told Kinder Morgan’s pipeline will prevent costly power shortages during prolonged cold spells or heat waves. But it really wouldn’t take more gas to prevent such flow-rate problems. We could, as an industry study notes, buy electricity from Hydro-Quebec or revert to other fuels. Massachusetts already has a gas inflow capacity that is more than double the amount of gas we consume.

Then we are reminded that past use does not include the new demand created by power plants converting to gas to generate electricity. The consulting firm ICF International has reported: “The projected deficits in gas supply apply only to the power sector; gas supply capabilities are adequate to meet non-power, firm [residential and industrial] gas demand.” Demand for more gas relates only to electrical generation.

In Massachusetts, however, the “repowering” change at power plants has largely already happened and, thanks in part to conservation and green energy efforts, it has had only marginal

effect on total gas use. Furthermore, 2.2 bcf/day of gas is simply a huge amount of energy—enough to produce twenty times the average annual output of the Vermont Yankee nuclear power plant. Using conservative conversion factors that include energy loss in power generation, the pipeline will deliver enough fuel to produce more than twice the combined power generated in all of New England by coal, petroleum and nuclear fuels in 2012. If residential/ industrial use and power generation cannot use all that gas, where will it go?

Not coincidentally, the owners of the Maritimes & Northeast Pipeline, which has been bringing fuel to Dracut from Canada, have asked permission to reverse its flow to take fuel from Massachusetts to the port of St. John in Brunswick, Canada. There the gas may be liquefied for shipping. The US Energy Information Agency is not hiding the conclusion: “Increased natural gas production would meet most demand from added LNG [Liquefied Natural Gas] exports,” meaning the oversupply will meet its *need* for demand through exports to other markets.

<http://www.eia.gov/todayinenergy/detail.cfm?id=18771#>

Kinder Morgan is proposing to profit from government authority to take private property under the guise of public gain. But fuel for export is about private gain, not the greater good of the Commonwealth. If Massachusetts is not going to be even the main recipient of the benefits of this pipeline, why should its citizens—and regional electric rate-payers—bear all the multi-billion dollar cost? We will pay through takings of private and public property as well as through government mandated increases in electric rates to pay this private company for building its own money-making infrastructure. Why should we be made to pay Kinder Morgan for the greater good of Kinder Morgan?

Massachusetts cannot use 2.2bcf/day of gas. Neither can New England. Prices in Europe are much higher than here. Kinder Morgan and the companies it will serve want to get their gas to the more lucrative market. But if they admit that goal, they lose the excuse for taking private property by eminent domain. If the good is not public, people’s land should stay private. Let Kinder Morgan pay for its own pipe and pay reasonable royalties to landowners for what goes through it on its way overseas.

**David Gilbert Keith is an independent researcher and co-author of “The Hidden Cost of Oil: New Orleans to Indonesia” for Environmental Rights International. He lives in Deerfield, MA.**



December 24, 2014

**Via Certified & First Class Mail**

Cristobal Bonifaz, Esq.  
180 Maple Street  
P.O. Box 180  
Conway, MA 01341

Dear Mr. Bonifaz:

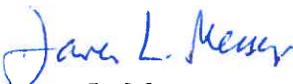
I am writing in response to your letter dated November 29, 2014, which I received by first class mail on December 3, 2014. We do not think it is productive to engage in a point by point rebuttal of the allegations and legal claims asserted in your November 29, 2014 letter, as such allegations are generally denied and will be left to another forum, but rather address the matters noted below.

The allegations concerning fracked gas in your November 29, 2014 letter were addressed in my November 17, 2014 letter to Ms. Shores Ness, which is incorporated herein by reference. Tennessee Gas Pipeline Co. LLC ("Tennessee") further categorically rejects your unfounded assertions about alleged "fraudulent misrepresentations" and "unjust enrichment." Suffice it to say that Tennessee stands by its exceptional natural gas pipeline performance and safety record as evidenced by many years of operating in the Northeast.

Tennessee reserves all rights and remedies, including, without limitation, the right to challenge the Order and the allegations set forth in your correspondence in an appropriate forum, at an appropriate time.

Please feel free to call me should you have any questions.

Sincerely,

  
James L. Messenger

cc: Randall Pais, Esquire

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CALIFORNIA \ CONNECTICUT \ MASSACHUSETTS \ MICHIGAN \ NEW JERSEY \ NEW YORK \ PENNSYLVANIA \ VIRGINIA \ WASHINGTON, D.C.



November 17, 2014

**Via Certified & First Class Mail**

Ms. Carolyn Shores Ness  
Chair, Board of Health  
Town of Deerfield  
8 Conway Street  
South Deerfield, MA 01373

Re: Board of Health's Decision on the Kinder Morgan Proposed Pipeline

Dear Ms. Shores Ness:

This firm represents Tennessee Gas Pipeline Co., LLC ("Tennessee") and its affiliates, including Kinder Morgan, Inc., on the Northeast Energy Direct Project. Please direct any further correspondence to me rather than Joseph Listengart who is no longer employed by Kinder Morgan. I am writing in response to the Board of Health's Decision on the Kinder Morgan Proposed Pipeline (the "Order") dated October 27, 2014. We do not think it is productive to engage in a point-by-point rebuttal of the allegations and legal issues asserted in the Order as such will be left to another forum but rather address issues noted below.

First, Tennessee has an excellent safety record and reputation in connection with construction, operation and maintenance of interstate natural gas pipelines. The Federal Energy Regulatory Commission ("FERC") has exclusive jurisdiction over the transportation and sale of natural gas in interstate commerce, and the siting, construction, operation and maintenance of interstate natural gas pipelines. FERC has issued Tennessee Certificates of Public Convenience and Necessity ("COPCN") on numerous occasions. FERC completes a thorough examination of companies seeking COPCNs based on, among other things, safety and environmental considerations. FERC's repeated issuance of COPCNs to Tennessee Gas over the years belies the claims in the Order regarding Tennessee Gas, which has an exceptional record of performance, and the natural gas pipeline industry in general.

Secondly, the Order is a nullity. Contrary to the claims in the Order, the Board of Health (the "BOH"), *inter alia*, exceeded its authority under its own by-laws and Massachusetts General Law ch. 111. Additionally, even if the BOH did not exceed its authority under the Town of Deerfield by-laws or state law, its actions are preempted by the Natural Gas Act (the "NGA"), 15 U.S.C. §717, *et seq.* The NGA provides that FERC has the exclusive jurisdiction over the siting

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Ms. Carolyn Shores Ness

November 17, 2014

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of interstate pipeline facilities. Courts have continued to recognize that in enacting the NGA that “Congress occupied the field of matters relating to wholesale sales and transportation of natural gas in interstate commerce.” *Schneidewind v. ANR Pipeline Co.*, 485 U.S. 293, 305 (1988). Therefore, the Order is not valid.

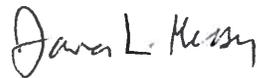
Thirdly, we categorically reject the BOH’s claims relating to transporting fracked gas. For many years, fracked gas has been transported, and in fact, is currently being transported throughout the Commonwealth of Massachusetts and across America.

Lastly, please clarify whether the Order is intended to prohibit Tennessee from performing surveys on both public and private lands in Deerfield, which surveys are needed to complete and finalize Tennessee’s FERC application.

Tennessee expressly reserves all legal rights and equitable remedies, including, without limitation, the right to dispute the factual allegations and legal claims in the Order not addressed in this reply.

Please feel free to call me should you have any questions.

Sincerely,



James L. Messenger

cc: Randall Pais, Esquire

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November 29, 2014

James L. Messenger, Esq.  
LeClairRyan  
One International Place  
Eleventh Floor  
Boston, Massachusetts 02110

*In Re: Order Dated October 22, 2014 of the Board of Health of Deerfield Regarding Kinder Morgan and all its Subsidiaries and/or Affiliated Companies.*

Dear Mr. Messenger:

This office represents the Board of Health of Deerfield (“BOH”) regarding all matters related to the Order issued by BOH dated October 22, 2014 on the matter of Kinder Morgan and all subsidiaries and/or affiliated companies. (Hereinafter together KM). Please direct all future communications to this office.

With regard to your questions related to the extent of the Order I refer you to the Order as it is the best evidence of its contents.

Your comment that the Order is a “nullity” is taken within the framework of the findings of BOH. The comment reflects a corporation which has shown total disregard and contempt for the Commonwealth of Massachusetts and its laws. KM cancelled on the day of the hearing its participation in the BOH’s adjudicatory hearing, failed to object to all matters introduced into the record for the truth of the matters asserted, and failed to respond to the questions raised by BOH at the hearing within the fifteen day response period granted by BOH to KM which ended on September 22, 2014.

In addition to the findings listed on its Order the BOH would like to point out that KM has engaged in fraudulent misrepresentations to officials and the people of Massachusetts in the past few months in order to obtain support to carry out its vast unjust enrichment scheme at the expense of home owners whose properties would be destroyed by the projected pipeline and related activities such as compression stations.

Let me explain:

- a. KM has held a number of presentations concerning its project in Franklin and adjacent counties in Massachusetts. At these presentations KM has shown photographs of a Southwick compression station that KM alleges would be

similar to compression stations planned to be installed in the pipeline route. What KM fails to disclose is that the Southwick station is a compression station of 2,000 HP while the projected compression station for Deerfield is a massive power plant of 120,000 HP one of the biggest in the United States. The projected compression station that KM would like to install in 100 acres of former American Friends Service Committee's pristine land in Deerfield is banned under the BOH order of October 22, 2014. For a history of the land that KM wishes now to convert into a Corpus Christi Texas type of monstrous factory, with total disregard of history and decency, I refer you to <http://woolmanhill.org/history/>.

- b. KM has publically stated a number of times that the fracked gas it intends to transport through Massachusetts is intended to fulfill New England's gas requirements. This is a fraudulent misrepresentation, designed to set neighbor against neighbor in Massachusetts, since KM intends to sell a great portion of the transported gas to foreign nations directly or through a intermediaries.
- c. KM has stated publically that it does not know or has to know the composition of the fracked gas to be transported through the pipeline as BOH established at its hearing. KM fails to fraudulently disclose that the composition of the fracked gas could easily be monitored daily by simple chromatography.

With regard to the issue of unjust enrichment KM has disclosed that it emerged from the late Enron collapse with 325 million dollars in value and it has grown in less than fifteen years into a company with value in excess of 100 billion dollars. This increase in value which exceeds 30,000% was acquired on the back of property owners to whom KM does not pay royalties for burying massive pipelines in their properties under the protection of a rubber stamp federal agency whose regulations were created under the lobbying shadow of gas transporters. There is no logic for paying royalties for extracted gas from the property of a home owner, as gas frackers do, and not paying royalties to home owners whose property is destroyed by burying massive pipelines in their properties for the transport of gas for export to foreign markets.

Thank you for the attention you will give to this letter.

Sincerely,



Cristóbal Bonifaz

Cc: Cheryl A. LaFleur Chairperson Federal Energy Regulatory Commission  
 Representative Stephen Kulik  
 Senator Elizabeth Warren

CB/mj



## **TOWN OF DEERFIELD**

Board of Selectmen and Board of Health  
8 Conway Street  
South Deerfield MA 01373  
Voice: 413.665.1400  
Facsimile: 413.665.1411  
Website: [www.deerfieldma.us](http://www.deerfieldma.us)

*VIA CERTIFIED MAIL/RETURN RECEIPT REQUESTED*

October 27, 2014

Joseph Listengart  
General Counsel  
Kinder Morgan  
1001 Louisiana St, Suite 1000  
Houston, TX 77002

Dear Mr. Listengard:

Please find enclosed the decision of Deerfield's Board of Health **Ordering** Kinder Morgan and all its subsidiaries and affiliated companies to cease immediately all activity related to the proposed Kinder Morgan proposed pipeline.

Thank you for the attention you will give to this matter.

Sincerely,

Carolyn Shores Ness  
Chair Person BOH Deerfield

Enclosure (1)

Cc: Norman Bay, Chairman, Federal Energy Regulatory Commission





**TOWN OF DEERFIELD**

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Board of Health  
8 Conway Street  
South Deerfield, Massachusetts  
Voice Mail: 413-665-1400  
Fax: 413-665-1411

**BOARD OF HEALTH'S DECISION ON THE KINDER MORGAN  
PROPOSED PIPELINE**

This matter has come before the Deerfield, Massachusetts Board of Health at the request of citizens of Deerfield that the Board hold hearings in order to determine whether the “fracked” gas pipeline Kinder Morgan Corporation proposes to build in Deerfield presents unreasonable risk to the health and lives of the citizens of Deerfield. For the reasons set forth below, the Board of Health of Deerfield does indeed find that the proposed pipeline presents an unreasonable risk to the health and lives of the residents of Deerfield and **ORDERS** Kinder Morgan or any of its subsidiaries or affiliated companies to immediately cease from carrying on activities in Deerfield associated with said pipeline.

**I. Background**

Kinder Morgan is a Texas Corporation with headquarters in Houston, Texas and offices in Holyoke, Massachusetts. On or about February of 2014 Kinder Morgan announced that it planned to build a pipeline carrying natural gas produced by hydraulic fracturing—fracking—to transit the Town of Deerfield, Massachusetts.

On August 20, 2014 the Deerfield Board of Selectmen held a public hearing, at the request of Deerfield residents, to hear testimony about the concern many residents had over anticipated impacts of the proposed pipeline. In response, the Board of Selectmen issued a non-binding resolution in opposition to the installation of the pipeline on Deerfield’s land.

Residents of the Town of Deerfield requested the Board of Health of Deerfield (“BOH”) on the same date, August 20, 2014, to hold hearings and determine, under the provisions of M.G.L. Ch. 111 §§s. 31 and 143, whether or not

construction and operation of the proposed pipeline presents an unreasonable risk to the health and lives of residents of the Town of Deerfield. The Board of Health agreed to conduct the requested hearings and set a hearing date for September 9, 2014.

That same evening of August 20, 2014 BOH send an e-mail to the local representative of Kinder Morgan, notifying Kinder Morgan of the forthcoming hearing. (Ex.-1 at pg. 6). This e-mail communication was followed by a Certified Letter addressed to the General Counsel of Kinder Morgan on August 26, 2014 giving notice of the scheduled hearing. (Ex.-1 at pgs. 1-3). Joseph Listengart, General Counsel of Kinder Morgan, received the Certified Letter communication on September 3, 2014 (Ex.-1 at pg. 5). Kinder Morgan notified the BOH via telephone at approximately 12:30 PM on the day scheduled for the hearing, September 9, 2014, that Kinder Morgan would not be attending the hearing (Certified Transcript ["CT"] at pg.4).

The BOH went forward with the scheduled public hearing on September 9, 2014 as planned, at the auditorium of the Frontier Regional School in Deerfield. At this hearing the BOH introduced twelve exhibits into the hearing record (CT at pgs. 9-25). Exhibits 1-12 were introduced by the BOH for the truth of the matters asserted therein and without objection from Kinder Morgan. *Id.*

Kinder Morgan was notified that the hearing had taken place in spite of their default absence and that BOH had granted Kinder Morgan fifteen days, ending on September 24, 2014, to comment on all matters and Exhibits presented at the hearing (CT at pg.5 and Ex.-13). Kinder Morgan defaulted failing to respond to the BOH request by the deadline set of September 24, 2014 at 4:00 PM (CT at pg. 24).

On September 24, 2014 Kinder Morgan wrote to the BOH, in a letter delivered on September 26, 2014, two days past the deadline, in response to BOH communications of August 26, 2014 (Ex.-1) and September 12, 2014 (Ex.-13).

In this defaulted letter, filed past the deadline set by the BOH, Kinder Morgan alleged that the Federal Energy Regulatory Commission ("FERC") "will be the government agency responsible for reviewing" the projected pipeline (Ex.-14). Kinder Morgan chose to ignore all facts introduced into the record of the BOH hearing of September 9, 2014.

## II. Facts.

- a. **Kinder Morgan's subsidiary was convicted in California of six felony counts regarding the deaths of Javier Ramos, Israel Hernandez, Tae Chin, Victor Rodriguez and Miguel Reyes. (Ex.-2)**

The Supreme Court of the United States has

...rejected the argument that political speech of corporations or other associations should be treated differently under the *First Amendment* simply because such associations are not “natural persons.” *Citizens United v. Federal Election Commission Supreme Court of the United States 558 U.S. 310at 343; 130 S. Ct. 876 at 900; 175 L. Ed. 2d 753 at 784 (2010)( citations omitted)*

The order of the Supreme Court establishing that corporations cannot be treated differently from “natural persons”, albeit in the context of the First Amendment, gives clear indication to the BOH that a corporation cannot be treated differently from “natural persons” in the context of felonies committed.

Felons have limited rights in Massachusetts, i.e., cannot participate in elections as they cannot vote while incarcerated, cannot be members of the Gaming Commission, etc.

The Deerfield BOH hereby finds that a corporation convicted of felonies resulting in the tragic deaths of five people presents an unreasonable risk to the health and lives of residents of Deerfield if such felon were to be allowed to build a massive, high pressure fracked-gas pipeline, the dangers of which will be enumerated in the sections which follow.

**b. Kinder Morgan’s Safety Violations and Accidents (Ex.2)**

Kinder Morgan was cited by the Hazardous Materials Safety Administration for violating its regulations five times in 2011 (Ex.-2 at pg.-4).

In Texas, alone, from 2003 to 2014 Kinder Morgan experienced 36 “significant incidents” resulting in fatalities or hospitalization, fires, explosions or spills (Ex-2 pgs. 4 and 5, describing the incidents in detail with adequate references).

The Deerfield BOH hereby finds that allowing a corporation known to have acted with such willful disregard for regulations enacted to prevent injury to or death of residents and citizens to build and operate a massive high pressure “fracked” gas transportation pipeline through the town would present unreasonable risk to the health and lives of residents of Deerfield.

**c. Kinder Morgan Has a Record of Bribery, Pollution, Fraud, Scams, Thefts, Deaths, Felonies, Environmental Disasters, Labor Violations, Unsafe Working Conditions, and Influence Buying. (Ex.-4 at pgs. 7-11).**

Kinder Morgan’s operations in Portland, Oregon, have been home to pollution, law-breaking, and even bribery. (Ex.-4 at pg. 7).

The Federal Bureau of Investigations determined that between 1997 and 2001 “Kinder Morgan systematically scammed some of its customers, including the Tennessee Valley Authority (‘TVA’), a publicly owned provider of electricity in the mid-South” (Ex.-4 at pg.-7).

The same federal investigation found that at its Grand River Terminal in Kentucky, Kinder Morgan officials took coal from a customer’s stockpiles and resold nearly 259,000 tons (Ex.-4 at pg.-7).

In another case the US Environmental Protection Agency (“EPA”) fined Kinder Morgan \$613,000 for violations of the Clean Air Act after “regulators discovered that the company had been illegally mixing an industrial solvent described as a ‘cyclohexane mixture’ into unleaded gasoline and diesel” (Ex.-4 at pg-7).

In 2010 the federal government fined Kinder Morgan \$1 million for repeatedly violating the Clean Air Act. The US Department of Justice found that “among other crimes” Kinder Morgan managers lied in permit applications, stating that the company would control its pollution when all the while they knew the control equipment was not being operated or even maintained properly (Ex-4 at pg.-7).

Currently, Kinder Morgan is under investigation by the EPA for violating the federal Renewable Fuels Standard. Officials believe that Kinder Morgan purchased conventional fossil fuels while filing falsified documents certifying that the fuels came from renewable sources (Ex.-4 at pg-8).

The Deerfield BOH hereby finds that if allowed to build and operate a massive fracked gas transportation pipeline through the town, a corporation on the record as having acted with such willful disregard for regulations enacted to prevent injury to or death of residents and citizens would present unreasonable risk to the health and lives of residents of Deerfield.

**d. Kinder Morgan’s Pipelines Have Endangered Lives in Many Communities across the United States and Canada.**

In 2007 a Kinder Morgan pipeline ruptured in Burnaby, British Columbia, forcing 50 families to evacuate their homes as oil rained down on a residential neighborhood (Ex.-4 at pg. 8).

In January of 2012 a Kinder Morgan storage facility in British Columbia spilled roughly 29,000 gallons of crude oil into the community of Abbotsford (Ex.4 at pg. 90).

In April of 2004 a long stretch of a Kinder Morgan corroded pipeline ruptured, spilling 123,000 gallons of diesel fuel into a sensitive saltwater wetland on San Francisco Bay. Kinder Morgan pled guilty on four counts relating to that spill as

well as an unrelated spill in Los Angeles Harbor (Ex.-4 at pg. 9).

In November of 2004 an oil pipeline of a Kinder Morgan subsidiary burst in the Mojave Desert, sending a jet of fuel 80 feet into the air. The break closed the nearby interstate highway and contaminated more than 10,000 tons of soil in the habitat of the federally endangered California Desert Tortoise (Ex.-4 at pg. 10).

In 2005 Kinder Morgan spilled 70,000 gallons of fuel into Oakland's inner harbor, and then 300 gallons into the Donner Lake watershed in Sierra Nevada. And in 2007 the City of San Diego sued Kinder Morgan for falsifying records of the clean-up of a fuel leak that contaminated the aquifer (Ex.-4 at pg. 10).

In May of 2011 the US Pipeline and Hazardous Materials Safety Administration announced a proposed \$425,000 fine against Kinder Morgan for safety violations following a federal investigation into Kinder Morgan's having spilled 8,600 gallons of hazardous liquids in New Jersey (Ex.-4 at pg. 10).

In December of 2011 a two-year-old Kinder Morgan natural gas pipeline leaked in Ohio, spewing 127,000 cubic feet of natural gas and forcing residents to evacuate their homes (Ex.-4 at pg. 10).

The Deerfield BOH hereby finds that allowing a corporation with a known record of endangering the lives of residents across North America to build and operate a massive fracked gas transportation pipeline through the town would present unreasonable risk to the health and lives of residents of Deerfield.

**e. Pipeline Transportation of Fuels is a Dangerous Operation in the United States and Worldwide.**

From 2000 to 2009 there were 460 accidents on record related to pipeline discharges of fuels, whether gas or liquids, in the United States (Ex.-5 at pgs. 1 to 23). Pipeline-related incidents have brought pipeline safety to national —and presidential — attention (Ex.-6 at pgs. 1-5).

From 1994 through 2013 the United States had 745 serious incidents with gas distribution, causing 728 fatalities, 1059 injuries, and \$110 million in property damage (Ex.-7 at pg.-2).

National Public Radio reported in January of 2014 that more than 6,000 leaks of gas had occurred in the District of Columbia alone (Ex.-8 at pgs. 1-4).

In Massachusetts in the last ten years it has cost consumers more than \$1.5 billion for fuel leaked from pipelines (Ex.-9 at pgs. 1-4).

The Deerfield BOH hereby finds that there is a danger to the health and lives of residents of Deerfield if the BOH were to permit construction and operation of

natural gas pipeline within the town of Deerfield, particularly when the company constructing and operating the pipeline is Kinder Morgan, as per sections a to d above.

**f. Kinder Morgan's Official, Mark Hamrich, Reported at a Public Meeting Held at Greenfield Community College on July 14, 2014 that Kinder Morgan Does Not Know the Composition of the Gas Resulting from Fracking to be Transported in the Proposed Pipeline.**

Fracking is a process designed to extract gas from shale buried in the soil. Fracking fluid is a toxic brew consisting of multiple chemicals which may include toxic materials such as petroleum distillates, ethylene glycol, methanol, polyacrylamide and many others (Ex.-11 and Ex-12 at pgs. 1-3).

Kinder Morgan has not denied that some of these fracking chemicals might be present in the fracked gas to be transported through the pipeline.

The Deerfield BOH finds the statement by Mark Hamrich of Kinder Morgan at an open meeting disingenuous as the actual composition of the gas in the pipeline can be established at any time by simple gas and/or liquid chromatography analysis.

The Deerfield BOH hereby finds that the unknown composition of the gas in the pipeline does indeed present a danger to the health and lives of residents of Deerfield if the BOH were to permit construction and operation of natural gas pipeline within the town of Deerfield, particularly when the company constructing and operating the pipeline, Kinder Morgan, does not know the composition of the gas to be transported through the pipeline.

**g. Many Residents of Deerfield Have Shallow Wells Which Might Be Contaminated by Leaks from the Proposed Pipeline, and There is No Evidence that the Proposed Pipeline Will Not Disturb the Aquifer and thus Endanger Residents of Deerfield (CT at pages 21-22).**

The Deerfield BOH hereby finds that given possible contamination of the fracked gas with fracking chemicals from possible corrosion and leaks from the pipeline that installation of the massive pipeline through Deerfield will indeed endanger the health and lives of the residents of Deerfield by contaminating drinking water drawn from the shallow wells of many Deerfield residents.

**III. The Board of Health of Deerfield Has Authority to Prevent the Construction and Operation of the Proposed Pipeline Within the Confines of the Town of Deerfield.**

**a. The Board of Health of Deerfield Has Authority under M.G.L. Ch. 111 §§. 31 and 143 to Conduct Hearings and Determine Whether or Not the Proposed Kinder Morgan Pipeline Presents an Unreasonable Danger to the Health and Lives of the Residents of Deerfield.**

Kinder Morgan, in a belated letter arriving at the offices two days after the close of comments on the subject matter of the hearings (Ex.-14), implies that any resolution by the BOH in this matter is inconsistent with the Federal Constitution and Federal statutes, and thus that it is invalid under the *supremacy clause of the United States Constitution*, Art. VI, cl. 2.

This argument has been dealt adequately by the Supreme Court of Massachusetts in *Arthur D. Little v. Commissioner of Health of Cambridge* 395 Mass. 535; 481 N.E.2d 441; 1985 Mass. LEXIS 1720(1985).

The Supreme Court considered the argument in light of two principles which are traditionally the basis of preemption analysis.

First, "[p]reemption . . . is not favored, and State laws should be upheld unless a conflict with Federal law is clear." *Attorney Gen. v. Travelers Ins. Co.*, 385 Mass. 598, 602 (1982) (*Travelers I*), vacated, 463 U.S. 1221 (1983), reaffirmed, 391 Mass. 730 (1984), aff'd sub nom. *Metropolitan Life Ins. Co. v. Massachusetts*, 471 U.S. 724 (1985). See *Commonwealth v. McHugh*, 326 Mass. 249, 265-266 (1950); *Exxon Corp. v. Governor of Md.*, 437 U.S. 117, 132 (1978). State law is not preempted merely by reference to some vaguely defined Federal policy, or on the ground that Congress has enacted a statute which is tangentially relevant to the subject at issue. Instead, the plaintiff here is obligated to show preemption "with hard evidence of conflict . . . on the basis of the record evidence in this case." *Grocery Mfrs. of Am., Inc. v. Department of Pub. Health*, 379 Mass. 70, 81-82 (1979), quoting *Kargman v. Sullivan*, 552 F.2d 2, 6 (1st Cir. 1977). Generally speaking, "a finding of no preemption is regarded as preferable because Congress can overrule it by appropriate legislation, while a finding of preemption cannot be changed by the states." *Agency Rent-A-Car, Inc. v. Connolly*, 686 F.2d 1029, 1038 (1st Cir. 1982). See *Pacific Gas & Elec. Co. v. State Energy Resources Conservation & Dev. Comm'n*, 461 U.S. 190, 216 (1983).

Secondly, the Court argued that the Supreme Judicial Court of the Commonwealth and the United States Supreme Court have been particularly reluctant to overturn State laws which are "deeply rooted in local feeling and responsibility." *Travelers I*, *supra* at 611, quoting *San Diego Bldg. Trades Council v. Garmon*, 359 U.S. 236, 243-244 (1959). *Massachusetts Elec. Co. v. Massachusetts Comm'n Against Discrimination*, 375 Mass. 160, 174 (1978). This principle applies with special force to laws designed to protect the public health and welfare, a subject of "particular, immediate, and perpetual concern" to any municipality 6 *E. McQuillin, Municipal Corporations* § 24.01 (3d ed. rev. 1980). In fact, according to an early decision of the Massachusetts Supreme Judicial Court, *Vandine, petitioner*, 6 Pick. 187, 191

(1828), “ [t]he great object of the city is to preserve the health of the inhabitants.” Accordingly, municipal health and safety regulations, such as that at issue here, carry a heavy presumption of validity and are only rarely preempted by Federal law. *Travelers I, supra* at 612. See *Malone v. White Motor Corp.*, 435 U.S. 497, 513 n.13 (1978). “The States traditionally have had great latitude under their police powers to legislate as ‘to the protection of the lives, limbs, health, comfort, and quiet of all persons.’” *Metropolitan Life Ins. Co. v. Massachusetts*, 471 U.S. 724, 756 (1985), quoting *Slaughter-House Cases*, 16 Wall. (83 U.S.) 36, 62 (1873). *Huron Portland Cement Co. v. Detroit*, 362 U.S. 440, 442-443 (1960).

**b. The Federal Energy Regulatory Commission Cannot Prevent the BOH of Deerfield from Issuing Regulations Safeguarding the Health and Lives of the Residents of Deerfield.**

The law created by Congress designed to regulate pipeline transportation of natural gas in the United States is the Natural Gas Act, 15 USCS §§ 717 et seq. The Federal Energy Regulatory Commission is the agency created by Congress to enforce the Natural Gas Act.

The purpose of The Natural Gas Act is to protect consumers against exploitation. ... The Natural Gas Act was intended to provide, through exercise of national power over interstate commerce, agency for regulating wholesale distribution to public service companies of natural gas moving interstate, which United States Supreme Court has declared to be interstate commerce not subject to certain types of state regulation. ... Congress, in drafting Natural Gas Act, was not only expressing its conviction that public interest requires protection of consumers from excessive prices for natural gas, but was also manifesting its concern for legitimate interests of natural gas companies in whose financial stability gas-consuming public has vital stake. ... Purpose of Congress in enacting Natural Gas Act was to create comprehensive and effective regulatory scheme, and to underwrite just and reasonable rates to consumers of natural gas. ... Primary aim of Natural Gas Act is to protect consumers against exploitation at hands of natural gas companies; to that end, Congress created comprehensive and effective regulatory scheme. ... Purposes of Natural Gas Act are to protect consumers against exploitation at hands of natural gas companies, to underwrite just and reasonable rates to consumers of natural gas, and to afford consumers complete, permanent, and effective bond of protection from excessive rates and charges. ... Primary aim of Natural Gas Act is protection of consumers against exploitation at hands of natural gas companies, and congressional intent is to give

Federal Power Commission [now FERC] jurisdiction over rates of all wholesale sales of natural gas in interstate commerce. ... Natural Gas Act is intended to create, through exercise of national power over interstate commerce, agency for regulating wholesale distribution to public service companies of natural gas moving interstate, and is, for this purpose, expected to balance investor and consumer interests; Federal Power Commission's [now FERC's] responsibilities include protection of future, as well as present, consumer interests. ... Fundamental purpose of Natural Gas Act is to assure adequate and reliable supply of gas at reasonable prices. ... Basic purpose of Natural Gas Act is protection of public interest. ... Purpose of Natural Gas Act is to underwrite just and reasonable rates to consumers of natural gas. ... Protection of interest of consumers in adequate supply of gas at reasonable rates is overall purpose of Natural Gas Act. ... Purposes of Natural Gas Act, including that of protecting consumers from prices which are forced above just and reasonable level by market power of natural gas suppliers, impose limits on Federal Power Commission's [now FERC's] broad discretion to devise methods of natural gas regulation capable of equitably reconciling diverse and conflicting interests. ... Purpose of regulation under Natural Gas Act is to provide reliable and adequate supply of gas for interstate market at lowest reasonable cost; Federal Power Commission [now FERC] must regulate, through application of Act, in such manner as to encourage exploration, development, and dedication of natural gas to interstate market. ... It is not purpose or intent of Natural Gas Act to interfere with intrastate transportation, sale, or use of natural gas, and Act was not designed to limit state authority to prevent waste in its natural gas resources. [(Natural Gas Act 15 USCS § 717 Section III (A) (2))] (Citations Omitted).

**c. Safeguarding the Health and Lives of Residents of Towns in Massachusetts by Boards of Health Is Not a Preempted Activity by The Natural Gas Act.**

These are the State Activities preempted by the Natural Gas Act according to the Statute and Court decisions, (Court Citations Omitted):

Natural Gas Act preempts regulatory powers over transportation and sale of natural gas in interstate commerce. ... Congress meant by Natural Gas Act to create comprehensive and effective regulatory scheme,

complementary in its operation to those of states and in no manner usurping their authority. ... Natural Gas Act does not envisage federal regulation of entire natural gas field to limit of constitutional power, but contemplates exercise of federal power as specified in Act, particularly in that interstate segment which states are powerless to regulate because of commerce clause of Federal Constitution. ... Congress, in enacting Natural Gas Act, did not intend to cut down state regulatory power, but rather to supplement it by closing gap between federal and state powers created by prior decisions of United States Supreme Court. ... Congress, in enacting Natural Gas Act did not give Federal Power Commission [now FERC] comprehensive powers over every incident of gas production, transportation, and sale; rather, Congress invested Commission with authority over certain aspects of this field, leaving residue for state regulation; however, from fact that Congress intended to impose comprehensive regulatory system on transportation, production, and sale of gas, it follows that as to problem which is not, by its very nature, one with which state regulatory commissions can be expected to deal, Congress desired regulation by federal authority rather than no regulation. ... Interstate sales of gas are not to be determined by case-by-case analysis of impact of state regulation upon national interest. ... Congress meant by Natural Gas Act to create comprehensive and effective regulatory scheme of dual state and federal authority, and, from this fact, it follows that as to problem which is not, by its very nature, one with which state regulatory commissions can be expected to deal, Congress desired regulation by federal authority rather than no regulation; when dispute arises over whether given transaction is within scope of federal or state regulatory authority, problem should not be approached negatively, thus raising possibility that "no man's land" will be created; in borderline case where congressional authority is not explicit, crucial question is whether state authority can practicably regulate given area, and, if it cannot, federal authority governs. ... Congressionally designed interplay between state and federal regulation under Natural Gas Act does not permit states to attempt to regulate purchasing decisions of interstate pipelines in mere guise of regulating natural gas production. ... Congress, in enacting Natural Gas Act (*15 USCS §§ 717 et seq.*), did not envisage federal regulation of entire natural gas field to limit of federal constitutional power; rather, Act is designed to supplement state power

and to produce harmonious and comprehensive regulation of industry, and neither state nor federal regulatory body is to encroach upon jurisdiction of other. ... In passing Natural Gas Act, Congress took care not to intrude unnecessarily upon state prerogatives; Congress did not intend Federal Power Commission [now FERC] to act as local forum on matters over which it had no regulatory jurisdiction. ... Federal regulatory control is proper during period from time that Federal Power Commission [now FERC] has made determination that federal jurisdiction exists until conclusive upholding of such finding by last available court, and state authorities have no right to regulate unfettered merely because courts have not conclusively reviewed Commission's finding of jurisdiction. ... In borderline cases under Natural Gas Act (*15 USCS §§ 717 et seq.*) involving respective ambits of state and federal regulatory authority, courts ask whether it is within capability of states to regulate in accordance with purposes of Act, and if it is not, courts can preserve efficacy of Act only by determining that federal authority prevails. ... Under Natural Gas Act, regulation of interstate transportation and sale for resale of natural gas is committed exclusively to jurisdiction of Federal Power Commission [now FERC], and jurisdiction over such transactions cannot be asserted by state agency. Courts have subject matter jurisdiction under *28 USCS § 1331* in action in which companies sought declaration that zoning amendment providing for absolute prohibitions and limitations on siting of liquefied natural gas facilities was preempted by Natural Gas Act, and also sought injunction barring enforcement of amendment because complaint sought both declaratory and injunctive relief on grounds of preemption. ... If Natural Gas Act, *15 USCS §§ 717 et seq.*, grants jurisdiction to Federal Energy Regulatory Commission over matter, its jurisdiction is exclusive. ... Gas producers do not have "natural" monopoly power; that is, the industry does not possess the inherent technical characteristics that prevent its efficient and economical operation unless operated as a monopoly. Therefore, the theory that a regulatory agency is necessary to represent consumers when they bargain on rates with a natural monopolist like a utility no longer applies to gas production; FERC has a fundamentally different regulatory obligation, a narrower authority to administer the NGPA and to prescribe higher price ceilings only in certain circumstances. ... Regulation of natural gas companies engaged solely in interstate commerce and sale for resale has been preempted

by federal government. ... Natural Gas Act was so framed and enacted as to complement and in no manner usurp state regulatory authority. ... Where natural gas company was not engaged in exclusively interstate operations, state control was not precluded by Natural Gas Act. *Natural Gas Act 15 USCS §717Section III (B)(6)* (Citations Omitted).

The Natural Gas Act is primarily concerned with safeguarding consumer financial protection from predatory practices of corporations involved in natural gas transportation. Thus it specifically preempts certain activities. ... Order of state regulatory agency requiring interstate natural gas pipeline company to take gas ratably, in proportion to shares of various well owners and operators, from common gas pool and to purchase gas under nondiscriminatory conditions is pre-empted by comprehensive scheme of federal regulation. ... When applied to “natural gas companies” within meaning of Natural Gas Act (NGA) (*15 USCS §§ 717 et seq.*), state statute under which state’s public service commission regulates issuance of securities by public utilities transporting natural gas in interstate commerce is pre-empted by NGA as regulation of natural gas companies’ rates and facilities. ... Interstate natural gas pipelines operate within field--reserved under Natural Gas Act (*15 USCS §§ 717 et seq.*) for federal regulation--of buying gas in one state and transporting it for resale in another, so inevitably states are preempted from directly regulating such pipelines in such way as to affect pipelines’ cost structures. ... Needs of metropolitan area for adequate and efficient supply of natural gas outweighed state’s plan for community development, and therefore regional development commission’s action in refusing to issue permit for construction of natural gas plant was arbitrary and unwarranted imposition on interstate commerce in conflict with Natural Gas Act. ... Oklahoma statute providing that pipeline company, on request, shall furnish gas to one whose premises are crossed by its pipeline frustrates full effectiveness of Natural Gas Act because it frustrates exercise of power which Congress has delegated to Federal Power Commission [now FERC]; state statute violates supremacy clause and is without effect. ... Natural Gas Act (*15 USCS §§ 717-717w*) pre-empts state public utilities securities regulation law which requires public utilities, including natural gas companies as defined under *15 USCS § 717a(6)*, operating in state to obtain approval of state’s

public service commission before issuing long-term securities. ... District Court properly determined that Oklahoma's ratable take statute and implementing regulation, requiring interstate pipeline company to purchase natural gas from all producers of natural gas reservoir or field, was pre-empted by federal regulatory scheme established by Natural Gas Act (*15 USCS §§ 717 et seq.*) and Natural Gas Policy Act (*15 USCS §§ 3301 et seq.*) ... Under Natural Gas Act (*15 USCS §§ 717 et seq.*) Congress had implicitly preempted state regulation of interstate pipeline company's direct transportation of natural gas from wellhead in Oklahoma to ultimate consumer in Michigan. ... As applied to interstate pipeline construction, New York State regulatory scheme governing construction of natural gas transmission lines was preempted by Natural Gas Act (*15 USCS §§ 717 et seq.*), since Congress intended to vest exclusive jurisdiction to regulate pipelines in FERC, and Congress had occupied field of regulation regarding interstate gas transmission facilities. ... Oklahoma statute directly regulating interstate pipeline companies in their purchase of natural gas by rendering them liable to all royalty owners in entire drilling and spacing unit regardless of whether they had complied with their obligations to parties with whom they had contracted was preempted by Natural Gas Act (*15 USCS §§ 717 et seq.*) as amended by Natural Gas Policy Act (*15 USCS §§ 3301 et seq.*) insofar as state statute applied to interstate pipelines engaged in purchase of natural gas. ... In case involving natural gas pipeline regulation, Iowa provisions regulated in federally occupied field because (1) Federal Energy Regulatory Commission (FERC) considered environmental concerns and specifically addressed issues of soil preservation and land restoration, which were very areas that board members wished to regulate, (2) there was substantial potential for collision between Iowa provisions and FERC plan in that Iowa regulations imposed additional requirements in number of areas, (3) imminent possibility of collision between Iowa provisions and federal regulatory scheme affected ability of FERC to achieve uniformity of regulation, which was objective of NGA, (4) it was undeniable that Congress delegated authority to FERC to regulate wide range of environmental issues relating to pipeline facilities, and (5) because FERC had authority to consider environmental issues, states could not engage in concurrent site-specific environmental review; thus, Iowa's regulations were preempted by Natural Gas Act (NGA), *15 USCS §§ 717 et*

seq., and trial court did not err in granting summary judgment to gas companies granting permanent injunction in companies' favor. ... Rhode Island's Coastal Resource Management Program's Category B Assent (licensing) process required by 04-000-010 R.I. Code R. §§ 100.1(A), (D), 300.1, clearly conflicted with exclusive authority of Federal Energy Regulatory Commission (FERC), which it had exercised in instant case, to license siting, construction, expansion, or operation of liquefied terminals under *15 USCS § 717b(e)(1)*; by finding dredging activities were part of construction and operation of terminal facility, FERC interpreted dredging at issue to be within its jurisdiction, and thus, assent process utilized by Rhode Island clearly collided with FERC's delegated authority and was preempted. ... Where natural gas company could have raised question whether Natural Gas Act (*15 USCS §§ 717 et seq.*) preempted state franchise law before FERC at same time that company was raising question in state court, Court of Appeals would not require FERC to reopen proceedings at late date in order to permit introduction of preemption question. ... On review--under §§ 1 and 5 of Natural Gas Act (*15 USCS §§ 717, 717d*)--of FERC Order No. 636, which comprehensively restructured natural gas industry through mandatory unbundling of sales and transportation services, court would uphold (1) FERC's jurisdiction to regulate re-sale of interstate-transportation rights in general, as well as specifically its jurisdiction over local distribution companies (LDCs) who broker capacity to local end-users and over municipal LDCs, (2) uphold FERC's decision that state authorized "buy/sell arrangements" are pre-empted by FERC's capacity-release program, and (3) uphold FERC's decision to exclude Part 157 shippers. ... Where established course of business of gas distributing company is predominantly interstate, mere fact that some gas is sold and delivered in state of its origin affords that state no superior power to regulate or control transaction. ... State constitutional provision and statute which gives state users first priority at obtaining new natural gas that may be found in state is invalid as being violation of Supremacy Clause of United States Constitution since these state provisions clearly frustrate Congressional intent to provide adequate and reasonably priced supply of natural gas for entire nation with equal access to both intrastate and interstate markets. ... Oklahoma ratable take provision in natural gas statute and regulation is unconstitutional where state attempted to prevent discrimination in favor of any one common source

of supply as against another by allowing state to skew free market for gas, because federal law and policy to allow price to be determined by free flow of commerce among states preempts state regulation. ... Federal Energy Regulatory Commission's granting of certificate of public convenience and necessity for bypass transportation of natural gas preempts regulatory power of state public service commission, where bypass will allow direct transportation of gas from Oklahoma facilities to Michigan steel plant, because *15 USCS § 717(b)* applies to this approved interstate transportation of gas, which is neither "other sale" nor "local distribution" within meaning of residual regulatory authority of states. ... In interstate natural gas pipeline companies' suit against state utilities board members, state laws relating to pipelines and land restoration, Iowa Code ch. 479A and 199 Iowa Admin. Code chs. 9 and 12, were preempted. ... Amendment to county zoning regulation, which provided for absolute prohibitions and limitations on siting of liquefied natural gas (LNG) facilities, was preempted under Supremacy Clause of U.S. Const. art. VI by Natural Gas Act (NGA) because *15 USCS § 717b(e)(1)* provided Federal Energy Regulatory Commission (FERC) with exclusive authority over siting of LNG terminals; NGA governed virtually every step of LNG facility's siting, construction, and operation; zoning amendment conflicted with NGA by impeding upon FERC's jurisdiction; and, although *15 USCS § 717b-1(b)* required FERC to consult with state agencies on matters of local concern and *15 USCS § 717b(d)* reserved to states their delegated authority under certain environmental statutes, Congress intentionally structured NGA to give states no decision-making authority. ... Requiring plaintiff natural gas company to obtain permit under Connecticut's Structures, Dredging and Fill Act, *Conn. Gen. Stat. § 22a-359* et seq., for pre-construction, construction, and operation of its federally authorized gas pipeline conflicted with Federal Energy Regulatory Commission's certifying project, and permit requirement was therefore preempted by Natural Gas Act. ... Because Natural Gas Act, *15 USCS §§ 717* et seq., and Federal Energy regulatory Commission's regulations promulgated thereunder govern virtually every facet of liquefied natural gas facility's siting, construction, and operation, Congress has occupied entire field of natural gas regulation and thereby preempted state assent processes. ... Natural Gas Act (NGA), *15 USCS §§ 717* et seq., delineates specific areas of federal regulatory authority; section 1(b) of

Natural Gas Act (NGA), 15 USCS §§ 717 et seq., gives Federal Energy Regulatory Commission plenary jurisdiction over three areas, and three areas only: (1) transportation of natural gas in interstate commerce, (2) sale in interstate commerce of natural gas for resale, and (3) natural-gas companies engaged in such transportation or sale. ... State commerce commission is without authority to regulate issuance of securities issued by natural gas pipeline companies to finance construction and acquisition of facilities subject to jurisdiction of Federal Power Commission [now FERC]. *Natural Gas Act 15 USCS §717Section III (B)(7)*. (Citations Omitted).

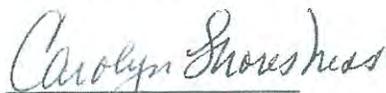
**IV. Conclusion**

The Deerfield BOH finds that the proposed hydraulic fracturing—fracking—pipeline will endanger the health and lives of the residents of Deerfield, and hereby bans the construction and operation of such pipeline within the boundaries of the Town of Deerfield. The Board of Health of Deerfield has the authority to ban construction and operation of the proposed pipeline and the Federal Energy Regulatory Commission does not have the legal authority to preempt the decision of the Board of Health.

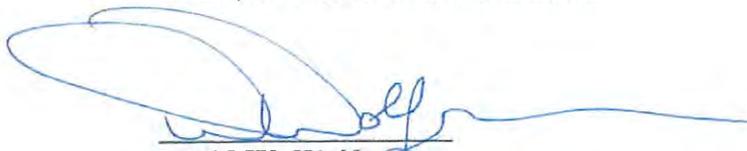
**ORDER.**

For all the reasons stated in this opinion the Board of Health of Deerfield orders Kinder Morgan or any of its subsidiaries or affiliated companies to cease immediately all its activities in Deerfield related to construction of the proposed hydraulic fracturing pipeline within the boundaries of the town of Deerfield, Massachusetts.

**So ORDERED.**

  
**Carolyn Shores Ness**  
**Chair, Deerfield Board of Health**

  
**Mark E. Gilmore**  
**Member, Deerfield Board of Health**

  
**David W. Wolfram**  
**Member, Deerfield Board of Health**



September 24, 2014

**Via Certified & First Class Mail**

Carolyn Shores Ness  
Chair, Board of Health  
Town of Deerfield  
8 Conway Street  
South Deerfield, MA 01373

Re: Board of Health August 26, 2014 and September 12, 2014 Letters

Dear Ms. Shores Ness:

This firm represents Tennessee Gas Pipeline Co., LLC (“Tennessee”) in connection with the portion of the proposed Northeast Energy Direct Project (the “NED Project”) located in Massachusetts. I am writing today in response to your August 26, 2014 and September 9, 2014 letters to Tennessee.

The Federal Energy Regulatory Commission (“FERC”) will be the government agency responsible for reviewing Tennessee’s application for a certificate of public convenience and necessity to construct the NED Project located in Massachusetts. As part of the review process, FERC will, *inter alia*, evaluate the proposed siting of the pipeline and the proposed construction methodology.

We disagree with your assertion that local boards of health, such as that of Deerfield, enjoy *unlimited* power to negate or regulate the construction and installation of an interstate natural gas pipeline, and that any action by the Town of Deerfield to attempt to do so is “not pre-emptible by the Federal Government.” Under the authority vested in FERC by the Natural Gas Act, 15 U.S.C. § 717 *et seq.*, the federal government through FERC “maintains exclusive jurisdiction over the transportation and sale of natural gas in interstate commerce for resale.” *Schneidewind v. ANR Pipeline Co.*, 485 U.S. 293, 300-01 (1988). FERC exercises this jurisdiction through the permitting authority vested to it by Congress, including the requirement that a petitioner obtain a certificate of public convenience and necessity prior to commencing construction of facilities in connection with an interstate natural gas pipeline. 15 U.S.C. § 717f(c)(1)(A). Multiple state and federal courts have held that state and local government regulations may be pre-empted because jurisdiction is exclusively occupied by FERC’s

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CALIFORNIA \ CONNECTICUT \ MASSACHUSETTS \ MICHIGAN \ NEW JERSEY \ NEW YORK \ PENNSYLVANIA \ VIRGINIA \ WASHINGTON, D.C.

Carolyn Shores Ness

September 24, 2014

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permitting authority. *See, e.g., Islander East Pipeline Co., LLC v. Blumenthal*, 478 F.Supp.2d 289, 294 (D.Ct. 2007), quoting *National Fuel Gas Supply Corp. v. Pub. Serv. Comm'n of the State of New York*, 894 F.2d 571, 579 (2d Cir. 1990) (“Because FERC has authority to consider environmental issues, states may not engage in concurrent site-specific environmental review”); *Northern Nat. Gas Co. v. Munns*, 254 F.Supp.2d 1103, 1110 (S.D. Iowa 2003) (“The breadth of [federal statutes and regulations governing environmental and land use issues], when combined with extensive safety regulations applicable to pipeline construction, compel the conclusion that Congress has occupied the field of interstate gas pipeline regulation, including land maintenance and restoration standards”).

The FERC permitting process facilitates state and local authorities raising concerns about a proposed project. As such, the Town of Deerfield may participate in the FERC review of the proposed NED Project during the pre-filing process and the certificate application process by, *inter alia*, submitting comments to FERC and attending open houses conducted by Tennessee and scoping meetings conducted by the agency. We encourage the Town of Deerfield to raise any concerns it may have regarding the NED Project with FERC.

Please feel free to call me should you have any questions.

Sincerely,



James L. Messenger

cc: Randall Pais, Esquire



## **TOWN OF DEERFIELD**

Board of Selectmen and Board of Health  
8 Conway Street  
South Deerfield MA 01373  
Voice: 413.665.1400  
Facsimile: 413.665.1411  
Website: [www.deerfieldma.us](http://www.deerfieldma.us)

REC'D SEP 2 2014

**Via Certified Mail Return Receipt Requested**

August 26, 2014

Joseph Listengart  
General Counsel  
Kinder Morgan  
1001 Louisiana St, Suite 1000  
Houston, TX 77002

**Re: Kinder Morgan Pipeline Proposal for Western Massachusetts**

Dear Mr. Listengart:

The purpose of this letter is to inform you that on September 9, 2014 at 6:30 pm the Board of Health of Deerfield Massachusetts will hold a hearing to evaluate whether or not the proposed pipeline by your company presents an unacceptable health danger to the resident of Deerfield Massachusetts.

The Board of Selectman "BOS" of Deerfield has requested a number of times for representatives of your company to come to an open meeting of the Select Board and describe what Kinder Morgan is proposing which might impact the Town of Deerfield.

On August 20, 2014 at the request of residents of Deerfield the BOS held an open meeting and after considering what appeared to be the wishes of the majority of town residents issued a not binding petition to Massachusetts and Federal authorities not to allow the construction of the proposed pipeline for a variety of reasons.

Residents of the town requested at this meeting that the Board of Health "BOH" of Deerfield conduct hearings on the possible negative health impacts this pipeline could have on the town's residents. The Board of Health agreed to conduct the requested hearings and has scheduled a hearing for September 9, 2014 at 6:30 pm in the Frontier Regional School Auditorium, 113 North Main Street, South Deerfield MA.

Boards of Health in Massachusetts have been granted unlimited power by the legislature to stop any activity in a town viewed as possibly harming the residents of the town. This unlimited power was upheld by the Supreme Court of Massachusetts in *Arthur D. Little, Inc. v. Commissioner of Health and Hospitals of Cambridge* 395 Mass. 535; 481 N.E.2d 441; 1985 Mass. LEXIS 1720 (1986).

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The Board of Health of Deerfield has very serious concerns regarding health impacts by the proposed pipeline on the residents of the town. The burden of proof that the pipeline presents no health risks to any citizen of Deerfield rests with Kinder Morgan. *Stately Homes, Inc. v. Richard A. Escolas, Jr., et al.*, 17 Mass. L. Rep. 349; 2004 Mass. Super. LEXIS 44 (2004). Given these facts we are urging Kinder Morgan to present testimony, at the scheduled September 9, 2014, as to why Kinder Morgan believes that the proposed pipeline presents no health risks to residents of the Deerfield. Kinder Morgan has publicly stated their belief that *The Natural Gas Act 15 U.S.C. § 717* is the only law to which they have to abide for the constructions and installation of the pipeline through Deerfield. Kinder Morgan is wrong. There is nothing in the *Natural Gas Act* which pre-empts BOH's in Massachusetts to negate or regulate the installation of the pipeline if the BOH were to find that such action could be detrimental to the health of any resident of Deerfield, and any such action taken by a BOH is not pre-emptible by the Federal Government, *Arthur D. Little Id.*

As you are aware the *Federal Energy Regulatory Commission* "FERC" has been granted powers by Congress to regulate gas pipelines throughout the United States. This power granted by Congress to FERC to regulate gas transportation, prices etc., is based on principles which are anathema to the responsibilities of Boards of Health in Massachusetts. FERC's regulations are generated balancing risks with costs whereas Boards of Health are not bound by such principles.

The BOH of Deerfield has learned from presentations given by Kinder Morgan in other towns a number of facts regarding the pipeline which are of concern to BOH.

1. Kinder Morgan has made public the fact that the walls of the pipeline projected for Deerfield are only 60% as thick as similar walls of pipelines used in more congested areas. The use of this cheaper pipeline is based on monetary assignments to values of possible life losses, in case of accidents, versus costs of the thicker pipelines. This is unacceptable to the BOH as the BOH values the loss of one life at infinite value not the one million dollars or so assigned by FERC for each death the result of an accident.
2. Kinder Morgan has stated publicly that it is just a transportation company and does not know the chemical composition of the fracked gas transported through the pipeline. This is unacceptable to the BOH of Deerfield. The BOH of Deerfield needs to know the composition of a gas which can possible leak and injure residents of Deerfield. As you are aware the fracking process is achieved by the pumping of vast amounts of toxic chemicals to break the underground shale and release or convert the shale into gas. These chemicals become part and parcel of the transported gas and the BOH needs to know what these chemicals are in order to properly protect the residents of Deerfield.
3. The installation of the pipeline through Deerfield involves the digging of a wide and deep channel through areas where the water table is high. The water will eventually rust the pipeline and release additives of the pipeline which will contaminate the shallow water wells used by many residents of Deerfield.

4. The one hundred feet wide swath of land the pipeline needs for its regular maintenance will require extensive use of herbicides for the life of the pipeline. Given the proximity of many Deerfield homes to the pipeline these herbicides will eventually contaminate the same shallow water wells

The BOH wants testimony on these issues before considering granting a permit to Kinder Morgan for the construction and operation of the pipeline through Deerfield and will expect from Kinder Morgan detailed answers to the issues raised here as well as to other issues dealing with possible health impacts on the residents of Deerfield.

Sincerely

A handwritten signature in cursive script that reads "Carolyn Shores Ness".

Carolyn Shores Ness  
Chair Board of Health

Cc: Norman Bay Chairman Federal Energy Regulatory Commission

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