

## **Memo for New York State Landowners Along the Proposed Tennessee Gas Pipeline\***

**\* [The information in this memo is intended as a general guide, and is not intended to provide—nor should it be relied upon for—legal advice. You should consult with an attorney for legal advice concerning your specific property’s facts and circumstances.]**

There are four parts to this memo: 1: Some general background about the pipeline and land use; 2: A description of the approval and implementation process; 3: Answers to some questions about abutting landowners’ rights and participation, and 4: Protesting the pipeline. A chart presents some of the same material in a different format following a list of references for more information and resources.

### **1. Background Description of the Proposed Pipeline and Land Use Issues**

The proposed pipeline is called the **Northeast Energy Direct (NED) Pipeline Project** (the **pipeline**). **Tennessee Gas Pipeline Company (TGP)**, a subsidiary of **Kinder Morgan (KM)**, is proposing to construct a high pressure pipeline to carry compressed fracked natural gas, running from northern PA, north to Wright, NY, east through New York State, New Hampshire and Massachusetts to Dracut, MA. From there, gas will be distributed to power plants and local distribution companies (**LDCs**) in the larger metropolitan areas of New England and/or will be sold to exporters for sale outside the US.

To go forward, TGP must receive a **Certificate of Public Necessity (Certificate)** from the **Federal Energy Regulatory Commission (FERC)**. TGP submitted a pre-filing application to FERC on September 16, 2014. **The FERC docket number is #PF14-22**. The pre-filing process is intended to identify problems before the formal filing of the application. TGP hopes to file its formal application to receive a Certificate in September 2015.

At that point FERC is required to conduct a NEPA (National Environmental Policy Act) environmental review for all properties that are abutting the pipeline route, and to hold an open public comment period to allow anyone who wishes to comment on the proposed pipeline project to do so while the TGP application is under consideration. Under recent federal law, FERC review and a decision are anticipated to be completed within 12 months of TGP’s application submission. There is NO local law, permit, or other license required in order for the pipeline to be approved; only federal law controls the approval process for interstate pipelines. But local towns may pass non-binding resolutions against the pipeline to show FERC that they do not want a pipeline there.

If TGP’s FERC Certificate is granted, TGP then has the legal right to condemn private land so that TGP may acquire it by eminent domain along the path of the pipeline, and to go forward with planning, construction and operation of the pipeline. **Eminent domain takings cannot occur until after a FERC Certificate has been granted**, and until then permission to survey your property is within your rights to refuse (unless TGP already has an easement on your property that specifically states future surveys may be done without your prior permission or approval). If anyone gives you a document, calls you on the telephone, or comes to your home and tells you in person that eminent domain proceedings will begin immediately if you refuse survey permission, they are NOT giving you correct information.

### **2. Description of Pipeline Approval and Implementation Process**

There are 4 stages (a through d) from start to finish; that is, from before TGP has applied to FERC until an operational pipeline will be in place. In each phase, different options are available to abutting landowners and other citizens seeking to stop the pipeline. These options change, and become more limited, in each successive phase of the process.

**2a. Pre-Application Phase:** During this period, TGP will be preparing to make its application to FERC. TGP will send surveyors to abutting lands, seeking permission to survey along the proposed pipeline path because they need a definite pipeline route in order to undertake the NEPA environmental review. **This phase began on September 16, 2014**. The ability to stop the pipeline greatly diminishes once a FERC Certificate has been

granted. Before and during the certificate application phases are the best times for landowners and all citizens to be heard. **This is the time to refuse or rescind survey permission by sending a letter to TGP; save a copy for your files, and send a copy to FERC. This is also the time to send FERC, your town officials, and all your state and federal political representatives a letter or email stating your objections to the pipeline. Call FERC (see below) and follow their steps to read public information on TGP's pipeline application and review process. Ask your town to pass a non-binding resolution against the pipeline to let TGP and FERC know the town does not want the pipeline there, and send both FERC and TGP copies of the resolution.**

**2b. Application to FERC:** Submission of the TGP application to FERC is expected to occur around September 2015. The application will contain many parts, including available survey information along the pipeline pathway, an environmental analysis, and other technical materials. **This is a good time to have a current appraisal of your entire property done. The appraised value should include the entire property, because these values are needed to prove the worth of both the area where the pipeline could go that may be seized for eminent domain, and also the worth of the rest of the area and buildings that would be affected if the pipeline were to leak, explode, cause a fire, cause a sinkhole, or cause other problems. Include the cost of higher insurance rates for pipeline land, and note that land may not be able to be mortgaged or insured once a pipeline is in place. Letters and protests can continue during this phase.**

**2c. Following FERC Granting of a Certificate:** Upon issuance of the FERC Certificate, which could happen within a year of the application submission, TGP will secure certain new legal rights:

First, TGP can now go to court and get permission to survey land along the pipeline pathway, and bring their equipment onto that land.

Second, as with a new highway, TGP will be granted an easement over the land where the pipeline will run, through the power of eminent domain (also called condemnation), even if the landowner objects. **Unlike signing an easement with the company, eminent domain takings may be able to be reversed even though you have been paid for the eminent domain taking. Eminent domain takings also may only last as long as the company who did the taking is in business, or is using the land for the purpose it was seized for. This is important information to research before an eminent domain seizure occurs.**

Third, abutting landowners will be compensated for the fair value of the easement land taken, based on a valuation procedure overseen by Federal Court. **Landowners can try to increase the amount of the compensation over what is initially offered by TGP, by showing the court that the pipeline will reduce the value of ALL their property, and will increase their risk [and possibly insurance costs] as well.**

**2d. Construction/Operation:** Following completion of the surveying and other construction planning, TGP will construct the pipeline along the approved easement path and, following completion of construction, pipeline operations will begin. **According to the FERC information booklet for property owners, land areas disturbed during pipeline construction are 75 to 100 feet in width, and easements are 50 feet wide once construction is completed, with that easement land restricted from your use and only accessible by TGP representatives and subcontractors, 24 hours per day, 7 days per week. Pipeline dangers and accidents are listed online in Wikipedia under "Kinder Morgan."**

### **3. Landowners' Rights, Participation, and Answers**

Your rights as an abutting landowner regarding TGP or subcontractors entering your land depends upon whether or not TGP already has an easement on your land, and what that easement says. Generally, a new pipeline needs new permission even if you already have pipeline on your land. Unless your previous pipeline easement specifically says that TGP can do new surveys without getting permission, TGP cannot enter your land to do a new survey without first getting your permission. Until a FERC Certificate is granted, **you do not have to allow TGP representatives or subcontractors onto your land to survey or for any other purpose**

**(unless an existing easement gives them that permission).** Only after TGP has been granted a FERC Certificate can they get a court order allowing them onto your land for surveying in connection with eminent domain land seizures. An exception to this sequence of events is if a **clear majority** of landowners have **already** given survey or easement permission, TGP can ask FERC to grant them survey permission for the minority of landowners who are still refusing permission to survey.

First, confirm that you do **not** give permission to TGP to come onto your land: **send TGP a letter denying them access.** Form letters are available as set forth in **References**, below. If you have already given TGP permission to enter your land, **you may withdraw (rescind) your permission by sending TGP a letter stating that.** Form letters are available as set forth in **References**, below.

If your land already has an existing pipeline easement, TGP may tell you that they do not need any additional permission to enter and survey. This may or may not be true—that depends upon the language of the original easement agreement on that piece of property. **Send a certified letter asking TGP to prove they have the right to enter or survey your property by sending you a notarized or certified copy of the original easement with it noted where TGP has these rights.** Review the original easement document, and the new copy, and consult a lawyer about this. **If you can show that TGP doesn't have the right to survey or enter onto your property, and you have already sent TGP a letter but you are still having problems with people refusing to leave or to stop surveying your property, you can have a lawyer write a "Cease and Desist" letter to TGP and their subcontractors.** You can also call or write your local Town, Planning, and Zoning officials and ask them to take action.

#### **4. Protesting Against the Pipeline**

Locally, citizens are organizing in many ways, and you can find out more about town and pipeline opposition meetings, lawn signs, letters to the press, on electronic media, and to elected officials, online petitions and groups, supporting the movement financially, and other means in **References**, below.

Federally, during the application process you may become an "intervener" in the FERC proceeding and register your opposition officially, as well as have access to the application documents. This involves filing a form with FERC, and further involvement via email. This information can be gotten through FERC (see **References**, below). **Note that you can choose at any time to cooperate without your actions affecting your legal right to receive compensation for your land.**

#### **References**

- Stop NY Fracked Gas Pipeline (SNYFGP): on **Facebook**, and/or via email **raconnors@yahoo.com**, or phone **518 – 781 – 4686**
- Stop the Pipeline: **www.stopthepipeline.org**
- No Fracked Gas In Mass: **www.nofrackedgasinmass.org** (and they have a SNYFGP webpage link on their "TOWN-BY-TOWN" page under "COLUMBIA COUNTY")
- Rural Communities: **www.RuralCommunities.org**
- FERC (Federal Energy Regulatory Commission) Office of External Affairs: **http://www.ferc.gov**  
**1-866-208-3372** or **1-202-502-8004**, **customer@ferc.gov**

## TENNESSEE GAS PIPELINE – SUMMARY

No.	Stage	Your Rights
1.	Pre-Application	<p>You may deny or withdraw access to your land for surveying by TGP.</p> <p>You may participate in organized or personal protests against the pipeline.</p> <p>You may ask local town(s) to pass a non-binding resolution against the pipeline and let FERC know the pipeline is not a public necessity.</p>
2.	Application to FERC	<p>Same as in Stage 1.</p> <p>Also, you may register as an intervener in the FERC proceeding.</p> <p>This is a good time to have your land and all property on it appraised.</p>
3.	FERC Certificate Granted	<p>You may object in court to TGP entry onto &amp;/or seizure of your land;</p> <p>you will almost certainly lose your case, but may succeed in creating some delay.</p> <p>In the eminent domain valuation proceeding (to determine the amount of compensation you will receive), you may try to get a higher valuation and thus a higher amount of compensation.</p> <p>Try to include compensation for the loss of value to all property, based on pipeline within the land, due to the possibility of damage, fire, higher insurance rates, etc.</p>
4.	Construction/Operation	<p>No legal rights to stop or interfere with pipeline.</p> <p>Mortgage &amp;/or insurance companies may refuse coverage &amp;/or have higher costs.</p> <p>If pipeline construction stops &amp;/or pipeline company goes out of business &amp;/or pipeline is abandoned, eminent domain takings may possibly be reversed by going to court.</p>