

MEMORANDUM

TO: U.S. Senator Jeanne Shaheen (via [contact@jeannshaheen.org](mailto:contact@jeannshaheen.org) and first class mail)  
 U.S. Senator Kelly Ayotte (first class mail)  
 U.S. Representative Ann McLane Kuster (via [NH.Energy@Mail.House.Gov](mailto:NH.Energy@Mail.House.Gov))  
 U.S. Representative Frank Guinta (via [info@teamguinta.com](mailto:info@teamguinta.com) and first class mail)  
 Federal Energy Regulatory Commission (FERC) (via eComment)  
 NH Governor Maggie Hassan (via [governorhassan@nh.gov](mailto:governorhassan@nh.gov))  
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 Fitzwilliam Board of Selectmen (via [fitzwilliamnh@fitzwilliam-nh.gov](mailto:fitzwilliamnh@fitzwilliam-nh.gov))  
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FROM: Robert T. Ford, Esq., Upper Gap Mountain Road, Fitzwilliam, NH

RE: Deny Kinder Morgan (KM) NED Pipeline Proposal PF14-22 and Supporting Local Gas Purchasing Contracts in NH and MA

DATE: August 24, 2015

I am writing to state that my family is completely opposed to the proposed NED pipeline and any proposed underlying NH or MA state gas purchasing contracts which may be used as a basis to justify it. We have repeatedly refused to give consent to allow a survey or access of our land and reiterate that refusal again here. We ask for your support in rejecting the pipeline in Fitzwilliam and the Monadnock Region for the following reasons and because little or no positive benefit to Fitzwilliam (or the Monadnock Region) can be demonstrated in exchange for the permanent environmental damage, violation of conservation protections, ongoing health and safety risks, lost quality of life, permanent municipal and landowner costs, and other burdens being imposed on the towns and the residents of this area.

The following are just a few of the reasons why NED as currently proposed should be stopped and any underlying gas purchasing contracts should be rejected.

A. Breach of the Public Trust and Charitable Trust Doctrines: NED proposes to cross and damage several valuable conservation properties or conservation easements/restrictions held by municipalities, state agencies, federal governments, and private nonprofit organizations in MA and NH (such as the

Forest Society and the Monadnock Conservancy), as well as in other states. These lands are protected in perpetuity for the benefit of people and wildlife and are held in public trust for conservation purposes (known as the Public Trust Doctrine). Illinois Cent. R.R. v. Illinois, 146 U.S. 387 (1892); Gould v. Greylock Reservation Comm., 350 Mass. 410 (1966); Op. Att’y Gen., June 6, 1973. NED violates the Public Trust Doctrine by crossing and converting conservation lands to an inconsistent use (which is prohibited and actionable by the citizens) and which erodes the public’s confidence in government, conservation permanence, and the benefits of environmental protection and conservation for everyone. Furthermore, many (if not all) of these conservation lands being crossed are supported by federal funds/grants, federal tax dollars (including ongoing IRS charitable tax deductions), charitable donations, state funds/grants, and state tax dollars (including ongoing state charitable tax deductions). The use of government tax dollars, grants, and IRS/DOR charitable tax deduction benefits require that the conservation of land associated with these financial incentives continue as conservation land in perpetuity, many of these requirements are codified in federal, IRS, and state regulations. See IRS Regulations, 26 CFR § 1.170(A)-14. Similarly, under the Charitable Trust Doctrine, gifts or partial gifts of land or interests in land for conservation purposes can be enforced by the intended beneficiaries, including the general public, and cannot be undone by a vote or act of the Legislature. Opinion of the Justices, 368 Mass. 979 (1975). The environmental destruction promised by the pipeline violates that conservation protection and voids the purpose of any government funding/grants and IRS tax deductions awarded creating a need to reimburse or refund the government grant programs and IRS for the loss of the conservation benefits they originally underwrote. **FERC should explain how it intends to reimburse or compensate donors, taxpayers, land trusts, charities, government agencies, and the IRS for lost conservation benefits (and those which were paid for), lost conservation funding, and lost conservation tax deduction incentives, credits, and lost tax revenue due to the destruction promised by pipeline and breach of the Public Trust and Charitable Trust Doctrines.** Even more damaging for our state’s future and environmental health, breach of the Public Trust and Charitable Trust Doctrines completely erodes public confidence in government and faith in any future conservation initiatives. Such damage to public confidence and trust in government cannot be cured by any compensation or mitigation offered by KM or any entity for that matter. As some know, our farm was formerly owned by Jane Fiske who was a major force behind saving Gap Mountain with other Fitzwilliam and Troy residents and she donated a substantial part of our land to the Forest Society's Gap Mountain Reservation which we abut. Like her, we would like to contribute additional conservation land to the Forest Society’s Gap Mountain Reservation, the Monadnock Conservancy, or the Town to preserve this property’s historical and environmental significance, but sadly that effort is in jeopardy with the level of destruction promising to impact and devalue our area as well as the undoing of existing conservation protections contemplated by NED. **As a result, if not stopped the pipeline should be rerouted and located in, on, under, or along existing hardscape and previously disturbed hardscape infrastructure (such as Route 12, other major highways such as the I-90/MA Turnpike alternative, or within or along other existing pipeline corridors), and NOT in undisturbed virgin wetlands/forested areas adjacent to above-ground electric power lines.**

B. Breach of Due Process, Lack of Fairness in FERC Scoping Hearings, Segmentation, and Failure to Include Reasonably Foreseeable Pipelines Required by NEPA: As several state and federal legislators have repeatedly urged FERC, the current scoping period should be suspended in order for citizens and municipalities to evaluate the new information recently provided by KM and to provide meaningful feedback. The 79 volumes of their recent report have 6,571 pages of maps, tables and technical drawings, and contain significant gaps in information like a Horizontal Directional Drill Plan that consists of four pages containing one sentence, and over 10,000 instances of meaningless “TBD” in tables that should be completed with valid information. At the state and local government levels, such omissions would be a **direct and unilateral basis for denial**, even at a pre-filing stage. The same standard should apply here. Also absent is any information about the cumulative impact and overlap between the NED, KM’s CT Expansion, other laterals currently being considered in NH and MA, and future compressor stations that would be reasonably required for new service areas and laterals contemplated as a result of NED. All reasonably related and anticipated projects as a predictable result of NED should be combined into one NEPA filing to avoid the growing evidence of segmentation as the Court said in Delaware Riverkeeper v. FERC and for the purpose of enabling citizens and governments to understand the full scope of NED, its overall environmental impact, and to understand other reasonably foreseeable and anticipated consequences for our region. 44 ELR 20126, No. 13-1015 (2014). **This is especially true where new gas purchasing contracts designed to justify NED are currently being advanced with NH and MA PUC’s for new service areas in our region (such as Liberty Utilities and Berkshire Gas are currently doing). It is therefore reasonably foreseeable in the not too distant future that new laterals and new compression stations will be directly connected to NED, which would not exist without NED approval, and new environmental destruction will be required as a result of NED, such as in Troy, NH, Jaffrey, NH, Marlborough, NH, Swanzey, NH, and Keene, NH, to name just a few.**

As the Court held in Riverkeeper, FERC “fail[ed] to assess the additive effect of the Project together with the effects of existing or **reasonably foreseeable gas development activities** in the Project area, including . . . compressor stations, and other infrastructure. . . [and was] inadequate in considering the combined environmental impacts of related existing and **reasonably foreseeable pipelines** within the Commission’s Jurisdiction [emphasis added].” As the Court instructed, NEPA is “in large measure, an attempt by Congress to instill in the environmental decision making process a more comprehensive approach so that long term and cumulative effects of small and unrelated decisions could be recognized, evaluated and either avoided, mitigated, or accepted as the price to be paid for the major federal action under consideration. NRDC v. Callaway, 524 F.2d 79, 88 (2d Cir. 1975).” Thus, an agency like FERC when reviewing NED must consider all “connected actions,” “cumulative actions,” and “similar actions.” 40 C.F.R. § 1508.25(a). Cumulative actions are defined as “the impact on the environment which results from the incremental impact of the action when added to other past, present, and **reasonably foreseeable future actions** regardless of what agency (Federal or non-Federal) or person undertakes such other actions. Cumulative impacts can result from individually minor but collectively significant actions taking place over a period of time.” 40 C.F.R. §1508.7. The Court explained that “a meaningful cumulative impact analysis must identify (1) the area in which the effects of the proposed

project will be felt; (2) the impacts that are expected in that area from the proposed project; (3) **other actions – past, present, and proposed, and reasonably foreseeable – that have had or are expected to have impacts to the same area**; (4) the impacts or expected impacts from these other actions; and (5) the overall impact that can be expected if the individual impacts are allowed to accumulate [emphasis added].” Grand Canyon Trust v. FAA, 290 F.3d 339, 345 (D.C. Cir. 2002).

As a result, and as other commenters have opined, FERC’s draft EIS fails to consider the reasonably foreseeable cumulative impacts of NED for our region and environment based on existing evidence supporting reasonably predictable laterals, compression stations, and environmental destruction directly connected to and as a direct result of NED. The absence of such information violates NEPA and deprives our region of, among many other things, a meaningful understanding of the full price to be paid for this major federal action being considered.

To comply with NEPA, as the Court held in Grand Canyon, the EIS should be revised to include “other actions – past, present, and proposed, and reasonably foreseeable – that have had or are expected to have impacts the same area; the impacts or expected impacts from these other actions; and the overall impact that can be expected if the individual impacts are allowed to accumulate.”

C. Wetlands and Drinking Water Aquifer: NED impacts a major wetland resource area and drinking water aquifer supply source located along the western and southern sides of my land abutting the electric power line corridor and which is associated with the Bowkerville Pond watershed and related aquifers. These wetland resource areas and aquifers should be avoided by the pipeline due to potential contamination and damage to underground aquifers and water flow due to pipeline construction and inevitable gas leaks. **To preserve wetland resource areas, values, functions and drinking water aquifers, if not stopped the pipeline should be rerouted and located in, on, under, or along existing hardscape and previously disturbed hardscape infrastructure (such as Route 12 and other major highways such as the I-90/MA Turnpike alternative, or within or along other existing pipeline corridors), and NOT in undisturbed virgin wetlands/forested areas adjacent to above-ground power lines.**

D. Substation Public Safety Hazard: NED directly abuts and passes within a few feet of the PSNH high voltage substation in Fitzwilliam. PSNH has acknowledged at recent Selectmen meetings that the substation has recently suffered structural failures and other failures of the high voltage transformer units. Such failures in close proximity to the pipeline would result in catastrophic destruction for our neighborhood and Town. Further, should a compromise in the pipeline integrity occur due to locating it near high voltage power lines and a high voltage substation (as is known to happen due to the electromagnetic fields generated), its location just a few feet from the substation would be equally as catastrophic. **Locating a volatile high pressure gas pipeline so close to a high voltage substation is a recipe for disaster.** As a result, and to protect public safety, if not stopped **the pipeline should avoid the substation area and should be rerouted** and located in, on, under, or along existing hardscape and previously disturbed hardscape infrastructure (such as Route 12 and other major

highways such as the I-90/MA Turnpike alternative, or within or along other existing gas pipeline corridors).

E. Health Concerns: As recently cited in the Greenfield Recorder and other news media, KM has a long record of health and safety violations, felony convictions for deaths due to gas line negligence, gas pipeline leaks, and has demonstrated a knowing disregard for local health, safety, and environmental regulations that caused unreasonable risk to the public and the contamination of drinking water resources and private wells. This is unacceptable and should unilaterally serve to disqualify KM from filing any FERC or local applications. As we know, all residences in the Gap Mountain area use private drinking wells from underground aquifers or shallow wells and it is known in the industry that locating gas lines along or near high voltage transmission lines (not to mention near a high voltage substation) and the electromagnetic fields they generate cause accelerated corrosion of the gas line coating resulting in gas leaks contaminating the ground water, among other health and environmental harms. Our drinking water also serves agricultural purposes and supports our livestock business. By allowing the gas pipeline in this location and by this company we are inviting trouble, health problems, and economic loss. **As a result and to protect public safety, if not stopped the pipeline should avoid the PSNH substation area and should be rerouted and located in, on, under, or along existing hardscape and previously disturbed hardscape infrastructure (such as Route 12 and other major highways such as the I-90/MA Turnpike alternative, or within or along other existing pipeline corridors).**

F. Increased Noise Concerns: As you know, the pipeline apparently cannot be located in the cleared area of the existing electric utility power line corridor due to the electromagnetic fields generated, although for some strange reason, the pipeline crosses through the cleared utility corridor at various points. This is an unacceptable risk to public safety and should be rejected. In addition, a new 150+ foot wide swath of cleared corridor next to the existing power line corridor must occur in which to install the gas pipeline. This extensive loss of trees along the current power line corridor would be devastating for my property aesthetically, environmentally, and would compromise the stability of the steep slope of my western boundary creating a future environmental and safety hazard. Further, this new cleared corridor would remove a substantial sound buffer currently serving to reduce noise from the PSNH substation and Route 12 traffic thus depriving us of the quiet use and enjoyment of our neighborhood and exacerbating harm to our neighborhood. **As a result, if not stopped the pipeline should be rerouted and located in, on, under, or along existing hardscape and previously disturbed hardscape infrastructure (such as Route 12 and other major highways such as the I-90/MA Turnpike alternative, or within or along other existing pipeline corridors).**

G. Wildlife Habitat: Above ground utility line corridors and the abutting forests are commonly occupied by various wildlife as important habitat. Clearing a new 150+ foot swath of land adjacent to the power lines would unnecessarily destroy this habitat occupied by numerous wildlife species, some endangered such as the Smooth Green Snake, which may also occur on my property. **As a result, if not stopped the pipeline should be rerouted and located in, on, under, or along existing hardscape and previously disturbed hardscape infrastructure (such as Route 12 and other major highways such as the I-90/MA Turnpike alternative, or within or along other existing pipeline corridors).**

H. Alteration of Landscape and Waterflow Patters/Flooding Concerns: Installing the pipeline on the western boundary of my property as proposed will jeopardize the stability of steep slopes leading to a risk of land and rock slides and will change waterflow patterns associated with drainage leading to a risk of flooding and water contamination. All are factors that will jeopardize the safety and integrity of the pipeline leading to public health and safety risks and contamination of groundwater supplies. The extensive blasting required for installation will also destabilize and jeopardize this area. **As a result, if not stopped the pipeline should be rerouted and located in, on, under, or along existing hardscape and previously disturbed hardscape infrastructure (such as Route 12 and other major highways such as the I-90/MA Turnpike alternative, or within or along other existing pipeline corridors).**

I. Undue Overburdening: The Gap Mountain area where we live, once touted as a beautiful asset and important natural resource in Fitzwilliam and Troy for tourism, recreation, and hunting, is currently being degraded by the energy utilities. We already host a noncompliant high voltage substation damaging our neighborhood and PSNH is currently seeking to expand its power lines causing even more tree loss, environmental damage, and wetland alteration. We have made strides working with the Selectmen and Planning Board to help improve these issues. But now add the gas pipeline, and you have a perfect storm of environmental destruction and detriment to our neighborhood. Fitzwilliam and the Gap Mountain area is being overtaxed by the utilities and should not have to singularly bear the environmental damage, lost tourism, lost economic and agricultural opportunities, depreciated property values, and public safety risks caused by the combination of a volatile noncompliant substation, power line expansions, and a new KM gas line all in the same neighborhood. Further, it seems unfortunately predictable that either PSNH (or KM) will eventually seek to occupy adjacent land for additional structures, transformers, gas compressors, utilities, etc. further destroying our natural resources, threatening public health, and degrading our neighborhood and the Gap Mountain area. **As a result, if not stopped the pipeline should be rerouted and located in, on, under, or along existing hardscape and previously disturbed hardscape infrastructure (such as Route 12 and other major highways such as the I-90/MA Turnpike alternative, or within or along other existing pipeline corridors).**

J. Destruction of Upper Gap Mountain Road and Cobligh Hill Road: Installation of the pipeline will likely involve the use of narrow dead-end dirt roads and cart paths that provide access to and surround my property and in which I currently hold a possessory fee interest. These narrow dirt roads/cart paths are not suitable for heavy construction equipment and Cobligh Hill Road (which circumnavigates my property) is an abandoned path not passible by any vehicles or equipment. Use or alteration of these dirt roads for any access or travel relating to the pipeline construction would constitute an overburdening of any public or other easement right to pass that may exist, if any. As a fee owner of these dirt roads, I will be negatively impacted by any increased use associated with the pipeline construction and will require appropriate compensation, restoration, and mitigation if eminent domain or other proceedings require their use or occupancy. **As a result, if not stopped the pipeline should be rerouted and located in, on, under, or along existing hardscape and previously disturbed hardscape infrastructure (such as Route 12 and other major highways such as the I-90/MA Turnpike alternative, or within or along other existing pipeline corridors).**

K. Eminent Domain Taking is Wrong for Private Business Purpose: Currently, NH law prohibits the taking of land by government for private gain and for power transmission lines. The forced taking of a portion of my land for this project violates NH law and, even if permitted, is wrong without adequate compensation for the total financial losses suffered, including but not limited to, financial harm due to loss of resale value, loss of mortgage and refinance eligibility, loss of homeowner's insurance, loss of agricultural and subdivision opportunities, and lost quality of life and enjoyment. None of these very real and quantifiable losses are accounted for in the compensation guidelines provided by federal eminent domain. As a result, and as was proposed in part by the NH legislature, KM should be obligated to compensate me equal to the purchase of the entirety of my farm and homestead property connected with the pipeline portion at a fair market value based on comparable sales data determined by an independent appraiser. **Otherwise, if not stopped the pipeline should be rerouted and located in, on, under, or along existing hardscape and previously disturbed hardscape infrastructure (such as Route 12 and other major highways such as the I-90/MA Turnpike alternative, or within or along other existing pipeline corridors).**

L. More Investigation of Nonimpact Alternatives, Highway/Existing Pipeline Colocation Alternatives, and Renewable Energy Alternatives must be done: In the interests of due process, fairness, and the efficient use of government resources and tax payer dollars, KM (its subsidiaries and agents) should be enjoined from submitting additional applications to FERC (and to any local public utility agencies) and FERC (and any local public utility agencies) should be enjoined from receiving and reviewing any further applications relating to NED until such time as a comprehensive review of the region's energy need is completed and compared against: (1) newly authorized energy and gas delivery projects, (2) new enhancement, maintenance, conservation, recovery, or expansion of existing projects and facilities available to provide gas/energy to serve the region, and (3) new renewable energy resources available to supplement energy needs. We are glad the Massachusetts Attorney General is currently undertaking such studies to inform the region's energy growth needs and balanced with government's critical climate change goals. Many have suggested the proposed Spectra Energy and Portland Natural Gas Transmission System pipelines as better alternatives to NED because: (1) they would utilize existing pipeline rights of way without destroying hundreds of miles of virgin forests and wetlands, (2) avoid the thousands of eminent domain takings NED would require, (3) supply more than enough gas for the Region's projected energy needs, and (4) it is anticipated they will be they will be operational during a similar time frame as NED. It would be a more efficient use of taxpayer dollars and better for our environment and economy if FERC required additional analysis of these and all other potential alternatives, including the no-build option, and further explain the reasons why none are preferable to the public interest and environment compared to NED.

Furthermore, KM has failed to compare the impacts of the NH preferred route to the MA Turnpike (I-90) alternative and also failed to assess the impact of constructing and maintaining a pipeline and right of way on virgin forested lands as compared to on previously disturbed or hardscape lands. In most circumstances, a pipeline crossing conservation land, forests, wetlands, or rivers in a virgin or undisturbed land would have a greater negative impact on the ecosystem than would the same crossing

in already disturbed hardscape lands. As a result, KM should be directed to utilize existing hardscape and previously disturbed lands and to avoid forested undisturbed lands.

M. Gas Capacity for the Pipeline Dramatically Exceeds Local Need and is not in the Public Interest:

Research indicates any alleged need for additional gas in New England is very small (merely 25% or less) and much less for NH's alleged need (nearly 6% or less), as compared to the total gas capacity of the NED pipeline. As a result, at least 75% or even more of the gas travelling through NH can be expected for export to foreign countries and markets, and not for use in NH or even New England. Yet NH landowners and municipalities suffer a disproportionate majority of the costs, environmental damage, loss of property values, public health and safety risk, loss of tourism, loss of quality of life, loss of agriculture, and long term burden due to the NED pipeline and its reasonably anticipated future infrastructure expansion. Hence, NH unnecessarily assumes all of the permanent risks and environmental damage for its section, but gains little to none of the benefits and none of the profits in this lopsided arrangement. Whose self-serving idea was this? As an agency that purports to issue permits in the public interest, FERC should be offended by this prospect and reject it immediately. Ironically, it is anticipated that export of gas to the exclusive profit of KM will increase the cost of gas generally and thus harm all US citizens. Last, it has been well supported that the alleged need for additional gas in NH and New England can be readily obtained without the need for a new pipeline and its associated damage, costs and risks to the Monadnock region. Alternative sources of energy include, but are not limited to, adopting energy conservation measures currently being considered by all New England states, improved maintenance of existing gas pipelines currently serving the area, upgrading existing pipelines already in service in MA and NH, increasing capacity of currently planned and FERC approved pipelines currently serving all of New England. Any and all of these options would be abundantly preferable to permanently destroying over 450 new miles and thousands of acres of virgin forest, woodlands, and wetlands, and committing thousands of wrongful eminent domain takings for us to achieve the same ends. Furthermore, in today's era of confronting and mitigating climate change, the prospect of a new gas line in virgin land and forests should be the least desirable option, an absolute last resort, and to be considered only when all other alternative options and measures are completely exhausted. Yet in the case of NED, it seems to be a first and worst option for NH, although many other viable options exist that are less costly and less damaging to NH, its citizens, its landscape, and its resources. NH governments, officials, and representatives should refuse this option because it will work to negatively impact the entire state and instead act to protect the interests of its citizens and environment. Last, supplying the region with more gas through NED will likely not lower gas prices or energy costs which is the carrot KM and FERC seem to be leading us by. In addition to destroying our natural resources and quality of life, Ann Berwick (the former NESCOE President) recently opined on August 17, 2015 in a Boston Globe article that adding more gas capacity to the region will not necessarily lower energy prices. This was illustrated in PA, home of the largest supply of natural gas in the Eastern U.S., when gas prices spiked in the winter of 2014. If they are not immune to gas price volatility, it's hard to believe we would ever be after NED. Let's think smarter about energy delivery and energy efficiency before we decide to destroy more of our irreplaceable natural resources, reduce



existing conservation lands set aside for people and wildlife, and take more private land for private business gain.

#### N. Conclusion

For these reasons, among many others (such as the pipeline cost/benefit analysis denouncing pipelines released by the Maine PUC on July 14, 2015 – one of KM’s former potential but now lost customers), the Town and NH Government should take whatever action is appropriate to prohibit NED or require that it is rerouted to existing hardscape, previously disturbed hardscape infrastructure (such as Route 12 and other major highways such as the I-90 MA Turnpike alternative), or located along existing disturbed pipeline corridors.

Thank you.