



TOWN OF MERRIMACK, NH

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September 4, 2015

Kimberly D. Bose, Secretary
Federal Energy Regulatory Commission (FERC)
888 First Street, N.E.
Washington, DC 20426

RE: Access by Tennessee Gas Pipeline Company, LLC to property in the Town of Merrimack, New Hampshire for environmental surveys for the Northeast Energy Direct Project

Dear Secretary Bose:

The Town of Merrimack (“Town”) has now spent eight months, innumerable hours, and thousands of dollars in a futile attempt to finalize an access agreement with the Tennessee Gas Pipeline Company, LLC (“TGP”) in order to allow TGP to access multiple Town properties for environmental and other surveys associated with the Northeast Energy Direct Project (“NED”). There are four properties, plus Town roads covered by the draft access agreement and the majority of the properties at issue are conservation lands with sensitive resources.

In February, 2015, the Town prepared an access agreement setting forth the terms by which the Town will allow such access and sent it to the pertinent TGP contact on March 25, 2015 (“TGP Access Agreement”). At the end of March, TGP sent back a markup of the TGP Access Agreement with only a few outstanding issues. Since then, the Town has gone back and forth with TGP personnel with no clear and final resolution of all of those few outstanding issues. For example, in the May 10, 2015 version of the agreement which TGP sent to the Town noting that it had been reviewed by the TGP legal team, TGP agreed to language requiring that Town personnel be present when TGP personnel undertake surveys of Town property. However, more recent TGP versions of the draft agreement have eliminated this requirement without any explanation. Further, TGP has repeatedly rejected the Town’s request for a limit of four TGP personnel accessing Town properties at any given time. Despite the relatively minor nature of these changes and their importance to the Town, TGP has made no mention of any concern that these limits would impact their ability to complete the necessary field surveys, but, instead, simply circulates redline after redline refusing to integrate these changes. In short, TGP has thrown up a stone wall to execution of the TGP Access Agreement. A more detailed chronology of the TGP and Town negotiations is enclosed.

Assessing P: 603-424-5136 F: 603-424-0461	Community Development P: 603-424-3531 F: 603-424-1408	Finance P: 603-424-7075 F: 603-423-8539	Human Resources P: 603-424-2331 F: 603-424-0461	Media Services P: 603-423-8561 F: 603-424-0461
Public Assistance P: 603-423-8535 F: 603-423-8539	Public Works Administration P: 603-424-5137 F: 603-424-3890	Town Council P: 603-424-2331 F: 603-424-0461	Town Manager P: 603-424-2331 F: 603-424-0461	

As noted to the Commission in May, 2015, the Town has achieved so little traction regarding the TGP Access Agreement that it can only conclude that TGP is not interested in actually executing an agreement. Lending credence to this conclusion from the Town's perspective is the fact that, in late June 2015, TGP personnel unlawfully accessed Town property, requiring the Town to take action to notify TGP of the applicable permits and/or approvals required under the Town's ordinances for their survey work, and that, barring an executed TGP Access Agreement, access to Town property was unacceptable.

As a public entity, the Town bears responsibility for managing and protecting Town resources. The Town decided early in this process that the best way to protect those resources was to cooperate with TGP in order to provide access to assess NED impacts. Unfortunately, TGP's intransigence has proven exhausting. At this point the Town has finalized and executed the enclosed access agreement, with reasonable terms discussed in good faith with TGP. Thank you for any assistance you can provide in incentivizing TGP to execute this agreement such that impacts to Town property from the NED can properly be assessed and mitigated.

Sincerely,



Eileen Cabanel
Town Manager

cc: Merrimack Town Council
Maggie Hassan, Governor of New Hampshire
Joseph Foster, Attorney General of New Hampshire
Shawn Jasper, Speaker of the New Hampshire House of Representatives
Chuck Morse, President of the New Hampshire State Senate
Kelly Ayotte, U. S. Senator
Jeanne Shaheen, U. S. Senator
Frank Guinta, U. S. House of Representatives
Ann McLane Kuster, U. S. House of Representatives
Allen Fore, Kinder Morgan

**Field Survey Access Agreement Chronology
Town of Merrimack / Tennessee Gas Pipeline Negotiations through 8/20/2015**

<u>1/20/2015</u>	Patty Quinn, Field Survey Agent with Kinder Morgan, dropped off survey permission agreements to survey (4) Town owned parcels
<u>2/11/2015</u>	Town Attorney Joanna Tourangeau met with Chair & Vice Chair of Town Council, Town Manager, several department heads, Conservation Commission Chair Tim Tenhave & representatives from the Merrimack Village District to discuss environmental impacts associated with the proposed pipeline project
<u>2/23/2015</u>	Joanna prepared and circulated draft Field Survey Access Agreement for Kinder Morgan access to all four Town owned parcels
<u>2/26/2015</u>	Town Council discussed, revised and approved the Field Survey Access Agreement and authorized TM to sign during public meeting
<u>3/5/2015</u>	Revised Access Agreement sent to Joanna for review and recommendations. Joanna reviewed and agreed with changes
<u>3/25/2015</u>	Town emailed Access Agreement to Patty Quinn for consideration and signature
<u>3/31/2015</u>	Received KM revised agreement from Patty Quinn via email
<u>4/1/2015</u>	Sent to Town Attorney Joanna Tourangeau for review. KM refused to agree to Town requests that Town personnel be present for access or to permit Town review of data obtained regarding Town properties in advance of filing with FERC
<u>4/2,6,8,10,14,16,18/2015</u>	Joanna calls Patty Quinn leaving messages requesting time to discuss outstanding issues regarding Access Agreement
<u>4/23/2015</u>	Town Council amended agreement during their public meeting

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<u>4/29/2015</u>	Emailed revised agreement to Joanna
<u>4/30/2015</u>	Received clean redline from Joanna showing the Council's primary changes
<u>5/7/2015</u>	Sent to Patty Quinn revised agreement for signature
<u>5/8,11,12/2015</u>	Joanna calls Patty Quinn and leaves messages requesting discussion of outstanding issues with Access Agreement
<u>5/12/2015</u>	Received modified agreement from Patty Quinn via email. Modified agreement continues to delete Town requests for Town personnel to be present when KM personnel on Town property and for review of acquired data prior to submission to FERC. No explanation of this refusal to change Access Agreement is provided
<u>5/13/2015</u>	Forwarded agreement on to Joanna for opinion and received recommendations
<u>5/28/2015</u>	Town Council discussed access agreement during public meeting
<u>6/1, 3, 5/2015</u>	Joanna leaves messages for Patty Quinn regarding outstanding issues with Access Agreement
<u>6/24/2015</u>	KM field surveyors commence sampling in Town roadways without approval from Town of access agreement or of Public Works Department for road opening and other required permits
<u>6/25/2015</u>	Town provides Patty Quinn with copy of local ordinances and cease and desist request. Patty Quinn contacts Joanna Tourangeau for the first time
<u>6/26/2015</u>	Conference call between Patty Quinn and Joanna regarding outstanding issues with access agreement. Patty confirms that she cannot address those issues but will forward to KM
<u>6/29/2015</u>	File correspondence with FERC discussing lack of progress on access agreement and KM unauthorized access
<u>6/30/2015</u>	KM representative (Jim Hartman) reaches out to Town Manager and indicates that the Town must be working with the

Field Survey Access Agreement Chronology
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	wrong people on the Access Agreement. Asks the Town to contact him
<u>7/1/2015</u>	Joanna emailed redlined access agreement to Patty Quinn
<u>7/6-10/2015</u>	Joanna and Kinder Morgan contact (Jim Hartman) trade calls regarding the Access Agreement
<u>7/12/2015</u>	Joanna and Jim discuss Access Agreement. KM indicates unwillingness to provide data from property in advance of filing with FERC and prefers not to condition access on attendance by Town personnel
<u>7/16/2015</u>	Discussion of Town position regarding Access Agreement with Town
<u>7/17/2015</u>	Joanna left a message for KM discussion Town position on access only with Town personnel available for sensitive properties and so long as KM provides data gathered during survey to Town in advance of filing with FERC or in an otherwise public manner
<u>8/12/2015</u>	Joanna receives voicemail message from Jim Hartman indicating that KM legal is actively reviewing the Access Agreement and will send a revised document the following week
<u>8/20/2015</u>	KM sends a revised Access Agreement with provisions which do not reflect the discussions regarding outstanding issues important to the Town

ACCESS AGREEMENT RE FIELD SURVEYS

The Town of Merrimack (“Town”) received four requests for access by Tennessee Gas Pipeline, LLC or its designated contractors (hereinafter referred to as “TGP”) to access the following properties:

- (1) Horse Hill Nature Preserve (Map/Block/Lot 3B-164) deeded from NasTam Associates to the Town of Merrimack by deed dated July 19, 2002 and recorded in the Hillsborough County Registry of Deeds in Book 6670, Page 2730;
- (2) Gilmore Woods Memorial Forest (Map/Block/Lot 3C-73) deeded from Constance M. Heath to the Town of Merrimack by deed dated December 30, 1997 and recorded in the Hillsborough County Registry of Deeds in Book 5892, Page 0204;
- (3) 10 Green’s Pond (Map/Block/Lot 3C-41) deeded from Digital Equipment Corporation to the Town of Merrimack by deed dated January 26, 1978 and recorded in the Hillsborough County Registry of Deeds in Book 2608, Page 637;
- (4) Sewer Buffer (Map/Block/Lot 3C-40-2); and
- (5) All Public Roads and Ways, provided applicable permit requirements are met

(these five properties are referred to herein together as the “Property”) in order for TGP or its designated contractors to perform field surveys necessary for the above captioned FERC Docket No. PF14-22 environmental screening. The surveys to be conducted on the property of the Town are described as follows: civil and environmental surveys and studies that include, but are not limited to, project routing, characterization of land as to property ownership, topographic features, descriptions, cultural resources, wetland delineation and archeology.

The Town consents to these requests for access on the following terms:

The Town will permit, at any given time, no more than a total of four (4) employees and/or consultants of TGP the right, but not the obligation, of ingress to, egress from, and access under, above, and through, the Property by foot and limited vehicular access for the purpose of allowing TGP to conduct nonintrusive field surveys. With regard to the Public Roads and Ways (described above in numbered Paragraph 5), the Town does not grant TGP access rights to areas beyond the visible road or way (whether paved or gravel). The Town expressly withholds consent to TGP access which includes passage beyond a fence or other barrier or onto a lawn or beyond any other visible demarcation of the road or way even where the area is within the Property.

The Town reserves the right to prevent activity that, in its reasonable judgment, could result in damage or injury or threaten interference with activities of the Town. TGP shall have no access to buildings on the Property.

Before undertaking any activity on the Property, TGP shall give the Town reasonable advance notice no less than forty-eight (48) hours in advance, by telephone conversation with Eileen Cabanel at (603) 424-2331, or in writing, of planned activity, including notice of the areas of the Property that are expected to be accessed. TGP shall also provide the Town with reasonable advance notice of the name and contact information for each and every individual exercising rights under this Agreement. The Town shall make every reasonable effort to provide a representative to accompany TGP during any surveying activities conducted on the Property. Notwithstanding this Town obligation, TGP's rights to access the Property described in Paragraphs 1, 2, and 3 above is expressly conditioned upon the presence of a Town representative. Access shall occur between the dates of September 1, 2015 and December 31, 2015. This Agreement shall automatically terminate on December 31, 2015 unless an extension

is approved in writing by the Town and TGP.

TGP shall reasonably cooperate with the Town regarding all activities that are conducted on the Property. TGP shall bear the responsibility of determining the location of any utilities. In conducting all activities TGP shall exercise due care and shall ensure that each and every individual accessing the Property under this Agreement behaves in a professional manner.

After completing the activities contemplated by this contract, TGP shall ensure removal of their equipment and shall restore any part of the Property that was affected by its activities to a condition that is substantially similar to the condition of the Property at the time immediately preceding the commencement of said activities.

As part of the public process and upon collection of any field survey data that suggests any of the Property is impacted by significant resources, hereinafter referred to as the "Data", TGP shall provide the Data to Eileen Cabanel. The Town shall use its best reasonable efforts to maintain the confidentiality of any Data identified by TGP as confidential consistent with New Hampshire's Right to Know Law.. Consistent with federal law and regulations, in the event that any cultural resources and/or endangered species Data is collected as a result of TGP's activities on the Property under this Agreement, TGP shall file the field survey reports concerning the Data as confidential with the Federal Energy Regulatory Commission (FERC). The Town may also request the information directly from the FERC through a Freedom of Information Act request.

TGP shall indemnify and hold harmless the Town from (a) any damage to the Property, (b) damage to any property of any person not a party to this Agreement, or for bodily injury to any person or third party that is caused by TGP as a result of the activities of TGP related to activities contemplated by this Agreement. The Town shall promptly notify TGP in writing of any damage to the Property that has allegedly been caused by any TGP pursuant to any activity

of TGP on the Property. Before it will be liable to provide any monetary payment to the Town for any indemnified damage to the Property, TGP shall have the right to restore or repair the damage to its prior condition, using contractors and consultants selected by them and reasonably satisfactory to the Town. TGP shall indemnify the Town for TGP noncompliance with this Agreement and this indemnification shall survive termination of the Agreement.

EXECUTED: September 4, 2015.

TOWN OF MERRIMACK:

By: Eileen Cabanel

Print Name: Eileen Cabanel

Title: Town Manager, Merrimack N.H.

**TENNESSEE GAS PIPELINE
COMPANY, LLC:**

By: _____

Print Name: _____

Title: _____