

**BEFORE THE UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION**

PROJECT NAME: CT EXPANSION PROJECT) DOCKET no. CP14-529-000)

**MOTION FOR STAY OF 154 FERC ¶ 61,191- ORDER ISSUING
CERTIFICATE (issued March 11, 2016)**

Pursuant to Rule 713 of the Federal Energy Regulatory Commission's (the "Commission") Rules of Practice and Procedure, Sandisfield Taxpayers Opposing the Pipeline ("S.T.O.P."), an intervenor in this matter, hereby seeks a stay of the Commission's order dated March 11, 2016 called ORDER ISSUING CERTIFICATE (the "Order"), authorizing Tennessee Gas Pipeline Company, L.L.C. ("Tennessee" or "TGP") under section 7(c) of the Natural Gas Act ("NGA"), 15 U.S.C. § 717f(c), and Part 157 of the Commission's regulations, 18 C.F.R. § 157.1 *et seq.*, to construct and operate pipeline facilities in Albany County, New York; Berkshire and Hampden Counties, Massachusetts; and Hartford County, Connecticut, and modify an existing compressor station in Hampden County, Massachusetts (collectively, the "Connecticut Expansion Project").

MOTION FOR STAY

S.T.O.P. respectfully asks the Commission to issue a stay of the certificate and enjoin Tennessee from moving forward with any construction activity, including tree-cutting, under the certificate issued in CP14-529.

In support of this request, S.T.O.P. states the following:

1. S.T.O.P. is an organization of Sandisfield, MA landowners and neighbors impacted by the proposed Ct. Expansion Project. We have previously filed to intervene and believe the proposed project is environmentally damaging and will cause irreparable harm to us individually, to our community, and to State protected lands.
2. On March 11, 2016 the Commission issued a certificate for the Connecticut Expansion project.
3. It is anticipated that, after obtaining the Commission's permission, Tennessee will immediately begin tree-felling activity (*see* Kimberly Watson, President of Tennessee, letter to Commissioner Norman Bay, *et al.*, dated 2/25/16, urgently pressing the Commission to grant Certificate within 3 working days to allow tree-cutting to be completed by 3/31/16)
4. To obtain a stay, a party must show the likelihood of: (1) irreparable harm, (2) success on the merits, (3) lack of prejudice,

and (4) that a stay is in the interests of justice. S.T.O.P. satisfies this criteria as shown below:

5. There will be irreparable harm if trees are taken down. Heather Morrical's property on Hammertown Road is, at just under 9 acres, is the smallest of the Sandisfield properties being affected by the Ct Expansion project. The trees anticipated to be cut for the temporary workspace represent the majority of the older growth forest on her property; all such cutting would be a total loss, and irreplaceable. This constitutes nearly 100% of the forest buffer between the only feasible home site and septic system and the pipeline. Once the temporary workspace is cleared and the approximately 700 ft of stone walls on this property are destroyed, the value of the property will be effectively reduced to nothing. Jeffrey Friedman's property at 112 Hammertown Rd already has a 75 foot easement for two extant pipes, which has been cleared of trees. The felling of more forest for 90 more feet in width of additional permanent and temporary workspace will create a 165 foot swath of decimated old forest on his property. This is an eyesore, disrupts his walking paths, and invites invasive species. When the project is constructed, his stream (SMA-21) is at risk of

being permanently disrupted. Although the Commission's Environmental Assessment ("EA") encouraged Tennessee to work with the landowners to replant trees, Tennessee chose to not replant trees in upland areas disrupted by the proposed construction on these or any other properties. The resulting impact will therefore be permanent and unmitigated.

If the pipeline is not constructed, but trees are nonetheless felled and equipment placed pursuant to the Order, great damage will have been done during tree-cutting for no ultimate "benefit": natural habitat will have been destroyed, water quality will have been put at risk, and property values will have been negatively impacted. Additionally, any tree cutting that will take place now or in the very near future, would be out of compliance with best practices, i.e. that tree cutting take place under dry or frozen conditions. Due to the warm winter conditions, the ground is saturated and would be greatly disturbed from tree cutting activities, resulting in erosion and promotion of the spread of invasive species to an unacceptable level.

6. S.T.O.P. is likely to succeed on the merits. It is a violation of the Commission's own mandate, to obey applicable federal and state

permitting and laws, to grant a certificate to Tennessee *before* Massachusetts has granted a Section 401 permit per the Clean Water Act (“CWA”), 33 U.S.C. § 1341. Furthermore, this license is in direct conflict with Article 97 of the Massachusetts Constitution, which does not permit private companies, like Tennessee, to construct on public lands without (1) the appropriate consent of the legislature, *and* (2) the consent of the landowner who conveyed the land to the State for protection. The Connecticut Expansion goes directly through Spectacle Pond Farm in Otis State Forest, which was donated by the Audubon Society to Massachusetts. The Audubon Society is opposed to the use of this parcel for this purpose, which is incompatible with the intent of Audubon Society’s conveyance. Although S.T.O.P. is aware that Tennessee has secured the introduction of a bill to the Massachusetts Legislature, it is doubtful at this time that an Article 97 variance will be granted to TGP. As an initial matter, both the local State Senator, Ben Downing, and State Representative, William Pignatelli, are opposed, as are the State Senate President and many others. Further, the bill is fatally flawed, as it attempts to convey an unspecified amount of land that is contingent on the outcome of the

Commission's Certificate process. As of this date, that process is not final, since Tennessee has not completed the Section 404 and Section 401 processes, nor are consultations for preservation under the National Historic Preservation Act yet complete. In essence, the Commission has authorized eminent domain authority without the Commonwealth having had even the chance to "negotiate an easement" under Article 97.

No harm will be caused to Tennessee by granting a stay. Tennessee has not secured the necessary permits from the U.S. Army Corps of Engineers ("Corps") under CWA Section 404, 33 U.S.C. § 1344, or State Water Quality Certifications under CWA Section 401, 33 U.S.C. § 1341, for its proposed work in either Massachusetts or Connecticut. Moreover, the current thawed, wet conditions in Massachusetts will preclude tree felling in this area, since Tennessee has committed to following "Best Management Practices." Thus even if authorized, Tennessee will not be able to do the work in Massachusetts at this time. With respect to Tennessee's alleged urgency, it submitted its most recent response to information requests from the Corps and the MA Department of Environmental Protection for the various Water Quality permits less than one month ago. While it has been months since the Commission issued

the EA for this project (October 23, 2015), Tennessee is still in the process of developing its mitigation plans, and has only recently submitted a 5-year vegetation plan to the MA Department of Agricultural Resources (January 20, 2016). Perhaps the Commission's offering of a Certificate to Tennessee will increase *Tennessee's* interest in resolving some issues, but ultimately, Tennessee has been lax in supplying information to the permitting authorities. Justice requires that the appropriate procedures be followed for public input regarding vegetation maintenance and use of chemicals on the right-of-way. However, the public meetings for this proposed plan are not even scheduled until the end of March 2016, with the corresponding public comment period ending in April of 2016. Justice would require that the Constitution of the Commonwealth of Massachusetts be given at least some deference.

WHEREFORE, for the foregoing reason, S.T.O.P. asks the Commission to GRANT this STAY request.

Respectfully submitted on behalf of S.T.O.P.

Jean Atwater-Williams, 182 Cold Spring Rd.

Susan Baxter 250 Cold Spring Rd.

Thelma Esteves, 113 S. Beach Plain Rd.

Jeffrey Friedman, M.D. 112 Hammertown Rd.

Laurie Friedman, 112 Hammertown Rd.

Heather Morrical, Hammertown Rd.

Roberta Myers, 212 Cold Spring Rd.

Barbara Penn, 98 Hammertown Rd.

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3/17/16

DATE