

EXHIBIT-16

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Lovelace et al., v United States

Letter from Kinder Morgan's Counsel

Town of Deerfield

November 17, 2015



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TOWN OF DEERFIELD

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

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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