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Tennessee Gas Co. wants court's OK to start cutting trees for Sandisfield spur of pipeline

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As a court confrontation looms between a Kinder Morgan affiliate and the Commonwealth of Massachusetts, a state lawmaker has issued a sharp denunciation of the energy infrastructure company's actions and the federal regulators who approved the 3.8-mile Tennessee Gas Co. pipeline spur through Otis State Forest in Sandisfield this week.

Several rapid-fire developments on Thursday included Kinder Morgan's Tennessee Gas Co. filing an injunction in Berkshire Superior Court seeking to grant the company immediate access to the state-protected land so tree-cutting can begin promptly. In connection with the Endangered Species Act, federal guidelines limit tree-clearing to a period between Oct. 1 and March 31. The company aims to put the pipeline into service next winter.

The Sandisfield Taxpayers Opposing the Pipeline group, or STOP, filed a motion to stay the Federal Energy Regulatory Commission's approval of the so-called Connecticut Expansion Project, seeking to stop any tree cutting or construction work.

"It is a violation of the [Federal Energy Regulatory 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," the filing stated.

"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 the appropriate consent of the legislature and the consent of the landowner who conveyed the land to the state for protection."

The group noted that the pipeline crosses Spectacle Pond Farm in Otis State Forest, property that was donated to the state by Mass Audubon 18 years ago.

"In essence, the commission has authorized eminent domain authority without the Commonwealth having had even the chance to negotiate an easement under Article 97," STOP contended in its motion.

State Rep. William "Smitty" Pignatelli, D-Lenox, blasted FERC for approving the spur alongside an existing Tennessee Gas pipeline.

"FERC is saying that because it's on an existing route, they don't have to abide by any rules and regulations," Pignatelli said.

He also declared that "there's no doubt in my mind" that the federal regulators will approve Kinder Morgan's application to build its proposed \$5 billion, 412-mile pipeline through upstate New York, Western Massachusetts, including seven Berkshire County towns, and southern New Hampshire, terminating in Dracut.

"If there's no way to stop a little loop in southern Berkshire County that has no benefit to anybody in Massachusetts, how the hell are we going to stop this bigger pipeline, going through state-owned and Mass Audubon land?" he said. "This was a test, and the process failed."

However, he conceded that FERC might scrutinize the major pipeline more closely since it's a new project and does not run alongside an existing Tennessee Gas route.

Pignatelli acknowledged that the state Department of Environmental Protection approved the state forest spur back in the Gov. Deval Patrick administration.

But he accused Kinder Morgan of "stringing along" Sandisfield, one of the smallest towns in his district with about 900 residents.

"I question their ethics and their integrity," he said in an Eagle interview.

He contended that the company backed out of a \$1 million verbal agreement to compensate the town by repairing town roads, restoring old stone walls and testing septic systems following construction of the pipeline spur.

The agreement was set to be approved by special town meeting voters in Sandisfield last fall until the company withdrew it at the last minute, Pignatelli said.

"I've encouraged the town to prepare for what may be inevitable, that you can't stop the pipeline, but get what you can from these folks that will benefit the community," he said. "Try to get some remediation for the roads they're going to beat up during the construction."

To put pressure on Kinder Morgan to honor the agreement, Pignatelli has contacted Lt. Gov. Karyn Polito, the state attorney general's office and U.S. Rep Richard Neal, D-Springfield, urging them to take action on behalf of Sandisfield.

Kinder Morgan spokesman Steve Crawford stated: "We continue to work with the town's representatives and we're optimistic that we can reach an agreement."

Pignatelli said legislation is still tied up on Beacon Hill that would allow the pipeline loop to cross state-owned land. He and state Sen. Benjamin Downing, D-Pittsfield, strongly opposed the bill filed last year by state Rep. Garrett Bradley of Hingham that, if passed, would convey to Tennessee Gas the necessary easements through the state forest.

Without the legislation, the forest would remain sheltered by Article 97, the amendment to the state constitution that protects and conserves designated state land.

On the injunction sought by Tennessee Gas at Berkshire Superior Court, Crawford commented: "After the completion of a full environmental review, a public comment period and the development of extensive mitigation and land protection measures, Tennessee Gas Pipeline received its environmental certificate from the state.

"Despite the issuance of that state certificate and nearly two years of working with state and local officials to coordinate and obtain approvals, the Legislature has not approved the easements for the Sandisfield loop; nor does it appear likely to do so," he added.

In its court filing, the company seeks an injunction to condemn and gain immediate access through eminent domain to more than 15 miles of permanent and temporary easements in the Otis State Forest in order to begin pipeline construction.

The document states that Tennessee Gas has owned two federally approved, underground gas pipelines for the past 30 years and has maintained a corridor above it used by the state Department of Conservation and Recreation as year-round hiking trails.

The company wrote that "it is indisputable that the DCR is unwilling to enter into a voluntary agreement to transfer the easements to Tennessee Gas unless it is approved by a two-thirds vote of the state Legislature." Since the lawmakers have not acted, the court filing emphasized, the eminent domain proceeding is necessary.

The defendants to the lawsuit include the Commonwealth of Massachusetts, the Department of Conservation and Recreation, DCR Commissioner Leo P. Roy and "unknown landowners."

Pignatelli cited the old-growth forest of eastern hemlocks in the state forest that will be affected by the pipeline construction.

"There are trees there that are 400 years old, before the Pilgrims landed on Plymouth Rock," he said.

"FERC has had total disregard for this small community," Pignatelli said. "Kinder Morgan has had total disrespect for us and the town of Sandisfield. They should be held accountable and honor this agreement. They need to be good corporate citizens and honor the agreement they've proposed to the town of Sandisfield."

He noted that in 1997, the state paid \$5.2 million to acquire the state forest land, protecting it from potential development, in what he described as "the largest land acquisition dollar-wise in the history of Massachusetts at that time."

As for the federal regulators, Pignatelli charged that "clearly they don't care about Article 97 or about natural habitats."

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