

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS  
WESTERN DIVISION**

HOLLY AND GORDON LOVELACE,  
CAROLYN AND ERIC NESS,  
KERRY AND MICHAEL PAULSEN,  
WOOLMAN HILL INC.,  
MEG WORCESTER AKA  
MARGARET W. FRIEDRICH, AND  
THE MARGARET W. FRIEDRICH TRUST,

Plaintiffs,

v.

THE UNITED STATES OF AMERICA

Defendant.

C.A. NUMBER:

**COMPLAINT IN CIVIL ACTION**

**I. SUMMARY OF THE CLAIM**

1. The Fifth Amendment of the United States Constitution grants the United States the power to take private property for “**public use**,” by paying adequate compensation to property owners, as well as the right to grant such power to private entities. The sole issue in this litigation is the constitutionality of Section 15 U.S.C. § 717(a) of the National Gas Act 42 U.S.C. § 7111 et seq., which grants the United States power to allow private entities to take Plaintiffs’ real property by eminent domain, with adequate compensation, for the construction of pipelines to carry natural gas, **not for “public use” but for exportation to foreign countries.**

## **II. JURISDICTION**

2. This action arises under the Constitution of the United States and the laws of the United States, including 15 U.S.C. § 717(a) and 42 U.S.C. § 7111 et seq. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. § 1331 as this is a civil action arising under the United States Constitution and pursuant to 28 U.S.C. § 1346(a)(2) as this is a civil action against the United States not exceeding \$10,000.00, said action being founded upon the Constitution and an Act of Congress.

## **III. VENUE**

3. Venue is proper under 28 U.S.C. § 1391(e) (1) (B) because the defendant is the United States; under 28 U.S.C. § 1391(e) (1) because the properties subject matter of this action are located in this district; and 28 U.S.C. § 1402(a) (1) (2) because all Plaintiffs reside in this district.

## **IV. PARTIES**

### **A. Holly and Gordon Lovelace**

4. Holly and Gordon Lovelace have lived in their idyllic 22-acre homestead in Northfield, Massachusetts since February 2007. It is an absolutely amazing property, including a barn, pond, stream, mixed woodlands, blueberries, blackberries, peach and pear trees and an extensive woodlot as well.
5. The home itself is 200 years old, having survived the Civil War, hurricanes, historic blizzards and at least one fire. It has three original fireplaces, a beehive oven and a floor plan nearly identical to one of the reproduction homes in Sturbridge Village. It is truly an historic home.
6. This historic home needed a lot of love -- and work. When the Lovelaces arrived its basement was just a dirt floor and fieldstone walls.

7. Holly and Gordon installed a pea-stone base and lots of insulation. They refinished and made extensive repairs to the original 12-inch-wide floorboards throughout the main floor. They replaced a wall, three exterior doors, and almost every window. They replaced the ceiling in the dining room, renovated the main bathroom, installed crown molding and repainted nearly every room.
8. Outside, they replaced the front porch completely. They added two levels to the backyard deck, so now there is a view of the stream and wetlands surrounding their home. Several ill trees were professionally removed, as well as an ancient dump area, where they found many bottles and relics from the 1800s. They hired a bulldozer crew to level a massive area of the property.
9. All the work done on the property was worth every penny. Their renovated, historic home is now insulated, warm and comfortable. Sitting on the deck with binoculars and birdwatching books Holly and Gordon have identified more than 50 bird species, and sighted two more as yet unidentified. Their game camera catches photos of foxes, deer, coyotes and they see black bears round and about at least once a year. The Lovelaces collect garnets, tourmaline and other mineral-rich stones from up their hill and place them in their gardens.
10. This is not just their home. They have three businesses there: Homestead Computing Solutions; Mom's House Estate Finds online collectibles store; and, in addition they carryout sustainable logging on their land.
11. On June 4, 2015 Holly and Gordon Lovelace received communication from a Kinder Morgan Corporation's subsidiary, Tennessee Pipeline Company, ("Tennessee") stating that a major compression station will be built adjacent to their property. (*Ex-1*)
12. The proposed compressor station would be one the largest, if not the largest, compression station in the entire United States. (*Ex-2*).
13. Building of the compression station adjacent to the Lovelaces' land amounts to a de facto taking of their property since it will make it impossible for Holly and Gordon to continue residing on their property.
14. No one would buy a property so close to what Safety Insurance Company describes as a bio-hazard area. Among the myriad threats are carcinogenic, toxic chemicals -- including benzene -- released by the station into the air, probable groundwater

contamination due to blasting to build the station, and toxic waste from the periodic cleaning of the massive pipeline. Running 24/7, the massive station would always be brightly lit, ruining the rural night sky. Sporadic blasts of noise at levels in excess of 100 decibels will average, over 24 hour periods, to be significantly in excess of acceptable noise levels for residential use.

15. The construction of such compression station adjacent to their land will destroy the value of their land.
16. The knowledge that the United States, through the Federal Energy Regulatory Commission, would allow the taking of their home and despite the fact that the gas to be pumped by the compression station is primarily for exportation to foreign countries has caused and continues to cause Holly and Gordon Lovelace emotional distress and anguish.

**B. Carolyn and Eric Ness**

17. Eric and Carolyn were married on 1 May 1977 in Seattle, Washington and moved to 10 Old Albany, Deerfield in August 1980 when they bought their home. Deerfield, being close to Carolyn's family, was chosen as the place to raise their four children, William, Andrew, Samuel and Victoria, and has continually been their home except for Eric's two family-accompanied military assignments outside the continental United States. Despite Eric's current work location in Bloomsburg, Pennsylvania, Deerfield remains the family home, with Eric home regularly on weekends. The Deerfield home is the site for annual hosting of major family events like Thanksgiving and Christmas.
18. While living at their home in Deerfield through the years the Nesses have made significant improvements to their property, including a new septic system, new heating system, potable water, well deepening/improvement, renovations to two bathrooms and five bedrooms, rebuilt kitchen chimney, replaced slate roof flashing, new 200-amp below-grade electrical service, plumbing improvements, kitchen ceramic floor installation, electrical and data line distribution expansion, new

workshop outbuilding, land clearing, landscaping, and pasture fencing, to name the most obvious.

19. The Nesses expected to eventually sell their home and use the funds so gained to finance a smaller retirement property.
20. Eric and Carolyn's commitment to this long-term plan for raising their family and financial strategy included retaining the house during overseas military assignments to London and Alaska and has meant Eric has worked away from his family, as a geographical bachelor, for 28 of the past 35 years.
21. Eric and Carolyn received two letters from Kinder Morgan's subsidiary, Tennessee Pipeline Company, dated January 26, 2015 and March 6, 2015 in which Kinder Morgan requested access to their property located at 10 Old Albany Road in Deerfield for the purposes of conducting civil, geotechnical, archaeological, wetlands and water body delineation and an endangered species survey. This request to survey the property is tied to the fact that the proposed pipeline would pass through their property. (*Ex-3*).
22. This letter has impacted Carolyn and Eric in more ways than one: a) The projected intrusion of the pipeline onto their property has caused a significant decrease in the value of their property if not destroying in completely; b) The proposed taking has caused and continues to cause emotional distress to Carolyn and Eric, as it undermines the purpose of all their sacrifices, time apart over the years, and their dreams and hopes for the future.

**C. Kelly and Michael Paulsen**

23. Kelly and Michael Paulsen bought their house on 10 Windsor Avenue in Plainfield almost 17 years ago. They didn't have much money but wanted a place with enough land for gardening and horses. When they purchased the house, it had old rattling windows that barely slowed down the wind. It had plywood floors and a hatch with a ladder that led to the basement.
24. Kelly was pregnant with their first daughter at the time. They decided to fix up the house and build equity. Instead of investing in a 401k or like product they poured

- their savings into the house. They put in hardwood floors, new cabinets, tile, windows, siding, electrical service, spiral staircase, new roof, solar hot water panels, and an addition for a mudroom/laundry room. They put up new window and door trim and baseboard throughout. Outside they added a stone patio with a concrete soaking tub and a native locust wood pergola. They constructed a full-size riding ring for the horses and installed new fencing.
25. Kelly and Michael knew that all their work would eventually allow them to sell the house and move to a new house, closer to their girls' schools, and still have enough to help out with college tuition. Once their younger daughter became old enough to need her own bedroom, they planned on building an addition that would give Kelly and Michael their own bedroom and bathroom. They planned on adding solar electric panels to save on electric costs, over time, and to do their part to lower their carbon footprint.
26. In the fall of 2014 a man came to their door asking them to sign a piece of paper that would grant him permission to survey their land. The man told them that a gas pipeline was being planned to be built through their property. When they inquired as to the kind of pipeline, they were told it was to transport fracked gas out of Pennsylvania. Kelly and Michael denied him permission. He came back two more times and both times he was denied the requested permission.
27. Kelly and Michael began to inquire as to the nature of the proposed gas pipeline and finally established that the pipeline was going to be built by Kinder Morgan, a Texas corporation. The plan was to put the pipeline through their property, cutting a giant one hundred feet wide path to bury and hide a 36-inch pipeline planned to transport billions of cubic feet of natural gas per day from Pennsylvania to Dracut, Massachusetts, a natural gas hub from which natural gas could be transported for liquefaction to natural gas plants and then for exportation to foreign countries.
28. The value of the Paulsens' house was destroyed by this news, as no one wants to buy a house with a massive amount of explosive gas passing through the property.
29. Kelly and Michael quickly established that natural gas pipelines could leak and break and explode, destroying their house and ending their lives and the lives of their children. They can no longer sell their house and their equity has disappeared. They

- cannot move and have nothing to leave their daughters. They can no longer fulfill their plans to build an additional bedroom and bath or to add the planned solar panels.
30. They have been paralyzed by the pipeline proposal. Their emotional distress has damaged their marriage and it has made it impossible for their teenaged daughters to do the things that their friends do.

**D. Woolman Hill Inc.**

31. Situated on the beautiful Pocumtuck Ridge in Deerfield, Woolman Hill Retreat Center is a non-profit organization dedicated to the importance of reflection, spiritual engagement, and connection with nature. It provides simple, comfortable facilities for individual retreats, group gatherings, and programs that nurture spiritual growth. In its operations and its programming, Woolman Hill seeks to foster the values of peace-making, simplicity, integrity, social responsibility, and stewardship of the earth.
32. Beginning with Antoinette Spruyt's original intent to "further the causes of peace and brotherhood in the world" when she donated the land to Quakers in the 1950s, Woolman Hill has a long history of advocacy and witness in western Massachusetts and beyond. Woolman Hill has served as the locus of peace conferences, international youth work camps, alternative school, the birthplace of Traprock Peace Center, the home of war tax resisters Juanita and Wally Nelson, and innumerable spiritual and social justice events.
33. The Nelson homestead was intentionally built with no reliance on fossil fuels or electric power. A demonstration fruit tree and nut project, begun several decades ago, continues to this day. Over the years, significant financial and human resources have been invested in the upkeep, improvement and renovation of Woolman Hill's buildings and land.
34. Consistent with its purpose and its Quaker values, Woolman Hill encourages lifestyles that reduce dependence on non-renewable energy and minimize negative impact on the earth. It places a high value on environmental stewardship in its operations -- for example, using wood as the primary heating source, benefiting from solar panels for two of its buildings, and recently installing on-demand hot water

- heaters in its main building.
35. On February 5, 2014, Kinder Morgan's subsidiary Tennessee Gas Pipeline Company (jointly "Tennessee") send a letter to Wolman Hill requesting permission to survey Woolman Hill's property because Tennessee was planning to expand its natural gas transmission system in the area. (*Ex. - 4*).
  36. On March 11, 2014, Tim Corcoran, an agent of Tennessee, met with two Woolman Hill staff members (Margaret Cooley and Will Stark) and indicated that the projected pipeline would require Tennessee to acquire an easement over Woolman Hill's property.
  37. Tennessee has indicated in public meetings and informational pronouncements that the gas projected to be transported through the pipeline originates in the Marcellus Shell located in Pennsylvania and other states, will cross Massachusetts and other New England states, terminating at a natural gas hub located in Dracut Massachusetts.
  38. Tennessee and KM have also indicated at public meetings that the size of the projected pipeline would be 36" to 42" and that the pipeline will transport 2.2 billion cubic feet per day of fracked natural gas per day.
  39. The energy that can be generated from two and two tenths billion cubic feet of fracked natural gas per day is the equivalent of one half the equivalent energy expected to be generated by tar sands oil scheduled to be transported by the heavily litigated Keystone pipeline, or the energy than can be generated by eleven nuclear power plants each of the size of the Vermont Yankee nuclear power plant.
  40. Tennessee and KM have never denied that the great portion of the fracked natural gas to be transported through the pipeline is for exportation to foreign countries after the gas is liquefied at facilities expected to be approved by the Department of Energy of the Unitized States ("DOE").
  41. Woolman Hill relies on income from services that depend on a peaceful, quiet, naturally beautiful setting. Woolman Hill's setting, and its financial wellbeing, would be severely impacted by the construction and installation of the pipeline. Keets Road is also the only egress from the retreat center, and the pipeline would cross that road in three places. Woolman Hill hosts large groups of people, and emergency response or evacuation would be seriously hampered in the event of any pipeline malfunction.



42. In addition to significant concerns about the danger, environmental destruction and economic disturbance posed to Woolman Hill by the pipeline's route across its land, the Woolman Hill community carries equal concern for the broader implications of the pipeline's regional and global impact. All that Woolman Hill stands for would be challenged by the taking of its property for the purpose of fossil fuel export.
43. Installation of the proposed pipeline through Woolman Hill will destroy the moral, spiritual and physical value of Woolman Hill, reducing significantly its future value as a Quaker retreat center and/or the value of the property which could be derived from other possible uses.

**E. Meg Worcester aka Margaret W. Friedrich and the Margaret W. Friedrich W. Friedrich Trust**

44. Meg Worcester married Edmund E. Friedrich, "Eddie," on December 28, 1989 and moved into the home where she has resided ever since. Eddie died on May 30, 2011.
45. During her lifetime Meg has lived in many homes around the country, but the home where she now lives, in Deerfield, Massachusetts, holds a great deal of significance for her. It is modern version of her family's 150-year-old home in the White Mountains of New Hampshire. The setting is similar, has a view of the mountains, and it is where she has lived now for 25 years, a longer period in one home than anywhere else in her lifetime.
46. This home is Meg's ideal home, and finding it was culmination of a life-long spiritual journey. It was designed by her beloved late husband 25 years ago, and where she lived with him there for 21 and half years, before his passing four years ago. She expected to live in this home with memories of him for the rest of her life, hosting guests at her bed and breakfast, all of whom are enchanted not only with the beauty of the accommodations (newly renovated last year) but with the view and quietness of the rural setting as well.
47. On December 12, 2014, Kinder Morgan, on Tennessee Gas Pipeline stationery, sent a three-page letter to Margret (sic) W. Friedrich Trust, owner of the property where Meg Worcester resides, stating that her home and property would be affected by a

- proposed natural gas pipeline expected to be built through her property. (*Ex. -5*).
48. The aforementioned letter was clear indication to Meg that Kinder Morgan or Tennessee Pipeline intended to take an easement by legal action on the property where she has resided for 25 years.
49. Meg was devastated when she learned that Kinder Morgan wanted to install a 36-inch wide natural gas pipeline across her property. She is still in a state of shock, suffering from nightmares about it. She is concerned about not only the construction noise that will completely destroy the sense of peace on her hill, but also the also realization that her well water (within 30 feet of Kinder Morgan's proposed route) could be ruined by either contamination or mechanical malfunction of the pipeline. There is no other place on the property to build a new well.
50. Uppermost in her mind is the potential for an explosion, the fear of which would loom over her constantly.
51. Consequences of the construction of a pipeline across her property would be, for her, devastating. At her age (a healthy, active septuagenarian who is just trying to remain independent and productive) she is distraught, to say the least, and suffering from enormous emotional distress. She feels she belongs on this land and home, and she is not at an age when she can embark on a "fresh start" away from familiar, safe, and nostalgic surroundings. The pipeline would rip all of that away and destroy who she is.
52. The property is in her Trust, with the understanding that it will be given to Eddie's son, Kris, (if still alive) or to her daughter (if Kris is deceased). However, the value of the property has been destroyed by the announcement of the proposed pipeline.

#### **F. Defendant The United States**

53. Defendant the United States of America is the proper defendant in an action arising under 28 U.S.C. § 1331, a civil action arising under the Constitution, and under 28 U.S.C. § 1346(a)(2), a civil action against the United States not exceeding \$10,000.00 and founded upon the Constitution and an Act of Congress.

**V. THE NATURAL GAS ACT AND THE FEDERAL ENERGY  
REGULATORY COMMISSION**

54. The Natural Gas Act was enacted by Congress in 1938 and was subsequently amended in 1954 and 1992. June 21, 1938, ch 556, § 1, 52 Stat. 821; March 27, 1954, ch 115, 68 Stat. 36; Oct. 24, 1992, P.L. 102-486, Title IV, § 404(a)(1), 106 Stat. 2879.
55. In 1977 Congress created the Federal Energy Regulatory Commission ("FERC") and granted the newly created agency responsibility for formulation and implementation of a national energy program, whereas previously that responsibility had been fragmented among various departments and agencies of the Federal Government. 42 U.S.C. § 7111 et seq.
56. The newly created federal agency assumed, as of that date, full responsibility for creation of regulations and for implementation of the Natural Gas Act, previously assigned to the Federal Power Commission and terminated as of the date of enactment of 42 U.S.C. § 7111 et seq., 15 U.S.C. § 717. *Transfer of Functions*.
57. From the date of its inception in 1977 through 2005 the Federal Energy Regulatory Commission lacked the power to regulate natural gas for import and export and Courts clearly recognized this lack of power:

An **exporter** of natural gas that, like Entex, is not otherwise engaged in interstate gas transactions is not a "natural-gas company" within the meaning of the Act, because the Act defines a "natural-gas company" as a "person engaged in the transportation of natural gas in interstate commerce, or the sale in interstate commerce of such gas for resale," Natural Gas Act § 2(6), 15 U.S.C. § 717a(6) (1976), and defines "interstate commerce" as "commerce between any point in a State and any point outside thereof, or between points within the same State but through any place outside thereof, **but only insofar as such commerce takes place within the United States,**" *Id.* § 2(7), 15 U.S.C. § 717a(7) (emphasis added). See *Border Pipe Line Co. v. Federal Power Commission*, 84 U.S.App.D.C. 142, 171 F.2d 149 (1948); *Compañía de Gas de Nuevo Laredo v. Energy Regulatory Commission* 606 F. 2d 1029 (1979) (*emphasis here only*).

58. In 2005, with the advent of fracking in the United States, Congress amended the Natural Gas Act and extended jurisdiction of the Federal Energy Regulatory Commission (“FERC”) to the exportation of natural gas with the following language:
- Necessity of regulation in public interest. As disclosed in reports of the Federal Trade Commission made pursuant to S. Res. 83 (Seventieth Congress, first session) and other reports made pursuant to the authority of Congress, it is hereby declared that the business of transporting and selling natural gas for ultimate distribution to the public is affected with a public interest, and that Federal regulation in matters relating to the transportation of natural gas and the sale thereof in interstate and **foreign commerce** is necessary in the public interest. 15 U.S.C. § 717(a). (*Emphasis here only*).
59. Congress erred in justifying the inclusion of jurisdiction of gas for **export** based on public interest by referring to “...S. Res. 83 (Seventieth Congress, first session) and other reports made pursuant to the authority of Congress.” *Id.*, since S. Res 83 of the Seventieth Congress (1928) was based on Federal Trade Commission reports which dealt solely with **1928** interstate commerce. (*Ex.-6, Hearings before the Committee on Intrastate Commerce Seventieth Congress Record of S. Res. 83 of the 1928, applicable discussions at pgs. 10, 16, 79, 94, 97, 98 and 221*).
60. The Natural Gas Act was enacted in 1938, and the awarding of gas for **export** jurisdiction to FERC took place in 2005. Congress’ assertion of public interest in its amendment to the Natural Gas Act of 2005 was not only baseless but highly premature, as evident from the two attached letters to the Department of Energy of the United States (“DOE”) by two different groups of senators, one group arguing that gas exportation is in the public interest, the other asserting that it is not in the public interest. (*See attached letters to DOE by senators, dated July 13, 2013 and February 11, 2015*). (*Exs.-7 and 8*).
61. Important public policy issues related to exportation of gas have not yet been dealt with by either group of senators.
62. Exportation of United States gas to foreign countries depletes a national resource for the use of future generations without bringing any benefit whatsoever to the public interest.

63. Exportation of United States gas to be burned into carbon dioxide and water in foreign countries adds significantly to climate change, an issue of great concern to the people of the United States and their government.
64. It is a self-evident fact that exporting natural gas depletes a national resource from usage by future generations.
65. The issue of climate change, the result of such export, touches on an issue which has generated a great deal of concern to the government of the United States and other governments across the world. The purpose of reducing carbon dioxide emissions is vacated when at the same time a country exports fossil fuels. If and when the United States becomes an exporter of energy reaped by fracking, any agreement between the United States and countries such as China for emission reduction within the United States is rendered meaningless since those exported fossil fuels will be converted to carbon dioxide in other countries. Carbon dioxide emitted by exported fossil fuels is not taken into account in the United States-China agreement to reduce carbon dioxide emissions within each country.
66. Public interest is not, however, the deciding factor as to why FERC cannot regulate transportation of natural gas across the United States **for export**, and as to why DOE cannot approve export of natural gas transported across the United States in **gas export** pipelines regulated by FERC.
67. **The critical issue is that the 2005 Amendment to the National Gas Act permitting jurisdiction by FERC, to regulate transport of gas for export, is unconstitutional because the Natural Gas Act provides for eminent domain taking of property to satisfy goals set by FERC.**

**h) Right of eminent domain for construction of pipelines, etc.**

When any holder of a certificate of public convenience and necessity cannot acquire by contract, or is unable to agree with the owner of property to the compensation to be paid for, the necessary right-of-way to construct, operate, and maintain a pipe line or pipe lines for the transportation of natural gas, and the necessary land or other property, in addition to right-of-way, for the location of compressor stations, pressure apparatus, or other stations or equipment

necessary to the proper operation of such pipe line or pipe lines, it may acquire the same by the exercise of the **right of eminent domain** in the district court of the United States for the district in which such property may be located, or in the State courts. The practice and procedure in any action or proceeding for that purpose in the district court of the United States shall conform as nearly as may be with the practice and procedure in similar action or proceeding in the courts of the State where the property is situated: Provided, That the United States district courts shall only have jurisdiction of cases when the amount claimed by the owner of the property to be condemned exceeds \$3,000. 15 U.S.C. § 717f. (*Emphasis here only*).

68. To the extent that FERC includes exportation of gas in its regulatory domain, it is violating the *Fifth Amendment of the United States Constitution* which clearly states that:

“[N]or shall private property be taken **for public use**, without just compensation.” U.S. Const., Amdt. 5. That Clause is made applicable to the States by the *Fourteenth Amendment*. See *Chicago, B. & Q. R. Co. v. Chicago*, 166 U.S. 226, 41 L. Ed. 979, 17 S. Ct. 581 (1897). (*Emphasis here only*).

69. FERC’s consideration for approval pipelines carrying gas for export is in conflict with *Fifth Amendment* law as interpreted by the Supreme Court of the United States.

On the one hand, it has long been accepted that the sovereign may not take the property of A for the sole purpose of transferring it to another private party B, even though A is paid just compensation. On the other hand, it is equally clear that a State may transfer property from one private party to another if future “**use by the public**” is the purpose of the taking; the condemnation of land for a railroad with common-carrier duties is a familiar example. *Susette Kelo et al., v. City of New London* Supreme Court of the United States 545 U.S. 469, 477; 125 S. Ct. 2655, 2661; 162 L. Ed. 2d 439, 444 ( 2005.) (*Emphasis here only*).

70. In *Kelo Id.*, in an opinion by Justice Stevens, J., joined by Justices Kennedy, Souter, Ginsburg, and Breyer, JJ., it was held that the city’s proposed disposition of property under the development plan qualified as a “**public use**” under the *Fifth Amendment*,

so that the city properly could use the power of eminent domain to acquire the unwilling sellers' property.

We emphasize that nothing in our opinion precludes any State from placing further restrictions on its exercise of the takings power. Indeed, many States already impose “**public use**” requirements that are stricter than the federal baseline. Some of these requirements have been established as a matter of state constitutional law, while others are expressed in state eminent domain statutes that carefully limit the grounds upon which takings may be exercised. As the submissions of the parties and their *amici* make clear, the necessity and wisdom of using eminent domain to promote economic development are certainly matters of legitimate public debate. **This Court’s authority, however, extends only to determining whether the City’s proposed condemnations are for a “public use” within the meaning of the Fifth Amendment to the Federal Constitution.** *Kelo Id.* 545 U.S.469 at 489; 125 S. Ct. 2655 at 2668; 162 L. Ed, 2d 439 at 457-458 (2005.) (*Emphasis here only*).

71. Were the Supreme Court to eventually rule that a foreign trade benefit justifies *Fifth Amendment* takings, the prophetic words of Judge O’Connor in her dissent, joined by the Chief Justice and Justices Scalia and Thomas, in *Kelo Id.*, would come to pass:

...nearly any lawful use of real private property can be said to generate some incidental benefit to the public. Thus, if predicted (or even guaranteed) positive side effects are enough to render transfer from one private party to another constitutional, then the words “**for public use**” do not realistically exclude *any* takings, and thus do not exert any constraint on the eminent domain power. *Kelo Id.* 545 U.S.469 at 501; 125 S. Ct. 2655 at 2675; 162 L. Ed, 2d 439 465 (2005.) (*Emphasis here only*).

72. Once trade benefit is accepted as “**public use**” Congress could allow the taking of virtually any private property that could more profitably be marketed abroad, which taking might improve the economy of the United States. Congress could, for example, permit one of its agencies to confiscate all automobiles in the United States older than three years. This congressional agency could then confer this power on a corporation, which would pay wholesale value for the automobiles (just compensation) and sell

them at a profit in foreign markets. This too-easily imagined nation would no longer be the United States of America.

73. *Kelo Id.*, is not the case here. The strip mall to be built on Mrs. Kelo's property was to be used by the public, and that is exactly what the majority of the justices concluded.
74. FERC is about to approve the installation of a gas pipeline, subject matter of this action, destroying the value of Plaintiffs' properties, while this pipeline cannot be considered, under any definition of the term, to be for "**public use**" since it is only going to transport less than thirty percent of the gas for use within the United States, with the balance going for export to foreign countries for the sole purpose of enrichment of the corporations planning the gas transportation.
75. Defendant may argue that because thirty percent of the natural gas to be transported by the pipeline is for "**public use**" (as it will be used in New England) the entire pipeline transporting the balance of the gas for export qualifies as "**public use**" within the meaning of the *Fifth Amendment*.
76. Such an interpretation of the *Fifth Amendment* "**public use**" clause will create a slippery slope, destroying the meaning of the "**public use**" term. How far would the defendant go if it uses this argument? Is it thirty percent? Is it twenty percent? Is it one percent? Is it one thousandth of one percent?
77. The United States Department of Energy is considering granting permits for construction of Liquefied Natural Gas Plants ("LNGP") for export of natural gas approved for transportation, for eventual export, by pipelines approved by FERC.
78. The exportation of natural gas is a very profitable venture for private parties and, per *Kelo Id.*, such enrichment of a private party is not justification for *Fifth Amendment* takings.
79. In the last analysis, what FERC and DOE are overlooking is that "**public interest**" is not equivalent to "**public use**" within the meaning of the *Fifth Amendment*.
80. The framers of the United States Constitution did not say that governments had the right to take private property if such takings are in the public interest. What they said was that government had the right to take private property for "**public use**."



81. Taking of private property because it is in the public interest is a fallacious excuse for eminent domain takings since in a democratic society anything a government does is by definition in the “public interest.”
82. Adoption of the “public interest” term as a justification for eminent domain takings will simply turn the *Fifth Amendment* provision permitting eminent domain takings into useless paper.
83. Congress, the Executive branch, and the Courts can approve gas or oil transportation pipelines for **exportation** of oil and/or gas or the building of LNG facilities using transported gas or oil **for export** only when the proposed oil and gas pipelines carrying gas or oil for exportation **do not take private land by eminent domain or threaten to take private land by eminent domain**. This is the restriction imposed by the *Fifth Amendment* whether the proposed pipeline is the Kinder Morgan (“KM”) pipeline, pipelines scheduled to transport tar sands’ oil for export, or any other similar pipelines.

## **VI. KINDER MORGAN AND THE FRACKING GAS INDUSTRY**

84. Kinder Morgan’s subsidiary, the Tennessee Gas Pipeline Company, L.L.C. (“Tennessee”), filed on September 15, 2014 a request with the Federal Energy Regulatory Commission seeking eventual approval to build a pipeline to carry 2.2.billion cubic feet of natural gas per day from the Marcellus Shale through New England.
85. Prior to September 15, 2014 and starting sometime in 2014 Kinder Morgan conducted a series of public meetings in Franklin County, Massachusetts, describing the nature and extent of the project, including the projected pipeline capacity and the volume of gas expected to be transported through the pipeline.
86. At no time has FERC conveyed to Kinder Morgan, or any of its subsidiaries or affiliated companies, that since a portion of the gas expected to be transported through the pipeline is for export to foreign countries rather than for usage within the

United States, FERC has been and will continue to be in violation of the United States Constitution if it continues to take any action regarding the project.

87. On or about July 6, 2105, FERC mailed Plaintiffs' counsel a Notice of Intent to Prepare an Environmental Impact Statement ("EIS") for the Planned Request for the "Northeast Energy Direct Project...involving construction and operation of facilities by Tennessee Gas Pipeline Company, L.L.C. ('Tennessee')" (*Ex-9*).
88. FERC states in its July 6, 2015 communication, referred to in ¶ 87, that "The Commission will use this EIS in its decision-making process to determine whether the Project is in the public interest and necessity." *Id. at pg.-1*.
89. FERC continues on in its July 6, 2015 communication:

If you are a land owner receiving this notice a Tennessee Gas Representative may contact you about the acquisition of an easement to construct, operate, and maintain the planned facilities. The company would seek to negotiate a mutually acceptable agreement. However, if the Commission approves the Project, the approval conveys with it the right of eminent domain. Therefore if easement negotiations fail to produce an agreement, the pipeline company could initiate condemnation proceedings where compensation would be determined in accord with state law. *Id., at pg.-2*
90. The majority of gas to be transported by the proposed Tennessee pipeline is for export to foreign countries. (*Ex.-12, Expert Report of David Keith.*)
91. Neither Kinder Morgan nor Tennessee nor FERC have ever denied in any forum that the great portion of the natural fracked gas to be transported in the Tennessee pipeline is in fact for export.
92. FERC is aware that a great portion of the natural gas to be transported by the proposed Tennessee pipeline is for export to foreign countries.
93. FERC is aware Tennessee has not been able to contract more than thirty percent of the gas projected to be transported by the proposed pipeline for sale within the United States.
94. On December 30, 2014, counsel for the Plaintiffs raised the issue of exportation of gas through the Tennessee pipeline with Tennessee and Kinder Morgan's counsel. (*Ex.-10*).

95. Neither Kinder Morgan nor Tennessee ever responded to counsel's letter dated December 30, 2014, referred to in ¶ 94, thus admitting by their silence that FERC has no jurisdiction over the proposed pipeline given the fact that most of the gas to be transported is for export to foreign countries.
96. The Department of Energy of the United States ("DOE") claims jurisdiction over the exportation of natural gas.
97. At no time has DOE taken into account, in its permitting processes for exportation of natural gas, that gas for foreign export, including KM's gas, is transported through pipelines approved by FERC under authority allegedly granted them by the 2005 Amendments to the National Gas Act ("NGA") and that approval by FERC of such transportation of natural gas for exportation is in violation of the Constitution of the United States.
98. The United States Department of Energy is aware that that a great portion of the natural gas to be transported by the proposed Tennessee pipeline is for export to foreign countries.
99. The United States Department of Energy is aware that Tennessee has only been able to contract for sale within the United States less than thirty percent of the gas projected to be transported through the proposed pipeline.
100. The lack of communication to anyone by DOE of these facts while at the same time continuing to grant permits to transport natural gas for foreign export, through FERC-approved export gas pipelines represents a continuing violation of *Fifth Amendment* rights of individuals such as Plaintiffs who stand to have their land taken for transportation of natural gas intended for exportation to foreign countries, solely for the enrichment of Kinder Morgan and Tennessee.
101. On July 20, 2015 Plaintiffs Eric and Carolyn Ness received a letter from KM addressed through Plaintiffs' counsel. (*Ex.-11*).
102. KM's submission through the July 20, 2015 letter is a Notice for Public Comment Hearings by the Massachusetts Energy Facilities Sitting Board regarding the gas pipeline and associated facilities in Berkshire, Essex, Franklin, Hampden, Hampshire, Middlesex, and Worcester Counties proposed by the Tennessee Gas Pipeline Company. *Id.*

103. Tennessee admits in its application to the Energy Facilities Sitting Board that the diameter of the Main Line Pipeline is 30 or 36 inches. *Id.*
104. Tennessee also admits that the diameter of the Maritime Delivery Line is 30 inches. *Id.*
105. The admissions made by Tennessee as per paragraphs 103 and 104 are in fact admissions that a minimum amount of gas scheduled for export through the Maritimes Delivery Line is in fact a minimum of seventy per cent of the gas to be transported by the Main Pipeline entering Massachusetts.
106. The admission comes about from the fact that the volumes to be transported through the Main Delivery Line and the Maritimes Lines are proportional to the square of the diameters of the pipelines.
107. Berkshire Gas (“Berkshire”) is a supplier of natural gas to some Western Massachusetts towns. Berkshire is owned by UIL Holding Company (“UIL”).
108. In May or June of 2015 a major European Conglomerate, Iberdola, won federal approval for the purchase of UIL, which also owns Connecticut Natural Gas and Southern Connecticut Gas.
109. Iberdola is a Spanish corporate giant who already owns Rochester Gas and Electric Company Co., New York State Electric and Gas, and Central Maine Power.
110. The amount of natural gas Berkshire Gas projects to purchase from Tennessee is less than **1.6 per cent** of the total gas expected to be transported by Tennessee’s pipeline. (*Ex-12, Expert Report by David Keith.*)
111. Berkshire, given the profit it is going to derive from the sale of UIL to Iberdola, has a keen interest in the construction of the Tennessee pipeline.
112. Iberdola’s interest in small gas suppliers in the United States, such as Berkshire Gas, is directly related to the importation of natural gas by Iberdola into Europe.
113. Berkshire appears to have overstepped its bounds in its sale to Iberdola when its principal spokesperson, Mr. Christopher Farrell, accused those opposed to the Tennessee pipeline, including Plaintiffs in this litigation, of eco-terrorism for their efforts to protect their lives and property. (*Ex.-13*).
114. The matter of the Tennessee pipeline came before the Deerfield Massachusetts Board of Health (“BOH”) at the request of citizens of Deerfield who asked the BOH to hold

- adjudicatory hearings to determine whether the fracked gas pipeline KM and Tennessee propose to build through Deerfield's boundaries presents unreasonable risk to the health and lives of the citizens of Deerfield. (*Ex.-14, Transcript of the Hearings by a Certified Court Reporter*).
115. BOH held the requested adjudicatory hearings to establish facts and to evaluate the dangers to the health and well-being of the residents on Deerfield between September 9, 2014 and October 23, 2014. *Id.*
  116. KM and Tennessee were invited to participate and introduce evidence at the adjudicatory hearings in person and in writing. *Id.*
  117. KM and Tennessee refused to participate in any way at the adjudicatory hearings, thereby showing nothing but contempt for BOH and the law in Massachusetts which grants boards of health in Massachusetts the right to ban from their respective towns activities that may endanger the health and of the residents of the town. M.G.L. Ch. 111 §§s. 31 and 143. *Id.*
  118. The Massachusetts Supreme Court has ruled that federal preemption does not apply to such rulings or regulations issued by BOHs. *Arthur D. Little v. Commissioner of Health of Cambridge* 395 Mass. 535; 481 N.E.2d 441; 1985 Mass. LEXIS 1720 (1985).
  119. After extensive adjudicatory hearings before the BOH of Deerfield between September 9, 2014 and October 23, 2014, BOH banned the building and operation of the projected Deerfield pipeline within the boundaries of Deerfield. (*Ex.-15*).
  120. Deerfield BOH established a series of facts, not contested or objected to by KM or Tennessee, at the adjudicatory hearing. *Id.*
  121. The uncontested facts upon which BOH based its decision to ban the pipeline follow.
  100. A Kinder Morgan subsidiary was convicted in California of six felony counts regarding the deaths of Javier Ramos, Israel Hernandez, Tae Chin, Victor Rodriguez and Miguel Reyes. *Id.*
  101. The Supreme Court of the United States has rejected the argument that political speech of corporations or other associations should be treated differently under the *First Amendment* simply because such associations are not "natural persons." *Citizens United v, Federal Election Commission Supreme Court of the United States*

*558 U.S. 310 at 343; 130 S. Ct. 876 at 900; 175 L. Ed. 2d 753 at 784 (2010) (citations omitted).*

102. The order of the Supreme Court establishing that corporations cannot be treated differently from “natural persons,” albeit in the context of the *First Amendment*, gives clear indication to the BOH that a corporation cannot be treated differently from “natural persons” in the context of felonies committed.
103. Felons have limited rights in Massachusetts, i.e., cannot participate in elections as they cannot vote while incarcerated, cannot be members of the Gaming Commission, etc.
104. The Deerfield BOH found that a corporation convicted of felonies resulting in the tragic deaths of five people presents an unreasonable risk to the health and lives of residents of Deerfield if such felon were to be allowed to build a massive, high-pressure fracked-gas pipeline through Deerfield. (*Ex.-15*).
105. Deerfield BOH found that Kinder Morgan was cited by the Hazardous Materials Safety Administration for violating its regulations five times in 2011. *Id.*
106. Deerfield BOH found that in Texas, alone, from 2003 to 2014 Kinder Morgan experienced 36 “significant incidents” resulting in fatalities or hospitalization, fires, explosions or spills. *Id.*
107. Deerfield BOH found that allowing Kinder Morgan, a corporation known to have acted with willful disregard for regulations enacted to prevent injury to or death of residents and citizens, the right to build and operate a massive, high-pressure fracked gas transportation pipeline through the town would present unreasonable risk to the health and lives of residents of Deerfield. *Id.*
108. Deerfield BOH found that Kinder Morgan has a record of bribery, pollution, fraud, scams, thefts, deaths, felonies, environmental disasters, labor violations, unsafe working conditions, and influence buying. *Id.*
109. Deerfield BOH found that Kinder Morgan’s operations in Portland, Oregon, have been host to pollution, law-breaking, and even bribery. *Id.*
110. Deerfield BOH found that the Federal Bureau of Investigations determined that between 1997 and 2001 “Kinder Morgan systematically scammed some of its

- customers, including the Tennessee Valley Authority (‘TVA’), a publicly owned provider of electricity in the mid-South.” *Id.*
111. Deerfield BOH found that the same federal investigation found that at its Grand River Terminal in Kentucky, Kinder Morgan officials took coal from a customer’s stockpiles and resold nearly 259,000 tons. *Id.*
112. Deerfield BOH found that in another case the US Environmental Protection Agency (“EPA”) fined Kinder Morgan \$613,000 for violations of the Clean Air Act after “regulators discovered that the company had been illegally mixing an industrial solvent described as a ‘cyclohexane mixture’ into unleaded gasoline and diesel.” *Id.*
113. Deerfield BOH found that in 2010 the federal government fined Kinder Morgan \$1 million for repeatedly violating the Clean Air Act. The US Department of Justice found that “among other crimes” Kinder Morgan managers lied in permit applications, stating that the company would control its pollution, when all the while they knew the control equipment was not being operated or even maintained properly. *Id.*
114. Deerfield BOH found that currently Kinder Morgan is under investigation by the EPA for violating the federal Renewable Fuels Standard. Officials believe that Kinder Morgan purchased conventional fossil fuels while filing falsified documents certifying that the fuels came from renewable sources. *Id.*
115. Deerfield BOH found that allowing Kinder Morgan, a corporation with a record of having acted with such willful disregard for regulations enacted to prevent injury to or death of residents and citizens, to operate within the bounds of the town of Deerfield would present unreasonable risk to the health and lives of residents of Deerfield. *Id.*
116. Deerfield BOH found that Kinder Morgan’s pipelines have endangered lives in many communities across the United States and Canada, as enumerated below. *Id.*
117. Deerfield BOH found that in 2007 a Kinder Morgan pipeline ruptured in Burnaby, British Columbia, forcing 50 families to evacuate their homes as oil rained down on a residential neighborhood. *Id.*

118. Deerfield BOH found that in January of 2012 a Kinder Morgan storage facility in British Columbia spilled roughly 29,000 gallons of crude oil into the community of Abbotsford. *Id.*
119. Deerfield BOH found that in April of 2004 a long stretch of a Kinder Morgan corroded pipeline ruptured, spilling 123,000 gallons of diesel fuel into a sensitive saltwater wetland on San Francisco Bay. Kinder Morgan pled guilty on four counts relating to that spill as well as an unrelated spill in Los Angeles Harbor. *Id.*
120. Deerfield BOH found that in November of 2004 an oil pipeline of a Kinder Morgan subsidiary burst in the Mojave Desert, sending a jet of fuel 80 feet into the air. The break closed the nearby interstate highway and contaminated more than 10,000 tons of soil in the habitat of the federally endangered California Desert Tortoise. *Id.*
121. Deerfield BOH found that in 2005 Kinder Morgan had spilled 70,000 gallons of fuel into Oakland's inner harbor and then 300 gallons into the Donner Lake watershed in Sierra Nevada. And in 2007 the City of San Diego sued Kinder Morgan for falsifying records of the clean-up of a fuel leak that contaminated the aquifer. *Id.*
122. Deerfield BOH found that in May of 2011 the US Pipeline and Hazardous Materials Safety Administration announced a proposed \$425,000 fine against Kinder Morgan for safety violations following a federal investigation into Kinder Morgan's having spilled 8,600 gallons of hazardous liquids in New Jersey. *Id.*
123. Deerfield BOH found that in December of 2011 a two-year-old Kinder Morgan natural gas pipeline leaked in Ohio, spewing 127,000 cubic feet of natural gas and forcing residents to evacuate their homes. *Id.*
124. Deerfield BOH found that allowing Kinder Morgan, a corporation with a known record of endangering lives of residents across North America, to build and operate a massive fracked gas transportation pipeline through the town would present unreasonable risk to the health and lives of residents of Deerfield. *Id.*
125. Deerfield BOH found that pipeline transportation of fuels is a dangerous operation in the United States and worldwide, as instances enumerated below illustrate. *Id.*
126. Deerfield BOH found that from 2000 to 2009 there were 460 accidents on record related to pipeline discharges of fuels, whether gas or liquids, in the United States. *Id.*



127. Deerfield BOH found that pipeline-related incidents have brought pipeline safety to national —and presidential —attention. *Id.*
128. Deerfield BOH found that from 1994 through 2013 the United States had 745 serious incidents with gas distribution, causing 728 fatalities, 1059 injuries, and \$110 million in property damage. *Id.*
129. Deerfield BOH found that National Public Radio reported in January of 2014 that more than 6,000 leaks of gas had occurred in the District of Columbia alone. *Id.*
130. Deerfield BOH found that in Massachusetts in the last ten years it has cost consumers more than \$1.5 billion for fuel leaked from pipelines. *Id.*
131. Deerfield BOH found that there is a danger to the health and lives of residents of Deerfield if the BOH were to permit construction and operation of natural gas pipeline within the town of Deerfield, particularly when the company constructing and operating the pipeline is Kinder Morgan. *Id.*
132. Deerfield BOH found that Kinder Morgan's Official, Mark Hamrich, reported at a public meeting held at Greenfield Community College on July 14, 2014 that Kinder Morgan does not know the composition of the fracked gas planned to be transported through the proposed pipeline. *Id.*
133. Deerfield BOH found that fracking is a process designed to extract gas from shale buried in the soil. Fracking fluid is a toxic brew consisting of multiple chemicals, which may include materials such as petroleum distillates, ethylene glycol, methanol, polyacrylamide and many others. *Id.*
134. Deerfield BOH found that Kinder Morgan has not denied that some of these fracking chemicals might be present in the fracked gas to be transported through the pipeline.
135. Deerfield BOH found that the statement of Mark Hamrich of Kinder Morgan at an open meeting disingenuous as the actual composition of the gas in the pipeline can be established at any time by simple gas and/or liquid chromatography analysis. *Id.*
136. Deerfield BOH found that the unknown composition of the gas in the pipeline will indeed present a danger to the health and lives of residents of Deerfield if the BOH were to permit construction and operation of natural gas pipeline within the town of Deerfield, particularly when the company constructing and operating the pipeline,

Kinder Morgan, does not know the composition of the gas to be transported through the pipeline. *Id.*

137. Deerfield BOH issued an Order dated October 23, 2014 banning construction and operation of the proposed pipeline through Deerfield based on the factual, uncontroverted evidence presented at the public adjudicatory hearings held between September 9, 2014 and October 23, 2014. *Id.*
138. Kinder Morgan's and Tennessee's response to the Deerfield BOH Order, based on the board's findings through its extensive adjudicatory hearings (where neither Kinder Morgan nor Tennessee were willing to participate nor did they object to the facts introduced), was a letter sent on November 17, 2014 by Kinder Morgan and Tennessee's counsel, stating that "...the Order is a nullity." (*Ex. -16*).
139. The aforementioned letter also states that "Tennessee expressly reserves all legal rights and remedies, including, without limitation, the right to dispute the factual allegations and legal claims in the Order." *Id.*
140. Neither KM nor Tennessee seems to be aware that by not participating, as repeatedly requested to do so, at the BOH hearings held between September 9, 2014 and October 23, 2014, they waived their right to object to the factual findings of BOH.
141. Kinder Morgan stated at a public relations meeting held at Greenfield Community College on July 14, 2014 that the thickness of the walls of the proposed 36-inch to 42-inch pipeline will be only 60% of the thickness of other pipelines that pass through more populated areas.
142. Wall thickness of gas pipes is one of the major costs of pipelines for manufacture, installation, and operation. The thinner projected pipeline represents savings in the hundreds of millions of dollars in the projected five billion dollar project.
143. KM/Tennessee rationalizes implementation of the thinner-walled pipelines by using a cost-benefit analysis which values **total** expected lives lost in an explosion in rural areas much lower than total expected lives in a more populated area because of projected lower number of deaths.
144. Plaintiffs' lives and other lives possibly lost by an explosion are thus merely a cost of doing business for KM/Tennessee.

**VII. THE ALLEGATION BY FERC THAT THE PIPELINE  
PROJECT IS IN THE “PUBLIC CONVENIENCE AND  
NECESSITY” IS IRRELEVANT  
TO THE FIFTH AMENDMENT CLAIM  
SUBJECT MATTER OF THIS COMPLAINT  
AND IT IS ALSO NOT TRUE**

145. FERC justifies, in its July 6, 2015 communication referred to in ¶ 87, that the pipeline project subject matter of this action is “**in the public convenience and necessity.**” (*Ex.-9*).
146. FERC is now arbitrarily modifying the language of 15 U.S.C. § 717 (a) from public interest justified by a 1928 interstate trade report to “**public convenience and necessity,**” thus in its mind trying to simulate desperately, the *Fifth Amendment* language of “**public use.**”
147. What the *Fifth Amendment* states is that:
- “[N]or shall private property be taken **for public use,** without just compensation.” U.S. Const., Amdt. 5. That Clause is made applicable to the States by the *Fourteenth Amendment*. See *Chicago, B. & Q. R. Co. v. Chicago*, 166 U.S. 226, 41 L. Ed. 979, 17 S. Ct. 581 (1897). (Emphasis here only).
148. The 2005 amendment to the Natural Gas Act, subject matter of this action, allegedly grants FERC jurisdiction over exported gas when such exportation is the public interest, justified by a 1928 interstate trade report, which is not “**public use**”. The effort of FERC to redefine its jurisdiction based on public interest justified by a 1928 interstate trade report into “**public convenience and necessity**” is a futile effort to place a square peg into a round hole.
149. Defendant cannot re-write the statute. This attempted re-writing of 15 U.S.C. § 717(a) as justifying takings of land based on “**public convenience and necessity**” deserves an E grade for effort on the part of the agency, and nothing more, since the statute reads public interest justified by a 1928 interstate trade report and the *Fifth Amendment* reads “**public use.**”

150. Defendant's attempt to re-write the statute suffers from an identical flaw as does the term public interest justified by a 1928 interstate trade report language of 15 U.S.C. § 717(a) since **neither "public interest justified by a 1928 interstate trade report" nor "public convenience and necessity" can be equated with "public use."**
151. Defendant admitted in 2014 in a report prepared by one of its agencies, the General Accounting Office ("GAO"), that "In passing the NGA, Congress did not define public interest." (*Ex.-17 at pg. 11*).
152. This Court is faced with three separate and distinct explanation as to why Defendant claims justification for KM/Tennessee to take Plaintiffs' property by eminent domain:
  - A. Congress in enacting 15 U.S.C. § 717(a) justified the taking of private property by eminent domain on the basis of 1928 obscure interstate trade report. (*Ex. - 6*).
  - B. FERC justifies the taking of private property by eminent domain based on a rabbit pulled out of hat which it calls "public convenience and necessity".(*Ex.-9*)
  - C. The General Accounting Office ("GAO"), comes clean, and admits that Congress failed to define what is the public interest in taking private property to have a multibillion dollar company enrich itself by exportation of gas to foreign countries. (*Ex.-17 at pg. 11*).
153. The fact that GAO in 2014 finds that GAO has not defined public interests in the Natural Gas Act should give this court pause as to how far Defendant is willing to go to redefine the statute as if it said "**public convenience and necessity**," which it does not say, which furthermore is in fact not "**public use**" satisfying the requirements of the *Fifth Amendment*.
154. Moreover the projected pipeline is not even in the "**public convenience and necessity**" since it is going to result in sharp increase of natural gas costs and it is not needed to supply natural gas to New England. (*Exs.-12, 18*).
155. Plaintiffs' expert David Keith has testified that the natural gas expected to be transported through the pipeline is not needed in New England. (*Ex.-12*).
156. Industrial expert Paul Cicio, CEO of Industrial Energy Consumers of America, has opined that consumer prices of natural gas will most likely increase if natural gas is exported to foreign countries. (*Ex.-18*).

157. The testimony of Mr. Paul Cicio is particularly swaying since the Industrial Energy Consumers of America (“IECA”) is a nonpartisan association of leading manufacturing companies with \$1.0 trillion in annual sales, over 2,900 facilities nationwide, and with more than 1.4 million employees worldwide. It is an organization created to promote the interests of manufacturing companies, through advocacy and collaboration, for which the availability, use and cost of energy, power or feedstock play a significant role in their ability to compete in domestic and world markets. IECA membership represents a diverse set of industries, including chemical, plastics, steel, iron ore, aluminum, paper, food processing, fertilizer, insulation, glass, industrial gases, pharmaceutical, building products, brewing, independent oil refining, and cement. *Id.*
158. Paul Cicio has presented similar testimony in Congress (*Ex.-19*) and in the intervention of the Industrial Energy Consumers of America in the matter of Pieridae application for export of liquefied natural gas. (*Ex.-20*).

### **VIII. RESERVATION OF RIGHTS**

159. This case is filed under 28 U.S.C. § 1331 and 28 U.S.C. § 1346(a) (2) since this is a civil action against the United States arising under the Constitution and does not claim damages in excess of \$10,000.00, as per 28 U.S.C. § 1346(a) (2), and it is based on the Constitution and an Act of Congress, in this case 15 U.S.C. § 717(a).
160. Plaintiffs through this filing are not waiving any damages to which they might be entitled under Massachusetts tort laws and the Federal Torts Claim Act.

### **IX. CAUSE OF ACTION**

161. Plaintiffs re-allege and incorporate by reference each and every allegation contained in the preceding paragraphs as if set forth fully herein.
162. This is an action to halt the approval under consideration by federal agencies of the Kinder Morgan/Tennessee pipeline, as described in this complaint. The purported basis for considering construction and operation of the pipeline is Section 15 U.S.C. § 717(a) of the National Gas Act 42 U.S.C. § 7111 et seq., which grants the United

States the power to allow private entities to take real property by eminent domain, with adequate compensation. In a case such as this, however, where the pipeline is expected to carry a minimum of seventy per cent of the gas for foreign export, approval by these federal agencies amounts to an **unconstitutional** exercise of their powers.

163. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. § 1331 because this is a civil action arising under the Constitution and pursuant to 28 U.S.C. § 1346(a)(2) because this is a civil action against the United States not exceeding \$10,000.00, and founded upon the Constitution and an Act of Congress.
164. The defendant is the United States of America.
165. As a direct result of 15 U.S.C. § 717(a) of the National Gas Act 42 U.S.C. § 7111 et seq., the federal government is considering permitting KM/Tennessee to take Plaintiffs' properties or an easement over Plaintiffs' properties.
166. These actions of the United States are unconstitutional and have caused damages to Plaintiffs, granting them Article III standing to bring this action to have 15 U.S.C. § 717(a) of the National Gas Act 42 U.S.C. § 7111 et seq., declared unconstitutional, in that it permits the United States to allow KM/Tennessee to take Plaintiffs' properties by eminent domain or to place an easement over Plaintiffs' properties by eminent domain in violation of the *Fifth Amendment* of the United States Constitution since the takings are not for "**public use.**"

## **X. PRAYERS FOR RELIEF**

**WHEREFORE, plaintiffs pray this court:**

1. Declare 15 U.S.C. § 717(a) of the National Gas Act 42 U.S.C. § 7111 et seq., unconstitutional as applied to Plaintiffs in this litigation.
2. Issue a Temporary Restraining Order halting all further actions of Defendant's agencies in the matter of the KM/Tennessee pipeline until the issues raised in this Complaint are fully adjudicated.

3. Enjoin Defendant from considering for approval the KM/Tennessee pipeline, subject matter of this action since a great portion of the gas to be transported by the proposed pipeline is for export to foreign countries.
4. Award Plaintiffs a judgment as allowed by law and such other relief as the Court may deem just, including an award of reasonable litigation costs incurred in this proceeding pursuant to 28 U.S.C. § 2412(a)(1) and an award of attorney's fees pursuant to 28 U.S.C. § 2412 (b).
5. Grant such other and further relief as the Court may deem equitable and proper.

Dated: Conway, Massachusetts  
July 28, 2015

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