

## Lies, Damned Lies and Statistics

Periodically FERC hosts an “Interagency Pre-Filing Conference Call” that includes a rotating roster of FERC staff and contractors, Kinder Morgan staff and contractors and members of a variety of other NED-affected services, commissions, bureaus, etc. The purpose of these calls is to allow Kinder Morgan to report on the current NED pre-filing status. Reports of these conference calls are then filed with FERC, though the filings happen weeks after the calls themselves are completed. One statistic typically reported on these calls is the percentage of landowners who have given survey permission to Kinder Morgan.

Having had my own property directly threatened by the earlier NED route through Massachusetts, I’ve always paid close attention to this survey approval statistic. My own feeling is that denying survey permission is one of the few ways available to send a direct message to Kinder Morgan (and hopefully to FERC) for them to please withdraw from New England and to take their pipeline with them. I planned to fight them tooth and nail and they could stay the h-e-double-hockey-sticks off of my property.

In the report filed on May 20 regarding the April 30, 2015 conference call (<http://elibrary.ferc.gov/idmws/common/opennat.asp?fileID=13881265>), Kinder Morgan had this to say about survey permissions:

### **Approved landowner access is approximately:**

- **Supply Path – ~51% of landowner approval**
- **Market Path – ~38% approved including 23% in NH**

And in the just-filed report regarding the June 25, 2015 conference call (<http://elibrary.ferc.gov/idmws/common/opennat.asp?fileID=13947860>), Kinder Morgan reported these numbers:

### **Landowner survey access**

- **Supply Path**
  - **46% access in PA/NY”**
- **Market Path**
  - **20-30% access in NH and MA**
  - **Unknown from Wright, NY to NY/MA state line**

I’ll give KM’s **20-30%** estimate a value of 25%, halfway between 20% and 30%. Taken at face value, these figures indicate that the percentage of landowners who have given survey permission has decreased along the Supply Path by five percentage points (from 51% to 46%, one tenth) and decreased along the Market Path by thirteen percentage points (from 38% to 25%, fully one third).

These numbers are very significant, both statistically speaking and also for anyone following the “progress” of this pipeline proposal. Kinder Morgan’s percentages of survey approvals appear

to have dropped very significantly in the months of May and June. At this rate, the approval percentages should be approaching zero when KM files their application this fall ☺.

The possibilities that I see for explaining these changing numbers are as follows:

- KM is receiving survey denials from landowners who previously gave approvals.
- KM is conceding that they had earlier grossly under-counted affected landowners.
- KM inflated the earlier numbers, hoping to hit them before the June 25 call.
- KM is incompetent and can't be trusted to accurately make this calculation.

Note that KM is not required to make public its list of affected landowners, much less the KM collection of survey permission/denial forms – and so it is difficult to fact check their data. I have previously called upon FERC to require that KM share with FERC the verified data that supports these approval percentages. The latest (June 25) set of percentages make it appear that the earlier skepticism was justified.

At the recent FERC scoping meeting in Nashua, an elected official from Rindge, NH reported that KM counts 73 directly affected landowners in that town, but that town officials count over 150 (using the most detailed maps that KM has supplied). Such under-counting of the total number of affected landowners by KM would certainly boost their calculation of percentage of landowners approving surveys. This is a very good reason to mistrust the unverified KM percentages.

There are numerous reports of KM surveyors entering the property of landowners who have denied survey approval. This seems like a good reason to question whether KM is accurately tracking survey denials. There are also numerous reports of landowners who seem very directly affected on the most recent KM maps, but who have never been contacted by KM.

Kinder Morgan has always tried to convince the public of the inevitability of this pipeline, hoping to foster the belief that resistance is futile. But it surprised me when Eric Tomasi, the FERC project manager for NED, encouraged landowners to allow surveys during his opening remarks at the Nashua scoping meeting. The Boston eminent domain lawyer that I consulted when my property was directly threatened by NED strongly recommended that landowners not have any official dealings with Kinder Morgan or its contractors, and certainly not allow surveyors on their property. His explanation was that if you later meet Kinder Morgan in the courtroom as they are proceeding with an eminent domain taking of your land, they will use any and all information gleaned from the survey to strengthen their case.

FERC has indicated in the past that one factor that would weigh against approving a pipeline is the total of the eminent domain takings that would likely occur if a certificate of public necessity and convenience is awarded for that pipeline. I submit to FERC that the survey approval percentage is perhaps their best predictor of the extent to which takings by eminent domain will accompany an approval of the NED pipeline. And I therefore call upon FERC to force Kinder Morgan to prove that the data that this calculation is based upon is accurate.

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