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NY/NJ Coalition Against the Pilgrim Pipeline  
www.stoppilgrimpipeline.com  
May 13, 2016

Ares Management, L.P.  
2000 Avenue of the Stars  
12th Floor  
Los Angeles, CA 90067

Mr. Michael Arougheti, President of Ares Management, L.P.  
Mr. David Kaplan, Partner  
Mr. John Kissick, Partner  
Mr. Michael McFerran, Chief Financial Officer  
Mr. Antony P. Ressler, Chief Executive Officer  
Mr. Bennett Rosenthal, Partner  
Mr. Michael Weiner, Chief Legal Officer

Dear Sirs,

We, the NY/NJ Coalition Against the Pilgrim Pipeline, comprising over 70 environmental, activist and other local organizations (see [Attachment I](#)), are writing to ask that you defund and halt all efforts on the part of your subsidiary to construct these two pipelines. The proposed pipelines present totally unacceptable risks to the water supplies, health, safety and property values of millions of residents, municipalities, businesses and other institutions in New York and New Jersey while offering virtually no benefits to the region. We consider this project to be not only immoral, as it preempts the rights and will of millions of local people for the benefit of a few, but bad business for Ares, a company that prides itself on its socially responsible actions and has publicized its high ethical standards in its code of conduct. The clearly unethical behavior of its Pilgrim project executives and their agents along with their false benefit claims and deceitful business plan statements do not comport with Ares' stated business principles. The citizens of New York and New Jersey as well as Ares Management would benefit from defunding this project as demonstrated in the summary below and subsequent detailed sections of this letter and attachments.

Pilgrim's pipelines introduce completely [Unacceptable Risks](#) to our region, our water supplies, our health and welfare and our property values.

The proposed pipelines project is [Lacking in Significant and Credible Benefits](#) for the residents, businesses, municipalities and other institutions in this region. It is only beneficial to Pilgrim and Ares who will reap any profits while those in the path of this pipeline will incur all the risks. All of Pilgrim's benefit claims have been shown to be false or misleading.

[Pilgrim's Executives, Lobbyists and Land Agents have Behaved Badly](#) by outright lying, intimidation and harassment of homeowners, making false promises, making misleading statements, trespassing and selling Ares/EIF funds using very misleading statements. These behaviors appear to be clear violations of Ares' code of conduct and ethical standards.

[Pilgrim's Plans Violate Ares' ESG Policy and its Social Responsibility Program.](#) The ESG (Environmental, Social and Corporate Governance) Policy calls for responsible investment and "*encourage(s) the companies in which it invests to consider relevant **environmental**, (author's emphasis added) issues, minimizing adverse impacts in these areas.*" This project also conflicts with the principles of Ares' social responsibility program that "*focuses on giving back to our communities and the **environment** (author's emphasis added).*" Instead of protecting or improving our environment, Pilgrim's pipelines will create new, unacceptable and totally unnecessary risks to our environment.

Pilgrim Pipeline executives have made [Highly Questionable and Easily Refutable Assertions in Support of their Business Plan.](#) They have failed to provide credible evidence to back up their business strategy. Either Pilgrim does not have a solid business plan (which should be a concern to Ares) or Ares and Pilgrim are hiding something in an attempt to avoid having to deal honestly with the public and government about the risks of this pipeline, which would make this venture even more objectionable and repugnant to residents and towns were it to become known.

The [Volume of Opposition](#) to these pipelines is almost unprecedented for a regional project. Seventy-nine municipal and other governmental bodies in New York and New Jersey have stated their opposition to this project, while thousands of residents have signed petitions to the same effect.

Pilgrim executive's behavior has produced [Negative Reactions from Local, State and Federal Elected Officials.](#) They have criticized Pilgrim for using bully tactics, lack of transparency and their inability to support their claims with sound facts and statistics.

[Fossil Fuel Investments are Becoming Problematical.](#) There are currently 505 institutions that have committed to divest fossil fuel investments controlling \$3.4 trillion in assets. This trend is growing due to the worldwide outcry against an

industry that drives climate change and generates significant (often devastating) local impacts as byproducts of virtually every project it undertakes. **Investors are listening and the arc of history is bending toward our side.**

Ares Management is clearly a very smart, professional and financially sophisticated company. We do not understand why you are investing in a project that has the potential to reflect poorly on Ares given its history of repeated ethical challenges, significant environmental risks, disregard for the public welfare, widespread opposition and implications of worse to come; not to mention an implausible business plan that requires a high degree of public financial risk in order for Ares make a profit.

We understand that Ares/EIF has invested about \$20M in this project. While not an insignificant amount, it represents only about .02% of total Ares assets under management. At the same time we know you perceive the current volatile market as potentially generating many other new opportunities for Ares across a wide spectrum of industries. We are not financial/business consultants but it is clear that this pipeline project is not vital to Ares' future success and has a unique set of risks for Ares beyond financial performance.

While other avenues of action/communication within the government, media, investor and financial sectors are open to us, we are communicating our request for defunding of this project only to Ares' management and its board of directors at this time.

We respectfully ask that you respond to this request within three weeks. We understand it may be difficult for you to assess the Pilgrim project in this time frame and we are willing to work with you if you indicate that a longer time period is needed. However, we are asking for a response to this letter by June 7, 2016. Understand that we will have to interpret the absence of a response as a denial of our request.

We want to make it clear we are planning to fight this for as long as it takes including any necessary litigation. You should also be aware that independent of the steps we are taking, over a dozen New Jersey municipalities have formed a coalition to create a joint legal fund to oppose these pipelines. For Ares and EIF/Pilgrim this is a matter of a few more dollars in your pockets. For us it is a matter of quality of life and ability to live where we choose knowing our water supplies, property values and health are safe from this type of destruction. **We cannot afford to not fight this pipeline.** You can afford to give it up.

Finally, we also want Ares to know that it can earn our support and positive press announcements by defunding Pilgrim. We would be delighted to praise Ares as an excellent example of a company who lives its values, considers the worth of life and human rights as part of its business processes and is willing to partner with the public who would be affected by its decisions.

Below are sections with the details to support all of our claims summarized above.

We await your response.

In order to respond, you can contact Mr. Kenneth Dolsky at either:  
[kdolsky@optonline.net](mailto:kdolsky@optonline.net) or  
21 Winfield Drive  
Parsippany, NJ 07054

An electronic copy of this letter will be sent to anyone who requests it via email.

CC: Ares Management Board of Directors

## **Unacceptable Risks**

- The proposed pipeline route travels through densely populated residential areas, within 75-100 feet of homes, schools, health care facilities and businesses and would cut through environmentally sensitive and protected areas, including the Highlands region in NJ. The proposed route through the Preservation Area in the New Jersey Highlands alone, threatens the drinking water in whole or in part of over four million people. This same area (NJ Highlands) is responsible for New Jersey having the fourth lowest cost of water in the country, a benefit that could be lost with an oil spill.
- In New Jersey, Pilgrim's proposal cuts across three major drinking water river sources, numerous smaller streams and two EPA designated sole source aquifers (the Ramapo Aquifer and the Buried Valley Aquifer). The U.S. EPA declared the entire 163 square miles of the Ramapo River Basin a Federal Sole Source Aquifer in 1992 under the provisions of the Safe Drinking Water Act. (22% of the Ramapo River Watershed has already been assessed as having poor quality. Pilgrim's pipelines will only put more stress on this watershed). The Buried Valley Aquifer impacts drinking water sources for twenty-six municipalities in four northern New Jersey counties. NJ has a very dense and highly interconnected network of rivers, streams, reservoirs and aquifers. Polluting any one of them affects all of them. Any aquifer pollution would likely result in strict DEP limits on drawdowns from replacement sources, which can impact other communities and economic development.
- The pipeline proposal also crosses numerous NJ Green Acres Program sites including Ringwood State Park, Ramapo Mountain State Forest, Ramapo Valley County Reservation, Sunset Valley Golf Course, Troy Meadows, West Essex Park, Passaic River County Park, Ash Brook Reservation, Middlesex Water Company Reservoir, Rahway River Parkway and Roosevelt Park.
- In New York, the plan filed with the DEC crosses 8 aquifers, 19 freshwater wetlands protected by New York under its Environmental Conservation Law, approximately 226 federally regulated wetlands and 232 streams, including the Hudson (which would be crossed twice while the pipeline would also reach the river's edge in Newburgh and New Windsor), Wallkill, and Ramapo Rivers, and Cossackie, Esopus, Rondout, Moodna and Catskill Creeks. It will also cross the Catskill and Delaware Aqueducts, which supply water to New York City. The direct water supply for 30,000 people (Silver Lake and Lake Washington) along the two Newburgh laterals is vulnerable due to extreme sensitivity of feeder streams and reservoirs. The already compromised Newburgh water source will be put at greater risk. The pipelines would traverse or run adjacent to 19 prime destinations for outdoor recreation, such as Harriman State Park, Sterling Forest State Park and Catskill Park. Catskill Park in the town of Ulster is also designated on Pilgrim's route maps as the potential site for a pump station. Catskill Park serves as both a watershed and recreational area. Pilgrim's plans show their pipelines crossing within a few feet or even inches of the sole water supply for the Village of Catskill. Finally, the pipelines would cross numerous smaller aquifers that many residents in rural communities depend upon for their drinking water.
- Crude oil contains "BTEX" – benzene, toluene, ethylbenzene, and xylene. The EPA stated "maximum contaminant level goal" for benzene is zero because it causes blood diseases and cancer. The Transportation Safety Board of Canada sampled Bakken

crude. Based on its data, the 200,000 barrels per day of oil that would be pumped south equates to the following volumes per minute: 71 pounds of benzene, 122 pounds of toluene, 34 pounds of ethylbenzene and 190 pounds of xylenes. A spill lasting only ten minutes can be expected to release about two tons of BTEX. A one-minute pumped release (spill) from the southbound Pilgrim pipe could amount to almost 6,000 gallons containing about 70 pounds of benzene. This is enough to contaminate 1.7 billion gallons of water, making it unsafe for human consumption. It is also very important to recognize that the processed products to be carried in the northbound pipeline, such as jet fuel, also contain BTEX, particularly benzene.<sup>1</sup>

- If a pipeline spill were to contaminate the Hudson River watershed in NY or the Ramapo River or Buried Valley Aquifers in NJ, all irreplaceable water sources, it could take decades before the water for millions of residents would be safe to consume. Despite efforts to clean up an oil spill that polluted a Minnesota aquifer in 1979, the water still wasn't safe to drink 17 years later because levels of benzene, toluene, ethylbenzene and xylenes still exceeded safety limits established by the U.S. EPA.<sup>2</sup> A recent study of the same aquifer found arsenic levels rose from below 10 micrograms per liter to over 230 micrograms per liter years after the spill. When bacteria break down petroleum underground, the chemical process can release naturally occurring arsenic.<sup>3</sup>
- Pilgrim's pipelines would be able to transport 400,000 barrels of Bakken crude oil and refined products per day, virtually every day, for the next 30 to 40 or more years. During that time the risk to our drinking water will be based on their ability and resources to perform proper maintenance, monitoring, training and management of operators, not to mention external factors beyond their control, which account for 44% of all pipeline incidents.
- Major pipelines regularly reduce local property values by posing serious safety risks. These risks include forced evacuation of homes for prolonged periods of time and permanently polluted drinking water. Pipeline spills (as shown via case studies in MD, TX, OH, the Gulf of Mexico and other regions) – or even the possibility of pipeline spills – have been shown time and again to adversely impact property values. In several documented cases, directly impacted properties lost between 10 and 40% of their value. The reputation impacts alone are significant - properties near spills will usually see a 5-8% reduction in value.<sup>4</sup> Groundwater contamination will lead to more permanent value losses, particularly where homes rely on well water. How much is a home worth without running water? Even if houses aren't directly damaged, the stigma and perception that the next incident could affect them is significant.
- Oil pipeline leaks pose serious health risks<sup>5</sup> to nearby residents, workers and first responders. Oil fumes are **toxic and carcinogenic**. Breathing the fumes from crude oil are known to cause chemical pneumonia, irritation of the nose, throat, and lungs, headache, dizziness, drowsiness, loss of coordination, fatigue, nausea, and labored

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<sup>1</sup> [https://www.osha.gov/dts/chemicalsampling/data/CH\\_248748.html](https://www.osha.gov/dts/chemicalsampling/data/CH_248748.html)

<sup>2</sup> <http://mn.water.usgs.gov/projects/bemidji/>

<sup>3</sup> [http://missoulian.com/news/local/usgs-study-links-montana-oil-spills-to-arsenic-releases-in/article\\_dc2f4fec-9bb4-5119-a556-8ae85c6af5ff.html](http://missoulian.com/news/local/usgs-study-links-montana-oil-spills-to-arsenic-releases-in/article_dc2f4fec-9bb4-5119-a556-8ae85c6af5ff.html)

<sup>4</sup> <http://credbc.ca/wp-content/uploads/2013/12/Pipeline-spills-property-values.pdf>

<sup>5</sup> [https://docs.neb-one.gc.ca/ll-eng/llisapi.dll/fetch/2000/90464/90552/548311/956726/2392873/2449925/2451480/2785463/C259-8-15\\_-\\_App\\_12\\_to\\_JE\\_evidence\\_-\\_NSNOPE\\_Health\\_Effectsof\\_Pipelines\\_and\\_Oil\\_Spills\\_-\\_A4L5W5.pdf?nodeid=2784472&vernum=1](https://docs.neb-one.gc.ca/ll-eng/llisapi.dll/fetch/2000/90464/90552/548311/956726/2392873/2449925/2451480/2785463/C259-8-15_-_App_12_to_JE_evidence_-_NSNOPE_Health_Effectsof_Pipelines_and_Oil_Spills_-_A4L5W5.pdf?nodeid=2784472&vernum=1)

breathing. Chronic exposure can result in irregular heartbeats, convulsions, and coma. Crude oil is a known teratogen<sup>6</sup> and can cause birth defects and changes in fetal development. The target organs for crude oil are the hematopoietic (blood forming) system, lymphatic system, nervous system, and reproductive system. The Benzene component is a known carcinogen.

- A February 23, 2014 article in the Wall Street Journal<sup>7</sup> compared oil from 86 locations around the world and found Bakken crude oil to be the most explosive. Bakken oil fires are so intense that they are often left to burn out on their own because fire fighters cannot get close enough to control them. The northbound refined products such as gasoline are also extremely explosive as the residents of Bellingham Washington found out in June 1999 when an explosion from a leaking gasoline pipeline killed three people.<sup>8</sup>
- The proposed route in a good portion of New Jersey from Mahwah to Parsippany runs within the same utility corridor as a 50+ year old Spectra Energy gas line. As this letter was being constructed came news that a similar, although younger (built in 1981) Spectra Energy gas line in Pennsylvania blew up “in a towering, roaring fireball Friday, destroying a home **several hundred yards away** (author’s emphasis added).”<sup>9</sup> In New Jersey, Pilgrim’s proposed lines carrying highly volatile Bakken crude and even more volatile processed products such as gasoline would be only 50 to 100 feet away from the Spectra Energy gas line. The proposed route in New York would cross the Columbia TCO gas line in Tuxedo and would cross the Iroquois gas pipeline in the town of Athens. It would also run parallel to the CHGE Gas Transmission System along sections of the NY Thruway.
- First responders from the 50+ towns whose boundaries will be crossed by the proposed pipelines will be put at risk in the event of spills and fires. (Pilgrim’s spill response plan is to have their remediation team show up **within 24 hours** of a spill). Even if these incidents do not cause major damage or injuries, local communities will be the ones paying for these efforts.
- **Fresh water is more valuable than oil.** Over time we can find replacements for oil. There are no replacements for fresh water.

An officer of Pilgrim Pipeline Holdings, George Bochis, stated publicly in 2014 at a town meeting in Kinnelon, New Jersey that Pilgrim will not indemnify any residents, municipalities, businesses or other institutions against these harms. A portion of the Kinnelon meeting, including this statement from Mr. Bochis, can be viewed at <https://www.youtube.com/watch?v=f6SG3U6ayGI>

Pilgrim has been completely unable to demonstrate that the need for these pipelines outweighs these significant potential harms to local landowners and others living and working in this area. In fact, Pilgrim’s attempts to demonstrate benefits are so weak and fraught with falsehoods and misleading statements that they are almost comical, as described below.

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<sup>6</sup> A drug or other substance capable of interfering with the development of a fetus, causing birth defects.

<sup>7</sup> <http://thinkprogress.org/climate/2014/02/24/3323551/bakken-crude-explosive/>

<sup>8</sup> <http://www.bellinghamherald.com/news/local/article22200432.html>

<sup>9</sup> <http://abcnews.go.com/US/wireStory/natural-gas-explosion-pennsylvania-leaves-hurt-38759329>

### **Lack of Significant and Credible Benefits**

Pilgrim claim: **By any statistical measure** (author's emphasis added) *pipelines are by far the safest and most efficient means of transporting crude oil and refined products. Transporting petroleum products via the Pilgrim Pipeline is far more environmentally friendly than relying on trucks or fleets of traditional barges.*

While stressing the importance of statistical data, Pilgrim has failed to provide any such data in support of its claim. Over the past five years, there have been over 1,000 crude oil pipeline leaks and ruptures reported to the federal Pipeline and Hazardous Materials Safety Administration. (PHMSA relies on the industry to report spill events and volumes. It cannot determine this itself). The total spillage was more than 168,000 barrels of oil (more than 7 million gallons). This equates to an average of over 200 spills per year.

More importantly, according to the **statistical measure** provided by the Congressional Research Service, **pipelines spill three to four times more crude oil per ton-mile transported than either rail or barge.**<sup>10</sup>

Pilgrim's inclusion of trucks in their statement, while technically true, is meaningless, as trucks are not used for long haul transmission of petroleum products. Pilgrim's definition of "environmentally friendly" is its false argument that reduced volumes of barge traffic would reduce air pollution (see below). Pilgrim conveniently fails to include the new risks that it will introduce to water supplies, property values and public health for millions of residents.

*Pilgrim Claim: Pipelines are seven times safer than barges.*

Pilgrim has never provided any research data or statistical measures to back up this claim. As cited above, the results of the Congressional Research Service study show that on a normalized per unit basis, (in this case the volume of oil transported over a certain distance expressed as billion ton miles) between 2002 and 2007 (latest data shown by PHMSA) pipelines spill three to four times more oil than barges and rail. **Barges have, in fact, the best safety record of the major forms of oil transport.**

*Pilgrim Claim: The pipeline won't leak.*

This statement was made by George Bochs at the above mentioned Kinnelon meeting. Between 1986 and 2013 pipeline accidents have spilled an average of 76,000 barrels per year or more than 3 million gallons. This is equivalent to 200 barrels of oil spilled into our environment every day. PHMSA data from 2001 to 2011 compelled pipeline engineering consultants Kiefner & Associates, Inc., to conclude: "The 'average' pipeline, therefore, has a 57% probability of experiencing a major leak, with consequences over the \$1 million range, in a ten-year period."<sup>11</sup> PHMSA has estimated that, based upon historical observation, significant pipeline leaks occur with a frequency of .00109 ruptures per mile per year. Applying this to the Pilgrim project means one significant rupture every 2.6 years. The most convincing argument against Pilgrim's assertion is the fact that Pilgrim has said it will not indemnify any resident, business or governmental body along the route for any damages or problems. Another absurd proof that the pipeline would not spill, presented by Mr. Bochs at

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<sup>10</sup> <http://www.forbes.com/sites/jamesconca/2014/04/26/pick-your-poison-for-crude-pipeline-rail-truck-or-boat/#784dae8f5777>

<sup>11</sup> <http://www.tbp.org/pubs/Features/W15Bell.pdf>

the same meeting, was that oil spills would be bad for Pilgrim and therefore, they would prevent them. The list of pipeline accidents (gas and oil) in the United States in the 21st century<sup>12</sup> is 42 pages long.

*Pilgrim Claim: The environmental impact of constructing the pipeline would be minimal. The project would not be cutting through 'large swaths of environmentally sensitive land,' but would be sited almost entirely along existing rights of way where other pipelines and transmission lines are already in place.*

- The Highlands Region in NJ, through which Pilgrim proposes to build its pipelines, serves as a significant green belt along the East Coast's metropolitan areas, noted for its scenic beauty and environmental significance. The Highlands Region serves as a vital source of drinking water for over half of New Jersey residents.
- ROWs in watersheds are still in watersheds. Fourteen streams cross the pipeline ROW in the seven miles between Mahwah and Skyline Drive in Ringwood NJ. Most of these streams flow to the east and their water ends up in the Ramapo River, which feeds the Ramapo aquifer along with other rivers and reservoirs.
- Endangered species living near, or regularly crossing over a ROW are just as endangered from an oil line whether the ROW exists or is newly created. There are 46 endangered and threatened species in the NY and NJ regions the pipeline would traverse. Spills would result in both bioaccumulation<sup>13</sup> and biomagnification<sup>14</sup> of toxic chemicals.
- Construction and expansion of existing ROWs weakens forest infrastructure and creates wind tunnels that continue to take down trees in storms. ROWs also allow invasive vegetation to gain stronger footholds. Herbicides used to keep ROWs clear of vegetation also threaten native flora and fauna.
- Use of the New York Thruway corridor would require clear cutting 100-foot wide areas of trees and other vegetation removing it as a buffer between residents/businesses and the Thruway.
- Spills (and dumping) of diesel fuel, lubricants and other construction materials in ROWs are just as harmful as in virgin forest, perhaps even more so given the lack of vegetation to prevent runoff into streams.
- Directional drilling under streams has resulted in converting the stream to a mud puddle with a corresponding total collapse of the stream's ecosystem and ability to support life, as happened in September 2014 when Sunoco pipeline drilling destroyed historic Little Mingo Creek in Pennsylvania, killing aquatic life for two miles downstream.<sup>15 16</sup> Some of this concern stems from the fact that in 2005 oil and gas companies were exempted from federal government permit requirements to control erosion and prevent sediment from entering streams and rivers. Also, small headwater streams that had been protected by the 1972 Clean Water Act were made

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<sup>12</sup> [https://en.wikipedia.org/wiki/List\\_of\\_pipeline\\_accidents\\_in\\_the\\_United\\_States\\_in\\_the\\_21st\\_century](https://en.wikipedia.org/wiki/List_of_pipeline_accidents_in_the_United_States_in_the_21st_century)

<sup>13</sup> Bioaccumulation refers to the accumulation of substances, such as [pesticides](#), or other chemicals in an organism.

<sup>14</sup> Biomagnification is the increasing concentration of a substance, such as a toxic chemical, in the tissues of organisms at successively higher levels in a food chain.

<sup>15</sup> [http://www.observer-reporter.com/article/20140920/NEWS01/140929973#.VF-9X\\_nF9j5](http://www.observer-reporter.com/article/20140920/NEWS01/140929973#.VF-9X_nF9j5)

<sup>16</sup> <https://www.youtube.com/watch?v=BnTnyVgCHIE>

more vulnerable to sedimentation by a series of Supreme Court rulings in the early 2000s.<sup>17</sup>

- Pipeline construction along steep slopes is a disaster waiting to happen. NJ residents are all too familiar with the Tennessee Gas Pipeline's destruction of beautiful Lake Lookover in West Milford located at the bottom of one of these slopes in the Highlands, because TGP failed to prevent runoff.
- All construction equipment, material, and labor would be transported using local roads and bridges, increasing wear-and-tear on local infrastructure. Pilgrim's plan includes construction of temporary access roads at one-mile intervals along the entire route, many connecting to small local roads through residential communities that are not appropriate for this kind of use.
- Pilgrim will need to lease or condemn all, or parts of, several hundred privately owned parcels along its proposed route. Thousands more property owners located just off the Right of Way would face secondary impacts including threats to their property values, health and safety risks, and loud noise and heavy traffic delays from a long and disruptive construction process.

*Pilgrim Claim: Overall, the pipeline option does not represent a significant source of GHG emissions, and, by relieving congestion caused by transporting products by teams of traditional tankers and barges, and eliminating the tons of pollutants associated with these forms of transportation, the Pilgrim Pipeline will produce a net air quality benefit to the region.*

Pilgrim commissioned a study to support the above claim. This study is deeply flawed in two ways.<sup>18</sup>

1. It assumes that the volume of crude oil and refined petroleum products carried today by barges, that the two pipelines would replace, is equal to the combined capacity of the two pipelines when, in fact, today's volume (combined southbound and northbound transport) is only about 50% of the proposed pipeline capacity. A comparison of the GHG emitted from actual recent barge shipments with those attributable to the pipelines at full proposed capacity of 400,000 bpd (barrels per day) of crude and refined products, shows that the new delivery system would, in fact, produce 81% more greenhouse gas than all recent barge shipments.
2. It fails to take into account the GHG emissions from the increased shipment of oil by train to Albany that would be required to fill the pipeline to its capacity. The volume of oil loaded onto barges between March 1, 2014 and December 31, 2015 was equivalent to an average of 0.9 oil unit trains/day. Filling the pipeline to capacity (200,000 bpd of crude oil), plus maintaining the barge shipment volume the pipeline would not replace, would require about 3.2 trains per day arriving in Albany. Thus, at least two more trains per day, averaging 71,000 bbl each, would be needed which would generate an increase of 211% in GHG emitted to North America air over today's train shipments.

*Pilgrim Claim: The 178 mile pipeline will create 2,000 temporary and 50 permanent jobs.*

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<sup>17</sup> <http://america.aljazeera.com/articles/2015/5/5/pipelines-pose-hidden-threat-to-trout-in-pennsylvania.html>

<sup>18</sup> <http://stoppilgrimpipeline.com/pilgrim-faqs/#GHG>

Pilgrim plans to outsource the pipeline construction to its partner, Appalachian Pipeline Contractors in Tennessee. Firms like this bring their own out of state workers, as has been observed on gas pipeline projects in both states. According to the Albany Business Review, Pilgrim Pipeline could actually lead to a net job loss for the New York State Capital Region! The General Manager of the Port of Albany said a proposed east coast oil pipeline would threaten jobs and growth at the Port of Albany.<sup>19</sup> Yes, the pipeline will create jobs, but No, not for people in NY and NJ.

*Pilgrim Claim: New pipeline technology is safer than old.*

Pilgrim has never produced any research results to support this assertion. A PHMSA representative (Karen Gentile) has stated they have no research on the relative performance of new versus older pipelines. While Pilgrim's claim may sound plausible to a layperson we must understand that since there is no evidence of the degree to which this might be true (is it 1% safer, 5% safer, 50% safer?) this basically an unfounded claim. Even experts agree that the most state of the art remote monitoring systems cannot, in real time, detect spills of less than 1.5% to 2% of pipeline volume, which are the most common types of leaks. (A 1.5% spill of the Pilgrim southbound line would be 126,000 gallons.) This is one of the reasons why between 2002 and July 2012, remote sensors detected only five percent of the nation's pipeline spills and 80% of leaks larger than 42,000 gallons go undetected by remote systems.<sup>20</sup>

PHMSA data does show, however, that 44% of pipeline leaks are due to non-technology factors. So even if new technology is 100% safer than old (virtually impossible) it only means new pipelines will only leak at a rate of about half of that of older pipelines from the day they are constructed.

*Pilgrim Claim: The overwhelming majority of pipeline incidents relate to older pipelines (the implication being that its new pipeline will have fewer incidents).*

If this is true (and again, Pilgrim has not provided any data to support this claim) it is only statistically true because the overwhelming majority of pipelines are older. Is Pilgrim promising its pipeline will never grow older?

As this letter was being written the following news article was posted by Time<sup>21</sup> about one of many leaks in the **new** Keystone pipeline.

Freeman, SD - On Saturday, April 2nd, TransCanada announced that an oil leak was detected by a South Dakota landowner on its Keystone I pipeline. The foreign corporation initially stated that only 4.5 barrels, approximately 187 gallons, of oil appeared to have spilled. Those numbers have now changed. TransCanada estimates that about 16,800 gallons of oil has now leaked from the Keystone pipeline into a field in South Dakota. As noted above, the leak was less than 2% of pipeline volume and TransCanada's leak detection system failed to report it.

Keystone I was commissioned in **2010** (author's emphasis added) with reassurances

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<sup>19</sup> [http://www.bizjournals.com/albany/morning\\_call/2014/06/port-manager-fears-oil-pipeline-will-threaten-jobs.html](http://www.bizjournals.com/albany/morning_call/2014/06/port-manager-fears-oil-pipeline-will-threaten-jobs.html)

<sup>20</sup> <http://insideclimatenews.org/news/20120919/few-oil-pipeline-spills-detected-much-touted-technology>

<sup>21</sup> <http://time.com/4292856/south-dakota-oil-spill/>

to the concerned public that it had a number of advanced leak detection technologies. **In its first year, however, the pipeline leaked 35 times in the United States and Canada** (author's emphasis added) with one major leak that spilled 21,000 gallons of oil near a wheat field in North Dakota. The spill near Freeman, SD is now among the largest in South Dakota history for a pipeline.

Evan Vokes, a former TransCanada materials engineer, predicted after he heard about the leak that it would be found at a "transition weld" where the pipeline crossed under a road. Such welds connect thinner-walled pipe to thicker-walled pipe. It turns out that Vokes' prediction was right. In a corrective action notice issued to TransCanada on Saturday, the Pipeline and Hazardous Materials Safety Administration (PHMSA), the agency that regulates interstate pipelines, indicated the probable cause of the leak was from a girth weld anomaly at a transition site.<sup>22</sup>

*Pilgrim Claim: Pilgrim Pipeline will address long consumer waiting times caused by limited holding tanks and small tankers in use on the Hudson River.*

We have not seen one article or comment on consumer waiting times, other than statements like this from Pilgrim itself. Pilgrim has not cited any articles or other evidence for this claim. Even if this is true, is it not possible to improve the situation with a few more holding tanks and/or a few more tankers? Is spending almost a billion dollars a better solution if Pilgrim is really concerned about waiting times?

*Pilgrim Claim: The Hudson River/NY Harbor closure due to Sandy prevented oil shipments and caused gasoline shortages across the region.*

Hurricane Sandy severely disrupted the gasoline supply chain, creating a number of broken links.<sup>23</sup> First, Sandy closed the Bayway refinery for 13 days and the only other refinery in the NY harbor area, Hess Port Reading in Woodbridge (which shut down after January 2013), preventing the processing of crude oil so there was no oil to load onto the barges even when the river was open, six days after the storm. Second, there was a lack of backup power at pipeline pumping stations and gasoline storage facilities and loading facilities in the New York area. Without these terminals, pipelines can't offload gasoline into the storage drums, which are needed to feed gasoline trucks bound for nearby service stations. Third, Sandy knocked out power to a number of critical pipelines that provide the bulk of the region's refined product needs. The Colonial Pipeline lost power to its pumps in Linden and the same thing happened to the Buckeye Pipeline, which runs gasoline into New York from the Midwest. Shortages were also caused by the lack of electricity at gas stations, and the inability of tanker trucks to get through tree filled streets. The bottom line: Pilgrim's pipelines would have had absolutely no ability to prevent shortages caused by Hurricane Sandy.

Even if Pilgrim's story were true, the risk of having gasoline shortages for a few days is simply not comparable to the risk of endangering the water supplies for well over 5 million people for 30 to 40 years, not to mention the risks of property damage and health damages from leaks which will last far longer than the inconvenience of a few days without gasoline.

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<sup>22</sup> <http://www.dailykos.com/stories/2016/4/11/1513696/-TransCanada-plugs-leak-in-Keystone-I-pipeline-and-turns-on-the-flow-from-the-tar-sands-again>

<sup>23</sup> <http://fortune.com/2012/11/05/was-the-gas-shortage-preventable/>

Pilgrim Claim: *Bad weather has led to gasoline shortages because of barge transportation (which the pipeline will rectify).*

Pilgrim executives have never produced a single article or any other documentation citing this problem. The captain of the U.S. Coast Guard ship responsible for keeping open a shipping channel on the Hudson stated to one of our members that they have always kept this channel ice-free. He stated, "That is the Coast Guard's top mission on the Hudson, and we have never failed to accomplish it."

Pilgrim Claim: *The Region is underserved by oil pipelines. Pilgrim will modernize the shipment of oil in the region.*

When was the last time anyone anywhere in any format said we are underserved by oil pipelines in this region? Is this one of the many problems we read and hear about daily and urge our elected officials to correct? We are on or near the coast and have refineries nearby that make gasoline and other products less expensive than in nearby states. We also have a reasonably steady supply of oil products, interrupted only by a major storm that also shut down the same refinery upon which Pilgrim plans to rely.

As an area that has traditionally been a conduit between major metropolitan areas we also have plenty of risk from current oil transportation methods (barges and trains) and do not need to add a third risk to our water supplies, health and property values merely because a private enterprise sees an opportunity to make a profit.

Pilgrim uses the term "region" to include New Jersey when it talks about improved reliability of oil and gasoline shipments. Since the pipeline will send refined products back to Albany, just as the barges do today, New Jersey is not being served by either form of transportation and simply incurs a tremendous risk for no benefit. The only organizations that will benefit from "modernization" are Pilgrim and Ares.

Pilgrim Claim: *The pipeline will reduce the volume of oil carried by trains.*<sup>24 25</sup>

Pilgrim's proposal will not replace dangerous oil trains currently carrying Bakken oil from the Albany area down the West side of the Hudson and through Northern New Jersey. The trains transporting oil through this region do not go to the Port of Albany, the proposed starting point for these pipelines. Trains carrying crude oil down the CSX Hudson River line come across NY from the West, turn south at Selkirk, and take their oil to refineries in Philadelphia. Adding pipeline capacity between Albany and Linden will not reduce this rail traffic to Philadelphia. In, addition, as noted above, an increase in oil train traffic of about two trains per day coming into Albany will be needed to fill the pipeline to capacity. Thus, the pipeline project will have exactly the opposite effect of the benefit claimed; **it will increase oil bomb train traffic.**

The Pilgrim managers know they have a very weak case for benefits to anyone beyond themselves and have used every linguistic contrivance they can find to make this sound beneficial. This is deceitful and unethical and we have to ask if this is in line with Ares' policies and practices when selling investments?

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<sup>24</sup> <http://www.dailyfreeman.com/general-news/20160217/village-of-saugerties-is-urged-to-join-pilgrim-pipeline-opposition>

<sup>25</sup> <http://newyork.cbslocal.com/2015/12/09/pilgrim-pipeline-proposal-rockland-county/>

### **Bad Behavior of Pilgrim Pipeline Holdings Executives, Lobbyists and Land Agents**

Pilgrim's executives and employees have behaved badly and their actions and statements have raised questions about Ares' business ethics.

At the above-mentioned public meeting in Kinnelon, George Bochis declared, "We have the power of eminent domain." This statement had no basis in fact and clearly was meant to intimidate and confuse residents and public officials.

In the fall of 2014 Pilgrim's lawyers sent letters to homeowners and towns in NJ along the proposed route, which included the following inaccurate statements and threats:

- *"Pilgrim is a pipeline company established under New Jersey Law, and because of that status it has the power to condemn private property."*
- *"Part of the power to condemn is the ability to enter on private land to perform surveys and investigations."*
- *"If you continue to decline to allow Pilgrim to enter your property, Pilgrim will have no choice but to ask a court to issue an order allowing it to enter the property for this purpose. Please let us hear from you about entry onto your property no later than October 31, 2014. If we are unable to obtain your agreement for initial inspections by that date, Pilgrim has instructed our law firm to apply to the Superior Court for an Order to allow entry for initial inspections. Thank you again in advance for your anticipated reconsideration and cooperation."*

When asked about this legal tactic, Mr. Bochis said, "Pilgrim has never tried to 'intimidate' landowners. Pilgrim requests access to property in order to conduct surveys to help better understand the potential route — hardly an 'outrageous stunt' and, as it happens, entirely consistent with New Jersey law."

If you are a homeowner with no legal expertise and no knowledge of this situation and you receive a letter claiming to be able to condemn your property, telling you that you have no rights and threatening you with a court order in two weeks, you are intimidated. Mr. Bochis' comments to the press are clearly another falsehood.

This letter was dated October 17. The homeowner recipients had two weeks in which to clarify the situation, decide to incur the expense and time to find and engage a lawyer and fight this or just give in to the survey request. And, as stated above, **this was a complete lie.**<sup>26</sup> Pilgrim never followed up on any of these threats because it does not have eminent domain power.

Without public notification, Pilgrim filed a DEIS (draft environmental impact statement) with the New York State Thruway Authority in August of 2015. This only became public in November of 2015 when it formally filed for permits in New York. The implication is that

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<sup>26</sup> <http://www.northjersey.com/news/oil-pipeline-company-is-threatening-to-take-n-j-homeowners-to-court-if-surveys-denied-1.1128532>

Pilgrim wants to keep residents' knowledge about the project to a minimum as it is concerned they would be increasingly upset if they knew more.

At public sessions Pilgrim has consistently used tactics to avoid having to answer difficult questions when residents, concerned about the pipeline's impact on their homes and property, have asked for useful information. For example, Pilgrim never sent an engineer to these sessions enabling the Pilgrim representative to continually say that he can't answer technical questions because he is not an engineer. This is invariably followed by a promise to provide an answer to the question, which, almost as invariably, rarely happened. One example of such an interaction is described below:

On December 16, 2015 Pilgrim had an unpublicized meeting with the Greene County legislature. There were a number of questions that had been prepared for the legislators to pose to Pilgrim. Some of these questions were posed at the meeting by legislators, most of which Pilgrim refused to answer. Pilgrim was given a full list of questions for further replies. On December 18, 2015, the County Attorney, Ed Kaplan, sent Pilgrim a letter with a number of additional questions about the proposed project, and a request that Pilgrim provide an answer to these questions within 10 business days. Pilgrim never responded. On January 19, 2016 the County Attorney reiterated Greene County's request, and to date, has not received a response.

Other examples of similar behavior are described below:

- Pilgrim twice cancelled their planned appearance on short notice when they had promised to answer questions from the Rosendale town board. They never did appear in Rosendale despite four months of requests.
- Pilgrim failed to answer questions posed to them in writing by the Town of Newburgh. Newburgh's town supervisor, when asked about Pilgrim's presentation to Newburgh, said publicly, "Yes they came, they presented, and to all our questions they said 'we don't know, we'll get back to you,' and then we never heard from them again."
- Mr. George DeRosa (a Pilgrim lobbyist) did appear in Plattekill and promised to later answer the questions he could not answer in person but never got back to the Town Board with answers to those or other questions.<sup>27</sup>
- Pilgrim did show up at an Esopus Public Forum but after waiting for a month or two for answers to their questions the Esopus Town Board passed their resolution opposing Pilgrim's pipelines.
- Pilgrim offered to appear before Ulster County legislature, then did not appear and failed to respond to questions.

At a meeting in Harrison NY with Pilgrim representative George Bochis, an audience member asked, "Doesn't there have to be public input at some point, about whether Pilgrim Pipeline Transportation Corporation is in the public interest?" Mr. Bochis is reported to have answered, "I'm not a lawyer," despite his bio on pilgrimpipeline.com which states he is a

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<sup>27</sup> Mr. DeRosa, who said that most of the oil for the pipelines would be coming from Canada, as opposed to Pilgrim's claim that it will come from North Dakota has never, as far as we know, spoken again at any town, village or city board meeting in NY. We suspect he was telling the truth, that the pipeline is being built to export tar sands products, as was the proposed Keystone XL, and Pilgrim, recognizing the political problems this would cause, is using North Dakota Bakken oil as a cover up.

lawyer.<sup>28</sup>

Ms. Jennifer Metzger, councilperson in Rosendale, NY reported:

“When I called the company as a Town Councilwoman, I believe in August of 2014, seeking specific information on their survey "rights" as a company, the representative refused to answer my questions directly, instead referring vaguely to their rights as a transportation corps. They were completely non-cooperative with the local government.

A Rosendale property owner came to a Town Board meeting and told us that, after refusing to grant permission to survey, the Company sent a representative to their house telling them that the Company had a right to survey and that the property owners would be hearing from their lawyers.

We (the town) received complaints from two different property owners who DID grant access for surveying that they had been misled by the company about where the surveying was to occur. One property owner was told originally that the surveying would just affect a small area on a remote portion of their property adjacent to the Thruway, and he came home to trucks at his house surveying his driveway for an access road.”

A Pilgrim official trespassed in Tuxedo Park. The Tuxedo Park Board of Trustee’s minutes of 9/28/15 (<http://tpfyi.com/bot-archives-2015.html>) recorded the incident as follows:

Public Hearing – Local Law Introductory #2 of 2015 – Pipelines:

A representative from the Pilgrim Pipeline was supposed to attend the meeting however at the last minute they called and cancelled. Mayor Guinchard reported that a week prior a gentleman who turned out to be a lobbyist for the pipeline had managed to get into the Village by telling the Gate Guard that he had a scheduled meeting with her, which was not the case. He then had the opportunity to give himself an unauthorized tour of the Village on his way to the Village Office, where he was neither expected nor well received.

Pilgrim has hired landmen who have trespassed on private property and harassed residents with repeated calls and visits. In one case in Tuxedo Park, New York, a homeowner claimed that someone from Pilgrim entered her kitchen through her garage while she wasn't home and left some information from Pilgrim on her counter. In other instances residents have reported being repeatedly pestered by landmen after firmly rejecting their offers.

A March 18, 2016 article in *The Sentinel Orange County Post*<sup>29</sup> reported that New Windsor resident Chris Maciel, 75 was approached in 2013 to provide an easement. Land agents came back about three more times in 2014, 2015 and this year. *“The representative was disappointed, Maciel said. He wanted her to change her mind. The man said the decision could result in court action possibly being sought for an eminent domain judgment, where private property can be taken for public use, Maciel said.”* As in the letter to homeowners cited above, this was a clear attempt at intimidation, based on false information.

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<sup>28</sup> <http://pilgrimpipeline.com/staff/>

<sup>29</sup> <https://ocpostsentinel.wordpress.com/2016/03/18/residents-approached-to-sell-easements-for-pipeline-project/>

Another New York property owner, Arielle Herman, cited her personal interactions with Pilgrim rep, Randy Smith of Petersen Engineering as follows.

*“When I pointed out to Randy Smith that the legal contract he wanted me to sign was vastly different than (in fact had no connection whatsoever to) what he had claimed Pilgrim wanted from me in terms of parameters of access to my property, his response was (paraphrased), “Oh, don’t worry about that, those are just technicalities that won’t impact you.”*

*When I asked Randy Smith what would happen if I decided not to give Pilgrim access to my property, and specifically if I needed to be concerned about eminent domain, he told me, “No, no. We absolutely respect the decisions of landowners. If you don’t want to give us access, we won’t bother you again.””*

In Plattekill and also in Tuxedo, Pilgrim claimed that the landmen who had done inappropriate things had been fired. But we have heard reports that these behaviors, such as contacting the same homes over and over, continues.

Representatives from Pilgrim Pipeline told the Bethlehem Soccer Club that the company plans to use their Soccerplex on Wemple Road as a staging area for construction of the pipeline along the New York Thruway.<sup>30</sup> When the club manager expressed reservations to a Pilgrim representative, Jeremy Martelle (president of the club) said **the representative said the company would take the land by eminent domain.**

"That sounds like you are trying to threaten the club and I don't appreciate that," Martelle said. The club has dealt with several Pilgrim representatives and the one who raised the possibility of eminent domain no longer works for the company, Martelle said.

Ares/EIF sales representatives have pitched Ares/EIF funds which include the Pilgrim Pipeline project by describing the Pilgrim project as a *“Compelling transaction(s) based on new supply, safety and the environment.”*

This statement appeared in an Ares/EIF presentation to a county pension investor in California. Given all of the above evidence counter to this assertion one has to question the integrity and honesty of Pilgrim Pipeline Holdings LLC and EIF presentations to potential investors. Is this how Ares sells its investments? Is Ares/EIF/Pilgrim actually telling its investors that they will be doing good for the environment? We understand this is one of many counties in California that practices green investing. Do they really understand what they would be buying if they invested in EIF/Pilgrim?

Are these standard business practices at Ares? Does Ares condone this type of behavior?

The Ares Code of Business Conduct and Ethics (adopted on April 15, 2014) states: *This Code of Business Conduct and Ethics (this “Code”) embodies the commitment of Ares Management, L.P. (the “Partnership”) and its general partner, Ares Management GP LLC (the “General Partner” and, together with the Partnership, the “Company”), to conduct the Company’s business in accordance with all applicable governmental rules and regulations and to promote*

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<sup>30</sup> <http://www.timesunion.com/tuplus-business/article/Bethlehem-Soccer-Club-opposes-Pilgrim-Pipeline-7396728.php>

*honest and ethical conduct. The Company is committed to maintaining the highest legal and ethical standards in the conduct of its business. Meeting this commitment is the responsibility of the Company and each and every one of our Covered Persons. Each Covered Person should endeavor to deal fairly with the Company's customers, suppliers, service providers, competitors and employees. No officer, director or employee should take unfair advantage of anyone through manipulation, concealment, abuse of privileged information, misrepresentation of material facts or any unfair dealing practice. Obeying the law, both in letter and in spirit, is the foundation on which the Company's ethical standards are built.*

The behaviors cited above appear to be clear violations of this code of conduct and ethics. If this is how Ares and Pilgrim Pipeline Holdings behave now, when they still need approval for this project from governmental entities and easements from homeowners we remain very concerned as to how residents and municipal officials would be treated should permits be received.

**Pilgrim's Plans Violate Ares' ESG Policy and its Social Responsibility Program.**

Ares Management ESG (Environmental, Social and Corporate Governance) Policy states:

*Ares' environmental, social and corporate governance (ESG) Policy is based on guidelines that are principally consistent with the United Nations-backed Principles of Responsible Investment and The Private Equity Growth Capital Council Guidelines for Responsible Investment.*

*Ares' ESG Policy States:*

- 1. During the due diligence (pre-investment) phase of potential investments and during the ownership period (post-investment), Ares will incorporate environmental, social and governance considerations, as appropriate.*
- 2. Ares will encourage the companies in which it invests to consider relevant **environmental**, (author's emphasis added) social and governance issues, with the goal of improving performance, minimizing adverse impacts in these areas and ultimately providing long-term sustainability for the benefit of multiple stakeholders.*

The Pilgrim project has not considered relevant environmental or social issues. As cited elsewhere in this letter, it neither protects nor improves our environment (as it claims). It only generates new, unacceptable and totally unnecessary risk to our environment. The social implications of the destruction of a township's water supply are obvious. At a time when every town is under pressure to reduce costs and hold the line on taxes this could bankrupt them as they would have to increase spending on remediation while losing tax income as property values decrease.

Ares Management should be aware that there is an environmental justice community (low income community of color) next to the Global Partners facility (GP purchases and ships oil from North Dakota) in the City of Albany where the oil would have to be transloaded from rail cars to the beginning of the pipeline. Existing transloading operations have already degraded air quality and caused health problems for that community and increasing the amount of crude train traffic and transloading activities at Global can only exacerbate the health impacts for those vulnerable residents. The playground for the low income housing is

literally just over a chain link fence from Global's facility in Albany and the oil trains parked in that facility.

The Ares' Corporate Social Responsibility program described on your web site is very commendable: *Ares In Motion (A.I.M.) [is] a global initiative to support corporate responsibility, foster employee engagement and strengthen community relationships through philanthropy. The Volunteer program focuses on giving back to our communities and the **environment***" (author's emphasis added). This project also conflicts with these principles.

We are not looking for philanthropy, we are asking that you recognize the threat these pipelines will bring to our environment, our health and drinking water and stop them before the A.I.M. team needs to participate in local community clean up efforts.

### **Credibility of Pilgrim Business Plan**

Pilgrim executives have made highly questionable and easily refutable assertions in support of their business plan. They have failed to provide credible evidence to back up their business strategy. This creates the perception that Ares and Pilgrim are hiding something in an attempt to avoid having to deal honestly with the public and government about the risks and benefits of this pipeline, which would make this venture even more repugnant and risky to residents and towns. The most significant examples are described below:<sup>31</sup>

- Questionable Element #1 - Pilgrim has stated it will replace current oil barge shipments to the Bayway refinery by using the pipeline to carry the same oil. However, Bayway has said it is not interested in using the pipeline and has built its own rail facilities to accept oil directly from North Dakota.<sup>32</sup>
- Questionable Element #2 - Pilgrim has admitted that in an environment of increasing bankruptcies on the part of oil producers (and requests for relief from contracts with midstream pipelines to which "investors flocked for their generous payouts and a belief that their revenues were backed by long-term, immutable contracts with customers.")<sup>33</sup> that they have no contracts and are building this pipeline on spec. As stated in a January 16, 2015 article on NJ.com<sup>34</sup>, *And even though Pilgrim has no arrangement in place with the Phillips 66 Bayway Refinery in Linden, the presumed destination for the unrefined oil, "We're confident that if we build the pipeline, people will use it," Nathanson [Pilgrim spokesperson] said. "We're still focused on getting our permits and constructing the pipeline, and will deal with contracts later on," Nathanson said.*
- Questionable Element #3 - Barge shipments southbound to the Bayway refinery from Albany have been in decline since early 2014, averaging less than 33,800bpd over the past 22 months (and dropping to less than 10,000 bpd in November 2015<sup>35</sup>) but the

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<sup>31</sup> See <http://stoppilgrimpipeline.com/pilgrim-faqs/> for more details on these claims.

<sup>32</sup> <http://www.freerepublic.com/focus/f-news/3211871/posts>

<sup>33</sup> <http://www.ft.com/fastft/2016/03/08/us-bankruptcy-judge-lets-oil-company-shed-pipeline-contracts/>

<sup>34</sup> [http://www.nj.com/morris/index.ssf/2015/01/pilgrim\\_pipeline\\_continuing\\_fight\\_despite\\_mounting.html](http://www.nj.com/morris/index.ssf/2015/01/pilgrim_pipeline_continuing_fight_despite_mounting.html)

<sup>35</sup> <http://priceofoil.org/2016/01/25/companys-case-for-proposed-new-york-pilgrim-pipelines-undermined-by-data/>

pipeline expects to carry 200,000bpd southward. On its website Pilgrim states that it will bring no new oil into the region. This raises the question of why Pilgrim is proposing to construct a pipeline whose capacity exceeds by five-fold the actual amount of oil that has been moving from the Port of Albany to the refinery in Linden and far exceeds the total actual volumes shipped by barge in the last three years.<sup>36</sup>

- Questionable Element #4 – The January 25, 2016 article in Oil Change International questioned the economics of this project. *“The trouble for the Pilgrim Pipeline proposal is that it is not a direct link to crude sources. It would still rely on rail to get crude to Albany, NY before it is loaded into the pipe for the next leg of its journey. Crude delivered this way would struggle to compete with imported crudes at east coast refineries and would be even more expensive for European or Latin American importers that would incur the additional cost of trans-Atlantic shipping. Under the current market conditions, it simply does not make sense.”*<sup>37</sup>
- Questionable Element #5 – As stated in the April 3, 2016 article in DeSmogBlog:<sup>38</sup> *In order to justify this project — and the potential use of eminent domain — the applicants need to show that there is a benefit to the citizens of New York. The main argument by the applicant is that the pipeline will, “Provide a safe and reliable fuel supply, thereby increasing emergency response capabilities and energy security in New York State.” The basis for this is that the pipeline that would bring refined products to Albany would improve New York’s energy security by avoiding fuel shortages. There are two flaws with this argument. The first is that New York hasn’t experienced fuel shortages. The second is that it isn’t hard to find examples of the oil and gas industry intentionally creating shortages to drive up prices. So why should members of the oil industry be trusted when they say they are just building this pipeline to help the people of New York?*

Assuming Pilgrim/EIF has a financially sound business plan, there is clearly something it is not sharing with the public or, apparently, even with its investors. What is the terrible secret they are hiding?

As the Daily Record editorial cited above concluded, **Residents have been given ample reason to distrust everything Pilgrim officials say** (added emphasis by author). *Communities are never going to be receptive to new pipelines in their midst. But there is a time and place — and need — for some of those projects. But not all of them. The Pilgrim Pipeline isn’t needed, and the company hasn’t earned it. We encourage public officials to continue to push back against the pipeline — and we hope the decision-makers will make the right call.*

We have already seen some negative implications for Ares. The May 2015 Unite Here article from Private Entity Closer Look<sup>39</sup> reviewed the Pilgrim situation and, as a result, listed the following questions for EIF investors to consider:

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<sup>36</sup> <http://priceofoil.org/2016/01/25/companys-case-for-proposed-new-york-pilgrim-pipelines-undermined-by-data/>

<sup>37</sup> <http://priceofoil.org/2016/01/25/companys-case-for-proposed-new-york-pilgrim-pipelines-undermined-by-data/>

<sup>38</sup> <http://www.desmogblog.com/2016/04/03/new-pilgrim-oil-pipeline-proposed-new-york-and-new-jersey-raises-many-questions>

<sup>39</sup> <http://www.pecloserlook.org/wp-content/uploads/Ares-Investment-Hazard-UNITE-HERE-050515.pdf>

- *Was EIF's due diligence into the Pilgrim Pipeline proposal adequate?*
- *What expectations did Pilgrim have regarding community response to its proposal?*
- *The project appears to be behind schedule, how would delays impact EIF's investment?*
- *If Pilgrim is unsuccessful in securing the necessary approvals, what protections are in place for EIF & its investors?*

This situation will get worse as Pilgrim (and Ares) become more visible by requesting permits and variances, generating large rallies of concerned residents, more editorials and becoming involved in legal battles with many municipalities. We expect Pilgrim to eventually apply to the courts for eminent domain power (a very hot topic in a number of states these days)<sup>40</sup> and we plan to oppose this as loudly as possible.

### **Volume of Opposition**

One of the most ludicrous statements from Pilgrim's management and its PR firm has consistently been: *"The more people hear about this project the more they will like it."*

However, the reality is that the number of municipal entities and local grassroots groups who have stated their opposition to this project is almost unprecedented for a regional project.

- In New Jersey, 36 towns, five counties, both houses of the state legislature, 7 boards of education plus the Rockaway River Watershed Association have all passed resolutions opposing the pipeline. Eleven NJ towns have passed ordinances prohibiting or severely regulating the siting of unregulated oil pipeline in their communities. In Bergen County New Jersey alone, over 1,000 people have signed a petition against the pipeline as part of a project to force Bergen County to rescind its poor decision to allow Pilgrim to survey County parkland.
- In New York, 24 Hudson Valley cities, counties, towns and villages have also stated their opposition, while 29 municipalities also passed resolutions and sent letters opposing any Thruway Authority lead agency role (in NY's SEQRA process). New York State Assemblyman Frank Skartados (D, Milton) recently introduced legislation to prohibit development of the Pilgrim Pipeline along the NY Thruway.<sup>41</sup>
- The NY/NJ Coalition Against the Pilgrim Pipeline includes over 70 environmental and activist organizations (see [Attachment I](#)).
- Phillips 66, the owner of the Bayway Refinery in New Jersey has said it has no interest in the project and has built its own rail facilities to receive Bakken oil.<sup>42</sup>
- PSE&G in New Jersey has refused Pilgrim access to their 27 mile ROW between Montville and Woodbridge.<sup>43</sup>

A few unions who believe they will have a few temporary months of work are supporting the pipeline but those of us and our children and grandchildren who would have to live with this

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<sup>40</sup> <http://insideclimatenews.org/news/01042016/palmetto-pipeline-kinder-morgan-georgia-eminent-domain-oil-gas-republicans>

<sup>41</sup> [http://www.midhudsonnews.com/News/2016/April/16/PilPipe\\_Skartados\\_opp-16Apr16.html](http://www.midhudsonnews.com/News/2016/April/16/PilPipe_Skartados_opp-16Apr16.html)

<sup>42</sup> <http://www.northjersey.com/news/more-oil-trains-heading-to-n-j-1.1103039>

<sup>43</sup> [http://www.nj.com/morris/index.ssf/2015/02/pseg\\_pilgrim\\_pipeline\\_cant\\_use\\_right-of-way\\_betwee.html](http://www.nj.com/morris/index.ssf/2015/02/pseg_pilgrim_pipeline_cant_use_right-of-way_betwee.html)

pipeline for many years are strongly opposed. Up to this point Ares has turned a deaf ear to all these statements of opposition despite its claim to be a socially responsible organization.

On March 25, 2016 several of CAPP NY's key partners (Catskill Mountainkeeper, Natural Resources Defense Council, Hudson Riverkeeper, Scenic Hudson, and the Sierra Club Atlantic Chapter) sent a letter to the New York DEC and the Thruway Authority describing why Pilgrim's current proposal is unbuildable and, therefore, urging them to suspend processing of Pilgrim's application (see [Attachment II](#)). One of the key reasons is based on New York's Transcorp Law, which specifies that:

No pipe line shall be constructed into or through any incorporated village or city in this state, unless authorized by a resolution prescribing the route, manner of construction and terms upon which granted, adopted at a regular meeting of the board of trustees of the village or the legislative body of the city *by a two-thirds vote thereof*. . .

Since a number of incorporated municipal entitles have already voted unanimously to oppose the Pilgrim Pipeline it is unreasonable to assume they would approve it.

### **Negative Reactions from Local, State and Federal Legislators**

New York and New Jersey local, state and federal legislators have expressed concerns and displeasure over Pilgrim's attitude and style after meeting with Pilgrim principals. Pilgrim principals have alienated many residents and legislators as described below.

New Jersey Congressman Rodney Frelinghuysen's office gave the Hanover Eagle the following statement: *"The people behind the Pilgrim pipeline have not done their due diligence. When they came to Congressman Frelinghuysen's office he told them the people he represents are well educated and they need to act in a transparent way to what they are doing. This is the first time that a group has come in and actually bullied us by their proposal and that's not the way to do it if you want to be successful."*<sup>44</sup>

In a December 19, 2014 Newark Star-Ledger news story, one of the sponsors of the resolution against the pipeline in the NJ Assembly, Assemblywoman Linda Stender, said the bipartisan support *"speaks volumes about the concern for our drinking water, and the desire to keep it from being ruined by the oil that this thing would carry."*

A February 23, 2015 editorial in New Jersey Daily Record<sup>45</sup> stated, *"Pilgrim hasn't exactly been forthcoming about project details, so much so that Democratic Sen. Richard Codey, whose North Jersey district would be significantly affected by the pipeline, has blasted the company for poor communication with the public."*

Oakland NJ Mayor Linda Schwager stated,<sup>46</sup> *"The Pilgrim Pipeline puts our residents, our drinking water and our first responders at risk. The Ramapo River Basin Aquifer is*

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<sup>44</sup> Hanover Eagle, March 7, 2015. [http://www.newjerseyhills.com/hanover\\_eagle/sports/frelinghuysen-speaks-to-whippany-rotary/article\\_75c146d3-72fb-5507-8763-4bb792af6f87.html](http://www.newjerseyhills.com/hanover_eagle/sports/frelinghuysen-speaks-to-whippany-rotary/article_75c146d3-72fb-5507-8763-4bb792af6f87.html)

<sup>45</sup> <http://www.dailyrecord.com/story/opinion/editorials/2015/02/23/pilgrim-pipeline-much-risk/23793901/>

<sup>46</sup> <http://www.paramuspost.com/article.php/20141010145838887>

*Oakland's most precious resource and our town sits on top of a major fault line. Could you imagine an earthquake causing a rupture, leak or explosion? A pipeline spill could pollute our aquifer and render it undrinkable for decades. When executives from Pilgrim came to our previous council meeting they were unable to address any of our concerns, and just kept repeating 'it's safe.' Passing this resolution became a logical choice for us, and an important first step in protecting our residents from this dangerous project."*

After the NJ Assembly passed a resolution in 2014 opposing Pilgrim's pipelines, "Mr. Bochis (a Pilgrim representative) accused the Assembly of failing to invite a Pilgrim representative 'to present information at a (State and Local Government) Committee hearing before undertaking this action.' Not so, said Holly Schepisi (Assemblywoman from Bergen County,) who told NJ Advance Media, her chief of staff met with Ed Krenik, a member of Pilgrim's lobbying firm, Bracewell & Giuliani, as well as three representatives from Pilgrim Pipeline to discuss safety concerns about its route at a Oct. 21 meeting at Ramapo College in Mahwah. Schepisi noted that mayors and town councils from several municipalities within her legislative district, including Bloomingdale, Oakland and Mahwah, had reached out to the company with safety concerns and questions, but 'didn't feel they were getting the proper attention from representatives at Pilgrim pipeline.' All three of those Bergen county towns went on to pass resolutions opposing the pipeline.

'The way it's been handled [by Pilgrim] has turned a lot of people off,' Schepisi said, noting that letters sent out by the pipeline were fairly aggressive in tone, threatening eminent domain seizures of land in the event that a town didn't comply. 'They may not have been invited to Trenton,' she said of the start-up Pipeline venture, 'But they've been invited to other meetings, including the one they did attend on October 21st.'<sup>47</sup>

After passing it's resolution opposing the pipeline, New Paltz town supervisor Susan Zimet said, "I also got a call from someone who was contacted by the company. The way they approach you, the way they lie to you is a real concern to me.... We have to take a real aggressive stand on this."<sup>48</sup>

### **Fossil Fuel Investments are Becoming Problematical**

There is a growing movement to divest from coal, tar sands and other fossil fuels. Worldwide<sup>49</sup> there are currently 505 institutions that have committed to divest, including universities, faith-based organizations, non-profits, municipalities, philanthropic organizations, and national and state pension funds, controlling \$3.4 trillion in assets. Among these entities are the Rockefeller Brothers Fund, the London School of Economics and the cities of San Francisco, Seattle, and Cambridge. Last September the California legislature voted to divest from all coal holdings in the California Public Employees' Retirement System and the State Teachers' Retirement System, together the largest public pension system in the

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<sup>47</sup>[http://www.nj.com/politics/index.ssf/2014/12/pilgrim\\_execs\\_fire\\_back\\_at\\_assemblys\\_resolution\\_opposing\\_pipeline.html](http://www.nj.com/politics/index.ssf/2014/12/pilgrim_execs_fire_back_at_assemblys_resolution_opposing_pipeline.html)

<sup>48</sup> <http://www.newpaltzx.com/2014/11/29/pilgrim-pipeline-opponents-say-landowners-denying-access-are-baseline-of-defense/>

<sup>49</sup> <https://www.nysenate.gov/newsroom/press-releases/liz-krueger/senate-committee-votes-favor-fossil-fuel-divestment>

country. The Norwegian Sovereign Wealth Fund, the largest in the world, has also divested from coal. A full list of commitments can be viewed at Fossil Free.<sup>50</sup>

Most recently, on April 11, 2016 the New York State Senate Civil Service and Pensions Committee voted in support of the Fossil Fuel Divestment Bill (S.5873).<sup>51</sup> We noted with interest that the NY state pension fund as of March 2015 had approximately \$766M invested in Ares, far more than Ares has invested in Pilgrim.<sup>52</sup>

This divestment activity is being powered by worldwide climate change and the significant, often devastating, local impacts of fossil fuel transportation and infrastructure projects of every sort. Growing numbers of local activists are fighting these projects and this activity will continue to increase every year. Three recent examples are:

- The successful effort by Earth Quaker Action Team which forced PNC Bank to announce a shift in its policy on March 2, 2015 that will effectively cease its financing of mountaintop removal coal mining in Appalachia.<sup>53</sup>
- Grassroots opposition and Rainforest Action Network's successful efforts to cause Goldman Sachs to withdraw from a coal terminal project in Bellingham, WA, in 2014.<sup>54</sup>
- In April 2016, Oregon LNG withdrew a proposed \$6 billion terminal and pipeline project on the Skipanon Peninsula in the state of Washington. This ended a decade of acrimony over a liquefied natural gas project that galvanized residents to protect the Columbia River and caused political upheaval in Clatsop County. Mayor Mark Kujala said that Leucadia National Corp., the New York-based holding company behind the project, was no longer willing to bankroll the effort.<sup>55</sup>

This divestment trend is also being driven by pure economics. As global policy makers look to aggressively reduce emissions in the years to come, and as technological innovations and increased public investment continue to drive down the cost of renewable energy development, bringing them in parity with fossil energy generation, long term fossil fuel infrastructure built today will be at great risk of becoming a stranded asset in the future. A September 2015 article in the Financial Times<sup>56</sup> by Mark Carney, Governor of the Bank of England describes the problem of stranded assets that fossil fuel producers would face should governments (pushed by citizens and the economics of renewable technology) recognize the limited carbon budget they have to spend and push much harder to limit their carbon outputs. Mr. Carney stated, "If the world ever took serious action to meet the 2C goal, most of those reserves would become 'unburnable' stranded assets." This analysis was used a year later (2012) in an article by US environmental activist Bill McKibben. That helped

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<sup>50</sup> <http://gofossilfree.org/commitments/>

<sup>51</sup> <https://www.nysenate.gov/newsroom/press-releases/liz-krueger/senate-committee-votes-favor-fossil-fuel-divestment>

<sup>52</sup> [http://www.osc.state.ny.us/retire/word\\_and\\_pdf\\_documents/publications/cafr/asset\\_listings\\_15.pdf](http://www.osc.state.ny.us/retire/word_and_pdf_documents/publications/cafr/asset_listings_15.pdf)

<sup>53</sup> <http://wagingnonviolence.org/feature/small-quaker-group-forced-pnc-bank-stop-financing-mountaintop-removal/>

<sup>54</sup> <http://nvdatabase.swarthmore.edu/content/grassroots-opposition-and-rainforest-action-network-prompt-goldman-sachs-withdrawal-coal-ter>

<sup>55</sup> <http://www.dailyastorian.com/Free/20160415/oregon-lng-withdraws-warrenton-project>

<sup>56</sup> <http://www.ft.com/intl/cms/s/0/97ba13d4-6772-11e5-97d0-1456a776a4f5.html#axzz47YOHpQhd>

stoke a [fossil fuel divestment](#) campaign which now claims to have prompted investors controlling about \$2.6tn in total assets to cut back or sell fossil fuel company holdings.

**Investors are listening and the arc of history is bending toward our side.**

## Attachment I - Coalition Against the Pilgrim Pipeline Members

350NJ

350NYC

Already Devalued and Devastated Homeowners of Parsippany

Berks Gas Truth

Bergen County Audubon Society

Bergen County Green Party

Bergen Save the Watershed Action Network (Bergen SWAN)

Breathe Easy Susquehanna County (BESC)

Catskill Mountainkeeper

Citizens Campaign for the Environment

Catskill Citizens for Safe Energy

Citizens for Local Power

Citizens Oppose Dirty Energy

Clean Water Action – NJ

ClimateMama

Coalition Against the Rockaway Pipeline

Coalition to Ban Unsafe Oil Trains

Earth Guardians New York

Earthworks

Eco-Logic, WBAI-FM

Eco-Poetry.org

Environment New Jersey

Environment New York

Essex and Passaic Green Party

Food and Water Watch

Franciscan Response to Fracking (North Jersey Chapter)

Green Party of New Jersey

Greenfaith

Highlands Coalition

Kinnelon Conserves

Lakeland Unitarian Universalist Fellowship

League of Conservation Voters

Mahwah Environmental Commission

Mahwah Town Council

Moms Clean Air Force

Montclair State University “No Fracking Way”

NAACP Branch 2104- Roselle Area

National Organization for Women (Northern NJ Chapter)

New Jersey Citizen Action

New Jersey Environmental Justice Alliance

New Jersey Environmental Lobby

New Jersey Highlands Coalition

New Jersey State Conference of the NAACP, Environmental and Climate Justice Committee

New Jersey State Industrial Union Council

New Jersey Sustainable Collegiate Partners  
New York/New Jersey Baykeeper  
New York- New Jersey Trail Conference  
Newark Water Group  
North Jersey Pipeline Walkers  
North Jersey Public Policy Network  
Occupy the Pipeline  
Orange Residents Against Pilgrim Pipelines (Orange RAPP)  
Pascack Sustainability Group  
People of Albany United for Safe Energy  
Pequannock River Coalition  
Protecting Our Waters  
Ramapo River Committee  
Ramsey Farmers Market  
Rockland Coalition Against Fracking  
Roseland Against the Compressor Station  
Sane Energy Project  
Sierra Club Atlantic Chapter  
Sierra Club New Jersey Chapter  
Sterling Forest Partnership  
Sustainable Bergen  
The Mothers Project.Org, National Organization  
The Mothers Project.Org of New Jersey  
Torre Valley Preservation Association  
Union Forge Heritage Association  
Unitarian Society of Ridgewood  
Unitarian Universalist Legislative Ministry of NJ  
Unitarian Universalist Women's Association – Metro NY District  
United for Action  
Waterspirit

**Attachment II - Coalition Letter to the NY State Thruway Authority and NY DEC**

**Catskill Mountainkeeper  
Natural Resources Defense Council  
Riverkeeper  
Scenic Hudson  
Sierra Club Atlantic Chapter**

March 25, 2016

Hon. Joanne M. Mahoney  
Chair  
New York Thruway Authority  
200 Southern Blvd.  
P.O. Box 189  
Albany, NY 12201-0189

Hon. Basil Seggos  
Acting Commissioner  
Department of Environmental Conservation  
625 Broadway  
Albany, NY 12233-1011

**Re: Review of Application by Pilgrim Transportation Corporation for  
Proposed Petroleum Pipelines**

Dear Chair Mahoney and Acting Commissioner Seggos:

We write to you today regarding your review of the proposal outlined in the use and occupancy permit application submitted by Pilgrim Transportation of New York, Inc. (“Pilgrim”),<sup>1</sup> dated August 7, 2015 (the “Application”), for the construction of two parallel petroleum pipelines stretching from Albany, New York, to Linden, New Jersey.<sup>2</sup>

Because Pilgrim is unlikely to secure multiple necessary municipal approvals for the project, and because it has failed to submit other necessary applications in contravention of the state’s policy and procedures regarding the uniform and coordinated review of environmental permitting, the Department of Environmental Conservation (“DEC”) and the Thruway Authority (the “Authority”) are deprived of the information necessary to conduct the appropriate review. Consequently, we formally request that you conserve agency and public resources by suspending review of the Application or asking that it be withdrawn until Pilgrim credibly demonstrates its ability to obtain such approvals and submits the additional necessary applications.

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<sup>1</sup> Pilgrim Transportation of New York, Inc. is a New York pipeline corporation and a subsidiary of Pilgrim Pipeline Holdings, LLC, a New Jersey corporation.

<sup>2</sup> As an initial matter, the undersigned organizations recognize that there is an ongoing lead agency dispute with respect to the environmental review process for the proposal, and do not suggest or imply by sending this letter that this dispute has been resolved.

The undersigned organizations—Catskill Mountainkeeper, the Natural Resources Defense Council, Riverkeeper, Scenic Hudson, and the Sierra Club Atlantic Chapter—offer the following information in support of our request:

### *The Pilgrim Proposal*

Pilgrim’s proposal is to build two new 20-inch diameter 169.89 mile-long pipelines in a single ditch about six feet deep and six feet wide, along with five “laterals” of varying lengths, (collectively, the “Pipelines”) running from the Global Terminal in the Port of Albany, New York, to refineries and marine terminals in and around Linden, New Jersey. As currently planned, one line would bring crude oil south from Albany, while the other would bring refined products back northward, with each line capable of transporting approximately 200,000 barrels per day.<sup>3</sup>

As a Type 1 action under the State Environmental Quality Review Act (“SEQRA”),<sup>4</sup> the Pipelines’ potential for significant adverse environmental impacts is presumed, and indeed, almost certain. As proposed, the Pipelines would cross surface waters 257 times (including two crossings of the Hudson River) and wetlands 296 times, and construction of the lines would require the clearing of a 100 foot-wide right of way (“ROW”) and the disturbance of upwards of 1,000 acres of forested and vegetated lands.<sup>5</sup> After construction, the Pipelines would require between a 10 and 50 foot cleared ROW and would be pressurized by four continuously operating pump stations, illuminated at night by 20-foot-high LED lights.<sup>6</sup>

While roughly 79% of the mainline route in New York is proposed to run within the Interstate 87 ROW, about 24 miles of the mainline lie outside of the ROW, running across 168 properties.<sup>7</sup> These figures also do not include the nearly 14 miles of additional laterals and the additional acreage required for the construction of 4 pump stations, 7 temporary contractor/pipe yards, and “numerous” access roads, 35 of which will become permanent.<sup>8</sup> In New Jersey, where only a small fraction of the mainline would be located within highway ROWs, the bulk of the remaining 50 plus miles of line would cut through the heart of suburban villages and towns.<sup>9</sup>

Although the Pipelines will require several dozen permits or approvals, including multiple permits from DEC, to date, Pilgrim has not applied for any federal permits or state permits in either state, with the exception of the Application.

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<sup>3</sup> Pilgrim, *Draft Environmental Impact Statement: Volume I*, ES-1 (Aug. 2015) [hereinafter “Proposed DEIS”], available at <http://pilgrimpipeline.com/wp-content/uploads/2015/pdf/Pilgrim-Pipeline-Project-DEIS.pdf>.

<sup>4</sup> See Letter from Robert Megna, Executive Director of the Thruway Authority, to Marc Gerstman, Acting Commissioner of the Department of Environmental Conservation, dated Nov. 16, 2015, and available at: [http://www.dec.ny.gov/docs/administration\\_pdf/pilgrimthruwayltr15.pdf](http://www.dec.ny.gov/docs/administration_pdf/pilgrimthruwayltr15.pdf).

<sup>5</sup> *Id.* at ES-9, ES-11.

<sup>6</sup> *Id.* at 2-13.

<sup>7</sup> See *Id.* at ES-3, 1-13.

<sup>8</sup> *Id.* at ES-3, 1-7.

<sup>9</sup> See *Id.*, Figure ES-1 at ES-2.

*Pilgrim Will Likely Fail to Secure Necessary Municipal Approvals for the Pipelines from Communities That Now Overwhelmingly Oppose Their Construction*

Like many recent proposed oil and gas infrastructure projects in the region, the Pipelines have faced considerable public backlash as well as organized opposition at the municipal level. Unlike many of those projects, however, the Pipelines are uniquely vulnerable to local actions as the statute governing the construction of petroleum pipelines in New York—the Transportation Corporations Law (“Transcorp Law”)—conditions Pilgrim’s authority to build and operate the lines on first obtaining certain individual and municipal approvals.

With its origins in the late nineteenth century, the Transcorp Law allows certain types of businesses to incorporate—such as, for example, “gas and electric corporations,” “telegraph corporations,” or “ferry corporations”—in order to transport persons or goods within the State of New York. *See* Transcorp Law § 2. Apart from general operational authority, one of the most significant powers granted by the Transcorp Law is the ability to use eminent domain in order to construct necessary transportation infrastructure.

These powers, however, are not provided without constraints. Because minimal effort or documentation is required to incorporate, *see, e.g.*, Transcorp Law § 3, the law provides other checks to prevent the unrestricted exercise of power. One of the most significant checks, found throughout the law, is the obligation that transportation corporations obtain the consent from the local legislature (e.g., a town board) in order to operate within a given municipality. *See, e.g.*, Transcorp Law §§ 3(b)(3); 11(1); 27; 41; 71; 86; 87; 89; 107; 116; 122(1). As the Court of Appeals explained, “the legal effect of th[is] consent” is generally “to create a franchise.” *Ghee v. N. Union Gas Co.*, 158 N.Y. 510, 513 (1898). Municipalities have the “right to grant or withhold consent,” and without consent, the corporation may not occupy local land for its business purposes. *See People ex rel. W. Side Elec. Co. v. Consol. Tel. & Elec. Subway Co.*, 187 N.Y. 58, 65 (1907). Depending on the type of corporation, other approvals may also apply, such as permission from landowners to use private property.

Although many of the types of infrastructure specified in the Transcorp Law are now primarily regulated by other statutes, petroleum pipelines are not. For this reason, Pilgrim acknowledges in its Application that it is “a pipeline corporation organized and existing under the [Transcorp Law].”<sup>10</sup> What the Application and the accompanying proposed Draft Environmental Impact Statement (“Proposed DEIS”) fail to mention, however, is that the conditions placed upon the authority of pipeline corporations to condemn land and construct infrastructure are among the strictest in the Transcorp Law. *See Iroquois Gas Corp. v. Jurek*, 30 A.D.2d 83, 87 (2d Dep’t 1968) (The “power to condemn as a pipe line corporation is much more severely circumscribed than . . . a gas corporation.”).

Article 7 of the Transcorp Law (“Article 7”) governs the authority of pipeline corporations, and the limits it imposes range from constraints waivable by individuals or governments to unqualified prohibitions. For example, the restriction that a pipeline corporation “shall not locate

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<sup>10</sup> Pilgrim, *Application of Pilgrim Transportation of New York, Inc. for a Longitudinal Use and Occupancy Permit for the Pilgrim Pipeline Project* (Aug. 2015), available at <http://pilgrimpipeline.com/wp-content/uploads/2015/pdf/Use-and-Occupancy-Permit-Application-8-7-15.pdf>.

its route or construct any line of pipe under any building, dooryard, lawn, garden, or orchard” may be waived by the owner of that property, while the prohibition against longitudinal occupancy of railroad property is absolute. *Compare* Transcorp Law § 83 *with* § 84.

Importantly, under Article 7, municipalities occupy a central role in determining if and how pipeline corporations will operate within local boundaries. Pipeline corporations must seek the approval of the relevant local government to use “lands owned by any county, city or town,” including where the line would cross any “public highway.” Transcorp Law § 87, 89. Corporations seeking to build pipelines in villages or cities face even greater hurdles, as the Transcorp Law specifies that:

No pipe line shall be constructed into or through any incorporated village or city in this state, unless authorized by a resolution prescribing the route, manner of construction and terms upon which granted, adopted at a regular meeting of the board of trustees of the village or the legislative body of the city *by a two-thirds vote thereof*. . .

Transcorp Law § 87 (emphasis added).

Although silent about these required individual and municipal approvals in its application materials, Pilgrim is well aware of the limitations that presently control its ability to construct the proposed Pipelines. Indeed, in the alternatives analysis of the Proposed DEIS, Pilgrim frankly acknowledges that a “Rail Corridor Alternative” to the current proposed path “was determined to be infeasible in light of Transportation Corporation Law provisions which appear to prohibit the longitudinal occupation by pipelines of existing rail ROW.”<sup>11</sup> This admitted legal impossibility of locating the Pipelines within a rail ROW, however, is equaled by the unmentioned near practical impossibility of its proposal to route the Pipelines through a number municipalities now openly hostile to their construction.

Since the proposal for the Pipelines became public in 2014, 22 New York municipalities have passed resolutions opposing the project (most of them within the Pipelines route), and with several others presently considering similar legislation.<sup>12</sup> Importantly, of the nine incorporated villages and cities where the proposed path for the Pipelines leaves the Interstate 87 ROW—Albany, Harriman, Hillburn, Kingston, Newburgh, Rensselaer, Ravena, Tuxedo Park, and Woodbury—four have passed opposition resolutions. Even assuming Pilgrim could obtain the permissions for the use of local lands, roads, and private property<sup>13</sup> elsewhere along the route, it defies reason that it will be able to secure the required supermajority support from several municipalities that have now formally opposed its project.

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<sup>11</sup> Proposed DEIS at 1-14.

<sup>12</sup> The New York municipalities that have passed resolutions opposing the Pipelines are: Cornwall, Cornwall on Hudson, Esopus, Gardiner, Harriman, Kingston, Marletown, Newburgh (City), Newburgh (Town), New Paltz (Town), New Paltz (Village), New Windsor, Plattekill, Red Hook, Rhinebeck, Rochester, Rosendale, Saugerties, Tuxedo, Tuxedo Park, Wawarsing, Woodstock.

<sup>13</sup> Notably, Pilgrim identifies that the mainline and the Roseton Product Lateral will cross through orchards in the New Paltz area, “thereby permanently affecting” them through tree cutting and the placement of the permanent ROW. Proposed DEIS at 4-99. As mentioned, the Transcorp Law forbids the use of eminent domain for pipeline construction through orchards without permission of the orchard owner, yet Pilgrim does not identify that it has obtained, or even sought, these permissions.

In New Jersey, Pilgrim's plans for the Pipelines look even less viable, as nearly every inch of the proposed line there runs through an antagonistic municipality. To date, 38 New Jersey municipalities have passed resolutions against the project<sup>14</sup> and 11 New Jersey municipalities have gone even further, passing ordinances designed either to restrict or exclude the proposed Pipelines from within their local borders.<sup>15</sup> These local efforts are matched at the state level, with both houses of the New Jersey legislature having also passed resolutions opposing the Pipelines.<sup>16</sup>

*The Application Contains Insufficient Information to Allow for Adequate Review*

Due to the near practical impossibility that the Pipelines will be able to run along their presently proposed route, the Application and supporting materials are largely speculative and fail to provide the information necessary to enable appropriate review of the project under SEQRA or the standards governing approval of utility longitudinal use and occupancy permits.

As you know, SEQRA requires earnest examination of any significant adverse environmental impacts that may derive from a proposed action. See Env'tl. Conserv. Law ("E.C.L.") § 8-0109. In order to "identify 'the relevant areas of environmental concern' and take a 'hard look' at them," *Merson v. McNally*, 90 N.Y.2d 742, 751 (1997) (quoting *Chem. Specialties Mfrs. Ass'n v. Jorling*, 85 N.Y.2d 382, 397 (1995)), the reviewing agency must examine, among other things, the "setting" and "geographic scope" of the environmental impacts likely to result. 6 N.Y.C.R.R. § 617.7(c)(3)(i), (v). Where an environmental impact statement is prepared, it must contain a "description of the proposed action and its environmental setting," which, in turn, provides the foundation for the required assessment of the relevant impacts, potential alternatives, and appropriate mitigation. See E.C.L. § 8-0109(1), (2); 6 N.Y.C.R.R. § 617.11(d).

Put simply, a reviewing agency must know *where a project is actually going to be located* before it can conduct satisfactory review of the possible environmental harms that it will generate. In the present situation, to the unlikely extent the Pipelines can be built at all, municipal opposition will almost certainly require a dramatic rerouting of the project. Under these circumstances, the proposal presented in the Application is largely speculative, and examination of that proposal would waste valuable agency resources and fail to satisfy SEQRA.<sup>17</sup> It would also involve the participation of the public in an unnecessary and essentially academic exercise.

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<sup>14</sup> The New Jersey municipalities that have passed resolutions opposing the Pipelines are: Berkeley Heights, Bloomingdale, Caldwell, Chatham Borough, Chatham Township, Clark, Cranford, East Hanover, Edison, Fanwood, Florham Park, Kinnelon, Linden, Livingston, Madison, Mahwah, Millburn, Montville, New Providence, Oakland, Parsippany, Pequannock, Pompton Lakes, Rahway, Ramsey, Ringwood, Riverdale, Roseland, Roselle, Scotch Plains, South Orange, Wanaque, Watchung, Wayne, West Milford, West Orange, Westfield, Woodbridge.

<sup>15</sup> The New Jersey municipalities that have passed ordinances that would in some way restrict or exclude the Pipelines are: Berkeley Heights, Bloomingdale, Chatham Township, East Hanover, Madison, Mahwah, Montville, Oakland, Parsippany, Roselle, Watchung.

<sup>16</sup> A.R. 191, 216th Leg. (N.J. 2014) available at <https://legiscan.com/NJ/text/AR191/id/1055223>; S.R. 106, 216th Leg. (N.J. 2014) available at <https://legiscan.com/NJ/text/SR106/id/1249193>.

<sup>17</sup> Pilgrim may argue that local approvals cannot be obtained until after the SEQRA process is undertaken. But this would be to stand the process on its head. The required local approvals are effectively jurisdictional; without them, the pipeline cannot be built as proposed. Pilgrim should be required to provide at least some evidence that it can obtain approvals where it needs them. If it does and the SEQRA review proceeds, the localities can then make a final judgment and take action on the basis of what that review has revealed.

Similarly, the Application lacks the information necessary to enable appropriate review under the standards for review of use and occupancy permit applications. As you know, the Authority generally “discourages longitudinal use of Authority Property,” permitting it only in “special cases.”<sup>18</sup> Longitudinal occupation must also satisfy the federally required state highway “accommodation plan,”<sup>19</sup> which allows occupation for utilities only by request for an “exception.”<sup>20</sup> Exception proposals must demonstrate, among other things, conformity “with local and state planning efforts,”<sup>21</sup> echoing federal highway regulations that utility occupation of a highway ROW is not presumed to be consistent with the public interest where it “conflict[s] with . . . local laws or regulations.” 23 C.F.R. §645.205(a). Thruway guidelines also mandate consideration of “a number of factors” before approval of a use and occupancy permit, including the exact location of the utility line, the extent to which it is assembled with adjacent property, and any “known legal issues or disputes.”<sup>22</sup>

As described, in the present case, Pilgrim is unlikely to obtain permission to operate in several municipalities where its project clearly conflicts with local regulations and development plans. Pilgrim’s failure to address these conflicts in its application materials and how they affect the Pipelines’ proposed route, therefore, also denies the Authority information it requires to evaluate the Application under its own guidelines and the federally mandated accommodation plan.

These omissions are exacerbated by the fact that Pilgrim has, to date, submitted only one application from among the dozens that will be necessary at the local, state, and federal levels. Because these applications may contain additional information essential to full performance of the critical roles of involved agencies and the public in the SEQRA process, both at the scoping stage and beyond, *see* 6 N.Y.C.R.R. §§ 617.3(d), (e); 617.8(d), (e); 617.9(a), Pilgrim’s current fragmented approach deprives that process of vital information.

*The Appropriate Course of Action Is to Request Withdrawal of the Application or Suspend Review until Pilgrim Provides Sufficient Information to Enable Meaningful Review*

Although completion of the SEQRA review process may be warranted in some cases where approval is unlikely, where, as here, “it is clear that [an] application will not meet regulatory

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<sup>18</sup> The Authority, *Utility Occupancy Supplement TAP-401U*, § II.B.2 (Jan. 2010), available at <http://www.thruway.ny.gov/business/realproperty/forms/tap-401u.pdf>.

<sup>19</sup> See New York Department of Transportation (“NYSDOT”), *Accommodation Plan for Longitudinal Use of Freeway Right-of-Way by Utilities* (Oct. 1995), available at <https://www.dot.ny.gov/divisions/engineering/design/dqab/dqab-repository/accommod.pdf>.

<sup>20</sup> See NYSDOT, *Accommodation of Non-Communication Utilities on New York State Freeway or Controlled Access Rights of Way*, 1 (undated), available at <http://on.ny.gov/1RhUzVk>. This document provides clarification of the Accommodation Plan referenced above, which is a federally required agreement between the Federal Highway Administration and NYSDOT. Although the Authority is not a party to this agreement, as noted in the January 9, 2013 letter from Donna K. Hintz of NYSDOT to Jaclyn A. Brilling of the New York Public Service Commission, provided at the link above, “[t]he toll portions of Interstates 87 and 90 under the jurisdiction of the New York State Thruway Authority (NYSTA) are included in this [Accommodation] Plan.”

<sup>21</sup> *Id.* at 6.

<sup>22</sup> See Thruway Authority Bureau of Management Analysis and Projects, *Manual 500-2, Section 02.1: Transaction Process Analysis*, Exhibit 2 (Feb. 2012), available at <http://www.thruway.ny.gov/business/realproperty/sop/500-2-02.1.pdf>.

standards for issuance,” the reviewing agency may exercise options that protect it from engaging in meaningless review.<sup>23</sup> Relevantly, the agency may: (1) “[e]xplain to the project sponsor how the project fails to meet standards for issuance and recommend that the application be withdrawn;” or (2) “[e]xplain to the project sponsor how the project fails to meet standards for issuance” and urge modification to comply with those standards.<sup>24</sup> Accordingly, because Pilgrim’s proposal will almost certainly fail to secure numerous statutorily required approvals, a request for withdrawal or suspension of review pending satisfactory modification is appropriate.

Even to the extent that DEC and the Authority find Pilgrim’s plans not wholly conjectural, its piecemeal approach to submission of the necessary permit applications is antithetical to SEQRA’s objective of “coordinated action” in analyzing environmental impacts and the state’s uniform procedures for review of environmental permits. *See* E.C.L. §§ 8-0103; 70-0101 (“a comprehensive project review approach shall replace separate and individual permit application reviews”). These procedures demand that where “a project requires more than one [DEC] permit, the applicant must simultaneously submit all the necessary applications” or demonstrate good cause for not doing so. 6 N.Y.C.R.R. § 621.3(a)(4); *see also* 6 N.Y.C.R.R. § 621.6 (regarding completeness of applications). They also allow DEC “at any time” to request “any additional information . . . reasonably necessary to make any findings or determinations required by law,” and failure to respond to these requests “may be grounds for permit denial.” 6 N.Y.C.R.R. § 621.14(b); E.C.L. § 70-0117(2). Because the impacts of the project “implicate [DEC]’s permitting authority pursuant to the Environmental Conservation Law,”<sup>25</sup> and the project requires several permits governed by DEC’s uniform rules, the door is open for their application. 6 N.Y.C.R.R. § 621.3(c) (“Where a project involves permits both subject and not subject to [the uniform permit rules], [DEC] reserves the right to process all such applications pursuant to [those rules].”).

In sum, where Pilgrim has not yet initiated the process of seeking approval for the dozens of permits or other permissions it will need to construct the Pipelines, and where several necessary approvals are all but certain to be rejected, Pilgrim asks DEC and the Authority to commit valuable agency resources to a hypothetical exercise, in which any public participation will also be a waste of time and money. Because review of the environmental impacts of the unviable proposal put forth by the Application benefits no one (not even Pilgrim), the undersigned organizations ask DEC and the Authority to either request that Pilgrim withdraw its Application or suspend their review until the corporation can provide credible evidence demonstrating the feasibility of the project as proposed and submits all additional necessary permits.

Thank you for your attention to this request.

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<sup>23</sup> *See* DEC, *The SEQR Handbook: 3rd Edition*, 14-15 (2010), available at [http://www.dec.ny.gov/docs/permits\\_ej\\_operations\\_pdf/seqrhandbook.pdf](http://www.dec.ny.gov/docs/permits_ej_operations_pdf/seqrhandbook.pdf).

<sup>24</sup> *Id.* at 15. Because construction of the Pipelines would constitute a Type I action under SEQRA, issuance of a negative declaration along with a denial of the Application would be inappropriate.

<sup>25</sup> *See* Agreement between DEC and Thruway, dated February 1, 2016, and available at: [http://www.dec.ny.gov/docs/permits\\_ej\\_operations\\_pdf/plgrmfnlmoa.pdf](http://www.dec.ny.gov/docs/permits_ej_operations_pdf/plgrmfnlmoa.pdf).

Respectfully,



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