Is Ares Management Building a Pipeline to Nowhere?

Proposed $980 million oil pipeline is behind schedule, opposed by a growing number of state and municipal lawmakers, and faces significant regulatory hurdles.

In May 2015 UNITE HERE raised questions about Ares Management’s $195 million commitment to the Pilgrim Pipeline, which had failed to overcome growing community opposition. Over one year later, the 170-mile oil pipeline now faces additional political and regulatory hurdles.

- Pilgrim Pipeline is opposed by all of the municipalities along the pipeline’s proposed route in New Jersey and both houses of the state’s legislature.
- Opponents have raised questions about Pilgrim’s customer base. Bayway, the largest refinery near the pipeline’s end in Linden, NJ has stated that the pipeline “is not a strategic fit.”
- In New York, where village and city boards reportedly have “veto power” over pipelines crossing their borders under a century-old law, the project is opposed by 20 municipalities along the proposed route.
- A New York Assemblyman recently filed a resolution asking the New York Thruway Authority – the largest landholder along the route – to deny the use of its right-of-way. Pilgrim has stated that alternate routes off the Thruway are not feasible.

Pilgrim Pipeline Faces Mounting Obstacles

As of June 2015, Ares Energy Investors Fund (EIF) IV had committed $195 million to the construction of Pilgrim Pipeline, a roughly 170-mile bi-directional crude oil and refined products pipeline from Linden, NJ to Albany, NY. Since 2014, when news reports emerged that Pilgrim had begun outreach to towns along the proposed route, the pipeline has faced growing opposition from a number of state and municipal lawmakers and a coalition of community organizations. Already delayed by landowners who have denied surveying access and easements, Pilgrim may also be blocked by village and city boards with potential “veto power” over pipeline construction within their borders that opponents say is granted by New York’s Transportation Corporations Law.

Ares EIF IV had by June 2015 invested $18 million in phase 1 of the pipeline, which has a projected capital cost of $980 million. Phases 2 and 3 represented “compelling midstream
opportunities” to service “major east coast markets” and a “potential combined additional investment opportunity of $350 million,” according to an Ares investor presentation from September 2015.\textsuperscript{6} EIF’s estimated $195 million phase 1 investment represented 9.4% of the total committed capital in EIF IV and V; an additional $350 million would represent 26.4% of the committed capital in the two energy funds as of year-end 2015.\textsuperscript{7}

Last year, before applying for state permits, Pilgrim already faced opposition from all but one of the municipalities along the proposed route in New Jersey and both houses of that state’s legislature,\textsuperscript{8} a number of New York municipalities and lawmakers,\textsuperscript{9} and from the Coalition to Stop Pilgrim Pipeline (CAPP), a 76-member alliance of environmental and community groups.\textsuperscript{10} The New Jersey Sierra Club declared “a really big victory” that “could end up killing the project” when in February 2015 the New Jersey utility, Public Service Electric & Gas Co. (PSE&G), denied Pilgrim the use of a 27-mile right-of-way.\textsuperscript{11} “We told Pilgrim that it was not in the best interests of the utility or its customers to allow access to the right of way,” said a PSE&G spokesperson.\textsuperscript{12}

These problems show no sign of abating. Not only has Pilgrim failed to overcome the growing opposition to its use of land along the pipeline’s route, but it now faces additional potential legislative and regulatory hurdles.

See Map of Municipalities along the Proposed Pilgrim Pipeline Route in Appendix A.

**Delays and Opposition in New Jersey**

Pilgrim has missed two of its own target dates for submitting necessary permit applications with the New Jersey Department of Environmental Protection.

The company does not appear to have initiated any state permit applications,\textsuperscript{13} despite telling Union County officials in June 2014 that it intended to file in the third quarter of that year, and stating in a November 2015 press release that it would file “later in the year.”\textsuperscript{14} We have found no indication that Pilgrim has applied in New Jersey, where it “faces widespread opposition” from “those fearful of possible leaks, explosions and harm to the water supply.”\textsuperscript{15}

<table>
<thead>
<tr>
<th>Pilgrim Pipeline’s Obstacles in New Jersey</th>
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<tbody>
<tr>
<td><strong>Status</strong></td>
</tr>
<tr>
<td>Not filed</td>
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<tr>
<td>Denied</td>
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<tr>
<td>Opposition bill approved Dec. 18, 2014</td>
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### Status

<table>
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<tr>
<th>Status</th>
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<th>Obstacle</th>
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<tbody>
<tr>
<td>Opposition bill approved June 29, 2015</td>
<td>State Senate</td>
<td>Bipartisan Senate Resolution 106 opposing Pilgrim Pipeline as currently conceived</td>
</tr>
<tr>
<td>All 30 opposed</td>
<td>30 municipalities</td>
<td>Opposition from municipalities in the proposed route</td>
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<tr>
<td>“Not a strategic fit” according to Phillips66</td>
<td>Phillips66</td>
<td>Customer base: No agreement to connect pipeline to Phillips66’s Bayway Refinery in Linden, a major potential customer and the largest east coast refinery</td>
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### Municipalities Against Pilgrim

In New Jersey, all 30 municipalities in the proposed route and another 10 nearby municipalities have passed resolutions opposing the project. Of the 40 opposed municipalities, 31 also call for a “moratorium” on planning, proposal, or surveying of the pipeline (26 of these also call for a moratorium on Pilgrim Pipeline construction).\(^6\)

Chatham and Florham Park asked the state utility PSE&G to “continue to stand with” them in denying Pilgrim Pipeline access to the requested rights-of-way. Florham Park officials “view the proposed pipeline as inconsistent with our Master Plan and a detriment to our citizens,” while Chatham’s lawmakers “believe Pilgrim’s proposed route risks our community’s safety, drinking water, health, natural resources and property values, while providing no benefits,” according to their respective letters to PSE&G.\(^7\)

Another 11 municipalities passed land use ordinances limiting the construction of pipelines within their boundaries. One ordinance states: “Pipelines which are not public utilities that distribute services to end users and are unregulated by the State of New Jersey Board of Public Utilities are prohibited within any zone in the Township.”\(^8\)

### Bipartisan Opposition in the New Jersey State Legislature

Both houses of the New Jersey legislature approved bipartisan resolutions opposing the project and urging any “federal, state, or local entity engaged in review of the Pilgrim Pipeline project to reject the project as currently proposed, and thereby prohibit its construction through New Jersey.”\(^9\)

The bill’s co-sponsor in the New Jersey Senate, Republican Tom Kean, objected to the potential environmental hazards posed by the pipeline: “It goes through everything from densely developed areas to pristine, protected regions. None of us want it there.”\(^10\) Democratic co-sponsor Richard

“[Pilgrim Pipeline] goes through everything from densely developed areas to pristine, protected regions. None of us want it there.”

— Tom Kean, Republican Senator from New Jersey
Codey said that “any spill could affect the drinking water of one million residents in New Jersey.” Assemblywoman Mila Jasey declared, “We have the power to stop it.”

**Pilgrim Missteps with “Harsh” and “Aggressive” Outreach Tactics**

Federal and state legislators have also criticized what environmentalists call “threatening” tactics in attempting to gain access to private property to conduct land surveys. Pilgrim itself has admitted it was “too harsh” in its approach to home owners.

Republican Assemblywoman Holly Schepisi, co-sponsor of the anti-Pilgrim resolution, has criticized Pilgrim’s tactics, particularly the threat of eminent domain. “The way it’s been handled [by Pilgrim] has turned a lot of people off,” said Schepisi, who reportedly noted that the company’s letters to property owners were “aggressive in tone, threatening eminent domain seizures of land.”

In October 2014, the company reportedly sent letters to homeowners along the proposed route stating that Pilgrim has “the power to condemn private property” and that it would seek a court order to survey properties if denied access. At a town hall meeting that same month, Pilgrim official George Bochis told the audience: “If the design of the project winds up being across your property and we can’t come to a reasonable agreement, as a pipeline company, under New Jersey statutes we do have the right to eminent domain.”

Lawyers for the New Jersey Sierra Club and the Eastern Environmental Law Center have argued that Pilgrim does not have eminent domain power.

Pilgrim later acknowledged that the letters to landowners were “too harsh.”

Republican US Congressman Rodney Frelinghuysen told a Hanover, NJ audience that “the people behind the Pilgrim pipeline have not done their due diligence” and that “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.”

**New York Opposition**

In August 2015, Pilgrim applied for a Use and Occupancy Permit in New York state where it faces opposition in the state assembly and from 20 municipalities comprising nearly two-thirds of those in the proposed route.

The permitting process includes an environmental review originally to be overseen by the New York Thruway Authority. But after opponents reportedly “expressed concern that Thruway officials, who are trying to locate funding for the new Tappan Zee Bridge, could be unduly influenced by the fees Pilgrim would pay to use Thruway land,” the New York Department of Environmental Conservation (DEC) and the Thruway Authority announced that they would co-lead the environmental review. Local municipalities continued to call on the DEC to take sole authority for the review process.
In the preliminary Draft Environmental Impact Statement submitted as part of its Use and Occupancy application, Pilgrim identified an additional 31 “permits, executive orders and approvals” under the authority of at least 13 different federal, state and local agencies that are “potentially applicable to the proposed Pilgrim Pipeline Project.”

One of the potentially required approvals—a DEC-issued Water Quality Certification (WQC) required under Section 401 of the Clean Water Act—was in April 2016 denied to the Constitution Pipeline, “a 124-mile pipeline that would have delivered shale gas from Pennsylvania to eastern New York.” A Constitution Pipeline opponent celebrated the WQC denial as a “landmark decision [that] should serve as a precedent for denying New York State authorization for all proposed fossil fuel pipelines.”

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<tr>
<td><strong>Status</strong></td>
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<td>Preliminary Draft filed Aug. 2015</td>
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<tr>
<td>Filed Aug. 2015</td>
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<tr>
<td>Not filed. To be determined during or after environmental review</td>
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<tr>
<td>Opposition bill filed April 13, 2016</td>
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<tr>
<td>Opposed by five of the nine applicable municipalities</td>
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<tr>
<td>Opposed by 20 of 33 municipalities</td>
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**Municipal Opposition under the New York Transcorp Law**

Pipeline opponents are using a century-old New York state law that they say gives villages and cities “veto power” over pipeline projects within their boundaries.\(^37\)

The New York Transportation Corporations Law of 1909 (Transcorp Law) states 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.”\(^38\)

As of March 2016, five of the nine applicable villages and cities under the Transcorp Law had passed resolutions against the project.\(^39\)

“It doesn’t make any sense for [the DEC and the Thruway Authority] to study a project that can’t possibly be built,” said the director of Riverkeeper, one of the Coalition leaders. The Coalition has asked the DEC and the Thruway 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.”\(^40\)

Of the 33 total municipalities in the proposed pipeline path, 20 have passed resolutions opposing the pipeline. Seventy five percent of the resolutions call “upon the New York State Thruway Authority”—the largest landholder along the pipeline’s route—“to reject use of its right-of-way for the Pilgrim Pipeline” specifically or “for the purpose of transporting oil or gas by pipeline” generally.\(^41\)

In April 2016, Democratic Assemblyman Frank Skartados filed a resolution prohibiting the Thruway Authority from allowing Pilgrim to build the pipeline.\(^42\) Skartados stated that “the proposed Pilgrim Pipeline puts Hudson Valley families, farmers and businesses at risk. We must say ‘no’ to the pipeline.”\(^43\)

According to Pilgrim’s New York Use and Occupancy Permit Application, Pilgrim has “investigated alternate locations for the Project and has determined that constructing off Thruway property would be infeasible.”\(^44\)

**Business Plan Called Into Question: A Pipeline to Nowhere?**

Opponents have also raised questions about Pilgrim’s business plan – and the existence of a customer base.

In its New York permit application, Pilgrim stated that the pipeline will transport oil to “one or more refineries and marine terminals in the vicinity of Linden.”\(^45\) But a major potential customer
and the largest refinery on the east coast, Linden’s Bayway Refinery said in November 2015 that it had no agreement with Pilgrim to connect to the pipeline, adding that it “is currently not a strategic fit.” The Sierra Club has pointed out that Bayway’s owner, Phillips 66, already has an agreement with Buckeye Partners pipeline, a different regional pipeline.

**Municipal Opponents to State Pension Officials: Reconsider Ares Investments**

Two New York municipalities have gone as far as asking state pension officials to reconsider their investments with Ares. The Boards of New Paltz and Rosendale have passed resolutions asking the New York Comptroller to “take a broader look reviewing Ares Management portfolio companies.” New Paltz Mayor Tim Rogers stated that the pension funds’ influence could make a difference in halting the pipeline.

“I believe we have significant leverage in that our pension fund ... has about $700 million of exposure across a variety of different funds that Ares — this behemoth of an investment management firm — is responsible for. So we have all this exposure to Ares, and, if everyone and their brother is concerned and opposed to the Pilgrim pipelines, particularly in all the communities ... we would really like to use some of that leverage and ask the comptroller to use some of their influence. We pay an enormous amount of money by paying for their management fees. So money talks, and we have, I believe, leverage in terms of what we want our pension fund assets invested in.”

**Questions for Investors**

- What expectations did Pilgrim have regarding community response to its proposal?
- How will Pilgrim develop a customer base?
- When will Pilgrim file its permit application in New Jersey, if it has not already done so?
- What will happen if Pilgrim is unable to secure the necessary approvals?
- Will EIF limited partners be impacted by further delays?

**Endnotes**


10 Coalition Against Pilgrim Pipeline Members: https://stoppilgrimpipeline.com/coalition-members/


According to CAPP's legal analysis (see p. 29: https://stoppilgrimpipeline.files.wordpress.com/2016/06/capp_to_ares_may13_2016.pdf), the 1909 law applies because, unlike natural gas pipelines or other interstate infrastructure, oil pipelines are not regulated by other state or federal statutes.


Example from the Town of New Paltz, Resolution Opposing the Pilgrim Pipeline, adopted November 19, 2014. https://drive.google.com/file/d/0Bw5nDE9mUIfKgYTVoSnFWd1Z1cXc/view


Rosendale Town Board Resolution 06-2016-03, adopted June 1, 2016. https://stoppilgrimpipeline.files.wordpress.com/2014/12/rosendale_aresinvestment.pdf

Legend

GREEN – Towns directly on the pipeline route that have passed resolutions opposing the pipeline.

LIGHT GREEN – Other nearby towns that have passed resolutions opposing the pipeline.

BLUE – Towns that have passed both resolutions and ordinances restricting pipeline construction.

GRAY – Towns on the pipeline route that have not passed resolutions opposing the pipeline.

Red line – represents the proposed pipeline route.

Source: https://stoppilgrimpipeline.com/maps/