



Looming Trade Deals Threaten our Climate and Massachusetts' Fight against Fossil Fuels

Across Massachusetts, activists are organizing to protect their communities and climate from fossil fuel pipelines and power plants, while pushing for a carbon fee to reduce climate pollution. But the Trans-Pacific Partnership (TPP) – a pending trade deal between the U.S. and 11 Pacific Rim countries – would spur more climate disruption and empower multinational fossil fuel corporations to sue the U.S. over climate protections in private tribunals. As proposed, the Transatlantic Trade and Investment Partnership (TTIP), under negotiation with the EU, would only increase these threats.

TransCanada, the corporation behind the Keystone XL pipeline, illustrated this threat in June 2016 when it used rules in NAFTA to sue the U.S. for \$15 billion in a private tribunal as “compensation” for the pipeline rejection, which avoided increased risks of oil spills and climate disruption.¹ We could see many more corporate challenges to our hard-fought climate victories if Congress were to pass the TPP or if broad corporate rights were to remain in TTIP.

Extreme Rights for Fossil Fuel Corporations

The TPP and TTIP, as proposed, would empower thousands of multinational corporations, including major polluters, to follow TransCanada’s example and sue the U.S. government in tribunals not accountable to any domestic legal system, in which corporate lawyers act as “judges.”² There, the corporations could use the TPP’s and TTIP’s broad corporate rights to demand compensation for restrictions on dangerous fossil fuel projects, claiming interference with their expectations.

Fossil fuel corporations are increasingly using this private tribunal system – called “investor-state dispute settlement” (ISDS) – in existing trade and investment pacts to demand payment for environmental protections and to deter policymakers from enacting environmental policies. ISDS cases have targeted a fracking moratorium in Quebec, a court order to pay for oil pollution in Ecuador, and new restrictions on a coal-fired power plant in Germany. Indeed, half of the new cases launched in 2014 targeted policies affecting oil or gas extraction, mining, or power generation. The TPP and TTIP would dramatically expand this threat. For example, if approved by Congress, these deals would:

- Empower 45 of the 50 biggest climate-polluting corporations in history to use ISDS to challenge climate policies, and
- More than double the number of fossil fuel corporations able to challenge U.S. policies in unaccountable ISDS tribunals. Firms gaining this power would include United Kingdom-based National Grid – the largest distributor of gas in the U.S. Northeast – which is responsible for multiple pipeline safety violations throughout Massachusetts.³

A Lifeline for Gas Pipelines

Massachusetts communities have been using the courts, the press, and public protest to oppose new pipelines that would transport fracked gas from Appalachia across the state.⁴ Massachusetts does not need new gas pipelines for its energy security, according to a 2015 study by the Massachusetts Attorney General’s Office.⁵ Rather, the suspected purpose of proposed new pipelines is to export liquefied natural gas (LNG) – a fossil fuel with high climate emissions. Beyond facilitating increased global dependency on fossil fuels and increased fracking in Appalachia, such pipelines would pose local risks, including methane leakage, oil spills, explosions, and land disturbances during construction.⁶ Exporting LNG also would require new, environmentally destructive export terminals and could raise local energy prices.

In April 2016, after strong resistance from Massachusetts landowners, environmentalists, and elected officials, Kinder Morgan withdrew its proposal for the massive Northeast Energy Direct pipeline – a major win for local activists.⁷ But the

¹ *TransCanada Corporation & TransCanada PipeLines Limited v. The Government of the United States of America*, [Request for Arbitration](#), June 24, 2016.

² Citations and further details for all facts in this section can be found in Sierra Club’s new report: Ben Beachy, “[Climate Roadblocks: Looming Trade Deals Threaten Efforts to Keep Fossil Fuels in the Ground](#),” The Sierra Club, March 2016.

³ Christine Legere, “[Fine Against Natural Gas Distributor for Cape Violations Is Largest in DPU History](#),” *Cape Cod Times*, December 22, 2015.

⁴ Charlotte Khan, “[Pipeline Opposition Grows Without Big Media](#),” *The Enterprise*, April 2, 2016.

⁵ Paul Hibbard and Craig Aubuchon, “[Power System Reliability in New England](#),” Analysis Group (for the Office of the Attorney General), November 2015, at iii.

⁶ For a discussion of risks, see “[Natural Gas Pipelines: Problems from Beginning to End](#),” Food and Water Watch, January 2013.

⁷ Mary Serreze, “[Kinder Morgan Pulls the Plug on Northeast Energy Direct-Tennessee Gas Pipeline](#),” *MassLive*, April 20, 2016.

TPP and TTIP, as proposed, would allow fossil fuel corporations to sue the U.S. over such victories in unaccountable ISDS tribunals. Take, for example, the controversial Access Northeast project, which would expand existing pipelines in Massachusetts to transport more fracked gas across the state.⁸ TTIP would empower National Grid, one of the corporations behind Access Northeast, to sue the U.S. in a tribunal of three private lawyers if local communities were to succeed in pushing federal authorities to reject the pipeline expansion, just as TransCanada is doing under NAFTA.⁹

To make matters worse, under the TPP and the terms proposed for TTIP, the Department of Energy would be required to automatically approve LNG exports to Japan and the EU, the world's largest and third-largest LNG importers, respectively, which could increase pressure for new gas pipelines in Massachusetts.¹⁰

A Tool to Defend Gas Power Plants

Massachusetts' goal of reducing greenhouse gas emissions by 80 percent by 2050 only will be achievable if it tackles emissions from gas power plants, which provide two-thirds of its electricity.¹¹ Gas power produces 39 times more greenhouse gas emissions than wind power.¹² Massachusetts has enormous wind potential and ambitious wind power policies,¹³ but to reduce climate pollution, renewables must *replace* gas power, not supplement it. However, the TPP and TTIP, as proposed, would enable gas corporations to sue the U.S. in private tribunals if states like Massachusetts were to place new restrictions on gas plant emissions. That includes Japan-based Itochu Corporation, part owner of a gas power plant in Pittsfield, and France-based Engie, which owns gas plants in Bellingham and Blackstone, the state's third and fifth largest greenhouse gas emitting facilities.¹⁴ The TPP would give Itochu, and TTIP would give Engie, a new tool to challenge emissions controls in Massachusetts.

A Threat to Massachusetts' Landmark Carbon Fee

The Massachusetts legislature is considering a bill that would charge a fee for the distribution or sale of carbon-based fuels, with all raised funds rebated to residents.¹⁵ If passed, this would be the first carbon fee in the U.S. However, the TPP and TTIP, as proposed, would allow fossil fuel corporations to turn to tribunals of three private ISDS lawyers to challenge this pioneering climate policy as a violation of one of their broad trade deal rights. Indeed, multinational corporations are increasingly using ISDS provisions in such deals to challenge progressive tax policies.¹⁶ In 2008, for example, Anglo-French oil company Perenco sued Ecuador in a private tribunal over a new tax on windfall oil profits.¹⁷

Increased Climate-Disrupting Emissions

Though trade can significantly increase climate-disrupting emissions, the TPP text fails to even *mention* the words "climate change."¹⁸ The omission is particularly alarming given the threats that climate change poses to Massachusetts – from more frequent extreme storms to coastal flooding.¹⁹ The TPP would increase greenhouse gas emissions by:

- Offshoring Manufacturing: The TPP would shift U.S. manufacturing to Malaysia and Vietnam, where manufacturing is two to six times as carbon-intensive as in the U.S. This also would increase shipping emissions.
- Escalating Tropical Deforestation: In TPP member Malaysia, new oil palm plantations are a major cause of climate emissions from deforestation. The TPP's elimination of tariffs on palm oil would encourage wider oil palm expansion.

Let's Replace these Toxic Deals with Climate-Friendly Trade

Opposition to toxic trade deals like the TPP is broad and growing. It's time to create a new model of trade that protects communities and the environment, not the bottom lines of corporations. Join us at www.sierraclub.org/trade.

⁸ Bruce Gellerman, "As Linchpin of Project, Mass. Town of Acushnet Weighs Pipeline Facility," *WBUR*, February 2, 2016.

⁹ "National Grid Joins Eversource Energy and Spectra Energy on Access Northeast," Spectra Energy, February 18, 2015.

¹⁰ Ilana Solomon and Ben Beachy, "A Dirty Deal: How the Trans-Pacific Partnership Threatens Our Climate," The Sierra Club, updated July 2016, at 9-12.

¹¹ "Massachusetts: Profile Analysis," U.S. Energy Information Administration, June 16, 2016.

¹² "Renewable Energy Sources and Climate Change Mitigation," Intergovernmental Panel on Climate Change, 2012, Table A.II.4 (50th percentile), at 982.

¹³ "Massachusetts Offshore 90-Meter Wind Map and Wind Resource Potential," U.S. Department of Energy, accessed August 5, 2016. "Wind Energy in Massachusetts: 2,000 MW by 2020," Massachusetts Department of Energy Resources, accessed August 5, 2016.

¹⁴ "2014 Greenhouse Gas Emissions from Large Facilities," U.S. Environmental Protection Agency, accessed August 5, 2016.

¹⁵ "Bill S.1747: An Act Combating Climate Change," The 189th General Court of the Commonwealth of Massachusetts, accessed August 5, 2016.

¹⁶ Claire Provost, "Taxes on Trial: How Trade Deals Threaten Tax Justice," The Transnational Institute and Global Justice Now, February 2016.

¹⁷ Julie Bédard, et al., "The 'Law 42' Arbitrations against Ecuador and the Importance of BIT Language," Skadden, January 2015.

¹⁸ For citations and further details for all facts in this section, see Ilana Solomon and Ben Beachy, "A Dirty Deal: How the Trans-Pacific Partnership Threatens our Climate," The Sierra Club, updated July 2016, at 11.

¹⁹ "Massachusetts Climate Change Adaptation Report," Executive Office of Energy and Environmental Affairs, Commonwealth of Massachusetts, September 2011.