

June 25, 2018

Federal Energy Regulatory Commission
888 First Street, N.E.
Washington D.C. 20426

RE: Time for FERC to Represent People over Pipelines: Implementing a Public Interest Pipeline Review Process, Giving Proper Priority to People, Environment, Climate and Future Generations.

Submission to docket PL18-1

Dear FERC Commissioners,

As a federal agency, the Federal Energy Regulatory Commission (FERC) has a duty to respect the law and respect the people of the United States of America. We The People offer the following comments:

- 1) It is Time that FERC Implement a Pipeline Review Process that Prioritizes the Public Interest Over the Goals of the Pipeline Industry. This Means Giving Proper Priority (i.e. Highest Priority) to People, the Environment, Protection Against Climate Changing Emissions and Protection of Future Generations in Both the FERC Review and Decision-making.***

- 2) Review and Reform of FERC's Pipeline Review Process Must Begin with a Series of No Less than Six Public Hearings Held in Affected Communities, and 90 Days for Written Comment, So FERC Can Learn How the Current Process Is Failing and the Public Interest Reforms that Are Needed.**

To ensure that FERC identifies a full spectrum of truly meaningful fixes to its pipeline review and approval process, FERC's Commissioners need to hear directly from the communities impacted by pipeline infrastructure and the FERC process. FERC should begin the 1999 Policy Statement review process with no less than six public hearings held in affected communities across the nation that are dedicated to allowing the impacted public to testify directly to the FERC Commissioners about their experiences with the pipeline review and approval process. Testimony should be open to all who are interested and impacted including community members, impacted landowners, environmental advocates, and their representative organizations.

In addition, FERC needs to open a comment period of no less than 90 days to receive written comment, submitted not just via the FERC online portal, but by mail and email as well – in order to ensure the broadest access possible from all who are impacted and have important information to share for this review.

In addition to the reforms that will be identified and informed by the public process outlined above, VOICES – a coalition of over 200 impacted community organizations representing communities in every state in the nation – has identified reforms that must be implemented if FERC is earnestly seeking a process that fully, fairly and properly considers the appropriateness of a proposed pipeline infrastructure project, and is genuine in its desire to secure complete and accurate information as well as community engagement.

3) FERC Must Mandate a Legitimate Demonstration of “Need” for a Proposed Pipeline/Infrastructure Project that is Verified by Unbiased Experts, Is Not Comprised of Contracts to Supply Gas to the Pipeline Company Itself or Any of Its Business Counterparts, and Is Not/Cannot be Supplied by Renewable or Existing Energy Sources.

FERC must mandate a legitimate demonstration of an end-use need for a proposed infrastructure project as part of any application materials. This assertion of need must be objectively verified by experts who are not tainted by an industry conflict of interest.

This means that a claim of “need” cannot be supported/demonstrated by contracts from the pipeline company itself, or any of its subsidiaries or business counterparts or affiliates. This also means that a claim of “need” cannot be supported/demonstrated if the geographic region to be served already has gas service from other pipelines that would merely be replaced/displaced by gas delivery from the proposed project. Such illegitimate “need” demonstrations must be prohibited, and cannot be used to fulfill the “public use” requirements needed to support project approval and eminent domain authority.

A legitimate demonstration of “need” must include a demonstration that the energy goals to be achieved cannot be fulfilled by renewable energy options, or by existing or proposed energy sources and infrastructure (e.g. the gas is already being supplied by a pre-existing pipeline supply network).

4) There Must Be a Prohibition on FERC Issuing (a) Certificates of Public Convenience or Necessity, (b) Notices to Proceed with Any Aspect of Construction, Including Tree Felling, and/or (c) Approval for Exercise of Eminent Domain, Until Such Time as an Infrastructure Project Has Secured All State, Federal and/or Regional Permits, Dockets and/or Approvals. This Includes a Prohibition on Conditional FERC Certificates.

FERC must respect the authority of other state and federal agencies by instituting a regulatory prohibition on (a) issuance of a FERC Certificate approving a project or (b) FERC approvals for projects to proceed with any element of construction or eminent domain authority, until such time as all state, federal and regional (e.g. from River Basin Commissions) reviews have been finalized and any and all necessary approvals, permits, certificates and/or dockets have been granted. Such a prohibition is essential for ensuring that projects are not allowed to proceed until all government agencies/entities have had the opportunity to fully and fairly evaluate a project and render their own independent determinations regarding necessary approvals, and to avoid the current situation where pipeline companies are allowed by FERC to proceed with eminent domain and/or construction only to find that later they have been denied some key permit and are not able to proceed to completion. This prohibition must include the issuances of conditional FERC Certificates or approvals of any kind, because conditional approvals by FERC have resulted in projects advancing prior to securing all necessary reviews, approvals, permits and/or dockets.

This prohibition is imperative and non-negotiable. We don't want a repeat of the Constitution Pipeline situation where, as the result of a FERC Certificate and notices to proceed, the property rights of hundreds of property owners were taken, forests were cut, and businesses were harmed only to have the project denied New York state approval thereby preventing full construction. In other words, all the devastation was for naught as the pipeline is never going to be built.

5) FERC Must End Its Strategic Practice of Failing to Affirmatively Grant or Deny Rehearing Requests, But Instead Issue Responses that Provide FERC More Time for Consideration (i.e. a Tolling Order), and as a Result Prevent Pipeline Challengers from Bringing a Legal Challenge in the Courts while FERC Grants the Pipeline Company the Power of Eminent Domain and Approval for Construction.

FERC must end the use of tolling orders, which place people in legal limbo and prevent communities from challenging a FERC pipeline approval in the courts before property rights are taken by eminent domain; forests are cut; and irreparable harm is inflicted on communities, farmers, businesses, the environment, public open spaces and our global climate.

Because property owners, community groups, business owners and environmental organizations are unable to challenge a FERC Certificate approving a pipeline project until after they have submitted a rehearing request to FERC and that request has been denied or granted and the rehearing process completed, FERC has developed a strategy whereby it refuses to grant or deny rehearing requests and instead issues a decision termed a “tolling order” which merely grants FERC unlimited time to consider the rehearing request. Tolling orders are commonly in effect for a year or more, with one recent tolling order lasting 15 months while the pipeline company exercised eminent domain authority and was granted 20 notices to proceed with construction. Without a final decision on the rehearing request, challengers are placed in legal limbo, unable to challenge the project until FERC renders a final yay or nay on the rehearing request.

As a result of this strategy, FERC prevents court challenges to its decision in a meaningful time frame. Meanwhile, it grants the pipeline company the power of eminent domain and the right to begin and continue construction, all the while knowing that challengers are awaiting their ability to challenge the project in court. The result is that even in those cases where legal challenges to FERC approvals have succeeded, the victories have come too late to genuinely impact the FERC decision already rendered. See, for example, the successful challenge to the TGP NorthEast Upgrade Project where, as the result of a nearly 12 month tolling order, the court determination that FERC had violated the National Environmental Policy Act by engaging in illegal segmentation and failing to consider cumulative impacts came only after the pipeline was fully constructed and in operation. There are two potential remedies to this problem:

1. A regulatory prohibition that prevents FERC from granting approval for pipelines to exercise the power of eminent domain or undertake any element of construction if there is an outstanding rehearing request/tolling order. In this way the status quo is maintained for all, while FERC engages in its supposed consideration of the rehearing request. We say “supposed” given the fact that FERC has never, according to our research, granted a rehearing request submitted by a challenger to a project; the requests are always denied signifying that in fact FERC is not engaged in any genuine review process, but instead is simply buying time for the pipeline company to proceed, unimpeded, with its project.
2. A regulation mandating that FERC respond to rehearing requests with a firm yes or no within 30 days and that the practice of issuing tolling orders is outlawed. In this way it is assured that rehearing requests will be addressed in a timely fashion and legal challenges can, likewise, proceed in a timely fashion, before it is too late for the property owners, businesses, communities and environments that will be impacted by construction.

6) *FERC Must Prohibit the Practice of Hiring Third-Party Consultants to Assist in the FERC Review Process who Have Any Business Contracts (Past, Present or Future) with a Pipeline Company Seeking FERC Approval, and Must Prohibit FERC Commissioners or FERC Staff from Working on or Deciding upon Any Pipeline or Infrastructure Project in which They or a Family Member Have a Direct or Indirect Financial or Employment Interest.*

FERC must commit to removing bias from the decision-making process, by no longer hiring consultants with demonstrated conflicts of interest (i.e., those who are representing a pipeline company seeking

Commission approval), and by prohibiting Commission staff or Commissioners from working on/deciding upon any pipeline infrastructure project in which they, or a member of their family, have a direct or indirect financial stake or have worked to represent the company within the previous five years or from whom they are seeking future employment.

Conflicts of interest are well documented for the consultants FERC hires to support pipeline reviews, in FERC Commissioners reviewing and rendering decisions on projects, and in FERC staff working to advance projects through the review and approval process. Such bias taints the process and must be firmly prohibited.

7) *FERC Must End the Practice of Using Segmentation, Allowing Pipeline Companies to Break Up Projects into Smaller Segments in Order to Undermine a Full and Accurate Review of Community and Environmental Impacts.*

FERC must end the practice of using segmentation, whereby larger projects are broken up into smaller pieces for FERC review and approval, as a means to undermine environmental and community impact reviews. FERC's practice of segmentation has been firmly rejected by the courts and yet the practice continues at the agency. A prohibition on the practice is clearly warranted to make clear to agency staff and Commissioners that this violation of law will no longer be tolerated.

8) *FERC Must Commit to a Full and Fair Implementation of the National Environmental Policy Act, Including Full and Fair Evaluation of Climate Change Impacts; Induced Fracking/Drilling Operations; Costs of Construction, Operation and Maintenance (not Just Benefits); Health and Safety Impacts; the Full Array of Community, Business and Environmental Impacts that Will Result; and that All Inaccurate, Missing, False or Misleading Data and/or Information Identified by FERC and/or Public Commenters Are Fully, Completely and Accurately Addressed.*

FERC must commit to a full and fair implementation of the National Environmental Policy Act (NEPA), including a complete analysis of the costs and benefits of every aspect of a project (i.e. not just segmented pieces) including, but not limited to, fully evaluating social justice impacts; climate change impacts of pipeline construction and operation; community, environment, and climate change impacts of increased natural gas exploration, fracking, and methane emissions that will result from pipeline infrastructure operations; economic analyses that include costs, not just asserted benefits; alternatives not limited to alternate routes but that also include alternative energy sources and the no-build option; and robust health-and-safety impact analyses. This reform must mandate that all data gaps be filled before FERC issues a Certificate approval. This reform must mandate that all demonstrated data inaccuracies, misleading information, and/or false information be fully investigated and addressed by the applicant before FERC issues a Certificate approval.

9) *FERC Must End the Practice of Allowing Pipeline Companies to Secure a 14% Rate of Return on Equity on All New Pipeline Projects In Order to Ensure the Public Does Not Bear the Burden of Flawed Projects and to Ensure that FERC Does not Incentivize Inappropriate and/or Unwarranted Pipeline/Infrastructure Construction.*

FERC must end the practice of allowing pipeline companies to secure a 14% rate of return on equity on all new pipeline projects (what are termed as greenfield projects in that they require constructing a new right of way through communities and natural resources). This practice of granting a 14% rate of return, without adequately examining market need and existing infrastructure, not only incentivizes the construction of more and more pipelines, regardless of whether there is any genuine need, because the

projects become a cash cow for the companies, but it also inflicts an unfair economic burden on communities.

Our communities have already borne the burden of construction of these projects in the loss of natural resources, property rights, property values, agricultural production, business revenue and jobs, the sense of safety and well-being, their actual safety and well-being, the cost of emergency and community services and more. It is neither fair nor right to allow the company to further burden the public with the cost of these projects by guaranteeing the company such a high and unwarranted rate of return, particularly given that an increasing number of these projects are being built to ship gas to foreign markets, not to U.S. customers.

In conclusion, if FERC is serious about wanting a full, fair, and properly informed decision-making process for fracked gas pipelines, compressors, LNG export, storage and related infrastructure projects, it will commit to the process and substantive asks laid out in this letter.

Respectfully,