

Some Examples Where FERC has Failed the Public in the NED Project

FERC uses policy statements developed 17 years ago to guide its decisions on whether the public benefit of a pipeline justifies environmental risks, health risks, and eminent domain takings. These policy statements presumed a domestic gas shortage, when in fact there is now a glut. This practice suits the interests of entrenched energy interests who want unlimited approvals of capacity requests, but not the public interest.

The pre-filing process which FERC created 10 years ago is being used improperly by Kinder Morgan in its NED proposal in an attempt to simultaneously plan its project in parallel with the approval process. FERC seems unfazed by KM's obvious abuse of the pre-filing process.

KM launched its NED process in secrecy, making unannounced home visits to individual owners without notifying any public officials of its plans. These visits were often threatening. When project managers began public outreach, they presented misleading information. For example, they showed pictures of 6,000 HP compressor stations when their proposals were for up to 120,000 HP. Nine months after the NED project surfaced locally, KM officially requested to use the pre-filing process. On November 5, 2014, KM loaded reams of required information onto FERC's antiquated website. They submitted their desired routes on topographic maps from the 1980's. They merely estimated where compressor stations might be located and did not notify landowners within the ½ mile of those locations as required. Yet, FERC defended the lack of transparency because the pre-filing process was "voluntary."

Less than one month after publishing its preferred route, KM substantially revised it, moving a large swath of the pipeline's "market path" north from Massachusetts into New Hampshire, with a completely new set of stakeholders. This was a surprise to New Hampshire, and presumably to FERC, but not to Kinder Morgan investors. Richard Kinder had talked about such a move to investors during October, before the first reports were even released. FERC did not require KM to refile.

Kinder Morgan touts that their new route uses primarily existing rights of way. In truth, this route will require a completely new ROW corridor to be obtained beside the 77+ miles of powerline easement across southern NH. Along this corridor NED will double the width of intrusion into private property and public conservation lands with associated destruction of forests, wildlife habitat, wetlands and water resources, and privacy. FERC continues to allow Kinder Morgan to misrepresent the truth.

FERC made formal requests to Kinder Morgan for more information beginning in February 2015 in anticipation of Resource Reports to be released in March 2015. Many of these requests were still unanswered when FERC made even more requests in May. In July, Kinder Morgan's reports were still filled with "TBD" (to be determined) in places where critical information is required. Yet FERC continued with the next step of the pre-filing process by scheduling scoping sessions, even in the absence of this information.

Pre-filing regulations specify that the applicant must respond to all issues raised at scoping sessions within 14 days of the end of the scoping comment period. This period ended on October 16, 2015. Kinder Morgan provided NO responses in the required time. The first responses Kinder Morgan offered

were with its formal application on November 20, where it indicated it would be late December before they responded to comments made after October 1. Even in its December 21 responses, KM appears to have been selective about which comments to address. FERC has not held KM to any deadline, and has not pushed them to respond to the comments as its regulations require.

Kinder Morgan's incomplete November application once again changed routes and changed compressor station locations, introducing yet another round of stakeholders into the process at this late date. On December 21, KM requested a waiver of landowner notification because it had failed to notify some stakeholders. As of this writing, FERC has not acted on their request.

The November 20 application continued with missing information. Kinder Morgan says this information will be provided in "supplemental filings." It has become apparent in public statements and in a December 30 filing that the application will not be complete until late April. Yet, despite protests from many, including the six affected Regional Planning Agencies in Massachusetts and New Hampshire, FERC accepted the application as "complete" and formally noticed it on December 7. It appears that FERC is not running the process, but rather that Kinder Morgan is running FERC.

FERC itself has failed to respond to comments and requests. Chairman Bay responds to requests from elected officials with boilerplate language. FERC has received repeated requests from elected officials, private citizens, municipal groups and conservations agencies, for a comprehensive review of all Northeast pipelines under consideration, but this request has been apparently ignored.

FERC's website is not designed for public access. It is bulky, cumbersome, and prone to crashes. It does not use plain language to ease navigation. It makes no attempt to make it simple for the average person to find what is needed, or to browse and select items for closer examination. Incredibly, the "automated" website was down without public notice for both long weekends over the holidays while the public was anxious to meet a January 6 intervention deadline. In the realm of technology, FERC gives no consideration to the important role of the public.

Remarkably, although NEPA requires that FERC conduct this "open" process for review of environmental impacts, FERC has no such public process to address the counterbalancing question of need. Public discussion of "public necessity" appears limited to considering the "no action alternative" as part of the environmental review process. Kinder Morgan provides self-serving, broad discussions of need in the application materials. They quickly dismissed the MA Attorney General's comments which included results of an independent study which refuted KM's estimate for gas needs of the electric generating market.

The lack of transparency regarding need is indefensible given the tremendous issues at stake for the country. The U.S. Energy Information Agency predicts the US will become a net LNG exporter within the next 24 months. Public interests demand attention to issues unaddressed in FERC's 1999 policy statements. These include climate change, shale gas extraction, the potential impact of natural gas exports on American energy prices, the emergence of conservation and renewable technologies to address the nation's energy needs, and the critical question of whether private land can be taken by eminent domain in the absence of clear public benefit.

A few more of our favorite things to mention, but not *directly* NED.....

When the FERC Need policy was approved Google had 8 employees. There were no thumb drives, no wifi, no smartphones. Deregulation was all the rage. Enron, poster child for deregulation, participated actively in the development of the Policy Statements. Richard Kinder was once President and COO of Enron. He started Kinder Morgan with the purchase of Enron Liquid Pipelines.

A recent DOE study concludes “While selling natural gas at higher prices on the world market would increase profits for U.S. gas producers, the narrowing of the price gap between the United States and the rest of the world would erode some of the benefits that have accrued to U.S. consumers and manufacturers.”

FERC has more power than the President in its assigned realm. Although most Americans aren’t even aware of its existence, the decisions it makes today, with essentially no oversight, have significant implications for the American people for years to come. FERC actions to enable unbridled markets for natural gas will have far-reaching effects on climate change, national security, and the country’s fossil fuel reserves. FERC’s decisions will arguably increase the price of energy in America in the wake of natural gas exports, thwart emerging conservation and renewable energy technologies, and institutionalize the practice of taking private land by eminent domain even absent clear public benefit.

