Delaware Riverkeeper Network ~ Keep Southeast Nashville Healthy
PTA- Green Local School District ~ Green Soccer Association
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Arden Enterprises ~ Preserve Giles County
Bucks Environmental Action ~ Bucks Sierra Club
Oregon Citizens Against the Pipelines
May 6, 2019

Dear members of the U.S. House of Representatives and U.S. Senate,

It is with increasing frequency and growing magnitude, that the Federal Energy Regulatory Commission (“FERC” or “Commission”) is abusing its authority and the law in alarming ways. After three decades of FERC’s unaccountable and irresponsible approach to energy development, the trust of the American people has been strained beyond the breaking point. And, to be honest, our trust that Congress wants to fix the problem is withering. We are hopeful that you will prove us wrong and become a champion for the kind of meaningful reform that is truly needed.
We are urging you to lead a call for Congressional hearings into the abuses of power and law being inflicted by FERC, infringing on property rights, states’ right, peoples’ rights, and environmental protection. We have assembled a dossier to document FERC’s abuses and brought representatives of beleaguered communities from across the nation to share their experiences in a Peoples Hearing held in Washington DC. Our findings demonstrate that Congressional hearings and investigation are needed.

We are urging you to be a lead voice opposing legislative rollbacks when it comes to review and/or approval of natural gas infrastructure. And we are asking you to champion meaningful reforms that will prevent ongoing and future abuses of power and law by FERC. As it currently stands, the language of the Natural Gas Act (NGA) is being misused by FERC to deny people their legal and constitutional rights, to strip and undermine the legal authority of states, to undermine the authority of other federal agencies, to ignore the mandates of the Clean Water Act and the National Environmental Policy Act, to trample private property rights, to take from communities the protection of public parks, forests and conserved lands that they have invested heavily in protecting, to take jobs and destroy small businesses, to inflict on our communities health, safety and environmental harms, all for the benefit of a single industry seeking to advance its own corporate profits and business edge over its competitors.

We need to transform FERC’s authority for review and approval of pipelines and other natural gas infrastructure and reform its mission so the focus is on honoring and protecting communities and the environment as opposed to advancing the needs, goals and desires of industry. FERC has demonstrated its bias toward the natural gas infrastructure industry. The abuses and problems are so ingrained that reform will be difficult. Transformational change is needed to ensure clean and renewable energy, community and environmental protection goals are a priority mandate in decisionmaking.

With this letter, we are identifying for you the meaningful reforms that are needed. Recent pronouncements of soft ball legislative proposals will not remedy the abuses communities are suffering. Legislative proposals that are only focused on the public participation process of FERC and not the taking of the judicial, legal, state, property, or environmental rights we have been highlighting are simply not good enough.

These are among the reforms we need:

Remove the Power of Eminent Domain from FERC authority.
The ability of FERC to give the power of eminent domain to private pipeline companies must be removed. There is no shortage of power in this nation now or in the foreseeable future. In addition, we have viable and growing clean energy pathways to follow, pipeline projects are routinely advanced to support corporate interests and goals rather than public benefit or need, and an increasing number of pipeline infrastructure projects are to serve the export of gas to overseas nations. Given all of these facts, the Commission has no business allowing a private company to use eminent domain for a self-serving project at the expense of American property rights. If a project is not good enough to curry the favor of landowners then it should not be powerful enough to take their property rights.
Remove language that results in preemption of state or local laws or authority for FERC regulated infrastructure projects.

A fundamental underpinning of our nation is respect for the rights of states to govern within their boundaries and to ensure the protection of the health, safety and welfare of their people. States’ rights are carefully honored throughout our nation’s laws and history. Stripping states and municipalities of their legal authority, particularly given the tremendous health, safety and economic harms pipelines inflict on communities is not justified. In addition, there is no reason that natural gas pipeline projects should not be subject to the same laws that all other industries are subject to, and that other arms of the energy industry must comply with. To exempt interstate natural gas infrastructure from the state and local laws that apply to every other industry gives them an inappropriate competitive advantage. This respect for the rights of states to take leadership in the protection of their citizens is carefully recognized and provided for in the area of environmental protection, particularly the implementation of the Clean Water Act.

Strengthen the language of the Natural Gas Act to fully protect the Clean Water Act Section 401 Certification Authority of States.

Out of respect and regard for the irreplaceable role states provide in implementing the Clean Water Act, the Clean Air Act and the Coastal Zone Management Act, and out of respect for their right, duty and obligation to protect the residents and natural resources of their state, Section 717b(d) of the Natural Gas Act specifically preserves the authority of states pursuant to these three laws with regards to FERC regulated pipelines. And yet, on April 10, 2019, Donald Trump signed an executive order in which he wrongly accused states of causing confusion and inappropriately hindering the advancement of FERC regulated pipelines in how they were implementing section 401 of the Clean Water Act and ordered the US EPA to modify federal policies and regulations so as to disrupt, impede, and/or otherwise undermine the authority granted to states pursuant to the federal Clean Water Act. It is imperative that Congress reform the Natural Gas Act to specifically and firmly affirm and strengthen the rights granted to states pursuant to the Clean Water Act, the Clean Air Act and the Coastal Zone Management Act with regards to interstate, FERC regulated, natural gas pipelines.

The signing of Donald Trump’s April 10, 2019 Executive Order in which he seeks to protect and advance the profit goals of the fossil fuel industry over the legal authority and rights of states strengthens the importance of Congressional action to implement all of the reforms articulated in this letter.

Clarify the law to make clear that there is no time limit on the state review and approval process regarding FERC regulated infrastructure, including in the context of Clean Water Act 401 Certifications.

Another important change necessary to ensure full and fair respect of states’ rights and authority when it comes to protecting the residents and environments within their state boundaries is ensuring states are given all the time they need to ensure that state water quality standards will be protected if a pipeline is approved for construction within their state boundaries. The Natural Gas Act needs to be clear that states are entitled to all of the time they deem necessary to engage in full review and decision-making on FERC regulated pipeline and infrastructure projects, particularly in the context of implementing Clean Water Act authorities (which for most states is the 401 Water Quality Certification and for states like New Jersey also includes 404 wetlands determinations). The law needs to be clear that state authority is only waived when the state renders an affirmative decision that they are waiving their authority.
Prohibit FERC from approving a pipeline infrastructure project and/or allowing it to proceed with any element of construction until all state and federal reviews/permit processes have been finalized and approvals/permits granted.

Currently, FERC approves pipelines and allows them to proceed through phases of construction and eminent domain regardless of whether or not they have received all necessary reviews and approvals from impacted states who have a legal decision-making role and other federal agencies. Consequently, pipelines have proceeded with the power of eminent domain, tree felling and significant construction that inflicts irreparable harm on property, economic and environmental interests. The law needs to make clear that FERC cannot approve a project and allow it to proceed with any element of eminent domain or construction (including tree felling) until all state and federal reviews/permit processes have been finalized and approvals/permits granted.

If you are unwilling to put in place this common sense reform then other approaches for addressing the concern could include:

⇒ **Clarify the law to make clear that State Section 401 Clean Water Act approvals have primacy in the FERC review and approval process.** Section 401 of the Clean Water Act specifically reads: “no [federal] license or permit shall be granted until the certification required by this section has been granted or waived.” 33 U.S.C. § 1341(a)(1). Requiring Section 401 certification from the states prior to federal action ensures that states’ rights are honored, that state standards are met, and that public and private resources are not unnecessarily lost. It also ensures that the federal government is held accountable to the same standards as private entities, an important point of equity. FERC routinely issues Certificates of Public Convenience and Necessity prior to state decision-making on 401 Certifications for FERC pipeline and infrastructure projects. The result is to undermine state authority, and in some instances, has resulted in the taking of property rights, and damage to business, jobs and the environment for construction of a pipeline that a state ultimately rejected. 401 primacy prevents such an irreversibly harmful outcome. If the mandate that 401 Certification must be received prior to FERC providing NGA Certification is not enacted/clarified within the language of the NGA, then it must be clear that FERC cannot approve any element of eminent domain or construction until all state reviews/permit processes have been finalized and approvals/permits granted, including but not limited to 401 Certification.

⇒ **Ensure Full Applicability of all Federal Laws.** Currently, FERC approves pipelines and allows them to proceed through phases of construction and eminent domain regardless of whether or not they have received all necessary reviews and approvals from other agencies, such as wetland permits from the US Army Corps or completed endangered species review from the U.S. Fish & Wildlife Service. The law needs to make clear that FERC cannot approve a project and allow it to proceed with any element of eminent domain or construction until all state and federal reviews/permit processes have been finalized and approvals/permits granted.

*The law should be reformed to require a genuine demonstration of need for a natural gas pipeline infrastructure project.*

FERC routinely accepts false or inappropriate claims/demonstrations of need for pipeline infrastructure proposals. As a result, the law needs to be reformed to ensure that a full, fair and legitimate need, one that cannot be fulfilled by clean energy technologies, is demonstrated before a pipeline can even be considered for FERC Certification.
Currently,

- Pipeline companies routinely assert “need” for a project because it will lower costs, improve profits or enhance the ability to compete with others in the gas and/or pipeline industry. These assertions demonstrate corporate goals and desires. None of these scenarios demonstrate public needs that warrant the economic, environmental or property rights harms inflicted by a project and so should be explicitly prohibited.
- Pipeline companies routinely assert need by presenting contracts for pipeline capacity that are from related corporate entities, as such they use their own connected operations to put forth an unverified claim of genuine need. Pipeline companies should be prohibited from engaging in self-dealing in need demonstration – no contractual indealing should be allowed for manufacturing need, i.e. company cannot claim it needs a new pipeline for a gas source that is itself or some subsidiary self or related company that is, in fact, just another form of itself.
- Pipeline companies routinely assert need to tap into an alternative source of gas, regardless that there is no threat to the source for their business use, it is simply a preferred business option. Preferred business operations of this kind should not be allowed for asserting need.
- Pipeline company claims that end of pipeline communities “need” their gas are often debunked by experts in the field who are quickly ignored by FERC in their reviews. Expert reports challenging company claims of need should be given primacy in the review process, rather than being disregarded if in conflict with pipeline claims.
- “Need” considerations uniformly focus on the end goal of securing gas, rather than focusing on the end goal of securing energy. This means that clean energy or other viable alternatives are ignored in the FERC review and approval process. Consideration of need must focus on “energy” needs of the end users and require full and fair consideration of whether clean energy alternatives could fulfill the need for energy identified. Proof of need should include a mandated demonstration that renewable strategy cannot be used to fulfill energy goal being asserted.
- Demonstration of need must be based on more than assertion that a pipeline or export facility has customers, it needs to demonstrate a genuine end-use need that cannot be fulfilled by renewable options;

Revisions of law are needed to address all of these scenarios as none of them demonstrate public needs that warrant the economic, environmental or property rights harms inflicted by a project and so should be explicitly prohibited.

⇒ The law needs to be reformed to ensure legitimate, and independently verified demonstrations of need are provided for FERC review and consideration. Pipeline companies must be required to demonstrate a genuine end-use need that cannot be fulfilled by renewable options.

The use of Tolling Orders by FERC to undermine individual, community and states’ rights should be prohibited.

Under federal law, a private party is not allowed to legally challenge FERC approval of a pipeline project until they have first submitted a rehearing request to FERC, and FERC has affirmatively granted or denied that request. Rather than do one or the other, FERC’s practice is to issue a “tolling order” in response to such requests, which temporarily grants the request but only “for further
consideration”. As a result, the public's ability to challenge the FERC decision is put into legal limbo until such time as FERC renders and issues its final decision regarding the rehearing request. It is common for FERC to place people in this legal limbo for up to a year or more, while allowing the pipeline company to advance its project, take property, and begin construction.

Much to the shock of legislators, states and communities, tolling orders are routinely used by FERC to place people in legal limbo, unable to challenge a FERC approval of a natural gas infrastructure project even when the Commission has allowed the company to use the power of eminent domain to take property rights and is approving construction and operation of project sections. Tolling orders are demonstrably unfair and simply wrong, and deprive people, communities and states of their legal right to challenge FERC regulated infrastructure projects before they take property rights by eminent domain or inflict irreparable harm on communities and the environment.

As a result:

⇒ **Tolling orders should be prohibited.** Quite simply the NGA should be reformed to mandate that FERC must respond to rehearing requests within 30 days and if they fail to do so the rehearing request is deemed denied.

If tolling orders are not prohibited then the other most legally equitable mechanism for addressing the problem is to:

⇒ **Prohibit projects from advancing** in any way, shape or form, including eminent domain and/or construction, if there is an outstanding rehearing request/tolling order;

### Mandate Meaningful Consideration of Climate Change in Pipeline Review and Decision-making.

As FERC Commissioner Glick has stated several times:

“Climate change poses an existential threat to our security, economy, environment, and, ultimately, the health of individual citizens. Unlike many of the challenges that our society faces, we know with certainty what causes climate change: It is the result of GHG emissions, including carbon dioxide and methane, which can be released in large quantities through the production and consumption of natural gas. Congress determined under the NGA that no entity may transport natural gas interstate, or construct or expand interstate natural gas facilities, without the Commission first determining the activity is in the public interest. This requires the Commission to find, on balance, that a project’s benefits outweigh the harms, including the environmental impacts from climate change that result from authorizing additional transportation. Accordingly, it is critical that, as an agency of the federal government, the Commission comply with its statutory responsibility to document and consider how its authorization of a natural gas pipeline facility will lead to the emission of GHGs, contributing to the existential threat of climate change.”

Despite this well stated position of Commissioner Richard Glick, and despite the fact that federal courts have ordered FERC to consider the climate changing impacts of pipelines and associated infrastructure, FERC has taken the position that it does not need to undertake meaningful climate change reviews or take climate change impacts into consideration in their decision-making.

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As a result, it is vitally important that the law be reformed to make clear that FERC’s “public interest” duty pursuant to the Natural Gas Act does in fact mandate consideration of the climate change impacts of pipeline infrastructure. In order to fully and properly implement this reform, legislative reforms must mandate, and include, all of the following, that:

⇒ FERC conduct a full accounting of the climate changing impacts of any proposed pipeline infrastructure, and
⇒ that this analysis must include a full and robust Social Cost of Carbon analysis, and
⇒ that this analysis must include both the downstream end uses of the gas to be carried through the pipeline as well as the climate change contributions of the upstream extraction operations necessary to secure the gas that would flow through the proposed pipeline and/or infrastructure under review (including associated drilling and fracking operations, tree removal, associated trucking and industrial operations), and
⇒ that if it is demonstrated that there is a significant climate change impact that will result, FERC “must”/“shall” deny FERC Certification for the project.

**Instill Mandatory penalties and stop work orders for violations during construction, operation, and maintenance that are commensurate with the level of harm inflicted.**

Violations by pipeline companies during construction, operation and maintenance are routine, with hundreds documented for a single project. Also documented is FERC’s failure to ever (never) issue a civil penalty or stop work order to address the violations. As a result, it is more cost beneficial for a pipeline company to ignore environmental protection laws than to comply with them. In addition, violations are reviewed by FERC in terms of company response, rather than magnitude of the severity of the incident. The law mandating penalties needs the level of penalty assessed to be based upon the severity of the environmental and community harm inflicted.

**There should be a ban put in place on Liquefied Natural Gas Exports.**

If the goal of drilling and fracking is truly energy independence, that end goal is not served through exports. In addition, the level of community harm and sacrifice is too great for an energy supply that is then shipped overseas to support foreign nations, industries and users.

**Mandate full and fair application of NEPA and prevent any rollback of this important and iconic information and review legislation.** Among the clarifying and confirming provisions required:

⇒ Clarity on prohibition against segmentation and provide an expansive definition of that term;
⇒ Express obligation to ensure cumulative impact reviews and give that term an expansive definition;
⇒ Ensure review includes consideration of the fracking/drilling/shale gas extraction that a project induces and/or supports and the end uses of the gas whether it be a new power plant, export, industrial, residential;
⇒ Ensure consideration of alternatives not limited to alternate routes but includes alternative ways to create the energy that is asserted as needed;
⇒ Mandate robust health and safety impact analyses and prohibit projects that will adversely impact health and/or safety of a community/region.
⇒ Heightened scrutiny of affiliate relationships, wherein regulated utilities are the pipeline customers while their affiliates are investing as pipeline developers. Here’s recent Congressional testimony on this particular issue: tinyurl.com/Peress-6-14-16

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Provisions need to be placed in the law that ensure an appropriate level of accountability and oversight of the agency to both Congress and the people of the United States. Provisions should include:

- Prohibit FERC's use of third party consultants with actual or potential bias.
- Change structure of FERC commissioners – add a public representative Commissioner position.
- Mandate removal of Commissioners that are demonstrated to engage in any degree of conflict in their decision-making.
- Prohibit Commissioners or other agency staff from working for the pipeline, oil or gas industry, or any of their legal, messaging, lobbying or other related representatives, for a period of 5 years prior to, and a period of 5 years post, their employment with the agency.
- Require a public advocate be appointed for each pipeline that is representative of environmental resources, property owners, public land interests that will be impacted by the project.
- Put in place stronger requirements for information disclosure and timelines by which info has to be released.
- Mandate Commissioners provide public hearing opportunities before them, as a body, before final decision-making;
- Mandate FERC use latest science in analysis and decision-making;
- Prohibit waivers, variations and/or changes to a project after its application been submitted for review by FERC; if changes are proposed mandate the new proposal be subject to the full agency and public review and approval process.
- Add an environmental justice standard, including community involvement, for pipeline projects that are within a 10 mile proximity of an environmental justice community.
- Prohibit self interest in FERC staff and Commissioners:
  - Prohibit investments in companies regulating,
  - Prohibit Commissioners or staff from being involved in decisions that benefit directly or indirectly the staff, Commissioner, their families or professional colleagues.
- Mandate public hearings during NEPA process that are within 20 miles of any community that will be impacted by a proposed project;
- Mandate minimum 120 days to comment on any FERC NEPA documents or proposed project approvals.

Require leadership from FERC for renewables:

- change FERC’s mission to include priority obligation to advance renewables;
- seek a way to mandate/incorporate approval of the renewable energy option if it can be demonstrated to fulfill the claimed energy need being advanced by the pipeline company.
- mandate FERC carry out a robust climate change analysis and if approval of a project demonstrates it will contribute climate change emissions and cannot demonstrate (when considering cradle to grave impacts of the source and/or end use of the gas) it will improve climate change conditions then FERC is mandated to reject the project.

For thirty years FERC has served as a rubber stamp agency for pipeline and LNG infrastructure. It has misused its authority and the law at every turn in order to advance these projects. Meaningful and substantive reforms are needed. Ideally Congress will hold Congressional hearings to expose the abuses and help identify and shape the reforms needed. But given that legislators are increasingly putting forth window dressing fixes rather than the strong substantive reforms needed, we provide this robust list of fixes that need to be pursued firmly, quickly and without compromise.
Respectfully,

Maya van Rossum, the Delaware Riverkeeper, Delaware Riverkeeper Network
Chris Tuley, President, Keep Southeast Nashville Healthy
Tammy Daly, Executive Member, PTA- Green Local School District
Tammy Daly, Recreational Director, Green Soccer Association
Tammy Daly, President, Green Meadows Home Owners Association
Jeremy Brueck, President, Green Lacrosse Club
Greg Mazzagatti, President, Green Youth Football
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Agnes Marsala, President, People Over Pipelines
Eleanor Amidon, Networker, Pipeline Education Group
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Debbie Bradley, the Delaware Township Citizens Against the Pipeline (DTCAP)
Sara Steele, Steeleworks
Vivian Stockman, Vice Director, OVEC-Ohio Valley Environmental Coalition
Cathy Kristofferson, Co-Founder, Stop NED
Andrea Miller, Executive Director, People Demanding Action
Diana Wright, Facilitator, PAUSE - People of Albany United for Safe Energy
Claude P. Bowie, Jr., Fair Compensation for Underground Natural Gas Storage
Rosemary Wessel, Founder/Program Director, No Fracked Gas in Mass
Roberta M. Bondurant, Preserve Roanoke/Bent Mountain
Roberta M. Bondurant, Protect Our Water, Heritage Rights
Natalie Cronin, Chief Play Artist, Tinker Tree Play/Care
Howard C. Lopshire, PLS., PP., Carroll Engineering Corporation
Lakshmi Fjord, Friends of Buckingham
Michael J. Roth, Treasurer, Our Santa Fe River, Inc.
Stuart Anderson, Community Organizer, Concerned Citizens of Otego NY
Judith Kay McClintock, Arden Enterprises
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Sharon Furlong, Bucks Environmental Action
Sharon Furlong, Bucks Sierra Club
Martha Neuringer, Oregon Citizens Against the Pipelines
Cheryl Nenn, Riverkeeper, Milwaukee Riverkeeper
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Leslie Cagan, Coordinator, Peoples Climate Movement NY
Ted Glick, Beyond Extreme Energy
Walt and Danuta Lange, Lange Tree Farm
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Judy Detrano, City of Lambertville NJ Citizens Against the PennEast Pipeline
Marty Wissig, Delaware Township NJ Citizens Against the PennEast Pipeline
Maureen Syrnick and Debra Kratzer, Kingwood Township NJ Citizens Against the PennEast Pipeline
Jacqueline Freedman, Alexandria Township NJ Citizens Against the PennEast Pipeline
Lorraine Crown, Holland Township NJ Citizens Against the Penn East Pipeline
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David Pringle, NJ Campaign Director, Clean Water Action
Phillip Johnson, Executive Director, Oregon Shores Conservation Coalition
Jerome Wagner, President, 350 New Jersey - Rockland County
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Tara Sumner, Vice President, Advocates for Springfield, NY
Nancy Wilson, Member, Steering Committee, Stop the West Roxbury Lateral Pipeline (SWRL)
Tom Burkett, Spokesperson, Virginia River Healers
John J. Walkup III, President, Greenbrier River Watershed Association
Elaine Cimino, Director, Common Ground Country Trust, Stop Fracking the Rio Grande Valley & Common Ground Rising
April Keating, President, Mountain Lakes Preservation Alliance
Linda Christman, President, Save Carbon County
Vincent DiBianca, Homeowners Against Land Taking (HALT-PennEast)
Vincent DiBianca, the Business Alliance for the Future
Vincent DiBianca, Eckelmann Brothers Construction
Hope Taylor, Clean Water for North Carolina
Jill Weiner, Catskill Citizens for Safe Energy
Trellan Smith, Co-founder, Concerned Residents of Oxford
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Tim Spiese, Board President, Lancaster Against Pipelines
Beverly Foster, PA Residents for a Ban on Geoengineering
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S. Miriam MacGillis, Genesis Farm
Caroline Katmann, Executive Director, Sourland Conservancy
Linda Heindel, Williams Township CAP
Craig L. Stevens, Founder, Patriots From The Oil & Gas Shales
Courtney Williams, Safe Energy Rights Group
Jenny Isaacs, Chair, Bucks County Green Party
Mara Robbins, Preserve Floyd
George Billard, SCRAM
Vera Scroggins, Citizens for Clean Water
Arianne Elinich, Bucks County Concerned Citizens Against the Pipelines
John Weisheit, Co-founder, Living Rivers & Colorado Riverkeeper
Maura Stephens, Coalition to Protect New York
Kelly Branigan, Middlefield Neighbors
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Tari Pantaleo, Kingston Greenways Association
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Nancy Tate, LEPOCO Peace Center
Donald Hebbard, President, Compressor Free Franklin

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