

People's Dossier: FERC's Abuses of Power and Law

Evidence of the Federal Energy Regulatory Commission's (FERC) abuses of law and power in communities and states across the country

- Budget Issues
- Climate Change and Drilling Impacts Ignored
- Consultant Conflicts of Interest
- Deficient EIS Analysis
- Deficient Needs Analysis
- Economic Harms
- Illegal NEPA Predetermination
- Illegal Segmentation
- Lack of Public Assistance
- Public Participation Undermined
- Safety Threats Ignored
- Staff Conflicts of Interest
- Stripping People's Rights
- Undermining Federal Authority
- Undermining State Authority
- Violations Overlooked

Communities across America are being abused by the use and misuse of powers granted to the Federal Energy Regulatory Commission (FERC) pursuant to the Natural Gas Act. And so communities from across the nation are banding together to demand that Congress:

- Hold congressional hearings to learn the many ways communities are being harmed by FERC's implementation of the Natural Gas Act as currently written;
- Take swift affirmative action to reform the Natural Gas Act so as to better protect communities including eliminating the threats associated with natural gas infrastructure; and
- Oppose restoration of a quorum at FERC until such time as these two actions have been complete.

With the Department of Energy Organization Act of 1977 (S.826) Congress reorganized the Department of Energy and created FERC, an independent executive agency. During Senate hearings on the bill, a rightfully skeptical Senator William V. Roth of Delaware had this to say about the critical role that an equitable energy policy plays in our society:

If there is a single area where it is necessary for the American people to believe implicitly in the fairness and honesty of Government, where there can be no doubts whatsoever, it is in the field of energy...A sweetheart relationship between those who regulate and those who are regulated will strain the credibility of the most trusting citizens.

Unfortunately, after four decades of FERC's unaccountable and irresponsible approach to energy development, the trust of the American people has been strained beyond the breaking point. As it currently stands, the language of the Natural Gas Act is being misused by FERC to strip people of their legal and constitutional rights; to strip the legal authority of states; to undermine the authority of other federal agencies; to prevent fair public participation in the pipeline review process; to ignore the mandates of the Clean Water Act and the National Environmental Policy Act; to take from residents and citizens their 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 the pipeline industry seeking to advance its own corporate profits and business edge over its competitors.

The time has now come for Congress to investigate.

As this Dossier demonstrates, Congressional hearings are essential to inform Congress of the abuses of power and law that FERC is inflicting. Congressional hearings will also help identify smart and meaningful reforms that can accomplish the nation's energy goals without sacrificing people, communities, the law, and the environment. Until Congress has held hearings and instituted needed reforms it would be irresponsible for Congress to restore a quorum in the FERC Commissioners thereby allowing the greased wheels of pipeline approvals to continue.

Congressional Hearings have been requested by over 200 organizations representing communities across the nation. It is time for Congress to grant this request.

People's Dossier: FERC's Abuses of Power and Law

Contents

- 1. People's Dossier of FERC Abuses: Budget Issues**
- 2. People's Dossier of FERC Abuses: Climate Change and Drilling Impacts Ignored**
- 3. People's Dossier of FERC Abuses: Consultant Conflicts of Interest**
- 4. People's Dossier of FERC Abuses: Deficient EIS Analysis**
- 5. People's Dossier of FERC Abuses: Deficient Needs Analysis**
- 6. People's Dossier of FERC Abuses: Economic Harms**
- 7. People's Dossier of FERC Abuses: Illegal NEPA Predetermination**
- 8. People's Dossier of FERC Abuses: Illegal Segmentation**
- 9. People's Dossier of FERC Abuses: Lack of Public Assistance**
- 10. People's Dossier of FERC Abuses: Public Participation Undermined**
- 11. People's Dossier of FERC Abuses: Safety Threats Ignored**
- 12. People's Dossier of FERC Abuses: Staff Conflicts of Interest**
- 13. People's Dossier of FERC Abuses: Stripping People's Rights**
- 14. People's Dossier of FERC Abuses: Undermining Federal Authority**
- 15. People's Dossier of FERC Abuses: Undermining State Authority**
- 16. People's Dossier of FERC Abuses: Violations Overlooked**

Complete People's Dossier: FERC's Abuses of Power and Law

available at <http://bit.ly/DossierofFERCAbuse>

People's Dossier: FERC's Abuses of Power and Law

→ Budget Issues

FERC Bias is Emboldened by Its Ballooning Budget and Lack of Oversight

Per federal law, FERC relies on the industry it regulates for its entire budget. (*42 U.S. Code § 7178(a)(1)*)¹. This funding structure means that FERC is vulnerable to the whims and wishes of the very industry it's charged with overseeing. Nowhere is this more true than in the case of pipelines and related infrastructure including LNG facilities and compressors. The lack of oversight by other branches of government or watchdog agency helps to perpetuate FERC's biased decision making.

FERC's Funding Structure Leads to Bias in Fact

FERC issues a volume based per-unit charge on natural gas pipelines to cover the agency's costs. This means that the more pipelines, gas delivery, and LNG facilities FERC approves the more fees it is able to collect for its self-inflating, FERC-created budget.

As a result of this funding structure, FERC is all but compelled to decide in favor of pipeline companies. The record of pipeline project approvals by FERC Commissioners demonstrates a clear bias in FERC decision-making; in the last thirty years, FERC's Commissioners have denied only *one* pipeline project brought before them for approval, and that denial happened relatively recently, on March 11, 2016. Up until this time, FERC had a 100% approval rating for all natural gas pipeline projects brought before its Commissioners for a vote. Interestingly, FERC's singular denial came just one week after a challenge was filed against FERC's pipeline program in which its then-100% approval rate was cited as a key piece of evidence. There is not a single other federal agency that has this exceptionally high rate of approvals for applicants seeking an authorization or certification.

FERC is Insulated from Oversight

This industry-financing mechanism not only encourages the biased approval process for proposed projects, but it also provides FERC with a significant degree of insulation from the legislative branch of government. FERC is simultaneously free from the oversight of the executive branch because of the limitation of the President's power to remove FERC Commissioners. The "for-cause" limitation on the removal of FERC's Commissioners only allows the removal of Commissioners under a very narrow set of circumstances, i.e. "inefficiency, neglect of duty, or malfeasance." (*42 U.S. Code § 7171(b)(1)*).

¹ See Federal User Fees: Budgetary Treatment, Status, and Emerging Management Issues, U.S. Government Accountability Office (GAO) Report to the Chairman, Committee on the Budget, House of Representatives, GAO/AIMD-98-11 (Identifying 27 agencies that rely on federal user fees for a significant portion of their budget, none of which are fully funded or nearly fully funded like FERC, are independent executive entities, presently exist, are independent executive agencies, and conduct direct adjudications that affect its finances) (December 19, 1997).

In fact, FERC brags about the lack of oversight it receives. According to FERC:

“FERC’s decisions are not reviewed by the President or Congress, maintaining FERC’s independence as a regulatory agency, and providing for fair and unbiased decisions.”²

While FERC asserts the lack of oversight is beneficial for decisionmaking, the reality is actually quite different; FERC’s independence from the oversight of both the executive and legislative branches of government leaves FERC especially vulnerable to the undue influence of the industry that funds its budget. This is particularly true because FERC itself operates without the scrutiny of any type of regulatory oversight or regulatory board, i.e. a watchdog responsible for overseeing regulatory quality.

FERC’s Budget Outpaces Other Agencies - Including its Parent the DOE

FERC’s ability to secure funding from the regulated industry has resulted in a budget that has grown appreciably faster than its parent government agency, the Department of Energy, as well as the Federal government as a whole. In fact, over the past decade, FERC has seen its annual budget grow by more than 60-percent - rocketing from sub-\$200 Million in 2004 to more than \$346 Million projected for 2017. A substantial portion of this boom occurred during a recessionary period that left other independent agencies reeling from budget slashes in the hundreds of millions of dollars.

The fiscal year 2017 budget request for FERC seeks a 3% increase in base operating costs and includes a “building modernization project” for FERC offices, the cost of which has nearly doubled from \$40 million dollars to \$79 million dollars.³

FERC’s growing budget demands are sustained by the Agency’s approval of an increasing number of infrastructure projects.

Attachments:

Budget Issues Attachment 1, Congressional Performance Budget Request, Fiscal Year 2014, pg. 5.

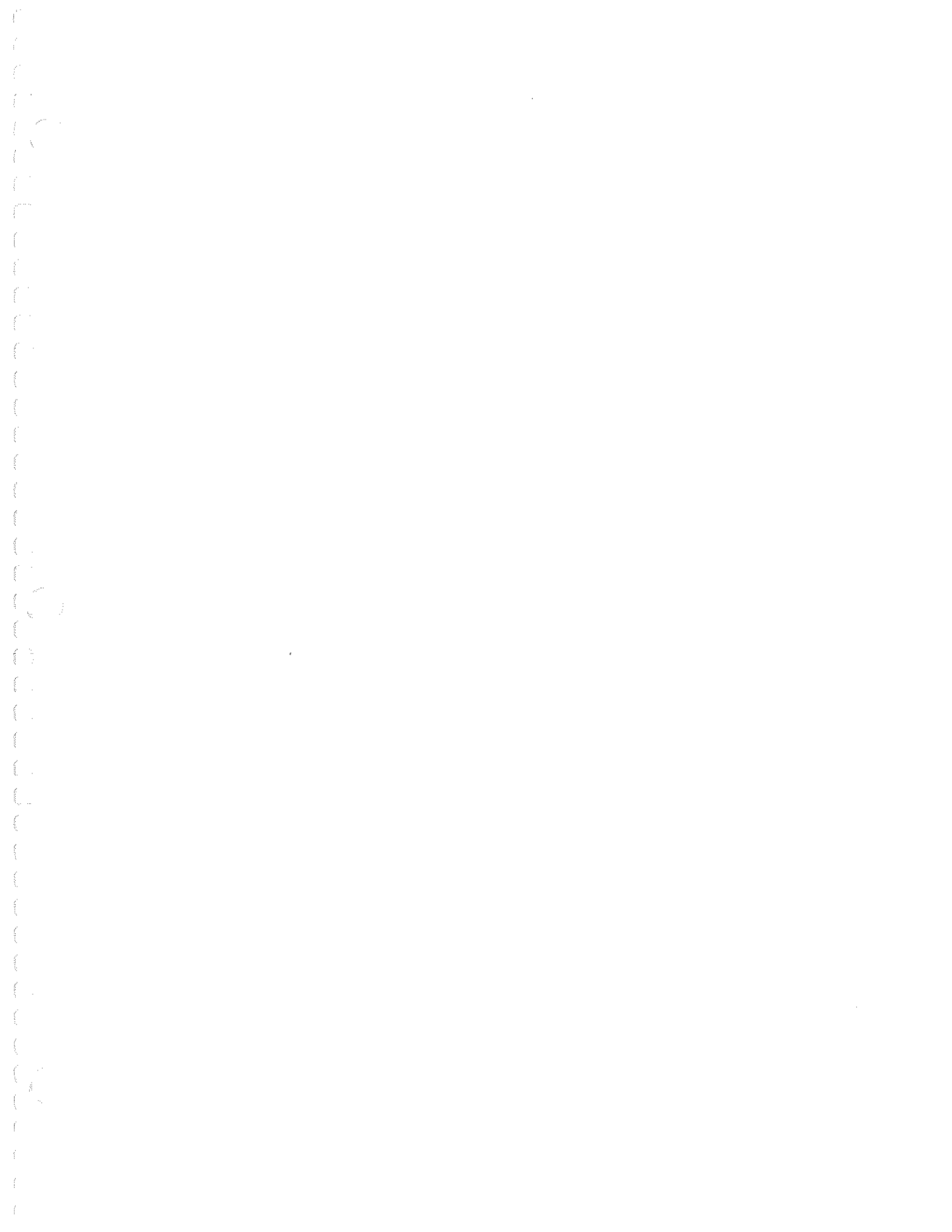
Budget Issues Attachment 2, Congressional Performance Budget Request, Fiscal Year 2017, pgs. ii-iii.

Complete People's Dossier: FERC's Abuses of Power and Law

available at <http://bit.ly/DossierofFERCAbuse>

² See Budget Issues Attachment 1, Congressional Performance Budget Request, Fiscal Year 2014, pg. 5.

³ See Budget Issues Attachment 2, Congressional Performance Budget Request, Fiscal Year 2017, pgs. ii-iii.



People's Dossier: FERC's Abuses of Power and Law
→ **Climate Change and Drilling Impacts Ignored**

FERC Fails to Give Due Consideration to the Climate Change and Drilling Impacts of Pipeline Projects

Despite the mandate of the National Environmental Policy Act (NEPA) that federal agencies take environmental considerations into account in their decision-making “to the fullest extent possible” (42 U.S.C. § 4332; 40 C.F.R. § 1500.2; *Fla. Audubon Soc. v. Bentsen*, 94 F.3d 658,684 (D.C. Cir.)) FERC routinely fails to meet its obligation to consider foreseeable drilling and fracking impacts directly resulting from its pipeline approvals, including water impacts, air impacts, community impacts and effects on climate change.

The U.S. Environmental Protection Agency has explicitly commented that FERC should consider impacts from the development and production of natural gas being transported through a proposed pipeline, as well as considering impacts associated with the end use of the gas, particularly with regards to greenhouse gas emissions and climate change effects.¹ And yet FERC continues to ignore both the input of EPA and the mandates of NEPA.

This failure to consider impacts of the induced drilling operations and end uses of the gas these pipelines deliver is significant, particularly considering the scope of the induced activities. For example, in the case of the PennEast Pipeline (*FERC Docket CP15-558*) FERC failed to consider the emissions and other harms that will result from the shale gas production necessary to fulfill the claimed “need” for the project and to carry the volumes of gas proposed. The PennEast pipeline will likely induce the drilling of 3,000 new wells in Northeast Pennsylvania, in Bradford, Susquehanna, Lycoming, and Tioga counties.² Given recent estimates that “during the life cycle of an average shale-gas well, 3.6 to 7.9% of the total production of the well is emitted to the atmosphere as methane” (1) combined with the water, land, and community harms resulting from drilling operations, the environmental and community impacts ignored are massive.

FERC excludes consideration of induced drilling and end-use impacts from its NEPA review, despite having recognized that increased gas production will result from pipeline construction. For instance, FERC has recognized that a new pipeline would “alleviate some of the constraints on...natural gas production”.³ Despite this acknowledgement, FERC fails to consider the direct production impacts resulting from pipeline development.

This failure to consider the impacts of induced shale gas production and its end uses is particularly troubling given that FERC has explicitly recognized that “upstream development and

¹ Climate Change & Drilling Impacts Ignored Attachment 4, U.S. EPA Detailed Comments on the DEIS for the Leach Xpress Pipeline and Rayne Xpress Expansion Project.

² Climate Change & Drilling Impacts Ignored Attachment 1, Delaware Riverkeeper Network Comment regarding PennEast DEIS, Sept 12, 2016, at p.35.

³ Climate Change & Drilling Impacts Ignored Attachment 2, Mountain Valley Pipeline DEIS at 3-1, FERC Docket No. CP16-10.

production of natural gas may be a ‘reasonably foreseeable’ effect of a proposed action.” Despite this recognition, FERC asserts that “the actual scope and extent of potential GHG emissions from upstream natural gas production is not reasonably foreseeable” and therefore no consideration pursuant to NEPA is necessary.⁴ Through this circular logic of recognizing induced drilling but then discounting it because FERC has failed to assess the extent of the GHG emissions that will occur, FERC ignores its NEPA obligation to consider the impacts.

The only reason why FERC deems such impacts unforeseeable is because the agency itself chooses to remain purposefully blind. This kind of doublespeak – that shale gas production is reasonably foreseeable but at the same time it is not reasonably foreseeable – is used by FERC to arbitrarily limit its review of impacts.

- (1) R. Howarth, D Shindell, R. Santoro, A. Ingraffea, N. Phillips, A Townsend-Small, *Methane Emissions from Natural Gas Systems*, Background Paper Prepared for the National Climate Assessment, Reference number 2011-0003, Feb. 25, 2012.

Attachments:

Climate Change & Drilling Impacts Ignored Attachment 1, Delaware Riverkeeper Network Comment regarding PennEast DEIS, Sept 12, 2016, at p.35.

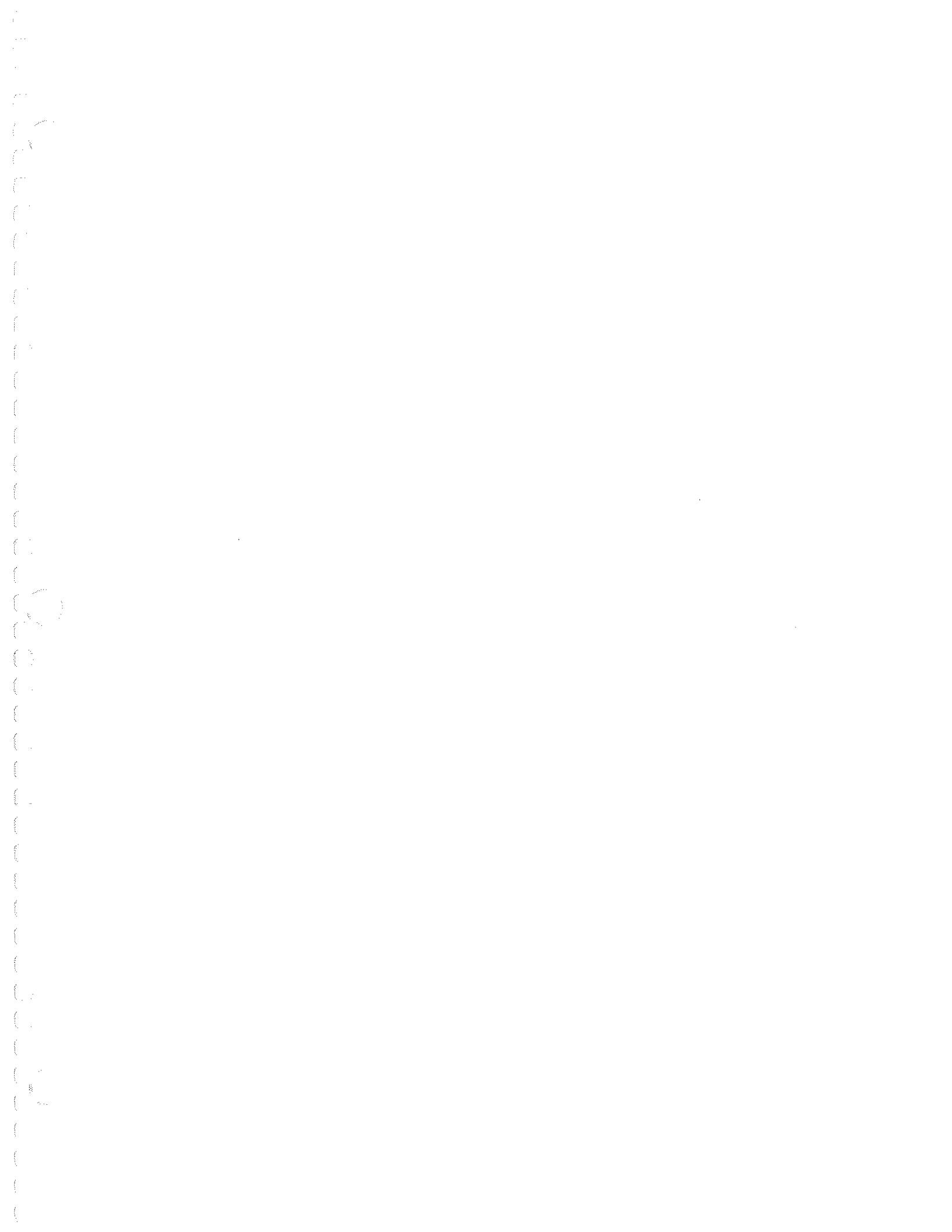
Climate Change & Drilling Impacts Ignored Attachment 2, Mountain Valley Pipeline DEIS at 3-1, FERC Docket No. CP16-10.

Climate Change & Drilling Impacts Ignored Attachment 3, PennEast Pipeline DEIS at 4-285, FERC Docket No. CP15-558, July 2016.

Climate Change & Drilling Impacts Ignored Attachment 4, U.S. EPA Detailed Comments on the DEIS for the Leach Xpress Pipeline and Rayne Xpress Expansion Project.

***Complete People's Dossier: FERC's Abuses of Power and Law
available at <http://bit.ly/DossierofFERCAbuse>***

⁴ Climate Change & Drilling Impacts Ignored Attachment 3, PennEast Pipeline DEIS at 4-285, FERC Docket No. CP15-558, July 2016.



People's Dossier: FERC's Abuses of Power and Law → Consultant Conflicts of Interest

FERC Routinely Uses Conflicted Consultants to Conduct Project Reviews and Make Recommendations

FERC routinely hires third party consultants to lead its project reviews knowing full well that these same consultants are simultaneously working as consultants for the pipeline companies seeking FERC approval for their projects. The use of these conflicted consultants, that are operating on both sides of the FERC approval process at the same moment in time, sometimes even on directly related projects, injects an obvious source of bias and concern.

For example:

The FERC Environmental Assessment (EA) for Spectra Energy's Atlantic Bridge project was prepared with the help of NRG, a third party contractor hired by FERC. At the same time, Spectra had also retained NRG as a "public outreach and relations" consultant on the PennEast pipeline project, of which Spectra owns 10% interest. This means that NRG was hired by FERC to conduct an objective, unbiased review of Spectra's Atlantic Bridge project, while at the same time receiving money from Spectra Energy to conduct the preliminary review for another of the company's proposed pipelines (i.e. PennEast pipeline). Additionally, the two projects (PennEast and Atlantic Bridge) are physically connected, further entrenching the conflict of interest. It is no stretch of the imagination that NRG would financially benefit from Spectra's Atlantic Bridge project if the project were approved, a project which NRG was partially tasked by FERC with "objectively" reviewing. In fact, while NRG was conducting its "review", Spectra hired NRG for *no less than five other projects*.¹

FERC's own handbook defines such a situation as a conflict of interest, stating a conflict of interest exists when a contractor has an ongoing relationship with an applicant. The conflicts involving NRG, Spectra, the PennEast Pipeline (*FERC Docket No. CP15-558*), and the Atlantic Bridge Pipeline (*FERC Docket No. CP16-9*) were brought to FERC's attention by concerned community members and two U.S. Senators. Instead of conducting a new, unbiased review, FERC's then-Chairman Norman Bay simply responded by quoting sections of FERC's handbook on hiring third-party contractors. NRG's review still stands intact because despite clear evidence to the contrary, FERC took NRG's word that no conflicts existed.²

By way of further example:

Tetra Tech is a known consultant for FERC, most recently on the PennEast Pipeline project. Tetra Tech is also a member of the Marcellus Shale Coalition. Founded in 2008,

¹ Consultant Conflicts of Interest Attachment 1, DeSmog Blog, *Revealed: Contractors Hired by FERC to Review a New Spectra Energy Pipeline Work for Spectra on a Related Project*, May 26, 2016.

² Consultant Conflicts of Interest Attachment 2, DeSmog Blog, *Despite Senate Inquiry into Potential Conflicts of Interest, FERC Approves Spectra Energy's Atlantic Bridge Project*, January 26, 2017.

the Marcellus Shale Coalition works to advance production and distribution of gas fracked from the Marcellus and Utica Shales. The support of the Marcellus Shale Coalition is not just well known, but is touted by the PennEast Pipeline company raising another significant conflict for FERC on the PennEast Pipeline project.³

Attachments:

Consultant Conflicts of Interest Attachment 1, DeSmog Blog, *Revealed: Contractors Hired by FERC to Review a New Spectra Energy Pipeline Work for Spectra on a Related Project*, May 26, 2016.

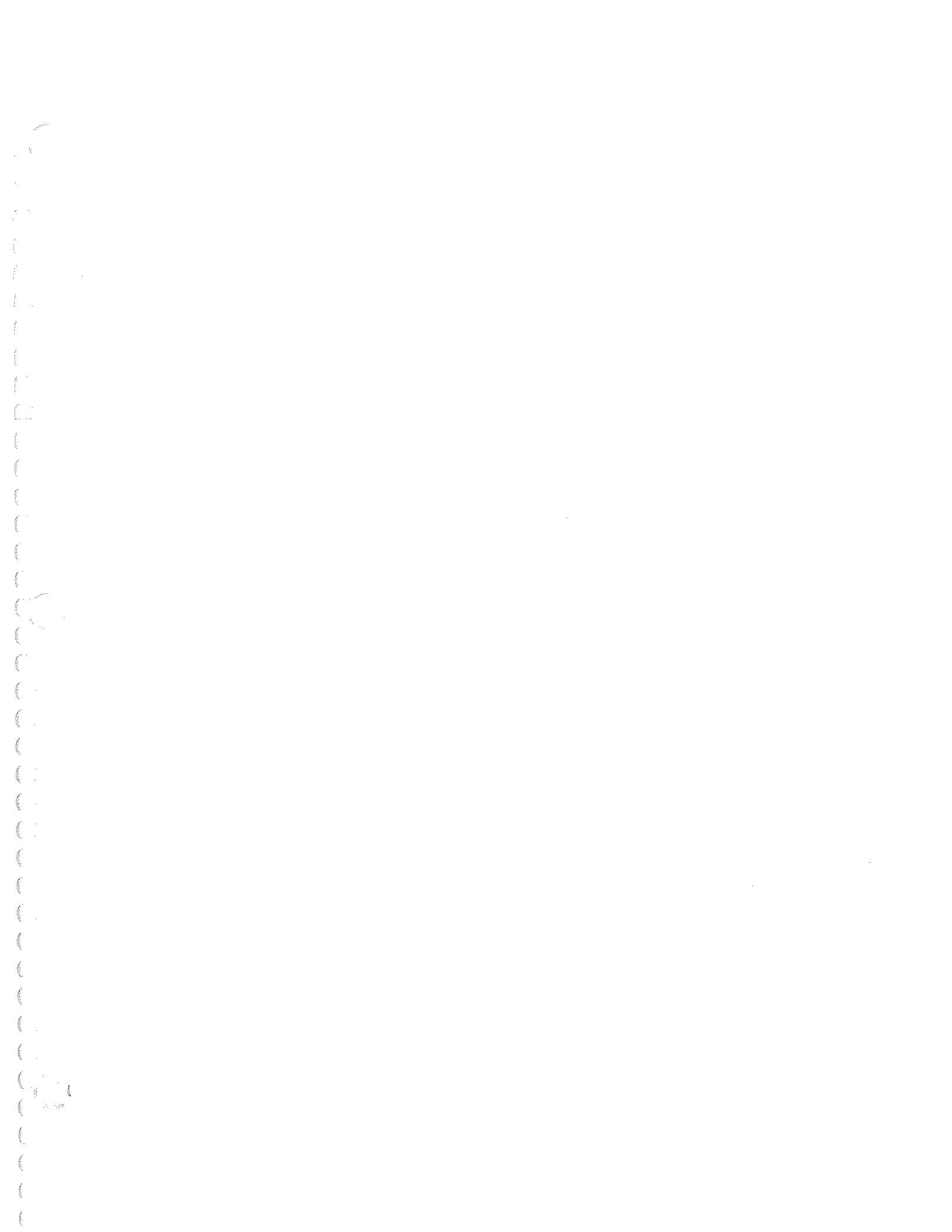
Consultant Conflicts of Interest Attachment 2, DeSmog Blog, *Despite Senate Inquiry into Potential Conflicts of Interest, FERC Approves Spectra Energy's Atlantic Bridge Project*, January 26, 2017.

Consultant Conflicts of Interest Attachment 3, Times of Trenton, *PennEast Natural Gas Pipeline Environmental Study Firm's Connection to Shale Coalition is Questioned*, February 28, 2015.

Complete People's Dossier: FERC's Abuses of Power and Law

available at <http://bit.ly/DossierofFERCAbuse>

³ Consultant Conflicts of Interest Attachment 3, Times of Trenton, *PennEast Natural Gas Pipeline Environmental Study Firm's Connection to Shale Coalition is Questioned*, February 28, 2015.



People's Dossier: FERC's Abuse of Power and Law

→ Deficient EIS Analyses

FERC Consistently Approves Pipeline Projects Based on Applications and NEPA Reviews that are Demonstrably Deficient, False and Misleading

The National Environmental Policy Act (NEPA) (*18 CFR § 380.3(b)(2)*) requires an applicant to supply the information necessary to determine a project's impact on the environment and natural resources. Complete and accurate information is essential for informed decision making, yet FERC consistently approves projects that lack proper NEPA documentation. FERC approves applications that are filled with data gaps, misrepresentations, and inaccurate, false, or even conflicting information. Additionally, FERC approves projects based on information that has been solidly debunked, contradicted, and undermined by expert, agency, and public comment. The NEPA documents upon which FERC bases its pipeline approvals are of such poor quality that they cannot support legitimate or defensible conclusions.

Missing Information Is a Frequent Deficiency in FERC NEPA Documents

Often, it is the *lack* of information in NEPA documents which is the most egregious. For example, FERC documentation for the PennEast Pipeline Project (*FERC Docket CP15-558*) lacks: detailed locational maps; accurate lists of wetland, waterbody, and/or aquifer crossings; restoration measures and/or impact mitigation; accurate fisheries classifications; accurate information on vegetative cover impacts; accurate and complete information on endangered or threatened species impacts; an accurate list of biological/ecological impacts; fails to consider socioeconomic conditions and the project's impacts thereon; lacks accurate information on geologic hazards; lacks accurate information on existing air quality; etc.¹ This is the case with other proposed pipelines.

FERC NEPA Documents Routinely Rely Upon Inaccurate Information

The incorrect information supplied by pipeline companies and adopted by FERC often disregards the most basic of environmental impacts. For example:

- When field-truthing just *one half of a mile* of the proposed PennEast Pipeline route, the Delaware Riverkeeper Network found twelve vernal pool complexes and groundwater seeps, where the pipeline company indicated in its materials to FERC that there were only two in the same area.
- PennEast failed to delineate an intermittent stream in another section of the proposed route, despite the fact that the stream was delineated on government mapping.
- Penneast completely left out from its assessment of project impacts any discussion of eight NJ state threatened, endangered, or special concern mussel species that potentially exist along the project route. In addition, the DEIS asserted "there are no private water supply wells or springs located within 150 feet of the pipeline construction workspace in Pennsylvania", which was proven false by ground-truthing efforts.²

¹ Deficient EIS Analysis Attachment 1, Delaware Riverkeeper Network Comment Regarding the PennEast Pipeline DEIS, September 12, 2016.

² Deficient EIS Analysis Attachment 1, Delaware Riverkeeper Network Comment Regarding the PennEast Pipeline DEIS, September 12, 2016 and Deficient EIS Analysis Attachment 11, Delaware

FERC Routinely Finds No Significant Impact Even When It Has Identified Deficiencies

Data gaps are often acknowledged by FERC itself, yet the agency approves applications despite this lack of information. For example, FERC identified over thirty data gaps in PennEast's application, the majority of which were substantial, such as the failure to identify working and abandoned mines near waterbody crossings and migratory bird conservation plans. Experts identified and notified FERC of dozens of additional data gaps. Despite these known gaps, FERC issued the DEIS, concluding that while the Project "would result in some adverse environmental impacts...impacts would be reduced to less-than-significant levels..."

Induced Drilling Impacts a Frequent Deficiency in FERC NEPA Documents

FERC's cumulative impact analyses for pipelines frequently mischaracterize the degree of harm that will result from the project by ignoring reasonably foreseeable future actions. Natural gas production and its subsequent impacts are among the cumulative effects that FERC must consider under NEPA when determining whether an action will have a significant impact. A pipeline's capacity will necessarily lead to additional consumption of natural gas, with consequences for its price, production, and use – these are direct, indirect and clearly foreseeable outcomes, yet FERC fails to consider them. For example, FERC ignored that the PennEast pipeline will likely induce the drilling of 3,000 new wells in Northeast Pennsylvania, Bradford, Susquehanna, Lycoming, and Tioga counties.³ FERC fails to address these future actions even when the applicants themselves state that more wells will be drilled to feed the proposal pipeline project.⁴ Read More in [People's Dossier: Drilling Impacts & Climate Change Ignored](#).

Economic Harms & Benefits Routinely Misrepresented in FERC NEPA Documents

FERC routinely fails to independently verify a pipeline company's assertions of economic benefits, and ignores expert evidence to the contrary. FERC fails to consider the economic harms proposed projects will inflict such as reduced crop production for farmers, adverse impacts to businesses along or near the pipeline right of way, the implications for ecotourism and related businesses and jobs, etc.⁵ Read More in [People's Dossier: Economic Harms](#).

Relatedly, FERC uniformly accepts industry assertions that property values are not harmed by pipeline rights of way or by location within the blast radius or evacuation zone of a pipeline, despite significant evidence to the contrary.⁶ Reduced property values also reduce the property taxes that can be collected by local governments. For example:

→ An analysis by Key-Log Economics determined that construction of the PennEast

Riverkeeper Network, Field-Truthing and Monitoring of the Proposed PennEast Pipeline, FERC Draft EIS, September 2016.

³ Deficient EIS Analysis Attachment 1, Delaware Riverkeeper Network Comment Regarding the PennEast Pipeline DEIS, September 12, 2016.

⁴ Deficient EIS Analysis Attachment 14, *Mountain Valley Pipeline DEIS at 3-1*, Docket No. CP 16-10 ("According to Mountain Valley, the MVP would alleviate some of the constraints on...natural gas production").

⁵ Deficient EIS Analysis Attachment 2, Key-Log Economics, Economic Costs of the Mountain Valley Pipeline, May 2016 and Deficient EIS Analysis Attachment 3, Key-Log Economics, Economic Costs of the PennEast Pipeline, January 2017.

⁶ Deficient EIS Analysis Attachment 15, Key-Log Economics, Memo on effects of pipelines on property values, March 11, 2015.

pipeline would result in a loss of \$158.3 to \$176.0 million in property value in the right of way and evacuation zone.⁷

- For the Mountain Valley Pipeline, projected property value losses result in a loss of \$42.2 to \$53.3 million in property tax revenue annually.⁸
- In fact, in Hancock, New York, “three homeowners have had their property assessments reduced, two by 25% and one by 50%, due to the impact of truck traffic, noise, odors, and poor air quality associated with the compressor station” that was proposed as part of the project.⁹

Economic losses resulting from pipelines can be dramatic, and far outweigh the claimed public benefits of the pipeline companies; for example, expert review determined that the PennEast Pipeline could result in as much as \$56.6 billion in total economic harm. By comparison, the company claimed only \$2.3 billion in economic benefit over a 30 year period. Similar findings have been documented for the Mountain Valley Pipeline, the Atlantic Coast Pipeline and the Millennium Eastern System Upgrade Project. In every instance, FERC ignored detailed reports demonstrating economic harm while accepting industry assertions describing only benefits. Attachment 13 includes four summaries of economic harm for pipeline projects including the PennEast Pipeline Project, the Mountain Valley Pipeline Project, the Millennium Eastern System Upgrade Project and the Atlantic Coast Pipeline Project outlining the significance of economic harms that are routinely ignored by FERC.¹⁰

Health Harms Routinely Ignored in FERC NEPA Documents

FERC NEPA analyses consistently fail to fully assess health impacts of proposed pipelines. For example, those living near compressor stations and other natural gas facilities often suffer from asthma, nosebleeds, dizziness, weakness, and rashes. Some residents are forced to sell or abandon their homes because of these health impacts—however, FERC turns a blind eye to these well-documented issues when assessing a natural gas project.

Proximity to compressor stations inflicts various harms; impacts can be severe, with at least one documented case of a family forced to abandon their \$250,000 home rather than continue to suffer the health, safety, and other harms they were experiencing.¹¹ People and experts have urged FERC to adequately consider health impacts during NEPA review, including the

⁷ Deficient EIS Analysis Attachment 3, Key-Log Economics, Economic Costs of the PennEast Pipeline, January 2017.

⁸ Deficient EIS Analysis Attachment 2, Key-Log Economics, Economic Costs of the Mountain Valley Pipeline, May 2016.

⁹ Deficient EIS Analysis Attachment 4, Catskill Citizens for Safe Energy, press release, “Proximity of Compressor Station Devalues Homes by as Much as 50%”, July 7, 2015 and Deficient EIS Analysis Attachment 5, Letter from Key-Log Economics to Secretary Kimberly Bose & Deputy Secretary Nathaniel J. Davis, September 9, 2016.

¹⁰ Deficient EIS Analysis Attachment 13, Key-Log Economics, Four Summaries of Economic Harm (PennEast Pipeline Project, the Mountain Valley Pipeline Project, the Millennium Eastern System Upgrade Project and the Atlantic Coast Pipeline Project). Attachments 2, 3, and 12 include the full analyses for each project.

¹¹ Deficient EIS Analysis Attachment 6, Jessica Cohen, *House Abandoned Because of Minisink Compressor Station -- Family Walks Away from \$250,000*, The River Reporter November 24, 2015.

establishment of baseline air quality, and FERC routinely refuses.¹²

Harms to Historic Resources Routinely Ignored in FERC NEPA Documents

Historic and cultural resources are also among the impacts routinely ignored by FERC. For example, the Atlantic Coast Pipeline was found to have no impact on cultural resources, despite the fact that its proposed route slices through the "Most Endangered Historic Place" in Virginia, as found by Preservation Virginia.¹³

The public that has been forced through the FERC process with regards to infrastructure review and approvals has, almost uniformly, the same experience -- deficient EIS/EA documentation, lack of fair access to FERC or to be heard through the NEPA process, the undermining of legal rights and opportunities upon completion of the process.¹⁴

Attachments:

Deficient EIS Analysis Attachment 1, Delaware Riverkeeper Network Comment Regarding the PennEast Pipeline DEIS, September 12, 2016.

Deficient EIS Analysis Attachment 2, Key-Log Economics, Economic Costs of the Mountain Valley Pipeline, May 2016.

Deficient EIS Analysis Attachment 3, Key-Log Economics, Economic Costs of the PennEast Pipeline, January 2017.

Deficient EIS Analysis Attachment 4, Catskill Citizens for Safe Energy, press release, "Proximity of Compressor Station Devalues Homes by as Much as 50%", July 7, 2015.

Deficient EIS Analysis Attachment 5, Letter from Key-Log Economics to Secretary Kimberly Bose & Deputy Secretary Nathaniel J. Davis, September 9, 2016.

Deficient EIS Analysis Attachment 6, Jessica Cohen, *House Abandoned Because of Minisink Compressor Station -- Family Walks Away from \$250,000*, The River Reporter November 24, 2015.

Deficient EIS Analysis Attachment 7, Neighbors Oppose Wawayanda Gas Plant; Health Concerns Top the List, July 31, 2015.

Deficient EIS Analysis Attachment 8, NH Pipeline Committee Letter to Secretary Bose, January

¹² Deficient EIS Analysis Attachment 7, Neighbors Oppose Wawayanda Gas Plant; Health Concerns Top the List, July 31, 2015; Deficient EIS Analysis Attachment 8, NH Pipeline Committee Letter to Secretary Bose, January 14, 2016; and Deficient EIS Analysis Attachment 9, Times Union, *Bethlehem Lawmakers Oppose Natural Gas Pipeline*, February 11, 2016.

¹³ Deficient EIS Analysis Attachment 10, Union Hill/Woods Corner Rural Historic District Comments on Docket No. CP15-554, June 2, 2016.

¹⁴ See, for example, Deficient EIS Analysis Attachment 16, Letter from Pipeline Awareness Southern Oregon to Maya van Rossum, the Delaware Riverkeeper, February 4, 2016; and consider the testimony available at www.PeoplesHearing.org.

14, 2016.

Deficient EIS Analysis Attachment 9, Times Union, *Bethlehem Lawmakers Oppose Natural Gas Pipeline*, February 11, 2016.

Deficient EIS Analysis Attachment 10, Union Hill/Woods Corner Rural Historic District Comments on Docket No. CP15-554, June 2, 2016.

Deficient EIS Analysis Attachment 11, Delaware Riverkeeper Network, Field-Truthing and Monitoring of the Proposed PennEast Pipeline, FERC Draft EIS, September 2016.

Deficient EIS Analysis Attachment 12, Key-Log Economics, Economic Costs of the Atlantic Coast Pipeline, February 2016.

Deficient EIS Analysis Attachment 13, Key-Log Economics, Four Summaries of Economic Harm (PennEast Pipeline Project, the Mountain Valley Pipeline Project, the Millennium Eastern System Upgrade Project and the Atlantic Coast Pipeline Project).

Deficient EIS Analysis Attachment 14, Mountain Valley Pipeline DEIS at 3-1, Docket No. CP 16-10.

Deficient EIS Analysis Attachment 15, Key-Log Economics, Memo on effects of pipelines on property values, March 11, 2015.

Deficient EIS Analysis Attachment 16, Letter from Pipeline Awareness Southern Oregon to Maya van Rossum, the Delaware Riverkeeper, February 4, 2016.

***Complete People's Dossier: FERC's Abuses of Power and Law
available at <http://bit.ly/DossierofFERCAbuse>***

People's Dossier: FERC's Abuses of Power and Law
→ **Deficient Needs Analysis**

**FERC's Failure to Mandate Genuine Demonstration of Need
Results In Pipeline Overbuild**

FERC approval of a pipeline requires a demonstration of need. (*Certification of New Interstate Natural Gas Pipeline Facilities*, 88 FERC ¶ 61,227 (1999), clarified, 90 FERC ¶ 61,128, further certified, 92 FERC ¶ 61,094 (2000)). And yet, FERC routinely ignores evidence that there is no genuine public need for a proposed pipeline project. Further, instead of requiring a demonstration of genuine need, FERC allows pipeline companies to assert increased profits, competitive advantage, and self-manufactured claims of need to fulfill the public necessity mandate.

Rather than engage in objective and independent review of the claims of need, "FERC has increasingly relied on information supplied by pipeline operators in making decisions to grant approvals..."¹ The failure to objectively consider claims of "need" results in poorly informed and often inappropriate decision making.

FERC's failure to ensure "need" for a pipeline will result in overbuild

Industry experts themselves have recognized that there is no need for additional pipeline capacity. For example:

→ Industry expert Rusty Braziel, speaking to attendees at the 21st Annual LDC Gas Forums Northeast conference regarding capacity in the Northeast, said:

*"an evaluation of price and production scenarios through 2021 suggests the industry is planning too many pipelines to relieve the region's current capacity constraints... What we're really seeing is the tail end of a bubble, and what's actually happened is that bubble attracted billions of dollars' worth of infrastructure investment that now has to be worked off."*²

→ And Elle G. Atme, Vice President, Marketing and Midstream operations for independent producer Range Resources has said:

*"We believe that the Appalachian Basin's takeaway capacity will be largely overbuilt by the 2016-2017 time frame."*³

When credible and expert evidence is provided that the asserted "need" for a new gas

¹ Deficient Needs Analysis Attachment 1, Tom Pawlicki, *FERC deference to pipeline operators seen contributing to overbuild*, snl.com, March 24, 2016.

² Deficient Needs Analysis Attachment 2, Jeremiah Shelor, *Marcellus/Utica on Pace for Pipeline Overbuild, Says Braziel*, Natural Gas Intelligence, June 8, 2016.

³ Deficient Needs Analysis Attachment 3, *Marcellus-Utica could soon be overpiped*, Kallanish Energy, February 2, 2016.

project is false, FERC routinely and without explanation ignores that evidence instead embracing pipeline company assertions

In the following cases, expert analyses have directly contradicted company assertions of “need.” And yet, in each instance, the information was largely ignored by FERC as it continued, instead, relying on the assertions of the pipeline companies:

NorthEast Direct Pipeline (FERC Docket No. CP 16-21): A 2015 study conducted by Analysis Group at the request of the Massachusetts Attorney General that was placed on the FERC docket for the Northeast Energy Direct pipeline, found that new interstate natural gas pipeline capacity is not needed in New England through the year 2030.⁴

Mountain Valley (FERC Docket No. CP16-13) and Atlantic Coast Pipelines (FERC Docket No. CP15-554): According to a 2016 study conducted by Synapse Energy considering the need for the Mountain Valley and Atlantic Coast pipelines that are purported to deliver natural gas from West Virginia to Virginia and the Carolinas: “The region’s anticipated natural gas supply on existing and upgraded infrastructure is sufficient to meet maximum natural gas demand from 2017 through 2030. Additional interstate natural gas pipelines, like the Atlantic Coast Pipeline and the Mountain Valley Pipeline, are not needed to keep the lights on, homes and businesses heated, and industrial facilities in production.”⁵ In a separate analysis, Synapse found that Dominion overestimated the Atlantic Coast Pipeline's economic benefits in reports to FERC and failed to account for any of the environmental and societal costs that the pipeline would impose on local communities.⁶

Constitution Pipeline (FERC Docket No. CP13-499): In the case of the Constitution Pipeline, one detailed report on the record concluded that New York City’s existing infrastructure is “large, dynamic, and more than adequate” to support the City’s needs. The report also provided evidence that the Constitution Pipeline does not, in fact, seek to supply the City with natural gas, but instead seeks to export the natural gas.⁷

PennEast Pipeline (FERC Docket No. CP15-558): The asserted public “need” advanced by the PennEast pipeline company for the PennEast Pipeline Project and accepted by FERC included assertions that the proposed pipeline is necessary to serve New Jersey and eastern Pennsylvania communities and some unstated number of “surrounding states.” However, numerous expert reports on the PennEast docket demonstrate there is in fact no such “need” for the gas that PennEast would transport, and that if the pipeline were to be built there would be an increased gas surplus in both NJ and PA:

⁴ Deficient Needs Analysis Attachment 4, Power System Reliability in New England, Analysis Group, Inc., November 2015 and Deficient Needs Analysis Attachment 5, Press Release, Mass Attorney General’s office, AG Study: Increased Gas Capacity Not Needed to Meet State’s Electric Reliability Needs, November 18, 2015.

⁵ Deficient Needs Analysis Attachment 6, Are the Atlantic Coast Pipeline and the Mountain Valley Pipeline Necessary? Synapse Energy, September 12, 2016.

⁶ Deficient Needs Analysis Attachment 15, Atlantic Coast Pipeline Benefits Review, Synapse Energy, June 12, 2015.

⁷ Deficient Needs Analysis Attachment 7, Report on Need for the Constitution Pipeline, April 7, 2014.

- “The proposed PennEast Pipeline would deliver an additional 1 Bcf/d of natural gas to New Jersey potentially creating a 53% supply surplus above the current level of consumption.” “...Pennsylvania has no unfulfilled demand...”⁸
- “Local gas distribution companies in the Eastern Pennsylvania and New Jersey market have more than enough firm capacity to meet the needs of customers during peak winter periods. Our analysis shows there is currently *49.9% more capacity than needed to meet even the harsh winter experienced in 2013.*”⁹

Sabal Trail Pipeline (FERC Docket No. CP14-554): FERC refused to revisit the alleged “need” for the Sabal Trail pipeline through Alabama, Georgia, and Florida, despite admissions by Florida Power and Light (FPL) that the region’s needs had dramatically changed. In 2016, FPL’s Ten Year Plan stated firmly that “FPL does not project a significant long-term additional resource need until the years 2024 and 2025” and, at the same time, acknowledged that growing investments in efficiency and solar power will stave off and reduce Florida’s need for increased natural gas deliveries. Given the predictions that shale gas will peak by 2020, seriously declining thereafter, that FPL’s predictions for its energy needs changed significantly between its 2013 and 2016 energy plans, and the significant advancements in efficiency and clean energy options, FERC’s refusal to reconsider the question of need for the Sabal Trail pipeline is yet another example of irresponsible consideration of “need.”¹⁰

Atlantic Sunrise Pipeline (FERC Docket No. CP15-138)

In the case of the Atlantic Sunrise Pipeline, FERC took Transco’s word over the word of a Pennsylvania electric utility. FERC’s approval of Transco’s Atlantic Sunrise Pipeline directly negatively affected the public and the electric grid; Transco’s use of a public utility’s right-of-way would condemn the right-of-way, rendering it unusable for the utility’s transmission infrastructure. FERC issued a Certificate to Atlantic Sunrise despite the fact that its interference with the utility’s right-of-way would negatively affect the electric grid’s reliability and resiliency, forcing the utility to intervene before FERC. This approval demonstrates FERC’s skewed definition of public need, which favors natural gas infrastructure over the security of the electric grid.¹¹

Pipeline Claims of Higher Profits or Competitive Advantage are Inappropriately Adopted by FERC as Demonstrating Need

FERC routinely allows self-serving claims that a proposed project will help the pipeline company increase corporate profits, give them a competitive edge, or otherwise advance

⁸ Deficient Needs Analysis Attachment 8, Arthur Berman, Labyrinth Consulting Services, Inc., Professional Opinion on the PennEast Pipeline, February 2015 and Deficient Needs Analysis Attachment 9, Arthur Berman, Labyrinth Consulting Services, Inc., PennEast Updated Opinion, September 11, 2016.

⁹ Deficient Needs Analysis Attachment 10, Analysis of Public Benefit Regarding PennEast, Skipping Stone, March 9, 2016.

¹⁰ Deficient Needs Analysis Attachment 11, Florida Power and Light, Ten Year Power Plant Site Plan, 2016-2025, April 2016, p.56-62.

¹¹ Deficient Needs Analysis Attachment 16, Motion to Intervene out-of-time of the PPL Electric Utilities Corporation re the Transcontinental Gas Pipeline Company, FERC Docket No. CP15-138, March 6, 2017.

company goals to stand in lieu of a genuine demonstration of need.

Among the assertions of “need” advanced by the PennEast Pipeline Company and endorsed by FERC, are to “provide low cost natural gas produced from the Marcellus Shale region;” to provide “enhanced competition among natural gas suppliers and pipeline transportation providers;” and to allow “supply flexibility,” “diversity,” better pricing, etc. By any reasonable definition, none of these are public “needs.” These are very clearly private goals and gains that are sought for the benefit of private industry and should not justify the power of eminent domain and avoidance of state and local regulations in the construction, operation and maintenance of the pipeline.

Self-Dealing is Inappropriately Accepted By FERC as Proof of Need

FERC routinely, and inappropriately, allows companies to put forth themselves as the customers in “need” of a proposed pipeline project and do so using unverifiable data and information. The PennEast Pipeline Company asserts that the need for its pipeline is demonstrated by contracts for most of the proposed pipeline’s capacity. FERC accepts this “need” demonstration at face value. But, as described by the New Jersey Division of Rate Counsel’s comments on the PennEast Docket these contracts do not in fact demonstrate need:

“PennEast bases its claim of need on “precedent agreements with seven foundation shippers and twelve total shippers, which together combine for a commitment of firm capacity of 990,000 dekatherms per day (‘Dth/d’),” approximately 90% of the Project’s total capacity...In this case, approximately 610,000 Dth/d of the 990,000 Dth/d of capacity has been contracted by affiliates of the Project owners... Of the twelve shippers that have subscribed to Project capacity, five of them are affiliates of companies that collectively own PennEast... **Thus, two-thirds of the demand for the pipeline exists because the Project’s stakeholders have said it is needed. This self-dealing undermines the assertion of need that the DEIS relies upon.**” (emphasis added; citations omitted).¹²

In *Empire Pipeline*, then-Commissioner Norman Bay acknowledged that the Agency’s reliance on precedent agreements to establish need is misplaced. Former Commissioner Bay stated that FERC should consider “whether precedent agreements are largely signed by affiliates; or whether there is any concern that anticipated markets may fail to materialize” among other considerations.¹³ Despite these facts, FERC makes no investigation into the legitimacy of the claims resulting from self-dealing.

FERC Fails To Provide Independent Assessment or Review of Pipeline “Need” Claims and Thereby Perpetuates Overbuilding

As reported by the Institute for Energy Economics and Financial Analysis, pipeline companies have an incentive to overbuild, and no reason to self-moderate or limit their construction. The failure of FERC to provide any independent review or oversight over self-serving claims of

¹² Deficient Needs Analysis Attachment 14, Comments of the New Jersey Division of Rate Counsel on PennEast Pipeline, FERC Docket No. CP15-558, Sept. 12, 2016.

¹³ Deficient Needs Analysis Attachment 13, Commissioner Bay Separate Statement, p.3, FERC Docket No. CP15-115.

“need” undermines the requirements of the law and the actual needs of the public.

- “...current low natural gas prices in the Marcellus and Utica region are driving a race among natural gas pipeline companies An individual pipeline company acquires a competitive advantage if it can build a well-connected pipeline network ...; thus, pipeline companies competing to see who can build out the best networks the quickest. This is likely to result in more pipelines being proposed than are actually needed to meet demand in those higher-priced markets.”
- “...[T]he regulatory environment created by FERC encourages pipeline overbuild. The high returns on equity that pipelines are authorized to earn by FERC and the fact that, in practice, pipelines tend to earn even higher returns, mean that the pipeline business is an attractive place to invest capital. And because, as discussed previously, there is no planning process for natural gas pipeline infrastructure, there is a high likelihood that more capital will be attracted into pipeline construction than is actually needed.”
- “The pipeline capacity being proposed exceeds the amount of natural gas likely to be produced from the Marcellus and Utica formations over the lifetime of the pipelines. An October 2014 analysis by Moody’s Investors Service stated that pipelines in various stages of development will transport an additional 27 billion cubic feet per day from the Marcellus and Utica region. This number dwarfs current production from the Marcellus and Utica (approximately 18 billion cubic feet per day). ... pipeline capacity out of the Marcellus and Utica will exceed expected production by early 2017.”
- “The loss borne by the public, businesses, and critical irreparable natural resources when a natural gas pipeline is approved by FERC requires that the Agency sufficiently consider whether an infrastructure project is actually necessary and for the public good. Instead, FERC uses an inappropriate and counterintuitive definition of “need” which is contrary to the historic underpinnings and intent of the Natural Gas Act, and results in the overbuild of unnecessary pipelines to pad companies’ quarterly balance sheets.”¹⁴

Attachments:

Deficient Needs Analysis Attachment 1, Tom Pawlicki, *FERC deference to pipeline operators seen contributing to overbuild*, snl.com, March 24, 2016.

Deficient Needs Analysis Attachment 2, Jeremiah Shelor, *Marcellus/Utica on Pace for Pipeline Overbuild, Says Braziel*, Natural Gas Intelligence, June 8, 2016.

Deficient Needs Analysis Attachment 3, *Marcellus-Utica could soon be overpiped*, Kallanish Energy, February 2, 2016.

Deficient Needs Analysis Attachment 4, Power System Reliability in New England, Analysis

¹⁴ Deficient Needs Analysis Attachment 12, IEEFA, Risks Associated with Natural Gas Pipeline Expansion in Appalachia, April 2016.

Group, Inc., November 2015.

Deficient Needs Analysis Attachment 5, Press Release, Mass Attorney General's office, AG Study: Increased Gas Capacity Not Needed to Meet State's Electric Reliability Needs, November 18, 2015.

Deficient Needs Analysis Attachment 6, Are the Atlantic Coast Pipeline and the Mountain Valley Pipeline Necessary? Synapse Energy, September 12, 2016.

Deficient Needs Analysis Attachment 7, Report on Need for the Constitution Pipeline, April 7, 2014.

Deficient Needs Analysis Attachment 8, Arthur Berman, Labyrinth Consulting Services, Inc., Professional Opinion on the PennEast Pipeline, February 2015.

Deficient Needs Analysis Attachment 9, Arthur Berman, Labyrinth Consulting Services, Inc., PennEast Updated Opinion, September 11, 2016.

Deficient Needs Analysis Attachment 10, Analysis of Public Benefit Regarding PennEast, Skipping Stone, March 9, 2016.

Deficient Needs Analysis Attachment 11, Florida Power and Light, Ten Year Power Plant Site Plan, 2016-2025, April 2016, p.56-62.

Deficient Needs Analysis Attachment 12, IEEFA, Risks Associated with Natural Gas Pipeline Expansion in Appalachia, April 2016.

Deficient Needs Analysis Attachment 13, Commissioner Bay Separate Statement, p.3, FERC Docket No. CP15-115.

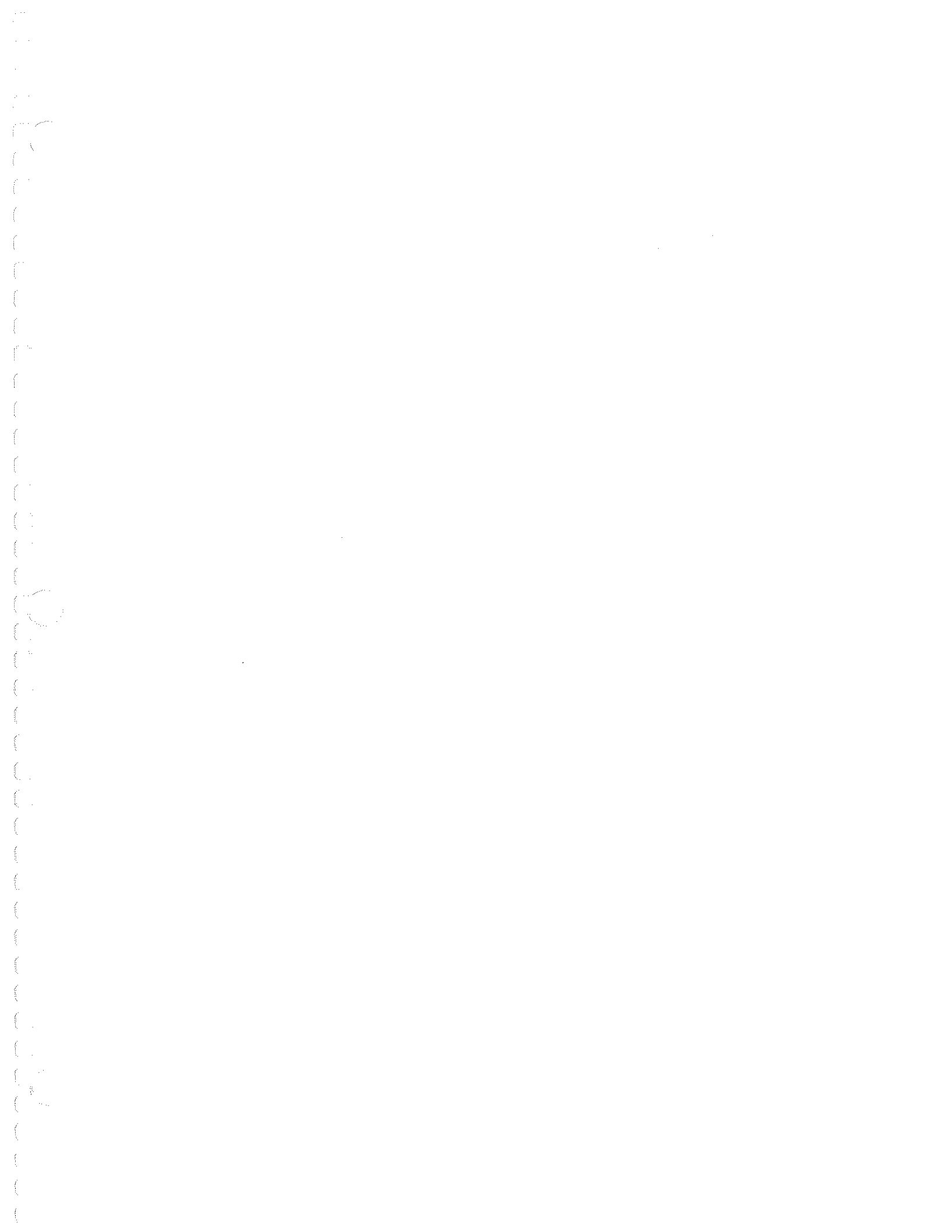
Deficient Needs Analysis Attachment 14, Comments of the New Jersey Division of Rate Counsel on PennEast Pipeline, FERC Docket No. CP15-558, Sept. 12, 2016.

Deficient Needs Analysis Attachment 15, Atlantic Coast Pipeline Benefits Review, Synapse Energy, June 12, 2015.

Deficient Needs Analysis Attachment 16, Motion to Intervene out-of-time of the PPL Electric Utilities Corporation re the Transcontinental Gas Pipeline Company, FERC Docket No. CP15-138, March 6, 2017.

Complete People's Dossier: FERC's Abuses of Power and Law

available at <http://bit.ly/DossierofFERCAbuse>



People's Dossier: FERC's Abuses of Power and Law → Economic Harms

FERC Routinely Ignores the Economic Costs of Pipeline and Compressor Infrastructure Projects

FERC's section 7 duty to consider the public interest is broader than promoting a plentiful supply of cheap gas. (*See Fla. Gas Transmission Co. v. FERC*, 604 F.3d 636, 649 (D.C. Cir. 2010)). Rather, FERC must ensure "the [public] benefits of the proposal outweigh the adverse effects on other economic interests." *AES Ocean Express, LLC*, 103 F.E.R.C. ¶ 61,030 at ¶ 19.

Despite this clear mandate, FERC routinely ignores documented economic harms anticipated from proposed pipelines, while accepting at face value company claims of benefit. As Dr. Spencer Phillips, Ph.D. articulates, FERC's policy that guides its review of pipeline economics "is completely inadequate for evaluating the costs and benefits of proposed pipelines."¹

- First, FERC's stated policy is for the applicant to provide information that supports FERC's approval. By asking only for information supporting a foregone conclusion, FERC fails to subject pipeline applications to a full, rigorous, or economically adequate examination of the proposals.
- Second, FERC relies almost exclusively on cost and benefit information supplied by applicants and their consultants, who have – and act upon – their self-interest by presenting inflated estimates of benefits and greatly discounted estimates of costs. As most recently demonstrated by the Atlantic Coast Pipeline² (*FERC Docket No. CP15-554*), Mountain Valley Pipeline³ (*FERC Docket No. CP16-13*), PennEast Pipeline⁴ (*FERC Docket No. CP15-558*), Millennium Eastern System Upgrade Project⁵ (*FERC Docket No. CP16-486*), and Atlantic Sunrise pipeline⁶ (*FERC Docket No. CP15-138*), FERC's NEPA review relies almost entirely on the information provided by the applicant and as a result, provides no serious consideration of the costs of pipeline construction, operation and maintenance.

Property Value Costs and Lost Tax Revenues Are Significant and Ignored

Some of the important costs that pipeline applicants and FERC fail to consider include:

¹ Economic Harms Attachment 1, Testimony of Dr. Spencer Phillips, People's Hearing Investigating FERC Abuses of Law & Power, December 2, 2016.

² Economic Harms Attachment 2, Key-Log Economics, LLC, *Economic Costs of the Atlantic Coast Pipeline*, February 2016.

³ Economic Harms Attachment 3, Key-Log Economics, LLC, *Economic Costs of the Mountain Valley Pipeline*, May 2016.

⁴ Economic Harms Attachment 4, Key-Log Economics, LLC, *Economic Costs of the PennEast Pipeline*, January 2017.

⁵ Economic Harms Attachment 5, Key-Log Economics, LLC, *Economic Costs At a Glance of the Millennium Eastern System Upgrade Project*, Publication of Full Report Pending.

⁶ Economic Harms Attachment 7, Key-Log Economics, LLC, *FERC's Approval Based on Incomplete Picture of Economic Impacts*, March 2017.

- Reductions in private property values along the length of pipelines and extending outward through the right-of-way, the “high consequence area,” and the evacuation zone. These reductions in property value translate into a reduction in the property taxes collected by local governments. These property value reductions can be significant:
 - construction and operation of the Penneast Pipeline, for example, would result in a loss of property value of \$159.7 to \$177.3 million resulting in a \$2.7 to \$3.0 million loss in property tax revenue annually⁷;
 - construction and operation of the Mountain Valley Pipeline would result in losses of \$42.2 to \$53.3 million in property value (resulting in losses ranging from \$243,500 to \$308,400 tax revenue annually).⁸
- Reductions in property value are not limited to pipelines; compressor stations were responsible for a 25-50% reduction of property assessments for homes in Hancock, NY.⁹

Credible, independent research shows that pipelines do in fact have significant negative effects on property values. See “Claims That Pipelines Do Not Harm Property Value Are Invalid” beginning on page 20 of Key-Log Economics’ report on the Millennium Eastern System Upgrade project.¹⁰ And yet, FERC routinely cites fundamentally flawed, industry-sponsored studies that claim there is no such property value effect, ignoring the independent data and real world experiences to the contrary.

Environmental, Business, Farming, and Other Economic Costs are Far Reaching, Staggering, and Ignored

Additional costs resulting from pipeline construction, operation, and maintenance that are ignored by FERC include:

- Loss of water purification, water storage, air quality benefits, flood protection, aesthetic quality and wildlife habitat, are among the costs that are ignored. These benefits are lost, minimized and/or significantly reduced when land uses/land covers like forests, wetlands, natural meadows, and natural open space that produce these benefits at a high rate are converted to pipeline associated industrial operations and/or shrub/scrub that produce far less, and frequently no, natural benefits.
- Economic harms such as reduced crop production for farmers, adverse impacts to businesses along or near the pipeline right of way, and adverse impacts to ecotourism and related businesses and jobs.
- Forgone economic development opportunity from recreationists, tourists, retirees, entrepreneurs, and workers who will choose safer, more environmentally healthy, and more aesthetically pleasing locations the ones associated with construction and operation of the proposed pipeline/compressor.

⁷ Economic Harms Attachment 4, Key-Log Economics, LLC, *Economic Costs of the PennEast Pipeline*, January 2017.

⁸ Economic Harms Attachment 3, Key-Log Economics, LLC, *Economic Costs of the Mountain Valley Pipeline*, May 2016.

⁹ Economic Harms Attachment 6, Catskill Citizens, Press Release, *Proximity of Compressor Station Devalues Homes by as Much as 50%*, July 7, 2015.

¹⁰ Economic Harms Attachment 5, Key-Log Economics, LLC, *Economic Costs At a Glance of the Millennium Eastern System Upgrade Project*, Publication of Full Report Pending.

These costs can be significant and staggering:

- For the PennEast Pipeline, a 115 mile pipeline with one compressor, estimated external costs ignored by FERC total approximately \$13.3 to \$56.6 billion.¹¹
- In the case of the Mountain Valley Pipeline, an analysis of only half the proposed 300-mile length revealed uncounted external costs of between \$8 and \$8.9 billion.¹²
- For the Atlantic Coast Pipeline, where costs were estimated for just a fifth of the ACP's proposed 500+ mile length, unconsidered costs by FERC would total between \$6.9 and \$7.9 billion.¹³
- According to a recent study, the Millennium Eastern System Upgrade project, which includes new compression and a new 7.8 mile section of pipeline, would cause between \$4.7 and \$18.8 million in external costs.¹⁴

FERC Lacks the Economic Expertise to Remedy Its Economic Failings

It is also important to note that FERC's reliance on pipeline applicants to provide information about the need for, as well as the benefits and costs of, their proposals is exacerbated by FERC's lack of capacity to review and filter the economic information they receive, let alone to conduct analyses of its own. The Office of Energy Projects (OEP), whose "mission...is to foster economic and environmental benefits for the nation through the approval and oversight of hydroelectric and natural gas pipeline energy projects that are in the public interest"¹⁵ has no economists among its staff.¹⁶ The Office of Energy Policy and Innovation, which otherwise collaborates with other FERC offices to evaluate industry proposals, does not support OEP by providing any economic review and analysis of pipeline certification projects.¹⁷

It does not seem plausible that an agency responsible for evaluating the economic merits of energy project proposals could do so without benefit of qualified economic expertise. Indeed, as we have noted above and as is detailed in the attachments listed below, FERC has not provided adequate review of the economic costs and benefits of pipelines. The predictable result will be too much pipeline capacity, too many environmental and other external costs, and a loss of economic vitality for American people and communities.

Attachments:

Economic Harms Attachment 1, Testimony of Dr. Spencer Phillips, People's Hearing Investigating FERC Abuses of Law & Power, December 2, 2016.

¹¹ Economic Harms Attachment 4, Key-Log Economics, LLC, *Economic Costs of the PennEast Pipeline*, January 2017.

¹² Economic Harms Attachment 3, Key-Log Economics, LLC, *Economic Costs of the Mountain Valley Pipeline*, May 2016.

¹³ Economic Harms Attachment 2, Key-Log Economics, LLC, *Economic Costs of the Atlantic Coast Pipeline*, February 2016.

¹⁴ Economic Harms Attachment 5, Key-Log Economics, LLC, *Economic Costs At a Glance of the Millennium Eastern System Upgrade Project*, Publication of Full Report Pending.

¹⁵ FERC, Office of Energy Projects, Updated March 20, 2017, available at <https://www.ferc.gov/about/offices/oep.asp>

¹⁶ 2017 FERC Employee Phone Directory, available at <https://www.ferc.gov/contact-us/tel-num/phone.pdf>

¹⁷ Personal communication of Dr. Spencer Phillips (Key-Log Economics) with OEPI's Administrative Officer, March 17, 2017.

Economic Harms Attachment 2, Key-Log Economics, LLC, *Economic Costs of the Atlantic Coast Pipeline*, February 2016.

Economic Harms Attachment 3, Key-Log Economics, LLC, *Economic Costs of the Mountain Valley Pipeline*, May 2016.

Economic Harms Attachment 4, Key-Log Economics, LLC, *Economic Costs of the PennEast Pipeline*, January 2017.

Economic Harms Attachment 5, Key-Log Economics, LLC, *Economic Costs At a Glance of the Millennium Eastern System Upgrade Project*, Publication of Full Report Pending.

Economic Harms Attachment 6, Catskill Citizens, Press Release, *Proximity of Compressor Station Devalues Homes by as Much as 50%*, July 7, 2015.

Economic Harms Attachment 7, Key-Log Economics, LLC, *FERC's Approval Based on Incomplete Picture of Economic Impacts*, March 2017.

Complete People's Dossier: FERC's Abuses of Power and Law

available at <http://bit.ly/DossierofFERCAbuse>

People's Dossier: FERC's Abuses of Power and Law
→Illegal NEPA Predetermination

FERC Illegally Predetermines the Level of Its NEPA Reviews

National Environmental Policy Act (NEPA) (*18 CFR § 380.3(b)(2)*) dictates that FERC evaluate the environmental impact of a proposed action by first preparing an Environmental Assessment (EA). If significant impacts are found during the preparation of the EA, FERC must then prepare a more comprehensive Environmental Impact Statement (EIS). If, as a result of the EA, it is determined that there will be no significant impact, then FERC issues a Finding of No Significant Impact and the Agency is deemed to have fulfilled its NEPA environmental review obligations.

Rather than enter into the EA process in good faith and with an open mind as to the outcome, an outcome that is informed by the information and data received from the public, agencies, and experts during the EA review process, FERC instead “eyeballs” a project applicant’s initial request and predetermines whether it will only undertake an EA and forego the more comprehensive EIS. Contrary to the mandates of NEPA, the EA is **not** used by FERC as the vehicle for determining the appropriate level of review. Instead, FERC routinely pre-determines the environmental review process it will use based on its own judgment.

For example, in response to concerns raised by Senator Elizabeth Warren regarding the Atlantic Bridge Project (*FERC Docket CP 16-9*), FERC issued a response stating that “The Commission staff will issue an environmental assessment (EA) to meet our responsibilities under the National Environmental Policy Act.”¹ In other words, FERC clearly stated, prior to its review, that the issuance of an EA would fully meet NEPA requirements.

This kind of advance determination is routine. Notably, and by way of further evidence of this assertion, FERC has **never** issued an Environmental Assessment that found possible significant impacts, or even unknown impacts, which would then require a full Environmental Impact Statement.

Such truncated environmental review procedures save the industry both time and money, and denies the public an unbiased review of project impacts as required by NEPA.

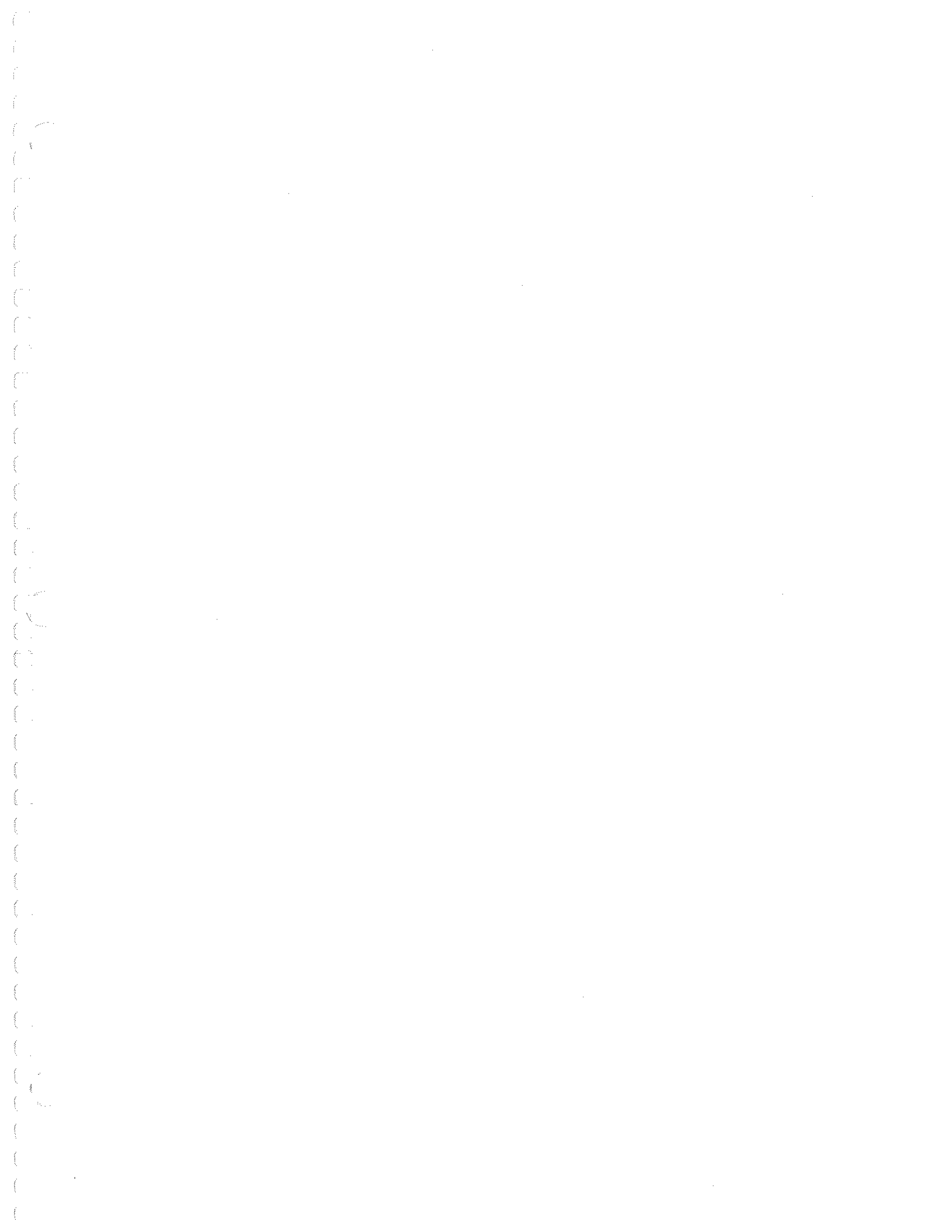
Attachments:

Illegal NEPA Predetermination Attachment 1, FERC Chairman Norman Bay’s Letter to Senator Elizabeth Warren, February 12, 2016.

Complete People's Dossier: FERC's Abuses of Power and Law

available at <http://bit.ly/DossierofFERCAbuse>

¹ See Illegal NEPA Predetermination Attachment 1, FERC Chairman Norman Bay’s Letter to Senator Elizabeth Warren, February 12, 2016.



People's Dossier: FERC's Abuses of Power and Law
→ **Illegal Segmentation**

**FERC Engages in Segmentation in Order to Prevent Full Consideration
of Environmental and Community Impacts**

FERC routinely and illegally narrows its environmental review of pipeline projects by allowing for the practice of segmentation.

On January 22, 2013, Delaware Riverkeeper Network, NJ Sierra Club and New Jersey Highlands Coalition filed a legal action challenging FERC's May 2012 approval of the Tennessee Gas Pipeline Company's Northeast Upgrade Project (NEUP). Delaware Riverkeeper Network *et al.* successfully argued that FERC's approval was illegal because it had segmented its environmental review when it ignored three other connected and interdependent pipeline projects that were simultaneously before FERC. A map clearly demonstrates that the 300 Line Project, the Northeast Supply Diversification Project, the MPP Project and the NEUP were merely separate parts of the same pipeline and, therefore, FERC was legally obligated to consider all of these projects together when reviewing the NEUP for environmental impacts.¹ On June 6, 2014, the United States Court of Appeals for the District of Columbia issued an opinion and order finding that FERC's segmentation violated NEPA and that FERC had failed to consider the cumulative impacts of these projects.²

Despite this ruling, FERC continues to rely upon segmentation as a matter of common practice in its pipeline reviews. For example:

SouthEast Leidy - Atlantic Sunrise pipelines:

Just six months after the Court's ruling, FERC engaged in the same unlawfully segmented NEPA process for Transcontinental Pipeline Company's Leidy Southeast Upgrade Project (*FERC Docket No. CP13-551*), the Northeast Supply Diversification Project (*FERC Docket No. CP11-30*), and the Atlantic Sunrise Project (*FERC Docket No. CP15-138*) -- all parts of the same pipeline that were illegally segmented for FERC review. The Combined Transco Leidy Line Project Map³ clearly demonstrates the connection between the projects.

Orion Pipeline:

On February 2, 2017 FERC approved the Tennessee Gas Company's proposed Orion Pipeline project -- another segmented project designed to further upgrade the 300 Line project -- known as 300-3 -- that was the subject of the *Delaware Riverkeeper Network, et al.* case. Tennessee has improperly segmented its 300-3 pipeline into pieces for review: the Orion Project, the Triad Expansion project, and the Susquehanna West project.

¹ Illegal Segmentation Attachment 1, Maps of NEUP, 300LU, NSD, and MPP.

² Illegal Segmentation Attachments 2 & 3, *Delaware Riverkeeper Network, et al. v. Federal Energy Regulatory Commission*, 753 F.3d 1304, at 1314-1315 (D.C. Cir. 2014) & Delaware Riverkeeper Network Press Release, *Federal Court Rules FERC Violated Federal Law When Issued Approvals for NEUP Pipeline Project*, June 6, 2014.

³ Illegal Segmentation Attachment 4, Combined Transco Leidy Line Project Map.

- Application for the proposed Susquehanna West project was submitted on April 2, 2015 (*FERC Docket No. CP15-148*). Anticipated in-service date of November 1, 2017.
- Application for the Triad Expansion project was submitted on June 19, 2015 (*FERC Docket No. CP15-520*). Anticipated in-service date of November 1, 2017.
- Application for the Orion project was submitted October 9, 2015 (*FERC Docket No. CP16-4*). Anticipated in-service date of June 1, 2018.

The three 300-3 line Tennessee projects were all proposed within roughly six months of each other. Tennessee Gas's Orion, Triad, and Susquehanna West Map⁴ demonstrates the interconnected nature of the three projects -- they are all clearly part of the same pipeline system -- each upgrading a different section of the pre-existing 300 pipeline.

National Fuel's Northern Access 2016:

FERC also engaged in illegal segmentation when considering the National Fuel's Northern Access 2016 project, the latest of National Fuel's pipeline projects in the Northeast. The figure on p.10 of the Northern Access Comment shows the segmentation of the company's in-service and proposed pipelines, and hints at further expansion and segmentation with stranded gathering lines.⁵

For discussion of the significance of the *Delaware Riverkeeper Network et al. v. FERC* case, see the article by Michael R. Pincus of the American Bar Association.⁶

Attachments:

Illegal Segmentation Attachment 1, Maps of NEUP, 300LU, NSD, and MPP.

Illegal Segmentation Attachment 2, Delaware Riverkeeper Network, et al. v. Federal Energy Regulatory Commission, 753 F.3d 1304, at 1314-1315 (D.C. Cir. 2014).

Illegal Segmentation Attachment 3, Delaware Riverkeeper Network Press Release, *Federal Court Rules FERC Violated Federal Law When Issued Approvals for NEUP Pipeline Project*, June 6, 2014.

Illegal Segmentation Attachment 4, Combined Transco Leidy Line Project Map.

Illegal Segmentation Attachment 5, Tennessee Gas's Orion, Triad, and Susquehanna West Map.

Illegal Segmentation Attachment 6, Northern Access Comment by Allegheny Defense Project and PA Alliance for Clean Water and Air, April 16, 2015.

Illegal Segmentation Attachment 7, Michael R. Pincus, *FERC Pipeline Siting Program Deals with Legal Challenges*, American Bar Association, Spring 2016.

⁴ Illegal Segmentation Attachment 5, Tennessee Gas's Orion, Triad, and Susquehanna West Map.

⁵ Illegal Segmentation Attachment 6, Northern Access Comment by Allegheny Defense Project and PA Alliance for Clean Water and Air, April 16, 2015.

⁶ Illegal Segmentation Attachment 7, Michael R. Pincus, *FERC Pipeline Siting Program Deals with Legal Challenges*, American Bar Association, Spring 2016.

***Complete People's Dossier: FERC's Abuses of Power and Law
available at <http://bit.ly/DossierofFERCAbuse>***

People's Dossier: FERC's Abuses of Power and Law
→ **Lack of Public Assistance**

FERC Minimizes Assistance to the Public While Providing Robust Access and Assistance to the Pipeline Industry

While not legally required to do so, it is notable that FERC has never made any effort to fund a Congressionally authorized Office of Public Participation to help the public navigate the difficult, complex, and highly technical pipeline review and approval process that so dramatically impacts and harms their lives, communities, and the environment. In contrast to this refusal by the agency to assist the Public, FERC regularly holds educational seminars and events with industry allowing for easy access to FERC commissioners and staff.

Congress established an Office of Public Participation (“Office”) at FERC as part of the 1978 Public Utility Regulatory Policies Act. (*16 U.S.C. § 825q-1*). In creating this Office, Congress recognized that effectively participating in FERC proceedings is especially challenging for individuals, homeowners associations, non-profit organizations, local government bodies, and consumer protection organizations because the highly technical nature of FERC dockets requires significant specialization and costly resources often unavailable to non-industry related parties. Among the Office’s responsibilities would be to help “coordinate assistance to the public” on Commission dockets, and the Office may “provide compensation for reasonable attorney's fees, expert witness fees, and other costs of intervening” for the public. (*16 U.S.C. § 825q-1(b) (1-2)*). FERC has never created this Office.

The pipeline industry enjoys vast advantages and virtually open access in navigating FERC’s review and approval process in comparison to the public—not only are they able to communicate regularly with FERC staff regarding their projects from as early as the pre-filing stages, they enjoy the benefits of the employee revolving door and regular trainings offered by FERC for their benefit. FERC’s online calendar details various industry seminars, such as the one held March 7, 2017, described as a “three day interactive seminar [that] will include how to successfully navigate the FERC environmental review process and to prepare an Environmental Report, a brief introduction to pipeline construction for industry newcomers, a discussion of pre-construction preparation considerations, and a review of baseline mitigation measures for pipeline construction and restoration.”¹ In addition, the industry has far greater resources in order to engage with FERC and to use the process to their full power and advantage.

Not only does FERC fail to educate the general public regarding the pipeline permitting process, the Agency completely ignores the public’s requests for help. For example, citizens interested in

¹ Lack of Public Assistance Attachment 1, *FERC Environmental Review and Compliance for Natural Gas Facilities Seminar*, from March 7, 2017 on FERC’s online calendar.

participating in the Mountain Valley Pipeline process (*FERC Docket No. PF15-3*) repeatedly, and formally, sought help on issues ranging from the Agency's definition of "public interest" to how the Agency resolves conflicting expert reports. Despite multiple requests for assistance, none was given.²

Despite the clear need for the Office of Public Participation, FERC has **never** requested nor allocated any funds for this Office, even though fully funding the office would constitute less than 2 percent of FERC's budget. As such, this Office exists only in theory; individuals, families, communities, and organizations faced with the significant impacts of a pipeline project and faced with the high complexity and cost of properly reviewing and/or challenging a project when the need arises have never received the appropriate, needed or congressionally envisioned assistance from FERC.

FERC's failure to fund the Office of Public Participation reflects FERC's lack of institutional interest in cultivating a balanced, fair, and impartial review and approval process for natural gas pipeline projects.

Attachments:

Lack of Public Assistance Attachment 1, *FERC Environmental Review and Compliance for Natural Gas Facilities Seminar*, from March 7, 2017 on FERC's online calendar.

Lack of Public Assistance Attachment 2, Thomas Bourdain comment on FERC docket regarding the Mountain Valley Pipeline on FERC Docket No. PF15-3, September 28, 2015.

***Complete People's Dossier: FERC's Abuses of Power and Law
available at <http://bit.ly/DossierofFERCAbuse>***

² Lack of Public Assistance Attachment 2, Thomas Bourdain comment on FERC docket regarding the Mountain Valley Pipeline on FERC Docket No. PF15-3, September 28, 2015.

Handwritten text, possibly a list or index, located on the left edge of the page. The text is extremely faint and illegible.

People's Dossier: FERC's Abuses of Power and Law

→ Public Participation Undermined

FERC's Public Process Is Carefully Crafted to Frustrate Public Input and Deny Full and Fair Opportunity to Participate

The National Environmental Policy Act (NEPA) requires that federal agencies take environmental considerations into account in their decision-making “to the fullest extent possible.” 42 U.S.C. § 4332. In addition, NEPA “guarantees that the relevant information [concerning environmental impacts] will be made available to the larger audience,” including the public, “that may also play a role in the decision-making process and the implementation of the decision.” *Robertson*, 490 U.S. at 349. As NEPA’s implementing regulations explicitly provide, “public scrutiny [is] essential to implementing NEPA.” 40 C.F.R. § 1500.1(b). The opportunity for public participation guaranteed by NEPA ensures that agencies will not take final action until after their analysis of the environmental impacts of their proposed actions has been subject to public scrutiny. *See N. Plains Res. Council v. Surface Transp. Bd.*, 668 F.3d 1067, 1085 (9th Cir. 2011)

And yet, FERC’s public meeting process is notorious for the many ways it disenfranchises the public and creates barriers to public participation. FERC ...

- frequently holds hearings at locations far from the impacted communities,
- fails to respond in a timely manner to requests for confidential information needed to inform public comment,
- ends public hearings prematurely, before all in attendance have been given the opportunity to speak
- fails to provide adequate notice of hearing venues and/or changes, and
- targets comment periods for major holidays, e.g. comment period over thanksgiving, new year’s or that end on labor day.

FERC routinely denies the public access to vital information regarding pipeline projects prior to comment deadlines

Recently, FERC refused to provide Critical Energy Infrastructure Information (“CEII”) to an environmental organization until after the scoping period for the proposed Project had closed, despite the organization’s timely filing of the request for information and its repeated efforts to secure the documents requested.

- April 29, 2016, FERC posted Confidential CEII material relating to the Millennium Eastern System Upgrade to the FERC pre-filing docket (*FERC Docket No. PF16-3*). Delaware Riverkeeper Network (DRN) submitted its request for the information on the same day.
- May 11, 2016, FERC released a request for comments with a deadline of June 10, 2016.
- DRN submitted no less than five requests for a comment period extension, to allow time to receive, analyze and comment upon the CEII data before the deadline.
- The June 10th comment deadline passed without the Delaware Riverkeeper Network having received the CEII materials.

- On July 15, 2016, DRN received a letter from FERC acknowledging, that despite Millennium’s objections, the organization had demonstrated a legitimate need for the information—“to assess the need and true nature of the project being proposed.”
- DRN finally received responsive information from FERC on July 29th, nearly two months after the comment deadline and three months after the information was requested. The responsive materials did not include the Flow Diagrams that were needed to assess the true size and scope of the project. That same day, Millennium submitted an Abbreviated Application to FERC (*FERC Docket No. CP16-486*), which included more complete CEII information, including the Flow Diagrams.
- The following business day, August 1, DRN submitted a new CEII request for the latest CEII filing.
- On December 6, over four months later, FERC sought to deny release of the CEII Flow Diagrams and Flow Diagram Data required to assess the project. FERC’s rejection of the request was in contrast with the agency’s previous practice of providing such information - no explanation was provided for the change. Delaware Riverkeeper Network filed a challenge to the denial.
- In January 2017, Millennium finally agreed to release the information to DRN.
- The information was received in January 2017, a full 8 months after the close of the scoping period.

FERC undermines the entire purpose of public participation and fair notice by allowing for significant project alterations after public comment periods have ended

It is not uncommon for FERC to allow a proposed pipeline route to change or to offer new viable alternatives after the filing of a formal FERC application, and after relevant comment periods have ended, but without giving the public a full and fair opportunity to comment.

New Hampshire residents struggled to understand the impacts of the Northeast Energy Direct Project (*FERC Docket No. PF14-22*) as the pipeline route was repeatedly changed during the project’s scoping period. Members of the community attempted to identify and alert new landowners on ever-changing maps when Kinder Morgan and FERC failed to do so.¹ As a result, the public was unable to meaningfully comment on a pipeline’s route, and impacted landowners were left unaware that a pipeline was slated to cross their property until the application process was well under way and public comment opportunities had passed.²

FERC creates unnecessary technological barriers to participation

When residents participate in FERC’s “public process” via written comment or intervention, they are often stymied by FERC’s website which is, at best, convoluted, and often, non functioning at critical times.³ FERC could remedy this barrier by participating in The eRulemaking Program

¹ Public Participation Undermined Attachment 3, Testimony of Stephanie Scherr, People’s Hearing on FERC’s Abuses of Power and Law, National Press Club, December 2, 2016.

² Public Participation Undermined Attachment 20, Email from Susan Meacham regarding PennEast route changes, June 3, 2016.

³ Public Participation Undermined Attachment 27, Letter from Kingwood Township to FERC, September 11, 2016; Public Participation Undermined Attachment 25, “Draft for Maya” describing the difficulty in navigating the FERC website and Public Participation Undermined Attachment 28, Jim Levulis,

and utilizing the far more accessible commenting and notification platform available through Regulations.gov, which was created to “increase public access to federal regulatory materials,” “increase public participation and their understanding of the federal rulemaking process,” and “improve federal agencies’ efficiency and effectiveness in rulemaking development.” FERC is a Non-Participating Agency in the program, despite regular complaints regarding their e-Filing system.⁴

FERC’s lack of notice for and poor timing of public comment periods and public hearings creates barriers to participation

It is common practice for FERC to provide short notice of upcoming hearings and to offer limited windows within which to comment on significant project proposals.

- FERC provided a mere 3 weeks public notice for scoping hearings regarding the Atlantic Coast Pipeline -- FERC announced on February 27 that it would hold a scoping meeting on March 18 to receive public testimony. Given the high interest and significant volume of information that needed to be compiled, reviewed, and addressed, 3 weeks was highly deficient.
- FERC provided only 24 days before holding public hearings on a 1,174 page EIS document for the PennEast Pipeline project. In total only 45 days was given for those who wanted to submit written comment. Neither the 24 days for verbal comment nor the 45 days for written comment was enough for such a long and detailed proposal.

FERC is known to give even less notice when there is a change in the location of a public meeting.

- Notice of a change of hearing venue for the PennEast pipeline project’s August 16th and 17th Draft EIS hearings were postmarked August 11 and in fact did not arrive in mailboxes until on or about August 16, 2016, the same day as the hearing.⁵ The delayed notification of the change denied many concerned members of the public the opportunity and ability to attend the hearings at the new locations. *(Note, the notice itself was dated August 5, but the postmark was August 11, indicating the agency waited a full 6 days before actually getting the notice into the postal system for delivery).*

FERC’s public meetings are designed to discourage participation and opposition through unnecessary time restrictions and inconvenient timing and locations

FERC public meetings are often held at a limited set of locations along a proposed pipeline route, making it difficult for many impacted community members to travel the long distances necessary to participate, particularly those that have some sort of physical limitation or significant family obligations.

Rosenberg: Gas Pipeline at Odds with State’s Energy Goals, WAMC Northeast Public Radio, January 5, 2016.

⁴ Retrieved from website: <https://www.regulations.gov/aboutProgram>

⁵ Public Participation Undermined Attachment 26, FERC Notice of Public Comment Meeting Location Change, PennEast Pipeline, LLC., August 5, 2016.

- Residents in Buckingham County, VA were not given the benefit of a public meeting or subsequent “listening session” in their community to discuss the Atlantic Coast Pipeline (*FERC Docket No. CP15-554*) despite the fact that the county would be the site of a large compressor station, the only one in the state, and the proposed pipeline would cut through the entire length of the 584-square mile county.⁶
 - Residents had been told that there would be a FERC hearing in their county on the pipeline, as well as additional hearings specific to the compressor station. Instead, the public meeting was held in another county, 45 minutes to an hour’s drive away. This drastically limited Buckingham residents, many of whom are elderly and do not normally drive on a winter’s evening, from attending and expressing their concerns over the project.
 - Local public officials requested that FERC hold a meeting in the county, as did Senators Kaine and Warner on their behalf. Senator Kaine summarized in his letter to FERC, “the opportunity [to comment] was not sufficiently given.”⁷ FERC did not respond to any of the requests.
 - Residents who were able attend the meeting later found that their comments were not transcribed accurately and were so riddled with mistakes that their testimonies seemed nonsensical on the record.⁸

- Millennium held “open house” forums on the Eastern System Upgrade project (*FERC Docket No. PF16-3*) at inconvenient times and locations that were inaccessible for impacted community members, among other problems. The public meeting that was intended to focus on the proposed Highland compressor station was held 30 miles north of the proposed site, at a time that many indicated was inconvenient for the daily realities of those affected.⁹

FERC public meetings include strict time limits for testimony and turn testifiers away once arbitrary time limits are met:

- FERC public hearings traditionally allow only 2 to 3 minutes of time per person for testimony. This time limit is enforced even when the number present is so few that there is clearly the ability to provide more time without reaching the scheduled end time for the hearing.
 - For example, at PennEast project hearings, a three minute time limit was imposed for the stated purpose of ensuring that everyone had the opportunity to testify, despite the fact that the number of individuals signed up to testify did not warrant the time constraint. FERC’s unnecessary time restriction was evident when all

⁶ Public Participation Undermined Attachment 21, Email from Lakshmi Fjord to Maya K. van Rossum regarding Atlantic Coast Pipeline, January 28, 2017.

⁷ Public Participation Undermined Attachment 24, Letter from Senator Kaine to FERC Asking to Revise Policies, April 7, 2015.

⁸ Public Participation Undermined Attachment 4, Testimony of Chad Oba, People’s Hearing on FERC’s Abuses of Power and Law, National Press Club, December 2, 2016 and Public Participation Undermined Attachment 5, Testimony of Irene Leech, People’s Hearing on FERC’s Abuses of Power and Law, National Press Club, December 2, 2016.

⁹ Public Participation Undermined Attachment 29, Delaware Riverkeeper Network letter to FERC concerning Millennium, May 15, 2016.

individuals had provided testimony by 8:30 pm and the scheduled close of the public hearing was 10 pm.

- For meetings where there is significant turnout, when the scheduled end time of the meeting is reached, people are turned away without ever getting a chance to testify -- regardless of how long or far they travelled, or how long they waited to speak. Providing an opportunity for written comment does not serve the same function as an opportunity to verbally testify for the benefit of FERC and two to three minutes is simply not enough.

FERC separates and intimidates commenters at public hearings

FERC recently began implementing a new hearing format designed to take the “public” out of the concept of public hearings and deny the ability of attendees to hear the testimony offered by others in attendance; commenters are escorted individually to rooms to state their testimony, in private, to a FERC-hired stenographer out of earshot of others in attendance. The press is prohibited from hearing comments given (even if testifiers request that press be allowed to hear their testimony) and are also prohibited from taking photos and/or video for their news reporting. The public is also told that they are prohibited from taking photos of the public meeting.

- At a summer 2017 public hearing for the PennEast Pipeline, individuals who took photos were quickly admonished by FERC representatives, told that photos were prohibited and suggested they would have to leave the event if they persisted.
 - During this same faux hearing, FERC sought to use state police to intimidate a community member from sharing information and free T-shirts regarding the pipeline in the hearing “waiting room”, where testifiers were awaiting their chance to speak to the FERC-hired stenographer.
 - At this same meeting FERC employees stated that they had neither made, nor were making, any special accommodations for members of the public with sight impairment.
 - At this series of faux hearings a parent had to argue with a FERC employee for the right to sit with her minor child during delivery of the child’s testimony to the stenographer. When challenged by the FERC employee as to the need to be present the mother stated her concerns, and had to forcibly assert her right as a parent to be present.
- At a November 3, 2016 FERC public meeting in Roanoke, Virginia for the Mountain Valley Pipeline (MVP) (*FERC Docket No. CP16-10*), FERC again replaced the public meeting with one-on-one three minute individual testimonies to a FERC stenographer. The FERC Project Manager Paul Friedman took it a step further by “badgering, speaking over people and refutation of citizens’ concerns” as they attempted to give their testimony. According to residents, “Friedman, who was present for many of these recording sessions, interrupted individuals, disrupting their carefully prepared statements, disputing their concerns, and thereby (once again) whitewashed the public record.”¹⁰

¹⁰ Public Participation Undermined Attachment 8, Testimony of Russell Chisholm, People’s Hearing on FERC’s Abuses of Power and Law, National Press Club, December 2, 2016 and also supported by Public Participation Undermined Attachment 9, Testimony of Richard Shingles, People’s Hearing on FERC’s Abuses of Power and Law, National Press Club, December 2, 2016.

- At a FERC public hearing on the NEXUS Pipeline (*FERC Docket No. CP16-22*), Ohio residents attempting to voice their concerns, and to share with and gain insights from their neighbors, were instead taken into separate rooms to give their statements to FERC contractors. As a result, many people left that meeting without commenting because “they felt uneasy talking one-on-one and they wanted to hear what everyone else had to say.”¹¹

As a result, the public is disenfranchised, confused, intimidated and angered by the wealth of hurdles and challenges they face from FERC employees and security.¹²

Some public participants have even been injured when exercising their rights at FERC meetings. Dr. Norris, a 73-year old man, had his shoulder severely injured when he was forcibly removed from a FERC hearing, even though Dr. Norris did not resist and force was absolutely unnecessary.¹³

FERC turns a blind eye when the public process is abused by the industry and expresses clear bias in the public process

- For example, 347 letters were filed on the docket for the NEXUS pipeline-- supposedly on behalf of individuals by a group called the “Consumer Energy Alliance”. When FERC was informed that these letters of support were false; had been filed “on behalf of” people who had been dead for nearly 20 years, people with dementia whose and family said they could never have written such a letter, and others who stated they never filed such a letter, FERC’s response was simply that it is not the Agency’s job to investigate such issues and that they do not have the resources or a relevant protocol to investigate. One FERC staffer told concerned residents that “people who believe their signature was improperly used could file a letter in the docket to refute it, otherwise it would stay.” Even when provided with evidence of these misrepresentations on the record, FERC failed to take appropriate action.¹⁴
- At public scoping meetings for the Mountain Valley Pipeline in Elliston, Virginia on May 5, 2015, commenters complained that FERC Project Manager Paul Friedman “conducted the Elliston meeting in a highly unprofessional, partisan manner, allowing the few supporters of the MVP to exceed the three minute speaking limit, while strictly limiting

¹¹ Public Participation Undermined Attachment 7, Testimony of Renee Walker, People’s Hearing on FERC’s Abuses of Power and Law, National Press Club, December 2, 2016.

¹² Public Participation Undermined Attachment 6, Testimony of Jacqueline Evans, People’s Hearing on FERC’s Abuses of Power and Law, National Press Club, December 2, 2016.

¹³ Public Participation Undermined Attachment 19, Email from Dr. Steven Norris to FERC Director of Safety and Security Mark Radlinski detailing shoulder injury from FERC security, Sept. 21, 2016.

¹⁴ Public Participation Undermined Attachment 10, Testimony of Paul L. Gierosky, People’s Hearing on FERC’s Abuses of Power and Law, National Press Club, December 2, 2016, Public Participation Undermined Attachment 1, Glenn Wojciak, *Protest Groups Claim Phony Supporters Flood FERC with Comments*, the Post, August 19, 2016 and Public Participation Undermined Attachment 2, Keith Metheny, *New Nexus Pipeline Great Idea, Says Man Who Died in 1998*, Detroit Free Press, September 12, 2016.

opponents and ordering the stenographer to erase opponents comments that ran over or he ruled out of order.”¹⁵

Often, unexplained shenanigans occur at public meetings that further impede the ability of impacted landowners and community members to testify:

- For example, Virginia residents were not given a fair opportunity to voice their concerns over the Atlantic Coast Pipeline at FERC scoping meetings because members of the public arrived at the meetings’ announced start time only to find that all speaking slots were claimed hours prior.
 - Pipeline proponents had been somehow notified that the sign up sheet for speaking slots would be available an hour prior to the official hearing start time, while pipeline opponents had not been similarly made aware.
 - In the end, 203 people signed up to speak and only 75 were allowed to do so. FERC declined to allow more time for public comment and declined to conduct additional public hearings.¹⁶

FERC does not fulfill its NEPA obligation to consider and address relevant issues raised in public comments

When members of the public, and even elected representatives, participate in the public process, either in-person or in writing, their concerns and valid legal arguments fall on FERC’s deaf ears.

- For example, 22,093 people and 37 elected state officials informed FERC of their opposition to the Marc-1 Pipeline in Northeast Pennsylvania; the EPA even questioned the need for yet another pipeline in the area, yet FERC rubberstamped the project and hastily granted eminent domain authority to the pipeline company.
- Residents impacted by the Spectra AIM pipeline (*FERC Docket No. CP14-96*) watched helplessly as the pipeline company and FERC ignored the questions and objections or community members and elected officials at every level of government in the four impacted States (NY, CT, RI, and MA), including Senators and members of Congress, the New York Governor and four New York state agencies, during the scoping period and through the Draft and Final Environmental Impact Statements.¹⁷

¹⁵ Public Participation Undermined Attachment 8, Testimony of Russell Chisholm, People’s Hearing on FERC’s Abuses of Power and Law, National Press Club, December 2, 2016 paraphrasing letter submitted to FERC by Elizabeth and Scott Malbon (20150506-5104-30556806).

¹⁶ Public Participation Undermined Attachment 23, Andrew Cain, *US regulators reject request for more hearings on atlantic coast pipeline*, Richmond Times Dispatch, May 14, 2015; Public Participation Undermined Attachment 24, Letter from Senator Kaine to FERC Asking to Revise Policies, April 7, 2015 and Public Participation Undermined Attachment 22, Michael Martz, *Battle escalates over extending comment period for proposed pipeline*, Richmond Times Dispatch, April 22, 2015.

¹⁷ Public Participation Undermined Attachment 11, Testimony of Nancy Vann, People’s Hearing on FERC’s Abuses of Power and Law, National Press Club, December 2, 2016 and Public Participation Undermined Attachment 12, Testimony of Chris D. Gauthier, People’s Hearing on FERC’s Abuses of Power and Law, National Press Club, December 2, 2016.

This behavior is not regionally-limited. FERC has acted similarly when approving two fiercely contested pipelines in Texas; Trans-Pecos and Comanche Trail, and in countless other situations across the nation.

Key-Log Economics has undergone a thorough analysis of all comments submitted to the FERC docket during key comment periods for the Atlantic Coast Pipeline, the PennEast Pipeline, and for Millennium's Eastern System Upgrade (ESU) project. Across the board, these analyses have found that the vast majority of comments submitted to FERC express negative opinions and serious concerns about the proposed pipelines. More so, these concerns are greatest among people who would be directly affected by the proposed pipelines. Under NEPA, FERC must consider and address relevant concerns raised in public comments. These comments are important to the process as they "provide direct and clear information about the issues of concern to the people living in communities through which the pipeline would pass as well as to people who, as visitors, downstream water users, business owners, and others, use and enjoy the affected landscape. The comment letters help FERC understand the nature and extent of the effects of the proposed pipeline."¹⁸ However, FERC regularly fails to meet its legal obligation to consider the full range of environmental effects raised on the record in their final EIS or EA.¹⁹

FERC misleads and discourages landowners from participating in the public process

FERC has gone so far as to actively mislead and discourage landowners who stand to lose their property to eminent domain from participating in the public process.

- William F. Limpert, who, along with his wife, stands to have his retirement property cut in half by the Atlantic Coast Pipeline (ACP) (*FERC Docket no. CP15-554*), was discouraged from participating as an intervenor by FERC staff when he inquired about the process. He was told, falsely, that "being an intervenor is very difficult because [he] would have to send letters to hundreds of other intervenors." The FERC employee made the process sound so daunting and time consuming that the Limperts decided not to intervene at the time. The ACP would cut a 3,000 foot by 125 foot path cut through the virgin forest on their property within several hundred feet of their home, taking down hundreds of old growth trees.²⁰

FERC's disregard for public concern is reckless, illegal, and appears intentional

Members of the public have reported overhearing FERC employees disparage the public process and, when they thought they were not being overheard, laughing at the notion that the public believed that their input could have any impact on the pre-determined outcome of approval of a pipeline by FERC.

¹⁸ Public Participation Undermined Attachment 13, Testimony of Cara Bottorff, People's Hearing on FERC's Abuses of Power and Law, National Press Club, December 2, 2016.

¹⁹ Public Participation Undermined Attachment 16, Key-Log Economics, LLC, *Economic Costs of the Atlantic Coast Pipeline*, February 2016, Public Participation Undermined Attachment 17, Key-Log Economics, LLC, *Economic Costs of the Mountain Valley Pipeline*, May 2016 and Public Participation Undermined Attachment 18, Key-Log Economics, LLC, *Economic Costs of the PennEast Pipeline*, January 2017.

²⁰ Public Participation Undermined Attachment 15, Testimony of William Limpert, People's Hearing on FERC's Abuses of Power and Law, National Press Club, December 2, 2016.

The public is denied any opportunity to testify before the FERC Commissioners directly before they render the final decision on a pipeline infrastructure project – and if they attempt to speak at a FERC Commissioners meeting they are forcibly removed or arrested.²¹ And so people who are losing their lives, livelihoods, properties, protected lands and healthy environments are never even given the opportunity to be heard by the very decisionmakers who are making the decision to inflict the harm.

The steps taken by FERC to deny people their right to be heard and to participate in the public review process are particularly egregious in light of the fact that these proposed projects take their private property rights, irreparably damage natural resources and lands communities have worked hard to preserve and restore, take jobs and harm small businesses, impede farmers from being able to most successfully grow their crops, and put communities in a literal blast zone that could take their lives. This clearly frustrates provisions of the National Environmental Policy Act, the Clean Water Act, and the Natural Gas Act.

Attachments:

Public Participation Undermined Attachment 1, Glenn Wojciak, *Protest Groups Claim Phony Supporters Flood FERC with Comments*, the Post, August 19, 2016

Public Participation Undermined Attachment 2, Keith Metheny, *New Nexus Pipeline Great Idea, Says Man Who Died in 1998*, Detroit Free Press, September 12, 2016.

Public Participation Undermined Attachment 3, Testimony of Stephanie Scherr, People's Hearing on FERC's Abuses of Power and Law, National Press Club, December 2, 2016.

Public Participation Undermined Attachment 4, Testimony of Chad Oba, People's Hearing on FERC's Abuses of Power and Law, National Press Club, December 2, 2016.

Public Participation Undermined Attachment 5, Testimony of Irene Leech, People's Hearing on FERC's Abuses of Power and Law, National Press Club, December 2, 2016.

Public Participation Undermined Attachment 6, Testimony of Jacqueline Evans, People's Hearing on FERC's Abuses of Power and Law, National Press Club, December 2, 2016.

Public Participation Undermined Attachment 7, Testimony of Renee Walker, People's Hearing on FERC's Abuses of Power and Law, National Press Club, December 2, 2016.

Public Participation Undermined Attachment 8, Testimony of Russell Chisholm, People's Hearing on FERC's Abuses of Power and Law, National Press Club, December 2, 2016.

²¹ Public Participation Undermined Attachment 11, Testimony of Nancy Vann, People's Hearing on FERC's Abuses of Power and Law, National Press Club, December 2, 2016 and Public Participation Undermined Attachment 14, Testimony of Ted Glick, People's Hearing on FERC's Abuses of Power and Law, National Press Club, December 2, 2016.

Public Participation Undermined Attachment 9, Testimony of Richard Shingles, People's Hearing on FERC's Abuses of Power and Law, National Press Club, December 2, 2016.

Public Participation Undermined Attachment 10, Testimony of Paul L. Gierosky, People's Hearing on FERC's Abuses of Power and Law, National Press Club, December 2, 2016.

Public Participation Undermined Attachment 11, Testimony of Nancy Vann, People's Hearing on FERC's Abuses of Power and Law, National Press Club, December 2, 2016.

Public Participation Undermined Attachment 12, Testimony of Chris D. Gauthier, People's Hearing on FERC's Abuses of Power and Law, National Press Club, December 2, 2016.

Public Participation Undermined Attachment 13, Testimony of Cara Bottorff, People's Hearing on FERC's Abuses of Power and Law, National Press Club, December 2, 2016.

Public Participation Undermined Attachment 14, Testimony of Ted Glick, People's Hearing on FERC's Abuses of Power and Law, National Press Club, December 2, 2016.

Public Participation Undermined Attachment 15, Testimony of William Limpert, People's Hearing on FERC's Abuses of Power and Law, National Press Club, December 2, 2016.

Public Participation Undermined Attachment 16, Key-Log Economics, LLC, *Economic Costs of the Atlantic Coast Pipeline*, February 2016.

Public Participation Undermined Attachment 17, Key-Log Economics, LLC, *Economic Costs of the Mountain Valley Pipeline*, May 2016.

Public Participation Undermined Attachment 18, Key-Log Economics, LLC, *Economic Costs of the PennEast Pipeline*, January 2017.

Public Participation Undermined Attachment 19, Email from Dr. Steven Norris to FERC Director of Safety and Security Mark Radlinski detailing shoulder injury from FERC security, Sept. 21, 2016.

Public Participation Undermined Attachment 20, Email from Susan Meacham regarding PennEast route changes, June 3, 2016.

Public Participation Undermined Attachment 21, Email from Lakshmi Fjord to Maya K. van Rossum regarding Atlantic Coast Pipeline, January 28, 2017.

Public Participation Undermined Attachment 22, Michael Martz, *Battle escalates over extending comment period for proposed pipeline*, Richmond Times Dispatch, April 22, 2015.

Public Participation Undermined Attachment 23, Andrew Cain, *US regulators reject request for more hearings on atlantic coast pipeline*, Richmond Times Dispatch, May 14, 2015.

Public Participation Undermined Attachment 24, Letter from Senator Kaine to FERC Asking to Revise Policies, April 7, 2015.

Public Participation Undermined Attachment 25, "Draft for Maya" describing the difficulty in navigating the FERC website.

Public Participation Undermined Attachment 26, FERC Notice of Public Comment Meeting Location Change, PennEast Pipeline, LLC., August 5, 2016.

Public Participation Undermined Attachment 27, Letter from Kingwood Township to FERC, September 11, 2016.

Public Participation Undermined Attachment 28, Jim Levulis, *Rosenberg: Gas Pipeline at Odds with State's Energy Goals*, WAMC Northeast Public Radio, January 5, 2016.

Public Participation Undermined Attachment 29, Delaware Riverkeeper Network letter to FERC concerning Millennium, May 15, 2016.

Complete People's Dossier: FERC's Abuses of Power and Law

available at <http://bit.ly/DossierofFERCAbuse>

People's Dossier: FERC's Abuses of Power and Law
→ **Safety Threats Ignored**

FERC Ignores Critical, Even Catastrophic, Safety Concerns

FERC routinely overlooks critical safety issues. For example, FERC has approved construction of the Algonquin Incremental Market (AIM) pipeline (*FERC Docket CP14-96*) adjacent to the Indian Point nuclear facility on the Hudson River, bringing the total number of neighboring pipelines to three. Nuclear safety experts have warned FERC that a rupture in the AIM pipeline at Indian Point could result in a radioactive release greater than that at Fukushima, rendering the region and likely New York City uninhabitable. FERC has approved the project despite its knowledge of the unique national security risk that the pipelines sited at the Indian Point nuclear facility pose to the 20 million people within the 50-mile impact radius of the plant.

According to Richard Kuprewicz, pipeline safety expert, the mitigation measures proposed (such as burying the pipe two feet deeper and adding concrete slabs above the pipe) are unlikely to offer protection. In addition, a former chief consultant for the Indian Point power plant put the probability of a nuclear failure at Indian Point due to a pipeline incident in the range of 1 in 1,000 to 1 in 10,000 per year--a very dangerous level that not only shocks the public conscience, but is not in keeping with regulatory goals according to expert testimony.¹

FERC also fails to adequately consider the safety record of pipeline companies in its reviews. For example, in considering the Pacific Connector Gas Pipeline (*FERC Docket CP13-492*) being proposed by the Williams Company, FERC did not give due consideration to the massive gas leak and explosion at its liquid natural gas facility in Washington state. Workers were injured and hundreds were forced to evacuate their homes when 599,340 gallons of liquid natural gas leaked or exploded.²

Attachments:

Safety Threats Ignored Attachment 1, Testimony of Amy Rosmarin, People's Hearing Investigating FERC Abuses of Law & Power, December 2, 2016.

Safety Threats Ignored Attachment 2, Declaration of Paul Blanch, *Town of Dedham v. FERC*, (D.C. Cir., Docket No. 16-1081), September 21, 2016.

¹ Safety Threats Ignored Attachment 1, Testimony of Amy Rosmarin, People's Hearing Investigating FERC Abuses of Law & Power, December 2, 2016, Safety Threats Ignored Attachment 2, Declaration of Paul Blanch, *Town of Dedham v. FERC*, (D.C. Cir., Docket No. 16-1081), September 21, 2016, and Safety Threats Ignored Attachment 3, Declaration of Richard Kuprewicz, *Town of Dedham v. FERC*, (D.C. Cir., Docket No. 16-1081) September 21, 2016.

² Safety Threats Ignored Attachment 4, Letter from Stacey McLaughlin to FERC enclosing Tarika Powell, How Industry and Regulators Kept Public in the Dark after 2014 LNG Explosion in Washington, February 8, 2016.

Safety Threats Ignored Attachment 3, Declaration of Richard Kuprewicz, *Town of Dedham v. FERC*, (D.C. Cir., Docket No. 16-1081) September 21, 2016.

Safety Threats Ignored Attachment 4, Letter from Stacey McLaughlin to FERC enclosing Tarika Powell, How Industry and Regulators Kept Public in the Dark after 2014 LNG Explosion in Washington, February 8, 2016.

Complete People's Dossier: FERC's Abuses of Power and Law

available at <http://bit.ly/DossierofFERCAbuse>

People's Dossier: FERC's Abuses of Power and Law → Staff Conflicts of Interest

Conflicts of Interest Color, Undermine, and Invalidate FERC Pipeline Decision-Making

There Exists an Employee Revolving Door Between FERC and the Fracking Industry

The revolving door between FERC employees and industry includes agency staff up to the Commissioner level. This revolving door shapes how FERC employees view issues generally, affects the overall mindset of the agency, and creates bias. In 2014, according to press reports there were over forty instances of FERC employees, including its Commissioners, seeking multiple opportunities with grid operators, law firms and utilities that the agency regulates.¹

Current FERC employees are able to begin negotiations with the industry for employment while still on the FERC payroll. This clearly enhances the incentive to engage in favorable agency decision-making biased towards the industry and against the public as employees try to advance their chances of securing a more lucrative and powerful position. Examples of conflict arising from this scenario include:

- Former FERC Commissioner Philip Moeller left his post at FERC to work in Washington D.C. as the Senior Vice President of Edison Electric Institute, one of the top lobbying firms for electric utilities,² and as the Non-Executive Director of Liquefied Natural Gas Limited.³
- Larry Gasteiger, former chief of staff at FERC, left the agency to work as the chief of federal regulatory policy at Public Service Enterprise Group, a major New Jersey utility company.⁴
- Pat Wood, a former FERC Chairman, became chairman of the board at Dynegy, a natural gas and coal power generating firm.⁵
- Michael Yuffee, a former attorney-advisor in FERC's Office of Administrative Law Judges, left the Agency for the law firm representing developers of the Dakota Access oil pipeline, Norton Rose Fulbright LLP.⁶
- Mason Emmett, deputy director of FERC's Office of Energy Policy and Innovation, "left

¹ Staff Conflicts of Interest Attachment 6, Hannah Northey and Kevin Bogardus, E&E News, *Employees Negotiate for Industry Jobs Under Agency's Eye*, April 7, 2015.

² Staff Conflicts of Interest Attachment 7, Jonathan Crawford, Bloomberg News, *Ex-Regulator Joining Lobby Skirts Revolving-Door Ban, Group Says*, January 12, 2016.

³ Staff Conflicts of Interest Attachment 8, LNGL Media Release: *Appointment of Third US-Based Non-Executive Director*, December 7, 2015.

⁴ Staff Conflicts of Interest Attachment 5, Jonathan Crawford, Bloomberg News, *Another U.S. Regulator Joining Utility Revives Watchdog Concerns*, October 21, 2016.

⁵ Staff Conflicts of Interest Attachment 15, Dynegy Energy Bio of Pat Wood, retrieved March 10, 2017.

⁶ Staff Conflicts of Interest Attachment 4, Hannah Northey, E&E News, *Former FERC Advisor Joins Firm Representing Dakota Access*, October 25, 2016.

the agency after almost eight years ... to take a position as a senior attorney for NextEra Energy Inc.”⁷

The increased access resulting from the revolving door benefits the industry within the halls of FERC – the only question is what form, and to what degree, this bias manifests itself.

Several documents demonstrate the ease with which former FERC Commissioners, former attorneys, the former Director of Pipeline Certificates, and other former employees arrange meetings with and otherwise access current FERC Commissioners and employees. For example, Former Commissioner Suede Kelly frequently and colloquially communicates with current FERC Commissioners on behalf of her client, Spectra Energy,⁸ and former Deputy Director of the Office of Energy Projects and former Director of Pipeline Certificates Berne Mosley does the same regarding the Atlantic Coast Pipeline Project.⁹

Self-Interest Compounds Concerns Regarding FERC’s Decision-Making Process

FERC employees, including Commissioners, are known to decide on projects that serve their own financial self-interest.

For example, as reported by Desmog Blog;

During former Commissioner Philip Moeller’s nearly ten-year tenure with FERC, “Moeller’s wife was employed as a lawyer and lobbyist for the Washington, DC-based firm Pillsbury, Winthrop, Shaw & Pittman LLP...the Commission’s counsel repeatedly authorized Moeller to rule on matters *concerning companies represented by his wife* or others at Pillsbury Winthrop” (*emphasis added*). While Philip Moeller had secured a waiver from a FERC Ethics Official, the inappropriate bias and self-dealing cannot be said to have been remedied by those steps. One such example of how this benefit played out is as follows: In 2010, Ms. Moeller began lobbying for a company that held agreements to drill for natural gas in Pennsylvania’s Marcellus Shale. Soon thereafter, her husband and the Commission approved a number of new natural gas projects in the Northeast that would carry fracked gas from the Marcellus Shale, such as Spectra’s Texas Eastern Appalachia to Market project and New Jersey-New York Expansion project.¹⁰

Other examples of self-dealing by FERC officials include:

The hiring of former FERC Outreach Manager of the Office of Energy Projects, Douglas Sipe, by an engineering firm with a \$1.8 million stake in the Spectra Energy Pipeline

⁷ Staff Conflicts of Interest Attachment 6, Hannah Northey and Kevin Bogardus, E&E News, *Employees Negotiate for Industry Jobs Under Agency’s Eye*, April 7, 2015.

⁸ Staff Conflicts of Interest Attachment 13, DeSmog Blog, *Exposed: Husband of FERC Official Responsible for Reviewing New Spectra Energy Pipelines Consults on Related Spectra Project*, November 1, 2016.

⁹ Staff Conflicts of Interest Attachment 12, Commissioner Honorable Enclosures 13-26, emails from August 17, 2015 and September 10, 2015.

¹⁰ Staff Conflicts of Interest Attachment 14, DeSmog Blog, *Revealed: Ex-FERC Commissioner’s Multiple Rulings Favored Energy Companies His Wife Lobbied For*, August 22, 2016.

Project. Mr. Sipe served as the Environmental Project Manager for the project while at FERC.¹¹

Maggie Suter, a FERC official tasked with reviewing the Cove Point and Atlantic Bridge projects, is married to Phil Suter, a paid consultant for a related project, Access Northeast. When Mrs. Suter told her supervisors at FERC of the potential conflict, she was allowed to remain in her role of reviewing the two projects.¹²

It is clear from these examples that FERC and its employees are not acting as unbiased professionals during the fracking infrastructure approval process, but instead are making licensing and approval decisions based on existing industry relationships and their own personal and/or financial self-interests.

Attachments:

Staff Conflicts of Interest Attachment 1, DeSmog Blog, *FERC Chairman Used Not-Yet-Published Guidelines to Deny Wrongdoing in Hiring of Contractor for Spectra Pipeline*, October 19, 2016.

Staff Conflicts of Interest Attachment 2, DeSmog Blog, *Former FERC Official Hired By Company With \$1.8 Million Stake in Spectra Energy Pipeline Project He Had Reviewed*, June 6, 2016.

Staff Conflicts of Interest Attachment 3, Letter from Senator Elizabeth Warren to FERC regarding Atlantic Bridge Conflict of Interest, June 9, 2016.

Staff Conflicts of Interest Attachment 4, Hannah Northey, E&E News, *Former FERC Advisor Joins Firm Representing Dakota Access*, October 25, 2016.

Staff Conflicts of Interest Attachment 5, Jonathan Crawford, Bloomberg News, *Another U.S. Regulator Joining Utility Revives Watchdog Concerns*, October 21, 2016.

Staff Conflicts of Interest Attachment 6, Hannah Northey and Kevin Bogardus, E&E News, *Employees Negotiate for Industry Jobs Under Agency's Eye*, April 7, 2015.

Staff Conflicts of Interest Attachment 7, Jonathan Crawford, Bloomberg News, *Ex-Regulator Joining Lobby Skirts Revolving-Door Ban, Group Says*, January 12, 2016.

Staff Conflicts of Interest Attachment 8, LNGL Media Release: *Appointment of Third US-Based Non-Executive Director*, December 7, 2015.

Staff Conflicts of Interest Attachment 9, Meeting with Larry Gasteiger, Norman Bay, and Joe

¹¹ Staff Conflicts of Interest Attachment 2, DeSmog Blog, *Former FERC Official Hired By Company With \$1.8 Million Stake in Spectra Energy Pipeline Project He Had Reviewed*, June 6, 2016.

¹² Staff Conflicts of Interest Attachment 13, DeSmog Blog, *Exposed: Husband of FERC Official Responsible for Reviewing New Spectra Energy Pipelines Consults on Related Spectra Project*, November 1, 2016.

Kelliher regarding NextEra Energy, July 8, 2015:

Meeting with Larry Gasteiger, Norman Bay, Andy Black, among others, regarding the Association of Oil Pipelines October 22, 2015

Meeting with Norman Bay, Larry Gasteiger, and Suede Kelly, among others, regarding the Northeast Energy Direct Project, November 13, 2015

Staff Conflicts of Interest Attachment 10, Meeting with Norman Bay and Mustafa P. Ostrander, among others, regarding Tallgrass Energy meet and greet, January 4, 2016.

Staff Conflicts of Interest Attachment 11, Email from Suede Kelly to Andrew Holleman regarding phone call with Commissioner LaFleur, August 3, 2015.

Staff Conflicts of Interest Attachment 12, Commissioner Honorable Enclosures 13-26, emails from August 17, 2015 and September 10, 2015:

Email from webform@ferc.gov to Robert Thormeyer, among others, requesting a meeting between FERC Commissioner Honorable and Berne Mosley, Dominion Consultant, to discuss the Atlantic Coast Pipeline and Supply Header Project, August 17, 2015

Email from Suede Kelly to FERC Commissioner Honorable, among others, regarding Northeast Energy Direct pipeline expansion, September 10, 2015

Email from Suede Kelly CC'ing Robert Thormeyer regarding meeting Commissioner Honorable, November 5, 2015

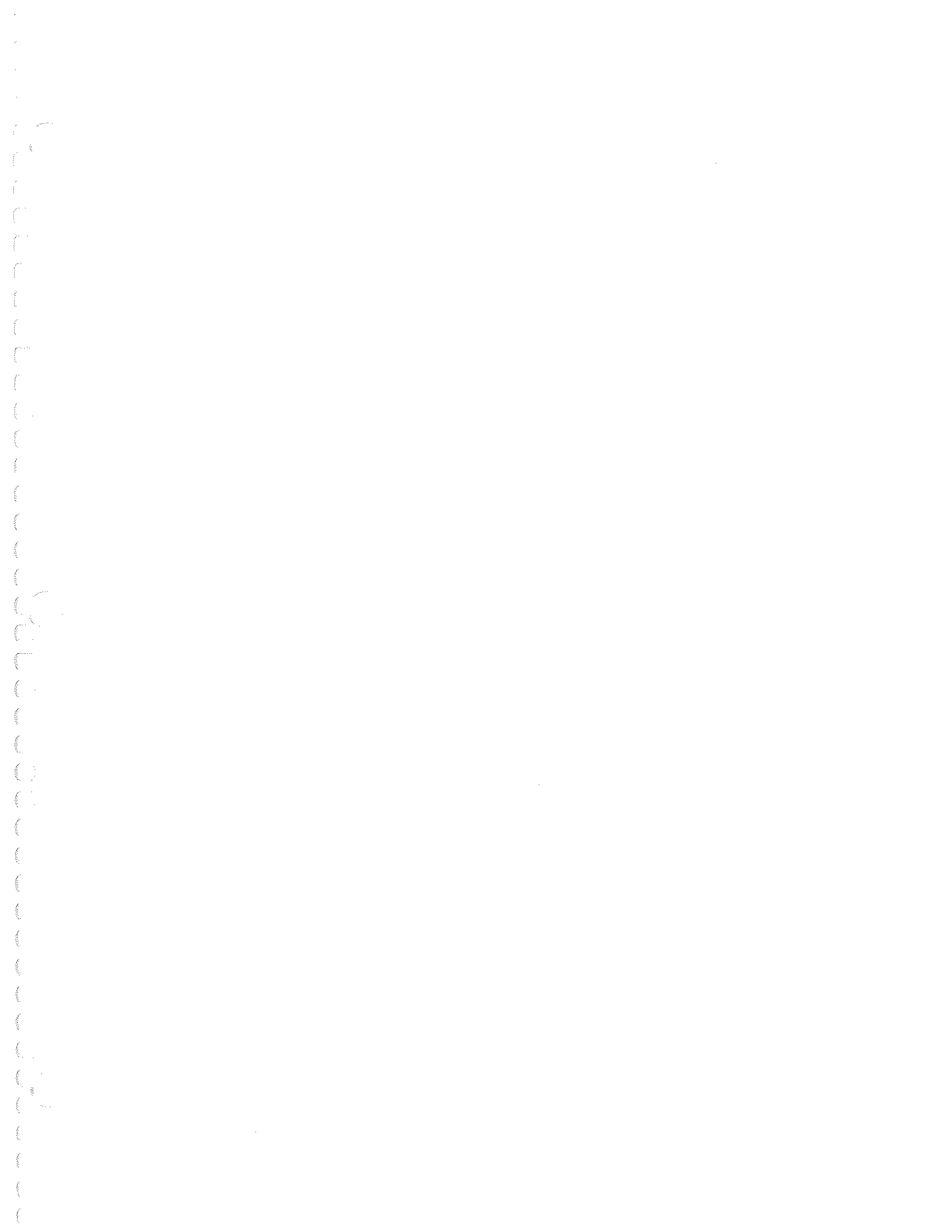
Staff Conflicts of Interest Attachment 13, DeSmog Blog, *Exposed: Husband of FERC Official Responsible for Reviewing New Spectra Energy Pipelines Consults on Related Spectra Project*, November 1, 2016.

Staff Conflicts of Interest Attachment 14, DeSmog Blog, *Revealed: Ex-FERC Commissioner's Multiple Rulings Favored Energy Companies His Wife Lobbied For*, August 22, 2016.

Staff Conflicts of Interest Attachment 15, Dynegy Energy Bio of Pat Wood, retrieved March 10, 2017.

Complete People's Dossier: FERC's Abuses of Power and Law

available at <http://bit.ly/DossierofFERCAbuse>



People's Dossier: FERC's Abuses of Power and Law

→ Stripping People's Rights

FERC Denies the Public their Right to Due Process

FERC routinely uses a legal loophole to deny the public the right to challenge approval of a pipeline project before it allows private companies to seize property rights via eminent domain and before pipeline construction begins. Through the use of tolling orders, FERC puts people in legal limbo and prevents them from challenging FERC pipeline approvals for an undetermined amount of time – sometimes for over a year – during which time FERC approves the exercise of eminent domain and construction by the pipeline company.

How FERC Forces Communities Into Legal Limbo

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.

There does not appear to be a single instance when FERC has granted a rehearing request submitted by the public -- as such, the denial is a foregone conclusion and the use of tolling is simply a ploy to allow pipeline projects to advance unfettered by any legal challenge. The harms inflicted by the delay in responding to the rehearing requests cannot be undone or fully remedied later – forests cut cannot be instantly regrown; property rights, once taken, are not returned.

Transco Southeast Leidy

While issuing a tolling order to leave communities in Pennsylvania in legal limbo for 15 months for the Transco Southeast Leidy pipeline project, FERC issued over 20 Notices to Proceed that allowed the project to advance through various stages of construction and operation. Specifically:

- Transco filed an application with FERC on September 30, 2013 to construct and operate the Leidy Southeast Pipeline, and received its Certificate of Public Convenience and Necessity from FERC on December 18, 2014.
- The Delaware Riverkeeper Network submitted a rehearing request to FERC on January 16, 2015.
- Already, on January 30, 2015 – prior to the deadline for the submission of rehearing requests – FERC issued Transco its first Notice to Proceed with the project.
- On February 4, 2015 Transco requested that FERC approve its request for a Notice to Proceed with additional construction activity. FERC again granted Transco's request on

February 5, 2015.

- On February 18, 2015 FERC issued its “tolling order”, granting DRN’s rehearing request for the purposes of “further consideration”, thereby putting the organization and its membership into a legal limbo that prevented them from taking any further legal action to challenge the pipeline’s approval.
- On March 9, 2015, FERC again authorized Transco to begin tree felling and other construction activities, allowing the company to permanently destroy more than 140 forested acres adjacent to valuable streams and wetland resources. All of this occurred before the public had any chance for court review.
- In total, FERC issued twenty Notices to Proceed for the project, including allowing certain portions of the project to begin operation, before it finally denied the Delaware Riverkeeper Network’s rehearing request on March 3, 2016 – 15 months later -- thereby freeing the organization to file its legal challenge to the project.

Delaware Riverkeeper Network filed a legal challenge to the project on March 9; however, much of the irreparable harm to the environment that the Delaware Riverkeeper Network and its members had sought to avoid had already occurred. By the time the Delaware Riverkeeper Network was allowed to proceed with its challenge, FERC had allowed the pipeline company to cut trees along 21 miles of right of way on 209 acres of land, and inflicted irreparable harm to at least 8 ½ acres of pristine forested wetlands.¹

Algonquin Pipeline Expansion - Algonquin Incremental Market (AIM)

In response to a rehearing request submitted by Stop the Algonquin Pipeline Expansion (SAPE) FERC issued a tolling order on May 1, 2015. As a result, SAPE was left without access to a legal remedy until FERC issued its Order Denying Rehearing on January 28, 2016. The Spectra AIM pipeline was largely constructed in the 11 months that SAPE was placed in legal limbo by FERC’s tolling order.

While FERC was “considering” the rehearing request, it allowed the pipeline company to seize private property and destroy homes, roads, and parklands.²

Tennessee Gas Pipeline Company’s Northeast Upgrade Project (TGP NEUP)

In the case of *Delaware Riverkeeper Network v. FERC*, 753 F.3d 1304 (D.C. Cir. 2014), FERC’s use of a tolling order prevented any sort of real remedy even where a court ruled that FERC had violated the National Environmental Policy Act in allowing the use of segmentation and failing to consider cumulative impacts in its review and approval of the project. Specifically:

- May 29, 2012 FERC issued a Certificate of Public Convenience and Necessity for the TGP NEUP. The NEUP would devastate 810 acres of land and convert 120.6 acres, including forest, into permanent pipeline right of way. The pipeline cut through PA’s

¹ Stripping People's Rights Attachment 1, People’s Hearing Testimony of Maya van Rossum, the Delaware Riverkeeper, on behalf of the Delaware Riverkeeper Network, December 2, 2016.

² Stripping People's Rights Attachment 2, Akiko Matsuda, *FERC Denies Rehearing Request on Algonquin Pipeline Expansion*, the Journal News, January 29, 2016..

Delaware State Forest, NJ's Highpoint State Park, the Appalachian Trail, and crossed the Wild & Scenic Delaware River. Seven miles of prime farmland and dozens of creeks and wetlands all fell within the pipeline's footprint.

- June 28, 2012 the Delaware Riverkeeper Network filed its rehearing request.
- July 9, 2012 FERC issued its tolling order.
- January 11, 2013, after 7 months, FERC finally denied the rehearing request.
- Delaware Riverkeeper Network filed its legal challenge within 2 weeks.

The 7 months of legal limbo meant that by the time the Delaware Riverkeeper Network secured the court ruling that FERC had in fact violated federal law in their review and approval of the project, the pipeline segment was fully constructed and in operation.

Constitution Pipeline

In the case of the Constitution Pipeline (FERC Docket CP 13-499), FERC tolled the rehearing request for nearly a year. In this case the FERC Certification was issued on December 2, 2014.

Concerned communities filed their Rehearing Request on January 2, 2015. FERC issued its tolling order on January 27, 2015, and from that point on communities were left without a legal remedy as the project proceeded. It wasn't until one year later, January 28, 2016, when FERC finally denied the rehearing request that concerned communities got the opportunity to challenge FERC's illegal approval of the Constitution Pipeline.

During the one year communities were in legal limbo, the project continued to advance towards construction. By December of 2014, the Constitution Pipeline Company had filed 125 Complaints in Condemnation in the Northern District of New York alone, seeking to take private property away from landowners in its path.³ By the end of 2015 homeowners who had refused access to their property had their property rights overridden through condemnation, the Constitution pipeline was granted easements by force, and the Constitution Pipeline Company secured access to the properties to finish surveying work and to tag trees for clearing. On January 29, 2016, FERC approved tree cutting on 25 miles of the Pennsylvania portion of the pipeline, despite lacking multiple state and federal approvals, including New York Clean Water Act Certification.⁴ Ultimately New York would deny its Clean Water Act Certification. And so the construction and eminent domain proceedings allowed may ultimately have been for naught.

Atlantic Sunrise

FERC's use of tolling orders continues unabated; the Agency recently issued such an order for Transco's Atlantic Sunrise project and has not yet issued an order granting or denying the

³ Stripping People's Rights Attachment 3, Earthjustice Motion for Stay, Docket Nos. CP13-499 and 13-502, January 11, 2016.

⁴ Stripping People's Rights Attachment 4, Earthjustice Response to Supplemental Information, Docket No. CP13-499, January 15, 2016; Stripping People's Rights Attachment 5, Catskill Mountainkeeper *et al.*, Press Release, February 18, 2016; and Stripping People's Rights Attachment 6, Stop the Pipeline, Statement in Opposition to Request for Partial Notice to Proceed, Docket No. 13-499, January 12, 2016. See also Stripping People's Rights Attachment 7, Petitioner Stop the Pipeline Brief in Docket Nos. 16-345 and 16-361, (2nd Cir.) July 12, 2016.

rehearing request.⁵

Legal Limbo is a Strategy

Delaware Riverkeeper Network is unaware of any non-industry aggrieved party who has actually been granted a request for rehearing in the history of FERC's existence. As a result, the denial of the rehearing request is a foregone conclusion. The only rationale for FERC to delay issuing its denial response is to allow the project to advance and be constructed to the benefit of the company. Another possible justification is to grant FERC more time to attempt to justify its decision after-the-fact thereby increasing its chances of defeating a later legal action by the public.

Simply by issuing more timely final orders on rehearing requests, as contemplated by the Natural Gas Act provisions on administrative remedies and judicial review, FERC would not only fulfill its due process obligations to rehearing requesters but also avoid time-consuming and unnecessary litigation that wastes both the agency's and the courts' resources. In many, if not most, instances it would provide an opportunity for affected parties to secure legal review of a project well before the project actually begins, negating the need for requests for injunction and fully honoring affected parties' rights to have their grievances heard and addressed by a court before it is harmed by a pipeline project approved by FERC.

For additional examples of projects that have been tolled for months, see:

- Transco Leidy Line⁶
- Northeast Upgrade⁷

For additional examples of the harms inflicted on people via tolling orders, see:

- Constitution Pipeline⁸

Attachments:

Stripping People's Rights Attachment 1, People's Hearing Testimony of Maya van Rossum, the Delaware Riverkeeper, on behalf of the Delaware Riverkeeper Network, December 2, 2016.

⁵ Stripping People's Rights Attachment 13, FERC Order Granting Rehearing for Further Consideration, Atlantic Sunrise Pipeline, Docket No. CP15-138, March 13, 2017.

⁶ Stripping People's Rights Attachment 8, FERC Order Granting Rehearing for Further Consideration, Transcontinental Gas Pipeline, Docket No. CP13-551, Feb. 18, 2015; and FERC Order Denying Rehearing, Transcontinental Gas Pipeline, Docket No. CP13-551, March 3, 2016.

⁷ Stripping People's Rights Attachment 9, FERC Order Granting Rehearing for Further Consideration, Tennessee Gas Pipeline, Docket No. CP11-161, July 9, 2012; and FERC Order On Rehearing, Tennessee Gas Pipeline, Docket No. CP11-161, January 11, 2013.

⁸ Stripping People's Rights Attachment 11, Candy Woodall, *Constitution Pipeline delayed, but hundreds of trees already cut down*, Pennlive, March 10, 2016; and Stripping People's Rights Attachment 12, Jon Hurdle, *Maple syrup trees cut to make way for Constitution Pipeline*, StateImpact, March 2, 2016 <https://stateimpact.npr.org/pennsylvania/2016/03/02/maple-syrup-trees-cut-to-make-way-for-the-constitution-pipeline/>

Stripping People's Rights Attachment 2, Akiko Matsuda, *FERC Denies Rehearing Request on Algonquin Pipeline Expansion*, the Journal News, January 29, 2016.

Stripping People's Rights Attachment 3, Earthjustice Motion for Stay, Constitution Pipeline, Docket Nos. CP13-499 and 13-502, January 11, 2016.

Stripping People's Rights Attachment 4, Earthjustice Response to Supplemental Information, Constitution Pipeline, Docket No. CP13-499, January 15, 2016.

Stripping People's Rights Attachment 5, Catskill Mountainkeeper *et al.*, Press Release, February 18, 2016.

Stripping People's Rights Attachment 6, Stop the Pipeline, Statement in Opposition to Request for Partial Notice to Proceed, Docket No. 13-499, January 12, 2016.

Stripping People's Rights Attachment 7, Brief of Petitioner Stop the Pipeline, Docket Nos. 16-345 and 16-361, (2nd Cir.) July 12, 2016.

Stripping People's Rights Attachment 8, FERC Order Granting Rehearing for Further Consideration, Transcontinental Gas Pipeline, Docket No. CP13-551, February 18, 2015; and FERC Order Denying Rehearing, Transcontinental Gas Pipeline, Docket No. CP13-551, March 3, 2016.

Stripping People's Rights Attachment 9, FERC Order Granting Rehearing for Further Consideration, Tennessee Gas Pipeline, Docket No. CP11-161, July 9, 2012; and FERC Order On Rehearing, Tennessee Gas Pipeline, Docket No. CP11-161, January 11, 2013.

Stripping People's Rights Attachment 10, FERC Order Denying Rehearing, Algonquin Gas Transmission, Docket No. CP14-96, January 28, 2016.

Stripping People's Rights Attachment 11, Candy Woodall, *Constitution Pipeline delayed, but hundreds of trees already cut down*, Pennlive, March 10, 2016.

Stripping People's Rights Attachment 12, Jon Hurdle, *Maple syrup trees cut to make way for Constitution Pipeline*, StateImpact March 2, 2016.

<https://stateimpact.npr.org/pennsylvania/2016/03/02/maple-syrup-trees-cut-to-make-way-for-the-constitution-pipeline/>

Stripping People's Rights Attachment 13, FERC Order Granting Rehearing for Further Consideration, Atlantic Sunrise Pipeline, Docket No. CP15-138, March 13, 2017.

Complete People's Dossier: FERC's Abuses of Power and Law

available at <http://bit.ly/DossierofFERCAbuse>



People's Dossier: FERC's Abuses of Power and Law

→ Undermining Federal Authority

FERC undermines the regulatory authority of sister federal agencies by granting permission for pipeline construction activity prior to the issuance of all required federal permits.

While FERC suggests it will not advance pipeline projects to construction prior to the issuance of all required permits, in reality FERC routinely approves pipeline construction regardless of whether or not all required permits have been secured.

In other portions of this dossier, we have discussed how FERC undermines state Clean Water Act authority by issuing Certificates of Public Convenience and Necessity prior to receiving state Section 401 Certificates. FERC similarly undermines the authority of other federal agencies by issuing premature approvals.

In its Certificates issued to natural gas infrastructure companies, FERC routinely includes the provision:

Prior to receiving written authorization from the Director of OEP [Office of Energy Projects] to commence construction of any project facilities, [pipeline company] shall file with the Secretary documentation that it has received all applicable authorizations required under federal law or evidence of waiver thereof.¹

While this provision gives the impression that a project will not commence until such time as it has fully secured agency review and approvals, has complied with all applicable laws, and has received all necessary permits, that is not in fact the case. Projects are routinely allowed to commence, with significant environmental impacts, prior to receiving all necessary approvals.

For example, the Tennessee Gas Pipeline Northeast Upgrade Project (*FERC Docket No. CP11-161*), which cut through significant areas of mature forest and forested wetlands on both public and private lands, was allowed to initiate tree felling prior to receiving Clean Water Act permits, including US Army Corps of Engineers Section 404 wetlands permits. The tree cutting significantly impacted water quality and was among the major causes of environmental harm and community impacts resulting from pipeline construction.

¹ Federal Authority Undermined Attachment 1,139 FERC ¶ 61,161, Tennessee Gas Pipeline Company, L.L.C., FERC Docket No. CP11-161, Order Issuing Certificate and Approving Abandonment, May 29, 2012, Appendix B, Environmental Conditions, ¶ 8 (emphasis in original).

Another example of FERC prematurely issuing Certificates and allowing projects to proceed without required federal permits includes:

- FERC issued a Certificate for Sabal Trail (*FERC Docket No. CP15-17*) in February 2016, before an Army Corps section 404 permit was issued. FERC began approving construction in summer 2016, including through private lands for which no court date had yet been set to settle eminent domain claims.²

FERC permission to proceed with tree felling enables pipeline companies to argue that they have already made major investments in the construction of a project and the agencies reviewing the approvals are now compelled to issue permits regardless of potential agency concerns. And so premature approval and initiation of construction becomes an incentive for other agencies to truncate their reviews, as stopping a project that has already started and the remediation of harm already inflicted are both highly unlikely.

Attachments:

Federal Authority Undermined Attachment 1,139 FERC ¶ 61,161, Tennessee Gas Pipeline Company, L.L.C., FERC Docket No. CP11-161, Order Issuing Certificate and Approving Abandonment, May 29, 2012, Appendix B, Environmental Conditions, ¶ 8 (emphasis in original).

Federal Authority Undermined Attachment 2, FERC Order Issuing Certificates to Sabal Trail Transmission, LLC; FERC Docket No. CP15-17, Feb. 2 2016, pages 1-30 of 110.

***Complete People's Dossier: FERC's Abuses of Power and Law
available at <http://bit.ly/DossierofFERCAbuse>***

² Federal Authority Undermined Attachment 2, FERC Order Issuing Certificates to Sabal Trail Transmission, LLC; FERC Docket No. CP15-17, Feb. 2 2016, pages 1-30 of 110.

People's Dossier: FERC's Abuses of Power and Law → Undermining State Authority

FERC Improperly Strips States of Their Legal Authority in the Certification Process

The Clean Water Act (CWA) prohibits FERC from issuing a Certificate of Public Convenience and Necessity (Certificates) prior to receiving a Clean Water Act Section 401 Certification from states impacted by a proposed project.

- Section 401 of the CWA states: “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).
- Several courts, including the Supreme Court, have elaborated on the CWA’s authority, stating:
 - “without [Section 401] certification, FERC lacks authority to issue a license.”¹ and
 - Section 401 “requires States to provide a water quality certification *before* a federal license or permit can be issued....”²

Despite this clear legal mandate, FERC routinely issues FERC Certificates for pipeline projects prior to state decisionmaking on CWA 401 Certification. FERC then compounds the harms inflicted by this illegal act by authorizing the use of eminent domain and construction activity (including earth moving and tree clearing) once the FERC Certificate has been issued, but prior to state CWA 401 Certification.³ FERC wastes no time in granting these approvals, sometimes issuing them just hours after receiving a request.⁴

This is a blatant and knowing violation of the law by FERC. It is a violation that deprives states of their right and ability to prevent pipeline construction activities which will result in violation of state water quality standards by rejecting a project outright or mandating modifications regarding the route, construction practices and/or mitigation obligations.

This issue plays out indiscriminately in project after project when FERC and the pipeline companies feel the state is acting too slowly in issuing its CWA 401 Certification.

Constitution Pipeline (FERC Docket CP13-499):

¹ *City of Tacoma v. FERC*, 460 F.3d 53, 68 (D.C. Cir. 2006).

² *PUD No. 1 of Jefferson Cnty. v. Wash. Dept. of Ecology*, 511 U.S. 700, 707 (1994) (emphasis added).

³ State Authority Undermined Attachment 1, FERC Partial Notice to Proceed with Construction Activities, FERC Docket No. CP14-17, January 9, 2015, and State Authority Undermined Attachment 2, FERC Authorization to Commence Construction, Tree Clearing, and Use of Variances, FERC Docket No. CP11-161, December 14, 2012.

⁴ State Authority Undermined Attachment 3, Rover’s Request to Fell Trees, FERC Docket Nos. CP15-93, CP15-94, and CP15-96, and FERC Partial Notice to Proceed with Tree Felling, February 13, 2017.

On December 2, 2014, FERC granted a Certificate to the Constitution Pipeline despite the fact that New York State had not issued a CWA 401 Certification. Thereafter, FERC granted the company the power of eminent domain, a power that the company began to exercise that same month, with the filing of 125 complaints in condemnation against NY and PA landowners. FERC then expressly permitted the Constitution Pipeline to begin elements of construction. For example, on January 8, 2016, the Constitution pipeline submitted a request to proceed which was quickly granted by FERC.⁵

Amongst other actions, FERC authorized the Constitution Pipeline company to seize and cut eighty percent of the trees in a forest in New Milford Township, Pennsylvania. On March 1, 2016, the Constitution Pipeline company began to cut the forest that has belonged to the Holleran family since the 1950s -- they live on the property, enjoy its natural beauty, and operated a growing maple syrup business (North Harford Maple).

On April 22, 2016, New York denied CWA 401 Certification for the pipeline, and as a result, the project is permanently stalled.⁶ If NY never grants the CWA 401 Certification, the project cannot be built and the devastation inflicted on the Hollerans and other Pennsylvania environments, communities, and homeowners was for naught. The associated exercise of eminent domain on New York residents could also have been avoided. Even if New York approval were to be granted at some future time, the Hollerans and other Pennsylvanians had to prematurely suffer the environmental, economic and personal loss inflicted.

Despite New York's denials of Constitution's January 14 and February 25, 2016 requests to clear cut and start earth moving activities, and despite Constitution's lack of a New York Water Quality Certification, the company started illegally clearing trees in New York.⁷ Constitution went ahead with these activities in 2015 and 2016 in multiple towns and counties in New York, and when concerned citizens and the New York Attorney General's Office made FERC aware of these activities, FERC did nothing to stop Constitution's illegal acts, resulting in the permanent loss of vast amounts of trees and devastating impacts to water quality.⁸

Other examples:

- FERC issued a Certificate of Public Convenience and Necessity for Sabal Trail (*FERC Docket No. CP15-17*) in February 2016, before CWA 401 Certifications were issued by Alabama and Georgia, and before an Army Corps section 404 permit was issued. FERC

⁵ State Authority Undermined Attachment 4, FERC Partial Notice to Proceed with Tree Felling and Variance Requests, FERC Docket No. CP13-499, January 29, 2016.

⁶ State Authority Undermined Attachment 5, Letter from NYSDEC to Constitution Pipeline Company, Water Quality Certification/Notice of Denial, April 22, 2016.

⁷ State Authority Undermined Attachment 6, NY AG Notice of Complaint for Violations of Law and the Order Issuing Certificates of Public Convenience and Necessity, FERC Docket No. CP13-499, May 13, 2016.

⁸ State Authority Undermined Attachment 6, NY AG Notice of Complaint for Violations of Law and the Order Issuing Certificates of Public Convenience and Necessity, FERC Docket No. CP13-499, May 13, 2016 and State Authority Undermined Attachment 11, Letter from Stop the Constitution Pipeline to NY Attorney General Eric Schneiderman, January 11, 2016.

began approving construction in summer 2016, including through private lands for which no court date had yet been set to settle eminent domain claims.⁹

- On March 11, 2016, FERC issued a Certificate to the Tennessee Gas Pipeline company for the Connecticut Expansion Project (*FERC Docket No. CP14-529*) before the state of Massachusetts issued or waived its CWA 401 Certification.¹⁰
- On December 18, 2014, FERC issued a Certificate to Transco Pipeline Company for its Leidy Southeast project (*FERC Docket No. 16-416*) before the state of Pennsylvania issued or waived CWA 401 Certification.¹¹

Attachments:

State Authority Undermined Attachment 1, FERC Partial Notice to Proceed with Construction Activities, FERC Docket No. CP14-17, January 9, 2015.

State Authority Undermined Attachment 2, FERC Authorization to Commence Construction, Tree Clearing, and Use of Variances, FERC Docket No. CP11-161, December 14, 2012.

State Authority Undermined Attachment 3, Rover's Request to Fell Trees, FERC Docket Nos. CP15-93, CP15-94, and CP15-96, and FERC Partial Notice to Proceed with Tree Felling, February 13, 2017.

State Authority Undermined Attachment 4, FERC Partial Notice to Proceed with Tree Felling and Variance Requests, FERC Docket No. CP13-499, January 29, 2016.

State Authority Undermined Attachment 5, Letter from NYSDEC to Constitution Pipeline Company, Water Quality Certification/Notice of Denial, April 22, 2016.

State Authority Undermined Attachment 6, NY AG Notice of Complaint for Violations of Law and the Order Issuing Certificates of Public Convenience and Necessity, FERC Docket No. CP13-499, May 13, 2016.

State Authority Undermined Attachment 7, FERC Order Issuing Certificates to Sabal Trail Transmission, LLC, FERC Docket No. CP15-17, pages 1-30 of 110, Feb. 2 2016.

State Authority Undermined Attachment 8, Carolyn Elefant, Press Release, *Notice of Intent to*

⁹ State Authority Undermined Attachment 7, FERC Order Issuing Certificates to Sabal Trail Transmission, LLC, FERC Docket No. CP15-17, pages 1-30 of 110, Feb. 2 2016.

¹⁰ State Authority Undermined Attachment 8, Carolyn Elefant, Press Release, *Notice of Intent to Sue FERC for Violating the Clean Water Act Filed by the Sandisfield Taxpayers Opposing the Pipeline*, March 21, 2016, and State Authority Undermined Attachment 9, Clarence Fanto, Berkshire Eagle, *Tennessee Gas Co. Wants Court's OK to Start Cutting Trees for Sandisfield Spur of Pipeline*, March 18, 2016.

¹¹ State Authority Undermined Attachment 10, Merits Brief of Delaware Riverkeeper Network and the Delaware Riverkeeper (D.C. Cir. 2016).

Sue FERC for Violating the Clean Water Act Filed by the Sandisfield Taxpayers Opposing the Pipeline, March 21, 2016.

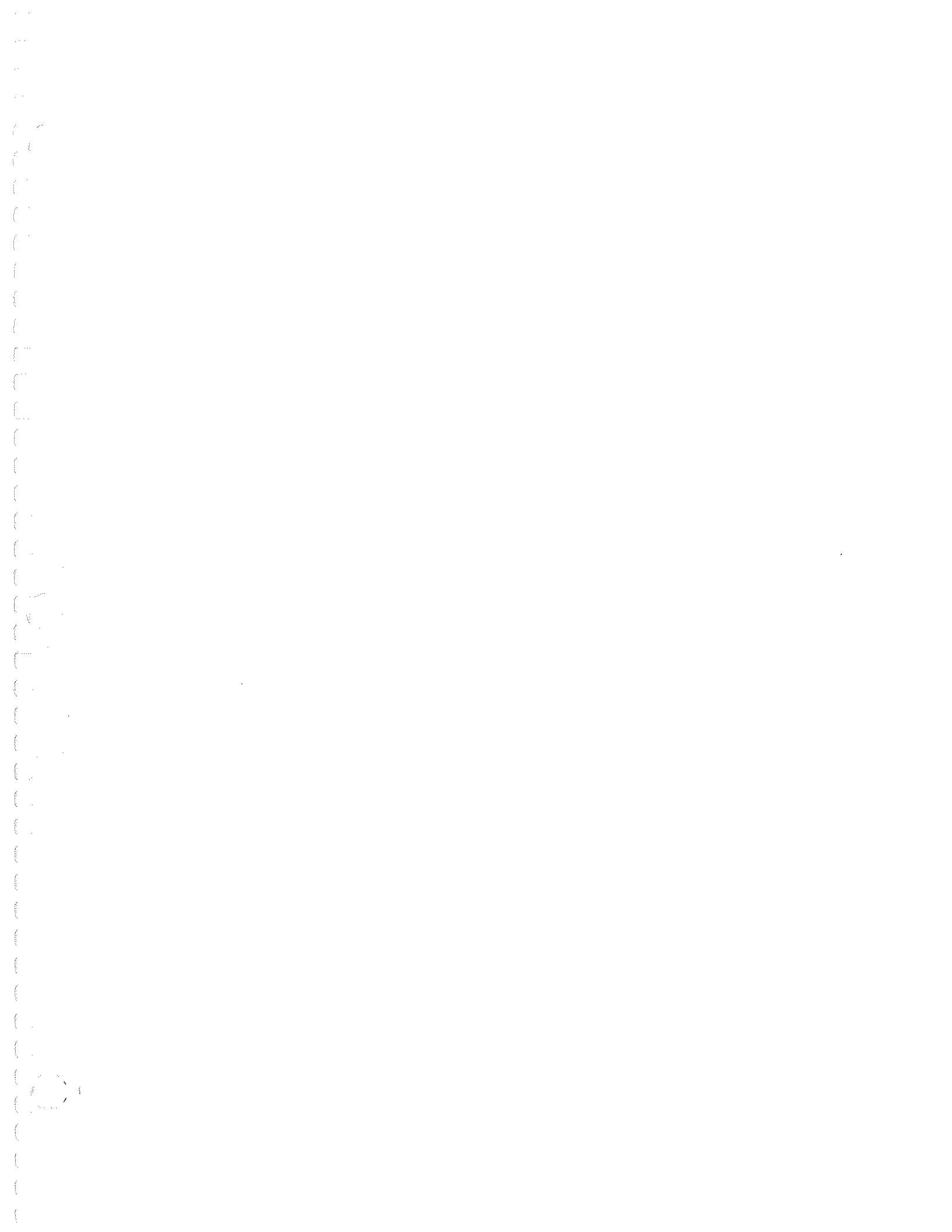
State Authority Undermined Attachment 9, Clarence Fanto, Berkshire Eagle, *Tennessee Gas Co. Wants Court's OK to Start Cutting Trees for Sandisfield Spur of Pipeline*, March 18, 2016.

State Authority Undermined Attachment 10, Merits Brief of Delaware Riverkeeper Network and the Delaware Riverkeeper (D.C. Cir. 2016).

State Authority Undermined Attachment 11, Letter from Stop the Constitution Pipeline to NY Attorney General Eric Schneiderman, January 11, 2016.

Complete People's Dossier: FERC's Abuses of Power and Law

available at <http://bit.ly/DossierofFERCAbuse>



People's Dossier: FERC's Abuses of Power and Law →Violations Overlooked

FERC Fails to Hold Pipeline Companies Accountable for Violations of Environmental Protection Laws

FERC consistently overlooks violations of law and/or degradation of the environment during pipeline construction

Research by the Delaware Riverkeeper Network shows that FERC has *never* issued a civil penalty for violations related to construction activity, for *any* pipeline project, despite the fact that the applicable water protection laws and regulations are routinely violated during pipeline construction. In addition, when violations are identified, FERC does not issue stop work orders or mandate the company remedy the environmental harm and come into compliance with the law prior to continuing construction; instead, the pipeline company is allowed to simply continue with construction on the rest of the line.

Not only does FERC fail to investigate credible individual complaints, but FERC also consistently ignores violations reported by local and state regulatory employees.

FERC's inadequate response to violations not only results in continuing damage from the violations that take place, but there is no incentive for pipeline companies to ensure violations are avoided, or that the company self-identify, remedy, and remediate violations and damage as soon as a violation occurs.

A typical example of FERC's inexplicable reluctance to issue civil penalties for violations of environmental protection laws involves the construction of Tennessee Gas Pipeline Company's ("Tennessee") 300 Line Upgrade Project (*FERC Docket No. CP09-444*). By the end of the project, among other violations, FERC had recorded:

- 43 instances of silt laden water entering resources/depositing sediment off of the pipeline right-of-way,
- 15 instances of failures to properly install erosion controls or use best management practices to adequately protect resources,
- 9 instances of failures to properly install/maintain erosion controls resulting in impacts to resources,
- 6 instances of erosion/disturbance resulting from stormwater discharges off of the right-of-way, and
- at least 2 instances of in-stream work conducted in violation of fishery restrictions.

FERC not only failed to issue any civil penalties relating to the multitude of recorded violations, FERC did not even issue a stop-work order that would require TGP to remedy the violations and environmental harm before allowing the pipeline company to proceed with ongoing construction activities. FERC did nothing to rectify the violations or the harms caused thereby, and in effect condoned and incentivized this behavior by the company.

By contrast, the Pennsylvania Department of Environmental Protection found that these clear violations were sufficiently serious to secure an \$800,000 settlement from Tennessee for the

