

July 24, 2018

Honorable Kimberly D. Bose, Secretary
Federal Energy Regulatory Commission
888 First Street NE
Washington, DC 20426

Re: Notice of Inquiry – Certification of New Interstate Natural Gas Facilities - Docket #PL18-1-000

Dear Secretary Bose:

Thank you for the opportunity to provide comments on how the Federal Energy Regulatory Commission (FERC) can improve its process for permitting new natural gas transportation facilities. My suggestions are based on my direct experiences during the early stages, pre-filing (PF14-22) and application (CP16-21) processes for the now withdrawn Kinder Morgan (KM) Northeast Energy Direct Project (NED). Between April 2014 and May 2016 I actively participated in public meetings, Open Houses, submitted frequent comments to FERC during the pre-filing, scoping and application processes, and, requested Intervenor Status as an affected landowner. Additionally, I helped organize and educate communities and other impacted landowners.

It is indeed time to revisit the 1999 Policy Statement and either replace it completely or at the very least provide clarification and guidance on how this almost 20 year old policy can meet 21st century energy needs.

In 2002, the GAO and the Senate Committee on Governmental Affairs cited FERC for its failures leading up to the Enron energy scandal. The Senate Committee found “the agency is no match for the sophisticated, competitive, profit-driven companies it regulates.” It went on to say, “If FERC is to be an effective protector, regulator, and overseer of the nation’s increasingly deregulated energy marketplace, it must recognize the need for a total cultural reorientation of its regulatory approach.”

Sixteen years later, there is no evidence this reorientation has occurred. In fact, FERC’s current Certificate Policy actually predates this challenge. Enron actively participated and was cited in the Policy review. FERC can use this policy review to set the agency on a new course in-line with its mission to, “Assist consumers in obtaining reliable, efficient, and sustainable energy services at a reasonable cost through appropriate regulatory and market means.” (source: <https://www.ferc.gov/about/strat-docs/strat-plan.asp>).

I am providing comments on each of the areas FERC has requested.

- A. Potential Adjustments to Determination of Need
- B. Exercise of Eminent Domain and Landowner Interests
- C. Consideration of Environmental Impacts
- D. Improvements in Efficiency of the Review Process

A. Potential Adjustments to Determination of Need

FERC’s current review policies leave citizens out of the most fundamental question that must be addressed: what is the need for and benefit of a proposal? Although NEPA requires FERC conduct an “open” process for review of environmental impacts, FERC has no such public process to address the counterbalancing question of need. During the NED project FERC ignored requests for evidentiary hearings.

Lacking a transparent process, the public’s distrust of government grows, and the credibility of our institutions suffer. Petitions, demonstrations, and civil disobedience actions directed at FERC continue to escalate just as the expansion of natural gas pipelines projects grow at an unprecedented rate. People are frustrated that they do not have a voice at the fundamental decision point of a proposed project’s need determination.

A1. Should the Commission consider changes in how it determines whether there is a public need for a proposed project?

A1. The Commission must change how it determines whether there is a “public need” for a proposed project. Public necessity (need) should be at the heart of all certificate decisions. In particular, the need determination process needs to be more open and transparent. FERC currently makes decisions regarding “public benefit” without public evidentiary proceedings. Stakeholders must be allowed input into the need determination including the chance to participate in adjudicated hearings on need. Public acceptance of any energy project can not be gained without a clear demonstration of need. Failure to allow public participation in this key step greatly limits any project’s ability to successfully and efficiently navigate the approval process.

I was surprised to learn during the NED project review in 2016 that in the previous 15 years, FERC had not held one evidentiary hearing on need in a pipeline project. The purpose of a full evidentiary hearing is to resolve genuine issues of material fact. The FERC certificate process for approving pipeline projects compels FERC to balance public convenience and public necessity. FERC’s policy on need was not defined, and appeared to shift based on the changing financial assessments of the proponent in a process that is outside public scrutiny. Congress intended the definition of need to be for the public interest, not private interests, so it is appropriate for the public to be able to question in an adjudicatory process the proponent’s demonstration of need. It is incomprehensible given the dramatic changes in the energy industry and the increased acceptance of climate change as a critical issue of national security that FERC was not allowing this.

The public had raised concerns about need from the time Kinder Morgan’s plans were first disclosed in early 2014. Both proponents and opponents cited studies of varying assumptions and conclusions in support of one view or another.

- Proponents had a well-funded public relations campaign which implied new pipelines would lower energy costs in New England.
- Opponents claimed that existing infrastructure was under-utilized, that more pipelines would thwart progress towards cleaner energy, and that new pipeline capacity would largely serve LNG export customers, increasing domestic energy prices.
- DOE decision authorizing export of 1.6 Bcf/d of U.S. natural gas to Canada via pipeline for re-export out of Canada to foreign nations begged for an explanation of how foreign demand justified injury to US consumers interests, whether it would also justify eminent domain takings for new capacity to serve export markets, and how experts to other countries constituted a “need” for the proposed project. (**Whose** need?) The general public was unaware of the assumptions and implications that underlie any of these issues.

Issues of material fact beleaguered the NED project as evidenced by Kinder Morgan’s own documents.

- At its first public acknowledgment of the NED project in early 2014, Kinder Morgan asserted a critical need in the public interest for 2.2 Bcf/d of capacity. It submitted a pre-filing application designed to fill that need.
- It then scaled its project down to 1.3 Bcf/d , which it then insisted was the critical need in the public interest.
- Two years after its first announced projection of need, Kinder Morgan had only secured pending agreements for .55 Bcf/d in New England and 25% of those agreements were for replacement rather than new capacity.
- In a March 22, 2016 submittal to FERC, Kinder Morgan disputed the credibility of several studies questioning need including the Electric Reliability Report completed for the MA Attorney General. The fact that Kinder Morgan and the MA Attorney General disagree pointed to a need for an arbiter of fact to examine the need issue.

The law provides a way to decide whether a project is actually necessary by holding a formal evidentiary hearing. Individuals and organizations had requested FERC conduct a hearing to make a public reconciliation

of conflicting views regarding need. The requesters included the NH Municipal Pipeline Coalition (representing 18 communities in New Hampshire), the Franklin Regional Council of Governments (representing 26 communities in MA), and Northeast Energy Solutions, Inc. (a multi state non-profit corporation representing more 101,000 individuals with energy, land, environmental, and other economic interests).

On February 25, 2016, Congressman James P. McGovern called for a formal evidentiary hearing “to address, and to call into question, the disputed materials and evidence used to support the NED project.” FERC did not acknowledge the validity of either the public or even elected officials’ concerns. Then Commissioner Bay responded to an inquiry from a U.S. Senator regarding need with a boilerplate response: “All projects filed with the Commission undergo a thorough analysis in the determination of need as well as to assess their compliance with existing laws, regulations and policy.” This response demonstrated a lack of regard for the wide-ranging implications of these decisions for the nation’s energy future, the world’s climate future, and for the rights of citizens who face eminent domain takings for no clear public benefit and with no clear demonstration that the project is actually needed.

The “need” and “public benefit” determination needs to be made more transparent and open to public participation. FERC should develop procedures to take input and questions on the determination of need and develop clear criteria for how need for a project must be demonstrated. In the meantime, FERC can and should use the authority it has to conduct formal evidentiary hearings on the need for the project. It should allow input from all stakeholders and respond affirmatively to requests from elected officials and the public to hold a hearing on need. Indeed it is required to do this when there is a material question of fact that can't be resolved with paper submissions.

As described below, the determination of “public need” and “public benefit” needs to be more inclusive.

A2. In determining whether there is a public need for a proposed project, what benefits should the Commission consider? For example, should the Commission examine whether the proposed project meets market demand, enhances resilience or reliability, promotes competition among natural gas companies, or enhances the functioning of gas markets?

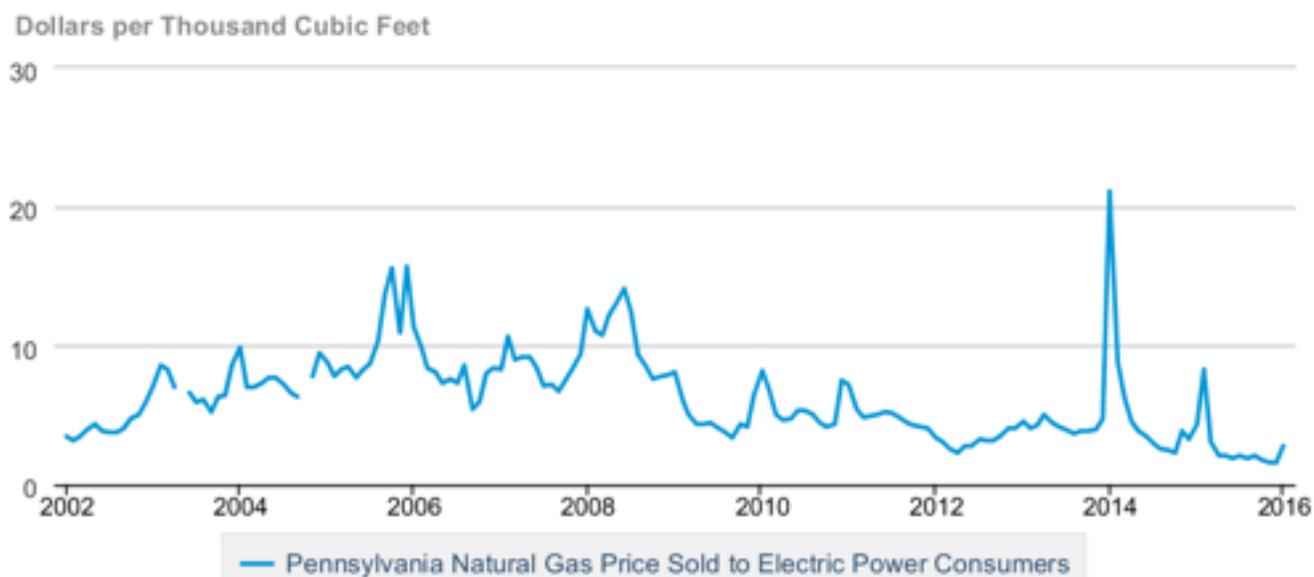
A2. In determining whether there is a public need for a proposed project, the Commission should consider a wide range of benefits and balance those against the costs to decide if there is truly a public benefit. The Commission should consider all factors in determining “public need” and also consider all reasonable alternatives to meet any potential need including alternative sources of energy at end use, using existing pipelines and other natural gas infrastructure that has capacity, use of seasonal storage to augment peak demand periods, addressing leaks and specific constrictions or bottlenecks, and, making market changes that impact demand. FERC must ensure that any identified “capacity problems” are in fact physical constraints and not merely “market design problems.”

During the NED project, we pointed to the two underutilized LNG “energy bridges” that had been approved by FERC and built off shore of Massachusetts. Their use in the winter of 2014-15 avoided the gas capacity shortfalls that the region experienced in the previous and milder 2013-14 winter. ISO New England’s 2013-14 Reliability Program did not allow electric generators to buy LNG capacity during the winter months. ISO New England ignored its responsibility to ratepayers by using the Reliability Program to make an artificial case for more gas pipeline capacity: “compensating natural gas resources for incremental [liquefied] natural gas could reduce opportunity costs, and thus wholesale electric prices, at times of high natural gas demand, thereby sending the wrong signal during times of natural gas scarcity.”<http://commonwealthmagazine.org/environment/gordon-van-welie-do-your-job/> Due partly to public attention to this market manipulation, ISO New England changed the 2014-15 Reliability Program to allow LNG contracts. The following winter (2014-15) wholesale electric prices were 43% lower than the previous year despite that the fact that the 2014-15 winter was colder than the previous (2013-14).

Kinder Morgan and other pipeline proponents continued to use the 2013-14 winter energy cost as a basis for their claim for new pipeline capacity need. They claimed that New England's constricted pipeline capacity

caused the high winter peaks on certain days. However, the following graph shows the same winter 2013-2014 price spike as experienced in New England also occurred in Pennsylvania in the middle of the Marcellus Shale where there is plenty of gas.

Pennsylvania Natural Gas Price Sold to Electric Power Consumers



 Source: U.S. Energy Information Administration

In determining costs and benefits, FERC must include climate impacts. As Commissioner Glick stated in March 2018, “Climate change is the single most significant threat to humanity, fundamentally threatening our environment, economy, national security and human health.” (<https://www.ferc.gov/media/statements-speeches/glick/2018/03-14-18-glick.asp#.W1dj4dhKj-Z>)

Scientifically tested tools to calculate emissions are readily available as are tools to monetize environmental impacts such as the Social Cost of Carbon and the Social Cost of Methane. FERC must incorporate their use into the public interest analysis. In the case of greenfield pipelines, FERC should also include the climate impact of cutting mature forests. Any perceived public benefits in abstract without comparison to societal cost is truly meaningless.

A3. Currently, the Commission considers precedent agreements, whereby entities intending to be shippers on the contemplated pipeline commit contractually to such shipments, to be strong evidence that there is a public need for a proposed project. If the Commission were to look beyond precedent agreements, what types of additional or alternative evidence should the Commission examine to determine project need? What would such evidence provide that cannot be determined with precedent agreements alone? How should the Commission assess such evidence? Is there any heightened litigation risk or other risk that could result from any broadening of the scope of evidence the Commission considers during a certificate proceeding? If so, how should the Commission safeguard against or otherwise address such risks?

A3. FERC must go beyond precedent agreements in determining project need. The use of precedent agreements to satisfy the need argument presents a distorted view of the energy market. Demonstration of a potentially profitable transaction between two or more un-regulated or under-regulated entities is a poor surrogate for a demonstration of need.

FERC's public interest determination must balance any proposed public benefits with costs including its impact to landowners and local communities. As described in A1, these determinations must be open to public review and challenge including use of Adjudicatory Hearings. The current method of using confidential precedent agreements is not only inadequate, it erodes public confidence since so much is redacted and out of the public view. This reinforces the public perception that the system is rigged. It seemed that FERC considered any expansion of the gas market in the public interest. If the Commission is making a determination on what is in the public interest, then the public needs to participate. Again, it is important to point out that FERC's mission is to : "Assist consumers in obtaining reliable, efficient, and sustainable energy services at a reasonable cost through appropriate regulatory and market means." (source: <https://www.ferc.gov/about/strat-docs/strat-plan.asp>). It does not say, "expand natural gas infrastructure at any cost."

Rather than use precedent agreements, FERC could take a regional approach to need. The public need is for "reliable, efficient and sustainable energy services at a reasonable cost" (FERC mission). Every region of the country has different economic, environmental and energy needs that must be balanced. FERC already is used to regional planning on the electric side with it's reliance on Independent System Operators (ISO) and Regional Transmission Organizations (RTO). An integrated regional approach involving ISO, RTO, state officials and Local Distribution Companies (LDC) could assess the energy needs of the region to determine how much, if any, capacity is needed. This process would take into account all state and regional policies affecting market trends as well as alternative energy sources. FERC would consider the capacity of all existing and proposed pipelines that would serve the area. If this consideration showed a demand for increased capacity, FERC should prioritize upgrades to pre-existing gas pipeline routes over new greenfield projects. FERC could then issue an RFP to meet any specific need for increased natural gas transportation and/or storage capacity. The respondents would make their case on who can provide the capacity with the least environmental and economic cost.

During the NED project review, we saw a rush of proposed pipelines to satisfy the same, questionable, market demand. FERC was reviewing each of these pipelines individually. FERC did not respond to requests to consider the projects together even though the projects were likely to be mutually exclusive. A more comprehensive review of all the projects competing to meet a clearly defined need can help avoid overbuilding.

A4. Should the Commission consider distinguishing between precedent agreements with affiliates and non-affiliates in considering the need for a proposed project? If so, how?

A4. FERC must differentiate between precedent agreements with affiliates and non-affiliates. Affiliate precedent agreements should require a deeper review of market need. While the energy industry may now be too integrated to forbid precedent agreements from affiliates with financial interests in the proposed project, FERC could require Adjudicatory Hearings on need for affiliate projects. This would allow the public an opportunity to corroborate the evidence of need.

A5. Should the Commission consider whether there are specific provisions or characteristics of the precedent agreements that the Commission should more closely review in considering the need for a proposed project? For example, should the term of the precedent agreement have any bearing on the Commission's consideration of need or should the Commission consider whether the contracts are subject to state review?

A5. Any state review and approval of precedent agreements should happen before FERC reviews the project.

A6. In its determinations regarding project need, should the Commission consider the intended or expected end use of the natural gas? Would consideration of end uses better inform the Commission's determination regarding whether there is a need for the project? What are the challenges to determining the ultimate end use of the new capacity a shipper is contracting for? How could such challenges be overcome?

A6. The Commission must consider the end use of the natural gas. Export of gas may be very profitable for the gas companies but it is **not** a public need. Eminent domain authority should not be granted for pipelines transporting gas to the export market but instead should be reserved for cases of clear domestic necessity. Increasing exports of gas will increase the cost to national consumers. Thus the burden of proof of project need must be much more compelling.

The proposed overbuilding of pipeline capacity in New England appeared to be a thinly veiled effort to transport gas through New England to export facilities in Canada. It took months and years for that truth to emerge. Kinder Morgan and the Coalition to Lower Energy Cost, an organization started by one of Kinder Morgan's corporate lobbyists, traveled around New England saying that increased pipeline capacity into New England would lower natural gas prices and electricity rates. They didn't talk about the economic impacts of their business plan to transport gas for export through New England to Nova Scotia and then overseas.

Kinder Morgan kept the export issue quiet as they lobbied for project support locally, while at the same time they signalled their investors that they are ready to serve the export market. When asked about exports at public meetings, Kinder Morgan repeatedly said it has no contracts with export customers. Yet, in 2015, its website told investors, *"There are currently four proposed LNG export projects in Atlantic Canada and one LNG export project in northern Maine that could find capacity on the NED Project useful to serve their proposed LNG export facilities."*

As an open access pipeline, NED would have allowed anyone to purchase capacity without regard for its eventual use. At a NED pipeline open house in Northfield, MA in October 2015, Kinder Morgan's Director of Business Development, Curtis Cole, admitted Kinder Morgan was talking with several LNG exporters about purchasing capacity on NED. He specifically mentioned Pieridae Energy and Repsol, among others. On February 4, 2016, the U.S. Department of Energy gave approval for Pieridae's and Repsol's two Canadian LNG facilities, to receive 1.5 Bcf/day of U.S. natural gas from New England via the Maritimes and Northeast (M&N) pipeline for re-export. This was almost double the current capacity of M&N, and is close to 40 percent of the capacity of all gas pipelines now serving New England.

Gas exports matter to New England and to US energy consumers. Currently, the international price for natural gas is much higher than the natural gas price here in the states. **The Macroeconomic Impact of Increasing U.S. LNG Exports**, an October 2015 Department of Energy report, predicted that increasing exports of U.S. natural gas will level the price differential: *"In every case, greater LNG exports raise domestic prices and lower prices internationally."* With increasing exports, only the natural gas industry benefits. American manufacturers and consumers will suffer increased costs.

The Industrial Energy Consumers of America (ICEA), a manufacturing organization representing companies with more than 2,900 facilities nationwide and \$1 trillion in annual sales, opposed the rapid increase in natural gas exports. In addition to causing U.S. gas prices to rise, they know exports will also accelerate the consumption of a finite domestic resource, greatly impacting the viability of the businesses they represent. In testimony before Congress in January 2016, ICEA President Paul Cicio called LNG exports a "failed public policy." Cicio explained that exports are not in the public interest because they will cause the domestic price of natural gas and natural-gas fired electricity to rise dramatically. He also points out that there are more jobs created when natural gas produced in U.S. is consumed by U.S. manufacturers rather than exported. *"Consuming the natural gas in the manufacturing sector increases GDP by two and increases 8 times more jobs (over 4 times more the construction jobs),"* according to Cicio.

Kinder Morgan hoped people wouldn't connect the dots to the export market as they asked FERC for eminent domain authority to push a new over-sized pipeline through Massachusetts and New Hampshire. Rates of return for pipelines authorized by FERC are typically at least 10-12% per year range. Kinder Morgan's \$5 billion NED pipeline investment could have earned Kinder Morgan a guaranteed return of \$500-\$600 million annually. No wonder Kinder Morgan and their partner, the Coalition to Lower Energy Costs, spent close to \$900,000 to lobby officials in Massachusetts in 2015. The lobbying costs were a small investment to better sell their "low energy cost" myth without revealing the truth about increased costs due to exports.

A7. Should the Commission consider requiring additional or alternative evidence of need for different end uses? What would be the effect on pipeline companies, consumers, gas prices, and competition? Examples of end uses could include: LDC contracts to serve domestic use; contracts with marketers to move gas from a production area to a liquid trading point; contracts for transporting gas to an export facility; projects for reliability and/or resilience; and contracts for electric generating resources.

A7. The evidence of need for different end uses would be incorporated into the regional planning method described above in the response to A3. Each region of the country would have its own specific characteristics to consider.

A8. How should the Commission take into account that end uses for gas may not be permanent and may change over time?

A8. Commission must take into account end uses that are not permanent particularly when the proposed project will result in permanent loss of critical forested habitat. The duration as well as the volume of any shorter term needs may be better served with shorter term solutions. such as small increases in existing pipelines, increased use of existing underutilized offshore LNG terminals, increasing local LNG storage to cover short-term peak demands, and increased use of energy efficiency measures. Other solutions may be more viable and cost-effective than massive new infrastructure projects that make long-term impacts on natural resources and communities.

A9. Should the Commission assess need differently if multiple pipeline applications to provide service in the same geographic area are pending before the Commission? For example, should the Commission consider a regional approach to a needs determination if there are multiple pipeline applications pending for the same geographic area? Should the Commission change the way it considers the impact of a new project on competing existing pipeline systems or their captive shippers? If so, what would that analysis look like in practice?

A9. Yes, the Commission must assess multiple pipeline applications servicing the same geographic area together. The process outlined in response to A3 provides a way to consider regional needs. FERC would then put out an RFP or call an Open Season to determine which proposals could provide the need for the lowest cost and with the least impact.

A10. Should the Commission consider adjusting its assessment of need to examine (1) if existing infrastructure can accommodate a proposed project (beyond the system alternatives analysis examined in the Commission's environmental review); (2) if demand in a new project's markets will materialize; or (3) if reliance on other energy sources to meet future demand for electricity generation would impact gas projects designed to supply gas-fired generators? If so, how?

A10. FERC must adjust its assessment of need to include a determination of the capabilities of existing infrastructure to satisfy the need as well as to assess whether project's market (including the demands on the future electric market) will materialize. The process described in the responses to A2 and A3 above describe how this could work. Additionally the use of an inclusive public process including the Adjudicatory process described in A1 will help ensure that the public has confidence in the decision-making. FERC could consider significant procedural advantages (streamlining) for projects that incrementally expand or enhance existing infrastructure as opposed to new greenfield solutions.

B. Exercise of Eminent Domain and Landowner Interests

B1. Should the Commission consider adjusting its consideration of the potential exercise of eminent domain in reviewing project applications? If so, how should the Commission adjust its approach?

B1. The Commission needs to take great care in wielding its power to exercise eminent domain. Some FERC actions have created resentments around the takings issue particularly when project need has not been clearly demonstrated in an open and transparent process. This includes issuing of conditional certificates, granting notices to proceed without state and local approvals and using tolling orders to preclude timely rehearings.

It was both heartbreaking and infuriating to see Williams Company needlessly cut down a Pennsylvania family's mature sugarbush stand for the Constitution Pipeline that was never built because the company was not able to secure the necessary state permits. (<https://stateimpact.npr.org/pennsylvania/2016/03/11/williams-delays-construction-of-constitution-pipeline/>).

Any taking of private lands must truly be for a true public need and not just for the convenience and profit of a private corporation. We did not have good experiences with representatives for the NED project. Agents used strong-armed tactics telling residents that they should provide access because FERC would force it at the end. Agents told landowners that they would be able to make better deals now than after FERC granted eminent domain access. Lawyers we talked to indicated otherwise.

During the project review, proponents use access for survey permission as a surrogate for approval to access the property for construction. This is why we and many others would not grant permission to survey to Kinder Morgan's NED project. Although we understood that FERC would have liked us to provide access to get baseline data, we did not provide access as a show to Kinder Morgan and FERC that eminent domain proceedings would be likely and would be challenged.

Six months into the pre-filing period for the NED project, the proposed route for a 12-inch lateral moved onto our property. The Kinder Morgan land agent and engineer who met with us indicated that the move was necessary to avoid crossing some state-owned land. Their plan was to cut an almost 100 foot wide swath across 1/2 mile of forested portions of seven private parcels that were entirely in a state-designated Area of Critical Environmental Concern and contained mapped protected species habitat. This would have involved permanently removing trees atop an esker, which provided essential shade to the cold water fishery that runs along the base of the esker. We and our neighbors asked if the pipeline could run down the town road instead. We were told that wouldn't do that because placing the pipeline in the road would require a higher class pipe. Our requested alternative to route the lateral down the public road never appeared on alternative analyses in subsequent reports even though it was a viable alternative with substantial environmental and construction advantages. Public convenience and necessity had appeared to be replaced by project proponent's convenience.

B2. Should applicants take additional measures to minimize the use of eminent domain? If so, what should such measures be? How would that affect a project's overall costs? How could such a requirement affect an applicant's ability to adjust a proposed route based on public input received during the Commission's project review?

B2. FERC must take all measures possible to limit eminent domain takings to a last resort when the need for a project is clear. There should not be eminent domain for corporate gain or corporate convenience. No eminent domain authority should be granted for export capacity. Any eminent domain authority for natural gas projects should be to serve only domestic needs.

FERC should send project proponents a clear signal that eminent domain powers will be exercised rarely. Proponents will have then have the incentive to site projects in already existing rights-of-way and corridors.

The NED project was a prime example of the misuse of the FERC process by a project proponent. Rather than expand its existing and aging 200 pipeline in its existing right-of-way, Kinder Morgan proposed to cut a new greenfield pipeline across Massachusetts and New Hampshire.

If FERC used a regional perspective to address need as described in responses to A2 and A3, a next step in the comparison of projects offering to meet that need could be a quantification of the new easements that would be required and how many are likely to involve the eminent domain process. While current landowner survey permission (or more specifically, lack thereof) may be used as a surrogate indicator of the number of eminent domain takings expected, it is important to note that landowners granting of survey permission does not mean they support the project and will grant an access without eminent domain takings.

B3. For proposed projects that will potentially require the exercise of eminent domain, should the Commission consider changing how it balances the potential use of eminent domain against the showing of need for the project? Since the amount of eminent domain used cannot be established with certainty until after a Commission order is issued, is it possible for the Commission to reliably estimate the amount of eminent domain a proposed project may use such that the Commission could use that information during the consideration of an application?

B3. FERC should limit its use of private or public lands and the use eminent domain authority to these projects that truly meet a public need. Proponents should be encouraged to use existing rights-of-way and roadways. Additionally, FERC should require that ALL local, state and Federal permits be in place before eminent domain authority is granted. In a regional-solution approach, a key selection criteria FERC should apply in evaluating competing proposals is the percentage of the route “under agreement.”

B4. Does the Commission’s current certificate process adequately take landowner interests into account? Are there steps that applicants and the Commission should implement to better take landowner interests into account and encourage landowner participation in the process? If so, what should the steps be?

B4. The Commission’s current certificate process seems to be clearly stacked against landowner interests and in favor of project proponents. Project proponents have teams of agents and consultants working overtime while land-owners are trying desperately to learn as much as they can about the project and process while also balancing their own personal work and family lives. As described above, some of the strong-armed tactics make it even more stressful for landowners. FERC must make it clear to proponents that they should not use these threatening tactics.

FERC can help level the playing field by providing funding to landowners to hire their own consultants to help in project review. Technical Assistance Grants (TAG) could be funded by the project proponent and available to groups of landowners municipalities and regional planning agencies to use for staffing and consultants to assist land owners and to peer review the information provided by the applicant. This could be modeled after the the EPA Brownfields TAG program. As described in A1 above, affected landowners and communities must also be allowed to have real input into the need determination.

The creation and funding of a FERC Office of Public Participation can also help ensure that all stakeholders have the skills and resources to participate in FERC proceedings.

B5. Should the Commission reconsider how it addresses applications where the applicant is unable to access portions of the right-of-way? Should the Commission consider changes in how it considers environmental information gathered after an order authorizing a project is issued?

B5. Project proponents do not need to access rights-of-way until the detailed permitting process. During the pre-filing and initial application process, project proponents could complete robust alternatives analyses using most recent GIS information. This level of detail could be all that FERC needs to make the need and public benefit determination. Only following this should FERC compel survey access permission. The FERC certificate issued in this case would be subject to the proponent receiving all the necessary permits. Eminent domain authority should not be granted until all permits are received.

FERC Project proponents do need to provide clear, factual and accurate mapping of the proposed route including political boundaries, roads, public and protected lands, critical natural resource areas (water supplies, wetlands and watercourses, prime farmland, protected forest land, critical habitat areas), and known and potential historical and cultural resources. Applicants need to notify communities and landowners about proposed projects and subsequent route changes. FERC needs to hold proponents accountable.

C. Consideration of Environmental Impacts

C1. NEPA and its implementing regulations require an agency to consider reasonable alternatives to the proposed action. Currently the Commission considers the no-action alternative, system alternatives, design alternatives, and route alternatives. Should the Commission consider broadening its environmental analysis to consider alternatives beyond those that are currently included? If so, what specific types of additional alternatives should the Commission consider?

C1. FERC needs to ensure that project proponents are truly and fairly considering all alternatives to the project. This includes those such as alternatives and improvements that may not be in the direct purview of FERC. Using a regional approach to identify needs as described in Section A is one way to accomplish this goal.

As described in Section A, the Commission must also consider climate change in their decision making at the point of the need and public benefit determination. Climate change is the most serious energy and environmental issue of our times and the action on climate is overdue. The science is clear. The current administration is failing the American people on this issue. In some ways FERC has more power to address energy issues than even the President. It's long past time that FERC use its power to address the climate issue.

FERC could begin by taking State and Regional Energy and Climate Action Plans and any US Energy and Climate Policy into account when considering approval of infrastructure that will add GHG emissions. PL18-1 seems to argue for FERC to be reluctant to act on environmental issues including climate. The Commission must realize that climate change is not just an environmental issue, it is an issue that affects our economy, health and national security. **Climate change is the ultimate public inconvenience.**

As described in A2, FERC must begin to use upstream and downstream climate impacts in the Public Need and Public Benefit determinations. Tools such as the Social Cost of Carbon and the Social Cost of Methane exist and are being continually refined to help in this analysis. FERC could begin to use these tools while refining these models or developing their own through a public process. FERC's failure to address the climate issue reinforces a widely held public belief that FERC is merely an arm of the Federal Government catering to the desires of the fossil fuel industry.

C2. Are there any environmental impacts that the Commission does not currently consider in its cumulative impact analysis that could be captured with a broader regional evaluation? If so, how broadly should regions be defined (e.g., which states or geographic boundaries best define different regions), and which environmental resources considered in NEPA would be affected on a larger, regional scale?

C2. FERC should consider doing two broader levels of Environmental Impact Analyses. A National Programmatic Environmental Impact Statement could consider the programmatic impacts of Natural Gas Infrastructure. In December 2014, the Council on Environmental Quality issued guidance on the use of Programmatic environmental reviews:

Programmatic NEPA reviews provide an opportunity for agencies to incorporate comprehensive mitigation planning, best management practices, and standard operating procedures, as well as monitoring strategies into the Federal policymaking process at a broad or strategic level. These analyses can promote sustainability and allow Federal agencies to advance the nation's environmental policy as articulated in Section 101 of NEPA. (December 2014 CEQ Guidance, p. 35)

With a National programmatic review, FERC may be able to develop Best Management design, management and operating strategies which could be used across the industry, thus limiting the review time on specific projects. On a regional basis, FERC should use consolidated reviews to assess the impacts of competing regional projects.

During the NED review, FERC had recently approved or was currently reviewing at least seven proposals from three different companies to increase natural gas infrastructure in New England. Added together, these projects would have almost doubled the gas supply to New England at a time when the federal and state policies are demanding that we greatly reduce our consumption of fossil fuels to address the significant threats to the region from climate change. Many of the interventions and scoping comments requested FERC undertake a programmatic or consolidated review of these various pipeline proposals. The issue was raised again formally in the intervention process by individuals and organizations including the Conservation Law Foundation, Natural Resources Defense Council, and the New Hampshire Municipal Pipeline Coalition (a group representing more than 160,000 residents in 18 communities).

A decision on multiple projects that are “**temporally or spatially connected**” is one example provided in the CEQ Guidance on Programmatic Review cited previously. In a November 25, 2015 letter to U.S. Rep. Bob Goodlatte, Chairman Bay denied a request for a PEIS for several proposed pipelines in the Appalachian region of Virginia:

Because the Commission does not direct the development of the gas industry's infrastructure, either on a broad regional basis or in the design of specific projects, and does not engage in regional planning that would result in the selection of one project over another, the Commission has determined that it would not be appropriate to prepare a programmatic environmental impact statement (EIS).

In a follow-up article in Charlottesville, VA, The Daily Progress, FERC spokesperson Tamara Young Allen indicated that FERC had never done such an analysis.

The commission "does not engage in regional planning exercises that would result in the selection of one project over another," she said. Instead, FERC's policy has been to "allow market forces to influence where projects would be situated," she said.

http://www.dailyprogress.com/news/local/ferc-chairman-rejects-overarching-review-of-pipeline-projects/article_fc4d1032-9ecf-11e5-8ff9-5bf089490039.html

It is hard to believe that almost 50 years after the National Environmental Policy Act became law, FERC believes “market forces” rather than environmental concerns should dictate which pipeline projects are appropriate. FERC appears willing to allow pipeline companies to cut thousands of acres of new rights of way, and take hundreds of properties by eminent domain based on the company's belief that the projects may be successful. Will these pipelines be the 21st century equivalent to the overbuilding and abandonment of the railroads in the early 20th century? We know better and so should FERC. It is FERC's job to make sure that pipeline capacity is not overbuilt. It is also FERC's responsibility to comply with Section 101 of the National Environmental Policy Act which requires agencies to:

“use all practicable means and measures, including financial and technical assistance, in a manner calculated to foster and promote the general welfare, to create and maintain conditions under which man and nature can exist in productive harmony, and fulfill the social, economic, and other requirements of present and future generations of Americans.”

The pipeline construction boom proposed for New England was unprecedented. So is the very real and substantial threat of impacts of climate change on our region. The use of a PEIS process is one “practicable means” to make sure that the proposed natural gas infrastructure projects do not impact our nation's ability to keep climate warming well below the 2 degree Celsius target.

C3. In conducting an analysis of a project, should the Commission consider calculating the potential GHG emissions from upstream activities (e.g., the drilling of natural gas wells)? What information would be necessary for the Commission to

reliably and accurately conduct this calculation? Should the Commission also evaluate the significance of these upstream impacts? If so, what criteria would be used to determine the significance of these impacts?

C4. In conducting an analysis of a project, should the Commission consider calculating the potential GHG emissions from the downstream consumption of the gas? If so, should the Commission base this calculation on total consumption, or some other amount? What information would be necessary for the Commission to reliably and accurately conduct this calculation? Should the Commission also evaluate the significance of these downstream impacts? If so, what criteria would be used to determine the significance of these impacts?

C5. *How would additional information related to the GHG impacts upstream or downstream of a proposed project inform the Commission's decision on an application? What topics or criteria should be included in this additional information?*

C3. C4. C5. FERC should consider upstream (drilling and production) and downstream impacts (burning) during the economic analysis in the Public Need determination. This analysis should include all direct (leaks, venting of pipeline) and indirect impacts (leaks, venting in production process) in upstream and downstream processes.

As described in Section A, and C1, there are scientifically tested tools FERC can use.

In the environmental analysis, FERC needs to take into account how climate change will affect the construction, operation and maintenance of proposed facilities such as impacts of increased flooding risk impacting wetland crossings.

C6. *As part of the Commission's public interest determination, should the Commission consider changing how it weighs a proposed project's adverse environmental impacts against favorable economic benefits to determine whether the proposed project is required by the public convenience and necessity and still provide regulatory certainty to stakeholders?*

C6. As described above, FERC must begin to consider climate impacts in weighing the proposed projects impacts against the possible benefits. FERC can address the issue of regulatory certainty by making this practice known to all stakeholders (project proponents, affected landowners and communities and other interests groups). Using readily available and scientifically tested tools such as the EPA emission factors and Social Costs of Carbon and Social Cost of Methane tools will allow potential applicants to test their need case before submitting a request for pre-filing or application to FERC.

C7. *Should the Commission reconsider how it uses the Social Cost of Carbon tool in its environmental review of a proposed project? How could the Commission use the Social Cost of Carbon tool in its weighing of the costs versus benefits of a proposed project? How could the Commission acquire complete information to appropriately quantify all of the monetized costs/negative impacts and monetized benefits of a proposed project?*

C7. The Commission must begin to use the Social Cost of Carbon and the Social Cost of Methane in their review of proposed projects. As described above this analysis should occur in the determination of public need.

D. Improvements in Efficiency of the Review Process

D1. *Should certain aspects of the Commission's application review process (i.e., pre-filing, post-filing, and post-order-issuance) be shortened, performed concurrently with other activities, or eliminated, to make the overall process more efficient? If so, what specific changes could the Commission consider implementing?*

D2. *Should the Commission consider changes to the pre-filing process? How can the Commission ensure the most effective participation by interested stakeholders during the pre-filing process and how would any such changes affect the implementation and duration of the pre-filing process?*

D1. D2. FERC should more proactively manage the pre-filing processes. They should not accept incomplete applications or requests to use the pre-filing process. FERC should not accept incomplete Resource Reports and should hold project proponents accountable for information requests and timetables.

During the NED project, FERC seemed unfazed by Kinder Morgan's (KM) obvious abuse of the pre-filing process, which KM used to simultaneously conceptually plan its project in parallel with the FERC approval process, as outlined here:

- KM launched its NED process with unannounced home visits and misleading information, leaving local officials out of the process, and ignoring FERC's suggested best practices for stakeholder engagement. We learned after the fact that KM had been privately planning the route for at least the previous two years.
- FERC accepted KM's spotty pre-filing information, which used topographic maps from the 1980's, and failed to specify landowners within the ½ mile of planned compressor stations as required. FERC defended the lack of transparency because the pre-filing process was "voluntary."
- Less than one month after pre-filing, KM substantially modified its market path, moving 70+ miles of pipeline north from Massachusetts into New Hampshire, affecting hundreds of new landowners, and thousands of new stakeholders. FERC did not require KM to refile.
- Kinder Morgan touted that its new route used primarily existing rights of way. In truth, it used a new corridor alongside an existing power-line easement destroying the natural buffers that screened landowners already subject to the easement. FERC allowed Kinder Morgan to misrepresent the truth.
- FERC made formal requests to Kinder Morgan for more pre-filing information in February 2015, and again in May. Kinder Morgan released reports in May 2105 still filled with "TBD" (to be determined) in places where FERC had requested information. Even in the absence of the information requested, FERC scheduled scoping sessions, the next step of the pre-filing process.
- Pre-filing regulations specify that the applicant must respond to all issues raised at scoping sessions within 14 days of the end of the scoping comment period. Kinder Morgan provided NO responses by October 15, the required time, releasing its first responses with its formal application on November 20.

As the process moved forward, it was apparent that FERC was not running the process, but rather that Kinder Morgan was running FERC.

- Despite KM's failure to adhere to the basic provisions of the pre-filing process, KM filed its application on November 20, 2015. FERC ignored its own previous requests for information and accepted it as complete on December 7.
- On December 21, Kinder Morgan filed what they represented as their final set of responses to scoping comments, but was selective about which comments to address. FERC did not require KM to respond to comments as FERC regulations require.
- Kinder Morgan's incomplete November application once again included changes to routes and compressor station locations, introducing yet another round of stakeholders into the process at this late date. On December 21, KM requested a waiver of landowner notification because it had failed to notify some stakeholders. As of April 2016, FERC has not acted on their request.
- Congresswoman Niki Tsongas, who represents the landowners not noticed, sent FERC a request on February 11, 2016 requesting an extension of the intervention period to accommodate them in the standard process. FERC denied this request on April 7.

- On December 30, 2015, KM submitted a filing indicating its application would be updated with new information in April 2016, five months after it was presented as “complete.” The project schedule remained unchanged, with KM calling on FERC staff and consultants to complete a draft and final EIR and award them a certificate on KM’s schedule in 4Q 2106.

PL18-1 refers to Executive Order 13807 which encourages agencies to make decisions on major infrastructure projects within 2 years. The Order seems to suggest that agencies are taking too long to review projects. In the NED experience, the project proponent submitted incomplete materials but still expected the agencies to act in a timeline that assumed the application was complete. FERC needs to hold project proponents accountable and not begin project reviews until complete applications are submitted. To do otherwise, penalizes the other project stakeholders and erodes public trust.

In the NED project case, the project consumed significant time, energy and resources of local stakeholders from the moment Kinder Morgan began knocking on the doors of residents in December 2013 to its suspension of work on the project in April 2016. FERC Commission staff were significantly involved beginning in September 2014. KM wasted significant public resources (time spent by local, state and federal officials) reviewing a proposed project that was ill-conceived, poorly executed, and never viable. The project failed because KM did not plan the project well and did not have a market. There was no need for this pipeline as clearly demonstrated by KM’s failure to secure customers for a project that FERC appeared poised to conclude was needed. If FERC had held KM accountable for a complete intent to pre-file and a complete application, public resources would have been saved. KM made a mockery of the profiling process. They did not appear to be genuinely open to sharing their project information with the public as illustrated by their failure to address comments and questions raised. FERC’s unwillingness to hold KM accountable added to the public perception that FERC is “in bed” with the industry it is supposed to regulate.

FERC should consider revising the Pre-filing process to use it to better address the issue of public need and public benefit. The pre-filing process could be used to for public input on the regional approaches to need determination discussed in Section A. FERC could also require the pre-filing process for large mostly greenfield projects to better understand alternative and scoping needs.

D3. Are there ways for the Commission to work more efficiently and effectively with other agencies, federal and state, that have a role in the certificate review process? If so, how?

My perception during the KM pre-filing process was that agencies and FERC staff worked together well. It was KM’s reluctance to share the information that agencies requested in a timely manner that was the bottle-neck. FERC could help in the future by holding project proponents accountable for complete applications and then to address information needs in a timely matter. When I asked FERC officials why they were not holding KM more accountable, their most frequent response was that since the pre-filing process was an “optional” process for pipelines, FERC had no power to hold proponents accountable. Perhaps FERC can address this by making the pre-filing process a requirement for larger and more complicated projects, including those that are accessing new rights-of-way. FERC could set up timelines for updated reports, allowing adequate time (45-60 days) for stakeholder review. Project proponents who fail to meet the timelines would be considered “on hold” until the information is provided.

PL18-1 does not ask how FERC can use the process to more effectively deal with stakeholder involvement. As discussed in Section C, FERC should consider implementing Technical Assistance Grants and establishing a FERC office of Public Participation.

In addition the FERC Website should be updated to allow for quicker search and downloading of materials. FERC might consider adding more time and resources for projects affecting communities that do not have high speed internet access.

FERC's communication technology gives no consideration to the important role of the public. Its website is not designed for ease of public access. It is bulky, cumbersome, and prone to crashes. It does not allow for simple searching, browsing and selection. It makes no provision for people with low internet speed. Incredibly, the FERC website was down without public notice for 2 holiday weekends in 2015-2016 when the public was anxious to meet the January 6 intervention deadline for NED.

D4. Are there classes of projects that should appropriately be subject to a shortened process? What would the shortened process entail?

A Programmatic EIS could identify classes of projects that may be subject to a shortened process. This might include replacement or small incremental expansions of infrastructure that use but do not expand existing rights-of-way. Perhaps a requirement that the same class pipe be used in all areas would discourage project proponents from using greenfield routes.

As I alluded to previously, FERC has more power than the President in its assigned realm. Although most Americans aren't even aware of its existence, the decisions FERC makes today, with essentially no oversight, have significant implications for the American people for years to come. FERC actions to enable unbridled markets for natural gas will have far-reaching effects on climate change, national security, and the country's fossil fuel reserves. FERC's decisions, made without public review, could arguably increase the price of energy in America in the wake of natural gas exports, thwart emerging conservation and renewable energy technologies, and institutionalize the practice of taking private land by eminent domain for corporate gain.

I sincerely hope that FERC will use this PL18-1 review as an opportunity to rethink its role and begin to use its authority to more proactively advocate for the public interest. FERC is supposed to work for us, the people of the United States. Thank you for the opportunity to submit these comments.

Sincerely,

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