

***July 25, Deadline for Comments on FERC's Pipeline Review Process!***  
**The Federal Energy Regulatory Commission (FERC) is accepting input on its decades-old approach for evaluating proposals for gas pipelines, like the ACP**

*Here are some specific points you might wish to make. We encourage you to choose those that you care most about, then put those in your own words and rearrange them, so your comments will be unique!*

A. FERC must carry out a full and comprehensive implementation of the National Environmental Policy Act, including assessment of climate change Impacts; upstream drilling and fracking operations; health and safety Impacts; a comprehensive community, economic and environmental impacts; including a critical “hard look” at data provided by the parties to benefit from the pipeline construction.

B. FERC must avoid motivating the building of unneeded pipelines by reducing the maximum return on investment allowed of 14% for “greenfield” pipeline projects to one typically approved by state utilities commissions, in order to remove the extreme incentive to construct pipelines that are not needed and not in the public interest.

C. FERC must be prohibited from issuing Certifications of Public Convenience and Necessity or Notices to Proceed with any aspect of construction, and exercise of Eminent Domain until the project has full approval of all required state and federal permits. This Includes a prohibition on conditional FERC Certificates, where no separate enforcement ensures those conditions will be implemented.

D. FERC must either affirmatively grant or deny Petitions for Rehearing of a pipeline approval within three months of filing of a petition, rather than issuing responses that indefinitely extend the time for consideration (ie, “tolling orders”) , which allow construction to move forward and Eminent Domain to take control of land, while preventing pipeline opponents from taking court action against a decision that is still considered legally “not a final deciaion.”

E. FERC must prevent serious conflicts of interest in the preparation and review of environmental documents by avoiding the hiring of “third party” consultants who have previous or concurrent contracts with a pipeline company seeking approval for a project. In addition, FERC Commissioners or FERC Staff must not be allowed to work on or participate in any decisions about any infrastructure project in which they or a family member has any direct or indirect financial or employment interest.

F. The Commission must supplement its environmental documents as required by Federal statutes, implementing regulations, and guidance documents. The applications for pipeline projects are often supplemented over a dozen times after the comment period on the DEIS has ended, after the Final Environmental Impact Statement (“FEIS”) is issued, and even after the Commission has issued a Certificate of Necessity and Convenience! The Commission has made unsupported assertions that the additional information was “not significant” and did not cause the Commission to make changes to the project. However, this failure to incorporate new information into supplemental statements fails to meet the legal standard.

The Commission must allow the full investigation of the environmental risks and costs associated with the ACP, including all new and supplemental information. This requirement goes far beyond the “we didn’t change our mind” rationale often cited by the Commission. It is apparently the practice of some pipeline owners to frequently supplement an application without regard for orderly process and flaunting Commission and NEPA rules. This behavior has been condoned by the Commission in its failure to incorporate supplemental information and allow timely and transparent public review and comment. Further, the Final Environmental Impact Statement often reads almost identical to the Draft EIS, indicating that even detailed, substantive and well-documented comments have been ignored.

G. The Commission must establish clear and rigorous standards for documentation sufficient to justify the need for a pipeline project, consistent with its own Certificate Policy Statement.

In its needs determination, the Commission has relied almost completely on contracts for purchase of gas to be transmitted by a pipeline, or “precedent agreements” as evidence for determining market need. The Commission’s rationale for the need for the Atlantic Coast Pipeline Project is almost entirely based on affiliate transaction, where one or more of the owners of the Project are selling to themselves or an affiliate. This is contrary to the Commission’s own policy statement regarding new natural gas pipelines, which established a policy that allowed the applicant to demonstrate need relying on a variety of factors, including “environmental advantages of gas over other fuels, lower fuel costs, access to new supply sources or the connection of new supply to the interstate grid, the elimination of pipeline facility constraints, better service from access to competitive transportation options, and the need for an adequate pipeline infrastructure.” All of the above are positive factors tending to motivate project construction, but FERC’s analyses generally fail to include evaluation of negative factors. As Commissioner LaFleur noted in her dissent to the approval of the Atlantic Coast Pipeline, “the Commission’s implementation of the Certificate Policy Statement has focused more narrowly on the existence of precedent agreements,” which should be only a part of the overall consideration of actual need for a greenfield pipeline project.

The Commission’s current method of determining actual need for a pipeline fails to:

- compare the expressed need for the project to the “no action” alternative;
- rigorously explore or objectively evaluate reasonable alternatives;
- provide a higher level of scrutiny for “affiliate transactions”; and
- it condones the shifting of all economic risk from shareholders to ratepayers or other customers of the gas transmitted by the pipeline.

H. The Commission must establish and apply specific and valid standards for consideration of necessary state-issued permits and permissions.

The Commission's orders approving a Certificate of Necessity and Convenience are often conditional on future actions by state regulatory programs and approvals of various state-issued permits and approvals. The Commission's statement (below) in the order approving the Atlantic Coast Pipeline, for instance, regarding a state's jurisdiction, asserts a very broad and inappropriate range of Federal preemption over matters that clearly are within the various state jurisdictions.

"Any state or local permits issued with respect to the jurisdictional facilities authorized herein must be consistent with the conditions of this order. The Commission encourages cooperation between interstate pipelines and local authorities. However, this does not mean that state and local agencies, through application of state or local laws, may prohibit or unreasonably delay the construction or operation of facilities approved by this Commission."

The Commission can only issue a permit for a pipeline project contingent on the relevant state's decisions on water quality, erosion control, and, often crucial to a project, the air quality permit. Otherwise, the Commission must delay its final decision until the state has made final decisions on those types of permits.

I. The Commission in its Orders and supporting environmental documents must adequately assess reasonably foreseeable greenhouse gas emissions and climate change impacts from the Project. The application for given pipeline projects and the associated environmental documents, and the approval are often flawed as each discounts the greenhouse gas emissions and impact on the climate crisis from the proposed pipeline.

The Commission must consider the impacts on climate change as a result of the end-use consumption of the natural gas transported by the pipeline. Quantification of greenhouse gas impacts as compared to the no action alternative would permit the agency to compare the emissions from this project to emissions from other projects, to total emissions from the state or the region, or to regional or national emissions-control goals. Without such comparisons, it is difficult to see how FERC could engage in "informed decision making" with respect to the greenhouse-gas effects of this project, or how "informed public comment" could be possible.

J. The Commission's Environmental Justice Impacts Analysis must rigorously and consistently ascertain whether low-income, African-American, Native American households and communities will bear a disproportionate impact from the proposed pipeline, and employ methods that maximize sensitivity to detect such disproportionate impacts. For example, comparing the % people of color in the population within a mile of a project to the % people of color in the county where the project is located tends to minimize the apparent impact where County already has a high % people of color.

Executive Order 12898 requires that specified federal agencies make achieving environmental justice part of their missions by identifying and addressing, as appropriate, disproportionately high and adverse human or environmental health effects of their programs, policies, and activities on minorities and low income populations. The Commission is not one of the specified

agencies and the provisions of Executive Order 12898 are not binding on this Commission. Nonetheless, in accordance with our usual practice, the final EIS addresses this issue.

K. The Commission must include in its considerations all reasonable direct and indirect impacts and cumulative impacts, including the upstream and downstream impacts associated with gas development and compressor stations, to determine overall costs to the environment and the public, without arbitrary and undue weight placed on poorly documented anticipated economic benefits, when considering granting a Certificate. Further, it must specify methods and practices required to achieve adequate protection of natural resources, health and safety.

In addition to the environmental justice and climate impacts described above the Order fails to adequately consider all reasonable direct and indirect impacts and cumulative impacts, including those impacts associated with fracking gas development and compressor stations. In analyzing the potential impacts of its approval of the ACP, the Commission must consider the indirect effects of shale gas development. Indirect effects are “caused by the action and are later in time or farther removed in distance, but are still reasonably foreseeable. ... Indirect effects are defined broadly, to ‘include growth inducing effects and other effects related to induced changes in the pattern of land use, population density or growth rate, and related effects on air and water and other natural systems, including ecosystems