DELAWARE RIVERKEEPER NETWORK™

November 30, 2015

Senator Bernie Sanders
332 Dirksen Building
Washington, DC 20510
Fax: (202) 228-0776

1 Church Street, 3rd Floor
Burlington, VT 05401
Fax: (802) 860-6370

Senator Elizabeth Warren
317 Hart Senate Office Building
Washington, DC 20510
Fax: 202-228-2072

2400 JFK Federal Building
Boston, MA 01103

Dear Senator Sanders and Senator Warren,

We write to you seeking your assistance as key members of the Senate Committee on Energy and Natural Resources.

The Federal Energy Regulatory Commission (FERC) has become a rogue agency that is blatantly biased towards the pipeline companies it purports to regulate, and that is misusing legal loopholes and ignoring court orders to advance gas infrastructure projects while preventing the public from exercising their rights to judicial review or fair public participation in the process. License for FERC's abuse of power and blatant bias is provided by the agency's funding mechanism which makes it an agency funded 100% by the industry it regulates and is advanced by the revolving employee door that exists between FERC and its regulated community.

In the context of the Minerals Management Service we have already seen the serious consequences of what happens when a regulatory agency becomes a partner to, rather than a regulator of, the industry it is tasked with overseeing. An equally improper relationship has now developed at FERC, and this abuse of power and process must not continue unchecked.

We ask you to please request a review of the FERC by the Government Accountability Office (GAO).

There are four key areas that we think are particularly ripe for GAO consideration:

I. The funding mechanism which results in the Federal Energy Regulatory Commission being 100% funded by the industry it regulates has resulted in blatant bias in favor of pipeline companies and against the public, a skewed and high rate of pipeline approvals, and a low level oversight.

DELAWARE RIVERKEEPER NETWORK
925 Canal Street, Suite 3701
Bristol, PA 19007
Office: (215) 369-1188
fax: (215)369-1181
drn@delawareriverkeeper.org
www.delawareriverkeeper.org

II. The revolving door between employment with FERC and the industry it regulates contributes to agency bias in the project review and certification process, an unjustifiably high approval rate of proposed projects, and a lack of oversight and enforcement for FERC approved pipeline projects.

III. FERC abuses of law that deny the public their legal rights:
   a) use of "tolling orders" to allow projects to advance while denying citizens the ability to initiate an appeal in court;
   b) granting permission for pipeline companies to begin construction activity prior to the company securing all necessary permits and approvals;
   c) continued use of segmentation and the failure to undertake cumulative impact environmental reviews in blatant violation of the National Environmental Policy Act ("NEPA") and in disregard of a July 2014 court order and opinion from the D.C. Circuit;
   d) failure to comply with the requirements of NEPA, and instead using subjective judgment to pre-determine the level of environmental review for proposed projects.

IV. Allowing the taking of public and private land via eminent domain for projects that are demonstrably for private benefit as opposed to public purpose.

I. The funding mechanism which results in the Federal Energy Regulatory Commission being 100% funded by the industry it regulates has resulted in blatant bias in favor of pipeline companies and against the public, a skewed and high rate of pipeline approvals, and a low level oversight.

Per federal law, FERC is a uniquely self-financed agency that relies entirely on the industry it regulates for its whole budget. No other federal agency has a similar funding structure. [1]

FERC issues a volume based per-unit charge on the industry it regulates to cover all of its costs. This means that the way FERC's fees for the industry are structured, the more pipelines, gas delivery, and LNG facilities FERC approves the more fees it is able to collect for the self-inflating budget FERC creates to support its operations.

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 Congress and the legislative branch of government that no other independent federal agency enjoys. Of the twenty-seven other independent federal agencies, FERC is *the only agency* that is financially immune from the legislative branch for its budget.

FERC is simultaneously free from the oversight of the executive branch, as a result of the limitation of the President's removal power of 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." *See* 42 U.S. Code § 7171(b)(1).

FERC's wholly unique 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 entire 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.

Given that FERC's coffers are entirely reliant on the assessment and collection of annual charges to the industry it regulates, FERC cannot fairly preside over the review and approval process of proposed jurisdictional projects. This is especially true for natural gas pipeline projects, because the annual volume based charges on the pipeline industry alone comprises 20% of FERC's budget. This overwhelming and direct pecuniary interest of FERC in the outcome of its review process of natural gas pipeline projects creates a structural bias.

FERC's ability to self-fund, and therefore self-determine, its budget 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 $300 Million in 2014. A substantial portion of this budgetary boom occurred during a recessionary period that left other independent agencies reeling from budget slashes in the hundreds of millions of dollars.

FERC's growing budget demands can only be sustained by the agency approving an increasing number of infrastructure projects. In this context, FERC's funding structure has a PONZI scheme element to it. This is because FERC can tax the industry it regulates only so much, eventually, pipeline companies will lose the ability to pay. Therefore, FERC is subject to an absolute compulsion to approve a growing number of new pipeline projects, as the approval of new pipeline projects is the *only* way FERC can ultimately stay in business.

As a result, FERC is both tempted and compelled to make decisions in favor of pipeline companies.

Proof of FERC's extreme bias towards the industry it is supposed to be regulating lies in the historical record of companies seeking approval of projects before the FERC Commissioners. For example, according to Delaware Riverkeeper Network research, FERC has never in its entire history denied an application for a natural gas pipeline that was submitted for vote to the FERC Commissioners. There is not a single other federal agency that has a 100% approval rate for applicants seeking an authorization or certification from the agency.

In addition, from what Delaware Riverkeeper Network research shows, FERC has never in its history, for any pipeline project, issued a civil penalty for violations related to construction activity. And yet we know for a fact that violations of the terms and conditions of FERC issued Certificates during construction border on routine. A typical example of FERC's inexplicable reluctance to issue civil penalties to the industry it regulates involves the construction of Tennessee Gas Pipe Line Company's ("Tennessee") 300 Line Upgrade Project (Commission Docket No. CP09-444). By the end of the project FERC had recorded 43 instances of silt laden water entering resources/depositing sediment off of the 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 during fishery restrictions, among many others. The Pennsylvania Department of Environmental Protection found that these clear violations were sufficiently serious to secure an $800,000 settlement from Tennessee for the harm caused to the environment as a result of project construction violations. However, FERC not only failed to issue any civil penalties relating to the plethora of recorded violations, FERC did not even issue a stop-work order to attempt to secure remedy to the problems before allowing the pipeline company to proceed with other construction activity.

This extreme bias towards the approval, growth, and oversight of the pipeline infrastructure industry is propelled forward by FERC's funding mechanism and the employee revolving door between FERC and the industries it regulates.

II. The revolving door between employment with FERC and the industry it regulates contributes to agency bias in the project review and certification process, an unjustifiably high approval rate of proposed projects, and a lack of oversight and enforcement for FERC approved pipeline projects.

As articulated by industry observers, a revolving door between government agencies and the entities they regulate results in concerning and harmful bias:

- "THE INDUSTRY-TO-GOVERNMENT REVOLVING DOOR, through which the appointment of corporate executives and business lobbyists to key posts in federal agencies establishes a pro business bias in policy formulation and regulatory enforcement."

- "THE GOVERNMENT-TO-INDUSTRY REVOLVING DOOR, through which public officials move to lucrative private-sector positions in which they may use their government experience to unfairly benefit their new employer in matters of federal procurement and regulatory policy." [1]

These dynamics are very much at play in FERC. As observed by *In These Times*: "…FERC is a political environment where who you know matters…"[2]

According to numerous reports, FERC staff have sought employment with, and held stock in, companies that are part of the industry that FERC regulates and over which it has decision-making authority. The concern regarding the fluid movement of employees from FERC to the private sector and back again is magnified by the fact that FERC employees are able to begin negotiations with the industry for employment while still on the FERC payroll, clearly enhancing 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.

In 2014, according to press reports, there were over 70 letters that were filed by FERC employees seeking multiple opportunities with grid operators, law firms and utilities that the agency regulates. Even though these employees recused themselves from cases to prevent conflict of interest, that does not prevent or remedy the agency bias. According to *Greenwire,* 2014 documents secured through the freedom of information act show more than 40 instances in the year when FERC employees entered into negotiations for jobs outside the agency including with "Van Ness Feldman LLP, Dominion Resources Inc., Xcel Energy Inc., Crowell & Moring, General Electric Co., TransCanada Corp., Florida Power & Light Co., Steptoe & Johnson LLP, FirstEnergy Corps., and American Electric Power Company Inc.."[3]

According to reporting by *Greenwire*:

- "The documents show intense interest by the private sector in hiring FERC staff, with several employees disclosing job talks with prominent energy companies and law firms."
- "One FERC employee … gave notice that he or she was in negotiations with eight different entities."
- "Mason Emnett, the deputy director of FERCs Office of Energy Policy and Innovation, …. left the agency after almost eight years … to take a position as a senior attorney for NextEra Energy Inc."
- "…Teresina Stasko, a FERC attorney, **recused** herself from decisions involving the North American Electric Reliability Corps., where she was seeking employment. Stasko is now the senior counsel and manager of enforcement actions at NERC."

---

[1] A Matter of Trust: How the Revolving Door Undermines Public Confidence in Government – And What To Do About It, by the Revolving Door Working Group, Oct 2005.
[2] Dozens of Energy Regulators Applies for Industry Jobs in 2014, by Justin Mikulka, ***In These Times***, Apr 23, 2015.
[3] FERC: Employees negotiate for industry jobs under agency's eye by Hannah Northey & Kevin Bogardus, ***E&E Greenwire***, April 7, 2015.

The fact that FERC employees are so sought after by the industry is itself a demonstration of how beneficial the industry views the relationships and access that result from this revolving door of employment. The positions at issue are high level positions at FERC and within the industry, another demonstration of how valued this revolving door relationship between FERC and the energy industries it regulates is.

Whether or not a particular individual that worked for industry and now works for FERC or is working for FERC and hoping to some day get a job within the industry they regulate *intends* to engage in demonstrably biased decision-making is not the question, the question is whether in fact bias manifests itself as part of the decision-making process. The desire to work for, or past employment within, the regulated industry most certainly is resulting in a bias that is reflected in communications, decisions, and increased access that benefits the industry within the halls of FERC.

FERC's cozy relationship with the industry it regulates takes many forms. In addition to the employee revolving door, training sessions FERC holds for the industry include solicitations by FERC employees throughout the trainings for the industry to "sponsor" meals, breaks and happy hours that induce and encourage a party like atmosphere between FERC employees and the staff of the regulated community. Representatives of the Delaware Riverkeeper Network witnessed this cajoling for sponsored breaks and happy hours first hand.

Another concern is the investments held by FERC employees in the energy industry they regulate, either through direct holdings or through retirement or pension plans. As written by *Greenwire*:

- "Agency staff noted that they had holdings in Bank of America Corp., Exelon Corp., and PPL Corps., as well as Berkshire Hathaway Inc."
- "FERC employees also maintained ties to energy interests – such as Pepco Holdings Inc., Consolidated Edison Inc. and the Tennessee Valley Authority – through retirement and pension plans."

Recusal from decision-making by FERC staff members does not cure the cultural bias that infuses the entire agency as a result of these many relationships between FERC staff and the industry they regulate.

Similar to the improper relationships between the agency and industry that were well -documented in the context of the Minerals Management Service, similar relationships have developed between FERC and the regulated industry.

III. FERC abuses of law that deny the public their legal rights:

a) use of "tolling orders" to allow projects to advance while denying citizens the ability to initiate an appeal in court;

b) granting permission from pipeline companies to begin construction activity prior to the company securing all necessary permits and approvals;

c) continued use of segmentation and the failure to undertake cumulative impact environmental reviews in blatant violation of the National Environmental Policy Act ("NEPA") and in disregard of a July 2014 court order and opinion from the D.C. Circuit;

d) failure to comply with the requirements of NEPA, and instead using subjective judgment to pre-determine the level of environmental review for proposed projects.

FERC is systematically improperly interpreting and applying the law, and taking advantage of legal loopholes, as part of an intentional effort to strip communities of their legal rights and ability to challenge pipeline projects *before* they are constructed and *before* they can inflict their unnecessary harm.

<u>a) use of "tolling orders" to allow projects to advance while denying citizens the ability to initiate an appeal in court;</u>

The Natural Gas Act ("NGA"), 15 U.S.C. § 717r(a), permits "any person . . . aggrieved by an order issued by the Commission in a proceeding under this chapter to which such person . . . is a party may apply for rehearing within thirty days after the issuance of such order. . . . Unless the Commission acts upon the application for rehearing within thirty days after it is filed, such application may be deemed to have been denied."

The NGA makes a rehearing request a condition precedent for filing suit in federal court for review of a FERC order. Moreover, the aggrieved party may not file suit in federal court until FERC renders its final decision on the merits of the rehearing request.

FERC's common practice is to comply with the NGA 30-day mandate by issuing a "tolling order" within thirty days of a rehearing request. The tolling order grants the request for rehearing only insofar as to take the matter under consideration and allow FERC extra time to make a decision. The length of the tolling order is indefinite, as the time period to make a decision is unlimited and undefined by FERC in its regulations. This places aggrieved parties in an untenable state of administrative and legal limbo, as an order on a request for rehearing is a condition precedent to seeking judicial review of an initial FERC order, such as the Certificate Order approving a pipeline project. The effect of using this practice for final decision-making on pipeline project approvals is to deny the public a timely response and the ability to challenge a project in a timely fashion in the courts.

FERC compounds this inequity by waiting to issue final decisions on rehearing requests until just before or even after a project is granted authority to proceed with construction.

FERC's practice of tolling the time to respond to rehearing requests and then failing to issue timely final orders cannot be justified. This practice effectively denies rehearing requesters' due process rights to a timely decision by FERC and judicial review thereof, before construction starts, causing irreparable injury to communities striving to protect their health, safety, and environmental interests.

The harms inflicted during the period that a rehearing requester follows the legal path to secure a decision so it can proceed with a legal challenge prior to initiation of the project cannot be undone or fully remedied later. In addition, this practice creates unnecessary litigation burdens for the affected parties and FERC itself.

For example, the Delaware Riverkeeper Network is right now being denied its right to challenge a FERC project approval while at the same time FERC is allowing the project to advance to construction – this despite that the Delaware Riverkeeper Network filed for a rehearing request almost one year ago. Transcontinental Pipeline Company ("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. The Natural Gas Act requires that FERC rule on DRN's rehearing request before DRN can initiate a lawsuit.

On January 15, 2015 – prior to the deadline for the submissions of rehearing requests – Transco already submitted its first request for a Notice to Proceed with segments of its construction activity to the FERC. On January 30, 2015 FERC granted Transco's January 15 request. On February 4, 2015 Transco again 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. Additionally, on March 9, 2015, FERC authorized Transco to begin tree felling construction activity, allowing the company to permanently destroy more than 140 forested acres adjacent to valuable streams and wetland resources.

DRN's rehearing request remains pending to this day, 11 months later – as a result we remain unable to bring a legal challenge to the project in federal court despite the fact that the project has proceeded with key elements of construction, including tree felling activities.

Once construction begins it creates administrative inertia that is difficult, if not impossible, to stop, even if an aggrieved party's viewpoints are eventually vindicated in court, as happened in the case of *Delaware Riverkeeper Network v. FERC*. In that case, FERC's use of a tolling order prevented timely adjudication of FERC's unlawful actions and resulted in numerous pristine resources being needlessly harmed. Such a blatant abuse of its rules to steamroll the rights of aggrieved parties that are residents and citizens of this country is further evidence of the FERC's bias in allowing proposed projects to be constructed and operated in order to add to the FERC's bottom line.

Furthermore, the Delaware Riverkeeper Network is unaware of any non-industry aggrieved party who has actually been granted a request for rehearing in the history of the Commission's existence. Instead, FERC routinely uses the loophole in the law to allow it additional time to attempt to bullet-proof its initial order so that its likelihood of successfully defending a legal challenge to the proposed project is significantly increased.

Simply by issuing more timely final orders on rehearing requests, as contemplated by the NGA's 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 project approved by FERC.

Given that modifying its response to rehearing requests so they are more timely results in more beneficial outcomes that better serve the public good in ensuring the legal rights of the public are best honored makes the FERC's continuing abuse of the loophole all the more unjustified and indefensible.

b) granting permission from pipeline companies to begin construction activity prior to the company securing all necessary permits and approvals;

FERC continues to fail to honor the requirement in its Certificates of Public Convenience and Necessity that, prior to receiving FERC authorization to construct a project, a company must first have secured all authorizations or permits required pursuant to federal, state, or local law.

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.[4]

FERC staff has identified this provision as a critical tool to ensure that a project is fully compliant with all applicable laws and has been fully reviewed and approved by all applicable local, state, and federal agencies before the project is allowed to move to construction.

While the 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, 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. The tree cutting significantly impacts water quality and is among the major causes of environmental harm and community impact resulting from pipeline construction. If the Clean Water Act permits had ultimately been denied, a major portion of the harm would already have been inflicted because of FERC's already granting approval of this initial construction phase. Of further concern, FERC's permission to proceed with tree felling enabled the pipeline company to argue that, because it had already made major investments in the actual construction of the project, the agencies reviewing the approvals were now compelled to issue the permits regardless of potential agency concerns. And so premature approval and initiation of construction becomes an incentive to other agencies to truncate their reviews as the likelihood of stopping a project that has already started, and the ability to remediate the harm already inflicted, are both unlikely.

c) continued use of segmentation and the failure to undertake cumulative impactenvironmental reviews in blatant violation of the NEPA and in disregard of a July 2014 court order and opinion from the D.C. Circuit;

On January 22, 2013, Delaware Riverkeeper Network filed a legal action in the United States Court of Appeals for the District of Columbia challenging FERC's approval of the Tennessee Gas Pipeline company's Northeast Upgrade Pipeline Project. On June 6, 2014, the Court issued an opinion and order finding that FERC had violated federal law (NEPA) by segmenting its environmental review of the Northeast Upgrade Project from three other connected and interdependent pipeline projects and by failing to provide a meaningful analysis of the cumulative impacts of these projects. (*Delaware Riverkeeper Network, et al. v. Federal Energy Regulatory FERC*, 753 F.3d 1304, 1307 (D.C. Cir. 2014).

Because of the violation of law, the Court remanded the case back to FERC so it could further consider the project and properly respond to the court's ruling.

Despite the clear directive that FERC should no longer engage in segmentation and should consider cumulative impacts, FERC is clearly ignoring the order of the court and continues to rely upon segmentation as a matter of common practice in its pipeline reviews.

Just six months after issuance of the Court's order against segmentation FERC issued the Certificate of Public Convenience and Necessity for another company and pipeline to engage in the same unlawful

[4] 139 FERC ¶ 61,161, Tennessee Gas Pipeline Company, L.L.C., Docket No. CP11-161, Order Issuing Certificate and Approving Abandonment, May 29, 2012, Appendix B, Environmental Conditions, ¶ 8 (emphasis in original).

segmented NEPA process. Transcontinental Pipeline Company separately submitted three applications to FERC for its Leidy Southeast Upgrade Project, the Northeast Supply Diversification Project, and the Atlantic Sunrise Project. Each of these interrelated projects leap-frog one another on the Leidy Pipeline system along the same geographic corridor. Furthermore, Transco announced yet another upgrade project two weeks after the Environmental Assessment for the Leidy Southeast Upgrade Project was released, the Diamond East Project. This fourth project was announced to also upgrade loops of pipeline along Transco's Leidy line system. By considering the environmental impacts of these four inter-related and functionally inter-dependent projects in separate reviews, rather than completing a full Environmental Impact statement to review upgrading the Leidy line system as a whole, FERC unlawfully segmented its analysis in violation of its obligations under NEPA and the clear directive of the DC Circuit Court of Appeals.[5] This unlawful segmented review process and factual scenario is precisely the same for which the D.C. Circuit Court admonished FERC in *the Delaware Riverkeeper Network* case.

FERC's decision to ignore the mandate of the court so shortly after it was handed down demonstrates a commitment to advancing pipeline projects as proposed by the industry regardless of whether or not they are in violation of federal law. Such action also demonstrates a lack of accountability, largely driven by the agency's independent funding status and its self-perception as being above the law. As such, there is a significant need for the independent and unbiased review that a GAO investigation would bring.

d) failure to comply with the requirements of NEPA, and instead using subjective judgment to pre-determine the level of level of environmental review for proposed projects.

Before FERC can approve a project, it must satisfy the requirements of NEPA by identifying and evaluating the environmental impacts of the proposed action. This means that FERC is required to prepare an Environmental Assessment and, if significant impacts are found, to then prepare a more comprehensive Environmental Impact Statement. 40 C.F.R. § 1501.4.

However, FERC does not follow the procedure as described above. Instead, FERC "eyeballs" a project applicant's initial application request, and subsequently categorizes the project to receive either an Environmental Assessment or an Environmental Impact Statement.

While the Environmental Assessment review *should* be the vehicle to determine when an Environmental Impact Statement is necessary, FERC has *never in its history* issued an Environmental Assessment that found possible significant impacts, or even unknown impacts, and demanded a full Environmental Impact Statement. Such truncated and improper environmental review procedures save the industry both time and money, but shortchanges the public who are impacted by construction activity that is allowed to proceed absent the appropriate level of environmental review.

Yet again, FERC places the needs, desires and goals of the industry above those of the public. This misplacing of priorities needs independent review and oversight which cannot be secured given FERC's funding mechanisms and lack of legislative or executive oversight.

V. Allowing the taking of private land via eminent domain for projects that are demonstrably for private benefit as opposed to public purpose

[5] *Please note the Diamond East project has not advanced to the NEPA stage as of yet and according to press reports may be temporarily shelved, but the other three projects have advanced.*

Pursuant to the Natural Gas Act section 717f(e) the FERC issues a Certificate of Public Convenience and Necessity to the pipeline projects it approves for construction. Upon receipt of this Certificate, the Natural Gas Act then confers upon companies constructing natural gas pipelines the right of eminent domain. Specifically, pursuant to the Natural Gas Act section 717f(h),

> "When any holder of a certificate of public convenience and necessity cannot acquire by contract, or is unable to agree with the owner of property to the compensation to be paid for, the necessary right-of-way to construct, operate, and maintain a pipe line or pipe lines for the transportation of natural gas, and the necessary land or other property, in addition to right-of-way, for the location of compressor stations, pressure apparatus, or other stations or equipment necessary to the proper operation of such pipe line or pipe lines, it may acquire the same by the exercise of the right of eminent domain …."

Given that FERC approval in the form of a Certificate of Public Convenience and Necessity grants pipeline companies the power of eminent domain, the obligation to ensure the interests of the public are most fully and fairly protected throughout the review process should be of paramount importance. And yet, in practice and reality, FERC exercises its authority by giving priority to the goals of the pipeline companies it approves.

Rather than focusing on whether the benefits to be achieved by a project are in fact in the public interest, the FERC assessment of whether or not a project is in the public interest focuses on the needs and benefits of the pipeline industry, not that of the public. FERC's consideration of public benefit considers a project's impact on pipeline competition, on the possibility of overbuilding, on and whether a project subsidizes an existing shipper. To the extent FERC considers environmental impacts, often that review is in the context of the more minimal Environmental Assessment review provided by NEPA and safety considerations are often deferred to the Pipeline Hazard and Safety Administration. The impacts of an approval on private property values or marketability, on community peace of mind, the impacts on the use of private property or the adverse implications for open space preservation, the impacts on community quality of life, impacts on existing businesses along a proposed pipeline route, and more, are all minimized in the wake of the implications for the pipeline industry for a positive or negative decision. A true consideration of the public benefit of an infrastructure project under consideration by FERC is demonstrably subservient to the goals or desires of the pipeline companies.

Furthermore, each proposed pipeline project requires a 20-year commitment by a potential gas shipper to economically justify the building of the project. Therefore, every single pipeline approval that is provided by FERC represents nothing less than a 20-year commitment to a dirty and dying fossil fuel industry. And yet, a growing number of experts observe that fracked shale gas, such as that to be carried by the multitude of pipelines FERC is so quickly approving, will soon be in decline. According noted expert Arthur Berman: "All shale gas plays except the Marcellus are in decline already" with Marcellus predicted to peak by 2020.[6] So FERC is approving this proliferation of pipelines and the taking of public and private lands, all to service the profit goals of an industry soon to be in swift decline.

There can be no defense for destroying the lives and livelihoods of so many for purely private profit, for taking public lands preserved with public dollars to serve purely private industrial interests, for the unavoidable harms to the environment of pipeline construction and operation, and for approving the

[6] Arthur Berman, Years Not Decades: Proven Reserves and the Shale Gas Revolution, Feb 23, 2015; can be viewed at http://www.nakedcapitalism.com/2015/03/debunking-americas-energy-fantasy-shale-gas-tight-oil-peak-next-decade.html .

proliferation of pipelines to serve a dying energy source that will prevent us from achieving goals needed to protect us from the worsening ramifications of climate change.

An objective GAO review is clearly needed – neither Congress nor the President have the authority necessary to hold FERC accountable for their abuses of the public trust. A thorough and objective review is clearly warranted, and can only be brought to bear by the U.S. Government Accountability Office who can initiate a dialogue about necessary and needed reforms.

Respectfully,

Maya K. van Rossum

Maya K. van Rossum
the Delaware Riverkeeper

cc:
Senator Cory Booker, Fax No. (202) 224-8378
Senator Bob Menendez, Fax No. (202) 228-2197
Senator Kirsten Gillibrand, Fax No. (202) 228-0282
Senator Chuck Schumer, Fax No. (202) 228-3027