

VOICES
Victory Over InFRACKstructure, Clean Energy inStead

December 15, 2020

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

This letter is signed and submitted on behalf of the VOICES coalition (Victory Over InFRACKstructure, Clean Energy inSteAD), a coalition of over 250 grassroots, community and environmental organizations battling against FERC-regulated fracked gas infrastructure and the abuses of power and law inflicted on communities by the Federal Energy Regulatory Commission (FERC).

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

These were the words of Delaware Senator William V. Roth reacting to the reorganization of the Department of Energy and the creation of the Federal Energy Regulatory Commission in 1977.

It is now more than four decades later and the prescient wisdom of those fateful words are ringing in the ears of every American who has experienced abuse at the hands of the FERC regulatory review and approval process. FERC’s unaccountable and irresponsible approach to energy development has strained the trust of the American people beyond the breaking point. FERC is widely recognized as a rubberstamp for fracked gas infrastructure and a partner in league with the industry, doing all it can to help advance fracked gas pipelines, LNG exports to foreign nations, compressor stations and associated infrastructure.

Today, all communities under threat from FERC-regulated infrastructure know that when FERC gets an application from a pipeline or LNG company it is not a question of IF approval will be granted, it is simply a matter of WHEN approval will be granted. Even FERC Commissioner Richard Glick has admitted the rubberstamp label is justified. It is not just the biased decisionmaking that is so devastating when it comes to FERC; it is FERC’s repeated misuse of the law to advance pipeline infrastructure and LNG facilities as quickly as possible. FERC is abusing US citizens, residents, farmers, businesses, states and future generations in its misuse of the law and its authority to advance fracked gas pipelines, compressors and LNG facilities regardless.

We are once again calling on Congress to champion meaningful legislative reforms that will prevent ongoing and future abuses of power and law by FERC. As it currently stands, the language of the Natural Gas Act (NGA) is being misused by FERC to deny people their legal and constitutional rights, to strip and undermine the legal authority of states, to undermine the authority of other federal agencies, to ignore the mandates of the Clean Water Act and the National Environmental Policy Act, to trample private property rights, to take from communities the protection of public parks, forests and conserved lands that they have invested heavily in protecting, to take jobs and

destroy small businesses, and to inflict harms on our communities' health, safety and environments, all for the benefit of a single industry and private energy companies seeking to maximize their own corporate profits and greed.

In this letter we provide a list of critically needed reforms to the Natural Gas Act and other related federal laws. In addition, we have assembled a Dossier that documents and provides irrefutable evidence of FERC's abuse of its power and the law (available at: bit.ly/DossierofFERCAbuse). And we share with you links to video from two People's Hearings where people from all over the nation speak to, and offer proof of, the abuses they have experienced at the hands of FERC and their pipeline partners in crime (available at: bit.ly/2020PeoplesHearing and starting at video #4 in this compilation: bit.ly/2016PeoplesHearing). The more recent hearing came four years after the first one, yet the testimony given at both hearings is strikingly similar. Nothing has changed in four years. The people can't wait another four years.

Critical Needed Reform:

FERC's Mission Needs to Be Updated to Reflect Modern Times, Needs, Goals and the Threat of Climate Catastrophe.

- ⇒ ***Natural Gas Act should be amended to redirect FERC's mission to ensure a clear focus on advancing energy service that serves the public interest, including that of future generations, with a priority on advancing clean and renewable energy alternatives, retiring existing fossil fuel infrastructure, protecting the health and safety of people and our environment, and making clear a that priority on environmental protection, people's rights, state's rights and the property rights of the public versus private industry, is always given a priority in decisionmaking.***

FERC's demonstrated bias toward the natural gas infrastructure industry is so ingrained reform will be difficult and must begin with a transformational shift in FERC's guiding mission as articulated in the Natural Gas Act. As testified to by VOICES member Maya K. van Rossum at the February 2020 hearing before the House of Representatives Committee on Energy and Commerce, FERC describes its mission as primarily focused on the advancement of natural gas, not protecting the public interest when it comes to energy development. For example, on January 30, 2020, FERC described its principal obligation under the Natural Gas Act to be to "encourage the orderly development of plentiful supplies of . . . natural gas at reasonable prices," and "In enacting the NGA, Congress established a carefully crafted comprehensive scheme in which the Commission was charged with vindicating the public interest inherent in the transportation and sale of natural gas in interstate and foreign commerce, in significant part through the issuance of certificates of public convenience and necessity for interstate gas pipelines."²

This misplaced focus encourages FERC to misinterpret and misuse the law to advance fracked gas pipelines and LNG facilities at all costs. That is why we see, literally, only a handful of pipeline denials in over 40 years, accompanied by decisions and actions that trample on due process rights, property rights, states' rights, state sovereign immunity and the environment. The assumption that the public interest is inherent in the transportation and sale of natural gas has been proven wrong by modern science and experience, and has in fact resulted in significantly greater harm to the public than benefit.

To avoid FERC's continuing and intentional misuse of the law, FERC's mission needs to be rewritten to ensure a clear focus on advancing energy service that serves the public interest, including that of future generations, with a priority on advancing clean and renewable energy alternatives, retiring existing fossil fuel infrastructure, protecting the health and safety of people and our environment, and making clear that environmental protection, people's rights, states' rights and the property rights of the public versus private industry, are always given priority in decisionmaking.

Critical Needed Reform:

Remove the Power of Eminent Domain from FERC authority.

- ⇒ ***The Natural Gas Act must be amended to restore respect for property rights and the integrity of the authority of eminent domain by:***
- ***removing the ability of FERC to give eminent domain authority to private pipeline companies and return the power to Congress for use and oversight in the natural gas context;***
 - ***in addition, or in lieu of such reform, protecting state property rights and sovereign immunity and making clear that FERC may not grant eminent domain authority to private companies in order to take property in which a state has a property interest and is unwilling to grant pipeline company taking or access.***

FERC has demonstrated a cavalier disregard for the property rights of people and states; and has been stretching the misuse and premature use of eminent domain in ways never intended by Congress. Eminent domain power was originally intended to advance the greater public good but in the hands of FERC has been misused to advance only the private property goals of private energy companies. As a result, FERC has demonstrated that it cannot be trusted with this awesome power.

FERC routinely approves pipelines, immediately bestowing the power of eminent domain to the pipeline companies and granting approval for projects to undertake construction, including cutting forestland, trenching out streams, destroying critical wildlife habitat and more-- regardless of whether or not they have received all necessary permits and approvals. In a number of cases, property rights have been taken and irreparable construction damage inflicted for a project later denied needed approvals that prevent them from ever being fully built and put into operation – in these situations the taking of property and the devastating construction was all for naught. In such cases there persists a real question over what happens to those property rights taken for a pipeline that is not finally approved and therefore not fully built and put into operation - there is not a clear mechanism to have the property rights restored to their original owner.

In addition, FERC is increasingly stretching the use of eminent domain authority in ways not intended by Natural Gas Act. For example, FERC granted a Certificate and eminent domain authority to the PennEast pipeline company despite acknowledging that the company had not provided all of the siting information necessary to support the approval; nonetheless FERC granted eminent domain authority in order to allow PennEast to take property by eminent domain so they could gather the surveys and data they need to finalize their application materials for final FERC approval. In other words, FERC gave the company a FERC Certificate and eminent domain authority so the company could complete the materials necessary to support the approval given. Even FERC Commissioner Neil Chatterjee expressed concern over this most recent abuse of FERC eminent domain approval.

Further, FERC has illegally granted pipeline companies the authority to pierce the constitutionally protected sovereign immunity of states in order to take state property rights by eminent domain. When the federal Third Circuit court determined that this was a violation of state sovereign immunity, FERC sought to subvert the course of justice by issuing a Declaratory Order in which it joined with the pipeline companies to reject the court determination and issue its own interpretation of the Natural Gas Act that supported eminent domain authority against states.

FERC has demonstrated that it cannot be trusted with the awesome power of eminent domain and as such the ability of FERC to give eminent domain authority to private pipeline companies must be removed and returned to Congress for use and oversight in the natural gas context. It is our belief that only natural gas infrastructure where the company can secure the agreement of impacted property owners and states (through the grant of needed permitting) should be allowed to advance. If a project is not good enough to curry the favor of landowners then it should not be powerful enough to take their property rights.

Critical Needed Reform:

Remove language that results in preemption of state or local laws or authority for FERC regulated infrastructure projects.

⇒ ***The Natural Gas Act should be amended so as to remove preemption of state laws in the context of natural gas pipelines and compressors, or at least be more limiting in the areas of exclusion (e.g. allowing wetland, waterway, air quality, forest and species protections to remain applicable).***

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

Critical Needed Reform:

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

⇒ ***The Natural Gas Act should be amended to make clear that State Section 401 Clean Water Act approvals have primacy to FERC Certification and should clearly prohibit FERC from granting a Certificate of Public Convenience and Necessity until all state Clean Water Act Certifications have been issued or specifically, formally and intentionally waived.***

- ***If the mandate that 401 Certifications must be secured prior to FERC providing NGA Certification is not enacted/clarified within the language of the NGA, then it must be clear that FERC cannot approve any element of eminent domain or***

construction until all state reviews/permit processes have been finalized and approvals/permits granted, including but not limited to 401 Certification.

- ⇒ ***The Natural Gas Act should be amended to prohibit FERC from granting a Certificate of Public Convenience and Necessity until states have issued or waived any and all state approvals required pursuant to the the Clean Air Act and the Coastal Zone Management Act.***
- ⇒ ***The Natural Gas Act needs to make clear that there is no time limit on the state review and approval process regarding FERC regulated infrastructure, including in the context of Clean Water Act 401 Certifications (i.e. the current 1 year time limitation needs to be explicitly removed).***
- ⇒ ***The Natural Gas Act needs to be clear that state authority is only waived when the state renders an affirmative decision that they are waiving their authority.***

Respect for the rights of states to take leadership in the protection of their environment or the benefit of their residents is carefully recognized throughout our legal system. Federal laws such as the Clean Water Act have been carefully crafted, interpreted and implemented so as to duly respect and honor the responsibility and right of states to protect their environment in order to protect their citizenry. Out of respect and regard for the irreplaceable role states provide in implementing the Clean Water Act, the Clean Air Act and the Coastal Zone Management Act, and out of respect for their right, duty and obligation to protect the residents and natural resources of their state, Section 717b(d) of the Natural Gas Act specifically preserves the authority of states pursuant to these three laws with regards to FERC regulated pipelines.

And yet, FERC has consistently disregarded and intentionally undermined states' rights and authority in how it interprets and applies the Natural Gas Act, particularly in the application of section 401 of the Clean Water Act – interpretations that have been endorsed, out of respect for the agency, by the courts.

Section 401 of the Clean Water Act specifically reads: “no [federal] license or permit shall be granted until the certification required by this section has been granted or waived.” 33 U.S.C. § 1341(a)(1). Requiring Section 401 certification from the states prior to federal action ensures that states' rights are honored, that state standards are met, and that public and private resources are not unnecessarily lost. It also ensures that the federal government is held accountable to the same standards as private entities, an important point of equity. Despite the plain language of the Clean Water Act, the language in 717b(d) of the Natural Gas Act, and the goals of protecting state authority in environmental protection, FERC routinely issues Certificates of Public Convenience and Necessity prior to state decision-making on 401 Certifications for FERC pipeline and infrastructure projects. This practice undermines state authority, and in some instances, has resulted in the taking of property rights, and damage to businesses, jobs and the environment for construction of a pipeline that a state ultimately rejected and may never or will never be built. Clean Water Act Section 401 primacy prevents such an irreversibly harmful outcome. The Natural Gas Act should be amended to make clear that Clean Water Act 401 Certifications have primacy and must be secured from all impacted states before FERC Certificates of Public Convenience & Necessity can be granted. If the mandate that 401 Certifications must be secured prior to FERC providing NGA Certification is not enacted/clarified

within the language of the NGA, then it must be clear that FERC cannot approve any element of eminent domain or construction until all state reviews/permit processes have been finalized and approvals/permits granted, including but not limited to 401 Certification.

Amending the Natural Gas Act to protect state Clean Water Act 401 authority is essential given the Presidential Executive Order and US EPA rulemaking regarding state Clean Water Act 401 authority.

On April 10, 2019, Donald Trump signed an executive order in which he wrongly accused states of causing confusion and inappropriately hindering the advancement of FERC regulated pipelines in how they were implementing Section 401 of the Clean Water Act and ordered the US EPA to modify federal policies and regulations so as to disrupt, impede, and/or otherwise undermine the authority granted to states pursuant to the federal Clean Water Act. As directed, on June 1, 2020 the US EPA announced new regulatory rollbacks to Section 401 of the Clean Water Act, undermining the rights of states to fully, fairly and independently review pipelines and, when appropriate, deny Section 401 permits for projects like FERC regulated interstate natural gas pipelines. The rule expands EPA's role far beyond the scope of its statutory authority, and does the same for *other* federal agencies. Furthermore, with implementation of these rules, there could now be significant gaps in water quality protection in states like New York, New Jersey, Pennsylvania, West Virginia, Virginia, Massachusetts, North Carolina, Oregon, and Ohio, just to name a few, where there is significant pressure from the shale gas industry and pipeline companies to secure extensive shale gas infrastructure buildout. The regulations are a clear and obvious power grab designed to take from states their legal right to deny Section 401 certifications and to empower the EPA and other federal agencies to unilaterally decide whether a project should be allowed to advance, regardless of the state's determination regarding compliance with water quality requirements and applicable state and federal law. This new federal rule undermines the Clean Water Act's cooperative federalism framework solely for the benefit of the shale gas industry, including companies seeking to construct and operate fracked gas pipelines, LNG export facilities, associated compressor stations and other related infrastructure.

While the Delaware Riverkeeper Network, South Carolina Native Plant Society, Amigos Bravos, Natural Resources Defense Council, Savannah Riverkeeper, Pyramid Lake Paiute Tribe, Orutsararmiut Native Council, Columbia Riverkeeper, Sierra Club, and others, as well as states including: California, Washington, Colorado, New York, Connecticut, Illinois, North Carolina, Oregon, Rhode Island, Vermont, and several others, are challenging these regulations in court, it is imperative that Congress reform the Natural Gas Act to specifically and firmly affirm and strengthen the rights granted to states pursuant to the Clean Water Act, the Clean Air Act and the Coastal Zone Management Act with regards to interstate, FERC regulated, natural gas pipelines.

In addition, the Natural Gas Act needs to be amended to be clear that states are entitled to all of the time they deem necessary to engage in full review and decision-making on FERC regulated pipeline and infrastructure projects, particularly in the context of implementing Clean Water Act authorities (which for most states is the 401 Water Quality Certification and for states like New Jersey also includes 404 wetlands determinations) – the one year time limitation currently in place needs to be explicitly removed.

Critical Needed Reform:

Prohibit FERC from allowing a pipeline, LNG, or related infrastructure project from proceeding with any element of construction or eminent domain until all applicable state, federal and interstate agency certification/permit/docket processes have been finalized and approvals/certifications/permits/dockets granted.

⇒ ***The Natural Gas Act needs to prohibit FERC allowing companies to proceed with any element of eminent domain or construction (including tree felling) until all state, federal and/or interstate reviews/certifications/permits/dockets have been finalized and approvals/permits/dockets granted.***

Currently, FERC approves pipelines and allows them to proceed through phases of construction and eminent domain regardless of whether or not they have received all necessary reviews and approvals from impacted states, other federal agencies (such as wetland permits from the US Army Corps or completed endangered species review from the U.S. Fish & Wildlife Service), and interstate regulatory agencies with authority such as the Delaware River Basin Commission. Consequently, pipelines have proceeded with the power of eminent domain, tree felling and significant construction that inflicts irreparable harm on property, economic and environmental interests despite not having all necessary approvals and being at risk of having critical permits, certifications and/or dockets denied which will prevent the project from ever being constructed along the route and using the practices approved by FERC but rejected by others. The law needs to make clear that FERC cannot approve a project and allow it to proceed with any element of eminent domain or construction (including tree felling) until all state and federal reviews/permit processes have been finalized and approvals/permits granted.

Critical Needed Reform:

Prohibit the Use of “Tolling Orders” in order to protect individual, community and states’ rights to challenge FERC approval of a project in a meaningful time and manner.

⇒ ***Congress must amend the Natural Gas Act so as to prohibit the use of “tolling orders” and mandate that FERC must issue a substantive and final decision on rehearing requests within the 30 day time limit included in the law and if they fail to do so the rehearing request is deemed denied.***

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

⇒ ***amend the Natural Gas Act so as to prohibit projects from advancing in any way, shape or form, including eminent domain and/or construction, if there is an outstanding rehearing request/tolling order.***

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

request. It is common for FERC to place people in this legal limbo for up to a year or more, while allowing the pipeline company to advance its project, take property by eminent domain, undertake the felling of trees including in forests and wetlands, and undertake other significant aspects of construction.

An EarthJustice review demonstrated that in a 10 year period (from 2009 to 2019) 61 tolling orders were issued in response to 63 rehearing submissions challenging FERC issued Certificates and in 48 of these cases (i.e. more than three-quarters of the time) FERC approved construction before the tolling order was lifted. And one-third of projects (21 of the 61 cases) were not just in construction while a tolling order was still in place, but were actually placed into partial or full service before the tolling order was lifted by FERC issuing a substantive response to the challengers' rehearing request. This means that before impacted property owners and community challengers even got a chance to file their case in court, two-thirds of the time the pipelines they were challenging had taken property rights, were built and already operating.

Because of tolling, every major legal victory against FERC approval of a project came too late -- property was already taken, construction was done, and all too often the project was already in partial or full operation.

When the courts ruled in the case of the Northeast Upgrade Project, the Sabal Trail project, and the Nexus Pipeline project that FERC had violated the law by allowing illegal segmentation, failing to consider cumulative impacts, failing to consider the climate changing ramifications of the project, and considering service of foreign customers to be a proper support of need, the pipelines were already operating and there was no meaningful way to remedy the violation. Even the precedential value of these cases were lost because in subsequent pipeline reviews FERC outrightly, blatantly, and illegally ignored the instructions of the court. Segmentation still happens, cumulative impacts and climate change are still ignored.

FERC's January 31, 2020 pronouncement that it is going to prioritize landowner rehearing requests and try to meet a 30 day review period does not displace the need for Congress to act.

- First, FERC has no credibility on the issue, a tolling order fix needs to be part of the law. FERC could ignore, or reverse, this policy at any time and at its own discretion.
- Second, the announcement clearly exempts non-landowner challengers meaning forests, wetlands, streams, wildlife, and impacted neighbors can all continue to suffer grievous harm while forced by FERC into tolling order limbo.
- Third, some of the most important precedent setting cases were brought by organizations like the Delaware Riverkeeper Network, Sierra Club and others for the benefit of landowners and the community as a whole, but such organizations could still be subject to tolling under this policy. That means the precedents set regarding illegal segmentation, and the failure of FERC to consider cumulative impacts and climate change would still suffer the same outcome – a decision too late to have an effect.

To prevent the ongoing abusive use “tolling orders” Congress must amend the Natural Gas Act so as to prohibit the use of “tolling orders” and mandate that FERC must issue a substantive and final decision on rehearing requests within the 30 day time limit included in the law and if they fail to do so the rehearing request is deemed denied. If “tolling orders” are not prohibited then the other most legally equitable mechanism for addressing the problem is for Congress to amend the Natural Gas

Act so as to prohibit projects from advancing in any way, shape or form, including eminent domain and/or construction, if there is an outstanding rehearing request/tolling order.

Critical Needed Reform:

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

⇒ ***Congress must amend the Natural Gas Act so as to specifically and clearly mandate that: its public interest analysis must include a full accounting of the climate changing impacts of any proposed pipeline infrastructure project under review; that this analysis must include***

a) a full and robust Social Cost of Carbon analysis, and

b) assessment and consideration of all of the climate change impacts of the extraction, storage, transportation and end uses of the natural gas to be carried through the pipeline infrastructure (including associated drilling and fracking operations, tree removal, associated trucking and industrial operations, and the use of the gas for energy creation);

and that a certificate is not deemed to serve the public convenience and necessity if it is demonstrated/determined that emissions resulting from extraction, transport, storage and end use of the natural gas to be transported will result in a net increase in climate change emissions over current levels.

As FERC Commissioner Glick has stated several times:

“Climate change poses an existential threat to our security, economy, environment, and, ultimately, the health of individual citizens. Unlike many of the challenges that our society faces, we know with certainty what causes climate change: It is the result of GHG emissions, including carbon dioxide and methane, which can be released in large quantities through the production and consumption of natural gas. Congress determined under the NGA that no entity may transport natural gas interstate, or construct or expand interstate natural gas facilities, without the Commission first determining the activity is in the public interest. This requires the Commission to find, on balance, that a project’s benefits outweigh the harms, including the environmental impacts from climate change that result from authorizing additional transportation. Accordingly, it is critical that, as an agency of the federal government, the Commission comply with its statutory responsibility to document and consider how its authorization of a natural gas pipeline facility will lead to the emission of GHGs, contributing to the existential threat of climate change.”¹

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

¹ Statement of Commissioner Richard Glick on Texas Eastern Transmission, LP, FERC Docket No. CP18-10, July 19, 2018.

As a result, it is vitally important that the law be reformed to make clear that FERC's "public interest" duty pursuant to the Natural Gas Act mandates consideration of the climate change impacts of pipeline infrastructure including climate change effects of shale gas extraction, storage, transmission and end use, and that FERC Certification cannot be granted to projects that will result in a net increase in climate changing emissions over current levels.

Critical Needed Reform:

Mandate a focus on "avoidance of harm" in order to secure FERC Certification.

- ⇒ ***The Natural Gas Act should be amended to mandate rights of way and construction practices that avoid ecological harm when and where possible including by:***
- ***requiring that all recommendations from other regulatory agencies – state, federal or regional – that would result in an avoidance of ecological harm must be included in any FERC Certification;***
 - ***mandating that FERC require an assessment of alternatives to avoid harm to water quality, air quality, ecological habitats, plant and animal species, and publicly protected open space;***
 - ***mandating that any alternatives identified for construction practices and/or pipeline rights of way that would avoid harm to water quality, air quality, ecological habitats, plant and animal species, and publicly protected open space, be required as part of any FERC issued Certification;***
 - ***prohibiting the use of mitigation when there is a solution that would avoid the ecological harms identified.***

The Natural Gas Act should be reformed to ensure a mandatory focus by FERC on avoidance of harm as part of its certification decisionmaking. Currently the pipeline companies make their proposal and FERC reviews it as it stands. There may be inclusion of modifications for endangered species or wetlands if recommended by another agency, but all too often mitigation is accepted in lieu of available options for avoidance of harm. The Natural Gas Act should be amended to require that all recommendations from other regulatory agencies – state, federal or regional – that would result in an avoidance of ecological harm must be included in any FERC Certification. In addition, the law should be modified to mandate that FERC itself require an assessment of alternatives by the applicant into alternatives that would avoid harm to water quality, air quality, ecological habitats, and plant and animal species, as well as avoidance of harm to publicly protected open space. In addition it should be required that identified alternatives for construction practices or pipeline rights of way that avoid harm be a required as part of any FERC issued Certification; prohibiting the use of mitigation when there is a solution that would avoid the ecological harms identified.

Critical Needed Reform:

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

- ⇒ ***The Natural Gas Act needs to be reformed to ensure legitimate, and independently verified demonstrations of need are provided for FERC review and consideration. Pipeline companies must be required to demonstrate a genuine end-use need that cannot be fulfilled by contracts with its own affiliates, or by renewable energy options.***

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

Currently,

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

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

Critical Needed Reform:

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

⇒ ***The Natural Gas Act should be amended so as to put in place a ban on export of Liquefied Natural Gas Exports to foreign nations.***

The climate crisis is an existential threat. LNG exports are fueling increased and ongoing fossil fuel extraction that is literally fueling and growing the climate crisis. Given the incontrovertible contributions of LNG exports and fracking to the climate crisis, and the devastating health and economic consequences for our nation, there is no justification to allow the continued export of natural gas from the U.S. abroad. The level of community harm and sacrifice is too great for an energy supply that is then shipped overseas to support foreign nations, industries and users.

In Conclusion:

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

In recent years, Congress has increasingly turned its attention to FERC's abuses; while we are encouraged by that, the fixes proposed do not get to the source of the problem. Every one of the substantive and needed reforms we propose in this letter pertain to the Natural Gas Act. It is in the spirit of seeing robust fixes pursued firmly, quickly, and without compromise that we have shared our recommendations with you.

Respectfully,

Maya van Rossum, the Delaware Riverkeeper, Delaware Riverkeeper Network

Karen Feridun, Founder, Berks Gas Truth & Better Path Coalition

Dwain Wilder, Editor/Publisher, The Banner

Yvonne Taylor, Vice President, Gas Free Seneca

Joseph Campbell, President, Seneca Lake Guardian, A Waterkeeper Affiliate

Doug O'Malley, Director, Environment New Jersey

Faith Zerbe, Co-Founder, Schuylkill Pipeline Awareness

Ken Dolsky, Co-Founder, Coalition Against Pilgrim Pipeline - NJ and Organizer, Don't Gas The Meadowlands Coalition

Charley Bowman, Chair, Environmental Justice Taskforce Of The Western NY Peace Center

Megan Amsler, Executive Director, Self-Reliance Corporation

Rosemary Wessel, Program Director, No Fracked Gas In Mass

Jane Winn, Executive Director, Berkshire Environmental Action Team

Rebekah Sale, Executive Director, Property Rights And Pipeline Center

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Amy Rosmarin, Executive Director, Earthkeeper Health Resources

Donald Hebbard, President/Founding Member, Compressor Free Franklin

Robert Cross, President, Responsible Drilling Alliance (RDA)

Barbara Jarmoska, President, Project Coffeehouse

Rachel Dawn Davis, Public Policy & Justice Organizer, Waterspirit

Karry Muzzey, Co-Chair, Take Back The Grid
Tracy Manzella, President, Carcs- Citizens Against The Rehoboth Compressor Station
Perri Meldon, , Boston Dsa Ecosocialism Working Group
Maiyim Baron, Leadership Team, Elders Climate Action - MA Chapter
Kevin Campbell, Director, Mountain Lakes Preservation Alliance, Inc
Kitty Vetter, SASD
Vivian Stockman, Executive Director, Ohio Valley Environmental Coalition (OVEC)
Linda Reik, Member, Board Of Directors, Sullivan Alliance For Sustainable Development
Pat Konecky, Coordinator, 350 MA Berkshires
Adele Franks, Steering Committee, Climate Action Now, Western Mass
Alice Arena, President, Fore River Residents Against The Compressor Station
Louis Zeller, Executive Director, Blue Ridge Environmental Defense League
Dale Feik, Project Director And Spokesperson, Hillsboro Air And Water
Keely Wood, Co-Chair, EnvironmentalLEE
Valerie Williams, President, Concerned Stewards Of Halifax County - A BREDL Chapter
Judy Hogan, Chair, Chatham Citizens Against Coal Ash Dump (CCACAD)
Irene Leech, President, Virginia Citizens Consumer Council
Chad Oba, President, Friends Of Buckingham
Cynthia Munley, Chair, Preserve Salem
Richard Walker, CEO, Bridging The Gap In Virginia
Ann Finneran, Member, NY Water Action
Faith Harris, Interim Co-Director, Virginia Interfaith Power & Light
Wanda Roberts, , Concerned Citizens Of Charles City County
Dan Taylor, Co-Founder, Concerned Residents of Oxford
Lakshmi Fjord, Ph.D., Project Director, Union Hill Freedmen Family Research
Donna Pitt, Coordinator, Preserve Giles County
Becky Crabtree, Founder, CEO, Naku Books
Dr. Richard D. Shingles, Chair, Sierra Club New River Valley Group
Scott Geller, Alumni Distinguished Professor, Make-A-Difference, LLC
Russell Chisholm, Co-Chair, Protect Our Water, Heritage, Rights (POWHR)
Emily Adams, Chair, Tompkins County Progressives
Lynda Majors, Chair, Preserve Montgomery County VA
Susanna Calvert, Exec Dir, Foundation For Family and Community Healing
Mimi Bluestone, Co-Leader, 350Brooklyn
Elizabeth Peer, Environment Team Lead, Indivisible Lambertville/New Hope
Mary Finneran, Co-Founder, Frackbusters NY
John Elder, Vice President, Communities For Safe And Sustainable Energy
Leah Zerbe, Owner, Potter's Farm
Collin Rees, Senior Campaigner, Oil Change International
Courtney Williams, Co-Founder, Safe Energy Rights Group
Tammy Murphy, Advocacy Director, Physicians For Social Responsibility Pennsylvania
Ann Maynard, Managing Director, Maynard Hr Consulting, Inc.
Natalie Cronin, President, Tinker Tree Play/Care
Roseanna Sacco, Chair Person, Preserve Monroe
Maury Johnson, Herman Mann, Paula Mann, Co-Founders, Friends Of The Narrows Of Hans Creek

Patti Wood, Executive Director, Grassroots Environmental Education
Sally Jane Gellert, Member, Occupy Bergen County
Kathie Jones, Organizer, Sustainable Medina County
Rebecca Roter, Chairperson, Breathe Easy Susquehanna County
Rev. Joan Vanbecelaere, Director, Unitarian Universalist Justice Ohio
Gwen B. Fischer, Coordinator, Portage Community Rights Group
Emily Keel, Steering Committee Member, Women's International League For Peace and Freedom of
the Triangle
Ted Glick, Organizer, Beyond Extreme Energy
David A. Mucklow, Attorney, Coalition To Reroute Nexus
Madi Hamilton and Sydney Landstrom, Co-Presidents, Kenyon Eco
Jo Anne St. Clair, Chair, Climate Action Alliance Of The Valley
Peter Hudiburg, Founder, Plymouth Friends For Clean Water