

Delaware Riverkeeper Network ~ Clean Water Action
350 Loudoun ~ Middlefield Neighbors ~ No Fracked Gas in Mass
American Sustainable Business Council ~ Prince William Soundkeeper
Protect Orange County ~ Raritan Headwaters ~ Save Carbon County
Stop the Minisink Compressor Station ~ StopNED ~ The Wei
Tierra Madres ~ Waterkeepers Chesapeake ~ NC WARN
Breathe Easy Susquehanna County ~ Chesapeake Climate Action Network
Gas Free Seneca ~ Lancaster Against Pipelines ~ Our Santa Fe River
Seneca Lake Guardian ~ Town of Warwick, Massachusetts Planning Board
Washington Crossing Audubon Society ~ Lehigh Valley Gas Truth
Aquashicola/Pohopoco Watershed Conservancy
Concerned Citizens of the Methow Valley ~ Grassroots Environmental Education
Sierra Club Niagara Group ~ WWALS Watershed Coalition, Inc.
Berkshire Environmental Action Team (BEAT)
Environmental Justice Task Force of WNY Peace Center, Inc.
Mohawk Valley Keeper ~ Oregon Shores Conservation Coalition
People Demanding Action ~ Pipeline Awareness Southern Oregon
Altamaha Riverkeeper ~ Friends of Water ~ Gulf Restoration Network
Pelham Awareness Outreach Subcommittee ~ Clean Water for North Carolina
Advocates for Cherry Valley ~ Citizens United for Renewable Energy
Berkshire Brigades ~ Cook Inletkeeper ~ Environment New Jersey
Humboldt Baykeeper ~ Landscape Alternatives, LLC ~ Minisink Matters
NJ Sierra Club ~ Northjersey Pipeline Walkers
South Coast Neighbors United, Inc ~ West Amwell Citizens Against the Pipeline
Sullivan County Residents Against Millennium ~ Earth Care
Stop the Algonquin Pipeline Expansion ~ Concerned Citizens of Lebanon County
Unitarian/Universalist Women's Association
Save the River/Upper Saint Lawrence Riverkeeper
Brandywine | TB Southern Region Neighborhood Coalition
Forest Grove Oregon Citizens Against the Pipeline (OCAP)
People of Albany United for Safe Energy (PAUSE)
Securing Economic and Energy Democracy (SEED) of SW NM
Citizens for a Safe Cumberland County ~ HALT- PennEast ~ DiBianca Associates
World Business Academy ~ Praemia Group ~ The DiBianca Family Foundation
Bennett Farm Services ~ Eckelmann Bros Construction
Karas Administrative Services ~ Beyond Pay ~ reThink Energy Florida
Durham CCAP ~ PEACE-YOUTH ~ New Hampshire Pipeline Awareness Network
Earth Action, Inc. ~ Sustainable Medina County ~ Colorado Riverkeeper
Waccamaw Riverkeeper ~ People's Climate Movement- Capital Region
Raritan Riverkeeper ~ Delaware Township Citizens Against the Pipeline
Lebanon Pipeline Awareness ~ Milwaukee Riverkeeper
Safe Energy Rights Group, Inc. ~ Elk County C.A.R.E.S.

350 Eugene ~ Protect Our Water, Heritage, Rights (POWHR)
Concerned Burlington Neighbors ~ Beyond Extreme Energy
Indian Creek Watershed Association ~ Friends of Nelson
Friends of Hopewell Valley Open Space ~ Preserve Franklin County ~ Yadkin Riverkeeper
Myersville Citizens for a Rural Community ~ Berks Gas Truth
Interfaith Moral Action on Climate (IMAC) ~ Stop the PennEast Pipeline
Capital District Against Fracking ~ Concerned Citizens for a Safe Environment
WV Citizen Action Group ~ Richmond Heritage Commission ~ Albany Bicycle Coalition
350 NYC ~ Pipeline Education Group of Nelson County, VA
Citizens Alliance Upholding a Safe Environment (CAUSE) ~ ClimateMama
Friends of Buckingham ~ Free Nelson ~ Knitting Nannas of Virginia
PAUSE (Peaceful Action Uniting Stewards of the Earth)
Citizens Coalition for a Safe Community ~ NY Water Action Group ~ Lakehouse Graphics
Stop NY Fracked Gas Pipeline ~ Greenbrier River Watershed Association
Allegheny-Blue Ridge Alliance
Southern Shenandoah Chapter of the Potomac Appalachian Trail Club
Wild Virginia ~ Clean Air Council ~ Dominion Pipeline Monitoring Coalition (DPMC)
Preserve Montgomery County Virginia ~ People, Not Pipelines ~ Preserve Giles County
NJ Highlands Coalition ~ Franciscan Response to Fracking ~ Toxics Action Center
Catskill Mountainkeeper ~ LAWPA- Local Authority of Western PA
UBCAMP- Upper Burrell Citizens Against Marcellus Pollution ~ Mason Pipeline Committee
Stop the West Roxbury Pipeline ~ Resist the Pipeline ~ EarthWorks
Food & Water Watch ~ Hilltown Community Resource
Diné Citizens Against Ruining our Environment
Preserve Roanoke ~ Sustainable Warwick
Augusta County Alliance ~ Responsible Drilling Alliance ~ Coalition to Reroute Nexus
Christians for the Mountains ~ National Religious Coalition on Creation Care
Coastal Monmouth Democratic Club ~ Cahaba Riverkeeper
Advocates for Springfield, NY ~ Catskill Citizens for Safe Energy
Mountain Lakes Preservation Alliance ~ Roseland Against the Compressor Station (RACS)
WildEarth Guardians ~ New Energy Economy ~ Comeback Farm
Keep Southeast Nashville Healthy ~ Atlantic Chapter of the Sierra Club
Stop Fracking the Rio Grande Valley ~ Southern Cayuga Anti-Fracking Alliance
Fractivist.org ~ Potomac Riverkeeper Network ~ Green Soccer Association
Green PTA ~ Green Meadows Homeowners Association
Freshwater Accountability Project ~ Eight Rivers Council ~ The Ramapo River Committee
Massachusetts PipeLine Awareness Network ~ ROAR Against Fracking ~ ECHO Action
Marcellus Outreach Butler ~ Sane Energy Project ~ Protect PT
Peacemakers of Schoharie County ~ Climate Action Alliance of the Valley
Rogue Climate ~ Appalachian Voices

September 21, 2016

Chairman Fred Upton
House Energy & Commerce Committee

Ranking Member Frank Pallone
House Energy & Commerce Committee

Chairman Lisa Murkowski
Senate Committee on Energy & Natural Resources

Ranking Member Maria Cantwell
Senate Committee on Energy & Natural
Resources

Dear Chairman Upton, Chairman Murkowski, Ranking Member Pallone & Ranking Member Cantwell,

As representatives of communities from 35 states across America, from coast to coast, as well as the District of Columbia, who are being abused by the use and misuse of powers granted to the Federal Energy Regulatory Commission (FERC) pursuant to the Natural Gas Act, we are writing to urge you to:

- ✓ Hold congressional hearings to learn the many ways communities are being harmed by FERC's implementation of the Natural Gas Act as currently written;
- ✓ Take swift affirmative action to reform the Natural Gas Act so as to better protect communities including eliminating the threats associated with natural gas infrastructure; and
- ✓ Oppose, or at a minimum hold in abeyance, any further advancement of the Energy Policy Modernization Act of 2016 which includes language intended to further "streamline" an already misused, and well streamlined, process for advancing the review and approval of natural gas infrastructure until you have learned, through the hearing requested above, how people's rights, state's rights, and the environment are already being abused under the implementation of the Natural Gas Act and how they will be further harmed by passage of provisions proposed in the new law.

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

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

Unfortunately, after four decades of FERC's unaccountable and irresponsible approach to energy development, the trust of the American people has been strained beyond the breaking point. As it currently stands, the language of the Natural Gas Act is being misused by FERC to strip people of their legal and constitutional rights, to strip the legal authority of states, to undermine the authority of other federal agencies, to prevent fair public participation in the pipeline review process, to ignore the mandates of the Clean Water Act and the National Environmental Policy Act, to take from residents and citizens their private property rights, to take from communities the protection of public parks, forests and conserved lands that they have invested heavily in protecting, to take jobs and destroy small businesses, to inflict on our communities health, safety and environmental harms, all for the benefit of a single industry seeking to advance its own corporate profits and business edge over its competitors.

Nearly 40 years ago, members of Congress expressed significant concern over the level of autonomy that was being given to FERC and its relationship with the Department of Energy (DOE) – there

were some that referred to the new structure enacted in 1977 as creating a “two-headed horse.” And so, at that time, there was already acknowledgement that there would come a time when the FERC/DOE structure would need to be revisited. As Senator Henry M. Jackson remarked during the 1977 DOE Act debates:

This has been a hard assignment; it will continue to be. I think all of us agree that it is not the final word in a Department of Energy. The Senator from Connecticut, the distinguished chairman, observed from time to time that there had to be trial and error in this kind of operation. After this department has functioned awhile and has gone through a shake-down period, we will be in a better position to determine whether any changes are necessary and will be able to deal with those issues at an appropriate time.

The time has now come for Congress to investigate how FERC is using its authority and to recognize that major changes are in fact necessary in order to protect people, including future generations, from the ramifications of FERC’s misuse of its power and implementation of the Natural Gas Act.

The abuses resulting from the language and implementation of the Natural Gas Act and the grant of authority to industry and FERC are clearly demonstrated in the public record. Congressional hearings are essential to inform Congress of the abuses of power and law that FERC is inflicting on people, states and businesses of all kinds with the uncontrolled and irresponsible proliferation of unneeded natural gas pipelines; to demonstrate how FERC’s current funding mechanism is denying Congress the ability to oversee this increasingly damaging agency; and to help identify smart and meaningful reforms that can accomplish the nation’s energy goals without sacrificing people, communities, the law, and the environment at the same time. Until you have learned about the abuses already taking place, and how the wheels have already been greased by FERC for the inappropriate advancement of natural gas pipelines, it would be irresponsible for you to pass the provisions included in the Energy Policy Modernization Act of 2016 that will make a horrific situation even worse.

This request, signed by 182 community, faith, business and environmental organizations, is being made on behalf of millions of Americans residing and working in 35 states, including Alabama, Alaska, Arizona, California, Colorado, Connecticut, Delaware, Florida, Georgia, Kentucky, Louisiana, Maryland, Massachusetts, Minnesota, Mississippi, New Hampshire, Nevada, New Jersey, New Mexico, New York, North Carolina, North Dakota, Ohio, Oregon, Pennsylvania, South Carolina, South Dakota, Tennessee, Texas, Utah, Vermont, Virginia, Washington, Wisconsin, West Virginia, as well as the District of Columbia.

The harms being inflicted by FERC and pursuant to the Natural Gas Act that demonstrate the critical need for Congressional hearings include, but are not limited to, the following checked (✓) items:

- ✓ **FERC abuses of law that deny the public their legal rights to challenge the approval of a pipeline project before FERC and the industry are allowed to take property rights by the power of eminent domain and advance pipelines through construction.**

Through the use of a self-manufactured legal loophole called a “tolling order,” FERC puts people and communities in legal limbo and prevents them from challenging a pipeline approval for an undetermined amount of time – sometimes for over a year – during which time the pipeline company is allowed to take property rights using the power of eminent domain and to proceed with construction in ways that inflict irreparable harm on private properties, public lands, small businesses and to our environment.

For example, while using a tolling order to leave communities in Pennsylvania in legal limbo for 15 months for a Transcontinental Pipeline Company (“Transco”), FERC issued over 20 Notices to Proceed that allowed the project to advance through various stages of construction and operation.

Specifically, Transco filed an application with FERC on September 30, 2013 to construct and operate the Leidy Southeast Pipeline, and received its Certificate of Public Convenience and Necessity from FERC on December 18, 2014. The Delaware Riverkeeper Network submitted a rehearing request to FERC on January 16, 2015. On January 30, 2015 – prior to the deadline for the submissions of rehearing requests – FERC issued its first Notice to Proceed with the project to Transco. 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. On February 18, 2015 FERC issued its “tolling order” granting DRN’s rehearing request for only the purposes of “further consideration” thereby putting the organization and its membership into a legal limbo that prevented them from taking any further legal action to challenge the pipeline’s approval. On March 9, 2015, FERC again authorized Transco to begin tree felling and other construction activities, allowing the company to permanently destroy more than 140 forested acres adjacent to valuable streams and wetland resources. In total, FERC issued twenty Notices to Proceed for the project, including allowing certain portions of the project to begin operations, before it finally denied the Delaware Riverkeeper Network’s rehearing request on March 3, 2016 – 15 months after Delaware Riverkeeper Network had filed its rehearing request. Delaware Riverkeeper Network filed a legal challenge to the project on March 9; however, much of the irreparable harm to the environment that the Delaware Riverkeeper Network and its members had sought to avoid had already occurred.

FERC’s practice of tolling the time to respond to rehearing requests and then failing to issue timely final orders denies the public their due process rights to a timely decision by FERC and denies them a fair opportunity to challenge a pipeline before their property is taken or their community or environment are irreparably harmed. Such a failure to act causes avoidable irreparable injury to communities striving to protect their property, health, safety, and environmental interests. The harms inflicted by the delay in responding to the rehearing requests with a grant or denial cannot be undone or fully remedied later – e.g. the mature trees and forests cut cannot be regrown or replanted to their pre-construction condition, the loss of a maple tree forest necessary to support a maple syrup business cannot be replaced in time to deliver syrup for the company to survive -- it is simply too late.

In the case of *Delaware Riverkeeper Network v. FERC*, 753 F.3d 1304 (D.C. Cir. 2014), FERC’s use of a tolling order prevented any sort of real remedy even though the organization won a decision that FERC had in fact violated the law in reviewing the community and environmental impacts of the project, a review which was FERC’s basis for approving the project. By the time the Delaware Riverkeeper Network secured the court ruling that FERC had in fact violated federal law in their review and approval of four interrelated pipeline projects, the pipeline segment being challenged was fully constructed and in operation, having destroyed numerous pristine resources, including forests, wetlands, creeks, state-owned forests and private property.

Furthermore, according to research by the Delaware Riverkeeper Network, there is not a single non-industry aggrieved party to whom FERC has ever granted a request for rehearing for a natural gas pipeline project in the history of FERC’s existence. As a result, this tolling order scenario is clearly a strategy designed and pursued by FERC to allow pipeline projects to continue through construction while FERC bullet-proofs its initial decision from being overturned.

The use of tolling orders strips people of their due process rights, strips them of their property rights, and frustrates provisions of the Natural Gas Act to the degree that congressional action and reforms are needed in order to protect the people and check FERC in its blatant abuse of power.

- ✓ **FERC suffers from an unparalleled bias in support of the industry it is supposed to regulate – a bias fueled by the fact that FERC is 100% funded by the industries it is supposed to regulate. FERC has denied only 1 natural gas pipeline project in the 30 years since it has been funded this way. That one denial was issued in apparent response to the filing of a federal constitutional challenge to this funding mechanism.**

Per federal law, FERC is a uniquely self-financed agency that relies entirely on the industry it regulates for its whole budget. *See* 42 U.S. Code § 7178(a)(1). No other independent executive federal agency with similar adjudicatory power has a similar funding structure.¹

As per federal laws, the more pipelines, gas delivery, and LNG facilities FERC approves, the more fees FERC is able to collect for its self-inflating budget. FERC has an overwhelming and direct pecuniary interest in the outcome of its review process of natural gas pipeline projects. As such, FERC is subject to inherent structural bias to approve these projects.

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 and extreme 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. Even the public is kept at arms-length during FERC Commission meetings where there is no opportunity to comment on or about FERC decisionmaking.

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

The historical record of companies seeking approval of projects before the FERC Commissioners, demonstrates that a clear bias exists in FERC's decision-making. In the last 30 years, FERC's Commissioners have denied only one single pipeline project brought before them for approval, and that denial only happened recently, on March 11, 2016. Up until this time, FERC had a 100% approval rating for all natural gas pipeline projects brought before its Commissioners for a vote -- FERC's singular denial came just one week after a constitutional challenge was filed against FERC's pipeline program in which,

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

its then 100% approval rate, was cited as a key piece of evidence.

There is not a single other federal agency that has this rate of approvals for applicants seeking an authorization or certification from the agency.

FERC's funding mechanism and lack of Congressional and Legislative oversight has resulted in obvious and unchecked conflicts of interest that frustrate provisions of Natural Gas Act to the degree that congressional action and reforms are needed.

✓ **Despite public opposition and harm, and pipeline industry benefit, FERC routinely uses consultants to undertake work on their behalf who have vested interests in the outcome of projects they are hired to work on and/or with a demonstrated and/or likely bias resulting from the consultant's customer base.**

FERC routinely authorizes the use of outside consultants to assist with its environmental review and evaluation of natural gas pipeline proposals; these same consultants are also used by the pipeline industry to craft the applications necessary to obtain FERC Certificates of Public Convenience and Necessity for their projects. It is not uncommon that the consultants assisting FERC in the review of one pipeline project by a particular pipeline company or consortium are representing the same pipeline company(ies) on other pipeline projects advancing through FERC review and decisionmaking, thus creating clear conflicts of interest.

For example, FERC retained Natural Resources Group (NRG) to assist in the preparation of an environmental assessment for the Atlantic Bridge project, a project advanced by Algonquin Gas, a subsidiary of Spectra Energy. At the same time, NRG has been hired by the PennEast Pipeline company, of which Spectra is a primary member, to help advance the PennEast Pipeline project before FERC for approval. Of further concern, there is a publicly known connection between the two projects with the approval of one being important to the advancement of the other. And so while NRG is hired by FERC to analyze one Spectra project, it is at the same time hired by a pipeline partnership of which Spectra is a primary member to advance another related project for FERC approval.

Key quotes from a recent investigative journal piece help make the point:

"On February 20, 2015, FERC sent a letter to Spectra, announcing the selection of NRG as contractor for Atlantic Bridge. Yet at the time, NRG was already working directly for PennEast LLC, a major pipeline consortium of which Spectra is a member. NRG has been conducting public affairs for PennEast since at least 2014. A year earlier, NRG opened an office in the Marcellus Shale to represent energy companies operating in the region."

"When Spectra joined the PennEast Pipeline consortium in October 2014, Spectra executives made clear their purpose was to bring fracked gas from the Marcellus Shale to its Algonquin Pipeline, of which the Atlantic Bridge project is a part. In other words, NRG, which works directly for PennEast, has a financial stake in the approval of Atlantic Bridge, the project it was hired by FERC to review as third-party contractor."

"According to FERC's own guidelines for hiring third-party contractors, a conflict of interest exists when the contractor "has a past, present, or ongoing financial interest in a project to be covered by the third-party contractor." This exists, for instance, when the contractor "has a financial or other interest in the outcome of the Commission's decision.""

See, <http://www.desmogblog.com/2016/05/26/revealed-contractors-hired-ferc-review-new-spectra-energypipeline-work-spectra-related-project>

Efforts by the public to uncover conflicts are deliberately thwarted by FERC. For example, when members of the public submitted Freedom of Information Act requests to secure copies of FERC's Request For Proposals and copies of the responsive proposals to try to determine how a single firm, Mergent, was selected to represent FERC on Sabal Trail and the other two parts of the Southeast Market Pipeline Project, FERC refused to release the information.

The use of consultants that are operating on both sides of the FERC approval process at the same moment in time, sometimes even on directly related projects, frustrates provisions of the Natural Gas Act to the degree that congressional action and reforms are needed.

✓ **There is a revolving door between FERC and the industries it regulates that clearly contributes to agency bias in the project review and certification process.**

As articulated by industry observers, there is a “revolving door” between employees that leave FERC who then immediately take positions promoting industry interests before 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 seventy letters that were filed by FERC employees seeking multiple opportunities with grid operators, law firms and utilities that the agency regulates. According to *Greenwire*, 2014 documents secured through the freedom of information act show more than forty instances in the year when FERC employees entered into negotiations for jobs outside the agency, including such regular FERC participants as “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 further 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 Emmett, the deputy director of FERC’s 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.”

Many of the positions at issue are high-level positions at FERC, and within the industry. Whether

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.

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 or appears to do so. The desire to work for, or the impacts of past employment within, the FERC-regulated pipeline industry most certainly results in a bias that is reflected in communications, decisions, and increased access that benefits the industry within the halls of FERC – the question is what form, and to what degree, this bias manifests itself.

These are the exact type of relationships that resulted in the Minerals Management Services being dissolved.

The employee revolving door between FERC and the industries it is supposed to be regulating clearly frustrates provisions of the Natural Gas Act to the degree that congressional action and reforms are needed.

✓ **FERC Commissioners and Employees Commonly Rule on Pipeline Projects that Serve Their Own Financial Self-Interests**

In addition to the employee revolving door, FERC employees are known to hold investments in the energy industry they regulate, either through direct holdings or through retirement or pension plans. According to research and reporting 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.”

Even FERC Commissioners are known to get in on the self-serving action of ruling on pipeline projects that will benefit their personal wealth and income. For example, as recently reported by Desmog Blog:⁴

“Philip Moeller left FERC in late 2015 after nearly ten years on the Commission.

Throughout his entire tenure, Moeller’s wife, Elizabeth Moeller, was employed as a lawyer and lobbyist for the Washington, DC-based firm Pillsbury, Winthrop, Shaw & Pittman LLP (Pillsbury Winthrop).

According to internal FERC documents obtained by DeSmog, the Commission’s counsel repeatedly authorized Moeller to rule on matters concerning companies represented by his wife or others at Pillsbury Winthrop.”

“Office of Government Ethics rules strictly forbid public officials from working on matters where they have a personal financial stake, unless authorized in writing by the agency’s Ethics Official. “

While Moeller had requested and secured a waiver from the Ethics Official, the inappropriate bias and self-dealing cannot be said to have been remedied by those steps.

⁴ <http://www.desmogblog.com/2016/08/21/revealed-ex-ferc-commissioner-s-multiple-rulings-favored-energy-companies-his-wife-lobbied>

“By virtue of being an equity partner in Pillsbury Winthrop, “Elizabeth Moeller automatically benefited financially with every increase in her firm’s total income.”

“In 2010, Elizabeth Moeller began lobbying for Mitsui Oil Exploration shortly after the company purchased agreements to drill for natural gas in Pennsylvania’s Marcellus Shale.

Soon afterwards, Moeller and the Commission approved a number of new natural gas projects in the Northeast carrying fracked gas from the Marcellus Shale. These include Spectra Energy’s Texas Eastern Appalachia to Market project and New Jersey-New York Expansion project.”

In addition to the employee revolving door and inappropriate financial benefits to Commissioners and their family members from decisions they participated in, the 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. The desire to secure industry sponsorships in the form of paid-for coffee bars, happy hours, and/or meals throughout the course of training sessions advances a begging and beholden atmosphere from the regulatory agency to the pipeline industry that is wholly inappropriate and is another manifestation of the regulatory capture of the FERC agency that is of such serious concern to the public.

The self-dealing that is engaged by FERC Commissioners and staff to their personal benefit and resulting in clear and obvious bias and/or appearance of bias to outside observers and impacted members of the public frustrates provisions of Natural Gas Act to the degree that congressional action and reforms are needed.

✓ **FERC Strips States of Their Legal Right and Authority to Review and Approve, Deny, or Approve with Conditions, Natural Gas Pipeline Projects.**

The Clean Water Act expressly prohibits FERC from issuing a Certificate of Public Convenience and Necessity or an Order to proceed with construction activity prior to the project applicant receiving a Clean Water Act Section 401 Water Quality Certification from the impacted state – this mandate can be found in the plain language of the Clean Water Act (“CWA”).⁵

Despite this clear legal mandate that FERC await the states’ issuance of authority regarding Section 401 Certification, FERC routinely issues Certificates of Public Convenience and Necessity pursuant to the Natural Gas Act granting pipeline approval, thereby authorizing pipeline construction activity, including activities that will impact the States’ regulatory standards, prior to a project receiving state 401 Water Quality Certification. *See e.g.*, FERC Docket Nos. CP11-161-000, CP14-17-000, and CP13-551.

This FERC practice deprives states of their right and ability to prevent pipeline construction activities that will result in violation of state water quality standards – a right enshrined in existing statutory and common law. Such action stripping states of their right to reject a project outright or

⁵ Section 401 of the CWA plainly requires “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); *City of Tacoma v. FERC*, 460 F.3d 53, 68 (D.C. Cir. 2006) (“without [Section 401] certification, FERC lacks authority to issue a license.”). The Supreme Court has stated that, consistent with the State’s primary enforcement responsibility under the CWA, Section 401 “requires States to provide a water quality certification *before* a federal license or permit can be issued...” *PUD No. 1 of Jefferson Cnty. v. Wash. Dept. of Ecology*, 511 U.S. 700, 707 (1994) (emphasis added).

mandate modifications to a project as a condition of state certification usurps the states' authority to protect natural resources and public health.

In addition to granting approval for construction activities such as earthmoving or tree clearing activities, FERC's orders to proceed include the power of eminent domain despite a project not having obtained 401 Certification from impacted states.

This disregard of the law sets up the very real situation where a pipeline company can and does exercise the power of eminent domain to take peoples' property and inflict irreparable construction damage to natural resources for a pipeline that may never, ultimately, get all of the approvals necessary to be built. A prime example of this type of situation can be found in the Constitution Pipeline (FERC Docket CP13-499):

On December 2, 2014 FERC granted its Certificate of Public Convenience and Necessity to the Constitution Pipeline. Thereafter FERC granted the company the power of eminent domain, a power that the company began to exercise almost immediately in that same year against New York and Pennsylvania landowners. In fact, the Company filed 125 complaints in condemnation in the Northern District of New York in December of 2014. The FERC approval and grant of eminent domain authority was issued despite not receiving NY State 401 Certification.

On January 8, 2016, in spite of not having obtained two required federal authorizations -- a 404 permit from the US Army Corps of Engineers and 401 Water Quality Certification from the State of New York -- the Constitution Pipeline Company requested a partial notice to proceed from FERC. Shortly thereafter FERC granted the company the authority to begin construction on the PA portion of the project. Among the approvals granted, FERC issued an order in January, 2016 permitting the Constitution Pipeline to seize and cut 80 percent of the trees in a forest in New Milford Township, Susquehanna County, Pennsylvania, and replace them with a natural gas pipeline. That forest has belonged to the Holleran family since the 1950s. The property is where the Hollerans live and also where, each year, they tapped 300 maple trees to make maple syrup for their family maple syrup business (North Harford Maple).

FERC permitted the tree cutting even though the Constitution pipeline had not yet received a Clean Water Act approval from the State of New York, without which the NY portion of the pipeline cannot be built. New York ultimately rejected 401 certification for the project and further progress on the project was been halted. But by that point irreparable harm on property rights and the environment had been inflicted. To this day the Constitution pipeline is being held in abeyance by the NY rejection of 401 Water Quality Certification.

Similarly, FERC issued a Certificate of Public Convenience and Necessity for Sabal Trail in February 2016, before section 401 certifications from Alabama and Georgia, or needed Army Corps section 404 permits were issued. Despite a lawsuit by Sierra Club, Flint Riverkeeper, and others, after the states and the Corps issued their permits, FERC began doling out construction approvals in summer 2016 including through private lands for which there has been no court date even set to settle the eminent domain claims.

This stripping of state legal authority violates the Clean Water Act and frustrates the intent of the Natural Gas Act to the degree that congressional action and reform are needed.

✓ **FERC fails to hold Pipeline Companies fully accountable for their violations of environmental protection laws, another serious manifestation of the agency's bias.**

Research by the Delaware Riverkeeper Network shows that 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 are routine. In addition, when violations are identified, FERC does not issue stop work orders and mandate the company remedy the harm and come into compliance with the law prior to construction continuing – instead the pipeline company is allowed to advance business as usual with their construction on the rest of the line. As a result of FERC’s inadequate response to violations, there is no incentive for pipeline companies to ensure violations are avoided and that when they occur the company self-identify, remedy, and remediate violations and damage as soon as possible.

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 multitude of recorded violations, FERC did not even issue a stop-work order to attempt to remedy the problems before allowing the pipeline company to proceed with other construction activity.

This failure to hold pipeline companies accountable for environmental and community harm and violations of environmental protection laws needs Congressional review and a legislative remedy in order to stop this practice which clearly frustrates implementation of applicable federal and state environmental and community protection laws.

✓ **FERC routinely uses the practice of segmentation to advance pipeline projects in pieces to make it easier to overcome regulatory requirements and state reviews and approvals.**

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

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 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 to create a new pipeline. By considering the environmental impacts of these inter-related and functionally inter-dependent projects in separate environmental reviews pursuant to NEPA (rather than completing a full Environmental Impact statement that reviews

the Leidy line system upgrade as a whole) FERC continues to carry out segmented analyses in violation of NEPA and the decision of the D.C. Circuit Court of Appeals.

The Leidy line upgrade is a clear and obvious demonstration of FERC's ongoing use of the practice of segmentation that helps pipeline companies more easily advance its projects through the decision-making process. As a result of FERC's ongoing and increasingly frequent use of the practice of segmentation, the degree and sophistication to which companies and FERC use this illegal and improper practice is expanding.

For example, in July 2016 the Millennium pipeline company filed for approval of its Eastern System Upgrade (ESU) project – a project that includes 2 new compressor stations and an additional 7.8 miles of pipeline along the existing Millennium pipeline project passing from Pennsylvania through New York. While Millennium's ESU Project filing asserts that the proposed new compressors and pipeline loop are the extent of its intended expansion, it is obvious to impacted community members that these new elements of the pipeline had already been conceived in 2013 and 2014 when Millennium added another two new compressors within 50 miles of the new proposed ESU compression.

The Hancock and Minisink compressor stations along the Millennium Pipeline were completed in April 2014 and June 2013, respectively. The addition of the new ESU compressor in Highland, NY, coupled with a second compressor at the Hancock, NY site, brings the pipeline from two compressors within 50 miles to four compressors within 50 miles. Such a situation is more than quadruple the standard of one compressor every 40 to 100 miles of pipeline.⁶ Based on industry practice and the reality of natural gas pipeline operations, it is obvious that the proposed ESU compression along with the Hancock and Minisink compression projects, are merely a pre-cursor to significant additional expansion already being anticipated by Millennium for all or significant portions of its current pipeline in the form of a second, parallel pipeline construction project. In fact, in an April 6, 2012 news article,⁷ Millennium representatives already were speculating about the possible future of a second pipeline being constructed along the existing pipeline. And the docket for the Minisink compressor station included comments about new compression at Hancock and asserted the need for its consideration and review as part of the Minisink docket CP11-5151. The comments were dismissed by FERC with a statement that should a compressor in Hancock be proposed in the future then, at that time, consideration of the Minisink Compressor impacts should and would be considered.

Despite the evidence to suggest that the proposed ESU is merely a segment of a much larger project soon to come, FERC refuses to consider this segmentation potential or to undertake any review beyond a simple NEPA Environmental Assessment. FERC's failure to anticipate and or investigate the likely expansion of the Millennium pipeline despite the evidence suggests a willful blindness on the part of the Agency.

⁶ A review of data from top shale gas pipeline industry organizations and companies shows very little variation in the actual or suggested distances between compressor stations, with all ranges reviewed falling within 40-100 miles. While sources note that the distance between compressor stations can vary depending on factors such as the size of the pipeline, the compressor horsepower, and the desired capacity, *none* of the literature sites compressor station intervals *shorter than 40 miles* Based on a review of: (1) Folga, S.M. 2012. "Natural Gas Pipeline Technology Overview," Argonne National Laboratory.; (2) Tobin, James. 1996. "Natural Gas Compressor Stations on the Interstate Pipeline Network: Developments Since 1996," Energy Information Administration.; (3) Interstate Natural Gas Association of America. 2010. "Interstate Natural Gas Pipeline Efficiency.;" (4) Spectra Energy. 2013. "Inside a Natural Gas Compressor Station.;" (5) Eagle Pipeline LLC. 2012. "Station Pipeline." Retrieved from: <http://www.eaglepipelinellc.com/station-work.html>; (6) Naturalgas.org. 2013. "Transportation of Natural Gas." Retrieved from: <http://naturalgas.org/naturalgas/transport/>; (7) Nexus Gas Transmission. 2015. "Compressor Stations." Retrieved from: <http://www.nexusgastransmission.com/about/compressor-stations>; (8) Circor Energy. 2016. "Compressor Stations." Retrieved from: <http://www.circorenergy.com/applications/compressor-stations.php>

⁷ Herald Staff. April 6, 2012. "Millennium Holds Open House On Proposed Construction of Second Compressor Station," The Hancock Herald.

The continued use of segmentation by FERC is a violation of the National Environmental Policy Act that also frustrates provisions of Natural Gas Act to the degree that congressional investigation and action are needed.

✓ **FERC deliberately, and increasingly, carries out its public process in a way that purposefully obstructs informed public participation in FERC's administrative process.**

FERC obstructs informed public participation by frequently holding hearings at locations distant from the communities being impacted by the projects it is reviewing, failing to timely respond to requests for confidential information needed to inform public comment, limiting public comment by structuring hearings in a way that prevents all individuals from testifying and/or providing a fair amount of time to submit hearing testimony or to craft written comment, failing to providing adequate notice of hearing venues and/or changes, and targeting comment for periods that span difficult periods for most members of the public to participate (i.e. public holidays etc.).

Recently, FERC refused to provide Critical Energy Infrastructure Information ("CEII") to an environmental organization until after the scoping period for the proposed Project had closed, despite the organization's timely filing of the request for information and its repeated efforts to secure the documents requested. By way of specifics, CEII material relating to the Millennium Eastern System Upgrade was posted to the FERC docket on April 29, 2016. The Delaware Riverkeeper Network submitted its request for this information the same day. On May 11, 2016, FERC released a notice of intent to prepare an environmental assessment for the project and a request for comments on its potential environmental impacts with a comment deadline of June 10, 2016. DRN filed at least 3 additional requests for the information and urged an extension of the comment period to allow the organization time to receive and to review and comment on the materials before the close of the scoping period. FERC refused the extension, and while it made repeated promises that the information was imminent, the organization only received the information on or about July 29, 2016, well after the scoping period ended.

By way of another example, while notices of a change of hearing venue for the PennEast pipeline project were dated August 5, 2016, the post mark on the notices was August 11, almost a full week later, and the notices only actually reached public mail boxes on August 16 and 17, the very days the hearings were taking place. Such a delay denied concerned members of the public the opportunity and ability to attend the hearings at these new locations. This problem was compounded by the fact that the hearings were just 24 to 26 days into the public comment process for a voluminous 1,174 page draft EIS document, and for which the full period for written comment was only 45 days.

In fact, it seems common practice for FERC to give inadequate notice to the public to purposefully avoid broad awareness of and participation in the meetings. For the Atlantic Coast Pipeline, FERC announced on February 27 that it would be opening its scoping period to gather public input and holding a scoping meeting on March 18 for the community. Given the high level of interest in the project and the significant volume of information and concerns that needed to be compiled, reviewed and addressed, three weeks was not an appropriate level of notification.

Communities frequently report that despite driving hundreds of miles and hours to attend a public comment hearing, FERC will end the opportunity for comment at a hearing and turn people away without giving them the opportunity to provide oral testimony. This is in addition to frequently limiting public hearing testimony to only three minutes, even when that reduced time is not necessary in order to give every individual present an opportunity to speak before the close of a particular hearing. For example, at recent PennEast project hearings comment was reduced from five minutes to three minutes for the stated purpose of ensuring everyone had the opportunity to testify, despite the fact that the number of

individuals signed up to testify did not warrant the reduction in time. FERC's unnecessary time restriction was evident when all individuals had provided testimony a full hour to hour and a half before the end of the stated hearing time - all individuals that were signed up had testified by 8:30 pm when the scheduled close of the public hearing was 10 pm. FERC also often allows employees of the pipeline industry to sign up early to testify at public hearings so that when the general public arrives at their advertised time there are already many pro-industry personnel signed up to provide comment.

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

At a recent FERC faux hearing FERC implemented a new format designed to take the "public" out of the concept of public hearings and deny the ability of attendees from hearing the testimony offered by others in attendance; anti-pipeline commenters were escorted individually to rooms to state their testimony, in private, to a FERC-hired stenographer out of the hearing of others in attendance. The press was prohibited from taking photos and/or video for their news reporting. At this same meeting the public was also told that they were prohibited from taking photos of the public meeting and the press was denied the option of photos or video during the public "hearing"; individuals who took photos were quickly *dressed-down* and admonished by FERC representatives present. During this same faux hearing process FERC sought to use state police to intimidate a member of the public from sharing T-shirts and information in the waiting room prior to members of the public offering testimony in a hearing format that forced folks to testify privately in front of a FERC-hired stenographer. At this same meeting FERC employees stated that they had neither made, nor were making, any special accommodations for members of the public with sight impairment - i.e. the 1,174 page Draft Environmental Impact Statement was not being offered in braille nor would an audio version be made available. At this series of faux hearings a parent had to argue with a FERC employee for the right to sit with her minor child during delivery of the child's testimony to the stenographer. When challenged by the FERC employee as to the need to be present the mother stated her concerns, and had to forcibly assert her right as a parent to be present. The public was disenfranchised, confused, intimidated and angered by the wealth of hurdles and challenges they faced from FERC employees and security.

The steps being taken by FERC to deny people their right to be heard and to participate in the public review process for proposed pipeline projects that will take their private property rights, irreparably damage natural resources and lands communities have worked hard to preserve and restore, take jobs and harm small businesses, impede farmers from being able to most successfully grow their crops, and put communities in a literal blast zone that could take their lives if an accident, incident or explosion occurs, clearly frustrates provisions of the National Environmental Policy Act, the Clean Water Act, and the Natural Gas Act to the degree that congressional investigations are needed.

- ✓ **FERC inappropriately allows pipeline companies to use profit goals, the desire to enhance their ability to compete with other pipeline companies, and obvious self-dealing to fulfill the requirement of need that entitles a company to pursue a project using the power of eminent domain and avoiding state and local legal requirements that would apply to every other industry.**

FERC is required to make a determination regarding project need prior to engaging in the environmental analysis for the project. However, FERC provides no written determination justifying its need determination to the public nor provides the public an opportunity to engage FERC on the subject. Frequently evidence is ignored that is placed on a pipeline docket that undermines the claim of need for a project, and/or demonstrates that the pipeline company itself is actually its own customer for the gas

contracts they purport demonstrate a need for the project. FERC routinely rejects such analyses without any explanation.

The supposed public “need” advanced by PennEast and adopted by FERC included assertions that the proposed pipeline is necessary to serve New Jersey and eastern Pennsylvania communities and some unstated number of “surrounding states.” However, there are numerous reports on the PennEast docket that prove there is in fact no “need” for gas that PennEast could serve, and that if it were to be built there would be an increased gas surplus in both NJ and PA.

According to two expert reports on the PennEast docket:

“Natural gas consumption for New Jersey has been relatively flat for the past four years at average rate of 1.8 billion cubic feet of gas per day (Bcf/d), somewhat below the higher levels of the late 1990s. [] Although consumption increased slightly in 2013 compared to the three previous years, New Jersey cannot be called a growth market....”

“The proposed PennEast Pipeline would deliver an additional 1 Bcf/d of natural gas to New Jersey potentially creating a 53% supply surplus above the current level of consumption.”

“...Pennsylvania has no unfulfilled demand...”⁸

“Local gas distribution companies in the Eastern Pennsylvania and New Jersey market have more than enough firm capacity to meet the needs of customers during peak winter periods. Our analysis shows there is currently *49.9% more capacity than needed to meet even the harsh winter experienced in 2013.*”⁹

Other claims of “need” by the company being endorsed by FERC are to “provide low cost natural gas produced from the Marcellus Shale region;” to “provide “enhanced competition among natural gas suppliers and pipeline transportation providers;” and to allow “supply flexibility”, “diversity”, better pricing, etc. But by any reasonable definition, none of these are public “needs.” These are industry desires, goals, hopes, dreams, wishes and wants and should not justify the power of eminent domain and avoidance of state and local regulations and protections by the pipeline company. These are very clearly private goals and gains that are sought for the benefit of private industry on the backs of people, communities and the environment.

Even though there is no evidence to document a need for the gas, just a desire by PennEast to be able to better compete with its competitors and to increase its profits, FERC is endorsing the PennEast Pipeline company’s assertion of “need.”

Further, FERC accepts the assertion by PennEast that because it has contracts for most of its proposed pipeline’s capacity, that it has somehow demonstrated need. But as described by the New Jersey Division of Rate Counsel in comments on the PennEast Docket, it is the PennEast companies that have contracted for their own capacity in order to support their argument that there is a need – FERC makes no investigation into the legitimacy of the claims resulting from this self-dealing:

“PennEast bases its claim of need on “precedent agreements with seven foundation shippers and twelve total shippers, which together combine for a commitment of firm capacity of 990,000 dekatherms per day (‘Dth/d’),” approximately 90% of the Project’s

⁸ *Professional Opinion of Proposed PennEast Pipeline Project*, Arthur E. Berman, Petroleum Geologist, Labyrinth Consulting Services, Inc., February 26, 2015

⁹ *Analysis of Public Benefit Regarding PennEast, Skipping Stone*, March 9, 2016

total capacity. In this case, approximately 610,000 Dth/d of the 990,000 Dth/d of capacity has been contracted by affiliates of the Project owners. PennEast is a joint venture owned by Spectra Energy Partners, LP together with subsidiaries of AGL Resources Inc., New Jersey Resources, South Jersey Industries, UGI Energy Services, LLC, and Public Service Enterprise Group (“PSEG”). Of the twelve shippers that have subscribed to Project capacity, five of them are affiliates of companies that collectively own PennEast. Specifically, Pivotal Utility Holdings, Inc. (D/B/A Elizabethtown Gas), a subsidiary of AGL Resources, Inc., has contracted for 100,000 Dth/d. New Jersey Resources is the parent company of New Jersey Natural Gas Company, which has contracted with PennEast for 180,000 Dth/d of firm transportation capacity. Similarly, South Jersey Industries subsidiary South Jersey Gas Company has contracted with PennEast for firm capacity of 105,000 Dth/d. UGI Energy Services, LLC, the parent of PennEast stakeholder UGI PennEast LLC, has contracted for firm capacity 100,000 Dth/d. And PSEG Power LLC, a member of the PSEG corporate family, has likewise contracted for 125,000 Dth/d. **Thus, two-thirds of the demand for the pipeline exists because the Project’s stakeholders have said it is needed. This self-dealing undermines the assertion of need that the DEIS relies upon ...**” (emphasis added; citations omitted)

As discussed in *Risks Associated with Natural Gas Pipeline Expansion in Appalachia*,¹⁰ pipeline companies have an incentive to overbuild, and no reason to self-moderate or limit their construction. The failure of FERC to provide any independent review or oversight over self-serving claims of “need” undermines the requirements of the law or the needs of the public. As stated in the report:

“... current low natural gas prices in the Marcellus and Utica region are driving a race among natural gas pipeline companies that want to capitalize on low prices by building new pipeline capacity to higher-priced markets. An individual pipeline company acquires a competitive advantage if it can build a well-connected pipeline network that offers more flexibility and storage to customers; thus, pipeline companies competing to see who can build out the best networks the quickest.³ This is likely to result in more pipelines being proposed than are actually needed to meet demand in those higher-priced markets.

Additionally, utilities—which have been attracted to the natural gas pipeline business because of its traditionally high returns and to further integrate their supply chains as electric power generation becomes increasingly reliant on natural gas—have an economic interest in building new lines. A regulated electric or gas utility that is purchasing natural gas for power generation or for use as a heating fuel passes the cost of its pipeline contracts, which include a FERC-approved profit for the pipeline developer, on to its customers.⁴ If the regulated utility’s parent company can build its own pipeline for use by its regulated subsidiary, it can capture this profit, giving a utility holding company an incentive to prioritize building its own pipeline rather than utilizing that of another company.⁵ This structure also shifts some of the risk of pipeline development from the developer and its shareholders to the regulated utility’s ratepayers.

Some upstream producers of natural gas, such as EQT Corporation, have also moved into the pipeline construction business. For such companies, investment in pipelines promises a relatively stable revenue stream compared to the volatility of the natural gas drilling business. EQT, for example, has taken advantage of investors’ willingness to fund pipeline development by creating an EQT-controlled master limited partnership (EQT Midstream), which has been able to raise equity through public offerings both for new pipeline projects and for buying gathering and processing infrastructure formerly owned by EQT, leaving EQT in a much better cash position than many other drillers. Such short-term balance sheet

¹⁰ IEEFA, *Risks Associated with Natural Gas Pipeline Expansion in Appalachia*, April 2016.

considerations for a company like EQT do not translate into rational planning of long-term infrastructure.”

In addition,

“the regulatory environment created by FERC encourages pipeline overbuild. The high returns on equity that pipelines are authorized to earn by FERC and the fact that, in practice, pipelines tend to earn even higher returns, mean that the pipeline business is an attractive place to invest capital. And because, as discussed previously, there is no planning process for natural gas pipeline infrastructure, there is a high likelihood that more capital will be attracted into pipeline construction than is actually needed.”

The analysis goes on to say:

“The pipeline capacity being proposed exceeds the amount of natural gas likely to be produced from the Marcellus and Utica formations over the lifetime of the pipelines. An October 2014 analysis by Moody’s Investors Service stated that pipelines in various stages of development will transport an additional 27 billion cubic feet per day from the Marcellus and Utica region. This number dwarfs current production from the Marcellus and Utica (approximately 18 billion cubic feet per day). ... pipeline capacity out of the Marcellus and Utica will exceed expected production by early 2017.”

By way of further example of the inappropriate consideration given to need by FERC, FERC refuses to revisit the alleged “need” for the Sabal Trail pipeline through Alabama, Georgia, and Florida despite admissions by Florida Power and Light (FPL) that the claimed need for the project dramatically changed for the region. In 2016, FPL’s Ten Year Plan stated firmly that “FPL does not project a significant long-term additional resource need until the years 2024 and 2025” and at the same time acknowledges that growing investments in efficiency and solar power will stave off and reduce Florida’s need for increased natural gas deliveries. Given the predictions that shale gas will peak by 2020 and be in serious decline thereafter, given that FPL’s predictions for its energy needs changed significantly between its 2013 and 2016 energy plans, and given the significant advancements in efficiency and clean energy options, FERC’s refusal to reconsider the question of need for the Sabal Trail pipeline is yet another irresponsible abuse of its authority.

Given the level of loss sustained by the public, businesses and critical natural resources when a natural gas pipeline is approved by FERC, the inappropriate definition granted by FERC to the analysis of need for a pipeline that is clearly contrary to the historic underpinnings and intent of the law, mandates Congressional investigation.

✓ **FERC routinely undermines the authority of other federal agencies by allowing projects to advance to construction despite not having all federal permits required by law.**

In addition to the requirement of Clean Water Act for Section 401 water quality certificates to be obtained prior to FERC issuing Certificates of Public Convenience and Necessity, FERC also routinely defies its very own conditions that it inserts into its certificates that projects receive all required federal permits before proceeding to construction.

While FERC regularly includes in its Certificate approvals for pipelines the following 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,¹¹

FERC uses this provision as proof that FERC is ensuring pipeline projects are fully compliant with all applicable laws, and to assure concerned politicians that a project will not commence to construction until such time as it has fully complied with all applicable laws, and has received all necessary permits, FERC habitually allows projects to commence, with elements of construction inflicting significant environmental impacts, prior to receiving all necessary permits and 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.

In 2014, an industry publication¹² said Marcellus Shale gas would reach Miami through Sabal Trail, and there at least four liquid natural gas (LNG) export operations already authorized by the Department of Energy Office of Fossil Energy (FE) where this pipeline chain goes in Florida, plus FE authorization for Florida East Coast Railroad to carry LNG as far as Jacksonville and Miami, in violation of Section 3 of the Natural Gas Act, which states, "no person shall export any natural gas from the United States to a foreign country or import any natural gas from a foreign country without first having secured an order of the Federal Energy Regulatory Commission (FERC) authorizing it to do so."

FERC's undermining of other federal regulatory programs and agencies clearly frustrates provisions of the Clean Water Act, Clean Air Act, Coastal Zone Management Act and the Natural Gas Act to the degree that congressional action to reform the law is needed.

In Conclusion, Congressional Hearings into the Abuses Being Suffered by Communities at the Hands of FERC and the Natural Gas Act are Timely and Needed.

We, the undersigned, representing communities across America, respectfully request that you schedule, as a priority for the 115th Congress, Congressional Hearings in both the House Energy & Commerce Committee and the Senate Committee on Energy & Natural Resources, into the abuses communities are suffering at the hands of the Federal Energy Regulatory Commission as a result of the use and misuse of the provisions of the Natural Gas Act, and that you take no action to "streamline"

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

12 MIAMI 2017 – MARCELLUS GAS HEADING TO FLORIDA, by Housley Carr, Oil & Gas Financial Journal, 17 January 2014, <http://www.ogfj.com/articles/2014/01/miami-2017-marcellus-gas-heading-to-florida.html>

review and approval of natural gas pipeline projects or LNG export facilities approved pursuant to FERC jurisdiction.

Respectfully Requested,

Maya K. van Rossum, the Delaware Riverkeeper, Delaware Riverkeeper Network
David Pringle, NJ Campaign Director, Clean Water Action
Richard Eidlin, VP of Policy/Campaigns and Co-Founder, American Sustainable Business Council
Natalie Pien, Chair, 350 Loudoun
Kelly Branigan, Founding Member, Middlefield Neighbors
Rosemary Wessel, Founder, No Fracked Gas in Mass
Richard Eidlin, Co-Founder, American Sustainable Business Council
Kate McLaughlin, President & Executive Director, Prince William Soundkeeper
Pramilla Malick, Chair, Protect Orange County
William Kibler, Director of Policy, Raritan Headwaters
Linda Christman, Save Carbon County
Pramilla Malick, Chair, Stop the Minisink Compressor Station
Cathy Kristofferson, Co-founder, StopNED
Kimi Wei, CEO/Founder, The Wei
Elizabeth Nicholas, Executive Director, Waterkeepers Chesapeake
Connie Leeper, Organizing Director, NC WARN
Rebecca Roter, Chairperson/Co-Founder, Breathe Easy Susquehanna County
Anne Havemann, General Counsel, Chesapeake Climate Action Network
Yvonne Taylor, Vice President, Gas Free Seneca
Tim Spiese, Board chairman, Lancaster Against Pipelines
Julie Edgar, Organizer, Lehigh Valley Gas Truth
Terry Phelan, Vice President, Our Santa Fe River
Joseph Campbell, President, Seneca Lake Guardian
Edwin Cady, Jr., Chair, Town of Warwick, Massachusetts Planning Board
C. Sharyn Magee, President, Washington Crossing Audubon Society
Kimi Wei, Founder, Tierra Madres
Jim Vogt, President, Aquashicola/Pohopoco Watershed Conservancy
Jan Sodt, Coordinator, Concerned Citizens of the Methow Valley
Patricia Wood, Executive Director, Grassroots Environmental Education
Pamela Hughes, Chair, Sierra Club Niagara Group
John S. Quarterman, President, WWALS Watershed Coalition, Inc.
Jane Winn, Executive Director, Berkshire Environmental Action Team (BEAT)
Charley Bowman, Co-Chair, Environmental Justice Task Force of WNY Peace Center, Inc.
John Valentine, Founder, Mohawk Valley Keeper
Phillip Johnson, Executive Director, Oregon Shores Conservation Coalition
Harriet Heywood, Florida State Coordinator, People Demanding Action
Stacey McLaughlin, Pipeline Awareness Southern Oregon
Jen Hilburn, Altamaha Riverkeeper/ED, Altamaha Riverkeeper
Chris Hale, Founder/Citizens Climate Lobby Group Leader, Friends of Water
Johanna de Graffenreid, Coastal Campaign Organizer, Gulf Restoration Network
Julia Steed Mawson, Signatory, Pelham Awareness Outreach Subcommittee
Hope Taylor, Executive Director, Clean Water for North Carolina
Lynn Ellen Marsh, President, Advocates for Cherry Valley
Sheila Murray, Chairperson, Berkshire Brigades
Georgina Shanley, Co-founder, Citizens United for Renewable Energy
Bob Shavelson, Inletkeeper, Cook Inletkeeper

Doug O'Malley, Director, Environment New Jersey
Jennifer Kalt, Director, Humboldt Baykeeper
Lynn Ellen Marsh and Douglas DeLong, Partners, Landscape Alternatives, LLC
Asha Canalos, Co-founder, Minisink Matters
Jeff Tittel, Executive Director, NJ Sierra Club
Diane Wexler, Co-founder, Northjersey Pipeline Walkers
Wendy M. Graca, Secretary, South Coast Neighbors United, Inc
George Billard, Founding Member, Sullivan County Residents Against Millennium
Mike Spille, Founder, West Amwell Citizens Against the Pipeline
Bianca Sopoci-Belknap, Executive Director, Earth Care
Susan Van Dolsen, Co-founder, Stop the Algonquin Pipeline Expansion
Pamela Bishop, Concerned Citizens of Lebanon County
Reena Kondo, President, Unitarian/Universalist Women's Association
Lee Willbanks, Riverkeeper/Executive Director, Save the River/Upper Saint Lawrence Riverkeeper
Kamita Gray, Founding Trustee/Director, Brandywine | TB Southern Region Neighborhood Coalition
Paul Sansone, Forest Grove Oregon Citizens Against the Pipeline (OCAP)
Diane Wright, Facilitator, People of Albany United for Safe Energy (PAUSE)
Debraura James, Representative, Securing Economic and Energy Democracy (SEED) of SW NM
Wendi Taylor, Citizens for a Safe Cumberland County
Maureen Syrnich, Board of Trustees, HALT- PennEast
Vincen DiBianca, Founding Partner, DiBianca Associates
Matt Renner, Executive Director, World Business Academy
Marie Case, Senior Partner, Praemia Group
Suzanne DiBianca, Trustee, The DiBianca Family Foundation
Kip Bennett, Owner, Bennett Farm Services
George Eckelmann, President, Eckelmann Bros. Construction
Daria Karas, Owner, Karas Administrative Services
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Emma Gerald Boyer, Riverkeeper, Waccamaw Riverkeeper
Tina Lieberman, Chair, People's Climate Movement- Capital Region
Bill Schultz, Riverkeeper, Raritan Riverkeeper
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Cheryl Nenn, Riverkeeper, Milwaukee Riverkeeper
Nancy Vann, President, Safe Energy Rights Group, Inc.
Mike Kamandulis, President, Elk County C.A.R.E.S.
Debra McGee, Co-Founder, 350 Eugene
Laurie Ardison, Co-Chair, Protect Our Water, Heritage, Rights (POWHR)
Suzy Winkler, Co-founder, Concerned Burlington Neighbors
Lee Stewart, Organizer, Beyond Extreme Energy
Judy Azulay, President, Indian Creek Watershed Association
Ernie Reed, President, Friends of Nelson
Carol Kleis, Board President, Friends of Hopewell Valley Open Space
Mike Carter, Chairman, Preserve Franklin County

Will Scott, Riverkeeper, Yadkin Riverkeeper
Franz Gerner, Myersville Citizens for a Rural Community
Karen Feridun, Founder, Berks Gas Truth
Lise Van Susteren, Steering Committee, Interfaith Moral Action on Climate (IMAC)
Elizabeth Balogh, Stop the PennEast Pipeline
Collin Fox Thomas, Co-founder, Capital District Against Fracking
William Robertson, Vice President, Concerned Citizens for a Safe Environment
Gary Zuckett, Executive Director, WV Citizen Action Group
Robert Weekes, Secretary, Richmond Heritage Commission
Lorenz M. Warden, President, Albany Bicycle Coalition
Pat Almonrode, Steering Committee, 350 NYC
Eleanor Amidon, Pipeline Education Group of Nelson County, VA
Carrie Hahn, Organizer, Citizens Alliance Upholding a Safe Environment (CAUSE)
Harriet Shugarman, Executive Director, ClimateMama
Chad Oba, Chair, Friends of Buckingham
Marion Kanour, Free Nelson
Paul Ferrazzi, Executive Director, Citizens Coalition for a Safe Community
Ann Finneran, Charter Member, NY Water Action Group
Janette Chauncey, Owner, Lakehouse Graphics
Becky Meier, Co-founder, Stop NY Fracked Gas Pipeline
John J. Walkup III, President, Greenbrier River Watershed Association
Lewis Freeman, Executive Director/Chair, Allegheny-Blue Ridge Alliance
David Bennick, President, Southern Shenandoah Chapter of the Potomac Appalachian Trail Club
David Sligh, Conservation Director, Wild Virginia
Joseph Otis Minott, Esq., Executive Director, Clean Air Council
Rick Webb, Program Coordinator, Dominion Pipeline Monitoring Coalition (DPMC)
C.E. Zipper, Coordinating Team Member, Preserve Montgomery County Virginia
Colleen McKinney, Co-founder, People, Not Pipelines
Richard Shingles, Coordinator, Preserve Giles County
Julia Somers, Executive Director, NJ Highlands Coalition
Jackie Schramm, Director, Franciscan Response to Fracking
Claire Miller, Lead Organizer, Toxics Action Center
Marion Kanour, Knitting Nannas of Virginia
Wes Gillingham, Program Director, Catskill Mountainkeeper
Debra Borowiec, Coordinator, LAWPA- Local Authority of Western PA
Rob Slabe, President, UBCAMP- Upper Burrell Citizens Against Marcellus Pollution
Kathy Chapman, Co-Chair, Mason Pipeline Committee
Nancy Wilson, Steering Committee, Stop the West Roxbury Pipeline
Aaron Mintzes, Policy Advocate, EarthWorks
Wenonah Hauter, Executive Director, Food & Water Watch
Delta Carney, Founding Member, Hilltown Community Resource
Carol Davis, Coordinator, Diné Citizens Against Ruining our Environment
Ann Rogers, Member, Preserve Roanoke
Wendy Insinger, Infrastructure Committee Organizer, Sustainable Warwick
Nancy Sorrells, Co-Chair, Augusta County Alliance
James Slotterback, President, Board of Directors, Responsible Drilling Alliance
Paul L. Gierosky, Co-founder, Coalition to Reroute Nexus
Nancy Wilson, Steering Committee, Resist the Pipeline
Allen Johnson, Coordinator, Christians for the Mountains
Fred Krueger, National Religious Coalition on Creation Care
Kathy Maher, President, Coastal Monmouth Democratic Club

Myra Crawford, Executive Director, Cahaba Riverkeeper
Tara Sumner, Vice President, Advocates for Springfield, NY
Tammy Daly, Funds Distribution, Green PTA
Bruce Ferguson, Catskill Citizens for Safe Energy
April Keating, President, Mountain Lakes Preservation Alliance
Mary Kushner, Founding Member, Roseland Against the Compressor Station (RACS)
Rebecca Sobel, Climate and Energy Senior Campaigner, WildEarth Guardians
Mariel Nanasi, Executive Director, New Energy Economy
Mark Canright, Organic Farmer, Comeback Farm
Chris Tuley, Keep Southeast Nashville Healthy
Kate Bartholomew, Conservation Co-Chair, Atlantic Chapter of the Sierra Club
Elaine Cimino, Stop Fracking the Rio Grande Valley
Michael Gorr, Group Coordinator, Southern Cayuga Anti-Fracking Alliance
Shane Davis, Director, Fractivist.org
Jeff Kelble, President, Potomac Riverkeeper Network
Dean Naujoks, Potomac Riverkeeper, Potomac Riverkeeper Network
Mark Frondorf, Shenandoah Riverkeeper, Potomac Riverkeeper Network
Brent Walls, Upper Potomac Riverkeeper, Potomac Riverkeeper Network
Tammy Daly, Rec Director, Green Soccer Association
Lea Harper, Managing Director, Freshwater Accountability Project
Beth Little, Secretary/Treasurer, Eight Rivers Council
Geoff Welch, Chair, The Ramapo River Committee
Kathryn Eiseman, Director, Massachusetts PipeLine Awareness Network
Allegra Schecter, Founder, ROAR Against Fracking
Marion Kanour, PAUSE (Peaceful Action Uniting Stewards of the Earth)
Stephanie A. Scherr, Founder, ECHO Action
Tammy Daly, President, Green Meadows Homeowners Association
Diane Sipe, President, Marcellus Outreach Butler
Kim Fraczek and Patrick Robbins, Co-Directors, Sane Energy Project
Gillian Graber, President, Protect PT
Wayne Stinson, Action Committee Member, Peacemakers of Schoharie County
Laura Dansby, Chair, Climate Action Alliance of the Valley
Amy Adams, NC Campaign Coordinator, Appalachian Voices
Hannah Sohl, Director, Rogue Climate