

Kimberly D. Bose, Secretary
Federal Energy Regulatory Commission
888 First Street NE
Room 1 A
Washington, DC 20426

re: Tennessee Gas Pipeline Company, L.L.C., Docket No. PF14-22-000

Dear Secretary Bose:

Fix FERC First **Chapter 2: FERC's Faulty Definition of Need**

It has become increasingly obvious to many observers that the Federal Energy Regulatory Commission (FERC) is badly broken and desperately in need of repair or reformulation. This document is one in a series of several chapters of the **Fix FERC First** story, with each chapter describing a specific FERC shortcoming and the harm done directly to the public and the public interest as a result of that shortcoming. This chapter details **FERC's Faulty Definition of Need**.

Most people will concede that a government might justifiably make occasional use of eminent domain. This power allows a local, state or federal government the ability to determine that a proposed construction project is for the common good and that it will provide enough benefit to the public at large for the government to justify the taking of the privately owned land (with compensation paid) that is needed for the project to go forward.

But such taking of private land is a gravely serious matter. Simply stated, eminent domain is a “nuclear option” because it violates what most US citizens hold so dear – their ability to own and control their own land and their own home. Such potent powers should be used very sparingly and only after an open, public review that demonstrates the absolute need for the project and the benefits that will accrue to the public at large if the project is approved. The use of eminent domain to facilitate a project whose need has not been openly examined and clearly proven to the public is an abuse of the power granted to the government by the people.

Congress has given FERC the ability to grant federal eminent domain powers (overriding virtually all state and local powers) to privately owned, for-profit energy companies – and FERC uses this power quite freely. Once FERC determines that a proposed project is worthy of a certificate of “public convenience and necessity”, landowners in the project's path (be they individuals or members of a group such as conservation commissioners) understand that their ability to control and protect their land from harm has been overridden and that this control will now be shared with a private energy company. Virtually every large scale pipeline project that FERC approves involves the taking of land by eminent domain and/or the coerced sale of land or easements by otherwise unwilling owners who know that the land will simply be taken if they do not negotiate. And remember that FERC has approved virtually every one of these projects that it has considered.

So just how should the determination of a valid public “need” for new energy infrastructure be reached? You might think that there would be an open, public review of the energy supply needed in the region and of the possible energy sources available; of making full use of existing infrastructure while also trying to diminish carbon and greenhouse gas emissions; of favoring projects that would increase efficiencies and conservation over increased energy usage; of emphasizing renewable energy resources

where appropriate; of adapting our energy portfolio as new technologies emerge and are put into use; and of only as a very last resort choosing to create massive new infrastructure that will lock us into increased fossil fuel usage for decades to come. But if you thought that any of the above was true, you would be mistaken.

What then is the definition of “need” that FERC uses to justify the approval of the many projects proposed by these energy companies? Simply stated, FERC allows energy companies to collaborate in private with large scale energy consumers and for them to jointly determine the “need” for new energy infrastructure. In other words, public “need” is determined solely by the market, not by a considered look at the public’s current energy needs and its stated goals for a cleaner, more renewable energy future.

Because of FERC’s market-based definition of “need”, the public is largely excluded from having any part in helping to determine or even commenting upon the issue of need. Once the for-profit folks have determined that there is a “need”, FERC will then encourage the public to comment upon the environmental and property damage that will result if the project goes forward - but FERC does not encourage any public input on the issue of determining the need for the project in the first place.

And note that some of the large scale energy consumers helping to determine the market “need” may well be planning to export the natural gas coming through the proposed pipeline. Because of FERC’s faulty definition of “need”, the “need” of the energy companies to export natural gas is considered to be every bit as genuine as the actual need of American citizens to have a reliable and affordable energy supply – how can this be considered to be a rational policy? Given FERC’s approach, the property rights and protected lands of American citizens can then be trampled upon in order to advance a private energy company’s plans to develop an export market for its product. Just whose greater good is being served by this?

Approving major infrastructure projects that the public perceives as being built largely for the benefit of a private energy company and its shareholders, while not allowing that same public to take an active role in the review of the actual need for those projects has many detrimental effects.

One effect is that people become enraged and they react. Is it any wonder that FERC has experienced such a sharp uptick in the number of incidents where otherwise peaceful and law-abiding members of the public are disrupting FERC’s meetings and blocking access to their headquarters building in Washington DC?

Another effect is that the public will perceive that government itself is ineffective, is uncaring or has simply been bought and paid for by private interests. When the overwhelming vote of dozens of town meetings to oppose a pipeline is inconsequential; when seemingly strong local conservation and wetlands laws can be brushed aside by a for-profit company; and when even a state’s constitutional protection of public lands is threatened (see Mass Article 97) - then the public notices. And they take notice when this is being done for a pipeline whose very capacity virtually guarantees that much of the gas that it carries will be shipped overseas. And they notice when they are told that, in fact, multiple new pipelines may be “needed”. But not needed by the public, no - they are “needed” by the energy companies, by the export market and by the profits that it all promises.

Summary

FERC must take a big step back and reexamine its working definition of the “need” for additional fossil fuel infrastructure. It makes no sense to allow the market to be the sole arbiter of “need” - the public must be included in this determination. After all, it is the public whose private property rights will be

overridden, it is the public that will lose precious conservation land, and it is the public that will be forced to bear the many other negative impacts of the multiple natural gas pipeline projects being proposed in New England. Those projects that the for-profit energy companies are trying so desperately to prove to FERC that we “need”.

Nick Miller Groton, MA



This earlier chapter of **Fix FERC First** is downloadable from the FERC eLibrary:

[Chapter 1: An Introduction](#)