

Fix FERC First

The Sad Story Of An Irregular Regulatory Agency

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Foreword

Kinder Morgan is a private energy company that has proposed constructing a massive high pressure natural gas pipeline from Wright, NY through northern Massachusetts and southern New Hampshire and terminating in Dracut, MA. This proposal is known as Northeast Energy Direct (NED) project. Kinder Morgan is in the process of filing an application with the Federal Energy Regulatory Commission (FERC) for the authority to build this pipeline.

FERC is the federal agency that has approval authority for interstate energy infrastructure projects such as the NED project. FERC will determine whether to issue Kinder Morgan a certificate of “public necessity and convenience” for this project. Essentially, FERC is charged with determining whether the project meets the “greater good” standard – that is, whether the project’s potential advantages outweigh the damage that this pipeline would do to both the environment and to private property rights. If such a certificate is granted by FERC, Kinder Morgan can then use it to “take” easements to construct the pipeline from virtually any landowner along the pipeline route with whom it cannot reach an agreement. The certificate would also give Kinder Morgan the authority to lay the pipeline through protected wetlands, conservation land, etc., subject to FERC’s approval of the route.

This document contains a compilation of the seven chapters of what was initially a series of individual comments filed with FERC regarding the proposed NED pipeline, focusing on FERC’s regulation (and specifically on the lack of said regulation) as Kinder Morgan’s application to FERC proceeds through the “pre-filing” process.

The original seven chapters have been edited to remove the FERC headers that originally preceded each chapter and the trailers that allowed readers to link back to previous chapters. Additionally, a title page, a Table of Contents, and this Foreword have been added to the document.

Chapter 1

Introduction

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. FERC is the Federal agency that oversees the approval of interstate oil and natural gas pipelines and other energy infrastructure proposed by private energy companies. FERC is, as its current chairman Cheryl LaFleur tells us, a “creature of Congress” – created by Congress to administer the pipeline approval process.

There are numerous grave problems with FERC that need to be addressed. This chapter will serve as a brief introduction to the **Fix FERC First** theme and will also provide an overview of the principal problems with FERC. Later chapters will cover these problems in greater detail.

The **Fix FERC First** title was chosen quite purposely - because it is impossible to expect that FERC will be able to provide a rational, considered deliberation of the multiple natural gas pipelines proposed for New England (and in many other parts of the country) while the rules and procedures that govern its deliberations remain as fundamentally flawed as they are at this time. An overview of these problems with FERC is provided in the next several paragraphs.

FERC considers pipeline proposals in isolation from each other, despite the fact that multiple simultaneous pipeline proposals from different companies should logically be considered and judged from an aggregated, regional perspective. FERC’s approach to determining the “need” for a particular pipeline appears to be “Approve them all and let the market sort them out”. We, the public, are then saddled with new fossil fuel infrastructure that will endure for decades – impeding the advancement of renewable energy and hindering our ability to meet goals for lowering greenhouse gas emissions.

Because of this faulty, market-driven definition of “need”, the “need” of the energy companies to export natural gas is considered by FERC to be every bit as genuine as the actual need of American citizens for a reliable energy supply – how can this be considered rational? The protected lands and the property rights of American citizens are then trampled on 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?

FERC asserts that it is interested in hearing from members of the public who feel they will be impacted by the approval of proposed energy infrastructure projects. FERC administers “scoping” meetings to allow public comment before they issue licenses. They require those proposing a project to prepare reports on the environmental impacts and they solicit public input to this process. But a closer look discloses that FERC is mostly interested in public comments about specific environmental or siting problems that might be caused by a project – and they then set about to have the energy company mitigate what FERC considers to be the worst of these. This is all well and good, but where is the ability of an individual or a town or even an entire state or region to question the actual need for a project? How can the public get any assurance that the damage that will inevitably accompany such a project is in fact to be balanced by a greater public good? It cannot.

As a direct result of the skewed metrics summarized above, FERC doesn’t seem to ever have come across a pipeline proposal that it didn’t like. This agency is staffed by commissioners following guidelines that lean very heavily in favor of approving all of the energy company proposals for large scale fossil fuel infrastructure projects that they are charged with considering. If some oil or natural gas

is good, then it appears that FERC considers that more must certainly be better – societal, environmental and climate costs be damned. In short, FERC has become a rubber stamp machine for the energy industry's current pipeline craze.

The companies proposing infrastructure projects are charged by FERC with some responsibility for informing the public of their proposals so that those impacted by these proposals will have a chance to learn about the project and provide feedback. Over the past year it has become painfully obvious to observers of Kinder Morgan's public presentations on the Northeast Energy Direct (NED) project that FERC maintains minimal monitoring, much less any actual control, over the quality of the information being supplied to the public. Kinder Morgan has a virtually unblemished record of providing vague answers, releasing ridiculously out-of-date pipeline maps (hello 1980s) and deliberately displaying photos of under-sized facilities (e.g. projecting a picture of a 6,130 HP compressor station to "give an idea" of what a 90,000 HP compressor station might look like) while "informing" the public of their NED plans. FERC is either completely unwilling and/or unable to intervene in this orgy of misinformation and there is apparently no risk to Kinder Morgan of FERC imposing any sanctions on it as the pipeline company continues to actively mislead the public and keep them in the dark for as long as possible. Is it in the public interest to hold meetings where the public is deliberately and actively misled?

If FERC is allowed to continue to wield the enormous power of the Federal government while applying its current set of skewed priorities and metrics, then we can expect it to continue to blindly approve massive new energy infrastructure projects that will marry us to a very long term fossil fuel future – one reached with scant consideration given to the possibilities for conservation and renewable energy, and one reached with disregard for individual property rights, local governance and even state laws.

Chapter 2

FERC's Faulty Definition of Need

Most people will concede that a government might justifiably make occasional use of eminent domain. This authority 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”.

Chapter 3

FERC Allows The Public To Be Misled

FERC has a responsibility for understanding and weighing the environmental and property impacts that are inevitable when any large, high pressure pipeline and its associated infrastructure are approved, constructed and put into operation. FERC therefore typically encourages the energy companies proposing such infrastructure to hold meetings to inform the public of their plans. The public deserves to be informed and this needs to be done in a timely manner. A properly informed citizenry can then consider the negative impacts of the proposed project upon themselves and their communities and provide timely feedback to FERC about those impacts. FERC can then balance those impacts against the public “need” for the pipeline (but see Chapter 2, **FERC’s Faulty Definition of Need**). If the project is approved, FERC will then require that the energy company remediate the worst of those impacts. This sounds plausible in theory - but note that this plan is completely dependent upon the energy company providing accurate and timely information to the public.

But what if an energy company doesn’t keep its end of the bargain? What if it delays informing the public and then supplies vague, misleading and simply false information – so that the public is robbed of some of its opportunity to provide timely feedback to FERC? Shouldn’t FERC have a hand in insuring that this doesn’t happen – and in sanctioning any energy company that does attempt to mislead and delay?

Imagine that an energy company such as Kinder Morgan did the following while “informing” the public:

- Made presentations at town meetings where it agreed to provide answers to the written questions submitted by the town selectmen – and then simply never even attempted to provide those answers, despite repeated requests for them to do so.
- Filed pipeline maps with FERC that are based on 1980s topographical maps – laughably poor maps that are missing anything built within the past 25 years; maps with less detail than what any 12-year old could access in seconds on a smartphone.
- At public meetings with hundreds of impacted residents present, Kinder Morgan showed a slide presentation that included an image of a small outbuilding that is part of a 6,130 HP compressor station to “give an idea of what a compressor station looks like” with the proviso “but not exactly like this”. There were two lies encapsulated in this one image. First, the image showed an outbuilding, not the much larger 6,000+ HP compressor building standing nearby. But even more importantly the audience was not told was that the project includes compressor stations of up to 90,000 HP, fifteen times the capacity of the 6,130 HP station. A 90,000 HP compressor station is a very sizable, brightly lit, noisy industrial complex comprising several large buildings - it is not the single smaller wood shingled outbuilding that Kinder Morgan displayed in a blatant attempt to mislead the public.
- Made changes to previously published pipeline maps with absolutely no effort to notify the newly affected (or the newly unaffected) towns and residents of those changes. Those folks were left to find this out from sources other than the company proposing to disrupt their lives.
- During the snowiest New England winter weather in 81 years, FERC staff “strongly recommended” that Kinder Morgan reschedule the public Open Houses planned for a week in February in order to insure that those planning to attend the meetings were not deterred by the record amount of snow and the two significant storms predicted for the upcoming week. Kinder Morgan thought it over and simply refused FERC’s strong recommendation to reschedule.

- Told the public that the pipeline would be constructed mostly within an existing power line right-of-way (ROW) when the truth is that it will be built parallel to but almost completely outside of the existing ROW. This is a huge difference to those along the pipeline's path.
- Kinder Morgan continues to file resource reports with FERC that fail to disclose the location of the five huge compressor stations proposed for the pipeline. The potential location of each of these stations is only indicated on their maps as being somewhere along a stripe multiple miles in length in each of five selected regions of the pipeline path. Any resident in the vicinity of a planned compressor station must be notified by the energy company, since these installations are recognized to be so intrusive. But no residents have been notified yet (will they ever be?) and the locations of the compressor stations are still apparently a Kinder Morgan secret. How can FERC pretend that proper notification is being given to abutters and others? When will Kinder Morgan notify the affected residents and how much time will they then have to react? If the locations of these installations have truly not been finalized, shouldn't there be a moratorium on the consideration of this entire project until those locations can be publicized and the affected residents notified? If not, who will restore to the public the time that they will need to prepare and provide input to FERC regarding the impacts of the proposed stations?
- Kinder Morgan spokesman Allen Fore moderated most of the company's informational meetings and he continually provided answers to the public that were one or more of the following:
 - **Vague** ("FERC is in charge of deciding that, we're just making a proposal to them")
 - **Misleading** ("There are no current plans to export any of this gas" and "Natural gas pipelines do not affect property values")
 - **Misdirected** (Mr. Fore loves to answer a question that has not been asked rather than the one that has been. When asked about his company's pipeline safety record, he talks about the many safety regulations that apply to pipeline companies. When asked about the environmental damage caused by pipelines, he talks about the licensing procedures.)
 - **False** ("All of it" – Mr. Fore's answer to the question "How much of the gas put into the pipe at one end reaches the other end?")
 - **Simply missing** (Mr. Fore's inability to answer the question "Would you want this pipeline in your backyard?" – left unanswered, despite multiple prompts from a meeting moderator.)

For the record, I have personally witnessed all of the Kinder Morgan misstatements, misdeeds and misbehavior detailed above – and more. But I was only present at a limited number of their public meetings. I can only guess at the entirety of the misinformation they have spread during the past year.

So it seems that Kinder Morgan is at best misbehaving and at worst deliberately lying to the public about their plans through omission and commission, while ticking off the "public information" check boxes that FERC requires of them. And what is FERC's response to the missing and blatantly false information being used by Kinder Morgan to "inform" the public? Nothing. Nada. Zilch.

From my vantage point, Kinder Morgan is pretending to accurately inform the public and FERC is satisfied to let that pretense stand. There appears to be no attempt at all by FERC to monitor the (lack of) quality of the information being supplied to the public by Kinder Morgan, much less to try to control it or to remediate the damage done when the public is deliberately misled. And FERC does not seem to be prepared to react to this situation at all, even when the public does report the misdeeds and misinformation to them. Here is a question for FERC to consider: Is the public interest served by informational meetings where the public is deliberately misled by those presenting the information?

With no sanctions being applied by FERC, why would Kinder Morgan ever be expected to mend their ways? Simply stated, Kinder Morgan does not want there to be an informed public. An informed public does its homework, asks pointed questions and does not passively accept vague and inaccurate answers. It is to Kinder Morgan's advantage to release as little information as possible, to delay its release as long as possible, to keep the information as vague as possible and to simply misinform when they can. An informed public will inevitably begin to question the need for a new pipeline as they realize what the actual short term and longer term costs of this massive new fossil fuel infrastructure would be.

And I have to say that it was frankly eye-opening for me to see just how brazenly and openly Kinder Morgan carries this off. Initially I expected that FERC would be in firm control of Kinder Morgan's actions and the information that it supplied to the public. But Kinder Morgan is obviously not too concerned about FERC's reaction to any of this. For example, they felt free to ignore FERC's "strong recommendation" to reschedule public meetings. And remember that Kinder Morgan has done this "public information" dance with FERC many times before and so they have a pretty good idea of where the out-of-bounds lines are (there are some out-of-bounds lines out there somewhere, aren't there FERC?).

Summary

So here we are. Kinder Morgan is pretending to properly inform and notify the public of their plans in a timely manner. And FERC is pretending that the public is being properly informed and notified. Check boxes are being checked and the plans for this pipeline are moving through the system. Apparently this is all simply business as usual for FERC. But this bogus "information" is misleading the public and it causes people to underestimate the true impact of the proposed pipeline. Shame on Kinder Morgan for perpetrating this sham and shame on FERC for standing idly by as it happens.

Chapter 4

FERC Is Short-Sighted

FERC seems to have its head down, focusing on things immediately in front of it – while very much missing the larger picture. It needs to look up and take in this larger picture – everything, all at once and in its proper context – not just a piece at a time. And certainly not just the piece that a particular private energy company would like it to focus on. FERC is guilty of such short-sightedness in two important ways, as described below.

The first example of FERC's myopia is the fact that it judges each pipeline proposal individually, as if that proposal had absolutely no relation to other current pipeline proposals. The courts have ruled that a single pipeline company is not allowed to divide a project into multiple parts and then to propose them to FERC piecemeal. This is called segmentation and it is not allowed because it prevents a project (and all of its negative impacts) from being considered in its entirety. In the past, when pipeline companies have attempted this and FERC has not objected, FERC has been sued, chastised by the court and forced to then reconsider the entire project as a single proposal.

So there are good reasons why segmentation of a single pipeline project is not allowed. But FERC knows that multiple new pipelines are currently being proposed to bring natural gas into New England – pipelines that in total would supply more than four times the volume of natural gas that even proponents of more gas believe that New England needs – and that each pipeline approved will cause serious environmental damage and the forced taking of land along its route. But FERC nonetheless considers each of these pipeline proposals in isolation from other proposals – a different form of segmentation. Wouldn't it be much more logical for FERC to lift its head up and take a regional view of the energy needs of New England and to consider the impact of all of the proposed pipelines in total rather than individually?

This also ties back to FERC's faulty definition of need, detailed in Chapter 2. FERC allows the market to define the "need" for additional energy infrastructure rather than using a rational, regional energy policy. If some fossil fuel is good, then FERC seems to believe that more must certainly be better.

The second example of FERC's short-sightedness concerns its view of the environmental impact of the massive fossil fuel infrastructure that it routinely approves. FERC gives consideration to the impact of cutting trees and digging trenches to bury the pipeline, of building the compressor stations, etc. But it doesn't consider the full, long term impact of procuring the gas that will travel in the pipeline, of the running of the compressor stations needed to move it, of the leakage and venting that occur during the normal operation of a pipeline and ultimately of the burning of the gas transported by the new pipeline.

Natural gas is made up mostly of methane. Methane is a powerful greenhouse gas – some 20 to 80 times more damaging to the atmosphere than carbon dioxide. And fracked gas also contains a mix of known carcinogens and neurotoxins. The valve stations and compressor stations that are part and parcel of a high pressure natural gas pipeline both leak gas and intentionally vent gas, and the large compressor stations burn a portion of the gas in the normal course of pipeline operations. Compressor stations are large industrial complexes that pollute with noise, with light and with the release of the hydrocarbons and carcinogens carried in the fracked gas. And this doesn't count the numerous sources of gas emissions from the fracked wells where the gas originates. And finally, the eventual burning of the natural gas carried by the pipeline produces other greenhouse gases. Yes, burning the gas itself is

less polluting than burning oil or coal – but it is still a fossil fuel. Isn't all of this pipeline pollution worthy of consideration when measuring the environmental impact of a proposed new pipeline?

FERC in general and current chair Cheryl LaFleur in particular maintain that it is not FERC's job to try to judge a project's upstream (e.g., fracking) and downstream (e.g., liquefying the gas, burning the gas) effects on climate change, though it appears that the National Environmental Policy Act (NEPA) allows FERC the latitude to do so. Ms. LaFleur points to the lack of accepted standards for measuring these effects as justification for FERC's laxity in this area. But others assert that it is well within FERC's purview to add such considerations to its review process – but that FERC is simply unwilling to assert this power. Recently the White House has provided additional guidance that climate change should factor into all federal environmental reviews - and yet FERC continues to drag its feet on this.

When FERC approves a new pipeline that will exist for decades without considering its total, lifetime environmental and climate impact, it is being willfully myopic. A new natural gas pipeline is a self-fulfilling prophecy. It means that more gas will be fracked, compressed, leaked, liquefied and burned. And it means that it will be more difficult to build momentum for the renewable energy future that everyone agrees we should be striving for.

Summary

FERC's practice of considering proposals to build multiple new natural gas pipelines in New England in isolation from each other is ludicrous and short-sighted. FERC needs to weigh the energy requirements of the New England region and decide how best to meet them. And FERC (with its faulty, market-driven definition of need) should not be allowed to treat pipeline proposals as if they were lined up on an assembly line, each to be picked up and examined individually (and most probably stamped "Approved" if history is any guide) without looking down the line and also considering the other New England pipeline proposals coming its way.

And if FERC is going to do a comprehensive job of weighing the environmental costs of a new pipeline proposal, it should consider all of the environmental costs that attach to that pipeline, not just those caused during the construction process. A pipeline's negative environmental impacts are certainly most immediately noticeable to those directly along the pipeline's path. But in reality, a new pipeline has long term negative impacts upon the entire region and beyond. FERC needs to develop the metrics to be able to quantify those negative impacts and to then include them in its deliberations. FERC's current "Not my job" attitude toward this responsibility is simply not acceptable.

Chapter 5

The “R” Is For Regulatory Not Rubberstamp

In the preceding chapters, these major problems with FERC have been detailed:

- FERC’s faulty definition of need
- FERC’s failure to recognize and sanction energy companies’ deceit of the public
- FERC’s insistence on considering multiple pipeline proposals in isolation from each other
- FERC’s willful myopia regarding a pipeline’s total negative long term upstream and downstream environmental impacts

As a result of these critical faults, FERC ends up doing exactly what the energy companies want. This is because the FERC shortcomings listed above all help to facilitate one common result: pipelines are not fully vetted by FERC and thus FERC licenses virtually every pipeline that it passes judgment on. As has often been noted: FERC has rarely, if ever, seen a pipeline proposal that it didn’t like.

When reviewing these proposals, FERC may require that the energy company submitting the proposal make a minor route change here or use a special remediation technique there – but doesn’t it seem likely that Congress had more in mind for FERC than simply regulating the remediation of localized damage caused by pipeline construction? They are, after all the Federal Energy Regulatory Commission.

During the past year, I have witnessed firsthand the deception and the misdirection that Kinder Morgan uses in parceling out information to the towns and individuals impacted by their proposed pipeline. But as the FERC pre-filing process progressed, I also came to see that Kinder Morgan was in effect being given cover by FERC. Kinder Morgan would tell the public that FERC was in charge of the process but in the meantime FERC would simply be looking the other way. As the months went by, FERC seemed to be acting more as a silent partner to Kinder Morgan than as the watchdog agency that I had (naively) assumed it to be. FERC exerted little or no control over the orgy of misinformation that Kinder Morgan provided to the public about their pipeline plans. For its part, Kinder Morgan seemed to just be ticking off checkboxes for FERC rather than making an honest attempt to educate the public.

And this behavior by FERC is especially troubling since FERC is the agency endowed with the authority to grant federal eminent domain rights to the private, for-profit energy companies. If granted to Kinder Morgan, these rights can be used to threaten and ultimately take land from the hundreds of landowners along the pipeline route who will not willingly cooperate or negotiate with them. And as I learned more about FERC – including that they have approved nearly every pipeline that they have ever considered, I began to wonder just what it was that they were regulating. It didn’t seem that they were attempting to regulate very much of anything in regard to what I saw as the major issues with the pipeline.

Kinder Morgan angered me with their disrespect for the people whose lives they were threatening to disrupt so thoroughly. I considered their dispensing of lies and disinformation to be under-handed and actually abusive of those impacted by their plans. But in a way, I could almost understand their motivation – they are a huge, private, for-profit energy company, beholden to their stockholders and to their bottom line. They are in this for the money, pure and simple. This certainly didn’t make me like or respect them in the slightest – but I could at least begin to understand their actions.

Such large, for-profit companies have always existed and have always tended to look out for themselves first. And so the public and the federal government have learned through hard experience that such

companies must be controlled and regulated or else they will run roughshod over everyone and everything in their pursuit of greater profits. And so we the people have come to rely upon the federal government to pass laws and regulations – and to create agencies to oversee the industries being constrained by those laws and regulations. I initially (and incorrectly) thought that this was the role that FERC would play with the pipeline companies.

But FERC is not fulfilling its regulatory role, and it is FERC that has become the focus for much of the public's disbelief and anger over the handling of this proposed pipeline project. FERC is the agency that should be keeping Kinder Morgan in line. They are the ones who should be considering our regional energy needs and how the multiple current pipeline proposals mesh with those needs. And they are the ones entrusted with the authority to grant this nearly sacred power of eminent domain – the power to take another person's land. And they seem to give it away quite willingly – to virtually any pipeline company that asks for it.

Summary

FERC was not created by Congress to simply be a lap dog of the fossil fuel industry. FERC needs to grow a spine and intervene as needed to keep the energy companies from abusing the public that they are supposed to be educating under FERC's direction. FERC needs to stop considering pipeline proposals for the same region in isolation from each other. FERC must take a leadership role in pushing for the development of metrics that can be used to help measure the long term upstream and downstream impacts of the pipelines that they so readily approve. And FERC especially needs to rethink their current market-driven definition of "need". The need for a new pipeline should not be determined solely by the very industry that FERC is supposedly regulating. This leads to the overbuilding of infrastructure, unnecessary environmental damage and the abuse of the property rights of American citizens – all done in order to further the export of fossil fuels and the profits of large energy companies.

Simply put, the people of FERC need to assume their proper role as the Federal Energy Regulatory Commission and discard what appears to be their current role as the Federal Energy Rubberstamp Commission – a role that they seem to have taken to so enthusiastically.

Chapter 6

What Others Are Saying About FERC

In previous chapters of this **Fix FERC First** story, I have expressed my own opinions about specific problems with FERC. Now seems like a good time to share the thoughts and words of some others who have encountered FERC and formed their own opinion of that agency. And since FERC is a “creature of Congress” (as chair Cheryl LaFleur has stated), it seems appropriate to begin with quotes from two current members of Congress – to see how well they think this federal regulatory agency is functioning.

All **red bolding** in the following quotes is provided by me.

US Senator Elizabeth Warren

In response to a question about FERC and the proposed NED pipeline, Senator Warren said she couldn't comment on the specifics of a particular permit application because she didn't have the information to do so, but she said this: **“I am very concerned about a regulatory agency that is only able to say ‘yes, yes, yes.’ That’s not the job of a regulatory agency.”**

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“Before we sink more money in gas infrastructure, we have an obligation wherever possible to focus our investments on the clean technologies of the future -- not the dirty fuels of the past -- and to minimize the environmental impact of all our energy infrastructure projects. **We can do better -- and we should.**”

US Representative Jim McGovern

“I also really detest the process in which energy companies get to put pipelines through states. They go through this kind of secretive process where they design where they want the pipeline to go and they give the public the bare minimum in terms of what we need to know. And then they go to FERC – the Federal Energy Regulatory Commission in Washington – to get the OK. And once they get the FERC OK then they have the full backing of the Federal government to do whatever they want to do. **And I think this process stinks, quite frankly.** I think any kind of process ought to involve the people in the communities that will be adversely impacted.”

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“And FERC kind of automatically accepted [the pre-filing]. And we lodged a protest with FERC because the information that the energy company was providing FERC is outdated. The maps aren't even up to date. **How do you accept even a pre-filing for a pipeline without at least [having] accurate information?**”

Robert F Kennedy Jr.

When Kennedy was asked on national television about the danger of the Constitution Pipeline, he replied: "There's an almost larger issue now of our democracy, of the growing power of the oil industry to influence our democracy." FERC "transfers the federal authority, this sacred authority of eminent domain, to a private company to make money for themselves [by

exporting the gas] ...This is about enriching a few billionaires by impoverishing the people of New York state. ... **FERC is really a rogue agency. It's a classic captive agency."**

FERC Chair Cheryl LaFleur

"These groups are active in every FERC docket ... as well as in my email inbox seven days a week, in my Twitter feed, at our open meetings demanding to be heard and literally at our door, closing down First Street so FERC won't be able to work. **We've got a situation here."**

Yes, Ms. LaFleur - you do indeed have a "situation" here. A situation that is going to grow stronger and increasingly in-your-face. FERC is enraging US citizens with their rubberstamping of projects that are more for the benefit of the energy companies that propose them than for the American people who must bear their negative consequences.

Summary

It appears that I am not alone in my opinion of the seriousness of the problems with FERC and just how dysfunctional it is to have a federal regulatory agency that panders to the industry being "regulated". An agency that appears eager to approve any and every pipeline project that comes its way.

Chapter 7

Conclusion

In the Introduction to this document, I explained that the **Fix FERC First** title was chosen purposely – because it seems impossible to expect that FERC would be able to provide a rational, considered deliberation of the multiple natural gas pipelines proposed for New England while the rules and procedures that govern its deliberations remain as fundamentally flawed as they are at this time. In the ensuing chapters, I detailed what I saw as the main problems with FERC and the negative effects of those problems.

I wrote the **Fix FERC First** story because I wanted not just to describe, but also to personalize the problems that I see with FERC. One year ago I had only a very vague idea of what FERC was and that there seemed to be some issues with it – but I honestly had never paid much attention to FERC. And then someone at Kinder Morgan drew a line on a map that represented the route for a proposed natural gas pipeline through New England. That line bisected my property, passing within 40 feet of my house. That served as a very effective wakeup call – and so I started to educate myself about pipelines, energy companies and about FERC. In the past year I have learned much about the tactics used by pipeline companies such as Kinder Morgan – and also about the ineffectual “regulation” that FERC provides of those companies and their pipeline proposals.

As I have previously stated, I witnessed firsthand the deception and the misdirection that Kinder Morgan has used in parceling out information to the towns and individuals impacted by the proposed pipeline. But as the FERC pre-filing process progressed, I also came to see that FERC was acting more as a silent partner of Kinder Morgan rather than as an industry regulator. I was disheartened over the ensuing months as Kinder Morgan (theoretically under FERC’s direction) openly and repeatedly misled the public by providing “information” that unerringly underestimated the negative impacts of the pipeline.

And the more that I learned about FERC, the more that I became concerned that New England was most likely going to get yet another rubberstamped pipeline, compliments of FERC. A pipeline that FERC thought was “needed” because that’s what the pipeline company and the market were whispering in FERC’s ear. A pipeline that would be built using the authority of federal eminent domain to override the property rights of many hundreds of New Englanders. A pipeline whose capacity virtually guaranteed that much of the gas that it carried was destined to be exported. A pipeline that might well be approved without FERC ever considering it in the context of the other New England pipelines being proposed. A pipeline whose long term negative upstream and downstream environmental impacts would not be properly considered – not because those impacts didn’t exist but because FERC simply couldn’t be bothered to study them and help to develop the metrics with which to measure them. And a pipeline that FERC seemed bound and determined to facilitate rather than to regulate.

The reality is that as things stand, FERC will be the arbiter for much of New England’s energy future for decades to come. If FERC approves the trove of natural gas pipelines currently being proposed, New England will become a way point on a gas superhighway leading from the Marcellus Shale fracking fields to a series of LNG liquefaction and export terminals being planned for eastern Canada. And these pipelines will then dominate our energy choices and priorities for decades to come – slowing our move to a renewable energy future and destroying any chance of meeting our commitments to lower greenhouse gas emissions.

So the question comes down to this: Can FERC be rehabilitated? Given FERC's history of allowing the pipeline companies to abuse the public by disseminating misinformation about their proposed projects; given FERC's faulty definition of the "need" for more pipelines; given FERC's unwillingness to take any leadership on weighing the upstream and downstream impacts of the pipelines they so freely approve; and above all, given FERC's history of worshipping exclusively at the altar of fossil fuels – can FERC be saved? Can it become a true energy regulatory agency – an agency that insists that energy companies stop abusing the public, that is forward looking, that adapts as our needs and energy sources change?

FERC Commissioner Norman Bay will soon assume the chairmanship of FERC. Let's hope that he will listen to the rising tide of voices insisting that FERC must change its ways. But we all understand that FERC won't accomplish this without a strong, ongoing push from the public. FERC is beginning to see that they indeed have a "situation" here. We need to continue to help them to understand just how serious that situation is and that it is not going to go away on its own – FERC needs to fix itself. Until they do, FERC's future will be filled with increasingly negative media coverage, more frequent and more raucous disruption of their day-to-day business by enraged citizens, and building pressure from the people and the people's elected representatives for this broken agency to be mended.

Our job is to keep applying that pressure every day, in every way possible. FERC must be fixed.