

July 25, 2018

Ms. Kimberley Bose, Secretary  
Federal Energy Regulatory Commission  
888 First Street, N.E.  
Washington, DC 20426

RE: Docket No. PL18-1-000, Notice of Inquiry Regarding Certification of New Natural Gas Facilities (the “NOI”)

Dear Ms. Bose:

Thank you for the opportunity to provide comments on potential changes to the Federal Energy Regulatory Commission’s (FERC) approach to certification of new natural gas transportation facilities and how the Commission determines whether such proposed projects are or will be required by the public convenience and necessity, as that standard is established in section 7 of the Natural Gas Act. The Conservancy agrees that updates to FERC’s approval processes are warranted given changes within the industry and advances in remote sensing and GIS technology. We are a significant landowner throughout the United States and have had substantial recent experience with multiple natural gas pipelines regulated by FERC that have significantly affected the Conservancy’s conservation priorities.

### **The Conservancy’s Mission and Activities**

The Conservancy is a non-profit corporation whose mission is to conserve the lands and waters on which all life depends. We are a leading conservation organization working in all 50 states and more than 35 countries. The Conservancy has helped conserve roughly 15 million acres of land in the United States and more than 118 million acres with local partner organizations globally. Landscape-scale application of the mitigation hierarchy (avoidance of irreplaceable habitat, minimization of impacts, and replacement of remaining residual impacts through conservation actions elsewhere), for energy and other infrastructure development is a global priority for the Conservancy. The science behind this approach is well-established and documented in the peer-reviewed literature (Kiesecker, et. al., 2009; Kiesecker, et. al., 2010).

### **Conservancy Participation in Recent FERC Pipeline Proceedings**

The Conservancy actively engaged in two recent natural gas pipeline proceedings before FERC (1) the Atlantic Coast Pipeline (“ACP”) project (FERC Docket Nos. PF 15-5-000 and PF 5-6-000), with respect to which the Conservancy submitted a lengthy letter of comments dated April 28, 2015, and (2) the Mountain Valley Pipeline (“MVP”) project (FERC Docket Nos. CP 16-10-000 and CP 16-13-000), with respect to which the Conservancy filed a Request for Rehearing of Order Issuing Certificates and Stay. In our comments, the Conservancy urged FERC to: select a preferred alternative that would avoid all preserves, easements, Critical Habitats for conservation, and units of public lands where the introduction of linear infrastructure conflicts with management objectives; take a “hard look” at direct and indirect impacts of the projects cumulatively over time and to take into account all planned, proposed and foreseeable regional pipelines in the area;

and to utilize all available authorities to rigorously apply the mitigation hierarchy on a landscape scale.

### **Conservancy Proposals in Response to the NOI**

FERC noted in the NOI that since it adopted its Policy Statement on the certification of new natural gas transmission facilities in 1999 and later clarified in 2000, circumstances in the natural gas industry have changed dramatically:

*Over the last decade, the United States has seen an unprecedented change in the dynamics of the natural gas market and the supply and demand forces driving it. Led by advancements in production technologies, primarily in accessing shale reserves, natural gas supplies have increased dramatically.*

The Conservancy agrees that updates to FERC's approval processes are warranted given these changes to the industry. The Conservancy offers the following comments in response to the specific issues outlined in the NOI under Section III, "Requests for Comments." Many of the comments offered below reflect our experience engaging in the ACP and MVP proceedings.

#### **A. Potential Adjustments to FERC's Determination of Need.**

Given the focus of the NOI, the Conservancy believes it is inappropriate at this juncture to comment on the question of public need as it relates specifically to available and potential natural gas supply, demand, and market conditions, including the role of natural gas in a low-carbon economy. However, we do have concerns regarding the practice of utilizing affiliate-backed contracts to establish demonstrated need. We suggest instead that FERC require independent means of assessing need in projects relying on affiliate contracts.

The Conservancy also believes strongly that FERC's assessment of need should include an analysis of the aggregate impacts of current and future anticipated natural gas transmission facilities within a geographic area. Specifically, when multiple projects are being proposed, we recommend that FERC consider cumulative impacts through issuance of a Programmatic Environmental Impact Statement ("PEIS") that would simultaneously consider the purpose and need of each project, the aggregate impacts of all proposed or foreseeable projects on the affected area and the optimal combination of pipelines to deliver gas from the production areas to markets. This request is consistent with the Council on Environmental Quality ("CEQ") guidance on "Effective Use of Programmatic NEPA Reviews" issued on December 18, 2014, which states that a programmatic review under the National Environmental Policy Act ("NEPA") may be appropriate when an agency is approving multiple actions, for example "[s]everal similar actions or projects in a region." The Conservancy further believes that impacts of a given project should be quantified and included in the PEIS. The quantification should include full cost accounting for environmental impacts during the construction, operations and maintenance, and decommissioning phases of the project, and should include in the assessment the costs of undertaking minimization measures, and compensatory mitigation.

A Programmatic review under NEPA with tiered analysis of individual projects is the most efficient and effective way to satisfy NEPA and fully consider the aggregate impacts from multiple

proposed projects in the same geography with similar foreseeable projects. A programmatic approach can also minimize conflict when multiple projects are being proposed simultaneously, as was the case with the Atlantic Coast (ACP) and Mountain Valley (MVP) Pipelines. As the CEQ guidance on Programmatic NEPA Review states: "...one advantage of preparing a programmatic NEPA review for repetitive agency activities is that the programmatic review can provide a starting point for analyzing direct, indirect and cumulative impacts. Using programmatic NEPA reviews allows an agency to subsequently tier the analysis and analyze narrower, site- or proposal-specific issues. This avoids repetitive broad level analyses...and provides a more comprehensive picture of the consequences of multiple proposed actions..." (p. 10). In addition, such a programmatic process would afford FERC a transparent and streamlined opportunity to evaluate the total demand for gas that infrastructure will be required to meet.

This approach would support the objectives of the current Administration's "[One Federal Decision](#)" policy established in [Executive Order \(E.O.\) 13807](#), which seeks to support coordinated, predictable, and transparent Federal environmental review and permitting.

*B. The Exercise of Eminent Domain and Landowner Interests.*

The Conservancy recommends that FERC commit to avoiding, to the maximum extent practical, adverse impacts to areas owned by government conservation agencies and non-governmental organizations with a conservation mission, as well as those areas under a conservation easement when considering applications. We suggest that impacts to these areas should be evaluated in determining whether a proposed project is in the public interest. Conservation easements have a clear public benefit as, documented in many state and federal statutes and regulations. These benefits include protection of water quality; preservation of open space, farmland, rangeland, and timberland; maintenance of rural community character and landscapes for tourism. In recognition of these benefits, the donation of perpetual conservation easements has been incentivized both by the Commonwealth of Virginia and by the federal government and also by some states (such as the Commonwealth of Virginia) in the form of tax benefits to the donor of the easement. Furthermore, the Conservancy believes that FERC should specifically acknowledge and address comments asserting that proposed projects are in direct conflict with the terms of conservation preserves and easements.

The Nature Conservancy recommends that FERC commit to evaluating impacts to conservation areas and conservation easements individually rather than in a categorical manner in order to provide a basis for balancing costs and benefits for the purpose of determining whether the proposal is in the public interest. We believe that such an approach is supported by NEPA (42 U.S.C 4332(2)(C)), which requires preparation of a "detailed statement" of the environmental impacts of each alternative.

*C. FERC's Consideration of Environmental Impacts.*

Many of the comments in sections A and B above also address consideration of environmental impacts. In this section we detail a recommendation that FERC identify opportunities to improve its pre-filing process.

Avoidance is the most effective remedy for environmental impacts and the least costly modifications to pipeline alignment can be made at the project's inception. The pre-filing process was implemented to achieve avoidance and minimization of impacts through early identification conflicts between the project and environmental, cultural, and socio-economic values. Current practice falls short however, when project operators rush to submit pre-filing packages specifying alignments that fail to avoid complex terrain and/or resources with high conservation, cultural, or socio-economic value resources.

Pipeline route design teams often design projects under the working assumption that the shortest distance involves the least cost. The Conservancy submits, to the contrary, that a longer route that avoids steep terrain or areas with land uses or management objectives inconsistent with a natural gas pipeline will likely require: 1) less complex engineering to protect environmental health and pipeline safety, 2) less extensive consultation with public agencies, 3) less public opposition and consequently 4) potentially fewer significant project delays.

The Conservancy proposes that FERC improve its pre-filing process by establishing a higher standard of due diligence on the part of the pipeline developer to identify and avoid impacts at the earliest possible project phase. We suggest that applicants be required to utilize existing data sets in combination with a limited amount of project-specific information acquired by the prospective applicant (i.e. LIDAR<sup>1</sup>) to identify and avoid high conflict areas and highly complex terrain. Specifically, the Conservancy recommends that data be compiled to map: protected areas, including preserves and conservation easements, and public lands managed primarily for uses with which utility construction is incompatible; areas with high biodiversity value, including areas with occurrences of endangered species, endemic and/or restricted range species, highly threatened and unique ecosystems, and areas associated with critical evolutionary processes; migratory bird habitat; areas of cultural and historic significance; geology, hydrology and topography, including cave and karst complexes; landslide risk and incidence; drinking water supply; and other factors of interest to the affected public. We stress that nearly all of these datasets are extant and readily procurable.

The Conservancy recommends that these data be used to perform a "Least Cost Path Analysis" prior to submission of a pre-filing application. Least Cost Path Analysis is an established method used with GIS in which a number of factors are combined to indicate the most cost-effective route between a point of origin and a destination. With a modest level of expenditure, a reputable consultant could easily adapt this approach to perform a semi-automated and efficient analysis of potential pipeline route alternatives to compare the conflicts and challenges occurring along each potential alignment using the data layers listed above along with technical engineering design specifications.

---

<sup>1</sup> LIDAR (*Light Detection and Ranging*), is a remote sensing method that uses light in the form of a pulsed laser to measure ranges (variable distances) to the Earth. These light pulses—combined with other data recorded by the airborne system—generate precise, three-dimensional information about the shape of the Earth and its surface characteristics. LIDAR systems allow examination of terrain and hydrologic features with high accuracy and precision.

The inclusion of data-driven overlays illustrating the justification for selection of the preferred alternative as part of the pre-filing application would document the applicant's compliance with due diligence requirements. The overlays would also improve transparency around the extent to which the preferred alternative avoids impacts in contrast to other alternatives, and allow independent assessment of claims that impacts have been avoided to the greatest practicable extent.

The Conservancy maintains that incorporating reasonably available environmental, cultural, and socio-economic data into the first stages of pipeline design would greatly enhance a developer's ability to select a project path that avoids impacts, and significantly improve both the effectiveness of the pre-filing process, the efficiency of subsequent resource report preparation, and the environmental outcomes of project development. We urge FERC to seriously consider the efficacy and reasonableness of the proposed approach.

### **Conclusion and Summary**

In summary, the Conservancy strongly recommends that:

- (1) In acting upon a pipeline application, FERC should consider the aggregate and cumulative impacts of all proposed and reasonably foreseeable pipeline activity in the same area during the same general time period through a comprehensive PEIS.
- (2) FERC should take a serious look at the exercise of eminent domain and the impact of a proposed pipeline on land owned for conservation purposes and conservation easements and, in this regard, FERC should: take a landscape-scale approach to identify priorities for avoidance, minimization and compensatory mitigation; observe strictly the Mitigation Hierarchy; pursuant to existing authorities, require compensation for critical resources; and address specifically violations of the terms of conservation easements and State environmental policies.
- (3) FERC should improve the pre-filing process by requiring pipeline developers to perform a higher level of due diligence in advance of pre-filing, including incorporating reasonably available environmental, cultural, and socio-economic data into a least cost path analysis to determine the projects' initial preferred alternative.

Thank you again for the opportunity to provide comments to FERC on these important issues. If you have any questions please contact Andrew Kambour, Senior Policy Advisor at (703) 841-4109 or [andrew.kambour@tnc.org](mailto:andrew.kambour@tnc.org).