

BONNIE WATSON COLEMAN
12TH DISTRICT, NEW JERSEY

126 CANNON HOUSE OFFICE BUILDING
WASHINGTON, DC 20515
(202) 225-5801

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ASSOCIATED
PIPELINE TITLE

Congress of the United States
House of Representatives
Washington, DC 20515-3012

June 19, 2015

The Honorable Norman C. Bay
Chairman
Federal Energy Regulatory Commission
888 First Street, NE
Washington, DC 20426

OFFICE OF
EXTERNAL AFFAIRS
2015 JUN 19 P 12:35
FEDERAL ENERGY
REGULATORY COMMISSION

Subject: FERC Docket No. PF15-1-000
PennEast Pipeline Proposal
Hunterdon and Mercer Counties, New Jersey

Dear Chairman Bay:

I am writing to express our opposition to the pipeline proposed by the PennEast Pipeline Company, LLC for central New Jersey. If built, this pipeline would adversely and permanently affect critical forest and water resources that provide essential habitat and other natural resource services to our constituents and to the economy and environment of the entire state of New Jersey. Additionally, the Federal Energy Regulatory Commission (FERC) process outlined for this one gas transmission pipeline underscores broader flaws in FERC's current management of the application process for dozens of current and anticipated proposals for such pipelines resulting from major gas finds in the Marcellus and Utica shales.

As you know, the National Environmental Policy Act (NEPA) requires that federal agencies consider cumulative impacts and a range of alternatives to any major federal action.¹ However, one of the critical shortcomings of PennEast and other pipeline projects in the region has been FERC's failure to comprehensively consider the need for natural gas transmission infrastructure in a rational planning and evaluation process. Instead, FERC evaluates the need for, and prepares environmental impact statements (EIS) on, each pipeline in isolation. In this instance, FERC has disregarded other pending pipeline applications in the same watershed and natural gas market, and ignored numerous pipelines known to FERC in the same watershed and the same natural gas market that are already approved or in the pre-application process. The result of this approach is that cumulative impacts are unable to be taken into account, and the alternatives considered are too limited.

The consequences of this flawed process are especially troubling in the case of the PennEast application. As currently proposed, the project will disrupt, fragment, or otherwise impair forests, farmland, wetlands, streams, and other valuable resources on private and public lands along its 110-mile path. Many of these lands were acquired or protected at taxpayer expense with the legal requirement that they be permanently protected. Indeed, the proposed pipeline appears routed to maximize the use of these sensitive public trust resources to reduce the cost and opposition inherent in routing through privately held or already

¹ 42 U.S.C. §§ 4331 *et seq.*

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developed areas. These areas include lands preserved using federal funds from the U.S. Department of Agriculture's Farm and Ranch Land Protection Program as well as areas preserved through state funds and programs.

We recognize that improvements to gas transmission infrastructure may be needed if the United States is to encourage the development of new gas plays in the Marcellus Shale and elsewhere. But the approval of such pipelines (whose costs will ultimately be borne by ratepayers) should be done on the basis of a considered regional plan, rather than simply a rush of individual companies proposing pipelines that may in the end be duplicative, poorly sited, or built with excessive or inadequate capacity. The sizing, routing, impacts, and alternatives of any single pipeline cannot be reviewed in a rational, non-arbitrary way if done piecemeal. The current approval process precludes FERC from pursuing potential commonsense solutions to improve efficiency and minimize risk and negative impacts. For example, only a considered regional plan could determine whether one larger pipeline could suffice where two are proposed; or if shared rights-of-way could provide alternatives that would avoid or minimize damage to natural resources. Unfortunately FERC's current isolated review process is ill-equipped to consider those type of options. The current process is analogous to a transportation agency expecting an efficient road system to emerge from having competing applicants proposing multiple individual roads, and then basing approvals by considering each road in isolation.

The Natural Gas Act grants the power of eminent domain to the holder of a certificate of public convenience and necessity.² A private company is effectively given the authority, subject to the constitutional requirement of just compensation, to forcibly take all or part of an individual's property for its private project. Such power should only be exercised where FERC engages in thorough planning and scrutiny and develops a record supporting the conclusion that the project is indeed in the public interest. The current FERC process simply does not meet this standard, because it is likely to result in duplicative, poorly sited, or excessive infrastructure, a result that is not in the public interest.

I further believe that FERC's current approach is not merely unsound from a policy and planning perspective, and fundamentally unfair to property owners, it may also be unlawful. As the opponents of the Leidy Southeast Expansion Project recently suggested, FERC has long disregarded its legal obligation to conduct a programmatic EIS to consider the cumulative impacts on the environment from the more than one dozen natural gas pipelines proposed or approved in the Marcellus and Utica shale gas regions, rather than segmenting its review or considering individual projects as if these others did not exist.³ This obligation has been reinforced by the ruling of the United States Court of Appeals for the District of Columbia Circuit in *Delaware Riverkeeper v. FERC*.⁴ A regional plan based upon a programmatic EIS will insure that FERC's findings of public necessity and convenience, and any consequent imposition on private property rights, are lawful and well-supported by the administrative record.

I thank you for considering our views, and would appreciate the inclusion of these comments in any docket established for the PennEast Pipeline.

² 15 U.S.C. § 717(h)

³ FERC Docket No. CP13-551

⁴ *Delaware Riverkeeper v. FERC*, 753 F.3d 1304 (D.C. Cir. 2014) (enforcing the National Environment Policy Act (NEPA), 42 U.S.C. §§ 4331 *et seq.* (cited in Comments of the Princeton Ridge Coalition, FERC Docket No. CP13-551 (Sept. 10, 2014))).

**The Honorable Norman C. Bay
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Sincerely,



**Bonnie Watson Coleman
U.S. Representative**

cc. **The Honorable Ernest Moniz, Secretary of Energy
The Honorable Tom Vilsack, Secretary of Agriculture
The Honorable Gina McCarthy, Administrator of the Environmental Protection Agency
Christy Goldfuss, Managing Director, White House Council on Environmental Quality
Horst Greczmiel, Associate Director, White House Council on Environmental Quality
Anthony Cox, PennEast Pipeline Company, LLC**

Document Content(s)

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