



July 20, 2018

VIA REGULAR AND ELECTRONIC MAIL

Chairman Kevin McIntyre
Commissioners Cheryl LaFleur, Neil Chatterjee, Robert Powelson and Richard Glick
Federal Energy Regulatory Commission
888 First Street, NE
Washington, DC 20426

RE: Comments of the Land Trust Alliance on the Review of the 1999 Natural Gas Policy Statement Regarding the Natural Gas Act

Dear Chairman McIntyre and Commissioners LaFleur, Chatterjee, Powelson and Glick:

Thank you for seeking public comment on needed revisions to the current FERC policy on the certification of new natural gas transportation infrastructure. The Land Trust Alliance, Inc. (the Alliance) appreciates the opportunity to submit comments in response to your inquiry.

Founded in 1982 in Massachusetts, the Alliance is a nonprofit corporation and national land conservation organization based in Washington, D.C., that works to save the places people need and love by strengthening land conservation across America. The Alliance represents 1,000 member land trusts supported by more than 4.6 million financial supporters, 207,000 volunteers and 8,000 paid staff nationwide. The Alliance is the voice of private land conservation, unifying the American ideals premised on personal initiative, landowner empowerment and individual private property rights.

Overview

The Alliance recognizes that we all need and use energy. The Alliance also recognizes that land is essential to a healthy and secure future for all Americans. It provides pure drinking water, healthy food, clean air, protection from natural disasters, such as floods and drought, and absorbs and keeps carbon from the Earth's atmosphere, slowing the damage to human and ecosystem health from climate change. We all need and rely on a healthy functioning global ecosystem. Although many alternatives exist to generate energy and site infrastructure, we all have only one planet to sustain life. We, therefore, write to suggest that you adjust the balance of your decision-making process by protecting the broadest possible understanding of the public good. This view of the public good includes natural resource protection, local economy preservation, respect for private property rights and assessment of the impact of our energy choices on the overall health of the global ecosystem, people and communities consistent with FERC's mandate under the Natural Gas Act. Acknowledging the value of conserved lands and doing everything possible to avoid the impairment or destruction of those lands is a fundamental component of this approach.

To implement this approach in its energy infrastructure siting decisions, FERC should first determine that there is an actual, independently documented public need for any proposed infrastructure. After that need has been established, and the applicant has exhausted all state and other procedures, FERC should fully avoid siting energy infrastructure on conserved lands. This procedural hierarchy implies also that FERC updates its process to be publicly transparent. We discuss these points of need, all relevant factors, exhaustion of all procedures, avoidance of conserved lands and needed process improvements in detail below.

Conservation land is a critical public benefit funded by taxpayers.

Together, national, state and local land trusts hold 42,425 conservation easements and own 16,644 parcels of land throughout the United States, covering approximately 24,887,639 million acres of land as of 2015.¹ Approximately 6,250,000 people visit and enjoy those conserved land annually.² Nationally, the top three conservation priorities for land trusts are natural areas and wildlife habitat, water quality and wetlands and working farms, ranches, orchards and forests.³ Conservation organizations accomplish those objective through a number of tools, including conservation easements. Additionally, numerous government jurisdictions at all levels also own land and easements.

Land and water conservation returns \$4 to \$10 for every dollar invested.⁴ It also provides myriad co-benefits, including recreational opportunities, flood control, protection of air and drinking water quality, wildlife habitat and forests. Conservation also supports industries, such as tourism, agriculture, silviculture, outdoor recreation and hunting and fishing. Individual communities are able to quantify the economic value of these benefits, including the reduction in costs of supplying services to residences and businesses when towns choose to add green space instead of buildings and houses.⁵ National wildlife refuges alone pump \$2.4 billion dollars annually into the economy, support over 35,000 jobs and produce \$792.7 million in employment income for local communities based on fiscal year 2011 data.⁶

Land and water conservation is a vital public service and a critical factor in a thriving national economy that relies on natural resource protection. Natural habitats, whether public or private, and whether supporting natural systems or growing natural products, provide innumerable benefits to people, including significant economic value for communities.⁷ For example:

¹ Chang, K. (2015). *National Land Trust Census* (Rep.). Retrieved from <http://www.landtrustalliance.org/about/national-land-trust-census>.

² Chang, K. (2015).

³ Chang, K. (2015).

⁴ Conservation Economics (n.d.) Retrieved from <https://www.tpl.org/how-we-work/fund/conservation-economics#sm.0001ghgcgb1bh2cpdsgdm7w4p3d2o>.

⁵ Lerner, S., & Poole, W. (Eds.). (1999) Open Space Investments Pay Big Returns. *Land & People*. Retrieved from <https://www.tpl.org/magazine/open-space-investments-pay-big-returns%E2%80%9494landpeople#sm.0001ghgcgb1bh2cpdsgdm7w4p3d2o>.

⁶ *The Conservation Economy in America: Direct investments and economic contributions* (Rep.). (February 18, 2013). Retrieved from <http://www.nfwf.org/partnerships/federal/Documents/NFWF-Conservation-Economy-Rpt-Southwick-3-11-2013.pdf>.

⁷ Economic Benefits. (n.d.). Retrieved from <http://www.landtrustalliance.org/topics/economic-benefits>.

1. New York City saves about \$7 billion in water treatment infrastructure costs by drawing its drinking water from protected watersheds.⁸
2. Spending on sport fishing supports as many as 1,900 jobs and generates as much as \$64 million in employment income.⁹
3. Proximity to protected lands, such as National Wildlife Refuges, can increase urban home values by 3 to 9 percent.¹⁰
4. Bird watching supports more than 660,000 jobs and \$31 billion in employment income.¹¹
5. Coastal wetlands provide storm protection, valued at \$23.2 billion per year, by helping to reduce the severity of impacts from hurricanes in the United States.¹²
6. A dam removed in Taunton, Massachusetts, saved an estimated \$1.5 million in emergency response costs caused by flooding.¹³
7. Trees can provide urban communities over \$3.6 million in stormwater benefits annually.¹⁴

America is losing conservation land rapidly. The estimated loss of forests due to development, beginning in 1982 and projected to 2030, is nearly equivalent to the land area of the state of Georgia.¹⁵ Based on the Energy Information Administration's forecast of energy production in 2030, energy infrastructure will consume close to 50 million acres under current practices and policies—an area almost the size of the state of Nebraska. This is nearly equivalent to all the conservation land protected by private land trusts in the last 60 years and almost double the over 24 million acres of conservation land acquired by private land trusts at an annual cost to taxpayers of approximately \$38,800,000.¹⁶ The waste of taxpayer money that results from siting energy infrastructure on conservation land runs counter to any public benefit or interest. As such, FERC should avoid certificates or permits that site future energy infrastructure on conservation land.

⁸ Elliman, C. & Berry, N. (2007) Protecting and Restoring Natural Capital in New York City's Watersheds to Safeguard Water. In J. Aronson, S. J. Milton, & J. N. Blygnaut (Eds.), *Restoring Natural Capital: Science, Business, and Practice* (pp. 208-215). Washington, D.C.: Island Press.

⁹ Colt, S., & Schwoerer, T. (2009). Economic Importance of Sportfishing in the Matanuska-Susitna Borough. Institute of Social and Economic Research. Retrieved from http://www.iser.uaa.alaska.edu/Publications/matsu_sportfish_final_31aug2009.pdf.

¹⁰ Taylor, L. O., Liu, X., & Hamilton, T. (2012). Amenity Values of Proximity to National Wildlife Refuges. Center for Environmental and Resource Economic Policy. Retrieved from <https://www.fws.gov/economics/Discussion%20Papers/2012.4.NWRSAmenityReportApril2012withCovers8.pdf>.

¹¹ Carver, E. (2013). *Birding in the United States: A Demographic and Economic Analysis* (Rep. No. 2011-1). Retrieved from <https://digitalmedia.fws.gov/digital/collection/document/id/1874>.

¹² Costanza, R., Pérez-Maqueo, O., Martinez, M. L., Sutton, P., Anderson, S. J., & Mulder, K. (2008). The Value of Coastal Wetlands for Hurricane Protection. *Royal Swedish Academy of Sciences Ambio*, 37(4), 241-248.

¹³ *Community Benefits of Stream Barrier Removal Projects in Massachusetts: Costs and Benefits at Six Sites* (Rep.). (March 2015). Retrieved from <https://www.mass.gov/files/documents/2016/08/wg/phase-iii-benefits-from-stream-barrier-removal-projects.pdf>.

¹⁴ *Stormwater to Street Trees: Engineering Urban Forests for Stormwater Management* (Rep.). (September 2013). Retrieved from <https://www.epa.gov/sites/production/files/2015-11/documents/stormwater2streettrees.pdf>

¹⁵ Four Threats—Quick Facts. (October 30, 2006). Retrieved from <https://www.fs.fed.us/projects/four-threats/facts/open-space.shtml>.

¹⁶ Conservation Economics (n.d.) Retrieved from <https://www.tpl.org/how-we-work/fund/conservation-economics#sm.0001ghgcgb1bh2cpdsgdm7w4p3d2o>.

The Alliance is concerned about the impact of all forms of energy infrastructure siting on conservation land. The Natural Gas Policy drives much of this, including, without limitation, liquefied natural gas facilities and appurtenances siting. Too often, energy infrastructure siting defaults to conservation land first instead of seeking alternative routes. Condemning authorities mistakenly believe that conservation land lacks value or is interchangeable. In fact, and as noted above, numerous studies and articles document the high economic value of conservation land.¹⁷ The federal tax code and the conservation enabling acts in every state require perpetual conservation of specific parcels.¹⁸ Therefore, the Alliance recommends the common-sense revisions to the FERC Natural Gas Act Policy Statement set forth below in Appendix A.

People, communities and land and water natural resources must have first priority.

Overall, the Alliance urges FERC to rebalance its review process to ensure—above all else—that it protects the broadest possible understanding of the public good consistent with FERC’s mandate under the Natural Gas Act. This means prioritizing people, communities and land first so that public health, safety, natural resource sustainability and the imperative need to address climate change have equal status and priority with energy development.

An independently demonstrated, overwhelming need for energy infrastructure should drive approvals, as opposed to counterproductive pricing incentives or private industry pressure. FERC may be able to avoid the time-consuming public process engendered by its current limited review. If FERC fully employs the all relevant factors analysis of actual public need and defers to state procedures first, then it may find that pipelines are not necessary or that applicants can site them some place other than on conservation land.

FERC can do much to streamline its systems and increase efficiency while also enhancing its protection of the overall public good by including energy efficiency and alternative energy sources, by gaining system transparency and ease of access to the FERC process and by waiting for the completion of state siting processes before initiating a FERC proceeding as detailed in Appendix B below.

Communities have lost valuable land to unnecessary and unneeded energy infrastructure condemnation. The resulting economic losses to communities and the natural resource damages are disproportionate and unwarranted. Most of the impacts to these lands are permanent. No amount of off-site mitigation can compensate for these permanent losses created by precipitous condemnation done, sadly, for no good reason as illustrated by the examples in Appendix C below.

FERC can change this and improve its systems, increase efficiency and improve public respect for its integrity and equity. By doing so, FERC can advance its stated goal of public interest in the siting of

¹⁷ The majority rule in judicial opinions is that just compensation for the taking of property held subject to a restriction on its use is the property’s full *unrestricted* value, see: *Board of County Commissioners v. Thormyer*, 169 Ohio St. 291 (1959); *Fairfax County Park Auth. v. Virginia Dep’t of Transp.*, 247 Va. 259 (1994); McLaughlin, N. A. (2008). *Condemning Conservation Easements: Protecting the Public Interest and Investment in Conservation*. *UC Davis Law Review*, 41, 1897; *Winchester v. Cox*, 26 A.2d 592, 597-98 (Conn. 1942).

¹⁸ *B09: Federal Tax Issue: The Latest and Greatest CLE* [PDF]. (2017). Land Trust Alliance. Retrieved from https://alliancerally.org/wp-content/uploads/2017/05/Rally2017_B09.pdf.

future energy infrastructure by helping to protect the vitality and health of communities across the country that rely on open space for their economic and overall well-being.

Two decades of changes warrant rebalancing FERC priorities.

Changes in the nearly two decades since FERC's 1999 Policy Statement warrant a rebalancing of priorities. The guidance adopted then and applied in certification dockets since is no longer relevant to the values and demands of the 21st century. Gas production and pipeline construction have increased dramatically since 1999. Between 1999 and 2016, FERC approved over 400 pipeline projects totaling 180 billion cubic feet per day (Bcf/d) in natural gas capacity. It is important to note that FERC has rejected only two pipeline projects in the past 30 years.¹⁹ In the context of the calculated excess capacity of all those pipelines, FERC decisions appear to run counter to public need and benefit.²⁰

The Alliance urges FERC to seek the proper balance between the enhancement of competitive alternatives and the possibility of overbuilding. Given the vast changes that have occurred in the energy landscape since 1999, FERC's approach incentivizes—rather than limits—overbuilding and poses significant economic and environmental risks, which contributes to an excessive FERC docket.

Additionally, the Alliance urges FERC to consider all options and alternatives to building new energy infrastructure. FERC could significantly reduce its docket prior to expending time and expense on land acquisition by considering alternate sites and energy sources, removing and rebuilding along existing gas lines and rights-of-way or upgrading existing infrastructure and utilizing new technologies.

FERC would do well to institute a rigorous planning process when siting energy infrastructure that excludes conserved or sensitive lands and includes mitigation for every wetland, stream, river, forest and other natural and cultural resource damaged by energy infrastructure siting. It is critical that we protect our federal, state, local and private investments in open space for future generations. A three-pronged mitigation planning hierarchy, often referred to as “smart from the start,” provides a sound framework to use in responding to landscape-scale energy projects:

- **Avoid:** Consider alternate sites and routes for the project, even if more expensive, and avoid conserved and sensitive areas altogether as a matter of prior public use and commitment of taxpayer funds;

¹⁹ Lombardi, K., & Hopkins, J. S. (July 17, 2017). Natural gas building boom fuels climate worries, enrages landowners. The Center for Public Integrity. Retrieved from <https://www.publicintegrity.org/2017/07/17/20982/natural-gas-building-boom-fuels-climate-worries-enrages-landowners>.

²⁰ National gas market expert Skipping Stone analyzed PennEast's claim that the energy supply needs its pipeline on the heels of this winter's cold snap and found instead a 1.7 billion cubic feet of excess pipeline capacity on the coldest days last winter. The analysis “demonstrates that PennEast is not needed to meet peak winter demand, not even for a single day, even during extreme winter events,” said Greg Lander, a global energy expert. See: Rasmussen, M. (June 3, 2018). PennEast pipeline has only just begun: Rasmussen. *Asbury Park Press*. Retrieved from <https://www.app.com/story/opinion/columnists/2018/06/03/penneast-pipeline-battle-nj-jamestown-associates/667298002/>.

- **Minimize:** Lessen impacts of energy and utility infrastructure projects. Examples include co-location within an existing infrastructure (e.g., site on an existing right-of-way [ROW], thereby reducing the width of ROW clearings, and apply best management practices for erosion control, invasive species control, revegetation, etc.); and,
- **Offset:** After regulators and the pipeline company have made all reasonable efforts to avoid and minimize environmental impacts, any damage to the property itself should be offset or, failing that, then mitigate the project siting using other property or through mitigation banks. Because offsets will protect a different property, the benefits of the offset should be sustainable and protect more resources than were taken.²¹

FERC must adequately consider the documented value of conservation land. In many parts of the country, regional transmission organizations (RTOs) are responsible for transmission planning. RTO planning processes largely represent the owners, utilities and generators who stand to benefit from the energy and utility infrastructure. Accelerated federal approval processes for energy and utility infrastructure, without having appropriate procedures and principles, have the potential to overrun careful consideration of the lives of people, the health of communities and the use of land, particularly where that impact is on privately owned lands with important conservation values. The Alliance advocates that FERC adopt and implement protection of conserved land when planning, reviewing and permitting energy and utility infrastructure.

The public interest requires a full and fair examination of all relevant factors.

Project need should be a threshold determination for whether a project is in the public interest. The Natural Gas Act requires FERC to determine whether a pipeline project is in the public interest. To do so, the Alliance urges FERC to adjust its procedures in accordance with the changed circumstances and new challenges and opportunities of this century. FERC should determine project need through an all relevant factors analysis that fully evaluates *all* impacts and *all* stakeholders. FERC should accord equal consideration to impacts as it does to engineering and incentive decisions. FERC should prioritize the public interest over the goals of the pipeline industry. This includes robust health-and-safety impact analyses, adequate consideration to land use impacts in advance of permitting projects and balancing the project's adverse impacts on people, land, communities and planetary health against its benefits.

To truly serve the public interest, in addition to assessing infrastructure need, FERC must *fully evaluate all environmental and community impacts, including climate*. FERC's current approach ignores or discounts the quantitative and qualitative relevance of environmental impacts.

²¹ Offsets should be self-sustaining and provide a high level of confidence that the offset investment yields the intended ecological outcomes for the duration of the project. Offsets should also ensure that the attributes are similar/equivalent in type and proportionate to those affected by the project. In addition, offsets that restore, enhance and/or increase the protection of resources can provide a new contribution to conservation thus supporting additionality. See: McKenney, B., & Wilkinson, J. (April 2015). *Achieving Conservation and Development: 10 Principles for Applying the Mitigation Hierarchy* (Rep.). Retrieved from <https://www.nature.org/ourinitiatives/applying-the-mitigation-hierarchy.pdf>.

The Alliance recommends, therefore, that the new policy statement include these concepts based on need, all relevant factors, and exhaustion of all other proceedings and avoidance of conservation land as well as the transparent procedures.

Conclusion

We applaud the Commission for initiating this important review. We look forward to a robust process that gives careful, thorough consideration to the critical issues outlined above and provides sufficient time and meaningful opportunity for all stakeholders to present their views. We also welcome any opportunity to meet with you and Commission staff to discuss the critical public interest in avoiding conservation land in which taxpayers have already invested substantial resources. Thank you for your attention to this matter.

Sincerely,



Andrew Bowman
President

APPENDIX A

Put people, communities and land first.

1. Put people, communities and land first. By committing to a full evaluation of public need for a project, using all relevant factors independently verified and documented, FERC will thereby focus appropriately on serving the public and preserving public investments in conservation land and water, natural resources, vital communities, private property rights and a healthy planet.
2. Establish a review process to ensure that—above all else—FERC preserves the environmental gains of the last 20 years and reshapes its incentives to act in the overall public interest, consistent with FERC’s mandate under the Natural Gas Act.
3. Adhere to a comprehensive, integrated resource planning²² approach that treats conservation and other landowner and consumer concerns and investments on an equal basis with utilities and energy company priorities, including pre-siting planning and environmental analysis that explicitly values the public conservation investment and landowner private property rights.
4. Analyze each project’s costs and benefits completely only after the full state process has concluded with a favorable determination, including every aspect of a project such as:
 - a. The full project, not just segmented pieces. Segmentation, whereby the pipeline company fragments larger projects into smaller pieces for FERC review and approval, distorts and minimizes the cumulative environmental and community impact of proposed projects.
 - b. The impact on climate to better reflect the actual total costs of the project. This assessment is well within the existing Natural Gas Act purview and can be further explained in the revision process.
 - c. The full cost of condemnation of property and property interests. This calculation includes the high price of land condemnation public and landowner rights, plus the costs of environmental damage. Indeed, the current policy requires such analysis, which usually FERC and applicants overlook.
5. Address the need for a more regionally focused review by incorporating regional planning into FERC’s analysis. The current system views applications without consideration of existing planned infrastructure in the region, creating the risk of wasteful duplication and infrastructure that is out of step with the region’s needs. FERC already has a model to draw from, as the electricity sector has incorporated regional planning through the RTOs and other planning constructs in areas without RTOs. An integrated, more comprehensive review would assess the need for new pipelines based on the energy needs of the region(s) directly affected by the project. Such an assessment would examine such factors as existing and proposed pipeline capacity, long-term energy needs and state policies.
6. Prioritize state review and state processes to exhaust state procedures before issuance of a final certificate. This would require that all state reviews be final and that other jurisdictions grant any and all necessary approvals, permits, certificates and/or dockets first. All government agencies and entities must have the opportunity to fully and fairly evaluate and render their own independent decisions, which FERC gives full weight to in its review. If FERC didn’t open a docket until applicants concluded all the subsidiary, preliminary proceedings, it could rapidly streamline its

²² For the definition and criteria of integrated resource planning, see: The Energy Policy Act of 1992 mandated integrated resource planning: Integrated Resource Planning Guidelines. (September 19, 2016). Retrieved from <https://www.wapa.gov/PowerMarketing/IRP/Pages/guidelines.aspx>.

procedures and docket.

7. Prohibit eminent domain or construction until the pipeline company has obtained all final state permits and concludes all appeals in its favor. In states that don't allow access for precertificate surveying, FERC could continue issuing conditional certificates that limit eminent domain to survey access only for projects that have demonstrated independently determined public need and for which state procedures are well under way.
8. Cease issuance of (a) certificates of public convenience or necessity, including conditional certificates except as provided in number 7 above, (b) notices to proceed with any aspect of construction, including tree felling and/or (c) approval for exercise of eminent domain, until such time as an infrastructure project has secured all state, federal and/or regional permits, dockets and/or approvals, with the exception of access for precertificate surveying as provided in 7.
9. Include costs, not just asserted benefits, in economic analyses. The new system must fully account for the economic burden on and environmental damage to communities, including the loss of natural resources, property rights, property values, agricultural production, business revenue and jobs, both the actual and sense of safety and well-being of community members, the cost of emergency and community services and more.
10. Commit to a policy of avoiding permanently conserved public and private lands and easements, such as government parks, refuges, forests and other public and private conservation holdings, and including alternatives to building new energy and utility infrastructure on conserved lands.
11. Commit to a full and fair implementation of the National Environmental Policy Act (NEPA), which addresses and balances the full array of environmental impacts. This should include preparation of environmental impact statements, which include review by an independent party with requisite expertise. This must be a part of its balancing determination.
12. Address the broad climate implications and properly account for potential emissions to comply with a December 2017 D.C. Circuit Court order.²³
13. Use scientifically tested tools (such as the Social Cost of Carbon and the Social Cost of Methane as provided from time to time by the U.S. EPA), which allow the Commission to readily place a dollar value on environmental impacts and neatly incorporate them into a public interest analysis. NEPA requires using every available tool to consider all direct, indirect and cumulative environmental impacts, including downstream effects and all reasonably foreseeable impacts on the environment. Climate change is a significant impact on the environment; therefore, FERC must ask and demand a substantive response to the question about what the associated emissions are with each energy infrastructure project as a whole, not segmented. This includes such details as the source and destination of the natural gas that runs through pipelines so FERC can make an informed decision about need and impacts.
14. Pursue policies that further the development of non-carbon-based, renewable energy on already developed or disturbed sites, including brownfields and redevelopment areas.
15. Implement an open process that is inclusive and transparent for all stakeholders, including state utility commissions, trade associations, land trusts and other conservation organizations, interested localities, property owners and citizens.
16. Provide for increased federal monitoring of energy infrastructure and hazard prevention so that private lands receive the promise by the federal government to ensure health and safety. FERC should use the highest standards to preserve property values of private landowners. According to

²³ *Sierra Club, et al. v. Federal Energy Regulatory Commission, D.C. Cir. (2017).*

an analysis of federal pipeline accident data by the Pipeline Safety Trust, the annual average number of incidents per 10,000 miles of onshore transmission lines found a spike in incidents for pipelines installed in the 2010s.²⁴ A sampling of examples of the human fatalities, property damage, business losses and environmental destruction caused by inadequate siting and safety procedures illuminate the need for the highest level of care in siting energy infrastructure and in moderating the extent of the same to allow for adequate long-term oversight. A 2015 study by the National Transportation Safety Board pointed out weaknesses in inspection plans and federal oversight of the pipelines that to this day remain unremedied.²⁵ The installation of thousands of miles of new pipeline in the past several years exponentially exacerbates this deadly safety risk.

17. Consider impacts to property values. Improperly sited and monitored energy infrastructure can reduce property values by 5 to 40 percent by making them less attractive to potential buyers, according to news reports from various Pennsylvania realtors.²⁶ This is in addition to the noise, scenic intrusion, surface restrictions and documented increase in hazards. Forensic Appraisal Group, a Wisconsin-based pipeline and power line valuation company, participated in a study that found a “definitely measurable devaluation” of properties according to its website. Pipeline easements can create negative impacts ranging from 50 percent of the easement land value to 30 percent of the entire property value, the company said.²⁷

²⁴ Smith, S. (September 9, 2015). As US rushes to build gas lines, failure rate of new pipes has spiked. *SNL*. Retrieved from <https://www.snl.com/InteractiveX/article.aspx?cdid=A-33791090-11060&TabStates=0>.

²⁵ *Integrity Management of Gas Transmission Pipelines in High Consequence Areas* (Rep.). (January 27, 2015). Retrieved from https://www.nts.gov/news/events/Documents/2015_Gas_Transmission_SS_BMG_Abstract.pdf (NTIS No. PB2015-102735).

²⁶ Walmer, D. (January 2, 2016).

²⁷ *Power Line Valuation Issues*. (n.d.). Retrieved from <http://forensic-appraisal.com/power-lines>.

APPENDIX B

FERC can streamline its systems, increase efficiency and gain system transparency.

The Alliance recommends that FERC improve the transparency of its process and information it provides and timing of same, including:

1. Ending the practice of allowing pipeline companies to secure a 14 percent rate of return on equity on new pipeline projects that require constructing a new right-of-way through communities and natural resources. This practice does not now adequately examine market need and existing infrastructure. It incentivizes the construction of more pipelines, regardless of whether there is any genuine need or any public interest benefited by the project.
2. Using experts without industry conflicts of interest to objectively verify this assertion of need. This means that the pipeline company itself, or any of its subsidiaries or business counterparts or affiliates, cannot support or demonstrate a legitimate claim of public need. This also means that if the geographic region in question already has gas service from other pipelines, which the proposed project will replace, displace or duplicate, then a claim of “need” cannot exist. FERC must prohibit disingenuous “need” demonstrations. As such, the applicant cannot use these empty determinations to fulfill the public use requirements needed to support project approval and eminent domain authority.
3. Recognizing that a legitimate demonstration of need must include confirmation that renewable energy options or existing or proposed energy sources and infrastructure do not fulfill the public need for energy sources. For example, if a preexisting pipeline supply network that has the demonstrated capacity to absorb the projected increase in energy demand already supplies gas, then there is no need for another pipeline.
4. Protecting future generations in both the review and decision-making process by including such approaches as demand response, energy efficiency measures, encouragement of local renewable sources and maximizing the efficiency of transmission along existing rights-of-way through new transmission technologies. FERC must conduct a deeper review of market need when affiliate precedent agreements are the pipeline developer’s purported evidence of project need instead of relying exclusively on precedent agreements—contracts between pipeline developers and prospective shippers—to determine project need. An honest all relevant factors analysis facilitates an equitable assessment of public need and benefit. Then FERC can more appropriately weigh adverse impacts and other factors against precedent agreements to yield a final determination of whether the pipeline overall is in the public interest.
5. Ensuring the public has meaningful opportunities to participate and that every stakeholder—regardless of resources—has the tools to fully participate in FERC proceedings. This enhances public confidence in FERC and reduces time spent dealing with public protests.
 - a. Mandate that applicants investigate and accurately address all data gaps and inaccuracies, misleading and/or false information and eliminate the same before Certificate approval, including submission of detailed maps and property-specific information regarding the proposed route and impacts to stakeholders and affected landowners. It appears from experience that, once a company files an application, the project receives a construction permit regardless of stakeholder comments.
 - b. Include enough information in each docket regarding what is really driving the need for the pipeline. FERC should also provide environmental analyses from all ancillary federal

- authorizations. This will yield an improved assessment of all the environmental impacts, including landowner and climate impacts.
- c. Have concrete methods to incorporate the voices of environmental justice communities as required by Executive Order 12,898, and consult and collaborate with all tribal communities and conservation organizations.
 - d. Eliminate tolling orders and unlimited time to consider the rehearing request.
 - e. Have a full and fair process for all stakeholders without threat of construction or condemnation.
 - f. Have a *substantive* FERC response to rehearing requests within 30 days that addresses the merits of the rehearing request.
 - g. Avoid conflicts of interest by ensuring that no Commission staff or commissioners working on or deciding any pipeline infrastructure project in which they, or a member of their family, have a direct or indirect financial stake or have worked to represent the company within the previous five years or from whom they are seeking future employment.

APPENDIX C

Examples of permanent damage to conservation land that FERC could have avoided.

The Mountain Valley Pipeline (MVP) crosses portions of the Jefferson National Forest, the Appalachian Trail and the Blue Ridge Parkway and slices directly through the middle of a New River Conservancy 208-acre conserved forest, fragmenting its wildlife habitat resources and cutting a 125-foot wide line through half a mile of forest, impacting 6.5 acres of land. This pipeline adversely affects over 2,000 feet of a state-designated wild trout stream, which adversely affects the tourism and water quality benefits provided to the local community. Moreover, the 50- to 125-foot-wide cleared corridor directly harms communities by increasing the long-term health and safety risks from the loss of clean air and water and quiet enjoyment and recreation.²⁸ In addition, there is a significant documented loss of property value with losses of as much as 50 percent of the value of one of the most important assets most Americans own: their home.²⁹

This unwarranted destruction is also precipitous. The U.S. Circuit Court of Appeals for the Fourth Circuit recently issued a stay³⁰ that prohibits developers of the MVP from moving forward with plans to run the 42-inch pipeline—more than twice the size of existing transmission pipelines—across rivers and streams in West Virginia. The stay put such work on hold pending a challenge of a key stream-crossing permit issued by the U.S. Army Corps of Engineers for the pipeline's route through southern West Virginia. Additionally, a similar permit—granted by the Army Corps for a section of the 303-mile pipeline that runs through the New River and Roanoke Valleys—is the subject of a petition for review. The New River Conservancy and others argue that the Army Corps permit is deficient because it allowed the crossings of four rivers in West Virginia even though the company cannot complete work within the 72 hours required by that state's environmental regulators. The Virginia Department of Environmental Quality closed the Virginia section of the MVP after receiving dozens of water quality violation reports.³¹ This highlights the necessity of FERC awaiting the conclusion of *all* processes, procedures and appeals at all levels of government *before* granting a certificate for a proposed pipeline. In this way, FERC will allocate its time and resources *only* to those projects that successfully obtained all other permits.

²⁸ Rubin, P. (June 2, 2017). *Second HydroQuest Expert Report Regarding Environmental Issues Associated with Karst Geology Along the Proposed Mountain Valley Pipeline Project* (Rep.). Retrieved from [http://www.appalachiantrail.org/docs/default-source/a.t.-footpath-documents/06-14-17---mvp-blog-post-by-diana-christopulos/20170602-5147\(32197198\)-karst-roanoke-giles-6-2-17.pdf?sfvrsn=2](http://www.appalachiantrail.org/docs/default-source/a.t.-footpath-documents/06-14-17---mvp-blog-post-by-diana-christopulos/20170602-5147(32197198)-karst-roanoke-giles-6-2-17.pdf?sfvrsn=2).

²⁹ Brambila, N. C., & Wagaman, A. (February 1, 2015). Homeowners along gas pipeline hold out for better offers. *Reading Eagle*. Retrieved from <http://www.readingeagle.com/news/article/homeowners-along-gas-pipeline-hold-out-for-better-offers>; and Walmer, D. (January 2, 2016). Pipelines could affect property values. *Lebanon Daily News*. Retrieved from <https://www.ldnews.com/story/news/local/2016/01/02/pipelines-could-affect-property-values/77984160/>.

³⁰ Shelor, J. (June 22, 2018). MVP's 2018 Startup in Doubt as Appeals Court Stays Crucial Water Permit in West Virginia. *Shale Daily*. Retrieved from <http://www.naturalgasintel.com/articles/114817-mvps-2018-startup-in-doubt-as-appeals-court-stays-crucial-water-permit-in-west-virginia>.

³¹ Combs, M. (July 2, 2018). MVP construction now halted in both Virginias. *The Register-Herald*. Retrieved from http://www.register-herald.com/news/mvp-construction-now-halted-in-both-virginias/article_ad8dd987-894b-5564-b69f-f85bc50d4f01.html.

In another example, the Atlantic Coast Pipeline cuts through steep slopes and landslide-prone areas in the Monongahela and George Washington National Forests. U.S. Forest Service staff warned of the adverse, long-lasting impacts of this project with the pipeline cutting through 20 miles of steep, rugged mountainous regions of national forestland in West Virginia and Virginia, markedly increasing the threat of landslides.³²

Much of this land supports habitat for rare and endangered species, provides recreational opportunities for hikers and campers and creates jobs and economic opportunity for the communities serving those users. The Piedmont Environmental Council (PEC) in Virginia reports that, if constructed, the Atlantic Coast Pipeline would be the “largest intrusion onto protected properties in the 50-year history of Virginia’s conservation easement program.” Three of Virginia’s largest industries rely on land resources: agriculture, forestry and tourism. A 2011 study by PEC found that a number of environmental benefits—such as recreation, farm products and water quality—contribute about \$21.8 billion to Virginia’s economy every year.³³

The Constitution Pipeline, as the result of a FERC Certificate and notices to proceed in advance of state permits, resulted in pipeline companies precipitously taking the property rights of hundreds of property owners, leveling forests and harming businesses, only to have the project denied through the New York state approval process, which ultimately prevented full construction. FERC could have avoided wasting its time and resources and the serious impact to natural resources and communities if it had waited for the state process to conclude.

These are only three of literally dozens of examples where FERC summarily traded the value of conservation lands for a short-term gain of building energy infrastructure without consideration of the long-term impacts, without sufficient process or protection and often without demonstrated need for the project.

³² Cameron, M. G., Jr. (December 18, 2016). *The Proposed Atlantic Coast Pipeline Route through Little Valley in Bath County, Virginia: An Assessment of Landslide Risk and Slope Stability Factors* (Rep.). Retrieved from <https://www.dropbox.com/s/bxwz86b9hs4kqeo/DPMC%20Comments%20-%2020161223.pdf?dl=0>.

Landslide Analysis Monongahela National Forest Flood Event (June 2016) (Rep.). (December 23, 2016). Retrieved from <https://www.dropbox.com/s/wr75dj2nmoie3zn/Landslide%20Study%2020161227-5025%2831859125%29.pdf?dl=0>.

³³ Vance, K. (April 8, 2013). Protecting the Piedmont: Conservation Easements Preserve Over 357,000 Acres. Retrieved from <https://www.pecva.org/maps-and-resources/publications/piedmont-view/177-spring-2013-piedmont-view/831-protecting-the-piedmont-conservation-easements-preserve-over-357-000-acres>.