



July 25, 2018

The Honorable Kimberly D. Bose
Secretary of the Commission
Federal Energy Regulatory Commission
888 First Street NE
Washington, DC 20426

Attn: Docket No. PL18-1-000

RE: Notice of Inquiry Regarding the Certification of New Interstate Natural Gas Facilities.
83 FR 18020 (April 25, 2018)

Dear Secretary Bose:

The Pennsylvania Departments of Environmental Protection (PADEP), Conservation and Natural Resources (PADCNR) and Community and Economic Development (PADCED) appreciate the opportunity to comment on the Federal Energy Regulatory Commission's (the Commission) Notice of Inquiry Regarding the Certification of New Interstate Natural Gas Facilities¹ published on April 25, 2018 (83 FR 18020).

At the epicenter of the Marcellus and Utica shale formations, Pennsylvania is at a critical inflection point regarding natural gas production, transmission, and distribution. We have over 10,000 unconventional wells, with over 8,000 of those producing natural gas at 14.5 billion cubic feet per day, or 5.3 trillion cubic feet per year. We currently account for 37% of total U.S. shale gas production. In the past five years alone, we have experienced over \$10 billion in pipeline infrastructure investments in the Commonwealth. We anticipate additional transmission pipeline investments as the industry continues to mature.

Our three agencies, collectively, understand the daily impact of natural gas transmission pipeline projects from our stakeholder Pennsylvanians. There are very few areas of the Commonwealth that are not affected by the natural gas industry in some way. The buildout of the upstream natural gas drilling industry via transmission pipelines to markets well beyond Pennsylvania's borders comprises a complex combination of environmental, natural resource, and economic concerns that merit critical attention from federal, state, and local agencies.

Our combined comments are intended to provide three unique lenses into the issues related to siting natural gas transmission lines. We believe our comments to the Federal Energy Regulatory Commission can both expose the complexities of approving and constructing natural

¹ *Certification of New Interstate Natural Gas Pipeline Facilities*, 88 FERC 61,227 (1999), *clarified*, 90 FERC 61,128, *further clarified*, 92 FERC 61,094 (2000).

gas transmission pipelines in an era of significant natural gas development, as well as serve as a basis for substantive improvements in the process.

PADEP, PADCNR, and PADCED have reviewed the four general areas of examination in the Notice of Inquiry which include: (A) Potential Adjustments to the Commission's Determination of Need; (B) The Exercise of Eminent Domain and Landowner Interests; (C) The Commission's Consideration of Environmental Impacts; and (D) Improvements to the Efficiency of the Commission's Review Process, and provide the following comments:

A. Potential Adjustments to the Commission's Determination of Need

A1. *Should the Commission consider changes in how it determines whether there is a public need for a proposed project?*

- In determining whether there is public need for a proposed project, the Commission should provide particularly attention and weight to whether the pipeline will provide local benefit in the states through which it will travel. Relevant benefits that the Commission may want to weigh could include upstream benefits to producers and landowners, or downstream benefits to end-users, but significant weight should be focused on whether the pipeline will address localized needs in proportion to its impact, as opposed to simply serving as a means of transmission to markets elsewhere.

A2. *In determining whether there is a public need for a proposed project, what benefits should the Commission consider? For example, should the Commission examine whether the proposed project meets market demand, enhanced resiliency or reliability, promotes competition among natural gas companies, or enhances the functioning of gas markets?*

- The Commission should examine—along the entire pathway of the pipeline—how the project provides benefit to local communities including: 1) access to natural gas; and 2) long-term resiliency and reliability of power. Pennsylvania is currently being “built out” in a complex web of greenfield pipeline infrastructure with little consideration in the FERC process of how local communities will benefit other than the short term economic impact of temporary pipeline construction jobs and associated retail activity. In considering public need, FERC should carefully evaluate whether the proposed pipeline will provide benefit to the communities which the pipeline will transect.

A6. *In its determination of project need, should the Commission consider the intended or expected end use of the natural gas? Would consideration of end uses better inform the Commission's determination regarding whether there is a need for the project? What are the challenges to determining the ultimate use of the new capacity a shipper is contracting for? How could such challenges be overcome?*

- The Commission should consider the intended end use of the natural gas in order to determine a resulting public need for the project. As domestic production continues

to grow, there will be more demand for our natural gas resources to be exported via interstate pipelines to export terminals to international markets. There should be a distinction in the FERC review process for those projects where there is a clear and compelling domestic need, and those projects where our natural gas resources are being exported to meet international demand.

A7. *Should the Commission consider requiring additional or alternative evidence of need for different end uses? What would be the effect on pipeline companies, consumers, gas prices, and competition? Examples of end uses could include: LDC contracts to serve domestic use; contracts with marketers to move gas from a production area to a liquid trading point; contracts for transporting gas to an export facility; projects for reliability and resilience; and contracts for electric generating resources.*

- As indicated in the response to A6, end use should be an important consideration when issuing a Certificate of Public Convenience and Necessity for an interstate natural gas pipeline project. The end uses should also be evaluated for their overall economic impact to 1) those communities along the pipeline path, and 2) the domestic retail energy market.

B. The Exercise of Eminent Domain and Landowner Interests

B4. a) *Does the Commission's current certificate process adequately take landowner interests into account?*

- The Commission's process does not adequately consider public and private landowner concerns related to tree clearing that may occur as a pre-construction activity prior to the Commission's final approval of a pipeline project. PADEP recently provided a letter to the Commission related to tree-clearing and has enclosed the letter as Appendix A for the Commission's consideration. PADEP's recommended approach would improve consideration of landowner interests in preventing unnecessary tree clearing and unnecessary impacts to public and private property, as well as protecting critical resource areas such as riparian buffers and forested wetlands.
- As noted in PADEP's February 8, 2018 letter to FERC, PADCNR also requests that FERC prohibit or condition alteration or removal of vegetative cover along the proposed project rights-of-way or easements on the PADEP's final approval and permitting of the project or portion of the project in Pennsylvania. Absent this prohibition, private and public property owners may experience the unnecessary alteration of their property and/or loss of resources for a project that may either ultimately not be constructed or not be constructed in the location originally proposed by the Certificate holder in its application to FERC.

B4. b) *Are there steps that applicants and the Commission should implement to better take landowner interests into account and encourage landowner participation in the process?*

- As addressed in B4 a) above, the process should incorporate appropriate limitations on tree clearing before final approval. The process should require further coordination between applicants and the appropriate state environmental resource agencies to confirm that tree clearing activities will not result in unnecessary direct or indirect impacts to aquatic resources before the applicant proceeds.
- The Commission should expressly incorporate state water quality certification conditions related to seasonal limitations in the FERC Certificate of Public Convenience and Necessity and Notice to Proceed.
- Applicants must engage landowners of state lands and local conserved lands earlier in the FERC process to better understand their goals, objectives, and expectations. The landowner's review process should not be overshadowed or overridden by the FERC process and the desire to secure a certificate. For example, PADCNr has broad responsibilities for conserved lands (both state and locally protected lands) and should be engaged early in the process. In many cases the agency must work with local entities and is not an independent agent in the project review and siting process.
- PADCNr's responsibilities relating to scenic rivers also requires early engagement and siting consideration throughout the process.
- More substantive pipeline burial depths that do not impede the surface activities of the landowner should be required.
- Site restoration must remain a top priority, particularly maintaining soil health and productivity and ecosystem function. Companies should consider options such as doing soil tests, adding soil organic material, and reducing compaction.
- Landowners need clear and unambiguous reference standards regarding pipeline safety offsets from existing infrastructure as significant variations exists between applicants. This is critical information to landowners that are trying to minimize impacts on their property.

B4. c) *If so, what should the steps be?*

- Regarding tree clearing as addressed in B4 a) and B4 b) above:
 - The project planning and design should avoid and minimize tree clearing to the maximum extent practicable, including tree clearing for staging areas, contractor yards and access roads.
 - No tree clearing or grading should be allowed until applicants have received final approvals from the Commission and satisfied state water quality certification conditions, including obtaining the relevant state authorizations.

- Commission Orders should include conditions related to mitigation for impacts to resources and the right to request additional mitigation if unnecessary impacts occur from tree clearing activities.
- Landowner input must be considered regarding vegetation management within the corridor. Customarily this is accomplished through the landowner's agreement; but there is significant resistance from applicants to create a compatible vegetative community within the corridor that meets landowner objectives, assures pipeline integrity, and minimizes the continual and unnecessary maintenance of vegetation. Considerations such as maintaining a 10' herbaceous corridor centered on the pipeline, or only treating trees within 15' of the pipe would provide early successional habitat and minimize fragmentation impacts.

B5. a) ***Should the Commission reconsider how it addresses applications where the applicant is unable to access portions of the right-of-way?***

- If the applicant is not able to access portions of the proposed right-of-way, use of a combination of remote sensing, aerial overflight information, LIDAR, GIS, eMAP, National Wetlands Inventory mapping may be allowed in carefully limited instances for the Commission's Certificate of Public Convenience and Necessity, so long as on-site surveys, together with other appropriate site-specific resource investigation, are undertaken and form the basis of the Commission's Notice to Proceed.

B5. b) ***Should the Commission consider changes in how it considers environmental information gathered after an order authorizing a project is issued?***

- The Commission should develop a mechanism to incorporate any necessary conditions, limitations or modifications related to additional environmental information gathered after the Commission's Certificate of Public Convenience and Necessity, but before the Notice to Proceed, such as wetland field survey data gathered by the applicant after they have obtained access to the site.
- State water quality certifications and certification conditions should be incorporated in the Commission's Certificate of Public Convenience and Necessity.
 - Compliance with a state water quality certification and any conditions imposed by a state water quality certification should be an express requirement of a Notice to Proceed, if not already included in a Certificate of Public Convenience and Necessity.

C. The Commission's Consideration of Environmental Impacts

As a general matter, PADEP notes that Section 401 of the Clean Water Act, 33 U.S.C. § 1341,² requires applicants seeking a federal license or permit to conduct any activity including, but not limited to, the construction or operation of facilities, which may result

² See Section 3 of the Natural Gas Act, 15 U.S.C. § 717b(d).

in any discharge into navigable waters of the United States to seek certification from the State in which the discharge originates. A state's role during the water quality certification process is to ensure that proposed interstate natural gas pipeline projects will comply with state-specific water quality standards. In Pennsylvania, an applicant demonstrates that their proposed pipeline project will meet Pennsylvania's water quality standards through compliance with Pennsylvania's regulatory programs.

The Commission's continued incorporation of the state water quality certification requirement as part of the process for obtaining a Certificate of Public Convenience and Necessity ensures these state water quality standards will be satisfied. This practice benefits further from stakeholder participation and dialogue among the Commission, state agencies and the applicant during the Commission's pre-filing and National Environmental Policy Act (NEPA) review. Continued incorporation of the water quality certification as an environmental condition to the certificate is also critically important from a timing standpoint, since states have one year from the request of the applicant to grant, conditionally grant, or deny water quality certification. Applicants typically need the certificate to access project areas to complete the environmental evaluations necessary for final environmental approvals.

C1. ***Should the Commission consider broadening its environmental analysis to consider alternatives beyond those that are currently included? If so, what specific types of additional alternatives should be included?***

- The Commission should continue to comprehensively evaluate all environmental impacts from the project—including impacts from staging areas, contractor yards and access roads—working with and relying on input from state environmental and resource agencies. This comprehensive evaluation should require consideration of alternatives to the proposed action, including alternative locations, routings or designs to avoid or minimize adverse environmental impacts. The Commission should also consider conducting a comprehensive analysis of externalities, including greenhouse gas emissions, to ensure minimal impact to the environment and public health.
- In addition, Pennsylvania believes that co-location of pipeline infrastructure is always preferred and should be required everywhere feasible. Many companies currently resist co-location for reasons that have nothing to do with the environment. However, there should also be a socially and ecologically acceptable limit to corridor widths. The width of the corridor can sever habitat connectivity which is vital for the movement of plant and wildlife species. FERC should permit the incorporation of large, dead, woody materials in the corridor to connectivity. FERC should not issue a Certificate of Public Convenience and Necessity or Notice to Proceed until an adequate mitigation package is agreed to with the Commonwealth.

C2. ***Are there any environmental impacts that the Commission does not currently consider in its cumulative impacts analysis that could be captured with a broader regional evaluation? If so, how broadly should regions be defined (e.g., which states or***

geographic boundaries best define different regions), and which environmental resources considered in NEPA would be affected on a larger, regional scale?

- Looping project reviews should extend beyond the scope of immediate project planning to evaluate the entire potential corridor. Applicants strategically request rather benign loops to initiate a much more comprehensive, long term project. Cumulative impacts along the entire corridor must be considered to effectively evaluate the impacts and merits of a project. This kind of long-term planning should be done for every pipeline project reviewed by FERC.
- PADCNr believes that FERC should recognize that forests, especially those with large, contiguous acreage, provide both ecologic and economic benefits to citizens. The ecological services that forested areas provide are irreplaceable. Forests provide habitat to critical and/or endangered and threatened flora and fauna. During the environmental review process, it is important to consider these lands as assets that should be protected, instead of preferred project siting due to lack of infrastructure. Projects should also avoid sensitive water resources in the Commonwealth including Special Protection waters and designated Wild and Scenic Rivers.

C6. *As part of the Commission’s public interest determination, should the Commission consider changing how it weighs a proposed project’s adverse environmental impacts against favorable economic benefits to determine whether the proposed project is required by the public convenience and necessity and still provide regulatory certainty to stakeholders?*

The Commission should strengthen its expectations and evaluation of “favorable economic benefits”. It appears from various FERC applications for interstate transmission projects that originate and traverse through Pennsylvania that applicants are relying on short-term, non-sustainable economic benefits, such as increased construction work and retail trade to establish economic benefit. When transmission infrastructure is constructed, access to the natural gas itself is the long-term economic benefit, but it is generally intended for other markets that are located further along the transmission pipeline itself. Pennsylvania is being marginalized in the development of interstate pipeline infrastructure within our own borders. We ask the Commission to consider longer-term, sustainable economic benefit to those host communities along the pipeline path through careful economic planning of natural gas delivery points that are identified as part of the application process to the Commission.

D. Improvements to the Efficiency of the Commission’s Review Process

D3. *Are there ways for the Commission to work more efficiently and effectively with other agencies, federal and state, that have a role in the certificate review process? If so, how?*

- PADEP, PADCNr, and PADCED recommend that the Commission continue to be an advocate for the process and not the project. The Commission should establish a point of contact (POC) with Pennsylvania and keep that POC current so that timely

and effective communications are established during pre-filing, application review, and post authorization phases of the project review. In the past, our agencies have lacked the opportunity or otherwise received untimely notifications of proposed activities from misdirected notifications or other correspondence.

- Review and update Commission guidance and procedure documents, including “Wetland and Waterbody Construction and Mitigation Procedures,” and “Upland Erosion Control, Revegetation & Maintenance Plan.”
- See the response to Comment B4, A-C above.

D4. a) ***Are there classes of projects that should appropriately be subject to a shortened process?***

- The Commission should consider incentives for projects that are co-located within existing rights-of-way, or otherwise demonstrating the avoidance of or limiting new areas for disturbance or avoidance of potential adverse impacts, loss, or degradation to waterbodies and wetlands.
- PADEP believes the blanket certificate shortened process is appropriate only for projects requiring maintenance-related modifications with disturbances that do not trigger federal or state environmental regulatory thresholds. The blanket certificate process could be improved by better communication and coordination between the Commission, a blanket certificate applicant/holder and state agencies.

D4. b) ***What would the shortened process entail?***

- The Commission should consider a reduction in the timeframe for the application process since studies of potential alternative sites could be limited.
- The Commission should assign a docket number for a blanket certificate request at the time the request is received from the applicant, not the following year. This would avoid confusion and enable PADEP staff to determine whether there are new impacts associated with a blanket certificate project for which an amended water quality certification or additional state permits may be needed.

PADEP, PADCNR, and PADCED thank the Commission for affording an opportunity to comment on the Certification of New Interstate Natural Gas Facilities, Notice of Inquiry considering advancements to the Commission’s public transparency, environmental information, and process improvements. Our agencies look forward to continued collaboration with the Commission in delivering efficient programs, without compromising critical environmental and natural resource protections or economic opportunities that are central to our collective missions and duty to the citizens of Pennsylvania.

Sincerely,

A handwritten signature in black ink, appearing to read "Patrick McDonnell".

Patrick McDonnell, PADEP
Secretary

A handwritten signature in black ink, appearing to read "Cindy Adams Dunn".

Cindy Adams Dunn, PADCNR
Secretary

A handwritten signature in black ink, appearing to read "Dennis Davin".

Dennis Davin, PADCED
Secretary

Enclosure – Appendix A: PADEP February 8, 2018 Letter to FERC (Tree Clearing)