

VOICES

Victory Over InFRACKstructure, Clean Energy inStead

Founded in 2012

Over 250 grassroots, community and environmental organizations, in 35 states, battling against FERC-regulated fracked gas infrastructure and the abuses of power and law inflicted on communities by the Federal Energy Regulatory Commission (FERC)



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10 Natural Gas Act Reforms

Essential to Transforming FERC from an Abusive
Arm of the Pipeline Companies to a
Government Agency Serving the People of Our
Nation.

That Will Provide Genuine & Meaningful
Protection for Communities, Environment,
Climate, Businesses, Property Rights & States'
Rights.



**VOICES has identified Critical Reforms of the Natural Gas Act
Necessary to end FERC's Abuses of its Power and both Federal and State law.**

Focus on 7 critical reforms to NGA

Supported by witnesses from frontline battles

Q&A at end

Provided for follow-up:

- **this powerpoint with summary of all 10 Natural Gas Act reforms, specifically what is needed and why it is essential**
- **2021 Congressional Briefing recording: <http://bit.ly/2021CongressBriefing>**
- **Further evidence of FERC's abuse:**
 - **2020 Peoples Hearing: <http://bit.ly/VirtualPeoplesHearing>**
 - **2016 Peoples Hearing: <http://bit.ly/2016FERCPeoplesHearing>**
- **Dossier of FERC's Abuses of Power & Law with further evidence: <http://bit.ly/DossierofFERCAbuse>**
- **PowerPoint on FERC's failure to demonstrate pipeline need, Mike Spille**

Standing offer/request to meet & discuss FERC abuses & NGA reform with VOICES; pls contact:

- **[Maya van Rossum, Delaware Riverkeeper Network, keepermaya@delawariverkeeper.org;](mailto:keepermaya@delawariverkeeper.org)
215 369 1188 ext 102**
- **[Karen Feridun, Berks Gas Truth, karen.feridun@gmail.com](mailto:karen.feridun@gmail.com)**



Congressman Jamie Raskin

MD-08; Chairman, House Oversight Subcommittee on Civil Rights and Civil Liberties



Critical Natural Gas Act Reform #1:

FERC's Mission Needs to Be Updated to Reflect Modern Times, Needs, Goals and the Threat of Climate Catastrophe.

Redirect FERC's mission to ensure a clear focus on advancing energy service that serves the public interest, including that of future generations.

FERC's Mission guides how it interprets and applies the law and carries out its work on a day to day basis. Congress needs to redirect FERC's mission from one focused on industry goals to one focused on public protection, needs and benefits. Including ensuring a priority focus on:

- ✓ protecting the health and safety of people**
- ✓ environmental protection, including climate crisis**
- ✓ protecting people's rights, states' rights and property rights versus interests of private industry**
- ✓ advancing clean and renewable energy alternatives**
- ✓ retiring existing fossil fuel infrastructure**

Rationale for Mission Reform:

FERC has charged itself with serving the pipeline companies, not the well-being of the people. That focus is reflected throughout its work and decisions.

- FERC is a literal Rubber Stamp, approving over 99% of pipelines brought before commissioners.
 - According to FERC, over 20 years, of the pipelines brought before Commissioners, 1,021 certificates granted & only 6 denied = 99.415%.
- FERC helps pipeline companies take property rights for pipelines that have no demonstrated need & by preventing legal challenges until it is too late to stop a project.
- FERC has used a self-made legal loophole preventing property owner and community legal challenges to pipeline certificates while at the same time approving property rights takings, pipeline construction, and even final approval to go into operation.
 - 75% of the time FERC approves pipelines to go into construction while using the legal loophole to put property and community challenges into legal limbo through tolling orders until months or years after eminent domain takings and construction advances
 - 34% of community & property owner legal challenges placed into legal limbo through tolling orders, only released after the pipeline is fully constructed and in operation
- FERC undermines states' rights siding with pipeline companies challenging state authority at every turn including: advancing pipeline approval, eminent domain & construction before state review & approval; denying sovereign immunity by taking state owned land; rejecting state determinations that pipeline applications fail to meet state law necessary for review.
- FERC consistently ignores court mandates including their obligation to consider climate change and to stop allowing illegal segmentation in project reviews.
- & much much more – see <http://bit.ly/DossierofFERCAbuse>



Testifier:
Irene E. Leech, Ph.D., Associate
Professor of Consumer Studies, Virginia
Tech; with Friends of Buckingham, VA
and Preserve Montgomery County VA

Industry?



OR

People?



An Introduction To The FERC

The FERC regulates certain aspects of the natural gas, electric utility, hydroelectric power, and oil pipeline industries. In carrying out its regulatory responsibilities, the Commission attempts to assure that consumers are charged fair and reasonable rates and supports national energy policies which call for increased production of domestic energy supplies, use of renewable resources, and conservation.



The official seal of the Federal Energy Regulatory Commission.

In its earlier years the FERC Mission included a focus on conservation and renewable resources. Today the agency is a clear and obvious ally of the industry, giving Rubber Stamp approval to over 99% of the projects brought forth to the Commissioners.

Critical Natural Gas Act Reform #2:

NGA Section 7 must specifically & clearly define "Public Convenience and Necessity" to require priority protection for our environment, environmental justice, health, safety and climate, and to require demonstration of an objectively verifiable domestic need.

Definition of Public Convenience and Necessity must be defined to include:

- ✓ Clear and identified protections and benefits for:
 - Environmental protection
 - Climate protection
 - Environmental justice consideration and protections
 - Public health and safety
- ✓ *Ensuring the public convenience and necessity of future generations is considered and protected.*
- ✓ *Demonstration of a domestic need for the energy source proposed that is objectively verifiable.*
- ✓ *Requirement for full and complete information to support FERC decisionmaking (i.e., prohibit certification if application materials, surveys, and reviews are demonstrated/determined to be incomplete.)*

Rationale:

Currently the definition has been left to the courts and FERC through court cases, dockets and rulemaking, it is time for Congress to offer clarity and guidance.

Note: CLEAN Futures Act offers definition for "public interest", a term often used by courts and FERC when discussing pipeline certificates, but this term is used in a specific and limited way in the NGA; focus on defining what it means for a project to serve the "public convenience and necessity" would be more helpful and impactful.



Testifier: Barbara Exum, Wilson County - No Pipeline



“The path of the Atlantic Coast Pipeline was not a direct path from West Virginia to North Carolina; the path looked more like a gerrymandered political district; it snaked its way through North Carolina and miraculously found its way to some of the poorer counties and communities, especially the communities least capable of fighting back.”

“We felt like we were fighting two enemies, FERC and the gas companies. Both with a goal of taking our land rights....”

Critical Natural Gas Act Reform #3:

Provide language to fully respect and protect states' rights and authorities in issuing Clean Water Act Section 401 Certifications, including:

- Clarifying that State 401 Clean Water Act Certifications have primacy to FERC Certification & clearly prohibit FERC from granting a Certificate of Public Convenience and Necessity until all state Clean Water Act Certifications have been issued or specifically, formally and intentionally waived.
 - If the mandate that 401 Certifications must be secured prior to FERC Certification is not enacted, then make clear that FERC cannot approve any element of eminent domain or construction until all state reviews/permit processes have been finalized and approvals/permits granted, including but not limited to 401 Certification.
- Clarify that any time limit on state 401 certification begins on the date a state has determined that filed applications are complete and in compliance with state law; i.e. remove the FERC and court determination that the clock starts when the application is filed, regardless of how deficient submitted application materials are.
- Make clear that state authority is only waived when the state renders an affirmative decision that they are waiving their authority; if a 401 Certification review deadline is not met then the presumed determination should be denial of the Certification, not waiver of the authority.
- Clarify that there is no time limit on the state review and approval process regarding FERC regulated infrastructure, including in the context of Clean Water Act 401 Certifications; i.e. the current 1 year time limitation needs to be explicitly removed or lengthened to ensure states can fully do their work.

State's Rights Rationale:

Amending the Natural Gas Act to protect State Clean Water Act 401 authority is essential:

- FERC is granting Certifications, as well as eminent domain authority and approval for pipeline construction, prior to State 401 Clean Water Act Certifications having all been secured. The result is:
 - a. pipeline companies taking property and inflicting irreparable construction harm for projects that ultimately do not receive state approval, and/or
 - b. denying states the opportunity to put in place needed construction or route modifications in order to protect natural resources and ensure compliance with state standards – i.e. the construction has happened before these modifications are even identified and therefore they become meaningless.
- Court determinations and FERC are granting a limited 1 year time for review regardless of the size or complexity of the project – a pro forma 1 year may simply be too much or not enough depending on the project.
- Court determinations and FERC deem the 401 Certification 1 year review timeclock to begin the day an application is filed despite state agency findings of significant and severe deficiencies, misinformation, missing information and misrepresentations that make it impossible to do a proper and accurate review..
- Presidential Executive Order and US EPA rulemaking is limiting 401 Certification – litigation may defeat the rule but for now it still applies. In addition the above points still need redress.

Testifier:

**Megan Holleran, landowner & business owner
impacted by Constitution pipeline.**

Susquehanna County, PA



FERC approved, and Constitution Pipeline did, take property by eminent domain, devastated the forest, cleared 100s of trees, including those that were part of a family maple syrup business, prior to all state 401 Certifications being granted. Ultimately a state denied 401 Certification and now the project will never be built, but the family lands and business suffered irreparable harm. Had FERC awaited all state approvals, the unnecessary damage, harm and ongoing litigation all could have been avoided.



U.S. Marshalls with high powered weapons brought in as a show of force to prevent any peaceful protests from landowners or community as Constitution Pipeline proceeds despite lacking state approvals or having paid property owners for the taking of their land. Ultimately the project was cancelled. The intimidating and dangerous tactics were a clear overreach using government resources to help the pipeline company over the people.

Critical Natural Gas Act Reform #4:

Prohibit FERC from allowing companies to proceed with:

- eminent domain property rights takings or
- any element of construction (including tree felling)

until such time as all state, federal and/or interstate reviews/certifications/permits/dockets have been finalized and approvals/permits/dockets granted.

Rationale:

Allowing eminent domain and construction prior to a project securing all permits, certifications, dockets and approvals has resulted in property rights being taking, and irreparable construction harm inflicted, for:

- pipelines that were never built due to lack of permitting; or
- pipelines being built using construction practices or a right of way route that agencies sought to modify but by the time that determination was made the damage was already done.



Testifier:

Maury Johnson is a farmer, resident, and landowner impacted by the Mountain Valley & Atlantic Coast pipelines.

FERC allows pipeline companies to construct their pipelines using practices that are extremely destructive to the environment and property owners. Farmers are particularly hard hit – because of their large swaths of land they are often a target of pipeline companies. The pipelines inflict tremendous harm and FERC fails to ensure the use of best practices, to ensure restoration measures are fully implemented in a timely fashion, and to hold pipeline companies accountable for fully implementing promised and/or needed restoration measures. This recent photo shows what Maury's organic family farm looks like 3 years after the pipeline company first started working on the farm.

VOICES Congressional Briefing 5.4.21



Critical Natural Gas Act Reform #5:

Mandate Meaningful Consideration of Climate Change in FERC Review, Decision-Making and its Certification Analysis.

- Mandate Certification review specifically includes a full accounting of the climate-changing impacts of any proposed pipeline/LNG infrastructure project under review, including a full and robust assessment and consideration of all of the climate change impacts of a proposed project including the extraction, storage, transportation and end uses of the natural gas to be carried through the infrastructure (including associated drilling and fracking operations, tree removal, associated trucking and industrial operations, and the use of the gas for energy creation) (could specifically mandate use of Social Cost of Carbon or other equally robust analyses).
- Clearly stating in procedural sections of the law or the definition of Public Convenience & Necessity that a project is not deemed to serve the public convenience and necessity if it is demonstrated/determined that emissions resulting from extraction, transport, storage and end use of the natural gas to be transported will result in a net increase in climate change emissions over current levels.
- Providing a definition for Public Convenience & Necessity that includes climate protection.

Rationale for Critical Reform Regarding Climate Protection Obligations:

Court decisions specifically mandating consideration of climate change in FERC's natural gas infrastructure reviews are continually ignored.

While the current FERC administration is beginning to support climate change considerations, this action can be reversed by any future administration based on politics.

Congress needs to act in the law to ensure the climate change reviews and decisionmaking are statutorily required so they remain clear, applicable and inviolate regardless of the whims or politics of future administrations.



Testifier:

Adam Carlesco, Staff Attorney with the Climate & Energy Program at Food & Water Watch



Despite a change in administration, FERC continues to ignore foreseeable indirect emissions and the significance of their impact on climate change.

Just 500 ft from this facility is a home and resident that has been there since the 1970s and is now forced to live next to this expanding, loud, dangerous and polluting pipeline and compressor operation.

Critical Natural Gas Act Reform #6:

Mandate a genuine demonstration of domestic need for the gas to be transported in order to secure Public Convenience and Necessity Certification including:

- ✓ **proof of domestic need based on legitimate and independently verified demonstrations;**
- ✓ **requiring the needs claim be based on users unaffiliated with the project sponsors themselves; &**
- ✓ **demonstration that the energy need asserted cannot be fulfilled by renewable energy options.**

Rationale:

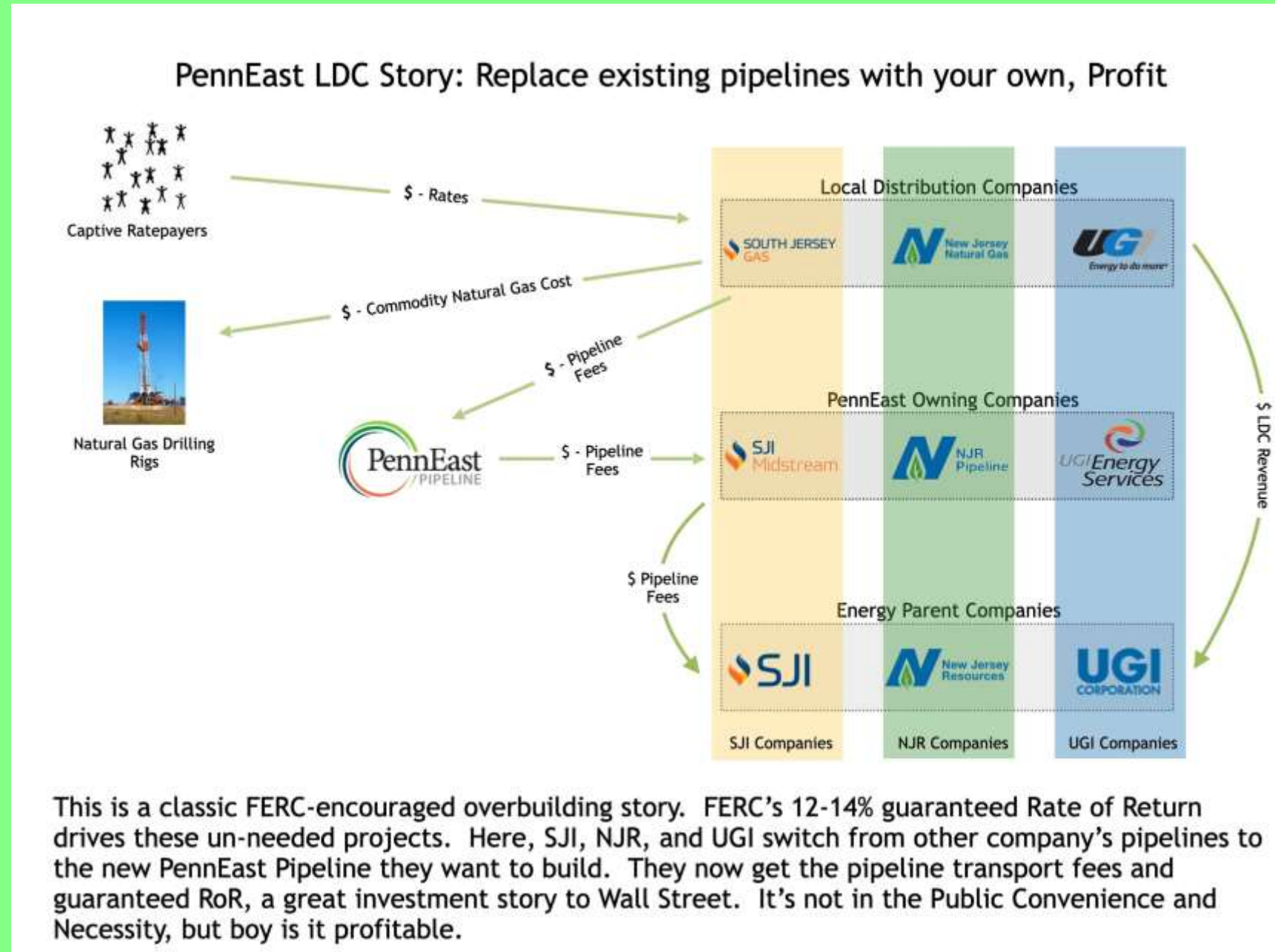
Pipeline companies routinely assert need by

- Presenting contracts for pipeline capacity that are from affiliated entities asserting unverified claims of need creating a concerning pattern of self-dealing;
- Claiming a project will provide lower costs, improve profits or enhance a company's competitive edge – these are private company goals and benefits as opposed to public interest benefits that could justify the economic, environmental or property rights harms inflicted by a project;
- Asserting an alternative source of gas beneficial to business operations, regardless that there is no threat to the existing source currently supporting their business use, it is simply a preferred business option.

Testifier:

Mike Spille, a resident of West Amwell NJ, chairman of the West Amwell Environmental Commission and impacted landowner of the proposed PennEast pipeline, and founder of TheCostOfThePipeline.com .

Self-dealing between affiliate companies for private profit should not constitute a finding of Public Convenience and Necessity. Affiliate contracts are not arm's length, and cannot be taken as indicative of local financial or energy markets



Critical Natural Gas Act Reform #7:

Prohibit the Use of “Tolling Orders” that allow projects to proceed with eminent domain and construction while legal challenges are left in legal limbo for many months and/or years.

2 Pathways to resolution:

1) Prohibit the use of “tolling orders” outright by mandating that FERC must issue a substantive and final decision on rehearing requests within the 30 day time limit included in the law and if they fail to do so the rehearing request is deemed denied.

or

2) If tolling orders are not prohibited then the other most legally equitable mechanism for addressing the problem is to prohibit projects from advancing in any way, shape or form, including eminent domain and/or any element of construction (including tree felling), if there is an outstanding rehearing request/tolling order.

Critical Reform Re Tolling Orders Rationale:

There is NO legitimate reason not to require a timely response to rehearing requests given the irreparable property rights, environmental, economic, health and safety harms that result.

Because of the recent decision in *Allegheny Defense Fund v. FERC* in June 2020, the use of tolling orders has been abandoned temporarily by FERC for a new set of rules decided by FERC, without Congressional input, making the challenge to obtain judicial review even more complicated for stake holders. The new rules do not stay eminent domain proceedings while the Rehearing process is pending. The situation demands amendments to the Natural Gas Act to protect property owners from abuses in this process.

FERC has abused the tolling order loophole:

- Tolling orders commonly last between 7 months and 2 years, placing citizens in legal limbo while pipelines advance totally unimpeded.
- Tolling orders are issued in response to nearly 100% of rehearing requests (61 out of 63 in a 10-year period; in $\frac{3}{4}$ of those instances construction was approved before the tolling order was lifted; & in $\frac{1}{3}$ (21 of the 61 cases) in addition to construction, pipelines were placed into partial or full service before the tolling order was lifted. This means that before impacted property owners and community challengers even got a chance to file their case in court, two-thirds of the time the pipelines they were challenging had taken property rights, were built and already operating.

Because of tolling, every major legal victory against FERC approval of a project came too late -- property was already taken, construction was done, and all too often the project was already in partial or full operation.

Testifier:

David Mucklow, Lead Attorney and Counsel for the Coalition to Reroute Nexus (CoRN) Pipeline



Old growth forest on Ariss Park in Green Ohio leveled for the Nexus Pipeline.



This is the day property owners got their day in court and defeated FERC on several legal issues. Unfortunately the pipeline was already fully constructed and operational despite numerous legal cases attempting to stop construction until the case could be heard. The case is still pending in the courts.

In picture: David Mucklow, Carolyn Elefant, Aaron Riddenbaugh

Critical Natural Gas Act Reform #8:

Remove language that results in preemption of state laws or authority for FERC regulated infrastructure projects.

The Natural Gas Act should be amended so as to either:

- a) remove outright the preemption of state laws in the context of natural gas pipelines and compressors and allow them to be subject to state law in the same way other industries are, or
- b) limit the areas of law where preemption applies – there is no reason a pipeline should not be required to comply with all waterway, air quality and health and safety protections applicable to other industries in a state and essential to protect a state’s citizenry.

Rationale:

Pipeline companies are well able to adapt their construction practices from one state to another – stream crossings in one locale are often different to those in another locale due to ecological differences; air emission technologies often differ compressor to compressor, etc.

To exempt interstate natural gas infrastructure from the state and local laws that apply to every other industry gives them an inappropriate competitive advantage.

Critical Natural Gas Act Reform #9:

Ban on Liquefied Natural Gas Exports &/or Pipeline Infrastructure Primarily Serving Foreign Nations.

The Natural Gas Act should be amended to put in place a prohibition on FERC issuing a Certificate of Public Convenience and Necessity for LNG or pipeline infrastructure that is demonstrated to be for the purposes of serving customers in foreign nations.

Rationale:

- The climate crisis is an existential threat and should not be perpetuated by U.S. businesses serving foreign nations.
- The devastating economic, environmental, property rights, health and safety consequences this infrastructure is inflicting on U.S. residents and communities cannot be justified in order to serve foreign nations.
- The level of community harm and sacrifice is too great for an energy supply that is then shipped overseas to support foreign nations, industries and users.

Critical Natural Gas Act Reform #10:

Mandate a focus on “avoidance of harm” in order to secure FERC Certification.

In order to receive a FERC Certificate a proposed pipeline must demonstrate its rights of way, construction and operation practices that avoid ecological harm when and where possible including by:

- requiring that all recommendations from other regulatory agencies – state, federal or regional – that would result in an avoidance of ecological harm must be included in any FERC Certification;
- mandating that FERC require an assessment of alternatives to avoid harm to water quality, air quality, ecological habitats, plant and animal species, and publicly protected open space;
- mandating that any alternatives identified for construction practices and/or pipeline rights of way that would avoid harm to water quality, air quality, ecological habitats, plant and animal species, and publicly protected open space, be required as part of any FERC issued Certification;
- prohibiting the use of mitigation when there is a solution that would avoid the ecological harms identified.

Rationale to mandate “avoidance of harm.”

Currently the pipeline companies make their proposal and FERC reviews it as it stands. There may be inclusion of modifications for endangered species or wetlands if recommended by another agency, but all too often mitigation is accepted in lieu of available options for avoidance of harm. The result is irreparable harm to environments, species and properties when a known better option is available. There is no excuse for not requiring the use of best practices that minimize and avoid harm, including those recommended by other state and federal agencies.

Congresswoman Nanette Barragán

CA 44th; Member, House Committee on Energy & Commerce



Q&A

- Time for your questions
- Congressional representatives and their staff will be elevated to presenter status so you can present questions verbally and live if you choose. Simply use the raised hand symbol and we will call on you.
- All viewers may put questions in the Q&A feature, if you are an elected leader or their congressional staff pls make that clear in any written question as your questions will be prioritized.
- Our panel will remain past the hour to continue to respond to questions from elected leaders and/or their staff but we do understand that many will need to leave exactly at 1, our planned stop time.

Thank you for joining us.

We look forward to working with you to reform the Natural Gas Act in order to restore needed protections and integrity to the FERC review and approval process.