APPALACHIAN TRAIL CONSERVANCY®

June 25, 2018

Via 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: FERC Review of the 1999 Natural Gas Policy Statement

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

The Appalachian Trail Conservancy (ATC) responds to a Federal Register notice posted by the Federal Energy Regulatory Commission (FERC) requesting review comments on its certification of new natural gas transportation facilities. We applaud the Commission's decision to revisit the 1999 Natural Gas Policy Statement and appreciate the opportunity to share our perspective as a manager of a National Scenic Trail; as an organization committed to the protection of Congressionally designated places, specifically the Appalachian National Scenic Trail; and as representative of the broad outdoor recreation community.

I submit these comments on behalf of the ATC and 30 dedicated trail-maintaining volunteer-led clubs. ATC, a §501(c)(3) nonprofit organization, works closely with Appalachian Trail clubs and public and private partners to ensure the protection and stewardship of the natural, cultural, and experiential resources of the Appalachian National Scenic Trail (known as ANST, the A.T., or "the Trail").

The Appalachian National Scenic Trail (ANST) is a unique unit of NPS, requiring special attention considering energy infrastructure development. The Trail was first conceived by regional planner Benton MacKaye in 1921 to preserve the crest line of the Appalachian Mountains and provide a wilderness retreat from life in the increasingly urbanized eastern United States. It was later designated one of the first national scenic trails under the 1968 National Trails System Act and has since become a world premier recreational and hiking resource attracting more than three million visitors each year. The same Act acknowledges the important role of non-profit organizations such as ATC, along with affiliated volunteers, to manage and protect Trail interests.

Today the Trail extends 2,190 miles through 14 states from Maine to Georgia. Approximately 250,000 acres have been acquired or designated through management agreements as a protective corridor for the Trail. This corridor of protected land is home to a wealth of natural, cultural and scenic resources. The Trail is eligible for the National Historic Register. Given the ANST's north- south orientation in the eastern United States, ANST lands very often are a component of environmental reviews for major new pipeline proposals emanating from Marcellus and Utica shale plays.

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ATC has worked with pipeline companies, and has commented on, several pipeline proposals across the ANST including PennEast, Atlantic Sunrise, Atlantic Coast, and Mountain Valley Pipeline (MVP). We have only formally opposed MVP due to poor planning and inadequate environmental review processes. Our comments and recommendations below draw from our recent experience with the FERC siting and review processes.

Recommendations

Our recommendations include the following with justification outlined below:

- The Commission should reform its pipeline review process to ensure that the public interest is protected in a way that recognizes and protects the interests of non-energy related industries that support local economies, as well as energy related industries.

- The Commission should review all necessary and relevant factors to determine public need for a pipeline, as required by the current Policy Statement.

- The Commission should adopt a regionally-focused review of pipeline development(s).

- The Commission should commit to Full and Fair Implementation of the National Environmental Policy Act.

- The Commission should improve the FERC process for rehearing requests

Justification

Evaluate public interest and project need.

The outdoor recreation industry's economic reach is massive and its influence continues to grow as more people engage in the outdoors. Increased participation in the outdoors is evident at many national parks, in crowded trailhead parking lots, and in the increasing up-tick of the Appalachian Trail's long-distance hikers. A 2017 study by the Outdoor Industry Association (OIA) reports that the outdoor recreation economy generates $887 billion in consumer spending annually and directly supports 7.6 million American jobs, generating $125 billion in federal, state and local tax revenues. Indeed, more Americans are directly employed in hunting and fishing industries (483,000) than oil and gas extraction (180,000).[1] Furthermore, the bipartisan Outdoor Recreation Jobs and Economic Impact Act of 2016, or REC Act, authorizes the Department of Commerce's Bureau of Economic Analysis to assess outdoor recreation's contribution to the nation's gross domestic product (GDP).

The FERC needs to evaluate impact on outdoor recreation and associated economies. One of the most notable outdoor recreation destinations in the eastern United States is the ANST, a day's drive to more than half the U.S. population.

As the nation continues to increase demand for recreation on public lands, gas production and pipeline construction have also increased dramatically since 1999. The United States is now a net exporter of natural gas. The increased production of gas and associated pipeline development raise concerns about the impacts of the gas industry on public and private recreation lands, as well as on the health, safety, and impact on communities.

[1] Outdoor Industry Association 2017 Report; Bureau of Economic Analysis.

ATC recognizes that society's demand for energy resources is increasing. The Conservancy believes that, where technically and economically feasible, demand should first be addressed with increased energy conservation strategies and demand-side management, followed by increasing our renewable energy supply.

The 1999 Policy Statement is meant to create a balance between the enhancement of competitive alternatives and the possibility of over building pipelines. The Natural Gas Act requires FERC to determine whether a pipeline project is in the public interest. However much has changed since 1999 that warrants a more comprehensive analysis of need and an examination of the unintended consequences of over development on other industries, such as outdoor recreation.

The 1999 Policy Statement directs FERC to first determine whether the proposed pipeline can be paid for without subsidization by existing customers, followed by an evaluation of the project's economic interests. The Policy Statement also outlines some factors, but not all factors, to be considered when determining whether a project is needed. However, in practice, FERC typically relies exclusively on precedent agreements—contracts between pipeline developers and prospective shippers—to determine project need.

In addition to contradicting the language and intent of the Policy Statement, FERC's reliance on precedent agreements fails to consider that precedent agreements are not necessarily a good proxy for market need, Environmental and other considerations may override private contractual interests in determining public need. There may also be alternatives to proposed capacity to meet demand, such as using underutilized existing pipeline capacity or alternative, cleaner energy resources.

The Commission's heavy reliance on precedent agreements to allow pipeline siting is problematic. When these agreements are between pipeline affiliates there are obvious conflicts that should be rigorously avoided. When a pipeline developer contracts with itself, the actual market need for the pipeline is never legitimately determined.

Conduct regional planning and assessments.

Recent rapid expansion of natural gas production has led pipeline developers to propose competing projects to satisfy identical markets. For example, numerous pipeline projects that potentially have significant impacts on ANST recreation lands have been approved or are under review (i.e. Mountain Valley Pipeline, Atlantic Coast Pipeline, WB XPress Project, Appalachian Connector, PennEast Pipeline, Atlantic Sunrise Pipeline). Each of these projects is designed to transport shale gas from the Marcellus and Utica plays to customers in the eastern and southeastern U.S. and each must, in some manner, cross the rugged and ecologically sensitive terrain of the Appalachian Mountains.

When proposed projects have similarities in purpose, similar nature of environmental concerns, and a common timeline among the projects, it makes economic and ecological sense for the FERC to consider pipeline projects under a Programmatic Environmental Impact Statement (PEIS), or some reasonable regional review. This approach would simultaneously consider the purpose and need of each project, the cumulative impacts of these projects in a discrete geographic region, and the optimal combination and alignment of pipelines to deliver gas from the Marcellus and Utica shale gas plays to eastern and southeastern markets.

This approach is consistent with the Council on Environmental Quality (CEQ) Guidance on "Effective use of Programmatic NEPA Reviews" issued on December 18, 2014, which states that a programmatic NEPA review may be appropriate when an agency is approving multiple actions as "…several similar actions or projects in a region."

A Programmatic EIS and tiered NEPA review is clearly the most efficient means by which to conduct cumulative assessments of impacts from a suite of recently proposed projects and from additional pipelines that are a reasonably foreseeable result of the presence of a large reservoir of natural gas in the Marcellus and Utica formations.

As stated in the CEQ Guidance: "One advantage of preparing a programmatic NEPA review for repetitive agency activities is that the programmatic NEPA review can provide a starting point for analyzing direct, indirect, and cumulative impacts. Using programmatic NEPA reviews allows an agency to better analyze proposal specific issues and avoid repetitive broad level analyses. Better analyses of proposal specific issues would provide a more comprehensive picture of the consequences of proposed actions."

Better analysis of pipeline alignments would also better support other NEPA evaluations such as those conducted by the U.S. Forest Service, whose National Forest land and resource management plan for special use authorizations and utility corridors directs that projects be located "where they minimize the need for *additiona*l designated sites and best serve their intended purpose." Policy requires joint use on land when feasible.

Of significant note, the 1999 Policy Statement intent in preventing overbuilding is inadequately addressed by FERC's lack of regionally focused reviews. This lack of regionally focused review also results in a wasteful duplication of agency reviews and infrastructure projects that are poorly balanced with regional needs and other planning initiatives. Considering each pipeline proposal in isolation also prevents the Commission from understanding how similar proposals cumulatively affect climate change, natural resources, and consumer prices. A more integrated, comprehensive review process would better assess the need for new pipelines based on the energy needs of the region(s) directly affected by the project by examining factors such as existing and proposed pipeline capacity, long-term energy needs, and state energy policies.

Consider cumulative impacts of foreseeable actions.

As stated in 40 C.F.R. §1508.7, "cumulative impacts result from the incremental effect of the action when considered in light of other past, present, and reasonably foreseeable actions." Consideration of cumulative impacts is necessary for the avoidance, minimization, and fair compensation for impacts that individually may appear to be minor but, over time and in concert with other activities, become significant. Accordingly, the FERC should cumulatively assess all proposed pipeline projects within the same region when determining the need for any one specific project in that region

Scientifically tested tools (such as the Social Cost of Carbon and the Social Cost of Methane) exist today that allow the Commission to monetize environmental impacts and incorporate them into a review analysis. FERC can satisfy its requirements under the National Environmental Policy Act (NEPA) by using modern analytical tools to consider all direct, indirect, and cumulative environmental impacts, including downstream effects.

Commit to full and fair implementation of the National Environmental Policy Act (NEPA).

FERC must improve its transparency in the NEPA review process by ensuring *meaningful* opportunities for public participation and by presenting complete and accurate draft environmental impact statements for public review. It is unacceptable to have reams of information presented after public comment periods have ended and to expect to legitimately factor into the public's ability to fully review and comment on proposed actions. Unfortunately, this was the case with FERC's public review process for the Mountain Valley Pipeline (MVP).

ATC, and many local stakeholders, were shocked and dismayed by the enormous number of disorganized filings that the developer, MVP, was permitted to add after the public review process.

Thousands of pages from MVP were added to FERC's website, without title and without indexing in a haphazard way beyond the deadline for public comment, making it all but impossible to fully understand the project. Moreover, MVP was allowed to continue to file documents after the Final Environmental Impact Statement (FEIS) was issued.

It is imperative that FERC adhere to NEPA processes. It is also imperative that filings are available to the public and agencies in a way that fully represents the project to assure meaningful commentary in the Draft Environmental Impact Statement (DEIS) process. An orderly labeling of filings is necessary so that affected agencies, organizations and individuals can review, monitor and track changes.

In addition to grievances outlined above, FERC must be mindful – and guard against – the suppression of public discourse. In the case of MVP hearings, a hearing November 3, 2016 in Roanoke, Virginia required citizens to go into a room alone with a FERC representative and a transcriber – which, in itself, is a practice to be discouraged. Public hearings typically allow the public to participate in public process – and provide assurance that comments are not manipulated. In the case of the Roanoke hearing, the public was not only disallowed opportunity to comment before their neighbors, the transcripts were not released for several weeks, questioning the validity of comments.

Additionally, because the public participation provisions of NEPA include public comment on all Federal and Federally directed state actions (i.e. permits), a FERC Certificate of Public Convenience or Necessity Notice to Proceed regarding any aspect of construction, (including tree felling, approval for exercise of eminent domain, etc.) should only be issued after all federal, state, local and other permits are obtained. This recommendation should apply to conditional FERC certificates as well.

Improve process for rehearing requests.

FERC must end its practice of failing to affirmatively grant or deny rehearing requests, but instead issue responses that provide FERC more time for consideration. Although the federal Natural Gas Act requires the agency to issue a decision on appeals within 30 days, FERC can extend the deadline indefinitely by issuing a tolling order. Tolling orders are officially an order granting rehearing for further consideration. In some recent cases, FERC issued its decision after the pipes were already in the ground with the gas flowing. The current process grants the pipeline company the power of eminent domain and approval for construction while valid lawsuits are being considered by the courts. There should be a limit on how much time FERC takes to resolve pipeline cases.

Conclusion

The Appalachian Trail Conservancy thanks the Federal Energy Regulatory Commission for reviewing the 1999 Policy and strongly recommends that processes for siting natural gas pipelines be vastly improved to assure that decision-making is open, fair and transparent. We welcome the opportunity to meet to discuss our comments, especially given unique considerations for the Appalachian National Scenic Trail and the high demand for new pipeline construction in the Central Appalachians.

Sincerely,

Suzanne Dixon

Suzanne Dixon
CEO/President
Appalachian Trail Conservancy

Also, signing on to these comments are 30 Appalachian Trail-maintaining clubs, representing nearly 6,000 volunteers:

Allentown Hiking Club
Appalachian Mountain Club
BATONA Hiking Club
Blue Mountain Eagle Climbing Club
Carolina Mountain Club
Cumberland Valley Appalachian Trail Club
Dartmouth Outing Club
Georgia Appalachian Trail Club
Green Mountain Club
Keystone Trails Association
Mount Rogers Appalachian Trail Club
Mountain Club of Maryland
Nantahala Hiking Club
Natural Bridge Appalachian Trail Club
New York-New Jersey Trail Conference
Old Dominion Appalachian Trail Club
Outdoor Club at Virginia Tech
Piedmont Appalachian Trail Hikers
Potomac Appalachian Trail Club
Randolph Mountain Club
Roanoke Appalachian Trail Club
Smoky Mountains Hiking Club
Susquehanna Appalachian Trail Club
Tennessee Eastman Hiking & Canoeing Club
Tidewater Appalachian Trail Club
Wilmington Trail Club
York Hiking Club