DELAWARE RIVERKEEPER NETWORK

May 26, 2018

Federal Energy Regulatory Commission
Secretary of the Commission
888 First Street, N.E.
Washington, DC 20426

For Dockets: PL18-1 & CP14-497

FERC Commissioners:

The Delaware Riverkeeper Network urges the Federal Energy Regulatory Commission to rescind its May 18, 2018 Order Denying Rehearing for Dominion Transmission, Inc. Docket No. CP14-497-001. Through this order, the Federal Energy Regulatory Commission has announced its intention to violate its legal obligations pursuant to the National Environmental Policy Act to fully and properly consider the climate changing impacts of its pipeline infrastructure decisionmaking as pertains to both the Dominion "New Market" pipeline expansion project and all pipeline infrastructure projects under its jurisdiction. Given the implications of this determination for all pipeline infrastructure reviews, this comment is also directly relevant to Docket PL18-1 and is also submitted for consideration as part of that review.

FERC's Order Undermines the Legal Rights of Pipeline Impacted Communities Across the Nation.

Through its Order Denying Rehearing for Dominion Transmission, Inc. Docket No. CP14-497-00, not only has FERC announced its intention to violate the law, but it has done so using a mechanism that undermines the ability of all those who will be harmed by this decision now and into the future to bring a timely legal challenge in an effort to protect themselves. FERC did not limit its bogus decision regarding climate change to the Dominion project at hand, but declared this decision applicable to every FERC-regulated pipeline infrastructure the Commission is or will be reviewing. By rendering this far reaching determination in the context of a single project docket, FERC has stripped from impacted communities across the nation the ability to challenge it, and therefore have taken from them their rights to fair and timely due process. Individuals and organizations can only legally challenge FERC determinations regarding infrastructure projects if they have intervened in the docket. Communities across the nation that will be impacted by this decision had no reason to know or anticipate that they needed to intervene in Docket No. CP14-497-001 so they could protect themselves from this blanket decision by FERC to violate NEPA.

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FERC's Pronouncement That It Will Not Consider Upstream or Downstream Climate Changing Impacts is Contrary to Law or Good Public Policy.

In the May 18, 2018 Order Denying Rehearing for Dominion Transmission, Inc. Docket No. CP14-497-001, FERC asserted that it would not undertake climate change assessments for the upstream production and downstream use of natural gas associated with the pipeline infrastructure it was approving, asserting that doing so was outside of the scope of the agency's NEPA analysis obligations.

To the contrary, as well stated by Commissioner Glick in his dissenting opinion to the Dominion Order:

> "the Commission cannot determine whether a natural gas pipeline is in the "public interest" without considering the effect that granting a certificate will have on climate change."

In addition, a wholesale rejection of its obligation to consider the climate changing impacts of the pipeline infrastructure projects it is approving is a violation of decision rendered by the Court of Appeals for the DC Circuit on August 22, 2017 in Sierra Club v. FERC, 867, F.3d 1357, 1373 (D.C. Cir. 2017) in which the court determined:

> "… greenhouse-gas emissions are an indirect effect of authorizing this [pipeline] project, which FERC could reasonably foresee, and which the agency has legal authority to mitigate. *See* 15 U.S.C. § 717f(e). The EIS accordingly needed to include a discussion of the "significance" of this indirect effect, *see* 40 C.F.R. § 1502.16(b), as well as "the incremental impact of the action when added to other past, present, and reasonably foreseeable future actions," *see WildEarth Guardians*, 738 F.3d at 309 (quoting 40 C.F.R. § 1508.7). "

FERC's assertions that:
(√) the climate changing and other impacts of the downstream uses of natural gas, and that
(√) the increased fracking for gas from shale and all of its associated harms, including climate changing impacts, are not reasonably foreseeable and determinable consequences of FERC regulated/approved pipeline infrastructure is reckless, irresponsible and counter to legal mandates.

√ *With regards to downstream impacts …*

As clearly articulated by the Court of Appeals for the DC Circuit in Sierra Club v. FERC, with regards to the downstream impacts:

> "An agency conducting a NEPA review must consider not only the direct effects, but also the *indirect* environmental effects, of the project under consideration. *See* 40 C.F.R. § 1502.16(b). "Indirect effects" are those that "are caused by the [project] and are later in time or farther removed in distance, but are still reasonably foreseeable." *Id.* § 1508.8(b). The phrase "reasonably foreseeable" is the key here. Effects are reasonably foreseeable if they are "sufficiently likely to occur that a person of

> ordinary prudence would take [them] into account in reaching a decision." *EarthReports, Inc. v. FERC*, 828 F.3d 949, 955 (D.C. Cir. 2016) (citation omitted). "
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> …
>
> "As we have noted, greenhouse-gas emissions are an indirect effect of authorizing this project, which FERC could reasonably foresee, and which the agency has legal authority to mitigate. *See* 15 U.S.C. § 717f(e). The EIS accordingly needed to include a discussion of the "significance" of this indirect effect, *see* 40 C.F.R. § 1502.16(b), as well as "the incremental impact of the action when added to other past, present, and reasonably foreseeable future actions," *see WildEarth Guardians*, 738 F.3d at 309 (quoting 40 C.F.R. § 1508.7). "

√ *With regards to upstream impacts …*

With regards to upstream impacts, increased and ongoing extraction of gas from shale using fracking technology is not just reasonably foreseeable, it is a known and demonstrable effect of FERC approved pipeline infrastructure that is obvious to any person of ordinary prudence, as are the related environmental and climate changing impacts that will result. That the gas will be utilized downstream and result in additional impacts, including climate changing impacts is, likewise, reasonably forseeable by any person of ordinary prudence. In fact, the induced fracking for gas and the end use of the gas are the very reasons why the industry is seeking to build its projects and why FERC is rubber stamp approving them. FERC is clearly obligated, by NEPA and the order of the DC Circuit, as well as the reality of applicable science, laws, and facts to consider the downstream and upstream climate impacts of its pipeline approvals. The DC Circuit clearly explained why downstream impacts must be considered. But, while not yet the subject of a court determination, the science, laws and facts also dictate that FERC must consider the climate change and other impacts of upstream gas extraction associated with the pipeline infrastructure it is approving.

While FERC continues to bury their heads in the sand regarding the irrefutable connection between natural gas infrastructure and increased production and downstream uses, to the industry, its experts, the courts, and other government agencies the relationship is obvious and clear.

The industry itself recognizes the relationship between pipelines and drilling and clearly states that new pipeline capacity will result, and in fact is needed to support, new shale gas extraction.

A subsidiary of the Natural Fuel Gas Company, Seneca Resources, stated in a presentation to its investors in 2016 that it had "[l]imited development drilling [in its Eastern Development Area in northeastern Pennsylvania] until firm transportation on [the proposed] Atlantic Sunrise (190 MDth/d) is available in late 2017" and that it had "50-60 remaining Marcellus [drilling] locations" and "100-120 [Geneseo shale] locations" that could not be developed until that pipeline project was underway.[1]

[1] National Fuel. Investor Presentation: Q2 Fiscal 2016 Update April 2016. Slide 10. Available at: http://s2.q4cdn.com/766046337/files/doc_presentations/2016/April/20160428_NFG-IR-Presentation.pdf

Other producers in the region have similarly stated that they require additional pipeline capacity to develop new production capacity. Argus Media, a leading provider of data on prices and fundamentals for the natural gas industry, reported that “Antero Resources is waiting on the 3.25 Bcf/d Energy Transfer Rover pipeline to come online in the second half of 2017 before it increases drilling activity,” while “Northern Fuel Gas [in July 2016] said it was waiting on its own 475mn cf/d Northern Access to come online in the second half of 2017 before it raises its production levels.”[2] Argus also reported that “Range Resources plans to drill a seven-well pad in the Appalachian shale region this year, and could quickly drill up to 42 more laterals. The producer is expecting the 628mn cf/d (18mn m^3/d) Spectra Gulf Markets project to facilitate some of its increased output when it begins flowing in the fourth quarter [of 2016].”[3] In their 2015 Annual Report, Cabot Oil & Gas noted that drilling activity in the Marcellus region had been reduced to a single rig, in response to “the market environment.” Cabot further noted that the company plans to “exit 2016 with between 45 and 50 drilled uncompleted wells, which will allow for operational flexibility into 2017.”[4]

A report[5] issued by the Greater Philadelphia Energy Action Team advocates for more pipelines in order to induce and support more and new shale gas production:

> “In creating an Energy Hub, the goal, first and foremost, is to expand the market for the Marcellus/Utica natural gas and NGLs to increase the economic benefits that will come to the Commonwealth and the Greater Philadelphia region from more vigorous production… To achieve this goal, however, we need to expand the existing interstate and intrastate natural gas pipeline infrastructure.”
>
> “Encouraging the industry to invest in new pipelines and in new distribution system infrastructure … provides additional capacity for increased volumes of gas.”

Economics also dictates that natural gas production is likely to increase as additional pipeline capacity is added to a region. Producers in the Marcellus shale region, such as Seneca Resources and Cabot Oil & Gas have indicated that additional pipeline infrastructure is a cornerstone of plans to increase production in Northeast Pennsylvania.[6] In January 2016, Bentek Energy and the EIA noted a large backlog of natural gas wells that have been drilled but will not begin production until infrastructure (in the form of pipelines) becomes available to transport additional supply or until the price of natural gas increases. Bentek and EIA suggested that this backlog will allow production

[2] Argus Media. August 29, 2016. “US gas producers boost output ahead of expansions.” Available at: http://www.argusmedia.com/news/article/?id=1302610

[3] Ibid.

[4] Cabot Oil & Gas 2015 Annual Report. Page 3. Available at: http://www.cabotog.com/wp-content/uploads/2016/04/COG-2015-AR.pdf

[5] Greater Philadelphia Energy Action Team, *A Pipeline for Growth*, March 30, 2016.

[6] Comments of Allegheny Defense Project before the Federal Energy Regulatory Commission on the Draft Environmental Impact Statement for Transcontinental Pipe Line Company proposed Atlantic Sunrise Project. Docket No. CP14-138-000. June 2016. Page 22.

of natural gas in the Marcellus to increase quickly when new infrastructure projects are completed.[7] And so, in addition to advancing new drilling, additional pipeline infrastructure will advance gas production in wells that may have been drilled but from which the industry did not yet extract gas due to a lack of available pipeline infrastructure.

Clearly, new pipeline capacity enables, supports and induces operators to advance, accelerate, and complete natural gas drilling and production – the industry is aware of this fact, the public is aware of this fact, and it seems pretty obvious to all that FERC is aware of this fact too. As a result, the climate change and other environmental impacts of supported, induced and/or associated natural gas extraction/development must be considered in every pipeline infrastructure project, whether it is a new proposal or an expansion of an existing pipeline system, in order or FERC to be in compliance with the law.

Climate Change is an Existential Threat that FERC is Legally and Morally Obligated to Consider.

More importantly, as so eloquently and accurately stated by Commissioner Glick:

> "Climate change poses an existential threat to our security, economy, environment, and, ultimately, the health of individual citizens.6 Unlike many of the challenges that our society faces, we know with certainty what causes climate change: It is the result of greenhouse gas emissions, including carbon dioxide and methane—which can be released in large quantities through the production and the consumption of natural gas. Accordingly, it is critical that, as an agency of the federal government, the Commission comply with its statutory responsibility to document and consider how its authorization of a natural gas pipeline facility will lead to the emission of greenhouse gases, contributing to climate change."

And as the dissents to the Dominion Order point out, this monumentally impactful decision comes as FERC is in the midst of an assessment (and potential revision) of its pipeline review process. The fact that FERC was unwilling to allow its climate changing decision to be undertaken in the context of that review, demonstrates the truth of what the Delaware Riverkeeper Network and others in the impacted public sadly presumed all along, FERC is not interested in a genuine or meaningful review of its process for the purposes of identifying meaningful reforms, it is simply interested in a process it can use to excuse its ongoing rubber stamp approval of pipeline infrastructure. This is not the first undermining decision FERC has made in this context, the other decision was a determination in the context of the DTE Midstream Appalachia Pipeline, Docket No. CP17-409, where FERC similarly announced a process decision with sweeping impacts across projects. In the DTE Midstream case, FERC announced it would be clamping down on out of time intervenors – irritated by community groups who did not become aware of projects within the mere few weeks the agency offers for intervention. FERC provided no rational justification for obstructing parties from becoming intervenors where there is no demonstrable detrimental impact to FERC's

[7] US Energy Information Administration. 2016. *Spread between Henry Hub, Marcellus natural gas prices narrows as pipeline capacity grows*, Available online at: http://www.eia.gov/todayinenergy/detail.cfm?id=24712

review process. This act was nothing short of a deliberate attempt to restrict the right of impacted parties from initiating litigation against the agency.

In order to fulfill its duties under the law, and to the best interests of present and future generations, FERC must rescind its Order Denying Rehearing for Dominion Transmission, Inc. Docket No. CP14-497-00, including its illegal and irresponsible proclamation that it will not consider the climate changing impacts of pipeline infrastructure projects under its jurisdiction.

Respectfully submitted,

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the Delaware Riverkeeper
on behalf of the Delaware Riverkeeper Network

Document Content(s)