To the Chairmen and Ranking Members
of
The House Energy Committee on Energy and Commerce

February 4, 2020

Dear Chairman Pallone, Chairman Rush, Ranking Member Walden, and Ranking Member Upton,

As you reflect on the details of the most appropriate amendments needed to update the Natural Gas Act, I strongly encourage you to consider the component of the broader socio-economic and climatic context in which humanity finds itself at this time.

Please see below 3 possibilities from the broader context which may help to inform your decisions:

1) The intelligent management of our country's resources. The regulation of natural gas could be advantageously amended to interface with the global imperative that emissions be drastically reduced ASAP. Additionally, at this time it would be especially wise for natural gas (and fossil fuels in general) to be left in the ground for future use in case volcanic eruptions or other meteorological events block out the sun. Natural gas and other fuels already extracted would be stored or parsimoniously doled out for production of necessary commodities and services such as energy generation, until alternative energy sources can be subsidized, built and brought on line. Solar is the number 1 energy to consider since it is currently abundant and while fabrication and installation bear a cost, the energy source itself is free and requires far less environmental degradation than does the extraction of natural gas.

2) The use of advertising to manipulate perception and create artificial necessity. This concept is extremely relevant to the discussion because public need is one of the criterion FERC uses to determine whether or not to issue a Certificate of Public Convenience and Necessity. Markets can be skillfully manipulated into existence by advertising and create apparent demand where there otherwise would be no real need. Stockholders can similarly be manipulated into investing in untoward or dubious ventures by promises of high returns. Under the mantra *'Give me convenience or give me death'* consumers are being manipulated into buying more than they need, into buying versions of the products they do need that are purposefully manufactured not to last whereas the technology exists to produce optimal performance products that withstand the test of time.

We stand at a crossroads where all action must point to one end: reduction of over-consumption of the earth and its resources. Mankind can also be considered as one of the earth's precious resources. Realizing this begs an answer to the question: Why should a human being work eight hours a day to produce sub-standard products many of which end up in a landfill within a few days?

The answer points to the conclusion that our socio-economic model of ***'work-work-work*** *to* ***buy-buy-buy*** *to* ***throw-it-out, throw-it-out'*** is no longer tenable. The earth can no longer digest all this garbage and neither can we. Our focus on over-consumption is deregulating every

aspect of our existence and causing great suffering. We must harness our attention on what we can do differently to bring our economy into balance with nature.

In that light I would like to ask if Section 4-A of the NGA, *Prohibition of Market Manipulation,* could possibly be amended to address the above?

3) The flagrant exacerbation of 'regulatory capture'. This concept is also extremely relevant to the discussion because there is an obvious 'public interest' for regulation which has been recognized and clearly established in Section I of the NGA. The Act can be seen as an attempt to regulate interstate natural gas transmission and also to protect the public from the monopolistic tendencies of an otherwise unregulated market.

However, as predicted by the American economist George Stigler, key leader of the Chicago School of Economics and 1982 laureate of the prestigious Nobel Prize in Economics , regulatory agencies are infiltrated and 'captured' by the very industries they are designed to regulate. Published in 1971, the central thesis of Stigler's *Economic Theory of Regulation* is that "As a rule, regulation is acquired ['purchased'] by the industry and is designed and operated primarily for its benefit."

To remedy this dysfunction would perhaps require a simple amendment to the NGA.

I would greatly appreciate if you are able to include this letter as part of the official record of this hearing.

Thank you for your consideration!

Sincerely,

Roseanna Sacco
1222 Cove Creek Road
Sweet Springs (GAP MILLS)
West Virginia, 24941

CC: Omar A. Guzman-Toro, Policy Analyst
Energy and Environment Committee on Energy and Commerce

February 4, 2020

To: Congressman Kurt Schrader
Congressman Greg Walden

Comments regarding the hearing on "Modernizing The Natural Gas Act To Ensure It Works For everyone"

I apologize for the late submission but I was made aware of the hearing just this morning. Please accept my submission and read my comments into the record.

I am an Oregon Landowner affected by the Pacific Connector Gas Pipeline which if built will provide Canadian gas to the Jordan Cove liquefied Gas export facility. In the 15 years that my family's land has had the treat of Eminent Domain hanging over our heads it has become clear that the Natural Gas Act was instituted to favor the gas companies to the detriment of the private citizens. I say this because there is no real consideration for the protection of private landowners. In order for the Gas Act to "work for everyone", changes need to include language to keep landowners from being ran over by gas companies securing easements.

The first area that needs addressed is the practice of "quick takes" which allows gas companies to acquire easements by court order and begin construction without paying the landowner for the land. In some cases, landowners have not been paid for the easements forced on their property 3 years after construction has started. In addition gas companies can cut trees, again without compensating landowners because tree cutting is not included in the definition of construction even though tree cutting could have a huge detrimental effect on the property value and future income even if no further construction takes place.

I believe the definition of public interests in section 1a needs to be better stated. While not directly stated the common interpretation of public interest seams to include public outside of the United States. The assumption must be that U.S. gas would be used and the U.S. industry would benefit from overseas sells of natural gas and thereby be in the public interest. This needs to be clarified to include the export of U.S. gas only. With the gas wells in Colorado and Wyoming closing down because gas prices are at an all-time low, Jordan Cove has even more of an opportunity to sell Canadian subsidized gas to Asian markets through the U.S. with very little benefits to the United States.

The states' rights also needs protected. Considering recent effort by the Trump administration to bypass the State's authority over The Coastal Zone Management, the Air and water Quality listed in section 3.d, 1-3. These need to be protected, if not strengthened. The requirements for state consultations listed in section 3A, should not be watered down in any way. The State is charged with protection of the state and citizens residing in that state. While FERC does a mediocre job in the environmental assessments, the states will be able to do go into greater detail and serve as a check and balance to the Federal process.

The requirement in section 19,d,1 is just wrong. That section states " IN GENERAL.-The United States Court of Appeals for the circuit in which a facility subject to section 3 or section 7 is proposed to be constructed, expanded, or operated shall have original and exclusive jurisdiction over any civil action for the review of an order or action of a Federal agency (other than the Commission) or State administrative agency acting pursuant to Federal law to issue, condition, or deny any permit, license, concurrence, or approval (hereinafter collectively referred to as ''permit'') required under Federal law, other than the Coastal Zone Management Act of 1972 (16 U.S.C. 1451 et seq.)". This seems to exclude any challenge to a FERC order from review by the presiding appeals court. This has allowed the gas companies to choose the jurisdiction that would give them a better outcome from legal actions brought against them. This needs to be fixed so such games can't be played with the system.

Thank you for your help in this matter

Clarence Adams
2039 Ireland Rd.
Winston, OR 97496

RE: Modernizing the National Gas Act to Ensure It Works For Everyone.

Wednesday, February 05, 2020

The Honorable Frank Pallone
Chairman, House Energy Committee on Energy Commerce
United States of Representatives
2107 Rayburn House Office Building
Washington, DC 20515-3006

The Honorable Greg Walden
Ranking Member, House Committee Energy and Commerce
United States of Representatives
2183 Rayburn House Office Building
Washington, DC 20515-3702

The Honorable Bobby Rush
Chairman, House Committee on Energy and Commerce
Subcommittee on Energy
Washington, DC 20515-1301

The Honorable Fred Upton
Ranking Member, House Committee on Energy and Commerce
Subcommittee on Energy
Washington, DC 20515-2206

Dear Chairman Pallone, Chairman Rush, Ranking Member Walden, and Ranking Member Upton,

I respectfully request your earnest attention to this very important hearing entitled "Modernizing the Natural Gas Act to Ensure It Works For Everyone ". The Natural Gas Act no longer represents the citizens of the United States. It has become an abusive tool of confiscating private property for corporate profits with no concern for the rights of the owners of such property.

Fuel Corporations with high dollar attorneys storm appraisers storm the courts, cities and towns with overwhelming 'so called" eminent domain claims to private properties dictating their below market terms, and disobeying civil laws. This is not the intent of eminent domain. It is stealing and destroying private and commercial property for export products. It is corporate greed and a violation of the very intent of eminent domain for the citizens affected.

Finally, the NGA does not have any provision governing the fair property valuation processes, and the obligations of pipeline companies and the rights of landowners. The current process allows the pipeline companies unfair leverage in pipeline routing and compensation negotiations. An amendment should include the requirement that the pipeline company cannot use eminent domain to take private property unless a true public need has been established and that they may not take the property until it has paid the landowner the just compensation agreed to by negotiation or determined in the condemnation proceeding.

I have been in business for over fifty years and worked in accordance with the laws of this country. This misuse of eminent domain authority is the greatest abuse I have witnessed to our rights to our own property.

Please forward this letter to all members of the committee and make it an official part of this hearing

Thank you for your consideration of these comment. I would appreciate to further this discussion so that we can revisit the Natural Gas Act so that it fulfills it's true intent

O. ASHBY BERKLEY
PRESIDENT - AFFECTED LANDOWNER
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CC:

CC: Omar A. Guzman-Toro, Policy Analyst
Energy and Environment Committee on Energy and Commerce

Feb 4, 2020
Dear members of the U.S. House of Representatives and U.S. Senate,

We want to submit written comment/testimony for Wednesday's House hearing on the Natural Gas Act,
This is being sent to **Chairman Rush and Ranking Member Upton and emailed to Omar Guzman-Toro at Omar.Guzman-Toro2@mail.house.gov**

First of all I must urge that all environmental reviews must be complete before the Certificate is Issued and discontinue the practice of issuing a Conditional Certificate to projects.

Congress can review both the National Environmental Policy Act (NEPA) and the Natural Gas Act, they are inextricably linked.

- It makes ZERO sense to speak about (in part) fixing the environmental review of Natural Gas Pipelines, without discussing NEPA reforms too.
- It makes ZERO sense to speak about fixing the environmental review of Natural Gas Pipelines, without discussing pipelines containing other hazardous gases or liquids.
- It also makes ZERO sense to speak about fixing the environmental review of Natural Gas shipped interstate and for export by PIPELINE, but not by other modes - by trucks or trains (e.g., LNG/CNG #BombTrains and #BombTrucks).

We urge the following reforms:

1: **CLOSE THE API LOOPHOLE**

Presently, gathering lines are not considered jurisdictional. Sounds good until you realize that the DEFINITION for "gathering line" is held by the American Petroleum Institute, via API RP-80, which is "included by reference" @ 49 CFR § 192.8

This allows MONSTER compressor stations like the Williams Dunbar Station in Windsor NY, and the Williams Central Station in Brooklyn PA to escape the multi-year FERC permitting, and escape an environmental review under NEPA.

Enumerating some specific reforms which must be accomplished which arise from this:

2. Eliminate "inclusion by reference": Regulations and definitions should be defined by Congress, and not delegated to industry.

3.a (minimum) Interstate gathering line systems (compressors and pipelines) must be considered jurisdictional which supply FERC regulated facilities (pipelines, storage, compressors, or facilities used for export) should be considered jurisdictional and subject to NEPA review, and to PHMSA regulations for safety, integrity management, mapping, etc.

3.b (IDEAL) ALL gathering line systems (compressors and pipelines) which supply FERC regulated facilities (pipelines, storage, compressors, or facilities used for export) must be considered jurisdictional and subject to NEPA review, and to PHMSA regulations for safety, integrity management, mapping, etc.

Why just natural gas?

4. ALL Interstate hazardous liquids pipelines as defined by 49 CFR § 195.2 and related facilities **MUST be subject to a Certificate of Public Convenience and Necessity**. (similar to @ 15 USC §717f) **and NEPA environmental review**.

Why just buried pipelines?

5. All fixed facilities involved in interstate commerce in bulk hazardous gas or liquid commodities by any mode (rail, truck, air, pipeline) **MUST be subject to a**

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Certificate of Public Convenience and Necessity. (similar to @ 15 USC §717f) **and NEPA environmental review**.
(this includes LNG, NGLs, LPG, crude oil, refined petroleum products, Diluted bitumen, etc. and Compressed Natural Gas)

Can we please include NEPA reforms too, as these are connected to the NGA?

NEPA reforms

6. **ALL fixed facilities involved in bulk haul of hazardous gases or liquids (or mixed phase gas+liquids), either commodities OR WASTE, shall require a Certificate of Public Convenience and Necessity subject to NEPA review.**

7. **Eliminate problems with the Fast Track "Environmental Assessment"**

This is very complicated and hard to phrase this concisely - basically: FERC and other agencies are presently often using their discretion to choose a **Fast Track EA** over a more thorough **Environmental Impact Statement.** According the the CEQ guidance, *some* EA's should result in a Finding of Significant Impacts (FOSI), and trigger an EIS. We have read DOZENS of EA's, and I can find NO EXAMPLE from ANY AGENCY where this has ever happened!!!

IN EVERY CASE we have reviewed, each EA results in a FONSI: Finding of NO Significant Impacts. This indicates that the EA process is broken and has to be reformed.

The law needs to make clear that FERC cannot approve a project and allow it to proceed with any element of eminent domain or construction (including tree felling) until all state and federal reviews/permit processes have been finalized and approvals/ permits granted.

In particular:
⇒ **Clarify the law to make clear that State Section 401 Clean Water Act approvals have primacy in the FERC review and approval process**. Section 401 of the Clean

Water Act specifically reads: “no [federal] license or permit shall be granted until the certification required by this section has been granted or waived.” 33 U.S.C. § 1341(a)(1). Requiring Section 401 certification from the states prior to federal action ensures that states’ rights are honored, that state standards are met, and that public and private resources are not unnecessarily lost. It also ensures that the federal government is held accountable to the same standards as private entities, an important point of equity. FERC routinely issues Certificates of Public Convenience and Necessity prior to state decision-making on 401 Certifications for FERC pipeline and infrastructure projects. The result is to undermine state authority, and in some instances, has resulted in the taking of property rights, and damage to business, jobs and the environment for construction of a pipeline that a state ultimately rejected. 401 primacy prevents such an irreversibly harmful outcome. If the mandate that 401 Certification must be received prior to FERC providing NGA Certification is not enacted/clarified within the language of the NGA, then it must be 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.

⇒ **Ensure Full Applicability of all Federal Laws.** Currently, FERC approves pipelines and allows them to proceed through phases of construction and eminent domain regardless of whether or not they have received all necessary reviews and approvals from other agencies, such as wetland permits from the US Army Corps or completed endangered species review from the U.S. Fish & Wildlife Service. The law needs to make clear that FERC cannot approve a project and allow it to proceed with any element of eminent domain or construction until all state and federal reviews/permit processes have been finalized and approvals/permits granted.

The law should be reformed to require a genuine demonstration of need for a natural gas pipeline infrastructure project.

FERC routinely accepts false or inappropriate claims/demonstrations of need for pipeline infrastructure proposals. As a result, the law needs to be reformed to ensure that a full, fair and legitimate need, one that cannot be fulfilled by clean energy technologies, is demonstrated before a pipeline can even be considered for FERC Certification.

Demonstrations of need are provided for FERC review and consideration.

Pipeline companies must be required to demonstrate a genuine end-use need that cannot be fulfilled by renewable options.

Currently,

- Pipeline companies routinely assert "need" for a project because it will lower costs, improve profits or enhance the ability to compete with others in the gas and/or pipeline industry. These assertions demonstrate corporate goals and desires. None of these scenarios demonstrate public needs that warrant the economic, environmental or property rights harms inflicted by a project and so should be explicitly prohibited.

- Pipeline companies routinely assert need by presenting contracts for pipeline capacity that are from related corporate entities, as such they use their own connected operations to put forth an unverified claim of genuine need. Pipeline companies should be prohibited from engaging in self-dealing in need demonstration – no contractual in-dealing should be allowed for manufacturing need, i.e. company cannot claim it needs a new pipeline for a gas source that is itself or some subsidiary self or related company that is, in fact, just another form of itself.

- Pipeline companies routinely assert need so the company can tap into an alternative source of gas, regardless that there is no threat to the source for their business use, it is simply a preferred business option. Preferred business operations of this kind should not be allowed for asserting need.

- Pipeline company claims that end of pipeline communities "need" their gas are often debunked by experts in the field who are quickly ignored by FERC in their reviews. Expert reports challenging company claims of need should be given primacy in the review process, rather than being disregarded if in conflict with pipeline claims.

- "Need" considerations uniformly focus on the end goal of securing gas, rather than focusing on the end goal of securing energy. This means that clean energy or other viable alternatives are ignored in the FERC review and approval process.

Consideration of need must focus on "energy" needs of the end users and require full and fair consideration of whether clean energy alternatives could fulfill the need for energy identified. Proof of need should include a mandated demonstration that renewable strategy cannot be used to fulfill energy goal being asserted

Demonstration of need must be based on more than assertion that a pipeline or export facility has customers, it needs to demonstrate a genuine end-use need that cannot be fulfilled by renewable options;

Revisions of law are needed to address all of these scenarios as none of them demonstrate public needs that warrant the economic, environmental or property rights harms inflicted by a project and so should be explicitly prohibited.

The use of Tolling Orders by FERC to undermine individual, community and states' rights should be prohibited.

Under federal law, a private party is not allowed to legally challenge FERC approval of a pipeline project until they have first submitted a rehearing request to FERC, and FERC has affirmatively granted or denied that request. Rather than do one or the other, FERC's practice is to issue a "tolling order" in response to such requests, which temporarily grants the request but only "for further consideration". As a result, the public's ability to challenge the FERC decision is put into legal limbo until such time as FERC renders and issues its final decision regarding the rehearing request. It is common for FERC to place people in this legal limbo for up to a year or more, while allowing the pipeline company to advance its project, take property, and begin construction.

Much to the shock of legislators, states and communities, tolling orders are routinely used by FERC to place people in legal limbo, unable to challenge a FERC approval of a natural gas infrastructure project even when the Commission has allowed the company to use the power of eminent domain to take property rights and is approving construction and operation of project sections. Tolling orders are demonstrably unfair and simply wrong, and deprive people, communities and states of their legal right to challenge FERC regulated infrastructure projects before they take property rights by eminent domain or inflict irreparable harm on communities and the environment.

As a result:

⇒ **Tolling orders should be prohibited.** Quite simply the NGA should be reformed to mandate that FERC must respond to rehearing requests within 30 days and if they fail to do so the rehearing request is deemed denied.

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 construction, if there is an outstanding rehearing request/tolling order;

As FERC Commissioner Glick has stated several times:

Mandate Meaningful Consideration of Climate Change in Pipeline Review and Decision-making.

> "Climate change poses an existential threat to our security, economy, environment, and, ultimately, the health of individual citizens. Unlike many of the challenges that our society faces, we know with certainty what causes climate change: It is the result of GHG emissions, including carbon dioxide and methane, which can be released in large quantities through the production and consumption of natural gas. Congress determined under the NGA that no entity may transport natural gas interstate, or construct or expand interstate natural gas facilities, without the Commission first determining the activity is in the public interest. This requires the Commission to find, on balance, that a project's benefits outweigh the harms, including the environmental impacts from climate change that result from authorizing additional transportation. 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 GHGs, contributing to the **existential** threat of climate change."[1] 0F

[1] Statement of Commissioner Richard Glick on Texas Eastern Transmission, LP, FERC Docket No. CP18-10, July 19, 2018.

Despite this well stated position of Commissioner Richard Glick, and despite the fact that federal courts have ordered FERC to consider the climate changing impacts of pipelines and associated infrastructure, FERC has taken the position that it does not need to undertake meaningful climate change reviews or take climate change impacts into consideration in their decision-making.

As a result, it is vitally important that the law be reformed to make clear that FERC's "public interest" duty pursuant to the Natural Gas Act does in fact mandate consideration of the climate change impacts of pipeline infrastructure. In order to fully and properly implement this reform, legislative reforms must mandate, and include, all of the following, that:

⇒ FERC conduct a full accounting of the climate changing impacts of any proposed pipeline infrastructure, and

⇒ that this analysis must include a full and robust Social Cost of Carbon analysis, and
⇒ that this analysis must include both the downstream end uses of the gas to be carried through the pipeline as well as the climate change contributions of the upstream extraction operations necessary to secure the gas that would flow through the proposed pipeline and/or infrastructure under review (including associated drilling and fracking operations, tree removal, associated trucking and industrial operations), and

⇒ that if it is demonstrated that there is a significant climate change impact that will result, FERC "must"/"shall" deny FERC Certification for the project.

Instill Mandatory penalties and stop work orders for violations during construction, operation, and maintenance that are commensurate with the level of harm inflicted.
Violations by pipeline companies during construction, operation and maintenance are routine, with hundreds documented for a single project. Also documented is FERC's failure to ever (never) issue a civil penalty or stop work order to address the violations. As a result, it is more cost beneficial for a pipeline company to ignore environmental protection laws than to comply with them. In addition, violations are reviewed by FERC in terms of company response, rather than magnitude of the severity of the incident. The law mandating penalties needs the level of penalty assessed to be based upon the severity of the environmental and community harm inflicted.

If the goal of drilling and fracking is truly energy independence, that end goal is not served through exports. In addition, 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.

There should be a ban put in place on Liquefied Natural Gas Exports. Mandate full and fair application of NEPA and prevent any rollback of this important and iconic information and review legislation. Among the clarifying and confirming provisions required:

⇒ Clarity on prohibition against segmentation and provide an expansive definition of that term;

⇒ Express obligation to ensure cumulative impact reviews and give that term an expansive definition;

⇒ Ensure review includes consideration of the fracking/drilling/shale gas extraction that a project induces and/or supports and the end uses of the gas whether it be a new power plant, export, industrial, residential;

⇒ Ensure consideration of alternatives not limited to alternate routes but includes alternative ways to create the energy that is asserted as needed;

⇒ Mandate robust health and safety impact analyses and prohibit projects that will adversely impact health and/or safety of a community/region.

⇒ Heightened scrutiny of affiliate relationships, wherein regulated utilities are the pipeline customers while their affiliates are investing as pipeline developers. Here's recent Congressional testimony on this particular issue: tinyurl.com/Peress-6-14-16

Provisions need to be placed in the law that ensure an appropriate level of accountability and oversight of the agency to both Congress and the people of the United States. Provisions should include:

⇒ Prohibit FERC's use of third party consultants with actual or potential bias.
⇒ Change structure of FERC commissioners – add a public representative Commissioner position. ⇒ Mandate removal of Commissioners that are demonstrated to engage in any degree of conflict

in their decision-making.
⇒ Prohibit Commissioners or other agency staff from working for the pipeline, oil or gas industry, or any of their legal, messaging, lobbying or other related representatives, for a period of 5 years prior to, and a period of 5 years post, their employment with the agency. ⇒ Require a public advocate be appointed for each pipeline that is representative of environmental resources, property owners, public land interests that will be impacted by the project.
⇒ Put in place stronger requirements for information disclosure and timelines by which info has to be released.
⇒ Mandate Commissioners provide public hearing opportunities before them, as a body, before final decision-making;

1. ⇒ Mandate FERC use latest science in analysis and decision-making;

2. ⇒ Prohibit waivers, variations and/or changes to a project after its application been submitted

for review by FERC; if changes are proposed mandate the new proposal be subject to the full agency and public review and approval process.
⇒ Add an environmental justice standard, including community involvement, for pipeline projects that are within a 10 mile proximity of an environmental justice community.

⇒ Prohibit self interest in FERC staff and Commissioners:

- Prohibit investments in companies regulating,
- Prohibit Commissioners or staff from being involved in decisions that benefit directly or indirectly the staff, Commissioner, their families or professional colleagues.

⇒ Mandate public hearings during NEPA process that are within 20 miles of any

community that will be impacted by a proposed project;
⇒ Mandate minimum 120 days to comment on any FERC NEPA documents or proposed project approvals.

⇒ change FERC's mission to include priority obligation to advance renewables;
Require leadership from FERC for renewables
⇒ seek a way to mandate/incorporate approval of the renewable energy option if it can be demonstrated to fulfill the claimed energy need being advanced by the pipeline company.

⇒ mandate FERC carry out a robust climate change analysis and if approval of a project demonstrates it will contribute climate change emissions and cannot demonstrate (when considering cradle to grave impacts of the source and/or end use of the gas) it will improve climate change conditions then FERC is mandated to reject the project.

For thirty years FERC has served as a rubber stamp agency for pipeline and LNG infrastructure. It has misused its authority and the law at every turn in order to advance these projects. Meaningful and substantive reforms are needed. Ideally Congress will hold Congressional hearings to expose the abuses and help identify and shape the reforms needed. But given that legislators are increasingly putting forth window dressing fixes rather than the strong substantive reforms needed, we provide this robust list of fixes that need to be pursued firmly, quickly and without compromise.

Sincerely yours,

Barbara Arrindell
Director
Damascus Citizens for Sustainability

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Dear Congressmembers Bobby Rush, Chairman
Fred Upton, Ranking member
House E&C, Energy Sub-Committee

CC: Paul Tonko, NY, member of Energy Sub-Committee

I applaud the Energy Subcommittee on the upcoming hearing entitled "Modernizing the Natural Gas Act to Ensure It Works For Everyone." As the Executive Director of an organization working with eminent-domain-threatened landowners all across the country, I have heard from many people with first-hand experience of this process, and I can attest that the Natural Gas Act needs to be amended.

When it was originally drafted in 1938, the NGA could not have anticipated the current boom in pipeline development nor the changing landscape of alternative energies and, therefore, no longer adequately balances and protects the interests of all involved parties. I would encourage the subcommittee to consider the following amendments to the NGA.

First, the current notice requirements do not provide sufficient notice to landowners that landowners must intervene in certificate proceedings to preserve their right to *any* administrative or judicial review. The result is that landowners do not understand how, why, or when to intervene, and they lose the opportunity to do so. Implementing a notice process that addresses these issues is a simple step that would preserve landowner rights without undue burden to FERC or pipeline companies.

The way the process currently stands, it is no wonder that landowners feel they are being fooled. Why shouldn't it be everyone's focus to make sure that a landowner knows what is being asked of them and clearly sees how to intervene in the process? Surely, the pipeline companies are not looking to surreptitiously steal land from private landowners – so why be opaque? You should not need legal counsel to read a notice about your own land.

Second, the NGA requires landowners to apply to FERC for rehearing before they can seek judicial review of the Certificate decision. Amending the NGA to remove this requirement would bring the process into line with the procedure for judicial review of other federal agency actions.

Finally, the NGA does not have any provision governing the property valuation processes, and the obligations of pipeline companies and the rights of landowners. An amendment should include the requirement that the pipeline company may not take the property until it has paid the landowner the just compensation determined in the condemnation proceeding (or deposited that amount with the court).

Thank you for your leadership on the subcommittee and for your consideration of this issue.

Sincerely,

Rebekah Sale
Property Rights and Pipeline Center
New York

February 2, 2020

The Honorable Bobby Lee Rush, Member
United States Congress
2188 Rayburn HOB
Washington, DC 20515-1301

The Honorable Fred Upton, Member
United States Congress
2183 Rayburn HOB
Washington, DC 20515

Attention: Omar.Guzman-Toro2@mail.house.gov

Re: Hearing on Modernizing the Natural Gas Act to Ensure it Works for Everyone
Wednesday, February 5, 2020 – 10:00 a.m. Room 2322 Rayburn House Office Building

Dear Chairman Rush, Member Upton and Representatives:

We appreciate that the Energy Subcommittee is conducting hearings to update the Natural Gas Act. Greater Good Oregon is a nonprofit organization dedicated to education about threats to land, water and people. We are very supportive of reforming the Natural Gas Act of 1938 to reflect present-day climate and environmental conditions relative to U.S. energy and energy infrastructure. We are especially concerned with the need to review the NGA's delegation of eminent domain authority to private pipeline companies upon issuance of a Certificate by the Federal Energy Regulatory Commission.

Private landowners in Southern Oregon have lived under the threat of eminent domain resulting from the Jordan Cove/Pacific Connector Gas Pipeline project, a volatile and speculative gas/LNG venture for **15 years**. Several private Canadian companies, including current owner Canada's, Pembina Pipeline have proposed to construct a 36-inch diameter high pressured pipeline to transport fracked gas from Canada across 229 miles of private and public lands in Oregon. During this decade and a half, hundreds of Oregon landowners have been unable to advance their private property interests or sell their properties as a result of this unpredictable project and the menacing consequence of eminent domain to their properties. Landowner rights have been trampled on far too long as a result of corporate eminent domain abuse that favors shareholder profits over the rights of individual private landowners under the Natural Gas Act.

We approve and support this review and hope it leads to major reform to safeguard against the abuses that have developed over the past 70 plus years. We do not believe Congress intended private property rights to be sacrificed in favor of foreign or corporate interests and private profits over the rights and liberties of U.S. citizens when it granted pipeline companies the power

of eminent domain in 1947. The Jordan Cove project in Oregon is a prime example of how this authority is distorted and abused. It is unfathomable that private lands can be condemned and taken from U.S. citizens to enable a private Canadian company, subsidized by the Canadian government, to transport 100% Canadian gas through the U.S. for export to Asian markets, all under the guise that it is in the public interest.

We do not believe Congress intended to afford U.S. citizens fewer rights, and unequal and unfair access to a federal agency decision-making process than is offered to a project applicant especially when it is predominately serving foreign interests over those of the U.S. This is precisely the situation Oregon landowners have faced.

Under the FERC process and rulemaking procedures, landowners often receive insufficient notice to review information; information that is inadequate and, in some cases, not even available to them. With no access to environmental impact data and reports that will have an immediate and direct bearing on their land, livelihoods and homes, landowners cannot responsibly or sufficiently comment on the effects to their families and properties, leaving the process very one-sided.

Rural Southern Oregon, like many rural communities across the country has a disproportionate number of elderly and fixed income people, most with little to no internet access, making access to notices and engagement in the regulatory process extremely challenging. Additionally, this population has fallen prey to aggressive and persistent land agent tactics riddled with misinformation and leaving them feeling vulnerable and threatened. Several who have entered into unfair easements because of these bullying tactics.

Not only are landowners the David to the natural gas' Goliath financially they are at Goliath's mercy when it comes to property valuation processes, and the obligations of pipeline companies for easement terms and just compensation. Reform of the NGA is a high priority and long overdue. We are grateful this Committee is taking up the issue.

We respectfully request that the Committee take great care to eliminate the bias toward corporate dominion and interests over the rights of individual American citizens, your constituents. Many of these individuals have spent their lives sacrificing to realize the American dream of owning their own home – they do not deserve to live under the threat of eminent domain for private profit and gain.

Sincerely,

/signed
Stacey McLaughlin, President
Deborah Evans, Secretary
Pamela Ordway, Treasurer

c: Representative Greg Walden, Oregon – 02
Scott Peters
Michael Doyle

John Sarbanes
Jerry McNerney
Paul Tonko
David Loebsack
G.K. Butterfield
Peter Welch
Kurt Schrader, Oregon – 05
Joseph Kennedy
Marc Veasey
Ann Kuster
Robin Kelly
Nanette Diaz
A. Donald McEachin
Tom O’Halleran
Lisa Blunt Rochester
Frank Pallone
Robert E. Latta
Cathy McMorris
Pete Olson
David B. McKinley
Adam Kinzinger
H. Morgan Griffith
Bill Johnson
Larry Bucshon
Bill Flores
Richard Hudson
Tim Walbert
Jeff Duncan

February 4, 2020

U.S. House Energy Committee on Energy and Commerce:
Omar A. Guzman-Toro
Frank Pallone
Greg Walden
Bobby Rush
Fred Upton

Gentlemen:

Please allow me to submit comments to your upcoming hearing called "Modernizing the Natural Gas Act To Ensure It Works For Everyone".

My name is Robert M. Jarrell and I currently have 3,020 feet of The Mountain Valley Pipeline's 42" natural gas pipeline running through my property in Pence Springs, WV, totally against my will. My fervent hope is that opposition efforts will succeed in keeping gas out of this pipeline as my house lies within the blast zone radius if a rupture and explosion were to occur anywhere on my property.

I leave it to others to give more detailed, technical, and anecdotal submissions about how dangerous, illegal, immoral, and un-American is the current process of pipeline approval and construction – I have always focused on the violation of private property rights and my unalienable right to the pursuit of life, liberty, and happiness.

Perhaps a simple timeline of the 5-year nightmare that began Jan. 14, 2015, when I received a call from Coates Field Service, will illustrate what is wrong with the process.

This was the beginning of a string of lies, delays, and obfuscations by Mountain Valley Pipeline and its representatives. That first phone call with Mike Robinson of Coates was to seek permission to enter my property with the intent of surveying it for the installation of a natural gas pipeline. When I said I didn't want a pipeline running through my property, he stated that he had the right under eminent domain to do the survey if I failed to give permission. When I refused permission, I received a letter from MVP about two weeks later stating that they would proceed

with the survey if I didn't give permission by about March 12 (exact date I don't remember). I was in Florida at the time and before that date arrived a neighbor called to say people were on my property surveying – they couldn't even abide by their own self-imposed deadline! LIE #1!

After returning to Pence Springs, I received several phone calls or visits by MVP land agents over about a one-year period trying to pressure me into signing a contract granting the pipeline right-of-way, all of which I politely refused. MVP did change their original routing on my property and will claim this illustrates their willingness to "work" with landowners to address their concerns, but it was done for their own reasons to ride the ridgeline, as I was never afforded the opportunity to say which route I preferred if the pipeline was approved. Both land agents touted how their pipeline would "make my property better", as if I just fell off a turnip truck. Willingness to work with landowners and claiming to improve the property are Lies #2 and #3!

Several times throughout the process it was stated that their extremely low offer would be off the table and I would likely be given much less if I didn't sign their contract before the FERC certificate was granted. Lie #4!

The last land agent I dealt with stated that it was "above his paygrade" to look into alternative routes that I suggested to locate the pipeline on the property adjacent to mine on the east (owned by a man who was okay with the pipeline), or failing that, further east on my own property, either of which seemed doable and safer. I finally sent a certified letter to Natalie Cox, spokesperson for MVP, who did respond and send one of their land planners/environmentalists to meet with me. He poo-pooed my suggestions but did promise to look over his topo maps and get back to me about my suggested alternatives. This was about three weeks before FERC granted a certificate to MVP, and I never heard back from him Lie #5! or anyone else at MVP. Once MVP received their certificate, all pretense of "working with" landowners was curtailed. Stringing me along for most of two-and-a-half years was their strategy from day one, absolutely sure of attaining the certificate from FERC, the rubber stamp agency of the energy sector they supposedly regulate.

Maybe I did fall off a turnip truck to naively believe that I actually had rights to my own property, my hopes and lifelong dreams for it, and that if my rights were violated, then MVP would honor their stated intention to work with me on acceptable alternatives, but the reality is they delayed in full confidence that they would get their certificate no matter what, and worse yet, actually punished me for opposing them. I still maintain that a safer route was available on my own property,

and that the steep drop from my property down to SR 12/3 is the most likely spot a rupture will occur anywhere in Summers Co.

I hope my story has helped you understand how flawed the process is for granting certificates for pipeline construction. While I still blame and hate MVP for the stresses of fighting them for five long years and the danger of incineration I will face if gas is allowed in their pipeline, my enmity is better directed at FERC, the agency that operates on the fees and fines it imposes on the industry it supposedly regulates and so has never met a pipeline it wouldn't approve.

My hope is that your committee will propose changes that curtail the awesome power of eminent domain that FERC currently wields with complete impunity. From my perspective FERC is a rogue agency that serves its own interests rather than the interests of our country or its private citizens. I'll close with two other suggestions - I hope FERC will be charged with greater oversight once a certificate is granted, as currently the pipeline companies pretty much do whatever the hell they want once the certificate is in hand, and that the political makeup of the FERC commission is changed – two commissioners from the Republican party, two from the Democratic party, and one Independent, so that political decisions like what happened with the MVP, is at least minimized.

Thank you for your consideration.

Sincerely,

Robert M. Jarrell
482 West Clayton Road
Alderson, WV 24910

Richard G. Averitt IV
Landowner and Businessman
88 Grace Glen
Nellysford, VA 22958

February 4, 2020

The Honorable Bobby Rush
Chairman
Subcommittee on Energy
House Committee on Energy and Commerce
2188 Rayburn House Office Building
Washington, DC 20515

The Honorable Fred Upton
Ranking Member
Subcommittee on Energy
House Committee on Energy and Commerce
2183 Rayburn House Office Building
Washington, DC 20515

Dear Chairman Rush and Ranking Member Upton;

I am an affected landowner along the route of the Atlantic Coast Pipeline. I have both a personal homestead and a business property affected by the ACP and I have drafted the attached comments on behalf of landowners from Nelson County, Virginia which we respectfully ask be considered and entered into the record for the upcoming House Energy and Commerce Committee hearing entitled "Modernizing the Natural Gas Act to Ensure It Works For Everyone" to be held Wednesday, Feb 5, 2020.

It is of critical importance that the voice and perspective of landowners affected by the current implementation of the Natural Gas Act be part of the record and a stakeholder to the process of reforming the NGA.

Sincerely,

Richard G. Averitt IV

Enclosures: Letter from Affected landowners of Nelson County, Virginia
CC: Congressman Griffith, Congressman McEachin, Congressman Riggleman

Richard G. Averitt IV
Landowner and Businessman
88 Grace Glen
Nellysford, VA 22958

February 4, 2020

Dear Chairman Rush, Ranking Member Upton, Congressman Griffith, and Congressman McEachin;

I write to you on behalf of Landowners in Nelson County, Virginia who are suffering greatly from gross abuse and misuse of the Natural Gas Act by a FERC that repeatedly slants every decision and ruling in favor of any new energy project regardless of the need, cost or environmental impacts.

We are outraged citizens who have spent nearly six years fighting for our most basic and fundamental rights to due process and property in a country founded on these sacrosanct principles. Moreover, while our specific experience relates to the Atlantic Coast Pipeline (ACP), our grievances are representative of injustices perpetrated against thousands of families across the country at this very moment along dozens of new pipelines routes. We are the victims of a broken system, a truly feckless FERC, an energy economy that is wildly incentivized to build infrastructure at any cost, and the outrageous lie that the public need for gas is driven by domestic demand while our nation races to be the largest global exporter.

The Natural Gas Act is the framework for these abuses and it has not been updated to reflect the massive changes in the energy economy or the new realities of a diverse energy market since 1962. As a result, the language of the Natural Gas Act (NGA) is being misused by FERC to deny people their legal and constitutional rights, to strip and undermine the legal authority of states, to undermine the authority of other federal agencies, to ignore the mandates of the Clean Water Act and the National Environmental Policy Act, to trample private property rights, to take from communities the protection of public parks, forests and conserved lands that they have invested heavily in protecting, to take jobs and destroy small businesses, to harm our communities' health, diminish our safety and damage our local environments, all for the benefit of a single industry seeking to advance its own corporate profits and business edge over its competitors.

I was initially invited to testify before you today, but my invitation was rescinded four days later when it appears there was some disagreement about the roster of witnesses. While I am somewhat relieved to not carry the burden of this process, we landowners are all deeply concerned that any meaningful discussion or hearing about the NGA **MUST** include landowner

voices to ensure that our individual and collective rights are represented and any reforms to the NGA include a balanced solution that respects the most critical rights of citizens.

There are many issues worth discussing, and **we ask that there be more thoughtful and detailed discussion allowing for adequate citizen comment to identify the right changes moving forward.**

There are at least five key issues which must be resolved in order to protect citizens' basic rights to property and due process in the courts and to re-balance the NGA.

1) Issues of Notice and Intervention

When a pipeline is proposed in any community, FERC relies on the developer to communicate with the landowners and apprise them of their rights and remedies. There is an obvious conflict of interest here and the NGA should require this notice to landowners be explicit and validated for any landowner, or the developer should lose their right to use eminent domain against any landowner who they cannot provide evidence was properly informed of the project proposal and their individual rights under the law. Additionally, landowners whose property is directly affected by the route of the pipeline or other ancillary access roads that involve any potential taking of land should not have to register as Intervenors within 21 days to protect their rights, but instead should automatically be considered Intervenors by default.

2) Defining the metrics for determining NEED

At a time when it is clearly the intent of the U.S. energy industry to become the largest global exporter of natural gas, the question of **domestic need** deserves examination with a very critical and skeptical eye. In the case of the ACP, five of six contracts for the gas (greater than 90%) are with affiliated companies and there is no precise destination for the gas where a current increase in demand can be demonstrated. Need must be determined by an independent third-party analysis.

Eminent Domain is an extreme power and must only be used when a verified domestic need for gas cannot be achieved by any other means or alternate energy sources. We cannot continue to sacrifice American citizens' families, farms, dreams, and their most important financial asset for uses that are, at best, benefits for one community over the property rights of another and more commonly for nothing more than the benefit of the developers' shareholders and their bottom line.

3) Tolling orders must be eliminated

The use of Tolling Orders by FERC to undermine individual, community and states' rights should be prohibited. Under federal law, a private party is not allowed to legally challenge FERC approval of a pipeline project until they have first submitted a rehearing request to FERC, and

FERC has either granted or denied that request. Rather than do one or the other, FERC's practice is to issue a "tolling order" in response to such requests, which temporarily grants the request but only "for further consideration". As a result, the public's ability to challenge the FERC decision is put into legal limbo until FERC renders and issues its final decision regarding the rehearing request. It is common for FERC to place people in this legal limbo for up to a year or more, during which time the pipeline company is nonetheless still allowed to seize property and begin construction.

As landowners on the route of the ACP, we have been the victims of this practice wherein we received notice of eminent domain while still waiting for FERC to approve or deny our rehearing request. This literally means that our land could be taken from us and destroyed at a time when we have no legal standing in any court in which to object and fight to protect our rights.

Quite simply the NGA should be reformed to mandate that FERC must respond to rehearing requests within 30 days and if they fail to do so the rehearing request is deemed denied.

4) Conditional Permits must be eliminated

With every FERC certificate comes the automatic power of eminent domain. FERC routinely issues "Conditional" Certificates by which it intends that the developer can build the project **if and only if** they receive all of the required federal, state and local permits. But the issuance of the Certificate itself immediately conveys the extreme power of eminent domain even while the required permits have not yet been granted.

This totally illogical approach makes a mockery of property rights and is simply bad government. This gives developers of pipelines the absolute right to seize family farms and property, to cut trees, dig trenches and irreparably harm the character of the property long before it is certain that the project will ever be built. There are many examples where this practice has led to a family losing their land for a project that ultimately was never constructed.

The NGA must be reformed to make clear that FERC cannot approve a project and allow it to proceed with any element of eminent domain or construction (including tree felling) until all state and federal reviews/permit processes have been finalized and approvals/permits granted. Further, if permits are remanded or revoked, all eminent domain processes should be halted until such time as valid permits are reinstated or reissued.

5) Eminent Domain reform - eliminate Quick Take

In the Natural Gas Act, Congress gives pipeline companies only the "straight" or "ordinary" power of eminent domain—which means they must wait until after any necessary trial on just

compensation and payment of such compensation before they may take possession of land needed for their pipelines. But pipeline companies don't want to wait until after trial to get the land. Once they get their FERC certificates, they run to federal court asking for a preliminary injunction (Quick Take) giving them immediate access to bulldoze the land and cut down the trees in the proposed right-of-way, even before securing the state and federal permits needed to lay their lines (the effect of which is compounded by the Conditional Permits referenced above).

Since Sage vs. E. Tennessee in 2004, courts have created a new class of eminent domain in direct conflict with federal law which allows pipeline companies the special power to seize property from landowners whom they can't get to sign an easement and before the fair and just compensation has been determined or paid and simply defer the fight about price until some much later date in court. The net effect of this unjust extension of the law is that it collapses on landowners, depriving them of all right to due process and a day in court. By the time a landowner gets to court, the pipeline company has done all the damage to your land and the only issue left to debate is the dollar amount for fair and just compensation. This means if you want to negotiate ANY other changes in the terms of the condemnation, like moving a pipeline to the edge of a prime pasture rather than through the center, or off of a future building site for your kids' future home, or away from cutting down the tree that was planted as homage to great grandma when she passed, a landowner has NO CHOICE but to settle with the developer before they are awarded Quick Take.

In practice, this means a landowner must "negotiate" with a developer who has no incentive to give them any concessions and has effectively nothing to lose from walking away while the landowner has everything they care about at risk with no power at the negotiating table. Clearly, this imbalance is an outrageous overreach of the courts and in conflict with basic justice.

At a bare minimum, if the courts deem the timing of the pipeline project so important that they must accelerate the process, then the correct remedy would be to accelerate the court dates and allow pipeline cases to jump to the front of the line. Taking away the right to due process entirely is a gross injustice and violates a citizen's most basic rights.

Congress alone holds the federal power of eminent domain, including the special power to take land before trial. Congress did not authorize early access (Quick Take) for Natural Gas Act takings. Orders granting early access infringe on Congress's power to prescribe the methods of condemnation and Congress must clarify the NGA to explicitly prohibit the practice of Quick Take in regards to pipelines.

In summary, while there are many details beyond these five core reforms, these changes to the NGA and the FERC process represent the bare minimum Congress must do in order to restore a

semblance of fairness and balance to the process and ensure the most basic and primary protections to a citizen's guaranteed right to due process and property are preserved.

I am happy to meet with any of you in person at any time, and, along with the undersigned group of Nelson County landowners (all of whose properties are being directly impacted by the ACP project), respectfully ask that this letter be addressed in the hearing and entered into the official record as the voice of landowners most impacted by the very reforms in question.

With deep respect,

Richard G. Averitt IV
88 Grace Glen
Nellysford, VA 22958
(Impacted Nelson County Parcel #21-A-36)

Dawn Averitt
330 Grace Glen
Nellysford, VA 22958
(Impacted Nelson County Parcel #21-17-1)

Richard G. Averitt III
6755 30th St. S.
St. Petersburg, FL 33712
(Impacted Nelson County Parcels #21-A-36, 21-17-1)

William and Melissa Barr
2443 Elrod Court
Yuma, Arizona 85365
(Impacted Nelson County Parcel #21-16-9)

Will and Lilia Fenton
39 Shelton Laurel Trail
Roseland, VA 22967
(Impacted Nelson County Parcel #19-3-2A)

Carolyn Fischer
184 Mountain Field Trail
Nellysford, VA 22958
(Impacted Nelson County Parcel #21-16-11)

Robert and Barbara Fuhrman
215 Flying Eagle Lane
Nellysford, VA 22958
(Impacted Nelson County Parcel #21-13-14)

Jonathan and Janet Geldzahler
3071 Old Church Road
Mechanicsville, VA 23111
(Impacted Nelson County Parcels #20-A-59A, 20-A-59G)

Demian Jackson
106 Starvale Lane
Shipman, VA 22971
(Impacted Nelson County Parcel #46-A-51)

Wisteria Johnson
2016 Wheelers Cove Road
Shipman, Virginia 22971
(Impacted Nelson County Parcel #59-A-6A)

Shahir and Nancy Kassam-Adams
360 Laurel Lane
Lovingston, VA 22949
(Impacted Nelson County Parcels #46-3-1, 46-3-2A)

Carolyn Maki
2228 Rockfish Valley Highway
Nellysford, VA 22958
(Impacted Nelson County Parcel 21-A-113)

Aubrey McClain
6490 Rockfish Valley Hwy
Afton VA 22920
(Impacted Nelson County Parcels 21-A-38, 21-A-39, 21-A-40)

Ken and Anne Norwood
3509 Stagebridge Road
Lovingston, VA 22949
(Impacted Nelson County Parcel # 46-A-6)

Becky Rhames
2914 Garfield Street, NW
Washington, DC 20008
(Impacted Nelson County Parcel #33-A-7A)

Jay Roberts
Executive Director, Wintergreen Property Owners Association
88 Wintergreen Drive
Roseland, VA 22967
(Impacted Nelson County Parcel #11-A-2-B)

Hershel and Darlene Spears
2215 Spruce Creek Lane
Nellysford, VA 22958
(Impacted Nelson County Parcel #20-A-61)

Whitney and Cecilia Tritch
26442 Indian Trace Trail
Unionville, VA 22567
(Impacted Nelson County Parcels 46-A-12H, 46-A-12I)

My name is Karolyn Givens.

I own the designated Historic Leffel farm in Newport Virginia which Givens family members have been farming for years.

In 1980, my husband Clarence, an Air Force meteorologist and Viet Nam Veteran, retired and we returned to his homeplace so that he could join his cousins in farming. While we lived on a farm in Blacksburg, Clarence also farmed the nearby Leffel farm which is situated in Sinking Creek Valley. The 1836 farmhouse and barns are located along the creek, while the pastures, crop lands and timberland are located on the steep of Sinking Creek Mountain.

In 2004, Clarence and I had an opportunity to purchase the Leffel property. We bought it because it SEEMED a sound investment, a property that would increase in value, that could be subdivided eventually, a property that we could leave in our estate for our offspring. We continued to farm it and rented the house to the same person who had been living there. Thus, the property provided both farm and rental income.

In 2015, we learned the proposed route for the Mountain Valley Pipeline would bisect the Leffel farm from west to east, across its entirety. It would be constructed using 42 inch diameter pipe carrying gas at 1400 psi (the largest natural gas pipe attempted in the United States). The land the farm is located on is steep and Karst in nature, complete with sink holes, caves, ridges and outcroppings of limestone, ephemeral ponding, and a spring. In addition, that area of Virginia is seismic, with relatively frequent seismic activity. Clarence and I were immediately concerned about the potential for explosion, given the size of the pipe and the pressure of gas within it, the steep unstable land it would be crossing, and for good reason. With some research we found that if the pipeline were to explode, the calculated Blast Zone (i.e., total incineration of buildings and vaporization of all people or animals caught in that zone) is greater that 1050 feet). The Evacuation Zone for a pipeline of this magnitude is 3583 feet in all directions. If caught in the Evacuation Zone, there is a chance that, if awake and capable of running, people and animals would likely suffer serious burns, and structures would still burn to the ground. The entire Leffel farm is within either the Blast or Evacuation zone. MVP runs through communities in 5 counties in SW Virginia, in essence putting whole communities in this kind of danger. Those of us who have property in the Blast and Evacuation Zones feel very much at risk, as if we will be sitting on a time bomb. Our response to learning all of this was to join a resistance group, thinking that reason would prevail, and surely the MVP would not be built, at least through these mountains. Our resistance group which Clarence chaired, worked hard over the next two years meeting with MVP, writing letters to all of our legislators at both the State and Federal Level, the Department of Environmental Quality, the Forest Service, the Virginia Historic Preservation Officer, to anyone and everyone we hoped would support us.

In late August 2017, Clarence died very suddenly. I decided without question to continue our resistance to the pipeline. Two months later, in October 2017, I discovered a 3 inch thick document duct taped to my front door notifying me that the Leffel farm had been condemned.

In January 2018, over 300 property owners were ordered to Federal District Court in Roanoke for condemnation proceedings, with Judge Elizabeth Dillon presiding. Chris Johns, my Eminent Domain Lawyer, asked me to testify and I did. We lost that battle. MVP, was awarded Rights of Ways on all of the properties. They immediately issued Tolling Orders so that they could begin construction even though they still did not have all of the required Certificates, and before they had remunerated property owners for the land.

In May 2018, MVP cleared the 125 foot Right of Way of all timber and began earth moving. In July of 2018, as they were crossing a Karst ridge on the mountain above the Leffel Farmhouse, they purposely dynamited part of a cave, and did not inform me of that. They had to stop work on that ridge, but they still have 20-30 holes drilled further down the ROW that they intend to use in blowing up the remaining part of the cave that lies in the path. My fresh water spring runs under that cave, under the right of way, and will be directly affected.

Thirteen days after Clarence's death I received an offer from MVP of $59,515.16 for damages to the property, a property that we paid over a half million for, and we worked hard in order to be able to do that. I have gone through the requisite mediation with MVP and their last offer in October 2019 was $159,000 for damages. While they are willing to pay for the 4 acres they are using, the real damages are to the property in its entirety. How will I ethically be able to continue to rent the house to someone who will be living in the Blast/Evacuation Zone? And while we bought the Leffel Farm as an investment for future development, who would ever buy such a property given the risk? As a widow, both the funds earned from both field and house rentals, as well as the value of the property as a whole is important to me.

There are many stories like mine, many worse. This is an Eminent Domain issue, and it is an issue about the practice of Tolling orders. There are other important issues to consider, but for the House Committee on Energy & Commerce Energy Subcommittee's Oversight hearing on the Natural Gas Act, as a citizen I hope this is helpful information.

Karolyn W. Givens
kgivens@radford.edu
540-230-8867

February 4, 2020

The Honorable Bobby Lee Rush, Member
United States Congress
2188 Rayburn HOB
Washington, DC 20515-1301

The Honorable Fred Upton, Member
United States Congress
2183 Rayburn HOB
Washington, DC 20515

Attention: Omar.Guzman-Toro2@mail.house.gov

Re: Hearing on Modernizing the Natural Gas Act to Ensure it Works for Everyone
Wednesday, February 5, 2020 – 10:00 a.m. Room 2322 Rayburn House Office Building; FERC Dockets CP17-494-000, Pacific Connector Gas Pipeline and CP 17-495-000, Jordan Cove LNG Energy Export Project

Dear Chairman Rush, Member Upton and Representatives:

This review is long overdue, and we hope timely because our family is days away from a FERC decision that could forever change and destroy our life as we know it. My husband and I are in our sixties and have sacrificed and struggled to rehabilitate our land and build our home only to be threatened and victimized at this stage of our lives by the exploitation of the 1947 Natural Gas Act and the 2005 Energy Policy Act. We do not believe that Congress ever intended to grant a foreign corporation authority to take our land through eminent domain so their shareholders could profit at the expense of American citizens. The NGA provisions regarding eminent domain must be reformed to better serve the rights and interests of the private landowners. Public need and necessity must be equitable for the individual and not skewed in favor of the gas industry as it is now.

We have lived under the threat of eminent domain resulting from the proposed Pacific Connector Gas Pipeline project, a volatile and speculative Canadian gas venture for **15 years**. The project has changed hands numerous times, has twice been denied without prejudice by FERC with the most recent denial coming in December of 2016. And within weeks of that denial, with nothing changed, FERC authorized a new application in early 2017, leaving little doubt the system is rigged in favor of gas industry profits over actual public need and necessity.

After more than 20 years rehabilitating our land, we have created a sanctuary for ourselves and the abundant wildlife who share this sacred place. We planted thousands of trees and restored a healthy and environmentally sound habitat to safeguard threatened native species and protect our ground water resources. Now all of this effort is jeopardized because a foreign company,

Pembina Pipeline wants to export its gas from Canada as LNG for Asian markets and profit at our expense. Pembina's pipeline will traverse over a mile of our land with a 100' wide easement clearcutting our trees and threatening our groundwater resources and poisoning our soil with pesticides and herbicides. Pembina's bottom line will grow while ours diminishes because of the impacts to the land and their unfair and unjust valuations.

The eminent domain provisions of the NGA and the distortions and abuses of its use, especially "quick take," is a travesty of the individual's rights and liberties under the Constitution. The decision-making process that allows eminent domain authority by foreign entities solely to benefit their profit margins and company bottom lines is nothing less than government sanctioned corporate terrorism against the American people.

These radical atrocities against private property owners account for many sleepless nights and are leaving the American public feeling so helpless and desperate to save their livelihoods and homes that we are witnessing their desperation manifest in very unproductive and dangerous ways. Two examples that come to mind, one very close to home was the occupation of the Malheur National Wildlife Refuge here in Oregon, and the Standing Rock Protest against the Dakota Access Pipeline. The current NGA and Energy Policy Act, unintentional as it may be are helping to create this anguish and despair.

It is well past time to examine the Natural Gas Act and we applaud your committee for undertaking what will be a challenging task. I have reviewed your witness panels and there is not one single impacted landowner represented. I would encourage this Committee to hear from us, the people whose land is threatened with eminent domain and who are being victimized by the regulations and not just depend on lawyers and industry officials and union representatives to contribute to this discussion. The individual landowners are the ones who stand to lose the most and whose voices are not being heard. That needs to change, we need to be heard.

Sincerely,

Stacey McLaughlin
Stacey McLaughlin
799 Glory Lane
Myrtle Creek, OR 97457
(541) 860-8307
smclaugh@ymail.com

c: Representative Greg Walden, Oregon – 02
Scott Peters
Michael Doyle
John Sarbanes
Jerry McNerney
Paul Tonko
David Loebsack
G.K. Butterfield
Peter Welch

Kurt Schrader, Oregon – 05
Joseph Kennedy
Marc Veasey
Ann Kuster
Robin Kelly
Nanette Diaz
A. Donald McEachin
Tom O'Halleran
Lisa Blunt Rochester
Frank Pallone
Robert E. Latta
Cathy McMorris
Pete Olson
David B. McKinley
Adam Kinzinger
H. Morgan Griffith
Bill Johnson
Larry Bucshon
Bill Flores
Richard Hudson
Tim Walbert
Jeff Duncan

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Elliston, VA 24087
ileech@vt.edu
540-230-5373 (cell)
4 February 2020

The Honorable Frank Pallone, Chairman
The Honorable Greg Walden, Ranking Member
House Energy Sub-Committee on Commerce
United States House of Representatives
2125 Rayburn House Office Building
Washington, DC 20515

The Honorable Bobby Rush, Chairman
The Honorable Fred Upton, Ranking Member
House Committee on Commerce and Energy
2125 Rayburn House Office Building
Washington, DC 20515

Dear Chairman Pallone, Chairman Rush, Ranking Member Walden, and Ranking Member Upton,

First, thanks to the subcommittee for holding a hearing tomorrow on "Modernizing the Natural Gas Act to Ensure it Works for Everyone. As an affected landowner, I cannot find strong enough words to explain how poorly it currently works for affected landowners; neither our selves nor our property rights are respected . If you are unlucky enough that your land is chosen by a natural gas company, your American Dream and your goals for your life and property are thrown under the bus by the current law. Nothing makes the company respect or recognize or respond to the landowner's interests. Their use of your land forever trumps yours and they expect you to respect their highest claim on your property even as they ignore yours.

There are many issues that need to be fixed in the Natural Gas Act. Most landowners affected by this infrastructure do not have access to gas for our use. Thus, I will not comment on the rate issue. Our communities have been dealing with FERC and siting, permitting, and construction of natural gas pipelines for nearly six years. In my case, the 1804 farm my family has operated since 1903 is bisected by the Atlantic Coast Pipeline for 1.1 mile putting all of our structures in the middle of the incineration zone only four miles after the Union Hill Compressor Station and 16 miles from the cutoff valve. My husband has been managing this business for the last seven years and we planned to retire there. I currently live in a 1797 era home that is within two miles of the Mountain Valley Pipeline as it crosses our mountains and valleys.

The landowners and community members around these two pipelines view the Natural Gas Act as unfair and unbalanced, allowing the industry to ignore the people and communities through which they force their infrastructure. We believe our basic property, health and safety rights as citizens are being taken and that we do not even have means to defend or protect ourselves. Using FERC's processes and the eminent domain authority so automatically granted to the industry, our largest asset – our land – is taken over by industry. We are granted some payment on a one-time basis but we continue to pay property taxes, live with the health and safety risks that result, and forever are limited in our use of our property. I describe some of the problems we have encountered here and welcome the opportunity to propose and discuss possible solutions.

1. Inadequate analysis of need for infrastructure. FERC accepts the applicant's word that infrastructure is needed. It accepts unspecified use and undocumented need. It ignores simultaneously proposed infrastructure and potential adaptation of existing infrastructure owned by other entities and does not consider whether multiple projects are needed. Each project is evaluated in a vacuum. The applicant is not forced to fully consider alternatives and the FERC analysis of need is superficial and leads to overbuilding. This means that eminent domain may be granted for projects that are not required to meet true public need or convenience. Thus, landowners are deprived of constitutional rights and forced to adapt to living with and working around dangerous infrastructure for no good reason except to fill the coffers of people who totally ignore the impact on our businesses and our lives.

2. Inappropriate use of eminent domain: Since the industry can depend upon being granted the power of eminent domain, it approaches landowners with that threat from the first interaction. Industry has no motivation to seek win-win solutions or to consider how its use of property affects the remaining property and the owner's previous, current, or future plans for the property.

   The industry selects the landowners whose concerns it addresses and those whose concerns it ignores. FERC and the industry collaborate to meet the industry goals. It appears that FERC considers its job to be approving infrastructure and pleasing industry, not serving as a fair arbitrator between industry and landowners, ensuring that there is true public need for infrastructure. FERC allows the industry to call the shots, make the rules and enforce them. Currently landowners have no recourse. Eminent domain law only allows for landowner compensation with a one-time provision of cash. It includes no mechanism for a landowner to seek a compromise on the path of the infrastructure, additional safety measures, or anything else. Landowners can only appeal to the company's good will if they seek consideration for routing of infrastructure on their property, greater safety, or anything else. This puts landowners at a decided disadvantage from the company's initial contact.

3. Construction activities before all permits obtained When FERC issues the certificate, pipeline construction activities begin immediately. FERC does not require that all necessary permits be obtained prior to commencing activities that permanently change land, especially cutting large trees such as sugar maples used in a family business. As a result, landowners may have to live with downed but not removed trees, open ditches, runoff, and even watching pipes left in standing water rust when loss of or lack of a permit causes work to slow or stop.

4. Insufficient public involvement: By the time the public is informed of projects, plans are well along and many critical and sometimes irrevocable decisions are already made. Even when landowners inform the company of their needs and requests as soon as contact is initiated, landowners have no assurance that their requests will be considered, much less addressed, and no means of appeal. In the case of the Atlantic Coast Pipeline, it was routed predominantly through comparatively poor and unsophisticated communities.

   During the years we have been involved in the FERC processes, public participation has been systematically ignored and reduced. The so-called "public meetings" held by FERC are not required to be held in or near the most affected communities. Many affected landowners are elderly, low income and/or minorities. When landowners asked that a meeting scheduled at night in mid-February be delayed due to dangerous weather, the request was denied so few attended – but the company and FERC checked the box of having had a public meeting.

From the first scoping meeting, landowners and the public were confused about the rules and felt that we were not heard. Rules seemed to evolve. For example, no signs were allowed inside the building or in the ground at the first location. Speakers signed up as they arrived. These rules were anticipated the second night in a different location. However, when landowners arrived, industry signs were all over school grounds and everyone was forced to enter through a line of people offering industry stickers. Only industry supported speakers were given dinner on-site prior to the meeting. When the hearing began, landowners discovered that industry supported speakers had been inserted before the signup time began. As a result, those speakers dominated the hearing, and even though the time was extended many landowners got no opportunity to speak and the industry supported speakers left as they spoke, without hearing landowners concerns. At another meeting a person who had been recruited by the industry to speak at the hearing told of her recruitment experience that led her to attend to speak against the project. In another location, the FERC staff member leading the hearing repeatedly threatened to end the hearing if everyone did not immediately sit down. As soon as those standing sat, others arrived at the hearing and stood in back, leading to another threat. The environment was certainly not conducive to encouraging the public to provide input.

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The Atlantic Coast Pipeline's owners have taken actions that have seriously divided the community and families near the Union Hill Compressor Station. It provided $5 million and expertise to some community members in exchange for their support of the project and to challenge the long active opposition. This has divided the community and even families.

Landowners do not see evidence of our concerns being addressed by FERC. Those who spoke and submitted written comments generally found that none of our concerns raised in the Draft Environmental Impact Statement were addressed in the Final Environmental Impact Statement. Even inaccurate data that was presented in the DEIS was not corrected after landowners provided accurate information. Further, FERC did not accept research that documented the fact of 83% minority population within a mile of the planned Union Hill Compressor Station. Instead it accepted inappropriate use of census tract level data that erased the historic environmental justice community.

5. <u>Landowners are not given clear, easy to follow rules for the FERC Process</u>. Many landowners are not even aware their land is being considered for a FERC project by the time the date by which those who wish to intervene must sign up. They may remain unaware for months after that date.

Landowners and other stakeholders find the process required to sign up as an intervenor to be difficult and confusing. Often landowners in the areas selected for infrastructure do not have access to affordable, dependable broadband service. Intervenors must sign up on line and are required to send a message to every other intervenor notifying them of that sign up. How is it fair to only allow people to sign up to possibly challenge decisions in the opening days of a years long decision making process?

Often the FERC website malfunctions and citizens find it impossible to sign up as intervenors, submit filings, or review industry filings. The website is especially prone to be inoperable near a submission deadline.

The information provided to landowners about the FERC process is not specific or complete. Most landowners learn the rules, especially the unwritten rules, through the process. FERC has not yet established the landowner office statutorily approved decades ago. On Friday, the FERC Chair announced that an office will be formed to address landowner appeals, however appeals are only one aspect of landowner needs.

6. FERC rules are designed to give the industry advantage over landowners. This is true in every step of the process. For example, landowners have 30 days to appeal the decision to certificate a project. FERC is supposed to rule on the requests within 30 days but routinely does not act on those requests, sometimes until after the project is completed and in service. Using "tolling orders" FERC allows the company to systematically construct the project and put it into service while landowners are prohibited from appealing the certification decision to the courts until FERC renders a decision on the appeal to reconsider. This effectively holds the landowner hostage until the appeal is rendered moot. This is wrong.

7. The FERC process does not adequately respect and involve other federal and state decision makers. Examples of this problem are too numerous to fully cover. FERC seeks to limit involvement of other agencies and does not respect their authority, especially if their decisions do not expedite the FERC process.

   Many have concern about the thoroughness of the NEAPA process used by FERC. If you read the FEIS for multiple projects, it can feel like you are reading the same statements repeatedly. Landowners believe decisions are "rubber stamped." Agencies such as those responsible for state historical resources may not become aware of projects in time to sign up as an intervenor. In our experience, FERC denied the request our historical resources agency made after becoming aware of the project after it had been under development for several years.

   Safety issues are relegated to PHMSA in the Department of Transportation after a project is in service, but PHMSA is not a decision maker in the approval or construction processes. FERC does not consider safety a top priority. PHMSA has never been adequately funded, so affected landowners have no way to feel that our safety is assured when dangerous infrastructure is forced onto our property. On November 8, 2019 former NTSB Chairman Jim Hall told participants at the Pipeline Safety Trust Annual Meeting in New Orleans that the pipe installed in eastern Virginia down the center of a major roadway through the middle of a low income community should have never been approved by any level of government. It is

another blatant example of putting infrastructure in communities with the fewest resources. No criteria exist to specify how close pipeline infrastructure can be sited to existing infrastructure and when damage occurs, landowners are forced to court to fight for compensation. Some propose that localities establish zoning regulations to avoid encroachment on pipeline infrastructure but nothing protects landowners from encroachment by pipelines on our homes and businesses.

Through the years of the process for the Atlantic Coast and Mountain Valley Pipelines, we have been repeatedly told that our state and local governments have no standing in the FERC process and cannot help us with the problems we've raised as we've experienced it. We find it frustrating that there is no place where we can get dependable support. It feels like all levels of government are aligned with the industry to take advantage of us. We cannot get a thorough baseline health analysis prior to construction and landowners whose water sources have been destroyed by pipeline construction have told us that we can expect to spend thousands of dollars and years trying to prove the damage if it happens to us. Sometimes homes are rendered uninhabitable but residents cannot quickly resolve issues and obtain compensation. They must invest thousands of dollars and years to attempt to prove their cases. Especially when citizens' largest asset, land, is taken, it is not fair to so thoroughly disadvantage affected landowners. Our democracy was established based on fair competition. That does not currently occur when the Natural Gas Act is employed.

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   Community members forced to live near the Mountain Valley Pipeline have been forced to learn proper environmental surveillance and monitoring strategies and to carefully document problems that we inevitably find, especially after significant rain events. Repeated failure of environmental protection measures is regularly documented and it does not appear that the company is incentivized to meet the letter of the law. Inspectors are stretched so far that they are not readily available to experience first hand the even the worst problems.

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In summary, from the landowner perspective, the problems with the nearly century old Natural Gas Act are numerous and significant. This list is not exhaustive. In short, the current law does not provide landowners with respect for ourselves or for our land. I have not made any attempt to propose solutions but am willing to do so. Thank you for considering our concerns.

Sincerely,

Irene E. Leech

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cc: Congressman Morgan Griffith; Congressman Don McEachin

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Elliston, VA 24087
ileech@vt.edu
540-230-5373 (cell)
4 February 2020

The Honorable Frank Pallone, Chairman
The Honorable Greg Walden, Ranking Member
House Energy Sub-Committee on Commerce
United States House of Representatives
2125 Rayburn House Office Building
Washington, DC 20515

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The Honorable Fred Upton, Ranking Member
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Sincerely,

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cc: Congressman Morgan Griffith; Congressman Don McEachin

February 3, 2020

The Honorable Frank Pallone
Chairman, House Energy Committee on Energy Commerce
United States of Representatives
2107 Rayburn House Office Building
Washington, DC 20515-3006

The Honorable Greg Walden
Ranking Member, House Committee Energy and Commerce
United States of Representatives
2183 Rayburn House Office Building
Washington, DC 20515-3702

The Honorable Bobby Rush
Chairman, House Committee on Energy and Commerce
Subcommittee on Energy
Washington, DC 20515-1301

The Honorable Fred Upton
Ranking Member, House Committee on Energy and Commerce
Subcommittee on Energy
Washington, DC 20515-2206

Dear Chairman Pallone, Chairman Rush, Ranking Member Walden, and Ranking Member Upton,

I want to express my gratitude to the Energy Subcommittee for holding the hearing entitled "Modernizing the Natural Gas Act to Ensure It Works For Everyone. " I plan on attending and would welcome the opportunity to meet with the committee if time allows. As a landowner with first-hand experience of this process, I can attest that the Natural Gas Act needs to be amended. When it was originally drafted in 1938, the NGA could not have anticipated the current boom in pipeline development and the ways in which its original intentions have been contorted to a point where it no longer adequately balances and protects the interests of all involved parties. I would encourage the subcommittee to consider the following amendments to the NGA.

First, the current notice requirements do not provide sufficient notice to landowners that they must intervene in certificate proceedings to preserve their right to *any* administrative or judicial review. The result is that landowners do not understand how, why, or when to intervene, and they lose the opportunity to do so. Implementing a notice process that addresses these issues is a simple step that would preserve landowner rights without undue burden to FERC or pipeline companies. As it stands, the process to intervene is far too complicated and can be simplified easily. All other government agencies have methods to file comments and be registered interveners that are much friendlier to stakeholders. Having worked with data collections on a statewide basis as part of the WV Education Information System, I have a working knowledge of data and comment collections and I would love the opportunity to discuss this going forward.

Second, the NGA requires landowners to apply to FERC for rehearing before they can seek judicial review of the Certificate decision. Amending the NGA to remove this requirement would bring the process into line with the procedure for judicial review of other federal agency actions. The use of "tolling orders" to thwart citizens and landowners from exercising their due process rights must halt immediately.

FERC must be reformed to be a "regulatory" agency instead of a "rubber stamp" agency whose actions help to expedite pipeline development to the determent of regular citizens and landowners. In my experience with the Mountain Valley Pipeline, the FERC Project Manager appears to be working for the pipeline company and the FERC Representative assigned to my "Spread" has been worthless in assistance with problems I have had with the developers and contractors of the MVP. On at least one occasion he has given me incorrect information which could have easily lead to serious consequences. I would love to have a forum where I could detail these grievances and experiences more fully.

FERC is also violating the Open Government Plan, which is official policy of FERC. I have filed the following as part of a letter submitted to the FERC Docketed Project CP19-477-000, known as the Greene Interconnect Project as well as the docket for the Mountain Valley Pipeline CP16-10-0000.

" *Open government is the governing doctrine which holds that citizens have the right to access the documents and proceedings of the government to allow for effective public oversight. In its broadest construction it opposes reason of state and other considerations, which have tended to legitimize extensive state secrecy. The origins of open government arguments can be dated to the time of the European Enlightenment. The concept of Open Government is broad in scope but is most often connected to ideas of government transparency and accountability.*

The Organization for Economic Co-operation and Development (OCED) approaches open government through the following categories: whole of government coordination, civic engagement and access to information, budget transparency, integrity and the fight against corruption, use of technology, and local development.

The term 'open government' originated in the United States after World War II. Wallace Parks, who served on a subcommittee on Government Information created by the U.S. Congress, introduce the term in his 1957 article "The Open Government Principle: Applying the Right to Know under the Constitution." After this and after the passing of the Freedom of Information Act (FOIA) in 1966, federal courts began using the term as a synonym for government transparency.

In more recent history, the idea that government should be open to public scrutiny and susceptible to public opinion dates back to the time of the Enlightenment, when many philosophies made an attack on absolutist doctrines of state secrecy.

Open government is widely seen to be a key hallmark of contemporary democratic practice and is often linked to the passing of freedom of information.

The above information was taken from this website:
https://en.wikipedia.org/wiki/Open_government

Furthermore, the way this Greene Interconnect Project has been handled seems to be a direct violation of The Open Government Directive which is suppose to encourage federal agencies to embody principles of collaboration, participation, and transparency to form the cornerstone of an open government. https://www.nationalservice.gov/about/open-government-initiative.

Looking further at this directive and you will find the Federal Energy Regulatory Commission's own policy on this initiative. It can be found at this website: https://ferc.gov/open.asp. It further states the following:

Welcome to FERC's Open Government Webpage. At FERC, we embrace the three principles of transparency, participation and collaboration forming the foundation of open government.

***Transparency**: Promotes accountability by providing the public with information about what the Government is doing. FERC information is available in eLibrary and our Major Orders section along with Decisions & Notices and technical conferences information.*

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There are several links on this page including a link to the FERC's Open Government Plan 2016. https://ferc.gov/open/plan-2016.pdf

FERC Federal Energy Regulatory Commission

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Collaboration: Improves the effectiveness of Government by encouraging partnerships and cooperation within the Federal Government, across levels of government, and between the Government and private institutions. FERC collaborates with NARUC on both Demand Response and Smart Grid.

- FERC's 2016 Open Government Plan
- Open Government Directive

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The entire filing can be found on the FERC Docket CP19-477-000, Submittal # 20190827-5022.

The NGA does not have any provision governing the fair property valuation processes, and the obligations of pipeline companies and the rights of landowners. The current process allows the pipeline companies unfair leverage in pipeline routing and compensation negotiations. An amendment should include the requirement that the pipeline company cannot use eminent domain to take private property unless a true public need has been established and that they may not take the property until it has paid the landowner the just compensation agreed to by negotiation or determined in a condemnation proceeding.

Finally, over the last five years I have educated myself due to having been very directly and adversely impacted by FERC processes, shortcomings, and collusion with pipeline companies that I would love to have a longer discussion. I have several ideas about how FERC can truly become a Public Service Agency and not just an extension of the Natural Gas Industry.

Please make this letter a part of the official record of this hearing.

Thank you for your consideration of these issues.

Sincerely,

Maury W. Johnson
3227 Ellison Ridge
Greenville, WV 24945

CC: Omar A. Guzman-Toro, Policy Analyst
Energy and Environment Committee on Energy and Commerce

4220 North Fork Rd.
Elliston, VA 24087
ileech@vt.edu
540-230-5373 (cell)
4 February 2020

The Honorable Frank Pallone, Chairman
The Honorable Greg Walden, Ranking Member
House Energy Sub-Committee on Commerce
United States House of Representatives
2125 Rayburn House Office Building
Washington, DC 20515

The Honorable Bobby Rush, Chairman
The Honorable Fred Upton, Ranking Member
House Committee on Commerce and Energy
2125 Rayburn House Office Building
Washington, DC 20515

Dear Chairman Pallone, Chairman Rush, Ranking Member Walden, and Ranking Member Upton,

First, thanks to the subcommittee for holding a hearing tomorrow on "Modernizing the Natural Gas Act to Ensure it Works for Everyone. As an affected landowner, I cannot find strong enough words to explain how poorly it currently works for affected landowners; neither our selves nor our property rights are respected . If you are unlucky enough that your land is chosen by a natural gas company, your American Dream and your goals for your life and property are thrown under the bus by the current law. Nothing makes the company respect or recognize or respond to the landowner's interests. Their use of your land forever trumps yours and they expect you to respect their highest claim on your property even as they ignore yours.

There are many issues that need to be fixed in the Natural Gas Act. Most landowners affected by this infrastructure do not have access to gas for our use. Thus, I will not comment on the rate issue. Our communities have been dealing with FERC and siting, permitting, and construction of natural gas pipelines for nearly six years. In my case, the 1804 farm my family has operated since 1903 is bisected by the Atlantic Coast Pipeline for 1.1 mile putting all of our structures in the middle of the incineration zone only four miles after the Union Hill Compressor Station and 16 miles from the cutoff valve. My husband has been managing this business for the last seven years and we planned to retire there. I currently live in a 1797 era home that is within two miles of the Mountain Valley Pipeline as it crosses our mountains and valleys.

The landowners and community members around these two pipelines view the Natural Gas Act as unfair and unbalanced, allowing the industry to ignore the people and communities through which they force their infrastructure. We believe our basic property, health and safety rights as citizens are being taken and that we do not even have means to defend or protect ourselves. Using FERC's processes and the eminent domain authority so automatically granted to the industry, our largest asset – our land – is taken over by industry. We are granted some payment on a one-time basis but we continue to pay property taxes, live with the health and safety risks that result, and forever are limited in our use of our property. I describe some of the problems we have encountered here and welcome the opportunity to propose and discuss possible solutions.

1. Inadequate analysis of need for infrastructure. FERC accepts the applicant's word that infrastructure is needed. It accepts unspecified use and undocumented need. It ignores simultaneously proposed infrastructure and potential adaptation of existing infrastructure owned by other entities and does not consider whether multiple projects are needed. Each project is evaluated in a vacuum. The applicant is not forced to fully consider alternatives and the FERC analysis of need is superficial and leads to overbuilding. This means that eminent domain may be granted for projects that are not required to meet true public need or convenience. Thus, landowners are deprived of constitutional rights and forced to adapt to living with and working around dangerous infrastructure for no good reason except to fill the coffers of people who totally ignore the impact on our businesses and our lives.

2. Inappropriate use of eminent domain: Since the industry can depend upon being granted the power of eminent domain, it approaches landowners with that threat from the first interaction. Industry has no motivation to seek win-win solutions or to consider how its use of property affects the remaining property and the owner's previous, current, or future plans for the property.

   The industry selects the landowners whose concerns it addresses and those whose concerns it ignores. FERC and the industry collaborate to meet the industry goals. It appears that FERC considers its job to be approving infrastructure and pleasing industry, not serving as a fair arbitrator between industry and landowners, ensuring that there is true public need for infrastructure. FERC allows the industry to call the shots, make the rules and enforce them. Currently landowners have no recourse. Eminent domain law only allows for landowner compensation with a one-time provision of cash. It includes no mechanism for a landowner to seek a compromise on the path of the infrastructure, additional safety measures, or anything else. Landowners can only appeal to the company's good will if they seek consideration for routing of infrastructure on their property, greater safety, or anything else. This puts landowners at a decided disadvantage from the company's initial contact.

3. Construction activities before all permits obtained When FERC issues the certificate, pipeline construction activities begin immediately. FERC does not require that all necessary permits be obtained prior to commencing activities that permanently change land, especially cutting large trees such as sugar maples used in a family business. As a result, landowners may have to live with downed but not removed trees, open ditches, runoff, and even watching pipes left in standing water rust when loss of or lack of a permit causes work to slow or stop.

4. Insufficient public involvement: By the time the public is informed of projects, plans are well along and many critical and sometimes irrevocable decisions are already made. Even when landowners inform the company of their needs and requests as soon as contact is initiated, landowners have no assurance that their requests will be considered, much less addressed, and no means of appeal. In the case of the Atlantic Coast Pipeline, it was routed predominantly through comparatively poor and unsophisticated communities.

   During the years we have been involved in the FERC processes, public participation has been systematically ignored and reduced. The so-called "public meetings" held by FERC are not required to be held in or near the most affected communities. Many affected landowners are elderly, low income and/or minorities. When landowners asked that a meeting scheduled at night in mid-February be delayed due to dangerous weather, the request was denied so few attended – but the company and FERC checked the box of having had a public meeting.

From the first scoping meeting, landowners and the public were confused about the rules and felt that we were not heard. Rules seemed to evolve. For example, no signs were allowed inside the building or in the ground at the first location. Speakers signed up as they arrived. These rules were anticipated the second night in a different location. However, when landowners arrived, industry signs were all over school grounds and everyone was forced to enter through a line of people offering industry stickers. Only industry supported speakers were given dinner on-site prior to the meeting. When the hearing began, landowners discovered that industry supported speakers had been inserted before the signup time began. As a result, those speakers dominated the hearing, and even though the time was extended many landowners got no opportunity to speak and the industry supported speakers left as they spoke, without hearing landowners concerns. At another meeting a person who had been recruited by the industry to speak at the hearing told of her recruitment experience that led her to attend to speak against the project. In another location, the FERC staff member leading the hearing repeatedly threatened to end the hearing if everyone did not immediately sit down. As soon as those standing sat, others arrived at the hearing and stood in back, leading to another threat. The environment was certainly not conducive to encouraging the public to provide input.

Since our pipelines completed the scoping stage, the standard FERC community meetings are done as an open house or private meetings with a transcriber and FERC representative. A mother was not even allowed to be present with her underage daughter as she made her statement. The community was unaware of what was said by speakers until the transcript was filed – and numerous errors were found in the transcript. Speakers had no means to get the errors fixed. We do not consider these to be public meetings!

At the local level, the Atlantic Coast Pipeline's owners orchestrated activities that appear to involve the community around its Union Hill Compressor Session. However, the reality is that the meetings were managed to avoid addressing the pollution and safety issues community members raised. The result of the activities was that the community was allowed to select the paint color of the compressor station building.

The Atlantic Coast Pipeline's owners have taken actions that have seriously divided the community and families near the Union Hill Compressor Station. It provided $5 million and expertise to some community members in exchange for their support of the project and to challenge the long active opposition. This has divided the community and even families.

Landowners do not see evidence of our concerns being addressed by FERC. Those who spoke and submitted written comments generally found that none of our concerns raised in the Draft Environmental Impact Statement were addressed in the Final Environmental Impact Statement. Even inaccurate data that was presented in the DEIS was not corrected after landowners provided accurate information. Further, FERC did not accept research that documented the fact of 83% minority population within a mile of the planned Union Hill Compressor Station. Instead it accepted inappropriate use of census tract level data that erased the historic environmental justice community.

5. Landowners are not given clear, easy to follow rules for the FERC Process. Many landowners are not even aware their land is being considered for a FERC project by the time the date by which those who wish to intervene must sign up. They may remain unaware for months after that date.

Landowners and other stakeholders find the process required to sign up as an intervenor to be difficult and confusing. Often landowners in the areas selected for infrastructure do not have access to affordable, dependable broadband service. Intervenors must sign up on line and are required to send a message to every other intervenor notifying them of that sign up. How is it fair to only allow people to sign up to possibly challenge decisions in the opening days of a years long decision making process?

Often the FERC website malfunctions and citizens find it impossible to sign up as intervenors, submit filings, or review industry filings. The website is especially prone to be inoperable near a submission deadline.

The information provided to landowners about the FERC process is not specific or complete. Most landowners learn the rules, especially the unwritten rules, through the process. FERC has not yet established the landowner office statutorily approved decades ago. On Friday, the FERC Chair announced that an office will be formed to address landowner appeals, however appeals are only one aspect of landowner needs.

6. <u>FERC rules are designed to give the industry advantage over landowners.</u> This is true in every step of the process. For example, landowners have 30 days to appeal the decision to certificate a project. FERC is supposed to rule on the requests within 30 days but routinely does not act on those requests, sometimes until after the project is completed and in service. Using "tolling orders" FERC allows the company to systematically construct the project and put it into service while landowners are prohibited from appealing the certification decision to the courts until FERC renders a decision on the appeal to reconsider. This effectively holds the landowner hostage until the appeal is rendered moot. This is wrong.

7. <u>The FERC process does not adequately respect and involve other federal and state decision makers</u>. Examples of this problem are too numerous to fully cover. FERC seeks to limit involvement of other agencies and does not respect their authority, especially if their decisions do not expedite the FERC process.

   Many have concern about the thoroughness of the NEAPA process used by FERC. If you read the FEIS for multiple projects, it can feel like you are reading the same statements repeatedly. Landowners believe decisions are "rubber stamped." Agencies such as those responsible for state historical resources may not become aware of projects in time to sign up as an intervenor. In our experience, FERC denied the request our historical resources agency made after becoming aware of the project after it had been under development for several years.

   Safety issues are relegated to PHMSA in the Department of Transportation after a project is in service, but PHMSA is not a decision maker in the approval or construction processes. FERC does not consider safety a top priority. PHMSA has never been adequately funded, so affected landowners have no way to feel that our safety is assured when dangerous infrastructure is forced onto our property. On November 8, 2019 former NTSB Chairman Jim Hall told participants at the Pipeline Safety Trust Annual Meeting in New Orleans that the pipe installed in eastern Virginia down the center of a major roadway through the middle of a low income community should have never been approved by any level of government. It is

another blatant example of putting infrastructure in communities with the fewest resources. No criteria exist to specify how close pipeline infrastructure can be sited to existing infrastructure and when damage occurs, landowners are forced to court to fight for compensation. Some propose that localities establish zoning regulations to avoid encroachment on pipeline infrastructure but nothing protects landowners from encroachment by pipelines on our homes and businesses.

Through the years of the process for the Atlantic Coast and Mountain Valley Pipelines, we have been repeatedly told that our state and local governments have no standing in the FERC process and cannot help us with the problems we've raised as we've experienced it. We find it frustrating that there is no place where we can get dependable support. It feels like all levels of government are aligned with the industry to take advantage of us. We cannot get a thorough baseline health analysis prior to construction and landowners whose water sources have been destroyed by pipeline construction have told us that we can expect to spend thousands of dollars and years trying to prove the damage if it happens to us. Sometimes homes are rendered uninhabitable but residents cannot quickly resolve issues and obtain compensation. They must invest thousands of dollars and years to attempt to prove their cases. Especially when citizens' largest asset, land, is taken, it is not fair to so thoroughly disadvantage affected landowners. Our democracy was established based on fair competition. That does not currently occur when the Natural Gas Act is employed.

8. Incomplete and inadequate climate analysis As previously described, it does not appear that FERC embraces the NEPA process during the approval phase or is willing to protect the environment in the construction phase of projects. We were frustrated that FERC refused to consider the cumulative impact of the Atlantic Coast and Mountain Valley Pipelines or how the existing Transco Pipeline could meet the needs with minor enhancements.

   Although the rules indicate that segmentation of projects is not allowed, it appears to occur regularly. Since the Atlantic Coast and Mountain Valley Pipelines have been proposed, numerous changes/additions have been revealed.

9. Inadequate construction oversight
   Community members forced to live near the Mountain Valley Pipeline have been forced to learn proper environmental surveillance and monitoring strategies and to carefully document problems that we inevitably find, especially after significant rain events. Repeated failure of environmental protection measures is regularly documented and it does not appear that the company is incentivized to meet the letter of the law. Inspectors are stretched so far that they are not readily available to experience first hand the even the worst problems.

   Some landowners have experienced property damage outside the construction right of way. Problems range from gates locked so that the landowner could not access the property, to repeatedly damaged mailboxes, to blocked driveways, to runoff from failed protection measures. Other landowners have experienced unpleasant interactions with construction workers, equipment and supplies.

In summary, from the landowner perspective, the problems with the nearly century old Natural Gas Act are numerous and significant. This list is not exhaustive. In short, the current law does not provide landowners with respect for ourselves or for our land. I have not made any attempt to propose solutions but am willing to do so. Thank you for considering our concerns.

Sincerely,

Irene E. Leech

Irene E. Leech

cc: Congressman Morgan Griffith; Congressman Don McEachin

February 3, 2020

The Honorable Frank Pallone
Chairman, House Energy Committee on Energy Commerce
United States of Representatives
2107 Rayburn House Office Building
Washington, DC 20515-3006

The Honorable Greg Walden
Ranking Member, House Committee Energy and Commerce
United States of Representatives
2183 Rayburn House Office Building
Washington, DC 20515-3702

The Honorable Bobby Rush
Chairman, House Committee on Energy and Commerce
Subcommittee on Energy
Washington, DC 20515-1301

The Honorable Fred Upton
Ranking Member, House Committee on Energy and Commerce
Subcommittee on Energy
Washington, DC 20515-2206

Dear Chairman Pallone, Chairman Rush, Ranking Member Walden, and Ranking Member Upton,

I applaud the Energy Subcommittee on tomorrows hearing entitled "Modernizing the Natural Gas Act to Ensure It Works For Everyone ". As a landowner adjacent to property where a pipeline (MVP) goes through with first-hand experience of this process, I can attest that the Natural Gas Act needs to be amended. When it was originally drafted in 1938, the NGA could not have anticipated the current boom in pipeline development and therefore, no longer adequately balances and protects the interests of all involved parties. I would encourage the subcommittee to consider the following amendments to the NGA.

First, the current notice requirements do not provide sufficient notice to landowners that landowners must intervene in certificate proceedings to preserve their right to *any* administrative or judicial review. The result is that landowners do not understand how, why, or when to intervene, and they lose the opportunity to do so. Implementing a notice process that addresses these issues is a simple step that would preserve landowner rights without undue burden to FERC or pipeline companies.

Also, the process to intervene is far too complicated and can be simplified easily. All other government agencies have much stakeholder friendlier methods to file comments and be registered interveners.

Second, the NGA requires landowners to apply to FERC for rehearing before they can seek judicial review of the Certificate decision. Amending the NGA to remove this requirement

would bring the process into line with the procedure for judicial review of other federal agency actions.

(ADD ADDITIONAL COMMENTS HERE)

Finally, the NGA does not have any provision governing the fair property valuation processes, and the obligations of pipeline companies and the rights of landowners. The current process allows the pipeline companies unfair leverage in pipeline routing and compensation negotiations. An amendment should include the requirement that the pipeline company cannot use eminent domain to take private property unless a true public need has been established and that they may not take the property until it has paid the landowner the just compensation agreed to by negotiation or determined in the condemnation proceeding.

Please make this letter a part of the official record of this hearing.

Thank you for your consideration of these issues.

Sincerely,

Paula Mann

3413 Ellison Ridge

Greenville, WV. 24945

CC: Omar A. Guzman-Toro, Policy Analyst
Energy and Environment Committee on Energy and Commerce

February 4, 2020

The Honorable Frank Pallone
Chairman, House Energy Committee on Energy Commerce
United States of Representatives
2107 Rayburn House Office Building
Washington, DC 20515-3006

The Honorable Greg Walden
Ranking Member, House Committee Energy and Commerce
United States of Representatives
2183 Rayburn House Office Building
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The Honorable Bobby Rush
Chairman, House Committee on Energy and Commerce
Subcommittee on Energy
Washington, DC 20515-1301

The Honorable Fred Upton
Ranking Member, House Committee on Energy and Commerce
Subcommittee on Energy
Washington, DC 20515-2206

Dear Chairman Pallone, Chairman Rush, Ranking Member Walden, and Ranking Member Upton,

I applaud the Energy Subcommittee on tomorrows hearing entitled "Modernizing the Natural Gas Act to Ensure It Works For Everyone ". I plan on attending and would welcome the opportunity to meet with the committee if time allows. As a landowner with first-hand experience of this process, I can attest that the Natural Gas Act needs to be amended. When it was originally drafted in 1938, the NGA could not have anticipated the current boom in pipeline development and therefore, no longer adequately balances and protects the interests of all involved parties. My name is Neal Laferriere and I and my family is directly affected by the Mountain Valley Pipeline. I could type a lot of patented responses that all of the organizations have as base arguments but I want to personally appeal to you based on my experience.

When MVP came to our farm, we had no idea who to talk to, we couldn't afford representation. I imagine that's probably the case with most of the regular people that have to deal with large infrastructure projects. We didn't want the pipeline on our property, but couldn't convince MVP to relocate, they eventually started talking about eminent domain and we were scared, we ultimately chose to sign an easement because we thought it was our only option.

Why are we as landowners not given the same thought, the same protections that these large companies are? Who is supposed to protect us and make sure we are not being taken advantage of or bullied? The Natural Gas Act is an unfair biased set of rules that favor business over landowners and their property rights. It gives companies the right to come in and rake via condemnation a landowner's property and begins construction prior to a settlement, prior to the company even having all of the federal and state permits fully guaranteed for the project. I

have seen these permits get revoked after months and months of construction? Some of these projects may never get completed and there is no reversing the damages caused by the quick take and condemnation process. I ask that you consider the land owner and try to come up with a better way to ensure they are treated fairly and that these corporations have stricter requirements to help prevent companies from starting projects that could result in stranded assets, destruction of land, and family lands

Please make this letter a part of the official record of this hearing.

Thank you for your consideration of these issues.

Sincerely,

Neal Laferriere
437 Blackberry Springs
Alderson WV 24910

CC: Omar A. Guzman-Toro, Policy Analyst
Energy and Environment Committee on Energy and Commerce

Congressmembers Bobby Rush, Chairman

Fred Upton, Ranking member

House E&C, Energy Sub-Committee

CC: Paul Tonko, NY, member of Energy Sub-Committee

Dear Congressmembers,

I applaud the Energy Subcommittee on the upcoming hearing entitled "Modernizing the Natural Gas Act to Ensure It Works For Everyone." As the Executive Director of an organization working with eminent-domain-threatened landowners all across the country, I have heard from many people with first-hand experience of this process, and I can attest that the Natural Gas Act needs to be amended.

When it was originally drafted in 1938, the NGA could not have anticipated the current boom in pipeline development nor the changing landscape of alternative energies and, therefore, no longer adequately balances and protects the interests of all involved parties. I would encourage the subcommittee to consider the following amendments to the NGA.

First, the current notice requirements do not provide sufficient notice to landowners that landowners must intervene in certificate proceedings to preserve their right to *any* administrative or judicial review. The result is that landowners do not understand how, why, or when to intervene, and they lose the opportunity to do so. Implementing a notice process that addresses these issues is a simple step that would preserve landowner rights without undue burden to FERC or pipeline companies.

The way the process currently stands, it is no wonder that landowners feel they are being fooled. Why shouldn't it be everyone's focus to make sure that a landowner knows what is being asked of them and clearly sees how to intervene in the process? Surely, the pipeline companies are not looking to surreptitiously steal land from private landowners – so why be opaque? You should not need legal counsel to read a notice about your own land.

Second, the NGA requires landowners to apply to FERC for rehearing before they can seek judicial review of the Certificate decision. Amending the NGA to remove this requirement would

bring the process into line with the procedure for judicial review of other federal agency actions.

Finally, the NGA does not have any provision governing the property valuation processes, and the obligations of pipeline companies and the rights of landowners. An amendment should include the requirement that the pipeline company may not take the property until it has paid the landowner the just compensation determined in the condemnation proceeding (or deposited that amount with the court).

Thank you for your leadership on the subcommittee and for your consideration of this issue.

Sincerely,

Rebekah Sale

Property Rights and Pipeline Center

New York

Dear: Chairman Congressman Bobby Rush
Ranking Member Congressman Fred Upton,
House Energy Subcommittee

We are landowners in Oregon and live along the Coos Bay Estuary. Two alternatives of the Pacific Connector Gas Pipeline (PCGP) pass through our property and we are troubled that the Natural Gas Act allows the Federal Energy Regulatory Commission (FERC) to possibly give Pembina, a Canadian company, the authority to use eminent domain to take our property for this project.

On our small ranch we raise blueberries and livestock. We have also dedicated a large part of our ranch for restoration: we have restored 14 acres of salt marsh and have created overwinter habitat for the threatened Coho salmon. We are planning on restoring another 10 acres for a freshwater marsh.

We understand the normal use of eminent domain when there is a project that produces a public benefit, such as a power line or highway. In fact, we have given an easement to the local airport district so they could improve the local airport to allow larger airplanes to access our community. We know that projects that provide services for the local community are essential and we are willing to do our part to get them built.

However, the PCGP is a project, potentially authorized under the Natural Gas Act, that does not provide any services to the local population, or in fact to any other state in our country.

The PCGP is being proposed by Pembina, a Canadian company, that will carry only Canadian natural gas across our state, and then it will be supercooled at the proposed Jordan Cove LNG facility and transported to Asia.

NOT ONE BTU OF THE GAS CARRIED BY THIS PIPELINE WILL BE CONSUMED IN THE UNITED STATES. THERE IS NO PUBLIC SERVICE.

We do not feel that it should be appropriate for the Natural Gas Act to be able to authorize the use of eminent domain when there is no public service, and when foreign natural gas will be transmitted across the United States for export. The only benefit of this project is to this Canadian company and its shareholders.

It is not right to "take" Oregonians property for the sole benefit of a Canadian pipeline company.

We request that this letter be read into the official Congressional record. Thank you.

Respectfully,

Larry and Sylvia Mangan
93780 Hillcrest Lane
North Bend, OR. 97459
(541)756-7543

Dear Mr. Omar A. Guzman-Toro,

I applaud the Energy Subcommittee on the upcoming hearing entitled "Modernizing the Natural Gas Act to Ensure It Works For Everyone ". As a landowner with first-hand experience of this process, I can attest that the Natural Gas Act needs to be amended. When it was originally drafted in 1938, the NGA could not have anticipated the current boom in pipeline development and therefore, no longer adequately balances and protects the interests of all involved parties. I would encourage the subcommittee to consider the following amendments to the NGA.

First, the current notice requirements do not provide sufficient notice to landowners that landowners must intervene in certificate proceedings to preserve their right to any administrative or judicial review. The result is that landowners do not understand how, why, or when to intervene, and they lose the opportunity to do so. Implementing a notice process that addresses these issues is a simple step that would preserve landowner rights without undue burden to FERC or pipeline companies.

Second, the NGA requires landowners to apply to FERC for rehearing before they can seek judicial review of the Certificate decision. Amending the NGA to remove this requirement would bring the process into line with the procedure for judicial review of other federal agency actions.

Finally, the NGA does not have any provision governing the property valuation processes, and the obligations of pipeline companies and the rights of landowners. An amendment should include the requirement that the pipeline company may not take the property until it has paid the landowner the just compensation determined in the condemnation proceeding (or deposited that amount with the court).

Thank you for your leadership on the subcommittee and for your consideration of this issue.

Please have my comments entered into the record.

Sincerely,

Christina Melocik
435 Craighill Dr.
Charles Town,WV 25414

Ron Schaaf, Deb Evans and Bill Gow
Affected Landowners
Testimony for Subcommittee on Energy
"Modernizing the Natural Gas Act to Ensure It Works for Everyone."

The Honorable Bobby Rush
Chairman
Subcommittee on Energy
House Committee on Energy and Commerce
2188 Rayburn House Office Building
Washington, DC 20515

The Honorable Fred Upton
Ranking Member
Subcommittee on Energy
House Committee on Energy and Commerce
2183 Rayburn House Office Building
Washington, DC 20515

February 4, 2020

Dear Chairman Rush and Ranking Member Upton,

We are landowners who live or own property along the proposed route of the Pacific Connector Gas Pipeline, which is part of the Jordan Cove Energy Project proposed for southwest Oregon. We thank the Energy Subcommittee for holding a hearing on February 5 entitled "Modernizing the Natural Gas Act to Ensure It Works for Everyone."

Most of us have been dealing with the threat of this speculative pipeline project for 15 years. We are certainly of the opinion that the NGA does *not* currently work for everyone. As it stands, the process favors fossil fuel companies with their vast resources. Landowners are put in a precarious position, having to use our own limited resources to learn about the process, our rights and our options. The only reason we can knowledgeably comment both on the JCEP project, now in its third round, and on this hearing is precisely because we have had 15 years to learn. Most landowners get one chance to try and understand the process and are put at a complete disadvantage.

The Natural Gas Act should be amended to make the process more accessible for landowners and to level the playing field when it comes to negotiations between landowners and fossil fuel companies. Specifically, we encourage the subcommittee to consider the following amendments to the NGA.

Require 100% voluntary easements and binding agreements for LNG export projects.

Several features make the Jordan Cove proposal unlike any other LNG project here in the United States. For one, it is an LNG export project owned by a Canadian company, Pembina, which will likely be used to convey, currently stranded Canadian natural gas to Asian countries. This project is not for a public use nor is it likely to ship U.S. sourced gas and yet it is being considered under the Natural Gas Act which will trigger the use of eminent domain to obtain easements.

In 15 years, Pembina/Jordan Cove has not secured a single binding precedent agreement for LNG off-take. That fact, in combination with the zero precedent agreements for pipeline capacity and low percentage of easements the company had acquired, prompted FERC to deny Jordan Cove a Certificate of Public Convenience and Necessity in 2016. Although the company has acquired more easements since then, there are still at least 80 landowners who have not voluntarily signed agreements with the company, and who may ultimately face having their land taken through eminent domain. Subjecting U.S. property owners to eminent domain for a speculative venture with no binding contracts should not be allowed, as it clearly puts the needs of a private corporation (and a Canadian one at that) above the rights of U.S. citizens.

When determining public interest and need, FERC should hold import and export projects to different standards and should require 100 percent voluntary easements from private property owners. FERC should also require the company to secure binding agreements for off-take in order to demonstrate a compelling need for the project.

Implement a notice process that helps landowners understand their right to intervene in certificate proceedings.

We landowners maintain a database of landowners and properties affected by the Pacific Connector pipeline. Many of the landowners in rural southwest Oregon are older: 75% are over 65; 95% are over 55. Many do not have computer skills or convenient access to a computer or the Internet; for many, the nearest library is miles away.

The intervener process is confusing and intimidating to those who have never encountered it before. Many landowners did not understand that they had the right to file for intervener status until it was too late. The current requirements for notifying landowners about certificate proceedings are woefully inadequate. FERC should implement a notice process and provide resources to landowners to help them understand what rights we have and how to engage in the process when we are first approached by a company who wants to use our property for their natural gas pipeline.

Remove the requirement that landowners apply to FERC for rehearing before they can seek judicial review of the Certificate decision.

Current FERC process allows the use of a 30-day “tolling order” which grants FERC more time in which to decide whether or not to approve a rehearing request. A challenger such as a landowner must wait for a final rehearing decision from FERC before taking their case to court. In some cases, consecutive tolling orders have resulted in a delay of one to one-and-a-half years, during which time landowners’ hands are tied. Meanwhile, the pipeline company is allowed to proceed with “preconstruction” and “construction,” and easement takings can be significantly damaged before the project is deemed valid. Removing this requirement would bring the process into line with the procedure for judicial review practiced by other federal agency actions.

Establish procedures for engaging with landowners and determining fair market value.

Currently, the NGA does not have any provisions governing how properties are evaluated, the rights of landowners, and what obligations the pipeline companies hold with regard to landowners. Consequently, pipeline companies are able to use the process to their advantage. In our case, because the process has dragged on for so many years, there is a huge disparity in the easement agreements with landowners who settled with the company early on and those who “held out” until recently.

Compensation packages for landowners along the Pacific Connector route range from $500 to over $1 million. This does not represent a process in which a company respectfully engages with landowners and offers fair market value for an easement; instead, it reflects a process in which the pipeline company takes advantage of its position and resources, using time, money, and the threat of the unknown to persuade landowners to sign. In fact, we know of some cases where landowners felt threatened or pressured to sign, and/or were misled about the process. Several landowners were told falsely that Jordan Cove was “a done deal” and that this was their only chance to sign, or be threatened with eminent domain if they did not. Some of our elderly landowners have been visited incessantly by land agents who employ a variety of questionable tactics, including researching deceased family members, to acquire their easements. In fact, one of our landowners has requested an FBI investigation to look into landowners’ complaints about the behavior and actions of Pembina land agents.

Eliminate “Quick Take”

We are very concerned about what could happen should FERC issue a conditional Certificate of Public Convenience and Necessity for Jordan Cove/Pacific Connector. Currently, a natural gas company can use “quick take” to take immediate possession of private land and can begin development long before paying the owner. We have been following cases such as the Atlantic Sunrise Pipeline where this has happened. We strongly urge the adoption of a requirement that a pipeline company may not take the property until it has paid the landowner the just compensation determined in the

condemnation proceeding. The Natural Gas Act needs to be amended so that this provision is crystal clear and not allowed.

Eliminate Conditional Certificates

FERC issuance of conditional orders must be eliminated so that the conveyance of eminent domain does not precede approval or denial of key permits under state and local authorization.

We strongly believe that companies should not be able to take possession of land through eminent domain until they have met *all* of the permitting requirements, even if they have been issued a Certificate of Convenience and Necessity from FERC. In the case of Jordan Cove/Pacific Connector, the company has failed to acquire the 401 Water Quality certification from the Oregon Department of Environmental Quality (DEQ) and a removal-fill permit from the Department of State Lands (DSL). We don't think it's right that the company could take easements through eminent domain and begin developing our land (clearing trees, removing vegetation, etc.) when there's a chance this project will not be ultimately approved.

There is only one effective remedy to this: Stop allowing FERC to issue conditional permits, particularly if the condition includes state-authorized permits acknowledged in the NGA as defined by the Federal Water Pollution Control Act, the Clean Air Act, and the Coastal Zone Management Act.

Redefine "Construction"

A Certificate of Public Convenience and Necessity from FERC conveys the power of eminent domain. Once received, pipeline companies such as Pacific Connector can immediately file condemnation proceedings, even if the Certificate is a conditional order. Once granted, these companies may commence "pre-construction": falling trees, digging, and degrading the property, even before the conditions of pending state permits have either been denied or met. This is a clear violation of due process and our rights as landowners and should be rectified by Congress.

To better protect landowners, "Construction" should be clearly defined as **any** physical alteration of property, including tree cutting, digging, or physically changing, dismantling or moving any part of the property.

Insisting that FERC not issue conditional permits and re-defining "construction" would provide better protections against harm to landowners currently allowed, prior to landowners getting their day in court and prior to the company getting access to our properties.

Thank you for your leadership on the subcommittee and for your consideration of this issue.

Sincerely,

Deb Evans and Ron Schaaf
Affected Landowners since 2005
9687 Highway 66
Ashland, Oregon 97520

Bill Gow
Affected Landowners since 2005
4993 Clarks Branch Rd
Roseburg, OR 97470

My name is Karolyn Givens.

I own the designated Historic Leffel farm in Newport Virginia which Givens family members have been farming for years.

In 1980, my husband Clarence, an Air Force meteorologist and Viet Nam Veteran, retired and we returned to his homeplace so that he could join his cousins in farming. While we lived on a farm in Blacksburg, Clarence also farmed the nearby Leffel farm which is situated in Sinking Creek Valley. The 1836 farmhouse and barns are located along the creek, while the pastures, crop lands and timberland are located on the steep of Sinking Creek Mountain.

In 2004, Clarence and I had an opportunity to purchase the Leffel property. We bought it because it SEEMED a sound investment, a property that would increase in value, that could be subdivided eventually, a property that we could leave in our estate for our offspring. We continued to farm it and rented the house to the same person who had been living there. Thus, the property provided both farm and rental income.

In 2015, we learned the proposed route for the Mountain Valley Pipeline would bisect the Leffel farm from west to east, across its entirety. It was to be built up and down the steep Appalachian Mountains, as its name implies. It would be constructed using 42 inch diameter pipe carrying gas at 1400 psi (the largest natural gas pipe attempted in the United States). The land the farm is located on is steep and Karst in nature, complete with sink holes, caves, ridges and outcroppings of limestone, ephemeral ponding, and a spring which serves the farm. In addition, that area of Virginia is seismic, with relatively frequent seismic activity.

Clarence and I were immediately concerned about the potential for explosion, given the size of the pipe and the pressure of gas within it, the steep unstable land it would be crossing, and for good reason. With some research we found that if the pipeline were to explode, the calculated Blast Zone (i.e., total incineration of buildings and vaporization of all people or animals caught in that zone) is greater that 1050 feet). The Evacuation Zone for a pipeline of this magnitude is 3583 feet in all directions. If caught in the Evacuation Zone, there is a chance that, if awake and capable of running, people and animals might escape but would likely suffer serious burns, and structures would still burn to the ground. The entire Leffel farm is within either the Blast or Evacuation zone. MVP runs through communities in 5 counties in SW Virginia, in essence putting whole communities in this kind of danger. Those of us who have property in the Blast and Evacuation Zones feel very much at risk, as if we will be sitting on a time bomb.

Our response to learning all of this was to join a resistance group, formed as a 501c3. We hired a lawyer, thinking that our work and reason would prevail, and surely the MVP would not be built, at least not through these mountains. Our resistance group which Clarence chaired, worked hard over the next two years meeting with MVP, writing letters to all of our legislators at both the State and Federal Level, the Department of Environmental Quality, the Forest Service, the Virginia Historic Preservation Officer, to anyone and everyone we hoped would support us.

In late August 2017, Clarence died very suddenly. I decided without question to continue our resistance to the pipeline. Two months later, in October 2017, I discovered a 3 inch thick document duct taped to my front door notifying me that the Leffel farm had been condemned. In January 2018, over 300 property owners were ordered to Federal District Court in Roanoke for condemnation proceedings, with Judge Elizabeth Dillon presiding. Chris Johns, my Eminent Domain Lawyer, asked me to testify and I did. We lost that battle. MVP, was awarded Rights of Ways on all of the properties. They immediately issued Tolling Orders so that they could begin construction even though they still did not have all of the required Certificates, and before they had remunerated property owners for the land.

In May 2018, MVP cleared the 125 foot Right of Way of all timber and began earth moving. In July of 2018, as they were crossing a Karst ridge on the mountain above the Leffel Farmhouse, they purposely dynamited part of a cave, and did not inform me of that. They had to stop work on that ridge, but they still have 20-30 holes drilled further down the ROW that they intend to use in blowing up the remaining part of the cave that lies in the path. My fresh water spring runs under that cave, under the right of way, and it will be directly obliterated.

Thirteen days after Clarence's death I received an offer from MVP of $59,515.16 for damages to the property, a property that we paid over a half million for, and we worked hard in order to be able to do that. I have gone through the requisite mediation with MVP and their last offer in October 2019 was $159,000 for damages. While they are willing to pay for the 4 acres they are using, the real damages are to the property in its entirety. How will I ethically be able to continue to rent the house to someone who will be living in the Blast/Evacuation Zone? And while we bought the Leffel Farm as an investment for future development, who would ever buy such a property given the risk? As a widow, the funds I earn from crop fields, pastures, and house rentals, as well as the value of the property as a whole is important to me.

There are many stories like mine, many worse. This is an Eminent Domain issue, and it is an issue about the practice of Quick Take and Tolling orders. There are other important issues to consider, but for the House Committee on Energy & Commerce, and the Energy Subcommittee's Oversight hearing on the Natural Gas Act, as a citizen I hope this is helpful information.

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