



NORTHWEST PROPERTY RIGHTS COALITION

January 30, 2008

Mark Hirschfield
Federal Energy Regulatory Commission
888 First Street, NE
Washington, DC 20426

Mr. Hirschfield,

Thank you for your prompt reply to my prior letter. To be sure I understood you correctly here is my understanding of our conversation. If you feel I have not adequately represented your responses, please let me know.

When I requested answers in writing, you demurred, preferring to engage in a "conversation."

1. For what period of time is a FERC certificate of public convenience and necessity (a "certificate") valid?
In perpetuity.
2. Is a FERC certificate transferrable and to what extent?
Yes, through application to FERC. Rarely invoked.
3. What federal resources are available to landowners to help them negotiate a fair easement?
FERC acts as a "parent" to resolve differences if requested, but FERC is not a party to any formal negotiation. You are not aware of any legal or other resources.
4. Is there any statute or policy governing how payment shall be made: lump sum, royalty?
No.
5. Is there any statute or policy governing how long the term of the easement shall be: in perpetuity, 99-years?
No, but you argued that anything less than in perpetuity would be impractical as it might enable a single owner on a pipeline to hold the system "hostage" at a future date. You were unaware of laws in Canada calling for contracts to be re-examined every 5 years.
6. In December 2001 FERC issued, "Ideas for Better Stakeholder Involvement in the Interstate Natural Gas Pipeline Planning Pre-Filing Process." What is the status of the recommendations? Is this still current FERC policy?
You were not aware of this document or whether it was current policy or whether it had been updated or superseded. However you surmised that it had been implemented as evidenced by the existence of the pre-filing process.
7. Will FERC accept invitations to attend landowner-only meetings?
There is no policy not to, but the meetings would be publicly noticed and you would be surprised if applicants did not attend.

8. If an HDD bore fails and has to be abandoned, what regulatory constraints exist on the number, timing and location of new bores?
You were not aware of this term, but stated that any deviation from the actual certificate would need to be brought back to FERC.
9. A certificate conveys the power of eminent domain, but do any rules exist specifying what is properly included in the recorded easement and what is in separate contracts. Example: additional, temporary space needed for a lay-down site?
No.
10. Is there any protection for organic farms that forbid the use of toxics in the easement corridor?
Not specifically, but a good example of something to include as a comment on a filing to be addressed.
11. What protections are in place if eminent domain is exercised in a depressed real estate market?
Nothing specifically.
12. USC 15B, § 717f, Construction, extension, or abandonment of facilities, sub (h) reads "Provided, That the United States district courts shall only have jurisdiction of cases when the amount claimed by the owner of the property to be condemned exceeds \$3,000."
Does this not mean, in practice, that virtually all disputes will be handled in federal courts?
Yes. Federal courts, but using state law.
13. Has FERC ever studied the question of "just compensation" or the effect on property values of pipeline proximity?
No. FERC collects no data that would enable it to evaluate this.
14. What, if any, limitations are there on foreign pipeline ownership?
None.
15. Does FERC have the authority to seal, or conversely, require easement agreements to be made public?
You suggested, and we agree that the question is better phrased, "Do the courts have the authority to seal, or conversely, require easement agreements to be made public?" The answer being yes, but the physical easement and any ongoing payments would have to be recorded.
FERC does not require, nor does it collect and catalog the easement agreements.
16. What does FERC consider adequate due diligence on the part of the applicant in considering alternative routes?
You asserted that FERC requires extensive evaluation of alternatives.
17. When does FERC address comments and motions before it?
Mostly at the Final EIS, but you cited the example of CP-07-14, by which I assume you meant the following:

WIC shall file with the Secretary detailed alignment maps/sheets and aerial photographs at a scale not smaller than 1:6,000 identifying all route realignments or facility relocations, and staging areas, pipe storage yards, new access roads, and other areas that would be used or disturbed and have not been previously identified in filings with the Secretary. Approval for each of these areas must be explicitly requested in writing. For each area, the request must include a description of the existing land use/cover type, and documentation of landowner approval, whether any cultural resources or federally listed threatened or endangered species would be affected, and whether any other environmentally sensitive areas are within or abutting the area. All areas shall be clearly identified on the maps/sheets/aerial photographs. Each area must be approved in writing by the Director of OEP before construction in or near that area.

Coincidentally, for your reference, this section places requirements on HDD, to wit:

If WIC is not able to complete the horizontal directional drill (HDD) at the lower Green River crossing near milepost 31.4, WIC shall not proceed with an alternative crossing method until it has filed a site-specific Alternate Crossing Plan. The Alternate Crossing Plan shall include site-specific drawings identifying all areas that would be disturbed by construction and identify measures that would avoid or minimize potential impacts on federally listed fishes. WIC shall provide its Alternative Crossing Plan to the Bureau of Land Management (BLM), U.S. Fish and Wildlife Service (FWS), U.S. Army Corp of Engineers, Utah Division of Environmental Quality, and other agencies responsible for issuing permits to implement this plan. WIC shall not begin a non-HDD crossing of the lower Green River until the FERC completes any necessary Endangered Species Act Section 7 consultation with the FWS, and the Director of OEP notifies WIC in writing that it may proceed with the alternate river crossing method.

Sincerely

Marc Auerbach, Chair