



## NORTHWEST PROPERTY RIGHTS COALITION

February 12, 2008

Chairman Joseph T. Kelliher  
Federal Energy Regulatory Commission  
888 First Street, NE  
Washington, DC 20426

Chair Kelliher,

Recently you published, "Myths Regarding Federal Electric Transmission Siting" (attached). We wish to challenge your assertion in busting myth 4, route changes, that FERC has a fair and reasonable system for establishing the route.

You say, "One can be assured that the proposed route in an application will not be the route finally approved by FERC" and point with satisfaction to the number of route changes on three projects. We argue this is evidence of a failed system. In the three examples cited, 178 consequential route changes were made in only 656 miles of pipeline; an average of one significant change every 3.7 miles. Yet, the crucial bit of information is missing. What was the average offset distance from the baseline route?

Since FERC knows, indeed "assures" us, the initial route is only a placeholder; we submit that the initial route should be a corridor reflecting the average deviation from the baseline route based on prior experience. Not a line. This would have several salutary effects:

- It would increase the notification area; decreasing the need for later notification as the route shifts.
- This in turn would decrease the number of landowners caught by surprise when adjustments drag them into a process that is already underway.
- Ensure the impacts are fully studied so that post-approval route changes are less likely to be in unstudied areas.
- Lower the animus generated by a baseline being drawn through a living room.

Another issue with the current FERC process is the duration of uncertainty. As your examples show some changes are made early on, some at the EIS, still others in the final order, and yes, even after the final order. In Myth 3, you cite CP06-85, which upon investigation, turns out to be Alexander Farms. As stated, the final order included moving the pipeline 300-feet north. We contacted the farm near Carthage, Texas and discovered the actual route, as built, is one-quarter mile away on another property altogether. Thus, it seems the current FERC system leaves landowners in limbo for years and the route of the pipeline uncertain until the pipe is actually in the ground.

You reference "Ideas for Better Stakeholder Involvement in the Interstate Natural Gas Pipeline Planning Pre-Filing Process" (FERC, December 2001), but a phone conversation with a FERC representative on 1/30/2008, could not confirm if this was or was not FERC policy or if it had been updated. Nonetheless, it says in part,

"Pipeline companies are encouraged to seek out greater involvement from the various groups early in the planning so those who are interested can participate in the decision-making process. Agencies and citizens are encouraged to get involved early and make their views known to the companies as soon as they learn about a potential project. *The goal is to achieve consensus and settlements among the groups and the company about an acceptable project design* [emphasis added]. FERC staff has been asked to offer assistance early in the process to support all stakeholders. Earlier and more productive involvement will lead to better project designs and less contentious applications to FERC and other agencies."

It seems from this that FERC has been "asked" to provide greater assistance in reaching "consensus," but it is not clear that FERC has accepted this role, and if so, what the process for developing consensus is.

Further you write, "In fact, the examination and adoption of alternative routes and alterations in the proposed route of a project is at the very heart of the National Environmental Policy Act."

Considering the time, expense and expertise required to propose a route, we submit that it is only possible for the applicant to develop alternative routes of any consequence, and as a rule, FERC does not demand anything other than minor route variations.

Finally, it is irresistible to not comment on CP07-44 which I quote in full.

The proposed route of a pipeline would have crossed the property of an elderly couple. The landowners participated in the FERC proceeding, protesting the proposed route, which would have crossed through their yard. The husband had hand-built their "dream home" with timber he cut himself on the property. The husband had a serious illness, and he attended the FERC community meeting with IV ports in his arms from a recent hospitalization. Intercession by FERC staff and an environmental condition in the order encouraged the pipeline to settle on a route off the property, avoiding treasured wet meadows and stands of mature trees.

What brutal insult compels an ill person to rise up from their hospital bed, and trundle down, IV in tow, to protest, and in the end only "encourages" the property to be avoided?

What are we to infer from this meretricious story? Are "treasured" lands *de facto* to be saved or only in conjunction with an intravenous-drip? Are hand-built homes exempt or only ones surrounded by mature trees? Who decides and when? What are the rules; what is the process?

Sincerely

Marc Auerbach  
Chair

cc: FERC Board, Senator Ron Wyden, Governor Ted Kulongoski

### **Myth #3 – Landowners will be denied a role and not be protected**

The rules and regulations adopted in the final rule on electric transmission siting require the project sponsor to create a Project Participation Plan to inform affected stakeholders, including landowners, how to facilitate their participation in the proceeding of their rights.

The regulations for the authorization to construct natural gas facilities under section 7 of the Natural Gas Act contain comprehensive guidelines for the applicant's responsibility for the notification of landowners (18 CFR § 157.6(d)). In addition, there are standard regulations for intervening and participating in natural gas projects. Of course, not all stakeholders have access or know where to go to get access to these regulations. In order to more fully serve the public, FERC has created, on its website, an area labeled "For Citizens". The drop-down menu for this selection contains four choices:

- **Projects Near You** This option allows the user to select a region of the country and access information on projects in that region.
- **About FERC** This option gives an overview of what FERC regulates.
- **Getting Involved** This option allows the user to access information on how to: use eLibrary, make electronic filings with FERC, attend meetings and conferences, and become an intervenor. There are links to related topics: **Should I Get Involved?; How To Get Involved;** and **The Process.**
- **Citizen's Guides** This option permits the user to access plainly-worded guides to: gas facilities, LNG, electric transmission siting, hydropower licensing, Ideas for Better Stakeholder Involvement In the Interstate Natural Gas Pipeline Planning Pre-Filing Process, oil regulation, and the FERC Dispute Resolution Service.

These Citizen's Guides are also published and made available by mail and at public meetings.

In addition, when FERC issues new infrastructure initiatives, staff typically (when the budget permits) will give presentations around the country that are open to all stakeholders. This allows FERC to not only present the new initiative, but to also invite discussion and convey a deeper understanding of the initiative.

#### **SE Supply Header Project – Mississippi – CP07-44**

- The proposed route of a pipeline would have crossed the property of an elderly couple. The landowners participated in the FERC proceeding, protesting the proposed route, which would have crossed through their yard. The husband had hand-built their "dream home" with timber he cut himself on the property. The husband had a serious illness, and he attended the FERC community meeting with IV ports in his arms from a recent hospitalization. Intercession by FERC staff and an environmental condition in the order encouraged the pipeline to settle on a route off the property, avoiding treasured wet meadows and stands of mature trees.

#### **Carthage to Perryville Project – Texas and Louisiana – CP06-85**

- The proposed route of the pipeline would have cut through the center of a dairy farm operation, 100 feet from labor housing and about 300 feet from the dairy barn. The concerns included the impact construction noise would have on employee sleep and cows in the milking barn. The noise of heavy machinery could scare the cows, affecting lactation, gestation, and reproductive cycles. It also would be very difficult to get the cows to cross the right of way during and after construction. FERC's order included a condition for a route change that shifted the pipeline route toward the northern end of the property resulting in happy cows and laborers.

### **Myth #4 – FERC will not make changes to proposed routes**

There is no constraint upon FERC when it comes to making alterations to the proposed routes of electric transmission facilities. In fact, the examination and adoption of alternative routes and alterations in the proposed route of a project is at the very heart of the National Environmental Policy Act.

As the following examples show, FERC routinely alters the proposed routes of pipeline projects. One can be assured that the proposed route in an application will not be the route finally approved by FERC.

#### **Spectra Energy's Southeast Supply Header Project (CP07-44) under construction** (269 miles of 36 and 42-inch pipeline in Louisiana, Mississippi and Alabama)

- During the pre-filing process 82 route variations were adopted to address landowner requests. Twelve others were adopted before the issuance of the final EIS. Finally, the FERC order required 4 additional variations. A total of 98 route variations resulted from the FERC process.

#### **Gulf South's Southeast Expansion Project (CP07-32) under construction** (110 miles of 36-inch pipeline in Alabama and Mississippi)

- Gulf South incorporated 40 route variations during the FERC process to accommodate various landowners and to avoid homes, retain viewsheds, avoid ponds, follow property boundaries, etc.

#### **Gulf South's East Texas to Mississippi Expansion Project (CP06-446) under construction** (250 miles of 36 and 42-inch pipeline in Texas, Louisiana and Mississippi)

- During the FERC process, Gulf South incorporated approximately 40 route variations proposed by various landowners.