Published On: Fri, Dec 4th, 2015

The ‘R’ in FERC stands for Regulatory, not Rubber-stamp

By Peggy Mackenzie

Mounting citizen alarm from grassroots groups have targeted the Federal Energy Regulatory Commission (FERC) for its pro-corporate decisions in permitting high-volume natural gas pipelines to be proposed for their communities. FERC’s opponents are publicly accusing the agency of being a spearhead for fossil fuel corporate domination of the United States and its resources. Nationwide, FERC approved 119 natural gas interstate transmission pipelines from 2009 through July 2015, with another 43 pending final approval for 2015. Nonviolent protests against FERCs have included national and local rallies, sit-ins and blockades of industry facilities. Last May, demonstrators staged protests outside of FERC’s offices in Washington, D.C. singing a spoof of the Beatles’ “Yellow Submarine” (“We all know FERC’s a rubber-stamp machine”).

Jeff Tittel, director of New Jersey’s Sierra Club, has coined the joke, “They’re the Will Rogers of regulatory agencies. They never met a pipeline they didn’t like.” Only one gas pipeline has been rejected outright by FERC in the past 10 years.

The truth is, FERC is a private entity largely funded by the American Petroleum Institute (API) and American Natural Gas Alliance (ANGA), and chaired in part by former oil and gas representatives, that is licensed by the U.S. Department of Energy to issue permits. Their job is to see that every application meets the minimum criteria to justify approval.

Founded in 1977, FERC ‘s status was updated nearly 11 years ago by the 2005 Bush-Cheney Energy Act to include jurisdiction over interstate electricity sales, wholesale electric rates, hydroelectric licensing, natural gas pricing and oil pipeline rates. FERC also reviews and authorizes liquefied natural gas terminals, interstate natural gas pipelines and non-federal hydro power projects. The timing of FERC’s status update is synonymous to the 2005 fracking exclusion added to the Clean Water Act by then-Vice President Cheney, which ushered in the full-scale shale gas boom.

Essentially, FERC is charged with determining whether the pipeline project meets the “greater good” standard – that is, whether the project’s potential advantages outweigh the damage that a pipeline would do to both the environment and to private property rights. If such a certificate is granted by FERC, the pipeline company can then use it to “take” easements to construct the pipeline from virtually any landowner along the pipeline route with whom it cannot reach an agreement. The certificate would also give the company the authority to lay the pipeline through protected wetlands, conservation land, etc., subject to FERC’s approval of the route.

FERC’s close relationships with the industry show up clearly in the shuttling of the commission’s officials to industry posts and back. This agency is staffed by commissioners following guidelines that lean very heavily in favor of approving all of the energy company proposals for large scale fossil fuel infrastructure projects that they are charged with considering.

In an article published by E&E’s Greenwire, at eenews.net, titled “Employees negotiate for industry jobs under agency’s eye,” FERC’s corrupt, internal culture is explained:

“Employees at the Federal Energy Regulatory Commission have deep ties to the industry they regulate, according to agency documents detailing their job negotiations and stock holdings. The disclosures reflect how FERC is regulating an industry that many of its staffers are well-suited for and often courted to work in.”

Greenwire obtained 88 ethics documents under the Freedom of Information Act detailing records throughout 2014 that show agency staff seeking employment with grid operators, law firms and utilities that the agency has jurisdiction over and often meets with, as it sets new orders and rules. In addition, FERC employees have held stock in or remain part of pension plans from companies that can be affected by the agency’s work.

It has become increasingly obvious to many observers that FERC is badly broken and desperately in need of repair or reformulation. In an article called “Fix FERC First,” at www.masonnh.org/Fix FERC First.pdf, four major problems are described with FERC’s approach to approving a pipeline:

• FERC’s faulty definition of a need for a pipeline is a market-based definition of “need.” – Simply stated, FERC allows energy companies to collaborate in private with large scale energy consumers and for them to jointly determine the “need” for new energy infrastructure. In other words, public “need” is determined solely by the market, not by a considered look at the public’s current energy needs and its stated goals for a cleaner, more renewable energy future.

• FERC’s failure to recognize and sanction energy companies’ deceit of the public – In theory, FERC has a responsibility for understanding and weighing the environmental and property impacts that are inevitable when any large, high pressure pipeline, and its associated infrastructure, are approved, constructed and put into operation. But, this plan is completely dependent upon the energy company providing accurate and timely information to the public. The pipeline companies pretend to properly inform and notify the public of their plans in a timely manner. And FERC pretends that the public is being properly informed and notified. Boxes are checked, and plans for the pipeline continue to move through the system.

• FERC’s insistence on considering multiple pipeline proposals in isolation from each other – FERC judges each pipeline proposal individually, as if that proposal had no relation to other current pipeline proposals.

• FERC’s willful myopia regarding a pipeline’s total negative long term upstream and downstream environmental impacts – Means that more gas will be fracked, compressed, leaked, liquefied and burned. And, it means that it will be more difficult to build momentum for the renewable energy future.

As a result of these critical faults, FERC ends up doing exactly what the energy companies want.

FERC is not fulfilling its regulatory role, and that is why FERC has become the focus for much of the public’s disbelief and anger for its handling of these proposed pipeline projects. FERC is the agency that should be keeping gas-drilling companies in line. They are the ones who should be considering regional energy needs and how the multiple current pipeline proposals mesh with those needs. And, they are the ones entrusted with the authority to grant this nearly sacred power of eminent domain – the power to take another person’s land.

This willful washing of hands of any responsibility for the massive harms of fracking and its threat to the climate, is why hundreds of people have targeted FERC with nonviolent direct action. FERC is rattled.

The ideal way to stop pipelines, described in an article found at saneenergyproject.org/2014/07/07/fercand-the-regulatory-trap/, is by establishing a Community Bill of Rights that essentially “zones out” this kind of activity, or restricts it and establishes safety standards and set-backs in such a way that it is no longer economically worthwhile for an operator to build. The concept of a Community Bill of Rights has been championed by CELDF (the Community Environmental Legal Defense Fund), a nonprofit, public interest law firm providing free and affordable legal services to communities facing threats to their local environment and quality of life. CELDF has assisted more than 150 communities across the country to establish such ordinances.

Two recent articles show the efforts of local action groups as follows: On

Nov. 30, environmental groups from West Virginia and Virginia, represented by Appalachian Mountain Advocates, filed a legal protest of Mountain Valley Pipeline (MVP) asserting the pipeline is not needed, would cause irreparable harm to the environment and private property, and should be denied. Their 59-page filing also describe in detail how MVP presented flawed and exaggerated information about the need for the pipeline, while ignoring the impacts to the environment, landowners, communities and the general public.

From another viewpoint, economic studies question MVP’s impact on regional revenues. While local officials look at the enticing economic ad valorem (property tax) revenue and job projections that the 300-mile-long pipeline will bring, a study commissioned by Roanoke Valley Cool Cities Coalition and Preserve the New River Valley, found EQT,one of the largest natural gas producers in the Appalachian Basin, overstated project benefits, financial gains to regional coffers, and understated the pipeline’s negative impact on property value and the lost ecosystem services, such as water quality.

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