



Federal Energy Regulatory Commission Office of Energy Projects

ABOUT THE AGENCY, HOW IT MAKES DECISIONS, AND HOW NATURAL GAS COMPANIES WHOSE PROJECTS ARE FOUND TO HAVE PUBLIC BENEFITS CAN ACQUIRE A PIPELINE RIGHT-OF- WAY

What is the FERC?

The Federal Energy Regulatory Commission, or FERC, is an independent federal agency, headquartered in Washington DC that, among other things, regulates the interstate transmission of natural gas. It was originally created in 1920 and was known as the Federal Power Commission until reorganized under the Carter administration. The Natural Gas Act of 1938 (NGA) defines the Commission's regulation of the natural

gas industry. The FERC does not regulate exploration, production, or gathering of natural gas, or the intrastate transportation of natural gas by local distribution companies, which are activities controlled by the states. Additional information regarding what the FERC does and does not do can be accessed at: <https://www.ferc.gov/about/ferc-does.asp>.

Who are the Commissioners?

The FERC is headed by five Commissioners, appointed by the President of the United States and confirmed by Congress. Commissioners serve five-year terms; and consist of three representatives of the political party in the Executive Branch, and two from the opposition. The Commissioners are the decision-makers for the agency, and are served by a staff of about 1,500 full-time employees. The current five Commissioners include:

Chairman Cheryl A. LaFleur
(Democrat from Massachusetts)

Appointed Chair of the Commission by President Obama in July 2014. LaFleur is serving her second term at the FERC; which expires in June 2019.

Commissioner Philip D. Moeller
(Republican from Washington)

Commissioner Moeller is serving his second term on the Commission; expiring in June 2015.

Commissioner Tony Clark
(Republican from North Dakota)

Commissioner Clark is serving his first term on the Commission; which expires in June 2016.

Commissioner Norman C. Bay
(Democrat from New Mexico)

Commissioner Bay is serving his first term at the FERC. He will take over the responsibilities of Chairman in April 2015. His term expires in June 2018.



Colette D. Honorable

(Democrat from Arkansas)

Commissioner Honorable was sworn in for her first term on the Commission in January 2015. Her term expires in June 2017.

Detailed biographies and information regarding the Commissioners can be accessed at www.ferc.gov.

How Do the Commissioners Determine Public Benefit and Need?

The Commissioners issue decisions in the form of an Order. The Commission's Order would discuss the purpose and need for a proposed project.

The Commission developed a "Certificate Policy Statement"¹ that established criteria for determining whether there is a need for a proposed project and whether the proposed project would serve the public interest. The Certificate Policy Statement explains that in deciding whether or not to authorize the construction and operation of major new natural gas facilities, the Commissioners must balance the public benefits against the potential adverse economic and environmental consequences.

The Certificate Policy Statement outlines a multi-step process for the Commissioners to consider prior to making their decision about a project. First, any new project must be financially supportable without relying on subsidization from existing customers. The next step would be to determine whether the applicant has made efforts to eliminate or minimize any adverse effects the project might have on its existing customers, existing pipelines in the market and their captive customers, or landowners and communities

affected by project construction. If residual adverse effects on these interests remain after the company made an effort to minimize them, the Commissioners would evaluate the project by balancing the evidence of public benefits against its residual adverse effects. This is essentially an economic test.

Only after determining that the benefits outweigh the adverse effects on economic interests would the Commissioners proceed to examine the environmental impacts of the project, as disclosed in either an environmental assessment (EA) or environmental impact statement (EIS) prepared by staff to comply with the National Environmental Policy Act. The Commissioners would consider the significance of the adverse environmental impacts and the mitigation measures recommended in the EA/EIS, together with non-environmental economic factors, such as markets and rates, before they make a decision. If the Commissioners decide to approve a natural gas pipeline project, the Order would include a Certificate of Public Convenience and Necessity under Section 7 of the NGA.

¹ See *Certification of New Interstate Natural Gas Pipeline Facilities*, 88 FERC ¶ 61,227 (1999), clarified in 90 FERC ¶ 61,128, and further clarified in 92 ¶ 61,094 (2000).

Why Do Jurisdictional Natural Gas Companies Get to Use Eminent Domain?

In 1947, the United States Congress added Section 7(h) to the NGA. That portion of the law granted the right of eminent domain to any jurisdictional natural gas company to whom the Commission conveys a Certificate of Public Convenience and Necessity. Thus, when the Commission finds that a project has public benefit, the applicant is given the legal right to acquire the right-of-way for its pipeline by eminent domain, if the company cannot acquire the necessary land through a negotiated easement, or where the landowner and the company cannot agree on the compensation to be paid for the land.

In cases where a company would exercise its right of eminent domain, a local court (not the company or the FERC) would decide on the amount of fair compensation to be paid to the landowner for the right-of-way easement. The FERC expects a company to acquire the right-of-way easements for its pipeline through negotiated agreements with landowners; and eminent domain should only be used as a last resort.