

**UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION**

IMO PennEast Pipeline Company LLC application for a Certificate of Public Convenience and Necessity	Docket # CP15-558
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**Motion for Leave to Answer and Answer Brought by the New Jersey
Conservation Foundation and Stony Brook-Millstone Watershed
Association, under 18 CFR 385.213(a)(2)**

**Eastern Environmental Law Center
50 Park Place, Suite 1025
Newark, NJ 07102
Aaron Kleinbaum, Esq.
Jennifer Danis, Esq.
Raghu Murthy, Esq.
Amanda Drennan, Legal
Intern**

**Columbia University School
of Law Environmental Law Clinic
435 West 116th Street
New York NY 10027
Edward Lloyd, Esq.
Susan J. Kraham, Esq.**

Attorneys for Movants

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Introduction

On behalf of the New Jersey Conservation Foundation and Stony Brook-Millstone Watershed Association (“Movants”), we request FERC’s leave to respond to PennEast’s July 5, 2016 “Answer,” in order to clarify the issues before FERC, and provide information that will assist in FERC’s decision-making process. On June 15, 2016, the New Jersey Conservation Foundation (“NJCF”) and the Stony Brook-Millstone Watershed Association (“SBMWA”) filed a Rule 206 Complaint and a Rule 212 Motion (“NJCF/SBMWA Complaint and Motion”) before FERC, both seeking an evidentiary hearing to address this troubled record. Rather than responding to the substance of Movants’ filing, PennEast’s “Answer” attempts to distract FERC with inapposite procedural arguments. As detailed below, Movants’ dual filing fully complied with both the requirements of Rule 206 (Complaints) and Rule 212 (Motions).¹

Beyond this attempt to procedurally dispose of this carefully delineated Complaint and Motion by recasting it as a “protest” or solely a complaint, PennEast’s “Answer” is, in essence, a directive to FERC to ignore everything but the existence of precedent agreements. To PennEast, those agreements both begin and end with what it asserts is a clerical inquiry. But Movants’ Rule 212 Motion laid out in great detail why FERC may not simply check the box in this proceeding. Both the Natural Gas Act and FERC’s own policy require it to find substantial evidence of significant public benefit --

¹ As set out in Part II below, FERC may also consider Movants’ filing solely as a Rule 212 Motion for an Evidentiary Hearing. There are no procedural bars to FERC’s full consideration of the submission. Movants included a Rule 206 Complaint to provide FERC with a second means to initiate an evidentiary hearing in this matter. Doing so, however, does not in any way diminish the companion Rule 212 motion’s ability to stand on its own merits. Nor are there procedural bars to consideration of the fully delineated and timely submitted Rule 206 Complaint.

not just that the “affiliated shipper’s decision to receive service from a new pipeline when its current contracts with an existing pipeline expire” is “in its best interest.” PennEast Answer at 12 (emphasis added).

However, as FERC noted in Eastern Shore (a case cited by PennEast), “the amount of evidence necessary to establish the need for a project will vary depending on the potential for adverse consequences.” 132 FERC ¶ 61,204 at 62,057. In that case, unlike the present one, “the lack of any identified significant adverse effects on Eastern Shore’s existing customers, other existing pipelines in the market and their captive customers, or landowners and communities affected by the route of the new Pipeline” justified a low threshold of “need.” Id. at 62,058. While FERC does not regard participation of affiliated shippers as a deal breaker, it is one factor to be considered in balancing adverse effects against “need.” “Eliminating a specific contract requirement *reduces* the significance of whether the contracts are with affiliated or unaffiliated shippers . . . A project that has precedent agreements with multiple new customers may present a greater indication of need than a project with only a precedent agreement with an affiliate.” 88 FERC ¶ 61,227 at 61,748 (emphasis added) Importantly, FERC went on to state that “projects to serve new demand might be approved on a lesser showing of need and public benefits than those to serve markets already served by another pipeline.” Id.

FERC will not penalize affiliated shippers for pursuing their self-interest, but this does not mean FERC should ignore potential adverse impacts that may be created by affiliate actions that maximize the parent company’s earnings. Profit maximization is

not synonymous with the public interest. Promotion of private corporate interests are not among the Commission's stated goals, which are "to foster competitive markets, protect captive customers, and avoid unnecessary environmental and community impacts while serving increasing demands for natural gas."² 88 FERC ¶ 61,227 at 61,742.

PennEast's "Answer" not only ignores the Commission's mandate to equitably balance risk and rewards between shareholders and ratepayers, but also derides all policy concerns supporting FERC's grant of an evidentiary hearing in this proceeding. PennEast dismisses the public outcry surrounding the lack of substantiated public need contained within this record, and asks FERC to similarly ignore that factor. PennEast would also have FERC disregard the plethora of federal and state officials who have called for an evidentiary hearing on this application. Moreover, it would suggest that Commissioner LaFleur's own characterization of the public outcry as "unprecedented" ought not carry any weight.³ Finally, PennEast also appeals to FERC's overburdened staff, suggesting that granting an evidentiary hearing here will create a slippery slope that leads to hearings in more, or perhaps all, Section 7 Certificate applications. This suggestion stands in direct contrast to the case Movants have set forth. Movants quite clearly have acknowledged that FERC's ordinary practice has been to move forward based primarily upon a showing of signed precedent agreements. The proposed

²FERC's stated goal refers to genuine demand for natural gas based on increased consumption, not merely the shifting of capacity contracts from legacy pipelines to a proposed pipeline. A central issue raised by Movants is that PennEast's capacity is far in excess of new demand in the region.

³ Keith Brown, Federal Energy Commissioner Concerned About Gas Pipeline Critics: 'We Have a Situation Here, (Mar. 3, 2015). http://www.nj.com/mercer/index.ssf/2015/03/penneast_pipeline_critics_blast_federal_commission.html.

pipeline, due to its size, potential adverse impacts, concurrent “unprecedented” level of public concern, and its interstate economic ramifications, is exactly the type of project that justifies employment of scarce administrative resources for heightened scrutiny.⁴

Movants have painstakingly delineated in their papers, and further explain below, why this particular proceeding ought to be subject to further inquiry through the course of an evidentiary hearing. PennEast’s proposal presents a unique set of circumstances which engenders a heightened risk of market abuse and harm to ratepayers. The Natural Gas Act requires FERC to protect against such an outcome. The language of FERC’s Certificated Policy Order similarly requires FERC to apply the highest level of scrutiny in reviewing this docket, to ensure that FERC’s ongoing practices do not allow this result.

Instead of offering anything of substance to FERC, PennEast proffers only distractions, dismissals and warnings. By contrast, Movants described precisely why FERC must probe beyond the precedent agreements in this proceeding, reaching the other factors identified in its Policy Statement, such as demand projections, costs to consumers, or comparisons of projected demand against capacity currently serving the market. In doing so, FERC will find material factual disputes that demonstrate why its public benefit inquiry cannot be accomplished “on the papers.” PennEast’s attempt to recast Movant’s argument as a simple disagreement amongst experts that has been fully vetted in the record, ignores the plain language of both the motion and the expert

⁴ Id.

reports referenced therein.⁵ Moreover, even in its “Answer,” PennEast itself provides contradictory assertions that require FERC to conduct an evidentiary hearing to assess its motives and credibility.⁶ PennEast’s ultimate failure to address the substance of Movants’ Rule 212 Motion in its “Answer” highlights why an evidentiary hearing provides the best vehicle to address the red flags raised by this application, and accurately assess whether or not there is substantial evidence of significant public benefit.

Motion for Leave to Answer

Movants hereby request that FERC grant leave to submit this response to PennEast’s “Answer.” FERC has previously allowed responses to Answers, pursuant to 18 CFR 385.213(a)(2), when those responses allowed a better understanding of the issues, or provided information that assisted FERC in the Commission's decision-making process.⁷ In order to conform to FERC’s rulings in those cases, we have limited

⁵ For example, the Skipping Stone report itself sets out why FERC ought to hold an evidentiary hearing, and what kind of data, questions, and analyses can only be probed in such a proceeding.

⁶ PennEast simultaneously classifies Skipping Stone’s contention that portions of PennEast’s subscribed capacity will be cannibalized from other pipelines as “misleading and unsupported” -- yet elsewhere concedes this would, in fact, happen if PennEast was built -- but states that FERC endorses this kind of pipeline capacity replacement. Compare Concentric Response at 22 with PennEast Answer at 12, 22. It is unclear whether PennEast asserts it serves a new market or would build its pipeline based on cannibalized capacity from other pipelines -- or even attempts to describe the “new market” it serves as comprised of cannibalized capacity. PennEast appears unwilling to clarify, choosing to instead argue both points in an attempt to cover all its bases while substantively covering none.

⁷ Duke Energy Corporation, 100 FERC P 61251 (F.E.R.C. 2002), Columbia Gas Transmission Corp., 110 FERC P 61063, 61331 (F.E.R.C. 2005), E. Tennessee Nat. Gas Co., 98 FERC P 61331, 62394 (F.E.R.C. 2002), Pjm Interconnection, L.L.C., 117 FERC P 61331, 62660 (F.E.R.C. 2006), Nat. Gas Pipeline Co. of Am., 104 FERC P 61322 (F.E.R.C. 2003)

our response herein to include only items that explicate issues left unresolved in PennEast's Answer and clarify the decisions before FERC.

Argument

I. PennEast's Application Presents a Unique Set of Circumstances That Are Not Present in Other Certificate Applications.

PennEast's Answer rests on the following propositions: (1) FERC does not conduct evidentiary hearings for most Section 7 Certificate applications; and (2) affiliate agreements do not automatically signal market abuse. But it somehow believes that those two propositions must yield the following conclusion: FERC need not ever look beyond precedent agreements, be they affiliate or arms-length transactions.^{8,9} Movants do not assert that FERC conducts evidentiary hearings for most Section 7 proceedings, or that presence of an affiliate automatically equals market abuse -- but rather that PennEast's conclusion runs afoul of the Natural Gas Act. Not surprisingly, PennEast cites several cases to support the first two uncontroversial propositions. None of those cases, however, approaches PennEast's scope, breadth, amount of capacity at stake,

⁸ Any portions of PennEast's "Answer" that purport to address Movant's Rule 212 Motion for an evidentiary hearing should be disregarded as the "Answer" was not submitted within the fifteen day limit established by FERC for responding to Rule 212 Motions (PennEast's Answer was filed on July 5, 2016, 20 days after Movants's June 15, 2016 filing date). 18 C.F.R. 385.213(d)(1). As set out in Part II below, Movants provided FERC with two vehicles to consider its argument. If FERC were to agree with PennEast's contention that Movants's filing is not a Rule 206 Complaint, but a Rule 211 Protest, it is unclear what PennEast achieves by this relabeling as there are also no procedural bars to making a protest at this juncture. Importantly, FERC must still consider Movant's Rule 212 Motion. The filing satisfies the requirements of Rule 212, a fact that PennEast conveniently ignores in its Answer. Because the filing is procedurally proper according to Rule 212, PennEast's attempt to disqualify the filing on a procedural basis is misguided and must be disregarded.

⁹ 18 C.F.R. 206(f) allows twenty days for filing an Answer to a Rule 206 Complaint. It appears that PennEast's late filing of its "Answer" therefore relies on FERC to consider only the Rule 206 Complaint, and not the Rule 212 Motion.

sweep of condemnation proceedings, and potential impact on legacy pipelines and their customers. And not a single one supports PennEast's conclusion. Movants ask FERC to hold an evidentiary hearing in this case because of the factors listed above and elaborated upon in both Movants' Rule 206 Complaint and Rule 212 Motion, as well as reviewed below; Movants do not suggest that FERC must conduct a hearing in every single certificate review, or look beyond precedent agreements in every affiliate transaction. Movants do argue that the particular circumstances surrounding the PennEast application require FERC to hold an evidentiary hearing.

A. Every LDC in the State Joined to Form this Consortium--Undermining FERC's Practice of Primarily Using Precedent Agreements to Determine Market Demand and Competition

There are four companies that share all natural gas distribution in New Jersey: Elizabethtown Gas, New Jersey Natural Gas, Public Service Electric and Gas, and South Jersey Gas Company.¹⁰ Each of them (either directly or through an affiliated company) is a partner in the PennEast Consortium, as well as a precedent agreement holder.¹¹ FERC typically uses precedent agreements as an indicator of need, but this is not the only factor that it considers when additional information is included in the record. 88 FERC ¶ 61,227 at 61,747 ("Rather than relying only on one test for need, the Commission will consider all relevant factors reflecting on the need for the project.") Other sources that FERC considers include "demand projections, potential cost savings

¹⁰ Retail Unbundling--New Jersey, U.S. Energy Information Administration (accessed July 14, 2016) http://www.eia.gov/natural_gas/restructure/state/nj.html

¹¹ These four entities hold 51.5 % of the subscribed capacity. NJCF/SBMWA Complaint and Motion at 14-15.

to consumers, or a comparison of projected demand with the amount of capacity currently serving the market.” Id. Because FERC’s own policy acknowledges that it “will consider all relevant factors reflecting on the need for the project,” PennEast’s assertion that the precedent agreements are sufficient to determine need in this case, while other data and analyses are pointing in the opposite direction is blatantly preposterous. 88 FERC ¶ 61,227 at 61,747. And FERC has specifically indicated its intention to consider such relevant factors in this case. FERC Docket CP15-558, Accession #20160715-0010. The PennEast precedent agreements are not arm’s length market-based transactions and provide no evidence that PennEast will serve *new* demand, a condition precedent for FERC to find “a lesser showing of need and public benefits than those to serve markets already served by another pipeline[s].” 88 FERC ¶ 61,227, at 61,748. As such, they are weak support for FERC’s usual practice of utilizing precedent agreements as a proxy for demand. Thus the other data sources that FERC names as factors it will consider when assessing demand should be developed and tested in an evidentiary hearing.¹²

Even more troubling, LDCs have historically been the strongest voices fighting anti-competitive behavior and protecting captive customers. By participating in this new structure, one of the historical checks on the pipeline certification process has been eliminated. Traditionally, LDCs would be concerned with the potential impact of the new pipeline on natural gas transport costs on all pipelines they might utilize, and would

¹² Those other sources cannot be assessed through FERC’s usual “paper hearing” route because PennEast refuses to respond substantively to the market demand data put forth by Movants, as further discussed below.

offer information about the impact on captive customers of legacy pipelines, but in this instance, where affiliates of the LDCs are owners, the LDCs have been silent.¹³ This removes a potential champion of consumer interests from the proceedings. Without this data that FERC would traditionally have used to resolve this matter “on the papers,” it becomes impossible to do so, supporting FERC’s grant of an evidentiary hearing.

PennEast’s answer distorts FERC’s policy on affiliate contracts, claiming that “Commission precedent clearly rejects any notion that the Commission distinguish between pipelines’ precedent agreements with affiliates or independent third parties.” PennEast Answer at 10. FERC’s own Policy Statement controverts this claim. FERC states instead that “a project that has precedent agreements with multiple new customers may present a *greater indication* of need than a project with only a precedent agreement with an affiliate.” 88 FERC ¶ 61,227, 61,748 (1999) (emphasis added). Therefore, PennEast’s precedent agreements are a lesser form of evidence of need because they are affiliate contracts, creating a stronger case for FERC to look beyond these agreements to the conflicting sources concerning demand.¹⁴ PennEast’s distortion of the plain language of FERC’s policy is troubling and deserves no consideration by FERC.

In fact, FERC’s Policy Statement makes the threshold question in a certification proceeding whether or not the ratepayers will be subsidizing the project, showing

¹³ The record data reflect that the decisions to participate in PennEast were driven by the affiliate partners of the LDCs. FERC Docket CP15-558, Accession #20160617-5128. FERC should take this opportunity to closely assess what potential market distortions resulted from the LDC managers not making independent business decisions.

¹⁴ 74.2% of the pipeline’s initial contracted capacity is held by affiliates. NJCF/SBMWA Complaint and Motion at 16. After 10 years, 88% of the contracted capacity will be held by affiliates. Id.

FERC's great concern for the ratepayer. 88 FERC ¶ 61,227 at 61,745. Although PennEast is a new entity without existing ratepayers, FERC's concern for ratepayers is still applicable. Here, ratepayers will suffer significant financial losses as captive customers on other pipelines, directly resulting from capacity lost to PennEast.¹⁵ See *Skipping Stone* at 4-5, 21 ("Given...the likely negative impact on ratepayers...the Commission should institute a full evidentiary proceeding"). The Commission included harm to customers on other pipelines as a consideration requiring a showing of additional benefits that would outweigh such harm. 88 FERC ¶ 61,227 at 61,748.

Ratepayers will likely be harmed by PennEast's capacity shifting effect, and PennEast presents no substantive data to contradict this claim in its Answer or its Concentric Response to the *Skipping Stone* study. FERC would need to ferret out this data and analysis in an evidentiary hearing, as it cannot be derived from the expert reports. Rather the PennEast Consortium simply proclaims a new market, then deploys a safety net, stating that even if the pipeline is not serving a new market, it will create *competition*, citing FERC's policy of fostering such. Concentric Response at 20-21. This alternative rationale is equally flawed, as the region to be served by PennEast is one of

¹⁵ As expounded upon in Movant's Complaint and Motion, there is evidence that PennEast's subscribed companies will be shifting capacity from existing pipelines and onto the PennEast pipeline. PennEast dismisses this claim out of hand, citing its own economic report. PennEast Answer at 21. PennEast simultaneously hedges on this claim by asserting that FERC supports this capacity switching behavior. PennEast Answer at 12. The presence of a dispute of material fact regarding this issue is precisely why an evidentiary hearing is necessary. *Tenneco Oil Co.*, 25 FERC ¶ 61,234, 61,605 (1983) ("An evidentiary hearing is required only if there exists a genuine issue of material fact."); NJCF/SBMWA Complaint and Motion at 23.

the most competitive in the country with natural gas provided by five different pipelines.¹⁶

B. This Project has a Large Capacity, Amplifying the Market Effects

There have been many pipeline projects certificated through New Jersey recently, none of which approach PennEast's proposed transportation capacity of 1 million dth/day.¹⁷ Because this project proposes to transport large amounts of natural gas, the market effects will be similarly large, and, thus, the adverse effect on ratepayers correspondingly large. FERC clearly states that the amount of evidence required to document need is directly correlated to the potential adverse effects of a project.¹⁸ Thus

¹⁶ New Jersey's LDCs are served by the Tennessee Gas, Columbia Gas Transmission, Transcontinental Gas, Texas Eastern Transmission, and Algonquin Gas pipelines. <http://www.njspotlight.com/stories/15/05/28/is-new-jersey-becoming-the-pipeline-capitol-of-the-northeast/>. PennEast cites Guardian Pipeline LLC in support of its competition argument, but the facts of that case are not applicable here. 91 FERC ¶ 61,285. The proposed region served had never seen pipeline-to-pipeline competition before, a situation that New Jersey is clearly not experiencing. *Id.* at 61,967. The New Jersey natural gas market has become more competitive since the winter of 2013-14 as new pipeline capacity has come on line, as the frequency and magnitude of basis differentials between the Marcellus and Eastern Pennsylvania/New Jersey has drastically declined to a level commensurate with an efficient market. Reply Comments of Concentric Energy Advisors, April 2016, at p. 6.

¹⁷ FERC Docket No. CP15-558, Accession No. 20150427-5242. Other recently certificated projects have proposed capacities of 312,000 dth/day (East Side Expansion Project), 180,000 dth/day (Garden State Expansion), 180,000 dth/day (Southern Reliability Link), 250,000 dth/day (Northeast Supply Link), and 525,000 dth/day (Leidy Southeast Project). 153 FERC 61,146; 155 FERC 61,016; 143 FERC 61,132; 154 FERC 61,166.

¹⁸ One of the adverse effects that FERC takes into account is the effect of eminent domain on landowners, as discussed below. 88 FERC ¶ 61,227 at 61,746 ("Landowners should not be subject to eminent domain for projects that are not financially viable and therefore may not be viable in the marketplace."). The massive scale of the PennEast project (118 miles of new 36-inch pipe, bringing one million dth/day) requires the extensive use of eminent domain -- required both because of landowner opposition (as addressed below) and the scale of the pipeline -- to be balanced against the dearth of data on public benefit. PennEast Pipeline: Overview, PennEast, <http://penneastpipeline.com/overview/> (last visited July 19, 2016). See PennEast Answer at 10; Eastern Shore Natural Gas Co., 132 FERC ¶ 61,204 at 62,053 (proposes a 50,000 dth/day expansion through 8 miles of 16 inch diameter pipeline); Midwestern Gas Transmission Co., 114 FERC ¶ 61,257 at 62,053 and 61,811 (proposes a 120,000 dth/day expansion through 30 miles of 16 inch diameter pipeline); Questar Pipeline Co., 93 FERC ¶ 61,279 at 61,917 (proposes 75.6 miles of 24 inch pipeline to provide 272,000 dth/day in new capacity). Cf. Guardian (a

here, a stronger showing of need is required, together with a careful review of data and analyses already in the record indicating that this need does not truly exist. Yet PennEast suggests in its “Answer” that FERC ought not deviate from its typical review process, and that neither market studies nor evidentiary hearings are required here to produce substantial evidence of significant public need. PennEast wishes to dispose of FERC’s sliding scale approach based on cases it cites that concern pipeline projects that are small relative to PennEast. Because PennEast proposes to flood the market with an additional 1 million dth/day, FERC must hold an evidentiary hearing to create a record containing substantial evidence of significant public need, and may not simply rely upon PennEast’s unsupported and disputed market claims. The potential adverse effects of a pipeline this size are both severe and far-reaching.¹⁹

C. PennEast’s Burden of Proof is Much Higher in this Case due to the Extensive Exercise of Delegated Federal Eminent Domain Authority

In this case, PennEast’s burden of proof for demonstrating public need is higher than other certificate applications where easements have been negotiated. Here, there will be large scale filings of eminent domain actions as a result of landowner objections. And FERC will require a showing stronger than substantial evidence, applying its sliding

prior finding from the Wisconsin state agency on need and importance of the pipeline to create competition where none existed was balanced against proposed use of eminent domain).

¹⁹ As set out above, PennEast alleges a new market without any data supporting this claim. Concentric Response at 20-22; PennEast Answer at 12, 22. They do so in response to the claim of the Skipping Stone Study that this much capacity is not needed to serve a new market. Skipping Stone Study at 4. Skipping Stone’s Study offers firm data on Peak Day demand and Total Peak Day Resources available in the region in order to reach its well-supported conclusions regarding an apparent glut of capacity. Skipping Stone Study at 7-8. That same Study clearly states that an evidentiary hearing is necessary to collect and test the data that could resolve this different assertions regarding need. Skipping Stone Study at 5.

scale approach, set out within FERC's Certificate Policy Statement.²⁰ PennEast mischaracterizes this measure, looking to Guardian Pipeline, LLC, 91 FERC 61,285 (2000) for support. PennEast's reliance on this case is misplaced, as it supports Movants' position instead. Before authorizing the Guardian Pipeline (which is similarly sized to PennEast at 140.3 miles of 36-inch pipe) as being in the public convenience and necessity, FERC had an affirmative finding of public need from the state as well as evidence of a severe lack of competition in the region. Id. at 61,967. Neither of these pieces of evidence will be present here.²¹

Every New Jersey municipality opposes the project, and roughly 70% of New Jersey landowners in the pipeline's path have explicitly denied survey access, and many of those parties have also stated that they are unwilling to sell their land to PennEast at any price.²² In this case, FERC must weigh PennEast's sparse evidence of public need against staunch opposition from hundreds of landowners, comprising the majority of the pipeline's New Jersey right-of-way; lack of need for new capacity; and significant existing pipeline competition. By contrast, in Guardian Pipeline, FERC found that the proposed pipeline would provide "pipeline-to-pipeline competition for the first time." 94 FERC ¶ 61,269. This is by no means the case in the New Jersey market, which is

²⁰FERC's Policy Statement elaborates upon how FERC will implement its mandate under the Natural Gas Act (NGA). 88 FERC ¶ 61,227 at 61,743. The NGA requires that pipeline applicants "conform to the provisions... of the Commission," one of which is presenting greater amounts of public benefit concurrent to the amount of eminent domain to be utilized. 15 U.S.C. § 717f(e); 88 FERC ¶ 61,227 at 61,749.

²¹ As discussed above, New Jersey is one of the most competitive natural gas markets in the country. Additionally, New Jersey's state regulatory body will not reach the issue until after FERC has acted. NJCF/SBMWA Complaint and Motion at 53-54.

²²Keith Brown, PennEast Pipeline Unnecessary, Would Increase Gas Rates, Study Says, NJ.com (Mar. 11, 2016), http://www.nj.com/mercer/index.ssf/2016/03/penneast_pipeline_unnecessary_would_increase_gas_r.html; E.g. Docket No. CP15-558, Accession No. 20160711-0019.

served by five natural gas pipelines and has one of the highest pipeline length to land ratios in the United States.²³

Faced with the extremely high burden of proof required by the sliding scale approach, PennEast fails to provide “unimpeachable-or at least persuasive” evidence of unmet demand, as required by Mobil Oil Corp. v. F.P.C., 483 F.2d 1238 (D.C. Cir. 1973).²⁴ PennEast has criticized the Skipping Stone analysis, yet provided no comparable analysis for FERC to consider. PennEast’s application cannot rest on less than substantial evidence. 5 U.S.C. § 556(d); 18 C.F.R. § 270.503(b)(1). FERC’s Certificated Policy Statement provides examples of data that it can collectively analyze to reach such a finding. Yet PennEast proclaims that all such information other than the precedent agreements -- critical information, such as market studies -- should be disavowed under Myersville Citizens for a Rural Cmty, 783 F.3d 1301 (2015). However, the market study in that case was a general one, concerning the entire natural gas market, not the specific market served by the proposed project. Here, the Skipping Stone study presented evidence on Peak Day Demand, Total Peak Day Resources, Contracted Capacity, as well as a host of other data points specifically concerning and responding to PennEast’s geographic region, shippers, and commissioned studies.

²³ See footnote 16, *supra*. <http://www.njspotlight.com/stories/15/05/28/is-new-jersey-becoming-the-pipeline-capitol-of-the-northeast/>. Only Mississippi, Pennsylvania (another target of the PennEast pipeline), Ohio, and Texas have more pipeline miles per square foot of land. Jacquelyn Press, Making State Gas Pipelines Safe and Reliable: An Assessment of State Policy, National Conference of State Legislatures (Mar. 2011), http://www.ncsl.org/research/energy/state-gas-pipelines-natural-gas-as-an-expanding.aspx#Population_Density___Pipeline_Mileage_Per_Square_Foot_of_Land

²⁴ PennEast misstates that Mobil Oil was overturned in 1985 and is no longer good law. As made clear in NJCF/SBMWA Rule 206 Complaint / Rule 212 Motion, Mobil Oil has been cited numerous times since 1985, by courts who found the record incomplete in cases where the opposing party supplied far more evidence than PennEast has here.

Because PennEast has not, and potentially cannot, respond substantively to these claims of lack of need, an evidentiary hearing is necessary to fulfill FERC's mandate to find substantial evidence of significant public benefit and need.

All of the above factors are presented in Movant's original Complaint and Motion, but instead of addressing these important issues, PennEast instead doubles down in its answer by insisting that FERC must approve PennEast's application based solely on LDC affiliate agreements. PennEast appeals to FERC's usual practice of conducting a "paper hearing." PennEast Answer at 9. However, PennEast ignores the facts of this troubled record, which demonstrate that there are specific reasons for FERC to look beyond the precedent agreements in an evidentiary hearing. FERC should grant Movant's motion seeking this hearing, not to inquire into the needs of particular shippers, but rather to fulfill its mandate under the Natural Gas Act to protect against inefficient allocations of risk and anticompetitive market shifts.²⁵ Here, FERC will be unable to conduct a paper hearing based on the written record and cull out substantial evidence upon which it can balance any finding of public benefit against adverse economic impacts and should instead order an evidentiary hearing so as to perform its duty of balancing ratepayer and industry interests. NJCF/SBMWA Complaint and Motion at 8.

²⁵ PennEast misapplies FERC's language. FERC's full language states that "it is Commission policy to not look behind precedent or service agreements *to make judgments about the needs of individual shippers.*" Certificate Order at Paragraph 66. Here, that Commission policy is inapposite. Movants' Complaint and Motion request that FERC look beyond the four corners of the precedent agreements for an entirely different purpose -- to determine if there is significant public benefit when weighed against the adverse impacts -- and have provided data and analyses supporting this request.

II. Both Movant's Rule 206 Complaint and Rule 212 Motion Meet The Requirements of the Respective Rules

A. Movants' Complaint and Motion are Both Timely

By attempting to recast both Movants' Complaint and Motion as a singular protest, PennEast wishes to disqualify the Complaint and Motion based on faulty reasoning. PennEast asserts that Movants' papers are late, citing FERC's October 8, 2015 Notice of Comment, Accession # 2015-1008-3002. PennEast Answer p. 4. That Notice of Comment set a "Comment Date" of October 29, 2015. PennEast now asserts that this date was not only a deadline for comments, but also a deadline for any complaints, motions or other pleadings to FERC regarding PennEast's application. Unsurprisingly, PennEast cannot cite any law, regulation, policy or case to support this argument, because none exists. FERC's comment date applies only to parties wishing to intervene, a task that Movants completed in a timely manner. Docket No. CP15-558, Accession No. 20151008-3002. This is the *only* purpose of the given comment date and it is in no way applicable to the situation at hand. PennEast cannot simply relabel these pleadings and distort the record to suit its desire to find easy means to dispose of them. Both the Complaint and Motion satisfy FERC's requirements for those respective pleadings, and thus PennEast's contorted argument that FERC should relabel and dismiss both pleadings as a singular "protest" has no merit. 18 C.F.R. §§ 385.206 and

385.212. FERC should accord these attempted procedural machinations no weight whatsoever.²⁶

B. Movant's Rule 206 Complaint Meets The Specific Content Requirements Of Rule 206

In the alternative, PennEast asks that FERC treat the pleading as a Rule 211 Protest rather than a Rule 206 Complaint, for timeliness reasons that are thoroughly controverted above. To support this novel theory, PennEast miscites Florida Southeast Connection, LLC et al., 154 FERC 61,080 (2016).²⁷ But that case bears no resemblance to the matter at hand. In Florida Southeast Connection, LLC et al., FERC determined that the movant's submission fell very far short of the Rule 206 Requirements because:

[Plaintiff] does not allege any contravention or violation of a statute, rule, or order, or any other alleged wrong, but merely notes its disagreement regarding Sabal Trail rerouting its pipeline. In addition, G.B.A. Associates fails to set forth the business, commercial, economic, or other issues presented by the action or inaction as such relate to or affect the complainant; make a good faith effort to quantify the financial impact or burden created for the complainant as a result of the action or inaction complained of; and indicate the practical, operational, or other nonfinancial impacts imposed as a result of the action or inaction. Because G.B.A. Associates fails to comply with the Commission's regulations for filing complaints, we conclude that it did not file a formal complaint.

Id. at para. 59. Movant's Rule 206 Complaint, by contrast, clearly lays out each requirement of Rule 206 at pp. 67-69, and specifically fulfills each Requirement.

Moreover, the Rule 212 Motion submitted therewith goes into great detail with respect

²⁶Moreover, PennEast's own actions contradict this argument: on November 13, 2015 and April 14, 2016, PennEast submitted a Response to Movants' October 30, 2015 and March 11, 2016 Comments, respectively, without mention of any October 29th deadline for comments. PennEast Answer p. 4, Note 15.

²⁷As noted above, PennEast appears to simply ignore Movant's Rule 212 Motion.

to these required elements, and the arguments, support, and controlling law elaborated upon in the Rule 212 Motion were specifically incorporated into the Rule 206 Complaint by reference. As such, the papers detail numerous violations of the Natural Gas Act that would occur absent the requested remedy of an evidentiary hearing, with complete citations to the Natural Gas Act, the Federal Register, relevant case law and FERC policy.

Even if FERC were to treat Movants' Complaint as a Rule 211 Protest instead of a Rule 206 Complaint, it does not disqualify, nor does PennEast claim it should disqualify, FERC's consideration of the companion submission as a Rule 212 Motion. The filing satisfies FERC's Rule 212 Motion specifications, is timely, and should therefore be considered by FERC. PennEast is silent with respect to that pleading, and as such, the Rule 212 Motion appears to be uncontested.²⁸

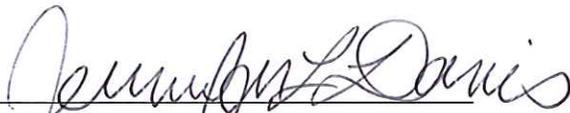
²⁸For example, PennEast's Answer regarding eminent domain raised serious additional questions regarding the consortium's credibility. Movants alleged in both their Complaint and Motion that hundreds of acres of land would be taken through eminent domain. NJCF/SBMWA Complaint and Motion at 21. PennEast attempts to circumvent this fact, claiming that negotiations are not yet over, and ignoring the plethora of letters from landowners submitted to the docket, each stating that the landowner "will never willingly allow this proposed natural gas pipeline on [his] land." E.g. Docket No. CP15-558, Accession No. 20160705-0019. An evidentiary hearing is necessary to evaluate the adverse impacts to homeowners through significant exercise of eminent domain, and balance them against findings of public benefit. An sweeping amount of eminent domain requires substantial evidence of significant public benefit according to FERC's "sliding scale" policy. 88 FERC ¶ 61,227 at 61,749. PennEast submits no facts or evidence to counter this clear indication of large scale eminent domain proceedings.

Conclusion

Under 18 C.F.R. § 385.206(g)(3) and 18 C.F.R. § 385.502(a)(1), FERC has clear authority to grant an evidentiary hearing, whether under this Docket number as a result of Movant's Rule 212 Motion or Rule 206 Complaint, or a new Docket number, pursuant to the Rule 206 Complaint. Such a hearing would neither be duplicative nor undermine FERC's efforts to date, as PennEast asserts. PennEast Answer, p. 2 and pp. 4-5. To the contrary, the hearing would complement FERC's efforts, and serve to do the job that PennEast failed to do: develop a complete record that FERC needs under 15 USC 717f(e), to determine whether there is "substantial evidence" of public need for this pipeline. 15 U.S.C. § 717r(b), 5 U.S.C. § 706(2)(E).

Respectfully submitted,

Date: 7/20/16



Aaron Kleinbaum, Esq.
Jennifer Danis, Esq.
Raghu Murthy, Esq.
Amanda Drennen, Legal Intern
Eastern Environmental Law Center
Suite 1025
50 Park Place
Newark, NJ 07102

Susan Kraham /*ESQ*

Edward Lloyd, Esq.
Susan Kraham, Esq.
Columbia University School of Law
435 West 116th Street
New York, NY 10027

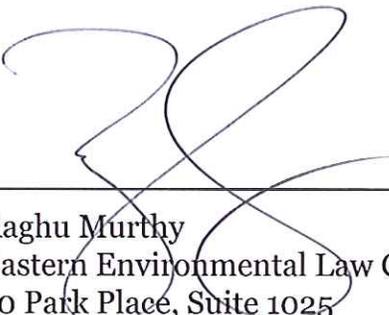
*Co-counsel for Movants New Jersey
Conservation Foundation and Stony Brook-
Millstone Watershed Association*

CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing document upon PennEast Pipeline LLC (the Respondent), affected regulatory agencies, and each person designated on the official service list compiled by the Secretary in this proceeding.

12pm

Dated at [time] this 20th day of July, 2016.



Raghu Murthy
Eastern Environmental Law Center
50 Park Place, Suite 1025
Newark, NJ 07102
973.424.1166
rmurthy@easternenvironmental.org