

impacted by the proposed PennEast pipeline. HALT-PennEast was established in January 2016 to protect homeowner interests in New Jersey from the injuries that PennEast's proposed pipeline would cause them. HALT-PennEast is a community group concerned about the infringement on property rights, direct harm to commercial, cultural, historic, and open space interests, and the health, economic, and environmental costs if FERC approves the PennEast pipeline. Because HALT-PennEast and its members would be directly harmed by PennEast's proposed route and their land could be taken by eminent domain if FERC approves the proposed route, HALT-PennEast is uniquely qualified to comment on these threats. Therefore, HALT-PennEast makes this motion on its own behalf and on behalf of its members.

On September 24, 2015, PennEast filed an application under Section 7 of the Natural Gas Act, 15 U.S.C. § 717f, for a 114-mile natural gas pipeline. The pipeline's proposed route would run through Hunterdon and Mercer Counties in New Jersey and would cross the properties of current and prospective HALT-PennEast members. FERC has previously recognized that landowners have a strong and unique interest in Section 7 proceedings.¹ In fact, landowners and their surrounding communities represent one of the "three major interests that may be adversely affected by" a proposed route.² Before granting a certificate, FERC must complete a full weighing of the public benefits against the adverse impacts on landowner interests.³ It is vital for HALT-PennEast to intervene to ensure that FERC has the information regarding landowner interests necessary to conduct a thorough balancing test.

The proposed pipeline threatens many interests unique to HALT-PennEast's members, as discussed in further detail below.

¹ Federal Energy Regulatory Commission, *Certification of New Interstate Natural Gas Pipeline Facilities (Policy Statement)*, 88 FERC ¶ 61,227, at 24, 1999.

² *Id.*

³ *Id.*

1. *Preliminary Surveys by PennEast Have Resulted in Unauthorized Entry on Property Owned by Members of HALT-PennEast.*

Adverse impacts on the land, homes, and livelihoods of HALT-PennEast's members have already begun. PennEast sent HALT-PennEast members requests for access to conduct surveys, to which the members either did not respond or responded with express denials of permission to enter. Despite failing to obtain permission, PennEast sent surveyors who have repeatedly entered onto members' land to conduct surveys along the proposed right-of-way for the pipeline. Low-flying drones also have been operated over members' land by PennEast surveyors located on or near these lands.

PennEast made these surveys without landowners' consent, despite clear federal and state law barring such entry, and in spite of several members' explicit denials of permission to enter. The surveys disrupt members' enjoyment of their land and may threaten businesses, livestock, and planted crops on farm fields. It is important for HALT-PennEast to participate in FERC's proceedings to fully explain the costs of these harmful entries.

2. *HALT-PennEast—Representing New Jersey Landowners and Energy Consumers—Has Unique Interests in Limiting the Use of Condemnation for Private Gain.*

If FERC issues a certificate of public convenience and necessity to PennEast, PennEast will be vested with eminent domain authority over land owned by members of HALT-PennEast. All contemporary evidence demonstrates that the pipeline will provide no public benefit, but instead only private gain to PennEast. The proposed pipeline would not meet unserved demand, increase electric reliability, or result in lower costs to consumers.⁴

⁴ FERC previously recognized that a recent increase in pipeline capacity resulted in the Northeast becoming a net exporter in 2015, which demonstrates that existing pipelines already exceed local demand. *2015-2016 Winter Energy Market Assessment: Item No. A-3*, FERC, at 7-8 (Oct. 15, 2015), available at <https://www.ferc.gov/market-oversight/reports-analyses/mkt-views/2015/10-15-15-A-3.pdf>.

In fact, the New Jersey market already has a glut in natural gas.⁵ Other less disruptive and less expensive alternatives—including taking advantage of existing stored reserves—exist to address New Jersey’s energy needs. Indeed, based on the stagnated demand for natural gas in the New Jersey market, it is most likely that the effect of the pipeline will be to increase exports for private gain rather than provide any natural gas to New Jersey residents.

HALT-PennEast is uniquely situated both to show the harmful impacts of eminent domain on property in Hunterdon and Mercer Counties and also to show that those harms will not result in any energy benefits for natural-gas consumers in New Jersey. Intervention in these circumstances will ensure that FERC does not grant eminent domain authority for a pipeline that offers no offsetting public benefit.

3. *HALT-PennEast’s Participation is Necessary to Develop a Full Record on the Economic, Environmental, and Community Costs of the Pipeline.*

HALT-PennEast’s participation also is essential to ensure the negative impacts on the environment, local business, historical and cultural interests, and public health are clearly understood, considered, and evaluated.

As an initial matter, many of the HALT-PennEast members earn a living off of the land by farming and raising livestock. The pipeline will jeopardize their ability to continue these trades and maintain the environmental certifications necessary to doing so. For example, the current proposed route would destroy members’ orchards, block access to hayfields and farming operations, and threaten existing, costly organic farming certifications, among other damages. As a result, the common interests of these homeowners can only be fully addressed by HALT-PennEast intervention.

⁵ See, e.g., Michael Spille, *Analyzing the PennEast Purpose and Need* (Oct. 27, 2015).

The pipeline will also interfere with members' health and safety, if it is built on or near their properties. The proposed pipeline would run close to many private ground water wells, which increases the risk of arsenic contamination in the drinking water caused by PennEast construction, including blasting the area's rock formation for construction.⁶ Arsenic could also be released into the soil, significantly harming farms and contaminating homeowners' food sources. Potential methane leaks into the air from the pipeline, as have been seen in California⁷, also threaten surrounding landowners' health and safety. Additionally, PennEast would draw significant amounts of water from local aquifers for pipeline construction, which threatens the long-term viability of residents' wells. Any dumping by PennEast into local waterways also could impact wells, protected wetlands, and C-1 designated waters, all of which are vital to the community. Members thus have a significant interest in preventing the threat to these waterways and ensuring that PennEast and FERC strictly follow the permitting provisions of the Clean Water Act. HALT-PennEast requests intervention so it can bring to FERC's attention these types of health and environmental contamination risks.

HALT-PennEast is also in a unique position to help FERC understand the environmental impacts that would result from the proposed pipeline. Increased reliance on natural gas in New Jersey, rather than a focus on renewables such as wind and solar, will exacerbate the effects of climate change and is inconsistent with President Obama's Climate Action Plan. In addition, the pipeline's current route threatens important wildlife in the area, including several endangered and threatened species and critical habitat for those species, such as abandoned mines for threatened and endangered bat species. These species are vital to the recreational, ecosystem, and

⁶ See, Letter from Tullis C. Onstott, Professor, Princeton University, to Cheryl A. LaFleur, Chairman, FERC (Feb. 24, 2014) (on file with FERC).

⁷ Nsikan Akpan, *3-Month-Old Methane Leak in Southern California Declared State of Emergency*, PBS (Jan. 6, 2016), available at <http://www.pbs.org/newshour/rundown/3-month-old-methane-leak-in-southern-california-now-a-state-of-emergency/>.

commercial well-being of the members' communities. HALT-PennEast's intervention is necessary to ensure that FERC fully considers these environmental concerns and less harmful alternatives in its draft Environmental Impact Statement (EIS).

These environmental concerns are multiplied by related projects: HALT-PennEast is concerned that PennEast's application improperly segmented its analysis of these related pipeline projects—and that FERC may do the same in drafting its EIS—thereby undervaluing the true environmental harms. A recent D.C. Circuit case held that FERC cannot segment review of related pipeline projects when conducting its EIS and that FERC must consider the cumulative impacts of all connected actions together in the EIS.⁸ Several other proposed pipeline projects are directly connected to the PennEast pipeline proposal and must be considered in the upcoming EIS. These include the proposed MARC II pipeline⁹ and proposed upgrades to the Transco Leidy Line that rely on a connection to the PennEast pipeline.¹⁰ FERC must consider the cumulative impacts from the MARC II proposal, the Transco proposed upgrades, and any other related pipeline projects in the EIS for the PennEast pipeline. HALT-PennEast's intervention ensures that FERC considers all cumulative impacts from connected actions and does not unlawfully segment the pipeline projects.

⁸ *Delaware Riverkeeper Network et al. v. FERC*, 753 F.3d 1304 (D.C. Cir. 2014).

⁹ The MARC II pipeline is specifically designed to connect the PennEast pipeline with the current MARC I pipeline. *Crestwood Midstream Partners Announces Successful Non-Binding Open Season for MARC II Pipeline in the Marcellus Shale*, BUSINESS WIRE (Oct. 20, 2014), available at <http://www.businesswire.com/news/home/20141020006631/en/Crestwood-Midstream-Partners-Announces-Successful-Non-Binding-Open>; see also, Tracy Halck, *Crestwood Midstream Partners LP*, at 20, available at http://www.millenniumpipeline.com/pdf/2014_annualmeeting/2014MillenniumPipelineAnnualCustomerMeeting-CrestwoodPresentation.pdf.

¹⁰ *Application for Certificate of Public Convenience and Necessity: Garden State Expansion Project*, Transcontinental Gas Pipe Line Company, LLC, at 3-5 (Feb. 18, 2015); see also *Application of PennEast Pipeline Company, LLC for Certificates of Public Convenience and Necessity and Related Authorizations*, PennEast Pipeline Company, LLC, at 7 (Sept. 24, 2015) (noting that the PennEast pipeline would terminate at a delivery point for the Transco Leidy line).

4. *HALT-PennEast has Unique Knowledge about State and Local Land Uses and Conservation Efforts, and Intervention is in the Public Interest.*

Many acres along the proposed routes are also subject to preservation or conservation easements under arrangements that include public investment by HALT-PennEast's members. For instance, the Green Acres Program in New Jersey has expended significant state and municipal resources to preserve open spaces in the state. N.J.S.A. 13:8A-1 *et seq.* These open spaces range from recreational areas and waterways to timber reserves and local farms. The proposed pipeline route is being sited to cross through thousands of acres of these preserved spaces. HALT-PennEast members have concluded that the pipeline would undermine and undervalue these preserved spaces and, in turn, directly harm its members' recreational and commercial interests in these lands. Based on the FERC Docket to date, it is apparent that PennEast has refused to adequately evaluate the history and restrictive land-use covenants of these preserved spaces. As a result, significant taxpayer expenditures would be wasted if these protections are lost, and the value of these spaces to the surrounding community and residents would be lost. HALT-PennEast's membership has extensive interest, knowledge, and reliance on the current land-use restrictions on this property, and its participation is necessary to develop a complete factual record on these issues and concerns.

Finally, the public interest will be served by intervention. HALT-PennEast's interests are shared by those in the public who are not members of HALT-PennEast but are still homeowners in New Jersey. In addition, the community at large currently benefits from the many preserved open spaces that would be damaged. It is in the public's interest to insure that homeowner and landowner views are heard alongside the environmental and business interests of other intervenors. More diverse voices in the FERC proceedings will make it more likely that the overall public will be served by the final decision.

III. Good Cause for Intervention Out-Of-Time

HALT-PennEast has good cause to intervene out-of-time. First, HALT-PennEast was only created as of January 21, 2016, and therefore could not have intervened as an entity until very recently. HALT-PennEast now moves to intervene promptly after its formation so it will not delay the FERC proceedings. Many impacted homeowners do not have the individual resources to fully and adequately present their interests and concerns to FERC. Therefore, a unified entity representing the views of landowners in Hunterdon and Mercer Counties is essential for FERC to understand the direct and indirect impacts of the pipeline and to develop a full factual record. In addition, intervention by HALT will lessen the administrative burden on FERC by limiting the number of intervenors and individual comments. In short, HALT-PennEast has been diligent in forming a non-profit entity and intervening in this matter as soon as the homeowners determined that a community group was necessary and essential to fully represent the community's interests.

Second, many of the concerns of HALT-PennEast arose recently. PennEast has made unconsented entry onto HALT-PennEast's members' properties for the purpose of conducting surveys. Many of these entries occurred after the October 29, 2015 intervention deadline. These continued entries—without the permission of the landowners—sparked an increase in concern among landowners, contributing to the formation of HALT-PennEast. Moreover, new concerns from members arose due to PennEast's recent actions and its inadequate responses to FERC staff's requests for additional information filed on November 24, 2015.¹¹ As a result, HALT-PennEast has good cause for intervening at this time. The intervention of HALT-PennEast is necessary to develop a full factual record of these recent events and prevent further unlawful entry until FERC makes a decision on PennEast's application.

¹¹ Letter from Kimberly D. Bose, Secretary, FERC, to Anthony C. Cox, PennEast Pipeline Company, RE Environmental Information Request (Nov. 25, 2015).

Third, HALT-PennEast's intervention will not delay the proceedings. This motion is filed prior to any decision by FERC on PennEast's application and prior to FERC's release of a draft Environmental Impact Statement. Therefore, intervention at this stage is sufficiently early in FERC's proceedings. *See* 18 C.F.R. § 385.214; *Venice Gathering Sys., LLC*, 152 FERC ¶ 61245, 62161 n.6 (Sept. 29, 2015).

IV. Conclusion

Wherefore HALT-PennEast on its own and on behalf of its members respectively requests FERC grant its Motion for Leave to Intervene Out-Of-Time as a party with full rights to participate in all future proceedings.

Respectfully Submitted,

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