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Kimberly Bose
Secretary
Federal Energy Regulatory Commission
888 First Street, NE
Washington, D.C. 20426

Re: PennEast Pipeline Project No-Action Alternative
FERC Docket No. CP15-558

Dear Ms. Bose:

I am writing on behalf of Homeowners Against Land Taking-PennEast (“HALT”). HALT represents over two hundred impacted landowners in towns along PennEast’s proposed pipeline route. HALT intervened in this proceeding on February 3, 2016. Its members are concerned that the alternatives analysis in the Draft Environmental Impact Statement (DEIS) is flawed. Many members of HALT will be directly impacted if the pipeline is built and have a strong interest in ensuring FERC fully considers the no-action and other no-build alternatives.

The DEIS’s alternatives analysis is deficient and violates NEPA. NEPA requires FERC develop and analyze a no-action alternative in the DEIS.¹ In addition, FERC must develop and “rigorously explore” reasonable alternatives to the proposed action.² The DEIS does not comply with these requirements.

The DEIS’s no-action alternative analysis does not meet NEPA’s standards. The DEIS only dedicates four paragraphs to analyzing the no-action alternative.³ These paragraphs are insufficient to meet NEPA’s requirement that a DEIS contain full and detailed analysis of the no-action alternative.⁴ There is no data on the impacts that would be avoided in the no-action alternative nor any meaningful, substantiated

¹ 40 C.F.R. § 1502.14.

² *Id.*; *Union Neighbors United, Inc. v. Jewell*, No. 15-5147, 2016 WL 4151237, at *1 (D.C. Cir. Aug. 5, 2016).

³ DEIS at 3-3.

⁴ *W. Watersheds Project v. Abbey*, 719 F.3d 1035, 1052 (9th Cir. 2013) (“Feasible alternatives should be considered in detail,” including the no-action alternative); *Bob Marshall All. v. Hodel*, 852 F.2d 1223, 1228 (9th Cir. 1988) (“Informed and meaningful consideration of alternatives-including the no action alternative-is thus an integral part of the statutory scheme.”); *S. Utah Wilderness All. v. Norton*, 237 F. Supp. 2d 48, 52 (D.D.C. 2002) (“Considering environmental costs means seriously considering alternative actions to avoid them.”).

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comparison of the no-action alternative to the proposed action. The DEIS prematurely dismisses the alternative with only scant analysis.

The minimal analysis of the no-action alternative also violates NEPA because it lacks any basis in fact.⁵ Rather than gather and analyze specific data, the DEIS draws conclusions on the no-action alternative solely from speculation.⁶ Based on unsupported guesses as to what would happen if the pipeline were not built, and without noting the benefits to the environment from using renewable and existing energy sources, the DEIS concludes that the no-action alternative would not “provide a significant environmental advantage.”⁷ This conclusion ignores and contradicts the DEIS’s earlier statement that “the short- and long-term environmental impacts described in this EIS would not occur” in the no-action alternative.⁸ The analysis is contradictory, conclusory, and based solely on speculation, violating NEPA. Equally troubling, because the DEIS contained less than 30 percent of the data necessary to evaluate environmental impacts of the preferred alternative,⁹ FERC has no baseline to compare the many environmental impacts of the preferred alternative against the acknowledged non-existent impacts in the no-action alternative.

In this case FERC’s rejection of the “no action” alternative was predetermined based on its unlawful and impermissibly narrow statement of purpose and need. In the alternatives discussion, the DEIS defines the purpose and need as meeting the needs of the shippers with whom PennEast has signed contracts.¹⁰ This is too narrow because the DEIS must define the project’s purpose consistently with FERC’s regulations, and a definition that focuses solely on private corporate needs is inconsistent with the Natural Gas Act’s mandate that pipelines be for the public

⁵ *Ctr. for Biological Diversity v. U.S. Dep’t of Interior*, 623 F.3d 633, 642 (9th Cir. 2010) (rejecting agency conclusion that no-action alternative would have no environmental benefits when that conclusion was based on false assumptions).

⁶ The DEIS speculates that shippers “may need” to obtain supply from new or existing pipelines, natural gas companies “would likely” build new pipelines for shippers, and renewable energy sources “could require . . . construction.” DEIS at 3-3. None of these speculations are supported by evidence in the record.

⁷ *Id.*

⁸ *Id.*

⁹ *See, e.g., id.* at 4-66, 4-68, 4-89, 4-107, 4-193 (showing percentages of missing environmental data ranging from 68% to close to 90%).

¹⁰ *Id.* at 3-3.

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convenience and necessity.¹¹ As a result of the overly narrow purpose and need, FERC improperly dismissed the no-action alternative as not meeting the project's purpose.¹² Had FERC not impermissibly narrowed the purpose, a more detailed analysis of the no-action alternative was mandatory, and FERC's cursory dismissal was invalid.

The DEIS also failed to discuss several reasonable alternatives to the proposed pipeline, including the LNG system alternative and dual-fuel alternative. Although Resource Report 10 in PennEast's application discussed the LNG system alternative,¹³ the DEIS inexplicably did not. The DEIS also makes no mention of dual-fuel generators as an alternative to constructing the pipeline. NEPA requires the DEIS consider "all reasonable alternatives, and for alternatives which were eliminated from detailed study, briefly discuss the reasons for their having been eliminated."¹⁴ Taking as true the DEIS's claim—not found in the alternatives analysis—that one of the project purposes is lowering energy costs, the LNG system alternative and the dual-fuel alternative are feasible and non-speculative alternatives. Indeed, the DEIS claimed that lowering energy costs was a secondary purpose of the project (DEIS at 1-3), so it needed to consider the effect of the project on energy costs when determining an alternative's viability and could not cherry-pick a narrower purpose in order to quickly dispose of all alternatives. Such analysis would have shown that the only evidence in the record on energy costs under future market conditions demonstrates that the preferred alternative (the PennEast pipeline) would increase energy costs and thus the project itself required dismissal as infeasible. Greg Lander, *Analysis of Public Benefit Regarding PennEast Pipeline*, Skipping Stone (Mar. 9, 2016).¹⁵ NEPA requires FERC to

¹¹ 15 U.S.C. § 717f(c), (e).

¹² *Citizens Against Burlington, Inc. v. Busey*, 938 F.2d 190, 196 (D.C. Cir. 1991) ("An agency may not define the objectives of its action in terms so unreasonably narrow that only one alternative from among the environmentally benign ones in the agency's power would accomplish the goals of the agency's action."); *Simmons v. U.S. Army Corps of Eng'rs*, 120 F.3d 664, 666 (7th Cir. 1997) (finding the agency impermissibly narrowed the purpose and need by defining it based on private applicant's goals and agreements rather than the broader service the applicant would provide).

¹³ Resource Report 10 at 10-6.

¹⁴ 40 C.F.R. 1502.14(a).

¹⁵ The technical feasibility of the LNG system alternative and its ability to lower energy costs is well-documented. Greg Lander, *Analysis of Public Benefit Regarding PennEast Pipeline*, Skipping Stone (Mar. 9, 2016). Studies also show dual-fuel generators and plants are viable alternatives to pipelines. Paul J. Hibbard and Craig P. Aubuchon, *Power System Reliability in New England: Meeting Electric Resource Needs in an Era of Growing Dependence on Natural Gas*, ANALYSIS GROUP, INC., at iii-iv (Nov. 2015), available at

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“rigorously analyze” alternatives in the DEIS, taking into account supporting and contrary facts in the record.¹⁶ In any event, even if FERC thought the LNG system alternative was not feasible for some undisclosed reason, the DEIS failed to provide the required explanation for why FERC eliminated the alternative after it was brought up in Resource Report 10.

FERC must withdraw the DEIS until it fully analyzes the no-action alternative and all reasonable alternatives, including the LNG system and dual-fuel alternatives.

Best regards,

s/ R. Steven Richardson

(Continued . . .)

http://www.berkshireeagle.com/local/ci_29134769/new-gas-pipelines-not-needed-region-energy-report; *Interregional Transmission Development and Analysis for Three Stakeholder Selected Scenarios And Gas-Electric System Interface Study*, EASTERN INTERCONNECTION PLANNING COLLABORATIVE, at 9-259 (Jul. 2, 2015), available at <http://nebula.wsimg.com/92151dbddb45d5c0d4981177eb19d52a?AccessKeyId=E28DFA42F06A3AC21303&disposition=0&alloworigin=1>.

¹⁶ *NRDC v. Morton*, 458 F.2d 827, 838 (D.C. Cir. 1972).