



# rethink energy Investments

Exploring Investment Risks of Fossil Fuel Infrastructure

*Examining the risks of new pipeline proposals in New Jersey a battleground state for companies seeking to market gas from the Marcellus Shale in Pennsylvania.*

---

## December 2017

---

### **Pipeline Opponents Bring Constitutional Challenge Against FERC's Certificate Approval Process**

A first-of-its-kind legal challenge filed with the U.S. District Court in Trenton against FERC contends that the federal regulatory agency is acting unconstitutionally by failing to ensure that the lands it authorizes pipeline companies to seize are being put to a public use.

The constitutional challenge of FERC's pipeline review practice by the Eastern Environmental Law Center (EELC) and Columbia University Environmental Law Clinic on behalf of New Jersey Conservation Foundation asserts:

- Under its current evaluation process, FERC's approval process for pipelines violates the Fifth Amendment of the U.S. Constitution by improperly authorizing land to be taken from private parties without a full public-use analysis.
- FERC must consider other agencies' findings on environmental impacts before granting a pipeline company a Certificate of Public Convenience and Necessity, which allows for the exercise of eminent domain.
- FERC cannot accept private shipping contracts as exclusive proof of market demand or as proof that consumers will not suffer economic harm.

The litigation applies to pipeline projects across the country, including PennEast pipeline.

Under FERC's flawed process, Tom Gilbert, campaign director, NJ Conservation

Foundation said, <sup>3</sup>Hundreds of homeowners, organizations and local governments could have their land seized through eminent domain for the unneeded, proposed PennEast pipeline, and would be victims of unconstitutional action by the federal government."

<sup>3</sup>The law is clear, and it is not being followed," said Jennifer Danis, senior staff attorney at EELC. "FERC<sup>1</sup>'s practice flies in the face of constitutional protections against the illegal seizing of private property.<sup>2</sup>

## Widespread Coverage of FERC Lawsuit

*"If the court sides with the environmentalists, FERC could be forced to revamp its methods for approving pipeline projects." - [The Star Ledger](#)*

*"In another challenge to the expansion of natural-gas pipelines, a conservation group is accusing a federal agency of unlawfully allowing the taking of private land in a complaint filed in the U.S. District Court in Trenton." - [NJ Spotlight](#)*

*"New Jersey Conservation Foundation sued the commission in federal court on Wednesday, saying the agency is failing in its duty to keep pipeline developers in check and protect consumers and landowners from environmental threats." - [Courthouse News](#)*

### **[The Daily Record Editorial: "No Rest on PennEast Fight"](#)**

*The Daily Record published an editorial on November 28 saying, "We continue to encourage environmentalists, property owners and anyone else affected by the PennEast project to fight the proposal at every turn. More delays can only help; a DEP under Murphy figures to be less receptive to pipelines in general than it would be under Christie. New Jerseyans don't need the PennEast pipeline, regardless of what company officials claim."*

---

## PennEast Owners and Shippers Signal Uncertain Future, More Delays for PennEast

As the weeks and months pass by with no decision by FERC, PennEast pipeline owners and affiliates appear to be increasingly uneasy and distancing themselves from the project. The first shoe to drop - **PSEG's** sale of its stake in the PennEast project to Spectra earlier this year. Now, other companies behind PennEast are changing their tunes:

- **SJI** is heralding its recent acquisition of [Elizabethtown Gas](#) as a growth project, [with some speculating](#) that it signifies the company's shift away from a focus on PennEast. <sup>3</sup>The acquisition of Elizabethtown Gas and Elkton Gas is a great fit for SJI and reinforces our commitment to high quality, regulated earnings growth,<sup>2</sup> said Michael J. Renna, President and CEO, South Jersey Industries. <sup>3</sup>We share the same business

model and are committed to the highest standards of safety, reliability and *environmental stewardship*."

- On its fiscal 2017 [earnings call](#), PennEast owner and largest shipper, **NJR**, confirmed slippage on PennEast in-service once again, saying the PennEast pipeline would be in service in 2019 and offering no guidance on exactly when in 2019 it would be in operation. Oddly, there were no slides in NJR's presentation dedicated to the proposed pipeline project - just two brief references. Rather, the focal point of the call with analysts was on the new Adelpia Gateway project. Adelpia is an existing oil pipeline NJR announced it would repurpose as a gas pipeline and extend to the Philadelphia area

---

## PSEG: Polar Vortex Rationale for Building Pipelines is a Lot of Hot Air

PennEast has consistently used the Polar Vortex to justify the need for its pipeline, which has been met by criticism from energy experts and project opponents.

Sure enough, on a November 6 analyst call, PSEG CEO, Ralph Izzo, refuted the *Polar Vortex* as an excuse to build new pipelines: <sup>3</sup>You don't want to build an interstate pipeline capability for a Polar Vortex. It's unnecessary. It's expensive. There's no need to do that.<sup>2</sup>

---

## About

**ReThink Energy Investments** is a publication of ReThink Energy NJ. The newsletter looks at the risks facing new pipeline proposals in New Jersey, a battleground state for companies seeking to bring to market natural gas from the Marcellus Shale.

ReThink Energy NJ empowers New Jersey citizens by informing them about the need for reduced use of fossil fuels and pipelines that threaten our state's preserved lands, water, environment, public health, and communities. Our goal is a swift transition to efficient, clean and renewable energy.

ReThink Energy NJ is supported by New Jersey Conservation Foundation, Stony Brook-Millstone Watershed Association and Pinelands Preservation Alliance.

**For more information**, visit [rethinkenergynj.org](http://rethinkenergynj.org) and find ReThink Energy NJ on [Facebook](#) and Twitter [@rethinkenergynj](#).

Contact: Tom Gilbert, campaign director, [tom@njconservation.org](mailto:tom@njconservation.org).



ReThink Energy NJ

<http://rethinkenergynj.org>

[Unsubscribe](#)