



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.

January 2018

PennEast's Regulatory Hurdles Continue to Pile Up

At its final meeting of 2017 on December 22, FERC announced it will [“review its policies on certification of gas pipeline proposals that come before it.”](#) FERC has yet to issue a Certificate order on PennEast.

According to statements made by commissioners at the meeting, FERC’s broad pipeline Certificate process review will examine the criteria the Commission uses to determine whether a pipeline is in the “public interest” and what role precedent agreements play in that inquiry.

Commissioner Richard Glick said the Commission should “examine whether to more broadly consider evidence of need, including placing greater emphasis on the other factors laid out in FERC’s guiding policy document.” He also said “the review should evaluate the current approach for evaluating the environmental impacts of a proposed gas pipeline, including potential greenhouse gas emissions.” Commissioner Cheryl LaFleur expressed similar concerns.

These are the core issues raised by opponents of the proposed PennEast pipeline, and it appears that three Commissioners, including the new Chairman, are listening to them.

The controversial projects before FERC that depend on precedent agreements between owners and those companies’ affiliated firms also remain questionable under the current 1999 Policy Statement, and this issue is central to current litigation. The FERC

Commissioners appear to be taking these issues seriously, which could explain the long delay for reaching a decision on PennEast.

“With FERC’s announcement, projects like PennEast face an even more uncertain regulatory landscape. Energy experts and the NJ Division of Rate Counsel have challenged PennEast’s assertion that the project serves a public need, and have said that affiliate agreements should not be considered evidence of market need. This alone is enough to reject the PennEast project as it does not meet FERC’s standards. These are also some of the exact issues that prompted FERC to reconsider its pipeline review processes,” said Tom Gilbert, campaign director, New Jersey Conservation Foundation (NJ Conservation).

A broad attack on the way FERC does business under its existing Certificate review process was launched in December when Eastern Environmental Law Center (EELC) and Columbia Environmental Law Clinic [filed a lawsuit](#) on behalf of NJ Conservation. The lawsuit contends that FERC is acting unconstitutionally in its pipeline Certificate review process by not ensuring the lands it authorizes pipeline companies to seize are serving a public need.

Governor Phil Murphy Nominates Veteran Enviro. Regulator as NJDEP Commissioner

Newly sworn-in New Jersey Governor Phil Murphy has nominated Catherine McCabe, former federal EPA administrator and 22-year U.S. Department of Justice veteran, as New Jersey’s top environmental regulator at the state’s Department of Environmental Protection (NJDEP).

In an article in *The Record* ([“Murphy picks a top EPA official to set new tone as state’s top environmental regulator”](#)), former U.S. EPA Regional Administrator Judith Enck applauded the appointment: “Catherine has years of experience in the field of environmental enforcement. New Jersey is now poised to return to being an environmental leader.”

McCabe’s strong history on enforcement of environmental laws indicates that the NJDEP under her watch will fully enforce its authority under the Clean Water Act when reviewing proposed pipelines like PennEast.

Fred Kupp, president of the Environmental Defense Fund, also praised the nomination, calling it “a timely reminder of what Governor-elect (sic) Murphy and an all-star cabinet can achieve for a healthy, clean energy future for New Jersey.”

As Murphy announced McCabe’s appointment, he stressed that it would “set a new tone at the agency”, and hailed McCabe as the leader needed to set policy “based on scientific fact, not politics.”

Enerplus Forecasts That PennEast Is Delayed Until 2Q 2019

At an oil and gas industry conference held earlier this month, [Enerplus Corporation](#) (NYSE: ERF), one of 12 shippers subscribed to the PennEast project, again forecasted that the proposed PennEast pipeline would be delayed until the second quarter of 2019.

NORTHEAST MARCELLUS		
Project	Capacity	
	(mmcf/d)	In-Service
Atlantic Bridge (Part 1)	40	Q4 2017
Connecticut Exp.	72	Q4 2017
DTI New Market	112	Q4 2017
Leidy South Project	155	Q4 2017
Orion	135	Q4 2017
Susquehanna West Exp	145	Q4 2017
Triad Exp. 300 - 3 loop	180	Q4 2017
Atlantic Sunrise	1,700	Q3 2018
Eastern Market Access	294	Q3 2018
Atlantic Bridge (Part 2)	199	Q4 2018
Empire North Exp.	300	Q4 2018
Penn East	1,000	Q2 2019
Constitution	650	Q2 2020
Northern Access	497	Q2 2020

Despite this, PennEast continues to mislead investors, the media, and the public [on its website](#), which continues to anticipate an unrealized FERC Certificate in 2017 and in-service status in 2018.

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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.

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Contact: Tom Gilbert, campaign director, tom@njconservation.org.



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