

Why and How to Intervene in the Application for the Proposed Constitution Pipeline

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July 6, 2013

Federal Energy Regulatory Commission (FERC)

part of the Department of Energy

Has the power to issue certificates of “public convenience and necessity.”

Leads the environmental review under NEPA.

Applications for gas pipelines fall under section 7(c) of the Natural Gas Act.

Certificate of Public Convenience and Necessity

FERC's balancing test:

- Need for pipeline (gas)
- **Landowners' property rights**

(Economic considerations are key)

- NEPA: socio-economic and environmental impacts

Certificate of Public Convenience and Necessity

This federal action triggers:

- Environmental Impact Study
- Other agency actions (Table 1.6-1)

The proposed pipeline will require additional permits and approvals.

Other involved agencies include:

US Environmental Protection Agency	
Army Corp of Engineers	(CWA § 404)
US Dept of Agriculture	(consultation)
US Fish and Wildlife	(ESA)
SRBC and DRBC	(water withdrawals)
NYS DEC	(CWA § 401)
SHPO	(NHPA)
NYS DOH	
NYS DOT	(hwy occupancy)
Towns and Counties	(road permits)

FERC oversees the process

Rules of procedure.

18 CFR 385.214 (Rule 214)

Anyone can “intervene” by July 17, 2013

After that date, it’s “untimely”

It’s still possible, but more difficult.

What is Intervention? Why Bother?

We're building the trial record during the application process. It's "adjudicatory."
Evidence cannot be entered once the process is over (certificate granted).
Unexpected things can happen.
Preserve your legal rights.
No obligations or risks.
Support landowners.

Privileges of Intervention

- Receive documents by other intervenors;
- Participate in hearings before FERC;
- File briefs;
- File for rehearing of a decision;
- Have legal standing to be heard by the Court of Appeals if you object to FERC's final order.

Landowners – and others – may want to sue later.
Need to create, gather, and submit evidence now.

Reduced rights if you don't intervene

There will be separate lists:

- the general one we've been using
- the new "service" list for intervenors

If you don't intervene, you can still make comments to FERC.

How to Intervene You Need a “Position”

Rule 214(b) “Contents of motion.

- (1) Any motion to intervene must state, **to the extent known**, the position taken by the movant and the basis in fact and law for that position.”

You Also Need Standing (interest / potential injury)

Rule 214 (b)(2) “A motion to intervene must also state the movant's interest **in sufficient factual detail** to demonstrate that:

(i) [a statutory or other right] . . .

(ii) The movant has or represents an interest which may be directly affected by the outcome of the proceeding, including any interest as a:”

You Also Need Standing

Rule 214 (b)(2)(ii) “. . . including any interest as a:

(A) Consumer,

(B) Customer,

(C) Competitor, or

(D) Security holder of a party; or

(iii) The movant's participation is in the public interest.”

Example 1: Landowners

Economic:

- Devaluation of property

- Liability to others

- Potential insurance or mortgage problems

Property rights:

- Eminent Domain

- Loss of Privacy: Trespassers, Drones

Environmental: Water, Woods, Wilderness

Personal Safety: Blast Zone

Example 2: Members of Community

Environmental degradation

Community character

Economic impacts

Public safety

Fracking

Example 3: Everyone

Pipelines are “open access”

It will enable fracking and encourage industrial development.

Industry will come to tap this gas;

AND industry will come to frack for gas.

Pipelines will crisscross everyone’s land.

In your intervention, state you want a full cumulative impact analysis.

Example 4: Businesses

State any specific concerns that may negatively affect your business:

- Crop damage
- Organic or other purity requirements
- Promotion of renewable energy
- Dependence on tourism
- Brand based on clean country life

Example 5: NonProfits and Municipalities

NonProfits and Municipalities (example: town boards) should intervene “in the public’s interest.”

The Pace Environmental Litigation Clinic will intervene on behalf of Stop the Pipeline (STP). However, individual members should still intervene on your own behalf.

Be Specific

As a landowners or community member, state your specific position and interest.

Ex: I own property one mile from the proposed pipeline. It is located down the hill from proposed route and future flooding will erode my pastures and inundate my house.

Be General

By stating a general interest, you retain the ability to add injuries as you become aware of them.

Ex: I invested my savings to buy property in the area in order to . . .
(raise a family, start an organic farm, retire in a country setting, fish, etc.)

Summary of Requirements

State it's a motion to intervene.

Include:

Date

Party names

Docket number: CP13-499-000

Contact information for service list

18 CFR 385.214 - Rule 214(b) requirements

your position - basis in fact and law

your "interest" - standing

Say no one else can represent your interest.

How to submit it to FERC

Prepare it as a document and eFile it.

OR

Use FERC's document-less intervention:

1. Register – get ID & set password
2. Log-in
3. Select eFile. Follow instructions.
4. Prepare your position / interest statement ahead of time. Paste it in.

Instructions Are Online

How to eRegister:

<http://www.stopthepipeline.org/index.cfm/take-action-now/send-comments-to-ferc/to-register/>

How to intervene:

<http://www.stopthepipeline.org/index.cfm/take-action-now/send-comments-to-ferc/to-intervene/>