

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

The Office of Public Participation

Docket No. AD21-9-000

Comments of the Pipeline Safety Trust

On June 10, 1999, the Olympic Pipeline ruptured in a city park in Bellingham Washington, spilling a quarter of a million gallons of gasoline into a creek before the fuel ignited, creating a gigantic mushroom cloud over the city, sending a fireball down the creek toward the downtown area, damaging the City's water treatment plant, and destroying everything in its path. Three young men were killed in that tragedy: two ten-year-old boys playing in the park died from severe burns and a young man fishing in Whatcom Creek was overcome by the fumes and drowned. The Pipeline Safety Trust was created with funds set aside from part of the criminal penalties paid by the operator. The US Department of Justice and the federal judge agreed with the families of the victims and the community who insisted that there needed to be an independent watchdog to oversee the industry as well as the safety regulators, to work toward better pipeline safety regulations and to assist the public in getting more information about pipelines in their communities. Since its inception, the Trust has been working toward those goals, providing the public information about pipelines in their communities, urging regulators to make more information available, and advocating for stronger pipeline regulations, better siting decisions, and a bigger role for the public in making sure that pipelines are properly sited, operated, maintained and decommissioned.

We strongly support the creation of an Office of Public Participation. It is critical that the public get accurate information about navigating the FERC website, finding information some alternate ways for those without digital access, getting information to inform their decisions about how to get involved, whether to intervene in proceedings, or advice about how to get the Commission's attention on issues that arise well after certification, when operators fail to properly restore land, or introduce weeds into crop land, or otherwise violate the terms of their certificates.

The logistical challenges in establishing a successful Office of Public Participation are perhaps exceeded only by the cultural ones. It will be a big shift in the work of the agency, and its success will require an equally large change in the public's view of the agency, establishing a sense of trust that does not now exist. FERC pipeline certification decisions are frequently perceived as callous towards the concerns of landowners, NGOs, tribal, state and local governments, and community groups concerned about the environment or safety or health. Some of that perception stems from the challenges faced by those who would like to participate in certification proceedings but are without access or means to do so. We are

hopeful that the establishment of the OPP with adequate staffing, participant funding and the full-throated support of its mission by the Commission will lead not only to better outcomes (more informed siting decisions, fewer abuses of eminent domain powers, more follow-through on certificate condition violations, etc.) but that those improved decisions result in a greater sense of legitimacy of the Commission's work among the public.

Our more specific comments will cover three main topics: access to information, agency responsiveness and participant compensation.

Access to information

The information challenges go both directions. One direction is to have agency information available to those members of the public who come looking for it. The other is to get agency information about a particular project out to the communities who would be affected by its certification.

One major barrier to public participation in FERC proceedings is the FERC website itself. Trying to find information specific to a pipeline proposed or already existing in your community is not at all intuitive. The labels on things make sense only if one lives and works in that agency world, and most people do not. What is e-file, what is e-register, and how do I find the right place to comment or read an application? For example, the instructions for "how to get involved" are found under an "Industries and data" button, which is not a place a person looking for that information might choose to look. As a member of the public whose only interaction with the Commission is a single pipeline project, it's not at all intuitive that you need to find a docket number to go any further, and how to find that docket number if you only know the operator, or the project's given name. And if you don't happen to know that docket number, or if you want to do research about, for example, how many pipeline certifications have been denied, then navigating the docket search function, once you find it, is quite difficult. The amount of information on the site is not the issue. It just needs to be labeled in a way that an average member of the public might have a chance of finding what they're looking for.

Engaging communities where pipelines are proposed to be routed (or might be re-routed) will require using a wide variety of communication tools, including social media, public meetings, mail, phone, email and face to face small meetings. It is a staff-heavy proposition, but it is so important that these communities know they can get information from a source other than the applicant's advance team of PR folks and those responsible for obtaining rights of way. Part of meeting people where they are means finding them by using the tools they use to get their news and information, and providing access to that information in languages they speak or read.

There will not be a successful one-size-fits-all means of accomplishing engagement with the wide variety of people, organizations and governments that need access to information from the OPP, from rural landowners to tribal governments to urban air quality organizations and many in between, many of whom feel threatened by the potential loss of their land, their sense of security and safety, and their health. Identifying and successfully engaging with residents of

Environmental Justice communities is critically important to improving the Commission's decision-making process. Appropriate engagement across all these aspects of "the public" may mean that the pre-filing process takes longer than it has in the past. More folks involved and asking questions always means that getting to decisions takes longer, but in this case, adding the voices of those who have not historically had a say in Commission proceedings is important and worth a bit more time.

Agency Responsiveness

Commission proceedings and dockets need to be accessible to the public in a way that meets the public where they are, and that means making documents available in a variety of ways, with sufficient time for the public to make an informed decision about whether to seek intervention, and in languages accessible to the area that will be impacted.

The Office needs to have sufficient staff to respond to questions about pending applications, the Commission decision making process, and to assist people in submitting comments or in the intervention process, and to be responsive to questions about existing certificated pipelines or facilities that may be violating the conditions of their certification. The Commission should consider having the OPP staff entirely separate from the staff assigned to process a given application or who staff a given proceeding. It may be more helpful to the public and the Commission to have those roles separated, and to have the OPP staff act to ensure that participants other than the applicant have every opportunity to get their views heard.

Whether it is OPP staff or staff assigned to process a given application, we believe that FERC should take more of a lead role in providing information to the public and running the informational meetings, rather than delegating this to the operator. The perception of information by the public is very different if it comes from the operator appearing at an agency public meeting than if it comes from the operator at a wholly operator-run public meeting/open house.

The OPP also needs to provide timely response to questions about the funding process for those who wish to intervene, and to approve applications for funding in a timely manner.

One further topic that should be addressed by the OPP is the coordination, or lack thereof, between FERC and PHMSA on applications for new projects and on reviewing certificates for projects that have been found to violate the conditions of their certificates, specifically the obligations to comply with PHMSA's minimum safety standards. There should be an explicit, visible role for PHMSA in reviewing applications for new certificates, in providing information to inquiring public about those proposals and PHMSA's assessments of those proposals should also be made publicly available by the OPP. The substantial safety concerns around siting, construction and operation of natural gas facilities cannot be brushed to the side by a direction from FERC, or a promise from the applicant to comply with PHMSA's minimum safety regulations. FERC should better coordinate with PHMSA over applications, and in investigations showing violations of PHMSA regulations that also result in violation of certificate conditions.

The OPP should be in a position to reassure the public that FERC is willing to use its enforcement authority against operators when those kinds of violations are found, even years after original certification.

Participant Compensation

The establishment of a way to compensate members of the public who wish to intervene in Commission certification or other proceedings is critical to providing the Commission a more balanced view of the facts surrounding any given application or proceeding. It is very uncommon that a landowner or group of landowners, a tribal government or local government would have the means to be able to intervene and meaningfully participate in any Commission proceeding without some financial assistance.

There are a couple of models for ways to do this, the well-known examples being the California Public Utilities Commission, and the Canadian Energy Regulator. The CPUC process, as also described in the workshop by Mr. Toney from TURN, has significantly more funding, and the process for making application and intervening seems to be pretty straightforward. Its usefulness and success could be greatly enhanced by the ability of a participant to have some amount of the participant funding accessible as soon as intervenor status is granted, so that parties can be assured of some cash flow for expenses incurred before the end of what can be long and complex proceedings. If parties have to wait until months after a Commission decision is reached to apply for and have access to any funding, that will in many cases, negate the usefulness of the participant funding altogether. Those without means would have to get representation and experts to assist them on a wing and a prayer that there would be reimbursement somewhere in the distant future. It's not likely that many members of the public or community groups have the means to foot that bill in the meantime. The State of Michigan also has a participant reimbursement process, but its system of awarding grants by a multi-member board, and allowing access to some part of the grant award during the proceeding could improve on the California system.

The Canadian process also gets around that problem to some extent by taking applications up front, at the beginning of the proceeding, for parties who wish to participate. The CER then grants participant status and tells the applicant up front how much funding they will be eligible for. The parties do not have to wait until after the proceeding to have access to any of the funds. <https://www.cer-rec.gc.ca/en/applications-hearings/participate-hearing/hearing-process/participant-funding-program/participant-funding-guide.html#s7> While this gives the participants more certainty about funding and some access to interim funding, the dollar limitations per participant must still constrain most intervenors without means to augment that funding to pay for experts or attorneys in a complex proceeding. The budget for participant compensation needs to be sufficient to allow for experts and attorney time in complex certification and rate cases.

It's important to point out, as Professor Jacobs did during last week's workshop, that while there may be organizations that will want to participate in multiple rate cases, for example,

there will also be lots of groups, individuals and governments who may want to participate in only one proceeding. It is important that the procedures be developed to accommodate those one-time intervenors and not cater to the organizations with full time staff and attorneys who will adapt to whatever rules get adopted. The process and the rules need to be transparent and logical, and staff assisting the public need to be well trained and responsive.

We appreciate the opportunity to provide comment on the Commission's deliberations in this long-sought improvement to the process of assessing projects, tariffs and policy decisions before the Commission.