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Comment to PA PUC Docket No. L-2019-3010267

Thank you for the opportunity to comment. These are important times for Pennsylvania and implementing proper regulations that take into consideration the interests of all Pennsylvanians is imperative. I appreciate the invitation for wide ranging comments and I hope PUC indulges my concerns on a variety of issues, even some issues I understand PUC has no authority over.

I'll first put things in context as context is important to any important decisions regardless of the topic.

49 C.F.R. Appendix A to part 195:

A certified State must adopt the same minimal standards but may adopt additional more stringent standards so long as they are compatible. Therefore, in States which participate in the hazardous liquid pipeline safety program through certification, it is necessary to distinguish the interstate from the intrastate pipeline facilities.

Context.

Where we are.

The Political climate in Pennsylvania surrounding the fairly recent development of Natural Gas (NG) seems to be that the companies involved are sacred cows and can do whatever they please, whether or not what they're doing and how they're doing it is in the best interests of the state as a whole.

It's not unusual for an industry generating tax revenue to have enormous influence over policy makers, but as a state, we should look to West Virginia (WV) as an historical example of what happens when legislators don't take the long view regarding mineral extraction.

The coal industry had clout in WV similar to the clout the NG industry exerts today in PA. After around 100 years of coal extraction and literally trillions of dollars in profits earned by mining

companies and their shareholders, WV is one of the poorest states in the nation today; that's an example of extremely poor governance.

Now that NG is outcompeting coal, WV and neighboring states are left with the cost of cleanup in many instances. The responsibility for that failure and financial liability lies directly on the previous administrations in WV. Those administrations failed their state and the majority of their citizens by not taking a long view of all repercussions and expenses associated with the industry. Some WV Congressman have said they won't make that same mistake with the NG industry in WV. PA legislators and PUC should take note.

The mineral wealth of NG in the Marcellus shale is largely within our state borders. Anyone with common sense should realize we are in the driver's seat when it comes to negotiations and regulations. It's a shame that those in Harrisburg fail to realize that *they* hold the cards, not the industry. As the President of the American Petroleum Industry (API) told congress after the Deep-Water Horizon disaster in answer to the question of why they were drilling in deep water, "The answer is the same that Jesse James answered when asked why he robbed banks…That's where the money is." When it comes to NG, PA is where the money is.

This PA resource won't last forever. Responsible, well thought out regulation is imperative for the safety and financial well being of the entire state. Harrisburg has the leverage, the resource is the goose that lays the golden egg for the producers and pipeline companies. All can profit while doing so responsibly.

For most of this comment I'm talking about fair and equitable treatment of PA landowners who aren't given a choice of saying no to the project. That isn't a tax. Every penny that's paid to the impacted landowners will be spent in the PA economy. The new pickup truck the rig workers buy is most likely in their home domiciled state, not in PA. The same is true of 60-70% of pipeline workers who are from out of state.

Elected officials have a duty to look beyond the sound bites and defend the *long-term* interests of the state as a whole, especially the interests and safety of their landowning residents and communities. They have a duty to speak to informed residents, not only gas lobbyists.

As a landowner I'm weary of the opinion in Harrisburg that if a landowner protests the seizure of their land, they're "obstinate." (actual statement during hearing before the Joint Committee on

Documents. ((JCD)) Transcript available) The landowners I know of all made counter offers to the Pipeline company, an amount of money that they would accept as payment for the privilege of using their land. Much as they'd rather not host the project at all, their only recourse is to accept financial compensation under threat of being sued. The "obstinate" pipeline company refused their offer and sued them instead. Our elected officials in Harrisburg are free to choose who to call "obstinate;" one of their constituent landowners or an out of state-based pipeline company. As things are, seems they're choosing the out of state company as the responsible party and their own Constituents as the "obstinate" party. I firmly disagree.

I'm also weary of the disingenuous statements that the NG and Pipeline industry can't afford responsible regulations, or to treat the PA landowners with the respect and dignity they've earned. The untruths told by some of the Land Agents in their attempt to acquire the private property their employer covets can't be allowed to go unpunished. ("you won't even know we're here" and many, many, more documented false statements) While for a middle class landowner, their property may be their only retirement investment and is certainly their largest, the amount of money budgeted for the acquisition of all property needed for any given Right Of Way (ROW) is historically around 4.6% of the total budget. That's not a lot of money paid to landowners as a percentage of the total budget.

While the billionaire owner of Energy Transfer Partners (ETP) enjoys the use of PA property owners' land to earn his fortune, the middle-class PA property owners see little financial benefit. The recent example of Mariner I & II's impact on PA property owners should give the legislature pause in their preference for the fast, easy money. Owner of ETP, Kelcy Warren stated in a recent call "*"A monkey could make money in this business right now."* Kelcy Warren, Energy Transfer Partners CEO, August 2nd, 2018. (Seeking Alpha)

One must take Mr. Warren at his word and doing so clearly implies the regulatory environment is not an undue burden, in fact quite the opposite. Apparently even a monkey could navigate and comply with the existing regulations and still profit handsomely. Any tightening of those regulations for the interest of landowners and the state couldn't possibly be an insurmountable financial burden for the pipeline builders. Directly impacted landowners are suffering, in some cases having their lives turned upside down, while Kelcy et al are rolling in the cash gleaned from the use of landowners' property.

According to "Executive Salaries," the CEO of Williams Companies is paid around $10 million per year. There's 261 work days in 2019, that means Mr. Armstrong is paid $38,314.00 *per day*, yet the landowners whose property he needs to earn that salary may only earn that in a year. According to salary.com, Dan Dinges, CEO of Cabot Oil and Gs is paid $13 million per year. You can do the math. Obviously, these companies can afford to treat landowners fairly and comply with common sense, best management and safety practices. Now that the middle-class landowners have something they need, one would think the landowners would be treated extremely well when asked to give up a part of their property. They're sued instead. What I'm talking about is fair play that would benefit the entire state.

Context

Where we're going

The United States Department of Energy (DOE) commissioned the University of Texas Bureau of Economic Geology (UT BEG) to conduct a thorough examination of how much NG and liquids exists in the four major shale plays. This information is extremely important for the PA PUC and our legislative body to help understand where we're headed if the status quo remains.

Completed and submitted to DOE in 2018, the study estimates the amount of Technically Recoverable Resource (TRR NG) in the four major shale plays. Of course, the Marcellus play is what's important here.

It's also important to understand what the term "Technically Recoverable Resource" (TRR) means, again, context is imperative to understanding the whole of the study.

The United States Geological Service defines at "Technically Recoverable Resource" as:

"Technically recoverable" means that the oil and or gas can be produced using currently available technology and industry practices. This is regardless of any economic or accessibility considerations."

"For example, the technology required to produce oil (or gas) from a location might exist, but it costs more than the oil (or gas) is worth. The oil (or gas) is still technically recoverable."

I hope that clears things up as to the actual "recoverability" of the following total resources documented by the UT BEG. TRR does not claim all the gas can be or will be extracted as the cost of extraction may exceed the worth of the gas and TRR number is far greater than "Proved Reserves." But for *arguendo*, let's assume all the TRR in the Marcellus is recoverable.

From the study:

2.1 Overview

"Estimation of resource in place, although helpful, lacks practical significance because most resources, and natural gas in particular, cannot be fully recovered."

UT BEG used the very best methodology available fine grain modeling in arriving at their estimates but as they said in the above these are estimates. It's impossible to say with absolute certainty what lies thousands of feet underground.

Note that the maps supplied by UT don't consider high density population areas like Pittsburgh and instead seem to assume wells will be drilled everywhere in the Marcellus.

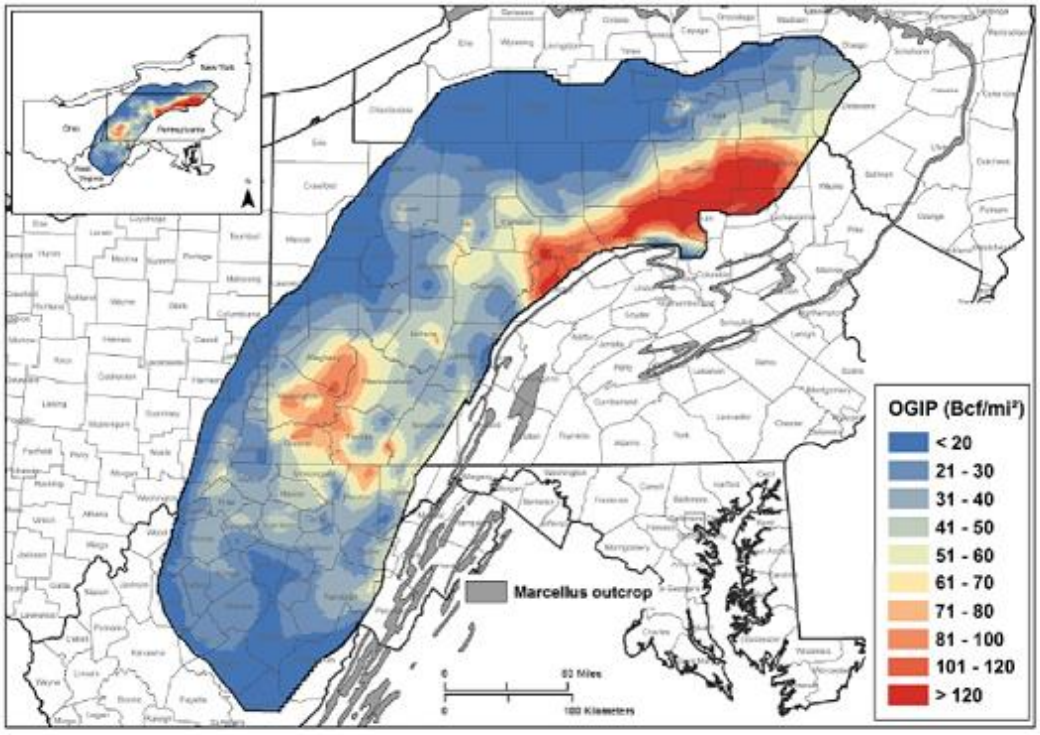


Figure 1.16 Marcellus Shale total free gas in place.

The above graph shows Estimated Ultimate Recovery (EUR) billion cubic feet per square mile.

This background information is meant to inform the PA PUC of what the future may look like. It's also meant to inform lawmakers so they understand PA has what producers and pipeline companies want. I've heard too many times "they'll go someplace else." See Jesse James statement. Note the Red highest producing areas are all in PA.

Protecting PA landowning constituents and the long-term interests of the Commonwealth while extraction is ongoing is the duty of the legislature and is not mutually exclusive of the resource extraction as some claim. Notice it's always those who stand to benefit financially who say they can't afford regulation.

From the same 2018 study this table illustrates the estimated TRR gas in place and the number of future wells needed to extract the resource. Since 2005 around 12,000 wells have been drilled; this table suggests another 175,500 more wells will be necessary to extract the NG resource from the Marcellus. It's important to pass legislation now that will protect PA constituents, and the state, going forward.

The results presented in Table 3.2 are used for the base-case production outlook in the next chapter. However, numerous simulations suggest uncertainty in these values, particularly regarding the future completion advances and drilling patterns.

Table 3.2 Summary results for recoverable resources in the four shale gas plays.

	Total Studied Area mi^2	Remaining* Developable mi^2	Potential** Future wells	Remaining TRR *Tcf*
Barnett	8,000	~6,300	62,000	72
Fayetteville	2,700	~ 1,600	12,500	12
Haynesville	5,200	~4,800	27,600	127
Marcellus	42,600	~39,400	175,500	560

* only drilled acreage and faults are excluded

** lateral length and well spacing assumptions vary within and across plays

So, while an estimated 560 trillion cubic feet of gas is estimated to be "Technically Recoverable," another 175,500 more wells will need to be drilled to access that gas and most certainly many more pipelines will be needed to transport that gas to market. PA PUC should take note. Given the uncertainty of the amount of TRR extraction, it wouldn't be inconceivable that far less is actually financially profitable to extract, and that's why allowing exports are a

terrible idea. Right now, in America we're consuming almost 30 trillion cubic feet of gas per year.

Supplying Americans with that gas *long term* should be the first concern of Congress and the PA legislature, not allowing it to be shipped overseas for the near-term profit of producers who've drilled themselves into a glut. In the free market economy, overproducing any product is *inapposite* to the first free market rules of supply and demand. It makes no sense to continue drilling when the market (demand) is satisfied. If the prices for gas are low, and they are, the producers have no one to blame but themselves.

When I was 18, I drove a triaxle dump truck hauling sand, gravel, and blacktop. We were laid off every winter for around 3 months. It was expected and wasn't a burden. We collected unemployment. Continuing to produce gas when the market is saturated doesn't make sense.

The PA PUC wields the authority of eminent domain and for any proposed project, the targeted landowners *must* be given notice of their right to present arguments that any given proposal is not in the "public interest" *before* construction begins. Due process requires landowners be allowed to present their *own* expert witnesses that a project is *not* in the public interest before construction begins and their property trashed. There's no political will to defend the PA landowners and like every minority before us we must rely on the courts to protect our Constitutional right to own property, free from outside invasion.

I don't have a problem with producers and pipeline companies taking a risk as to whether a given project is financially profitable, but I do have a problem with them forcing the owners of private property to take the risk with them. The property owners are the cornerstone of our economy and most aren't risk takers. They certainly wouldn't put the deed to their homes on a roulette wheel.

(Side note. In America, right now, we consume around 30 trillion cubic feet of gas per year. Obviously, the Marcellus won't supply that total nationwide demand, but taking a cautious view as to how this finite resource is used should concern Congress and the PA legislature. I don't believe it's in the "public interest" to export the gas overseas which *will* cause the domestic price to rise. Less than 20 years from now, we may be forced to import gas again if the amount of NG already permitted by DOE to be exported becomes reality. I don't understand how anyone exports are in the long term "public interest," especially to non-free trade countries. I certainly

don't agree that seizing Private property to facilitate those exports comports with a 5th Amendment taking)

Safety

This press release from a Congresswoman doesn't exactly instill confidence in landowners directly impacted by pipelines.

April 14, 2015
Press Release

WASHINGTON, DC – *Today, Congresswoman Jackie Speier (D-San Francisco/San Mateo counties) demanded accountability from the Pipeline and Hazardous Materials Safety Administration (PHMSA) in the face of serious revelations about their lax oversight of natural gas pipeline companies and regulators. Testifying before the House Transportation and Infrastructure Committee's Subcommittee on Railroads, Pipelines, and Hazardous Materials, she called for PHMSA to enforce and implement existing safety laws and laid out a framework for robust pipeline safety measures nationwide.*

"It is clear to me that PHMSA does not have the teeth—or the will—to enforce pipeline safety in this country," ***said Speier****. "As we've seen in California, it is often powerless over state regulators. Even when it has crystal-clear authority, it still refuses to act. PHMSA is not only a toothless tiger, but one that has overdosed on Quaaludes and is passed out on the job."*

The Congresswoman's words are hyperbole. That sort of hyperbole is normally born out of frustration, frustration with an "obstinate" body that refuses to act in the best interest of all

Hopefully she was speaking to her fellow Congresspeople as the PHMSA is severely underfunded for the task they've been assigned. One can't be expected to move mountains when all they've been given is a wheelbarrow. If PA PUC is going to continue to act as the Federally delegated safety representative for intrastate pipelines, they need teeth in the form of funding and the laws to do the job. As demonstrated previously, the pipeline companies can easily afford to comply with regulations which, as best as possible, diminish the possibility for any accident.

Jurisdiction

49 CFR Appendix A to Part 195- delineation between Federal and State Jurisdiction- statement of Policy and Interpretation (HLPSA)

I imagine that through the voluminous litigation that defines the Mariner I & II projects the issue of whether the PA PUC or DOT / PHMSA has jurisdiction has been raised and resolved. As I've not been involved in the Mariner project, I raise this question as it will relate to future projects.

It seems the PA PUC is a better overseer of projects like Mariner I & II. No matter which agency is delegated the authority of being responsible for the safety of PA residents, strict oversight is only prudent and adequate funding necessary.

Under this 49 CFR Appendix A to part 195. PHMSA defines projects which fall under their purview rather explicitly.

DOT / PHMSA has jurisdiction over pipelines deemed interstate. The criteria PHMSA examines to determine jurisdiction state: 49 CFR Appendix A to Part 195

"In implementing the HLPSA DOT has sought a practicable means of distinguishing between interstate and intrastate pipeline facilities that provide the requisite degree of certainty to Federal and State enforcement personnel and to the regulated entities. DOT intends that this statement of agency policy and interpretation provide that certainty.

In delineating which liquid pipeline facilities are interstate pipeline facilities within the meaning of the HLPSA, DOT will generally rely on the FERC filings; that is, if there is a tariff or concurrence filed with FERC governing the transportation of hazardous liquids over a pipeline facility or if there has been an exemption from the obligation to file tariffs obtained from FERC, then DOT will, as a general rule, consider the facility to be an interstate pipeline facility within the meaning of the Hazardous Liquids Pipeline Safety Act. (HLPSA)"

"The following examples indicate the types of facilities which DOT believes are interstate pipeline facilities subject to the HLPSA despite the lack of a filing with FERC and the types of facilities over which DOT will generally defer to the jurisdiction of a certifying state despite the existence of a filing with FERC. In the following example SPLP (Mariner) is "P."

"EXAMPLE 1.

Pipeline company P operates a pipeline from "Point A" located in State X to "Point B" (also in X). The physical facilities never cross a state line and do not connect with any other pipeline which does cross a state line. Pipeline company P also operates another pipeline between "Point C" in State X and "Point D" in an adjoining State Y. Pipeline company P files a tariff with FERC for transportation from "Point A" to "Point B" as well as for transportation from "Point C" to "Point D." DOT will ignore filing for the line from "Point A" to "Point B" and consider the line to be intrastate.

EXAMPLE 2.

Same as in example 1 except that P does not file any tariffs with FERC. DOT will assume jurisdiction of the line between "Point C" and "Point D."

EXAMPLE 3.

Same as in example 1 except that P files its tariff for the line between "Point C" and "Point D" not only with FERC but also with State X. DOT will rely on the FERC filing as indication of interstate commerce.

EXAMPLE 4.

Same as in example 1 except that the pipeline from "Point A" to "Point B" (in State X) connects with a pipeline operated by another company transports liquid between "Point B" (in State X) and "Point D" (in State Y). DOT will rely on the FERC filing as indication of interstate commerce.

EXAMPLE 5.

Same as in example 1 except that the line between "Point C" and "Point D" has a lateral line connected to it. The lateral is located entirely with State X. DOT will rely on the existence or non-existence of a FERC filing covering transportation over that lateral as determinative of interstate commerce.

EXAMPLE 6.

Same as in example 1 except that the certified agency in State X has brought an enforcement action (under the pipeline safety laws) against P because of its operation of the line between "Point A" and "Point B". P has successfully defended against the action on jurisdictional grounds. DOT will assume jurisdiction if necessary, to avoid the anomaly of a pipeline subject to neither State or Federal safety enforcement. DOT's assertion of jurisdiction in such a case would be based on the gap in the state's enforcement authority rather than a DOT decision that the pipeline is an interstate pipeline facility.

EXAMPLE 7.

Pipeline Company P operates a pipeline that originates on the Outer Continental Shelf. P does not file any tariff for that line with FERC. DOT will consider the pipeline to be an interstate pipeline facility.

EXAMPLE 8.

Pipeline Company P is constructing a pipeline from "Point C" (in State X) to "Point D" (in State Y). DOT will consider the pipeline to be an interstate pipeline facility.

EXAMPLE 9.

Pipeline company P is constructing a pipeline from "Point C" to "Point E" (both in State X) but intends to file tariffs with FERC in the transportation of hazardous liquid in interstate commerce. Assuming there is some connection to an interstate pipeline facility, DOT will consider this line to be an interstate pipeline facility.

EXAMPLE 10.

Pipeline Company P has operated a pipeline subject to FERC economic regulation. Solely because of some statutory economic deregulation, that pipeline is no longer regulated by FERC. DOT will continue to consider that pipeline to be an interstate pipeline facility.

As seen from the examples, the types of situations in which DOT will not defer to the FERC regulatory scheme are generally clear-cut cases. For the remainder of the situations where

variation from the FERC scheme would require DOT to replicate the forum already provided by FERC and to consider economic factors better left to that agency, DOT will decline to vary its reliance on the FERC filings unless, of course, not doing so would result in situations clearly not intended by the HLPSA."

[Amdt. 195-33, 50 FR 15899, Apr. 23, 1985]

Seems to me example 3,8, & 9, deem Mariner to be an interstate pipeline subject to DOT / PHMSA jurisdiction.

Given SPLP filed for a tariff with FERC on 12/01/2014 Order No. OR14-40-000 (Accession No. 20140829-5038) and in the petition explicitly stated the pipeline would cross, PA, OH, WV, and DE, it seems Mariner is an interstate pipeline subject to DOT / PHMSA jurisdiction. A recent Supreme Court ruling, *Knick v. Todd Township*, finally gives landowners whose property is seized through state action, without prior payment, the ability to challenge that action immediately in Federal Court through a challenge under 28 U.S.C. § 1331, 42 U.S.C. § 1983, and the Fifth Amendment to the United States Constitution. Due Process demands so.

From the FERC docket:

"Sunoco Pipeline L.P Docket No. OR14-40-000

DECLARATORY ORDER

(Issued December 1, 2014)

1. On August 29, 2014, Sunoco Pipeline L.P. (SPLP) filed a Petition for Declaratory Order (Petition) seeking approval of the priority service, tariff and rate structure, and terms of service for its proposed Project Mariner East 2 (Project). According to SPLP, the Project will create additional pipeline capacity to transport ethane, propane, and butane from the natural gas fields of the Marcellus Shale and Utica Shale in Pennsylvania, Ohio, and West Virginia to the Sunoco Partners Marketing & Terminals L.P. Terminal in Claymont, Delaware (SPMT Terminal).

5. “Further, states SPLP, the Project will include development of a batched propane and butane pipeline from Scio, Ohio, and other downstream receipt points to the SPMT Terminal.”
18 C.F.R 342.4 (c) 2014 is cited as a footnote 8 & **12** SPLP cites 18 C.F.R. § 342.4(c) (2014). This citation refers specifically to the Interstate Commerce Act.

§ 342.4 Other rate changing methodologies.

(a)*Cost-of-service rates.* A carrier may change a rate pursuant to this section if it shows that there is a substantial divergence between the actual costs experienced by the carrier and the rate resulting from application of the index such that the rate at the ceiling level would preclude the carrier from being able to charge a just and reasonable rate within the meaning of the Interstate Commerce Act.

Given the PHMSA’s extensive responsibilities, it would seem more efficient for the PA PUC to oversee safety for pipelines that are intrastate, but which agency has actual jurisdiction must be perfectly clear. President Trump oft recites the self-evident fact that we’re a nation of laws, I add that all are bound…no exceptions.

In the Mariner tariff filing with FERC SPLP speaks again of interstate commerce:

“21. In particular, continues SPLP, the NGLs TSA allowed a committed shipper making a minimum volume commitment the option to choose its Selected NGLs and Selected Origin Points, such as Scio and Hopedale, Ohio; Follansbee Jct., West Virginia; and/or Houston, Pennsylvania.**26**

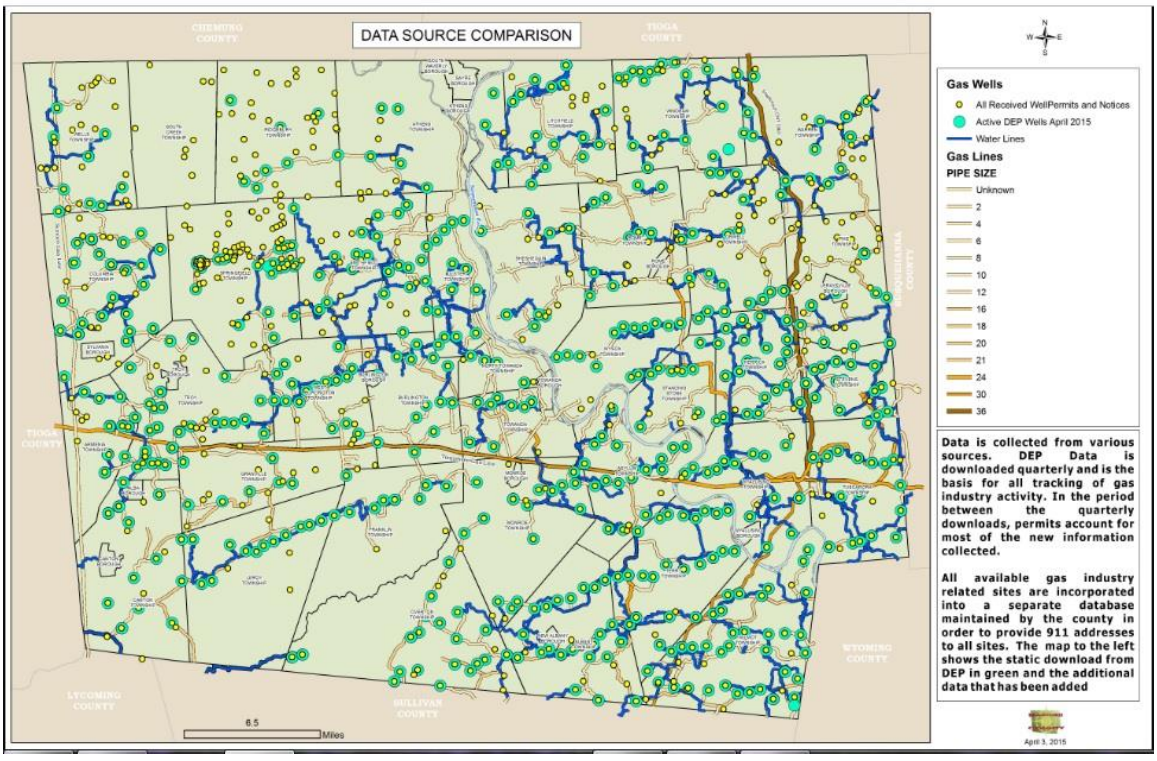
28. The Project’s added facilities will increase the capacity and versatility of the original Project Mariner East for ethane and propane, as well as adding butane as an additional product to be transported to the SPMT terminal in Claymont, Delaware.”

Notice there’s no mention of the Marcus Hook export facility that Mariner connects to. Landowners expect honesty from our government in all of its dealings.

Eminent Domain:

I agree with DCU that each project be examined on its own merits. The recent *Knick* case cited above will lead to even *more* extensive litigation, I suspect, should each project *not* be examined on its own merits. Property rights are foundational and it's been quite a spectacle witnessing the body politic in PA, from the legislature to the Governor, ignore the plight of their directly impacted constituents facing condemnation. My own State Rep, Representative Brett Miller has been the exception in our District.

I'm often told "these projects can't be built without the use of eminent domain." I've always countered that with actual proof that statement isn't true. The drill rigs on private property with lights shining all night and noise, dust, and other irritations weren't placed there with the authority of eminent domain. The gas company merely negotiated with the landowner for a price the landowner willingly agreed with. The same is absolutely true of the gathering pipelines that don't qualify for the use of eminent domain. They've all been built despite their lack of the authority of eminent domain. Here's a map of Bradford County's pipeline system. Many of these did not qualify for the use of eminent domain yet were somehow built anyway. Mysterious.



Clearly the authority of eminent domain is not required in order to build this infrastructure, much has been built without it.

The disparity in treatment of landowners I've witnessed is truly sad. Those who can least afford to lose equity in their property, or afford an attorney are usually the same folks who are paid the least for the use of their land and sign terrible easement agreements. I don't think any new laws are needed, enforcement against fraudulent or deceptive business practices (PA Title 18 § 4107) already makes lying in an attempt to acquire property or credit a felony. Actual prosecution of land agents and their employers who deceive landowners would make it less likely for the landowners to be deceived during negotiations. There doesn't seem to be any appetite to hold land agents accountable should they lie to landowners. Used car dealers who roll back odometers are vigorously prosecuted. Lying to landowners in order to gain a Right of Way across their property as cheaply as possible is no less egregious. The ROW is forever and impacts the landowners' most dear possession, a car is just a car.

Back in the good old days of 2005, many on both sides of the aisle had a visceral reaction to the Supreme Court ruling in Kelo vs. City of New London CT. Seems that former moral conviction about the sanctity of property rights disappears when the seizure of property for a pipeline that may or may not serve the public interest is the condemner.

Many states tightened their eminent domain laws in response to Kelo. as was suggested by a couple of dissenting Supreme Court Justices. PA responded by raising the required compensation to landowners for legal fees from $500.00 to $4000.00. $4000.00 is an inadequate amount of money for a landowner to engage counsel to protect their interests.

"[A] man who is forced into court, where he owes no obligation to the party moving against him, cannot be said to have received 'just compensation' for his property if he is put to an expense appreciably important to establish the value of his property. He does not want to sell. The property is taken from him through the exertion of the high powers of the state, and the spirit of the Constitution clearly required that he shall not be thus compelled to part with what belongs to him without the payment, not alone of the abstract value of the property, but of all the **necessary expenses incurred** in fixing that value. This would seem to be dictated by sound morals, as well as by the spirit of the Constitution; and it will not be presumed that the Legislature has intended to deprive the owner of property of the full protection which belongs to him as a matter of right." *In re Water Supply in City of New York*, 109 N.Y.S. 652, 654-55 (N.Y.A.D. 1908).

Florida changed the wording in their eminent domain law from "just compensation," to "full compensation," and in FERC pipeline cases the courts have been awarding attorney fees to the landowners for their legal defense. That's the logical thing to do. The landowners are completely innocent in all this. They didn't ask to have their lives interrupted by the pipeline projects.

Florida Const., art. X, § 6(a) – "[n]o private property shall be taken except for a public purpose and with **full** compensation therefor…."

"**Full compensation** under the Florida Constitution includes the right to a reasonable attorney's fee for the property owner" because in "Florida eminent domain proceedings, the goal is to render the private property owner as **whole** as possible…."
Joseph B. Doerr Trust v. Central Florida Expressway Authority,
177 So.3d 1209, 1215 (Fla. 2015).

While we, as a society provide free counsel to anyone accused of a crime, (*Miranda*) we provide little or nothing in the way of legal fees for the hardworking landowners beset by a pipeline project. The Natural Gas Act (NGA) provides zero funds for attorneys. Being threatened with having your liberty taken away prompted the courts to act because a constitutional right of Liberty was at risk once accused of a crime, providing free counsel for the accused is a societal duty. Having the "right to exclude others," the most fundamental right of property ownership is no less a Constitutional right that needs legal protection, and therefore funding for the threatened landowner.

Property Rights and Personal Rights are inseparable. Supreme Court:

Lynch v, Household Finance Corp.

Held:

1. There is no distinction between personal liberties and proprietary rights with respect to jurisdiction under 28 U.S.C. § 1343(3). Pp. 405 U. S. 542-552.

(a) Neither the language nor the legislative history of that section distinguishes between personal and property rights. Pp. 405 U. S. 543-546.

(b) There is no conflict between that section and 28 U.S.C. § 1331, and the legislative history of § 1331 does not provide any basis for narrowing the scope of § 1343(3) jurisdiction. Pp. 405 U. S. 546-550.

(c) It would be virtually impossible to apply a "personal liberties" limitation on § 1343(3), as there is no real dichotomy between personal liberties and property rights. It has long been recognized that rights in property are basic civil rights. Pp. 405 U. S. 550-552.

2. Prejudgment garnishment under the Connecticut statutes is levied and maintained without the participation of the state courts, and thus an injunction against such action is not barred by the provisions of 28 U.S.C. § 2283. Pp. 405 U. S. 552-556.

318 F.Supp. 1111, reversed and remanded.

Page 405 U. S. 539

STEWART, J., delivered the opinion of the Court, in which DOUGLAS, BRENNAN, and MARSHALL, JJ., joined. WHITE, J., filed a dissenting opinion, in which BURGER, C.J., and BLACKMUN, J., joined, *post*, p. 405 U. S. 556. POWELL and REHNQUIST, JJ., took no part in the consideration or decision of the case.

“In all criminal proceedings, th[e] right [to counsel] is expressly protected by the Sixth Amendment. As I have indicated, in civil disputes with the Government I believe that right is also protected by the Due Process Clause of the Fifth Amendment and by the First Amendment. If the Government, in the guise of a paternalistic interest in protecting the citizen from his own improvidence, can deny him access to independent counsel of his choice, it can change the character of our free society. Even though a dispute with the sovereign may only involve property rights…the citizen’s right of access to the independent, private bar is itself an aspect of liberty that is of critical importance in our democracy.” *Walters v. National Ass'n of Radiation Survivors*, 473 U.S. 305, 370-71 (1985) (Stevens, J., dissenting).

Property Rights are Basic Civil Rights.

Eminent domain attorneys offer contingency service usually at a cost of 33% of the money gained for the landowner over the final offer. While offering that service allows landowners who don't have the money in the bank to fight a billion-dollar company and their army of lawyers, it leaves the landowner limping away with 66% of "Just Compensation." In some cases that arrangement likely leads to the attorneys being paid hundreds of thousands of dollars. The landowner loses again.

Courts are perfectly capable of determining fair value for any service rendered, they do it all the time in civil cases. In this case, the court stated that for experienced eminent domain attorney a typical case should take 75 hours of work. That would pay only the condemnation and compensation hearing. Any appeals would be on the landowner.

Court order on attorney's fees:

"That amount of billable time seems excessive for an attorney experienced in eminent domain matters. After considering the testimony and evidence presented by the parties during the hearing, in addition to the factors set forth in *LaRocca, supra*, the Court believes that seventy-five (75) hours is a more accurate estimate of the billable time Plaintiff spent on Defendant's eminent domain matter. Multiplying this time by Plaintiff's proffered and accepted fair fee of $250.00/hour, Plaintiff is due the amount of $18,750.00 from Defendant for services rendered in her eminent domain case."

Many of these cases are resolved through negotiation without the attorney ever having to prepare for or attend court so they don't spend anywhere near 75 hours on the landowner's case but still collect their 33% fee from their clients who couldn't afford to pay by the hour.

I propose the state increase the amount of money awarded property owners under PA eminent domain law from $4000.00 to $25,000.00 (a certified appraisal is also required, cost $5-7,000.00) $25,000.00 is a more realistic amount given 14 years have passed since Kelo. $300.00 per hour X 75 hours = $22,500.00. (round up) The condemner, understanding they'll be responsible to pay this fee to landowners may make a far better offer initially and perhaps save the courts time in entertaining litigation that results from the current system. I understand this is a legislative problem that the PA PUC can't accomplish.

Congress recognized that "if the citizen does not have the resources [to obtain relief in a civil rights lawsuit], his day in court is denied him; the congressional policy he seeks to assert and vindicate goes unvindicated; and the entire Nation, not just the individual citizen, suffers." *City of Riverside v. Rivera*, 477 U.S. 561, 575 (1986).

While the State is treated like royalty where a pipeline crosses its land, the landowners are not. For instance, the Atlantic Sunrise crossed PA Game Lands 211. The crossing was around 1,300' (agreement attached). For that distance, the state was paid the equivalent of $714,000.00 and is paid a yearly lease payment of $3026.00 for the privilege of using that property. That's true of all state-owned properties. Common sense. If I use another's land to park a camper, I pay them monthly or yearly for as long as I'm using their land. The amount of the lease payment would vary depending on the size of the property. If one owns an acre, the impact is far more severe than if they own 100 acres. Being paid that stipend would help landowners with an enticement for potential future buyers of the property who may otherwise turn away due to the easement.

The Game Commission deal included a $24,000.00 cash payment and the donation of two other parcels of land to the Game Commission. I called the Recorder of Deeds in the counties where those two properties were situated. I was told the pipeline company bought one of the properties for $240,000.00 the other for $450,000.00, and then they were "donated" to the Game Commission.

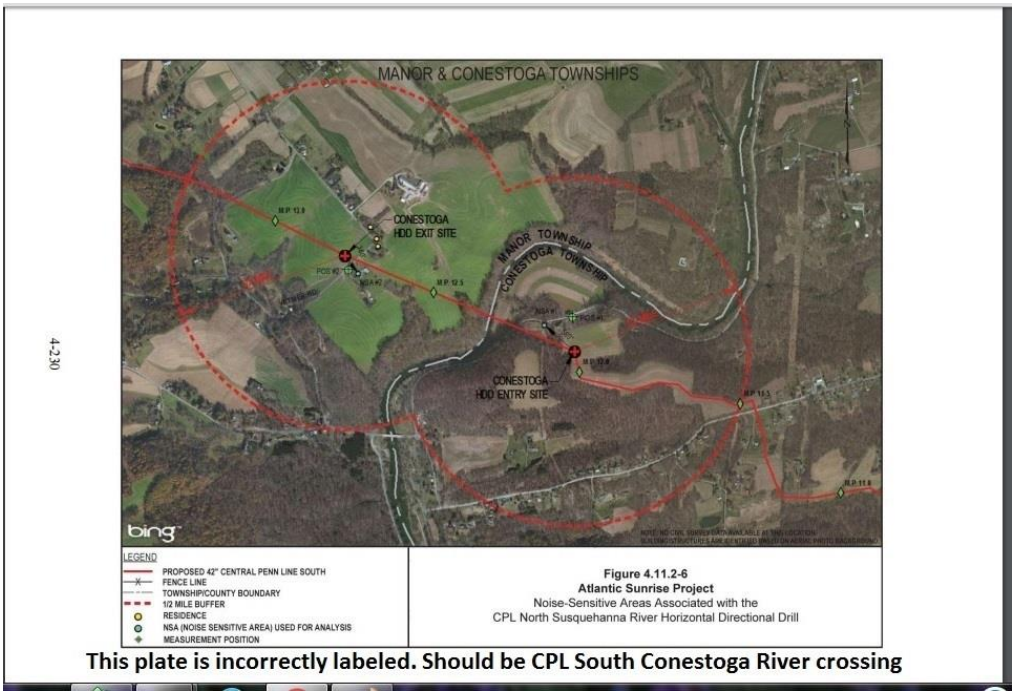
For roughly the same distance across my property, 1.300', I was told if I didn't accept the "generous" offer of $28,000.00, the amount the court would award me in a compensation hearing was $7,490.00. In addition to the fair offer of financial compensation paid the Game Commission the ROW agreement required the complete restoration of the temporary workspace. A recent 3rd circuit decision will help landowners faced with a taking under the NGA recoup monies for restoring their property. That only happened recently and I'm grateful to those Honorable Judges who did the right thing. Whether a landowner facing a PUC condemnation can recoup those costs is unclear to me, but is obviously the right thing for landowners. Timber value for trees cut down is wholly inadequate and is, in fact, insulting.

The PA property owner is required to continue paying the full load of property tax, including on the now jointly owned easement. That's absurd. The pipeline company must pay property tax on their easement and the landowner's property tax reduced in kind.

Any financial benefit paid to PA property owners is without a doubt spent in the PA economy. Any amount the pipeline company *doesn't* pay the landowner is profit which goes back to the out of state company and its remote shareholders from who knows where? That's not in Pennsylvania's best financial interest and certainly not in the financial interest of the landowner. An ongoing yearly lease payment to the landowner for the privilege of using their property to generate, in the case of Atlantic Sunrise, $1.1 million dollars *per day*, likely for 50 years (statement of project manager from the witness stand Eastern District Federal Court) is the only equitable financial remedy for landowners.

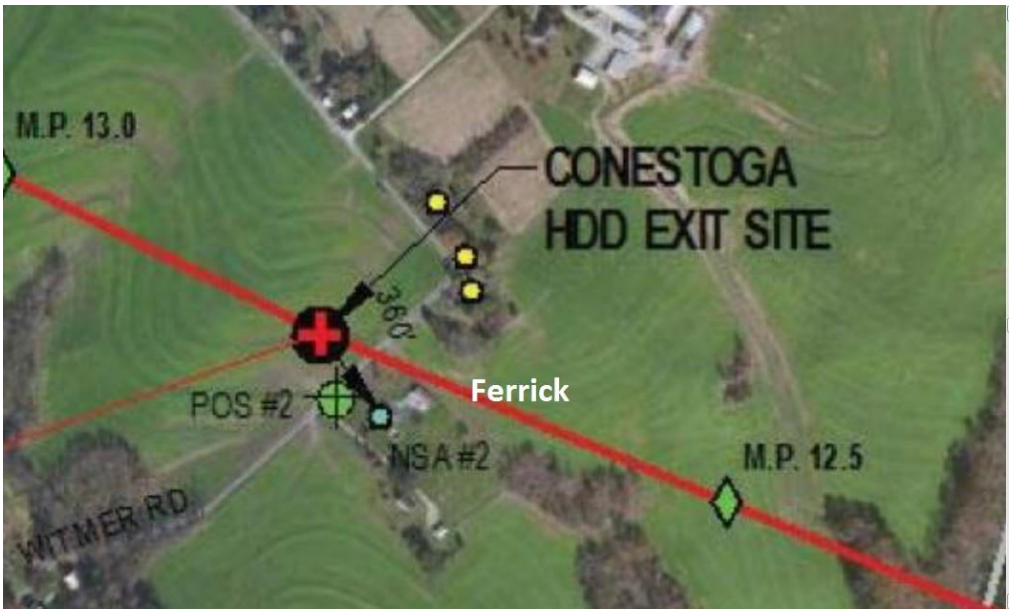
Noise

Another problem for any landowners living within the "Noise Sensitive Area" (NSA) of an HDD drill site is the constant noise and vibration they have to endure for as long as the drilling goes on. Many months is the norm. These people have to go to work each day and are entitled to a good night's rest. For the Atlantic Sunrise, the pipeline company promised the FERC they would provide temporary housing for the landowners so situated or pay them the monetary equivalent of relocation at the landowners' preference. Payment was only due if the company was drilling after 7:00 pm and couldn't keep the noise below 55 decibel (dBa) average. Map of NSAs for one HDD drill site. FERC docket Atlantic Sunrise:



You'll have to zoom in but the named NSAs (homes within the noise sensitive areas / drill rig ((red crosses)) are the yellow dots.

Here's an exploded view. (no pun intended)



While I certainly appreciate Transco's promise to the FERC to accommodate the landowners if drilling all night, the land agents never told the landowners (Ferricks) they were entitled to that compensation. Never. The offer to the Ferricks for the easement across their land was $7000.00. No offer of compensation whatsoever for the noise they'd be forced to endure. Every time the land agent called, he'd say "have you come to your senses yet Mr. Ferrick?" (declaration of David Ferrick) When the landowners brought the promise of compensation to the attention of the pipeline company attorneys, they were able to negotiate fair compensation for their inconvenience in the form of a daily stipend. The drilling went on for around 5 months. 24/7, 6-7 days per week. More proof these projects can easily be built while treating the landowners with a little dignity. Same is true of PUC regulated pipeline projects.

From the FERC docket:

TABLE 4.11.2-7

Summary of Estimated Sound Contribution (L_{dn}) of Horizontal Directional Drill Operations at the Closest Noise-Sensitive Area Assuming that Additional Noise Mitigation Measures are Employed to Meet the Sound Criterion

HDD Crossing	Entry or Exit Point	Distance and Direction of Closest NSA	Ambient L_{dn} (dBA)	Calculated L_{dn} due to HDD (dBA)	L_{dn} of HDD + Ambient (dBA)	Increase Above Ambient (dB)	Additional Noise Mitigation Measures Employed
CPL North							
Susquehanna River HDD	Entry	630 feet (S)	44.0	51.8	52.5	8.5	Barrier around the Hydraulic Unit, Barriers for other Engine-Driven Pumps/Equipment and Low-Noise Generators
CPL South							
Conestoga River HDD	Entry	580 feet (NW)	41.4	52.6	52.9	11.5	Barrier around the hydraulic unit, barriers for other engine-driven pumps/equipment and low-noise generators
Conestoga River HDD	Exit	360 feet (SE)	42.6	50.2	50.9	8.3	Barrier around South and East Side of Workspace

Transco indicated in its application that the owners of the properties at the nearby NSAs would be notified in advance of planned nighttime construction activities, advising them that noise-generating equipment may be operated during nighttime hours. Since mitigated noise levels attributable to HDDs are anticipated to be below the FERC sound criterion at any NSAs, overnight construction, if necessary, is not expected to create significant impacts on surrounding NSAs. However, if the noise levels cannot be reduced to target levels, Transco has committed to providing temporary housing or equivalent monetary compensation to the occupants of affected NSAs in the project area until the construction activities are completed.

That one sentence which promised landowners compensation was buried in a submission containing thousands of pages. Landowners can't possibly read all that and go to work each day too. As far as I know, No one along Mariner subjected to the all-night noise was ever compensated.

While the Bog Turtles and other environmental features have an army of environmental attorneys looking out for them, the landowners have no one, unless they pay out of pocket.

The PA PUC must implement the same protections and or payments for landowners in the "Noise Sensitive Areas" along a PUC regulated project.

Pre testing water wells.

The FERC requires the pre testing of private water wells within 150' of the construction zone unless the area is underlain with Karst geology. In cases where the underlying geologic formations are of Karst composition, the required testing stretches to 500' from the construction

zone. As far as I know, SPLP didn't do that for landowners within 500' along Mariner where the geologic formations beneath their homes were of karst compositions. Unacceptable.

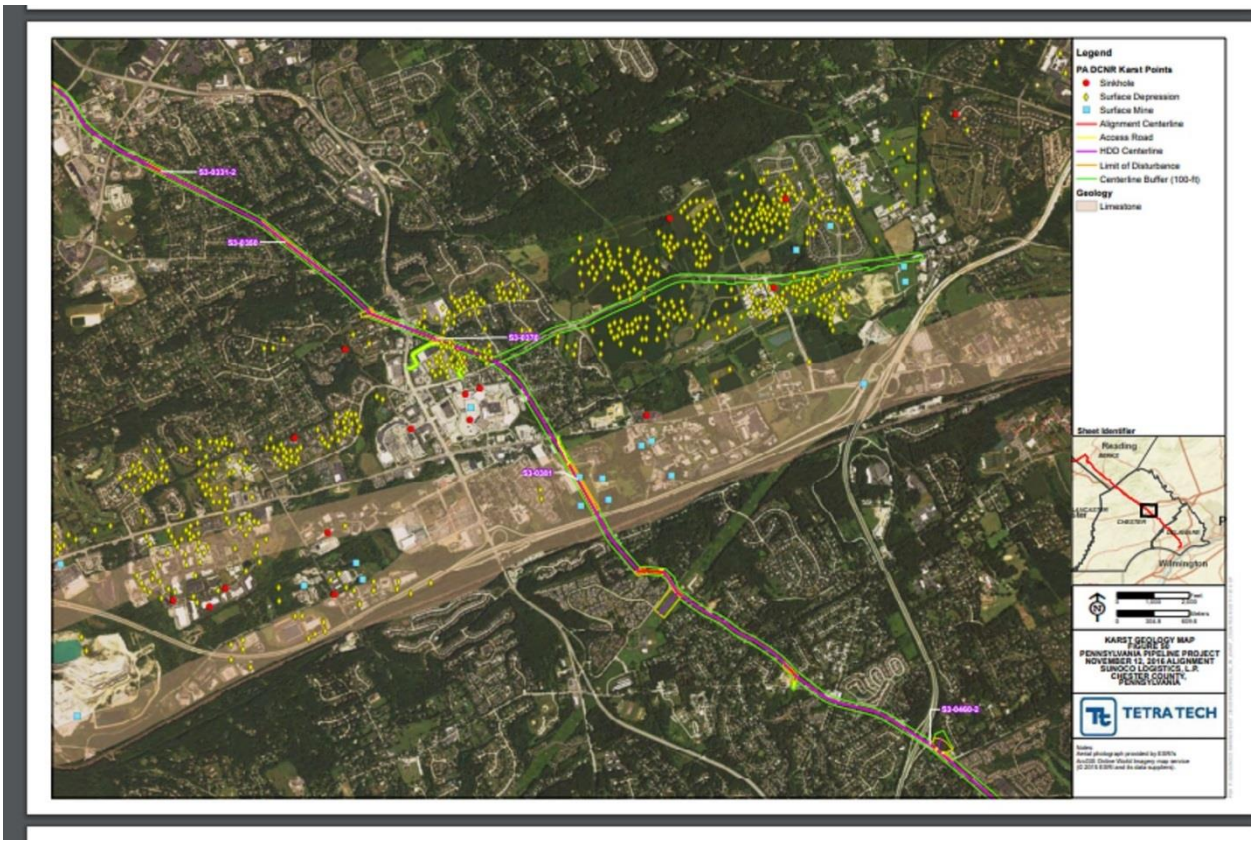
HDD verses DirectPipe.

HDD is the long-time standard method of crossing under sensitive areas and water bodies. While tried and proven, what happened to people in Chester County proves it is not without risk. DirectPipe is a different way of boring beneath a sensitive feature and has many environmental benefits. DirectPipe was first used to cross under the Rhine River in Germany in 2007. I had sent an active link to PA DEP a couple years ago. The link explained the benefits and how DirectPipe lowered the risks of "frackouts" and bore hole collapse, while minimizing the use of water and bentonite necessary to complete the bore. As with any new technology that lessens the potential environmental impact during a construction project, the DEP had the authority to require Best Management Practices.

Newer silt fencing as well as other much improved technology is always recommended by DEP when such technology becomes available. For any substrate geology that is prone to problems using HDD, DirectPipe must considered by PA DEP and PA PUC. I believe that had DirectPipe been used in Chester County the problems along Lisa Drive etc. and the ensuing nightmare for the landowners may have been avoided. It seems to me, as a layperson, the experts in the field should have recognized that attempting HDD though karst like that in Chester County came with risks, risks that could have been minimized by using DirctPipe in the first place.

Submission to DEP showing the known surface depressions which are sinkholes waiting to happen.

Mariner: sinkholes red dots, surface depressions yellow dots.



HDD on Mariner was a disaster. We can and must do better.

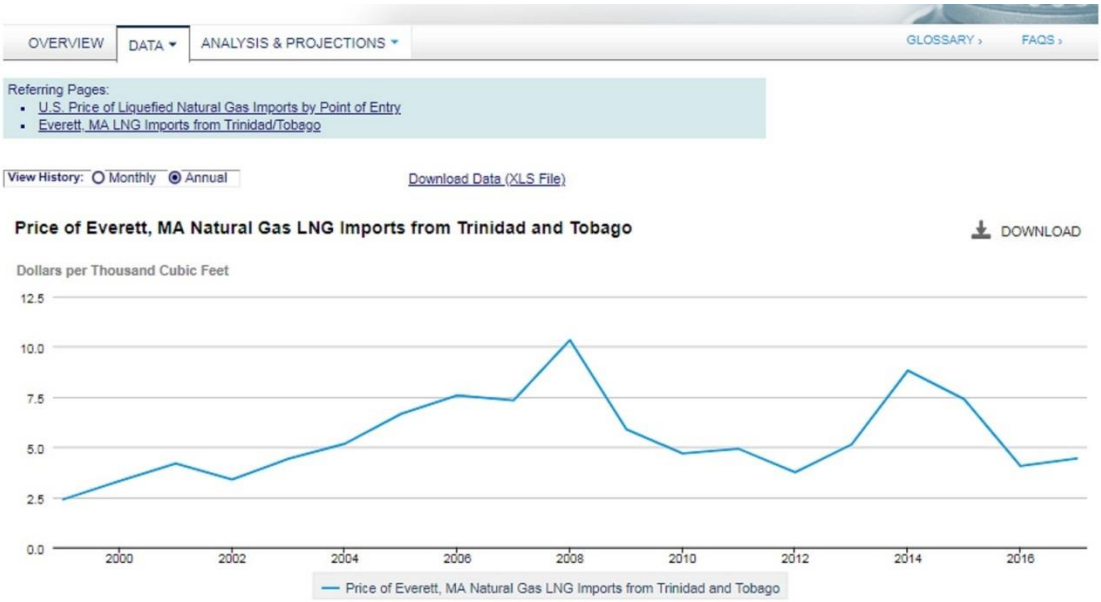
Untrue Statements.

I realize now that I've been fortunate in my life to not have been involved in a project or other action involving big business and the government. The amount of hyperbole and outright propaganda circulated and written is unbelievable.

The Russian Tanker Myth. The tanker that landed at Everett, Mass. import facility was owned by the same French company that owns the import facility in Mass. ENGIE. What happened to the Laissez Faire Neoliberal free marketers? Now that all their dreams have come true, they pivot away from their free market Dogma. I get whiplash just trying to follow their logic. None of this would matter to me if the threat of seizing Americans property weren't real and happening.

https://www.washingtonpost.com/business/economy/tanker-carrying-liquefied-natural-gas-from-russias-arctic-arrives-in-boston/2018/01/28/08d3894c-0497-11e8-8777-2a059f168dd2_story.html?noredirect=on

Part of one tanker that delivered gas to the Everett Mass. was Russian gas. That became "tankers," and the story ran from there. The ENGIE (Distragas) import facility in Mass. helps supply New England during high demand days. Historically, that imported gas came from Trinidad and Tobago. The 2018 price of around $4.00 per thousand cubic feet is competitive and a new $2.5 billion-dollar pipeline to supply NE for 12 days per year didn't make sense.



Price of Everett, MA Natural Gas LNG Imports from Trinidad and Tobago (Dollars per Thousand Cubic Feet)

Decade	Year-0	Year-1	Year-2	Year-3	Year-4	Year-5	Year-6	Year-7	Year-8	Year-9
1990's										2.39
2000's	3.31	4.18	3.38	4.41	5.16	6.65	7.58	7.32	10.33	5.89
2010's	4.68	4.91	3.74	5.13	8.81	7.39	4.06	4.43		

The truth is that gas from Cove Point, MD could supply Everett import facility if the Jones Act (antiquated 1920 law) were waived. In 2014 the state-owned Indian gas company GAIL Global contracted for 350 million cubic feet of gas per day from Cove Point. They no longer want much of that gas as they can source gas cheaper closer to home. Those contracts are being sold on the spot market and could have supplied Everett ENGIE import terminal. No need for that tiny bit of Russian gas.

During testimony before Senate Committee on Energy and Natural Resources July 12, 2018, Mr. Joseph Kelliher, Exec. VP at Nextera Energy, told the panel that the proposed Kinder Morgan Northeast Direct (NED) project, that was floated to run alongside the Constitution Pipeline, was cancelled because it didn't make sense to build a couple billion dollar pipeline to supply New England for only the coldest 12 days per year. He also said the pipeline system in New England is adequate to handle demand save for 12 days per year.

Having witnessed the FERC process, if Kinder Morgan was able to cut back flows on an existing and paid for pipeline and switch that capacity to the new Northeast Direct pipeline, I'm pretty sure the FERC would have approved that project. FERC almost never says no. The Everett import facility is already built and operational and can supply New England on the 12 coldest days of the year with gas from Cove Point that India no longer wants.

GAIL no longer wants the U.S. LNG they contracted even though their 20 year contract was part of what DOE relied on as proof of need for Cove Point export facility.

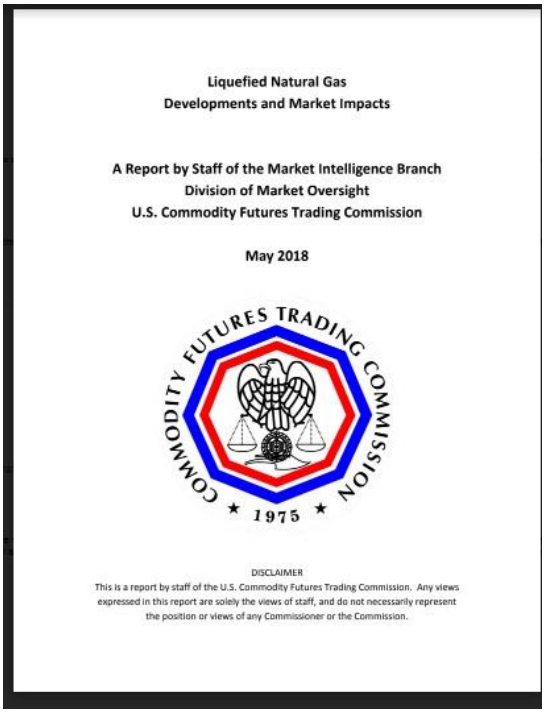
https://af.reuters.com/article/commoditiesNews/idAFL8N1PI35E

https://asia.nikkei.com/Business/India-s-GAIL-swaps-bulk-of-unsold-U.S.-LNG-contracts-amid-fall-in-crude-oil

The point is the wild and unfounded claims surrounding energy from both sides of the argument are a hindrance to making good policy based on facts, not wild hyperbole.

It seems even the Commodities Future Trading Commission, (CFTC) a Federal Agency, has published false statements regarding the arbitrage available for LNG exporters. I'm following up on this right now. It's unbelievable that a Federal Agency like Commodities Futures Trading Commission would publish something so inaccurate.

The figures cited in this paper are wildly inaccurate. $.90 per thousand cubic feet of gas? Cover page of CFTC Paper. Market Intelligence Branch?



Liquefied Natural Gas
Developments and Market Impacts

A Report by Staff of the Market Intelligence Branch
Division of Market Oversight
U.S. Commodity Futures Trading Commission

May 2018

COMMODITY FUTURES TRADING COMMISSION
★ 1975 ★

DISCLAIMER
This is a report by staff of the U.S. Commodity Futures Trading Commission. Any views expressed in this report are solely the views of staff, and do not necessarily represent the position or views of any Commissioner or the Commission.

This from inside the paper. CFTC claimed costs of production and shipping LNG wildly inaccurate.

ago.

LNG Value Chain

The key steps in the LNG value chain are Exploration and Production, Liquefaction, Shipping, and Storage & Regasification.

FERC estimates the costs of the four segments in the value chain are:

Exploration & Production:	$0.90/MMBtu +/- $0.30
Liquefaction:	$1.10/MMBtu +/- $0.20
Shipping:	$1.15/MMBtu +/-$0.65
Storage & Regasification:	$0.50/MMBtu +/-$0.10
Total Cost:	**$3.65/MMBtu +/-$1.25**[13]

All of these segments have seen development and investment, with notable improvements in efficiency. As discussed below, shale production of natural gas has fundamentally altered the natural gas market in the U.S., providing LNG exporters a significant competitive advantage. LNG shipping has also seen significant developments and improvements in efficiency:

- Between 2012 and 2016 charter rates for advanced LNG ships has declined from over $150,000/day to $33,500/day.[14]
- The global fleet of LNG tankers has expanded rapidly, with 31 new tankers added in 2016, bringing the total fleet to 478 vessels, double the number ten years ago.[15]

1 Thousand cubic feet of gas (mcf) is equivalent to 1 million Btu (MMBtu)

The paper claims cost of producing gas is 90 cents per mcf (1000 cubic feet)

CEO of EQT tells the truth about the cost of producing the gas. (Seeking Alpha)

"He said the producers must reduce drilling to maintenance capital levels for the next two years, and return the excess cash from operations to shareholders through dividends and buybacks. He said that strategy would allow natural gas prices to raise to a level — upward of $3.50 per thousand cf — (not 90 cents as the CFTC and apparently FERC claim. added) where producers can make money, shareholders can get returns and equity valuations that have dropped severely can improve
"At $2, even the mighty Marcellus does not make sense," he said."

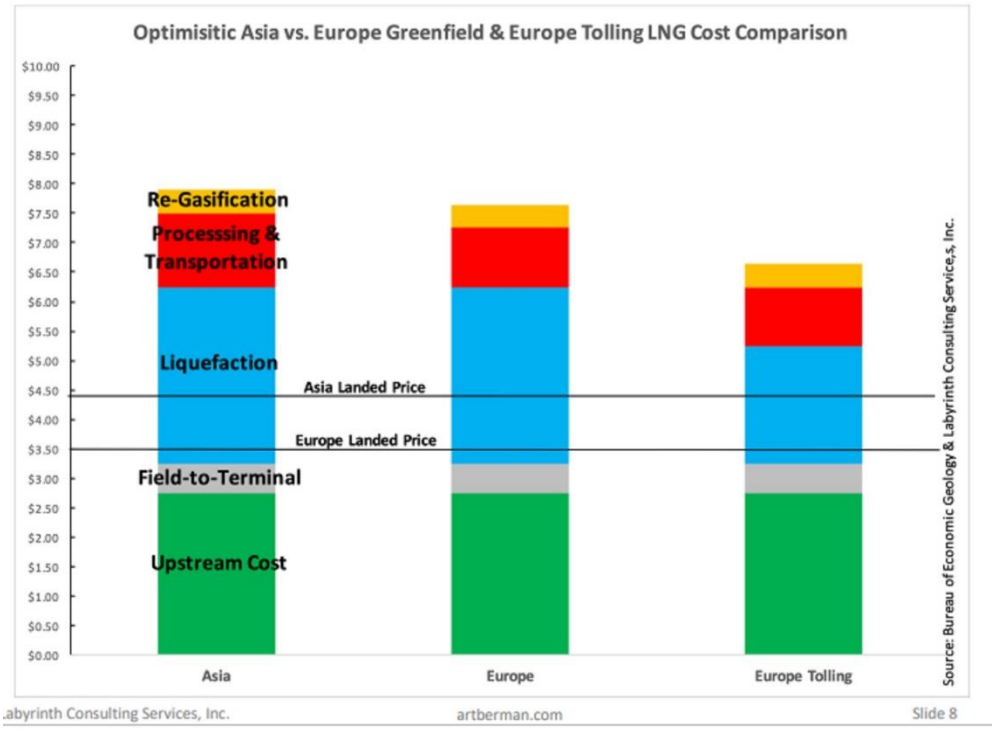
(CFTC says 90 cents makes sense?)

Shipping costs to Asia are at $86,000.00 per day, (Reuters link) not $33,500.00. Which means that shipping to Asia costs 2.56 times the $33,500.00 CFTC claims.

CFTC figure of $1.15 mcf when actual shipping costs to Asia of $2.94 per mcf if. At $86,000.00 per day, rather than the claimed $33,500.00 per day, the cost of shipping to Asia would be $2.94 per mcf. Total costs to Asia around $8.00 per thousand cubic feet, not the CFTC cited $3.65.

https://www.reuters.com/article/us-lng-shipping-rates/lng-shipping-rates-spike-with-no-respite-seen-through-2019-idUSKCN1M11W4

More accurate cost of LNG to Asia from Labyrinth Consulting. $8.00 to Asia, not $3.65.



It's other worldly to me that the CFTC cites such wildly inaccurate prices for commodities and associated costs of producing and shipping LNG. I understand all these issues are not within the purview of PA PUC. I'm writing to point out why the landowners must be given their day in court so they can use their own expert witnesses to contest the taking *before* their property is taken and savaged. I read a lot of misinformation regarding actual need, or actual benefits, and these couple illustrations only scratch the surface. If I, as a layperson, can understand the costs of shipping gas to Asia certainly the Market Intelligence Office of the CFTC can…or not.

Summary

1. PA is financially benefitting from shale gas, landowners in the path of FERC and PUC pipelines are not. The State must set up an Office of Landowner Assistance that would be funded by the gas and pipeline industry. Landowners are entitled to help navigating the complex PUC or FERC process.

2. In any eminent domain proceeding the State must increase the attorney fee allowance for landowners facing condemnation from $4000.00 to (for instance) $25,000.00, to be paid by the condemner over and above any compensation for the easement itself.
3. Each PUC project must be taken on its own merits. Blanket certification that the project is in the public interest must be able to be challenged in a timely manner
4. Prosecution of any individual who deceives landowners must be prompt if proven to be true. Having an Office of Landowner Assistance would likely cut down on those incidents.
5. PA Legislature must fund the PA PUC to the extent required for oversight of safety for the landowners and the environment. BMPs should include (for instance) DirectPipe instead of HDD wherever practicable.
6. Only pipelines absolutely required may be built. Upgrading existing pipelines must be considered wherever possible. The financial attraction of a 14-16% return for a FERC regulated pipeline may lead to unnecessary overbuilding at the landowner and ratepayer's expense.
7. Complete restoration of the temporary workspace, including either replanting any trees that were cut down or compensating the landowners for the "cost of cure," as is done for the PA Game Commission, is required for any PA PUC project.
8. Pay landowners a yearly lease for the privilege of using their property to generate profit, same as is done for the PA Game Commission.
9. Compensation for relocation of any landowners subjected to drilling noise all night is required for every day the decibel level is above 55 dBA.
10. Pre-testing and post-testing water wells within 150' of the construction zone in normal geologic formations and 500' in Karst formations is required.
11. Adopt ASCE 38-02 standards; enforce PA Act 287 rev.
12. Don't believe everything you read.

Seizing an Americans property against their will is a serious matter. Truth in all aspects of the process is mandatory otherwise Justice is not served.

Respectfully, J. Timothy Gross