

MASON, GRIFFIN & PIERSON

A PROFESSIONAL CORPORATION
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MEMORANDUM

To: Delaware Township Committee

From: Kristina P. Hadinger, Township Attorney ~~VP~~
Amanda E. Nini, Assistant Township Attorney *an*

Date: September 4, 2014

Re: **Federal Energy Regulatory Commission ("FERC") Process**
Natural Gas Pipeline

This memorandum provides an overview of the process private companies must follow when they are seeking authorization to install a natural gas pipeline. In general, a company seeking to install a natural gas pipeline must go through an application process that is strictly monitored by the Federal Energy Regulatory Commission ("FERC"). The process involves reviewing different types of data, and focuses primarily on an environmental assessment of the project. The Township has the ability to monitor the process and submit comments for FERC's consideration, and may even become more directly involved in the process as an intervenor. Additionally, if the application is approved by FERC, the applicant may use land protected by the NJDEP Green Acres program ("Green Acres") and the State Agriculture Development Committee ("SADC") for construction of the project. These issues are explored further, below.

FERC Application Process

FERC is an independent federal agency that regulates the interstate transmission of natural gas, oil, and electricity. Specifically, FERC is required to evaluate whether interstate natural gas pipeline projects proposed by private companies should be approved and installed. FERC fulfills that duty through its application process, which purports to evaluate all aspects of the proposed project. Prior to filing a formal application with FERC, many private companies choose to involve the public and the municipality in the pre-application process by holding informational town meetings and negotiating easements with affected landowners.

Once the private company files its application with FERC, the formal review process begins. First, FERC issues public notice that the application has been filed, and attempts to determine the scope of the project to begin to ascertain the environmental impact of the proposed

project. Second, FERC conducts a formal review of the application and issues requests for additional data, if necessary. FERC then receives and analyzes the requested data from the applicant. This process of requesting data and analyzing the data provided can go back and forth several times between FERC and the applicant until FERC has obtained a sufficient amount of data to perform the environmental assessment.

After reviewing and analyzing the data from the applicant, FERC issues a preliminary draft Environmental Impact Statement ("EIS") or a preliminary draft Environmental Assessment ("EA") for public review and comment. An EIS is issued when the scoping process conducted by FERC determines that the proposed pipeline may significantly affect the quality of the human environment. An EA, on the other hand, is issued when the scoping process determines that the proposed pipeline will not significantly affect the quality of the human environment. The EA evaluates the consequences of the proposed action on the environment, and recommends measures to minimize any potential adverse effects. Both the draft EIS and the draft EA are open for public comment after they are issued.

With regard to the draft EIS, FERC holds meetings in the project area to hear public comments on the draft document. FERC then revises the EIS, if necessary, and issues the final EIS. Regarding the draft EA, FERC responds to the comments received, but does not revise the document. Once the comments have been received and addressed with regard to the draft EIS or the draft EA, FERC then issues an order approving or denying the project. If the order approves the project, then FERC issues a Certificate of Public Convenience and Necessity, which authorizes the proposed project. After the order with the ultimate decision is issued, the applicant and/or the intervenors may appeal the decision by asking FERC to rehear the case within thirty (30) days from the date of the ultimate decision.

If the project is approved, and FERC does not rehear the case, then the applicant may construct and operate the project after obtaining other necessary permits such as Clean Water Act and Clean Air Act permits. Moreover, if the project is approved, the applicant may use land preserved by Green Acres and SADC to construct the pipeline because, as a federal agency, FERC's approval of the application trumps New Jersey law that protects land under Green Acres and SADC. If the applicant will be using land protected by Green Acres or SADC in which the Township holds an interest, then it must compensate the Township accordingly.¹ If an agreement on compensation cannot be reached, the applicant may file a condemnation action in federal court to resolve the matter.

Becoming Involved in the FERC Application Process

There are two ways the Township may become involved in the FERC application process, as an intervenor or as an objector. First, the Township can file an application to become an intervenor in the application process. The time period for filing a motion to intervene is set forth in the initial public notice issued by FERC after the formal application has been filed.

¹ Compensation provided to a municipality as the holder in fee of property or an easement differs depending on whether the preserved land to be used is protected under Green Acres or SADC rules. Generally, when land protected by Green Acres will be used for the construction of the pipeline, the applicant must provide the municipality with significantly more compensation than if it is protected by SADC.

Becoming an intervenor provides the Township with the greatest amount of involvement in the process. The process to become an intervenor is relatively simple, and requires that the Township file a timely motion to intervene within the time frame provided in the public notice. Specifically, the motion must state:

1. To the extent known, the position taken by the party seeking intervention, and the basis for that position;
2. The party's interest in sufficient factual detail to demonstrate that:
 - a. The party has a right to participate in the process, which is expressly provided by statute, FERC rule, order, or other action;
 - b. The party has an interest that may be directly affected by the outcome of the proceeding; and
 - c. The party's participation is in the public interest.

The motion will be automatically granted if no answer in opposition to the timely motion to intervene is filed with fifteen (15) days after the motion has been filed. If a timely answer in opposition is filed, then the party only becomes an intervenor if the motion is expressly granted.

As an intervenor, the Township will be added to the service list and therefore receive copies of all documents filed during the application process. This includes, but is not limited to, reports filed by the applicant, letters and comments submitted by the public, reports and requests issued by FERC, and any other document filed for consideration in the application process.

Additionally, becoming an intervenor affords the Township legal standing as an official party to the action. This standing provides intervenors with the option of subsequently appearing at hearings before the FERC administrative law judges, and appearing in the Court of Appeals to challenge FERC's ultimate decision.

Second, the Township can submit comments to FERC as an objector without filing an application to become an intervenor. This will allow the Township to submit comments and concerns for FERC's consideration, however it does not provide the Township with automatic legal standing as a party to the application process. Additionally, it will not provide the Township with service of all of the documents and reports filed with FERC. The Township will, however, be able to access and review all documents filed in the application process by accessing the "eLibrary" on FERC's website.

FERC must address all comments submitted by objectors and intervenors, which are officially entered into the application's record in the "eLibrary." Therefore, other parties to the application process and members of the public will also be able to review comments and suggestions submitted by the Township. Although the Township will not be added to the service list and automatically receive all of the documents filed in the case if it submits comments

without becoming an intervenor, the Township will be added to the mailing list to receive the environmental documents and the EIS or EA that are filed in the case.

Both as an intervenor and as an objector, the Township will be involved in the application process, will have its comments addressed by FERC, and will have access to all of the documents filed in the process. The main difference is that, as an intervenor, the Township will be afforded legal standing to subsequently challenge FERC's ultimate decision.

Conclusion

In general, the application process before FERC is a lengthy process that provides the public with detailed information about the installation of new pipelines. All elements of a proposed pipeline are reviewed by FERC to reach an ultimate decision regarding whether a new pipeline may be installed and what affect it will have on the surrounding community and environment. This memorandum has provided you with a brief overview of the process, however we would be glad to provide you with additional information should you feel that would be beneficial.