



Alternatives to the Pipeline

The NEPA regulations that govern FERC's environmental review of the project state that the Alternatives section "is the heart of the environmental impact statement." FERC must present the environmental impacts of the proposal and the alternatives in comparative form, providing a clear basis for choice among options.

FERC must "rigorously explore and objectively evaluate all reasonable alternatives," and must include reasonable alternatives outside FERC's own jurisdiction. The Courts that have reviewed these alternatives requirements have taken a range of judicial approaches. Some have taken a broad view of the alternatives requirements. The Seventh Circuit Court of Appeals ordered the Army Corps of Engineers to investigate and include property not even owned by the applicant when community interveners identified property that would lessen environmental impacts from the applicant's coal-loading facility in Illinois. The Court held that NEPA requires "an evaluation of alternative means to accomplish the general goal of an action; it is not an evaluation of the alternative means by which a particular applicant can reach his goals."

As might be imagined, other courts have taken narrower views of what alternatives are required, particularly when a third party, rather than an agency itself, is seeking a permit. In fact, the trend seems to be that NEPA alternatives can be more limited when nonfederal sponsors are proposing them. Summing up two cases, one commentator said, "[the Federal Aviation Administration] has no power to strong-arm FedEx into using a shorter, 7,000-foot runway or to force Burlington Air Express to stay in Toledo...Private projects do not become 'federal' by virtue of their required approval by federal agencies."

One of the alternatives addressed by FERC must include the alternative of no action at all. However, when FERC spokesperson, Tamara Young-Allen was asked whether the no-action option had ever been chosen by FERC in a pipeline case, she answered, “No, I don’t think that has ever been selected because, after all, the Commissioners look at all the customers [for the pipeline] who have been lined up, and constructing it is necessary for them.”

Two main alternatives to the Kinder Morgan proposal have emerged so far, both of which acknowledge the need for additional energy sources for power generation in the State, but point to less destructive means to that end: Under the first scenario, increased energy efficiency and reduced demand would meet energy demands; under the second scenario, the pipeline would be rerouted through already-compromised areas, such as existing roadways.

A Black & Veatch study for NESCOE supports the first alternative, concluding, “No long-term infrastructure solutions are necessary under the Low Demand Scenario.” No pipeline would be needed, and FERC would choose a no-action alternative.

Although this option would seem to be a long shot, there is precedent for community groups swaying federal agencies through the NEPA process: The Federal Highway Administration has scrapped proposed highways in Tennessee and Michigan because of the persistence and persuasiveness of opposition groups. While the situation of a third-party applicant is different from a federal project, the NEPA process – including organized, coordinated, analytically supported comments at public meetings and in writing – is still a viable avenue for public persuasion concerning alternative sources of energy, conservation, energy efficiency measures, repair of methane leaks in existing pipelines, and faster rollout of renewable energy resources.

Advocates of rerouting the pipeline, including the Conservation Commissions, also question whether it is needed, but appear to be willing to accept it if – and only if – it is relocated near less ecologically sensitive areas.

Conservation Commissions were invented by Massachusetts, and established by the Conservation Commission Act of 1958. Every city and town in the Commonwealth now has a Commission, composed of volunteers, whose purpose is to promote and develop natural resources and protect watershed resources. While much of their time is spent addressing wetlands cases, the Commissions are also charged with protecting the land, water and biological resources of their communities.