SENATE CONCURRENT RESOLUTION No. 55

STATE OF NEW JERSEY

219th LEGISLATURE

INTRODUCED FEBRUARY 10, 2020

Sponsored by:
Senator SHIRLEY K. TURNER
District 15 (Hunterdon and Mercer)

SYNOPSIS

Urges President and Congress to revise laws, and Federal Energy Regulatory Commission to change rules, concerning interstate natural gas pipeline approvals to more fully address adverse impacts.

CURRENT VERSION OF TEXT

As introduced.

A CONCURRENT RESOLUTION respectfully urging the President and Congress of the United States to change the laws, and the Federal Energy Regulatory Commission to change its rules, concerning approvals of interstate natural gas pipelines so they better implement current energy policy considerations, require consideration of the cumulative impacts of the overall development of natural gas transmission infrastructure on a region, and require deference to certain competing State policy determinations.

WHEREAS, The regulatory regimes governing oil transportation and gas transportation differ radically from each other; and

WHEREAS, Proposed interstate natural gas pipelines are reviewed and permitted at the federal level by the Federal Energy Regulatory Commission ("FERC"), while proposed interstate oil pipelines are reviewed and permitted almost exclusively at the state level; and

WHEREAS, The differences in regulation of the transportation of oil and gas arose in part because of the physical properties of each resource but also because each regulatory system developed in response to different political and economic times and remain in place today largely as a vestige of those early days; and

WHEREAS, Congress enacted the Natural Gas Act of 1938 to place the federal government in control of the siting of interstate natural gas pipelines to level the playing field between competing energy producing industries, and amended that act after World War II to put natural gas companies on the same footing as other power industries by providing natural gas pipeline companies with eminent domain authority; and

WHEREAS, Federal law's preferential treatment for the natural gas pipeline industry may have been supported by public policy considerations at an earlier time, when natural gas was a new, cleaner source of energy, however, current policy considerations no longer support the industry's preferred status, which impedes the development of newer, cleaner sources of energy; and

WHEREAS, Recent technological innovations in the production of natural gas through hydraulic fracturing and directional drilling have resulted in a wave of applications to develop new interstate natural gas transmission pipelines; and

WHEREAS, Reports presented to Congress by advocates for the natural gas pipeline industry estimate the need to construct annually, every year through 2035, 1,400 miles of gas transmission pipeline in the United States and Canada; and

WHEREAS, The Marcellus and Utica shale fracking boom in the Northeast United States has spurred the proposal and construction of multiple pipelines to transport unconventional shale gas through New Jersey; and

WHEREAS, In New Jersey, local units of government, property owners, and other interested parties that are affected by proposed interstate

natural gas pipelines have raised significant questions about the current processes for approving interstate natural gas pipelines, and have asserted that the current FERC approval process does not adequately balance competing policy considerations, adequately protect the State of New Jersey's natural resources, or even adequately consider compelling State and local policy determinations; and

WHEREAS, New Jersey, which is among the most densely-populated states, and among the first states facing "build-out," enacted laws establishing open space preservation and farmland preservation programs in order to dedicate land for those purposes in perpetuity, and have expended taxpayer funds in furtherance of those purposes, however, the FERC approval process allows for the location of interstate natural gas pipelines through irreplaceable preserved farms, forests, and environmentally sensitive areas, leading to the destruction of fragile habitat and the erosion of the public trust in these preservation programs; and

WHEREAS, Under the National Environmental Policy Act (NEPA), prior to approving a proposed pipeline, FERC is required to consider a wide range of potential environmental impacts, including the "cumulative impacts" of a project, those that result from a proposed pipeline project as well as past, present, and foreseeable projects which may be minor individually but collectively are significant, however, FERC's review and analysis of cumulative impacts typically includes only cursory review of this requirement; and

WHEREAS, Although NEPA requires FERC to consider cumulative impacts of proposed natural gas pipelines, the FERC approval process individually considers the impact of each pipeline project, and at times, only a segment of a proposed pipeline, without considering the cumulative impacts of the total projected development of natural gas pipeline infrastructure, according to natural gas industry estimates, within a region or a State; and

WHEREAS, NEPA requires FERC to consider all reasonable alternatives, including renewable energy, energy efficiency, and the no-build option, but FERC's review often does not comprehensively consider these alternatives; and

WHEREAS, New Jersey has adopted stringent environmental quality regulations, and the lax federal pipeline approval process undermines New Jerseyans' expectation of benefitting from robust environmental regulations; and

WHEREAS, Since FERC's current process of reviewing each proposed interstate natural gas pipeline project individually does not allow for a consideration of the true cumulative impacts of the development of pipeline infrastructure throughout a region over time, nor does it fully examine public need or provide a reasonable analysis of alternatives, it is respectfully urged that Congress enact legislation requiring FERC: to use comprehensive data and

planning tools to determine if new transmission capacity is needed, including a detailed analysis of renewable energy, energy efficiency, and more efficient use of existing capacity; to develop and undertake regional programmatic environmental impact statements that consider a full range of alternatives and provide FERC information to evaluate potential cumulative impacts of the reasonably foreseeable actions of pipelines that may be proposed for development across a region; and to consider all cumulative impacts and indirect effects of prospective pipeline proposals on a region; and

WHEREAS, Although Federal law currently provides that in order for FERC to approve a proposed natural gas pipeline project, FERC must find that the project is in the public interest, and that, overall, the benefits of the project outweigh the adverse impacts, unfortunately, the FERC approval process has become a rubber stamp approval for the natural gas industry; and

WHEREAS, The General Assembly and the Senate of the State of New Jersey express their dire concern that the current federal laws which govern the approval of interstate natural gas pipelines have devolved to an automatic approval process, benefiting private energy companies without adequate determination of public need, and before environmental costs are fully understood, and proper controls put into place, and contrary to good public policy of federal, state, and local entities, as well as those of private property owners; now, therefore,

BE IT RESOLVED *by the Senate of the State of New Jersey (the General Assembly concurring):*

1. The President and Congress of the United States are respectfully urged to undertake a comprehensive reassessment of the federal laws governing FERC approval of interstate natural gas pipelines, and to amend or revise those laws, in order to ensure they: are consistent with a national energy policy which includes an increased emphasis on renewable energy; require a regional analysis of public need and alternatives to address such need including renewable energy, efficiency measures, and more efficient use of existing infrastructure; require consideration of the cumulative impacts of the overall development of natural gas transmission infrastructure on a region; and require deference to certain competing state policy determinations, particularly, state laws which require the preservation of property dedicated for open space and agricultural purposes.

2. The FERC is respectfully urged to undertake a comprehensive reassessment of its rules regarding approval of interstate natural gas public pipelines, and to amend or revise those rules, in order to ensure they: are consistent with a national energy policy which includes an increased emphasis on renewable energy; require regional

programmatic environmental impact statements that include consideration of the cumulative impacts of the overall development of natural gas transmission infrastructure on a region, a regional analysis of public need for additional infrastructure, and the risk of overbuilding, and an examination of alternatives including renewable sources of energy, efficiency measures, and more efficient use of existing infrastructure; and give deference to certain competing state policy determinations, particularly state laws which require the preservation of property dedicated for open space and agricultural purposes.

3. Copies of this resolution, as filed with the Secretary of State, shall be transmitted by the Clerk of the General Assembly or the Secretary of the Senate to the President of the United States, the President of the United States Senate, the Senate Majority Leader, the Speaker of the United States House of Representatives, each member of Congress from the State of New Jersey , and the Federal Energy Regulatory Commission.

STATEMENT

This concurrent resolution urges the President and the United States Congress to revise the laws, and the Federal Energy Regulatory Commission (FERC) to revise its rules, governing the approval of interstate natural gas pipelines in order to better consider regional need, alternatives, and cumulative environmental impacts associated with the development and expansion of pipelines.