



December 1, 2015

Norman C. Bay
Chairman
Federal Energy Regulatory Commission
888 First Street, NE
Washington, D.C. 20426

Stephen G. Burns
Chairman
Nuclear Regulatory Commission
Washington, D.C. 2055

Re: Algonquin Incremental Market Project
Algonquin Pipeline / Spectra Energy
FERC Docket No. CP14-96

10 CFR Section 2.206 Petition to NRC
Requesting Enforcement Action
ADAMS Accession No. ML1429A751

Dear Chairmen Bay and Burns:

I write to bring your attention to significant issues regarding the Algonquin Pipeline expansion in New York and to seek your immediate attention and intervention in the application process. The issues in this case are urgent. Although no natural gas is flowing through the newly proposed pipeline, its construction is underway while significant public health and environmental concerns remain unaddressed. The public, advocacy organizations, and Riverkeeper, Inc., have actively and robustly participated in the National Environmental Policy Review act process for this gas pipeline application. The significant gas pipeline expansion and its unresolved issues are dangerously close to a nuclear power plant surrounded by 20 million people.

I urge the Commissions to fully and transparently respond to critical factual and legal questions that have been raised on the record. Further, a new study commissioned by the Massachusetts Attorney General indicates that the increased natural gas flow is not necessary and may in fact be detrimental to our long term climate prospects. There are serious questions about whether the risks posed by the approved pipeline exceed the

benefits. The risk to the public and the questions surrounding these issues must be addressed before the pipeline, as proposed, is completed.

**THE ENVIRONMENTAL REVIEW OF THE PROPOSED PIPELINE MISSED CRITICAL ISSUES AND HAS BEEN INSULATED FROM JUDICIAL REVIEW:
GRANT THE REQUEST FOR RE-HEARING.**

On March 3, 2015, the Federal Energy Regulatory Commission (FERC) issued the certificate approving the Algonquin Pipeline application. The approval was based, in part, on the Nuclear Regulatory Commission's (NRC) assertion that the pipeline (and its potential rupture) did not present any increased risk to Indian Point. The public record raised numerous concerns with the pipeline proposal - from the need for an independent review of its possible danger to the Indian Point Nuclear Generating Facility, to the destruction of local parkland, to the exposure of residents to harmful air and water contaminants, to the exposure of schoolchildren and local homeowners to pipeline safety risks. Elected officials and local advocates and citizens have made many reasonable requests for the Federal Energy Regulatory Commission to satisfactorily and thoroughly review these public health and environmental concerns, including:

a transparent and publicly reviewable Indian Point Nuclear Power Plant risk assessment/study must be completed - fully independent of the applicant and Nuclear Regulatory Commission;

an independent baseline human health assessment for the contaminants of concern to the local communities must be included and presented for review;
and,

an analysis of the existing gas pipeline infrastructure and what can be done to reduce public exposure and risks at schools, businesses, places of worship, parkland, and residential areas must be conducted.

FERC's response to the multiple re-hearing requests has been to not answer and to unilaterally decide to "stay" its regulatory deadline for such answers by way of a tolling order. The practical effect has been to insulate its actions from review by the courts preventing any challenges to the Algonquin Pipeline approval. That FERC action, in particular, has dire consequences for democracy and to our constitutional system and places the approval of the pipeline "above the law."

NUCLEAR REGULATORY COMMISSION: REQUIRE AN INDEPENDENT SAFETY ASSESSMENT.

Neither FERC nor the NRC required an independent safety assessment of the critical issue of the pipeline's close location near the Indian Point nuclear facility. The Algonquin Pipeline brings high pressure natural gas flow to within feet of a critical nuclear facility's infrastructure that could be severely compromised in the event of a pipeline rupture. The current safety concerns with Indian Point are well known and well documented, and given the inability to evacuate citizens in the event of an emergency, this pipeline poses a severe additional risk. Nuclear expert Paul Blanch submitted a Petition to NRC seeking action on the risks posed by the Algonquin Pipeline. The petition was not granted. More importantly, the NRC response has been wholly unsatisfactory in its fundamental failure to fully address the safety issues.

The NRC responded that it performed an independent confirmatory analysis of a risk assessment provided by the nuclear power plants operator, Entergy. The Entergy analysis evaluated the risk of a pipeline rupture and determined that the Indian Point nuclear plant could safely shut down in the event of such a rupture. In meetings, hearings, letters, and filings on the public record this past year, Mr. Blanch and Mr. Richard Kuprewicz, a renowned pipeline expert, have repeatedly explained the many significant problems with this NRC approach to the safety issues. Among other concerns, the issues include:

questionable and unverified methodology was used to estimate the impact of a pipeline rupture. Using NRC's own formula, the blast radius should have been estimated at 3,000-10,000 feet instead of 1,000 feet;

the NRC relied on Spectra's estimate that the gas valves could safely be closed remotely from Houston, Texas in three minutes, but the pipeline expert, Richard Kuprewicz, stated that this violates pipeline thermodynamics;

the operators at Indian Point have no control over the gas valves; and

the NRC does not possess the proper gas pipeline experience to properly evaluate the impact of a 42-inch diameter gas pipeline rupture.

Further, Mr. Kuprewicz and Mr. Blanch have offered a variety of criticisms to NRC, including that their confirmatory analysis defies the laws of thermodynamics, is inconsistent with federal regulations, is based on a modeling system that is prohibited

for the rupture of this pipeline, and that the NRC does not have the expertise to properly evaluate the consequences of a 42" high pressure gas pipeline rupture.

The November 6, 2015 NRC response to Mr. Blanch also fails to address important details about the NRC's "independent confirmatory analysis." The letter says the "review and approval of the proposed pipeline ... overreaches our regulatory authority," and that "the NRC does not perform safety-related calculations." The NRC noted that it's "role is limited to ensuring the safe operations of Indian Point" and that the licensee performed a "site hazards analysis." The NRC letter makes clear that no federal regulatory agencies have conducted any safety analysis of the siting of the pipeline alongside Indian Point. An independent safety analysis would address the safety issues in a holistic and comprehensive manner.

Despite the clearly articulated statements and analysis of the risks from nuclear and pipeline experts, the pipeline is currently being constructed and the issues remain unaddressed. Federal agencies note that risks to pipelines and nuclear generating facilities exist and that "the NRC is responsible for ensuring the safety and security of commercial nuclear plants," is not a credible or sufficient answer to the 20 million residents surrounding Indian Point. The NRC, on the other hand, cannot say that it's "role is limited to ensuring the safe operations" of Indian Point and then ignore analyses necessary to ensure the facility's safe operation. Further, the NRC's actions thus far have been thoroughly disingenuous. There is no justification for failing to require a fully independent assessment before completion of the pipeline and the movement of high volumes of natural gas near the Indian Point nuclear generating facility.

THE NATURAL GAS CAPACITY NEEDS OF NEW ENGLAND DO NOT JUSTIFY THE RISKS OF HIGH VOLUME GAS PIPELINES LIKE ALGONQUIN.

A concern expressed repeatedly in the public record is FERC's failure to assess the cumulative impacts of pipeline applications. In its certification process, it is also required to assess the public need for the natural gas. Massachusetts, faced with questions about the need for additional gas pipelines, commissioned a study to look at need issues.¹ A justification which has been offered for the Algonquin Pipeline has been the need to bring natural gas to market in New England.

The Massachusetts Attorney General's office's findings (the Study) appear to be directly

¹ See Off. of the Mass. Attorney General, Regional Electric Reliability Options Study, <http://www.mass.gov/ago/doing-business-in-massachusetts/energy-and-utilities/regional-electric-reliability-options-study.html> (last viewed Nov. 30, 2015).

linked to the Algonquin Pipeline concerns. Significant amongst the conclusions is that:

Under business-as-usual circumstances, the region can maintain electric reliability through 2030, even under stressed conditions, without additional new natural gas pipeline. Even under a "stressed system" scenario, the study found that cheaper, less carbon-intensive ways to ensure electric reliability are available to ratepayers, like energy efficiency and demand response.²

The Study found that "under existing market conditions (status quo), there is no electric sector reliability deficiency through 2030, and that no additional pipeline gas capacity is needed to meet electric reliability needs."³

The Study went further to challenge the wisdom of investing in natural gas infrastructure like the Algonquin Pipeline. It concludes that building new gas pipeline capacity sized to meet the deficiency in electricity supply is *more expensive* than the energy efficiency and demand response solutions, and *increases* regional greenhouse gases. These need issues are required to be fully assessed by FERC in the application review process.⁴

The Massachusetts analysis also illustrates the farcical nature of the drama being played out in the pipeline's review. The stated need of the pipeline is to bring natural gas to New England, yet despite the many issues raised on the public record, including need, FERC's actions have stopped the public from challenging the approval in Court. If an independent analysis of a state that is the "target market" for gas from the Algonquin Pipeline says it does not need the gas supply, why is it being built? It also raises the significant question of whether the FERC approval *could* withstand scrutiny.

CONCLUSION

The Algonquin Pipeline application was reviewed and approved by FERC. The pipeline's purpose is to bring natural gas from Pennsylvania to market in New England – travelling through New York and next to Indian Point. Many significant environmental and public health and safety issues have been raised on the public record during the approval process. Many issues were not adequately addressed and

² *Id.* at Infographic.

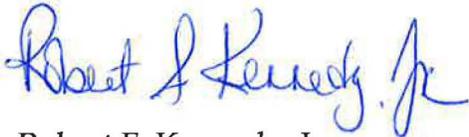
³ *Id.* at Study Summary.

⁴ See Off. of the Mass. Attorney General, Regional Electric Reliability Options Study Report, at 34 f.7 (2015), available at <http://www.mass.gov/ago/docs/energy-utilities/reros-study-final.pdf>.

the record is replete with reasons for FERC to grant a rehearing. FERC has decided not to answer the question of whether it will grant a re-hearing. Thus, it has insulated itself from challenge by anybody - rendering the Courts impotent - to review the adequacy of its decision. The lack of a fully transparent review violates the tenets of the past forty years of environmental review in the United States.

Serious safety issues related to the proposed project - and its close location next to a nuclear generating facility - have not been adequately addressed. At the same time, *pipeline construction has begun*. New York residents have been asked to bear dramatic risk associated with the Algonquin Pipeline, yet the piped gas goes to a market in New England that, in part, has concluded the gas is not necessary. The risks and benefits of this project are significantly out of balance. FERC must answer the re-hearing request and require that safety issues to be addressed. The NRC must also immediately and transparently address the safety concerns regarding the pipeline and Indian Point. Anything less is unconscionable. The public safety is paramount. An independent safety review, and implementation its conclusions, must occur before natural gas is allowed to flow through the pipeline.

Respectfully submitted,

A handwritten signature in blue ink that reads "Robert F. Kennedy, Jr." with a stylized flourish at the end.

Robert F. Kennedy, Jr.
Chief Prosecuting Attorney