

Congress of the United States
House of Representatives

COMMITTEE ON OVERSIGHT AND REFORM

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WASHINGTON, DC 20515-6143

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<https://oversight.house.gov>

November 20, 2020

The Honorable James Danly
Chairman
Federal Energy Regulatory Commission
888 First Street, N.E.
Washington, D.C. 20426

Dear Chairman Danly:

The Subcommittee on Civil Rights and Civil Liberties is seeking additional information about the procedures used by the Federal Energy Regulatory Commission (FERC) to resolve conflicts between landowners and natural gas pipeline construction companies. Specifically, the Subcommittee requests that FERC provide information on the following topics: certificate extensions, restoration delays, dispute resolution, and disposition of property for cancelled projects.

Certificate Extensions – When FERC approves a natural gas pipeline, it issues a certificate of public convenience and necessity (certificate), granting the pipeline company the ability to begin construction and setting the deadline for its completion.¹ During construction, landowners are subject to hazardous and noisy conditions and are often severely restricted in the use of their land. In addition to the permanent easements pipeline companies obtain across private land, pipeline construction often requires the temporary use of even more land.² When companies fail to meet their construction deadlines and FERC grants them certificate extensions, it prolongs landowners' suffering and lack of access to their full property.

For example, the Mountain Valley Pipeline (MVP) in Virginia and West Virginia has been chronically delayed. FERC recently granted MVP a two-year extension over the objections of more than 40,000 people, including landowners and other affected parties.³ Following FERC's approval of the extension, Cat McCue of Appalachian Voices, a local organization focused on the protection of land, air, and water in Central and Southern Appalachia, noted that the MVP has been "a nightmare for the people living along the route who've endured having their property taken through eminent domain, contractors working from dawn-until-dusk on their

¹ 15 U.S.C. § 717f; 18 C.F.R. § 157.20 (1999).

² Ohioline: Ohio State University Extension, *Understanding and Negotiating Pipeline Easements* (online at <https://ohioline.osu.edu/factsheet/anr-33>) (accessed on November 12, 2020).

³ *Pipeline Opponents React to Federal Ruling*, WDBJ7 (Oct. 12, 2020) (online at www.wdbj7.com/2020/10/12/pipeline-opponents-react-to-federal-ruling/).

land, and seeing atrocious erosion and muddy runoff in their streams and fields.”⁴ FERC’s extension forces these landowners to continue to endure these hardships for two more years.

Restoration Delays – The National Environmental Policy Act requires FERC and pipeline companies to develop plans to mitigate impacts to the environment, including on landowners’ property.⁵ However, FERC may disincentivize timely restoration by routinely authorizing pipelines to enter into service even though restoration is incomplete. Our office has heard from several landowners affected by the Midship Pipeline in Oklahoma. In April, FERC granted Midship’s request to put the pipeline into service even though the company still had not repaired damage it had done to private land.⁶ Instead, Midship promised to complete restoration by June 30.⁷ Four months later, landowners are still waiting for their property to be restored, while Midship has begun operating the pipeline. For some farmers, Midship’s restoration delays have continued over multiple growing seasons and are threatening to drag into next year.

Dispute Resolution – FERC has created a Dispute Resolution Service, purportedly to assist landowners who are in conflict with pipeline companies over issues such as those noted above. However, we have heard from several advocates and landowners that this process is insufficient and often does not aid in resolving disputes. The Service can only be initiated if both parties (the landowner and the pipeline company) agree to it.⁸ Pipeline companies can simply ignore a landowner’s request if they do not wish to participate.

Disposition of Property for Cancelled Projects – With the recent cancellation of the Atlantic Coast Pipeline, the second cancellation of a major pipeline in the last few years, there are growing concerns about what happens to land that has been taken through eminent domain for a pipeline that will never be built.⁹ There appears to be no process to ensure that this land reverts back to the property owner, or that the land is not used for an entirely different purpose than the one approved by FERC and accepted by the courts in eminent domain proceedings. It is

⁴ *Mountain Valley Pipeline Is Not a Done Deal*, Appalachian Voices (Oct. 1, 2020) (online at <https://appvoices.org/2020/10/01/mountain-valley-pipeline-is-not-a-done-deal/>).

⁵ Federal Energy Regulatory Commission, *Upland Erosion Control, Revegetation & Maintenance Plan* (May 2013) (online at www.ferc.gov/sites/default/files/2020-04/FERC%E2%80%99sPipelineConstructionandRestorationRequirementsinUplandAreasGuide.pdf).

⁶ *FERC Approves Service on Midship Natural Gas Pipeline*, Kallanish Energy (Apr. 22, 2020) (online at www.kallanishenergy.com/2020/04/22/ferc-approves-service-on-midship-natural-gas-pipeline/).

⁷ *FERC Gives Midship Approval to Start Service, Citing Upcoming Restoration*, S&P Global (Apr. 20, 2020) (online at www.spglobal.com/marketintelligence/en/news-insights/latest-news-headlines/ferc-gives-midship-approval-to-start-service-citing-upcoming-restoration-58091661).

⁸ Federal Energy Regulatory Commission, *Order No. 578: Alternative Dispute Resolution* (Apr. 12, 1995) (online at www.ferc.gov/sites/default/files/2020-08/rm91-12-00a.txt).

⁹ *Atlantic Coast Pipeline Canceled as Delays and Costs Mount*, New York Times (July 5, 2020) (online at www.nytimes.com/2020/07/05/business/atlantic-coast-pipeline-cancel-dominion-energy-berkshire-hathaway.html).

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unclear whether there is or will be a plan to restore land that was subject to pre-construction activity.¹⁰

In order to help us better understand these various issues we request the following information no later than December 4, 2020. All requests apply to the time period from September 19, 1999, to the present:

1. An explanation of how FERC determines whether to grant certificate extensions for the construction of natural gas projects;
2. The number of certificate extensions for the construction of natural gas projects that have been requested by companies;
 - a. the number of those extensions that FERC has granted;
 - b. the length of time, on average, that is requested for those extensions;
 - c. the length of time, on average, those extensions are granted for; and
 - d. the length of time, on average, between the original deadlines for construction and availability for service in the Certificate Order and the final in-service dates of natural gas projects; and
3. An explanation of the steps that FERC takes to ensure that pipeline companies either restore land or compensate landowners for the damage they cause, including:
 - a. how FERC determines whether restoration is complete, including when the landowner and pipeline company disagree;
 - b. the recourse a landowner can seek through FERC if their land was not restored properly;
 - c. the outcomes of cases where a landowner has sought recourse through FERC for improperly restored land, including what actions FERC took to ensure relief for landowners; and
4. The number of times FERC has levied civil penalties or taken enforcement actions against natural gas companies for failing to properly restore land in a timely manner;

¹⁰ *The Atlantic Coast Pipeline was Canceled. What Happens to All the Land Acquired for It?*, Virginia Mercury (July 29, 2020) (online at www.virginiamercury.com/2020/07/29/the-atlantic-coast-pipeline-was-canceled-what-happens-to-all-the-land-acquired-for-it/).

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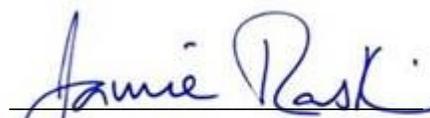
5. The length of time, on average, between when FERC grants an in-service order for a pipeline and when restoration is complete on the land affected by that pipeline;
6. The number of times parties have sought assistance through the Dispute Resolution Service, including:
 - a. the number of times landowners have sought assistance;
 - b. the number of times companies sought assistance;
 - c. in each of those instances, whether the other party agreed to participate in the Dispute Resolution Service;
 - d. the outcome of each of those cases;
 - e. the length of time, on average, between when assistance is sought and when the issue is resolved;
 - f. the percentage of landowners who are represented by counsel during the dispute resolution process; and
 - g. the percentage of companies who are represented by counsel during the dispute resolution process; and
7. An explanation of what actions FERC takes to make landowners aware of the Dispute Resolution Service;
8. An explanation of how FERC ensures that pipeline companies have the easements they need prior to granting notices to proceed for pre-construction or construction activities, including whether FERC collects records of said easements;
 - a. if available, the number of easements for natural gas projects that are acquired where no pipeline was ultimately built;
 - b. the number of times FERC has approved pre-construction or construction activity on land where no pipeline was ultimately built, including for projects that were abandoned, pipeline routes that changed, or land that was ultimately not needed;
9. The number of Notice to Proceed requests that FERC has received for the construction of a natural gas pipeline while other federal and state permits were still pending;

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- a. the number of Notice to Proceed requests for the construction of a natural gas pipeline that FERC has denied while other federal and state permits were still pending; and
10. The number of Notice to Proceed requests that FERC has received for the construction of a natural gas pipeline before adjudicating the merits of a request for rehearing; and
 - a. the number of Notice to Proceed requests that FERC has denied for the construction of a natural gas pipeline before adjudicating the merits of a request for rehearing.

The Committee on Oversight and Reform is the principal oversight committee of the House of Representatives and has broad authority to investigate “any matter” at “any time” under House Rule X. An attachment to this letter provides additional instructions for responding to the Committee’s request. If you have any questions regarding this request, please contact Committee staff at (202) 225-5051.

Sincerely,



Jamie Raskin
Chairman

Subcommittee on Civil Rights and Civil Liberties

Enclosure

cc: The Honorable Chip Roy, Ranking Member
Subcommittee on Civil Rights and Civil Liberties

Responding to Oversight Committee Document Requests

1. In complying with this request, produce all responsive documents that are in your possession, custody, or control, whether held by you or your past or present agents, employees, and representatives acting on your behalf. Produce all documents that you have a legal right to obtain, that you have a right to copy, or to which you have access, as well as documents that you have placed in the temporary possession, custody, or control of any third party.
2. Requested documents, and all documents reasonably related to the requested documents, should not be destroyed, altered, removed, transferred, or otherwise made inaccessible to the Committee.
3. In the event that any entity, organization, or individual denoted in this request is or has been known by any name other than that herein denoted, the request shall be read also to include that alternative identification.
4. The Committee's preference is to receive documents in electronic form (i.e., CD, memory stick, thumb drive, or secure file transfer) in lieu of paper productions.
5. Documents produced in electronic format should be organized, identified, and indexed electronically.
6. Electronic document productions should be prepared according to the following standards:
 - a. The production should consist of single page Tagged Image File ("TIF"), files accompanied by a Concordance-format load file, an Opticon reference file, and a file defining the fields and character lengths of the load file.
 - b. Document numbers in the load file should match document Bates numbers and TIF file names.
 - c. If the production is completed through a series of multiple partial productions, field names and file order in all load files should match.
 - d. All electronic documents produced to the Committee should include the following fields of metadata specific to each document, and no modifications should be made to the original metadata:

BEGDOC, ENDDOC, TEXT, BEGATTACH, ENDATTACH, PAGECOUNT, CUSTODIAN, RECORDTYPE, DATE, TIME, SENTDATE, SENTTIME, BEGINDATE, BEGINTIME, ENDDATE, ENDTIME, AUTHOR, FROM, CC, TO, BCC, SUBJECT, TITLE, FILENAME, FILEEXT, FILESIZE, DATECREATED, TIMECREATED, DATELASTMOD, TIMELASTMOD,

INTMSGID, INTMSGHEADER, NATIVELINK, INTFILPATH, EXCEPTION,
BEGATTACH.

7. Documents produced to the Committee should include an index describing the contents of the production. To the extent more than one CD, hard drive, memory stick, thumb drive, zip file, box, or folder is produced, each should contain an index describing its contents.
8. Documents produced in response to this request shall be produced together with copies of file labels, dividers, or identifying markers with which they were associated when the request was served.
9. When you produce documents, you should identify the paragraph(s) or request(s) in the Committee's letter to which the documents respond.
10. The fact that any other person or entity also possesses non-identical or identical copies of the same documents shall not be a basis to withhold any information.
11. The pendency of or potential for litigation shall not be a basis to withhold any information.
12. In accordance with 5 U.S.C. § 552(d), the Freedom of Information Act (FOIA) and any statutory exemptions to FOIA shall not be a basis for withholding any information.
13. Pursuant to 5 U.S.C. § 552a(b)(9), the Privacy Act shall not be a basis for withholding information.
14. If compliance with the request cannot be made in full by the specified return date, compliance shall be made to the extent possible by that date. An explanation of why full compliance is not possible shall be provided along with any partial production.
15. In the event that a document is withheld on the basis of privilege, provide a privilege log containing the following information concerning any such document: (a) every privilege asserted; (b) the type of document; (c) the general subject matter; (d) the date, author, addressee, and any other recipient(s); (e) the relationship of the author and addressee to each other; and (f) the basis for the privilege(s) asserted.
16. If any document responsive to this request was, but no longer is, in your possession, custody, or control, identify the document (by date, author, subject, and recipients), and explain the circumstances under which the document ceased to be in your possession, custody, or control.
17. If a date or other descriptive detail set forth in this request referring to a document is inaccurate, but the actual date or other descriptive detail is known to you or is otherwise apparent from the context of the request, produce all documents that would be responsive as if the date or other descriptive detail were correct.

18. This request is continuing in nature and applies to any newly-discovered information. Any record, document, compilation of data, or information not produced because it has not been located or discovered by the return date shall be produced immediately upon subsequent location or discovery.
19. All documents shall be Bates-stamped sequentially and produced sequentially.
20. Two sets of each production shall be delivered, one set to the Majority Staff and one set to the Minority Staff. When documents are produced to the Committee, production sets shall be delivered to the Majority Staff in Room 2157 of the Rayburn House Office Building and the Minority Staff in Room 2105 of the Rayburn House Office Building.
21. Upon completion of the production, submit a written certification, signed by you or your counsel, stating that: (1) a diligent search has been completed of all documents in your possession, custody, or control that reasonably could contain responsive documents; and (2) all documents located during the search that are responsive have been produced to the Committee.

Definitions

1. The term “document” means any written, recorded, or graphic matter of any nature whatsoever, regardless of how recorded, and whether original or copy, including, but not limited to, the following: memoranda, reports, expense reports, books, manuals, instructions, financial reports, data, working papers, records, notes, letters, notices, confirmations, telegrams, receipts, appraisals, pamphlets, magazines, newspapers, prospectuses, communications, electronic mail (email), contracts, cables, notations of any type of conversation, telephone call, meeting or other inter-office or intra-office communication, bulletins, printed matter, computer printouts, teletypes, invoices, transcripts, diaries, analyses, returns, summaries, minutes, bills, accounts, estimates, projections, comparisons, messages, correspondence, press releases, circulars, financial statements, reviews, opinions, offers, studies and investigations, questionnaires and surveys, and work sheets (and all drafts, preliminary versions, alterations, modifications, revisions, changes, and amendments of any of the foregoing, as well as any attachments or appendices thereto), and graphic or oral records or representations of any kind (including without limitation, photographs, charts, graphs, microfiche, microfilm, videotape, recordings and motion pictures), and electronic, mechanical, and electric records or representations of any kind (including, without limitation, tapes, cassettes, disks, and recordings) and other written, printed, typed, or other graphic or recorded matter of any kind or nature, however produced or reproduced, and whether preserved in writing, film, tape, disk, videotape, or otherwise. A document bearing any notation not a part of the original text is to be considered a separate document. A draft or non-identical copy is a separate document within the meaning of this term.
2. The term “communication” means each manner or means of disclosure or exchange of information, regardless of means utilized, whether oral, electronic, by document or otherwise, and whether in a meeting, by telephone, facsimile, mail, releases, electronic

message including email (desktop or mobile device), text message, instant message, MMS or SMS message, message application, or otherwise.

3. The terms “and” and “or” shall be construed broadly and either conjunctively or disjunctively to bring within the scope of this request any information that might otherwise be construed to be outside its scope. The singular includes plural number, and vice versa. The masculine includes the feminine and neutral genders.
4. The term “including” shall be construed broadly to mean “including, but not limited to.”
5. The term “Company” means the named legal entity as well as any units, firms, partnerships, associations, corporations, limited liability companies, trusts, subsidiaries, affiliates, divisions, departments, branches, joint ventures, proprietorships, syndicates, or other legal, business or government entities over which the named legal entity exercises control or in which the named entity has any ownership whatsoever.
6. The term “identify,” when used in a question about individuals, means to provide the following information: (a) the individual’s complete name and title; (b) the individual’s business or personal address and phone number; and (c) any and all known aliases.
7. The term “related to” or “referring or relating to,” with respect to any given subject, means anything that constitutes, contains, embodies, reflects, identifies, states, refers to, deals with, or is pertinent to that subject in any manner whatsoever.
8. The term “employee” means any past or present agent, borrowed employee, casual employee, consultant, contractor, de facto employee, detailee, fellow, independent contractor, intern, joint adventurer, loaned employee, officer, part-time employee, permanent employee, provisional employee, special government employee, subcontractor, or any other type of service provider.
9. The term “individual” means all natural persons and all persons or entities acting on their behalf.