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House of Representatives

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Opening Statement
Chairman Jamie Raskin
Subcommittee on Civil Rights and Civil Liberties
“Pipelines Over People: How FERC Tramples Landowner Rights in Natural Gas Projects”
December 9, 2020

Good morning and thank you to our witnesses for being here with us—virtually—today.

Congress passed the Natural Gas Act in 1938 to break up energy monopolies and ensure that the federal government put the public interest, not corporate interests, front and center in energy construction projects. As the Supreme Court put it, the Natural Gas Act was “plainly designed to protect the consumer interests against exploitation at the hands of private natural gas companies.”

In 1977, Congress created the Federal Energy Regulatory Commission (FERC) to ensure robust and independent implementation of the Natural Gas Act’s regulation of energy markets. Just a year later, Congress went one step further and ordered FERC to establish an Office of Public Participation to give the people a voice.

FERC is supposed to *protect* the people.

But our Subcommittee’s investigation has found that, rather than acting as a crucial check on energy companies, FERC has been a rubber stamp for the energy companies that build pipelines on their land. In every way we have examined, FERC is biased against individual landowners.

Here’s one example of FERC’s bias. In the last 20 years, FERC has received 1,021 applications for natural gas projects. It has only denied six. That is higher than a 99% approval rate. That statistic alone is prima facie evidence of bias.

FERC has a similarly skewed approval rate for certificate extensions, which pipeline companies request when their construction projects exceed the agreed-upon schedule. Over the last 12 years, FERC received 92 extension requests and approved 89 of them. That’s a 96.7% approval rate. On average, pipeline companies asked for a 21-month extension and, on average, FERC approved them for 20 months.

In other words, when pipeline companies ask FERC for something, they get it.

In contrast, over that same period, FERC didn’t approve a single landowner appeal. **A system where corporations win nearly 100% of the time and people win 0% of the time is inherently suspect and reeks of injustice.**

But there is more evidence of FERC’s bias against landowners. FERC never created the Office of Public Participation that Congress authorized in 1978. That’s a 40-year record of bias. That same year, Congress also ordered FERC to establish a landowner compensation program to help individuals afford to defend their rights against pipeline companies. FERC has never established that program.

The results of those failures are entirely predictable – landowners continually suffer at the hands of pipeline companies, even when the pipeline projects never get built.

This year, two major pipeline projects, the Constitution Pipeline and the Atlantic Coast Pipeline, were cancelled. Both companies had already secured easements, often through eminent domain, torn up people's land, and destroyed their businesses. Even though the projects have been cancelled, there is no process in place to ensure that any damage is repaired and that the people get their land back.

FERC claims it has no authority in these matters, leaving it solely to landowners to try to negotiate with the pipeline companies. But that is disingenuous. Pipeline companies need FERC certificates to exercise eminent domain and need FERC's authority to cut down trees and tear up land.

No situation is more demonstrative of the many failings of FERC to protect landowners than that of the Hollerans, who run a maple syrup business in Susquehanna County, Pennsylvania. The Constitution Pipeline company got an easement through eminent domain, tore down 90% of the syrup producing trees, and then abandoned the project. It appears that to FERC, the destruction of Hollerans's maple business is little more than collateral damage.

But FERC is an accomplice to the destruction of the Holleran family business. None of what happened to them would have been possible without FERC's approvals and regulatory loopholes.

And the Hollerans are not alone. You can find these stories all over the country, from farmers in Oklahoma whose land has been destroyed, to a 73-year-old retiree in Virginia unable to build a home on land his family has owned for five generations. They are Democrats and Republicans. They are Americans who have a right to legal protection. But FERC aids and abets the energy corporations which trample over them.

Make no mistake – I do believe, and the law envisions, that pipeline companies can provide a public good.

But that is no excuse for running roughshod over individual rights. The process of regulating the construction of natural gas pipelines needs to be balanced. Congress designed it to be so. It's time we make that design reality.

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