



## NatGas Pipeline Challengers Not Waiting for FERC Quorum

Jeremiah Shelor

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Opposition groups seeking rehearing requests on recently certificated natural gas pipelines don't appear willing to sit idly by until FERC's quorum is restored.

Attorneys representing a group of landowners in a filing Monday accused the Federal Energy Regulatory Commission of depriving "citizens of their due process rights" through the agency's "near uniform practice of issuing open ended tolling orders in response to requests for rehearing."

The filing, a rehearing request and motion for stay, was submitted in opposition to FERC's [approval last month](#) of Transcontinental Gas Pipe Line Co. LLC's (Transco) Atlantic Sunrise expansion.

Similarly, lawyers for the Accokeek, Mattawoman, Piscataway Creeks Communities Council Inc. (AMP Creeks) wrote in a Feb. 10 rehearing request for Atlantic Sunrise that "a tolling order in response to this request will result in a denial of rehearing due to FERC's lack of a quorum...AMP Creeks and its members will suffer irreparable harm if the project is implemented. It will therefore seek immediate review of the certificate order in the court of appeals if FERC issues a tolling order here."

The Allegheny Defense Project, filing jointly with other groups, also submitted a rehearing request for Atlantic Sunrise on Feb. 10.

"FERC's use of tolling orders in [Natural Gas Act] certificate proceedings has allowed project proponents to engage in extensive construction activities (and in some cases place facilities into service) before FERC addresses the issues raised in timely filed rehearing requests, thus effectively depriving parties of judicial review," the groups wrote.

If FERC does not issue an order on a rehearing request within 30 days it is considered denied under law. A tolling order gives the Commission more time to reach a decision, and [staff are currently authorized](#) to issue tolling orders while FERC lacks a quorum.

FERC currently has two sitting commissioners after the [departure](#) of former Chairman Norman Bay early last month.

It's common for environmentalists and landowner groups to challenge FERC's pipeline certificate orders, and the agency has generally succeeded in the courts in such cases, Washington, DC-based analyst firm ClearView Energy Partners told clients this week. But the unusual situation presented by a two-member FERC unable to act on rehearings could increase the risk of challengers securing a

stay, ClearView said, noting that a similar challenge was filed against the [Atlantic Bridge](#) expansion by the Town of Weymouth, MA.

"Given the potentially novel legal arguments posed by these parties, we will be watching to see whether any federal appellate court would grant a stay at least long enough to hear what we expect will be motions for preliminary injunction/stays on the pipeline's construction," ClearView analysts said. "How long such a stay might last is unclear. In the past, the courts have instituted very short stays (as little as a week) on natural gas pipeline construction as the bar for such judicial relief is high.

"Pipeline opponents to date have not been successful in securing stays before the Commission acts on rehearing, and therefore a petition for stay on these more recently approved projects may not fare better than earlier cases."

For its part, Transco responded to the rehearing and stay requests filed against Atlantic Sunrise, telling FERC that a stay would unduly harm the operator, which expects to bring part of the 1.7 million Dth/d expansion online later this year.

"Despite the Commission's well-informed, carefully crafted findings and determinations in its certificate order, the Movants, motivated by their views that any natural gas infrastructure is harmful and that environmental considerations outweigh all other public benefits, now request that the Commission enter a stay," Transco wrote.

"...This stay motion fails to specifically identify any imminent irreparable harm, but rather is proffered as a premature, blanket stay request designed to delay any progress with respect to this certificated project."