

Richard G. Averitt IV
Landowner and Businessman
88 Grace Glen
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February 4, 2020

The Honorable Bobby Rush
Chairman
Subcommittee on Energy
House Committee on Energy and Commerce
2188 Rayburn House Office Building
Washington, DC 20515

The Honorable Fred Upton
Ranking Member
Subcommittee on Energy
House Committee on Energy and Commerce
2183 Rayburn House Office Building
Washington, DC 20515

Dear Chairman Rush and Ranking Member Upton;

I am an affected landowner along the route of the Atlantic Coast Pipeline. I have both a personal homestead and a business property affected by the ACP and I have drafted the attached comments on behalf of landowners from Nelson County, Virginia which we respectfully ask be considered and entered into the record for the upcoming House Energy and Commerce Committee hearing entitled "Modernizing the Natural Gas Act to Ensure It Works For Everyone" to be held Wednesday, Feb 5, 2020.

It is of critical importance that the voice and perspective of landowners affected by the current implementation of the Natural Gas Act be part of the record and a stakeholder to the process of reforming the NGA.

Sincerely,

Richard G. Averitt IV

Enclosures: Letter from Affected landowners of Nelson County, Virginia
CC: Congressman Griffith, Congressman McEachin, Congressman Riggleman

Richard G. Averitt IV
Landowner and Businessman
88 Grace Glen
Nellysford, VA 22958

February 4, 2020

Dear Chairman Rush, Ranking Member Upton, Congressman Griffith, and Congressman McEachin;

I write to you on behalf of Landowners in Nelson County, Virginia who are suffering greatly from gross abuse and misuse of the Natural Gas Act by a FERC that repeatedly slants every decision and ruling in favor of any new energy project regardless of the need, cost or environmental impacts.

We are outraged citizens who have spent nearly six years fighting for our most basic and fundamental rights to due process and property in a country founded on these sacrosanct principles. Moreover, while our specific experience relates to the Atlantic Coast Pipeline (ACP), our grievances are representative of injustices perpetrated against thousands of families across the country at this very moment along dozens of new pipelines routes. We are the victims of a broken system, a truly feckless FERC, an energy economy that is wildly incentivized to build infrastructure at any cost, and the outrageous lie that the public need for gas is driven by domestic demand while our nation races to be the largest global exporter.

The Natural Gas Act is the framework for these abuses and it has not been updated to reflect the massive changes in the energy economy or the new realities of a diverse energy market since 1962. As a result, the language of the Natural Gas Act (NGA) is being misused by FERC to deny people their legal and constitutional rights, to strip and undermine the legal authority of states, to undermine the authority of other federal agencies, to ignore the mandates of the Clean Water Act and the National Environmental Policy Act, to trample private property rights, to take from communities the protection of public parks, forests and conserved lands that they have invested heavily in protecting, to take jobs and destroy small businesses, to harm our communities' health, diminish our safety and damage our local environments, all for the benefit of a single industry seeking to advance its own corporate profits and business edge over its competitors.

I was initially invited to testify before you today, but my invitation was rescinded four days later when it appears there was some disagreement about the roster of witnesses. While I am somewhat relieved to not carry the burden of this process, we landowners are all deeply concerned that any meaningful discussion or hearing about the NGA **MUST** include landowner

voices to ensure that our individual and collective rights are represented and any reforms to the NGA include a balanced solution that respects the most critical rights of citizens.

There are many issues worth discussing, and **we ask that there be more thoughtful and detailed discussion allowing for adequate citizen comment to identify the right changes moving forward.**

There are at least five key issues which must be resolved in order to protect citizens' basic rights to property and due process in the courts and to re-balance the NGA.

1) Issues of Notice and Intervention

When a pipeline is proposed in any community, FERC relies on the developer to communicate with the landowners and apprise them of their rights and remedies. There is an obvious conflict of interest here and the NGA should require this notice to landowners be explicit and validated for any landowner, or the developer should lose their right to use eminent domain against any landowner who they cannot provide evidence was properly informed of the project proposal and their individual rights under the law. Additionally, landowners whose property is directly affected by the route of the pipeline or other ancillary access roads that involve any potential taking of land should not have to register as Intervenors within 21 days to protect their rights, but instead should automatically be considered Intervenors by default.

2) Defining the metrics for determining NEED

At a time when it is clearly the intent of the U.S. energy industry to become the largest global exporter of natural gas, the question of **domestic need** deserves examination with a very critical and skeptical eye. In the case of the ACP, five of six contracts for the gas (greater than 90%) are with affiliated companies and there is no precise destination for the gas where a current increase in demand can be demonstrated. Need must be determined by an independent third-party analysis.

Eminent Domain is an extreme power and must only be used when a verified domestic need for gas cannot be achieved by any other means or alternate energy sources. We cannot continue to sacrifice American citizens' families, farms, dreams, and their most important financial asset for uses that are, at best, benefits for one community over the property rights of another and more commonly for nothing more than the benefit of the developers' shareholders and their bottom line.

3) Tolling orders must be eliminated

The use of Tolling Orders by FERC to undermine individual, community and states' rights should be prohibited. Under federal law, a private party is not allowed to legally challenge FERC approval of a pipeline project until they have first submitted a rehearing request to FERC, and

FERC has either granted or denied that request. Rather than do one or the other, FERC's practice is to issue a "tolling order" in response to such requests, which temporarily grants the request but only "for further consideration". As a result, the public's ability to challenge the FERC decision is put into legal limbo until FERC renders and issues its final decision regarding the rehearing request. It is common for FERC to place people in this legal limbo for up to a year or more, during which time the pipeline company is nonetheless still allowed to seize property and begin construction.

As landowners on the route of the ACP, we have been the victims of this practice wherein we received notice of eminent domain while still waiting for FERC to approve or deny our rehearing request. This literally means that our land could be taken from us and destroyed at a time when we have no legal standing in any court in which to object and fight to protect our rights.

Quite simply the NGA should be reformed to mandate that FERC must respond to rehearing requests within 30 days and if they fail to do so the rehearing request is deemed denied.

4) Conditional Permits must be eliminated

With every FERC certificate comes the automatic power of eminent domain. FERC routinely issues "Conditional" Certificates by which it intends that the developer can build the project **if and only if** they receive all of the required federal, state and local permits. But the issuance of the Certificate itself immediately conveys the extreme power of eminent domain even while the required permits have not yet been granted.

This totally illogical approach makes a mockery of property rights and is simply bad government. This gives developers of pipelines the absolute right to seize family farms and property, to cut trees, dig trenches and irreparably harm the character of the property long before it is certain that the project will ever be built. There are many examples where this practice has led to a family losing their land for a project that ultimately was never constructed.

The NGA must be reformed to make clear that FERC cannot approve a project and allow it to proceed with any element of eminent domain or construction (including tree felling) until all state and federal reviews/permit processes have been finalized and approvals/permits granted. Further, if permits are remanded or revoked, all eminent domain processes should be halted until such time as valid permits are reinstated or reissued.

5) Eminent Domain reform - eliminate Quick Take

In the Natural Gas Act, Congress gives pipeline companies only the "straight" or "ordinary" power of eminent domain—which means they must wait until after any necessary trial on just

compensation and payment of such compensation before they may take possession of land needed for their pipelines. But pipeline companies don't want to wait until after trial to get the land. Once they get their FERC certificates, they run to federal court asking for a preliminary injunction (Quick Take) giving them immediate access to bulldoze the land and cut down the trees in the proposed right-of-way, even before securing the state and federal permits needed to lay their lines (the effect of which is compounded by the Conditional Permits referenced above).

Since Sage vs. E. Tennessee in 2004, courts have created a new class of eminent domain in direct conflict with federal law which allows pipeline companies the special power to seize property from landowners whom they can't get to sign an easement and before the fair and just compensation has been determined or paid and simply defer the fight about price until some much later date in court. The net effect of this unjust extension of the law is that it collapses on landowners, depriving them of all right to due process and a day in court. By the time a landowner gets to court, the pipeline company has done all the damage to your land and the only issue left to debate is the dollar amount for fair and just compensation. This means if you want to negotiate ANY other changes in the terms of the condemnation, like moving a pipeline to the edge of a prime pasture rather than through the center, or off of a future building site for your kids' future home, or away from cutting down the tree that was planted as homage to great grandma when she passed, a landowner has NO CHOICE but to settle with the developer before they are awarded Quick Take.

In practice, this means a landowner must "negotiate" with a developer who has no incentive to give them any concessions and has effectively nothing to lose from walking away while the landowner has everything they care about at risk with no power at the negotiating table. Clearly, this imbalance is an outrageous overreach of the courts and in conflict with basic justice.

At a bare minimum, if the courts deem the timing of the pipeline project so important that they must accelerate the process, then the correct remedy would be to accelerate the court dates and allow pipeline cases to jump to the front of the line. Taking away the right to due process entirely is a gross injustice and violates a citizen's most basic rights.

Congress alone holds the federal power of eminent domain, including the special power to take land before trial. Congress did not authorize early access (Quick Take) for Natural Gas Act takings. Orders granting early access infringe on Congress's power to prescribe the methods of condemnation and Congress must clarify the NGA to explicitly prohibit the practice of Quick Take in regards to pipelines.

In summary, while there are many details beyond these five core reforms, these changes to the NGA and the FERC process represent the bare minimum Congress must do in order to restore a

semblance of fairness and balance to the process and ensure the most basic and primary protections to a citizen's guaranteed right to due process and property are preserved.

I am happy to meet with any of you in person at any time, and, along with the undersigned group of Nelson County landowners (all of whose properties are being directly impacted by the ACP project), respectfully ask that this letter be addressed in the hearing and entered into the official record as the voice of landowners most impacted by the very reforms in question.

With deep respect,

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