

House Dems propose boost for landowners in FERC disputes

Jeremy Dillon, E&E News reporter

Published: Wednesday, May 27, 2020



Democratic Reps. Sean Casten of Illinois (left) and Tom Malinowski of New Jersey introduced bills to give landowners more power before the Federal Energy Regulatory Commission. Francis Chung/E&E News

House Democrats are moving to prevent the Federal Energy Regulatory Commission from delaying decisions on appeal requests from landowners affected by pipeline, port or transmission projects.

At issue are "tolling orders," used by FERC to put off having to tell landowners whether it will hold a rehearing on a disputed project.

Led by Reps. Tom Malinowski (D-N.J.) and Sean Casten (D-Ill.), the bills would place a firm timeline for FERC to rule on a rehearing request under the Natural Gas Act and the Federal Power Act.

Malinowski's [**H.R. 6982**](#) would set a timeline for projects under the Natural Gas Act, like pipelines or export terminals, at 90 days.

In addition, the legislation would prevent projects from invoking eminent domain while the rehearing request is still pending.

"Landowners in my district are being cheated out of the opportunity to defend their land from seizure by the PennEast Corporation," Malinowski said in a statement. "This bill will give a voice to landowners fighting to protect their property."

PennEast Pipeline Co. is owned by several energy companies looking to build a natural gas pipeline from Pennsylvania to New Jersey.

The Casten bill, [H.R. 6963](#), would impose a 120-day deadline for rehearing decisions on non-gas infrastructure permitting under the Federal Power Act.

'Kafkaesque'

The bills would help alleviate what federal courts and a House Oversight and Reform Committee investigation have called a violation of landowner due-process rights.

The Oversight report, led by Rep. Jamie Raskin (D-Md.) and released last month, found that FERC has issued a tolling order for every single rehearing request filed over the past 12 years. Every case was then eventually denied ([Greenwire](#), April 28).

During the years analyzed, 114 requests for rehearing reached FERC. In 73 of those cases, the agency authorized construction of pipelines before acting on those requests.

On average, 212 days — about seven months — passed between the time a landowner made a request for rehearing and a final FERC decision.

The issue has become the subject of a high-profile lawsuit before the U.S. Court of Appeals for the District of Columbia Circuit. A lower court judge called the tolling orders a "Kafkaesque" scenario ([Greenwire](#), Aug. 2, 2019).

FERC Chairman Neil Chatterjee has made the issue a priority in hopes of bringing down the commission's use of tolling orders.

"The Commission recognizes and is sympathetic to landowner concerns, and we are committed to improving our process," Chatterjee said in response to the House report.

"We have taken steps to do just that, with the goal of speeding up our consideration of requests for rehearing so that landowners can have their day in court more quickly."

Chatterjee announced in February a staffing reorganization to help address the problem, including a new "rehearings" section within the Office of the General Counsel with six attorneys — a doubling of previous staffing — to focus on the issue ([Greenwire](#), Feb. 3).

Pandemic work

In addition to criticisms of tolling orders, House Democrats have voiced opposition to continued work by FERC during the coronavirus pandemic.

The fear, they argue, is that the pandemic would prevent citizens and landowners from being able to voice their opinions on a project, thus upsetting the spirit of the public comment process.

Chatterjee has ignored those calls, and the commission's work has earned endorsements from high-ranking lawmakers on the Senate Energy and Natural Resources Committee, Environment and Public Works Committee, and Armed Services Committee.

In a Friday **letter** led by Sen. Ted Cruz (R-Texas), six Republican senators called on FERC to continue its energy infrastructure permitting as a way to maintain jobs in a tough energy workforce landscape.

"Now is not the time to take advantage of a pandemic for political gain," the lawmakers wrote. "The levers of government should be used to restore America's energy independence and security, and to grow the economy out of the crisis."