

FERC draws fire over pipeline policy

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Members of the House Oversight and Reform Committee criticized the Federal Energy Regulatory Commission yesterday for how it has handled landowner concerns in the pipeline permitting process.

While the complaints came mostly from Democrats, Republicans on the Subcommittee on Civil Rights and Civil Liberties also nudged the agency during a hearing.

The session followed a year of controversy and litigation over FERC's natural gas pipeline approval and rehearing process. Democrats accused FERC of siding with energy companies.

"FERC is supposed to protect the people," said subcommittee Chairman Jamie Raskin. "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."

The Maryland Democrat added, "In every way we have examined, FERC is biased against individual landowners."

Raskin and his team spent months investigating FERC's approach to landowner disputes, citing concerns the agency violated people's due process rights through the indefinite use of tolling orders.

FERC has 30 days to make a decision on pipeline project landowner appeals, but so-called tolling orders have allowed the agency to delay that process.

A federal court in July reprimanded FERC on the use of tolling orders, prompting the agency to overhaul and improve its response to rehearing requests ([*Energywire*](#), July 21).

The Raskin-led report, released in April, found that over the past 12 years, FERC issued a tolling order for every single rehearing request filed, with every case eventually being denied ([*Greenwire*](#), April 28).

The report said that, over the same time frame, FERC only rejected six permit applications for pipelines. That would mark an approval rate above 99%, Raskin said.

"Nothing in the statute provides FERC the explicit authority to issue tolling orders, which primarily benefit pipelines, but FERC did it anyway," Oversight Chairwoman Carolyn Maloney (D-N.Y.) said.

"And yet they don't seem to be willing to be as creative or supportive when it comes to measures that could benefit landowners," she said. "I find that troubling."

FERC officials defended their review process yesterday, arguing the approval rates were a sign of the process working.

Permit applications "are changed throughout the process, so more or less only viable projects get to consideration by the commission," Terry Turpin, director of FERC's Office of Energy Projects, told lawmakers.

Democrats focused much of the hearing on pushing FERC to further change its procedures without congressional mandates, especially as it relates to rehearing requests and failed projects in relation to eminent domain.

FERC Commissioners Richard Glick and Neil Chatterjee issued a joint statement earlier this year calling on Congress to give the agency more time and expanded authority to address landowner concerns.

Bills have emerged on the issue, including [**S. 4673**](#) from Oregon Democratic Sens. Ron Wyden and Jeff Merkley, but they are unlikely to become law in the coming days ([*E&E Daily*](#), Sept. 25).

FERC may already have the authority to prevent some of the worst aspects of eminent domain abuse through an authority it can wield when granting permits.

Democrats pressed FERC to consider requiring companies return land seized under eminent domain should a developer decide not to build the pipeline.

"Traditionally the commission has viewed eminent domain and property rights beyond its authority," said David Morenoff, FERC's acting general counsel. "That said, I do not have a case to cite that says the commission could not use its 'conditioning authority' in that respect. I think that is an open question."