

FERC pipeline eminent domain fight heats up

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Pieces of the Mountain Valley pipeline awaiting installation in Newport, Va. Pamela King/E&E News

A firestorm over eminent domain rights is brewing at the Federal Energy Regulatory Commission as public advocates, environmentalists and states call for changes to the agency's natural gas permitting process, while developers urge caution.

When FERC approves a gas project, the developer is granted eminent domain rights to take privately owned land in the project's path. Property rights advocates, environmental groups and Congress have criticized the commission in recent years for its handling of complaints from landowners, who often lack familiarity with the process.

Democratic FERC Chairman Richard Glick last month issued an order seeking input on the issue, signaling he is open to stricter rules that could empower landowners and environmental advocates in clashes with pipeline companies ([***Energywire***](#), Feb. 1). Comments were due yesterday.

While it's unclear where the independent commission will land, the five-member panel under Democratic leadership has signaled it may be more sympathetic to landowner and environmental causes than it was under former President Trump.

For example, Glick recently announced he intends to hire a senior-level staff position to ensure environmental justice concerns are weighed in commission decisions. FERC is also launching an Office of Public Participation to help affected members of the public engage with the commission.

Republican Commissioner Neil Chatterjee, who has crossed the aisle to vote with Democratic commissioners on a number of recent orders, said FERC is shifting its focus to addressing resilience in the face of climate change.

"The Biden administration is extremely focused on decarbonization," he said yesterday during a webinar hosted by energy and water research organization Pecan Street Inc. "Climate change and decarbonization will drive the FERC agenda as well."

Still, Republican Commissioner James Danly, who served as chair under Trump, issued a sharply worded dissent challenging Glick's call for input on pipeline permitting on procedural grounds.

Republicans will make up the commission's majority through the summer when Chatterjee's term expires. President Biden is expected to appoint a Democrat in his place.

At issue is whether the commission should respond to property owners' complaints before developers can take land through eminent domain and begin construction. Currently, pipeline developers can seize private property and begin some forms of construction such as tree clearing while opponents are still waiting for the agency to respond to their objections.

"As the Commission is well aware, the proverbial bell of construction cannot be unrung," wrote Natural Resources Defense Council attorney Gillian Giannetti in formal comments to FERC on behalf of a group of environmental advocates.

In addition to the NRDC, the groups include Earthjustice, the Sierra Club, the Southern Environmental Law Center, the Chesapeake Bay Foundation, and Appalachian Mountain Advocates. Groups supporting pipeline permitting changes also included the libertarian Niskanen Center and the states of Maryland, Massachusetts, New Jersey, Oregon and Rhode Island, as well as the District of Columbia.

The Interstate Natural Gas Association of America, along with developers such as TC Energy Corp. and Enbridge Inc., pushed back on revisiting the pipeline approval process, warning that changes could cause unnecessary construction delays. The groups also said the commission should not curb eminent domain rights.

"The Commission should not ... attempt to limit the exercise of eminent domain during the pendency of rehearing requests, because doing so would be unlawful and inappropriate," INGAA wrote in comments to the panel.

The proceeding comes on the heels of a rule FERC issued last summer to limit companies' ability to start construction on pipeline and infrastructure projects until the commission addresses objections ([Energywire](#), June 15, 2020).

Landowners and environmental advocates said the rule did not go far enough because it still allowed developers to take land through eminent domain and begin "pre-construction" activities such as tree clearing. But pipeline advocates said they were worried the new rule would create uncertainty for developers.

At the time, then-commissioner Glick also argued that the rule did not go far enough.

"Eminent domain is among the most significant actions that a government may take with regard to an individual's private property," Glick wrote in his [partial dissent](#). "And the harm to an individual from having his or her land condemned is one that may never be fully remedied, even in the event they receive their constitutionally required compensation."

Two energy companies, TC Energy Corp. and Kinder Morgan Inc., objected to FERC's June order and asked for a rehearing. INGAA also requested clarification of the rule.

Now the commission under Glick is using that case as a platform to request comments about its broader approach to eminent domain proceedings.

The commission has said it expects to issue an updated rule on pipeline permitting by April 28.

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