



PRESS RELEASE

Attorneys General File Amicus in Support of Lawsuit Defending Property Owner’s Rights to Appeal

BALTIMORE, MD (January 17, 2020) – Maryland Attorney General Brian E. Frosh today led a coalition of 12 attorneys general in filing an [amicus brief in *Allegheny Defense Project v. Federal Energy Regulatory Commission*](#). The brief supports landowners and environmental groups who are challenging an expansion of the Atlantic Coast pipeline, which runs from Northern Pennsylvania to Alabama. The challenge focuses on a practice at the Federal Energy Regulatory Commission (FERC), which after granting approvals for pipelines, routinely allows construction to proceed before challengers can appeal the decision in court.

In their brief, the attorneys general argue that denying landowners and others their day in court before pipeline construction commences is a violation of the Due Process Clause of the U.S. Constitution. Specifically, once FERC approves a pipeline, the pipeline company can immediately exercise eminent domain and take land for construction. The pipeline’s opponents, however, must file a request for rehearing with FERC before appealing to a federal court. FERC is supposed to act on these requests within 30 days, but in almost every case, it grants itself additional time, through the use of a tolling order, to rule on the rehearing request, and then takes many months to rule. As a result, construction often proceeds for months before any challenges are heard in court. The attorneys general argue that FERC’s practice also hampers states’ efforts to appeal FERC Orders that affect state clean energy policies or state decisions to allow pipeline crossings.

“FERC’s procedures allow pipeline construction to get underway while trapping landowners in an administrative limbo,” said Attorney General Frosh. “The practice is fundamentally unfair, unconstitutional, and denies property owners their day in court until it’s too late.”

A three-judge panel of the Circuit Court of Appeals for the District of Columbia upheld FERC’s procedure in an August decision, holding that it was bound by the full court’s precedents. However, the Court since voted to rehear the case en banc and reconsider its prior decisions.