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Attorney General Frosh Urges FERC to Halt Construction of Pipelines Based on Interim Authorizations

BALTIMORE, MD – Maryland Attorney General Brian E. Frosh has filed a [brief](#) with the Federal Energy Regulatory Commission (FERC) urging it to stand firm against arguments from pipeline companies that they should be permitted to move forward with construction based on an initial authorization of the pipeline.

Until recently, after granting a pipeline company a certificate to construct a pipeline, FERC allowed the certificate holder to begin seizing land and undertaking construction before FERC made a final decision on rehearing requests filed by parties challenging the certificate. Rather than acting on rehearing requests within 30 days, as required by law, FERC would enter “tolling orders” that purported to act on the rehearing requests by “granting” the requests for the purpose of allowing itself additional time to decide on them. During this time, however, pipeline companies were permitted to exercise the power of eminent domain to take land and, further, were permitted to move forward with construction.

A recent decision of the United States Court of Appeals for the District of Columbia Circuit put a halt to FERC’s practice of using such tolling orders. While that case was pending, FERC issued an order stating that it would withhold construction pending a decision on the merits of rehearing requests, but that order did nothing to stop pipeline companies from exercising eminent domain. Since FERC issued the order, several pipeline companies and an industry association have objected to the order’s freeze on construction. The brief argues that FERC should turn aside industry objections to its recent order and should go further to provide additional protections for landowners.

“Until FERC allows a full airing of all parties’ objections, it must not allow pipeline construction to go forward, and it must protect landowners from having their property taken during this time,” said Attorney General Frosh.

Specifically, the brief contends that before authorizing construction of pipelines, FERC must decide the merits of rehearing requests from all affected parties, including not just landowners,

but also states, local governments, tribes, and community and public interest groups, who may oppose a project on grounds such as its public need, its contribution to climate change, its harm to the environment, and other concerns.

In addition, the brief argues that FERC should go further to protect landowners. It should promptly decide whether to enter a stay to prevent pipeline companies from exercising the power of eminent domain pending final decisions on the merits of pipeline authorizations. Although a certificate authorizing construction of a pipeline permits the company to exercise eminent domain, companies should not be permitted to do so until FERC decides rehearing requests that challenge the certificate. Finally, the brief asserts that the construction freeze should stay in place as long as FERC retains the power to decide rehearing requests, including throughout the initial phase of any lawsuit challenging the pipeline authorization.

In addition to Maryland, the brief was joined by the attorneys general of Massachusetts, New Jersey, Oregon, Rhode Island, and the District of Columbia.

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