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FERC Revises Practice Impacting Construction of Natural Gas Pipelines

BALTIMORE, MD— Maryland Attorney General Brian E. Frosh today lauded the Federal Energy Regulatory Commission’s decision to modify a practice that had allowed construction of natural gas pipelines to commence before opponents objections could be considered. In February, Attorney General Frosh led a coalition of states urging the Federal Energy Regulatory Commission to uphold and expand protections against construction of natural gas pipelines until it decided on pipeline opponents’ requests for rehearing.

In a revised order issued on May 5, FERC agreed with Maryland and the states joining the brief that it should not limit the withholding of construction activities to requests for rehearing from affected landowners, as the natural gas industry had proposed. Further, in response to concerns Maryland and the states raised about the exercise of eminent domain while FERC decided on rehearing requests, FERC announced a general policy of presumptively staying pipeline approvals.

“We’re pleased that FERC agreed with us that, until it allowed a full airing of all parties’ objections, pipeline construction should not go forward. FERC will now protect landowners from having their property taken before their voices are heard,” said Attorney General Frosh.

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 parties challenging the certificate had their day in court. A recent decision of the United States Court of Appeals for the District of Columbia Circuit put a halt to this practice. While that case was pending, FERC issued an order stating that it would withhold authorization of construction until it decided on rehearing requests, but that order did nothing to stop pipeline companies from seizing property while the matter was under consideration. After FERC issued that order, several pipeline companies and an industry association objected to the order’s freeze on construction.

The states’ brief argued that FERC should turn aside industry objections and provide additional protections for all parties, especially landowners. Specifically, the brief contended 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 argued that FERC should go further to protect landowners -- it should enter a stay to prevent pipeline companies from exercising the power of eminent domain until it decided on the merits of pipeline authorizations.

Also joining the February brief were Massachusetts, New Jersey, Oregon, Rhode Island, and the District of Columbia.

<https://www.marylandattorneygeneral.gov/press/2021/051121.pdf>