

United States Senate

March 30, 2018

Kevin J. McIntyre, Chairman
Federal Energy Regulatory Commission
888 First Street, N.E.
Washington, D.C. 20426

Dear Chairman McIntyre and Commissioners:

I write in regard to the Federal Energy Regulatory Commission's (the Commission) January 19, 2018 Order issued to PennEast Pipeline Company, LLC (PennEast) conditionally granting a certificate of public convenience and necessity subject to the conditions outlined by the Commission, which include other state and federal authorizations. Despite lacking these authorizations, the certificate holder has filed more than one hundred condemnation lawsuits against New Jersey property owners seeking immediate seizure of their lands. I am particularly concerned that the conditional certificate holder seeks to immediately condemn environmentally sensitive preserved lands held in public trust including those owned by county governments, municipal governments, and the State of New Jersey.

As I understand it, PennEast's certificate of public convenience and necessity was a conditional authorization, with its finding of public interest subject to further evaluation of the project's impacts and further consultation with a number of federal and state agencies including the U.S. Army Corps of Engineers, U.S. Fish and Wildlife Service, the Federal Aviation Administration, and the New Jersey Department of Environmental Protection. Historically, the Commission has described such conditioned approvals as "incipient authorization[s] without current force and effect,"¹ yet now the certificate holder is using such an authorization to attempt to seize private lands through condemnation filings of over 140 properties.

I share Commissioner Chatterjee's concerns in his concurring statement on the impact of a certificate's issuance on property owners. Commissioner Chatterjee points out that, "Under section 7 of the Natural Gas Act, once the Commission grants a certificate, a certificate holder is authorized to acquire the necessary land or property to construct the approved facilities by exercising the right of eminent domain if it cannot acquire the easement by an agreement with the landowner. It is important that the Commission have as much data as possible on which to base a determination that has such a momentous effect."²

The Commission outlined over 55 conditions required to be met, including other federal review, prior to construction of the pipeline which demonstrates to me that the Commission does not in fact have as much data as possible on which to base such a momentous determination. Yet as the New Jersey Department of Environmental Protection outlines in their motion to stay the order

¹ Ruby Pipeline Order Denying Rehearing, 133 FERC ¶ 61,015

² PennEast Pipeline Company LLC Order Issuing Certificates 162 FERC ¶ 61,053

pending rehearing, “Even though environmental impacts to almost two thirds of the route are unknown, the CPCN allows condemnation of land along the entire route, including environmentally sensitive State-preserved land... Moreover, condemning permanent easements at this stage with inadequate environmental information to guide the route is inefficient due to likely later route changes.”

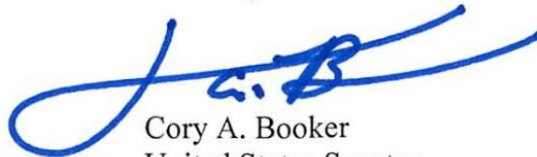
I understand that on February 20 the Commission issued an order granting the rehearing request “for the limited purposes of further consideration.” I am extremely concerned that this order was issued in order to toll the time for the Commission to take action on the rehearing of the order. I understand that over the last eight years, FERC has used a “tolling order” to take more than the 30 days allotted by Congress to consider rehearing requests 99% of the time. During that time, legal options to address the substance of FERC’s decision are frozen, but condemnation may proceed. This process has the ability to seriously impede landowners' property rights as they wait for a decision from the Commission.

Given the critical nature of this situation, I respectfully request that FERC thoroughly reconsider its Order Issuing Certificates for PennEast in order to ensure that the certificate provides no basis upon which PennEast can seize lands prior to meeting conditions outlined in the certificate order. Fundamental constitutional rights are at stake, and they must be protected by staying a conditional certificate holder’s ability to seize lands prior to a number of permitting agencies’ assessment of this project’s impacts, and pending judicial review designed to protect those constitutional rights.

If a certificate holder’s entry upon the lands is required to support applications for other governmental approvals, the only authorization granted by the conditional certificate should be limited to survey rights.

I appreciate your time and attention to this matter, and to your assistance in protecting New Jersey landowners’ constitutional rights.

Sincerely,



Cory A. Booker
United States Senator