

Comments Regarding the House Subcommittee On Civil Rights and Civil
Reforms 12/9/20 Pipelines Over People Hearing on the Federal Energy
Regulatory Commission (FERC)

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Chairman Raskin and Other Subcommittee Members:

Thank you for holding the hearing of December 9, 2020 regarding the Federal Energy Regulatory Commission (FERC), and their role in private property rights. I appreciate the frank and generally cooperative discussion and tone from the subcommittee members. I, and most Americans want our elected representatives to work together cooperatively, rather than combatively for the good of the American people, and for the most part, that is what I observed.

My wife I have been dealing with FERC for nearly five years regarding the Atlantic Coast Pipeline (ACP), which would have directly impacted our retirement home and property in Bath County, Virginia, the Mountain Valley Pipeline, and other pipelines that are under FERC regulation. We are personal acquaintances with every landowner that was mentioned during the hearing.

Hardly a single day has gone by over those five years that I have not worked at protecting our property, and the property of others from the damage they face from FERC, and the pipeline industry. On many days I worked all day. I have never worked so hard on any issue, even during my career as an environmental regulator, when I was actually getting paid for my public service, and had weekends and holidays off.

I believe that FERC has not served the interest of the American people on property rights and other issues, and should be extensively reformed. Dealing with FERC and the ACP has been by far the most frustrating experience of my life, and I sincerely fear FERC, and the fossil fuel industry

more than any terrorist organization. This has been a very negative life changing experience for my wife and I, and for most of the thousands of Americans who have been accosted by FERC and the natural gas industry every year. I would never have believed that a federal agency could act in this manner against the will of the American people until I experienced it myself.

FERC is fully funded by the energy industry. I am convinced that FERC has been captured by that industry. On nearly every occasion FERC has sided with the industry over landowners, even though all facts and logic indicated that property owners rights and concerns were not being addressed.

We were compelled to sell our beautiful retirement home and property due to FERC's approval of the Atlantic Coast Pipeline. We sold the property to the Atlantic Coast Pipeline on April 1st, 2020 because we would not be able to live there or even visit our property with the pipeline in place, or sell the property for even a small percentage of what we paid for it with the pipeline in place. It would become a stranded asset, and a huge financial loss for us. At the same time, the ACP could have taken our property by eminent domain at any time after FERC's approval of the project. We were well compensated for our property, but we incurred \$350,000 in legal expenses in the process. Regardless of the economic issues, we were compelled to leave our beautiful retirement home and property.

We have assisted others in fighting the ACP and other unjust projects that take away private property rights, and we have contributed more \$80,000 from the sale of our retirement home and property to assist others in these fights, and will continue to contribute as funds allow. We have also incurred high costs in the defense of our own property.

Just a little more than 3 months after we lost our home and property the ACP was cancelled. The stated reason for the cancellation was regulatory uncertainty. That uncertainty was, in part, created by FERC's questionable actions in approving and sustaining the project with an extension of the certificate. If it hadn't been for successful legal challenges argued by the Southern Environmental Law Center and thousands of steadfast patriotic private property owner advocates the ACP would likely still be destroying the lives and dreams of thousands of people. FERC did not stop the ACP.

We The People stopped the ACP.

We were mistreated by FERC on many occasions as summarized below.

When we received notice from the ACP that the pipeline had been routed through the middle of our property the language in the document was difficult to understand. Keep in mind, as stated in the hearing, that this document is not sent to landowners by FERC. It is sent by the pipeline company. We could not determine from reading the document how to intervene in the project, the time allotted to intervene was very brief, and we did not know that if we failed to intervene in that time period we would have no legal recourse in fighting for our property rights.

I called FERC to ask about becoming an intervenor, and a FERC representative attempted to dissuade me from becoming an intervenor. She advised me that “You don’t want to become an intervenor”, because, as an intervenor, I would have to send out hundreds of letters to other intervenors. This sounded very discouraging, and I nearly gave up on being an intervenor at that point. Nevertheless, I was able to learn from others in opposition to the ACP that, as an intervenor, I would only have to e-mail copies of my comments submitted to FERC to other intervenors, and FERC would supply the e-mails for the other intervenors. Even this is a time consuming labor, and one that FERC should be doing instead of the intervenors. The bottom line here is that FERC intentionally deceived me in an attempt to keep me from being an intervenor.

On almost every occasion when I contacted FERC with an inquiry I did not receive a satisfactory answer.

I asked FERC for a list of other nearby landowners who would be impacted by the ACP. I wanted this information in order to contact those landowners, exchange information, and work with them to help each other. FERC told me that I would need to contact the ACP for that information. I contacted the ACP, and they told me they would give me that information, but they didn’t call back. I contacted them on several other occasions with this question, but never received a response.

During a FERC scoping meeting I showed the FERC representative a diagram of our property and the route of the pipeline. The diagram showed that my wife and I would be well within the blast zone, or zone of instant incineration, if the pipeline exploded, and that we would be trapped in the evacuation zone, where one must escape within minutes to avoid death or serious injury, at the head of the valley we lived in, in a pipeline incident. In other words, we would be incinerated, or trapped with no chance of escape or recovery. The FERC representative casually looked at my diagram, put his finger on our home, and told us to walk up the mountain away from the pipeline if it exploded. He said this full well knowing that the mountain behind our home is so steep that it requires going up on all fours in some places, and my wife and I are both retired older Americans.

I also asked this same FERC representative how many people are located in the blast zone and evacuation zone for the ACP. He stated that he didn't know, and FERC doesn't go into that level of detail. His uncaring response was particularly troubling to me. The total evacuation zone for the ACP was more than half the size of Rhode Island. That's a lot of people in harm's way.

I submitted more than 300 pages of comments to FERC. At one point I asked the FERC representative which types of comments would best help FERC in decisions about the project, reports, studies, diagrams, or images. His response was that I should submit substantive comments. He gave me no further advice.

FERC is required by the National Environmental Policy Act (NEPA) to accept public comments about the environmental impacts of projects and to review those comments. I wanted to make sure that FERC was reviewing my comments, so I filed a Freedom of Information Act (FOIA) Request for the names and review notes of FERC employees who reviewed my comments. FERC's reply to this FOIA request was "No records found". So I am not sure that FERC ever read my comments.

FERC has always been very slow in providing records that I have requested under FOIA law, and it is likely that they violated the law regarding timeliness in providing records. Earlier this month I was still awaiting records from a June 2020 FOIA request. I contacted the FERC

FOIA office, and advised that if the records were not provided in a week, I would bring this matter to the attention of my Congressional representative, Jamie Raskin. The records appeared several days later. Thank you, Congressman Raskin.

On another occasion I asked the FERC representative about a difficult to understand ACP filing that used industry jargon that I was not familiar with. This was very technical language that I could not understand, despite my career as an environmental regulator. The FERC representative told me that FERC did not write the filing, and it wasn't FERC's responsibility to interpret it for me. I found this flippant response to be troubling, since FERC must interpret the filing in order to make decisions regarding the project.

I must tell you that in the past year a new FERC contact person for the ACP, Dave Swearingen, has been receptive and responsive to my communications. Although the ACP has now been cancelled, and I have less involvement with that project, I appreciated Dave's help regarding ACP issues.

FERC's Environmental Impact Statement (EIS) for the ACP contained many obvious errors, and I commented on all that I found. Particularly upsetting was FERC's statement that there would be no loss of property value if the ACP was constructed through that property, except in a few rare cases where a fair settlement would be obtained in court.

Our local real estate agent had already told us that properties in our county that were directly impacted by the ACP would lose at least 50% of their property value. Several properties in an adjacent county had been reassessed at 60% lower than the assessment prior to the announcement of the pipeline route, even though they would not be directly impacted by the pipeline, but would be in proximity to it.

FERC cited a number of studies in their EIS to back up their finding of no property loss. I reviewed all of those studies. They were all written by consultants hired by the industry, and besides that inherent bias, none of them pertained to a rural route like the ACP. I researched non industry studies on the impact of natural gas pipelines on property values. None of these studies were included in the FERC EIS, and all of them

found significant property value losses.

FERC did not consult with a single real estate agent or appraiser in West Virginia, Virginia, or North Carolina, the three states that would be impacted by the ACP, in their determination of no property value loss. I requested that they do so in my comments, but they still did not do so.

For most of us, our home and property is the biggest investment of our lives. When a large natural gas transmission comes through the property, that investment now becomes the biggest loss of our lives.

I estimated private property losses from the entire 600 mile ACP, based on conservative assumptions. I found well over \$500,000,000 in property value losses. This is wealth that would be taken from mostly lower and middle income rural property owners, and transferred to the ACP and their investors.

Environmental justice issues were not been adequately addressed by FERC for the ACP. Twenty five of the twenty six counties that the ACP was approved to pass through are below the median income level for their state.

Even more egregious, FERC determined that the Union Hill community in Buckingham County, Virginia was not an environmental justice community, and approved a large, noisy, and polluting compressor station in that town. FERC based its finding that this was not an environmental justice community on census tract information. The census tract is much larger than Union Hill.

A volunteer door to door survey of Union Hill residents found that greater than 80% of persons living within a mile of the proposed compressor station were African Americans who were generally low income and elderly. This meets all of the criteria for an environmental justice community. Nevertheless, when this information was presented to FERC, FERC still did not recognize Union Hill as an environmental justice community.

Numerous citizens requested a rehearing on the FERC certificate. Many friends of ours submitted rehearing requests to FERC, as we did. One friend submitted her request at 5:02 PM on the final day for submitting

requests. Another submitted her request at 10 PM on that same day. FERC denied both requests, stating that they did not meet the 5:00 PM deadline for submittals, since FERC's workday ends at 5:00 PM. This FERC workday time restriction apparently didn't apply when FERC issued its certificate of approval for the ACP at 10 PM on Friday, October 13, 2017.

FERC did not make a decision on the accepted rehearing requests within the required 30 day limit, and subsequently issued a tolling order that kept legal actions from moving forward for 8 months, until eventually rejecting the rehearing requests.

FERC has recently opened a new docket for the Mountain Valley Pipeline, Docket 21-12-000. FERC did this because the MVP on November 18, 2020 requested an amendment to the certificate allowing them to bore under a large number of streams for the pipeline. FERC issued a notice on the Federal Register on December 4, 2020 which required that intervention and comments on the amendment be received no later than December 21, 2020. Please note that the FERC notice did not state that comments are due by 5 PM on December 21st, but that is likely the case per FERC's history of rejecting comments after 5PM on the final day of the comment period.

Seventeen days is not nearly enough time for citizens to familiarize themselves with this new amendment request, and FERC should extend the period for comments and intervention for at least 60 days. FERC representatives at the hearing stated that time periods for comment and intervention can be extended for good cause, and FERC has routinely extended these time periods. I call on subcommittee members to call on FERC to extend the comment and intervenor period for docket 21-12-000.

Most property owners along the ACP eventually agreed to sign an easement agreement. But these were signed under extreme duress, with misinformation from the industry playbook intimidating landowners, and the knowledge that the property would be obtained by eminent domain, even after the landowner paid high legal expenses to attorneys who chased the eminent domain ambulance to profit from their misfortune.

Close to 300 property owners had their property taken by eminent domain

in “quick take” proceedings for the Mountain Valley Pipeline. This means that the property their property is seized by the pipeline, but compensation for that taking is not given until well into the future, and sometimes years in the future. For elderly property owners this means they may die before receiving any compensation, and before they die they live with a dangerous pipeline being constructed on their property, on land that they have nurtured in many cases for most of their lives.

I have had several young mothers ask me how they could put their children to bed at night if that dangerous pipeline is built behind their home. I believe that safety in one’s own home is a civil right.

Notification of proposed natural gas pipelines is only given to property owners whose property would be directly impacted by pipeline construction. Adjacent properties, including properties that are in the blast zone, and the evacuation zone of the pipeline are not notified, even though their property values are lowered as well. They are not reimbursed in any way for the safety and environmental threats to their property. This is the case, even though a home located on a property that is not directly impacted may be substantially closer to the pipeline than a home on property that is directly impacted.

As I am writing to you the Mountain Valley Pipeline plans to bring up to 4,000 pipeline workers, many of them from out of state, into rural communities in Southwest Virginia and West Virginia during the Covid-19 epidemic. Pipeline workers are likely to greatly outnumber local residents in some of these communities, and will be in close proximity to them. Rural residents are more likely to die from Covid-19 than others due to generally older populations, and fewer and less sophisticated health facilities.

This influx of out of state workers could easily create a Covid-19 superspreader event in these communities, and put the health of local residents at very significant risk.

Numerous citizens requested that FERC not extend the certificate for the MVP, or at minimum, that FERC would not allow this dangerous influx of workers during our national health care emergency. Yet FERC has failed to act to protect these residents.

I contacted the Centers for Disease Control and Prevention (CDC), and requested that they intervene to stop the influx of workers, and potential superspreader event. CDC advised me the the Department of Energy (DOE) has stated that pipeline workers are essential infrastructure workers who are allowed to continue to work during the pandemic, and may even get priority status for personal protective gear, and vaccinations. CDC needs to stand up to DOE. This is the worst public health emergency in at least 100 years, and over 300,000 Americans have already died. This is not an energy emergency. Our country has a glut of energy.

FERC allows pipeline companies to hire consultants to come on to impacted private properties to assess environmental and safety issues associated with pipeline construction. This is an inherent conflict of interest. Hired consultants want to get hired again on future projects, and are therefore economically biased to present findings that support pipeline construction.

We experienced this with ACP consultants. One consultant advised that a very large and recent landslide next to the ACP pipeline route was not a safety threat. After questioning this consultant I learned that he wrote his report without ever inspecting the landslide. Another ACP consultant stated that there was no threat to our drinking water, while an expert with the state of Virginia stated that a number of homes, including our home, were at significant risk of having our drinking water polluted from the pipeline.

In summary, FERC has become a rogue agency that has consistently trampled on the private property rights, and the rights of Americans to life, liberty, and the pursuit of happiness.

I would like to briefly touch on natural gas and fossil fuel impacts on climate change, since several committee members brought that issue up in the hearing.

I believe that climate change. along with the possibility of global nuclear war, are the biggest threats that mankind has ever faced. I believe that climate change may be civilization ending, and could kill more people than all previous wars combined. By far, the largest driver of climate change is

the use of fossil fuels, including natural gas.

For the past 800,000 years CO₂ levels have always been between 180 - 300 PPM. I think we passed 300 PPM around 1950...due to increased burning of fossil fuels. Now CO₂ levels in our atmosphere have reached 415 PPM, and they continue to rise as we burn more fossil fuels.

We have created a very efficient and long lasting heat trapping machine that will continue to heat the planet even if we stop all CO₂ emissions today. CO₂ remains in our atmosphere for centuries. We have ratcheted CO₂ levels up, and they won't come down for a long, long time. The last time the atmosphere contained 415 PPM CO₂, sea levels were about 60 feet higher than today.

Methane levels are also 2.5 times higher than preindustrial levels, and higher than any time in the past 800,000 years. Methane persists in the atmosphere for decades, and is a much more potent greenhouse gas than CO₂.

Methane is the primary component of natural gas. When burned it emits a little more than half the CO₂ per amount of energy created as coal, but it still contributes to increased CO₂ levels in our atmosphere. Worse yet, leakage of methane from natural gas systems amounts to 2% to 3% of natural gas produced and transported, and that makes the total greenhouse gas emissions from natural gas roughly equivalent to burning coal.

Natural gas generally contains 90% to 95% percent methane. The remaining 5% to 10% consists of numerous toxic and carcinogenic substances into several potent radioactive substances that are regularly discharged to our environment through the leakage.

So we are facing an ominous climate future, as well as ongoing pollution from toxic substances in the gas stream, and in other fossil fuel products as well.

We need to stop our addiction to destructive fossil fuels, and transition now to clean renewable energy resources like solar, wind, and geothermal

energy which are now as affordable as fossil fuels. Once renewable energy systems are in place, and except for minor maintenance costs the energy they produce is robust, inexhaustible, and free, while not emitting greenhouse gases or other pollutants into our environment.

Thank you once again for discussing these important issues. I have become skeptical of government during our ordeal in fighting the ACP and other pipelines. Your work in this committee hearing has renewed my faith that all of us can come together to make this a better world. Let's work to make that happen.

I would be happy to answer any questions, or further discuss these issues with any committee member.