

**PIPELINES OVER PEOPLE (PART II):
MIDSHIP PIPELINE'S DISREGARD FOR
LANDOWNERS IN ITS PATHWAY**

HEARING

BEFORE THE
SUBCOMMITTEE ON CIVIL RIGHTS AND CIVIL
LIBERTIES

OF THE

**COMMITTEE ON OVERSIGHT
AND REFORM**

HOUSE OF REPRESENTATIVES

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*Documents entered into the record during this hearing are available at:
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**PIPELINES OVER PEOPLE (PART II):
MIDSHIP PIPELINE'S DISREGARD FOR
LANDOWNERS IN ITS PATHWAY**

Wednesday, May 5, 2021

HOUSE OF REPRESENTATIVES
COMMITTEE ON OVERSIGHT AND REFORM
SUBCOMMITTEE ON CIVIL RIGHTS AND CIVIL LIBERTIES,
Washington, D.C.

The subcommittee met, pursuant to notice, at 10:12 a.m., via Zoom, Hon. Jamie Raskin (chairman of the subcommittee) presiding.

Present: Representatives Raskin, Mfume, Wasserman Schultz, Kelly, Ocasio-Cortez, Tlaib, Sessions, Higgins, and Biggs.

Mr. RASKIN. The committee will come to order.

Without objection, the chair is authorized to declare a recess of the committee at any time.

I will now recognize myself for an opening statement.

Good morning. And thank you to all of our witnesses for being here with us virtually today. This hearing is a continuation of our investigation into the imbalance of power between private landowners and pipeline companies at the Federal Energy Regulatory Commission, FERC.

Our subcommittee's been investigating FERC's process for permitting natural gas pipelines and its effects on the rights of landowners since February of last year. Our initial investigation revealed that FERC's rules and practices allowed these big companies to trample the rights of individual landowners.

Before we get into today's topic, I want to address some breaking news out of FERC.

As you know, FERC is the primary Federal permitting agency for construction and operation of all major interstate natural gas pipelines. It grants certificates to pipeline companies that allow them to assert eminent domain over the property of individual landowners per the Natural Gas Act.

Because of FERC's procedures, landowners were given little to no opportunity to prevent use of their private property against their will. In our subcommittee hearing in December, we pressed FERC to stay its certificates, such that a company could not assert eminent domain over a landowner's objections while the landowner's appeals were still pending.

We learned just last night that FERC has issued a new order that does exactly that. I want to thank Chairman Glick for his work to move landowner rights forward. This commonsense and

eminently fair practice was long overdue, and I'm thrilled that Chairman Glick and FERC have made this change a priority.

But there's still a lot of work to do, so I turn now to the issue before us, the Midship Pipeline.

Because of our investigation, we started to hear from landowners who were enduring long delays in the restoration and repair of their land damaged by pipeline construction. One example came up over and over again: the Midship Pipeline in Oklahoma.

And I want to take a second here to be clear on the identity of the parties involved in today's hearing. While the pipeline is technically built by an LLC called Midship Pipeline, Cheniere Energy is the parent company. Their staff told us that Midship executives also all have Cheniere titles. It is Cheniere staff that have been negotiating directly with the landowners, and when we contacted Midship for testimony, it was Cheniere's senior vice president for government affairs who showed up in response.

So, I think it's safe to say that Cheniere is responsible for what's happening with the Midship Pipeline. And you will hear us refer to Cheniere, not just Midship LLC, interchangeably here today.

After hearing about the problems with Cheniere's Midship Pipeline, we investigated and found that FERC routinely allows pipelines to go into service before the companies have fully restored the land that they damaged during construction. That means the companies, if you think about it, have no real incentive to settle with and satisfy the valid demands of landowners for repair of the land and face minimal consequences for not doing so.

If I come onto your land by way of eminent domain and I disrupt your farm and your business, invade the ground, tear it up, and I start making money immediately, what's my incentive to repair and restore your land? I've already gotten out of you what I want to get out of you. And that's the situation a lot of these landowners find themselves in.

FERC only requires that the companies demonstrate they've made, quote, "substantial progress" on restoration prior to going into service, but it never specifies what that means. In practice, as the Midship Pipeline case illustrates, FERC's standard is totally slippery and woefully insufficient. It's a promise basically written in disappearing ink.

More than a year after Cheniere turned on the pipeline, Oklahoma farmers are still dealing with leftover construction debris, erosion, flooding, and missing topsoil, among other damage.

Despite Cheniere's disregard for the property rights of these American farmers, FERC did not step in until March of this year to finally order Cheniere to complete restoration by May 17.

When FERC did finally take action, newly appointed Chairman Richard Glick wrote that he was deeply frustrated with the, quote, "disregard that Midship has shown for landowners and communities along the route" of the Midship Pipeline. He also stated that it was, quote, "past time for Midship to promptly resolve these issues and allow the landowners to move on with their lives."

I went directly to Cheniere to ask them, what are they doing to rectify the situation on the ground for these property owners? Last year, they told my staff and FERC that the damage would all be repaired by June 30, 2020—June 30 of last year. That day came

and went. Cheniere's promise was not met. Now Cheniere is promising that all of the landowners' property will be restored by May 17, less than two weeks from now.

At this point, the landowners have lost faith and trust in Cheniere's ability to properly repair their land. They have asked instead for Cheniere to compensate them for their cost to hire their own contractors to repair their damaged property. The farmers estimate that repairing the outstanding damage totals between \$20 million and \$40 million.

So, I want to be clear about something. These are individual farmers for whom millions of dollars is a huge amount of money, but to Cheniere that amount is barely a rounding error. According to Forbes Magazine, Cheniere earned \$9.3 billion in revenue and has \$38.2 billion in assets. The amount that it would take to repair the farms that Cheniere destroyed to build its pipeline pales in comparison to its total corporate worth. It's also a small fraction of what they're earning from this pipeline.

This is a story of David and Goliath. The individual landowners have legal rights, but, in practice, FERC allows corporate Goliaths like Cheniere to have their way. This is business as usual for decades at FERC. The bottom line is that FERC has enabled Cheniere, a multibillion-dollar company, to withhold from these farmers an amount of money that is chump change for them but is life-altering for the farmers. How can this go on?

For the landowners in Oklahoma, FERC is simply not doing its job as a public regulatory agency. It's basically working for the private companies.

Oklahoma farmers are not asking for the Moon. They are asking for simple vindication of their basic rights in their land. They are only asking Cheniere to fix what they broke. That's their right.

I hope that today we will get to the bottom of why that hasn't happened yet under such a long-running and well-developed legal regime that certainly protects the rights of the companies.

With that, I want to thank our ranking member, Mr. Sessions, for joining us, and I'm glad that he has arrived. I'm delighted that we're launching the work of this subcommittee this year with a problem, and hopefully with solutions, where we will have broad, bipartisan agreement about the need to protect the property rights of American citizens. And I hope we can work together on all necessary reforms in a creative and cooperative way.

With that, I now am happy to recognize the distinguished ranking member, Mr. Sessions, for his opening statement.

Mr. SESSIONS. Chairman Raskin, thank you very much, and to our panel and to the members who are prepared today to talk about this important subject.

There's no question that the building of pipelines to transport energy to America is a proper use of eminent domain—the process by which the government can put property to a public use after paying just and proper compensation to a property owner. That's how things like highways, public schools, and public hospitals are built as well.

But there is a responsibility—as the young chairman has noted, there's a responsibility not just under the law but also under regu-

latory agencies to not only do their job but to ensure that the public good is represented.

Let me also say that these companies that do do the hard work, that come and do the things that are necessary, must be interested in not turning their back on their full responsibility. And that is where public policy and proper utilization of the free enterprise system combined with the law come to meet with eminent domain.

While Americans may take issue with any particular eminent-domain project that is conducted, Americans overwhelmingly support this balanced approach for not only America's energy industry but other industries also.

In particular, it is the energy industry, because Americans need energy at their homes. We need energy, enough energy, whether it's above ground or below ground, to make sure that we can turn this economy, the world's greatest economy, into not only jobs but production on behalf of the American free enterprise system.

Americans understand that natural gas is critical to the health and sustainability of the American economy. And for many years, we in Texas have gotten used to not only understanding that this clean resource that is abundant to this great Nation can be utilized in balance with other ways that we provide electricity and energy to our country. But, the sustainability of the American economy is built around effective use of pipelines that safely ensure that the transfer of energy is available to all consumers and industry.

Indeed, one news report about the very pipeline at issue at this hearing today states that the property owners affected, quote, "don't cite concerns about climate change or even object to having a pipeline on their land." Most have already been through this. They're fine with that. What they have a problem with is that we have to follow up to make sure that this balance is achieved.

In my own state of Texas, property owners have had their fair share—or, should I say, unfair share—of negative experiences with pipeline projects, just as what we're talking about here. It's not a one-on-one basis, but it really gets down to that, that we need a better way to look at pipelines and oversight.

This was done years ago as we had pipeline failures across my state and very close to the congressional district that I was honored to represent. And that is why we have a continued opportunity, just as we do today, to not just reexamine but to look at and push industry and to push regulators.

The president of the Texas Farm Bureau, Russell Boening, has said, "We know that we must have the means to move people, goods, and energy across Texas, but private property owners should be treated fairly" as they give up their property to these sorts of enterprise.

Mr. Chairman, what we're doing here today did come as a result of a bipartisan approach that you have taken. In the conversations that we had between your staff and my staff, we looked at and you fairly asked us, what would we like to look at, what would be within our bailiwick of issues? You accepted that. We are doing that today.

And so I want to thank you. Our relationship is important. The relationship of our members to each other is important. And for us

to work together, it does mean that we don't have to agree on the issues but we do have to address them.

So, I want to personally thank you not only for listening to me but listening to us. And there are always examples of things we all wish we would do better. Perhaps there are failures. But your agreement and the agreement of your staff to work on this proposal is one that we appreciate, and I want to thank you.

I would like my full text of my speech that I did not give to please be included, Mr. Chairman. I'll make sure you have a copy of that. And I want to thank you very much and thank our witnesses for being here today.

Mr. RASKIN. Well, without objection, that will be entered into the record, Mr. Sessions. And thank you for a very thoughtful and significant opening statement, and I thank you for your kind words.

I'll now introduce our witnesses. The first one is Rob Squires, who's a landowner advocate at Squires Consulting. Then we will hear from Sam Gedge, who is an attorney with the Institute for Justice, which is a legal think tank in Washington, and I think also in Texas. Next we will hear from Christopher Smith, who is the senior VP for policy and government affairs at Cheniere Energy. And, finally, we'll hear from Terry Lubber, who is a farmer in Oklahoma.

I'm really delighted that all of you have joined us.

The witnesses will be unmuted so we can swear them in.

If you would all be kind enough to stand and raise your right hands.

Do you swear or affirm that the testimony you are about to give is the truth, the whole truth, and nothing but the truth, so help you God?

Let the record show that all of the witnesses have answered in the affirmative.

Thank you.

Without objection, your written statements will now be made part of the record.

And, with that, Mr. Squires, you are recognized for your five minutes, and thank you for your patience.

**STATEMENT OF ROB SQUIRES, LANDOWNER ADVOCATE,
SQUIRES CONSULTING, LLC**

Mr. SQUIRES. Thank you, everybody, for having me on. This is a great honor.

So, my name is Robert Squires, and I work in the oil and gas industry on the side of landowners who are affected or crossed by natural gas pipeline projects, including the Midship project and several others. I received bachelor's degrees in the fields of sociology and geography from Kent State University and received my master's degree in geography from Kent State University as well.

I work closely with other landowner advocates, landowner representatives, and landowners themselves to help document issues with construction and restoration, notify the company and FERC of these issues, as well as guide the landowners through cumbersome FERC processes.

I began working on the Midship project in June 2018, a few months before FERC approved the project in August 2018. Since

then, there have been many noteworthy events that have led us to where we are today. I'm going to run through some of these events. This is not an exhaustive list, but I would request every member of the committee to please look at the attachments that I've included in my opening statement.

So, on August 13, 2018, FERC approved the project. Three weeks later, Midship initiated condemnation proceedings in U.S. Federal court. A few months after that, in February 2019, Midship began construction. In July 2019, FERC issued a stop-work order on Midship for dozens of repeated or unresolved construction-related non-compliances. Later that month, July 31, FERC allowed Midship to resume construction.

In April, April 1, 2020, Midship requested FERC to place the project into service. Two weeks later, April 13 and 14, myself, Midship, FERC, the FERC compliance monitor, and various landowners conducted joint inspections of the landowners' properties and found numerous restoration issues and project-wide ongoing noncompliant activity.

Two days after this, Rich McGuire of FERC's Office of Energy Projects approved the Midship request to place the project into service in spite of the information that we had provided to him.

On August 11, 2020, Midship reported to FERC that all restoration activities had been completed throughout the entire project. This set off a series of events involving the landowners basically going out and checking Midship's work, finding that the work had not been completed, contrary to what they had publicly stated to the FERC, going to FERC, notifying them. Midship returns to the property, does the same thing, tells FERC that it's completed. The landowner has to, on their own time and on their own dime, go back out and basically continually disprove that Midship is—or prove that Midship is lying over and over again about the work they've completed. This cycle continues today.

On March 18, 2021, as Mr. Raskin noted, FERC issued an Order on Environmental Compliance toward Midship. This order directed Midship to take immediate action to remedy the unresolved restoration issues within 60 days of the date of that order. As of today, Midship has 13 days left on this order, and on every property that I have seen they have done work on, they have not made any meaningful advance toward actually resolving these issues.

If there's any takeaway from the above timeline of events, it is that Midship has proven themselves to be a company that is unable to be regulated. Not only have they treated the landowners poorly and their lands even poorer, but they disregard orders from FERC time and time again. Even more disturbing is the fact that FERC allows them to disregard its orders with no repercussions.

Until March 18, 2021, there had been no inkling of repercussions toward Midship's repeated dismay for accepted regulations and construction practices. The March 18 order makes clear that FERC has the ability and jurisdiction to hold Midship accountable.

Chairman Glick states in this order, and I quote him: "There must be consequences when the certificate holder fails to adequately fulfill these responsibilities. For instance, we can refer the matter to the Office of Enforcement for civil penalties. We can also consider whether to revoke their certificate of public convenience

and necessity itself. In my opinion, both options should be on the table if Midship fails to promptly resolve its outstanding obligations to landowners.”

I wholeheartedly agree with that statement. If Midship cannot resolve these things within the next 13 days, they must be shut down.

Every landowner will tell you the same thing. Midship approached them with an initial offer; the landowner wanted more. Midship came back a month later or so with a lower offer, and the landowner refused. Midship said, “We will condemn you, and you will have no say-so because it is a FERC pipeline.” The landowners did not sign and, thus, were brought into an eminent domain proceeding. This initial unreasonableness carried over into nearly every aspect of the project from that moment forward.

These Oklahoma landowners are not in any way adverse to the oil and gas industry. Many of them have several pipelines or gas wells on their property already or work in the industry themselves. They just want to be treated fairly.

Every landowner I have talked to echoes this sentiment, that they have been taken advantage of through complex processes, legal intimidation, and Midship’s ability to manipulate the facts on the ground—

Mr. RASKIN. Thank you, Mr. Squires.

Mr. RASKIN. We’re going to come now to Mr. Gedge.

STATEMENT OF SAMUEL B. GEDGE, ATTORNEY, INSTITUTE FOR JUSTICE

Mr. GEDGE. Thank you, Chairman Raskin, Ranking Member Sessions, and members of the committee.

My name is Sam Gedge. I’m an attorney with the Institute for Justice. We’re a nonprofit law firm that litigates to protect private property rights, and one of our areas of focus is combating eminent domain abuse.

Unlike my co-panelists, I’m not going to talk today about the Midship project specifically. Rather, I’d like to focus on a couple of examples of the broader systemic imbalance between pipeline companies that exercise eminent domain and the private landowners that have the misfortune of finding themselves in the way.

First, at a structural level, condemnations by pipeline companies are far more disruptive and far harsher than condemnations executed by the Federal Government itself, and that’s because, unlike the Federal Government, pipeline companies get to take land first and pay later. In this way, pipeline condemnations differ fundamentally from every other type of eminent domain exercised under Federal law.

Ordinarily, when the Federal Government itself wants to exercise eminent domain, landowners get compensated before the government enters on their property. Under a straight condemnation, for example, the government doesn’t get your land until the courts have determined the value of the property and until after the government has paid you.

Likewise for what’s called “quick take,” which is a speedier form of condemnation. There, the government can get immediate access to private land, but the government also has to pay the landowners

immediately. Up front, the government has to pay a fair estimate of the value they're taking.

In short, when the Federal Government condemns property, Congress has gone to great lengths to ensure that payment predates possession—in other words, that landowners get compensated before the government enters on their land. That's only fair.

But things are entirely different when it comes to pipeline companies. Routinely, pipeline companies file condemnation actions under the Natural Gas Act and secure what are called preliminary injunctions against private property owners. Those injunctions entitle the pipeline companies to immediate access to the land they want, yet, critically, the injunctions impose no immediate obligation on the companies to pay the landowners. It's take first and pay later, with "later" being months or even years down the road.

This state of affairs is profoundly unfair and profoundly unjust, and it follows, candidly, from the Federal courts misreading the Natural Gas Act.

When a pipeline company enters on your land, it imposes serious and immediate burdens. Landowners find themselves with construction equipment on their property, they find themselves with debris strewn about, with wildlife killed and left to rot, and, of course, with the loss of the sense of security that comes from being on your land and knowing that no one can take it from you. The least we can expect of pipeline companies is that they pay people before they visit those burdens on them.

Across the Nation, though, pipeline companies accelerate the parts of eminent domain that they like, the taking part, while slow-walking the part that they're less excited about, the payment part. And without congressional intervention, the Federal courts have made clear that they're willing to let those land-grabs continue.

Not only do pipeline companies enjoy this take-first-pay-later dynamic, but they can also take land even if the pipeline might never get built. Now, in your run-of-the-mill taking case, the government doesn't get to take your property until they get the necessary approvals to actually build the project, but here, too, pipeline companies are different. Because under the pipeline permitting process, FERC can say to a company, "You have our permission to build your pipeline, but that permission is conditional on getting a bunch of permits from other agencies over there," and, on the basis of that conditional permit, the pipeline companies instantly get the full power of eminent domain. What that means is that they can immediately enter on your property, take easements, tear up your land, even though the property might ultimately—the pipeline, rather, might ultimately never get built.

Now, these are just two examples of what I think is a broader phenomenon: pipeline companies exploiting FERC and exploiting the Natural Gas Act to disadvantage private property owners. This is a national problem that can take place in any district. Certainly we're aware of similar issues in Texas of particular concern to Ranking Member Sessions.

At the best of times, eminent domain is disruptive and is harsh and often falls hardest on people who lack political clout. And when it comes to pipelines, the eminent domain power is a product of Congress. And, for that reason, the scope of that power and abuses

of that power are, we believe, a strong candidate for congressional attention.

Thank you.

Mr. RASKIN. Excellent. Thank you very much, Mr. Gedge, for your testimony.

Next we'll hear from Christopher Smith, Mr. Smith, from Cheniere Energy.

STATEMENT OF CHRISTOPHER A. SMITH, SENIOR VICE PRESIDENT FOR POLICY, GOVERNMENT AND PUBLIC AFFAIRS, CHENIERE ENERGY

Mr. SMITH. Thank you very much, Mr. Chairman.

So, Chairman Raskin, Ranking Member Sessions, and members of the subcommittee, my name is Christopher Smith, and I'm the Senior Vice President for Policy, Government, and Public Affairs for Cheniere Energy.

Cheniere is the largest exporter of liquefied natural gas in the United States. Since we began operations in 2016, our LNG has helped displace dirtier fuels like coal, cleaning the air and cutting carbon emissions, while enabling the deployment of renewable energy. The American energy infrastructure we are building represents a more-than-\$30-billion investment, creating thousands of jobs, supporting suppliers across the country.

One of the infrastructure projects that we have undertaken is the Midship Pipeline, an approximately 200-mile natural gas pipeline in Oklahoma. Unlike our typical projects, it is not connected to our facilities, nor directly to our LNG production, but, rather, is a separate investment in the larger natural gas transportation system, providing access to new markets for Oklahoma's abundant natural gas.

Since this project was announced, we have worked to proactively engage with landowners and over 1,000 stakeholders in total so they're informed, involved, and heard throughout the process. Because of that work, we've enjoyed a positive relationship and a two-way dialog with the majority of landowners throughout this project and have been able to quickly address their concerns.

I want to assure the committee that we're doing everything we can to resolve the issues identified in the FERC order, and we have dedicated a team working around the clock to do so. In fact, today we have several members of the team in Oklahoma meeting face-to-face with landowners.

Under our FERC certificate, we are required to restore land, and I want to provide an update on those efforts. Just to give the committee perspective, the pipeline project is a total of about 200 miles, and today we're talking about approximately 21 miles identified in the FERC order that require restoration. As of today, over 75 percent of the identified tracts in the FERC order have either been completed or are awaiting inspection results from FERC or have reached agreements for alternate arrangements.

Midship is engaged in FERC's voluntary third-party compliance program, where FERC monitors are on the ground reviewing our work along with our environmental inspectors and those retained directly by landowners. We currently anticipate meeting all of our restoration obligations under the order by the May 17 deadline,

with the important caveat that alternate arrangements are being pursued in some of those cases.

Ahead of the March order, we voluntarily entered into the FERC's Alternate Dispute Resolution process, known as ADR. This process yielded success, as we have entered into ADR with many additional landowners with whom direct discussions have stalled. We've also engaged in dozens of bilateral settlement discussions that have resulted in successful resolution.

There's a clear path forward that all parties are following to meet the goal of completing remaining restoration work identified in the FERC order or reaching alternative arrangements in compliance with relevant FERC requirements.

As we speak, active negotiations are occurring on the ground between landowners and project representatives. So, while I will do my best to address the overall progress that we have made, I want to protect the productive process that we have established and with which we are coordinating with FERC.

We understand and take seriously the concerns voiced by specific landowners as well as by this committee. Midship hears those concerns, and we are taking all reasonable steps available to remedy and resolve the remaining challenges as part of our responsibility to landowners.

Again, thank you, Mr. Chairman, for the opportunity to appear before the committee, and I look forward to fielding your questions.

Mr. RASKIN. OK. Thank you.

And, finally, we will hear from Terry Lubber.

Mr. Lubber, you have five minutes.

STATEMENT OF TERRY LUBER, OKLAHOMA FARMER

Mr. LUBER. Thank you, everyone. Good morning.

In August, this farm I own is going to be in the family for 111 years, and I'm the fourth generation. I had it for three months before Midship came in and destroyed it.

I have a series of terraces and a water well on my property. And the terraces, they drain the water and save the silt. The waterway does the same thing; it's just a larger drainage ditch. It carries the water off the property.

Midship let this go unchecked with soil retention measures and actually just destroyed it. There are so many metric tons of soil gone that I had to use my topsoil that they piled on the side to fill the waterway and let it erode away again. So, I mean, it's basically—it's unfathomable how much it's going to cost to fix that.

They've been in several times and showed they're inept. One of their inspectors, compliance inspectors, from FERC, came out and was standing on the waterway and asked me what a waterway and a terrace is. I mean, how can you write the rules—this person said they wrote the rules for this. How can you do that and not even know what a waterway and terrace is?

On the other end of the property, I have a gate opening. It's about 40-foot-wide. They were warned with emails and verbally that this needed to be a hard crossing. I bring a semi in and heavy trailer with a track hoe and, say, a dozer. And they cut the bore section in the middle of the gate. So, basically, what I have is soft dirt on half the side of the gate and solid dirt on the other side.

When the semi swings in, they always have to swing wide, and you have the potential for the wheels on the trailer or the truck to sink in on the soft side. They dug a hole for their weld joint 40-foot-across, 70 feet wide, and 11 feet deep. So, that pipe is suspended four feet, probably, from its bottom in unstable soil.

So, a potential rollover, the driver may survive. If it dents the pipe, the pipeline is damaged. If it breaks at the weld joint, which is a distinct possibility, and you have a flare-up, that driver has absolutely, has no chance of survival.

The creek is less than a football field away, and you're going to have thousands of barrels of liquid natural gas pollute the creek, and it will go for miles. And that's what people, you know, water their livestock and stuff. It's everybody's livelihood.

They cut trees and left them in the floodplain. I asked them to move. Some of them floated out in a flood, got on the west-side creek bank, which is about 30 feet high, and we lost about 10 feet of soil on the creek bank. We haven't lost that much in 50 years.

The environmental issue because of that will surely make the national news. And I don't want anybody killed on my property. And they had fair warning. And I don't know how we're going to fix that now. It's the only place I can have that gate gap to get to the west end of the creek.

These people absolutely knew they were going to get eminent domain. And this is no different than, if you think about it, someone coming to your door, kicking the door in, making you stand there and watch while they destroy everything you care about that's been in your family for generations and walk off and say, "You better be glad we didn't do anything more." They knew they could get eminent domain.

There are so many issues there's no way I can get it in in five minutes. I would invite everyone to look at the statement that I sent in, the written statement. And, like Rob said before, the contract is—they use the fear factor like a sword.

And thank you.

Mr. RASKIN. Mr. Lubber, thank you. You do have—you did have one minute left, if you wanted to conclude.

Mr. LUBER. Well, I can tell you this much. If we wouldn't have had Central Land's services, I don't think we ever would've got to this point. They were relentless.

And I want everyone to know that the Midship attorneys used the fear factor all the way through this entire event. I'm sure they got many, many landowners to sign because of the fear factor that they used. It was intimidating all the way through.

And I think you're on the right track to give the landowners some say. I had zero say and zero help from FERC.

Thank you.

Mr. RASKIN. Thank you very much for your testimony.

And now we will go to member questioning, and we will begin with my questioning. I'm going to recognize myself for five minutes for questions.

Let's see. Mr. Gedge, let me start with you. You describe this whole "take your property now and pay you for it later, maybe" system as profoundly unfair and unjust. I've got two questions about it; one is constitutional.

Has anybody ever challenged what you describe as this unique process that the pipeline companies get through FERC as a violation of the Fifth Amendment Takings Clause? Why doesn't this violate the Fifth Amendment?

And then, second, if this has been litigated and adjudicated, then what is it Congress would need to do to at least get people in Mr. Luber's situation the same rights that other property owners get in terms of getting paid up front?

Mr. GEDGE. Right. Thank you, Mr. Chairman.

I think the constitutional argument would be a heavy lift for a couple of reasons. First, since I think the 1880's or so, the Supreme Court's said that under the Fifth Amendment there is no requirement that payment, that just compensation, predate the actual taking. So, as a constitutional matter, that seems like it's probably off the table under current doctrine.

As a practical matter, moreover, lots of property owners just don't have the opportunities to raise all of the defenses they might have because—and this is, I guess, a little bit outside the scope of my testimony—but because there are serious notice problems, and a lot of people who end up being targeted for eminent domain in these situations have unwittingly lost the opportunity to seek judicial review of many of the issues that they might be able to.

So, I think, as I said, the Fifth Amendment issue is a difficult one—

Mr. RASKIN. OK, OK. All right, good. Well, we'll be interested to hear from you about what you think a good legislative fix would be for that. I'll come back to you.

Mr. Smith, what is your company's incentive to repair and restore people's land, like Mr. Luber's land, when the pipeline's running and you guys are, you know, making money hand over fist on it now? What is your incentive to clear up the problems you've created on their land?

Mr. SMITH. Well, thank you so much, Mr. Chairman, for that question.

So, when we think about Cheniere's business model and how we operate—so, over the course of the last decade, we've put in place around \$30 billion worth of assets. In order to do that effectively, it requires us as a company to create sustainable, sustained, long-term relationships with a very wide range of stakeholders, be that off-takers, customers—

Mr. RASKIN. Why are the relationships so terrible with these farmers now?

Mr. SMITH. Well, to that point, Mr. Chairman, there are going to be some points of question here in this hearing that at this time I'm not going to have complete, satisfactory answers to. When I look at what our standard is as a company and the successes that we've had as a company in creating those type of long-term relationships for our corporation—

Mr. RASKIN. OK. Forgive me for interrupting, but when I spoke to you guys before, I asked you what percentage of the work in the March 17 order had been deemed complete, and several Cheniere executives could not tell me, said that they couldn't provide me even with ballpark numbers of what percentage of the work had been completed.

In a followup discussion, your staff said it would be able to provide those percentages in weekly updates. Since then, two weeks have passed where we've not gotten any weekly updates.

Your staff said those numbers would be included in your written testimony today. They were not included.

Hey, look, if you can't keep your promises to us and the whole world is watching, what should make us believe you're going to keep your promises to people like Mr. Lubber when nobody even sees what's going on?

Mr. SMITH. Well, Mr. Chairman, we are making progress on the list of issues that were identified in FERC and that compliance order in Appendix A. So, in that order, there were 56 tracts that the FERC monitors identified that we had to address. And so, right now, as we speak, literally at this very moment, we have crews on the ground, we have our folks that are in Oklahoma talking to landowners, sitting at their kitchen tables, walking their land, discussing these issues as we speak. And of the 56—

Mr. RASKIN. Well, that sounds great. What percentage of the work in the March 17 order has been deemed completed?

Mr. SMITH. So, of the 56 items, of the 56 tracts that were identified in that order, we have already addressed 41 of those tracts. So, of the 56, we've addressed 41.

Mr. RASKIN. When you say you've addressed them, what does that mean? You've completed the work?

Mr. SMITH. So, what that means, Mr. Chairman, is the work has either been completed or that we are awaiting inspection from the FERC monitors.

So, we are working with FERC as the referee. Their folks are on the ground to make sure that they're identifying any issues that might be—

Mr. RASKIN. OK. Forgive me. I just have a moment left.

Mr. Lubber, let me come to you finally. Tell me how the power of eminent domain that's basically been delegated to the companies through this FERC system, tell me how that power has affected your rights and the state of your land today.

You've got to unmute, if you would, Mr. Lubber.

Mr. Lubber, I'm afraid we can't hear you.

Ms. TLAI. Mr. Lubber, it's just—the unmute button, if you see the red mic, you can see a little X or a little slash on the red mic. Just click on that. I think you have it in front of you.

Mr. RASKIN. Do you see the little unmute function?

All right. Well, I'll tell you what. While you guys search for that—

Mr. LUBER. Sorry.

Mr. RASKIN. Oh, there you go.

Mr. LUBER. I'm sorry. I'm here.

Mr. RASKIN. OK.

Mr. LUBER. I touched something, and it took me out. I'm not very technologically wise.

OK. It affected me in incredible ways. If I had to pay out of pocket to fix the stuff that Midship tore up, it would cost me almost as much as the farm is worth. And—

Mr. RASKIN. So, you'd have to sell the entire farm to fix the farm, you're saying.

Mr. LUBER. That's basically it. I'd pay twice for my farm.

And I forgot a while ago, I was a pipeline inspector for eight years, so I know what I'm looking at. And so, I mean, I know what these people have done, and I know what pipeline practices are, and this wasn't it.

Mr. RASKIN. All right.

Yes, let me just say finally, you seem like a pretty reasonable guy. Did you try to operate with them in good faith and say, look, you know, you've torn up the land, we need you to put it back, and so on? I mean, you don't seem like an especially litigious guy.

Mr. LUBER. No. I've worked in—

Mr. RASKIN. Were you trying to work with them?

Mr. LUBER. I worked in the oil field for eight years as an inspector, and I worked I don't know how many years as a contract welder. I'm not against pipelines at all. And I want to try to get along. But once I balked on their first offer, it absolutely went downhill after that, and to no good end. All I got was lip service out of them.

Mr. RASKIN. Yes. OK. Thank you very much.

My time has expired, and, Mr. Sessions, I turn it over to the ranking member now.

Mr. SESSIONS. Mr. Chairman, thank you very much.

Not only to our three witnesses, Mr. Gedge, Mr. Luber, and Mr. Smith, I want to thank you. Your testimony taken by itself, notwithstanding the entire project, is what I think our young chairman is focusing on and I would like to also.

But I would like to ask Mr. Smith: Mr. Smith, the need of our Nation is great. The need to make sure that we have not only pipelines but that we have safe pipelines and that we get our product to consumers is very important.

You have heard Mr. Gedge to outline some of his ideas, notwithstanding about maybe the way courts are interpreting the Natural Gas Act, but he outlined a rather broad spectrum and that is an agreement to look at the law of, up front, there is a better agreement and understanding, I would say, that's a more balanced approach.

But can you talk with us about the impact of what Mr. Gedge has said?

Because the reasonability of a balanced approach, I think, is what not just Americans want but what we would want in the law. We would want the law to fairly be on the side of the best interest of consumers, which means properly applying what might be these rights to come in and get land, but once that is achieved, that process would be fair.

Mr. Smith, would you mind taking a minute and talking with us about a level playing field from a perspective of someone that does pipelines?

Mr. SMITH. Well, thank you very much, Congressman, for that question. There's a lot there in that question, so I'll try to address the questions that you're asking or the spirit of the question.

So, in my previous life before I came to Cheniere, I was a regulator. I was with the—or had some regulatory responsibilities as an official in the Department of Energy, and I've worked with FERC on projects like this. And one thing I can say firsthand is that there is, from the regulator's point of view, there's a terrifically difficult

and important piece of work they have to do in terms of determining the public interest.

And determining the public interest means they have to quantify it, they have to make sure it's consistent with statute, they have to make sure it's consistent with court cases, and then they have to put forth a series of regulations that then quantifies that in a series of steps that can be followed—

Mr. SESSIONS. Do you believe that's a balanced process, currently, that FERC has as their mission?

Mr. SMITH. Well, I would demure on opining on, you know, on the law as written by Congress or interpreted by FERC, who regulates us, with all respect, Congressman.

What I'll say is, I do know that they have an important balancing act to make sure that these important infrastructure projects get built that are going to create jobs but also ensure the energy that our country needs, at the same time making sure that there's a process to protect the landowners and other stakeholders in the community. It's not just landowners; it's other groups that might be impacted in some way by this infrastructure.

So, that's FERC's job. And if you look at, you know, what the Natural Gas Act says and if you look at the way that that's been interpreted by FERC, that is what they're endeavoring to do in all of their environmental impact statement requirements and their certification processes. They're trying to create that balance.

And I, again, firsthand, can say that that is—that's difficult but very, very important work the regulator has to do

Mr. SESSIONS. OK.

If you could move, then, directly to a pipeline company and how you feel like—and, Mr. Chairman, I think this is really important in this hearing, is to equally hear—we have heard some other problems. And Mr. Luber—I greatly appreciate his not only perceptions but the actual realities

Mr. Smith, how would we have balanced this in looking at this process? I understand—look, I was with a large company. We didn't do everything right. But we did what you say you're doing, and that is trying to pay attention, focus on it, and fix it.

What would the upfront changes be that you have heard about today of a balance that would offer more balance between your need, your desire, FERC, and the landowner?

Mr. SMITH. Well, here's what I can say to that question, Congressman.

You know, in the chairman's question, you know, he asked us about our progress on Appendix A of the FERC order. We're making progress. We are moving forward. You know, we have moved through over 70 percent of the issues that have been identified by FERC in that order in the period that we have, with the goal of making sure that we comply with that order by the deadline, which is the 17th.

Your broader question is—I would say that it is certainly in our best interests to do this well. And I can say that, as I compare other endeavors that our company has had and the types of long-term relationships we've created and if I compare that with, you know, from what I'm hearing from Mr. Luber and from Mr. McElvany and Mr. Morris that we saw in the video that the chair-

man put out a couple days ago, that's not consistent with the standard that we need to reach in order to make sure that we're operating properly.

So, there are some things that we will have to do differently. And we will understand that better after we finish the important, vital, immediate mission of making sure that we remediate the problems that are in front of us right now. Because after these things are fixed, we're going to have to come back and make sure that, over time, that the remediation that we've put in place has worked, that the vegetation's grown back, the erosion is stable, that all these other things are in place. And that is a multiyear engagement that we're going to have with all these landowners. And we need to do that well.

So, that's the best answer I've got to that, Congressman. And I'm sure that there will be—you know, there will be further dialog in this committee about that issue.

Mr. SESSIONS. Mr. Smith, thank you very much.

Mr. Chairman, I would yield back my time and appreciate the young chairman for allowing us—Mr. Smith the time to complete his testimony on this question.

Thank you, Chairman.

Mr. RASKIN. Thank you so much, Mr. Sessions.

We come now to Ms. Wasserman Schultz for her five minutes of questions.

Ms. WASSERMAN SCHULTZ. Thank you, Mr. Chairman.

And I thank you for the opportunity to have this hearing. This is not an issue that most of us are exposed to from around the country, and the egregious treatment of farmers by Cheniere is really an important topic, especially because it's caught the attention of FERC, really, clearly, to have them take unprecedented steps compared to other cases that are similar.

The farmers who are affected by Cheniere's seemingly reckless disregard for their legal and moral obligations, they're not strangers to pipeline companies. And listening to the testimony, many of these landowners have multiple pipelines running through their land and have had much more cooperative interactions with other companies.

So, Mr. Luber, I appreciate the really lengthy commitments that your family has had to your farm and really the imposition, which is the mildest word that I could use, the impact that that's had on you. But what you can you say about how Cheniere's behavior toward landowners compares to other pipeline companies?

Mr. LUBER. Well, I've got some other pipelines on my property now that came after them, and I didn't have any troubles with them. Normally, they negotiate with the landowner their wants and needs. And no one knows how to take care of the land better than the landowner. And I will say that most pipeline companies all think they know better.

But I was not consulted about anything. Anything I asked for was deaf ears, you know, lip service. And this truly is a David and Goliath story. They did not try to do anything right. And I believe, out of spite, because I got them to do that bore, I believe that's why they cut that pipe in the middle of my gate opening and made a

mess out of that. And that's the only place I can have that gate. And I have no idea how to resolve that.

Ms. WASSERMAN SCHULTZ. And, as you said, it's very clear that they operated with, you know, a background of fear, because they knew that they could just take your property by eminent domain unless you just rolled over and agreed to whatever it is that they had proposed, correct?

Mr. LUBER. That's exactly. I mean—and once I refused that first offer, everything just was just a disaster. And they blamed it on Central Land, they blamed it on the landowners, they blamed it on the weather. We did have very inclement weather through that, but—I worked with so many different pipeline companies. Everything, you just use common sense. They didn't do any of that.

And I have, I don't know, 1,000 to 1,500 pictures and some videos to prove every bit of what I said.

Ms. WASSERMAN SCHULTZ. Well, I mean, to me, it seems like Cheniere has adopted an unnecessarily hostile stance toward landowners who would've otherwise been happy to have a cooperative working relationship with them.

We've heard that Cheniere forced lowball offers onto farmers by immediately seeking to exercise their eminent domain powers in court rather than negotiate with landowners. In my experience as a legislator, that's not how the eminent domain process is supposed to work. There's supposed to be a negotiation first. And, you know, I understand that sometimes there are unreasonable landowners, but it seems like——

Mr. LUBER. Yes.

Ms. WASSERMAN SCHULTZ.—this was used, like you said, as a weapon.

One farmer, Mark Morris, has several pipelines on his property, and he called Midship the worst they've ever seen. He said Cheniere refused to negotiate with him and said they feel they're above the law.

Mr. SMITH, do you think Cheniere is above the law?

Mr. SMITH. Well, thank you for that question, Congresswoman——

Ms. WASSERMAN SCHULTZ. It's just a simple yes-or-no question. Do you think Cheniere is above the law?

Mr. SMITH. No.

Ms. WASSERMAN SCHULTZ. OK. So, if you're not above the law, then I assume you'll be fully complying with FERC's March 2021 order and restoring the farms by May 17 unless otherwise agreed to by a particular farmer. Is that correct? I mean truly restoring, not restoring by your definition, but by the farmers' definition or by a mutually agreed definition.

Mr. SMITH. Yes, we will be fully complying with the FERC order and meeting the deadline set in that order.

Ms. WASSERMAN SCHULTZ. OK. Because my understanding is that there are definitely discrepancies where landowners are saying—you're saying that you complied with that and restored their land and they're saying you're not. So, we're going to hold you to that, and, clearly, FERC has said they're going to hold you to that.

The egregious behavior of Cheniere toward Midship farmers is really just totally unacceptable. And, I mean, for—just important

to point out, in just the last year, Cheniere has invested at least \$100 million into Midship Holdings and is still unwilling to make many affected landowners whole.

For the FERC Chairman to call for unprecedented consequences, going as far as considering the revocation of a pipeline certificate, clearly demonstrates the egregiousness with which Cheniere has treated landowners in the pathway of the Midship Pipeline.

Mr. Chairman, thank you for the opportunity to highlight this really important issue. It impacts the environment. It impacts landowners' rights. And it certainly, as evidenced by the ranking member's comments, is not a partisan issue.

I appreciate the opportunity. I yield back.

Mr. RASKIN. Thank you, Ms. Wasserman Schultz.

I yield now to my friend from Louisiana, Mr. Higgins, for his five minutes of questioning.

Mr. HIGGINS. I thank my friend and colleague, Mr. Chairman, and I thank the ranking member for holding this hearing today. It's very important.

But, Mr. Chairman, I don't like eminent domain. And I'm certain that if the Founders were with us today they would agree that eminent domain, seizure of private property, should be a last resort, and, if used, the landowners' rights should most certainly be aggressively protected.

And that being said, I also recognize the significance of major projects that are vital to our national security and economic prosperity.

So, striking a proper balance is—you and I have spoken at length about this, and I believe we concur that there should be a balance. And we certainly have an appropriate role to play in Congress regarding oversight.

I would like to state for the record that the pipeline owner, Cheniere, has a facility in my district and is widely seen as a welcome member of the community. They've participated in promoting educational achievement through scholarship programs and apprenticeships. They've made major investments in local infrastructure. They were fast on a scene whenever a hurricane comes through. After Hurricane Laura and Delta, they were on the ground in southwest Louisiana helping folks in need.

So, it must be stated that the company that's being scrutinized today, my experience with them in our community has been very positive. And yet we have a role to play. And they should welcome this—they should welcome this level of congressional oversight and inquiry, and I expect that they do.

Mr. Squires, I have a couple of questions for you, sir. And I thank you for coming before the committee today, and I thank you for the work that you do on behalf of landowners. It's an important role that you play.

In your statement, you made it clear that you advise—you're very well-versed in how the FERC regulatory process works, correct, including how the regulatory process works in case of disagreement? Mr. Squires, is that a fair assessment?

Mr. SQUIRES. Yes. I would say so.

Mr. HIGGINS. OK. So, even if land is taken by eminent domain, which I've already given my opinion of, or through signed ease-

ments, FERC encourages the developers to remain actively engaged directly with landowners involved in the project.

This is a simple question. It may be a little uncomfortable for you, but all of this is on the table. While working on behalf of your clients, have you or the representatives of your company prohibited Midship and Cheniere from directly engaging with landowners? And, if so, wouldn't that cause a delay and wouldn't that hamper the potential progress of reaching an actual goal of agreeing on what restored land would be?

Mr. SQUIRES. I personally have not forbade Midship or anybody from reaching out to the landowners. Specifically, we have encouraged Midship to reach out to the landowners, specifically recently. But I personally have not, you know, prohibited Midship—

Mr. HIGGINS. So, as far as you know—thank you for your candor, sir. And, again, I thank you for the work you do. So, as far as you know, Midship or Cheniere has not been restrained from direct communication with landowners by your company or representatives of your company?

Mr. SQUIRES. Yes, as far as I know. Yes. Now, the—

Mr. HIGGINS. OK.

A final question for you, sir. Regarding the values of lands and compensations for condemned land, are you aware that Midship/Cheniere has placed into an escrow account in court an amount equal to—my research indicates is double the appraised value for landowners whose properties have been condemned through eminent domain? Are you aware of that escrow?

Mr. SQUIRES. Yes. They call that a bond. Yes.

Mr. HIGGINS. And so would you think that that property assessment was valid? Is that an act of good faith on the part of the pipeline, to place that money in an escrow account at double the value of the land?

Mr. SQUIRES. It is an act in good faith, but it is also required by law. You know, for the injunction to take place, they need to put up that bond amount. And that is based on—

Mr. HIGGINS. Sure. And we've been advised that everyone intends to follow the law. I'd see no reason to doubt that.

Mr. Smith, in my remaining time, as I stated, Cheniere has an excellent reputation in the community, and I'm concerned as to why that perhaps is not the case in Oklahoma.

Would you share with America what your personal intent is regarding resolving the remaining issues with landowners? Do you care about these landowners? Does Cheniere cultivate good relationships with pipeline-impacted communities? Are empathy and compassion driving factors?

These are some of the thoughts on my mind. And in my remaining time, please respond there, Mr. Smith.

Mr. SMITH. Well, thank you, Congressman, for the question.

So, certainly, the standard that we have reached in building and commissioning facilities—and it's being passed in your district, Mr. Congressman, and in Corpus Christi, Texas—that standard of long-term successful outreach to the community that has created those types of bonds, we have not reached or achieved that standard in Oklahoma on this project. And we are doing everything in our

power to make sure that we are complying in a way that brings us to our normal level of standard.

We have put our most senior business development executive on this project. And, Mr. Chairman, when you spoke with us a couple of weeks ago, you had an opportunity to talk to Mr. Wyatt, who, again, is our most senior business development officer of the company.

We've got teams that are on the ground as we speak at this moment. We've got crews on the ground as we speak at this moment. We are doing everything that we can to make sure that we comply with this compliance order, with the goal of making sure we're creating the right type of long-term relationships—

Mr. RASKIN. Thank you. Thank you, Mr. Smith. And the distinguished gentleman's time has expired.

I'm coming to Ms. Kelly for her five minutes of questions.

Mr. HIGGINS. Thank you, Mr. Chairman.

Ms. KELLY. Thank you, Mr. Chairman.

And welcome, to the witnesses.

Representatives from Midship and Cheniere assert that one of the reasons restoration has taken so long is that a group of landowners banded together to hire someone to advocate on their behalf. According to Cheniere, having to deal with these experienced advocates, quote/unquote, "thwarted" the settlement talks.

For the record, Cheniere is a \$38.2 million company and the number-one liquefied natural gas producer in the country.

Mr. Luber, you are a part of the group of landowners who hired consultants to represent you. Why did you decide to join that group and hire outside help?

Mr. LUBER. We were absolutely outgunned, as a landowner. They hired the best attorneys. I mean, all the way through, they have used the best attorneys. And we didn't have a chance, if it wasn't for Central Land.

You know, it was such a lowball offer and such quick timing on it. It was so unfair. And it was just our decision, my wife and I, that we would go ahead and fight it out with Central Land. And that's been a real blessing.

Ms. KELLY. Thank you.

Mr. Squires, you have a lot of experience with the FERC process and natural gas pipelines. How easy or difficult would you say it is for a landowner who doesn't have your level of expertise to figure out the FERC process?

Mr. SQUIRES. I would say it is extremely difficult. One, most of the landowners don't even use email. So, you know, getting online, figuring out how to go through the many-step processes that involves even filing to the FERC docket is a lengthy process.

Ms. KELLY. Thank you.

What are the advantages of landowners banding together and seeking out an advocate for help with negotiations with pipeline companies in general?

Mr. SQUIRES. I think it's beneficial. You know, we're not really there to be the negotiators but there to be their eyes on the scene, to watch the construction, to monitor the restoration, to make sure essentially that the company is doing the right thing, you know,

per the FERC guidelines or per, you know, any other guidelines that they're supposed to adhere to.

Ms. KELLY. Sure.

The FERC process allows natural gas companies to seek eminent domain, as we've been speaking of, so that they can acquire rights to private land in court—a power usually reserved for the government.

Mr. Smith, if someone took a member of your family to court to assert eminent domain to take part of their land, would you want them to have someone experienced to represent them?

Mr. SMITH. Well, thank you for that question, Congresswoman. Yes, I would. And—

Ms. KELLY. OK. Thank you. That's all I needed.

If your family member hired a representative, that person would presumably be the one dealing with the company and advocating on your behalf. Isn't that what they're there for?

Mr. SMITH. Yes.

Ms. KELLY. OK.

It doesn't surprise me at all that it's been easier for you to reach agreement when you have isolated negotiations with individual landowners that don't have the same resources or experience as your company. It sounds to me that what Cheniere is really upset about is that some landowners are refusing to be steamrolled.

In addition to blaming the farmers' advocates for delay, Cheniere has also accused landowners of purposely flooding their own land.

Mr. LUBER, would you ever flood your own land on purpose?

Mr. LUBER. No, ma'am. I would never do that.

And I have never told them they couldn't do what they wanted to do, even though I knew it was wrong. And I would like to add that they used some real estate that was sometimes 20 feet out of their permit. They were out of compliance. And FERC never addressed it, and neither did they.

Ms. KELLY. And you want your land to be fixed as quickly as possible, I would assume.

Mr. LUBER. Absolutely. And I know what it looked like before. I've lived there all my life almost.

Ms. KELLY. And flooding it would delay restoration even longer. Isn't that correct?

Mr. LUBER. That is correct. And I don't know a farmer in this world that's dumb enough to do that.

Ms. KELLY. I agree. This theory from Cheniere makes no logical sense. These farmers are trying to get their farms back to normal. Accusing them of damaging their own property is extremely disingenuous.

I thank the witnesses again, and I yield back.

Mr. RASKIN. Thank you, Ms. Kelly.

I now go to my dear Ms. Tlaib, the pride of Michigan, for your five minutes.

Ms. TLAIB. Thank you so much, Chairman.

I do want to start off by letting Mr. Luber know—it's very important for me for you to hear this: You are believed. I believe you. Everything, the experiences you went through—I know it's very hard, as you hear folks calling—I just want you to know I believe you and you inspire me to work harder in Congress.

Mr. LUBER. Thank you.

Ms. TLAIB. Thank you.

So, I really want to start out with Mr. Smith and asking you a question. Do you know the definition of “misleading” or “to be misled”?

Mr. SMITH. I do, yes.

Ms. TLAIB. Oh—oh, well, let me help you. I’m going to read off the definition that I found on Oxford. “Misleading is to give the wrong idea or impression.” Other words used in place of “misleading” is “deceiving” and “deceptive.”

So, Mr. Smith, yes or no, when your company submitted its request to turn the Midship Pipeline on, your company knew that they still had months of work left to fully restore the landowners’ farms harmed, correct?

Mr. SMITH. So I—

Ms. TLAIB. Yes or no, did you all know? Yes or no? It’s not that complicated. Did you know this information?

Mr. SESSIONS. Mr. Chairman—

Ms. TLAIB. Oh, here we go.

Yes, Ranking Member?

Mr. SESSIONS. Mr. Chairman?

Mr. RASKIN. Yes, Mr. Sessions?

Mr. SESSIONS. This issue is one that you and I both respectfully, as well as the gentlewoman who is speaking, respect and appreciate. We’re trying to highlight the issue, not the specific things that might still be in—

Ms. TLAIB. I think it’s—

Mr. RASKIN. OK.

Ms. TLAIB. If I may, Chairman, I think it’s really critically important—

Mr. SESSIONS. And I would consider that—

Mr. RASKIN. All right.

Ms. TLAIB. I think it’s important to understand that the farmers and the landowners were misled.

Mr. SESSIONS [continuing]. And would ask that the gentlewoman—

Mr. RASKIN. All right. But wait, my dear friends, you know, wait. It’s going to be difficult if we’re talking over each other.

The time is Ms. Tlaib’s time. Let’s let her proceed. And I think we’re going to continue to proceed in a totally civil way.

And, Mr. Smith, you’re not taking any of this personally. We understand you’re sent here as part of your job—

Mr. SMITH. Yes.

Ms. TLAIB. No. He works for the company. No.

Mr. RASKIN. And, Ms. Tlaib, please continue.

Ms. TLAIB. Yes, absolutely. Just for you to know, Mr. Smith, this is very much just me understanding if the people were misled.

Mr. SMITH. I understand.

Ms. TLAIB. Either your company knew or didn’t know. That’s all I need to know.

Mr. SMITH. So, we know that when we put the pipelines into service that we will have a restoration plan. And that restoration plan, in many cases, is a multiyear plan.

Ms. TLAIB. Sure.

Mr. SMITH. We go out and do the work, and then we have to—
 Ms. TLAI B. But in your request, Mr. Smith, in your request to turn on the pipeline, you told FERC that you would need until June 30 to finish restoration, yes or no?

Mr. SMITH. In order to—

Ms. TLAI B. I'm talking about an application you submitted to the Federal Government. Did you tell them that you need until June 30?

Mr. SMITH. Yes.

Ms. TLAI B. OK. So, if I have this right, the corporation you work for, worth over \$15 billion, wanted to start profiting on the pipeline just a few weeks after it had been completed. They misled the land-owners and had months left to address the damage they caused the farmers and their land.

We can leave that with no answer, but I just wanted to explain.

And, again, this is not—this is me as an attorney, as someone that has worked with so many residents that continue to be, you know, run over and kind of dismissed, even though, for many, as you heard Mr. Lubertell tell you, they did everything they were supposed to, they did everything right.

And so, Mr. Squires, do you believe the public and farmers were misled, yes or no?

Mr. SQUIRES. Absolutely. I mean, Midship publicly committed to doing numerous things that never actually occurred.

Ms. TLAI B. Yes. And I have personal experience where I have companies, corporations that apply for air quality permits in my district, which has one of the worst air qualities in the country. They come with shiny posters and tell us they're going to do all these wonderful things. Years and years of us fighting for air monitors.

So, I am, personally, for me, watching my residents get sick because they didn't implement it. And now hearing Mr. Lubertell's experience is really tragic.

Is it fair to say that the company wanted Midship to start generating revenue as quickly as possible and had no intention of restoring farmers, Mr. Squires?

Mr. SQUIRES. I would say so.

Ms. TLAI B. OK.

Mr. SQUIRES. I would agree with that.

Ms. TLAI B. This is a tragedy and an example of how FERC's, you know, pipeline approval process is broken. The company could immediately start raking in cash, right, profiting, all while hurting folks like Mr. Lubertell, who we represent in Congress. We represent him. You know, Mr. Lubertell was literally robbed out of his own livelihood, his income.

So, Mr. Smith, can you give me—you know, this is your opportunity to do the right thing. Yes or no, will your company commit to fully restoring—and if you answered other colleagues, that's fine, but I really want a commitment on the congressional record in this committee.

Will your company commit to fully restoring these folks' property and compensating them in full for all damages and lost income?

Mr. SMITH. Congresswoman, we fully commit to fully complying with the FERC order that's in front of us, which means that we

will work with FERC to ensure that we meet all of those requirements.

Ms. TLAIB. OK. Great.

Mr. SMITH. And, in fact, we are on the ground with Mr. Luber right now, and I look forward to having the opportunity to walk that—

Ms. TLAIB. And, you know, I hope it doesn't stop with Mr. Luber. Because he testified here—I've seen this happen—you go help him, but you don't help the others because they didn't come. So, we will seek out others that you hurt, and we will require you to please do the right thing.

You've committed it publicly. You should follow through on that commitment and not mislead or deceive these folks that are not against you—as you heard him. They were doing the right thing. They were doing everything they were supposed to do. You didn't follow through.

Last, you know, and, again, really important, Chairman, is that we follow up and seek out any other information from FERC in regards to what compliance they have, you know, followed through on, but also seeking out the other landowners, not just Mr. Luber. Because I think it's important that we don't allow them to just help a few here and there but they actually help every single person harmed by their lack of accountability and following through on what they committed to these folks.

I yield.

Mr. RASKIN. I appreciate that, Ms. Tlaib.

The gentlelady yields back.

There are just a handful of us here, and I have a few more questions which I'd like to ask. I'd like to give the ranking member and Ms. Tlaib and Ms. Kelly the chance to ask a couple more questions if you want.

Look, Mr. Smith, I appreciate your being here today. You represent a large company that has trampled the rights of a lot of people. You seem like a delightfully nice guy. It is not a personal thing. We need to get the law correct and the administrative process correct so we don't have to call a congressional hearing to get relatively simple things done, like people's land restored, right? Because, as Ms. Tlaib is suggesting, we're not going to be able to go and conduct a hearing on each of these. That's what the FERC process is for, right?

And I think everybody agrees that FERC should not just be an instrument of the big companies. As my friend Mr. Sessions says, you work for a big company. Big companies can do wrong things too. So, we don't want the government that's just in the pocket of the big companies. We want government that is going to protect everybody's rights in a situation like this.

So, Mr. Gedge, let me come back to you. If we're going to legislate structurally, systemically, in order to prevent people in Mr. Luber's situation from getting their rights abused in the future, what are the things that we could get Congress together to do now related to eminent domain and related specifically to the restoration and the repair of people's land?

Mr. GEDGE. Sure. So, thank you, Chairman. A few things.

First, I would improve the notice so that people who end up facing eminent domain know that they're going to face eminent domain and they have a chance to object to it.

Second, I would align the people——

Mr. RASKIN. Can you explain that for a second? Are you saying that people are not receiving sufficient and adequate notice?

Mr. GEDGE. So, historically, there has been concerns that the notices that are issued during the FERC certificate process don't provide sufficient notice to the people who ultimately are on the receiving end of a condemnation action.

Mr. RASKIN. OK.

Mr. GEDGE. And beyond that, Mr. Chairman, I would just add that aligning the payment and possession dynamics with the Federal Government, I think, would go a long way toward eliminating that loophole that we were discussing where the companies take possession long before they actually make payment.

And beyond that, on the question of restoration, one possible way to address that would be to create a trespass cause of action for folks where the company exceeds the scope of the easement and doesn't restore the property consistent with their obligations either under court order or under the terms of the easement.

Mr. RASKIN. OK. I appreciate that.

And I haven't gone back to look at the cases. I want to look into the whole Fifth Amendment question. To me, it's just unbelievable that it's consistent with the Fifth Amendment of our Constitution that the government can essentially delegate the eminent domain power to a private company to take my land and all of that can happen before I get any money.

And so I haven't received my money, and then, after ripping up my land, that that is something that can be continually postponed. I mean, that is a dystopian nightmare of just Big Brother and the merger of Big Business and Big Government to violate the rights of the people. That just can't be right. We've got to put government back on the side of the people.

So, with that, I pledge to work with Mr. Sessions, with every member of this committee. Let's come up with some legislation that will have bipartisan support that will guarantee this won't happen again.

Mr. Sessions, I turn it to you for any closing thoughts or closing questions you may have.

Mr. SESSIONS. Mr. Chairman, thank you very much.

Mr. Chairman, let me say that I think the balance of this hearing has been well-intended, and that was to hear, sure, specifically where things did not necessarily occur where they should have.

I think that what I would want to do is, Mr. Chairman, for us all, as a subcommittee, to look into and maybe get back with each of these participants on a balanced way to make sure that the Federal courts also understand the Federal—or the intent of the law. And, seemingly, I find myself at the back side of not knowing what these court cases that have shaped the way that companies then react, not only to FERC but react in the marketplace.

And so I would say to each of the people who've been here today, including Mr. Squires, including Sam, I want to thank you.

But, Mr. Smith, always—and you know this, and the chairman respectfully acknowledged what I think is truthful—big companies, like AT&T, which is my former company, or your \$38 billion company, Cheniere, do have responsibilities. They do have the need to make sure that they are following the law, that they are doing their things in the best interest of a balanced purpose, because they are dealing with our land, with our landowners, with the Constitution.

And so I would say to you, Mr. Smith, Mr. Squires, and Mr. Gedge, I would like to spend time to balance this out. I would like for Ms. Tlaib to feel like that we respectfully did not only hear her concerns but also others who have spoken up.

But the balance that we will get, Mr. Chairman, will be good public policy, to make sure we don't look back in a year or two and say, wow, we didn't fix what we heard.

So, I want to thank all the witnesses. I have no reason to believe that there was bad faith on anybody's part, but I do know that things like this do happen. And so we need to look further into Article III powers, of how they have looked at this, and make sure we include that as part of our discussion, answer, and result.

So, Mr. Chairman, you have lived up to the agreement that we had to effectively look at issues. We have included landowners, we've included outside groups, and we've included the people who were at the heart of the matter. I appreciate and respect the subcommittee's balanced approach. And our moving forward will be that exactly as you have stated, and I look forward to working with you.

And I want to thank our witnesses and the members of the committee for us thoughtfully working with each other.

Thank you, sir.

Mr. RASKIN. Thank you so much, Mr. Sessions, for your thoughtful remarks.

I don't know if Ms. Kelly is still here. If she's not, I would invite Ms. Tlaib to ask any final questions she may have.

Ms. TLAIB. No, just—you know, I just want to commend Mr. Luber, because I know this process is extremely intimidating. You know, the whole committee process, just being here, sharing, being vulnerable, I know how much it takes. Because even though you have not done anything wrong—the wrongdoing was not on you, but a process that was set up in a way that wasn't balanced, that didn't protect you.

And so I want you to know that, you know, I commend your courage to doing that. And I know there's so many that just, you know, even coming here, they think, "It's a waste of time. They're never going to hear me." I just want up to know I heard you.

And many of us are, again, inspired and motivated to address this. And if it was the wrongdoing on the part of Mr. Smith's company that motivates us to say it's broken and we need to fix it, it is going to be hearing stories like yours.

Not only on notice, but the language being used and what was sent to your homes, you know, I know that doesn't make sense sometimes. And I know. I've heard. And that happens to my residents as well. They don't understand particulate matter. They

want to know, how is their public health being impacted by air permits?

So, I have been there and, you know, represented so many organizations that have been fighting, you know, again, to fix these processes that are just—I think Ranking Member Sessions is right, this balanced approach. Because I know this much, and you know this, Mr. Luber: You know, when somebody does wrongdoing, admitting it and addressing it aggressively, that lands us with so much respect. But when there is wrongdoing and there's pretending, like, you know, that it didn't happen, some sort of, like, deception that, "Oh, oops"—this wasn't an oops. This was intentionally taking a step toward making sure that you're not whole.

And so I just—I really commend you, and I want you to know how much I appreciated your testimony today.

Mr. LUBER. Thank you so much.

Mr. RASKIN. Thank you so much, Ms. Tlaib.

And I wanted to ask one final question of you, Mr. Smith. You've mentioned a couple of times that Cheniere has several people on the ground actually fixing property, which is good to hear. And I just wanted to give you the chance to elaborate that. Can you tell us how many people you've got on the ground right now fixing the relevant properties?

Mr. SMITH. Well, thank you, Mr. Chairman.

So, we've got a full negotiation team out on the ground, you know, anywhere between five, six people, that are directly engaging with landowners. So, right now, as we speak, they are on the ground at this moment doing that work.

We also have crews, because, you know, as I was able to discuss a little bit, with the 56 tracts we've started with, we've made significant progress in this short period of time, with the full intention of meeting the deadline that was established by FERC.

So, we have—

Mr. RASKIN. All right.

Mr. SMITH [continuing]. A team on the ground of people and negotiators as we speak right now.

Mr. RASKIN. Five or six. Thank you for that.

We are going to both aggressively pursue everything we know about this situation at the micro level while we explore policy fixes at the macro level to see if we can improve this whole legal regime out there which hasn't been looked at in a long time.

Mr. Sessions, I thank you.

Members, I thank you.

Mr. Luber, Mr. Smith, Mr. Squires, Mr. Gedge, thanks to all of you for participating today.

And let's see, I just have a—I think before—the witnesses will have and the members will have time over the next several days—I don't know exactly how many.

How many days do they have to—

STAFF. Five.

Mr. RASKIN. Members have five days to include any additional material or to amend their statements in any way.

Mr. RASKIN. And, with that, the hearing is closed.

Thank you so much.

[Whereupon, at 11:37 a.m., the subcommittee was adjourned.]

