

This testimony is offered on behalf of Ryan Talbott with Allegheny Defense Project. When FERC approves a pipeline project, the next step in the administrative process is the filing of a request for rehearing. If you want to challenge FERC's decision in court, you must first seek rehearing in front of FERC. Under the Natural Gas Act, when FERC receives a request for rehearing, it has 30 days to "grant or deny" that request. 15 USC 717r(a). If FERC fails to "grant or deny" the request within 30 days, the request is supposed to be considered denied, allowing the aggrieved party to petition the Court of Appeals for relief.

FERC, however, has developed an Orwellian tactic in which it issues an order that purportedly "grants rehearing" but only for the purposes of "further consideration" of the request for rehearing. Pursuant to these orders, commonly referred to as "tolling orders," FERC grants itself an indefinite extension of time to consider requests for rehearing. Unfortunately, several courts of appeals have said as long as a tolling order remains in effect, aggrieved parties cannot seek judicial relief.

This puts landowners and environmental groups at a major disadvantage because FERC often allows pipeline companies to proceed with construction while the agency allegedly "further considers" matters raised on rehearing. For example, out of 21 natural gas certificate proceedings approved since 2009, the average response time to a request for rehearing was 240 days, well beyond the 30-day time limit in the Natural Gas Act. In many of these proceedings, by the time FERC lifted the tolling order and formally denied rehearing, thus permitting aggrieved parties to seek judicial review, large portions of the project were already constructed. In other words, FERC's tolling orders are not used to allow the agency to "further consider" matters raised in requests for rehearing; rather, these tolling orders are used to deny the public meaningful judicial review of FERC's decisions.

These tolling orders are contrary to the plain language of the Natural Gas Act. If Congress wanted to provide FERC with the power to extend the time period for considering requests for rehearing, it would have done so. Congress, however, said FERC has 30 days to "grant or deny" rehearing; otherwise, an aggrieved party can seek relief in court. FERC cannot interpret the Natural Gas Act to grant unto itself powers that Congress did not provide.

The court decisions that have upheld these tolling orders in the past are decades old and must be revisited. Moreover, these decisions involved other aspects of FERC's jurisdiction in the realm of economic regulation. In those cases, an aggrieved party could be made whole again by a refund. That is not the case in Natural Gas Act proceedings where property rights and environmental protections are at issue. In such cases, when FERC issues a tolling order and allows pipeline construction to move forward, it should be considered a denial of rehearing, and aggrieved parties should be able to seek immediate relief in the court of appeals.