



FERC Podcast Transcript

February 25, 2020 (Recorded February 12, 2020)

FERC Looks to Speed Landowner Rehearing Process

Mary O’Driscoll: I’m Mary O’Driscoll. FERC Chairman Neil Chatterjee recently announced a reorganization plan to help improve the natural gas pipeline rehearing process for affected landowners. This builds on a broader plan he announced in September 2019 to help ensure that the Commission’s Natural Gas Act siting process, and indeed the entire Commission, is transparent and accessible to the public. Our guests today will break down what this all means: Holly Cafer, associate general counsel who will be leading a new Rehearings section in the FERC Office of General Counsel, and Joshua Hurwitz, head of the Dispute Resolution Service within OGC, which is working to make it easier for landowners to interact with the Commission. Welcome to Open Access, Holly and Josh.

Holly Cafer: Thanks, Mary. Glad to be here.

Joshua Hurwitz: Yeah, Mary. We really appreciate being a part of this.

Mary O’Driscoll: Holly, I’ll go to you first. The Chairman announced a reorganization of the Office of General Counsel to address the concern that delays in the rehearing process can, in turn, delay the ability of affected landowners to challenge the Commission’s pipeline decisions in court. Why did FERC do this reorganization?

Holly Cafer: First, I want to note that the Chairman has been outspoken about his sensitivity to landowner rights and due process. Across the Commission, we take very seriously our responsibility to ensure that all parties, and particularly landowners, have their concerns addressed in a timely manner. Landowners in the path of a pipeline have unique interests, and the Commission understands that protracted administrative delay hampers the ability of landowners to have their concerns heard in court.

On that note, it might help to step back and explain the rehearing process. As I mentioned, administrative delay can slow down the ability of parties to bring their concerns to court. That’s a function of the statutes under which the Commission operates. Under both the Natural Gas Act and the Federal Power Act, rehearing is a statutory prerequisite to judicial review of Commission orders. At the same time, and under both the statutes, the Commission’s orders are final and go into effect when they are issued. So, that’s where the need for timeliness comes in.

Mary O’Driscoll: I get it. So, Landowners and others need FERC to act on rehearing before they get to court. So, can you tell us about the reorganization itself?

Holly Cafer: Sure. As you noted, in September 2019, the Chairman announced that FERC would work to act on landowner-related rehearing requests of section 7 certificate orders within 30 days, reducing the use of tolling orders in those cases. Last week, the Chairman announced a new

initiative aimed at building on and enhancing this process: The creation of a new Rehearing section within FERC's Office of the General Counsel. It will have two separate groups. First, Landowner Rehearings, which will give priority to landowner rehearing requests of Natural Gas Act pipeline certificate orders; and second, General Rehearings. We are excited and grateful to have the Chairman's and the Commission's support in getting this new section started, and we expect this new structure will position the Commission well to ensure that landowners are able to get to court as quickly as possible.

Mary O'Driscoll: How many lawyers will you have in this section?

Holly Cafer: Going back to the Chairman's September 2019 announcement of the expedited process for landowner rehearings, OGC designated three attorneys with substantial Natural Gas Act expertise to be "at the ready" for those cases. With the reorganization, we are both formalizing this structure and doubling the size of the dedicated group. As the Chairman noted in his announcement last week, this group will have landowner rehearings as their first priority and will work on other rehearing matters only as time permits.

Mary O'Driscoll: Will this mean adding more lawyers to your group?

Holly Cafer: Yes. We are already fielding interest from attorneys within the Commission, and, if necessary, we will solicit interest from attorneys outside the Commission. And I should note, the Commission relies on multi-disciplinary teams to prepare orders addressing requests for rehearing of section 7 certificates. So, the new Rehearing section will continue to work collaboratively with our colleagues across the Office of General Counsel and the Office of Energy Projects.

Mary O'Driscoll: OK, following the reorganization, how quickly do you expect to get landowner-related rehearing orders out?

Holly Cafer: Since the Chairman's September announcement, the aim has been – and of course continues to be – to issue landowner-related rehearing orders within 30 days. At the same time, the very purpose of rehearing is to allow the Commission the opportunity to carefully and thoughtfully consider the often-complex matters of law and policy that can arise on rehearing. So, we are always balancing the importance of timely decisionmaking, with our responsibility to engage in reasoned decisionmaking. In other words, to thoroughly consider the parties' arguments on rehearing. And we expect that this reorganization will improve both sides of that equation.

Mary O'Driscoll: So, what does this mean for non-landowner rehearings?

Holly Cafer: As the Commission noted in a recent brief to the D.C. Circuit, this reorganization likely won't eliminate all concerns about all delayed judicial review from all parties, but this should improve the rehearing process as a whole. The Commission has chosen to allocate its resources to ensure the speediest review for those litigants placed in the most vulnerable position by Commission decisions. With the experience we've gained in implementing this expedited process since September, we believe that the reorganization and additional staffing will enhance the Commission's ability to accomplish the goal of getting landowner-related rehearing orders out within 30 days.

Mary O’Driscoll: Thanks so much, Holly. Now, this is all part of how FERC is working to improve how landowners and the public at large interact with the Commission. Josh, you lead the Dispute Resolution Service within the General Counsel’s office. I want to get to the issue of the Landowner Helpline, but first, can you explain what it is you do in Dispute Resolution?

Joshua Hurwitz: Sure Mary. The Dispute Resolution Service is the independent section that specializes in Alternative Dispute Resolution. We try and find a negotiated solution to problems.

Mary O’Driscoll: OK, so how do you do that?

Joshua Hurwitz: We provide services such as mediation and conciliation to parties engaged in disputes that fall under the Commission’s jurisdiction. Our mission is to provide and promote collaborative conflict resolution, to prevent and resolve energy and environmental conflicts.

As a section we have two main alternative dispute resolution functions. First, we mediate complex disputes in gas, electric, hydro and oil – such as rate cases, interconnection agreements and hydro licensing. Second, we operate the Commission’s Landowner Helpline.

We also support Commission staff and our stakeholders through trainings on conflict prevention, dispute resolution and interpersonal communication skills.

Mary O’Driscoll: OK, so on to the Landowner Helpline. How does that help landowners?

Joshua Hurwitz: DRS staff works with landowners and companies who call or email us to informally resolve disputes by facilitating communication between landowners and natural gas pipeline companies.

We find that by using our negotiation and communication skills to identify interest and miscommunications, we can help settle many landowner concerns. We are also a voice on the other end of the phone who will direct you to the proper resource, information or person to resolve the caller’s challenge.

Mary O’Driscoll: OK, so are you advocates, or do you provide legal assistance, or what?

Joshua Hurwitz: Landowner Helpline staffers are neutral and independent professional mediators. We do not advocate positions, conduct investigations for the Commission or provide legal advice. Our role is to serve as a third-party neutral and help people identify and meet their interests.

We generally ask that landowners attempt to contact the companies about an issue before contacting us. But if a landowner is unable to get in touch with a pipeline company or if they are not satisfied with a pipeline company’s response, they can contact the Landowner Helpline, and we will try to open the lines of communication.

Mary O’Driscoll: OK, so, what kinds of assistance do you provide, precisely?

Joshua Hurwitz: The Landowner Helpline assists landowners with a wide range of concerns from something like getting them a point of contact at a pipeline company to helping negotiate a damage payment for crop loss.

Mary O’Driscoll: OK, so, can you give me a few examples of the types of issues you help people with?

Joshua Hurwitz: Absolutely. We help people with a broad range of issues. But a couple examples would be construction-related concerns and damages; land access issues, for instance, locking gates or notification requests; land restoration issues, revegetation, settling, erosion, drainage concerns, drain tiles; and sometimes noise and vibration issues.

Mary O’Driscoll: OK, so, what would a successful case look like?

Joshua Hurwitz: A successful resolution is when a caller has their concerns addressed. If that is crop issues, restoration issues, fences being left open. Our goal is to have the landowners and company have a good long-term relationship so any future concerns can be easily addressed.

Mary O’Driscoll: OK, so how do landowners find out more about this?

Joshua Hurwitz: There is some additional information on the FERC.gov website – go to the yellow button that says, “Natural Gas Project Landowners and Stakeholders.” Companies are also required to send letters to affected landowners providing our information.

But the best way to find out how we can help for your situation is to give us a call. We have staff answering the phone between 8 am and 5 pm Monday through Friday. If we miss your call, please leave us a message and we’ll get back to you within two business days.

Mary O’Driscoll: All right. Well thanks again Holly and Josh for joining us on Open Access!

Holly Cafer: Thanks, Mary. Glad to be here.

Joshua Hurwitz: Yeah, thank you Mary.

Craig Cano: FERC is an independent regulatory agency that oversees the interstate transmission of electricity, natural gas and oil. FERC reviews proposals to construct and operate interstate natural gas pipelines and liquefied natural gas terminals and oversees the licensing of nonfederal hydropower projects. FERC protects the reliability of the high-voltage interstate transmission system through mandatory reliability standards, and it monitors interstate energy markets to ensure that everyone in those markets is playing by the rules. Unless otherwise noted, the views expressed in these podcasts are personal views and do not necessarily express the views of individual Commissioners or the Commission as a whole. This podcast is a production of the Federal Energy Regulatory Commission’s Office of External Affairs, Leonard Tao, director. We will be updating our posts when we’ve got more news, so be sure to check out our website, www.ferc.gov, and follow us on Facebook, Twitter and LinkedIn to find out when our next podcast airs.