

Consumer Protection at the Federal Energy Regulatory Commission

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Citizens expect US government agencies to protect them from unfair practices in the markets they regulate. This poster evaluates the consumer protection provided by the Federal Energy Regulatory Commission (FERC) and makes policy recommendations to improve it.

FERC was established in 1934 as an independent agency, funded by industry fees. Landowners affected by FERC's decisions and consumer advocates increasingly decry FERC processes and decisions. In recent years, pressure from consumer and other groups has increased. After FERC ignored requests for change and tightened its meeting rules to keep consumers and advocates out, some turned to protests and creative attempts to get attention/action. To date, nothing has changed. Meanwhile, FERC's decisions affect all consumers because all require energy every day.

After fracking was widely deployed to obtain natural gas, proposals for additional natural gas infrastructure proliferated. Many landowners and communities have been affected and are frustrated. This work contains a review of FERC rules and processes to ascertain how consumer protection is provided by FERC. Problems encountered by landowners provide evidence for policy recommendations.

FERC requested comments on its processes and rules in 2018. Since Neil Chatterjee became chair, no action has been taken. Review of comments reveals that industry finds the processes and rules appropriate, only needing to be streamlined for faster decision making. Landowners and consumer and environmental advocates described their frustrations and requested many changes to provide them with basic rights and due process. Chairman Chatterjee intends to take no action.

A few years after FERC was created, Congress allowed it to award entities whose proposals to build natural gas infrastructure are approved the right to use the power of eminent domain to achieve them. Eminent domain is intended for use with projects that serve the public good, not private profit. The courts expanded the concept of eminent domain to include quick take, where energy companies are allowed to take possession of property prior to compensating landowners for it. Coupled with awarding certification conditioned on the company obtaining all necessary permits and licenses, FERC regularly issues tolling orders. These allow companies to incrementally construct infrastructure while forcing landowners seeking to challenge certification to wait for delayed official denial of their petition for reconsideration. By the time FERC finally issues the denial, the infrastructure is complete and in service.

In 1978, Congress directed FERC to create an Office of Public Participation, but it has not done so even though consumer groups have repeatedly requested it. The last formal request by consumer groups was made in 2016. To date, FERC has not responded. However, it routinely approves natural gas infrastructure. In recent years, landowners have become increasingly frustrated with FERC and their lack of rights and due process. Significant policy change is needed to protect rights of consumers. Congressional action is needed. The revolving door between FERC and the industry staff, and complete reliance on industry funding without Congressional involvement while excluding landowners and consumer advocates, indiscriminate use of the right of eminent domain, and other issues need to be addressed.

ACCI members should understand how FERC operates and that its decisions affect the availability, reliability, and price of energy for all consumers. Policy changes will only occur when there is widespread public pressure. Awareness of the situation is the first step.

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