

# **HALT**PennEast

Homeowners Against Land Taking



## **WHAT TO EXPECT AS AN IMPACTED HOMEOWNER AFTER FERC ISSUES THE FINAL EIS**

While considering actions and options regarding eminent domain for your property, it's important to know the dates that will trigger actions by PennEast.

**On April 7, FERC is expected to release of the Final Environmental Impact Statement (EIS).** Although we believe the facts and the law are such that a properly prepared EIS would conclude that the pipeline's significant adverse environmental impacts are such that it should not be allowed to proceed, it is likely that FERC will wrongfully and unlawfully issue a Final EIS that allows the pipeline to proceed, at least conditionally. Once this happens, PennEast will use it to declare victory and put further pressure on homeowners to sell them an easement. However, the release of the Final EIS is a predictable milestone and very far from a victory.

FERC has approved all but one pipeline that have come before it, so there was no expectation that FERC would not issue a favorable Final EIS for the proposed PennEast pipeline. That FERC delayed the release of the Final EIS twice is a harbinger of the problems still facing PennEast.

in fact, there are many more milestones ahead, and if PennEast fails any of them, it could stop the pipeline. These milestones include:

- Challenges to FERC over the Final EIS,
- Challenges to FERC's Certificate of Public Convenience and Necessity, which has not yet been issued,
- Review of PennEast's application and FERC's Final EIS by the Delaware River Basin Commission (DRBC), which has to follow its own independent rules to determine whether it will approve the project, and
- Review of PennEast's application and FERC's Final EIS by the NJ DEP, which has follow NJ's water quality standards, as well as other laws and regulations, to determine whether it will approve the project.

These additional approval processes could go on for well over a year and these independent agencies have the right to deny a project approved by FERC. In addition, if the project continues to be delayed, some investors could pull out of the project, as PSEG has done, threatening the project's economic viability.

HALT and many other environmental and community groups will continue to fight this pipeline because there are multiple ways this pipeline can be stopped. While it is likely that FERC will approve the project, stopping PennEast is a reasonable outcome at the state and regional levels, where local opposition and the environmental risks get greater consideration.

FERC usually issues its order granting a Certificate of Public Convenience and Necessity 30 to 90 days after it issues the Final EIS. This 30-90 day period could extend beyond 90 days, as FERC currently does not have a quorum of commissioners to issue a “conditional” certificate. Until a new commissioner is nominated by President Trump, vetted by the FBI, approved by the US Senate, and then seated, FERC cannot grant a Certificate of Public Convenience and Necessity.

Once FERC approves the project by granting a “conditional” Certificate of Convenience and Necessity, HALT and other people and groups who have intervened have thirty days to file a request for rehearing. Unfortunately, PennEast can file complaints in condemnation (eminent domain proceedings) in court. We expect PennEast to start filing these papers a few days or weeks after FERC grants its conditional approval. The soonest it will be granted is in May, but it could be delayed for months based upon the lack of a FERC quorum, a slow nomination process, and the backlog of cases that need to be decided. PennEast will have a very long list of conditions to meet before they can begin construction. It could take 1 to 2 years to be able to complete the environmental surveys that NJDEP is asking PennEast to complete.

Regardless of the additional milestones PennEast has to meet, PennEast will increase its pressure on homeowners as soon as FERC issues the Final EIS. PennEast will push hard to get people to sell easements and avoid going to court for Eminent Domain hearings. The pressure to sell an easement will be unrelenting, and will escalate after FERC issues its certificate.

The day after the FERC Commissioners conditionally approve the project, PennEast will be able to initiate eminent domain proceedings. The pipeline company will also ask the courts for immediate access to these properties so that it can begin surveying right away.

The choice of what to do for you and your family is a very personal decision. The rest of this paper is reviewing the advantages and disadvantages of possible decisions.

You can decide to sell PE an easement at any time, either before or after FERC’s actions trigger Eminent Domain.

**If you decide to sell an easement to PennEast:**

**ADVANTAGES:** The company may offer you more money in order to avoid going through eminent domain, and in some cases, you may be able to negotiate better terms, such as where the pipeline will go on your property. In addition, PennEast will stop pressuring you.

**DISADVANTAGES:** Once you sign an easement agreement, PennEast will have rights to that piece of property that are superior to your rights. They can come on your land

whenever they want, and they can sell the easement to another company without telling you, even if the PennEast pipeline project is not approved. Every easement PennEast buys will be used to leverage other landowners, as it makes the pipeline seem like a done deal. Any easement you grant to PennEast is a permanent encumbrance on the deed to your property, and it may diminish your ability to sell your land, or devalue it.

**You do not have to sign an easement agreement, and can continue to** refuse every offer to sell your easement. Eventually PennEast will take you to court to acquire your land through eminent domain. Even then, you still have choices, as you can:

- Choose to do absolutely nothing and PennEast and the courts will decide what your land is worth and eventually send you a check,
- Choose to represent yourself in court
- Choose to hire a lawyer to help you through the eminent domain proceedings. Some homeowners will be hiring the same ED lawyer in order to reduce their attorney fees.

**If you decide not to sell:**

ADVANTAGES: You will further delay the project and possibly get the easement removed if the PennEast project is not approved. Another benefit of having your land taken through eminent domain is that the easement is only for this specific project. If they want to build more pipelines, they have to pay you again. Also, by going through eminent domain, you make a strong statement to FERC, the community, your elected officials, and employees at state and regional agencies that you are determined to fight the pipeline, and are not willing to give up.

DISADVANTAGES: Depending upon your individual circumstances, you might not get as good a price for the easement. However, if you have grounds for severance damages, you could get more money than PennEast is offering.

HALT's position is to fight the pipeline, which puts us in the group that will go through eminent domain. HALT realizes this is a personal decision and the purpose of this paper is to provide a context for each homeowner to make that decision.