

# Blue Ridge Environmental Defense League

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## JUST SAY **NO** to NEGOTIATING PIPELINE EASEMENTS

Your ability to refuse to negotiate and require the energy companies to use eminent domain is one of the most powerful statements you can make to protect your land. It gives you the most influence afforded to you by the Federal Energy Regulatory Commission (FERC). The FERC requires the energy companies to prove that their pipelines are in the public's best interest. But they do NOT have the right of eminent domain until they have been issued a Certificate of Public Convenience and Necessity. Carolyn Elefant,



an expert lawyer who focuses primarily on FERC energy practice and policy, states: “To condemn property, a company must show: (1) that it holds a certificate of public convenience and necessity from FERC authorizing the project; (2) the land to be taken is necessary for the project and (3) the company has been unable to acquire the property through negotiation.”<sup>1</sup> When a landowner negotiates an easement, it makes it easier for the energy companies to acquire FERC approval. Withholding your permission delays any negotiations.

Recently, Pennsylvania’s Department of Environmental Protection told PennEast that it could not apply for permits without more geologic information along the pipeline's route. Information was lacking because so few landowners had allowed access to their property.<sup>2</sup> FERC will have no choice but to respond when the majority of landowners just say **NO**. You can send a letter to FERC telling them you will not negotiate an easement on your property, which will require the energy companies to use eminent domain to take your land. This action, when landowners stand in solidarity, will force FERC to raise the bar for the energy companies, standing by its policy to consider the economic impact on private property owners, as well as the environmental impact.



**DO NOT** negotiate an easement before the pipeline company has received the Certificate of Public Convenience and Necessity from FERC. The companies will try to get you to grant a perpetual easement, also known as a right-of-way. “Perpetual” means that there is no end date; the easement/right-of-way is granted forever. You are not required to grant them those easements. **KNOW YOUR RIGHTS.**

**REMEMBER:** A governmental or private entity may not take private property through the use of eminent domain if the taking confers a private benefit on a particular private party through the use of the property.<sup>3</sup> Stand up for your rights. You are not alone. Many other landowners stand in solidarity with you.

<sup>1</sup> <http://lawofficesofcarolynelefant.com/wp-content/uploads/2010/06/FINALTAGguide.pdf>

<sup>2</sup> Huffington Post article, Aug 17, 2015 [http://www.huffingtonpost.com/wild-river-review/beleaguered-new-jersey-co\\_b\\_7984424.html](http://www.huffingtonpost.com/wild-river-review/beleaguered-new-jersey-co_b_7984424.html)

<sup>3</sup> [http://www.southernlawjournal.com/2013\\_2/SLJ\\_Fall%202013\\_Chambers%20et%20al.pdf](http://www.southernlawjournal.com/2013_2/SLJ_Fall%202013_Chambers%20et%20al.pdf)

The Blue Ridge Environmental Defense League (BREDL) is a 31-year old community-based, non-profit environmental organization with chapters in seven states. Our founding principles are earth stewardship, environmental democracy, social justice, and community empowerment. Organize your community with help from BREDL!