Growing Role of Natural Gas:
Current Issues in Federal Regulation of Pipeline Projects

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Overview

- Natural gas supported by vast pipeline network
- Rise of natural gas
- FERC and the Natural Gas Act
- Challenges to building new infrastructure
Natural Gas Supply Chain
U.S. Natural Gas Pipeline Network

Legend
- Interstate Pipelines
- Intrastate Pipelines

Source: Energy Information Administration, Office of Oil & Gas, Natural Gas Division, Gas Transportation Information System
Natural Gas: Why Now?

- Over time, energy sector shifting away from coal
  - Environmental regulations
  - Low natural gas prices

- Renewables cannot entirely replace demand for fossil fuel
  - Reliability concerns
  - Generation locations vs consumption locations
  - Questions regarding how to value dispatch ability
  - Changes in peak usage timings

- Natural gas will continue to be a significant player in the U.S. energy portfolio
  - With or without the Clean Power Plan, even with an increase in renewables and regulation of methane, natural gas will continue to dominate. There will be a need for more infrastructure for natural gas-fired generation.
Federal Energy Regulatory Commission

- 5 Commissioners
  - Appointed by President; confirmed by Senate
  - 5-year staggered terms
  - No more than 3 from the President’s party
Natural Gas Act (1938)
15 U.S.C. §§ 717-717z

Establishes federal regulation of:

- Transportation (including storage) and sale for resale of natural gas in interstate commerce
- Construction, extension, acquisition, and operation of facilities
- Natural gas companies
- Facilities for import and export
- LNG terminals (in certain instances)
Natural Gas Act Section 7
15 U.S.C. § 717f

- No abandonment unless permitted by “present or future public convenience or necessity” – § 7(b)
- Certificate required to construct, acquire, extend, or operate an interstate pipeline – § 7(c)
- FERC issues certificate when required by the “present or future public convenience and necessity” – § 7(e)
- FERC may add reasonable conditions to certificates – § 7(e)
- Certificate holder gains right of eminent domain – § 7(h)
Role of FERC in Interstate Pipeline Construction

- Reviews applications and issues certificates of public convenience and necessity
- Conducts the NEPA review of proposed projects
  - FERC is lead; other agencies may cooperate with FERC during NEPA review
  - Must comply with Endangered Species Act, National Historic Properties Act, Migratory Bird Treaty Act, Clean Air Act, Clean Water Act, Coastal Zone Management Act
- Issues certificates with conditions to protect environment
- Oversees construction to ensure compliance with certificate conditions
Certificate Policy Statement


- The Certificate Policy Statement is FERC’s guideline for determining whether new construction project is “required by the present or future public convenience and necessity.”

- Threshold requirement is that new projects must not rely on subsidies from existing customers.

- Should minimize adverse impacts on:
  - Existing customers
  - Other pipelines and their captive customers
  - Landowners, communities, and environment

- Benefits must outweigh adverse effects – “essentially an economic test”
Other Environmental Permitting Statutes

- Clean Air Act, 42 U.S.C. §§ 7401 et seq.
- Clean Water Act, 33 U.S.C. §§ 1341, 1342, 1344
  - State 401 permit for discharge into “navigable waters”
  - Army Corps of Engineers CWA 404 permit for dredge and fill
- Coastal Zone Management Act, 16 U.S.C. § 1456(c)(3)(A)
  - Consistency determination from the state
  - Advisory Council on Historic Preservation opportunity to comment
  - FERC to consult with FWS and NOAA Fisheries (formerly NMFS)
Challenges to FERC’s Regulatory Role: Tactics & Disruption

- **Interventions and Protests**
  - Virtual “Swamping” of the FERC process through interventions and protests in major FERC NGA § 7 certificate proceedings.

- **Litigation**
  - Repeated filing of judicial appeals and petitions for stay of NGA § 7 certificate by anti-fossil fuel advocates and landowners.

- **Petition for Rulemaking**
  - Environmental and consumer groups filed petition asking FERC to implement 16 USC § 825q–1 by to establish an Office of Public Participation.

- **Congressional Action**
  - Environmental groups petitioned members of Congress to issue a formal request to GAO to investigate FERC. Members of the New Hampshire Congressional Delegation sent a request to the Inspector General of the Department of Energy.

- **Obstruction and Civil Disobedience**
  - See pictures above.
Legal Challenges to Pipeline Projects

- Direct legal challenges to FERC certificates
  - *Myersville Citizens for a Rural Cmty., Inc. v. FERC*, 783 F.3d 1301 (D.C. Cir. 2015) (opposed compressor station in MD).

- Opposition to FERC NEPA process
  - *Gunpowder Riverkeeper v. FERC*, 807 F.3d 267 (D.C. Cir. 2015) (MD pipeline NEPA claims dismissed).
Legal Challenges to Pipeline Projects

- **Procedural attacks on FERC**
  - *In re Stop the Pipeline*, No. 15-926 (2d Cir. Apr. 21, 2015) (writ of mandamus denied).

- **State permit challenges**
Legal Challenges to Pipeline Projects

- **Local opposition**

- **Post-certificate permit issues**
  - See Constitution Pipeline proceeding (CWA 401 certification denial; tree clearing issues).
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