

Pipelines 101

Episode 1: A FERC Overview from Pre-filing through Appeal

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Pipelines 101

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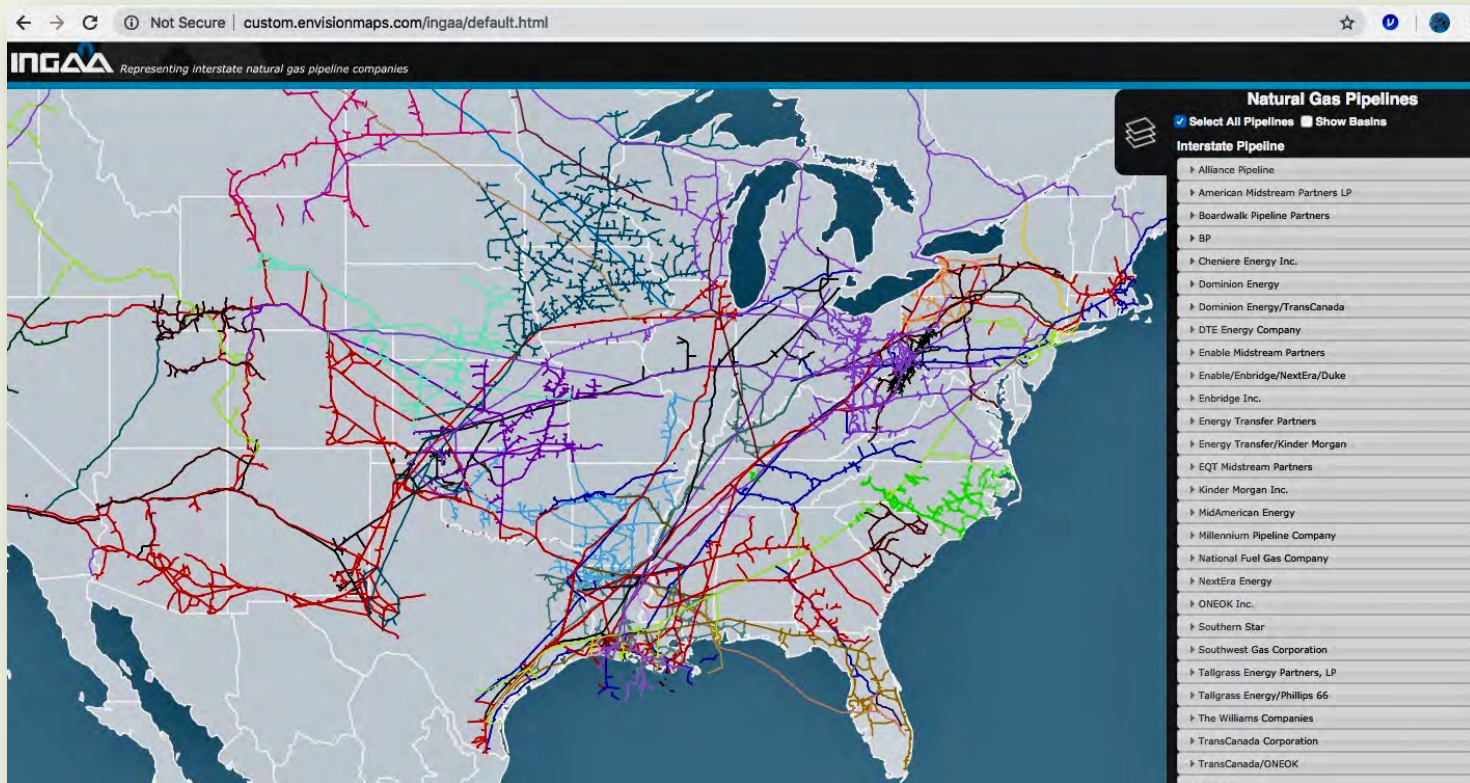
Overview

1. Why are we here?
2. What kind of pipeline are we talking about?
3. FERC: from pre-filing through appeal
4. Navigating the FERC website
5. Questions

❖ Liquids? Natural Gas? Intrastate? Interstate?
What are we talking about here?

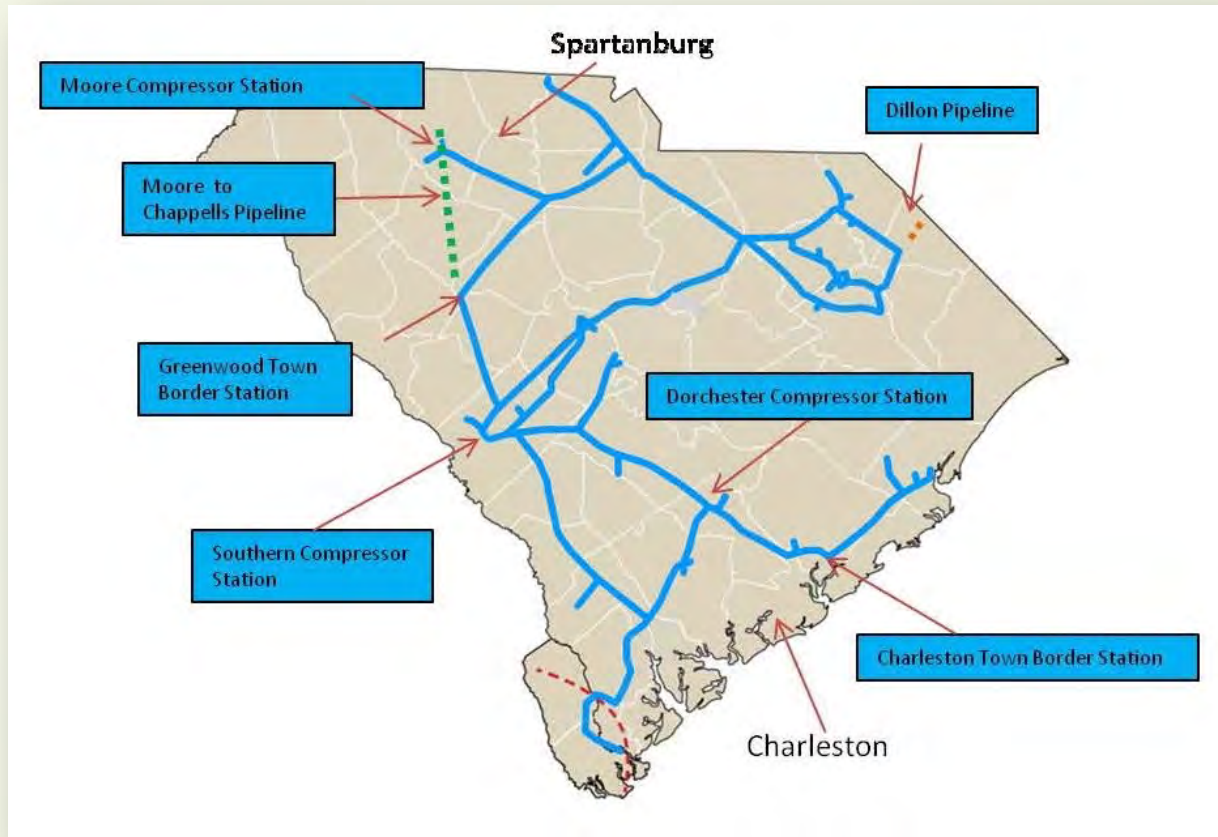
1. Natural Gas
2. Interstate (crosses state lines)
3. Transmission (not distribution)

Interstate Pipelines Map – INGAA Website

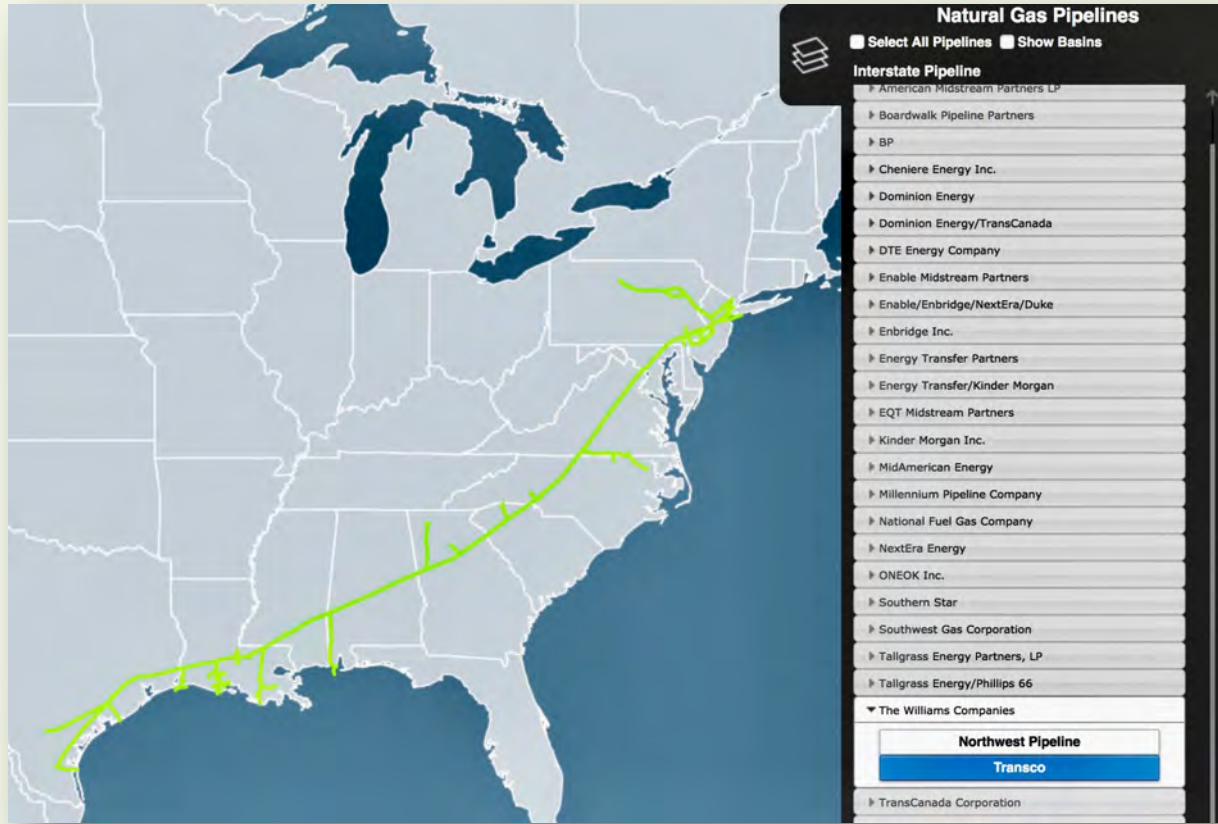


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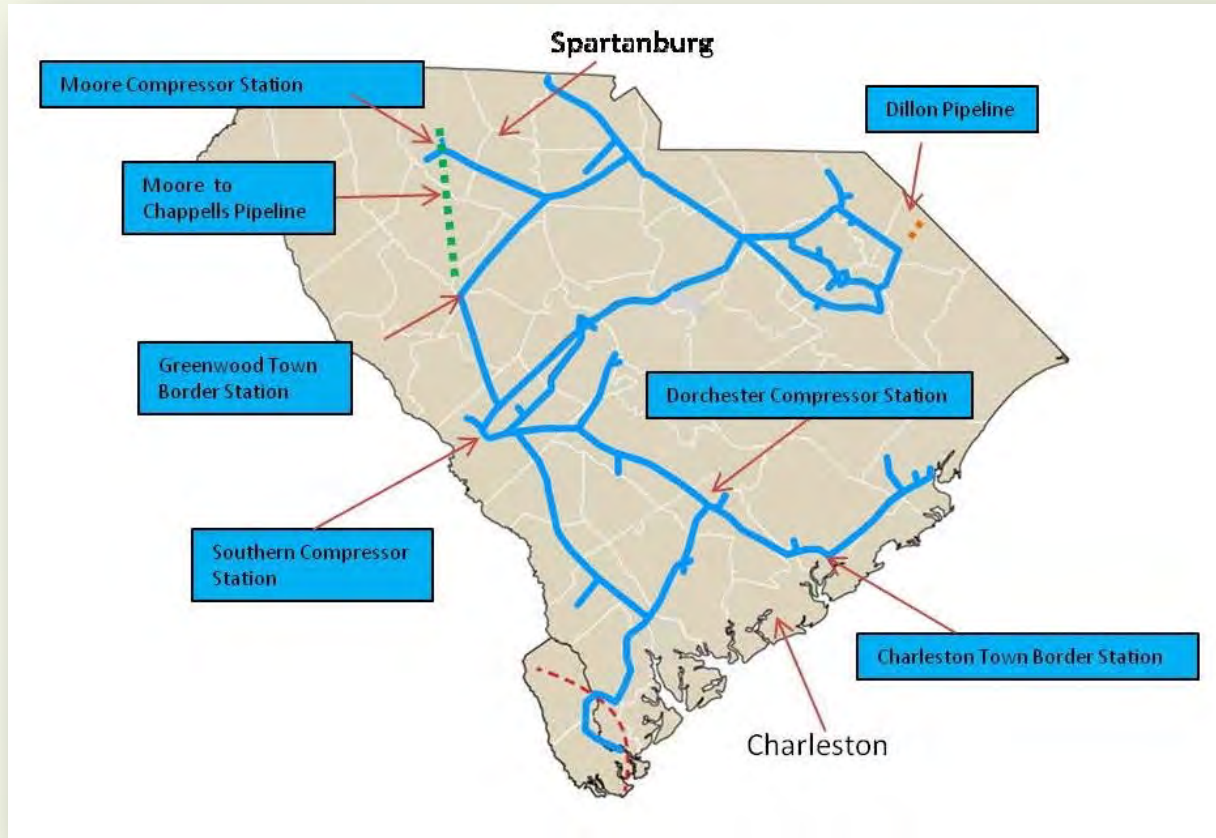
Taking a closer look at one system...



Transco



Dominion Carolinas Gas Transmission System



FERC: From Pre-filing through Appeal

Michael Corley, Esq.

Upstate Coordinator and Attorney
South Carolina Environmental Law Project



FERC: From Pre-filing through Appeal

- Natural Gas Act (NGA) - Must apply to Federal Energy Regulatory Commission (FERC) for natural gas interstate pipeline project.
- NGA History - Passage of NGA was related to concerns over price fixing and monopolistic tendencies. Market regulating focus.
- NGA Preemption – NGA preempts state law on energy, property, and environment. Broad and powerful law.
NGA does not preempt other federal environmental laws, though NGA pipelines often receive favorable treatment under those laws.

FERC Permitting Process Phases:

- Pre-filing – voluntary process for early stakeholder coordination and problem avoidance.
- Application for Certificate of Public Convenience and Necessity – required approval from the FERC Commission under Section 7(c) of the NGA.
- Post-decision processes – review of certificate decision.

Pre-filing Process:

- Stakeholder notification –Pipeline applicant must notify federal and state permitting agencies, as well as affected landowners..
- Information exchange with federal permitting agencies.
- “Open House,” for company to share information with the public.
- Commencement of NEPA Scoping, including FERC “scoping meetings.”

NEPA Overview

- Triggering event – “major federal action significantly affecting the quality of the human environment.”
- Environmental Assessment (EA) vs. Environmental Impact Statement.
- Procedural, not substantive.
- Opportunities for public input/challenge:
 - Scoping (notice of intent, meetings), EA/Draft EIS comment period.

Pre-filing Outcome:

- Increased quality and reduced problems for pipeline proposal.
Streamlined certification process.
- Preferred route selection.
- “Scoped” project, NEPA decision document in progress.
- No intervention.

Application for Certificate – 7(c)

- Certificate of Public Convenience and Necessity to *Commission*.
- Application contents:
 - construction plans/schedule
 - preferred route and route alternatives
 - environmental report and mitigation for alternatives
 - info on permits required from other agencies
- Federal Register and affected landowner notice – Intervention.

Intervention:

- Limitations period – Should file for intervention within **21 days** of FERC’s notice of application, but “out-of-time” motions regularly granted.
- Document receipt and filing – Intervenors receive electronic notice of all filings in the matter.
- Increased consideration – As a party of record, intervenors may file briefs and participate in proceedings. Public comments only have to be read.
- Appeal rights – Only an intervenor can further challenge FERC certificate.

Standard for Certification – 7(e)

- Public Interest – public benefits outweigh adverse impacts.
- Driven by market considerations.
 - Impact on pipeline competition.
 - Impact on existing customers – viability without subsidization.
 - Demonstrated demand through long-term customer commitments.
 - eliminating bottlenecks, accessing new supplies, lowering costs, improving the grid, providing competitive alternatives.
- Environment and Eminent Domain.

Environmental Limitations on Pipeline:

- EA or EIS – Must be issued before Certification. Informed by environmental report.
 - Necessity of considering greenhouse gases?
- Clean Water Act 404/401 – discharge of fill into regulated waters.
 - Nationwide permit 12 and mitigation...
 - Can state 401 stop pipeline with valid FERC Certification?
- Endangered Species Act – Section 9 and Section 7.
- SHPA, CZMA, Rivers and Harbors.

Property Limitations on Pipeline:

- Eminent Domain – The right of a government or its agent to take private property, with payment of just compensation.
A pipeline with a commission-issued certificate has the right to exercise eminent domain to acquire the land necessary to construct and operate a pipeline when it can't reach a voluntary agreement with the landowner.
- What can you do? Not much. State and local law preempted.
 - Fight over value, informally and formally.
 - Use negotiation leverage for minor path modifications.
 - Participate early and intervene.

When FERC Certification is Issued:

- Decision document – Final pipeline route with terms and conditions, as well as any construction or environmental mitigation measures required for the project.
- Reconsideration – Intervenors have 30 days to request reconsideration.
 - Reconsideration is required step for judicial challenge to certificate.
 - FERC decision not final until reconsideration is resolved.
- Judicial appeal - Legal challenge must be brought in the US Circuit Court of Appeals. U.S. District Courts have no jurisdiction.

Navigating the FERC website – Homepage to eLibrary



The screenshot shows the FERC website homepage. At the top, the URL is <https://www.ferc.gov>. The navigation bar includes links for eLIBRARY, eTARIFF VIEWER, STUDENTS CORNER, SITEMAP, and HOME. The FERC logo and the text "Federal Energy Regulatory Commission" are prominently displayed. A search bar is located to the right of the logo. Below the navigation bar, there are several sections: a left sidebar with a menu, a central banner for "Natural Gas" with a "Continue Reading" link, and a bottom section with "What's New" and "FERC PODCASTS & VIDEOS". A blue arrow points to the "eLibrary" link in the left sidebar menu.

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October 1, 2018 - FERC submits [FY 2018–FY 2022 Strategic Plan](#) PDF

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Natural Gas Continue Reading »

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Submittal 20181002-5032	10/02/2018 10/02/2018	PF18-7-000	Request of Galveston Bay LNG, LLC, et. al. under PF18-7, to update address. Availability: Public	Pleading/Motion / Procedural Motion	<input type="checkbox"/> PDF <input type="checkbox"/> FERC Generated PDF	30K 39K
Issuance 20180928-3085	09/28/2018 09/28/2018	PF18-4-000	Memo dated, Sept. 28, 2018 from Amanda Mardiney, OEP re Notes from MVP Southgate Conference Call under PF18-4. Availability: Public	FERC Memo / Internal Transmittal Memo	<input type="checkbox"/> PDF <input type="checkbox"/> FERC Generated PDF	47K 87K
Submittal 20180927-4000	09/25/2018 09/27/2018	PF18-4-000	U.S.Environmental Protection Agency submit comments re the notice of intent to prepare an environmental impact statement for the MVP Southgate Project under PF18-4. Availability: Public	Other Submittal / Government Agency Submittal Comments/Protest / Comment on Filing	<input type="checkbox"/> PDF <input type="checkbox"/> FERC Generated PDF	1328K 1328K
Submittal 20180925-0015	09/17/2018 09/25/2018	PF18-6-000	Summit Permian Transmission, LLC proposes to build, operate, and maintain the Double E Pipeline Project under PF18-6. Availability: Public	Applicant Correspondence / General Correspondence	<input type="checkbox"/> Image <input type="checkbox"/> FERC Generated PDF	32K 41K
Submittal 20180925-5062	09/25/2018 09/25/2018	PF18-5-000	Comment of Seminole Tribe of Florida in Docket(s)/Project(s) PF18-5-000 Submission Date: 9/25/2018 Availability: Public	Comments/Protest / Comment on Filing	<input type="checkbox"/> Text <input type="checkbox"/> FERC Generated PDF	9K 8K
Submittal 20180924-0007	09/18/2018 09/24/2018	CP16-10-000 PF18-4-000	Comments of the Rainey Family Trust re the Mountain Valley Pipeline and Extension Project under PF18-4, et al. Availability: Public	Comments/Protest / Comment on Filing	<input type="checkbox"/> Image <input type="checkbox"/> FERC Generated PDF	29K 35K
Submittal 20180924-0017	09/13/2018 09/24/2018	PF18-5-000	Draft Main Lateral 3 Discharge Notes of Assessment for the Turbine - Discharge Draft Discharge Report under P-5 Availability: Public	Applicant Correspondence / General Correspondence	<input type="checkbox"/> Image <input type="checkbox"/> FERC Generated PDF	38K 45K
Issuance	09/24/2018	PF18-4-000	Letter to Mountain Valley Pipeline, LLC re Comments on Draft Resource Reports 4, 6, 7, 11, and 12 of the MVP Southgate Project under PF18-4. Availability: Public	FERC Correspondence With	<input type="checkbox"/> PDF	153K

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❖ Questions??

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www.upstateforever.org

Thank you!

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