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)
Taking a closer look at one system...
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
eLibrary to General Search
How to search for all pre-filed dockets in one year

Pipelines Dockets:
PF=Pre-filed
CP=Filed
What the results look like

<table>
<thead>
<tr>
<th>Category/ Accession</th>
<th>Doc Date/ Final Date</th>
<th>Docket/ Number</th>
<th>Description</th>
</tr>
</thead>
</table>

CEII = Critical Energy Infrastructure Information (Confidential)
Questions??

Register for Episodes 2, 3 and 4 at www.upstateforever.org
Thank you!

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