

**INTERSTATE PIPELINE FORUM
FOR LOCAL OFFICIALS**



**Presented by:
Rebecca F. Zachas, Esq.**



AN INTERSTATE PIPELINE IN YOUR TOWN?

- Federal Law applies over interstate pipelines
 - NATURAL GAS ACT OF 1938, 15 U.S.C. §1717(c): FERC authority to authorize construction or extension of interstate pipeline projects
 - Certificates of "public convenience and necessity"
 - Eminent domain once certificate is granted
 - Local regulations preempted
- Local officials play an important role (application process, construction and maintenance)



CURRENT EXAMPLE: NORTHEAST ENERGY DIRECT

- Northeast Energy Direct ("NED") Project proposed by Tennessee Gas Pipeline Company ("TGP"), a subsidiary of Kinder Morgan Energy Partners, L.P.
- High-pressure, 36-inch pipeline with two sections of proposed extension:
 - from Wright, New York to Dracut, Massachusetts
 - from Franklin, Pennsylvania to Wright, New York
- Estimated cost of \$2.75 billion to \$3.75 billion
- Project Status
 - FERC Pre-filing filed September 15, 2014
 - FERC listed approval for pre-filing on October 2, 2014
 - Route change (through NH) filed December 8, 2014
 - Draft EIS by pipeline on March 13, 2015
 - Second Draft EIS filing anticipated in June 2015
 - Estimated FERC Application filing (including final EIS) September 2015
 - Proposed Construction Start Date: January, 2017
 - Estimated Placed in Service Date: November 2019



USEFUL ACRONYMS IN THE PIPELINE PROCESS

- EA = Environmental Assessment
- EIS = Environmental Impact Statement
- ER = Environmental Report
- ESP = Endangered Species Act of 1973
- FERC = Federal Energy Regulatory Commission
- NEPA = National Environmental Policy Act of 1969
- NGA = Natural Gas Act
- NOI = Notice of Intent



PHASES AND TIMING OF PROJECT REVIEW

- Project development by pipeline
- FERC Pre-Filing
 - FERC staff works with applicant
 - Timeframe: minimum 6 months
- FERC Application Review
 - No statutory time limits for review
 - Once an application is filed, the average time for FERC to issue an order is approximately 12 months
 - Complex, controversial projects may take additional time
- Post-FERC Order (rehearing; compliance with conditions) and Judicial Review



TOWN PARTICIPATION

- Pre-Filing Process:
 - Contact the project sponsor and/or FERC with questions and concerns
 - Write comments on environmental impact concerns
 - Attend pipeline-led open houses (route, identify town issues)
- Application Process:
 - File intervention (on FERC's service list to receive all filings in docket)
 - File comments, impact studies, expert evidence (paper hearings)
 - Attend FERC-led scoping meetings
 - Request conditions in FERC Order
 - Rehearing/post-certification judicial review
- Other:
 - Participate in permitting proceedings
 - Community Benefit Agreements

PREEMPTION: OCCUPYING THE FIELD

- FERC has broad authority to grant a certificate for pipelines under NGA
 - Federal courts have found: NGA and the accompanying federal regulations "occupy the field" with respect to siting, construction, or operation of natural gas facilities
 - Duplicative state and local permitting processes – such as siting or zoning – are preempted by federal law
- What is not preempted?
 - Federally-required state certification programs
 - Section 401 Water Quality Certificate/Federal Water Pollution Control Act
 - the Coastal Zone Management Act of 1972
 - the Clean Air Act

PREEMPTION: COOPERATION

- Despite preemption, FERC encourages cooperation between pipelines and local authorities
 - Where state or local agencies require environmental permits or impose conditions to protect local resources (e.g., state endangered species), FERC frequently makes compliance with these requirements a condition of the certificate
 - State agencies and localities may participate in the process
 - EFSB intervention to "preserve the rights of interested citizens."
- State and local actions:
 - must be consistent with the conditions of this certificate
 - may not prohibit or unreasonably delay the construction and operation of the pipeline facilities

OTHER PERMITS/AUTHORIZATIONS

- Other state and local permits and authorizations may include:
 - road opening permit
 - erosion and sedimentation control
 - wetlands crossings
 - Article 97 authorization from the Massachusetts legislature to obtain easement rights on conservation lands owned by the state or a town or city
 - MEPA filing with FERC
- FERC regulations require certificate-related final decisions from other agencies no later than 90 days after FERC issues its final environmental document



FERC PROCESS: PRE-FILING

- Voluntary process for pipelines
- File for approval to enter pre-filing process
- Pipeline conducts informational open houses
- Work collaboratively with FERC staff
- Identify project issues
- Determine scope of environmental review (EA/EIS)



FERC REVIEW: APPLICATION

- Non-Environmental Review
 - Financially viable project
 - Market Support/Need
 - Routes/Impacts on landowners and communities
 - Tariff - rates, terms & conditions of service
- Environmental Review under NEPA
 - Conducted by FERC (Energy Policy Act of 2005)
 - Level of Impacts:
 - significant - Environmental Impact Statement ("EIS")
 - less than significant - Environmental Assessment ("EA")
 - finding of no significant impact ("FONSI")



FERC APPLICATION: STANDARD OF REVIEW

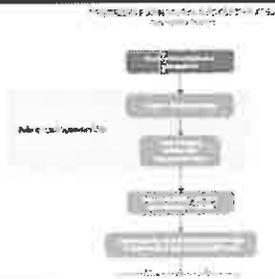
Project must be found to be in the "public convenience and necessity."

- **Threshold question:** Is the project financially prepared to stand on its own without subsidies from existing customers?
- **Balancing Test:** Do overall public benefits outweigh adverse impacts?
 - Public Benefits are case specific: meeting unmet demand, eliminating bottlenecks, access to new supplies, lower costs to consumers, competitive alternatives, electric reliability, addressing clean air objectives
 - Is there need? (is the pipeline subscribed? Overbuilding?)
 - Adverse Impacts (eliminated or mitigated?):
 - on existing customers of the pipeline (rate increase, service degradation)
 - on existing pipelines in the market and their captive customers (loss of market share, left with unsubscribed capacity)
 - on landowners and communities affected by the route of the new pipeline (acquire necessary ROW by negotiation, eminent domain, environmental)

NEPA Review

- FERC must integrate environmental values into its decision-making
- Consider potential impacts of pipeline and reasonable alternatives
- FERC seeks comments from other agencies with jurisdiction over the proposed project, the applicant and the public
- Review Includes:
 - Ecology – fish, wildlife, vegetation
 - Water Resources
 - Cultural Resources – historic preservation
 - Land use – recreation, aesthetics
 - Soils and geology
 - Air and noise
 - Socioeconomic impacts
 - Alternatives
 - Cumulative impact of pipeline projects

FERC APPLICATION: OVERVIEW



FERC APPLICATION OVERVIEW (CONTINUED)



FERC ORDER: CONDITIONS

- NGA Section 7(e): statutory authority to place conditions on its Order
- Public may request conditions

EMINENT DOMAIN

- NGA Section 7(h)
- Pipeline may use the eminent domain process after FERC's order issuing its certification
- Used when pipeline cannot acquire land by contract or agree to compensation with landowner
- FERC: eminent domain only as a last resort

COMMUNITY BENEFITS AGREEMENTS

- Timing: leverage during FERC process
- Provisions:
 - Construction
 - Environmental Mitigation
 - Compensation
 - Compliance with local regulations/process
 - Private Landowner Protections
 - Economic Considerations
 - Maintenance
- File with FERC to have included in certificate order

STRATEGIC OPTIONS

- Participation (alone, as groups of towns, through BRPC, other)
- Objectives – avoid, minimize and mitigate
- Outreach to Constituents – understanding concerns, potential impacts, possible mitigation
- Communication of concerns, impacts, mitigation to pipeline and FERC
- Resource limitations

NEXT STEPS
