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Getting Gas to the People The Federal Energy Regulatory Commission's Permitting Process for Pipeline Infrastructure

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Natural gas is a gaseous hydrocarbon mixture consisting primarily of methane. Unlike oil, which comes out of the ground in a liquid form that can be easily transported by truck, rail or pipeline, natural gas (in its gaseous form)¹ can only be transported by pipeline. Therefore, getting natural gas from the wellhead to the ultimate consumer requires a great deal of infrastructure. The recent surge in natural gas production from shale gas formations has resulted in a boom in pipeline construction. That is because many shale gas formations are located in areas that do not have an established pipeline infrastructure, such as North Dakota, or in areas where the existing pipeline infrastructure does not have sufficient capacity to accommodate the increased production. Where pipeline infrastructure is insufficient or nonexistent, oil well producers may simply burn, or “flare,” gas that is produced with oil. Flaring gas wastes an otherwise valuable resource. This chapter explores the types of infrastructure necessary to transport natural gas to its ultimate destination and describes the regulatory framework applicable to each phase of movement—production,

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gathering, transmission, distribution, and storage. Additionally, the chapter will discuss how concerned members of the public can obtain information about and become involved in the pipeline construction approval process.

OVERVIEW

The natural gas industry is highly regulated, with different aspects regulated by the states and the federal government. The states regulate the production of gas. A producer must obtain a permit from the applicable state agency to drill and operate wells. Once the natural gas comes to the surface, it is moved through a series of pipelines, which are subject to different regulatory regimes. Gas is first transported from the well via small production pipelines. The production pipelines take the gas to larger gathering pipelines. Gathering pipelines gather gas from a number of wells and generally transport the gas to a processing plant where it is processed to pipeline quality and then delivered to a high-pressure transmission pipeline. Processing plants remove liquefiable hydrocarbons (ethane, butane, propane, pentanes, and other heavier hydrocarbons) from the natural gas, and impurities such as water, carbon dioxide, hydrogen sulfide, or nitrogen. The purpose of processing is to make the gas suitable for industrial and residential use and to separate out heavier hydrocarbons that can be sold as separate products. If processing is not required (for example, if the gas is “dry” gas containing few hydrocarbons or impurities), the gathering pipeline may deliver the gas directly to a transmission line or to a local distribution company. The transmission pipeline moves the gas directly to customers (typically industrial customers) or to local distribution companies, which then deliver gas to residential, commercial, and industrial customers for ultimate consumption.

It may be helpful to visualize the pipeline system by comparing it to a road system—which, in a sense, it is. The gas leaves its house (the well) and travels along a driveway (production line) to the street (gathering line). The street feeds into a larger street or highway (transmission line), which takes the gas across the state or across the country to another town. At that point, the gas leaves the highway (transmission line) and enters a smaller road system (local distribution company), which then delivers the gas to its destination: residential, commercial, or industrial consumers. Similar to a road network, there

are quantitatively more smaller production, gathering, and distribution pipelines than there are larger transmission lines.

Regulatory oversight over pipelines is based on the function performed by the particular pipeline. Production lines, gathering lines, transmission lines, and distribution lines are all subject to different regulatory requirements.

■ THE NATURAL GAS ACT OF 1938 ■

Natural gas has been moved by pipeline in the United States since the mid-1800s. In the early days, pipelines were relatively short, delivering natural gas in the vicinity of its production. These pipelines were regulated by local governments, which realized that without regulation, pipelines as “natural monopolies” could exert market power to charge high rates. By the early 1900s, advances in technology enabled the construction of pipelines that could carry natural gas long distances. After a series of U.S. Supreme Court decisions determined that local government regulation of interstate pipelines would violate the commerce clause of the U.S. Constitution, Congress passed the Natural Gas Act, or NGA, in 1938 to provide for federal regulation of interstate pipelines.

Section 1(b) of the NGA sets forth the scope of federal regulation, which applies to (1) the transportation of natural gas in interstate commerce, (2) the sale in interstate commerce of natural gas for resale, (3) natural gas companies engaged in such interstate transportation or sales, and (4) the importation or exportation of natural gas in foreign commerce and to persons engaged in such importation or exportation. Section 1(b) specifically exempts from federal regulation “any other transportation or sale of natural gas or . . . the local distribution of natural gas or . . . the facilities used for such distribution or . . . the production or gathering of natural gas.”²

As a result of the NGA, the federal government regulates interstate transportation of natural gas, while the regulation of production, gathering, intrastate transportation, and local distribution of gas is left to the states. The primary federal agency charged with administration of the NGA is the Federal Energy Regulatory Commission, or FERC, which is an independent agency under the Department of Energy umbrella.³ While it may appear that the jurisdictional boundaries between federal and state regulation are clear cut, in fact they

are not, because the NGA does not define the terms “production,” “gathering,” “transportation,” or “local distribution.”

■ WHAT TYPES OF PIPELINES ARE THERE, AND HOW ARE THEY REGULATED? ■

Production Pipelines

Although the NGA does not define the term “production,” the industry has developed general guidelines for determining what constitutes a production pipeline. These guidelines are set forth in the American Petroleum Institute’s Recommended Practice 80,⁴ or API RP 80. According to API RP 80, production pipelines are generally considered to be those pipelines that relate to the extraction and recovery of natural gas, and may include individual well flowlines, equipment piping, transfer lines between production operation equipment elements and sites, and tie-in lines to connect to other pipelines, such as gathering, transmission, or distribution pipelines.⁵ Production pipelines are not regulated by FERC and are not subject to federal pipeline safety requirements.⁶ Production pipelines are subject to state regulation, but most states impose minimal, if any, regulatory requirements on production pipelines.

Gathering Pipelines

If natural gas crosses a state boundary in its journey from wellhead to consumer (even if this journey takes place on multiple pipelines, some of which may not cross state lines), then federal jurisdiction generally attaches to all of the facilities used for the transportation of such gas and to all of the companies engaged in such transportation. However, natural gas may be gathered across state lines without federal jurisdiction attaching to the gathering facilities, because the FERC has no jurisdiction over the gathering of natural gas under the NGA.⁷ FERC jurisdiction attaches once gathering stops and transportation begins.⁸ Thus, it is important to understand how the distinction is made between gathering and transportation (transmission) pipelines.

Because the terms gathering and transportation are not defined in the NGA, the FERC has developed several legal tests over the years to determine which facilities should be deemed to be non-jurisdictional gathering facilities and which facilities should be considered to be

jurisdictional transmission facilities. The FERC currently relies on the modified “primary function test” to delineate between gathering and transportation.⁹ This test considers six physical and geographic factors, including: (1) the length and diameter of the pipelines, (2) the extension of the facility beyond the central point in the field, (3) the facility’s geographic configuration, (4) the location of compressors and processing plants, (5) the location of the wells along all or part of the facility, and (6) the operating pressure of the pipelines. In addition, the FERC also considers the purpose, location, and operation of the facilities; the general business activity of the owner of the facilities; and whether the jurisdictional determination is consistent with the NGA and the Natural Gas Policy Act. The FERC does not consider any one factor to be determinative and recognizes that all factors do not necessarily apply to all situations. In short, the FERC’s modified primary function test is a subjective test. Until the FERC scrutinizes specific facilities under this test, the actual jurisdictional status of a particular pipeline cannot be definitively determined. As a rule of thumb, it is generally accepted that pipelines upstream of a processing plant are considered to be engaged in the gathering of gas.¹⁰ If there is no processing plant in the field, then it is less predictable where the FERC would place the point of demarcation between the gathering and the transportation functions on a particular pipeline system.

States generally apply light-handed regulation to gas gathering pipelines, unless such pipelines are regulated as gas utilities, in which case service obligations and rate oversight may apply. Construction authorization is generally not required.

Transmission Pipelines

Once gathering has ended, then transportation or local distribution begins. Transmission pipelines generally are high-pressure, large-diameter pipelines that transport natural gas long distances. These pipelines are typically 24 to 42 inches in diameter and may operate at pressures in excess of 1000 pounds per square inch. The large size and high pressure is necessary to move large quantities of natural gas efficiently. Compressor stations placed along the pipeline keep the gas pressurized and moving. The U.S. Energy Information Administration, or EIA, estimates that the United States has more than 300,000 miles of interstate and intrastate transmission pipelines. If a

transmission pipeline crosses a state line, then it is considered to be an interstate pipeline subject to FERC jurisdiction. However, even transmission pipelines that are wholly located in one state may become subject to FERC jurisdiction if they transport gas as part of a chain of movements in interstate commerce from the wellhead to the burner tip. Thus, if gas is produced and gathered in Texas and is delivered to an intrastate pipeline, which then delivers the gas to an interstate pipeline that delivers the gas to a customer in Louisiana, the Texas intrastate pipeline would be considered to be engaged in the interstate transportation of gas and subject to FERC jurisdiction.¹¹

Local Distribution Pipelines

Local distribution pipelines tend to be lower in pressure and smaller in diameter than transmission lines. A local distribution company is the local gas company or municipality that provides gas utility service to end users. A local distribution company typically receives gas from a transmission line and steps down the operating pressure to 200 pounds per square inch or less. By the time natural gas is delivered to a residence, the pressure has been reduced through regulators to less than one-quarter pound per square inch. These pipelines are not regulated by FERC, but are subject to varying degrees of state regulation. PHMSA estimates there are more than two million miles of gas distribution pipelines in the U.S.

Storage Facilities

Natural gas can be stored in underground caverns for later use. Most storage facilities are depleted natural gas or oil fields, but aquifers and salt caverns are also used to store natural gas. Many local distribution companies and other large gas users contract for gas storage to supplement their gas supplies during periods of high demand, such as very cold winter days or very hot summer days.

Natural gas can also be stored as liquefied natural gas (LNG), by cooling it to approximately -260 degrees Fahrenheit. LNG is kept in specially built storage tanks. When it is needed for periods of peak demand, then the LNG is regasified and transported by pipeline where needed. A benefit of LNG storage is that it can be placed close to market areas, and is therefore valuable to ensure reliability of service during periods of peak demand.

FERC considers storage to be a form of transportation. Thus, if a storage facility is used to store gas that has been or will be transported in interstate commerce, then the storage cavern and associated piping is likely to be subject to FERC regulation as an interstate pipeline facility.¹² According to the EIA, there are currently approximately 400 active storage facilities in the continental United States, with about 200 of these subject to FERC regulation. Pennsylvania, West Virginia, and New York have the most FERC-jurisdictional storage facilities, with 40, 26, and 25, respectively. Intrastate storage facilities are subject to varying levels of state regulation.

■ WHAT TYPE OF REGULATORY APPROVAL PROCESS IS REQUIRED TO CONSTRUCT A PIPELINE? ■

The type of regulatory approval process that is required to construct a pipeline depends on the type of pipeline that is being constructed. Production, gathering, intrastate transmission, and local distribution company pipelines are subject to state regulatory requirements. Thus, most of the pipelines that will be constructed to support the shale gas boom will be subject to state regulatory oversight, which varies greatly from state to state. Some state commissions may require pipelines to obtain construction permits, while other state commissions simply require notification of construction, or have no requirements. Some states may regulate the construction of transmission pipelines, but not gathering pipelines. It is not possible to make any generalizations regarding state regulation. The best way to determine what a particular state's requirements are is to visit the state regulatory agency's website. Most state agency websites have links to the governing state statutes and their administrative rules, which would provide more detailed information.

Unlike the states, the federal government has a well-established approval process for construction of interstate natural gas pipelines. Under the NGA, a pipeline must obtain prior approval from the FERC, called a "certificate of public convenience and necessity," before construction may commence.¹³ Helpfully, the FERC issued a Statement of Policy in 1999¹⁴ concerning certification of new interstate pipeline facilities that sets forth the principles applicable to the FERC's review of interstate pipeline certificate applications, including the overarching principle that the public benefits must outweigh

the adverse effects of the proposed construction. The Statement of Policy and the FERC's regulations provide the framework for FERC review of pipeline construction projects.

The FERC Process

The determination of need for new interstate pipeline facilities starts with the pipeline and its existing or potential customers. Gas producers or potential gas users may approach a pipeline to inquire whether the pipeline has sufficient existing capacity to transport additional gas supplies. Because of the lead time necessary to obtain construction permits, these communications typically occur before wells are drilled. Obviously, it does not make sense to drill a well and then not be able to move the gas to market. A pipeline company that receives expressions of interest will conduct an "open season" to determine whether there is a market need for additional pipeline infrastructure. The company publishes details about its proposed construction, and all interested customers have the opportunity to sign up for service. In addition to being required by FERC, the open season is useful for the pipeline's planning purposes, as it enables the pipeline to adjust the scope of its project to meet the expected demand for pipeline capacity. For example, if there is greater demand than the pipeline had anticipated, the company may decide to construct a larger-diameter pipeline. Conversely, if there is less demand than anticipated, the pipeline may be able to meet the expected level of new demand by adding compression or looping the existing line, instead of laying a new line.

Following the open season, the pipeline company selects its proposed pipeline route and meets with landowners along the route. The FERC encourages pipeline companies to secure easements and rights-of-way by negotiation with landowners. The pipeline company may also hold public meetings along the proposed pipeline route to educate the public about the proposed project at this stage.

Pipeline companies have the option to utilize the FERC's "prefiling" procedures for construction of new pipeline facilities (such procedures are mandatory for construction of liquefied natural gas terminal and related pipeline facilities). Under these procedures, the pipeline requests the FERC to open a prefiling docket. The prefiling process provides for a 180-day period for the pipeline, the public, and the FERC to hold scoping meetings and review information from the

pipeline about the proposed pipeline project. As part of the pre-filing process, the pipeline company files draft environmental resource reports, which are available for public review. The pre-filing process is intended to be a vehicle for addressing and resolving public concerns about a proposed pipeline construction project before the formal FERC certificate application is filed. Less controversy and public outcry generally results in a quicker approval process once the formal application is filed.

If the pre-filing process is not used, then after the open season the pipeline company sets about assembling the information necessary to file a certificate application with the FERC. This includes information about the pipeline company, maps, flow diagrams, market data, information on costs and financing, and an environmental report, which is normally prepared by environmental consultants. The environmental report consists of 12 resource reports sufficient to meet the requirements of the National Environmental Policy Act (NEPA). The FERC will conduct an environmental study of the applicant's proposed project and either prepare an Environmental Assessment (EA) for more minor projects, or an Environmental Impact Statement (EIS). Underground storage facility projects and major pipeline construction projects using rights-of-way in which there is no existing natural gas pipeline require the FERC to prepare an EIS.

After the necessary information is assembled, the pipeline company files its application with the FERC. The FERC issues a notice of the application in the Federal Register shortly after the application is filed, usually within a week or two. The Federal Register notice provides information concerning the proposed construction project, identifies a contact person for the applicant, sets forth a projected timetable for the FERC's environmental review, and provides information about how to file comments about the application or become a party to the proceeding.

After the notice is issued, the pipeline is required to publish newspaper notice of the application, notify all affected landowners, towns, communities, and local, state, and federal government agencies involved in the project, and provide such entities copies of the most recent version of the FERC's pamphlet that explains the FERC's certificate process.¹⁵

Next, the FERC conducts public scoping meetings to determine the extent of environmental issues related to the proposed project. The FERC reviews the application, and may request additional

information from the applicant. The FERC may issue an order on the project's nonenvironmental factors, such as rate design, before it completes its environmental review.

The FERC then determines whether it needs to complete an EA or an EIS. When completed, a draft of the EA or EIS is sent to other federal agencies for their review and input. The FERC is the lead permitting agency for pipeline construction projects, but other federal agencies, such as the U.S. Environmental Protection Agency, the U.S. Fish and Wildlife Service, or the Army Corps of Engineers, may also have permitting authority over aspects of the project. Following their review, the FERC will issue a draft EIS or EA for public review and comment. If the FERC issues a draft EIS, the FERC will also hold meetings in the project area to take public comments on the draft. After the close of the public comment period, the FERC will respond to comments received and prepare a final EIS or EA. Following the issuance of the final EA or EIS, the FERC will issue an order either approving or denying the certificate application. Typically, the FERC order approving an application will require the applicant to comply with a number of conditions, including completion of the construction within a set period of time, compliance with all FERC regulations, and compliance with environmental conditions listed in an appendix to the order. The environmental conditions will include a condition that the applicant submit proof to the FERC that it has secured all other required federal permits before construction may commence.

■ HOW CAN THE PUBLIC EFFECTIVELY CONVEY CONCERNS ABOUT PROPOSED PIPELINE PROJECTS? ■

The relatively recent discovery of shale gas and the rush to develop and produce this resource means that a large network of new pipeline infrastructure will be needed to gather and transport the gas to market. Some shale gas is located in traditional gas producing areas, but some is not. Where new pipelines are being proposed in areas where pipelines have never been built before, or at least not recently, the public may be understandably concerned about the potential impacts of having a natural gas pipeline and appurtenant facilities nearby.

The ability of the public to obtain information about proposed pipeline construction projects or to participate in the approval

process depends on the type of pipeline that is being constructed. As previously noted, production, gathering, and intrastate transmission pipelines are subject to state jurisdiction. There may or may not be a formal construction review process for such pipelines. Because production and gathering pipelines tend to be low pressure pipelines, they generally cause less public concern than high-pressure transmission lines. In states where there is no formal review process by the state regulatory commission, there may be no public notice of the construction at all. There may be no opportunity for the public to obtain any information about the project or become involved with issues such as siting. In such cases, only affected landowners would be aware of the proposed construction.

Even when no formal permission from a state regulatory agency is required, a pipeline company may not lay a pipeline without permission to do so from the affected landowners along the entire pipeline route. Usually, a company representative will contact the landowner, describe what the company wants, and make an offer for the use of a strip of land 50 to 100 feet wide, depending on the type of pipe. This right-of-way or easement is a formal property document filed at the courthouse with other real property documents that authorizes the pipeline to use a specified parcel of land for a specified purpose for a specified term of years. The landowner can negotiate with the company over the terms of the right-of-way or easement, including the location, price, and duration. However, if the landowner refuses to negotiate, that does not mean that the pipeline will not be constructed over the landowner's land. In most if not all states, pipelines have the right of eminent domain to acquire property to lay their pipelines. This is accomplished through a state court proceeding, where the burden of proof to establish the value of the right-of-way or easement is likely to be on the landowner.

High-pressure interstate natural gas pipeline facilities tend to cause the most public concern. As previously noted, the FERC has an established process for certificating such pipelines, and the FERC requires that there be public notice of the pipeline's proposal. The pipeline company is required to publish notice of its proposed construction in local newspapers all along the pipeline route. The company is also required to notify all affected landowners, including landowners whose property abuts the proposed right-of-way, is within one-half mile of proposed compressors, or contains a residence within 50 feet of a proposed construction work area. The pipeline company

will also be conducting scoping meetings to discuss the pipeline project, and there must be public notice about the scoping meetings. This means that a member of the public is likely to have actual notice that a new interstate pipeline is being proposed.

■ **WHAT ARE THE OPPORTUNITIES FOR PUBLIC INVOLVEMENT IN A FERC CERTIFICATE PROCEEDING?** ■

There are several ways that members of the public can participate in the certificate process at FERC. It is important to get involved early. If a pipeline company is conducting a scoping meeting in a community, then concerned citizens should attend. This is the first opportunity to obtain information about the project and its potential impacts. Further, the level of citizen participation in the scoping meeting will help the pipeline decide whether it should ask the FERC to open a pre-filing docket. Members of the public can also request the pipeline to initiate the pre-filing process, although it is up to the pipeline whether it decides to do so. During the pre-filing process, the pipeline will be conducting scoping meetings and making its draft environmental reports available to the public. This provides more opportunity for the public to become informed about the project, ask questions, and explore whether modifications to the project might be appropriate. It is always easier to make changes earlier in the process than later.

The next opportunity for public involvement occurs once the formal application is filed. The FERC's Federal Register notice will provide the deadline for filing a motion to intervene, which makes the filer a party to the certificate proceeding. If a person or entity wants to have the ability to file a request for rehearing of the FERC order on the certificate application or to challenge the FERC's order in court, then that person or entity needs to file a motion to intervene and become a party to the proceeding. A motion to intervene may also include comments or a protest. If the person or entity only wants to file comments on the pipeline's proposal, and does not wish to formally become a party, that is also permissible. The FERC's certificate order will consider and address all comments filed, whether or not the filer is a party to the proceeding.

After the FERC publishes notice of the application, the FERC will conduct scoping meetings to determine the environmental issues associated with the proposal. Representatives of the pipeline will also be in attendance. This provides opportunities for interested members

of the public to ask questions and place their concerns in front of the FERC staff for consideration at an early phase of the proceeding.

The next public input opportunity occurs after the FERC issues the draft EIS or EA. The FERC provides a public comment period of at least 30 days.

After the FERC issues its order approving or denying the project, parties to the proceeding may file for rehearing of the FERC order and pursue court appeals. Commenters do not have these rights.

What Criteria Does the FERC Use to Evaluate a Project?

In order for a member of the public to determine how best to become involved in a pipeline certificate application, it is helpful to understand how the FERC evaluates certificate applications. The 1999 Policy Statement is the latest expression of the FERC's policy.

Under the Policy Statement, the threshold requirement for an applicant to establish is that the new pipeline can be constructed without subsidization by existing customers. The "no subsidy" prong is generally satisfied by pricing the services to be rendered through the new facilities on an incremental basis, i.e., the cost of transportation through the new pipeline is based on the construction cost of the new pipeline. Assuming this requirement is satisfied, then the FERC considers whether the applicant has made efforts to eliminate or minimize adverse effects on the applicant's existing customers, existing pipelines in the market and their captive customers, and landowners and communities affected by the construction. If there are residual adverse effects on these interest groups after efforts have been made to minimize them, the FERC will evaluate the project by balancing the evidence of public benefits to be achieved against the residual adverse effects. This is essentially an economic test. Only when the benefits outweigh the adverse effects on economic interests does the FERC proceed to environmental analysis of the project.

The FERC's environmental analysis of the application starts with the company's environmental report submitted as part of the certificate application. But the FERC conducts its own environmental review to prepare the EA or EIS with the assistance of a third-party environmental consultant contractor, which the FERC selects and the applicant pays for. The FERC's environmental review is thorough and addresses all comments received by government agencies and members of the public. If the EA or EIS results in a finding of no significant impact, then it is fairly certain that the FERC will approve the

project. The environmental review may also reveal that an alternate route is environmentally preferable for the project to avoid sensitive areas or mitigate environmental impacts, in which case the FERC order on the application is likely to condition approval of the application on use of the alternate route or certain mitigation measures.

Issuance of a certificate of public convenience and necessity by FERC does not mean the applicant may commence construction immediately. The FERC order may be issued before the applicant has received other required federal agency approvals. The environmental conditions attached to the FERC order will require that all such approvals be obtained prior to the commencement of construction. The applicant will have to obtain written authorization from the FERC's Director of the Office of Energy Projects to commence construction.

If the applicant receives all of the requisite permits but has not been able to acquire all of the necessary rights-of-way or easements through negotiation, the applicant can exercise eminent domain to acquire the land rights. The NGA confers eminent domain authority on holders of a FERC construction certificate.

Case Study

A recent FERC order is illustrative of the FERC's approach to certifying a pipeline project in the face of significant public opposition.¹⁶ In that proceeding, the pipeline company proposed to put a compressor station close to a small Maryland town, next to a wastewater treatment plant and gas station, and adjacent to an interstate highway. A compressor station is an above-ground facility, and is used to facilitate movement of gas through the pipeline. As previously noted, compressor stations are spaced along the route of the pipeline. The townsfolk vigorously protested the location of the compressor station in their town. More than 650 individuals filed comments opposing the proposed location, contending it was incompatible with their rural community and would result in irreversible damage to their quality of life. Concerns were also expressed with respect to construction traffic, road damage/repairs, and dust, as well as operational aspects of the compressor station, such as noise.

The FERC order explained that FERC looked at eight alternative compressor sites in addition to the pipeline's proposed site. Three were eliminated due to engineering requirements. Three others were

eliminated due to constructability and/or residential impact issues. The FERC also considered a pipeline looping alternative and an electric compression alternative. The two remaining alternative sites were thoroughly analyzed in the EA, and the FERC determined that the proposed site offered environmental advantages the two alternatives did not. Accordingly, the FERC order approved the applicant's proposed compressor station site.

Instructive findings by the FERC include:

1. *Need for the project.* Because the capacity of the proposed project was fully subscribed, the FERC concluded there was a need for the pipeline, including the compressor station.
2. *Town's rejection of zoning request.* The FERC stated that while it encourages cooperation between pipeline companies and local authorities, this does not mean that state or local laws can be used to prohibit or unreasonably delay construction or operation of FERC-approved facilities. FERC stated, "While applicants may be required to comply with appropriate state and local regulations where no conflict exists, state and local regulation is preempted by the NGA to the extent they conflict with federal regulation, or would delay the construction and operation of facilities approved by this Commission."¹⁷
3. *Air permits.* Compressor stations require Clean Air Act permits. These are federal permits, but are administered by the state environmental agency if the state has a federally approved state implementation plan. The FERC declined to address air quality permit issues because they are outside the FERC's jurisdiction, but noted that the EA concluded that air impacts would be within environmentally acceptable limits. The FERC further noted that its order was conditioned on the pipeline company obtaining all applicable authorizations required under federal law. Thus, if the state of Maryland did not issue the air quality permit, it would be up to the pipeline company to determine how to proceed.
4. *Unavailing arguments.* The FERC considered and dismissed arguments raised concerning the following: impact on historical properties (none); visual impacts (sufficiently mitigated); property values (subjective and adequately mitigated through visual screening and noise mitigation measures); economic issues (speculative); air quality impacts (compliance with

federal and state air quality regulations are required by the order); noise impacts (mitigation adequate); public safety (adequate control systems, compliance with safety regulations required); landowner impact (FERC declined to expand the impact zone beyond the one-half mile radius required by FERC regulations); water quality (adequate mitigation, plus compliance with the Clean Water Act is required by the order); invasive species (adequate mitigation); and migratory birds (no adverse effect).

It can be expected that because FERC does a thorough environmental review, the FERC's order will defend the conclusions of the EA or EIS against challenges. Further, if the FERC finds that adverse impacts can be mitigated through adoption of reasonable measures such as planting trees or installation of sound control equipment, then the FERC is not going to be receptive to concerns about such adverse impacts. This means that any project concerns should be communicated to the FERC early on, before the final EA or EIS. The FERC might not agree with the concerns expressed, but the FERC will consider and respond to them. This provides the concerned citizen with the maximum opportunity to be heard.

Many of the Maryland citizens were generally opposed to the compressor station on generic quality of life grounds. In essence, these are "not in my back yard" arguments. The FERC is not receptive to these sorts of complaints. Local opposition will not deter the FERC from its mission, which is to evaluate the pipeline project in accordance with FERC's policies and regulatory requirements.

The bottom line is that a concerned citizen may not have the ability to prohibit certification of an interstate pipeline, but he or she will have the opportunity to express his or her concerns and have them addressed in the certificate proceeding. Public input may cause the FERC to require the applicant to take measures to minimize adverse impacts associated with construction and/or operation of the pipeline and associated facilities. Active participation early in the project may even influence the siting of an interstate pipeline facility if there are environmental issues that can be mitigated through relocation. For these reasons, it is worthwhile for members of the public to become involved in FERC certificate proceedings. The public interest is advanced when pipeline projects are subjected to vigorous examination.

NOTES

1. Natural gas can be converted to a liquid by cooling the gas to approximately -260 degrees Fahrenheit. Liquefied natural gas, or LNG, takes up 1/600th the space of natural gas at atmospheric pressure. In this condensed form it can be stored in above-ground storage tanks until it is needed, at which time it is regasified for transportation in pipelines. LNG can also be shipped in special tankers across the oceans to LNG storage tanks and regasification terminals in other countries.
2. Section 1(c) of the NGA, 15 U.S.C. § 717c, contains an additional exemption from federal regulation for intrastate pipelines that receive their gas supplies within or at the boundary of a state and all the gas is ultimately consumed within such state, provided that the rates and services provided by such pipelines are subject to regulation by a state commission.
3. The Department of Energy's Office of Fossil Energy, or DOE/FE, is responsible for approving imports and exports of natural gas, including LNG, but FERC has jurisdiction over the siting of natural gas pipelines used to import or export natural gas, and the siting of LNG terminals.
4. Am. Petrol. Inst., AMERICAN PETROLEUM INSTITUTE RECOMMENDED PRACTICE 80: GUIDELINES FOR THE DEFINITION OF ONSHORE GAS GATHERING LINES, (1st ed., Apr. 2000) [hereinafter API RP 80].
5. API RP 80 at Section 2.4.4.
6. The U.S. Department of Transportation's Pipeline and Hazardous Materials Safety Administration, or PHMSA, has jurisdiction over pipeline safety and integrity. Production pipelines are not presently subject to PHMSA regulation.
7. Natural Gas Act of 1938 § 1(b), 15 U.S.C. § 717b.
8. In contrast, federal regulation over pipeline safety starts with gathering pipelines. PHMSA's regulations generally define the term "gathering line" as "a pipeline that transports gas from a current production facility to a transmission line or main." Under the PHMSA regulations, the pipeline operator must determine whether a pipeline is a gathering line by consulting API RP 80, then applying additional considerations and limitations imposed by the PHMSA regulations.
9. *See, e.g.*, *Stingray Pipeline Co., LLC*, 142 FERC ¶ 62,069 (2013).
10. Processing plants are not subject to FERC jurisdiction under the NGA.
11. Under Section 311 of the Natural Gas Policy Act, however, intrastate pipelines may participate in interstate transportation without becoming interstate pipelines subject to the full panoply of FERC jurisdiction, so long as they follow the FERC regulations and policies applicable to Section 311 service.
12. LNG terminal facilities are subject to FERC siting regulation, but not all LNG terminals are subject to rate regulation.

13. NGA § 7(c).
14. Certification of New Interstate Natural Gas Pipeline Facilities, 88 FERC ¶ 61,277 (1999).
15. This pamphlet, called, AN INTERSTATE NATURAL GAS FACILITY ON MY LAND? WHAT DO I NEED TO KNOW? can also be downloaded from the FERC website, www.ferc.gov.
16. Dominion Transmission, Inc., 141 FERC ¶ 61,240 (2012).
17. *Id.* at P 68.