

Natural Gas Pipelines: The Process

1

JUNE 15, 2015

Federal Authority: What is Preemption?

2

- Preemption is when federal law supersedes or overrides state or local laws or rules governing the same subject
 - ✦ Based on Supremacy Clause
 - ✦ Field preemption-scenario where federal statute provides Comprehensive Scheme of Regulation preempting State and local law
 - ✦ Natural Gas Act - Preempts local and state governments from regulating interstate gas pipelines.

What the Federal & State Governments Control

3

- Federal Preemption means that the Federal government has complete control over:
 - ✦ Siting (local zoning, building permits preempted, etc.)
 - ✦ Construction Standards and Inspection (State and local construction and Inspection preempted)
 - ✦ Safety Standards - Department of Transportation (State or local Regulation preempted)
 - ✦ Abandonment of the facilities
- States –not local governments- regulate
 - ✦ Waterways-Clean Water Act
 - ✦ Air- Clean Air Act

What Local Governments Control

4

- Virginia is a Dillon Rule state which means that local governments can regulate only the areas where the General Assembly has granted specific legislative authority.
- Local governments have been granted specific authority over:
 - ✦ Erosion and Sediment Control
 - ✦ Stormwater
 - ✦ Noise

FERC JURISDICTION

5

- Section 7(c) Natural Gas Act
- Requires Certificate of Public Necessity and Convenience For Construction/Operation Interstate Natural Gas Pipeline

FACTORS CONSIDERED WHEN ISSUING CERTIFICATE

6

- Project in Public Interest
- Benefits of Project Outweighing Adverse Impacts
- NEPA – Must consider project alternatives and wide range of potential environment impact
- Paper Hearings – Executive Not Legislative
- FERC required to support its decision with Substantial Evidence
- Split of Opinion between Experts – substantial evidence standard met so long as FERC adequately explains decision

FERC PROCESS

7

THREE PHASES:

- Pre-Filing Phase
- Application Phase
- Post-Certificate Phase

PRE-FILING PHASE

8

- Applicant

- ✦ Requests Pre-Filing
- ✦ Study Potential Project Sites
- ✦ Identifies Stakeholders
- ✦ Holds Open House For Stakeholders
- ✦ Conducts pipeline route studies and Field Surveys to develop final application to Submit to FERC

PRE-FILING PHASE CONT.

- FERC
 - ✦ Grants Pre-Filing Process – Pre-filing Docket No.
 - ✦ FERC Staff Participate in Open House
 - ✦ Publish Notice of Intent for Preparation of EA or EIS
 - ✦ Open Scoping Period to seek Public Comment on potential environmental issues, alternatives and measures to avoid or lessen environmental impacts - June 16, 2015 Deadline
 - ✦ FERC Holds Scoping Meeting and consults with cooperating agencies on environmental issues

APPLICATION PHASE

10

- Application For Certificate Of Public Convenience and Necessity
 - ✦ Description of the Proposed Pipeline Route
 - ✦ Construction Plans – Schedules
 - ✦ Environmental Reports
 - ✦ Analyze Route Alternatives – potential environmental impact
 - ✦ FERC issues Notice of Application to Construct and Operate New Pipeline in Federal Register

APPLICATION PHASE CONT.

11

- ✦ FERC provides draft EIS – seeks public comments
- ✦ FERC holds public meetings
- ✦ FERC responds to comments on draft EIS – may revise – issues final EIS

APPLICATION PHASE

12

- Intervenor

- ✦ Request Intervenor status within 21 days of FERC Notice of Filing of Application
- ✦ Formal Party to Process
- ✦ Receive Applicant filings, filings from other Intervenor and other Commission Documents
- ✦ Have Standing to request Rehearing
- ✦ Have standing to file Appeal of Commission Final Ruling in Federal Court

APPLICATION PHASE

13

- Environmental Review
 - ✦ Environmental Review comprises bulk of FERC review
 - ✦ Examine Environmental impact in compliance with NEPA
 - ✦ NEPA requires FERC to examine environmental impact of granting Certificate – inform public of the impact
 - ✦ Scoping Process – FERC gathers input from public and interested agencies
 - ✦ Seek comments on potential environmental effects, reasonable alternatives and measures to avoid or lessen environmental impacts
 - ✦ Comments help FERC determine environmental issues to be evaluate in EIS

APPLICATION PHASE

14

- EIS
 - ✦ Geology and Soils
 - ✦ Water Resource and Wetlands
 - ✦ Vegetation and Wildlife
 - ✦ Cultural Resources
 - ✦ Land Use, Recreation and Visual Resources
 - ✦ Socio Economics
 - ✦ Air Quality and Noise Cumulative
 - ✦ Impacts Public Safety
 - ✦ Alternatives

APPLICATION PHASE

15

- FERC ROLE EIS
- ✦ FERC Seeks Comments from Cooperating Agencies:
 - U.S. Dept. of Agriculture
 - Forest Service
 - Army Corp of Engineers
 - U.S. Department of Transportation
 - EPA
 - State Historic Preservation Offices
- ✦ FERC will publish and distribute a draft EIS for Public Comment

APPLICATION PHASE

16

- ✦ Will consider comments and revise document before issuing Final EIS
- ✦ FERC will consider or recommend measures to avoid, minimize or mitigate impacts on specific resources
- ✦ Will Evaluate possible alternatives to the planned project or portion of the project

APPLICATION PHASE

17

- Current Identified Environmental Issues
 - ✦ FERC Identified the following issues that deserve attention in the EIS:
 - karst terrain, sinkholes and caves
 - domestic water sources, wells, springs and water bodies
 - forested areas
 - Federally listed threatened and endangered species
 - National Register of Historic Places
 - Appalachian Trail, Blue Ridge parkway and other scenic byways
 - residential development and property values

APPLICATION PHASE

18

- ✦ FERC Identified the following issues that deserve attention in the EIS:
 - local infrastructure and emergency response systems
 - tourism and recreation
 - public safety
 - alternatives and their potential impact on a range of resources

POST CERTIFICATE PHASE

19

- FERC issues Order – **NEVER DENIED**
states terms and conditions of approval, route authorization, construction and environmental mitigation measures
- **PARTIES CAN REQUEST FERC TO REHEAR DECISION WITHIN 30 DAYS**
- Parties can file **APPEAL** with Federal Court

POST CERTIFICATE PHASE

20

- Pipeline Project may proceed even if challenge filed in Federal Court
- Applicant submits outstanding info to satisfy conditions of Order
- FERC issues Notice to Proceed with Construction

POST CERTIFICATION PHASE

21

CONSTRUCTION:

- Finalize Project Design
- File plans, survey and info required prior to construction by FERC Order
- Complete R/W acquisition/Eminent Domain Authority granted when Certificate issued
- Pipeline construction

POST CERTIFICATE PHASE

22

- Must file weekly status reports with FERC documenting project inspection and certificate compliance
- R/W restoration
- Project in service
- Department of Transportation Office of Pipeline Safety

POST CERTIFICATE PHASE

23

PIPELINE SAFETY:

- FERC role is subordinate to the Department of Transportation
- FERC typically consults with DOT regarding compliance with standards
- Applicant required to certify to FERC “design, install, inspect, test, construct, operate, replace and maintain” in compliance with Pipeline Safety Act
- DOT inspects pipeline construction to assure compliance with Federal Regulations

POST CERTIFICATE PHASE

24

- DOT reviews Operator's prepared construction procedures to verify compliance
- DOT inspectors observe construction activities in field to verify compliance
- Once Pipeline operational – safety is regulated, maintained and enforced by DOT with safety violations reported to DOT Office of Pipeline Safety

Questions?