

# **INTERSTATE PIPELINE FORUM FOR LOCAL OFFICIALS**



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## AN INTERSTATE PIPELINE IN YOUR TOWN?

- Federal Law applies over interstate pipelines
  - NATURAL GAS ACT OF 1938, 15 U.S.C. §717f(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 issued approval for pre-filing on October 2, 2014
  - Route change (through NH) filed December 8, 2014
  - Draft ER by pipeline on March 13, 2015
  - Second Draft ER filing anticipated in June 2015
  - Estimated FERC Application filing (including final ER): September 2015
  - Proposed Construction Start Date: January 2017
  - Estimated Placed in Service Date: November 2018

## **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-certificate 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 propose 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
  - Route/Impact 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 (“FONSIE”)

## FERC APPLICATION: STANDARD OF REVIEW

Project must be found to be in the “**public convenience and necessity.**”

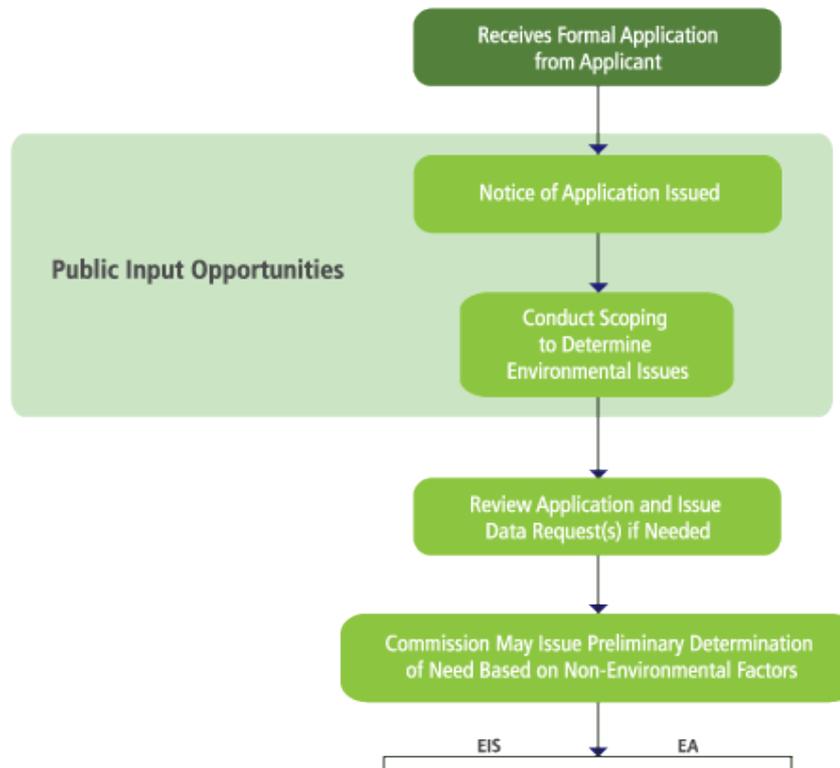
- Threshold question: Is the project financially prepared to stand on its own without subsidies from existing customers?
- Balancing Test: Do overall **public benefits outweigh adverse impacts**?
  - **Public Benefits** are case specific: meeting unserved demand, eliminating bottlenecks, access to new supplies, lower costs to consumers, competitive alternatives, electric reliability, advancing 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

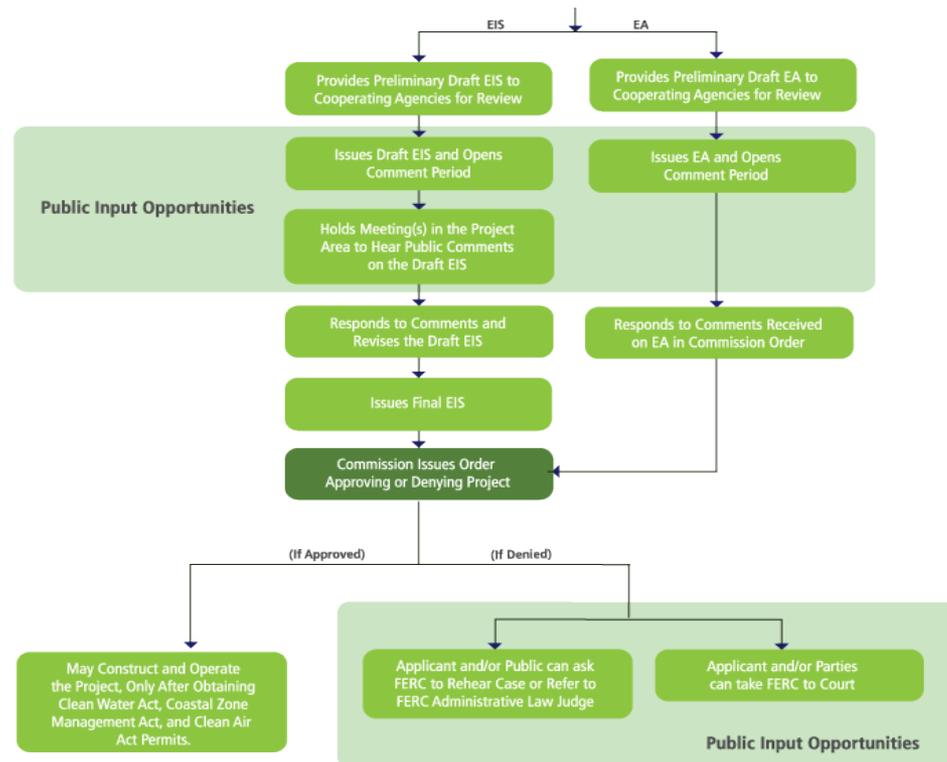
- FERC must integrate environmental values into its decision-making
- Consider potential impacts of pipeline and reasonable alternatives
- FERC seeks comments from other agencies with jurisdiction over the proposed project, the applicant and the public
- Review includes:
  - Ecology – fish, wildlife, 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

## PROCESSES FOR NATURAL GAS CERTIFICATES Application Process



# 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

