

## CHAPTER 19

### **Section 311 of the Natural Gas Policy Act, Its History and Its Potential Future Role in Natural Gas Transportation**

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Energy issues are receiving considerable national attention, once again, in 1991. The latest Middle Eastern crisis has contributed to a renewed interest in the issue of domestic energy self-sufficiency, including the increased use of domestic fossil fuels. Further, the environmental movement, and such issues as acid rain and global warming, have focused attention on the proper use and mix of available fossil fuels.

The current debate in Washington, D.C., over federal government involvement in energy matters includes a number of issues related to the appropriate role of domestic natural gas. This debate is taking place at the Federal Energy Regulatory Commission (FERC or Commission), the federal agency responsible for regulating interstate natural gas pipeline companies. The FERC has before it currently a number of policy and regulatory issues which may change the future regulatory environment for interstate natural gas pipelines. These issues include matters related to continued implementation by interstate pipelines of competitive "open access" transportation, as introduced in 1985.<sup>(2)</sup> The FERC review includes issues of

pipeline rate design, particularly with respect to transportation of third party gas, and issues of comparability between pipeline sales and transportation services.<sup>(4)</sup> The FERC is also reviewing its rules dealing with authorization for pipeline transportation services, and related pipeline facilities construction, which is the main focus of this Chapter.

Several major bills have also been introduced in the United States Congress, in early 1991, containing natural gas provisions as part of much broader energy legislative proposals. These bills address many of the same topics as the FERC is currently reviewing. They include, among others, a bill introduced by Senators Johnston and Wallop, (the Johnston-Wallop Bill),<sup>(5)</sup> and one introduced by Congressman Sharp, with several cosponsors, (the Sharp Bill).<sup>(6)</sup> Also, the *National Energy Strategy* unveiled by the Bush Administration in February 1991, with its related legislative proposals (NES), includes several natural gas policy proposals.<sup>(7)</sup>

Part of the focus of these initiatives involves proposals to speed up the FERC regulatory process related to pipeline construction, so that additional interstate natural gas pipeline capacity can be approved and built expeditiously to allow for increased domestic natural gas transportation and use. Recently concerns have been expressed by many parties that additional interstate pipeline capacity is needed in certain areas of the country. For example, the various elements that make up the market for natural gas in the Northeast United States have, in recent years, stated to the FERC that substantial new quantities of natural gas, and related pipeline capacity, are needed in that region to meet environmental requirements and the demand for conversions to natural gas from other fuel sources.<sup>(8)</sup>

In the context of this ongoing policy debate over rules for pipeline construction, there is an existing statutory provision, Section 311 of the Natural Gas Policy Act of 1978 (NGPA),<sup>(9)</sup> which is receiving considerable attention. This provision already has certain features which provide for both expeditious pipeline transportation service and related facilities construction. Section 311, and the FERC's regulations thereunder, are being evaluated in Congress and at the FERC, to determine whether additional statutory or regulatory changes, or both, should be implemented. The current review at the FERC of Section 311 has also been precipitated in large part by a recent court order.<sup>(10)</sup> In light of the possible changes to Section 311 and its implementing regulations and the related impacts of those changes on all the parties interested in the issue of increased natural gas use in the United States – namely producers, pipelines, and gas consumers, this Chapter examines Section 311, its history, some of the current proposals for change, and its possible future role in the transportation of natural gas.

## **§ 19.02. Overview of Section 311 of the Natural Gas Policy**

### **Act.**

Since passage of the NGPA in 1978, Section 311(a),<sup>(11)</sup> as implemented through FERC regulations, has provided for a largely self-implementing program of transportation services and related construction activity by interstate natural gas pipelines "on behalf of" local distribution companies (LDCs) and intrastate pipelines. The term "self-implementing" refers to the ability of a FERC regulated interstate natural gas pipeline to proceed with specific transportation transactions, and any related pipeline construction, without acquiring individual certificates of public convenience and necessity under Section 7(c) of the Natural Gas Act (NGA),<sup>(12)</sup> before building necessary facilities or beginning each transaction. Thus, Section 311 is a vehicle which can be used by interstate pipelines without many of the regulatory requirements and delays otherwise associated with traditional FERC jurisdictional transportation services and construction authorization, as long as the transportation service will be "on behalf of" an LDC or intrastate pipeline. While the FERC also provides other self-implementing transportation and construction authorization to