

Chapter 2

Recent Developments in the Law and Regulation of Oil and Gas Pipeline Infrastructure

Ramonda C. Lyons

Joseph L. Jenkins

Angela Ramsey

Lewis, Glasser, Casey & Rollins, PLLC

Charleston, West Virginia

Synopsis

§ 2.01.	Introduction and Organization of the Chapter	27
§ 2.02.	The Need for Additional Gas and Oil Pipeline Infrastructure Within the United States	27
§ 2.03.	Overview of Federal Energy Regulatory Commission Approved Infrastructure Construction Projects Within the Continental United States	28
	[1] — Northern Lights 2017 Expansion (Docket No. CP16-472-000).....	28
	[2] — Transco to Charleston Project (Docket No. CP16-98-000).....	29
	[3] — Rayne and Leach Xpress (docket Nos. CP15-514-000 and CP15-539-000)	29
	[4] — Orion Project (Docket No. CP16-4-000)	30
	[5] — Rover Pipeline Project (Docket Nos. CP15-93-000, CP15-93-0001, CP15-94-0000, CP15-96-000)	30
	[6] — Atlantic Sunrise Pipeline Project (Docket No. CP-138-000).....	31
	[7] — Northern Access (Docket No. CP15-115-001)	31
§ 2.04.	President Trump’s Treatment of Issues Impacting Oil and Natural Gas Pipelines	32
	[1] — Campaign upon America First Energy Plan	32
	[2] — January 20, 2017 Regulatory Freeze Memorandum.....	33
	[3] — Executive Orders	33
	[a] — Presidential Executive Order on Reducing Regulation and Controlling Regulatory Costs	33
	[b] — Presidential Executive Order on Enforcing the Regulatory Reform Agenda	34

	[c] — Presidential Executive Order on Promoting Energy Independence and Economic Growth	34
	[4] — Withdrawal from Paris Climate Agreement	35
§ 2.05.	Regulation of Pipeline Safety	36
	[1] — Pipeline and Hazardous Material Safety Administration (PHMSA) Background	36
	[2] — Significant Recently Implemented Rules and Regulations	37
	[a] — Docket No. 2011-0009 — Phase: Final Rule and Correction, Section 192	37
	[b] — Docket No. 2016-0010 — Phase: Interim Final Rule, Section 190	38
	[c] — Docket No. 2010-0026 — Phase: Final Rule, Section 192	38
	[d] — Docket No. 2009-0192 — Phase: Final Rule, Sections 196 and 198	38
	[3] — Pending Rules Presented by PHMSA	39
	[a] — PHMSA- 2011-0023	39
	[b] — PHMSA- 2010-0229	42
	[c] — PHMSA- 2011-0163	43
	[d] — PHMSA- 2014-0098	43
	[e] — PHMSA- 2013-0255	44
	[f] — PHMSA- 2013-0163	44
§ 2.06.	Eminent Domain	44
	[1] — Negotiation of Pipeline Right-of-Way Agreement with the Property Owner	45
	[2] — Summary of Recent Condemnation Legislation or Court Rulings Involving and Impacting Oil and Natural Gas Infrastructure	47
	[a] — Georgia	47
	[b] — Kentucky	47
	[c] — Ohio	48
	[d] — Pennsylvania.....	51
	[e] — South Carolina.....	54
	[f] — Virginia.....	54
	[g] — West Virginia	55
§ 2.07.	Conclusion.....	57

§ 2.01. Introduction and Organization of the Chapter.

Section 2 of this chapter will discuss the urgent need for additional gas and oil pipeline infrastructure within the continental United States. Section 3 of this chapter will briefly touch on some large-scale gas pipeline infrastructure development that is currently underway in the Marcellus and Utica shale plays. Section 4 will discuss some early policy moves made by the Trump administration that will likely have an effect on the oil and natural gas pipeline development. Section 5 will discuss recent developments in the regulation of oil and natural gas pipeline infrastructure. Finally, Section 6 will discuss recent legal developments concerning eminent domain for oil or gas pipeline infrastructure.

§ 2.02. The Need for Additional Gas and Oil Pipeline Infrastructure Within the Continental United States.

The recent shale boom, particularly in the Appalachia area,¹ has necessitated not only the expansion of pipeline infrastructure, but also the updates to and reconfiguration of existing pipeline infrastructure.² The increased production of natural gas, natural gas liquids and oil has exceeded the capacity of the existing infrastructure to accept the resources and deliver them to market for further processing and sale.³ The insufficient oil and gas pipeline infrastructure throughout the Northeast is costing both developers and residential and commercial consumers billions each year.⁴

¹ Jude Clemente, “More Northeast Natural Gas Pipeline Capacity Brings Questions,” *Forbes* (Oct. 23, 2016), <https://www.forbes.com/sites/judeclemente/2016/10/23/more-northeast-natural-gas-pipeline-capacity-brings-questions/#4aeb1f11c940> (“Led by the surge in Appalachia’s Marcellus and Utica plays, U.S. natural gas production has increased over 50% since 2005 . . .”).

² *Id.* (stating that gas pipeline infrastructure is lagging behind the rise in gas production).

³ *See id.*

⁴ *See* Mark Green, “Infrastructure and Harnessing U.S. Shale Energy,” *Energy Tomorrow* (Jan. 28, 2016), <http://www.energytomorrow.org/blog/2016/01/28/infrastructure-and-harnessing-us-shale-e> (“EIA estimates that Northeast residents paid up to 68 percent more for electricity than the national average in the winter of 2014, while industrial users paid up to 105 percent more for electricity than the national average.”).