

Chapter 24

Natural Gas Infrastructure Siting — The Environmental Angle

Kelley M. Goes

Jackson Kelly PLLC

Charleston, West Virginia

Synopsis

§ 24.01.	Introduction	928
§ 24.02.	Overview of Governing Federal Statutory and Agency Oversight	929
	[1] — Brief Outline of the Pipeline Approval Process	929
	[2] — Review of Environmental Impact and Concerns.....	931
	[3] — Environmental Review — National Environmental Policy Act Requirements	932
§ 24.03.	The Environmental Assessment, the Draft Environmental Impact Statement and the Final Environmental Impact Statement	933
	[1] — The Environmental Assessment.....	933
	[2] — Consideration of Reasonable Alternatives	934
	[3] — Finding of No Significant Impact	936
	[4] — The Draft Environmental Impact Statement and the Final Environmental Impact Statement	937
	[a] — Segmentation	939
	[b] — Standing	942
	[5] — Deference to the Federal Energy Regulatory Commission (FERC) and Its Process.....	944
	[6] — Scope of Appeal — Or Why You Have to Raise Everything Every Time	945
	[7] — Obtaining Permits Within the FERC Regulatory Framework	947
	[a] — Clean Water Act	949
	[b] — The Clean Air Act.....	952
	[c] — Coastal Zone Management Act — The Final Preempted Regulatory Scheme	958
§ 24.04.	Conclusion	960

§ 24.01. Introduction.

The extraction of shale gas in the Appalachian Basin from the Marcellus and Utica formations caused an explosion in the need for new or improved natural gas infrastructure. Building or upgrading this infrastructure is a heavily regulated, expensive and time-consuming process. Pipelines and compressor stations are not popular with the local residents and environmental groups. With the growth in infrastructure construction,¹ there has been a growth in environmental challenges at both the state and federal level.

Thanks to the Natural Gas Act, most of the disputes ultimately end up in one of two places: in front of the Federal Energy Regulatory Commission or in federal appellate courts. But the infrastructure road is fraught with environmental challenges. As the current Federal Energy Regulatory Commission (FERC) chairwoman, Cheryl LaFleur, stated earlier this year:

Pipelines are facing unprecedented opposition from local and national groups including environmental activists. These groups are very active in every FERC docket, as they should be, as well as in my email inbox seven days a week, in my Twitter feed, at our open meetings demanding to be heard, and literally at our doors closing down First Street so FERC won't be able to work.²

¹ According to the FERC website, as of time of publication, major pipeline projects totaling more than 1,723 miles were submitted for consideration between 2010 and 2014. This figure would not include some of the more recent projects that have generated comment and controversy to get gas out of the Appalachian Basin. The miles of pipeline approved by the FERC peaked in 2006 at about 3000 miles and bottomed out in 2012 with three miles approved. In 2014, FERC approved less than 500 miles of pipeline. *See* <http://www.ferc.gov/industries/gas/indus-act/pipelines/pending-projects.asp>; <http://www.ferc.gov/industries/gas/indus-act/pipelines/approved-projects.asp>.

² Tr. Nat'l Press Club Luncheon with Cheryl LaFleur, January 27, 2015, p. 5. https://www.press.org/sites/default/files/20150127_lafleur.pdf.