

BIG PROCESS, Small Communities

How Local Governments Can Stay
Relevant in A Federal Process

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THE QUESTION:

What is the role of local government in a national regulatory system?

National Pipeline Regulatory System

FERC - Natural Gas Act

PHMSA - Pipeline Safety Act

Role/Scope of FERC

- Jurisdiction over siting for interstate pipelines and LNG under NGA
- Certificate for pipelines (Section 7) confers eminent domain (none for LNG under Section 3)
- No jurisdiction over gathering, distribution or Hinshaw (Section 1 (b) NGA)
- CAA, CWA, CZMA still apply
- Reliance on PHMSA for safety analysis

Role/Scope of PHMSA

- Jurisdiction over safety for interstate facilities (pipelines and gathering facilities that affect commerce)
- No safety standards for intrastate pipelines regulated by state
- 49 U.S.C. § 60103(a),(b)
- Certifies/regulates safety for FERC sited projects
- Power only over safety, not siting
- Some powers administered by states

THE PROBLEM:

PREEMPTION

Two Types of Preemption

Field Preemption

Conflict Preemption

LOCAL GOVERNMENT STRATEGIES FOR SUCCESS

RULE 1:

**THINK KRYPTONITE,
NOT DYNAMITE**

Kryptonite v. Dynamite

- Dynamite: Try to use local law specifically to kill a project
 - AES Sparrows Point (Baltimore's proposed zoning law; not sympathetic)
- Kryptonite: look for vulnerabilities in the process; preserved authority
 - Millennium Pipeline CZMA
 - Islander Pipeline CWA
 - Myersville - CAA (not yet successful but potential due to CAA's EXPRESS reservation of local power)
 - Corps may also be sympathetic (Section 404)

RULE 2:

**FOCUS ON YOUR
BACKYARD**

Focus on Your Backyard

- Know the scope of authority and maintain it
 - WGL v. PG County (2013) - Neither PSA nor NGA apply to intrastate facilities; county can control
- On stronger ground if exercising locality's inherent powers
 - TX Midstream v. Grand Prairie (5th Cir) (2010)- PSA regulates safety, not siting. Locality not preempted from establishing setbacks for compressor station [NOTE - this is PHMSA case; outcome would be different under NGA]

RULE 3:

PARTICIPATE!

Rule 3: Participate!

- Intervene in the FERC process early
- If county has any unique concerns, raise them. If there are EXISTING zoning laws, make that known.
- Work with company if possible but involve FERC to resolve disputes
- Residents do not have the same power as government to raise issues - yet in many instances, they are doing the legwork.
- Use contacts with other government agencies

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