

New Gas Pipeline Construction: Intersection of FERC & PHMSA



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Market Landscape

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- “Shale Revolution” in the U.S. changing the marketplace
 - Nearly 50% annual increase of shale gas production between 2007-2011
 - U.S. no longer a major importer of crude and becoming a major exporter; projected to become net exporter of natural gas in near future
- Increased demand for natural gas (utilities, industry, commercial vehicle fleets)
- Current and anticipated growth in U.S. shale production necessitates an expansion of the nation’s natural gas infrastructure

FERC & PHMSA Regulatory Authority

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FERC

Applications for
Certificates of
Necessity:

NEPA

Siting

Routing

Rates

Construction

PHMSA

Regulates Safety:

Design

Installation

Operation

Maintenance

Inspection

FERC Authority

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- Section 7 of the Natural Gas Act confers authority for review of applications for construction and operation of interstate natural gas pipelines
- No jurisdiction over pipeline safety
 - 1993 MOU between FERC & DOT
- Certification process:
 - Notice of project
 - NEPA/permitting
 - Identification of route alternatives
 - Public input
 - FERC decision
 - Eminent Domain

Role of NEPA

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- Requires federal agencies prepare Environmental Impact Statement (EIS) for major projects
- Purpose of EIS
 - Identification of environmental impacts
 - Consideration of reasonable alternatives (including ‘no action’), mitigation, etc.
 - Public input
- Reviews various statutes: CWA, Wetlands, CAA, ESA, Historic Preservation, etc.
- FERC is ‘lead agency’ for NEPA purposes

Compliance with Other Laws

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- FERC certification is not a substitute for other legal compliance obligations
 - *e.g.*, environmental permits, endangered species consultations etc.
- State and local laws that intersect with areas of exclusive federal authority may be preempted
 - *e.g.*, siting, zoning, erosion and sedimentation control

FERC's Construction Oversight

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- *Certification* (may impose conditions such as construction and environmental mitigation measures)
- *Notice to Proceed with Construction* (issued after project submits implementation plan)
- *Compliance Monitoring During Construction* (weekly status reports)
- *Landowner Complaints and Dispute Resolution* (e.g., restoration of ROW, noise, etc.)

FERC Citizen Outreach

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- Maintains website information about the environmental review process and how to get involved
- Citizens' guide entitled "An Interstate Natural Gas Facility On My Land? What Do I Need to Know?"
 - use of eminent domain
 - how to participate in the Commission's proceedings
- <http://www.ferc.gov/for-citizens/for-citizens.asp>

PHMSA Authority

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- Pipeline Safety Act/PHMSA regulations
 - provide statutory authority to establish minimum safety standards for the design, installation, construction and operation of pipeline facilities (*49 U.S.C. § 601 et seq.*)
- Jurisdiction extends to intrastate and interstate oil and gas pipelines as well as LNG facilities
- New notification obligations for construction activity (OPID and Design Review)

Increased Focus by PHMSA

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- Intent to exercise oversight authority early in the process (recent guidance + inspections)
- Anticipated use of expanded Design Review process
 - Agency can elect to conduct design review of \$2.5B projects or ‘new and novel technology’
 - Includes review of design specifications, construction plans and procedures, and related materials
 - Cost recovery mechanism
 - Regulations under development

Increased Focus by PHMSA

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- **PHMSA Construction Quality Concerns:**
 - Material (seams, handling)
 - Pipe Bending
 - Lowering and Backfill
 - Welding
 - Coating
 - ROW Marking
 - AC Interference
 - Materials Verification

Questions?

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