

FERC (again) Rejects Regional Environmental Assessments of Unrelated Natural Gas Infrastructure Projects

by Joseph Donovan

The Federal Energy Regulatory Commission (FERC) recently released an order that provides further guidance to parties involved in natural gas infrastructure review projects by rejecting a challenge which posits that the Commission is required to perform a region-wide environmental impact assessment of natural gas development, transportation and production as part of a pending project review. FERC clearly rejected the regional approach to evaluating impacts, concluding that the mere fact that several projects are developed within a given region does not mean FERC is engaged in regional development processes. Despite this clarity, it is doubtful that those parties arguing against approval of infrastructure projects will suddenly “see the light” and abandon making those arguments.

In its order dated Oct. 14, 2015, in Docket No. CP14-17-001, the Commission denied requests for rehearing and stay, affirming its prior decision to approve Columbia Gas’ East Side Expansion Project application. In doing so, the Commission directly addressed claims from the Allegheny Defense Project (ADP) that the Commission “is engaged in regional development and planning with the gas industry” and is failing to take a regional environmental assessment of the cumulative impact of infrastructure projects. ADP argued that the Commission violated the National Environmental Policy Act (NEPA) in failing to prepare a programmatic environmental impact statement for all gas infrastructure projects in the region before it approved the East Side expansion project.

The Commission rejected ADP’s argument that it is engaged in regional planning, noting that “the mere fact that there are a number of approved, proposed, or planned infrastructure projects to increase infrastructure capacity to transport natural gas from the Marcellus and Utica Shale does not establish that the Commission is engaged in regional development or planning.” (Para. 58).

In response to ADP’s demand that the Commission conduct a broad review of natural gas transportation infrastructure in the Marcellus and Utica region, the Order notes that both the Natural Gas Act and NEPA require it to review and assess the public convenience and necessity of the individual projects.

The Commission’s siting decisions regarding pending and future natural gas pipeline facilities will be in response to proposals by private industry, and

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the Commission has no way to accurately predict the scale, timing, and location of projects, much less the type of facilities that will be proposed. Any broad, regional environmental analysis would ‘be little more than a study . . . containing estimates of potential development and attendant environmental consequences,’ and could not present a ‘credible forward look’ that would be ‘a useful tool for basic program planning.’

(Para. 59, citing prior decisions).

Finally, the Commission addressed the claim that the cumulative proposed and pending pipeline projects within and from the Northeast United States require a comprehensive regional assessment. The Commission rejected the position, noting that ADP was not able to demonstrate an “interrelationship or connectedness” among projects.

[ADP] has not shown any interrelationship or connectedness beyond the fact that they might share a general regional proximity to the Marcellus and Utica Shale regions. None of these projects’ utility is shown



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to be functionally or financially dependent upon any other project; nor are any proposals shown or claimed to be dependent upon the timing of another project’s approval or in-service date.

(Para. 60).

Parties should proceed cautiously, however. The Commission’s findings rejecting ADP’s in this case are fact-specific, and parties to future natural gas infrastructure certification proceedings should anticipate continued efforts from advocates challenging such projects to force a regional environmental assessment. ■

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