

Stradley Ronon Stevens & Young, LLP
2005 Market Street
Suite 2600
Philadelphia, PA 19103-7018
215.564.8000 Telephone
215.564.8120 Facsimile
www.stradley.com

With other offices in:
Washington, D.C.
Malvern, Pa.
Harrisburg, Pa.
Wilmington, Del.
Cherry Hill, N.J.
New York, N.Y.



www.meritas.org

Our firm is a member of Meritas – a worldwide business alliance of more than 210 law offices in 70 countries, offering high-quality legal services through a closely integrated group of independent, full-service law firms.

Information contained in this publication should not be construed as legal advice or opinion or as a substitute for the advice of counsel. The enclosed materials may have been abridged from other sources. They are provided for educational and informational purposes for the use of clients and others who may be interested in the subject matter.

Copyright © 2015
Stradley Ronon Stevens & Young, LLP
All rights reserved.

Second Circuit Decision Reinforces FERC Position that Pipeline Certificate Proceedings Do Not Require Region-Wide Environmental Impact Assessment of Potential New Drilling

by Joseph Donovan

In the Oct. 23, 2015 [Energy & Regulatory Alert](#), we discussed a recent Federal Energy Regulatory Commission (FERC) order in which the commission rejected attempts to force it to perform a region-wide environmental impact assessment of natural gas development, transportation and production as part of its project-specific review. In a similar vein, the Second Circuit Court of Appeals recently upheld the commission's approval of a pipeline in northeast Pennsylvania, reinforcing the position that the commission need not examine whether a proposed pipeline would spark significant new natural gas development in the region.

The three-judge panel issued a summary order in *Coalition for Responsible Growth and Resource Conservation, et al. v. FERC*, case number 12-566, in which it denied the petitions for review of both the underlying initial order and the order on rehearing. These orders granted Central New York Oil and Gas Company's petition for a certificate of public convenience and necessity to build and operate the 39-mile MARC I Hub Line Project. In the underlying proceeding, the commission performed a 296-page environmental assessment, issued a finding of no significant impact, and concluded that a full environmental impact statement was not necessary.

On appeal, the petitioners argued that the commission's environmental analysis was inadequate and that the commission failed to assess the project's "cumulative impact" from any increased drilling the pipeline could stimulate. The environmental groups argued that the pipeline would encourage new drilling in as-yet undeveloped areas of Pennsylvania, requiring a full environmental impact statement to consider health issues associated with that new drilling.

In rejecting this assertion, the court noted that its role is to ensure that the agency considered the environmental consequences of its action. The court held that:

FERC's analysis of the development of the Marcellus Shale natural gas reserves was sufficient. FERC included a short discussion of Marcellus Shale development in the [environmental assessment], and FERC reasonably

continued on next page

concluded that the impacts of that development are not sufficiently causally related to the project to warrant a more in-depth analysis.

The court further noted that, in granting the underlying certificate, the commission “required Central NY Oil to take concrete steps to address environmental concerns raised by petitioners and others.” Thus, the “environmental concerns identified by commenting parties, including the Environmental Protection Agency, were considered and addressed by FERC in the [environmental assessment] and the Rehearing Order.”

The decision was released in the form of a [summary order](#),



If you have any questions, please contact Joe Donovan at 202.507.5151 or jdonovan@stradley.com or any other member of the Stradley Energy & Regulatory group.

not a formal opinion, meaning that it does not provide precedential value but can be cited in future pleadings. ■

Energy & Regulatory Practice Group

Valentino F. DiGiorgio III	215.564.8029	vdigiorgio@stradley.com
Joseph Donovan	215.564.8081	jdonovan@stradley.com
Andrew S. Levine.....	215.564.8752	alevine@stradley.com
John R. Saler.....	215.564.8061	jsaler@stradley.com
William R. Sasso	215.564.8193	wsasso@stradley.com
Mark D. Villanueva	215.564.8159	mvillanueva@stradley.com
Catherine M. Ward	202.507.6415	cward@stradley.com