AN INTERSTATE PIPELINE IN YOUR TOWN?

- Federal Law applies over interstate pipelines
  - NATURAL GAS ACT OF 1938, 15 U.S.C. §717f(c): FERC authority to authorize construction or extension of interstate pipeline projects
    - Certificates of “public convenience and necessity”
    - Eminent domain once certificate is granted
  - Local regulations preempted

- Local officials play an important role (application process, construction and maintenance)
CURRENT EXAMPLE: NORTHEAST ENERGY DIRECT

- Northeast Energy Direct ("NED") Project proposed by Tennessee Gas Pipeline Company ("TGP"), a subsidiary of Kinder Morgan Energy Partners, L.P.

- High-pressure, 36-inch pipeline with two sections of proposed extension:
  - from Wright, New York to Dracut, Massachusetts
  - from Franklin, Pennsylvania to Wright, New York

- Estimated cost of $2.75 billion to $3.75 billion

- Project Status
  - FERC Pre-filing filed September 15, 2014
  - FERC issued approval for pre-filing on October 2, 2014
  - Route change (through NH) filed December 8, 2014
  - Draft ER by pipeline on March 13, 2015
  - Second Draft ER filing anticipated in June 2015
  - Estimated FERC Application filing (including final ER): September 2015
  - Proposed Construction Start Date: January 2017
  - Estimated Placed in Service Date: November 2018
USEFUL ACRONYMS IN THE PIPELINE PROCESS

EA = Environmental Assessment
EIS = Environmental Impact Statement
ER = Environmental Report
ESP = Endangered Species Act of 1973
FERC = Federal Energy Regulatory Commission
NEPA = National Environmental Policy Act of 1969
NGA = Natural Gas Act
NOI = Notice of Intent
PHASES AND TIMING OF PROJECT REVIEW

- Project development by pipeline

- FERC Pre-Filing
  - FERC staff works with applicant
  - Timeframe: minimum 6 months

- FERC Application Review
  - No statutory time limits for review
  - Once an application is filed, the average time for FERC to issue an order is approximately 12 months
  - Complex, controversial projects may take additional time

- Post-FERC Order (rehearing; compliance with conditions) and Judicial Review
TOWN PARTICIPATION

- **Pre-Filing Process:**
  - Contact the project sponsor and/or FERC with questions and concerns
  - Write comments on environmental impact concerns
  - Attend pipeline-led open houses (route, identify town issues)

- **Application Process:**
  - File intervention (on FERC’s service list to receive all filings in docket)
  - File comments, impact studies, expert evidence (paper hearings)
  - Attend FERC-led scoping meetings
  - Request conditions in FERC Order
  - Rehearing/post-certificate judicial review

- **Other:**
  - Participate in permitting proceedings
  - Community Benefit Agreements
PREEMPTION: OCCUPYING THE FIELD

- FERC has broad authority to grant a certificate for pipelines under NGA
  - Federal courts have found: NGA and the accompanying federal regulations “occupy the field” with respect to siting, construction, or operation of natural gas facilities
  - Duplicative state and local permitting processes – such as siting or zoning – are preempted by federal law

- What is not preempted?
  - Federally-required state certification programs
    - Section 401 Water Quality Certificate/Federal Water Pollution Control Act
    - the Coastal Zone Management Act of 1972
    - the Clean Air Act
PREEMPTION: COOPERATION

● Despite preemption, FERC encourages cooperation between pipelines and local authorities
  - Where state or local agencies require environmental permits or propose conditions to protect local resources (e.g., state endangered species), FERC frequently makes compliance with these requirements a condition of the certificate
  - State agencies and localities may participate in the process
    • EFSB intervention to “preserve the rights of interested citizens.”

● State and local actions:
  - must be consistent with the conditions of this certificate
  - may not prohibit or unreasonably delay the construction and operation of the pipeline facilities
OTHER PERMITS/AUTHORIZATIONS

- Other state and local permits and authorizations may include:
  - road opening permit
  - erosion and sedimentation control
  - wetlands crossings
  - Article 97 authorization from the Massachusetts legislature to obtain easement rights on conservation lands owned by the state or a town or city
  - MEPA filing with FERC

- FERC regulations require certificate-related final decisions from other agencies no later than 90 days after FERC issues its final environmental document
FERC PROCESS: PRE-FILING

- Voluntary process for pipelines
- File for approval to enter pre-filing process
- Pipeline conducts informational open houses
- Work collaboratively with FERC staff
- Identify project issues
- Determine scope of environmental review (EA/EIS)
FERC REVIEW: APPLICATION

- **Non-Environmental Review**
  - Financially viable project
  - Market Support/Need
  - Route/Impact on landowners and communities
  - Tariff – rates, terms & conditions of service

- **Environmental Review under NEPA**
  - Level of impacts:
    - significant - Environmental Impact Statement ("EIS")
    - less than significant - Environmental Assessment ("EA")
    - finding of no significant impact ("FONSIE")
FERC APPLICATION: STANDARD OF REVIEW

Project must be found to be in the “public convenience and necessity.”

- **Threshold question**: Is the project financially prepared to stand on its own without subsidies from existing customers?
- **Balancing Test**: Do overall **public benefits outweigh adverse impacts**?
  - **Public Benefits** are case specific: meeting unserved demand, eliminating bottlenecks, access to new supplies, lower costs to consumers, competitive alternatives, electric reliability, advancing clean air objectives
    - Is there need? (is the pipeline subscribed? Overbuilding?)
  - **Adverse Impacts** (eliminated or mitigated?):
    - on existing customers of the pipeline (rate increase, service degradation)
    - on existing pipelines in the market and their captive customers (loss of market share, left with unsubscribed capacity)
    - on landowners and communities affected by the route of the new pipeline (acquire necessary ROW by negotiation, eminent domain, environmental)
NEPA Review

- FERC must integrate environmental values into its decision-making
- Consider potential impacts of pipeline and reasonable alternatives
- FERC seeks comments from other agencies with jurisdiction over the proposed project, the applicant and the public
- Review includes:
  - Ecology – fish, wildlife, vegetation
  - Water Resources
  - Cultural Resources – historic preservation
  - Land use – recreation, aesthetics
  - Soils and geology
  - Air and noise
  - Socioeconomic Impacts
  - Alternatives
  - Cumulative impact of pipeline projects
FERC APPLICATION: OVERVIEW

PROCESSES FOR NATURAL GAS CERTIFICATES
Application Process

1. Receives Formal Application from Applicant
2. Notice of Application Issued
3. Conduct Scoping to Determine Environmental Issues
4. Review Application and Issue Data Request(s) if Needed
5. Commission May Issue Preliminary Determination of Need Based on Non-Environmental Factors

Public Input Opportunities
FERC APPLICATION OVERVIEW (CONTINUED)
FERC ORDER: CONDITIONS

- NGA Section 7(e): statutory authority to place conditions on its Order
- Public may request conditions
EMINENT DOMAIN

- NGA Section 7(h)
- Pipeline may use the eminent domain process after FERC's order issuing its certification
- Used when pipeline cannot acquire land by contract or agree to compensation with landowner
- FERC: eminent domain only as a last resort
COMMUNITY BENEFITS AGREEMENTS

- Timing: leverage during FERC process

- Provisions:
  - Construction
  - Environmental Mitigation
  - Compensation
  - Compliance with local regulations/process
  - Private Landowner Protections
  - Economic Considerations
  - Maintenance

- File with FERC to have included in certificate order
STRATEGIC OPTIONS

- Participation (alone, as groups of towns, through BRPC, other)

- Objectives – avoid, minimize and mitigate

- Outreach to Constituents – understanding concerns, potential impacts, possible mitigation

- Communication of concerns, impacts, mitigation to pipeline and FERC

- Resource limitations
NEXT STEPS