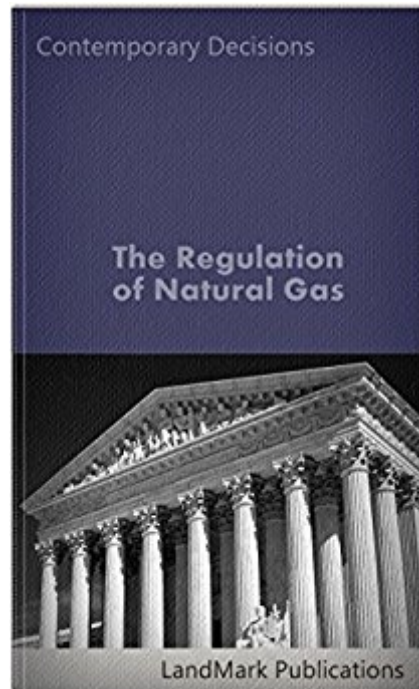




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The Regulation Of Natural Gas (Litigator Series)



Synopsis

THIS CASEBOOK contains a selection of 25 U. S. Court of Appeals decisions that analyze and discuss issues surrounding the regulation of natural gas by the Federal Energy Regulatory Commission. The selection of decisions spans from 2011 to the date of publication. The Natural Gas Act grants FERC jurisdiction over the transportation and wholesale sale of natural gas in interstate commerce. 15 U.S.C. § 717(b)-(c). Any person seeking to construct or operate a facility for the transportation of natural gas in interstate commerce must first obtain a certificate of public convenience and necessity from the Commission. *Id.* § 717f(c)(1)(A). FERC is authorized to issue such a certificate to any qualified applicant upon finding that the proposed construction and operation of the pipeline facility is required by the public convenience and necessity. *Id.* § 717f(e). *Delaware Riverkeeper Network v. FERC*, 753 F. 3d 1304 (DC Cir. 2014). Under Section 7(c) of the Act, before an applicant can construct or extend an interstate facility for the transportation of natural gas, it must obtain a "certificate of public convenience and necessity" from the Commission. 15 U.S.C. § 717f(c)(1)(A); *Dominion Transmission, Inc. v. Summers*, 723 F.3d 238, 240 (D.C.Cir.2013). The statute provides that a certificate "shall be issued to any qualified applicant" upon a finding that "the applicant is able and willing properly to do the acts and to perform the service proposed ... and that the proposed service" and "construction... is or will be required by the present or future public convenience and necessity." 15 U.S.C. § 717f(e). FERC may, in issuing such a certificate, attach "such reasonable terms and conditions as the public convenience and necessity may require." *Id.*; *Murray Energy Corp. v. FERC*, 629 F.3d 231, 234 (D.C.Cir.2011). *Minisink Residents For Env'tl. Pres. v. FERC*, 762 F. 3d 97 (DC Cir. 2014). The Commission has issued a policy statement outlining the criteria it considers in reviewing such certificate applications. *Certification of New Interstate Natural Gas Pipeline Facilities*, 88 FERC ¶ 61,227 (Sept. 15, 1999), clarified, 90 FERC ¶ 61,128 (Feb. 9, 2000), further clarified, 92 FERC ¶ 61,094 (July 28, 2000) ("Certificate Policy Statement"). The Commission will first confirm "whether the project can proceed without subsidies from the[] existing [pipeline's] customers." *Id.*, 88 FERC ¶ 61,227, at 61,745. Then, it will "balanc[e] the public benefits against the adverse effects of the project." *Id.*, 90 FERC ¶ 61,128, at 61,396. FERC will approve a project only "where the public benefits of the project outweigh the project's adverse impacts." *Id.*; see also *Fla. Gas Transmission Co. v. FERC*, 604 F.3d 636, 649 (D.C.Cir.2010) (Brown, J., concurring in part and dissenting in part) (summarizing the factors examined under FERC's Certificate Policy Statement). *Minisink Residents For Env'tl. Pres. v. FERC*, *ibid.*

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