

Appeals court rules regulators must reconsider Tennessee pipeline project

By Brendan Gibbons

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The Federal Energy Regulatory Commission violated federal environmental law when it treated one large natural gas pipeline expansion as four separate projects, according to a federal appeals court ruling.

Now, FERC must revisit the issue of deforestation, wetland removal and other environmental effects of the expansion of Tennessee Gas Pipeline, the D.C. Circuit Court of Appeals ruled Friday. The agency will have to look at changes to the landscape that have already occurred, unlike the approval process, which looks at potential changes.

The line runs from the Gulf of Mexico to major natural gas markets on the East Coast. It runs through Pennsylvania's Northern Tier, where it picks up gas from Marcellus Shale wells.

Between 2010 and 2013, FERC assessed, permitted and allowed Houston-based Kinder Morgan, which operates the pipeline, to build the upgrades. All were placed into service by late 2013.

The projects involved laying additional pipe alongside preexisting pipeline, a technique known as "looping." In many cases, this involved cutting down sections of forest to be maintained as a 25-foot-wide permanent, mowed grassy strip adjacent to existing pipeline rights of way.

Cumulatively, the projects added 185 miles of looped pipe, the ruling states.

"Even though each project's incremental increase in pipeline capacity was contracted for separately, all of the projects function together seamlessly," the ruling states. Considering them separately was a violation of the 1970 National Environmental Policy Act, the court ruled.

Taken together, these four projects cleared 628 acres of forest, the area of around 483 football fields, according to the Delaware Riverkeeper Network. The group, along with New Jersey Highlands Coalition and the New Jersey Sierra Club brought the legal challenge against FERC. Kinder Morgan submitted the projects separately because the company made separate

agreements with customers and gas shippers at different times, spokesman Richard Wheatley said in an email.

But FERC was well aware that the four projects were interrelated, Delaware Riverkeeper Network leader Maya van Rossum said.

“They’ve simply chosen to turn a blind eye or collude with the industry, but this is not an error,” she said.

FERC spokeswoman for natural gas regulation Tamara Young-Allen would not comment on why the commission reviewed the four projects separately or how exactly it would handle the court’s decision.

“At this point, (the commissioners) are reviewing the court decision and I can’t really comment beyond that,” she said.

Kinder Morgan does not expect FERC’s finding of “no significant impact” will change when it looks at all four upgrades as a whole, Mr. Wheatley said.

“Neither the appellate court’s opinion, nor the FERC’s remand proceeding, will disrupt the ability of Tennessee Gas Pipeline Company LLC to continue operation of the Northeast Upgrade Project facilities or any of the other completed project facilities discussed in the opinion,” Mr. Wheatley said in an email.

The issue of cumulative environmental impacts has arisen around other major pipeline expansions under FERC consideration, including the 124-mile Constitution Pipeline, planned to run from Susquehanna County to Schoharie County, New York. FERC is expected to release the pipeline’s final environmental impact statement Friday.

Many of the pipeline’s opponents argue FERC should consider broad environmental effects — everything from drilling natural gas wells to the expansion of local distributors linked to the interstate line to the climate implications of burning natural gas for power generation.

Ms. van Rossum said she thinks this ruling’s effects will ripple beyond the Tennessee line. She pointing to a concurrence by Judge Janice Rogers Brown, who said she would have focused on “FERC’s need for a more thorough cumulative impacts analysis.”

“This is an important first step, we believe, towards opening that door,” Ms. van Rossum said.

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