



JUST THE FACTS

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Pipes, Wires & Grids – Infrastructure Remains Critical to U.S. Energy Security

The challenges facing infrastructure development to move natural gas out of the Appalachian Basin to markets where it is urgently needed through the construction of the Mountain Valley Pipeline (MVP) arose yet again with the July 11, 2023 stay issued by a panel of judges on the 4th U.S. Circuit Court of Appeals. Equitrans Midstream's statement following the decision best defines the frustration of a federal court ignoring a law passed by Congress and signed by the President of the United States:

"We are disappointed with the U.S. Court of Appeals for the Fourth Circuit's remarkable decision to grant a one-sentence stay halting all construction in the Jefferson National Forest with no explanation. The Court's decision defies the will and clear intent of a bipartisan Congress and this Administration in passing legislation to expedite completion of the Mountain Valley Pipeline project, which was deemed to be in the national interest. We believe the Court also exceeded its authority, as Congress expressly and plainly removed its jurisdiction. Further, the fact that the Court issued the stay prior to receiving full briefing from the federal government and Mountain Valley is particularly telling and demonstrates why Congressional intervention was appropriate. We are evaluating all legal options, which include filing an emergency appeal to the U.S. Supreme Court. Unless this decision is promptly reversed, it would jeopardize Mountain Valley's ability to complete construction by year-end 2023."

The situation with MVP and other projects make it clear that strong permitting reform – applicable to all energy sources – is desperately needed in the U.S. Here are a few facts and – hopefully – lessons learned along the way.

The Appalachian Bottlenecks

While there have been a few success stories of natural gas pipelines in our region currently in service, the number of abandoned or rejected projects tell a story of frustration in efforts to move inexpensive, American-made energy out of the basin. David Butterworth, Business Agent for Pipeliners Local 798 reminded attendees at PIOGA's 2022 Marcellus to Market Conference about them, including:

- The Atlantic Coast Pipeline, to transport gas to Virginia and North Carolina, abandoned in 2020
- The Constitution Pipeline, looking to move gas to New York, abandoned in 2020
- The Northeast Supply Enhancement, intended for New Jersey and New York, denied by the New York State Department of Environmental Conservation (NYSDEC) in 2022

- The Penn East Pipeline, seeking to increase supplies in central New Jersey, denied by the New Jersey Department of Environmental Protection in 2019

National Fuel Gas' Northern Access Project, a 99-mile transmission line extending north from McKean County into New York State and originally proposed in 2016, has experienced delays due to the denial of a water quality certificate by NYSDEC and challenges to other permits. The Federal Energy Regulatory Commission (FERC) took action in June 2022 to extend the completion date for the project to the end of 2024.

On the positive side, the Williams Regional Energy Access Project, an expansion of the company's existing infrastructure in eastern Pennsylvania and New Jersey, has received permit approval and a full Notice to Proceed from FERC. Construction began in March of this year; the system is scheduled to be placed into service in late 2024.

The Grain Belt Express

Opposition to energy infrastructure is not limited to new natural gas pipelines or high-voltage electricity lines from nuclear or fossil fuel-powered facilities. In 2010, Invenergy envisioned the construction of the Grain Belt Express, an 800-mile power line to connect both wind and solar energy from large swaths of land in Kansas to population centers in Illinois, Indiana and Missouri. With approvals required from every local and state entity in its path, construction still has not started in earnest due to the resistance of at least one agency or government along the route. Its completion is far from certain.

Federal or State Authority?

The U.S. Department of Energy (DOE) recently recognized the need to evaluate the future of the nation's energy infrastructure, including transmission lines, distribution grid networks, microgrids and storage facilities, forming a "Grid Deployment Office" in August 2022 and spending billions of dollars to try and develop solutions to a far more dispersed energy generation landscape.

The new office has begun doing preliminary work to identify and establish "national interest" transmission corridors to guide federal siting authority for new transmission lines and infrastructure projects. Once established, those corridors would unlock \$2 billion in loan money in the August 2022 climate and tax bill known as the Inflation Reduction Act.

These efforts are bound to face opposition from state utility commissions, which issue permits for electric transmission under the Federal Power Act. Greg White, executive director of the National Association of Regulatory Utility Commissioners, told Bloomberg last August, "We don't think that removing the states is actually going to reduce the time frames. The sense is, if they [DOE] can remove the state authority on siting these, that these projects will proceed quicker—and we disagree with that."

The Energy Policy Act of 2005 included an effort by the federal government to take more control over transmission siting authority, with the act requiring the DOE to study electric grid constraints and declare National Interest Electric Transmission Corridors where customers are impacted. The law envisioned the designation of the FERC as the "backstop" siting authority if a state doesn't approve permits for a line along those corridors.

The Ninth Circuit Court struck down two broad corridors DOE designated in the Mid-Atlantic and Southwest regions in 2011, siding with a coalition of environmental and historic preservation organizations and state and local agencies. DOE and FERC have not attempted to wrest siting control away from the states since that time, with the Grid Deployment Office now seeming to be ready to undertake that task.

The Facts

The morass created by the 4th Circuit Court of Appeals regarding MVP has made a mockery of what needs to be a more predictable permitting regimen for much-needed energy projects, and the distributed nature of renewable energy sources has the potential to complicate infrastructure development even more. The DOE estimates that more than 930 gigawatts (GW) of solar, wind, hydropower, geothermal, and nuclear power capacity are currently sitting in interconnection queues awaiting access to transmission lines currently at their maximum.

The challenges do not stop there. Experts estimate the U.S. will need to increase its transmission line capacities by 25 percent in the next decade to reach renewable projects and renovate many existing lines to integrate them into the changing framework of generating sources, as well as those that need to be expanded or built to accommodate hydrogen hubs and carbon sequestration projects across the country. The fact remains that the process of getting power from sources to end users is an issue that needs better regulatory solutions.



115 VIP Drive, Suite 210
Northridge Office Plaza II
Wexford, PA 15090-7906
(724) 933-7306
www.pioga.org | info@pioga.org