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Natural Gas Act/Construction Activities: Federal Energy Regulatory Commission Issues Rule Precluding Issuance of Authorizations to Proceed Pending Rehearing Period

06/15/2020

The Federal Energy Regulatory Commission (“FERC”) issued a final rule on June 9th amending its regulations regarding authorizations to proceed with construction activities with respect to natural gas facilities.

The natural gas facilities affected include those for which an order has been issued pursuant to Section 3 or Section 7 of the Natural Gas Act.

The final rule would preclude the issuance of authorizations to proceed with construction activities related to the referenced facilities until:

1. Either the time for filing or request for rehearing of such order has passed with no rehearing request being filed; or
2. FERC has acted on the merits of any rehearing request.

The stated impetus for the rule is an effort to protect stakeholders, including landowners, to ensure that construction of an approved natural gas project cannot proceed until FERC acts on a request for rehearing.

Section 7(e) of the Natural Gas Act requires that a company obtain approval from FERC before it can construct a natural gas pipeline. Section 3 of the same statute prohibits the import or export of natural gas between the United States and a foreign nation without first having secured an order of the FERC authorizing it to do so.

The FERC states that Sections 3 and 7 proceedings have been the subject of increased interest and participation by stakeholders in recent years. Such stakeholders are stated to include landowners, community members, non-governmental organizations, property rights advocates, and governmental entities.

Any party dissatisfied with the FERC’s Natural Gas Act Section 3 authorization or Section 7 Certificate Determination may apply for a rehearing. Upon rehearing, the FERC is authorized to grant or deny the request or to abrogate or modify its order. The FERC notes that:

. . . because of the complex nature of the matters raised, the Commission issues an order (known as a tolling order) by the thirtieth day following the filing of a rehearing request, in order to allow additional time for the Commission to provide thoughtful, well-considered attention to the issues raised on rehearing.

The FERC further states in issuing the final rule that:

. . . in order to balance our commitment to expeditiously respond to parties' concerns in comprehensive orders on rehearing and the serious concerns posed by the possibility of construction proceeding prior to the completion of Commission review, we are exercising our discretion to adopt a new regulation that precludes the issuance of authorizations to proceed with construction of projects authorized under NGA sections 3 and 7 while rehearing of the initial orders is pending.

A copy of the final rule can be downloaded [here](#).