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SNL: FERC deference to pipeline operators seen contributing to overbuild

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Discoveries of oil and gas in new regions in the U.S. typically bring the need for additional pipelines to take the resources to market. But with natural gas production booming in the past 10 years, industry experts believe that increased use of gas for power generation and deference by regulators may result in a potential overbuild of pipeline infrastructure.

Signs of pipeline overbuild

The number of interstate natural gas pipelines and compressor stations that have been proposed and approved in recent years is growing.

"In 2014, there were 26 pipelines that were approved and then an additional 20 that were proposed," Carolyn Elefant, a private attorney that represents impacted communities during the pipeline conception process, said at a conference held by the Institute for Energy Economics and Financial Analysis on March 15. "In 2015, there were 54 pipelines proposed and 30 that were approved. There are definitely many more cases."

Elefant said that the increased number of proposed pipelines is a result of growing production in places like the Marcellus.

"Back in 2012 or 2013, maybe production did overwhelm infrastructure, but if you see where we're headed, pretty soon infrastructure is going to overwhelm Marcellus," Elefant said. "There have already been some reports questioning whether there is enough gas in Marcellus to sustain all of these pipelines."

Typically, pipeline operators work with exploration and production companies to guarantee that a new pipeline is needed and will be utilized.

Elefant said that there is a debate at FERC as to whether there is a causal connection between extraction and pipeline development, where increases in one lead to growth in the other, but said that it is arguably case specific.

FERC has increasingly relied on information supplied by pipeline operators in making decisions to grant approvals, and the issue has manifested itself through exports of liquefied natural gas.

"In theory, FERC might be thinking 'well pipelines are not going to overbuild because, if they don't have contracts for the gas, what are they going to do with it?'" Elefant said. "This is what

we're going to do with it. If they have excess capacity, they can use it for export, and so that's another factor that's driving development."

Problems with overbuild

Any overbuild in pipeline infrastructure could have deleterious effects on consumers and private property owners, according to Elefant.

One problem arises from electric companies that lock into long-term contracts to buy gas for power generation. State commissions are either pre-approving or encouraging utilities to enter into long-term contracts for gas. The locked prices typically lock in consumers as well, which does not bode well during a declining price environment.

The Clean Power Plan is contributing to this, as many utilities are substituting cleaner burning natural gas for coal.

Another problem with overbuild is pipeline abandonment, which could leave abandoned infrastructure on private property. Elefant said that FERC does not require pipelines to put up money for potential decommissioning or make plans for abandoning them down the line.

A third problem comes from potential encroachment on an individual's fifth amendment rights to private property. The amendment requires that eminent domain be coupled with just compensation and public need when property is taken.

"If you have companies that are overbuilding, then by definition, there's no need," Elefant said. "The constitution says you can only take private property with just compensation and if there's a public need."

Elefant said that the determination of need and the certificate that authorizes the taking of property are done at FERC, so that once a pipeline company has that certificate and uses it in an eminent domain proceeding, the landowner has little ability to challenge it. Such challenges are considered to be collateral attacks on a FERC decision.

There is also the possibility that getting the certificates has become easier.

"In reading over applications in the past few years, I've noticed that even the support for the need for these projects has really deteriorated over time," Elefant said. "In one of the applications, the company said something like 'it's our hope that we'll get enough subscribers for this project.' There wasn't even an attempt to suggest that there was demand for the project."

The fix for a potential overbuilding of pipeline infrastructure could lie in section 7 of the Natural Gas Act and the public need provision, along with adjudicated hearings.

"FERC really needs to take a closer look at need on a case-by-case basis," Elefant said. "The best way to do that is to have adjudicated hearings again."

A representative at FERC declined to comment but noted that the agency closely reviews each pipeline application to ensure adequate customer support for the project.

To view operational statistics on interstate natural gas pipelines, go to our [Pipeline Summary Page](#).