

## Gas Pipelines and LNG:

How is The Development of  
Natural Gas Infrastructure  
Regulated?

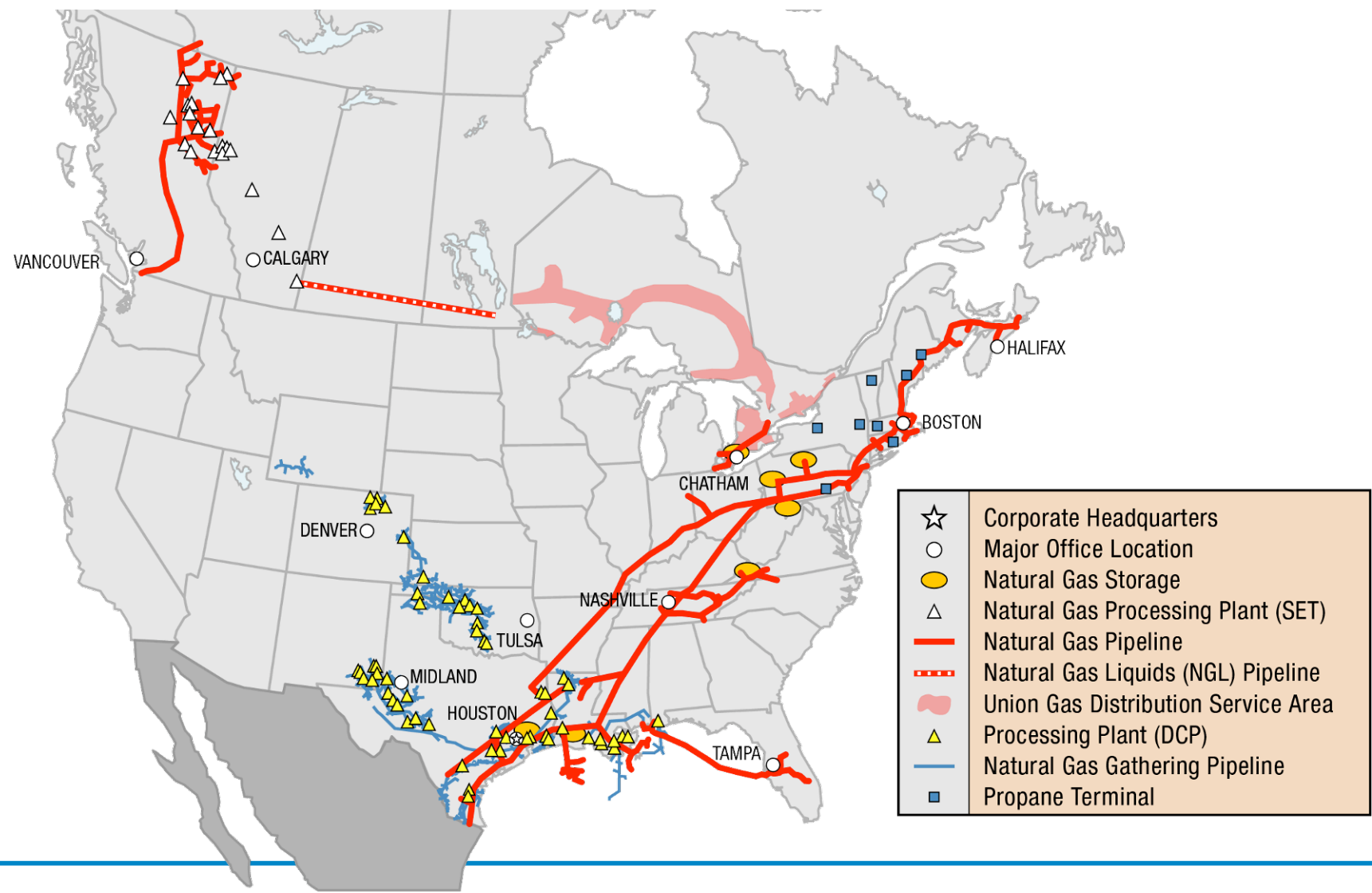
What Are The Respective  
Roles of Federal and State  
Regulators?

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# Spectra Energy System Map



# Overview of Primary Jurisdiction

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<u>Facility</u>	<u>Statute</u>	<u>Lead Agency</u>
Interstate Natural Gas Pipeline	Natural Gas Act - Section 7	FERC
Onshore LNG Terminal	Natural Gas Act - Section 3	FERC
Offshore LNG Terminal	Deepwater Port Act	MARAD / USCG

## I. Regulation of Interstate Natural Gas Pipelines

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- Natural Gas Act (NGA) provides comprehensive regulation of interstate pipelines
- Federal Energy Regulatory Commission (FERC) has the authority to administer the NGA
- Certificate of Public Convenience and Necessity required for construction and operation of new facilities
  - Comprehensive application required
  - Broad notice provisions
  - Open opportunity to intervene
  - NEPA review of facilities

## Energy Policy Act of 2005 – “Rational Siting Process”

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- Designates FERC as lead agency for NEPA review
- Authorizes FERC to establish a schedule for federal permits
- Requires agencies acting under federal law to comply with FERC schedule
- Authorizes FERC to maintain consolidated record for all federal permits
- Designates appellate courts for “expedited consideration” of reviews regarding federal permits
  - Failure to issue permit – DC Circuit
  - Review of permit/denial – Circuit of project location
- Establishes timeline for Secretary of Commerce to act on CZMA appeal

## FERC's Scheduling/Consolidated Record Process

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- FERC Order No. 687 – effective December 26, 2006
- All federal permits to be filed prior to FERC application
- FERC establishes permitting schedule within 90 days of notice of application
- All agencies to complete their reviews within 90 days of issuance of EA/EIS
- Exclusions:
  - State permits
  - Federal permits with statutory timelines (e.g. CZMA, CWA)

## Islander East Appeal of Section 401 WQC Denial

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- CT DEP denied Islander East's Section 401 water quality certificate application
- In August, 2005, Islander East filed petition for expedited review with 2d Circuit
- In October, 2006, the 2d Circuit issued its order
  - CT DEP was arbitrary and capricious
  - Remanded back to DEP for further review
- In December, 2006, the DEP again denied the application
- In December, 2006, Islander East again filed for expedited review with 2d Circuit
- Oral argument set for April 10, 2007

## Involvement of Other Agencies - Pipelines

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- Federal agencies acting under federal authority, e.g.
  - USCOE – Rivers and Harbors Act; Clean Water Act
  - USF&W – Endangered Species Act
  - USEPA – Clean Water Act
- State agencies acting under delegated authority, e.g.
  - Coastal Zone Management Act
  - Clean Water Act
  - Clean Air Act
- FERC / NEPA regulations provide for extensive input from all stakeholders

# Typical Federal Agencies Involved in Review of a Pipeline Project

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- FERC
- Army Corps of Engineers
- Environmental Protection Agency
- National Marine Fisheries Service
- Fish and Wildlife Service
- Advisory Council on Historic Preservation
- Federal Highway Administration
- National Parks Service

# Typical State Agencies Involved in Review of a Pipeline Project (Mass.)

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- Mass. Environmental Policy Act Office
- Coastal Zone Management Office
- Department of Environmental Protection
- State Historic Preservation Office
- Department of Conservation and Recreation
- Natural Heritage and Endangered Species Program
- Division of Marine Fisheries
- Mass. Highway Department

## FERC Encourages Collaboration / Cooperation

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- Ideas for Better Stakeholder Involvement (2001)
  - “earlier and more productive involvement”
- Interagency Agreement on Early Coordination (2002)
  - “framework for early cooperation and participation”
- Guidance: FERC Staff NEPA Pre-Filing Process (2004)
  - “encourage.... early project development involvement”
- Energy Policy Act of 2005 / Order Nos. 665 and 687
  - “encourage applicants to cooperate”
- Standard certificate language encourages “cooperation between pipelines and local authorities”

## Limitations on State and Local Action

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- Standard certificate language
  - State or local permitting must be consistent with FERC certificate
  - State and local agencies “may not prohibit or unreasonably delay”
- *Schneidewind v. ANR Pipeline* (1988)
  - State agency may not regulate matters directly considered by FERC
- *National Fuel v. NYPSC* (1990)
  - “states may not engage in concurrent site – specific environmental review”
- *Algonquin LNG v. Loqa* (2000)
  - “there is no room for local zoning or building code regulations”
- Not all state / local actions are unreasonable
  - FERC’s “rule of reason”

## Safety Jurisdiction – Pipelines

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- Natural Gas Pipeline Safety Act specifically preempts state safety standards
- U.S. DOT is responsible for establishing safety and design standards and ensuring compliance
  - 49 CFR Part 192
- U.S. DOT generally not active in certificate review process
  - focus is on inspection
    - States may become an agent for DOT for inspection purposes

## II. Onshore LNG Terminals

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- Section 3 of the NGA gives FERC exclusive jurisdiction for siting, construction, and operation
  - Clarified in EAct
  - Applies to onshore LNG facilities and LNG facilities in state waters
  - Unlike pipelines, no eminent domain authority
- “Rational Siting” provisions of EAct apply equally to Section 3 LNG facilities
- Mandatory NEPA pre-filing process
  - Six months minimum
  - Certificate in 12 months (?)
  - FERC’s NEPA review includes tanker operations and marine facilities
  - DOT and USCG part of review process

# Involvement of Other Federal Agencies – FERC LNG Projects

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- Federal agencies acting under federal law, e.g.
  - ACOE, USF&W, NOAA
- U.S. Coast Guard has authority for safety and security of ports and navigable waterways
  - Navigation and vessel safety
  - Safety of facilities in / adjacent to navigable waters
  - Security plan review
- U.S. DOT has authority to establish and enforce minimum safety standards
  - 49 CFR Part 193
  - FERC can impose more stringent safety conditions in certificate

# Involvement of Other State Agencies – FERC LNG Projects

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- State agencies acting under federal law, e.g.
  - CZMA, Clean Water Act, Clean Air Act
- State to designate contact for “state and local safety considerations”
- State may issue advisory report on safety within 30 days of certificate filing
  - FERC must review and respond to all concerns
- State may conduct safety inspections under certain conditions but no enforcement authority
- Applicants must consult with USCG and state and local agencies to develop “Emergency Response Plan”
  - Includes cost sharing agreements with state and local agencies
- Preemption principles apply

### III. Offshore LNG Terminals

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- Deepwater Port Act (DPA) authorizes the Secretary of Transportation to license the ownership, construction, and operation of “deepwater ports”
- “Deepwater port”
  - Manmade structure beyond state seaward boundaries intended for handling oil and gas
  - Includes natural gas or LNG
  - State seaward boundary
    - 3 miles on either coast
    - 3 marine leagues in the Gulf of Mexico
  - Can include associated pipelines
    - Into high water mark
    - Excludes “interconnecting facilities”

# Regulation of Deepwater Ports

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- Authority to issue DPA license delegated to DOT's Maritime Administration (MARAD)
  - Financial review
  - Prepare Record of Decision
  - Issue license
- Authority to process the DPA application delegated to USCG
  - Technical, safety and environmental reviews
  - Lead agency for NEPA
- DPA applications required to be approved or denied in 356 days of receipt
  - 21 days for completeness determination
  - 5 days to publish in Federal Registry
  - 240 days for review and hearings
  - 90 days to approve or deny
  - But USCG/MARAD can “stop the clock”

# Involvement of Other Agencies and Officials – Offshore LNG

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- Deepwater ports must comply with NEPA
- Federal and state agencies acting under federal law
- A DPA license cannot be issued if the EPA Administrator notifies MARAD that the project will not conform with CAA, CWA, and Marine Sanctuaries Act
- A DPA license cannot be issued without the approval of the governor of each adjacent coastal state
  - Must be issued within 45 days of last hearing
  - Silence is deemed acceptance
- The governor of an adjacent coastal state may also notify MARAD if an application is not consistent with state and environmental programs
  - MARAD must condition license on achieving such consistency

## Involvement of Other Agencies and Officials – Offshore LNG (continued)

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- Any other interested state may present its views and MARAD must give them full consideration
- Other agencies may recommend that the applicant provide additional information
- Interagency MOU to share information and involve all stakeholders
- USCG generally conducts three public hearings
  - Scoping
  - DEIS
  - FEIS

# Opposition Strategies – Roadblocks or Speed Bumps?

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- Quoddy Bay and Downeast LNG (ME)
  - Canadian government prohibits transit of LNG vessels in Canadian waters
- Crown Landing LNG (NJ)
  - Delaware denies CZM approval of NJ facility
- Sparrows Point LNG (MD)
  - County prohibits LNG terminals via zoning and land use ordinances
- Sound Energy Solutions LNG (CA)
  - City terminates lease negotiations with LNG developer
- Islander East Pipeline (CT)
  - State denies Section 401 WQC
- Weavers Cove LNG (MA)
  - State withholding completeness determination for CZM application

# How is the Development of Natural Gas Infrastructure Regulated?

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- All facilities regulated by an agency with “exclusive” jurisdiction
  - Siting jurisdiction at a minimum
  - Lead agencies for NEPA review
- Lead agency will establish permitting timeline
  - MARAD / USCG – 356 days + time outs
  - FERC – Pre-Filing + 12 months (approx)
- All facilities subject to compliance with other federal laws, e.g.
  - CZMA
  - CWA
  - CAA
- All agencies required / encouraged to cooperate with lead agency
- States play a major role in the regulatory process
  - Federally delegated authority
  - Governor’s veto under DPA
- Public participation is possible in multiple proceedings