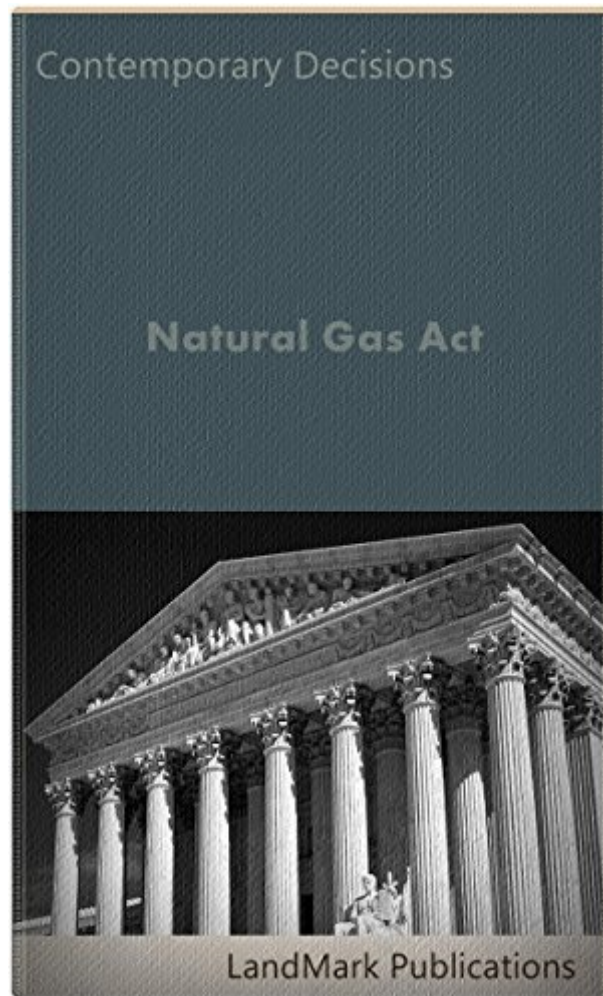




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Natural Gas Act (Litigator Series)



Synopsis

THIS CASEBOOK contains a selection of 125 U. S. Court of Appeals decisions that analyze, interpret and apply provisions of the Natural Gas Act. The selection of decisions spans from 2004 to the date of publication. Congress enacted the Natural Gas Act, ch. 556, 52 Stat. 821 (1938) (codified as amended at 15 U.S.C. § 717 et seq.), with the "principal purpose" of "encourag[ing] the orderly development of plentiful supplies of . . . natural gas at reasonable prices," *NAACP v. Fed. Power Comm'n*, 425 U.S. 662, 669-70 (1976). "[S]ubsidiary" purposes include respecting "conservation, environmental, and antitrust" limitations. *Id.* at 670 & n.6. The Act vests the Commission [FERC] with authority to regulate the transportation and sale of natural gas in interstate commerce, including authority to issue certificates permitting the construction or extension of natural gas transportation facilities[.] 15 U.S.C. § 717f(c). *Myersville Citizens For A Rural Community, Inc. v. FERC*, (DC Cir. 2015). The Natural Gas Act (NGA) requires any party seeking to construct a facility for transporting natural gas first to obtain a certificate of public convenience and necessity from the Federal Energy Regulatory Commission. 15 U.S.C. § 717f(c)(1)(A). [T]he Commission grants a certificate only if the construction project "is or will be required by the present or future public convenience and necessity," and conditions it upon "such reasonable terms and conditions as the public convenience and necessity may require." 15 U.S.C. § 717f(e). *Gunpowder Riverkeeper v. FERC*, (DC Cir. 2015). In issuing a certificate, however, the Commission must comply with the separate statutory mandate of the National Environmental Policy Act (NEPA). See 42 U.S.C. § 4332(2)(C). In accordance with the NEPA, every application for a certificate prompts an environmental review. Generally, the Commission first prepares an environmental assessment and, unless it determines the proposed project would have no significant environmental impact, it goes on to prepare a full-blown environmental impact statement. See 40 C.F.R. § 1501.4. *Gunpowder Riverkeeper v. FERC*, *ibid.* In addition, the Clean Water Act (CWA) requires every applicant for a federal permit authorizing any action that "may result in any discharge into the navigable waters" of the United States to submit to the permitting agency a certification from the appropriate state or interstate agency "that any such discharge will comply" with the CWA. 33 U.S.C. § 1341(a)(1). *Gunpowder Riverkeeper v. FERC*, *ibid.* When the Commission issues a certificate of public convenience and necessity, it "sets initial rates governing the sale price of natural gas transported in the pipeline," *Missouri I*, 601 F.3d at 583, and may "attach to the . . . certificate . . . such reasonable terms and conditions as the public convenience and necessity may require," 15 U.S.C. § 717f(e). Under that authority, the Commission "employs a 'public interest' standard to determine the initial rates that a pipeline may charge for newly certificated service." *Mo.*

Pub. Serv. Comm'n v. FERC, 337 F.3d 1066, 1068 (D.C. Cir. 2003) (citing Atl. Ref. Co. v. Pub. Serv. Comm'n, 360 U.S. 378, 391 (1959)). Initial rates "offer a temporary mechanism to protect the public interest until" the Commission sets permanent rates pursuant to NGA § 4, 15 U.S.C. § 717c. Algonquin Gas Transmission Co. v. Fed. Power Comm'n, 534 F.2d 952, 956 (D.C. Cir. 1976). Missouri Public Service Commission v. FERC, (DC Cir. 2015).. . .

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