



# ***FERC and the Trump Administration***

**This webcast will begin promptly at 12:00 PM Eastern**

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# Welcome





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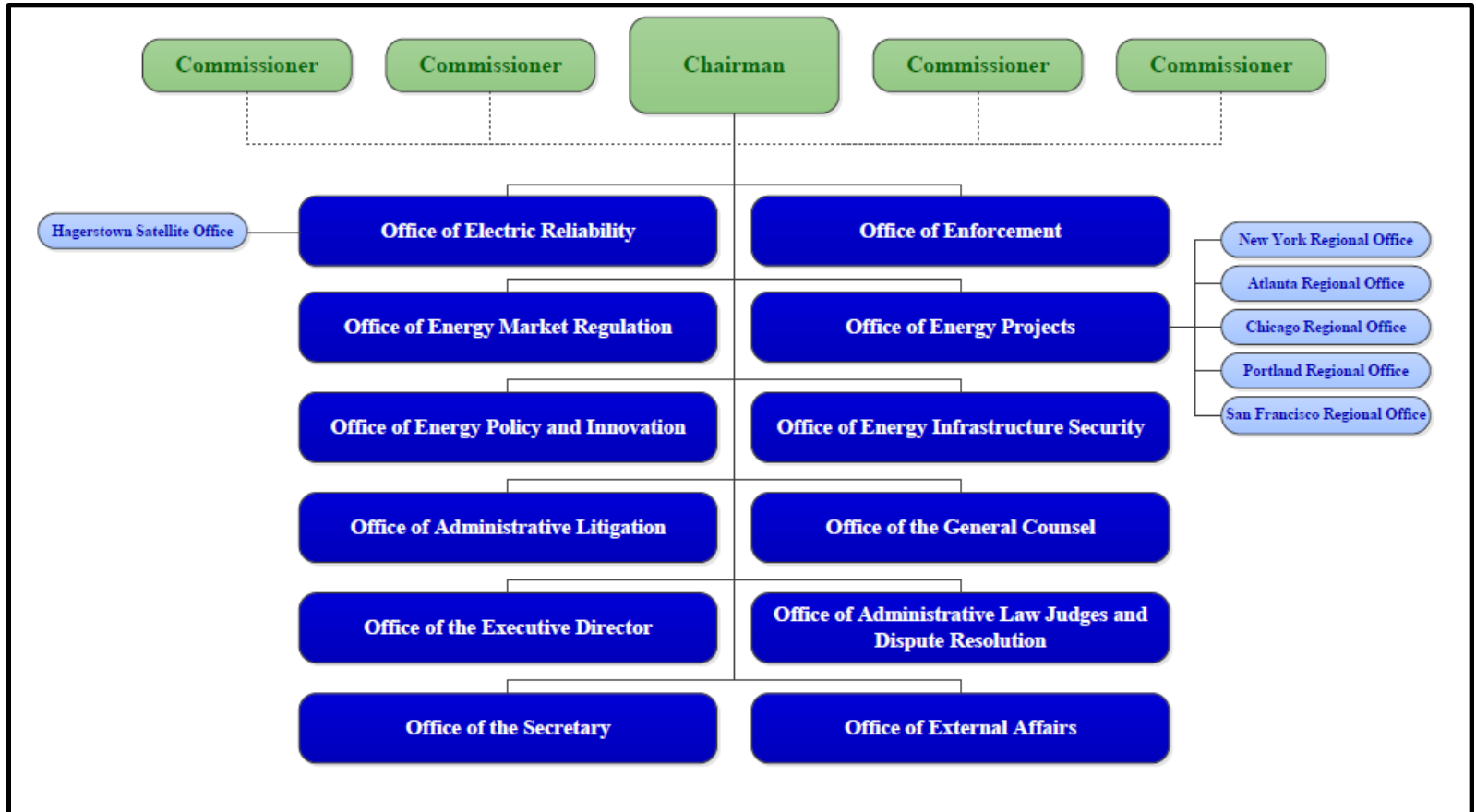


# What is FERC?

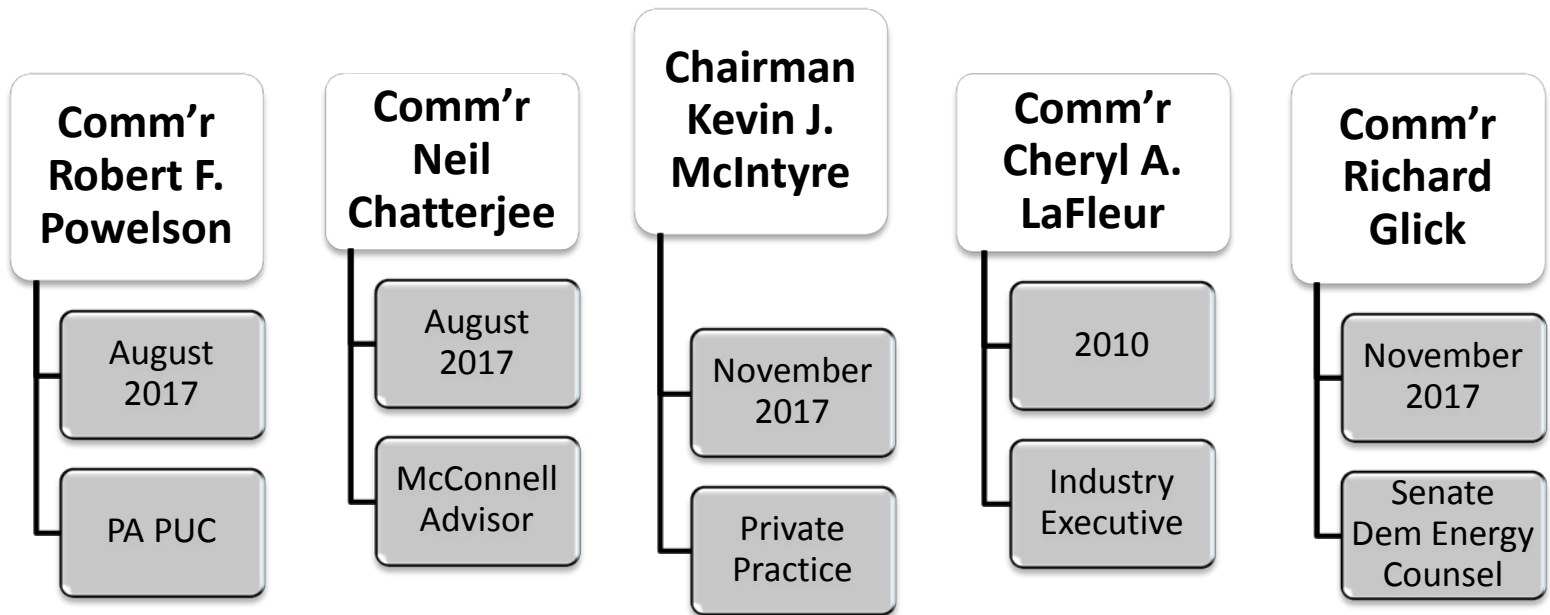
- **Independent federal agency** that regulates interstate transmission of electricity, natural gas, and oil; development of liquefied natural gas (LNG) terminals and interstate natural gas pipelines; and licensing of hydropower projects
  - Headquartered in Washington, DC
  - Five regional offices for hydroelectric dam safety
  - 10 internal functional offices
  - Approximately 1,450 FTEs
- **Five-member commission**
  - Staggered five-year terms
  - No more than three from same political party
  - Presidential appointment/Senate confirmation



# FERC Organizational Chart



# New Faces at FERC



# FERC's Mission

***Reliable,  
Efficient, and  
Sustainable  
Energy for  
Consumers***

*Assist consumers in obtaining reliable, efficient and sustainable energy services at a reasonable cost through appropriate regulatory and market means*

***Just and  
Reasonable  
Rates, Terms  
and Conditions  
of Service***

*Ensure that rates, terms and conditions are just, reasonable and not unduly discriminatory or preferential*

***Infrastructure***

*Promote the development of safe, reliable and efficient infrastructure that serves the public interest*





# FERC Authority Over Natural Gas

Transportation of natural gas (and gas sales for resale) in interstate commerce

Siting and construction of interstate pipelines and storage projects

Tariffs on File - Rates, terms of service, contracts

Audit/investigation of rates and practices

Affiliate Standards of Conduct and Codes of Conduct

Accounting, pipeline posting, affiliate and reporting rules

LDC and Intrastate Pipelines - interstate transactions

Transportation of natural gas under Outer Continental Shelf Lands Act



# New FERC Dockets

PL18-1-000

## Pipeline Certificate Process

RM18-11-000,  
PL17-1-000 *et al*

## Rate Changes – Tax Reform, MLP Income Tax Cost Recovery

AD18-7-000

## Grid Resiliency



# Pipeline Permitting Overview

- Application to build interstate pipeline
  - Proposed pipeline route, environmental reports
  - Required landowner notification
  - Intervention permitted
- FERC lead agency under NEPA
- FERC prepares EA or EIS
- FERC order approves or denies certificate
  - Approval is of route and environmental conditions



# Executive Action

Federal  
Agency  
MOU

Implementation of E.O. 13087

“Major Infrastructure Projects”

Environmental Review, Permitting

DOE

Secretary of Energy: National Security Interests?

Inspector General: Transparency Concerns

Tariffs

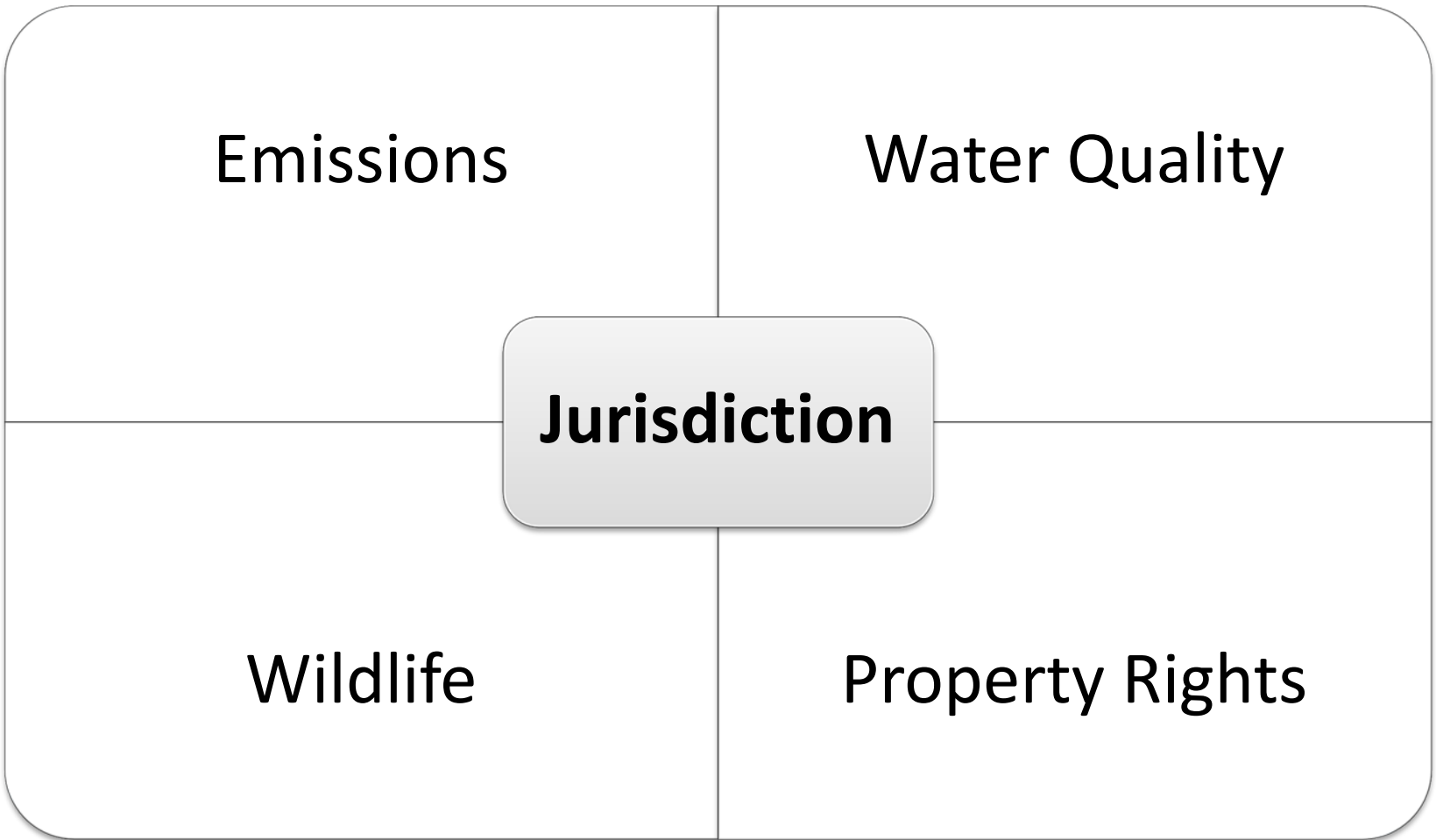
Steel imports

LNG





# Challenges & Developments



# Interstate Natural Gas Pipelines

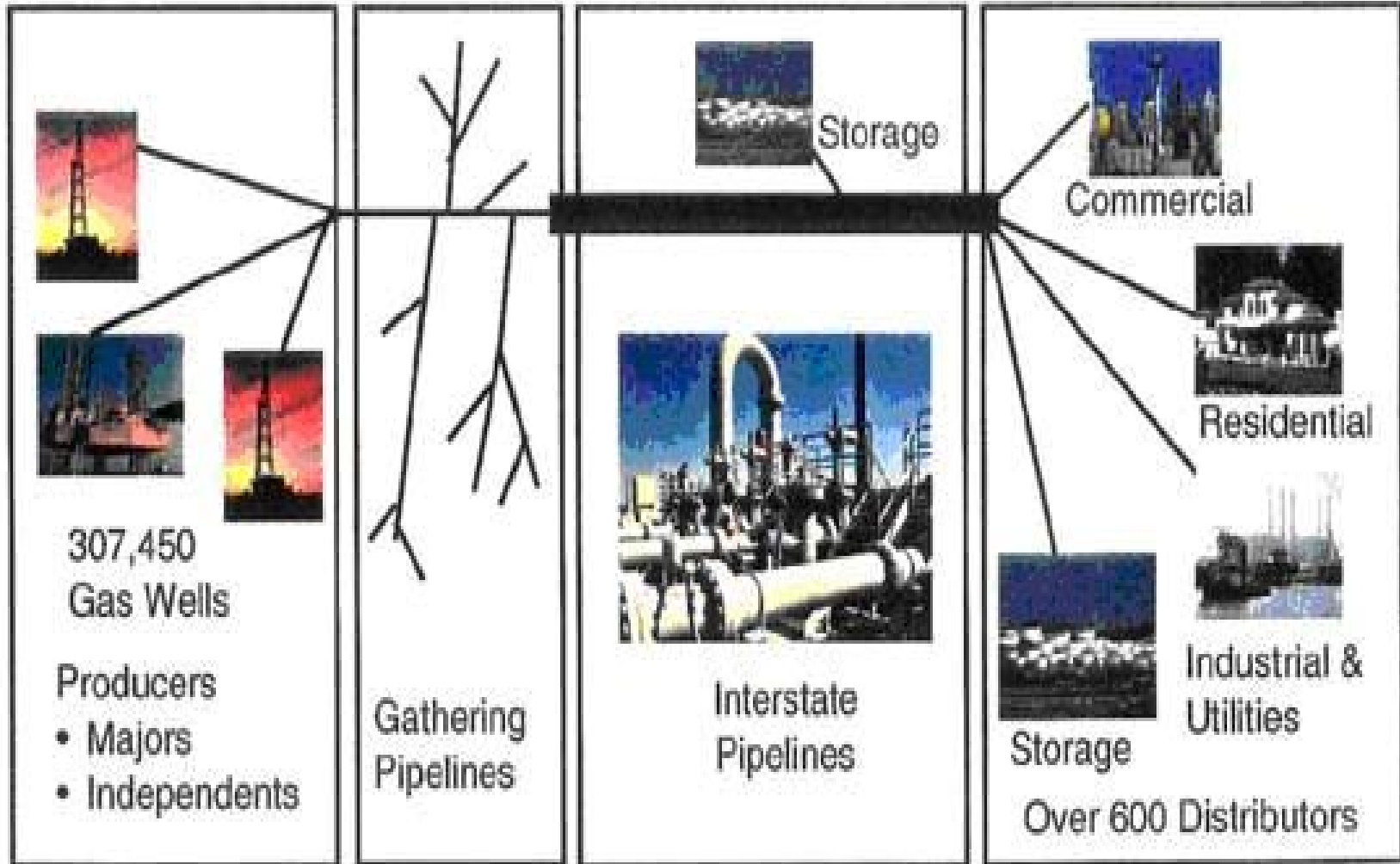


# The Natural Gas Segment

- Major Segments:
  - Production and Gathering
  - Interstate Transmission by Pipeline
  - Distribution by Local Distribution Companies

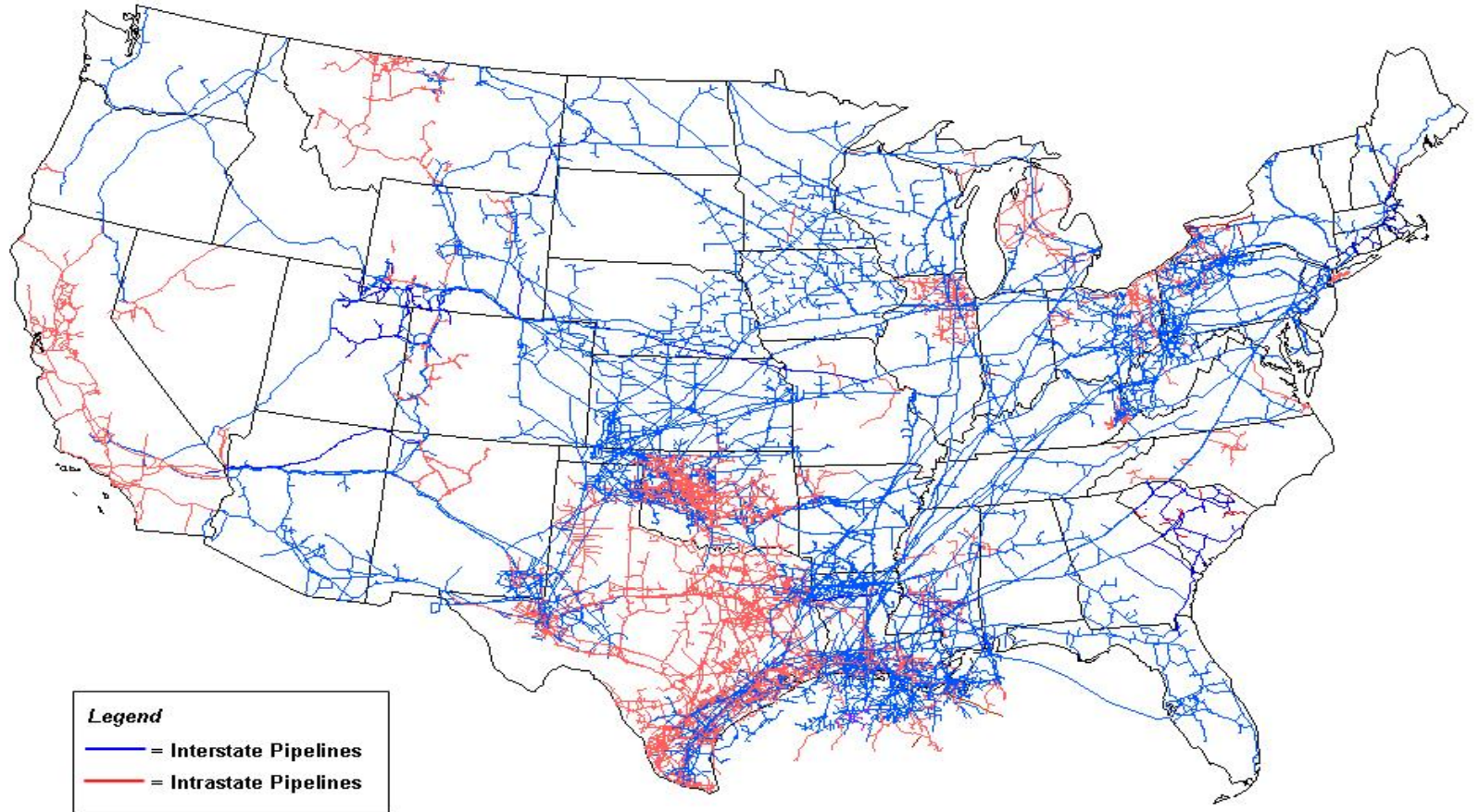


# The Natural Gas Segment



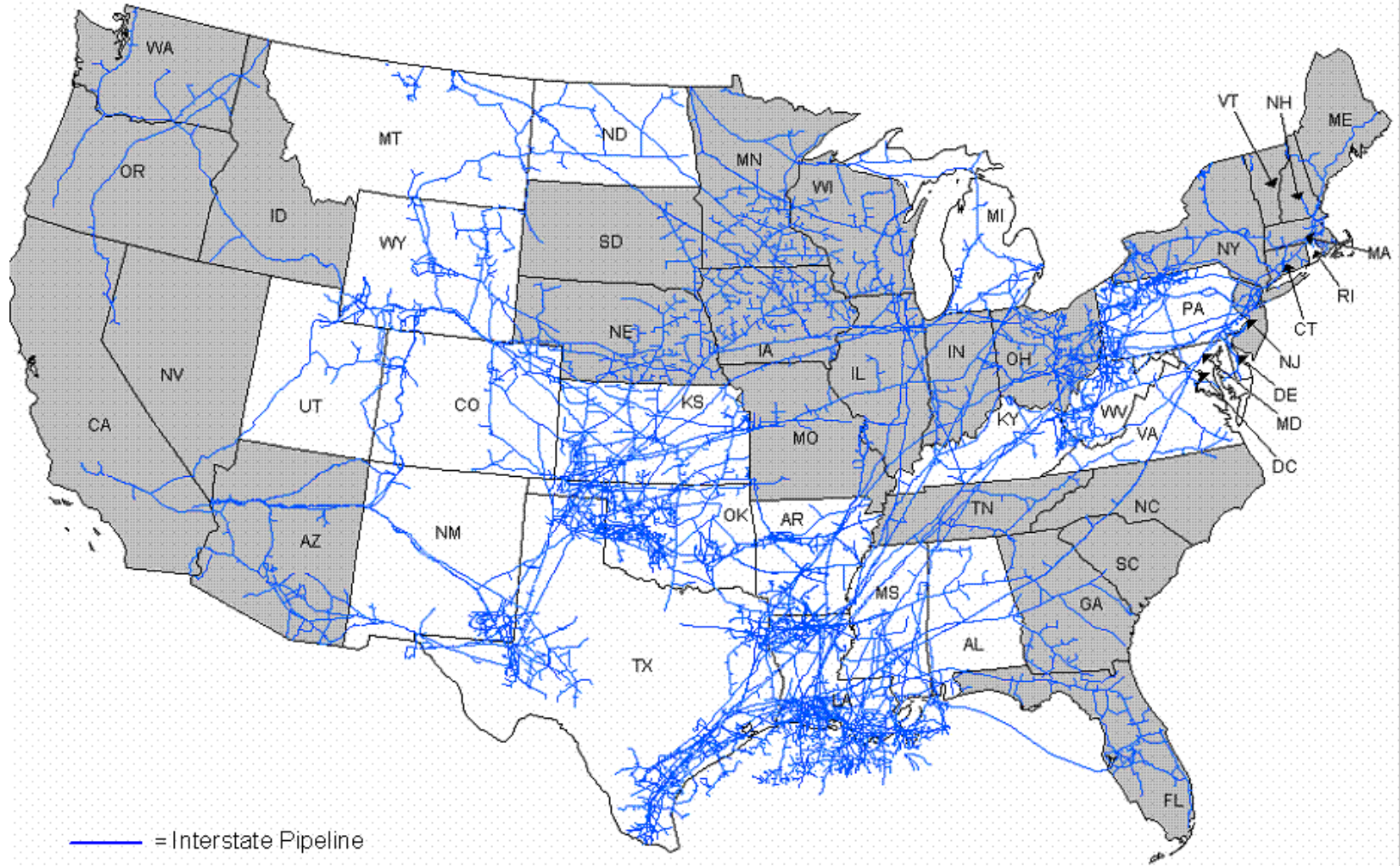


# Gas Pipelines – Interstate & Intrastate



Source: Energy Information Administration, Office of Oil & Gas, Natural Gas Division, Gas Transportation Information System

# Gas Pipelines – Interstate





# FERC's Unbundling Concepts

- FERC Orders 436 (1985) and 636 (1993)
- Bundling of transportation service with gas sales service declared unjust and unreasonable (illegal)
- FERC-regulated interstate natural gas pipeline and storage facilities required to provide “unbundled” services
  - Transportation service (to/from storage) separate from storage service
  - Must offer firm and interruptible services
  - Shipper must have title to the gas it transports or stores
- FERC-regulated pipelines sell transportation or storage “capacity,” but, generally, do not sell the “gas commodity”

# Regulated Rates - Filed Rate Doctrine

- Regulated company may only charge the rates on file with FERC and contained in the pipeline's FERC tariff
- NGA (and FPA) have similar provisions
- Rates changed through filings by the company
  - Cost-based rates
  - Market-based rates where adequate competition





# Regulated Rates - Demand & Usage

- Firm services pay demand/reservation (rent) charges plus usage/commodity charges
- Interruptible services pay usage/commodity charges
- Demand/Reservation = fixed costs
- Usage/Commodity = variable costs
- Retainage = fuel reimbursement rate
  - Compensates for fuel used for or lost during transportation or storage of the gas



# FERC Regulation - Gas Gathering

- NGA does not define “gathering” *facilities*
- FERC uses a six-part, modified “primary function test”
  - Length/diameter of the pipelines
  - Extension beyond central point in the field (processing plant)
  - Geographic configuration
  - Location of compression/processing
  - Location of wells
  - Operating pressures
- Also considers: purpose, location, operation of facilities, and business activities of owner
- No single factor determinative



# FERC Regulation – Gas Gathering

- What “gathering” does FERC regulate?
- Gathering ***provided by an interstate pipeline:***
  - FERC regulates the rates and terms of service (but not the facilities) for gathering services provided by an interstate pipeline under NGA § 4 “in connection with” jurisdiction
- Gathering provided by ***affiliate of an interstate pipeline***
- Gathering owned by independent party



# FERC Regulation – Within a State

- Gathering - effect of crossing state lines
- Interstate service within the boundaries of a state
- Facilities located within the boundaries of one state not determinative as to FERC jurisdiction





# FERC Regulation – Gas Gathering & Processing

- “Five-mile rule”
- Focus: gas pipeline downstream of the gas processing plant
- More than five miles in length?
- FERC jurisdictional transmission line
- Processing – jurisdictional?



# Eminent Domain

## NGA Section 717f(h) Right of Eminent Domain

***“When any holder of a certificate*** of public convenience and necessity cannot acquire by contract, or is unable to agree with the owner of property to the compensation to be paid for, the necessary right-of-way to construct, operate, and maintain a pipeline or pipelines for the transportation of natural gas, and the necessary land or other property, in addition to right-of-way, . . . necessary to the proper operation of such pipeline . . . ***it may acquire the same by the exercise of the right of eminent domain*** in the district court of the United States for the district in which such property may be located, or in the State courts. . . .”



# Eminent Domain

- Federal precedent for right to condemn property rights necessary for FERC certificated storage
- FRCP 71A governs
- FERC prefers ROW acquisition by agreement with the landowner, not litigation
- Judge cannot second guess FERC's route decision
- **Only issue**: how much pipeline must pay the landowner



# Intrastate Natural Gas Pipelines

- Public Service Commission of West Virginia
  - Comprised of three Commissioners appointed by the Governor
  - Commissioners serve six-year terms
  - No more than two Commissioners may be from the same political party
  - At least one Commissioner must be an attorney licensed to practice in West Virginia





# Intrastate Natural Gas Pipelines

- W. Va. Code § 24-2-2 gives the PSC authority to regulate the rates of an *intrastate* pipeline
- W. Va. Code § 24-3-3a gives the PSC authority to require the transportation of natural gas “in intrastate commerce by intrastate pipelines”
- W. Va. Code § 24-2-11 provides that the PSC may issue a certificate of convenience and necessity to an *intrastate* pipeline



# Intrastate Natural Gas Pipelines

- After enacting of W. Va. Code § 24-3-3a, the PSC promulgated its *Rules Governing the Transportation of Natural Gas*, W. Va. Code R. § § 150-6-1, *et seq.*
- The *Gas Transportation Rules* include key definitions and what services an intrastate pipeline must offer



# Intrastate Natural Gas Pipelines

- What is an intrastate pipeline?
  - Is a utility or another person/entity “engaged in natural gas transportation in intrastate commerce to or for” a third party
- What is intrastate commerce?
  - Includes “production, gathering, treatment, processing, transportation and delivery of natural gas entirely” in West Virginia



# Intrastate Natural Gas Pipelines

- What is an intrastate pipeline's obligation?
  - The pipeline must “provide non-discriminatory transportation of customer-owned gas, upon request, upon a first come/first served basis . . . .”
- BUT, the obligation is subject to valid capacity constraints





# Intrastate Natural Gas Pipelines

- Does an intrastate pipeline have to have a tariff on file with the PSC?
  - No, the *Gas Transportation Rules* exempt an intrastate pipeline from having a tariff on file
  - HOWEVER, the PSC may revoke this exemption if an intrastate pipeline is not offering services in accordance with the *Gas Transportation Rules*



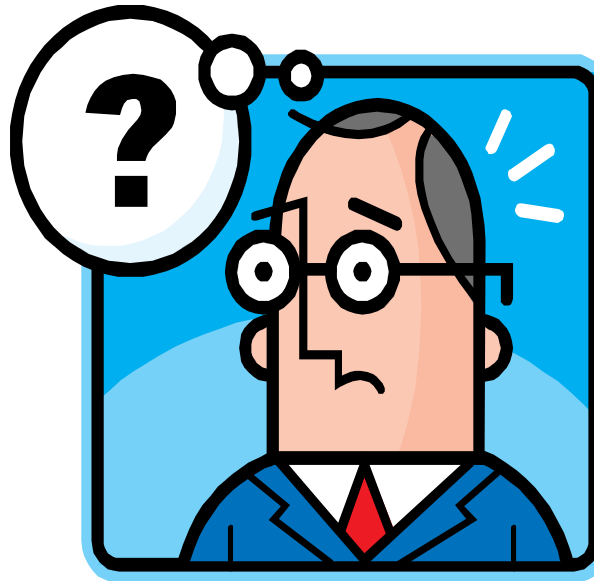
# Intrastate Natural Gas Pipelines

- Is gathering service subject to the *Gas Transportation Rules*?
  - Gathering facilities defined as “all pipelines and related facilities used to collect the gas production of one (1) or more wells for the purpose of moving such production from the well(s) into the facilities of an interstate pipeline, a utility, or an intrastate pipeline.”
- For purposes of the *Gas Transportation Rules*, gathering facilities are **NOT** considered an intrastate pipeline.





# QUESTIONS?





# Please Join Us

For our final webcast  
in the midstream series:

**July 11 – Eminent Domain Issues**

Watch your inbox for your invitation!



# Thank You!



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