



DC Circuit Reaffirms Jurisdictional Lines in Natural Gas Act

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On Tuesday, February 13, 2024, in *Bohan v. FERC*, the U.S. Court of Appeals for the District of Columbia Circuit (D.C. Circuit) for the second time affirmed a lower court's finding that property owners could not bring a constitutional challenge to the Mountain Valley Pipeline's use of eminent domain under Section 7 of the Natural Gas Act (NGA) after the Federal Energy Regulatory Commission (FERC) decision granting that pipeline its eminent domain authority has become subject to appellate judicial review. The court's reasoning was that Section 19(b) of the NGA explicitly denies a district court jurisdiction in this circumstance. The D.C. Circuit came to the same conclusion in a 2022 decision. However, that decision was vacated by the U.S. Supreme Court in light of *Axon Enterprise Inc. v. FTC*, which considered when a statutory scheme implicitly strips a district court of jurisdiction. *Bohan* distinguished *Axon* on grounds that it had considered when a statute implicitly strips jurisdiction over a particular claim whereas the NGA explicitly defines the bounds of federal court jurisdiction.

In a footnote, *Bohan* explained that the court had sought briefing on whether Section 324 of the Fiscal Responsibility Act of 2023 (FRA), would impact the outcome of the decision. It noted that FERC and Mountain Valley Pipeline had argued that the legislation stripped all federal courts of jurisdiction to review the pipeline's certificate. Ultimately, the court determined that the jurisdictional question could be answered in the text of the NGA, without consideration of the FRA.

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