



DC Circuit Embraces Seven County in FERC Pipeline Review Proceeding

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In *Sierra Club v. FERC*, No. 24-1199 (D.C. Cir. Aug. 1, 2025), the U.S. Court of Appeals for the District of Columbia Circuit (D.C. Circuit) upheld the Federal Energy Regulatory Commission's (FERC) approval of a 1,000-foot natural gas pipeline segment crossing the United States-Mexico border (the Border Pipeline) under section 3 of the Natural Gas Act (NGA), rejecting environmental groups' challenges that FERC improperly limited its analysis under both the NGA and the National Environmental Policy Act (NEPA), as related to a 155-mile intrastate "Connector Pipeline" constructed upstream of the Border Pipeline in Texas.

Critically, the court embraced the U.S. Supreme Court's *Seven County Infrastructure Coalition v. Eagle County* (*Seven County*) precedent, holding that FERC's scope-of-review decisions were entitled to "substantial deference" so long as they fell within a "broad zone of reasonableness" and bore a "reasonably close causal relationship" to the federal action at issue. Applying *Seven County*, the court emphasized that FERC was not obligated to assess upstream or downstream environmental impacts—such as emissions from the broader pipeline—because those effects were not within its control or causally linked to its decision concerning the Border Pipeline. The court reiterated that judicial review of NEPA compliance must defer to the agency's determination of the scope of its environmental analysis, provided it reasonably addresses the direct effects of the project at hand. This furthered the *Seven County* principle that NEPA does not serve as a substantive barrier to agency action, but rather ensures informed decision making within the bounds of agency authority.

The court also rejected the notion that the Connector Pipeline was subject to FERC jurisdiction under section 7 of the NGA, relying on precedent related to another Texas

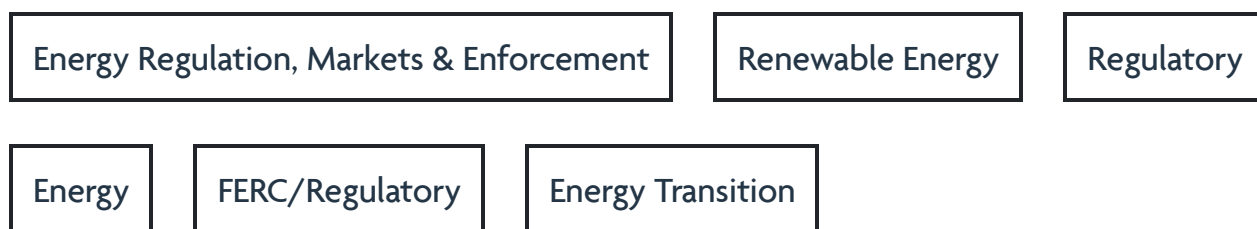
intrastate pipeline providing limited interstate service under section 311 of the Natural Gas Policy Act.

Implications for Judicial Review of Future FERC Orders

The ruling marks the first time a panel of judges on the D.C. Circuit embraced *Seven County* as applied to FERC pipeline reviews conducted under the NGA. It is a marked departure from prior D.C. Circuit decisions that curtailed NGA permits on NEPA sufficiency grounds, which Akin explained in a prior [client alert](#) on *Seven County*. Prior cases held that agencies should assess environmental effects of upstream or downstream projects outside of the agency's jurisdiction as part of indirect and cumulative impact analyses for pipeline and energy infrastructure projects. If the court's new line of reasoning holds, litigation risks to project developers may lessen. It could also expedite approvals for energy projects by reducing the scope of an agency's NEPA review, which may have been expanded to reduce an agency's reversal risk in court.

The decision indicates that going forward, environmental groups will face a higher bar in challenging FERC's environmental documents. Unless they can show that FERC's scoping decisions fall outside a "broad zone of reasonableness" or ignore impacts with a "reasonably close causal relationship" to the federal action, their claims may not overcome this reinforced deference standard. This could lead to fewer successful NEPA challenges in the D.C. Circuit, long considered a key venue for environmental litigation.

Categories



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