SpencerFane®

A Fifth Circuit Showdown Over Pipeline Expansion: Gas Transmission NW, LLC v. FERC

The case *Gas Transmission NW, LLC v. Federal Energy Regulatory Commission (FERC)* stands as a modern touchstone for energy law, dissecting the intersection of agency decision-making, environmental scrutiny, and the economics of interstate pipeline expansion. Decided on October 28 by the U.S. Court of Appeals for the Fifth Circuit, the opinion spans four parties, multiple administrative orders, competing state and private interests, and rigorous challenges to federal regulatory approaches.

Background: The Pipeline at the Heart of Dispute

Gas Transmission Northwest (GTN) operates a large natural gas pipeline carrying fuel from Western Canada into the U.S. Pacific Northwest and California. This dispute grows out of GTN's "GTN Xpress" project: a plan to increase throughput by replacing aging compressor units and expanding capacity to meet growing regional demand. The project combined equipment replacements – claimed as "maintenance" under FERC's rules – with a formal certificate application for new capacity under Section 7 of the Natural Gas Act (NGA).

A key procedural distinction: equipment replacements for reliability or safety (under FERC Regulation 2.55b) don't need the same environmental review or cost allocation as capacity expansions, which face the full scrutiny of the NGA and the National Environmental Policy Act (NEPA).

Legal Bones of Contention

GTN and FERC sparred on two major fronts:

- Rate-Setting and Cost Allocation:

    - Should the nearly $250 million in compressor replacements be borne by existing shippers (as maintenance) or should new expansion customers cover those costs? GTN sought a "rolled-in" rate presumption – spreading costs across all shippers – while FERC refused to make a predetermination, deferring cost allocation to a future NGA Section 4 rate proceeding.
- Environmental Impact and Statutory Compliance:
    - Environmental and state petitioners argued that FERC flouted its NEPA duty by not treating the compressor upgrades and new capacity as a single, cumulative "connected action." They asserted that FERC's environmental review was incomplete and its conclusion that the expansion was in the "public convenience and necessity" was premature and unsupported.

The Court's Analysis and Holdings

The Fifth Circuit tackled standing and ripeness first, holding that the case could be adjudicated now due to concrete financial injuries suffered by GTN from project delays and increased transaction costs.

On the merits:

- The court sided with FERC, finding its rate-setting deferral to the future Section 4 proceeding reasonable and consistent with agency precedent. The court emphasized FERC's historical deference, noting that detailed cost allocation is typically handled after-the-fact, since pipeline projects are commonly settled through "black box" agreements rather than precise cost assignments.
- For environmental review, the court upheld FERC's segmented analysis, ruling that under NEPA and recent U.S. Supreme Court precedent, an agency need not treat separate reliability upgrades and expansion projects as one action unless they are physically and functionally inseparable, which was not shown here. FERC's (Environmental Impact Statement) EIS sufficiently considered environmental impacts and alternatives, and the court deferred to FERC's line-drawing on technical matters.
- As to public necessity and market need, FERC's reliance on precedent agreements with expansion shippers was upheld as satisfactory evidence that the project responded to genuine demand, foreclosing second-guessing by the judiciary absent contrary evidence.

Policy and Practical Implications

This decision affirms "business as usual" for FERC pipeline approvals, allowing companies to plan maintenance separately from expansions, with costs and environmental review regimes kept distinct:

- For industry, the ruling provides clarity and predictability, especially around structuring major upgrades and rate cases.
- For environmental advocates and states, the barrier for consolidating projects and triggering more sweeping NEPA analysis remains high.
- For regulated entities, the case underscores the criticality of careful documentation and sequencing of maintenance versus expansion, and the power of precedent agreements to evidence market need.

Conclusion

Gas Transmission NW, LLC v. FERC reinforces the judiciary's deference to expert federal agencies in complex, highly regulated industries. While FERC's critics garnered a passionate, multifaceted challenge, the court ultimately validated the agency's segmented approach and reserved detailed economic questions for future proceedings. The result is a textbook example of administrative law's limits, the continued importance of procedure in energy infrastructure litigation, and a win for regulatory clarity over far-reaching change.

This blog was drafted by Amy Mitchell, an attorney in the Spencer Fane Houston, Texas office. For more information, visit www.spencerfane.com.

Click **here** to subscribe to Spencer Fane communications to ensure you receive timely updates like this directly in your inbox.