

Status of Legal Challenges

Constitution Pipeline

Anne Marie Garti, Esq.

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What Are the Current Cases?

1. STP v. FERC, Case No. 16-361.
2nd Cir. Court of Appeals (Consolidated)
2. Catskill Mountainkeeper, et. al., v. FERC
Case No. 16-345. 2nd Cir. Court of Appeals
3. Constitution v. DEC, Case No. 16-1568
2nd Cir. Court of Appeals
4. Constitution v. DEC, Case No. 16-0568
Northern District NY (NDNY)

Will These Be Future Cases?

5. NYSOAG petition and complaint
tree cutting in NYS. Filed 5/13/16
FERC said, “We’ll investigate.”
AG - requested rehearing on 8/12/16
FERC proceedings
6. Catskill Mountainkeeper, et. al.,
CP asked for 2 more years. Granted.
EJ - requested rehearing on 7/28/16
FERC proceedings

1. STP v. FERC, Case No. 16-361

2nd Cir. Court of Appeals

1. Four Issues:
CWA, 5th A. Due Process, NGA, NEPA
2. Court consolidated case / 16-345.
Same schedule, same judges
3. STP's opening brief is on STP's website.
4. CP, Iroquois, and NGSA intervened.
5. Amicus brief: Widener Law School

1. STP v. FERC - Issues & Remedies

2. CWA. FERC has to wait for 401 WQC.
Remedy: Void order
2. 5th Amendment. No Due Process.
No judicial review before CP took land.
Remedy: Void post 12/2/14 easements.
3. NGA. No substantial evidence of need.
Remedy: remand (moot if DEC wins)
4. NEPA. Didn't consider SoNo.
Remedy: remand (moot if DEC wins)

2. CMK v. FERC. Case No. 16-345.

2nd Cir. Court of Appeals

1. Four Issues: CWA & 3 NEPA (gas drilling, GHG, water impacts)
2. Court consolidated case / 16-361
Same schedule, same judges
3. EJ filed opening brief on July 12th.
4. Petitioners: CMK, Clean Air Council, Delaware-Otsego Audubon Soc., Riverkeeper, Sierra Club

3. CP v. DEC. Case No. 16-1568.

2nd Cir. Court of Appeals

1. 3 issues: (1) DEC waived rights;
(2) DEC exceeded authority;
(3) denial was arbitrary and capricious
2. Same schedule, different judges
3. CP filed opening brief on July 12th.
4. STP intervened. So did Catskill Mountainkeeper, Riverkeeper, & Sierra Club.
5. There will be amicus briefs on both sides.

Schedule for Three 2nd Cir. Court of Appeals Cases

1. Opening briefs due 7/12/16
2. Opposing briefs due 9/12/16
3. Reply briefs due 9/26/16
4. Deferred Appendix due 10/10/16.
5. Final briefs due 10/17/16.
6. Oral arguments – by end of 2016(?)
7. Decision by end of 2017(?)

4. CP v. DEC. Case No. 16-0568

NDNY – Judge Mordue

1. CP filed complaint on 5/16/16
2. DEC filed Mot. to Dismiss on 8/1/16
3. Opposing brief due 9/1/16
4. Reply brief due 9/9/16.
5. Motion date is 9/21/16.
6. Decision – fall of 2016 (?)
7. STP will intervene if not dismissed

4. CP v. DEC. Case No. 16-0568

NDNY – Issues

1. CP says “state permits” are pre-empted
2. DEC says:
 - Permits are connected to CWA. In FEIS.
 - No SMJ. NGA says go to Ct of Appeals.
 - Collateral attack of FERC order.
 - No case or controversy. No injury.
 - If not dismissed, wait for 2nd Cir to rule.

Interrelationships

Even though all the cases aren't consolidated, they are interrelated.

If DEC denial is upheld, many other issues become moot.

If DEC denial is not upheld, 2nd Cir. will remand case to DEC.

DEC could deny it again, and get sued again, like in *Islander East*.