

PIPELINES

FERC order jump-starts stalled Constitution project

Jeremy Dillon, E&E News reporter • Published: Thursday, August 29, 2019



Pieces of the unbuilt Constitution pipeline in upstate New York. Constitution Pipeline Co.

The Federal Energy Regulatory Commission issued an order late last night that could relaunch the controversial Constitution pipeline despite concerns from New York it would undercut the state's water quality authorities.

The **decision**, which appears to have unanimous backing from the commission, finds that New York waived its ability to block the water quality certificate after taking too long to block the permit.

The order builds off the recent U.S. Court of Appeals for the District of Columbia Circuit opinion in *Hoopa Valley Tribe v. Federal Energy Regulatory Commission*.

That case involved a separate issue related to a state's role in water quality permitting for hydropower that environmental groups warned could be used to skirt water quality standards under the precedent ([E&E News PM](#), April 26).

FERC ultimately ordered that since the pipeline developers first submitted the water permit application in 2014, followed by a series of withdrawals, resubmittals and requests for more information prompted by New York, the 2016 final rejection of the project fell outside the one-year decision timeline outlined in the Clean Water Act.

"Because we have found that New York [Department of Environmental Conservation] and Constitution engaged in repeated withdrawals and resubmissions of certification applications that are, as relevant here, equivalent to the situation in *Hoopa Valley*, the potential practical difficulties cannot alter the outcome," it added.

New York's Department of Environmental Conservation did not immediately respond to a request for comment.

FERC first approved the 125-mile pipeline in 2014, but the project has not been able to move forward without the needed permits to cross New York state lines.

The pipeline is meant to connect the Marcellus Shale to energy-hungry New England with a capacity of natural gas that is equivalent to being able to serve 3 million homes, the company behind the project said.

Pipeline projects through New York have become the poster child of the fight over permitting and constructing energy infrastructure. President Trump and Energy Secretary Rick Perry have criticized New York for affecting grid reliability as a result of political decisions.

New York has argued the pipelines could affect water quality through leaks. It also can affect climate considerations, Gov. Andrew Cuomo (D) has said.

The developers behind the project celebrated FERC's decision but remained mum about how it would affect development going forward and at what pace. They said they are still considering their next move for advancing the project.

"The Constitution project continues to represent much-needed energy infrastructure designed to bring natural gas to a region of the country confronting natural gas supply constraints that have resulted in some of the highest consumer energy prices in the country," the developers said in a statement.

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