Devastated By Coronavirus, New York's Pipeline Politics Ensure A Tougher Second Round

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Approximately 30% of all confirmed coronavirus cases in the United States have been reported in the New York City metropolitan area, which is located mainly in southeastern New York state and northeastern New Jersey. Last weekend, the administrations of the Governors of both states, Andrew Cuomo of New York and Phil Murphy of New Jersey, rejected once again the key permits for the Northeast Supply Enhancement Project (NESE), a natural gas pipeline that would have ensured sufficient natural gas supply to much of New York City and its environs. These decisions probably mean the death of NESE.

While environmentalists rejoiced, the decisions mean that New York City may be in for an even tougher time in the fall and winter should the coronavirus re-intensify during the cold weather - something both Dr. Anthony Fauci and the World Health Organization say is likely.

The decisions by the New York Department of Environmental Conservation and New Jersey Department of Environmental Protection focused once again on the Section 401 Water Quality Certifications needed to allow the pipeline's developer, Williams Company, to locate the pipeline in Raritan Bay. (In addition to declining to issue a Section 401 Certification like New York, New Jersey further rejected various state permits that would also have been needed for the project to go forward, including wetlands, waterfront development, and related approvals.) This crucial 23 mile link would have allowed the project to access New York from New Jersey, bringing natural gas from Pennsylvania to New York. Without it, New York is left to import gas from overseas when, as no one even opposing the project has seriously disagreed, it will inevitably run out of domestic natural gas from existing pipeline supplies.

The Section 401 Certification, based on a section of the federal Clean Water Act, is the main lever that Governors have used to block interstate projects previously approved by the key federal agency involved, the Federal Energy Regulatory Commission (FERC). FERC has jurisdiction over the transmission and wholesale sale of electricity, natural gas, and oil in interstate commerce – the latter two by pipelines. Designed by Congress to take interstate projects out of local politics, FERC decisions remain subject to one tiny administrative loophole left to local hands - the Section 401 Certification process.

Andrew Cuomo seized on this in 2016 to block other pipelines that mostly would have traversed upstate New York and serviced New England. NESE, however, would provide gas directly to Governor Cuomo's most important constituency, his downstate voters. Cuomo originally blocked the NESE permits in 2019, but Williams refiled its application. Following this latest rejection by Cuomo's NYDEC and New Jersey Governor Murphy's NJDEP, Williams said it has no plans to refile.

The New York rejection, combined with the decommissioning in April of one of the remaining reactors at the Indian Point Nuclear Power Plant in Westchester County, New York, means that at the very time New York City probably needs reliable power more than it ever has before it will have it the least. It also means that the natural gas industry in Pennsylvania will be dealt another blow as it tries to find markets for its abundant, readily available, and relatively cheap gas. This of course is the goal of the environmental movement, which seized upon fracking as an environmentally unsound practice, despite numerous studies showing no relation between fracking and ground water contamination and increasing awareness of the environmental implications of all other forms of energy, including those thought to be "green".

ATTORNEYS MENTIONED

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