

dence to reach its decision on the employment status of the drivers. Consequently, FedEx's cross-appeal was ineffective.

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*NO Gas Pipeline v. F.E.R.C.*, 756 F.3d 764 (D.C. Cir. 2014) (holding that three petitions filed for review of the order made by the Federal Energy Regulatory Commission ("FERC") granting certificates of public convenience and necessity to construct natural gas facilities lacked jurisdiction in the United States Court of Appeals for the District of Columbia).

Three petitions for review of the order granted by FERC for certificates seeking construction of natural gas facilities were submitted to the Court of Appeals. The environmental groups NO Gas Pipeline, Sierra Club, and Food and Water Watch ("Environmental Groups") submitted two petitions. The other petition was submitted by the city of Jersey City ("Jersey City"). Under the Natural Gas Act ("NGA"), entities that wish to construct a natural gas facility must obtain a certificate of public convenience and necessity from FERC. FERC granted two certificates to natural gas pipeline company Spectra to expand existing natural gas pipelines. In the certificate process, FERC must prepare environmental impact statements pursuant to the National Environmental Policy Act ("NEPA"). The Environmental Groups alleged that FERC did not follow the proceedings laid out in NEPA when they granted the certificates approving construction of the pipelines.

The Environmental Group's complaint rested upon NEPA's requirement for all agencies to prepare environmental impact statements while processing applications. The Environmental Groups asserted that the level of radon present in natural gas was hazardous and would have a negative effect on indoor air quality. There was also a concern regarding the risk of cyber attacks to Spectra's control system. FERC issued an environmental impact statement, pursuant to NEPA, regarding the negligible hazard of radon presence in natural gas.

The court first examined whether the Environmental Groups had standing for their claims. To meet standing requirements under *Lujan*, a plaintiff must have suffered an injury in fact, that injury must be traceable to the challenged action of the defendant, and a favorable ruling must redress the injury.

Under the first element, the members must have suffered a concrete and particularized injury and it must be actual or imminent and not conjectural or hypothetical. The court reasoned that Environmental groups did not meet this element because they simply stated that they objected

to FERC granting the certificates, but they did not actually establish an injury. The Environmental Groups also claimed they could be injured by radon levels, but the injuries had neither occurred nor were imminent, demonstrating that there was not a concrete injury. Under the second element of standing, that the causation must be traceable to the actions of the defendant and not a third party, the court reasoned that the injuries were only speculative and not likely to happen without third party intervention. Due to the fact that the first and second elements of standing were not present, the court concluded that they did not have jurisdiction and could not examine the merits of their radon-based claim. The court applied the same standing analysis to Environmental Group's cyber terrorism claim, and determined that they did not have jurisdiction to hear that claim either.

Accordingly, the court could not reach the merits of either of the Environmental Group's claims because they had no jurisdiction to do so.

Next, the court examined the petition brought by Jersey City. Jersey City claimed that FERC could not constitutionally regulate the pipeline industry. They based this claim upon the fact that the constitution states that adjudication proceedings may not have bias, and that bias was present because FERC both received funding from the pipeline industry and was the agency regulating certificates related to the pipeline industry. Jersey City further claimed that this court had jurisdiction to hear this case under the NGA. The NGA provides that a party aggrieved by an order issued by the Commission may obtain review of that order in this court. The court reasoned that Jersey City's claim did not fulfill the jurisdictional grounds of the statute because Jersey City was attacking the financial structure of FERC and had brought a claim under the Budget Act, not under the NGA. The court lacked original jurisdiction over claims arising under the Budget Act. The court explained that this claim should actually be brought in district court because district courts are courts of federal question jurisdiction, not the court of appeals. The court added that Jersey City had made no real attempt to demonstrate standing, and that their claim of actual bias was barred as untimely because they did not raise the issue before FERC made the initial order.

Accordingly, the court could not reach the merits of Jersey City's claim because they had no jurisdiction to do so. The court dismissed all three of the petitions for lack of jurisdiction.

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