

## INSIGHTS

## Court Finds FERC Overstepped Jurisdictional Boundaries with Order 720

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A panel of the United States Court of Appeals for the Fifth Circuit has vacated the Federal Energy Regulatory Commission's (FERC) Order Nos. [720](#) and [720-A](#), which imposed new requirements on non-interstate pipelines not normally subject to FERC's jurisdiction over interstate natural gas pipelines. In an [October 24, 2011 decision](#), the Court concluded that the orders exceed the scope of FERC's statutory authority under the Natural Gas Act of 1938 (NGA). In their petitions for review of the orders, the Texas Pipeline Association and the Railroad Commission of Texas argued that FERC had exceeded its NGA authority by requiring "major non-interstate pipelines" to post daily flow, capacity, and scheduling information for certain receipt and delivery points. FERC defended the orders by arguing that the Energy Policy Act of 2005 expanded its authority by adding section 23 to the NGA, which requires FERC to "facilitate price transparency in markets for the sale and transportation of physical natural gas in interstate commerce." Rejecting FERC's argument that section 23 empowers FERC to regulate intrastate pipelines, the Court explained that the authority found in section 23 to obtain information from "any market participant" must be read in the context of the NGA, as codified in Title 15, Chapter 15B. Therefore, FERC's authority pursuant to section 23 remains subject to the limitations of section 1(b) of Chapter 15B, which defines the scope of the chapter to include the transportation and sale for resale of natural gas in interstate commerce and expressly excludes "any other transportation or sale of natural gas," including the local distribution of natural gas and the facilities used for such distribution or the production or gathering of natural gas. The decision will become effective upon a mandate from the Court. In the meantime, FERC may seek rehearing of the decision or appeal the decision to the U.S. Supreme Court.