



Federal Regulation of Interstate Hydrogen Pipelines

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Overview

- **It is unclear how interstate hydrogen transportation will be regulated.**
- **Statutes include:**
 - Interstate Commerce Act
 - Natural Gas Act
- **Agencies include:**
 - Surface Transportation Board
 - Federal Energy Regulatory Commission

Project Construction



- **No federal agency has authority over the siting or construction of a hydrogen pipeline.**
- **No federal eminent domain power**
- **Separate approvals required from individual states, plus other federal permits**

Project Operation



- **No statute directly governs**
- **Could be subject to the Natural Gas Act as an “artificial gas”**
- **Could be subject to the Interstate Commerce Act as an “oil,” or as another “commodity”**

“A Commodity”



- The Interstate Commerce Act provides the Surface Transportation Board with “jurisdiction over [interstate] transportation by pipeline . . . when transporting a commodity other than water, gas, or oil.”
- The STB regulates railroads/“non-energy” pipelines.
- Typically, the commodity’s **use** determines who regulates it.
- Common viewpoint that STB is the regulator under current law

“Oil”



- FERC regulates rates associated with pipeline transportation of “oil”
- Although “oil” is typically defined as a petroleum or petrochemical, it has been stretched to include ethanol
- Hydrogen’s use as transportation fuel could support classification as an “oil”
- Typically applies to liquids, not gases

Regulation under the Interstate Commerce Act



- Light-handed regulation
- Common carrier requirements
- Rates, Tariffs
- No undue discrimination

“Natural Gas”



The NGA defines “natural gas” as “either natural gas unmixed, or any mixture of natural and artificial gas.”

Other “artificial gases” include synthetic gas made from coal and other feedstocks, and renewable natural gas

As an artificial gas, hydrogen would be unregulated if transported on its own, and regulated under the NGA if commingled with natural gas

Natural Gas Act Regulation



If planned to carry hydrogen only, could be built without FERC approval, but if planned as a mixed pipeline, a FERC certificate would be needed

No economic regulation if only hydrogen is transported

If commingled, rates and services subject to FERC open access/non-discrimination, just and reasonable rates, tariffs

Pros and Cons



STB

- Less intrusive than FERC, but least experienced
- Complexity if mixed with gas

FERC Oil

- Experienced regulator
- Light-handed regulation

FERC Gas

- No regulation unless mixed with natural gas
- Makes sense for commingled hydrogen/natural gas pipelines

Questions Pending at FERC

- Senator Heinrich recently wrote a letter to FERC asking questions about its jurisdiction. These include:
- “Does FERC have the jurisdiction and the regulatory authority it needs to incorporate hydrogen blending into its natural gas pipeline tariffs? If not, where are the gaps in jurisdiction and/or regulatory authority?”
- “Specifically, does the Commission have authority under the Natural Gas Act over hydrogen blending with natural gas, and has the Commission examined at what percentage blend additional authority might be required?”



Thank you!

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