

Commercial Litigation Team Argues High-Profile FERC Pipeline Case Before En Banc D.C. Circuit Court of Appeals

5.12.20

A White and Williams Commercial Litigation team recently argued to the en banc D.C. Circuit Court of Appeals on behalf of homeowners challenging an order issued by the Federal Energy Regulation Commission (FERC) in a high-profile matter that has gained attention from Congress, the energy sector, civil rights groups, and environmental organizations. Of primary importance to the court was the reexamination of FERC's routine issuance of tolling orders to extend the 30-day deadline in the Natural Gas Act for FERC to act on rehearing requests by property owners and others opposing pipeline construction. Notably, the telephonic nature of the hearing, before what is commonly considered the country's second highest court, served as a "test run" for the Supreme Court of the United States' first-ever livestreamed arguments in light of COVID-19-related stay-at-home orders.

In December of 2019, the team successfully petitioned for rehearing en banc of an August 2019 panel decision that upheld FERC's practice based on circuit precedent. Agreeing that this placed the landowners in "administrative limbo," Circuit Judge Patricia A. Millett suggested the case called for a re-examination of whether the practice affords due process.

The en banc hearing, which took place on April 27, 2020, focused on whether the Natural Gas Act (NGA) allows FERC to stretch the rehearing period for pipeline objections by issuing such tolling orders and whether doing so denies aggrieved parties due process. Partner Siobhan Cole, who argued on behalf of White and Williams' homeowner clients, argued that the NGA does not grant FERC the authority to toll the deadline and that "whether rehearing will be granted or denied must be decided within 30 days."

There were positive signs that many judges seemed to share the position that the NGA does not support FERC's tolling policies. Law360 reported that Judge Merrick B. Garland said "the NGA doesn't appear to contemplate the use of tolling orders" and that Judge Millett pressed FERC counsel on the open-ended nature of the process.

Along with Siobhan, the White and Williams team handling this potentially ground-breaking case includes Edward Koch, Natalie Molz, Sabina Yevdayeva and Johanna Egan. Earlier this year, Siobhan was recognized by Bloomberg Law as key player in 2020 environmental litigation for her handling of this case, considered "one of the biggest energy issues on the docket."

KEY ATTORNEYS

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PRACTICE AREAS

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