



# 2024 LEPA Annual Business Conference: Nashville, TN

## The Energy Policy Act of 1992 and the Regulatory Landscape

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Then, Now, & Tomorrow



# Presenters


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# Topic 1: The World Before EPA Act of '92


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## Before EPA Act

- Pre-DOE Act (pre-FERC)
- Long history of oil pipelines in a vertically integrated structure





## Topic 2: New FERC Era

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Uncertainty, Exhausting Litigation,  
and Op. 154-B

# Regulatory Landscape

- The regulatory landscape was uncertain
  - Regulatory methodology was not clear
- Some deregulation initiatives emerged
  - The Department of Justice released its Oil Pipeline Deregulation Report in May of 1986





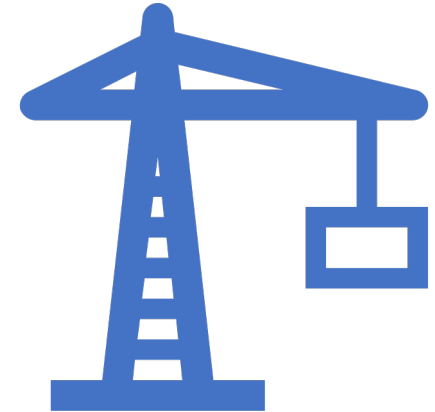
# Changes in Industry and Litigation

- Shift from valuation to original cost deters most carriers from changing rates
- Most major litigation involved “independent” carriers
- Lack of strong rate setting precedence leads to protracted proceedings
- Competition acknowledged as a J&R means to defend rates




# Changing Commercial Structure

- MLP tax structure established
  - Encouraged energy infrastructure development
  - Integrated oil firms begin to monetize assets while maintaining primary controls
  - Shifts industry from integrated to independent footing
  - Increasing regulatory challenges







## Topic 3: Origin of EPAct


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## Origin of EPA Act

- Pipelines + Shippers went to Congress
  - Goal: change course & establish a framework
- No legislative history
  - This avoided spin on the ball, but increased contention over language





## Topic 4: What did EPA Act do?

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# Resolved the Past


- Grandfathering of rates – what qualifies
- Left opening for future challenges for “substantial change” in “economic circumstances”



# Simplified the Future

- Directed FERC to establish parameters for simplified rate setting and rate changes in the future



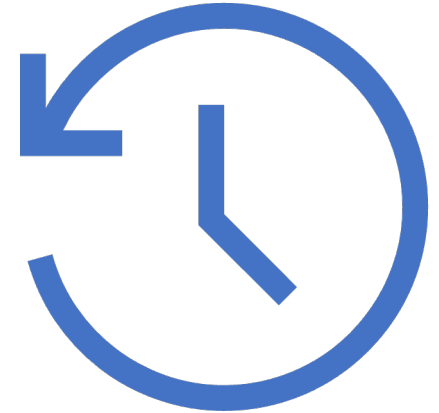


## Topic 5: What do Grandfathering and Simplification Mean?

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# Debating the Meaning of EPA Act Regarding Grandfathered Rates

- Remember, no legislative history was included in EPA Act
  - The meaning of grandfathering, what rates were covered, and how the issue could be challenged and defended was heavily litigated
- SFPP OR92-8 and OR96-2 established the framework's meaning



# Simplification of Rate-Setting Established via Rulemakings

- Initial rate standard for new rates
  - Incentive based rate structure
- Indexing became the method for adjusting grandfathered rates
  - Based largely on inflation
- Alternatives to indexing emerged
  - Market-based rates
  - Settlement rates (contract)
  - Cost rates (substantial divergence)






# Promotion of Settlements

- Withdrawal of tariffs and complaints
- Recognition of commercial realities in oil pipeline setting





# Topic 6: EPA Act in Action

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Workable & Useful Developments

# Indexing

- 5-year reviews of index adjustment methodology
- Index challenging standards have been established
  - Protest standard
    - Percentage comparison test
  - Complaint standard
    - Through substantial exacerbation and back



# Market-Based Rates

- *Buckeye/Williams* standards were codified
- Elaboration has occurred through applications and litigation
  - Ultimately, MBRs have been heavily used



# Settlement Rates

- Promoted consensual resolution of terms of service
- Led to the PDO process and contract carriage, supporting massive infrastructure investment
  - *See Express, Caesar/Proteus*





## Topic 6: The Future Landscape

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# What Comes Next

- With a mature and relatively stable structure:
  - What remains?
  - Where are we headed?
  - What's not fleshed out?
  - What's brewing?



# What about Indexed Rate Challenges and Standards

- If a challenge defaults to strict COS evaluation, is it really incentive ratemaking?
- How do we view a grandfathered base rate that has only been indexed?
- When a challenge is reviewed on a cost basis, are EPAct's bargain and structure still relevant?





# MBR Challenges

- Is there potential for further vetting?
- Will EVs and Solar become a recognized substitutes?
- What are the implications of MBR challenges and removal of authority



# Where Are the Future Stress Points for an Aging Industry

- Heavily depreciated lines
- Falling volumes
  - *See Tarpon*
- Dismantlement, Removal and Restoration (DR&R)
- Attracting Capital to an industry with a perceived limited remaining lifespan





# Closing Thoughts

- As liquids pipeline infrastructure matures and the energy transition moves ahead, what is needed in the regulatory environment to ensure that:
  - Critical infrastructure is maintained?
  - Operators can adjust as needed over a potentially lengthy transition period?





# Questions?

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Thank You