

SYMPOSIUM

THE CHANGING LANDSCAPE OF FEDERAL ENERGY LAW

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INTRODUCTION

I recognize that some readers may believe the title of this Article, *The Changing Landscape of Federal Energy Law*, is inapposite. Energy law may be perceived as static or ossified, resistant to change. To some, the pace of change in federal energy law may appear to be geologic, advancing at a crawl. A closer look shows that the changes to federal energy law have been very significant in recent years, that the pace of change has been increasing, and that there is the prospect of sweeping change in the near future. Energy law truly is a dynamic area of law.

Energy law, as discussed in this Article, does not encompass the full range of energy laws, but instead is limited to the laws administered by the Federal Energy Regulatory Commission (FERC). Energy industries have existed for more than 100 years, and many energy laws were enacted decades ago. FERC administers five principal statutes: Part I of the Federal Power Act,¹ governing the licensing and operation of nonfederal hydropower projects; Part II of the Federal Power Act,² regulating wholesale power sales, the transmission of electric energy in interstate commerce, and the review of public utility mergers and acquisitions and other public utility corporate transactions; the Natural Gas Act,³ providing a comprehensive scheme to regulate certain wholesale natural gas sales and interstate transportation of natural gas; the Natural Gas Policy Act of 1978,⁴ authorizing certain transactions by interstate and intrastate natural gas pipelines; and the Hepburn Act, providing for economic regulation of crude oil and petroleum product pipelines. The youngest of these statutes, the Natural Gas Policy Act of 1978, is thirty years old. The oldest of the other four laws is the Hepburn Act of 1906.⁵ Part I of the Federal Power Act was enacted nearly ninety years ago, while the others, Part II of the Federal Power Act and the Natural Gas Act, were enacted seventy years ago during the New Deal.

1. 16 U.S.C. §§ 792–823d (2006).

2. *Id.* §§ 824–824w.

3. 15 U.S.C. §§ 717–717w (2006).

4. *Id.* §§ 3301–3432.

5. Hepburn Act, ch. 3591, 34 Stat. 584 (1906) (codified as amended in scattered sections of 49 U.S.C.). Although the Hepburn Act is the oldest of these four statutes, it was only entrusted to FERC administration relatively recently, in 1977. 42 U.S.C. §§ 7155, 7172 (2006). Interestingly, FERC administers the Hepburn Act as it existed in 1977, not as it exists today, under the terms of the Department of Energy Reorganization Act of 1977.