

# E&E News Energywire

## SUPREME COURT

### Pipeline critics seek to maintain state control

Pamela King, E&E News reporter

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The Supreme Court in Washington, D.C. Sunira Moses/Wikimedia Commons

Another pipeline challenge is making its way to the Supreme Court.

The Delaware Riverkeeper Network yesterday filed a petition asserting that the 3rd U.S. Circuit Court of Appeals wrongly pre-empted Pennsylvania's process in permitting Transcontinental Gas Pipe Line Co. LLC's Atlantic Sunrise project. The case is one of at least three pipeline-related matters that have recently landed in front of the Supreme Court.

The court hasn't yet decided whether to review any of them.

"Since the federal government has not preempted the state's role in approvals for natural gas pipelines but, to the contrary, has specifically given the states a role in this process, on what authority does the federal government then disregard the very administrative procedure that the state has developed to comply with the federal requirements?" attorneys for the Delaware Riverkeeper Network and Lancaster Against Pipelines ask in their [petition](#).

After the Pennsylvania Department of Environmental Protection in 2016 approved a Clean Water Act permit for the Atlantic Sunrise project, the petitioners appealed the decision to the state Environmental Hearing Board and to the 3rd Circuit.

The 3rd Circuit upheld the water permit ([Energywire](#), Sept. 5, 2018).

Petitioners contend that the 3rd Circuit decision pre-empted state procedure and conflicted not only with other appellate court rulings, but also with the court's own findings last year in a similar case out of New Jersey.

The case law "has wrought uncertainty as to which states will have their administrative review process preserved and which states will have them preempted," the petition states.

A Supreme Court ruling would have ramifications beyond the Atlantic Sunrise pipeline, which spurred this particular challenge, said Maya van Rossum, head of the Delaware Riverkeeper Network.

"While the Atlantic Sunrise Project has largely been constructed, this case has significant implications for how and where appeals of future pipeline projects take place, including the state issued permits for the PennEast Pipeline Project," she said in a statement yesterday.

Atlantic Sunrise, which includes 200 miles of new pipeline in the Keystone State, is at the center of a separate Supreme Court petition alleging that the project violates a group of Catholic nuns' religious freedoms ([\*Energywire\*](#), Oct. 29, 2018).

Opponents of the Mountain Valley gas project through West Virginia and Virginia have asked the Supreme Court to examine the federal government's use of eminent domain in pipeline construction ([\*Energywire\*](#), Oct. 26, 2018).

The Trump administration has already asked the court not to take either case.

Supreme Court justices are still reviewing the petitions.