



The Committee on Energy and Commerce

Memorandum

July 3, 2013

TO: Members, Subcommittee on Energy and Power

FROM: Majority Committee Staff

RE: Hearing on H.R. 1900, the Natural Gas Pipeline Permitting Reform Act

On Tuesday, July 9, 2013, at 10:00 a.m. in room 2322 of the Rayburn House Office Building, the Subcommittee on Energy and Power will hold a legislative hearing on H.R. 1900, the Natural Gas Pipeline Permitting Reform Act, introduced by Rep. Mike Pompeo.

I. WITNESSES¹

Panel I

The Honorable Philip D. Moeller
Commissioner
Federal Energy Regulatory Commission

Panel II

Mr. David Markarian
Vice President, Governmental Affairs
NextEra Energy, Inc.

Ms. Maya K. van Rossum
The Delaware Riverkeeper
Delaware Riverkeeper Network

Mr. Rick Kessler
President, Board of Directors
Pipeline Safety Trust

E. Alex Paris III
Distribution Contractors Association

Donald F. Santa, Jr.
President and CEO
INGAA

¹ Invitations to testify were sent to officials at the Bureau of Land Management, Environmental Protection Agency, U.S. Army Corps of Engineers, and the U.S. Fish and Wildlife Service. These agencies declined to testify.

II. BACKGROUND

The Federal Energy Regulatory Commission (FERC) is authorized under Section 7 of the Natural Gas Act (NGA) to evaluate whether the routes for proposed interstate natural gas pipeline projects should be approved. FERC conducts the environmental review of each proposed natural gas pipeline project as required under the National Environmental Policy Act (NEPA). Under the Energy Policy Act of 2005 (EPA05), FERC is designated as the lead agency for coordinating and reviewing natural gas pipeline project applications under NEPA and “all applicable federal authorizations.” As the lead agency, FERC often coordinates with a variety of federal, state, and local agencies in the state or jurisdiction that is dependent upon where the interstate pipeline is being constructed.

Multiple permits are often required for a natural gas pipeline project, including permits under the Clean Water Act, Endangered Species Act, and Clean Air Act. Under current FERC regulations federal and state agencies participate in the development of the NEPA analysis for a pipeline project and then are required to complete their respective permit application reviews no later than 90 days after FERC issues its final environmental document, unless another schedule is established by federal law.

Despite the increased authority given to FERC under EPA05 there is growing evidence that FERC lacks the ability to enforce agency decisional deadlines related to natural gas pipeline applications. A December 2012 study conducted by the INGAA Foundation found that delays of more than 90 days have risen 28 percent after EPA05’s permitting reforms, while delays of 180 days or more have risen 20 percent.² A February, 2013 GAO report found the natural gas pipeline permitting process to be “complex.”³ A chief cause of these growing delays is that there are no enforcement mechanisms or consequences if agencies do not complete permit application review within 90 days.

There is a critical need to build new natural gas pipelines and to improve upon the existing infrastructure across the country. The growth in U.S. natural gas production and growth in market demand, especially market demand in certain markets, is driving the need. During a hearing before the Subcommittee on Energy and Power on natural gas and electric coordination challenges, several witnesses testified that there is an acute need for bringing new capacity to markets that need it, such as in northeastern states.⁴ In addition, more natural gas pipelines would have the added benefit of providing greater regulatory certainty to areas that have a growing need for more natural gas resources.

H.R. 1900 seeks to provide FERC with the authority to enforce natural gas pipeline permitting deadlines by addressing the shortcomings in EPA05 with three new provisions.

² INGAA Foundation, [*Expedited Federal Authorization of Interstate Natural Gas Pipelines: Are Agencies Complying with EPA05?*](#), December 21, 2012

³ Government Accountability Office, [*Interstate and Intrastate Natural Gas Permitting Processes Include Multiple Steps, and Time Frames Vary*](#), February, 2013.

⁴ Subcommittee on Energy and Power hearing on American Energy Security and Innovation: The Role of Regulators and Grid Operators in Meeting Natural Gas and Electric Coordination Challenges, March 19, 2013.

First, it would impose a 12-month deadline (after providing public notice of the natural gas pipeline application) for FERC to approve or deny a pipeline certificate request. Second, it would codify FERC's 90-day regulatory deadline for all relevant agencies to approve or deny a permit application after FERC's notice of completion of the final environmental document relating to the project. However, an agency may request an extension of this deadline by 30-days if FERC determines an extension is necessary because of "unforeseen circumstances beyond the control of the agency." Lastly, it would require that a permit becomes effective if an agency does not issue a response within the 90-day timeframe.

III. SECTION-BY-SECTION

Section 1: Short Title

Section 1 provides the short title of "Natural Gas Pipeline Permitting Reform Act."

Section 2: Regulatory Approval of Natural Gas Pipeline Projects

Section 2 of the legislation amends section 7 of the NGA by adding two new subsections, (i) and (j).

New subsection (i) directs the FERC to approve or deny an application for a certificate of public convenience and necessity for the siting, construction, expansion, or operation of any natural gas pipeline project not later than 12 months after providing public notice of the application.

New subsection (j)(1) requires any agency responsible for issuing any license, permit, or approval required under Federal law in connection with the project for which a certificate of public convenience and necessity is sought under the NGA to approve or deny the issuance of the license, permit, or approval within 90 days after FERC issues its final environmental document relating to the project.

New subsection (j)(2) provides that an agency may request FERC to extend the time period under paragraph (j)(1) by 30 days. FERC is required to grant the extension if the agency demonstrates it is necessary because of unforeseen circumstances beyond the agency's control.

New subsection (j)(3) provides that if an agency does not approve or deny the issuance of the license, permit, or approval within the 90 day time period (or 120 days if a 30 day extension is granted), such license, permit, or approval shall go into effect.

IV. ISSUES

The following issues will be examined at the hearing:

- The current process for permitting interstate natural gas pipelines;
- Impediments to permitting interstate natural gas pipelines;
- The role other agencies play in the natural gas pipeline permitting process;
- The need for increased natural gas pipeline capacity in the U.S.

V. STAFF CONTACTS

If you have any questions regarding this hearing, please contact Tom Hassenboehler or Jason Knox at (202) 225-2927.