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**TESTIMONY OF
THE PIPELINE SAFETY TRUST**

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**Presented by:
Rick Kessler, President**

**BEFORE THE

UNITED STATES HOUSE OF REPRESENTATIVES
COMMITTEE ON ENERGY AND COMMERCE
SUBCOMMITTEE ON ENERGY AND POWER**

HEARING ON H.R. 1900, Natural Gas Pipeline Permitting Reform Act

**10:00AM, TUESDAY JULY 9, 2013
2322 Rayburn House Office Building**

Good morning Chairman Whitfield, Ranking Member Rush and Members of the Subcommittee:

Thank you for inviting me to speak today on the important subject of pipeline safety. My name is Rick Kessler and I am testifying today in my purely voluntary, uncompensated role as the President of the Pipeline Safety Trust.

The Pipeline Safety Trust came into being after a pipeline disaster over fourteen years ago - the 1999 Olympic Pipeline tragedy in Bellingham, Washington that left three young people dead, wiped out every living thing in a beautiful salmon stream, and caused millions of dollars of economic disruption. While prosecuting that incident the U.S. Justice Department was so aghast at the way the pipeline company had operated and maintained its pipeline, and equally appalled at the lack of oversight from federal regulators, that the Department asked the federal courts to set aside money from the settlement of that case to create the Pipeline Safety Trust as an independent national watchdog organization over both the industry and the regulators. We have worked hard to fulfill that vision ever since, but with continuing major failures of pipelines we question whether our message is being heard.

I am here today to let you know of the Pipeline Safety Trust's concerns about, and opposition to, H.R. 1900, legislation by Representative Pompeo currently pending before the Committee on Energy and Commerce. As you may know, the Pipeline Safety Trust (the Trust) is the only national, independent, nonprofit organization solely devoted to promoting pipeline safety.

H.R. 1900 would add two new subsections to Section 7 of the Natural Gas Act. Proposed new subsection (i) would limit to one year the time for the Federal Energy Regulatory Commission's (FERC) consideration of an application for a certificate of public convenience and necessity. Proposed new subsection (j) would limit other agencies' consideration of licenses, permits, or approvals related to a

project to 90 days after FERC issues its “final environmental document relating to the project” with the ability for an agency to receive 30 more days if it can demonstrate that delays were beyond its control. Proposed paragraph (3) would, by operation of law, put into effect any license, permit or approval not acted upon by an agency subject to the provisions of new subsection 7(j).

There are many reasons why a FERC certificate process may not be complete within a year, such as the complexities involved with studying the potential impact of a pipeline on environmentally sensitive areas, on dense urban areas requiring substantial public involvement, or the mere lack of funds available to an agency to adequately staff and participate in FERC’s NEPA review process. This latter reason will, no doubt, grow as federal spending sequestration results in fewer resources for agencies involved in interstate natural gas projects. No clear reason for the need for the one-year limit has been provided, and such a new limitation seems to run counter to the recent GAO report¹ that studied the natural gas permitting process, which states “the average time for those projects that began at the application phase was 225 days.” Furthermore, there is no rationale for this one-size-fits-all, one-year limit that would treat a 10 mile pipeline across a barren desert the same as a 1400 mile pipeline that crosses multiple ecosystems and through dense population areas where it could pose a threat to the life and property of those citizens living nearby. At a minimum, we ask that thorough, independent analysis for the need and rationale for such a one-year limit be completed before any such measure is considered.

To be clear, our opposition to H.R. 1900 relates primarily to the aforementioned subsection 7(j)(3). That proposed new subsection would “deem approved” any licenses, permits or approvals related to an application for a certificate of public convenience and necessity if the agency considering the application does not act on it within 90 days of FERC’s issuance of its final environmental document, *regardless of when the agency receives the permit or license application*. The Trust believes that rushed or worse, incomplete reviews resulting in automatic approvals, pose a threat to public safety and the

¹ Government Accountability Office, *Interstate and Intrastate Natural Gas Permitting Processes Include Multiple Steps, and Time Frames Vary*, February, 2013.

environment. There are any number of licenses, permits and approvals that are completely dependent upon what route may be ultimately approved by FERC, including permits such as NPDES Storm Water Permits, Air Quality and Construction Permits, Coastal Zone Management Consistency Determinations, Section 404 Clean Water Act Permits, and Waste Water Discharge Permits. The bill provides no requirement that the applicant even apply for such a permit within that time frame, or any requirement that such an application is complete and contains the necessary information for the reviewing agency. Even the recent INGAA Foundation report² notes that many of the causes for delays are due to issues within the control of the applicants, not the permitting agencies, stating “the causes for delay that were identified included... applicant changes to the project requiring additional or revised environmental review, and site access problems.” In those cases, it would be impossible for an agency to complete its review of a complex route-dependent permit within the allotted 90-120 days following FERC’s environmental review making permit issuance under H.R. 1900 a fait accompli, effectively gutting the important role these permitting agencies play in protecting public health, safety and the environment. We also would point out that almost no company has pursued the remedy provided under current law, yet now the industry is arguing for this significant change to EAct 2005 without even availing itself of the avenues it currently has available to address the problem.

There may also be a serious unintended consequence of this bill that could actually slow progress on approval of pipeline projects since the only course this bill allows responsible agencies to take is to deny the permits within the 90-120 days they would now be given to preserve their ability to adequately process a complex permit to protect the public and the environment. While, as a result of EAct 2005, 18 CFR 157.22 already requires agencies to meet the 90 day timeframe for authorization, we can find no rationale for how or why that 90 day period was developed. We also note that the current regulation, while setting a 90 day deadline, also includes an exception for timelines set by other federal law; no

² INGAA Foundation, Expedited Federal Authorization of Interstate Natural Gas Pipelines: Are Agencies Complying with EAct?, December 21, 2012

such exception exists in H.R. 1900. Ultimately, we urge that this section not be considered without a full review, to include state and local permitting authorities in addition to federal entities, to come up with a realistic timeframe for such authorization.

Further, Section 7 of the Natural Gas Act is unique in that it provides for the granting of federal eminent domain authority to natural gas pipeline companies. Subsection 7(h) of current law allows these companies in certain circumstances to “take” private land to build an interstate natural gas pipeline upon the grant of a certificate of public convenience and necessity from FERC. This is a unique provision in federal energy law; neither electricity transmission lines nor hazardous liquid pipelines have federal eminent domain authority attached to them. The Trust believes that the taking of private land by corporations or any other entity is an extremely serious matter and should not be taken lightly in law or in practice. FERC has worked hard through its pre-filing efforts to give potentially affected property owners more time to become involved and knowledgeable regarding the certification process to ensure better protection of their property rights. This bill would undermine those important property rights efforts. In our view, no process or any part of a process should be curtailed or “deemed approved” when takings of private property are involved. Fast tracking the taking of land would only work to further alienate landowners and communities who after the pipeline is built, become our first line of defense in safeguarding the pipeline.

Moreover, the Trust fails to see any compelling case for this legislation. The construction of natural gas pipelines has grown and will only continue to grow as a result of the increased development of unconventional shale gas around the country. Any perceived strain on the process of FERC consideration of natural gas pipeline projects and associated agencies reviewing impacts and issuing permits, licenses or approvals is likely due to the success, not the failure, of the growth of pipeline transmission of natural gas. Absent new financial resources, the increase in new pipeline plans or expansions will put a strain on the ability of federal and state agencies to review these pipeline plans as quickly as companies and

their investors may want, but that should not be an excuse to cut corners, shortchange landowners and put at risk the public and our environment.

Finally, we do not know what the impact of this legislation will be on state and federal permitting, licensing and other processes already underway such as the Clean Air Act permit for a compressor station on a proposed pipeline running through Fredrick County, Maryland just a few miles north of where we are meeting here today. We urge the committee to take time to compile and assess all the facts regarding the consequences –intended and unintended—of enacting this legislation before scheduling the bill for a full committee markup.

Thank you for your attention to our concerns. As you know, the Trust does not oppose the construction of new pipelines in general. Rather, we advocate to ensure that new and existing pipelines be as safe as they can be for the sake of property owners, the environment and the public welfare. You have heard from us time and again about the inadequacy of the federal pipeline safety program and we believe that this legislation, by short-circuiting the review and permitting process on numerous levels, would deal a major blow to pre-construction review of new lines, increasing future risks to the public and the environment. We, therefore, strongly object to and oppose H.R. 1900 in its current form because, if enacted, the legislation will undermine pipeline safety and ultimately the well-being of the people and environment where pipelines are built.