

**TESTIMONY OF
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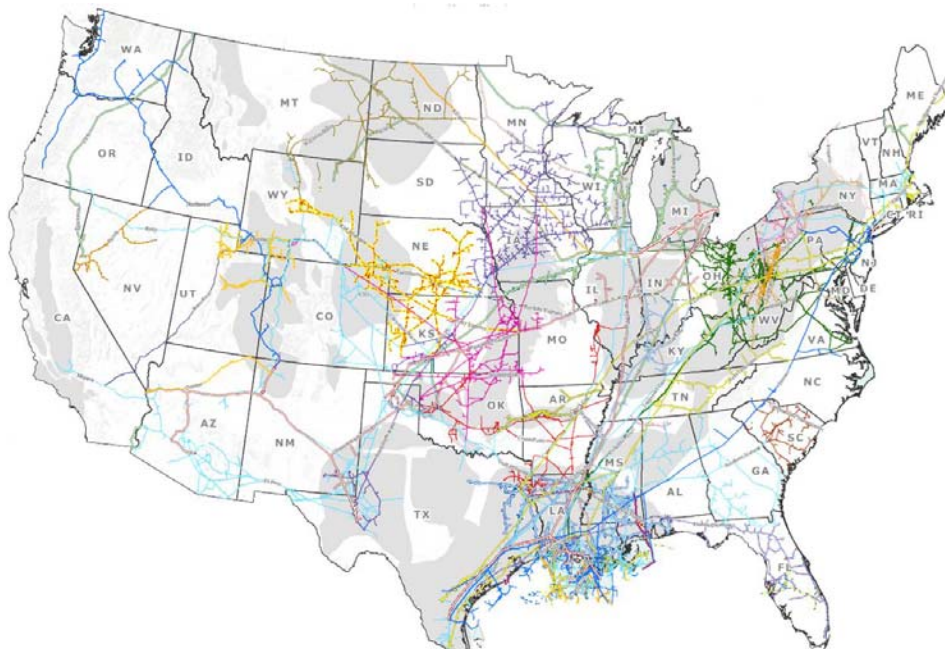
**BEFORE THE
SUBCOMMITTEE ON ENERGY AND POWER
COMMITTEE ON ENERGY AND COMMERCE
U.S. HOUSE OF REPRESENTATIVES**

**REGARDING
THE “NATURAL GAS PIPELINE PERMITTING REFORM ACT”**

JULY 9, 2012

Good morning Chairman Whitfield, ranking member Rush and members of the Subcommittee on Energy and Power. My name is Donald F. Santa, and I am the president and CEO of the Interstate Natural Gas Association of America (INGAA). INGAA represents interstate natural gas transmission pipeline operators in the U.S. and Canada. Our 26 members account for virtually all of the major interstate natural gas transmission pipelines in North America and operate about 200,000 miles of transmission pipe in the U.S.

U.S. Interstate Natural Gas Transmission Pipelines: A Robust Infrastructure



Thank you for the opportunity to share INGAA's views on H.R. 1900, the "Natural Gas Pipeline Permitting Reform Act." As you know, the shale revolution and the newly realized abundance of domestic natural gas have created new opportunities for the United States and have prompted significant and rapid changes in our nation's energy economy. The rapid growth in domestic natural gas supplies also has led to a significant change in the pipeline industry. While the U.S. enjoys a robust natural gas infrastructure, as seen above, this infrastructure was largely built to bring natural gas supplies – then primarily centered in the Gulf Coast region – to major markets in the Northeast, Midwest and along the West Coast. The new shale gas development has altered this model, driving the need to build new pipeline infrastructure to connect new supply to existing (and new) markets. A report by ICF International, sponsored by the INGAA Foundation, has estimated that the pipeline industry will need to invest about \$8 billion each year through 2035 to keep pace with anticipated growth in both the supply and the demand for natural gas.¹

As we build this necessary energy infrastructure, we need to be mindful of the processes in place for pipeline approval, the lead times involved, and the potential for improving upon the existing framework. Currently, under the overall direction of the Federal Energy Regulatory Commission (FERC), the approval and permitting process for interstate natural gas pipelines is generally very good – particularly when compared with the permitting processes for other types of energy infrastructure. Even good systems can be improved upon, however, and this area is no exception. This Committee had a role in some important amendments to the Natural Gas Act in 2005 to add certainty and efficiency to the natural gas pipeline approval and permitting process. While the 2005 amendments empowered FERC to set deadlines for the various permits required to construct a pipeline, the amendments did not give FERC the authority to enforce such deadlines. H.R. 1900 would make an incremental, but substantive, improvement to the permitting process by giving FERC such authority. INGAA, therefore, supports this legislation.

Approval Process for Interstate Natural Gas Pipelines

Entities proposing to construct (or modify) an interstate natural gas pipeline are required to seek approval from FERC, pursuant to section 7 of the Natural Gas Act. FERC may grant approval to the projects that it determines meet the "public convenience and necessity." It is important to note that the Natural Gas Act gives the federal government the preemptive role in pipeline approval, but that state agencies still play a role in the permitting process.

¹ *North American Midstream Infrastructure through 2035 – A Secure Energy Future*, INGAA Foundation, June 27, 2011.

The Energy Policy Act of 2005 (EPA 2005) provided FERC with additional authority in the permitting and approval process. First, section 313 of EPA 2005 clarified that FERC was the “lead agency” under the National Environmental Policy Act (NEPA) for those natural gas infrastructure projects requiring approval from FERC. Second, this section empowered FERC to establish a schedule for all “Federal authorizations,” in other words, all federal or state permits required under Federal law. As stated in section 313, these other federal and state permitting agencies “shall cooperate with the Commission and comply with the deadlines established by the Commission.” However, EPA 2005 did not create a specific mechanism for FERC to enforce such deadlines. Instead, a project applicant (not FERC) had the option to challenge an agency’s tardiness or inaction in federal court, a lengthy, circuitous and often a counterproductive process.

As stated by the Government Accountability Office (GAO) in a recent report,² the permitting process for interstate pipelines is “complex in that [it] can involve multiple federal, state, and local agencies, as well as public interest groups and citizens, and include multiple steps.” Most stakeholders view the FERC as a credible and consistent “lead agency” in its coordination of the multiple agencies and interests. It is worth emphasizing that while the pipeline approval and permitting process is complex – and getting more so – it is a process that generally works well.

A Process Improvement

This recent GAO report on pipeline permitting provides some useful metrics for the Committee to consider. The GAO looked at recent “major” projects (those that, due to size and scope, use the FERC pre-filing process) and determined that the average length of time to process an application was 558 days, with times ranging from 370 to 886 days, or in other words, from one year to almost 2.5 years. This did not include the time needed for obtaining permits after a FERC certificate is granted, nor did it include the time to develop a project before beginning the pre-filing process or the time to construct the project once all authorizations had been received. Recent industry experience suggests that it typically takes about four years for an interstate natural gas pipeline to go from concept to operation.

The approval and permitting process is not getting any shorter, even after enactment of EPA 2005. In fact, a recent report by the Holland & Knight LLP, sponsored by the INGAA

² *Pipeline Permitting: Interstate and Intrastate Natural Gas Permitting Processes Include Multiple Steps, and Time Frames Vary*, GAO Report 13-221, February 2013.

Foundation,³ found that permitting times have increased despite the stated intent of the new law. The report surveyed 51 pipeline projects and compared permitting timeframes from before the enactment of EAct 2005 to permitting times post-EAct 2005. The survey data showed:

- 1) an increase from 7.69 percent to 28.05 percent of federal authorizations that were delayed; and
- 2) an increase from 3.42 percent to 19.51 percent of federal authorizations that were delayed 90 days or longer.

The most common delays were for:

- 1) Bureau of Land Management right-of-way grants;
- 2) U.S. Army Corps of Engineers Rivers and Harbors Act permits; and
- 3) Coastal Zone Management Act consistency determinations.

The reasons for these delays varied from lack of agency resources to lack of agency focus and cooperation with FERC to permit applications deemed incomplete. Fixing these problems would require a number of actions within regulatory agencies and pipeline companies. Still, the top recommendation from the report was “schedule enforceability.”

As mentioned, FERC can set a deadline for permit completions, and under current FERC regulations the deadline is 90 days after the completion of the project NEPA document (either an Environmental Impact Statement or an Environmental Assessment, depending upon the scope of the project). FERC, however, cannot enforce its deadline. While the project applicant can file suit against the permitting agency, pipelines generally view such an action as futile because: 1) the applicants want to maintain positive working relationships with the agencies, for both current and future projects; 2) the time and expense of such a legal challenge generally outweighs the benefits of any favorable ruling; and 3) filing a lawsuit virtually guarantees additional delay.

Therefore, the INGAA Foundation report recommended that Congress amend EAct 2005 to require that FERC assume the issuance of a permit after the 90-day deadline, or alternatively, that such a permit go into effect automatically once the deadline expires. Quoting from the report:

Until such enforcement options are available, the effectiveness of FERC outreach with the other agencies will be limited because other demands imposed on those agencies that have real consequence will take priority.

³ *Expedited Federal Authorization of Interstate Natural Gas Pipelines: Are Agencies Complying with EAct 2005?*, INGAA Foundation report 2012.05, December 21, 2012.

In sum, certainty is needed. Clear deadlines would bring action and accountability to all permitting agencies, and improve what is already a good process. H.R. 1900 provides that accountability.

A Real-World Example

Permitting delays have real world consequences. For one interstate pipeline company trying to replace a small, older interstate pipeline that extended across a reservoir owned and operated by the U.S. Army Corps of Engineers, a one-year, entirely avoidable delay resulted in a 6 percent cost escalation for the project.

The project involved replacing a deteriorating pipeline that provided primary gas delivery to residential and industrial customers, including a local paper mill, in a nearby town. The company proposed a small replacement line – less than 20 miles of 10-inch diameter pipeline and ancillary facilities – and proposed a conservative seven-month approval and permitting timeframe (that included time for unexpected snags and delays) that would allow it to complete construction in time for the winter heating season.

The process with FERC went smoothly. The company filed the proposed project with FERC in February, and the commission issued a notice of schedule for environmental review a few months later. FERC planned to issue an Environmental Assessment for the project on July 1 and establish a 90-day deadline for issuance of federal authorization decisions, terminating on September 29. This would have given the company time to complete the work in time for the winter heating season.

The process for obtaining permits from other agencies did not go as well. While the company was able to obtain U.S. Fish and Wildlife Service and state historic preservation office approvals, thanks to early informal consultation, it ran into problems with the U.S. Army Corps of Engineers and National Resource Conservation Service water permits.

Despite early consultations and extensive applicant coordination with the Corps of Engineers, it took 15 months – and nine months after the FERC deadline -- for the Corps to finally issue a permit. Similarly, the NRCS did not approve the company's request for a permit until approximately 9 months after the FERC-established deadline for the issuance of federal authorizations and more than 18 months after the date that company first requested such authorization.

A Clarification

In advocating permitting deadlines, we want to make it clear that this is not about short-changing or, in anyway, bypassing NEPA. INGAA supports a process that gives FERC sufficient time to undertake and complete the NEPA analysis. This should not be an open-ended time period – that could lead to an endless process – but we agree that it is important for the NEPA process to be done right. FERC staff has great experience in performing this work in a timely fashion.

The permitting deadline in H.R. 1900, and the enforcement thereof, starts after the NEPA process is complete. By that time, permitting agencies should have been working cooperatively with FERC and the project sponsor for some months (and perhaps years, in some cases), and should, therefore, be ready to render a final decision. At this point in the process, action within 90 days is a reasonable expectation.

Why Is This So Important?

Why should Congress care about timely permitting for natural gas pipelines? This is important because pipelines are critical to enabling the U.S. to take advantage of its substantial new natural gas supplies. Without pipelines, natural gas supplies remain in the ground, and consumers in capacity-constrained markets experience greater price volatility and higher-than-average prices.

The Committee on multiple occasions has heard about the opportunities that natural gas is bringing back to America. Affordable, abundant, domestic natural gas has led to a resurgence of American manufacturing jobs, re-powered the electric utility industry, and lowered air emissions. Perhaps the best quote is from President Obama, in his speech at Georgetown University on June 25:

Now, even as we are producing more domestic oil, we're also producing more cleaner-burning natural gas than any other country on Earth. And again, sometimes there are disputes about natural gas, but let me say this: we should strengthen our position as the top natural gas producer because, in the medium term at least, it not only can provide safe, cheap power, but it can also help reduce our carbon emissions.

Federally supported technology has helped our businesses drill more effectively and extract more gas. And now, we'll keep working with industry to make drilling safer and cleaner, to make sure that we're not seeing methane emissions, and to put people to work modernizing our natural gas infrastructure so that we can power out homes and businesses with cleaner energy.

The bottom line is natural gas is creating jobs. It's lowering many families' heat and power bills.

The timely review, approval and permitting of new and refurbished natural gas infrastructure will be critical to meeting all of the goals expressed by the President a couple of weeks ago. Unnecessary delays cost project sponsors money, send a troubling signal to others contemplating pipeline expansion projects, and, in some cases, prevent investment in new pipeline infrastructure. All of this has an impact on consumers, who end up paying more for their energy in the absence of this infrastructure development.

Conclusion

Mr. Chairman, the members of INGAA thank Rep. Pompeo and the cosponsors of H.R. 1900 for introducing this legislation and the subcommittee for inviting testimony on the bill. If enacted, this bill will make an incremental but important change that will increase the likelihood that the U.S fully realizes the benefits of abundant domestic natural gas. Thank you for the opportunity to testify today, and I would be happy to answer any questions.