

Questions for the Record, The Honorable Pete Olson

- 1) Can you describe the regulatory hurdles faced by the interstate gas pipeline industry in securing permits for new pipelines?

As discussed in my testimony before the Subcommittee last July 9th, regarding H.R. 1900, the interstate natural gas pipeline permitting process is complex. While the Federal Energy Regulatory Commission (FERC) has exclusive authority under the Natural Gas Act to approve the construction of proposed interstate natural gas pipelines and is the “lead agency” for the environmental review conducted pursuant to the National Environmental Policy Act, it is not the only agency that must act in order for construction of a proposed pipeline to proceed. A myriad of other federal and, in some cases, state permitting agencies must act, and all permits and approvals must be received in order to build the pipeline. Consequently, a pipeline project can be delayed if but one of many required permits is not issued in a timely fashion.

In late 2012, the INGAA Foundation released a report on permitting delays prepared by Holland & Knight LLP that was referenced in my July testimony. The report compared pipeline permitting delays before the enactment of the Energy Policy Act of 2005 (which included several provisions intended to improve the permitting process) with delays after enactment of this law. Notwithstanding the intent of the new law, the report found that permitting delays have increased in recent years. Specifically, of those companies surveyed, the number of delayed permits increased from 7.69 percent to 28.05 percent of permits, and the number of delays that lasted 90 days or longer increased from 3.42 percent to 19.51. So, not only are permitting delays become more prevalent, but the delays are for longer periods.

Further, the impact of these delays may be much greater than just the additional number of days needed to obtain the permit. For example, if the delay causes the pipeline to miss the limited season for construction in environmentally sensitive areas, the initiation of construction could be delayed for nearly another year.

These delays affect not only the pipeline project developer, but also the customers of the pipeline. For example, the pipeline developer might incur the cost of keeping construction crews on hold and even may incur damages if the pipeline ultimately misses the in-service date specified in its contracts with customers. Producers and marketers lose the opportunity sell their natural gas during the period that initiation of pipeline service is delayed and consumers likewise are deprived the additional opportunities to purchase natural gas during this period. Getting agencies to work together in reviewing pipeline projects, and resolving permitting decisions in a cooperative and timely fashion, is a key to getting necessary energy infrastructure built in response to market demand.

2) Have these hurdles made attracting new infrastructure more difficult?

While it rarely happens, a handful of interstate natural gas pipeline projects have been cancelled due to the inability to obtain permits or protracted delays in permitting. In fact, the permitting reforms that were included in the Energy Policy Act of 2005 and that would be perfected with the enactment of H.R. 1900 were intended to address this situation.

Overall, the natural gas pipeline industry has succeeded in attracting the capital investment needed to finance new infrastructure. Often multiple proposed pipeline projects and proposed enhancements of existing facilities compete for new market opportunities to transport natural gas.

Still, interstate pipeline industry's ability to attract capital on favorable terms could be adversely affected if it is perceived that the potential for unreasonable permitting delays (and perhaps ultimately not receiving a needed permit) created a level of risk not associated with other investment opportunities. Such capital would flow to other energy infrastructure investments that were exposed to relatively less risk or for that matter to investments outside the energy sphere. This ultimately would harm consumers and the economy, because pipeline rates necessarily will reflect the higher cost of capital.

The challenges will grow greater as pipelines build facilities in more densely populated areas that are in close proximity with both new supply areas and growing markets, and as some activist groups target natural gas infrastructure as part of pursuing broader agendas. For example, even with support from the governors of New York and New Jersey and the mayor of New York City, it took Spectra Energy four years to obtain all of the authorizations needed to build its New York/New Jersey project. Consequently, efforts to improve the efficiency of pipeline permitting are warranted.