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

REGARDING
DISCUSSION DRAFT ADDRESSING FERC PROCESS COORDINATION UNDER THE NATURAL GAS ACT

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Good morning Chairman Whitfield, ranking member Rush and members of the subcommittee. My name is Donald Santa, and I am the president and CEO of the Interstate Natural Gas Association of America, or INGAA. INGAA represents interstate natural gas transmission pipeline operators in the U.S. and Canada. Our 24 members operate the vast majority of the interstate natural gas transmission network, which is the natural gas industry analog to the interstate highway system.

The approval and permitting process for interstate natural gas pipelines has become increasingly challenging. While this remains a good, albeit complex, process, there have been some trends in the wrong direction. What was once orderly and predictable is now increasingly protracted and contentious.

The United States' robust network of natural gas transmission pipelines has expanded to accommodate the new natural gas supplies made available by the shale revolution. Still, most energy experts agree that we will need even more gas

pipeline infrastructure to connect even greater supply and to support increased demand for gas from the manufacturing and petrochemical sectors, electric generators and other end users. (Pipelines also will have a role in the transition to greater utilization of renewable energy, as gas-fired generators will be relied upon to firm up variable renewable generators.) We need a process that balances thorough environmental review and active public involvement with orderly, predictable and timely approval and construction of necessary energy infrastructure.

If enacted, the draft bill before the subcommittee today would modestly improve the permitting process by introducing additional transparency and accountability for federal and state permitting agencies. We support these steps, but continue to urge Congress to create real consequences for agencies that fail to meet reasonable deadlines. The intent that motivates the draft bill – that is, better coordination to ensure that federal and state permitting agencies thoroughly review and act on pipeline applications on a timely basis – will not be accomplished absent real consequences for agencies that fail to act.

Approval Process for Interstate Natural Gas Pipelines

Entities proposing to construct (or expand/modify) an interstate natural gas pipeline must seek a "certificate of public convenience and necessity" from the Federal Energy Regulatory Commission (FERC), pursuant to section 7 of the Natural

Gas Act.[1] FERC approves projects that it determines are in the "public convenience and necessity;" in other words, projects that are in the public interest. While the Natural Gas Act provides FERC with exclusive authority to authorize the construction and operation of interstate natural gas pipelines, a variety of other permits and authorizations are necessary in order to construct and operate such a pipeline. Importantly, FERC's action pursuant to the Natural Gas Act does not preempt or override other federal agencies (or state agencies acting pursuant to delegated federal authority) in fulfilling their mandates pursuant to other federal laws.

We also should clarify the distinction between the timeline for the FERC certificate process and the variability in the timelines for decisions on the other authorizations needed to proceed with an interstate natural gas pipeline project. The draft bill is intended to address the latter process. FERC has a well-defined and commonly understood process – including detailed rules – for reviewing applications for proposed pipelines. For most major certificate applications, this FERC process includes both a voluntary informal "pre-filing" review that can take between six and 18 months, and a formal application process that generally takes 12 months. This level of certainty and timeliness often is lacking for the federal and state permitting agencies from which a proposed pipeline must obtain a specific land-use or environmental permit. Examples include the U.S. Army Corps of Engineers, which

[1] 15 USC Section 717f

issues permits for a stream or wetland crossing, and the Bureau of Land Management, which issues permits for a federal lands right-of-way.

The Energy Policy Act of 2005 (EPAct 2005) provided FERC with new authority to oversee the pipeline permitting process. First, section 313 of EPAct 2005 clarified that FERC is the "lead agency" under the National Environmental Policy Act (NEPA) for interstate natural gas infrastructure projects. Second, this section empowered FERC to establish a schedule for all "Federal authorizations," in other words, all federal and state permits required under Federal law.[2] Section 313 stated that other federal and state permitting agencies "shall cooperate with the Commission and comply with the deadlines established by the Commission."

A subsequent FERC rulemaking implemented section 313 by establishing a deadline 90 days after the completion of FERC's NEPA review for all permitting agencies acting under Federal authority to make their final permitting decisions. The draft legislation under discussion today would codify this deadline that now exists in regulation.

Two things should be noted here. First, the 90-day permitting deadline is not a deadline for completing FERC's certificate process. No deadline currently exists for

[2] Such as the Clean Water Act, the Clean Air Act, the Coastal Zone Management Act, and the National Historic Preservation Act.

FERC's certificate process, and none is proposed in this draft legislation.[3] Second, the beginning of the 90-day permitting deadline is not the first time a permitting agency has seen an application from the pipeline developer. By the time FERC completes its NEPA review, it reasonably can be expected that FERC and the pipeline project developer will have been engaged in a dialogue with the various permitting agencies for 12 to 18 months – or perhaps even longer. Consequently, permitting agencies will have had ample time to review a proposed project, suggest changes and modifications, and render a final decision.

Although EPAct 2005 authorized FERC to establish a deadline for permitting agencies, it did not create a mechanism for FERC to enforce such deadlines. Instead, a pipeline project developer may challenge a permitting agency's tardiness or inaction in federal court. Doing so, however, is both time-consuming and risky, and this option seldom has been exercised. The lack of permitting schedule enforceability has become an Achilles' heel in the pipeline approval and permitting process. Agencies are free to ignore FERC's deadline in what is currently a consequence-free environment.

Need for Process Improvements

[3] Legislation previously before the subcommittee, H.R. 1900 (H.R. 161 in the current Congress), included a 12-month deadline for FERC's formal application process, but did not include a time limitation on the pre-filing process, and therefore would not have imposed an overall time limit for the vast majority of pipeline projects that first go through the pre-filing process.

A 2013 Government Accountability Office (GAO) report[4] on pipeline permitting provides some useful metrics for the subcommittee to consider. GAO looked at recent "major" projects (those that, due to size and scope, use the FERC pre-filing process) and determined that the average time to process a FERC certificate application was 558 days, with times ranging from approximately one year to almost 2.5 years. This, however, did not include the time needed on the front end to develop a commercially viable project and engage in the FERC pre-filing process. Nor did it include the time needed to obtain other permits, once a FERC certificate had been granted, or the time to construct the project once all permits had been obtained. All told, recent experience suggests that it typically takes about four years for an interstate natural gas pipeline to advance from concept to operation.

The approval and permitting process did not get shorter after enactment of EPAct 2005. A December 2012 report by the Holland & Knight LLP, sponsored by the INGAA Foundation,[5] found that permitting times have increased despite the stated intent of the 2005 law. The report surveyed 51 pipeline projects and compared permitting timeframes before and after enactment of EPAct 2005. The survey data showed more than a threefold increase in the number of federal authorizations that were delayed beyond the 90-day deadline (after the FERC environmental review

[4] *Pipeline Permitting: Interstate and Intrastate Natural Gas Permitting Processes Include Multiple Steps, and Time Frames Vary*, GAO Report 13-221, February 2013.
[5] *Expedited Federal Authorization of Interstate Natural Gas Pipelines: Are Agencies Complying with EPAct 2005?* INGAA Foundation report 2012.05, December 21, 2012.

issuance), and, more troubling, an approximate sixfold increase in the number that were delayed at least another 90 days beyond that.[6]

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."

Therefore, the INGAA Foundation report recommended that Congress amend EPAct 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 absent a contrary decision from the permitting agency. Quoting from the report:

[6] Specifically, the report showed an increase from 7.69 percent to 28.05 percent of federal authorizations that failed to meet the 90-day FERC rule deadline for permitting agencies; and an increase from 3.42 percent to 19.51 percent of federal authorizations that were delayed an additional 90 days or longer.

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.

In sum, certainty is needed. Clear deadlines would prompt action by permitting agencies and hold them accountable for their inaction. This would reverse the recent trend of increasing delay.

Need for New Natural Gas Pipeline Infrastructure

Why is the timely approval of pipeline permits important? Pipeline infrastructure is a necessary predicate for fully realizing the benefits of America's natural gas abundance. Abundant domestic natural gas, spurred by shale gas development, already has had a profound positive effect on the United States' economy and, even more broadly, an effect on the geopolitics of energy. The existing pipeline network is robust, and has proven to be remarkably adaptable to the new reality. Yet, much of our pipeline network was constructed based on now outdated assumptions about the location of natural gas supply and demand. It clearly is not optimized for the energy reality of 2015, let alone 2020 and beyond. As a consequence, consumers in capacity-constrained markets cannot fully benefit from the abundance of domestic natural gas. They often pay much higher prices for natural gas and electricity than consumers in unconstrained markets.

New England is the prime example. The region is heavily dependent on natural gas to generate electricity, and to heat homes and businesses. Those competing demands have placed a heavy, unsustainable burden on the existing natural gas pipeline infrastructure in the region. Simply put, there is not enough pipeline capacity to meet peak demand. As a result, the region struggles with both high prices and operational challenges.

The two key strategies for getting New England through this past winter were: (1) burning fuel oil in power generation units instead of natural gas, and (2) importing liquefied natural gas from the Caribbean through the existing LNG import terminal in Boston harbor. Think about that for a moment. Huge, relatively inexpensive natural gas supplies are 250 miles away, yet the region is burning fuel oil and importing LNG because there is not enough pipeline capacity between Pennsylvania and New England. According to a statement from the six New England governors, released on April 23:

> *…New England is challenged by a lack of natural gas pipeline infrastructure and is losing non-gas power plants, both of which threaten (electric) system reliability.*

Consumers in New England pay dearly. This past winter, while natural gas prices for most of the U.S. hovered around $3.00 to $3.50/Mcf, prices in New England

fluctuated from about $5.00 to $30.00/Mcf. In a hearing before the Senate Energy and Natural Resources Committee on April 28, in which Energy Secretary Ernest Moniz was the witness, Sen. Angus King of Maine referred to this price differential as "appalling for our region," and stated that "it's a pipeline problem, not a gas problem." The senator is correct on both counts.

According to a 2014 report by ICF International commissioned by the INGAA Foundation, the natural gas industry will need to invest about $4 billion annually in new transmission pipeline capacity, through 2035, to keep pace with both supply development and demand. Even if one assumes, as does a recent report by the U.S. Department of Energy, that demand for new major, long-line pipelines has abated, this does not obviate the need for regional and inter-regional pipelines to relieve capacity constraints in the current network. Pipeline infrastructure is necessary for the U.S. to take full advantage of its newfound energy abundance. If a cumbersome permitting process delays pipelines, or if that process drives some investment away from infrastructure development, we will forfeit some of the economic opportunity and consumer benefit that new gas supply otherwise would have created.

Conclusion, and Request for Additional Agency Accountability

The Obama Administration's recent Quadrennial Energy Review (QER) discussed energy infrastructure, including siting and permitting for natural gas transmission pipelines. INGAA agrees with several of the QER recommendations, including:

1) Providing resources to permitting agencies,
2) Facilitating coordination across the numerous federal and state permitting agencies, including encouraging concurrent review,
3) Creating transparency for the permitting process, and
4) Adopting cost recovery for permitting applications.

Several of these ideas are part of the draft bill that is before the subcommittee today. We support these measures that would facilitate coordination among federal and state permitting agencies, enhance transparency and, to a modest degree, improve accountability for the multitude of permitting agencies involved in reviewing proposed natural gas transmission pipelines.

We would also suggest that the subcommittee consider an amendment to this draft bill to allow the use of aerial survey data in situations where a landowner does not grant a project developer permission to perform a ground survey. Survey information is critical to the FERC certification and agency permitting processes. If ground surveys cannot be performed until after issuance of a FERC certificate, then permitting agency approvals might be delayed even further. Aerial or remote-sensing surveys offer a 21st century alternative that would make the permitting process more efficient.

Even these measures, however, are not enough. Real accountability means real, enforceable deadlines, with consequences for tardiness or inaction. We can accept that agencies need more resources, but with those resources should come the obligation to act within clearly defined expectations.

Infrastructure remains the backbone of our nation's economy. How many times do we hear about the need to invest in roads and bridges, seaports and airports, and other forms of infrastructure? Likewise, pipelines are the backbone of our energy economy.

Pipelines should be just as much a national priority as other forms of infrastructure. Americans work to build natural gas pipelines. Americans benefit from lower-cost natural gas to heat their home and lower-cost electricity generated from natural gas. Manufacturing is returning to our shores thanks in large part to affordable natural gas. Affordable natural gas makes the United States the envy of the world, but none of this is possible without the infrastructure – the pipelines – to deliver it.

We hope that Congress will ensure that there are consequences associated with pipeline permitting delays, so that this critical energy infrastructure can be constructed on a timely basis. Transparency is certainly important, yet it needs to go hand-in-hand with clear accountability for agency inaction or delay. We need both concepts in place in order to ensure that interstate pipelines are built in a timely manner. Thank you for the opportunity to testify today.