

Statement of Tim Powell, Director of Land, GIS and Permits, The Williams Companies

On Behalf of the Interstate Natural Gas Association of America

before the Committee on Energy and Commerce,

Subcommittee on Energy and Power

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Mr. Chairman, Ranking Member and members of the Subcommittee. My name is Tim Powell and I am the Director of Land, GIS and Permits for The Williams Companies. In my current role, I oversee the department responsible for developing the environmental elements of our Natural Gas Act filings as well as all natural and cultural resource data collection and reporting required to support Federal and state permitting in The Gulf of Mexico region and the Atlantic coast. Williams is a Tulsa, Oklahoma based company and is a leading provider of natural gas related infrastructure in the United States, including natural gas gathering systems, processing facilities and interstate pipelines. The Williams systems touch about 30% of the natural gas consumed in this country on a daily basis. I am appearing today on behalf of the Interstate Natural Gas Association of America, the industry association representing the interstate natural gas pipeline industry.

I am here today to express our support for H.R. 3021, introduced by Mr. Pompeo and co-sponsored by Reps. Mullin, Schrader and Meeks. This legislation, and the version of the language included in H. R. 8, would address one important cause of interstate pipeline project delays while protecting the integrity of the NEPA review and other related permitting processes.

Section 313 of the Energy Policy Act (2005) amended the Natural Gas Act to instruct Federal and state agencies considering an application for a Federal authorization relating to a project jurisdictional to the Federal Energy Regulatory Commission (FERC or Commission) to cooperate with FERC and comply with the permitting decision deadlines established by the Commission. Unfortunately, however unintended, the practices prescribed by some districts of the Corps of Engineers and state agencies acting under Sec. 404 and 401 of the Clean Water Act respectively, make compliance with the FERC schedule effectively

impossible. The good news is that fixing this problem is relatively simple and will decrease the acrimonious relations that can develop between companies and landowners over accessing the proposed right-of-way.

We need new natural gas infrastructure in this country but as this Committee has recognized, siting and permitting those pipelines is a complicated, time consuming process. FERC as the lead agency has the authority to establish a schedule for all Federal Authorizations to be issued by other agencies in accordance with 15 U.S.C. Section 717n(c)(1), but the other agencies rarely adhere to these deadlines. In the case of the Corps of Engineers districts and states acting under the Clean Water Act, this is because the type of data they believe they need can only be obtained once the developer has complete or near complete access to the route, but the delay in the permitting process caused by this position is in direct contradiction of the Natural Gas Act's intent for agencies to act within the permitting schedule.

By way of background, after a project is announced, companies begin the process of obtaining survey permissions, conducting all the required environmental, cultural and engineering studies, and drafting often voluminous reports regarding various environmental conditions along the route as well as other information, such as potential sites of cultural or historic significance, the presence of endangered species, soil conditions, etc. All this information is required as we make our application to FERC for a certificate of public convenience and necessity pursuant to the Natural Gas Act and our permit applications to other agencies who review specific aspects of the project.

Often the first time an affected landowner has face-to-face contact with a company is when an agent knocks on their door and asks the landowner to sign a form giving the Company permission to begin performing field surveys on their property in order to develop the information needed for the NEPA review and other permits. Landowners can be increasingly reluctant to grant that permission, and frankly, project opponents often rally landowners in an attempt to convince them to deny this permission. As companies, we respect the rights of landowners who choose not to cooperate in the process, but as I referenced above, the process itself, particularly when the Corps is involved, often mandates that we collect information from field

surveys actually conducted on the property in order to have our application deemed complete and processed.

As I indicated, this Committee and the Congress has recognized the complexity of the permitting process and in the Natural Gas Act has directed FERC, acting as the lead agency, to develop the Federal Environmental Assessment or Environmental Impact Statement and to set a schedule for other agencies to act on their permits. The purpose is to create a schedule for the agencies that dovetails with the timeline for FERC to reach a decision on whether or not to issue a certificate to allow the project to move forward. The provisions of H.R. 8 further define the role of FERC in this process.

While the Corps of Engineers, and state agencies providing the Section 401 Water Quality Certification, must follow the requirements of the Clean Water Act, they also have an obligation to fashion a process that allows them to complete their statutory obligations for permitting their portion of the project within the FERC schedule. These permits deal with how the project would impact wetlands and water bodies such as streams, creeks, and ponds and how the Company will mitigate impacts to these resources. Instead, some Corps of Engineers districts and state agencies with 401 water quality certification responsibility will require an applicant to conduct up to 100% field surveys in order to deem an application complete. In other cases, the Corps and the responsible state agency will begin processing applications, but will not make a decision without 100% field survey data. This means the if landowners refuse to grant survey permission, which is their right, the work required by the agencies cannot be completed.

It doesn't have to be this way. There are cases in which the agencies will accept the best available data and move forward with conditioned permit decisions. In each case we are dealing with same Section 404 and Section 401 authorizations but with a permitting process that is applied inconsistently. While we understand the Corps Districts and states involved in this process would prefer to have an applicant provide data based on actual ground surveys of a right-of-way, in practice, it is rarely accomplished prior to issuance of a final FERC Order. Requiring 100% field survey data may be fine for projects where a developer actually owns the property but in the case of linear facilities involving rights-of-way, we must

obtain permission from each landowner along the route which for major projects could number in the hundreds or even thousands.

An agency requirement to obtain 100% or near 100% ground survey data sets a bar that is increasingly beyond what landowners are willing to provide to a company and sets up a classic “catch-22” situation. On the one hand, the company must seek to gain access to the land in order to gather the data desired by the agencies and to attempt to remain on the timetable set forth by FERC, yet to the extent landowners choose not to cooperate, it becomes impossible for a company to produce a complete application. The situation is made worse when project opponents, whose principal objective is to stop pipeline development, have discouraged landowners from voluntarily providing access while simultaneously challenging FERC’s authority to issue a conditional certificate, which allows for the use of eminent domain, as a last resort, to obtain the required information.

In one recent case, Williams was forced to complete the FERC certificate process and then use the eminent domain authority granted under the Natural Gas Act to gain access to many parcels along the right-of-way to complete the data collection for the water permits for both the Corps of engineers and the state agency making the Sec. 401 certification. This approach totally disrupted the project schedule since the time involved to obtain possession, conduct season-appropriate field surveys, prepare drawings, submit supplemental data and begin the 12 month Section 401 regulatory clock resulted in a sequential approach to permitting adding one or more years to the process.

In another case, however, the Corps of Engineers and the state agency administering the 401 Water Quality Certification accepted less than 100% field survey for the purposes of administrative completeness and permit review. The Corps of Engineers plans to issue a conditional permit that requires the submittal of field survey data prior to construction in cases where landowner permission was previously denied. This problem isn’t a problem with the Clean Water Act, it’s a problem that some Corps Districts and State agencies are less flexible in how they allow an application to move forward.

Again, as the Pompeo bill reflects, this is not a problem that requires amending the Clean Water Act. All

that is required is to authorize FERC, as part of its lead agency role, to direct other agencies involved in issuing federal authorizations to accept data gathered by means other than by on-the-ground surveys and to allow the use of such data when necessary to comply with the FERC project schedule. Any permits issued based on remote sensing could be conditioned upon ground survey verification once access has been obtained. In other words, to the extent an applicant is unable to obtain ground survey data within the time required by FERC's Notice of Schedule for Environmental Review because access has been denied, agencies must rely upon the applicant's use of data gathered through the tools that use remote sensing techniques without disturbing the land owners. This could be data gathered by satellite photography, sensors attached to fixed wing aircraft, helicopter, aerial photography, previous mapping of an area, or by studying the area from accessible locations on either side of the proposed right-of-way.

This concept is not foreign in the realm of natural and cultural resource studies. Remote sensing is referenced in FERC's *Guidelines for Reporting on Cultural Resources Investigations for Pipelines* and the 1987 *Corps of Engineers Wetland Delineation Manual* establishes methodologies for identifying wetlands without field visits by relying on other data, or combining field delineated wetlands with remote sensed or other existing data for wetland identification. The manual even states that remote sensing is one of the most useful sources available for identification and delineation of wetlands. The technology has only improved since 1987.

If at the end of the day a project does not move forward, the rights of landowners seeking not be disturbed will have been honored. If a project does go forward, on-the-ground surveys can be conducted prior to the start of construction. Any variances between remote sensed and ground truthed data can be corrected and the mitigation adjusted accordingly.

This solution has a number of obvious benefits: It gives regulators information they need to make informed decisions, keeps the permitting process on track, doesn't require any changes to the Clean Water Act, allows FERC to effectively fulfill its lead agency mandate and does not put unwilling landowners and the pipeline company in an adversarial position over the sensitive question of access to private property.

We understand why the Corps and affected state agencies might prefer to have 100% ground survey data in hand before acting on a 404 permit or 401 request. Field collected data provides a more exact boundary for review and precise calculation of impacts. What is proposed here would require the agency to make a permitting decision based on very good, but not necessarily perfect data. However, this is again contemplated in the 1987 *Corps of Engineers Wetland Delineation Manual* which notes that subsequent field survey may be required to correct any variances. While the agency may prefer the former approach, if the methodology no longer yields a decision in a reasonable time, it is inconsistent with the Energy Policy Act and we believe Congress should direct the agency to take a different approach when necessary to meet the designated schedule. This is wholly consistent with the Corps' own process outlined in its 1987 manual.

As we have discussed this approach to Corps and state delegated permitting of interstate pipeline projects, several questions and concerns have been raised. I would like to address those concerns.

Some have questioned whether or not the "conditional approval" approach works. Actually, most FERC certificates are conditioned on one or more follow up actions being completed and verified, so this is nothing new in the realm of pipeline permitting and the practice has been upheld by various courts. This approach is ideal where not all issues can be resolved within the time frame of the permitting schedule. In addition, as noted previously, the Corps of Engineers already contemplates this method and is using this remedy on a current project. Therefore, we are simply requesting this be applied consistently across all Corps districts and agencies administering Section 401.

Others have asked if companies will use this authority to avoid doing ground surveys altogether. The answer is definitely "no". FERC requires the Applicant to conduct ground surveys for a wide variety of environmental and cultural resource features. In addition, the Applicant must demonstrate that it has avoided and minimized impacts to the maximum extent practical and that the pipeline has been routed and designed for safe construction and operation. There is no advantage to the company from delaying this necessary survey work until the end of the process but before construction starts. The earlier in the process a company gathers this data the better information it has to make routing decisions while also

keeping on schedule. As noted earlier, having to wait to perform surveys until after the project certificate has been issued adds a year or more to the project schedule. The company has every incentive to gather this data as early in the process as possible so that it can demonstrate it has met the threshold for avoidance and minimization. Where landowners allow permission the company will continue to collect all necessary information.

The other primary concern that has been raised is that it somehow collecting data through remote means violates the landowner's rights. This concern is misplaced. There are no privacy rights that prevent over flights of areas or data being obtained from satellite photography. This entire country has been photographed, especially since the advent of aviation. As a landowner, I can refuse permission to someone for entering my property but I have no ability or right to create a personal "no fly" zone in the air above my property or to keep people from looking at my property from a public road. Rules may change over time and as companies we are required to follow those rules, but our proposal in no way weakens privacy rights and in fact, since this data is required by the government for our applications, it actually helps protect privacy rights.

In summary, Mr. Chairman, we believe the legislation being discussed is a win/win for all involved in the permitting process and we urge its adoption.