H.R. 1900, THE NATURAL GAS PIPELINE PERMITTING REFORM ACT

HEARING

BEFORE THE

SUBCOMMITTEE ON ENERGY AND POWER

OF THE

COMMITTEE ON ENERGY AND COMMERCE

HOUSE OF REPRESENTATIVES

ONE HUNDRED THIRTEENTH CONGRESS

FIRST SESSION

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H.R. 1900, THE NATURAL GAS PIPELINE PERMITTING REFORM ACT

TUESDAY, JULY 9, 2013

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON ENERGY AND POWER,
COMMITTEE ON ENERGY AND COMMERCE,
Washington, DC.

The subcommittee met, pursuant to call, at 10:05 a.m., in room 2123, Rayburn House Office Building, Hon. Ed Whitfield (chairman of the subcommittee) presiding.

Present: Representatives Whitman, Scalise, Hall, Pitts, Terry, Latta, Cassidy, Olson, Gardner, Pompeo, Kinzinger, Griffith, Barton, Upton (ex officio), McNerney, Tonko, Green, Barrow, Matsui, Castor, Dingell, and Waxman (ex officio).

Also Present: Representative Murphy of Pennsylvania.

Staff Present: Nick Abraham, Legislative Clerk; Gary Andres, Staff Director; Charlotte Baker, Press Secretary; Allison Busbee, Policy Coordinator, Energy and Power; Patrick Currier, Counsel, Energy and Power; Tom Hassenboehler, Chief Counsel, Energy and Power; Jason Knox, Counsel, Energy and Power; Ben Lieberman, Counsel, Energy and Power; Brandon Mooney, Professional Staff Member; Jeff Baran, Minority Senior Counsel; Phil Barnett, Minority Staff Director; Greg Dotson, Minority Staff Director, Energy and Environment; Caitlin Haberman, Minority Policy Analyst; and Bruce Ho, Minority Counsel.

Mr. WHITFIELD. I would like to call the hearing to order this morning.

Today we are going to be focusing on H.R. 1900, the Natural Gas Pipeline Permitting Reform Act.

[The information follows:]

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113TH CONGRESS
1ST SESSION

H. R. 1900

To provide for the timely consideration of all licenses, permits, and approvals required under Federal law with respect to the siting, construction, expansion, or operation of any natural gas pipeline projects.

IN THE HOUSE OF REPRESENTATIVES

MAY 9, 2013

Mr. POMPEO (for himself, Mr. MATHESON, Mr. OLSON, Mr. GARDNER, and Mr. JOHNSON of Ohio) introduced the following bill; which was referred to the Committee on Energy and Commerce

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A BILL

To provide for the timely consideration of all licenses, permits, and approvals required under Federal law with respect to the siting, construction, expansion, or operation of any natural gas pipeline projects.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Natural Gas Pipeline Permitting Reform Act".

SEC. 2. REGULATORY APPROVAL OF NATURAL GAS PIPELINE PROJECTS.

Section 7 of the Natural Gas Act (15 U.S.C. 717f) is amended by adding at the end the following new subsections:

"(i) The Commission shall approve or deny a certificate of public convenience and necessity that is sought under this Act not later than 12 months after providing public notice of the application.

"(j)(1) The agency responsible for issuing any license, permit, or approval required under Federal law in connection with the siting, construction, expansion, or operation of any natural gas pipeline project for which a certificate of public convenience and necessity is sought under this Act shall approve or deny the issuance of the license, permit, or approval not later than 90 days after the Commission issues its final environmental document relating to the project.

"(2) An agency may request that the Commission extend the time period under paragraph (1) by 30 days. The Commission shall grant such extension if the agency demonstrates that the extension is necessary because of unforeseen circumstances beyond the control of the agency.

"(3) If an agency described in paragraph (1) does not approve or deny the issuance of the license, permit, or approval within the time period specified under para-

graph (1) or (2), as applicable, such license, permit, or approval shall go into effect.".

○

Mr. WHITFIELD. And while I would normally give my opening statement first, I am going to be yielding to someone who is not here yet. So I am going to call on the chairman of the full committee to give his opening statement at this time.

Mr. Upton is recognized for 5 minutes.

OPENING STATEMENT OF HON. FRED UPTON, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF MICHIGAN

Mr. UPTON. Well, thank you, Mr. Chairman.

You know, this subcommittee has held a number of hearings addressing America's growing natural gas abundance, and two clear messages have emerged: first, that plentiful and affordable natural gas supplies offer many potential advantages; and, second, there is bipartisan support for the development and use of domestic natural gas.

Today we are going to discuss a critical step in turning these pro-natural-gas words into action with H.R. 1900, the Natural Gas Pipeline Permitting Reform Act.

In a number of locations across the country, the existing natural gas pipeline infrastructure is indeed struggling to keep pace with the expanding supplies while approvals for new pipelines often get delayed by State and Federal red tape that can last for years and years.

To put it bluntly, the permitting process has not kept up with the times. This problem is especially exacerbated in areas in the Northeast and the Midwest, as we learned in our natural-gas-electric coordination hearings earlier in this Congress.

As more and more of our energy needs become tied to the safe deliverability of natural gas, the need to build new pipeline infrastructure to connect new supplies to existing and new markets becomes more critical.

This is where the Natural Gas Pipeline Permitting Reform Act comes in. This legislation helps to put the Federal permitting process on a reasonable schedule with clear deadlines so that every Federal and State agency can be held accountable and know the rules of the road. I want to thank my friend and colleague, Mike Pompeo, for spearheading this commonsense bill.

New natural gas pipeline projects are going to benefit us in many ways. First, the projects themselves will provide significant numbers of good-paying jobs at a time of chronic high unemployment. And with each completed project, more natural gas can be transported to where it is needed. Countless homeowners and small-business owners could benefit from lower gas and electric bills. Natural-gas-dependent manufacturers could obtain sufficient supplies to sustain an American manufacturing renaissance. And a more robust pipeline infrastructure would open up promising opportunities to export natural gas supplies to our trading partners around the world.

The opportunities are great, but they could be stalled or even lost for good unless the pipelines start getting built. This legislation helps provide the certainty to ensure that these critical infrastructure projects get in the ground without unnecessary delay, while at the same time making sure they are protective of safety and the environment.

And I will remind us all, the President signed the pipeline safety bill last year, which upgraded 57 standards, new standards, for every oil and gas new pipeline being constructed. And I want to say that that bill passed without dissent, not only in this committee but also on the House floor. Maybe there was one person against it, but it was overwhelming.

Natural gas is going to be a big part of our energy future but only if we cut the red tape from the past. We are a Nation of builders, not a Nation of bottlenecks. And I look forward to this discussion of the Natural Gas Pipeline Permitting Reform Act and advancing this important piece of energy and jobs legislation.

And I yield the balance of my time back to the chairman.

Mr. WHITFIELD. Well, thank you, Mr. Upton.

[The prepared statement of Mr. Upton follows:]

PREPARED STATEMENT OF HON. FRED UPTON

This subcommittee has held a number of hearings addressing America's growing natural gas abundance, and two clear messages have emerged—first, that plentiful and affordable domestic natural gas supplies offer many potential advantages, and second, that there is bipartisan support for the development and use of domestic natural gas. Today, we will discuss a critical step in turning these pro-natural gas words into action with H.R. 1900, the "Natural Gas Pipeline Permitting Reform Act."

In a number of locations across the country, the existing natural gas pipeline infrastructure is struggling to keep pace with the expanding supplies, while approvals for new pipelines often get delayed by state and federal red tape that can last for years. To put it bluntly, the permitting process has not kept up with the times. This problem is especially exacerbated in areas in the Northeast and Midwest as we learned in our natural gas electric coordination hearings earlier this Congress. As more and more of our energy needs become tied to the safe deliverability of natural gas, the need to build new pipeline infrastructure to connect new supplies to existing and new markets becomes more critical.

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Mr. WHITFIELD. At this time, I would like to recognize the gentleman from California, Mr. McNerney, for 5 minutes for an opening statement.

OPENING STATEMENT OF HON. JERRY MCNERNEY, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF CALIFORNIA

Mr. MCNERNEY. Well, thank you, Mr. Chairman, for holding this hearing on H.R. 1900, the Natural Gas Pipeline Permitting Reform Act.

This subcommittee has held several hearings over the first 6 months of this year, many of which have focused on natural gas and our goal to achieve national energy independence through an approach that encompasses a variety of energy resources.

Although there have been advantages of increasing natural gas production here in the United States, we must produce energy responsibly, in a way that doesn't harm our environment or the public health. There are still reasonable concerns about methane leakage and pollution regarding natural gas production.

However, I think we are taking some positive first steps. For example, the EPA's final rule to reduce harmful emissions of methane and other greenhouse gases from new natural gas wells that use hydraulic fracturing will help our air quality and climate in years ahead.

Under the Natural Gas Act, FERC reviews applications for siting, construction, and operation of interstate natural gas pipelines. A company must receive a certificate of public convenience and necessity before building a pipeline. FERC also works with other agencies, such as the U.S. Army Corps of Engineers and the Fish and Wildlife Service, when reviewing permit applications.

According to a 2013 GAO report, the average processing time from the filing of an application to certification was 225 days. H.R. 1900 modifies the Natural Gas Act to require FERC to improve or deny a certificate within 12 months of the notice of application. The bill also imposes a 90-day deadline for other agencies to decide on other permits, such as those under the Clean Water Act and Clean Air Act. Lastly, the bill provides that the licenses and permits will automatically go into effect if the respective agency doesn't approve them on time.

I understand that the goal of these provisions is to speed up the permitting process, but I don't believe that setting the same firm deadlines for every natural gas pipeline project is necessarily in the public's interest. These deadlines may be achievable for a straightforward project or for a short pipeline but impractical for a complex pipeline that would travel hundreds of miles.

I would much rather see FERC and the experts from other agencies have the appropriate time to thoroughly review an application rather than be forced to rush and potentially make a mistake during the process. Sound science and proper environmental and technical review is essential. It isn't in anyone's interest to cut these reviews short or to reduce opportunities for public involvement.

There are just a couple of issues I hope we can answer today before we start the subcommittee markup this afternoon. We should fully understand the impacts of the changes made by this legislation and make sure they are necessary.

I want to thank our witnesses today, and I am eager to hear their testimony and input to H.R. 1900.

At this point, I would like to recognize my colleague from Texas, Mr. Green.

Mr. GREEN. Thank you, Mr. Chairman, and thank our ranking member for allowing me to take some time.

First of all, coming from where I come from, we have pipelines everywhere. People have said, I have never not lived on a pipeline easement in the Houston area. So I am very supportive of it.

I support knowing regulatory certainty so we will know that these things can't be drug out. But I think the bill goes so far in the deeming and approval, it may end up transferring it from a regulatory agency, FERC, who has been doing a pretty good job over the last 10 years—I know a few years ago I had some problems with FERC, but—but, you know, it may end up just transferring it to the courthouse, where we can't do anything about it.

So I would hope we have looked at the language of the bill, and particularly in section 3, and even looked at the testimony from Commissioner Moeller, who talks about some of the good things going on in FERC. And, typically, where I come from, if it ain't broke, you don't fix it. FERC was broken a few years ago, but it has been fixed. And I hate to create this new legislation that will make it harder to get pipelines approved, because pipelines are the safest way to move any product, as we found out recently, although it was an oil train, instead of anything else.

But, again, I thank my colleague for yielding to me, and I look forward to the hearing.

Mr. MCNERNEY. Thank you.

I yield back, Mr. Chairman.

OPENING STATEMENT OF HON. ED WHITFIELD, A REPRESENTATIVE IN CONGRESS FROM THE COMMONWEALTH OF KENTUCKY

Mr. WHITFIELD. The gentleman yields back.

At this time, I will recognize myself for a 5-minute opening statement.

Recently, the World Economic Forum was held in Davos, Switzerland, and the reports coming out of that forum was that a lot of attention was focused on the tremendous finds of natural resources in America and how the Eagle Ford, the Marcellus Shale, the Bakken field, and others in oil and gas gave America the opportunity to really become energy-independent. And people who attended that forum were struck by how the Europeans, in particular, were really focused on that issue.

Since then, we have had a lot of hearings, and it is quite clear that we do have a capacity limit as it relates to transmission of gas in pipelines. And it has become quite clear, I think, to most people that FERC lacks the ability to enforce agency decisional deadlines related to these natural gas pipeline applications.

And with the potential growth in this market, we have had hearings also about the problems in the Northeast, the lack of a capacity to get the product there. And so I am delighted that Mr. Pompeo has introduced H.R. 1900 to help us focus on this issue. It gives us the opportunity to look at his legislation and see if we could come up with a way to address this significant issue in America.

So at this time, I would like to recognize the gentleman from Kansas for purposes of an opening statement.

[The prepared statement of Mr. Whitfield follows:]

PREPARED STATEMENT OF HON. ED WHITFIELD

Over the last 6 months of this Congress, the Energy and Power Subcommittee has held multiple hearings that have touched on issues related to the growing domestic production of natural gas.

While we don't often agree on all of the issues before us, it has been heartening to hear the near universal consensus from the members of this subcommittee on the abundant growth in natural gas supplies and its benefits, such as increased manufacturing competitiveness along with growing support for exports, both of which need to be encouraged for the betterment of our economy and our energy security.

A common theme we have heard from our earlier hearings is that the U.S. needs to greatly expand its pipeline infrastructure because the new shale gas development has largely altered the previously existing model of delivering gas to capacity constrained centers that need it most like the Northeast and Midwest.

Producers need pipeline infrastructure to move it from the place of production to where it needs to be supplied most, which is often hundreds if not thousands of miles away. Utilities and manufacturers in the Northeast lack adequate supplies due to a lack of pipeline infrastructure.

There are endless examples of why more natural gas pipelines are needed but suffice it to say that it affects Americans in the two places that matter most right now—in the consumer's wallets and in the job market.

I want to thank Representative Pompeo for his work on H.R. 1900, the Natural Gas Pipeline Permitting Reform Act. It is a commonsense and thoughtful approach to dealing with a critical need-the ability to build infrastructure in a timely manner. I also want to praise him for his openness to working with a wide variety of members on this issue, regardless of party affiliation. With that I will yield the balance of my time to Mr. Pompeo.

# # #

OPENING STATEMENT OF HON. MIKE POMPEO, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF KANSAS

Mr. POMPEO. Thank you, Chairman Whitfield. And thanks for holding this hearing this morning on the H.R. 1900.

You know, we have natural gas production, as some have said, at an all-time high domestically. It is becoming an enormously important and prevalent fuel source for electricity generation, especially in the Northeast, which is starved for electrical power. Because of this combination of increased production and demand for natural gas, it is absolutely vital that the law for natural gas pipelines keep up with the capacity to get this stuff out of the ground.

The Energy Policy Act of 2005 made a very early attempt at improving the gas pipeline process, requiring FERC to act as the lead agency for all interstate natural gas pipelines. I think that absolutely made sense at the time. And in using this authority under EPAct, FERC required that all permitting agencies complete their reviews no later than 90 days after FERC provided notice that the environmental review was complete.

And despite those very, very good reforms, we are seeing a growing need for natural gas pipeline infrastructure beyond that which the authors of EPAct could possibly have contemplated at the time it was being put into law. There was a very recent report that found increasing delays of 90, 180 days, or even more in the construction of pipeline projects, in part because we have permitting

process that still remains very complex. That is the language that the GAO used, called the permitting process too complex.

That is why I, along with Congressmen Matheson and Olson and Johnson and Gardner from this committee introduced H.R. 1900, the Natural Gas Pipeline Permitting Reform Act. We try to do two things in the law. We make commonsense reforms allowing the permitting process to create certainty for businesses. We do not have to gut the whole environmental review process to do that, and this bill doesn't.

The point on environmental review is very important. Nothing in this legislation takes away any authority from any permitting agency, and nothing in this legislation amends or limits any existing environmental statute. It doesn't touch NEPA, the Clean Air Act, the Clean Water Act, or any other provision related to environmental review.

Look, in a perfect world, I would introduce legislation that would be a complete overhaul of this system. But what I am trying to do here is create business certainty. They can grant the permit, they can deny the permit, they can grant the permit with conditions, but the agencies are forced to complete their task.

Mr. Chairman, I look forward to our hearing this morning and our markup later this afternoon and tomorrow.

I would like to end by submitting letters for the record from organizations supporting H.R. 1900, including the National Association of Manufacturers, the U.S. Chamber of Commerce, the Distribution Contractors Association, the Electric Power Supply Association, Edison Electric Institute, the American Public Power Association, and the Gas Processors Association.

Thank you, Mr. Chairman, and I yield back my time.

Mr. WHITFIELD. Well, without objection, those will be entered into the record.

[The information appears at the conclusion of the hearing.]

Mr. WHITFIELD. And I yield back the balance of my time.

At this time, I recognize the gentleman from California, Mr. Waxman, for a 5-minute opening statement.

OPENING STATEMENT OF HON. HENRY A. WAXMAN, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF CALIFORNIA

Mr. WAXMAN. Thank you, Mr. Chairman.

Today's hearing focuses on Congressman Pompeo's bill, which addresses the permitting of interstate natural gas pipelines.

The U.S. Has more than 200,000 miles of interstate natural gas pipelines, and more new pipelines are built every year. Between 2009 and 2012, the Federal Energy Regulatory Commission, or FERC, approved over 3,000 miles of new pipelines in 30 States. On average, it took FERC only 9 ½ months to review and approve applications for pipeline projects.

Earlier this year, GAO examined FERC's permitting process and found it to be predictable and consistent. This process is getting pipelines permitted and built. That is what the pipeline companies told the subcommittee in May, when they testified that, "the interstate natural gas pipeline sector enjoys a favorable legal and regulatory framework for the approval of new infrastructure." They tes-

tified that pipeline development over the last decade shows that, "the natural gas model works."

Unfortunately, the bill we are considering today proposes to change a regulatory system that is working fine. The bill would require FERC to approve or deny new pipeline certificates within 12 months, regardless of their potential impacts or complexity. It would require all other Federal and State agencies to approve or deny required permits within 90 days after FERC completes its environmental review.

According to FERC's staff, some projects, due to their complexity, length, path, and the level of public concern, take longer than 12 months to review to get right. Arbitrarily limiting this time will deny FERC and the public the opportunity to fully consider these projects.

And it will likely results in slower, rather than faster, permitting. If FERC is unable to properly evaluate a project within 12 months, the bill's rigid deadline could force FERC to simply deny the permit. A project that currently could be approved in 15 months after a full review might instead be denied in 12 months under this bill.

The bill's limits on other agencies would create additional problems. The Environmental Protection Agency says that the bill's 90-day deadline could undermine protections under the Clean Air Act and the Clean Water Act. The U.S. Army Corps of Engineers came to the same conclusion, stating that the bill would, "allow certain activities to proceed despite potential adverse and significant impacts." Other agencies and statutes will also be affected. This bill threatens the Bureau of Land Management's ability to manage rights of way across Federal lands and Fish and Wildlife Service's ability to protect endangered species.

If any agency does not approve or deny a permit within 90 days, the bill states that the permit automatically goes into effect.

That could create new legal vulnerabilities for pipeline permits by giving a pipeline company a permit without ensuring that the environment and public health are protected. Alternatively, agencies could be forced to simply deny the permits when they are prohibited from taking the time needed for reviews required by Federal law.

American families expect our laws to protect health, safety, and the environment whenever pipelines are built. We shouldn't put those protections at risk.

We should also remember that, when FERC approves a pipeline, it grants the power of eminent domain, which allows a pipeline company to take property from landowners who do not want to sell. That is not something that should happen without agencies taking the time they need for thorough analysis and thoughtful decision-making. But, with this bill, we get rushed decisions and probably more project denials. No one benefits from that, not even the pipeline companies.

Mr. Chairman, this bill has not been well thought out. It is good that we are having a hearing so that Members can better understand the problems with this bill.

I yield back the balance of my time.

Mr. WHITFIELD. Thank you, Mr. Waxman.

That concludes the opening statements.

And so we have two panels of witnesses today. On the first panel, there is only one witness, and that is Mr. Philip Moeller, who is our Commissioner over at the Federal Energy Regulatory Commission. And accompanying him is Mr. Jeff Wright, who is the FERC Director of the Office of Energy Projects.

And I am sure that—I know sometimes in Congress Members need to confer with their staff. I am sure that is not the case in your situation, Mr. Moeller. But if you do, I understand Mr. Wright is quite an expert, so we are delighted that he is here, as well.

So, Mr. Moeller, thanks very much for being with us today. We do appreciate your views on this important issue.

And, at this time, I would recognize myself for 5 minutes of questions.

And I guess before I ask you questions, I should give you an opportunity to make an opening statement, as well. So I will recognize you for 5 minutes.

STATEMENT OF THE HONORABLE PHILIP D. MOELLER, COMMISSIONER, FEDERAL ENERGY REGULATORY COMMISSION; ACCOMPANIED BY JEFF C. WRIGHT, DIRECTOR, OFFICE OF ENERGY PROJECTS, FEDERAL ENERGY REGULATORY COMMISSION

Mr. MOELLER. Well, thank you, Mr. Chairman and members of the committee. My name is Phil Moeller. I am the sitting Commissioner at the Federal Energy Regulatory Commission. It is an honor to be back before you again today. And the testimony today related to H.R. 1900, the Natural Gas Pipeline Permitting Reform Act. My testimony reflects only my views, but I can elaborate on some of my colleagues' views, as well, if you would like.

From the onset, I want to thank you for shining the light, highlighting the issue of the need for additional energy infrastructure in this country. Consumers, generally speaking, enjoy abundant, reliable, and safe energy of many different forms, but they generally don't like to look at the pipes and wires that delivers it to them. And getting infrastructure built is, frankly, getting more difficult in the country. So the fact that you are focusing on this is a relevant topic.

Similarly, focusing on governmental agency action in a timely manner is relevant, as well, and certainly specific to this, and the natural gas industry is relevant and timely.

I think that FERC performs generally very well when it comes to energy projects, including natural gas pipelines. And I think that observation was largely supported by the report that has been referenced a few times already, the 2013 GAO report on pipeline permitting.

Our jurisdiction, under Section 7 of the Natural Gas Act, relates to interstate pipelines, those that are proposed within a State. Intrastate pipelines, that jurisdiction rests solely with the States.

Now, specific to natural gas pipeline certificates, project applications that we see at FERC have a wide range. They can be relatively small, uncontested upgrades to existing facilities, or they can range to a new pipeline that covers hundreds of miles. And so, naturally, the smaller and less contested projects can be reviewed

by us in a shorter amount of time and the complex applications take longer.

We did an internal review over the last few years since Federal fiscal year 2009, and in that time we had a total of 548 applications submitted to the Commission. Projects in what we call the "Prior Notice/No Protests" category average 75 days for a Commission decision. Those projects in the "Protests, Policy Issues, or Major Construction" category averaged 375 days for a Commission decision.

We stress to project developers the importance of public involvement when considering their projects, although some developers are better at outreach than others. Generally, those that employ aggressive public outreach tend to be rewarded with less contentiousness and faster Commission decisions.

In my time at the Commission, I believe every new major pipeline project has had some kind of a route change based on public involvement. So hopefully we are seen as responsive to the public that is concerned about these projects.

However, we are often dependent on other Federal agencies—a long list of them is in my testimony—to review aspects of the proposed projects. And sometimes, of course, State and local governments are involved, as well.

Specific to H.R. 1900, I have been informed by our Commission staff that the 12-month timeline for action is achievable once the Commission determines that an application is complete. That is a key point. And I would respectfully suggest that clarifying that aspect might help the bill's effectiveness, would it become law.

The timeline for resource agencies adds an admirable level of accountability for these resource agencies involved. My only caution is that, without high-level agency oversight directing the agencies to prioritize these permits, a timeline could result in agencies either denying certain permits or adding burdensome conditions as a way to protect themselves from accusations of insufficient review. Vigilant oversight of resource agency actions will be necessary if these requirements become law.

Apart from the bill itself, other actions would assist a more timely consideration of proposed timelines. Three areas: The first is the one I just reiterated. The management of Federal resource agencies have to be following these projects and these reviews to make sure that they are priorities to be reviewed in a timely manner. And we have seen a wide range. When agencies make this a priority, we get timely decisions. If they don't, things can drag on, and usually consumers are the ones who pay the price.

A second area is that we suggest that all natural gas pipeline developers should take advantage of the Commission's pre-filing process, but not all do so. This process allows a lot of the issues to be resolved with the Commission staff and various stakeholders before a formal application. Once the formal application is in, the ex parte rules apply and all communication needs to be in writing.

A third area, as noted in the GAO report, is that some States have designated a one-stop resource agency to coordinate State decisions on proposed pipelines. And for those States that have done it, it has generally added to regulatory certainty. For those States that haven't, it is typically a lot more difficult to get the pipeline actually constructed or at least considered. So I would respectfully

suggest that those States that don't have such a one-stop permitting resource agency consider doing so.

Again, it is an honor to be here. I appreciate the chance to talk about infrastructure, and I look forward to any questions.

Mr. WHITFIELD. Well, Mr. Moeller, thanks so much, and we appreciate your opening statement.

[The prepared statement of Mr. Moeller follows:]

One-page summary of major points
Testimony of FERC Commissioner Philip D. Moeller

Before the U.S. House of Representatives
Committee on Energy and Power
Subcommittee on Energy and Power

Regarding H.R. 1900
"Natural Gas Pipeline Permitting Reform Act"

July 9, 2013

- The Committee's focus on the need for additional energy infrastructure is important and timely, especially with the rapid shift toward burning natural gas to produce electricity.

- The Federal Energy Regulatory Commission (FERC) generally performs well when considering energy projects; the Commission's jurisdictional authority under section 7 of the Natural Gas Act pertains to the siting of interstate natural gas pipelines.

- FERC is dependent on a wide range of federal agencies in addition to state and local governments to provide jurisdictional reviews on aspects of proposed projects.

- FERC can achieve the 12 month timeline contained in HR 1900 as long as the proposed application is complete when the process begins.

- The timeframe for other agencies is admirable and adds accountability, but vigilant oversight by high-level agency management is needed to assure that the timelines do not result in additional rejections of projects or burdensome conditions placed on projects.

- Pipeline projects could benefit from additional regulatory certainty if: 1) the management of resource agencies prioritize project reviews, 2) developers use FERC's "pre-filing" process, and 3) if additional states consider adopting policies utilizing a "one-stop" permitting process.

Testimony of FERC Commissioner Philip D. Moeller

Before the U.S. House of Representatives
Committee on Energy and Power
Subcommittee on Energy and Power

Regarding H.R. 1900
"Natural Gas Pipeline Permitting Reform Act"

July 9, 2013

Chairman Whitfield, Ranking Member Rush and members of the committee, I am Phil Moeller, a sitting commissioner on the Federal Energy Regulatory Commission. Thank you for inviting me to testify on HR 1900, the Natural Gas Pipeline Permitting Reform Act. My testimony today reflects only my views on HR 1900.

From the outset, I thank you for shining the light on the need for additional energy infrastructure, specifically natural gas pipelines. Consumers universally enjoy the benefits of reliable, safe and affordable energy, but generally consumers do not like to look at the necessary infrastructure that delivers this energy to them. Building additional energy infrastructure through communities is increasingly difficult, and focusing on efficient government action when these projects are being considered is relevant and timely, especially given the rapid shift by the electric utility industry to favor the use of more natural gas to produce electricity.

I believe FERC generally performs very well at considering energy projects, an observation that I believe was largely supported in the February 2013 report from the Government Accountability Office entitled, "*Pipeline Permitting: Interstate and Intrastate Natural Gas Permitting Processes Include Multiple Steps, and Time Frames Vary*". Our Commission's siting jurisdiction under Section 7 of the Natural Gas Act applies only to those natural gas pipelines that cross state lines. The siting jurisdiction of intrastate natural gas pipelines rests solely with the states in which such pipelines are proposed.

Specific to natural gas pipeline certificates, project applications cover the range from relatively minor and uncontested upgrades for existing interstate pipelines all the way to new pipelines crossing a

number of state lines, and covering hundreds of miles. Naturally, the smaller and uncontested projects can be reviewed with determinations in a shorter amount of time, and the more complex applications usually take longer.

Commission staff's internal review of the time to process applications documents this observation. Since Federal Fiscal Year 2009, a total of 548 applications have been submitted to the Commission. Projects in the "Prior Notice/No Protests" category average 75 days for a Commission decision; those projects in the "Protests, Policy Issues, and/or Major Construction" category average 375 days for a Commission decision.

We stress to project developers the importance of public involvement when considering applications, although some project developers are better at outreach than others. Developers that employ aggressive public outreach tend to be rewarded with less contentiousness and faster Commission decisions. In my time at the Commission, I believe every new major pipeline project has made at least some changes to proposed routes based on public reaction and input to the pipeline's initial proposal.

We are often dependent on other state and federal agencies to perform their jurisdictional reviews on aspects of the proposed projects. Federal agencies include the Advisory Council on Historic Preservation, the Bureau of Indian Affairs, the Bureau of Land Management, the Army Corps of Engineers, the Environmental Protection Agency, the Fish and Wildlife Service, the Forest Service, and the National Marine Fisheries Service. Other governmental agencies are often involved including state resource agencies, Tribal governments, and local governments.

Specific to HR 1900, I have been informed by Commission staff that the twelve-month timeline for action is achievable once the Commission determines that an application is complete. I respectfully suggest that language clarifying this aspect would improve the bill's effectiveness.

The timeline for resource agencies adds an admirable level of accountability for the resource agencies involved in our process. My only caution is that without high level agency oversight directing

the agencies to prioritize these permits, a timeline could result in agencies either denying certain permits or adding burdensome conditions as a way to protect themselves from accusations of insufficient review. Vigilant oversight of resource agency actions will be necessary if these requirements become law.

Apart from HR 1900, other actions would assist a more timely consideration of proposed pipelines. As I mentioned earlier, it is essential that management of federal resource agencies monitor agency action at the regional level pertaining to proposed projects. We have seen a wide range of agency response to proposed infrastructure projects affecting federal lands. If regional managers of resource agencies make it a priority to review permits for proposed projects, timely decisions can result. If such reviews are not a priority, reviews can create extended delays.

All natural gas pipeline developers should take advantage of the Commission's "Pre-filing" process, but not all do so. This process allows many issues to be resolved with the Commission and various stakeholders before the formal application process begins. Once an application is filed, all communication must be formally filed in the public record.

As noted in the GAO report referenced earlier, some states have designated a "one-stop" resource agency to coordinate state decisions on proposed pipelines. Those states that have taken such actions are viewed as providing additional regulatory certainty for proposed projects. Given the need to develop more natural gas pipeline infrastructure throughout the nation based on increasing demand, I respectfully suggest that all states without such "one-stop" agency designations consider the value of taking such action.

Mr. WHITFIELD. And now I will recognize myself for 5 minutes of questions.

First of all, in the opening statements up here, I think you could detect that on one side of the aisle there was the impression that there really was not that much of a problem out there and on the other side of the aisle there was some reference that there is a problem out there relating to the approval of natural gas pipelines.

Since you are a Commissioner there at FERC and you deal with this on a regular basis, what is your opinion? Is there a need for assistance in speeding up these applications or not?

Mr. MOELLER. Well, I think the trend is such that, because of the abundant domestic resource that several of the Members referenced earlier, we are probably going to see an increase in pipelines. And I think the numbers show that we are getting an increase in the number of applications. It is probably project by project, as to whether there is a problem. Resource agencies need to have—I think the accountability aspect of it is good.

So there is a growing—we are certainly trending in a way where we are going to be a lot busier at FERC. And to the extent that Federal agencies can stick to timelines, I think the process would benefit.

Mr. WHITFIELD. And how many people are really involved in the application process for a pipeline at FERC?

Mr. MOELLER. Well, again, it depends on the project, but we have internal engineers, particularly analysts—Mr. Wright can probably elaborate more. We also have contractors that can perform environmental reviews. But it depends on the extent of the project. But——

Mr. WHITFIELD. Right.

Mr. MOELLER. —from just a few to many, especially if it is involving new pipe.

Mr. WHITFIELD. Yes. And, typically, what takes the most time, I am assuming, is the environmental impact study. Is that correct?

Mr. MOELLER. Yes. Well, arguably, maybe the pre-filing process, depending on the extent of the project. But once the application is filed, yes, the environmental review, whether it is an environmental impact statement or an environmental assessment, would take the most amount of time in terms of the process.

Mr. WHITFIELD. And under the Energy Power Act of 2005, you all have the authority to conduct the environmental impact study, correct?

Mr. MOELLER. Yes.

Mr. WHITFIELD. OK. Now, you mentioned the pre-filing, of course, in your opening statement, as well. Would you elaborate a little bit on what is included in this pre-filing process?

Mr. MOELLER. Well, typically, the developers will come to the Commission with an idea of what they are proposing. Sometimes there is an economic element of it, as well, in terms of who is going to bear the burden of financing it, but mostly it is going to be a focus on environmental aspects of the project.

And the feeling is that if the developer can work with the Commission staff and the stakeholders, a wide range of stakeholders, they can eliminate a lot of misunderstandings that could occur in

terms of routing, mitigation. And those are just much easier to work out before the formal ex parte rules apply.

Mr. WHITFIELD. You know, I have heard some people refer to it as sort of a Byzantine system, which—would that be a fair characterization, or is that being a little bit—maybe it is not that difficult. But you are dealing with State issues, you are dealing with local issues. You are dealing with a lot of other government agencies, as well.

Mr. MOELLER. I am guessing that it becomes more Byzantine the more agencies that are involved. If it is relatively focused, where maybe only one or two Federal agencies are in the loop, that is better. You start adding on to that, there are just that many more decision points.

Mr. WHITFIELD. Right.

And have you had the opportunity to review H.R. 1900?

Mr. MOELLER. I have, yes.

Mr. WHITFIELD. And, your personal view, do you think this is a good piece of legislation? Do you support this?

Mr. MOELLER. As I noted in the testimony, I think the key in terms of the 12-month timeline is having an ability for the Commission, perhaps through Mr. Wright, to designate once an application is complete that the timeline kicks in then. A lot of the problems we have had with developers are, you know, they are missing something, and that delays the process. Once it is deemed complete, we feel that the 12-month timeline is—we can accomplish that.

Mr. WHITFIELD. OK. Well, thank you very much.

Mr. McNerney, you are recognized for 5 minutes.

Mr. MCNERNEY. Thank you, Mr. Chairman.

And thank you, Commissioner, for your thoughtful testimony. I think it was very informative.

It seemed to me that you were saying that, if companies participated in the pre-filing process and did sufficient outreach, that their problems were likely to be less difficult and they might meet faster timelines. Is that right? Did I——

Mr. MOELLER. Correct.

Mr. MCNERNEY. —understand that correctly?

Mr. MOELLER. Yes.

Mr. MCNERNEY. Thank you.

Commissioner Moeller, the FERC data shows that, from 2009 to 2012, the Commission approved 69 major natural gas pipeline projects spanning 3,000 miles in 30 States. Does that sound about right?

Mr. MOELLER. Sounds about right.

Mr. MCNERNEY. Well, when the CEO of Dominion Energy testified on behalf of the Interstate Natural Gas Association of America in May, he told this subcommittee that the industry can add new pipeline capacity in a timely, market-responsive manner and that the interstate natural gas pipeline sector enjoys a favorable legal and regulatory framework for the approval of new infrastructure.

His conclusion was that the natural gas model works, and I was wondering if you thought that that situation had changed since May.

Mr. MOELLER. The only thing I would add is that we really lack sufficient capacity in the Northeast. And the typical financing model was long-term contracts for local gas companies, and the new demand is electric generation that is driving a lot. And that financing model doesn't work in the Northeast, and we need more pipe in the Northeast. So that is something we are struggling with.

Mr. MCNERNEY. OK. Thank you.

Mr. DINGELL. Would the gentleman yield?

Mr. MCNERNEY. Yes.

Mr. DINGELL. I don't believe that this bill addresses that problem, does it?

Mr. MOELLER. Congressman, no, this is not specific to that. Correct.

Mr. DINGELL. It does not address that problem. All right, thank you.

Mr. MOELLER. I didn't mean to imply that it did. I am sorry.

Mr. MCNERNEY. Thank you.

Well, the pipeline industry told us that the permitting process works. They reiterated today that the process is generally very good.

The GAO recently examined the issue, as well, and the GAO found that the permitting process for interstate natural gas pipeline is consistent. Do you agree with the GAO that FERC's permitting process is consistent for pipelines?

Mr. MOELLER. Yes.

Mr. MCNERNEY. Well, it takes FERC an average of 9–1/2 months to decide on an application for pipeline certification, but not all projects are clearly the same. The permitting process applies to applications for a single compressor station and to a short extension of existing pipeline. It also applies to, say, a 500-mile pipeline with multiple compressors that goes across many rivers.

As you pointed out in your testimony, the more complex projects take longer to permit than the smaller projects. Is it realistic to think that the permitting process for every project, no matter how complex, can be completed within 12 months?

Mr. MOELLER. Well, my impression is that we can do that if the bill becomes law.

Mr. MCNERNEY. Well, the bill doesn't start the clock until the application is completed. It starts the clock when FERC issues a notice that an application has been filed, even if it isn't completed; is that right?

Mr. MOELLER. Yes. I mean, referencing my earlier point, clarifying that we can deem an application complete would be very helpful.

Mr. MCNERNEY. Do you think there is a risk that applications will be denied for insufficient time?

Mr. MOELLER. That is something we have to be vigilant about.

Mr. MCNERNEY. And do you think it is realistic to expect other agencies to issue permits within 90 days or even 120 days if the application filed with them are not complete?

Mr. MOELLER. If it is not complete, no. If it is complete, yes.

Mr. MCNERNEY. OK, thank you, Mr. Chairman. I yield back.

Mr. WHITFIELD. At this time, I recognize the gentleman from Texas, Mr. Barton, for 5 minutes.

Mr. BARTON. Thank you, Mr. Chairman.

It is always good when honesty breaks out here at the subcommittee. I appreciate the Commissioner's admittance that, if we pass the law, he would enforce it. That is a noble thing in the Obama administration, so we are glad to know that.

You know, back in 2005, Mr. Dingell and Mr. Green, I think Mr. Barrow maybe was on the committee, Mr. Whitfield, myself, Mr. Pitts, Mr. Terry, we all passed this Energy Policy Act in 2005. And we gave the FERC additional authority, let the FERC kind of coordinate and serve as the quarterback, but we didn't give enforcement, we didn't put in penalties for noncompliance. Because the assumption was, if we required this coordination, that all the various agencies that had to coordinate and cooperate in what is considered to be a complex and complicated permitting process would comply. Well, that has apparently turned out not to be.

Do you agree that the current law, as written, does not give the FERC any meaningful enforcement authority when other agencies fail to comply with the various deadlines and requirements under the current law?

Mr. MOELLER. I would concur.

Mr. BARTON. OK.

Now, the solution that Mr. Pompeo has come up with is to give a certain amount of time and, if they don't comply, then it is just deemed or decided that their failure to act means they approve it.

Would the FERC have a different enforcement mechanism than that? Is there something that is not in the bill, that, instead of saying, we will give you so much time with a possible extension but after that period of time we are going to assume that those agencies don't have a problem and move forward? Would you prefer some different mechanism, or would FERC prefer some different mechanism?

Mr. MOELLER. We haven't discussed any alternative.

Mr. BARTON. Then are you satisfied that the bill as written is acceptable?

Mr. MOELLER. I believe that if it became law, it would add a level of accountability to the resource agencies. But we would all have to be vigilant to make sure that they didn't have the incentive to just deny permits or add burdensome conditions as a way of essentially covering themselves.

Mr. BARTON. Well, we have a good problem, in that the United States is blessed with abundant supplies of natural gas, and they are geographically well-situated, close to potential markets. It is a clean-burning fuel, it is an environmentally benign fuel.

So if we can come to some understanding of what an acceptable permitting process is, give everybody that is a stakeholder an opportunity to participate in the process, but if projects appear to be mutually beneficial to both the supplier and the consumer, that they should go forward, we are going to have a great outcome for this country.

And this bill attempts to, I think, create a balance between all the various competing interests so that these projects can move forward unless there is really a problem. And some on the more liberal side of the agenda just don't want these projects to go forward

under any circumstance. It is not a gas pipeline, but you see it in the Keystone pipeline.

So I think the Pompeo bill is a good step forward. And I hope, Mr. Chairman, that we mark it up expeditiously at the subcommittee, full committee, on the floor, and send it on the other body. This would serve as a good example to the American people that the Congress can solve problems and do things that are mutually beneficial for the entire country.

And, with that, I yield back.

Mr. WHITFIELD. Thank you, Mr. Barton.

At this time, I recognize the gentleman from California, Mr. Waxman, for 5 minutes.

Mr. WAXMAN. Thank you, Mr. Chairman.

I just want to clarify for the record, people aren't against pipelines per se, and my opposition to the XL pipeline is not because it is a pipeline, but because of additional greenhouse gases that would be expended just to get that dirty tar sands oil ready to be put into a pipeline.

But that does raise the question of a legislation that was adopted by the Congress, where there was an absolute deadline for the President to approve it, and he said he couldn't do the analysis in time so he disapproved it. And I think that is the point that Mr. Moeller was just making, and others, that you may get the opposite of what you hoped for.

Before an interstate natural gas pipeline can be built and operated, it has to get a permit from FERC. And the Pompeo bill amends the Natural Gas Act to establish a 12-month deadline for FERC to act one way or the other.

Under these same rigid deadlines, we would have the same situation apply to every project, whether it is a straightforward 30-mile pipeline in the middle of nowhere that crosses no rivers or a complex 500-mile pipeline that goes through a major population center and crosses a dozen rivers.

Commissioner Moeller, I appreciate your testimony, but I want to ask a question for Mr. Wright.

Mr. Wright, you are a senior member of FERC's nonpartisan career staff, aren't you?

Mr. WRIGHT. Yes.

Mr. WAXMAN. The FERC staff works on pipeline applications every day. You work on the easy ones and the more difficult ones. Do you believe that it is feasible for FERC to make a decision within 1 year of the notice of application for every complex pipeline project?

Mr. WRIGHT. I believe 12 months is adequate when FERC determines that it has a complete application before it.

Mr. WAXMAN. So sometimes FERC takes longer because you don't have a complete application.

Mr. WRIGHT. Correct.

Mr. WAXMAN. Which means the company didn't give you all the information you need; is that right?

Mr. MOELLER. Yes.

Mr. WAXMAN. Well, maybe they would just as soon run out the clock and get an automatic approval.

The bill doesn't start the clock when the application is complete. It starts the clock when FERC issues a notice that an application has been filed even if it isn't complete; isn't that right?

Mr. WRIGHT. That is correct, sir.

Mr. WAXMAN. Before FERC can make a final decision on an application, you not only have to do an environmental analysis but engineering and rate reviews; isn't that right?

Mr. WRIGHT. That is correct.

Mr. WAXMAN. These are important reviews to ensure that the environment, public health, and safety are protected. They are also necessary to make sure that rates are fair and reasonable.

Mr. Wright, if FERC could not complete the required analysis and certificate work for a project within the 12-month deadline established by this bill, what would happen? Would FERC have to dismiss the application?

Mr. WRIGHT. That would be a likely outcome if we are not satisfied with the environmental review that we have come to at that point in time and the review of the other matters that would be before us.

Mr. WAXMAN. So this bill aimed at speeding up FERC permitting could actually end up having the opposite effect. A project that could have been approved in 15 months, let's say, may just get denied if FERC is required to make a final decision in 12 months before it is ready to issue a certificate.

Mr. Wright, the bill also establishes a 90-day deadline for all other agencies to approve or deny their permits once the environmental review is complete. If they fail to do so, the permits are automatically granted. Do you think other agencies may end up denying permits that would otherwise have been approved because of this deadline and automatic issuance provision?

Mr. WRIGHT. That is a possible outcome.

Mr. WAXMAN. If this bill became law, do you think it would actually result in interstate natural gas pipelines being permitted faster than they are today, or could it backfire and create problems and permitting delays?

Mr. WRIGHT. I don't believe it would effectively cause pipelines to be permitted faster than they are now. And, quite possibly, if we would have to deny an application, it could take longer for certain projects,

Mr. WAXMAN. Well, I thank you for your answers to these questions.

The current system is getting pipelines permitted. This is what we want. This bill could result in slower permitting while also threatening safety, health, and environmental protections. That shouldn't be what we want.

This bill has not been thought through. It certainly is not ready to go to the floor this month. The committee should take the time to really understand the current permitting process before making changes that will have serious consequences.

Thank you, Mr. Chairman. I yield back my time.

Mr. WHITFIELD. I would like to remind the Members that Mr. Wright is not here as a witness today. He is here to lend technical support to Commissioner Moeller.

And since Mr. Waxman addressed all of his questions to Mr. Wright, Mr. Moeller, do you have any comment to any of his questions that you would like to——

Mr. WAXMAN. Mr. Chairman, I would like to hear what Mr. Moeller has to say, but Mr. Wright is there with the nitty-gritty——

Mr. WHITFIELD. Mr. Wright is not here as a witness. He is here to lend technical support.

Mr. WAXMAN. He was here at our request.

Mr. WHITFIELD. Well, look, you heard him, and now I am going to give Mr. Moeller an opportunity to respond since he is the witness.

Mr. WAXMAN. Well, that is fine. Let's hear from Mr. Moeller.

Mr. MOELLER. Let's see. The 12-month deadline, we think, as I said earlier, as long as we feel that an application is deemed complete, it is a deadline that we have been assured we can work around. And to the extent that that adds certainty, that is a good thing. The agencies, it seems to me that more accountability toward them is a good thing.

We are trending toward needing more pipelines based on domestic supply, and, frankly, we are burning a lot more gas to make electricity. So, as trend lines go, I appreciate the committee's focus on this.

Mr. WAXMAN. Do you think we should start the 12 months after the application is complete?

Mr. MOELLER. Yes.

Mr. WAXMAN. Thank you.

Mr. WHITFIELD. At this time, I would like to recognize the gentleman from Ohio, Mr. Latta, for 5 minutes.

Mr. LATTA. Well, thanks very much, Mr. Chairman.

And thanks very much to our witness for being here, and the technical witness.

You know, the questioning has been very interesting this morning. It is also kind of interesting, this morning there was an article in the Akron Beacon Journal, which is on the other side of the State from me. I am from northwest Ohio. And the article was kind of interesting. The headline is "Shale Boom Creating Shortage of Affordable Housing in Eastern Ohio." And reading through the story, it is talking about the reason for that is because of all of the drilling company workers that are coming in. And a lot of places around the State of Ohio would very much like to be in a situation to say that they have a problem out there because there is just not enough housing.

And so, you know, as we look at what is happening in Ohio and especially with our Utica Shale and what is happening across our State, I think one of the questions that the chairman had started off with a little bit earlier was a question, he had mentioned and asked, you know, was there a need to speed up the process? And I believe that, if I understood it right, you said that you are probably looking at there is going to be a need for more pipelines across the country.

And have you done any type of analysis of how much, you know, let's just say looking down the road in that crystal ball 5 years or

10 years, of what we are looking at and what we are going to need in more pipeline across the country?

Mr. MOELLER. I don't think FERC has done that specifically, but I know you will be hearing from some industry witnesses later. And I know there are a number of studies that particularly the pipeline association has undertaken looking at those projected numbers.

Mr. LATTA. But any kind of an idea off the top of your head of what those numbers might be?

Mr. MOELLER. I have seen their numbers, but I wouldn't want to misquote them. But, as you noted, with this supply coming in places that we didn't expect even a few years ago, there will be a great opportunity to expand pipelines for consumers' benefit.

Mr. LATTA. OK.

And just also, the chairman had also asked about on the pre-filing process of projects, I am just curious on that. In your testimony, you said that all natural gas pipeline developers should take advantage of the Commission's pre-filing process but not all do so.

Any idea of how many, you know, percentage-wise, take advantage of the pre-filing?

Mr. MOELLER. Mr. Wright tells me 70 percent in the last year.

Mr. LATTA. Seventy percent? And could I ask, just following up on that, how much more time does that add to the overall process? Does it lengthenit? Does it help shorten? What are we looking at?

Mr. MOELLER. Oh, it helps shorten the process, because, again, a lot of the issues and perhaps some misunderstandings between the developer, the Commission staff, and the stakeholders have an opportunity to be resolved before the formal written-only communication requirements kick in.

Mr. LATTA. OK.

And just also kind of out of curiosity, are these large pipelines or developers? Are they small? Or is there kind of a mix of everybody that might be out there?

Mr. MOELLER. Related to pre-filing?

Mr. LATTA. Right.

Mr. MOELLER. Well, I think every project developer should take advantage of it, and the larger ones especially. But I think most of the larger ones do. It is, I think, to their detriment if they don't.

Mr. LATTA. I mean, when you are talking about "to their detriment," not to dwell on one area, but I am just kind of curious, does it reduce the cost quite a bit? Or what happens in that pre-filing? When you look at, you know, trying to get the timeline down and make sure the paperwork that would be involved is there, is there a cost reduction to the developer in the end? Or what would you say on that?

Mr. MOELLER. I think almost universally, because, again, if you have a misunderstanding that has to be resolved in writing, it is so much less efficient than doing it in another manner ahead of the formal application filing. So I think it saves—and I think the industry would testify to the fact that it saves a lot of money and time if they take advantage of it.

Mr. LATTA. Thank you very much, Mr. Chairman. I yield back the balance of my time.

Mr. WHITFIELD. The gentleman yields back the balance of his time.

At this time, I recognize the gentleman from Michigan, Mr. Dingell, for 5 minutes.

Mr. DINGELL. Mr. Chairman, I thank you for your courtesy.

These questions to Mr. Moeller.

The new subsection 1 created by this bill would require that FERC approve or deny certificates of public convenience and necessity within 12 months.

Can you tell me approximately what percentages of these certificate requests currently take longer than 12 months?

Mr. MOELLER. Approximately 10 percent.

Mr. DINGELL. OK. Why?

Mr. MOELLER. Their complexity, usually. Sometimes——

Mr. DINGELL. What does this do about those complex questions? Does it give the Commission more authority, more money, or anything to help them achieve a quicker solution to those difficult and complex requests?

The answer is "no," isn't it.

Mr. MOELLER. I think with the addition of the certainty of an application being deemed complete, that 12-month deadline would——

Mr. DINGELL. But if it is not——

Mr. MOELLER. —provide some certainty.

Mr. DINGELL. But if it is not, that is going to cause considerable delay, is it not?

Mr. MOELLER. We think that would improve the bill.

Mr. DINGELL. Would improve the bill. Thank you.

Now, Commissioner, the new subsection (j)(2) allows agencies to request that FERC grant a 30-day extension if the agency needs more than 90 days to approve permits required by such laws as the Clean Water Act and the Endangered Species Act.

Do you believe that FERC has the technical expertise and understanding to determine if a Federal or State agency issuing permits required by these and other acts do or don't need additional time, yes or no?

Mr. MOELLER. Yes.

Mr. DINGELL. Now, you do have a problem here, however, with the fact that a lot of authorities are delegated by the Federal Government to the States, such as clean air, clean water, and others, where the States are permitted to take action under a coordinated program of Federal-State cooperation; isn't that right?

Mr. MOELLER. Yes.

Mr. DINGELL. What is this bill going to do to those matters?

Mr. MOELLER. Well, it would apply the deadlines to those agencies, as well.

Mr. DINGELL. Even if the State deadline might be different and even if the problem that the State confronts is more difficult and complex?

Mr. MOELLER. That is how I read the bill.

Mr. DINGELL. Now, as you know, more utilities are planning on building new natural-gas-fired plants. In order to do so, they will need more pipeline infrastructure to support these plants.

Do you believe that the FERC has funding, staff, and expertise to consider future applications in a timely manner, yes or no?

Mr. MOELLER. For now, yes.

Mr. DINGELL. But in the future probably not, right?

Mr. MOELLER. I think the way things are trending—and Mr. Wright could elaborate more—I would be happy to have the problem of more applications——

Mr. DINGELL. OK.

Mr. MOELLER. —than the need for more——

Mr. DINGELL. So in the future you are looking at a problem. Thank you.

Now, the chair has said that I can't ask questions of Mr. Wright, so I am going to ask these questions of you.

Are all applications submitted to FERC for pipeline projects the same, yes or no?

Mr. MOELLER. No.

Mr. DINGELL. That is, they are not, then, all the same length? They deal with different links in the pipeline, different kinds of terrain, different problems, such as being under the ocean or under bodies of water and so forth? And that is correct, is it not?

Mr. MOELLER. That is correct.

Mr. DINGELL. Does FERC receive incomplete applications requiring additional information from the applicant, yes or no?

Mr. MOELLER. Yes.

Mr. DINGELL. Is there a deadline for which applicants need to submit complete application information?

Mr. MOELLER. Yes, in the data requests.

Mr. DINGELL. Is that an absolute complete submission that you can require, or does that still leave you holes in the information that you need?

Mr. MOELLER. Well, if there are holes, we won't grant the—we won't make——

Mr. DINGELL. So that means delay. It means you will reject the application, because you had no choice under the legislation.

Now, if FERC were not able to complete its due diligence review within 12 months, as required under the proposed legislation, do you believe that more applications would be denied?

Mr. MOELLER. No.

Mr. DINGELL. But there would be denials because of this, would there not? You have already indicated that.

Mr. MOELLER. I think it would depend on each application.

Mr. DINGELL. Now, we have some other problems. I am about running out of time here. But I thank you for your assistance to the committee.

Mr. Chairman, I thank you for your courtesy.

Mr. WHITFIELD. Thank you, Mr. Dingell.

At this time I recognize the gentleman from Kansas, Mr. Pompeo, for 5 minutes.

Mr. POMPEO. Thank you, Mr. Chairman.

Thank you, Mr. Moeller, for your testimony today. I take to heart your concern about the application being completed, deemed full and complete. I just want to make sure that I understand the prefiling process. This is an extensive process when it is used, lots of

back and forth, including environmental concerns. Lots of issues are resolved in that pre-filing time period in a way that——

Mr. MOELLER. Correct.

Mr. POMPEO. And stakeholders are also notified during the pre-filing process, so we bring all the relevant folks that are concerned about a particular pipeline and have an interest in that pipeline, have a chance to engage during that pre-filing process when a company chooses to engage in the pre-filing?

Mr. MOELLER. Yes.

Mr. POMPEO. How long does that take typically?

Mr. MOELLER. Well, it varies widely depending on the complexity of the project. I would imagine it has ranged from maybe 6 to 12 months generally.

Mr. POMPEO. So this is not a shotgun deal. This is a long, thoughtful, lots of engagement process when done properly——

Mr. MOELLER. Correct.

Mr. POMPEO. —where all stakeholders get an opportunity——

Mr. MOELLER. Right.

Mr. POMPEO. —to state their case and make their arguments, and improve the process and improve the pipeline pathway and make sure we are doing all the things, including protecting the environment, complying with all the relevant statutes?

Mr. MOELLER. Precisely.

Mr. POMPEO. Why do you think some companies choose not do that?

Mr. MOELLER. They may not be aware of it.

Mr. POMPEO. So these are typically smaller, the folks who choose not to, is it fair to say they are typically smaller pipelines, less sophisticated businesses perhaps? I mean, to not be aware of a pre-filing opportunity.

Mr. MOELLER. Yes. I think typically that is right. Some have chosen not to, but I think they have missed an opportunity.

Mr. POMPEO. Yes.

Mr. MOELLER. Oh. Those that have—that are perhaps newer to the development——

Mr. POMPEO. Sure. Sure. Yes.

Mr. MOELLER.—don't realize the advantages of it.

Mr. POMPEO. I mention all this, because I think it is important in the context of these deadlines, which to someone who didn't—was unaware of this, this extended process might think 90 days or 12 months was too short a time period. It has been fascinating to listen to some folks here today who normally object to things be concerned about denial of permits and think this piece of legislation is a bad piece of legislation because it might delay a permit. I am thrilled to hear now that some folks on the other side are concerned about delaying of the permitting process. It may be the first time in my 30 months at Congress that I have heard that.

I wrote this in a way that I thought it would be bipartisan. All I was trying to do was get deadlines established and, as you talked about, accountability inside the other agencies; really not as much about FERC, but about the other agencies that require permits.

I want to come back to something Mr. Barton asked. So in the alternative of setting a deadline—and 90 days, I will concede we

could make it 91 or 89, I will concede that 90 is in some sense arbitrary, but I think it is important to have that deadline.

In the alternative, what are the other mechanisms to tell these agencies to just do their job?

Mr. MOELLER. Essentially people could bring an action against them in some——

Mr. POMPEO. You mean go to litigation?

Mr. MOELLER. Yes.

Mr. POMPEO. Yes. That is why I think this is absolutely important. And to your point, I think directing these agencies to be accountable and prioritize this permitting process needs to be done and needs to set these deadlines in a way that is meaningful. And I am happy if we need to talk about the trigger, the start point, I am happy to consider that.

The last thing, and this is a bit of a tangent, I just want to talk about reporting and data. In 2013, GAO stated that it had these public records to get at the actual length of the time that permitting process took for projects and to be approved by FERC. Do you think that in order to provide a better understanding of the time it takes to get the real good data that it would be appropriate to begin actual tracking inside of FERC of how long these processes take and maybe inside of each of the agencies as well?

Mr. MOELLER. We have—I think we have hopefully done a good job of adding some transparency by tracking information on our Web site.

Mr. POMPEO. Right. I appreciate that.

Mr. MOELLER. But generally, yes.

Mr. POMPEO. Thank you. Mr. Chairman, I yield back.

Mr. WHITFIELD. The gentleman yields back. At this time I would like to recognize the gentleman from Texas, Mr. Green, for 5 minutes.

Mr. GREEN. Thank you, Mr. Chairman.

And I know my earlier statement, I appreciate being able to have part of the opening statement, but Mr. Moeller, in a question from our—from Chairman Dingell, you have a 90 percent approval rate of applications once they are deemed within the year already?

Mr. MOELLER. A decision on 90 percent within 12 months.

Mr. GREEN. Within 12 months. I wish we had other Federal agencies that had that kind of record. And I know FERC's problems. And like I said earlier, you heard I had problems with FERC many years ago, but the problems I had were fixed, I mean, early part of 2001, 2002. Of course, in Texas, we had to live with Enron and part of the problems that deal with that, but I knew you were doing a good job, because I wasn't getting complaints from any of my companies, but 90 percent approval rate is amazing.

One of the concerns I have, and I know the Corps of Engineers and EPA has provided technical comments on the bill. They raised concerns that automatic permitting would lead to permits that are inconsistent with requirements with the Clean Water and Clean Air Act. This committee doesn't control resources to the Army Corps of Engineers and EPA; our appropriations process does that. And if either FERC doesn't have the appropriations or those agencies don't have it, you know, by setting arbitrary time limits means that it could possibly just be denied. Is that correct?

Mr. MOELLER. That is a potential, yes.

Mr. GREEN. So that is an option. If you don't make the year and the information is not available, you end up denying it because some agency—and that is not just Federal agencies. For example, I know one of my questions I want to get to is that some States have one-stop agency designations, and I assume those are much quicker in responding, but what if a State doesn't respond, and, of course, Congress doesn't control those States and we don't want to, so we are—there is a lot of moving targets in this issue, but let me ask some particular questions.

You and your staff interact with other agency and State permitting every day. And let's say that the agency couldn't finish preparing a permit before the 90-day deadline, and that would mean the unwritten permit would automatically take effect or would it be denied?

Mr. MOELLER. I believe the bill has another 30-day potential extension.

Mr. GREEN. OK.

Mr. MOELLER. And then under the bill, as I read it, it would be deemed approved.

Mr. GREEN. Even if there was no control by FERC or on a State agency not responding or another Federal agency?

Mr. MOELLER. That is how I read the legislation.

Mr. GREEN. My other concern, I said earlier, is increased litigation. If something is approved and there is something left out, it is deemed approved, you know, we just move it from an agency that is a regulatory agency to a courtroom. And if you think you have regulatory delay, go to even a State court system, but a Federal court system, it will be delayed even more.

One part of the bill that I don't have a huge interest—or issue with is it codified the 90-day deadline. And that said, there is some of the concern. I would hope that before this bill gets out, and we are going to have a markup this afternoon, we would at least make sure that that application is deemed complete before the time frames run, and simply because, again, I look at this that a solution in search of a problem is you have a 90 percent approval rating, but——

Mr. DINGELL. That could be a problem.

Mr. GREEN. Yes. But if we are going to do something, let's don't mess up a system that is working 90 percent of the time.

And, Mr. Chairman, I will be glad to yield back my time.

Mr. WHITFIELD. The gentleman yields back. At this time I would like to recognize the gentleman from Virginia, Mr. Griffith, for 5 minutes.

Mr. GRIFFITH. Thank you, Mr. Chairman. So here is the question I would have. If we are going to define and if we decided we wanted to change that the time starts when the application is complete, when is the application complete? And let me preface that by saying that I have had some experience with a different agency or different agencies where my constituents think they have got everything complete, and then a new request comes in from the agency and then we get that complete, and then another request comes in from the agency. So I just want to make sure that if we go down that path we are not setting ourselves up for failure. So when

would the application be complete under your projections or thoughts?

Mr. MOELLER. Well, I think Mr. Wright could probably come up with some very specific examples, but I know that we have had applications come in and perhaps part of the environmental review is somewhat deficient, and in that sense if we enter the pre-—if we enter the application period, as I referenced earlier, it is just a lot more inefficient to get that resolved in writing. So it will depend on each different project, but it is going to be, I think, largely environmental-related studies or—yes. There are potential rate-making issues that could be hanging out there. Most of those get resolved, at least discussed, ahead of time in terms of making sure there isn't subsidization of an expansion by existing customers of relatively detailed but important matters.

Mr. GRIFFITH. Yes. And I guess my one concern with deviating from the bill as it is currently written is that I wouldn't want to get into a situation where there were just a series of new requests, and would maybe want to see some limitation——

Mr. MOELLER. Understood.

Mr. GRIFFITH. —placed on that. That being said, I do appreciate that, you know, folks can talk these things out before the official process starts. That always is very helpful.

With that, Mr. Chairman, I yield back.

Mr. WHITFIELD. The gentleman yields back. At this time I recognize the gentleman from New York, Mr. Tonko, for 5 minutes.

Mr. TONKO. Thank you, Mr. Chair.

Mr. Moeller, in your testimony, you indicate there were some 548 applications submitted since 2009. How many fell into the Prior Notice/No Protests category?

Mr. MOELLER. A total of 75 over those years.

Mr. TONKO. OK. Thank you. And would the replacement of an existing pipeline go through the same project approval as a new pipeline?

Mr. MOELLER. Yes.

Mr. TONKO. What proportion of applications is for the replacement of existing pipelines versus entirely new lines, would you suggest?

Mr. MOELLER. We can get you those numbers. In terms of an actual replacement?

Mr. TONKO. Yes.

Mr. MOELLER. Relatively few. In terms of additions to existing pipes, such as updated compressors or—there are many more of those.

Mr. TONKO. Do replacement pipeline projects in general take the same amount of time to approve as new pipelines?

Mr. MOELLER. I think it depends on their environmental impacts in terms of where they are going and how much land they disturb.

Mr. TONKO. And in your experience, would you say that pipeline projects in areas of higher population density are more likely to fall into your second category——

Mr. MOELLER. Oh, yes.

Mr. TONKO. —that being protests and policy issues and major construction?

Mr. MOELLER. Yes. Absolutely.

Mr. TONKO. OK. It appears the areas that are deficient in pipeline infrastructure currently are areas with higher density, for example, areas like the Northeast, because of the increased gas development in the Marcellus Shale and a strong demand for gas in that region. Is that the case?

Mr. MOELLER. Well, that is part of it, but as I referenced earlier, part of the challenge in the Northeast is that the new growing use of electricity there is—of natural gas is to make electricity, and the financing model traditionally for pipelines has been that the local distribution company enters into long-term contracts to get the pipe built.

The new demand in New England is generators who may or may not be called on a daily basis, so they can't be expected to go into long-term contracts. So we have that kind of conundrum of needing more pipe in the Northeast, but the traditional financing model really doesn't apply to the new demand.

Mr. TONKO. OK. Well, if we have different categories of pipeline projects with differing circumstances, it seems to me that this one-size-fits-all policy for project consideration is likely to shortchange those projects that are the most complex to the highest density areas or are perhaps controversial.

I am very concerned about pipeline safety. I had represented when I was in the State legislature in New York areas that were impacted by serious pipeline failures that cost people their lives. It seems to me that an average approval time of a little over a year for a pipeline that will operate for some, what, 4 to 5 decades, perhaps, is simply not unreasonable.

Your comments to that statement.

Mr. MOELLER. I think it will highlight the need for the pre-filing process and that to be thorough, extensive and aggressive public outreach for any such projects. Those issues will be highlighted under a 12-month timeline.

Mr. TONKO. But even in light of, as was earlier discussed, some of the track record, that track record at the agency, are we sacrificing at the expense of pipeline failure?

Mr. MOELLER. Well, I don't think so. I think we have had a pretty good record in terms of how we deal with applications; as I noted, the 90 percent. The trend is that we are getting more of them, though, so that is something to keep in mind.

Mr. TONKO. OK. With that, Mr. Chair, I will yield back.

Mr. WHITFIELD. The gentleman yields back. At this time I recognize the gentleman from Nebraska, Mr. Terry, for 5 minutes.

Mr. TERRY. Thank you for being here. I always appreciate your efforts to keep us updated. I am just curious, when we talk about the protest and no protest, out of an—in let's say a year's time, how many of the projects will be protested?

Mr. MOELLER. Well, I have a total here of in fiscal year—well, for the last 5 years, basically the ones that haven't been protested average right about 75.

Mr. TERRY. Yes. I know. Those are the number of days. I am asking for the number of—you take the total number of applications, how many of the applications are actually protested?

Mr. MOELLER. We will get you that number, but I think it is more and more, generally.

Mr. TERRY. Yes. I would not be surprised that it is more and more, and then that begs the question of who is filing these complaints or protests.

Mr. MOELLER. Well, on major projects, they are going to be economic and, you know, market issues that are worthy of shippers and perhaps other entities being involved. In terms of smaller projects, we have seen more sophisticated public outreach in terms of social media being concerned about, say, a compressor station. So it can range from major corporations to individuals.

Mr. TERRY. So is there an effort, do you see, by Sierra Club or the NRDC to file protests on each one of these projects?

Mr. MOELLER. You know, we can get you that. I think, generally speaking, everybody is more interested in infrastructure, perhaps, than they used to be.

Mr. TERRY. That is kind. Genteel.

Then another area, now for something completely different than who is protesting and why, but I just received an email as I have been sitting here from Sapp Bros, which is a small chain of truck stops along Interstate 80 in the Midwest headquartered in my district inviting me to one of their high volume CNG pumps that they are putting in at their stations.

You have mentioned the additional need for natural gas pipelines to electric generators and with the new rules and regulations coming down from the EPA, from the White House, there will be even more pressure on natural gas. So my question is, has FERC started looking ahead at way—towards ahead to the future pipeline, gas pipeline needs in this country as natural gas will be used more for transportation and electrical generation?

Mr. MOELLER. Well, specifically we haven't done any projections, but industry entities have. As I think you know, one of my major concerns has been the fact that we are transitioning so quickly to using more natural gas. And there are reliability issues there, they are not insurmountable, but it is a very different paradigm going from, frankly, a pile of coal to a just-in-time fuel delivery on a pipeline.

Mr. TERRY. Well, and that is part of my concern, is as the economy starts naturally moving to natural gas in transportation and then artificially from rules and regulations, the demand will be there and the infrastructure will be needed, so how do we get your agency to look forward? Is that something that we need to do legislatively in addition to the Pompeo bill?

Mr. MOELLER. I think that we can look to the industry projections for pipeline capacity. Your continued oversight of how we do our job is appropriate. I think we have done a good job, but as I referenced earlier, the trend is that we are getting more of these, and we need to stay on top of that, and so I welcome your oversight.

Mr. TERRY. All right. Thank you. Yield back.

Mr. WHITFIELD. The gentleman yields back. At this time I would like to recognize the gentlelady from Florida, Ms. Castor, for 5 minutes.

Ms. CASTOR. Thank you, Mr. Chairman.

Thank you very much for being here. I want to focus on the part of the bill that says that permits automatically go into effect if

agencies do not approve or deny the permits within 90 days, because this kind of stuck out for me. Especially when you consider the complex projects, this provision appears to be very problematic, because I understand these permits are not simply yes or no, green light or red light. For example, a water discharge permit typically involves some limits, a clean air permit includes specific requirements such as emission limitations based on control technology or methods of operation. These permits can be very detailed documents, especially with the complex projects that need to be written by the agencies.

And let's say we go to that scenario of complex project, the agencies could not complete their review and conditions within the 90-day deadline. Would that mean under this bill an unwritten permit would automatically go into effect?

Mr. MOELLER. I believe as the legislation is drafted, there is another 30-day option, and then, yes, as I read the bill, the permits would go into effect.

Ms. CASTOR. Well, I think that is a major deficiency in the bill. I understand the need to boost efficient agency review in the drafting of the conditions, but I think that goes back to the point that was made earlier that this could potentially cause greater delays, especially for those complex projects.

The Army Corps of Engineers and EPA provided technical comments on the bill. They raise concerns that automatic permitting could lead to permits that are inconsistent with the requirements of the Clean Water Act and Clean Air Act. This could lead to a violation of Federal statutes. Doesn't it make—does it make sense for a permit to be granted that could be in violation of Federal statutes? Don't you think that could be problematic?

Mr. MOELLER. That would be problematic.

Ms. CASTOR. I would think so. We empower these agencies to assess the impacts of a project, set appropriate terms and conditions to protect the public interest and public health. And I think what has been established in the hearing today is that from 2009 to 2012, FERC has approved 69 major natural gas pipeline projects spanning over 3,000 miles and 30 States with a capacity of nearly 30 billion cubic feet per day. 90 percent of the permits are granted within a 12-month period.

Commissioner, you testified there are a wide range of projects, that you would encourage companies to take greater advantage of pre-filing. Maybe we should be focused on how we encourage that to happen. We have testimony in the record now that this bill could result in greater delays due to the fact that denials are mandated, so I think on balance we have work to do here.

There is a very important balance between making sure infrastructure is permitted and improved in the most efficient way, but it has got to be balanced against the health and safety standards, and I think this draft legislation just has not risen to the occasion. I think based on the evidence in the record, it could create greater problems. And I know that is not the intent of the author. I thank——

Mr. DINGELL. Would the gentlelady yield for a question?

Ms. CASTOR. I would be happy to yield.

Mr. DINGELL. You just raised a very good point. So let's take a situation where my State or the gentlewoman's State has not complied with the requirements delegated to them by the Clean Air Act or the Clean Water Act, so they can't issue a necessary permit. FERC may then step in and issue the permit whether the State has acted on this matter or not and whether or not the Federal Clean Water or Clean Air Act has been implemented and approved in the State? Isn't that right?

Mr. MOELLER. Well, we wouldn't issue the permit in place of the State.

Mr. DINGELL. What makes you so sure?

Mr. MOELLER. Well, we have been in that situation before where a State has delayed a Clean Water Act permit for a pipeline, and we have deemed the application complete subject to that being resolved.

Mr. DINGELL. I want to thank you. To the gentlewoman, I say thank you for your courtesy.

Ms. CASTOR. Thank you. And, Mr. Dingell, I think this also highlights a concern that it could lead to much greater litigation and this might be a great new employment act for environmental litigators out there.

Thank you. And I yield back.

Mr. WHITFIELD. The gentlelady's time has expired. At this time I recognize the gentleman from Texas, Mr. Olson, for 5 minutes.

Mr. OLSON. I thank the chair. And Commissioner Moeller, it is good to see you again. Welcome.

Mr. MOELLER. Thank you.

Mr. OLSON. I hope you celebrated the Fourth of July with your family.

Mr. MOELLER. I did.

Mr. OLSON. Great. And speaking of celebration, America has a lot to celebrate in 2013, because we are at a turning point in our country's history. For the first time in my 50 years on this planet, we can actually become energy independent. We are finding new oil and new gas places all over America that 10 years ago would have never been called energy States. North Dakota, the Bakken Shale play is the best example of that. Back home in Texas, shale plays seem to be doubling in size with each passing year. It is truly remarkable.

And the benefits extend beyond the oil patch. I have seen it firsthand along the Rio Grande River in the Eagle Ford Shale play. Local school districts there do not have revenue to compete—did not have revenue to compete for admission to America's best universities, but now with the revenue school districts are getting with all the oil and gas development from the Eagle Ford Shale play, instead of floppy disks, these kids have laptops, they have iPads, they have a future, but all that development, that progress will stop if we allow those resources to stay stranded at the wellhead.

Bureaucrats dither, and professional plaintiffs in the environmental community are looking to crank up lawsuits and take care—get involved with reviews of safe, important projects and grind them to a halt. That needs to stop, and that is why I am so thankful that we have this conversation today.

Now, I have a handful of questions for you on pipeline infrastructure and permitting in the United States. And in the tradition of Chairman Dingell, I will ask you to answer a few questions with either yes or no answers.

First question. Do you agree that we are relying on natural gas more today than ever before in our modern energy history?

Mr. MOELLER. I agree, yes.

Mr. OLSON. Yes, sir. Do you agree that increasing shale gas supply and increased use of natural gas for power generation are causing a need for new pipeline infrastructure?

Mr. MOELLER. Yes.

Mr. OLSON. Do you agree that infrastructure bottlenecks can contribute to or even cause a reliability crisis?

Mr. MOELLER. Yes.

Mr. OLSON. Does that fact make time and consideration of new or expanded pipelines for regulators even more important?

Mr. MOELLER. Yes.

Mr. OLSON. OK. No more yes or no questions, but as yet I heard complaints even at church this past Sunday from an employee of one of our oil companies, our power generators about the timeliness of reviews with regulation—some regulators. FERC has heard from groups with names like Stop the Pipeline and No Gas Pipelines dedicated to flooding your agency with sometimes trivial comments on individual pipelines. Knowing that, do you agree that some members of the environmental community have made it their mission to slow your good work?

Mr. MOELLER. Well, I don't know if it is their mission. There is a big debate going on out there, but as I said earlier, you need the infrastructure, the pipes and wires to get the energy to people for them to enjoy it, contribute to their quality of life.

Mr. OLSON. One more question, Commissioner. When FERC is considering a pipeline application, I know that you do all the lengthy reviews to ensure you meet all of your statutory requirements under the Natural Gas Act, however, I would like to know how you work with pipeline operators and project developers on their needs. Specifically if a project has to be completed in a certain time frame to guarantee reliability or meet some contractual deadline, does FERC have a way to take that into account?

Mr. MOELLER. Everyone would like their project done as soon as possible, so we have to balance the complexity of the project with the economic issues and try and do the best we can to get a thorough analysis of the application.

Mr. OLSON. Is there a way that we could involve the contractors, given these considerations, involved in the process without impacting the quality of your reviews?

Mr. MOELLER. I think emphasizing the pre-filing process that we talked about earlier.

Mr. OLSON. OK. I had some question on that, but I understand you hammered that, so I yield back the balance of my time. Thank you.

Mr. WHITFIELD. The gentleman yields back the balance of his time. And I believe that concludes the questions for this first panel. I think Mr. Murphy is here to introduce someone on the second panel.

So Chairman Moeller—I mean, Mr. Moeller, thank you for being with us today. And, Mr. Wright, we appreciate your being with us as well. We do value your comments and answers to our questions and we look forward to working with you as we move forward. So thank you all for joining us this morning.

Mr. MOELLER. Thank you for letting us.

Mr. WHITFIELD. And you are dismissed at this time.

Now I would like to call up the second panel of witnesses. I am going to introduce all of them except the gentleman that Mr. Murphy is going to introduce.

First we have Mr. David Markarian, who is Vice President of Government Affairs for NextEra Energy. We have Ms. Maya van Rossum, who is the Delaware Riverkeeper, Delaware Riverkeeper Network. We have Mr. Rick Kessler, who is the President of Pipeline Safety Trust. And we have Mr. Donald Santa, who is President and CEO of INGAA.

And at this time I would like to recognize Mr. Murphy for the purposes of an introduction.

Mr. MURPHY OF PENNSYLVANIA. Thank you, Mr. Chairman, and members of the subcommittee. I want to introduce Mr. Alex Paris. He is a good friend and a constituent of mine from Avella, Pennsylvania. Mr. Paris is a southwestern Pennsylvania success story. His company, founded by his grandfather I think in 1928, has its roots in coal mining and road building. Today it is a full service heavy construction firm employing hundreds of workers and laying thousands of miles of pipelines and helping to promote the safe development and secure transmission of natural gas from the Marcellus Shale, which is now the country's most productive shale play.

My district is experiencing an economic revival because of the Marcellus Shale, which sits almost exclusively on privately held lands, but regulatory and permitting pipeline barriers are restricting job growth, especially in gas poor regions of the country that stand to benefit from access to Pennsylvania's natural gas. Those regions need gas to power their factories, provide the feed stock for important chemicals, heat their homes, and basically keep the lights on. As Mr. Parish will explain, the passage of a the Natural Gas Pipeline Permitting Reform Act could help to address this challenge and spur billions in new economic activity.

So thank you for the opportunity to speak, Mr. Chairman, and I now turn it back to you. Thank you.

Mr. WHITFIELD. Well, thank you very much.

And I want to welcome all of the members of this second panel. We do look forward to your testimony, and each one of you will be given 5 minutes for an opening statement. And, Mr. Markarian, we will begin with you, so you are recognized for 5 minutes for your opening statement.

STATEMENTS OF DAVID MARKARIAN, VICE PRESIDENT, GOVERNMENTAL AFFAIRS, NEXTERA ENERGY, INC.; RICK KESSLER, PRESIDENT, BOARD OF DIRECTORS, PIPELINE SAFETY TRUST; DONALD F. SANTA, JR., PRESIDENT AND CEO, INGAA; MAYA K. VAN ROSSUM, THE DELAWARE RIVERKEEPER, DELAWARE RIVERKEEPER NETWORK; AND E. ALEX PARIS III, DISTRIBUTION CONTRACTORS ASSOCIATION

STATEMENT OF DAVID MARKARIAN

Mr. MARKARIAN. Thank you, Mr. Chairman, Ranking Member Rush, members of the subcommittee. Dave Markarian, Vice President of Governmental Affairs for NextEra Energy, Inc., also known as Florida Power & Light for many years here in town. And I appreciate the opportunity to appear here today and testify in favor of this bill.

NextEra is one of America's leading energy companies: 15,000 employees; we operate one of the most diverse fleets in the U.S., natural gas, solar, wind, nuclear, coal and other fuels to generate electricity every day for millions of Americans. We are engaged in hydraulic fracturing in many of the shales across the U.S. We build pipeline, we build long-distance, high voltage transmission lines. We operate the fourth largest nuclear fleet in the U.S., with commercial nuclear facilities in Florida, New Hampshire, Iowa and Wisconsin.

Now, to the point, in the last 5 years alone, NextEra Energy has invested $27 billion in American infrastructure for this industry. That puts us in the top 10 of folks that have come forward and put their money on—bet on this American economy. These projects have created thousands and thousands of jobs and improved our ability to take advantage of domestic sources of fuels to generate electricity here at home. These are key ingredients, not just for supplying electricity, but for economic growth. One of the things that we have done the most of is to invest in natural gas.

Now, we are probably better known as the largest wind energy company in the U.S., the second largest in the world, or the largest in solar, but the fact that we are sitting here today—we heard Chairman Upton talk about this bill having bipartisan support. This reflects—our presence here reflects that the support for this bill goes across fuel sources. So for a company like ours that uses everything, we are actually proud to sit here today and say that use of natural gas is saving customers across America billions of dollars. But just our company alone by investing in natural gas over the last so many years, we have reduced our import and use of foreign oil by 98 percent, our customer bills are 25 percent below the national average, our Florida utility, which is about half of our business, serves about half of our State, about 9 million folks, and this is the key thing, delivers lower electricity prices, which does a few things: one, it encourages businesses to locate, grow or move to our areas where we serve; it gives people more money in their pocket so they can do more with it; it spurs economic growth, it spurs spending, it spurs saving and investment.

If you have flown in and out of Fort Lauderdale, over the airport, we have got that classic smokestack configuration. Tuesday morning, 6:45 a.m., we blow those babies up and we build a brand-new

facility that will burn natural gas. A billion dollars of our money will save our customers $400 million just in the life of the plant. So we believe that it is really important to look ahead and get this fuel from where it is harnessed to where it is needed.

And I have heard the comments today. And I think the point, NextEra's support of this bill isn't so much for today, it is for the future, it is for the next 20 and 30 years. Our industry plans to 20, 25, 30 years out. And I wasn't alive during the Eisenhower administration, but they built a highway system, but I was alive for Gemini and Apollo. And if this industry doesn't rise to the level of national priority yet, and I think it will, and so we have to get ready for it. We have to keep pace with this renaissance that we know is on the way.

And I think what this bill does is it sets expectations. It requires that people and agencies think about staffing, that folks in Washington think about funding for staffing, and that everybody has an expectation of review that is certain.

Now, I said in my testimony that sometimes a definite no is better than an interminable maybe, and I think that that is true. If you are going to do what we do for a living, sometimes it is good to know that you are not going to get it done and you move in a different direction. So there is four reasons why, in summary, we support this: one, this is a great opportunity for us; two, we think it is going to spur the economy; three, it is helping to save customers money; and, four, it helps us move things from where they are harnessed to where we need it.

I also want to point out that the EEI, the Edison Electric Institute, which we are a member of, also supports this bill and there is wide industry support for the bill, and they have filed a letter in support.

Thank you, sir.

Mr. WHITFIELD. Thank you, Mr. Markarian.

[The prepared statement of Mr. Markarian follows:]

STATEMENT OF DAVID MARKARIAN

VICE PRESIDENT – GOVERNMENT AFFAIRS

NEXTERA ENERGY, INC.

BEFORE THE U.S. HOUSE COMMITTEE ON ENERGY AND COMMERCE

SUBCOMMITTEE ON ENERGY AND POWER

JULY 9, 2013

Mr. Chairman, Ranking Member Rush, and Members of the Subcommittee:

My name is David Markarian, and I am Vice President of Government Affairs for NextEra Energy, Inc. I appreciate the opportunity to appear before you today to testify on the Natural Gas Pipeline Permitting Reform Act of 2013 and the great value it will add to our country's advances in natural gas production.

My company, NextEra Energy is one of America's leading energy companies. Our 15,000 employees work in more than 20 different states operating one of the largest and most diverse fleets of power plants in the nation, using natural gas, nuclear, solar, wind, coal and other fuels to generate electricity for millions of Americans every day. NextEra is engaged in hydraulic fracturing in six shales. We also build and operate high voltage, long distance electric transmission lines, build pipelines to transport natural gas and operate the nation's fourth largest nuclear fleet; with eight commercial nuclear power units in Florida, New Hampshire, Iowa and Wisconsin.

Over the last five years alone, NextEra Energy has invested more than $27 billion in capital projects, putting us in the top 10 companies making investments in American infrastructure. These projects have created thousands of jobs and improved our ability to generate electricity from domestic sources of fuel, both of which are key ingredients for the United States' economic growth and prosperity.

One of the areas that we have invested most heavily in is high-efficiency power generation from low-cost, U.S.-produced natural gas. Indeed, today, as an enterprise, NextEra Energy is one of the nation's largest purchasers and consumers of natural gas for electric power generation. While NextEra might be better known as the largest wind energy generation company in North America, second-largest in the world, and the nation's leading generator of energy from the sun, we pride ourselves on our "all of the above" approach to meeting the nation's domestic energy needs.

Our use of natural gas is helping to save our customers literally billions of dollars. By investing in natural gas power over the past decade, our Florida utility, Florida Power & Light, has reduced its use of foreign oil to generate power by more than 98 percent. Thanks in part to investments in efficient natural gas generation, FPL's customers pay about 25 percent less for power than the national average. Lower electricity prices foster business creation and growth, and also provide our customers with greater discretionary income to invest, or spend on other goods and services.

In just a few days, FPL will be demolishing the iconic red-and-white stacks of its 1960s-era Port Everglades power plant, within view of the Fort Lauderdale-Hollywood airport, to make way for a new, high-efficiency, next-generation energy center that will run on American natural gas. Our analyses project that this $1 billion investment alone will net our customers more than $400 million in savings because of the advanced fuel-efficiency of the new plant.

But for plants like this and many others across the country, a reliable fuel supply is essential. The ability to get natural gas from where it's produced to efficient power plants in Florida, California, Texas, Illinois and other states is critical for both the security and affordability of electricity in America. As the supply of and reliance upon natural gas grows dramatically, our natural gas pipeline infrastructure must keep pace.

My testimony today:

- Details the importance of responsible and timely action in the construction of natural gas pipelines in the consideration of licenses, permits and approvals required under federal law; and

- Requests that the Committee support H.R. 1900, which has the broad backing from across the American electric power industry – a capital-intensive industry that is all too aware of the impact that delays in approving, permitting and siting have on important infrastructure projects that are designed to benefit customers.

NextEra Energy believes it is essential that policymakers support the robust natural gas pipeline capacity that is moving this country forward toward energy independence. We support the goals of Congress to expedite agency decision-making on gas pipeline infrastructure development and establish firm timelines for the review of natural gas permitting applications.

Four reasons in particular motivate NextEra's support of H.R. 1900. As a nation, we are fortunate that we have abundant supplies of natural gas in certain areas of the country. The surge of natural gas production is a windfall that, executed responsibly, benefits all Americans as we work together to grow our economy and move this country forward toward energy independence. Second, the surge in natural gas production

has, and will continue to help us revive our economy. Third, in addition to the benefits to the nation's economy, electric utilities and their customers have benefited from the significant technological advances in natural gas production that have contributed to lower natural gas prices and a stable supply. As a result, natural gas generated roughly 30 percent of the electricity produced in this country last year and electric utilities expect natural gas to remain a vital fuel resource for power generation. Fourth, we have to be able to transport natural gas from where it's produced to where it's needed to generate electricity. Utilities, independent electricity generators and other market participants across America rely on pipelines to deliver natural gas to their facilities so they can use it to provide their customers with affordable electricity. Constraints in pipeline capacity adversely impact electric utilities' ability to use natural gas to help generate affordable, reliable electricity needed to fuel economic growth and job creation in this country. Delays in the pipeline permitting process have the potential to inhibit the transportation of this integral energy source, directly impacting our customers, our country and our economy. Because of our industry's reliance on natural gas, it is critical that we have a robust natural gas pipeline capacity throughout the country. To put it simply, if we can't get gas to where we need it, everybody loses.

To prevent this, as the quantity and demand of natural gas proves more vital to our nation, economy and people, NextEra Energy believes that it is critically important that we have timely consideration of the licenses, permits and approvals needed under federal law for pipeline infrastructure projects.

We also think that it is important to point out what the bill does not do. It does not short-cut critical reviews nor does it guarantee approval of any kind - for any project. Its implementation will no doubt produce rejections as well as approvals, both yeses and nos. However, often in infrastructure development, a timely "no" is much preferable to an interminable "maybe."

It should also be noted that the proposed legislation does not affect the substantive standards of environmental protection and other laws designed to protect Americans. Those laws remain in place, undisturbed.

I am fortunate to have as my colleague at NextEra Energy, Joseph T. Kelliher, our Executive Vice President of Federal Regulatory Affairs, who previously served as Chairman and Commissioner of the Federal Energy Regulatory Commission from 2003 to 2009. Prior to that, Mr. Kelliher served as Senior Policy Advisor to the Secretary of the Department of Energy in the most recent Bush Administration, and before that, as the Majority Counsel to the House Energy and Commerce Committee. Mr. Kelliher and I have worked together in consultation and review of H.R. 1900, and NextEra Energy's support of the bill reflects Mr. Kelliher's input as well. Specifically, we support the legislation because it would:

(a) Require that FERC approve or deny a requested pipeline certificate no later than 12 months after providing public notice that a natural gas pipeline application has been submitted;

(b) Codify FERC's requirements that all relevant agencies approve or deny a permit application within 90 days after FERC's notice of completion of the environmental review; and

(c) Require that a permit goes into effect if an agency does not issue a required response within the 90-day timeframe.

The Edison Electric Institute ("EEI"), the trade association representing shareholder-owned electric companies, also supports H.R. 1900. EEI, on behalf of its member companies, has urged Congress to approve the bill, because EEI believes that the bill would help expedite the construction of natural gas pipelines by providing the timely consideration of licenses, permits and approvals required under federal law. EEI has also provided a letter in support of the bill. EEI's members serve virtually all of the ultimate

customers in the shareholder-owned segment of the industry, and represent approximately 70 percent of the U.S. electric power industry. NextEra Energy is a member utility of EEI.

Likewise, NextEra Energy believes that it is critically important to ensure timely consideration of the licenses, permits and approvals needed for energy infrastructure projects.

Mr. Chairman, Ranking Member Rush and Members of the Subcommittee, I appreciate the Committee's invitation to testify today and your consideration of the Natural Gas Pipeline Permitting Reform Act of 2013. I would be pleased to answer any questions you may have.

Mr. WHITFIELD. And Ms. van Rossum, you are recognized for 5 minutes.

STATEMENT OF MAYA K. VAN ROSSUM

Ms. VAN ROSSUM. Thank you. Good morning. My name's Maya van—is this on? Yes.

Mr. WHITFIELD. Yes. Push the button to make sure it is on.

Ms. VAN ROSSUM. Sorry. Good morning. My name is Maya van Rossum. I am the Delaware Riverkeeper, and my organization is the Delaware Riverkeeper Network. And I really appreciate the time to speak with you this morning about H.R. 1900. And I am actually here to ask you to please rethink the proposal, to rethink H.R. 1900 and not send it to the floor. H.R. 1900 will diminish critical protections for our communities and our environment and it will have unintended consequences.

Ensuring full and fair environmental reviews and permitting of pipelines is critical, because of the enormity of the potential environmental impact from these projects. For example, just one portion of one recent pipeline as it passes through the Delaware River watershed will impact 450 acres of land, cross 90 water bodies and 136 wetlands and cut through two State preserve forests.

By imposing an inflexible reduction in the time allowed for Clean Water Act 401 and 404 permitting or decision-making, H.R. 1900 could compel the States and the Army Corps to deny more applications rather than work with applicants to remedy deficiencies and improve their projects, or alternatively, they could overlook deficiencies and issue legally dubious approvals.

Our experience is that currently States will work with pipeline applicants to cure application deficiencies so as to ensure a fully informed 401 review. The time limitations in H.R. 1900 would inhibit such cooperation.

The H.R. 1900 timeline will also diminish the time available for States to develop conditions necessary to support 401 certification, resulting in either further denials or the issuance of certifications unsuited to protecting our water quality. More 401 denials necessarily results in more denials of 404 permits.

To avoid the administrative stress of H.R. 1900, some States may opt to simply waive their 401 authority altogether, depriving them of a critical opportunity to prevent degradation of their waters. Given that 401 certification may be the only way that a State can assure its water quality standards are met with regards to pipeline projects, H.R. 1900's interference with the exercise of this authority is an interference with the rights of States to protect their communities.

H.R. 1900 may even encourage deficient applications in the hopes that its timing restrictions prevent full and careful review by the agencies. And if FERC is unable to obtain the detailed surveys, expert reports and data analysis necessary to comply with NEPA and H.R. 1900's 1-year time frame, FERC could be forced to choose between deficient NEPA reviews or denying the certificate of public convenience and necessity.

By truncating the time for allowed for environmental reviews, H.R. 1900 incentivizes the illegal practice of project segmentation. Segmentation prevents the understanding of the full impacts of a

pipeline project and the need for specific protections. Segmentation is already common practice for pipeline projects. H.R. 1900 diminishes the ability of agencies to identify and stop the practice.

And a look at the pipeline map that we have provided for you with our testimony, if you look at the top where the arrow is, the red and the yellow line towards the top is two approved projects. One was authorized in May of 2010, the other was authorized in May of 2012. And it is very clear by even casual observation and the timing of these reviews that these two proposals are, in fact, one project that should have been reviewed and decided upon as a single project, not two. So that demonstrates, you know, how segmentation plays out.

H.R. 1900 reduces environmental protection by reducing environmental reviews and the time allowed for creating appropriate conditions. As such, if this piece of legislation is to move forward, it must be balanced by legislation that ensures the use of best construction practices and planning in order to ensure avoidance of environmental harm. Examples of enhanced practices: reduced right-of-way widths to more historic proportions that are mandatory; a mandate that public lands protected with community resources are avoided; use of construction strategies that avoid and reverse soil compaction. Compaction at pipeline construction sites can be as high as 98 percent. Urban dams are generally only compacted to 95 percent. The increased runoff, pollution, potential flooding and failed restoration that result could be avoided by better construction practices, such as using excavated soils and wood chips from felled trees to create the construction bed for operating heavy equipment.

And FERC should have a duty to ensure coordinated location of pipeline projects as part of its review, similar as its obligation with respect to hydroelectric dams.

Coordinated planning for pipeline projects would better serve the public interest and help avoid redundant and unnecessary projects.

So I would like to thank the committee for the opportunity to testify here today on behalf of the Delaware Riverkeeper Network, and I respectfully ask that you not move forward with this proposed piece of legislation, but if you do, I ask that you balance its effect with necessary legislative upgrades regarding pipeline planning, reviews and construction.

Mr. WHITFIELD. Thank you very much.

[The prepared statement of Ms. van Rossum follows:]

United States House of Representatives
Committee on Energy and Commerce
Subcommittee on Energy and Power
2125 Rayburn House Office Building
Washington, D.C. 20515

Written Testimony Regarding
H.R. 1900, Natural Gas Pipeline Permitting Reform Act
Submitted by Maya K. van Rossum, the Delaware Riverkeeper
to the House of Representatives Committee on Energy and Commerce,
Subcommittee on Energy and Power
July 9, 2013

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Summary of Testimony

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- HR 1900 Will Adversely Affect the Ability of States to Provide Water Quality Protection Pursuant to Section 401 of the Clean Water Act.
- HR 1900 Will Negatively Affect the Ability of the Corps to Properly Administer Clean Water Act Section 404 Permits and May Force Denial of those Permits.
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- HR 1900 Could Create Another Regulatory Gap by Inhibiting Implementation of the Clean Air Act and Coastal Zone Management Act.
- HR 1900 Undermines Fair and Informed Public Participation in the 401 Water Quality Certification, 404 Dredge and Fill Permitting Process, and NEPA Review.
- HR 1900 Compounds the Inability of Citizens to Secure Timely and Cost Efficient Consideration of Challenges. Limitations of FERC's Ability to Avoid Timely Response to Rehearing Requests In Order to Avoid Timely Legal Challenge Needs to Be Addressed.
- Diminished Reviews From HR1900 Should be Offset with Better Quality Construction, Planning, and Project Proposal Requirements.
- Conclusion

Introduction

Good morning, my name is Maya van Rossum. I am the Delaware Riverkeeper; my organization is the Delaware Riverkeeper Network, an environmental advocacy organization which champions the rights of communities for a Delaware River that is free-flowing, clean and healthy. Since 1988, the Delaware Riverkeeper Network has been working to protect and restore the Delaware River, its tributaries and watershed, which now supplies the drinking water for over 17 million people -- one-fifth of this country's population. Our work ensures the protection of that water supply as well as hundreds of thousands of jobs and local economies that rely upon healthy waterways. We help safeguard some of the most popular recreational destinations in the nation and we are working to preserve keystone species such as Atlantic sturgeon and horseshoe crab, which play critical roles in our communities, both human and wild. For example, the Delaware River's genetic line of Atlantic sturgeon exist nowhere else on earth, and the Delaware Bay's population of horseshoe crabs — whose annual spawning on bay beaches supports migrating birds as well as local economies through ecotourism — provide an irreplaceable substance necessary for testing vaccines for their safe use by humans.

I thank you for the opportunity to speak to you this morning. I have provided for the record a copy of my verbal statement as well as an expanded version that includes more detailed information to inform your deliberations. I am here to ask you to rethink HR 1900 and not send it to the floor. HR 1900 will diminish critical protections for our communities and environment, and will have unintended consequences, including for pipeline companies.

As natural gas drilling proliferates, so too does the infrastructure used to support and encourage it. Pipelines and associated compressor stations are being rapidly proposed and pursued. The rapid expansion of natural gas infrastructure requires ever-increasing time and attention from agencies and the public; yet, HR 1900 proposes just the opposite. HR 1900's implementation would result in serious negative consequences for the proper implementation of a number of environmentally protective federal laws, including: Clean Water Act Section 401, Water Quality Certifications; Clean Water Act Section

404 Army Corps permitting; National Environmental Policy Act compliance; and the application of the Clean Air Act and the Coastal Zone Management Act.

At a very fundamental level, HR 1900 undermines the power preserved and granted to the states to ensure protection of the health, safety, and economies of their people. Laws designed to protect the environment – particularly those for protecting clean water, clean air, and healthy habitats – were crafted with a specific respect and regard for the balance of power between state and federal governments. In the arena of energy production and use, that balance of power has already been undermined by seemingly unwarranted exemptions. HR 1900 further erodes that balance and takes from states and other federal agencies their ability to earnestly and effectively protect the natural resources that are fundamental to healthy families, lives, and jobs.

Not only does HR 1900 exacerbate problems in the current legal regime as it applies to natural gas pipeline projects, it also fails to address the most significant deficiencies that currently exist.

HR 1900 Will Adversely Affect the Ability of States to Provide Water Quality Protection Pursuant to Section 401 of the Clean Water Act.

HR 1900 introduces a number of problems that would not only reduce the scope and breadth of environmental protection that can be obtained pursuant to Section 401 of the Clean Water Act, but also creates inefficiencies within the permitting regime. Given that implementation of 401 Water Quality Certification may be the *only* way that a state can protect water quality through enforceable constraints on natural gas pipeline projects (as the result of 2005 Energy Policy Act related exemptions and preemption of state environmental law by the Natural Gas Act), HR 1900's significant interference with the exercise of this authority is also an interference with the rights of states to protect their communities, and can result in a significant regulatory gap.

Currently, the time period allocated for a state to issue a Section 401 Water Quality Certification is flexible and depends upon the discretion of an Army Corps District Engineer. This time period may

be as long as one year from the time the state receives a complete application. By contrast, HR 1900 imposes an inflexible 90-day deadline that can be expanded to only 120 days, under seemingly exceptional circumstances, and gives FERC – an agency that has no expertise in the Clean Water Act – the sole discretion to determine whether those exceptional circumstances have occurred. Furthermore, the 90-day time line begins to toll when FERC issues its final environmental document, not when the state has received a completed application.

The Delaware Riverkeeper Network's experience has been that states currently work with pipeline applicants seeking 401 Certification to remedy application deficiencies, rather than issue outright denials. The time limitations included in HR 1900 would inhibit such cooperative efforts. States may respond to the reduced time for reviewing 401 applications by quickly denying deficient applications rather than working with the applicants to remedy deficiencies. Or, a state may ignore the deficiencies in order to keep within the HR 1900 time limits, and end up approving deficient applications and projects.

Even if timely and complete applications are submitted, the truncated timeline afforded by HR 1900 may put states in a position to deny rather than condition their 401 Water Quality Certifications, as the development of project-specific conditions would require more time than the proposed law allows. Whereas the current statutory regime gives the Army Corps discretion to afford states the additional time needed to develop these conditions, HR 1900 would prevent that accommodation from taking place, leaving the states no choice but to deny the application -- or issue it without developing the necessary conditions to protect its waters. If a state makes a timely denial of a 401 Water Quality Certification, then the Army Corps *cannot* issue its 404 permit. 33 USC § 1341(a)(1).

In order to avoid the additional administrative or legal burdens imposed by HR 1900, some states may opt to waive their 401 authority entirely with respect to pipelines. These states would lose a critical opportunity to prevent degradation of their waters caused by pipeline construction.

The creation by Congress of an inflexible reduction in the time allocated to states to develop conditions to protect water quality will create the unintended consequences of more denials, more litigation, further delay of pipeline projects, and less effective environmental oversight.

HR 1900 Will Negatively Affect the Ability of the Corps to Properly Administer Clean Water Act Section 404 Permits and May Force Denial of those Permits.

CWA 404 permits are required to authorize the discharge of dredged or fill material into a navigable water of the United States. Section 404 permits are generally issued by the US Army Corps of Engineers.

Ensuring adequate review for the 404 permitting process is vitally important. Over the course of a single pipeline project, there are dozens, sometimes hundreds, of wetlands and waterways that are impacted and require individual consideration and review. For example, just one portion of one recent pipeline as it passes through the Delaware River watershed will impact an estimated 450 acres of land, and cross 90 waterbodies and 136 wetlands, a large portion of which are the region's highest quality streams and wetlands and are entitled the greatest level of protection under federal and state laws.

Currently, the timing of the 404 permit process is governed by Army Corps regulations, which provide defined time limits that can be extended only for good and specific cause. Pursuant to these regulations, after receiving a permit application, the District Engineer has 15 days to determine whether that application is administratively complete and has the components necessary for evaluation; within this timeframe the District Engineer must either publically notice that it has received a complete application, or inform the applicant that additional information is needed to complete its application. 33 CFR § 325.2(a)(2).

District Engineers are to decide upon all applications not later than 60 days after receipt of a complete application. 33 CFR § 325.2(d)(3). The "clock" on the running of the 60 days can only be stopped and restarted for good cause, e.g., if the Army Corps extends the public comment period, or if

the Army Corps is waiting for other state or federal agencies to provide certifications, impact statements, or other documents required by federal law. *See* 33 CFR § 325.2(d)(3)(iii),(vi).

HR 1900 would give the Army Corps 90 days from the issuance of FERC's "final environmental document" to either issue or deny the 404 permit. It would allow FERC to extend that time to 120 days only for "circumstances beyond" Army Corps control. This is problematic because the time limit starts to run from when FERC issues its final "environmental document" (presumably a FONSI or EIS), rather than from the time when the Army Corps receives a complete application. Similar to the result in state review of Section 401 permits, this could pressure the Army Corps to deny more applications based on incompleteness rather than working with the applicant to remedy information or project deficiencies.

HR 1900 is also problematic because it would take away the Army Corps' discretion to wait for a pending state 401 Water Quality Certification before rendering its 404 decision. Under the current law, the Army Corps can put the 60-day clock on hold for up to a year from the time that the state received a complete application for 401 Certification. Under HR 1900, the Army Corps would not have that level of discretion. Because 404 permitting depends on the state's 401 decision or waiver, the impact of HR 1900 on 404 permitting depends on how HR 1900 affects state implementation of Section 401 of the Clean Water Act.

- If states react to HR 1900 by denying more 401 applications, the Army Corps would be obliged, pursuant to law, to deny the 404 permit.
- If states react to HR1900 by waiving their authority, then Army Corps decision-making would be deprived of the important information that states provide about impacts of projects on the protection of state water quality standards.
- Under HR 1900, both the state 401 certification and the Army Corps 404 would simultaneously be due within 90 days of FERC's issuance of its "final environmental document." And so, if states exercise their 401 authority, but consume the entire 90 day period in developing conditions, then the Army Corps could potentially be deprived of

the opportunity to carefully consider those state-imposed conditions prior to issuing or denying the 404 application; and may be more inclined to deny the 404 permit if they are concerned about the conditions (or lack thereof) that may or may not be imposed by a state. Whether the Army Corps would receive additional time (no more than 30 days as per HR 1900) to consider the conditions imposed by the state (or the lack thereof) would depend upon FERC's discretion to decide whether a delay is warranted by circumstances beyond Army Corps' control.

As Proposed, HR 1900 Limits FERC's Ability to Properly Comply with the National Environmental Policy Act.

FERC compliance with NEPA is a legal prerequisite for issuance of a Certificate of Public Convenience and Necessity. As such, if FERC is unable to complete its NEPA obligations within the HR 1900 one-year timeframe, then it would be unable to Certificate a proposed project.

FERC's capacity to properly engage the NEPA process could be adversely impacted by the terms included in HR 1900. If FERC finds a pipeline application deficient, there would be less time to revise the proposal and cure the deficiencies within the context of a NEPA review. Additionally, NEPA analysis by FERC often requires detailed surveys, expert reports, and data analysis; HR 1900 would reduce the time within which FERC could secure this information.

Ultimately, requiring FERC to comply with an arbitrary truncated timing restriction will further stress the limited resources of FERC, and (1) could increase the likelihood of an improperly or inadequately informed decision by FERC that results in the approval of a sub-par application and project, or (2) FERC may find itself unable to fulfill its NEPA obligation within the one-year timeframe and be forced to deny Certification for a project.

Furthermore, FERC's mission is not directed towards environmental protection, it is to "[a]ssist consumers in obtaining reliable, efficient and sustainable energy services at a reasonable cost through

appropriate regulatory and market means." As a result, FERC often looks to other regulatory agencies for their expertise on issues of environmental protection; tying the hands of these other agencies, particularly the state agencies, with an artificially short timeline for review also diminishes the level of knowledge they can share with FERC.

HR 1900 Incentivizes the Illegal and Ongoing Practice of Segmentation.

By truncating the time allowed for environmental reviews, HR 1900 incentivizes the illegal practice of project segmentation. Projects that are segmented make it difficult, if not impossible, for agencies and the public to have a full understanding of the impacts of a pipeline installation or upgrade, and allow project sponsors to avoid fully complying with regulatory review requirements under federal law. Smaller project segments are easier for an agency to review within the HR 1900 time limitations, which creates an incentive for both the pipeline companies and the agencies to segment infrastructure projects. When segmentation does happen, HR 1900 diminishes the ability of agencies to identify and stop the practice.

The experience of the Delaware Riverkeeper Network is that pipeline companies routinely segment their projects. A look at the Delaware Riverkeeper Network pipeline map demonstrates the problem: the yellow line represents a project that was proposed and authorized in May 2010, and the red line represents a project that was authorized in May 2012. While these two projects were presented to FERC as separate and distinct projects to receive their own independent review and permitting, it is clear just by observation and the timing of the reviews that the Tennessee Gas Pipeline Companies 300 Line Upgrade Project (yellow line) and Northeast Upgrade Project (red line) are a single project submitted as two separate proposals in order to impact the path of review.

FERC has previously relied upon the assertion that since pipeline projects are designed to serve different customers, at different points in time, they have independent utility, and thus warrant individual review. Such an argument improperly rests entirely on the *economic* independent utility of

each project. Taken to its logical conclusion, this argument suggests that if a project sponsor could find individual shippers interested in extremely small volumes of gas that would each only require a half-mile stretch of looped pipeline along an existing pipeline, FERC could certificate each one of those small individual half-mile loops independently. Such a result undermines the design, purpose, and intent of NEPA.

HR 1900 Could Create Another Regulatory Gap by Inhibiting Implementation of the Clean Air Act and Coastal Zone Management Act.

Aside from section 401 of the Clean Water Act, state regulation of pipelines pursuant to federally-delegated authority under other statutes might also be affected by HR 1900. HR 1900 should not be passed until a careful analysis has been undertaken to determine how the timing restrictions that it imposes might affect state action pursuant to the federal Clean Air Act and the Coastal Zone Management Act. Because state environmental regulations are likely preempted by the Natural Gas Act, state action taken pursuant to these federally-delegated programs may constitute the only substantive environmental protections for air quality and coastal zone integrity imposed on interstate pipeline projects.

HR 1900 Undermines Fair and Informed Public Participation in the 401 Water Quality Certification, 404 Dredge and Fill Permitting Process, and NEPA Review.

The truncated reviews ensured by HR 1900 deny the public a full and fair opportunity to participate in the public process and to provide informed input into the decisions made by regulatory agencies regarding pipelines. Ninety to 120 days is not enough time for a community to become properly notified, secure access to public files and documents, procure expert analysis, and craft and submit informed comment. Ninety to 120 days is not enough time for agencies to schedule, announce, hold, and consider comments from a public hearing. Nor is it enough time for agencies to notice, secure,

consider and appropriately benefit from and utilize the information and considerations posed in written comments from the public. The needlessly restrictive timelines imposed by HR 1900 diminish the ability of the public to provide informed input into the process.

The public often provides helpful facts, science, documentation, information and considerations that inform and enhance an agency's decisionmaking process. Inhibiting meaningful public participation denies us all the benefit of public input and is a denial of this country's commitment to honoring the public voice in decisionmaking.

The one year time period provided by HR 1900 for NEPA review does not remedy this disadvantage; rather, it exacerbates the problem. Clean Water Act Section 401 and 404 decisionmaking are based upon different documentation, require different expert reviews, and require a different quality of comment than NEPA documents. Consequently, commenting pursuant to NEPA does not prepare a person for submitting informed and convincing comment pursuant to other laws.

Additionally, the public is already at a disadvantage with FERC's present process for implementing NEPA. In the experience of the Delaware Riverkeeper Network, FERC routinely allows an application to move ahead through the scoping process without critical analysis and information, such as Resource Reports that provide the details about the expected environmental impacts of a process. As a result, the public is denied critical information necessary to assess a proposal. For example, FERC closed the public comment period on the Transcontinental Gas Pipeline Company's Leidy Southeast Expansion Project with only two of ten Resource Reports available, and without making public any environmental reports describing the local impacts to those in the path of construction. Truncating the time for FERC's decision process will inevitably further reduce the public's involvement, jeopardizing the NEPA requirements for an open and accessible public participation process and disenfranchising stakeholders.

HR 1900 Compounds the Inability of Citizens to Secure Timely and Cost Efficient Consideration of Challenges. Limitations of FERC's Ability to Avoid Timely Response to Rehearing Requests In Order to Avoid Timely Legal Challenge Needs to Be Addressed.

The Natural Gas Act, 15 U.S.C. § 717r(a), permits "any person . . . aggrieved by an order issued by the Commission in a proceeding under this chapter to which such person . . . is a party may apply for rehearing within thirty days after the issuance of such order. . . . Unless the Commission acts upon the application for rehearing within thirty days after it is filed, such application may be deemed to have been denied." The NGA makes a rehearing request a condition precedent for filing suit in federal court for review of a Commission order. Moreover, the aggrieved party may not file suit in federal court until the Commission renders its final decision on the merits of the rehearing request.

FERC's common practice is to comply with the NGA 30-day mandate by issuing a tolling order within 30 days of a rehearing request. The tolling order grants the request for rehearing only insomuch as taking the matter into consideration, and allows FERC extra time to make a decision.

FERC compounds this inequity by then waiting to issue final decisions on rehearing requests until just prior to, or sometimes weeks after, the agency authorizes a project to proceed with construction. In some cases, FERC withholds its denial until the party seeking rehearing files a petition with a court of appeals to compel the response.

This FERC practice effectively denies the parties requesting rehearing their due process rights to a timely decision by FERC and judicial review thereof, before construction starts, thus resulting in potentially irreparable injury to communities striving to protect their health, safety, and environmental interests. Additionally, this practice creates unnecessary litigation burdens for the affected parties and FERC itself.

For example, this tolling procedure was abused by FERC in the context of the Tennessee Gas Pipeline Company's Northeast Upgrade Project. The Northeast Upgrade Project was approved in May of 2012. The Delaware Riverkeeper then timely submitted a Rehearing Request the following month.

FERC, required to respond in 30 days, instead issued a tolling order that indefinitely extended the time they had to review the Rehearing Request. During this tolling time period, the project sponsor began initiating requests to proceed with certain aspects of its construction activity. Despite numerous requests from the Delaware Riverkeeper Network and the Army Corps of Engineers as to the status of the Rehearing Request, FERC remained silent for nearly 6 months. This left the Delaware Riverkeeper without a legal remedy since a final decision from the agency had not yet been issued. Delaware Riverkeeper Network had to file an All Writs Act suit against the FERC in order to have their concerns properly reviewed. One day after the filing of the All Writs Act suit, FERC issued its final order denying the Rehearing Request, such that judicial review of FERC's decision could proceed.

The truncated timeline for review included in HR 1900 not only diminishes the time and opportunity for citizens and residents to gather factual and scientific information needed to support or challenge a project, but it further inhibits the people's ability to submit and secure timely response from agencies to their legal challenges. Agencies already pressed with truncated timelines for permit and certificate reviews will conceivably be less willing and able to give timely consideration and response to community legal filings, and further diminishes their ability to bring timely challenge in the courts, before a project begins.

Diminished Reviews From HR1900 Should be Offset with Better Quality Construction, Planning, and Project Proposal Requirements.

Pipeline projects that have already gone through the Delaware River watershed have been found by experts to have resulted in "significant and permanent increases in stormwater runoff volumes, rates, pollutant discharges, and frequencies of discharge, and a corresponding decrease in infiltration volumes.

As a result, existing streams and wetlands, including exceptional value streams, have been adversely impacted by stormwater discharges and the discharge of sediment."[1]

HR 1900 diminishes environmental protection by reducing the time period for creating appropriate conditions during environmental reviews. Therefore, if this piece of legislation is to move forward it must be balanced by Congressional legislation that ensures the use of best construction practices and planning so as to avoid environmental harm to the greatest extent possible.

Examples of enhanced practices include, but are certainly not limited to, the following:

- ✓ Reduced Right of Way widths to more historic proportions in order to reduce the level of land clearing, stormwater runoff, and loss of forest and backyard habitat.
- ✓ Requirement of the use of construction strategies that avoid soil compaction in order to allow for effective rainfall infiltration and avoid stormwater runoff that would otherwise cause pollution and flood damages for communities downstream. Delaware Riverkeeper Network experience has shown that the level of compaction at a pipeline construction site can be as high as 98%; by way of comparison, earthen dams are generally only compacted to 95%. Such high compaction levels ensure that all the rainfall that hits the ground runs off to wreak havoc on the communities below. But there are means to avoid this level of compaction, for example, by using the excavated soils and woodchips from felled trees to create the construction bed upon which heavy equipment such as the side boom travel and operate; once construction is complete this bed of soil and woodchips can be removed and the level of soil compaction beneath avoided or reduced. (In a video I am making available today, expert Leslie Sauer talks about the strategies used at one project that resulted in dramatic benefits for protecting the environment, communities and public lands.)

[1] Affidavit, Michele C. Adams, P.E., Meliora Engineering, in the case of *Delaware Riverkeeper Network, Maya van Rossum the Delaware Riverkeeper and Responsible Drilling Alliance v. Commonwealth of Pennsylvania Department of Environmental Protection and Tennessee Gas Pipeline Company*, before the Commonwealth of Pennsylvania Environmental Hearing Board. *See also* affidavits submitted in the same case from Kevin Heatley, Senior Scientist with Biohabitats, and Peter M. Demicco, Groundwater Geologist.

- ✓ A mandate that public lands protected with community resources, whether local, state or federal, be avoided to the greatest degree possible.
- ✓ Use of least harmful stream and wetland crossing strategies, such as horizontal directional drilling.
- ✓ Improved erosion and sediment control practices to best available technology.
- ✓ Avoidance, if not prohibition, of crossing our highest quality wetlands and streams in the siting of projects.
- ✓ Fully effective restoration and maintenance of sites to naturally healthy conditions after construction. The goal should be to restore the natural functions and values of a site after a project is complete.
- ✓ Avoidance of the conversion of forested wetlands to emergent wetlands.
- ✓ Mandatory protections against the invasion and spread of invasive plant species needs to be included in ongoing maintenance by the pipeline company.

FERC should have a duty to ensure coordinated location of pipeline projects as part of its review – similar to the obligation it has with respect to hydro-electric dams under the Federal Power Act. Coordinated planning for pipeline projects would better serve public interest and help avoid redundant and unnecessary projects.

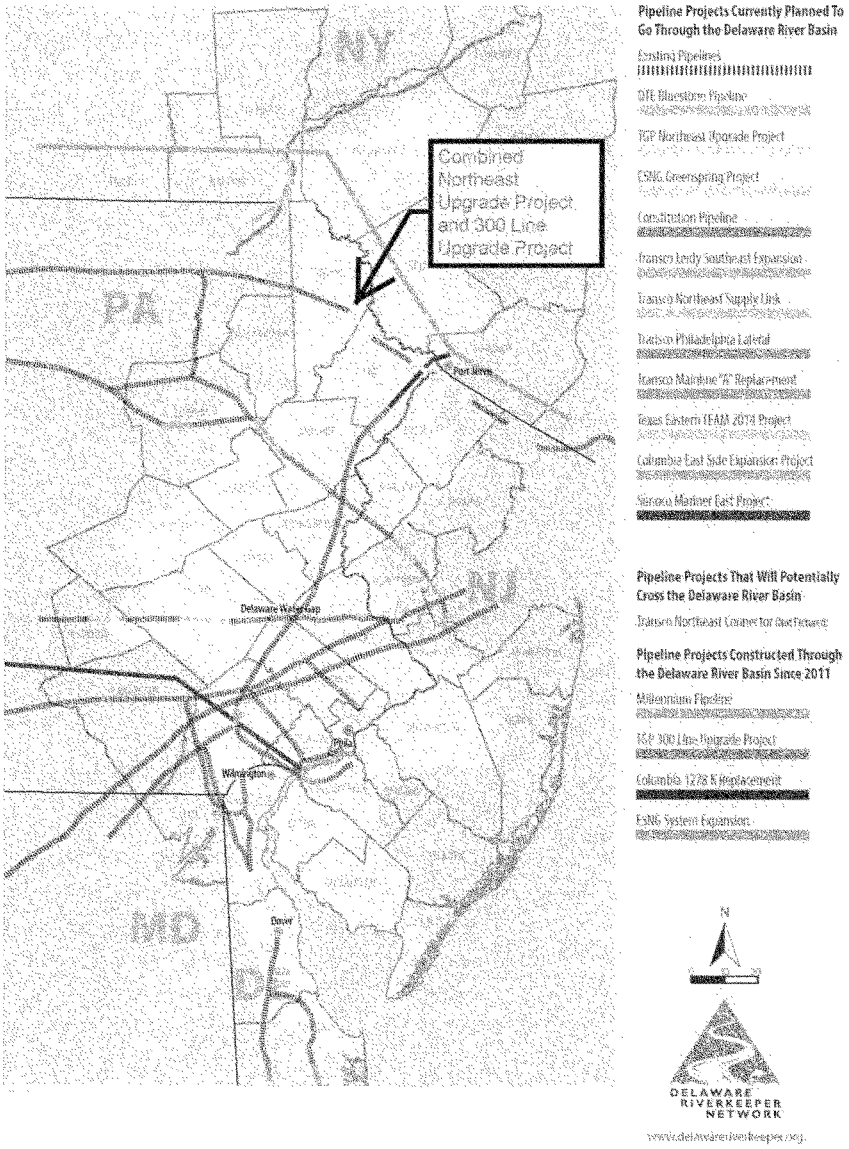
The coordinated planning obligation should include a mandate to consider cumulative impacts of pipeline construction: the cumulative impacts of individual pipelines as they pass from jurisdiction to jurisdiction, the cumulative impacts of multiple pipeline projects for a watershed or region, and the impacts of induced development that result from pipeline siting, location, and construction.

Conclusion

I thank the Committee for inviting the Delaware Riverkeeper Network to offer testimony on HR 1900. I respectfully request that the Committee not move forward with this proposed piece of legislation. However, if the Committee does so, I ask that the Committee balance its effect with necessary legislative reform regarding better pipeline planning, review, and construction.

Respectfully submitted,

Maya K. van Rossum, the Delaware Riverkeeper
Delaware Riverkeeper Network


NY
PA
NJ
MD
DE
Combined Northeast Upgrade Project and 300 Line Upgrade Project
Port Jervis
Delaware Watergap
Wilmington
Dover
Pipeline Projects Currently Planned To Go Through the Delaware River Basin
Existing Pipelines
DPL Bluestone Pipeline
TGP Northeast Upgrade Project
ESNG Greenspring Project
Constitution Pipeline
Transco Leidy Southeast Expansion
Transco Northeast Supply Link
Transco Philadelphia Lateral
Transco Mainline "A" Replacement
Texas Eastern TEAM 2014 Project
Columbia East Side Expansion Project
Sunoco Mariner East Project
Pipeline Projects That Will Potentially Cross the Delaware River Basin
Transco Northeast Connector Enhancement
Pipeline Projects Constructed Through the Delaware River Basin Since 2011
Millennium Pipeline
TGP 300 Line Upgrade Project
Columbia 1278 Replacement
ESNG System Expansion
N
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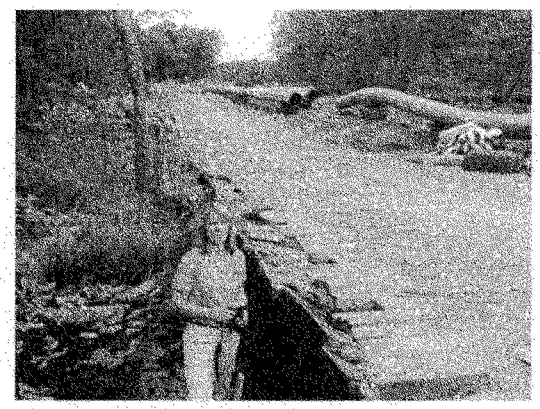
Natural Gas Pipeline Pictures

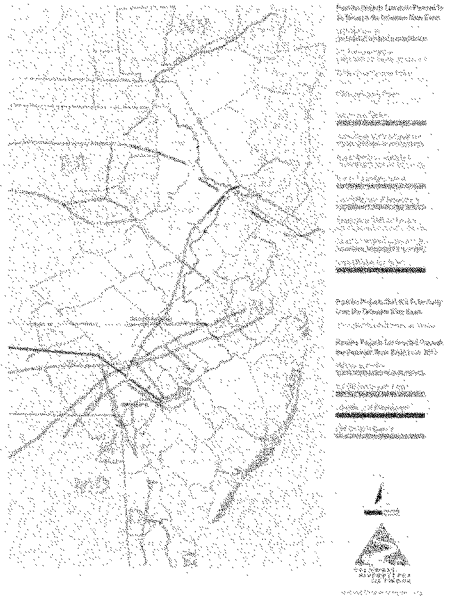
Presented by Maya K. van Rossum, the Delaware Riverkeeper to the Committee on Energy and Commerce

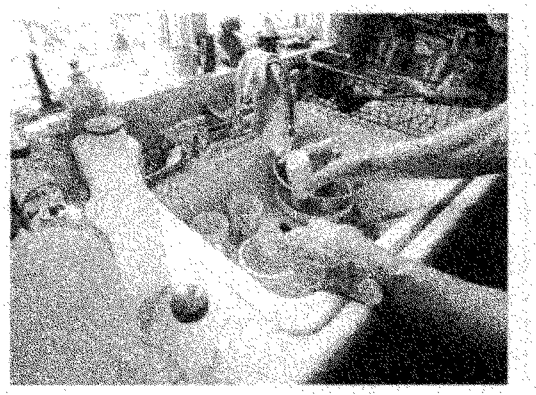
July 9, 2013

DELAWARE RIVERKEEPER NETWORK



Delaware Riverkeeper Network Documents Pipeline Construction Activity in the Delaware River Basin

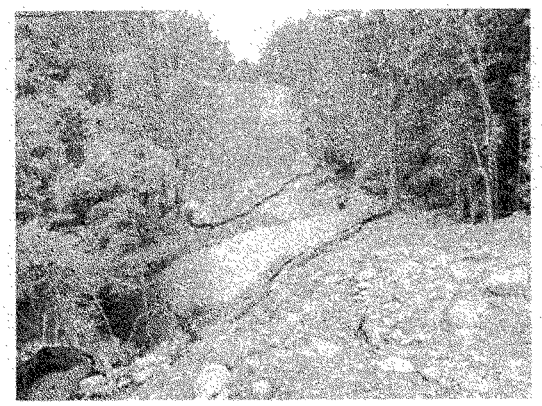




Contaminated Well Due to Pipeline Construction
Pipelines nearby homes can impact well water like in this case that occurred in New Jersey during pipeline construction. June 2013.

Pipeline Cut Through Public Lands

This pipeline path currently under construction passes through High Point State Park in New Jersey. Often public lands had intact and healthy habitat and mature forests before pipeline cuts occur. June, 2013.



Conversion of Forested Landscapes to ROW

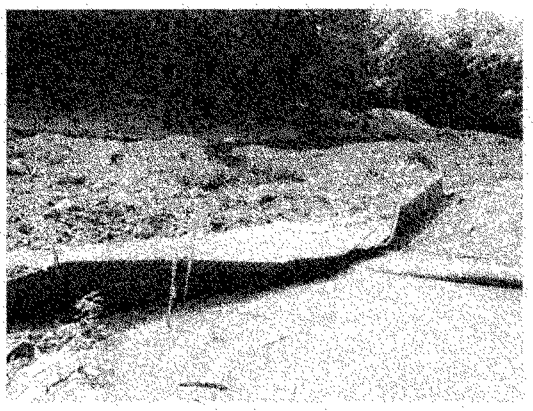
Pipelines often cut through forests and steep slopes which require much technical oversight to ensure measures are used to limit impacts. This pipeline cut through Pike County, PA across the Sawkill Creek. June 2011.

Sediment Discharged to Wetlands

Compost filter socks are topped by sediment-laden water causing large discharge of sediment to the adjacent high quality wetland outside the pipeline ROW.

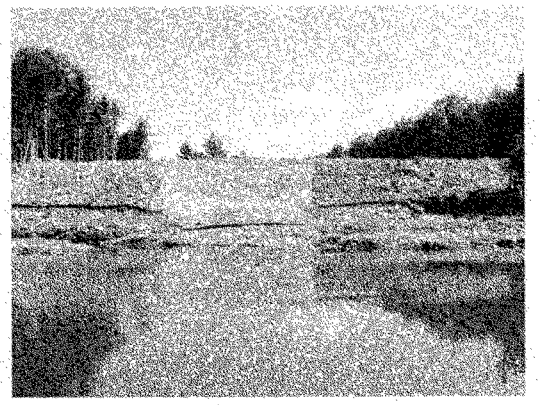
Pipeline ROWs Are Wide and Cut Through All Land Uses

Aerial flyover of a pipeline crossing through multiple counties in Pennsylvania, February 25, 2013.



Overwhelmed and Failing Erosion & Sedimentation Controls

This once forested slope dominated by underground springs and wetlands is a challenging location for a pipeline path with continual issues with stabilization of soils and control of water.



Lagging Recovery

Nine months after this new pipeline began carrying gas, land surface impacts adjacent a high quality tributary to the Delaware River including soil compaction and lack of vegetation growth keep this site in temporary restoration phase. August, 2012

Soil Compaction on ROW

A soil compaction study commissioned by Delaware Riverkeeper Network along a pipeline in Pike County, PA indicated extreme soil compaction along the pipeline ROW in temporary workspace areas which leads to increased stormwater runoff, challenging regrowth conditions, and a likely permanent change to the soil profile.

Waterbody Crossings Are Challenging

Wetlands, streams, and spring crossings are sensitive areas that are challenging places to site pipelines. June, 2013

Mr. WHITFIELD. Mr. Kessler, you are recognized for 5 minutes.

Mr. KESSLER. Thank you, Mr. Chairman.

Mr. DINGELL. Mr. Chairman, could I just be recognized for about 30 seconds?

Mr. WHITFIELD. Yes, sir.

Mr. DINGELL. I thank you for your courtesy. I want to commend Ms. van Rossum for her very fine statement and I would like to welcome to the committee Mr. Rick Kessler, who is a personal friend, former staff member, wrote much of the energy legislation written by this committee during my chairmanship, served with distinction in writing pipeline safety legislation and other matters. So we welcome an old friend back. Pleasure to see you, Mr. Kessler.

STATEMENT OF RICK KESSLER

Mr. KESSLER. Thank you, Mr. Dingell. And thank you, Mr. Chairman, Mr. McNerney, and also you, Mr. Pompeo. I appreciate the opportunity to testify today.

My name is Rick Kessler and I am here in my voluntary, uncompensated role as President of the Pipeline Safety Trust, which, as you know, is the only national independent non-profit solely focused on pipeline safety.

I am here to let you know of the trust's concerns and opposition to H.R. 1900 in its current form. The bill would add two new subsections loosely based on current regulation to Section 7 of the Natural Gas Act in an effort to expedite FERC's certification process, which, as we have heard from FERC, is pretty fast to begin with.

There are many reasons, though, why a FERC certificate may not be complete within a year time frame. These include the complexities involved with studying the impact of a pipeline on environmentally sensitive areas or on dense urban areas requiring substantial public involvement, or the mere lack of funds available to an agency to adequately staff FERC's NEPA review process. This latter reason will no doubt grow as sequestration takes greater hold on our budget.

Frankly, we see no policy rationale for the bill's one-size-fits-all, 1-year limit that would treat a 10-mile pipeline across the barren desert the same as a 1,400-mile pipeline that runs through multiple ecosystems in dense urban areas. In fact, this new limitation seems to run counter to the recent GAO report that studied the natural gas permitting process and found that the average time for those projects that began at the application phase was 225 days.

But to be clear, our opposition to H.R. 1900 relates primarily to the new subsection that would deem approve any licenses, permits or, quote unquote, approvals related to an application for certificate of public convenience and necessity if the agency considering the application doesn't act within the 90 to 120-day time frame of FERC's issuance of its final environmental document. It would do this regardless of when the agency receives the permit or the license application.

We note that the bill contains no requirement that such applications be complete and contain the necessary information for the reviewing agency. Even the recent INGAA Foundation report found that many of the causes for delays are due to issues wholly within the control of the applicants, not the permitting agencies. In those

cases, it would be impossible for an agency to complete its review of a complex route dependent permit within the allotted time frame, making permit issuance under H.R. 1900 a potential fait accompli and effectively gutting the important role these agencies play in protecting public health, safety and the environment.

We also note that current regulation, while setting a 90-day deadline also, includes an exemption for timelines set by other Federal law, yet no such exemption exists in H.R. 1900.

We would additionally point out that almost no company has pursued the remedy provided to industry under current law, yet now the industry is arguing for the significant change to EPAct 2005 without even availing itself of the avenues it currently has to address the problem. And as others have pointed out, ironically it is possible that this could slow progress on approval of pipeline projects by leaving agencies no choice but to deny permits, particularly at the State level, which are often even more strapped for money than the feds.

Perhaps most significantly, 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. The trust believes that the taking of private land by corporations or any other entity is an extremely serious matter and shouldn't be taken lightly in law or in practice. In our view, no process or part of the process should be curtailed or deemed approved when takings are involved. Unfortunately this legislation would do just that.

Ultimately the trust failed to see any compelling case for this legislation. Natural gas pipeline construction 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 FERC and related agency consideration is due to the success, not the failure, of the growth of natural gas pipeline transmission.

Absent new financial resources, in fact, the increase in new pipeline plants will likely put a strain on the ability of agencies at the Federal and State level to review these pipeline plans as quickly as companies and their investors want; however, that shouldn't be an excuse to cut corners, shortchange landowners and put at risk the public and our environment.

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 are as safe as they can be for the sake of property owners, the environment and the public welfare.

You have heard from us before about the inadequacy of the Federal pipeline safety program. 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 urge the committee to take the time necessary to fully review the situation before scheduling the bill for a full committee markup.

Thank you, Mr. Chairman.

Mr. WHITFIELD. Mr. Kessler, thanks.
[The prepared statement of Mr. Kessler follows:]

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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 report[1] 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 report[2] 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 EPAct 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 EPAct 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 EPAct?, 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.

Mr. WHITFIELD. Mr. Paris, you are recognized for 5 minutes.

STATEMENT OF E. ALEX PARIS III

Mr. PARIS. Chairman Whitfield and members of the subcommittee, my name is Alex Paris. I am President of Alex Paris Contracting. Our offices are located in Atlasburg, Pennsylvania, which is about 2 miles from the first Marcellus well.

We provide a variety of construction services throughout the mid-atlantic region, including natural gas pipeline construction. Last year we installed about 350,000 feet of pipe, mainly in the Marcellus and Utica Shale plays in Pennsylvania, West Virginia and Iowa. Because of development of these shale plays, we have had to increase our employee base dramatically as well as purchase a substantial amount of equipment. While we perform a significant amount of midstream work, we also work on gas distribution pipeline systems.

I am here today on behalf of the Distribution Contractors Association, which represents contractors who work primarily in the gas industry. I am pleased to speak to you this morning about the natural gas pipeline permitting process, which unfortunately often results in considerable delays in getting important projects off the ground.

The Natural Gas Pipeline Permitting Act would effectively address this problem by authorizing FERC to enforce approval deadlines subject to other Federal agencies involved in the permitting process.

It is evident that we have enough natural gas to meet America's growing energy needs for generations to come, which is a blessing; however, many parts of the country do not have the necessary pipeline infrastructure to meet the rise in demand. Many more pipeline projects will be needed to achieve that capacity.

Gas pipeline projects create high paying jobs and generate significant economic activity. On top of that, tax revenue generated by natural gas production comes at a time when States and local communities need it most. In 2011, the Pennsylvania Department of Revenue reported that companies engaged in natural gas drilling activities paid more than $1.1 billion in State taxes since 2006. Last year nationwide production and transportation of gas added $62 billion to Federal and State government revenues, and it could elevate to $111 billion by 2020.

I have seen these economic impacts up close over the past few years in my home State of Pennsylvania. In 2008, I employed about 250 people. I currently employ about 450, about a 20 percent increase per year. We are constantly hiring and training new employees to meet our project needs. In fact, on a recent project, we had to add about 60 more people to the job because the schedule compressed due to permitting issues.

Economic benefits that accompany natural gas pipeline projects aren't limited to hiring workers. Last year my company purchased an additional $16 million worth of trucks and equipment, and I can honestly attribute all of this to the recent boom in natural gas production and transportation.

I have had an opportunity to see firsthand both the economic and social impact of natural gas development. We have also witnessed

many problems that occur when permits are delayed. This includes layoffs, equipment being idled and negative impacts to property owners.

I would like to point out that our company is an opportunity to work in a vast variety of industries with many different—and with many different government entities. I have never seen an industry like the gas industry. Its commitment to the environment and to doing projects the right way is unparalleled. They spend the money and dedicate the resources necessary to address environmental concerns and build safe pipeline systems that meet the latest and highest standards. I have had an opportunity to be part of this, and I am very proud of it.

Unfortunately, important pipeline projects are often stalled because of extended reviews while they acquire Federal and State permits. Permit delays are a big problem. We live this almost every day, often resulting in missed in-service dates and increased project costs. My company is currently experiencing permit delays on several projects, one of which we were not able to obtain a permit for the last 8,000 feet of a project. That project ended up being delayed and in all likelihood will be rebid.

A recent study conducted in Pennsylvania determined that permit delays are averaging 150 days and most of them are for minor wetland and stream crossings. The bottom line is that delays in acquiring pipeline permits regularly cause downstream delays, which in the end impacts the consumer.

Understanding the significant job creation and the economic activity that result from gas pipeline projects, DCA strongly supports legislation to streamline the permitting process.

I appreciate the opportunity to appear before you this morning and look forward to answering any questions you may have.

Mr. WHITFIELD. Thanks very much, Mr. Paris.

[The prepared statement of Mr. Paris follows:]

The following is a summary of a written statement submitted by Alex Paris of Alex E. Paris Contracting, Inc. on behalf of the Distribution Contractors Association (DCA) before the House Committee on Energy and Commerce Subcommittee on Energy and Power at a subcommittee hearing June 9, 2013. The hearing focused on the Natural Gas Pipeline Permitting Reform Act (HR 1900). DCA represents contractors, suppliers and manufacturers who provide install, replace, and rehabilitee natural gas pipelines, water and wastewater infrastructure, as well as fiber optic, cable and duct systems in communities across the country.

Highlights of Testimony

It is evident that we have enough natural gas to meet America's growing energy needs for generations to come. However, many parts of the country do not have the necessary pipeline infrastructure to meet the rising demand – a significant number of pipeline projects must be approved and initiated to achieve that capacity. America will need significant increases in its natural gas infrastructure to meet this demand. Because supply from traditional to unconventional natural gas sources continue to be the key driver of pipeline construction, all regions with growing unconventional production will experience a higher proportion of infrastructure development.

Unfortunately, the current pipeline permitting process often causes considerable delays in getting important projects off the ground. The Natural Gas Pipeline Permitting Act (HR 1900) would effectively address this problem by authorizing the Federal Energy Regulatory Commission (FERC) to enforce approval deadlines subject to other federal agencies involved in the permitting process.

Gas pipeline projects create high-paying jobs, generate significant economic activity and expand the local tax base. With every $1 billion invested, hundreds of thousands of workers are employed to explore, produce, transport and distribute natural gas, and the tax revenue is generated by the natural gas phenomenon comes at a time when states and local communities need it most.

Economic benefits that accompany natural gas pipeline projects aren't limited to hiring workers. Millions of dollars in new equipment sales can be attributed to the recent boom in natural gas production and transportation.

Unfortunately, important pipeline projects are often mired with extended reviews while they acquire federal and state permits, grants of rights-of-way and approvals from various federal, state and local agencies. These delays often result in missed in-service dates and increased project costs, and hamper the vast economic benefits that accompany pipeline construction.

Mr. Paris will describe several examples of natural gas pipeline projects his company is working on where delays in acquiring permits have forced to demobilize equipment, displace workers, and threaten entire projects. Further, many projects are not put out to bid until all permits have been received, causing unpredictable work schedules which lead to increased costs all around.

DCA supports legislation to streamline the permitting process and get these important projects off the ground. FERC is generally effective in reviewing applications for permission to build pipelines but lacks the authority to enforce permitting deadlines for other federal and state agencies. HR 1900 would address that by providing that authority and establishing deadlines for approval of these permits. DCA supports quick consideration and passage of the legislation.

Written Statement for the Record

Alex Paris
Alex E. Paris Contracting Company, Inc.

On behalf of

Distribution Contractors Association

Before the

SUBCOMMITTEE ON ENERGY AND POWER

COMMITTEE ON ENERGY AND COMMERCE
U.S. HOUSE OF REPRESENTATIVES

Regarding

"Natural Gas Pipeline Permitting Reform Act"

July 9, 2013

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

My name is Alex Paris, and I am President of Alex E. Paris Contracting Company. Our main office is in Atlasburg, Pennsylvania which is located in southwestern part of the state. My company performs a variety of services in the Mid-Atlantic region, including gas pipeline construction, underground utilities site development, landfill construction, trenchless technology, mechanical piping, equipment installation, and a broad range of other construction services. We work on many gas pipeline projects in the Marcellus and Utica shale plays in Pennsylvania, West Virginia, and Ohio respectively. Last year we installed over 350,000 feet of gas pipe. Since the development of the shale plays in our area we have had to increase our employee base dramatically as well as purchase a substantial amount of additional equipment.

While we perform a significant amount of "midstream" work, mainly pipeline installation from the well to a treatment facility or distribution system, we also work on gas distribution pipeline systems. I am here today on behalf of the Distribution Contractors Association. DCA represents contractors, suppliers and manufacturers who provide install, replace, and rehabilitate natural gas pipelines, water and wastewater infrastructure, as well as fiber optic, cable and duct systems in communities across the country.

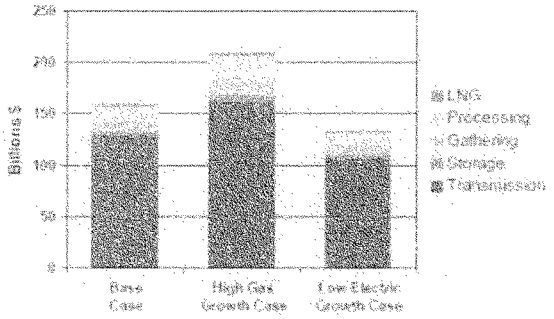
I am pleased to speak with you this morning about the natural gas pipeline permitting process, which unfortunately often results in considerable delays in getting important projects off the ground. The Natural Gas Pipeline Permitting Act (HR 1900) would effectively address this problem by authorizing the Federal Energy Regulatory Commission (FERC) to enforce approval deadlines subject to other federal agencies involved in the permitting process.

Pipeline Capacity must be expanded to meet Demand

It is evident that we have enough natural gas to meet America's growing energy needs for generations to come. According to the American Gas Association, natural gas serves more than 65 million homes; five million businesses such as hotels, restaurants, hospitals, schools and supermarkets; 190,000 factories; and 1,900 electric generating units. Currently there are more than 2.4 million miles of pipeline of varying sizes and pressures that transport natural gas from the natural gas wellhead to more than 177 million people across America.

However, many parts of the country do not have the necessary pipeline infrastructure to meet the rising demand – a significant number of pipeline projects must be approved and initiated to achieve that capacity.

In 2009, the Interstate Natural Gas Association of America (INGAA) Foundation released a study that found that the U.S. and Canada will need 28,900 to 61,600 miles of additional natural gas pipelines through 2030. According to *Pipeline and Gas Journal*, "new infrastructure is needed throughout the U.S. and Canada and not just to move natural gas across long distances between regions. All regions will need natural gas infrastructure to serve growing demand and/or shifts in demand. Even regions with mature producing basins will continuously need some additional development. Since shifts in supply from traditional to unconventional sources have been, and are projected to continue to be the key driver of pipeline construction, regions with growing unconventional production will experience a higher proportion of infrastructure development."



Billion $ in Natural Gas Pipeline, Storage, and Gathering Infrastructure, 2009-2030
(Source: Pipeline and Gas Journal)

INGAA projected that through 2030 investments from $133 to $210 billion in infrastructure will be needed over the next 20 years (between $6 and $10 billion per year), mainly to attach increased domestic natural gas production from unconventional shale basins and tight sands to the existing gas pipeline network. Market growth from the electric generation and industrial sectors and potential to connect LNG supplies to the grid was also expected be key drivers for additional investment, according to the study.

Extensive Economic Benefit

Gas pipeline projects create high-paying jobs, generate significant economic activity and expand the local tax base. It is estimated that 625,000 workers are employed to explore, produce, transport and distribute natural gas, and industry studies have indicated that every $1 billion invested in underground infrastructure creates up to between 25,000 and 30,000 jobs and greatly increases demand for products and services in other industries. According to IHS Global, the current unconventional gas boom supports close to two million jobs across a broad chain of supply, and expected to support up to three million jobs by 2020.

The tax revenue generated by the natural gas phenomenon is remarkable and comes at a time when states and local communities need it most. In 2011, the Pennsylvania Department of Revenue reported that companies engaged in and related to natural gas drilling activities in my state had paid more than $1.1 billion in state taxes since 2006. Last year, production and transportation of natural gas production nationwide added $62 billion to federal and state government revenues, a number that could elevate to $111 billion by 2020.

I've seen these economic impacts up close over the past few years in my home state of Pennsylvania. In 2008 I employed between 220-250 employees. Since then my company has seen an average annual growth of around 20 percent, and I now employ approximately 450 people. We are constantly hiring and training new employees to meet our project needs. In fact, on a recent project we had to add 60 more workers to an ongoing project because the schedule compressed due to permitting issues.

Recognizing the incredible employment opportunities in Pennsylvania, it's not surprising that in 2012, Washington County in Southwest PA enjoyed a lower unemployment rate than any other county in the United States.

Economic benefits that accompany natural gas pipeline projects aren't limited to hiring workers. Last year my company purchased an additional $16 million in new trucks and equipment, and I can honestly attribute all of this to the recent boom in natural gas production and transportation. Our company has been operating at a high rate of capacity since 2008 when the first Marcellus wells were being drilled. We have had an opportunity to see firsthand both the economic and social impact of the shale development. We have also been a witness to the many problems that occur when permits are delayed.

This includes layoffs, equipment being idled, and impacts on property owner. I've also seen companies move into our area to preform pipeline work and found the issues with permitting and resulting delays too much to deal with and opted to go elsewhere.

I would also like to point out that our company has had the opportunity to work in a vast variety of industries and with many government identities. I have never seen an industry like the gas industry. Its commitment to the environment and to doing projects the right way is unparalleled. They spend the money and dedicate the resources necessary to address environmental concerns and build safe pipeline systems that meet the latest and highest standards. I have had an opportunity to be part of this and I am very proud of it.

Delays in Permitting Process Impact Midstream and Downstream Operations

Unfortunately, important pipeline projects are often mired with extended reviews while they acquire federal and state permits, grants of rights-of-way and approvals from various federal, state and local agencies. These delays often result in missed in-service dates and increased project costs, and hamper the vast economic benefits that accompany gas pipeline construction.

My company is currently experiencing delays in obtaining permits on two key projects where we encounter stream crossings. In one project, we have not received all permits to initiate an additional 8,000 foot steel pipeline in Staltsburg, PA. We had completed the first five miles of the project, but because all permits were not able to be obtained in a reasonable amount of time we were forced to demobilize our equipment and displace 30 of our workers. The delay has threatened the entire project because of missed opportunities to negotiate pricing and at this point the project owner is likely put the remainder of the project out for rebid. All of this could have been avoided if all permits went through the approval process within a reasonable timeframe.

On another segment for the same customer we are currently being forced to significantly alter operations while installing a high-density polyethylene water line in Majorsville W.V. to supply water to a well site. Because the stream crossing permits have not been received, we had to simply lay the water line above ground and delay installation until we receive the necessary permits. This will inevitably increase the cost of the project, and depending on when the permits arrive, will cause future scheduling problems.

A recent study done in Pennsylvania determined that permit delays are averaging 150 days and most of these permits are for minor stream and wetland crossings. The cost of this is high and other impacts are far reaching.

Depending on the owner, many projects are not put out to bid until all permits have been received, causing unpredictable work schedules which lead to increased costs all around. The bottom line is that delays in acquiring pipeline permits regularly cause downstream delays, from gathering and compression systems through the treatment process to transmission and distribution pipeline transportation.

Providing FERC Needed Authority

The Energy Policy Act of 2005 included several provisions aimed at improving the pipeline permitting process by allowing closer coordination between state and federal agencies. FERC was designated as the "lead agency" for natural gas infrastructure involved in interstate commerce. This provided FERC with the authority to set timelines for other permitting agencies to act.

Unfortunately, despite the best intentions of the law, pipeline permitting today takes longer than it did when the 2005 bill was being debated. The root of the problem is that the permitting deadlines authorized by the 2005 law do not provide FERC an effective method to enforce those deadlines on other agencies. Providing for automatic approval if an agency does not respond by the deadline, as provided in HR 1900, would be a significant step in the right direction.

Conclusion

Understanding the significant job creation and economic activity that result from gas pipeline projects, DCA supports legislation to streamline the permitting process and get these important projects off the ground. While FERC is generally effective in reviewing applications for permission to build pipelines, the lack of authority to enforce permitting deadlines for other federal and state agencies is detrimental to the process. HR 1900 would address that by providing that authority and establishing deadlines for approval of these permits, and we support quick consideration and passage of the legislation.

I appreciate the opportunity to appear before you this morning, and I look forward to answering any questions you may have.

Mr. WHITFIELD. And, Mr. Santa, you are recognized for 5 minutes.

STATEMENT OF DONALD F. SANTA, JR.

Mr. SANTA. Thank you. Good morning, Chairman Whitfield, Mr. McNerney, and members of the Subcommittee on Energy and Power. 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.

Thank you for the opportunity to share INGAA's views on H.R. 1900, the Natural Gas Pipeline Permitting Reform Act. INGAA supports H.R. 1900. If enacted, this bill would perfect the provisions of the Energy Policy Act of 2005 that were intended to provide the Federal Energy Regulatory Commission with the ability to coordinate the actions of other Federal and State agencies that have authority under Federal law to issue permits required for the construction of natural gas pipelines.

As part of this coordination, EPAct 2005 authorized FERC to establish deadlines for action by other Federal and State agencies that must issue permits in connection with a FERC-approved pipeline. EPAct 2005, however, did not provide FERC with any authority to enforce such deadlines. Further, the remedy provided in that law, a lawsuit against the offending agency brought in a Federal appellate court by the pipeline applicant, has proven to be ineffective.

H.R. 1900 would remedy this problem by requiring that the Federal or State permitting agency must act within 90 days after FERC issues its environmental impact statement or environmental assessment pursuant to NEPA. 90 days is the period prescribed by the regulations adopted by FERC to implement EPAct 2005. Should the permitting agency fail to act within the 90 days, H.R. 1900 would have the license, permit or approval go into effect by operation of law.

This change in the law is needed because, notwithstanding the intent of EPAct 2005, it now takes longer than before for an applicant to receive the permits and approvals required to commence constructing a FERC-approved pipeline.

In particular, a report prepared by Holland & Knight and sponsored by the INGAA Foundation examined a sample of 51 pipeline projects from both before and after EPAct 2005. The report found more than a threefold increase in the permits that were delayed more than 90 days after the issuance of the FERC NEPA document and a more than fivefold increase in the permits that were delayed for yet another 90 days beyond the initial 90-day period. The report found that reasons for the delays varied and could be addressed partly by process improvements on the part of both the permitting agencies and the applicants. Still, the top recommendation from the report was schedule enforceability.

INGAA's goal in supporting H.R. 1900 is to encourage permitting agencies to make timely decisions by providing a real enforcement mechanism. With this enforcement, as contained in H.R. 1900, INGAA believes that permitting agencies will be strongly motivated to make timely decisions.

Why should Congress care about the timely permitting for natural gas pipelines? Congress should care because pipelines are critical to enabling U.S. consumers to take advantage of the substantial new domestic natural gas supplies.

The central role of natural gas in our Nation's energy future was noted by President Obama in his June 25th speech at Georgetown University. The President said, in part, quote, "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 energy but it can also reduce our carbon emissions," close quote. The President went on to say, quote, "The bottom line is natural gas is producing jobs. It is lowering many families' heat and power bills," close quote.

Without pipelines, natural gas supplies remain in the ground, and consumers in capacity-constrained markets experience greater price volatility and higher-than-average natural gas prices.

Mr. Chairman, members of INGAA thank Representative 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.

Mr. WHITFIELD. Well, Mr. Santa, thank you.

[The prepared statement of Mr. Santa follows:]

TESTIMONY OF
DONALD F. SANTA
PRESIDENT AND CHIEF EXECUTIVE OFFICER
THE INTERSTATE NATURAL GAS ASSOCIATION OF AMERICA

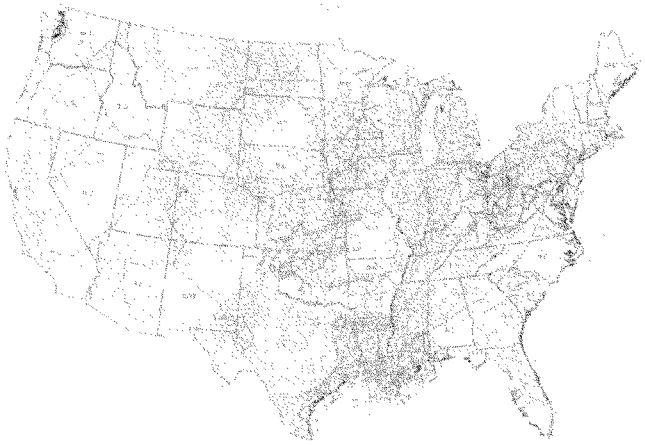
BEFORE THE
SUBCOMMITTEE ON ENERGY AND POWER
COMMITTEE ON ENERGY AND COMMERCE
U.S. HOUSE OF REPRESENTATIVES

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 (EPAct 2005) provided FERC with additional authority in the permitting and approval process. First, section 313 of EPAct 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, EPAct 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 EPAct 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 EPAct 2005 to permitting times post-EPAct 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 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. 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 EPAct 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.

Mr. WHITFIELD. And thank all of you for your testimony. As I said in the beginning, we appreciate your being here to give us your views on H.R. 1900.

I think it goes without saying that this is a particularly important piece of legislation, and I know all of us will have questions. And I recognize myself for 5 minutes of questions.

We have all talked about the abundant natural resources that we have in America with these recent discoveries. And we do know that there is going to be an increase in application numbers for gas line pipelines. And it appears that, on this panel, two of you are probably opposed to this—are opposed to this legislation, and three of you, I am assuming, support this legislation.

And one of the key issues here is this schedule enforceability. And, Mr. Santa, in your testimony, you gave an example of the Corps of Engineers and the Natural Resources Conservation Service on a water permit. You gave a good example of a permit that was delayed an unreasonable length of time, in my view. And I want you to comment on it, because that is the kind of real-life situation that we deal with.

Now, 90 percent of these permits are either approved or disapproved within the time constraints of existing law. But there are real consequences, certainly on both sides of the issue, when a permit is delayed. And in the example you gave, it increased the cost of this project by 6 percent, I believe.

Would you elaborate just a little bit on that project and the delay caused by the Corps of Engineers and the Natural Resources Conservation Service?

Mr. SANTA. It was a relatively short project, 20 miles of pipeline. I believe it was relatively small-diameter pipe. But nonetheless, notwithstanding the FERC process having worked very well, dealing with the Corps and the other agency added quite a bit of delay. That added cost for the applicant, likely cost for those who were the customers of the pipeline. To the extent the pipeline was going to provide additional gas supplies to that community, it delayed the benefit of that.

I think it is, as you said, Mr. Chairman, an example of the type of a delay that this bill would provide a powerful incentive for the agencies to act in a timely manner so that these facilities could be built.

Mr. WHITFIELD. Now, can any of you think of a better way to encourage these agencies that have these 90 days to either approve or deny a permit, can you think of a better enforcement mechanism than what Mr. Pompeo sets out in his legislation? Is there some other way that it could be done to encourage timely action?

Ms. VAN ROSSUM. Good morning. This is Maya van Rossum.

With all due respect, there already is an opportunity. In the 2005 Energy Protection Act, there is the opportunity to go to the courts and seek a remedy through the courts. The fact that even in INGAA's own report they document that the pipeline companies have chosen not to avail themselves of this remedy does not mean that it is not a fair, adequate, full, complete, and available remedy for them.

And, in fact, going to the courts is also the remedy that is available to environmental organizations and community organizations

and citizens and residents who feel that they have been disenfranchised by the process, perhaps for different reasons.

So just with all due respect, I would say that there is a remedy available to the pipeline companies. They simply have chosen not to avail themselves to take advantage of it.

And I would say, if they were to pursue these legal actions through the decisions that come out of each of these court cases, precedent would be set. And it would be the precedent that would mandate quicker or shorter, more thoughtful or less thoughtful decision-making by the agencies.

But that is really the path forward, we believe, rather than legislation that takes away the rights of the agencies and the community to fully participate.

Mr. WHITFIELD. Has your agency ever filed a lawsuit to stop a project?

Ms. VAN ROSSUM. We have filed—we are engaged in legal action, because we are actually concerned about the deficiency of the reviews and permitting that have been undertaken by FERC and by the State of Pennsylvania for the Northeast Upgrade Project pursued by the Tennessee Gas Pipeline Company.

So it is not a legal action about stopping a project. It is a legal action about making sure that the law has been complied with and that the project only moves forward in a safe manner for the environment and——

Mr. WHITFIELD. So you have a lawsuit against FERC today?

Ms. VAN ROSSUM. Yes, we do.

Mr. WHITFIELD. OK.

Ms. VAN ROSSUM. We have a legal action in the courts today.

Mr. WHITFIELD. My time has——

Mr. SANTA. Could——

Mr. WHITFIELD. Oh, yes, Mr. Santa?

Mr. SANTA. Could I respond on the point about the effectiveness of the legal remedy provided under the law today?

As we note in the testimony, it is somewhat self-defeating for a pipeline to go and sue the agency from which it is seeking to get a favorable permit.

But probably more importantly, the one instance in which a pipeline company availed itself of the appellate rights provided under EPAct 2005 I think illustrates that. With the Islander East project, it sought review of the denial of a clean water permit by the State of Connecticut, so not inaction by the State but nonetheless denial of a permit.

It took Islander East 1 year and 3 months to get review from the Second Circuit Court of Appeals, to get a decision remanding the case to the Connecticut DEP. It took Islander East a total of 2 years and 10 months and two more trips back to the U.S. Court of Appeals for the Second Circuit to get the final word, which ultimately was upholding the State on denying the permit.

So I think with that as the track record of utilizing the appellate process under EPAct 2005, you can see why pipelines have not been eager to do this.

Mr. WHITFIELD. Thank you, Mr. Santa.

Mr. McNerney, you are recognized for 5 minutes.

Mr. MCNERNEY. Well, thank you, Mr. Chairman.

This has been a pretty beneficial hearing. I think it has brought out that there are legitimate concerns on both sides of this piece of legislation. So I appreciate the testimony.

In my mind, the bottom line is this: Are firm deadlines going to be beneficial overall, or are firm deadlines going to be detrimental, taking into account public safety and the possible denial of what would be legitimate projects?

So I would like to just acknowledge that this is not an easy question to answer "yes" or "no." I think we should take time and look at this in a more deliberate manner than just bringing it up for markup this afternoon. That is my opinion, Mr. Chairman.

Mr. Paris, you have mentioned what you referred to as permit delays. Has your business participated in the pre-permitting process at FERC, and has that been beneficial?

Mr. PARIS. No. As a contractor, we typically wouldn't be involved in that. The pipeline company would be.

Mr. MCNERNEY. So——

Mr. PARIS. The permit delays are generally within the pipeline company that we are working for the constructing—that we are constructing the line for.

Mr. MCNERNEY. Well, I would just recommend that that approach be taken. It might ease that, sort of, burden that you are facing.

But this bill does set a 12-month deadline on FERC to decide applications for gas pipeline certificates. There is no flexibility, there are no exceptions. FERC has to decide every application within 1 year. During that year, the entire environmental review required by NEPA would have to be completed.

Ms. Rossum, do you think that 12 months is enough time to complete those kinds of permits on complex projects?

Ms. VAN ROSSUM. In terms of NEPA, where the 12 months in H.R. 1900 would apply, I absolutely feel that there are numerous projects where 12 months would not be appropriate, especially if you are not assuring that the clock begins at the time when there is an administratively complete application before the agency.

In terms of the State agencies and the Federal agencies, the 90-, potentially 120-day time frame, again, the volume of information and analysis that has to be undertaken to review a project, to put in place the conditions, to collect the data and the research of geological resources and water bodies that will be impacted and what kind of ENS control, it is a very time-intensive process, and I do not believe those time frames are enough.

Mr. MCNERNEY. Thank you.

Well, I mean, it is clear that we must remember that doing a good job reviewing a proposed natural gas pipeline could have serious impacts. And we are not only talking about environmental impacts, but I don't live too far from the San Bruno explosion that happened a few years ago in the San Francisco Peninsula. There are very serious consequences with engineering review deficiencies, as well.

And I would like to see if any of you, Mr. Markarian in particular, have concerns about possible consequences of bad engineering and environmental reviews if there is an imposed deadline that doesn't permit the agencies to do sufficient work.

Mr. MARKARIAN. Well, I think it is critically important that we do the things we need to do correctly and we not squander this great opportunity to advance our Nation forward on the back of natural gas.

However, I do think that a year's time is enough if we—I think we all worry about what government does well and efficiently. And I think we have to raise the bar and set expectations that things need to be done according to a schedule. And if they can't, a rejection, a "no," is certainly understandable. This will produce certain noes, and I think that is favorable to an interminable "maybe."

Mr. MCNERNEY. Well, I guess I don't disagree. But, I mean, I think the question is, imposing these strict deadlines, is that going to be beneficial or not? It is not clear to me that we can answer that question in one hearing. It is not clear to me that we should move forward with a markup today until we get some better answers on these questions.

With that, I will yield back.

Mr. WHITFIELD. Thank you, Mr. McNerney.

Mr. Pompeo, you are recognized for 5 minutes.

Mr. POMPEO. Thank you, Mr. Chairman.

And I thank all the witnesses for coming out and testifying today.

I want to just keep going in the direction you were headed, Mr. Markarian. You talked about the risk of "no." We have heard from Members today that there is this risk that the agencies will just say "no" because they ran the clock out. We have heard from Ms. van Rossum and Mr. Kessler of that risk.

But all the folks who have to go out and raise capital and operate in this environment seem to think that that risk is worth taking, because it creates certainty for them so they can deliver a high-quality product at a low cost and good value to their customers.

So you all got to the place that INGAA, that says, hey, that risk, which I think is low but, nonetheless, out there—how did you get there? How did you get comfortable that that is better off for you and for your customer service area than this risk of just being hung out for an indefinite period of time?

Mr. MARKARIAN. Because planning is critical, and meeting the expectations of a plan is critical. And let's not forget, we have done great things as Americans. And when we work together, we—what your bill does is it ups our game. It says, everybody, whether we are concerned about the environment or safety or getting things done, everybody ups their game and commits to a time schedule. And you actually have a little bit of wiggle room, too, in the bill, that if it can't be done in a year, you have some extra time.

So I think what we are focused on—we have been through some tough times, and we are focused on a gift that we can take advantage of, work together, up our game, make a commitment to each other that we are going to do it within a time limit, and then stick to it.

And you know what? If we have to work a little harder, we have to work weekends, we have to work nights, we have to work a 20-hour day, if that is what it takes, that is what we need to do. Because I really do believe the promise of this resource is that great.

Mr. POMPEO. And, Mr. Markarian, you have another obligation, you have a service area obligation to provide reliable—you have agencies that are requiring you to meet a certain level of reliability and capacity and are constantly chasing you on rate issues, as well.

I assume you think that H.R. 1900 would improve your capability to meet those other various commitments that your company has, as well.

Mr. MARKARIAN. We do.

Mr. POMPEO. Mr. Santa, does this risk of "no" due to timeline—Ms. van Rossum was talking about short-circuiting—I am not sure what the language was, but her concern was that the agencies would just say "yes" when they hadn't really completed the task. Do you think that is the likely administrative response to H.R. 1900?

Mr. SANTA. I think they have the potential, as has been noted, to say "no." And I also think that when we are talking about the timelines here, while there is a focus on the 90 days and the 30-day extension, let's remember there is all that period before FERC issues the NEPA document.

In that GAO report, they noted that for the projects that go through the pre-filing—those are the more complex, longer projects—typically, it is 558 days between initiation of pre-filing and the FERC certificate order. That is over a year and a half. Even if you back out and assume FERC takes 90 days between the EIS and the certificate order, that is still a year and 3 months of dialogue and engagement that is going on between the applicant, stakeholders, the resource agencies. So, number one, I think there is the time to make those decisions.

And, also, I think, quite frankly, if those agencies are true to their statutory mandates and, you know, what Congress has asked them to do, if they need to say "no," they will say "no." And as you noted, as Mr. Markarian noted, that is a risk that I think the industry is going to take. It is greater accountability on the part of the agencies, but also, quite frankly, it requires greater accountability on the part of the pipeline industry to file good applications.

Mr. POMPEO. Right. And my expectation would be that if that were to be the case, that we started to get these noes, I think industry would respond to that in an appropriate way. They would be more complete, they would be more careful, they would get these things done in a more timely fashion. They are not going to sit there and allow administrative noes to be made simply because of a failure on the part of the applicant.

Mr. SANTA. I don't think their shareholders would tolerate that.

Mr. POMPEO. I think that is probably right, as well.

Thank you very much, Mr. Chairman. I yield back the little bit of time left.

Mr. WHITFIELD. The gentleman yields back.

At this time, I recognize the gentleman from New York, Mr. Tonko, for 5 minutes.

Mr. TONKO. Thank you, Mr. Chair.

Mr. Kessler, you indicate in your testimony that, in spite of your organization's work, we continue to experience major pipeline failures.

In response to my question earlier to Mr. Moeller, he indicated that projects going through densely populated areas are more complex than those through more open areas. In an abbreviated process, are we likely to put more people at risk, given those situations?

Mr. KESSLER. Absolutely.

Mr. TONKO. And what role do safety considerations play now in pipeline sitings?

Mr. KESSLER. Not enough, from our perspective. But, you know, when you are making decisions about routing, whether it is through urban areas or high hazard areas like earthquake zones, flood zones, things like that, it is clearly a consideration.

I also think it is interesting that the industry which has been very reluctant, in fact resistant, to mandatory deadlines for safety inspections, who has argued against one-size-fits-all for safety inspections, suddenly wants a one-size-fits-all mandatory deadline for permitting. So it comes across a little strange to me.

Mr. TONKO. Yes.

To what extent are concerns about safety involved in public opposition to pipeline projects? You know, you talk about this one-size-fits-all for inspection. Is the public aware of that? And what concerns—again, are safety involved with public opposition to proposals?

Mr. KESSLER. You know, public opposition occurs for a number of reasons, ranging from true safety or environmental concerns to just a lack of familiarity with pipeline and energy production. As we get more energy production in New York, Maryland, where I live, and other nontraditional production States, you are going to have a level of resistance to projects based upon a lack of familiarity.

But you also have them based upon safety and environmental concerns, depth of coverage for burial of pipelines through streams, running through earthquake zones, running through densely populated areas, and routing matters when you do these things.

Mr. TONKO. Thank you.

Ms. van Rossum, we have heard the environmental review process response mentioned several times as the source of delays in approval of pipeline projects. Are communities' drinking water resources, agricultural and fishery resources part of the environmental review process? Are we only talking about habitats and areas of low public use?

Ms. VAN ROSSUM. Yes, when we are talking about the National Environmental Policy Act, we are not looking just at the ecological environment, we are looking at the human environment. So we are, in fact, looking at drinking water supplies, the quality of the air, the level of noise pollution that perhaps a compressor creates next to residential communities, to a wide variety of issues.

So we are concerned about the critters in the forests, but we are very much looking at the implications of what happens to the critters, to the forests, to the water, for what it means to the health, the safety, and the tremendous level of jobs that benefit people as a result of them.

Mr. TONKO. OK. Thank you.

And is an expedited process likely to increase or reduce public confidence and/or support for pipeline projects, in your opinion?

Ms. VAN ROSSUM. I think it will absolutely decrease it. I think there are already concerns about the integrity of the process, because there is so much chumminess, frankly, between the regulators and the regulated when it comes to pipeline projects. And that already has raised a level of concern.

And I think if we start imposing artificial deadlines and reducing the opportunity for the public to participate, which a 90-day review period absolutely does, we will absolutely be diminishing public confidence as well as the process as a whole.

Mr. TONKO. OK. Thank you very much.

Mr. Chair, I yield back.

Mr. WHITFIELD. I think Mr. Kessler wanted to say something.

Mr. TONKO. Oh, I am sorry. Mr. Kessler?

Mr. KESSLER. I just wanted to add to my answer before, that one of the reasons for the protest could involve the potential taking of private lands. And those landowners should have a right to process and to be able to argue against a particular route that would affect them.

Mr. TONKO. OK. I thank you for that added information.

And, with that, Mr. Chair, I yield back.

Mr. WHITFIELD. At this time, I recognize the gentleman from Texas, Mr. Olson, for 5 minutes.

Mr. OLSON. I thank the chair.

And good afternoon and welcome to the witnesses.

And before I get started with my questions, I want to share with you all a real-world story that happened about 48 hours ago about the importance of a thorough and expeditious permitting process to build new pipelines.

As I said, 48 hours ago I was at my church having a glass of water. I was approached by one of my fellow church members about the need to grow the pipeline infrastructure from the Eagle Ford Shale play in south-central Texas to the refineries along the Texas Gulf Coast. He works downstream for a power generator, natural gas power generator. And his legitimate concern was that our current pipeline infrastructure would hurt his business. He thought the natural gas price would increase because of artificially limited supply because of a lack of pipelines. I think that is a very legitimate concern.

So my first question is for you, Mr. Markarian. As you mentioned in your testimony, NextEra has an extremely clean and diverse fleet. You have gas, nuclear, coal, and wind. And I am very happy to have you operating in Texas. On behalf of the people of Texas 22, I encourage you to build new plants in the Lone Star State.

But, of course, one key element of your fleet is your gas-fired plants, which not only provide reliable power themselves but also help back up the highly variable wind. And when I say wind and power, I want to remind my colleagues that Texas is the number-one producer of wind in America—number one.

We discussed in this committee how reliability and access to fuel is different for coal plants or nuclear plants, and as it is for natural gas plants. So can you discuss the differences between coal, nuclear, and natural gas plants for reliability?

And is it fair to say that an efficient regulatory process for pipeline approvals like H.R. 1900 is key to keeping the lights on in many parts of our country?

Mr. MARKARIAN. It is key.

We actually have two giant gas plants, Forney and Lamar, in Texas, in Mr. Hensarling's district.

We believe we need all of these fuels. We are the Saudi Arabia of coal. We have a gift now of natural gas, by the way, made possible by the support of this Congress for policy that invested in new technologies that ultimately yielded the ability to harness this.

All forms of power need backup. And so we believe at NextEra we need all forms of energy and should encourage the development of all of it.

And, as far as Texas, it is a great place to do business.

Mr. OLSON. Yes, sir. You like that State income tax rate, right? Pretty close to zero.

Mr. MARKARIAN. Right.

Mr. OLSON. You got it. Yes, sir.

How would you describe the overall current regulation? Would you say it is efficient?

Mr. MARKARIAN. I do. Again, as I said, you know, there are rules that apply to every one of us in this room and outside this room in this town. And if we follow the rules that are set up and work together to try to do things according to the timelines set forth, I think we all win. And, on the contrary, if we don't work together, we all lose. We don't harness the electricity we can from natural gas, we don't sell it, we don't pull it up, we don't benefit the economy from it. So I think it behooves us to all work together.

Mr. OLSON. Yes, sir. And my State faces a power crisis. Supposed to bring new power plants on line sometime next year, too. If we have another heat wave like we had August of 2011, lights will go out all over the State.

My final questions are for you, Mr. Santa. I mean, as you mentioned in your testimony, pipelines are multibillion-dollar investments. And once these projects are undertaken, the timing becomes very important, because investors have expectations as capital is tied up, like Mr. Pompeo alluded to. The shippers who produce gas and the end-users who consume it need certainty for when that supply and demand can meet up.

Can you discuss some of the ways in which delays to pipeline projects can hurt everyone up and down the pipe chain, from the getting it out of the ground to the refinery, the whole supply chain? It is just like my fellow church member, worried about downstream, a power generating plant worried about a pipeline from the Eagle Ford Shale play.

Mr. SANTA. Yes, Mr. Olson. I think this is illustrated of what happens in the market when you have capacity constraints. This past winter in Boston, prices at one point got to $34 per MMBTU, while they were averaging a little above $4 in the rest of the country. That was largely due to pipeline constraints. So customers in that market were paying more because of pipeline constraints that were not relieved.

Similarly, upstream, if there are constraints that hinder a producer in getting their gas to the market, they will be forced to ac-

cept a lower price for that gas. That reduces their incentive to drill and to produce gas.

So the capacity constraints on the pipelines, the ability to relieve them in an efficient market-responsive manner, it not only affects the pipeline companies, it affects gas consumers across the board.

Mr. OLSON. Thank you.

I am out of time. I yield back.

Mr. WHITFIELD. The gentleman's time has expired.

At this time, I recognize the gentleman from California, Mr. Waxman, for 5 minutes.

Mr. WAXMAN. Thank you, Mr. Chairman.

The arbitrary deadlines established by this bill raise serious concerns, but the worst provision may be the one that automatically grants environmental permits for a pipeline. The project could be approved if an agency does not make a decision on the permit within 90 days of the issuance of FERC's environmental analysis.

The automatic permitting provision broadly applies to the Clean Air Act, the Clean Water Act, the Endangered Species Act, Coastal Zone Management Act, and the rights of way through Federal lands.

Under this bill, if an agency cannot complete its review of a permit application by the arbitrary 90-day deadline, then no one checks to make sure that the project won't have an adverse impact on the environment or public health; the permit is just magically issued.

These permits are detailed documents. They can include emission limits, technology or operating requirements, conditions to ensure that the environment is protected. Agencies need to figure out all of these details and then actually draft the permits.

Ms. van Rossum, what would it mean for a permit that might not even be written to automatically take effect if a deadline is missed? How would that work?

Ms. VAN ROSSUM. To be honest with you, I am not sure how it would work. I don't know what is the permit or the approval that would go into effect. Perhaps it is just the application the way the applicant submitted it, no matter how deficient the application material. So there is no clarity on that, frankly, the way the law is written.

But one thing I will say is that it is probably assured that we won't have the limitations in the document necessary to ensure that water protection laws, air protection laws, coastal zone management laws are met. And, as a result, those permits are eminently challengeable in the court. So it is going to draw us all into the courtroom.

Mr. WAXMAN. Let me give you a concrete permitting example to understand the impacts of this provision. What is involved with an Army Corps of Engineers review of a wetlands permit under Section 404 of the Clean Water Act, and why is this review important?

Ms. VAN ROSSUM. Yes, so the Army Corps is working to protect the health and the quality of the wetlands. Wetlands are vitally important for protecting water quality, including the quality of drinking water supplies, for soaking up waters that would prevent flooding and flood damages, for protecting ecological systems that are important for supporting wonderful ecotourism jobs and rec-

reational opportunities. So the work that the Army Corps does is beneficial to the wetlands, but it is beneficial to our community as a whole.

In order to undertake that review, they need to look carefully at the materials that have been submitted by the applicant to make sure that they are accurate. They need to go out in the field and do jurisdictional determinations. They need to collect information and data on the construction practices that are going to be used——

Mr. WAXMAN. What if they are just taking too long? We have a 90-day period, and they just haven't figured out to do all this in that period of time. What happens under this bill?

Ms. VAN ROSSUM. That is what is not clear to us, frankly. We don't know what happens. We don't know what is the document that goes into force and effect. Perhaps it is simply the application materials that the permittee has put in, whatever quality and information that may or may not have. It is really not clear what it means——

Mr. WAXMAN. Yes.

Ms. VAN ROSSUM. —to approve a nonexistent document.

Mr. WAXMAN. Mr. Kessler, what do you think? Is the Pipeline Safety Trust concerned about the safety implications of a host of permits automatically going into effect without any agency analysis or conditions?

Mr. KESSLER. Oh, absolutely, Mr. Waxman.

Look, we certainly would love to see the certification process be more efficient. We have no objection to that. But we don't think that a deemed approval or an undue denial of a permit is good public policy in any way, shape, or form. This is why we have agencies to actually look into these things.

I would note that this committee after 9/11, you will recall and Chairman Whitfield will recall, did extensive work, bipartisan, on nuclear safety. And we found that there was a 2-year backlog in FBI review of security——

Mr. WAXMAN. Well, what would be the——

Mr. KESSLER. —permits. And I don't think anyone argued that——

Mr. WAXMAN. Because you know what this committee is like and——

Mr. KESSLER. Yes.

Mr. WAXMAN. —the Member only has a limited amount of time, what if we have this automatic permit and then it results in damage to the environment and public health? What is this going to do to the public acceptance of interstate natural gas pipelines going through their community?

Mr. KESSLER. Oh, it is going to hurt them greatly, I think.

And, as I said, no one would have argued for a deemed approval of a security permit after 9/11 if it took longer than 6 months or a year. So, same thing with immigration. Even the most ardent supporter of open immigration wouldn't, I think, argue for a deemed approval of a green card.

Mr. WAXMAN. Thank you. My time has——

Mr. WHITFIELD. The gentleman's time——

Mr. WAXMAN. Oh, Mr. Chairman, I would like to ask unanimous consent that the technical analysis provided to us from the U.S. Army Corps of Engineers' perspective be put into the record, as well as the technical analysis by the Environmental Protection Agency.

Mr. WHITFIELD. Without objection.

[The information appears at the conclusion of the hearing.]

Mr. WAXMAN. Thank you.

Mr. WHITFIELD. At this time, I would like to recognize the gentleman from Virginia, Mr. Griffith, for 5 minutes.

Mr. GRIFFITH. Thank you, Mr. Chairman. I appreciate that.

I am intrigued. Ms. van Rossum, in answering one of Chairman Emeritus Waxman's questions, you were getting excited, as is a good thing to do when you are discussing the public events, and you indicated that one of the provisions of this bill would just draw us all into the courtroom, as if that were a negative thing.

And yet, earlier in the testimony, you indicated that that was the remedy for folks who had a problem with what was going on, that they could go into the courtroom and that that was a good thing, and they didn't need this bill and this remedy because they had the courts available to them.

And I am wondering if you could rectify the two. Is it good or is it bad to be pulled into the courtroom?

Ms. VAN ROSSUM. Well, it is always important to have the courts as an opportunity to remedy a real problem that exists. And so, if we find ourselves in a situation where the law is automatically approving documents that are nonexistent or are eminently deficient because the agencies did not have the opportunity to complete them, then, absolutely, the remedy is to go into courts.

But that is going to be a much more frequently required remedy than what we have in the current situation. We have had many, many——

Mr. GRIFFITH. Yes, ma'am, and I——

Ms. VAN ROSSUM. —testimony about how many applicants are approved——

Mr. GRIFFITH. —appreciate that. I don't think—I think the distinction, personally, is that it depends on whose ox is being gored. The courts are good when it is somebody else's ox, are bad when the courts are goring your ox. But when it is somebody else's ox, that is a great place to go.

Ms. VAN ROSSUM. No. It is about——

Mr. GRIFFITH. Let me——

Ms. VAN ROSSUM. —intentionally creating——

Mr. GRIFFITH. I don't have but so much time or I would love to get into a further discussion with you.

But I would ask you, Mr. Santa, earlier, in the previous panel, there was a lot of discussion about, well, we can make this happen if we only start the 12 months when there is a completed application. And I raised the concern that, yes, but when is an application completed, because can't that be a moving target?

Do you have those same concerns, Mr. Santa?

Mr. SANTA. I think there is some risk of that, Mr. Griffith, but I also think that it is something that if, you know, the committee

is looking at ways to respond to Commissioner Moeller's concern, certainly is worth further discussion.

Mr. GRIFFITH. But it shouldn't just be a blanket statement. There maybe ought to be some guidelines as to when there is a finished application——

Mr. SANTA. Oh, very much so. I think, in the interests of all concerned, there needs to be clarity as to what constitutes a complete application so that it can't be used as a way to game the system.

Mr. GRIFFITH. And it always work better when Congress dictates what that is, as opposed to leaving it to the administrative branch of government. Isn't that true, yes or no?

I will tell you it is "yes."

Mr. SANTA. OK.

Mr. GRIFFITH. Mr. Paris, do you want to make some comments on that point?

Mr. PARIS. Yes, I am from Pennsylvania, and I see the completed application process many times. Because we permits ourself, and we work for pipeline transportation companies that submit permits for—a lot of times, you will send the permit in for a review and ask if it is complete. They will send you a letter, "No, it is not complete. We are going to hold it. Here are the three things that aren't complete." You send those three things, and 2 months later here comes another letter saying, "Well, we also looked at it again, and this isn't complete." So you can get into basically a rat race on deeming what is a completed application.

So whatever is done here with this bill, that needs to be clearly defined, because the regulatory agencies can turn that into a nightmare. And I have been through that. I have seen that happen before.

Mr. GRIFFITH. And, Mr. Paris, I have to say that I have only been in office in Congress for 30 months, and I have had any number of complaints from my constituents about that very same problem.

Mr. Markarian, do you want to weigh in on that subject, as well?

Mr. MARKARIAN. It is important to build safely, environmentally sensitively, and get the job done all at the same time. But what we take comfort in, in terms of this bill, is it doesn't shortcut any reviews that are guaranteed to ensure any of those things.

Now, this process will produce yeses and noes, but it doesn't affect the substantive standards of environmental protection that are designed to protect Americans. It just means we have to get it done by a time certain. And that is why we are comfortable with it.

Mr. GRIFFITH. And I appreciate that. I also appreciate that your company is one of those that truly exercises all of the above when looking at production of energy in this country. And I do appreciate that.

With that, Mr. Chairman, I will yield back.

Mr. WHITFIELD. The gentleman yields back.

At this time, I recognize the gentleman from Texas, Mr. Green, for 5 minutes.

Mr. GREEN. Thank you, Mr. Chairman.

I assume the whole panel was here during the FERC testimony?

Mr. SANTA. Yes, sir.

Mr. GREEN. Just answer "yes" or "no": The testimony was that there is a 90 percent approval rating within the time frame that is the FERC rules right now? Is that correct?

Mr. MARKARIAN. That is what I heard.

Mr. GREEN. OK. Is that your experience, though, in filing for applications?

Mr. MARKARIAN. I wouldn't have any evidence to counter what we heard here today. My only point is we have to plan for the next 20, 25, and 30 years, when, I think it has been conceded, pipeline development is going to be ramped up significantly because the ability to harness gas is going to go in that same direction.

Mr. GREEN. Well, and I agree. But if it is 90 percent now—and, you know, there may be some unintended consequences of the legislation I am concerned of, including saying, well, we don't have the time, we just have to deny the permit.

And believe me, I understand, where I come from, the need for expansion of natural gas. Some of you may have heard. I have gone through Eagle Ford at night, and there is so much flaring there. One, environmentally bad, but also I know everyone who is drilling those wells would like to have a market for that gas. And so we need to expand it. I am not so sure, the way that it is drafted, this legislation will do it.

But the other experiences—Mr. Santa, do you agree, or INGAA, that 90 percent is what FERC is doing now?

Mr. SANTA. I have no reason to dispute it. We think that the FERC Office of Energy Projects does a good job.

However, the one point I would make in addition is that FERC's admirable record doesn't address the delays and the need to get all of the other permits from Federal and State agencies that are required before a pipeline can commence construction. And so the FERC record only answers part of the issues raised by Mr. Pompeo's bill.

Mr. GREEN. And I agree that that—but, you know, with this legislation, I don't know if FERC is going to be able to tell the Corps of Engineers or even EPA or even a State agency that—like I said, if a State has a unified application process, instead of having different States—in fact, I will probably get that from FERC, on how many States have that. I would assume Texas and Louisiana have some type of one-stop shopping for pipeline permits, just because we do them a lot. And maybe the States that are not—and I know somebody said something about, we are going to have pipelines in upper New York. You know, most of my drillers say, first, we need to get a permit to worry about a pipeline. And so we haven't had a permit in upstate New York on some of the success in the Marcellus Shale.

Mr. Santa, I appreciate you being here and worked for INGAA for years. And I recognize the need for additional capacity, particularly in my State and around the country. Namely, my concern, though, is the unintended consequences, namely the potential for agencies to deny permits simply on the grounds it lacks sufficient times for inadequate and legally defensible review or any other scenario if it deemed approved.

I would like to remind my colleagues and the majority, we did this once before and then last year when we required the President

to approve a pipeline within 60 days, or deemed it approved, and he denied it. I would worry that some of our pipelines that are so far down the road, because there may be a problem with getting a report back from some agency, would just say we will deny it and then starting over again. So that is my worry.

Mr. Santa, are you worried about the potential denials? And I know earlier in a question you said, if it is a "no," it is a "no." But what happens when they deny it? Filing a lawsuit virtually guarantees additional delay.

Mr. SANTA. Well, I think that, you know, as Mr. Markarian said, sometimes a definite "no" is better than an indefinite "maybe" in terms of businesses and their planning.

I also think that, you know, as I have noted, this bill establishes a two-way street. I mean, it will hold the permitting agencies more accountable, but, quite frankly, the pipeline industry is going to be more accountable for filing complete, timely applications so as to not put the agency in that bind and produce that undesirable result.

Mr. GREEN. And I know that hopefully there will be an amendment that would talk about a completed application before the time starts running so you have that. And I don't think the bill actually says that now.

And I understand you would rather have a "yes" or "no" than a "maybe" if a "maybe" would delay, would get you further down the road. But that ought to be the completed application process. That ought to be decided up front when you get that completed application.

Commissioner Moeller also warned that a 90-day deadline may force agencies to add burdensome conditions as a way to protect themselves from accusations of insufficient review. Is INGAA or any of you on the panel concerned about that?

I know, obviously, I am interested in building pipelines to handle both the natural gas but also, you know, to get it to a market, whether it be an export market that I support or either, you know, power generation.

Mr. SANTA. I mean, agencies frequently condition permits today. So I think the notion of receiving conditions in connection with an environmental permit is not something new. And if it leads the agencies to do that to ensure that all, you know, bases are covered, I think that is one of the consequences.

Mr. GREEN. OK.

Mr. MARKARIAN. And I think if an agency acts capriciously or in a way that it shouldn't, that brings heat of its own on the agency. So I think we can count on the agencies to act in good faith to—if it is a denial, a denial in good faith.

Mr. GREEN. Yes. Well, and some of you know, I have been around long enough that I know that I had problems with FERC, and I know Mr. Kessler does. And you may have been on the staff when we had some battles at FERC over the years.

But in the last few years, having dealt with them, and, like I said, a lot of your members I have worked with literally every day almost in the Houston area haven't had a problem with FERC. Because if there was, believe me, I would be there saying, what are we doing with it?

Mr. Santa, I have read where permitting time frames are even longer now than they were before we streamlined the process in the 2005 energy bill. Why is it longer, the time frames longer than we did the—as Joe Barton and I brag about all the time.

Mr. SANTA. Mr. Green, I am not sure there is any causal connection between the EPAct 2005 provisions and what has happened.

The INGAA Foundation report that we reference in our testimony had a survey and then more in-depth interviews with a subset of those pipeline companies. There were a variety of reasons identified, including inexperience on the part of the agencies in dealing with linear projects like this, other priorities at the agencies, interagency disputes, and also, in some instances, quite frankly, deficiencies on the part of the pipeline applicants.

But, as the report noted, probably the main recommendation coming out of there was providing some teeth, some enforceability to the EPAct 2005 provisions to prompt the incentive to address all of that.

Mr. WHITFIELD. The gentleman's time has expired.

Mr. GREEN. Thank you, Mr. Chairman, for your courtesy.

Mr. WHITFIELD. That concludes today's hearing on H.R. 1900. I want to thank those of us you who joined us today. We, as I said, appreciate your insights, your suggestions, your thoughts. And we have all looked at your opening statements, and we look forward to working with you as we move forward to address these many complicated energy issues. So thank you.

And that concludes today's hearing.

The record will remain open for 10 days.

Mr. WHITFIELD. Thank you.

[Whereupon, at 12:50 p.m., the subcommittee was adjourned.]

[Material submitted for inclusion in the record follows:]

Ross E. Eisenberg
Vice President
Energy & Resources Policy

July 8, 2013

The Honorable Fred Upton
Chairman
Committee on Energy and Commerce
U.S. House of Representatives
Washington, DC 20510

The Honorable Henry Waxman
Ranking Member
Committee on Energy and Commerce
U.S. House of Representatives
Washington, DC 20510

Dear Chairman Upton and Ranking Member Waxman:

The National Association of Manufacturers (NAM), the largest manufacturing association in the United States representing over 12,000 manufacturers in every industrial sector and in all 50 states, supports H.R. 1900, the "Natural Gas Pipeline Permitting Reform Act." H.R. 1900 would streamline the permitting process for natural gas pipelines, strengthening our energy infrastructure to accommodate increased domestic production and use of natural gas in manufacturing and other sectors.

Industry relies on natural gas for much of its energy needs and as a raw material. A NAM-supported study by PricewaterhouseCoopers (PwC) recently found that full-scale and robust development of U.S. shale gas plays could result in one million new manufacturing jobs by 2025. However, manufacturers will be unable to take full advantage of our vast domestic resources unless new natural gas pipelines and related infrastructure are added to the system in a timely manner. The INGAA Foundation recently found that from now through 2035, the U.S. will need approximately 1,400 miles per year of new gas transmission mainline and an additional 600 miles per year of new laterals to and from natural gas-fired power plants, processing facilities and storage fields.

Section 313 of the Energy Policy Act of 2005 (EPAct 2005) attempted to streamline the permitting process for natural gas pipelines by designating the Federal Energy Regulatory Commission (FERC) as lead agency and giving FERC the ability to set a schedule for completion of the review. However, in practice, FERC has little to no ability to enforce deadlines and there have been no consequences to other agencies that did not meet permit deadlines. As a result, natural gas pipeline permitting has dragged on, with delays actually *increasing* since enactment of EPAct 2005. The General Accountability Office described the natural gas pipeline permitting process as "complex" in a 2013 report on the subject.

H.R. 1900 modernizes the EPAct 2005 natural gas permitting process by (1) requiring FERC to approve or reject a pipeline certificate within 12 months, (2) requiring all relevant agencies to approve or deny a permit application within 90 days after FERC's notice of completion of the environmental review, and (3) requiring that a permit goes into effect if an agency does not issue a response within the 90-day timeframe. Taken together, the process changes in H.R. 1900 would ensure that needed natural gas infrastructure is brought online quickly, efficiently and in compliance with all required laws and regulations.

The NAM supports H.R. 1900 because it will strengthen our energy infrastructure, encouraging the cost-effective use of natural gas as part of an "all-of-the-above" energy policy that will fuel a manufacturing resurgence.

Sincerely,

Ross Eisenberg
Vice President
Energy and Resources Policy

CHAMBER OF COMMERCE
OF THE
UNITED STATES OF AMERICA

R. BRUCE JOSTEN
EXECUTIVE VICE PRESIDENT
GOVERNMENT AFFAIRS

1615 H STREET, N.W.
WASHINGTON, D.C. 20062-2000
202/463-5310

July 2, 2013

The Honorable Fred Upton
Chairman
Committee on Energy and Commerce
U.S. House of Representatives
Washington, DC 20515

The Honorable Henry Waxman
Ranking Member
Committee on Energy and Commerce
U.S. House of Representatives
Washington, DC 20515

The Honorable Ed Whitfield
Chairman
Energy and Power Subcommittee
Committee on Energy and Commerce
U.S. House of Representatives
Washington, DC 20515

The Honorable Bobby Rush
Ranking Member
Energy and Power Subcommittee
Committee on Energy and Commerce
U.S. House of Representatives
Washington, DC 20515

Dear Chairmen Upton and Whitfield and Ranking Members Waxman and Rush:

The U.S. Chamber of Commerce, the world's largest business federation representing the interests of more than three million businesses of all sizes, sectors, and regions, as well as state and local chambers and industry associations, and dedicated to promoting, protecting, and defending America's free enterprise system, strongly supports H.R. 1900, the "Natural Gas Pipeline Permitting Reform Act," which would serve as an important tool to ensure that adequate natural gas pipeline capacity is licensed, permitted, and approved under federal law in a timely manner. This bill would serve to support the nation's abundant natural gas resources, as well as the increasing manufacturing, transportation, and electric power generation uses for natural gas and the concomitant demands these activities place on our natural gas pipeline network.

The Energy Policy Act of 2005 (EPAct 2005) granted the Federal Energy Regulatory Commission (FERC) the authority to establish a schedule for other federal agencies to issue the permits necessary to site new natural gas pipelines. Unfortunately, the associated EPAct 2005 provisions do not provide FERC with the ability to enforce upon other agencies the decisional deadlines set forth with respect to applications to site new natural gas pipeline capacity. Therefore, the timelines established by FERC have not, in practice, facilitated the timely permitting of necessary new natural gas pipeline infrastructure.

H.R. 1900 would address the shortcomings of the reforms set forth in EPAct 2005 by providing FERC with the authority to enforce natural gas pipeline permit deadlines upon other federal agencies. Specifically, H.R. 1900 would establish a ninety-day review period for affected reviewing agencies, with the potential for a thirty-day extension of that time period in certain instances. This reasonable timeline would commence upon FERC's completion of its review of the project – and issuance of the associated environmental impact statement or

environmental assessment – pursuant to the National Environmental Policy Act. In the event that a reviewing agency would fail to take action on a permit request by the expiration of the associated review period, the permit would be deemed approved. Consistent with the Congressional intent manifested in the associated pipeline siting provisions of EPAct 2005, H.R. 1900 would ensure that permitting decisions are made in a timely manner.

The abundant natural gas resources that are now accessible through advanced exploration and technology have positively transformed the global energy posture of America and have also been a driving factor of a gradual economic recovery at both the national and local levels. In order to continue this positive economic growth, the timely permitting and construction of new natural gas pipeline capacity is essential to spur economic development and maintain the reliability of an electric power grid that is becoming increasingly dependent upon natural gas as a fuel source. H.R. 1900 is therefore not merely an infrastructure bill, but also an economic development and energy security bill.

The Chamber strongly supports H.R. 1900, and applauds the committee for its leadership on this important issue.

Sincerely,

R. Bruce Josten

cc: Members of the House Committee on Energy and Commerce

DCA
DISTRIBUTION CONTRACTORS ASSOCIATION

July 1, 2013

The Honorable Fred Upton
2125 Rayburn House Office Building
United States House of Representatives
Washington, D.C. 20515

Dear Chairman Upton,

The Distribution Contractors Association (DCA) represents contractors, suppliers and manufacturers who provide construction services including installation, replacement and rehabilitation of natural gas pipelines, water and wastewater infrastructure, as well as fiber optic, cable and duct systems in communities across the country. DCA has a vested interest in a facilitated pipeline permitting process, and we strongly support the Natural Gas Pipeline Permitting Reform Act (HR 1900).

It is increasing clear that we have enough natural gas to meet America's growing energy needs for generations to come. However, many parts of the country do not have the necessary pipeline infrastructure to meet the rising demand – an appreciable number of pipeline projects must be approved to achieve that capacity. Unfortunately, important pipeline projects are often mired with extended reviews while acquiring federal and state permits, grants of rights-of-way and approvals from various federal, state and local agencies. These delays often result in missed in-service dates and increased project costs, and hamper the vast economic benefits that accompany pipeline construction.

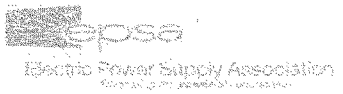
Gas pipeline projects create high-paying jobs, generate significant economic activity and expand the local tax base. Over 625,000 workers are employed to explore, produce, transport and distribute natural gas, and industry studies have indicated that every $1 billion invested in underground infrastructure creates up to between 25,000 and 30,000 jobs and significantly increases demand for products and services in other industries. Industry estimates indicate that current exploration and production industry driving the unconventional gas phenomenon supports 1.7 million jobs across a broad chain of supply, and could support 3 million jobs by 2020. In 2012, gas production and transportation added $62 billion to federal and state government revenues, a number that could rise to $111 billion by 2020.

Understanding the significant job creation and economic activity that result from gas pipeline projects, DCA supports legislation to streamline the permitting process and get these important projects off the ground. The Federal Energy Regulatory Commission (FERC) is generally effective in reviewing applications for permission to build pipelines but it lacks the authority to enforce permitting deadlines for other federal and state agencies. HR 1900 would address that by providing that authority and establishing deadlines for approval of these permits, and we support quick consideration and passage of the legislation.

Sincerely,

Robert Darden
Executive Vice President

Cc: House Committee on Energy and Commerce



1401 New York Avenue, NW
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June 28, 2013

Honorable Mike Pompeo
U.S. House of Representatives
Washington, D.C. 20515

Re: EPSA Support for H.R. 1900, the "Natural Gas Pipeline Permitting Reform Act"

Dear Representative Pompeo:

By way of this letter, the Electric Power Supply Association (EPSA) is pleased to express its support for H.R. 1900, the "Natural Gas Pipeline Permitting Reform Act." You and your co-sponsors are to be commended for introducing this legislation.

EPSA is the national trade association for leading competitive wholesale electricity suppliers, including generators and marketers. EPSA members are major suppliers of electricity in markets across the country. EPSA members are fuel diverse with among the largest portfolios of power assets using coal, natural gas, nuclear and renewable technologies to generate electricity.

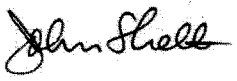
As we discussed when I had the pleasure of testifying before the Subcommittee on Energy and Power on May 9, 2013, the competitive power sector is primarily responsible for the deployment of modern combined-cycle natural gas power plants beginning in the 1990s. Had those investments not been made, the power generation infrastructure would not have been in place when the shale natural gas phenomenon made substantial supplies of natural gas more readily available in recent years, altering the economics of various power generation sources.

EPSA strongly believes that all forms of electricity should compete on fair terms through well-functioning competitive wholesale power markets. Natural gas is playing an increasing role in power generation. Government and private sector forecasts conclude that this trend is likely to continue. At the same time, demand for natural gas is expected to grow for home heating purposes and in the manufacturing sector. The ample supplies of natural gas that can be produced economically to serve all these uses depend on a robust pipeline system.

In this regard, H.R. 1900 requires the various federal agencies charged with reviewing natural gas pipeline projects to complete their work and act one way or the other within a firm timeline. The Federal Energy Regulatory Commission has a strong track record of acting in a timely fashion in this area. However, as you know, other federal agencies have roles in this process depending on the route of a particular proposed pipeline. H.R. 1900 is an important vehicle to consider issues around pipeline siting so the nation has the energy infrastructure it needs to reliably serve customers, including those in the competitive wholesale power sector.

EPSA looks forward to working with you on this bill as the legislative process moves forward.

Sincerely,



John E. Shelk
President and CEO
Electric Power Supply Association

CC: The Honorable Fred Upton
Chairman, House Committee on Energy and Commerce

The Honorable Henry A. Waxman
Ranking Member, House Committee on Energy and Commerce

The Honorable Ed Whitfield
Chairman, Subcommittee on Energy and Power

The Honorable Bobby L. Rush
Ranking Member, Subcommittee on Energy and Power

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202.508.5565 | Fax: 202.508.5736 | tkuhn@eei.org

Power by Association

Edison Electric Institute

Thomas R. Kuhn
President

June 26, 2013

The Honorable Mike Pompeo
United States House of Representatives
107 Cannon House Office Building
Washington, DC 20515

Dear Representative Pompeo:

On behalf of EEI's member companies, I am writing in support of H.R. 1900, the Natural Gas Pipeline Permitting Reform Act, which you introduced on May 9, 2013. The bill would help expedite the construction of natural gas pipelines by providing for timely consideration of licenses, permits and approvals required under federal law.

EEI is the trade association representing shareholder-owned electric companies. EEI's members serve over 98 percent of the ultimate customers in the shareholder-owned segment of the industry, and represent approximately 70 percent of the U.S. electric power industry.

Electric utilities and their customers have benefited from the significant technological advances in natural gas production that have contributed to lower natural gas prices and a stable supply. As a result, natural gas generated roughly 30 percent of the electricity produced in this country last year. According to the Energy Information Administration, natural gas generating capacity increased by 96 percent between 2000 and 2012. Electric utilities expect natural gas to remain a vital—and growing—fuel resource for power generation.

Because of our industry's reliance on natural gas, it is critical that we have robust natural gas pipeline capacity throughout the country. Constraints in pipeline capacity adversely impact electric utilities' ability to use natural gas to help generate the affordable, reliable electricity needed to fuel economic growth and job creation in this country.

The electric power industry, which is the most capital intensive in the United States, is all too aware of the impact of delays in approving, permitting and siting energy infrastructure projects that are designed to benefit consumers. We believe it is critically important for federal agencies to ensure that they provide timely consideration of the licenses, permits and approvals needed under federal law for energy infrastructure projects. H.R. 1900 represents an important step in holding the federal government to this standard in the construction of natural gas pipelines.

EEI supports H.R. 1900, and we urge Congress to approve the bill. We look forward to working with you to achieve this goal.

Sincerely,

Thomas R. Kuhn

TRK: kas

American
Public Power
Association

Ph: [illegible]
Fax: 202.467.2910
www.PublicPower.org

1875 Connecticut Avenue, NW
Suite 1200
Washington, DC 20009-5715

July 8, 2013

The Honorable Mike Pompeo
United States House of Representatives
107 Cannon House Office Building
Washington, D.C. 20515

Dear Representative Pompeo:

On behalf of the American Public Power Association (APPA), I am writing to express our support for H.R. 1900, the Natural Gas Pipeline Permitting Reform Act. APPA is the national service organization representing the interests of over 2,000 community-owned, non-for-profit electric utilities. These utilities include state public power agencies, municipal electric utilities, and special utility districts that provide electricity and other services to over 47 million Americans.

As you are well aware, there will be long-term implications from the greater use of natural gas for electric generation. Utilities are spending hundreds of millions of dollars to convert existing coal facilities, where possible, to natural gas or to construct new natural gas plants. They are also using natural gas generation to back up wind and solar power, variable energy sources that cannot be relied on to generate power at all times. However, it is not clear yet whether there will be sufficient infrastructure to accommodate this greater use of natural gas by electric utilities. There is a critical need to build new natural gas pipelines and to improve upon the existing infrastructure across the country. APPA believes that H.R. 1900 is a step in the right direction.

While the Federal Energy Regulatory Commission (FERC) is examining how to promote greater coordination between the electricity and natural gas industries, FERC lacks the ability to enforce other federal agencies to abide by deadlines related to natural gas pipeline applications. Therefore, APPA supports the language in the bill that seeks to provide FERC with the authority to enforce natural gas pipeline permitting deadlines thereby reducing waste, improving decision making, and diminishing the potential for conflict. APPA believes that this will help clarify and streamline the multi-agency inefficiencies associated with energy infrastructure development.

Thank you for your leadership on this important issue affecting electric utilities. I hope you will feel free to contact me or the APPA government relations staff with any questions.

Sincerely,

Mark Crisson
President & CEO

July 8, 2013

The Honorable Fred Upton
Chairman
Committee on Energy and Commerce
U.S. House of Representatives
Washington, DC 20515

The Honorable Henry Waxman
Ranking Member
Committee on Energy and Commerce
U.S. House of Representatives
Washington, DC 20515

The Honorable Ed Whitfield
Chairman
Energy and Power Subcommittee
Committee on Energy and Commerce
U.S. House of Representatives
Washington, DC 20515

The Honorable Bobby Rush
Ranking Member
Energy and Power Subcommittee
Committee on Energy and Commerce
U.S. House of Representatives
Washington, DC 20515

Dear Chairmen Upton and Whitfield and Ranking Members Waxman and Rush:

The Gas Processors Association (GPA), a non-profit trade organization made up of 127 midstream energy companies that own and operate 290,000 miles of pipelines and related facilities, strongly supports H.R. 1900, the "Natural Gas Pipeline Permitting Reform Act." GPA member companies gather, treat, process, and store natural gas; transport, store and fractionate natural gas liquids (NGLs); and provide gathering and storage of crude oil across all of the major basins in the U.S.

This legislation amends the Energy Policy Act of 2005, which granted the Federal Energy Regulatory Commission (FERC) the authority to establish a schedule for other federal agencies to issue pipeline permits without giving FERC the authority to enforce the schedule. H.R. 1900 would give FERC the ability to enforce natural gas pipeline permit deadlines at other federal agencies. Specifically, permits would be approved automatically if the permitting agency failed to act by the FERC-established deadline.

H.R. 1900 recognizes that the shale technology revolution has had a dramatic impact on the Midstream energy sector as new infrastructure will be required to move natural gas from the regions where production is growing dramatically to areas where demand is expected to increase. The development of shale oil and gas reserves will require hundreds of billions of dollars of new Midstream infrastructure to insure oil and gas reserves are produced safely, effectively and efficiently. Shale development has been fueling the U.S. economy over the last several years and is positioning the U.S. to achieve its goal of energy security.

Gas Processors Association • 6526 E. 60th St. • Tulsa, OK 74145
Phone (918) 493-3872 • Fax (918) 493-3875
gpa@GPAglobal.org • www.GPAglobal.org

While H.R. 1900 addresses the permitting process for interstate pipelines, we also need to address permitting of intra-state pipelines, such as gathering systems that bring raw natural gas from the production wells to gas processing plants. These intrastate pipelines are not within the jurisdiction of FERC, although they typically have to have many of the same permits for the Coastal Zone Management Act (National Oceanic and Atmospheric Agency), the Clean Water Act (enforced by the Environmental Protection Agency with permits issued by individual states and the Army Corps of Engineers); and the Endangered Species Act (enforced by the U.S. Fish and Wildlife Service).

Extended permitting processes delay needed infrastructure which lead to increased safety risks, unnecessary emissions and lost economic value. This is evidenced by the amount of natural gas flaring presently taking place in key producing basins as a result of infrastructure delays. Permits that used to take 30 to 60 days now take up to 18 months, and major projects that were formerly executed within 12 months now take up to 3 years.

Expediting infrastructure capabilities is in the best interests of the American public. Appropriate permitting practices and effective enforcement will promote new investment, which will allow this country to reduce emissions, increase the demand for equipment and labor, promote energy security, increase U.S. exports, and improve the U.S. trade deficit.

The Gas Processors Association strongly supports the passage H.R. 1900. At the same time, we encourage the Committee to look at these other permitting issues to accelerate the development of the infrastructure necessary to get these new natural gas resources to the market.

Respectfully Submitted,

Jeff Applekamp
Director, Government Affairs
Gas Processors Association

TECHNICAL ANALYSIS
HR 1900

A BILL- to provide for the timely consideration of all licenses, permits, and approvals required under Federal law with respect to the siting, construction, expansion, or operation of any natural gas pipeline projects

The House Committee on Energy and Commerce staff asked for a technical analysis from the U.S. Army Corps of Engineers perspective. This analysis is only technical in nature (not policy).

This bill would essentially authorize activities that Federal Energy Regulatory Commission (FERC) approves if the Corps of Engineers has not made a decision within 90-120 days. This proposed bill could have adverse implications for the Civil Works Regulatory Program and for Civil Works Section 408 decisions.

The legislation could conflict with existing Clean Water Act/Rivers & Harbors (CWA/R&H) legislation that mandates that the Corps review proposals in accordance with its regulations and render a decision based on those regulations. Often the information and evaluation criteria for FERC are different from what the Corps requires to complete its evaluation and the Corps may not be able to rely on FERC license/certification documentation. The information required to inform our agency decision may often be different from what FERC requires and the proposals may be evaluated by the agencies using different criteria because of the regulations that each agency is required to follow in its decision-making.

This legislation could allow certain activities to proceed despite potential adverse and significant impacts to aquatic resources and without appropriate compensatory mitigation which would be otherwise addressed in an appropriate manner under the Corps' CWA/R&H evaluation. If the Corps is bound to a specific timeframe and doesn't have the information needed, the Corps would be forced to deny applications because of the lack of information to demonstrate compliance with Corps regulations (404(b)(1) Guidelines, public interest determination, Endangers Species Act, Tribal consultation etc).

Additionally, this proposed bill may have adverse implications for the Corps' Section 408 permitting requirements when/if a proposed project is determined to impact a Corps Water Resources project. It appears that if a 408 decision is not made within the stated timeframe that permit would also be automatic which could pose serious impacts/risks to those federal projects.

Under the 2005 Energy Power Act, agencies have 90 days to issue a decision but there is no de facto issuance should the agency fail to make a decision by then.

It is also possible that the applicant/permittee might be vulnerable to lawsuits if the proper evaluation does not occur for a decision under all of the applicable laws and they proceed with work.

These EPA staff-level comments are being provided solely as technical assistance and are intended for use solely by Committee staff. The comments should not be construed in any way as representing the policy positions of the Agency or the Administration on this bill.

U.S. Environmental Protection Agency
Technical Assistance on H.R. 1900- "Natural Gas Pipeline Permitting Reform Act"
July 8, 2013

Bill Summary

Agencies responsible for issuing any license, permit, or approval required under Federal law in connection with the siting, construction, expansion, or operation of any natural gas pipeline project for which a certificate of public convenience and necessity is sought under this Act shall approve or deny the issuance of the license, permit, or approval not later than 90 days after the Commission issues its final environmental document relating to the project. Agencies may request a 30 day extension. In the absence of Agency action, the license, permit, or approval shall go into effect.

Impact on EPA responsibilities and activities

The proposed legislation could conflict with, or potentially alter, existing statutory and regulatory requirements and/or practices related to EPA's permitting programs, which would include, at a minimum, the Clean Air Act and the Clean Water Act. Due to ambiguity in the text of the draft legislation and its automatic approval of natural gas pipeline permits or licenses, the legislation could result in increasing permitting uncertainty and litigation, thereby unintentionally increasing rather than decreasing the review, approval, and construction of natural gas pipeline projects.

General Comments

- There is no definition in the bill of the "final environmental document" that triggers the 90-day deadline in the Act or cross reference to any other provision in the Natural Gas Act where this term is defined. It is thus unclear when the 90 day period for approval or denial of a license begins to run.
- The legislation is unclear as to whether the term "agency" pertains to both federal agencies who issue permits or licenses (which we presume) and also to state agencies that are authorized to issue permits or licenses pursuant to federal law (e.g., Clean Water Act Section 402, Clean Water Act Section 401, RCRA Subtitle C, Clean Air Act Title V, etc.). As a result, the scope of this legislation in practice is uncertain.
    - Additionally, if the bill is intended to also apply to state agency actions, we note that the bill only applies to permit/approvals/etc required under *federal* law, and says nothing about *state* law requirements. Unless a federal program is "delegated" to states, states administer federal statutes under their own state laws and regulations. So, for example, this legislation (if interpreted to also apply to state-authorized programs) may automatically deem granted a *federal* authorization to discharge after 90/120 days. However, it would not automatically authorize a discharge pursuant to *state* law, which typically mirrors provisions of federal law when permitting authority is vested in states.
- The provision of the bill that stipulates that a permit takes effect automatically if it is not granted or denied within 90 days is problematic because the terms and conditions of permit or license may as yet be unwritten by the agency. For example:

- Clean Air Act: A preconstruction permit under the CAA New Source Review Program is not a simple yes/no decision but rather a set of specific requirements (such as emission limitations based on control technology, methods of operation, etc.) based on an evaluation of the source by the permitting agency. To comply with applicable statutory and regulatory requirements, permitting agencies, including EPA, need sufficient time to assess the application and its potential impacts, draft permit conditions draft rationale to support their permit decisions, provide opportunity for the public to comment on proposed requirements, and finalize the terms and conditions of the permit. Likewise, a Title V permit under the CAA must contain terms and conditions. This requirement could potentially result in sources receiving an inadequate permit or a permit that does not assure compliance with the CAA.
- Clean Water Act: A discharge permit under Sections 402 or 404 of the Clean Water Act, likewise, is not simply a decision of whether a project may or may not discharge. Under Section 402 (the National Pollutant Discharge Elimination System, or NPDES), permits typically include numeric effluent limitations developed by the permitting authority (EPA or authorized state) to control the discharge of pollutants, as well as other requirements of the permit. If EPA or a state has not developed a draft NPDES permit within the 90-day window, it is not clear what permit would go into effect at the conclusion of this period. Similarly, permits under Section 404 of the Clean Water Act, issued by the U.S. Army Corps of Engineers, include permit terms to ensure that discharges comply with the Section 404(b)(1) guidelines (40 CFR Part 230) – such as avoiding and minimizing the extent of a discharge, preventing a discharge from causing significant environmental degradation or a violation of water quality standards, and ensuring mitigation for lost aquatic resource functions. Public notices issued by the Corps for proposed projects seeking Section 404 permit authorization typically do not include specific draft permit conditions. If this legislation were enacted, it is not clear what permit terms would go into effect upon the 91st day.

- The standard for granting a 30-day extension only on the grounds that there were "unforeseen circumstances beyond the control of the agency" is unduly strict and not sufficiently flexible to accommodate challenges with coordinating the timing of these actions and permitting and licensing decisions are complete and legally defensible. The bill provides no means for an agency to predict the timing of a "final environmental document" and thus provides no way to know what is foreseeable or not. It seems reasonably foreseeable that reaching a permitting or licensing decision under other authority would require more than 90 days from the time this document is completed.
- This legislation would not appear to preclude litigants from challenging automatically approved licenses or permits after 90 (up to 120) days on the grounds that a particular license or permit is inconsistent with the underlying statute or regulations. Because this legislation would force agencies to speed their review of complex natural gas pipeline projects, and automatically approve permits or licenses if deadlines are exceeded, it is more likely that the permit or license that is issued may be inconsistent with the underlying statute or regulations. As a result, this legislation may result in additional litigation and therefore a slower pace of project construction as these lawsuits are resolved.

These EPA staff-level comments are being provided solely as technical assistance and are intended for use solely by Committee staff. The comments should not be construed in any way as representing the policy positions of the Agency or the Administration on this bill.

Impact on Clean Air Act Permitting

- The timing relationship between the Commission issuing its final environmental document and the EPA's decision on a PSD permit application under the Clean Air Act (CAA) is affected by this bill. This bill establishes an unconditional requirement to issue (or deny) a permit within 90 days after the commission issues the final environmental document, with opportunity to request a 30 day extension. This approach does not comport with the current statutory requirement under section 165(c) of the Clean Air Act for EPA to make a decision on a PSD permit application within one year after the application is determined complete. 42 U.S.C. 7475(c). The bill language does not specify the expected timing for processing of the environmental document, but assuming it is processed in parallel with the PSD permit application, this bill could result in the shortening of the one-year application review period for PSD permits that is currently required under statute.
    - For example, if a PSD permit application for a gas compressor station is submitted in June 2013, deemed complete by EPA in July 2013, then (according to CAA 165(c)) EPA would have until July 2014 to issue (or deny) the permit. But if the Commission also began their environmental review in June 2013, and issued their final environmental document in November 2013, then under this bill, EPA would have to issue/deny the PSD permit by February 2014 or March 2014 if the standard for obtaining a 30 day extension could be met.
- The bill could also have similar impacts on Title V operating permits. Under the CAA and implementing regulations, Title V permits must be issued or denied within 18 months after the application is deemed complete. 42 U.S.C. 7661b(c). The bill could result in tension with this review period.
- The bill would seem to apply to permits issued by states with delegated federal authority to issue PSD permits on behalf of EPA Regional Offices, since ultimately these permits are considered actions of EPA. It is unclear whether the bill would apply to state agencies with EPA-approved programs that issue permits under state law authority.

Impact on Clean Water Act Permitting

- As noted above, this bill would create confusion about what specific Clean Water Act permit authorization would take effect after 90/120 days if the permitting authority has not yet made a final decision on a permit application within that time period. Clean Water Act permits are often complex documents that include a detailed analysis of the proposed discharge, a characterization of the receiving water into which the discharge will occur, an analysis of relevant technology- and water quality-based requirements, and a final set of effluent limitations or other permit conditions with which the permittee must comply. Often, the Clean Water Act permitting decisions with the greatest potential for environmental impacts take the greatest amount of time to review. In this way, an arbitrary 90 (or 120)-day deadline for completing these complex reviews would increase the likelihood that environmentally harmful discharges may occur, that incomplete authorizations would be automatically approved, and that costly and time-consuming litigation would then ensue.
- Section 401 of the Clean Water Act provides authority for states to certify that a discharge authorized pursuant to federal law is consistent with state water quality standards, or to condition

such authorization to ensure that water quality standards are met. The Clean Water Act provides a one-year timeline within which states must issue such certification, after which their certification authority is waived. This legislation is unclear as to whether it would apply to state certifications under CWA Section 401 – for example, by revising the one-year CWA timeframe and replacing it with a 90-day timeline. If so, it would severely limit states' ability to ensure that discharges comply with water quality standards – especially because this legislation (as described above) would increase the likelihood that permits or licenses would be automatically approved after 90/120 days with less than full environmental analysis.