

FEDERAL ENERGY REGULATORY COMMISSION  
Washington, DC 20426

Testimony before the Senate Majority Policy Committee on Marcellus Shale  
Pipeline Issues

Michael J. McGehee, Director, Division of Pipeline Certificates,  
Office of Energy Projects

Chairman Erickson and members of the committee, thank you for the opportunity to appear before you to discuss the federal process for siting natural gas infrastructure.

The Commission is an independent agency that regulates the interstate transmission of natural gas, oil, and electricity. We also review proposals to build liquefied natural gas terminals, interstate natural gas pipeline and storage facilities, as well as licensing hydropower projects. Specifically, my Division has the responsibility to analyze proposals to site, construct, operate and abandon of natural gas infrastructure.

Our mission is to provide reliable, efficient and sustainable energy for consumers. Fulfilling this mission involves pursuing two primary goals: 1) ensure that rates, terms and conditions of service are just, reasonable and not unduly discriminatory or preferential; and 2) promote the development of safe, reliable and efficient energy infrastructure that serves the public interest and safeguards the environment. In order to accomplish these goals, the Commission relies on its statutory authorities and enabling legislation to meet the pressing energy needs of our time. Further, the Commission balances the competing needs and interests of affected parties and fulfills its role as an independent energy regulator. The Commission's goal is to expedite authorization requests without compromising environmental responsibilities or public participation.

As for our approach to facilities, the Commission promotes the development of safe, reliable, and efficient infrastructure that serves the public interest. One aspect of the Commission's role in energy infrastructure development stems from our siting authority that includes licensing non-federal hydropower projects, certificating interstate natural gas pipelines and storage projects, authorizing liquefied natural gas (LNG) facilities, and, in certain circumstances, permitting electric transmission lines.

How does the Commission authorize this infrastructure? The natural gas industry today has changed dramatically over the last 30 years and is much more open to competition and choice. Wellhead prices are no longer regulated; meaning that natural gas prices are dependent upon supply and demand interactions. Interstate pipelines no longer take ownership of the natural gas commodity. Instead, they offer only the transportation component, which we regulate. The Commission regulates the rates pipelines charge, the access they offer to their pipelines, and the siting and construction of new pipelines.

Pipeline companies seeking to construct facilities must obtain a certificate of public convenience and necessity from the Commission under Section 7 of the Natural Gas Act. This certificate is a license allowing the pipeline proponent to construct and operate its facilities. Of course, the pipelines must independently obtain whatever other authorizations it needs, such as easement agreements, Clean Water Act, Coastal Zone Management Act and Clean Air Act permits.

The Commission has a variety of avenues to obtaining certificate authority available to project sponsors seeking authorization, from automatic authority and prior notice blanket certificate authority, to the all encompassing Section 7(c) process where the route, environmental impact, facilities, rates and terms and conditions of service are scrutinized. Once authorized, the certificate confers the right of eminent domain (the right of the government to take private land for public use). This right typically is afforded under state and sometimes federal law.

Depending on the size, complexity, environmental impact, and other stakeholder concerns, the time it takes to obtain a certificate can vary. The largest projects can take up to 18 months of review at FERC. However, most projects are authorized in less time. I'd say that most pipeline projects take about three or so years from the time they are announced to the time they are constructed and placed in service.

The certificate process includes consulting with stakeholders, identifying environmental issues through scoping, and preparing environmental documents such as Environmental Assessments or Environmental Impact Statements. To speed the process along, we've established a pre-filing process by which applicants become engaged with all stakeholders, including landowners, state, local, and other federal agencies, prior to filing an application with the Commission. The intent is to make the certification process transparent and by engaging all affected parties, an attempt, if you will, to shake the bushes and turn over the rocks. In other words, try to make all parties have as complete an understanding as possible of the project impacts so that once the actual application for a certificate is made, there are few, if any, surprises in store.

While applicants using the pre-file process agree that it could take up to 180 days to complete, that time frame is actually project specific. Some projects lend themselves to a shorter stay in the pre-file process because there are not a lot of issues that need to be resolved. Others may take more than 180 days to complete for the opposite reasons. Nevertheless, our experience is that use of the pre-filing process shortens the overall project schedule by three to six months.

Once the pre-filing process has been completed, the pipeline is ready to file its application with the Commission. The application is a comprehensive document that contains a description of the project, the need for the project, detailed maps, schedules, and environmental reports, as well as cost, rates and rate design, accounting, financing, tariff terms and conditions, and engineering and facility design operating conditions. Among other things, this plan includes all permit applications, maps showing the preliminary pipeline route, and up to 12 specific environmental resource reports. These resource reports cover topics such as water use and quality, vegetation and wildlife, cultural resources, socio-economics, geological resources, soils, land use, air and noise quality and project alternatives.

The Commission then gives public notice of the application, sets the time frame for interventions and protests to the application, and starts the detailed review and analysis of the project to determine if it is in the public interest. This review includes an evaluation of the project design, the need for the project, as well as the costs of transporting natural gas by the pipeline. The Commission also conducts an Environmental Assessment or an Environmental Impact Study to evaluate the project's anticipated impact on the public and environment. There is public participation allowed in the Commission review process both as a response to a public notice of the project issued by the Commission and a public notice of intent to prepare an environmental document for the project.

In deciding whether to authorize a project, the Commission uses the Certificate Policy Statement, which established criteria for determining whether there is a need for a proposed project and whether the proposed project will serve the public interest. Under this policy, the Commission balances the public benefits against the potential adverse consequences of a project. The goal is to give appropriate consideration to the enhancement of competitive transportation alternatives, the possibility of overbuilding, subsidization by existing customers, the applicant's responsibility for unsubscribed capacity, the avoidance of unnecessary disruptions of the environment, and the unneeded exercise of eminent domain in evaluating new pipeline construction.

Under this policy, the threshold requirement for pipelines proposing new projects is that the pipeline must be prepared to financially support the project without relying on subsidization from its existing customers. The next step is to determine whether the applicant has made efforts to eliminate or minimize any adverse effects the project might have on the applicant's existing customers, existing pipelines in the market and their captive customers, or landowners and communities affected by the route of the new pipeline. If residual adverse effects on these interest groups are identified after efforts have been made to minimize them, the Commission will evaluate the project by balancing the evidence of public benefits to be achieved against the residual adverse effects. This is

essentially an economic test. Only when the benefits outweigh the adverse effects will the Commission issue a certificate of public convenience and necessity authorizing the construction and operation of a project.

The bottom line? FERC works! The U.S. has been well-served by the Commission's siting of natural gas infrastructure. The Commission's process is a model of efficiency as constantly demonstrated through our pre-filing process, application analysis, and post-authorization monitoring. Commission's analyses and decisions are timely. Due deference is given to environmental and safety concerns. Adequate natural gas infrastructure is essential to both the consumer and to our economy.

This process works for all stakeholders:

- Project sponsors
- Federal, state, and local agencies
- NGO's (non-governmental organizations) – typically environmental groups
- Landowners, and
- other concerned entities.

We believe that the market knows best and FERC is not the market. The Commission will present a “menu” of infrastructure options that are: in the public interest, will cause the least environmental impact, and will be safe.

In the U.S., there is virtual unanimous agreement that more energy infrastructure is necessary. All parties, proponents, energy trade groups, affected officials, landowners and others need to work together. However, it is the market that is in the best position to select the infrastructure projects that get built.

I must note that maybe we've become a victim of our own success. With higher demand for natural gas and the development of new domestic and international supplies comes the need for more infrastructure, which in today's world of internet advocacy means more involvement and in many cases more opposition. Our message to the industry is to anticipate infrastructure hotspots. Education on the process is continually needed. Educating elected officials, affected state and federal agencies, landowners and all affected stakeholders. That is the key to negotiating the path to increased infrastructure. FERC will do its job!

We constantly reinforce the need for the industry to respect the public. Companies must step up their outreach to the public, because the public will affect proposed projects. And we believe that a project sponsor's desire to build infrastructure cannot be the reason to shortcut the needs of the affected stakeholders.

In conclusion, the Commission's process has benefited all stakeholders in natural gas projects. Since it is clear that more infrastructure is coming, we believe that more needs to be done. All parties must continue open dialogues that will help turn opposition into understanding, forge alliances in order to meet common goals, and continue our progress in providing reliable, efficient and sustainable energy for consumers.

I have a PowerPoint presentation attached that will help graphically guide you through our process and includes information on Marcellus shale projects that we've approved, have pending or could potentially emerge.

Chairman Erickson and members of the committee, I thank you for your time today and will be happy to answer any questions you have.