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INTERSTATE PIPELINES: QUESTIONS AND ANSWERS

By Ralph A. Cantafio¹ and Rosanna Slingerland²

OVERVIEW

Before an interstate pipeline can be built, facility owners and contractors must ensure that all necessary paperwork is first filed to secure permission from the various governing entities. Regulating agencies, such as the Federal Energy Regulatory Commission ("FERC"), seek to be as efficient as possible in granting permits balancing the same with the public's interest.

FERC does not have any new regulations in place for 2011 or many updates to existing rules. Recent pipeline incidents have increased public awareness of oil and gas infrastructure and their dangers. Over the past year, FERC has increased its focus on improving safety and environmental performance of its regulated companies.

QUESTIONS & ANSWERS

How does FERC review and approve natural gas pipeline projects?

FERC operates under the mandate provided by the Natural Gas Act of 1938. In 1945, FERC was provided sole authority as to oversight and regulation of natural gas pipelines in interstate commerce pursuant to Section 7. FERC operates under these basic rules, but they have been modified and supplemented over the years.

The approach of FERC can be said to be reactive. Applicants come to FERC to propose a project. FERC analyzes the project and considers approval. FERC streamlines application review with the pre-filing process. Once a company has a concept for a project, the company comes to FERC to start the federally mandated environmental evaluation process.

FERC tries to be transparent about its expectations. Instead of being notified of defects or criticisms as to its plans after the fact, FERC works with companies "up front". This pre-file process allows for "*ex parte*" participation. Thus all meetings do not need to be subject to notice. Meetings are noticed to

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allow interested parties to attend. However, at the initial phase if FERC needs information, they can telephone directly with whomever they elect.

What is FERC's jurisdiction regarding gas pipelines?

FERC is responsible for any and all gas lines involved in interstate commerce. If the pipeline is going to cross state lines, the owner must first secure approval from FERC. Under the Natural Gas Act, Section 3, FERC has the sole jurisdiction over the siting (i.e. deciding upon the location) of facilities to import and export natural gas, whether coming in by ship (liquefied natural gas or "LNG") or by crossing the Mexican or Canadian borders. FERC also has jurisdiction over siting natural gas pipelines. The Office of Fossil Energy within the U.S. Department of Energy ("DOE") is responsible for approving the importing or exporting of the commodity, typically natural gas.

What new FERC regulations are there for gas companies to consider in 2011?

Regarding siting, there are no new regulations. The last substantial change was the Energy Policy Act of 2005.

With regard to the pipelines themselves, this act establishes FERC as the primary agency in approving natural gas pipelines. There are still many permits needed from various other agencies. FERC, with the cooperation of all the permitting governmental agencies, establishes the processing schedule that is to be followed and becomes the lead agency. Otherwise, there has been nothing new out of Congress recently, so there are no changes in regulations.

What updates to the current FERC regulations have there been in 2011?

None.

How many projects are currently pending under FERC review?

In terms of actual applications pending, there were 18 projects as of approximately March 1st, which represent a capacity of 11 billion cu.ft. (bcf) per day and 700 miles of facilities. In the pre-filing stages, FERC has nine projects, which account for 13.7 bcf per day and 3,000 miles of pipeline. Not all of these proposed projects will come to fruition.

What trends is FERC predicting in the gas industry in 2011?

For a while the industry was focusing toward all kinds of pipelines and facilities to support LNG. That initiative has subsided. What the industry is focusing on, at least in the lower 48 states, is developing shale gas. State and other reservoirs once considered un-explorable (coal bed methane and "tight gas") now meet approximately one-half of the countries demands.

In terms of drilling production and pipelines, there has been significant activity in the Southeast United States and in Texas (particularly near Barnett, Haynesville, and other areas with shale formations). It is predicted that in the next year pipelines to take gas from other shale deposits, particularly the Marcellus formation on the East Coast, will be involved in the application process. The Marcellus formation is a potentially one of the most significant gas resources located in decades because of its close proximity to dense populations on the East Coast. Shale gas is predicted by many to be the most significant new resource to come along in years. The DOE's Energy Information Administration released its annual energy outlook and it predicted shale gas by 2035 will make up almost half of the United States natural gas supply. That is seen by many as conservative. Hence, the development of shale gas is going to be significant and pipelines will need to be constructed to transport the gas to market.

Where are pipelines being built? Are these typically for domestic consumption or for export to other countries?

In the pre-filing program, there are now two proposed LNG projects seeking consent to construct facilities to export natural gas. This is a significant departure because as recently as five years ago, it was thought that the United States would be importing, not exporting, LNG. There are applications for pipelines to transport LNG to the Sabine Pass (on the Texas-Louisiana border) and to the Freeport terminal (near Freeport, Texas). Both projects as required by Section 3 of the Natural Gas Act already have approval from the Office of Fossil Energy to export LNG to Canada, Mexico and all other countries the United States has free trade agreements. Both projects have additional applications pending with the DOE to also export LNG to members of the World Trade Organization.

There are also significant pipelines being built to address domestic consumption. In recent years very large systems have been constructed to transport natural gas east. Examples include the Rockies Express Pipeline, which starts in Wyoming and terminates near the Ohio-Pennsylvania border. This was the largest domestic pipeline project pursued in decades. The Ruby pipeline is another significant interstate pipeline. This moves 1.5 to 2 bcf per day transporting natural gas from the Rocky Mountains to the Oregon-California border. Numerous other projects have been proposed in the Southeast to develop its various shale basins. Looking into the future, there will almost certainly be more pipelines to service the Marcellus shale developments. In other parts of the country, there have been many new pipelines built which loop existing systems or adding more compression capacity. Development is only predicted to increase.

What impact have recent pipeline spills had on FERC regulations?

These incidents have heightened public awareness of pipeline related hazards including special scrutiny of local groups and landowners. The general population is much more sophisticated about these matters than in the past.

FERC tries to address the concerns of what it calls "stakeholders" by not ignoring them. Many are resistant to pipeline facilities going through their towns. Pipelines are seen by many as a potential danger. People are keenly aware of BP's Macondo well blowout and the pipeline explosion in San Bruno, California. Building standards have become more stringent and have generally led to

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improvements in the quality of pipes, which have better tensile strength and thicker walls. Safety is improving. FERC along with other governmental agencies does a credible job of keeping up with over 220,000 miles of interstate and another 80,000 miles of intrastate pipelines. The network is quite large and it is by and large safe. However, as recent events in Japan demonstrate, even pipelines designed to be amongst the safest are not without the potential for danger.