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**ENHANCING STAKEHOLDER
INVOLVEMENT:**
*A Dialogue with FERC and
the Natural Gas Pipeline Industry*

Foundation

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EXECUTIVE SUMMARY

Introduction

In September 1999 the Federal Energy Regulatory Commission (FERC) issued Order No. 608 that set out a voluntary program for increasing stakeholder involvement in pre-application activities by allowing applicants, at their election, to participate in a collaborative process that includes environmental analysis and issue resolution. It is designed to bring stakeholders together so that issues, especially potentially contentious issues, can be identified earlier in the process and, if possible, resolved before the applicant submits its certificate application to FERC. While fundamentally sound, Order No. 608 has not been widely utilized by pipeline applicants due to impediments in the process. Nevertheless, project applicants recognize that the challenge of building a pipeline is incrementally greater than in the past and there is unprecedented value in identifying early in the process as many issues as possible so that they may be resolved.

FERC and the pipeline industry concur that stakeholder involvement in the pre-application process may be used to identify and address issues earlier. While there is overall agreement of this goal, understanding the activities that can be used to enhance stakeholder involvement is the intent of this study.

The purpose of this study is to clarify FERC's objectives and examine industry outreach activities. Also, recognizing that companies currently adopt varied measures to ensure stakeholder involvement, this study offers illustrative examples and some suggestions that would enhance stakeholder involvement practices.

Specifically, this INGAA Foundation study on stakeholder involvement will:

- Examine FERC's and the natural gas pipeline industry's current perceptions, attitudes, and beliefs regarding the value, challenges, and current activities taking place during the pre-application process. Additionally, the study examines the unique constraints faced by the gas pipeline industry and explains how FERC has traditionally satisfied stakeholder involvement using the National Environmental Policy Act (NEPA) process.
- Characterize the pre- and post-application procedures that pipeline companies currently use to demonstrate stakeholder participation and collaboration in the process of pipeline routing and construction planning and offer suggested improvements that are options to assist the pipeline project sponsor in meeting the requirements of the FERC Office of Energy Projects (OEP) for stakeholder involvement during the NEPA process.

Methodology

The stakeholder involvement study included three interactions with industry and FERC:

Interviews: Protocols were developed for in-person and telephone interviews with key FERC and industry personnel. The FERC interviews were held first to capture the agency's perceptions of goals and challenges of stakeholder involvement, current industry practices, and areas of improvement.

Workshop: A broad range of representatives from the natural gas pipeline industry convened in September 2000 for a full-day workshop to discuss stakeholder involvement issues. The goal was to share experiences and attempt to identify typical or common techniques used for stakeholder involvement. Industry was also given a chance to react to information gathered through the initial interview process.

Dialogue: Finally, in November 2000, a facilitated dialogue was conducted in Washington, D.C. between FERC and industry leadership to discuss the ideas generated from the prior two meetings and to consider suggestions for improving stakeholder involvement. A number of suggestions were discussed. These form the basis of the recommended improvements in this study.

It is important to note that the information gathered for this study represents individual experiences and perceptions only. As such, one should not interpret the discussions as representing an official policy or position of either the FERC or the natural gas pipeline industry. Additionally, it is not the intent of this study to either quantify the results or suggest that stakeholder involvement activities be standardized. In fact, while the industry can benefit from the successful experiences of other pipelines, this dialogue underscored that stakeholder involvement activities must be tailored to the specifics of the individual project.

Results

The FERC interviews were designed to gather information about FERC's perceptions of industry stakeholder involvement activities as well as the methods FERC would view as appropriate in realizing increased stakeholder involvement. The interviews questioned FERC on its opinion of current stakeholder activities, how and when stakeholders should be involved, its experiences and preferences, and finally, its understanding of what barriers there are to involvement.

Many of the outcomes were predictable but some new thoughts emerged as well. FERC believed stakeholders to be more informed, more organized, and more apt to contact the agency if a problem existed. Pipeline company stakeholder involvement practices varied widely but anything less than "progressive" activities were considered unacceptable. FERC believed that applicants were improving their contacts and trying innovative measures but industry still needed to provide better reporting and documentation of these efforts to get recognition. FERC also indicated a willingness to become more involved in pre-application discussions including interagency coordination.

The industry interviews were intended to garner the applicants' point of view on current activities and experiences. Industry believed FERC favors applications with the least amount of conflict and more upfront work. While companies are willing to work with stakeholders on issues, FERC would have to be willing to play some role in conflict resolution.

Like FERC, industry believed stakeholders to be more coordinated and capable of organizing responses to proposed projects, including negotiating mitigation measures. Industry identified the stakeholder group broadly, including both direct and indirect beneficiaries of the project. Stakeholder involvement and education is critical because whether the stakeholder supports or opposes the project, the stakeholder will raise important issues about the route or project. Industry also expressed frustration over barriers to more extensive stakeholder involvement. Several industry representatives cited the competitive nature of the industry as well as the difficulty in identifying grassroots organizations. Resource limitations also prevent grassroots organizations from more extensive participation. Companies also found some state agencies unwilling to get involved in pre-application discussions or to review competing projects.

During the industry workshop companies shared project specific experiences and ideas. Stakeholder involvement is a multi-step process that requires broad company involvement. In some cases it is better to begin discussions based on a broader geographic area rather than a final pipeline route map. Communications with stakeholders can take many forms and companies have found the media to be most effective when it projects a concise message. Early public meetings and ongoing agency interaction is essential but these could be enhanced if FERC took a more visible role.

In the final dialogue session, FERC and the natural gas pipeline industry discussed the earlier sessions and raised a number of suggestions for enhancing stakeholder involvement. Stakeholder involvement is essential to successfully site a pipeline though a one size fits all approach will not necessarily work. Each project is unique and stakeholder involvement must be tailored to fit the needs and circumstances of the situation. Companies, FERC, and agencies must be committed to maximizing participation so that as many issues as possible are brought to light early in the process.

Recommendations

Based on the interviews, the workshop, and the facilitated dialogue, three suggestions are offered which may facilitate broader, more productive stakeholder involvement. They are options that should be added to the "tool box" of ways to resolve stakeholder concerns. If pursued, these options would need to be customized to fit the needs of the project and the specific stakeholders. The basic goal of each suggestion is to synchronize and streamline the interaction among the different stakeholders for efficient, high quality results. The suggestions are:

1. Optional Forum for Stakeholder Discussion of Project Need

The NEPA process is not intended to be the forum to determine project need. Its purpose is to determine the route with the least adverse environmental impact and adopt the most appropriate mitigation measures for a proposed project for which a federal decision is required. FERC should conduct special public forums for stakeholders on the need for projects. These forums might be on a regional basis and include state agencies. They should address current and projected markets, system alternatives, and other economic and policy considerations.

2. Improved Participation of Agencies During the Development of the Project Filing; Possible Earlier Issuance of NEPA Notice of Intent (NOI) to Prepare Environmental Assessment or Environmental Impact Statement

FERC should work with industry to encourage agencies to coordinate activities and engage in pre-filing discussions and consultations. Workshops and meetings should be designed to coordinate information requests, clarify jurisdictional questions, and raise any issues that would promote information sharing. This suggestion should enhance the environmental review process.

3. Optional Collaborative Selection Process and Rationale for the Proposed Route

Industry should work with FERC to devise a modified collaborative process, which can be used at the applicant's discretion. The modified process would allow for a progressive, open, and inclusive process where stakeholders are fully engaged in discussions of potential market areas, broad corridors, and feasible routes within those corridors. Such a program should include mechanisms to prevent parties from changing agreements and ensure that efforts are not wasted.

1.0 INTRODUCTION

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On September 15, 1999 FERC issued Order No. 608, the Collaborative Procedures¹. In Order No. 608, FERC modified its procedural regulations governing the authorization of natural gas facilities and services. In general, the regulations were intended to offer prospective applicants the option of using a collaborative process to resolve environmental and interested party issues. This collaborative process is comparable to the process the FERC adopted with respect to applications for hydroelectric licenses, amendments and exemptions. The process is optional. Though intended to be adaptable to the facts and circumstances of the particular case, few applicants have made use of this option because the procedures are complicated and impractical.

Although there are significant barriers to utilizing Order No. 608, natural gas pipeline applicants fully support the concept of engaging stakeholders early in the process so that issues can be identified and perhaps resolved. The role that stakeholders play in pipeline siting is critical and cannot be underestimated. If applicants wish to have a successful application, stakeholders, whether they are advocates or opponents, must be identified and their respective issues addressed. Pre-application discussions provide a beneficial and practical means of identifying stakeholders and their issues.

In October 1999 FERC issued Order No. 609, Landowner Notification². In Order No. 609, the Commission added certain early landowner notification requirements to ensure that landowners who may be affected by a pipeline's proposal to construct natural gas pipeline facilities are formally notified by the pipeline post-filing so that they have sufficient opportunity to participate in FERC's certificate process. Under the current regulation, the pipeline must notify all affected landowners, as defined by 18 C.F.R. § 157.6(d)(2), and towns, communities, and local, state, and federal governments and agencies involved in the project. This notification must be made within 3 business days following the date the Commission issues a notice of the application or by hand within the same time period. The applicant must also publish the application twice not later than 14 days after the date that a docket number is assigned to the application. The application must be published in a daily or weekly newspaper of general circulation in each county in which the project is located. Order No. 609 has significantly improved landowner communication and landowner participation in the certificate process.

¹ Collaborative Procedures for Energy Facility Applications, Docket No. RM98-16-000; Order No. 608, 88 FERC ¶ 61,226 (1998); Order No. 608-A, Order on Reh'g, 93 FERC ¶ 61,099 (2000).

² Landowner Notification, Expanded Categorical Exclusions, and Other Environmental Filing Requirements, Docket No. RM98-17-000; Order No. 609, 89 FERC ¶ 61,023 (1998); Order No. 609-A, Order on Reh'g, 90 FERC ¶ 61,259 (2000).

This study recognizes that significant benefits can be achieved by informally involving all stakeholders even earlier in the process. This study examines the unique challenges faced by the natural gas pipeline industry to incorporate more stakeholder participation in the pre-filing stage. The study further examines how FERC has traditionally engaged stakeholders as well as FERC's perceptions of current industry stakeholder involvement practices. The study also examines the procedures that pipeline companies currently use both pre- and post-filing to achieve stakeholder participation and collaboration during the pipeline routing and construction planning phases.

The fundamental questions to be answered are:

- What is FERC's perception of current stakeholder practices?
- What stakeholder involvement practices does industry use now?
- How could industry enhance its practices prior to the filing of the pipeline application?
- What can FERC or others do to assist pipelines to file better applications using improved practices?

For any given project, potential stakeholders are varied and diverse. Stakeholders include all those parties that are affected by or have an interest in a particular project. In addition to landowners, stakeholders include government agencies, public interest groups, local businesses, and civic organizations. Identifying all stakeholders early in the process can be a challenge but failure to solicit input from stakeholders can result in unnecessary delays and added costs. The following are example categories of stakeholders:

- Real property and neighborhood interests
 - Landowners/residents – immediately affected residential, agricultural, and commercial/industrial properties
 - Future development interests – planned residential, commercial, and industrial developments
 - Infrastructure interests – adjacent rights-of-way for electric power lines, roads, and other linear features
- Government agencies
 - Resource protection agencies – Fish and Wildlife, Corps of Engineers, historic preservation offices, water districts, etc.
 - Land management agencies – U.S. Forest Service, Bureau of Land Management, state forests, park districts, etc.
 - Planning/permitting agencies – city or county planning agencies, highway departments, etc.

- Political interests
 - Elected officials – federal, state, and local
 - Interest groups – environmental, landowner, recreation, etc.
- Economic and business interests
 - Regional development interests – Chambers of Commerce, etc.
 - Project beneficiaries – power suppliers, equipment vendors, labor unions, etc.
- Media – print and broadcasting

Existing Information in the Environmental Report

Many of the stakeholder's concerns are identified by the pipeline applicant and addressed in the Environmental Resource Reports required by FERC to satisfy the NEPA process. Stakeholders who are concerned with the project are required to be identified.

The Resource Reports contain the following information related to stakeholders:

Resource Report 1: A discussion is provided of the pre-construction activities that were undertaken by the applicant. This includes general information regarding the process to secure right-of-way (ROW) easements and to advise landowners of construction in advance. It also describes measures taken to work with the public, including landowners, agencies, customers, officials, and interest groups. It includes details on how the applicant communicated with landowners, including use of letters, newspapers, 800 numbers, pamphlets, and open houses.

Resource Report 1 usually contains an agency and contact list that reports how the applicant complied with Order No. 609. It also reflects agency correspondence, and explains what permits are required and their status. It explains the involvement of other companies to whom gas would be delivered, and sets out a description of non-jurisdictional facilities. The alignment and location of the pipeline within other rights-of-way may be included. This provides information that may concern other stakeholders.

Resource Report 2: It usually contains a list of agencies concerned with water resources, information on the status of construction permits for agencies with jurisdiction over surface waters, local watershed areas crossed, and agency correspondence.

Resource Report 3: It contains a list of agencies that are concerned with fish and wildlife resources, agency correspondence, and the general status of permits and agency consultation, including threatened and endangered species consultation.

Resource Report 4: It contains agency correspondence, State Historic Preservation Act Office (SHPO) and Native American correspondence.

Resource Report 6: It can contain information on contacts with owners of mines crossed by the project, paleontological contacts, and agency correspondence.

Resource Report 8: It includes information on what residences are near the right-of-way, information on planned developments, what entities are concerned about recreation, public use lands crossed, and agency correspondence.

Resource Report 9: It includes information on what agencies need to be consulted regarding compliance with air quality regulations, and information on locations of noise sensitive areas for compressor stations.

Resource Report 10: It includes a discussion of alternate routes and how an alternative route or site may resolve a landowner concern or an agency concern.

2.0 FERC AND INDUSTRY INTERVIEWS

Phone and in-person interviews were conducted with leaders in the gas pipeline industry and the FERC Office of Energy Projects (OEP) to better understand their basic positions. The interviews were also used to elicit information about the pre- and post-application procedures currently used to achieve stakeholder participation in the pipeline planning process.

The interviews focused on a number of topics including:

- The atmosphere of stakeholder involvement in the pipeline industry.
- How and when stakeholders should be involved in the process and what stakeholders should be involved.
- Experiences with stakeholder involvement and preferences for the level of involvement.
- Barriers to stakeholder involvement and ideas to address those barriers.

2.1 FERC INTERVIEW RESULTS

The FERC interviews were designed to gather information about FERC's perceptions of industry stakeholder involvement as well as the methods FERC would view as appropriate in realizing increased stakeholder involvement. The FERC interviews focused on: current stakeholder pre-filing activities; how and when FERC believes stakeholders should be involved; stakeholder feedback on positive and negative pipeline stakeholder contact; its experiences and preferences; and finally, its understanding of the barriers to widespread stakeholder involvement.

FERC believed stakeholders to be more informed, more organized, and more apt to contact the Commission if a problem existed. Pipeline company practices varied widely but FERC stated that anything less than "progressive" activities were considered unacceptable. FERC believed that applicants were improving and trying innovative measures, but industry needed to provide better reporting and documentation of these efforts to get recognition. FERC also indicated a willingness to become more involved in pre-application discussions and interagency coordination.

The following points were raised during the FERC interview process:

- Stakeholder perceptions are driven by “project specific” factors, such as:
 - Initial impressions made by the company (land men);
 - A company’s current behavior;
 - Whether other pipeline projects in the area were controversial or not; and
 - Whether or not there is competition.
- Stakeholders have become more “savvy”, better informed, better organized, and they know how to contact FERC. Nonetheless, landowners and other stakeholders feel that they have little control over the process. Landowners now represent a broader set of interests.
- Applications with less protest are processed more quickly and stakeholder involvement can speed up the process. Also, the level of conflict can determine whether an Environmental Assessment (EA) or an Environmental Impact Statement (EIS) is needed. Stakeholder activity can influence the decision.
- Gas projects are different than hydro projects because of the high stakes and tight construction timeframes. Gas pipeline applicants need quick resolution of their proposals in order to place their pipeline into service.
- There is a wide variation in stakeholder involvement practices for pipeline siting. Best practices are good, but less progressive practices are not acceptable. Applicants are improving and trying new approaches, e.g., involving agencies before filing. Industry could provide better reporting and documentation of stakeholder efforts.
- Pipeline companies respond quickly when agencies make requests. Environmental documents are improving, but could be improved, e.g., third-party prepared EAs do not include mitigation.
- Industry, according to FERC, does not appreciate the constraints NEPA places on FERC, e.g., its non-compressible process, the necessity of complying with the Endangered Species Act (ESA) and the Coastal Zone Management Act (CZMA), and FERC’s need to establish a credible evidentiary record.
- FERC is willing to get involved in “pre-filing” activities to assist with interagency coordination and to resolve stakeholder issues.

2.2 INDUSTRY INTERVIEW RESULTS

Industry was also interviewed to see if there were differences of perspectives between industry and FERC on the nature and extent of pre-filing stakeholder participation. Industry described stakeholder involvement as a multi-step process that requires broad company involvement. In some cases, industry noted that it is better to begin discussions of the project using a broader geographic area instead of a final line on a map. Communications with stakeholders can take many forms. Companies have found the media to be most effective when they have developed a clear and concise message. Early public meetings and ongoing agency interaction is essential but these could be enhanced if FERC took a more visible role.

The following points were raised during the industry interview process:

- There are many different stakeholders to consider, for example, landowners, customers, labor, the environmental community, the local community, government agencies, local emergency preparedness agencies, and direct/indirect beneficiaries of the project. Each can have a unique perspective that might not necessarily be shared by other stakeholders.
- Stakeholders' use of the Internet and community organizing efforts are increasing. Indirectly impacted stakeholder involvement has increased. Communities are now even negotiating for "mitigation measures" such as fire trucks, bike trails, annual payments, etc.
- Stakeholders can often bring information about the route or other important issues to the table. Affected stakeholders and stakeholders who may benefit from the process ought to be included. There should be no difference in the involvement of supporters or opponents. The best approach is to keep all stakeholders involved, especially those who oppose the project.
- Some of the barriers to achieving extensive stakeholder involvement include:
 - Grassroots stakeholders are hard to find and their participation can be compromised due to resource limitations.
 - Pre-filing information may not be specific enough and can cause stakeholders to overreact.
 - The industry has a competitive nature.
 - Pre-application meetings may not be cost effective because they do not attract widespread participation.
- Companies have different approaches to stakeholder involvement. Some companies prefer to notify the public and allow stakeholders to "self-select" whether they get involved. Other companies want to cast a broad net and are more aggressive in order to assure involvement.

- Industry prefers stakeholder involvement with issues discussed in a consultative fashion and limited to the environmental review process, i.e., needs discussions should not be part of NEPA environmental discussions.
- There are no easy routes and undoubtedly there will always be some level of conflict. Industry is willing to meet with everybody, realizing that some people will not change their minds. Industry recognizes that providing relief or concessions to one group will almost always have an impact on another group.
- Some agencies will not become involved before the application is prepared; others will not become involved until the draft EIS is printed. Securing early consultation is difficult. Agencies often lack resources for thorough participation, and they do not want to conduct duplicative reviews of competing pipelines. They do not want to lose the control over the project and may be willing to accept the risk of participating in early consultation. Companies should conduct research to scope agency issues prior to conducting early meetings with agencies.
- Industry believes FERC is interested in seeing the following: less conflict, credible route selection, permits from other agencies obtained before filing, a robust public involvement process, well-developed alternatives, up-front environmental and geographic work, and fewer condemnations.

Analysis

Both FERC and industry stated that the pre-application process and the final siting decision could benefit from early stakeholder involvement. Both also said that industry is improving in its stakeholder involvement practices. However, it can continue to improve especially in the area of documenting stakeholder interests and describing actions taken to address those concerns. One area that both groups mentioned as a concern is early involvement from agencies that are reluctant to get involved until the application is filed.

Both agreed that some level of conflict is unavoidable and there will always be some stakeholders who disagree with the final decision. However, they suggested that stakeholders could provide valuable information and contribute to the siting effort. They should be involved. Interviewees also stressed that every project is different and the decisions about types of actions and levels of effort are best left to the company. FERC recognized that there is a significant difference between the hydro and gas processes for which it is responsible but emphasized that stakeholder involvement can benefit both areas.

3.0 INDUSTRY WORKSHOP

3.0 INDUSTRY WORKSHOP

A broad range of representatives from the leadership in the natural gas pipeline industry convened in September 2000 to share experiences and information on stakeholder involvement issues.

During the workshop, companies shared project specific experiences and ideas. Stakeholder involvement is a multi-step process that requires broad company involvement. There must be a clear commitment from everyone involved that stakeholder participation is important. In some cases it is better to begin discussions based on a broader geographic area rather than a final line on a map, which may be viewed as a final decision on routing. Communications with stakeholders can take many forms and companies have found the media to be most effective when used with a clear and concise message. Early public meetings and ongoing agency interaction is essential but these could be enhanced if FERC took a more visible role.

Findings

Participants discussed a number of questions regarding stakeholder involvement including:

- Why should stakeholders be involved in natural gas pipeline siting?
- What is the right level of stakeholder involvement? What is success?
- What are the activities that should be conducted to encourage stakeholder involvement?
- What can the various entities (industry, FERC and agencies) do to ensure that adequate stakeholder involvement is implemented?

Highlights of the discussion follow in the sections below.

3.1 REASONS FOR STAKEHOLDER INVOLVEMENT

- Involving stakeholders facilitates the application process and the goal of building a pipeline as quickly as possible. Informed stakeholders that understand trade-offs do not usually become interveners.
- Stakeholder involvement builds longer-term relationships with the community.
- Public education is important and stakeholders, especially in high-density areas, will get involved anyway. The company should be the first to inform stakeholders and involve them in the process.
- The best route will be chosen by all entities working together.
- An early study of the issues and identification of stakeholders along the route corridor allows the company to flesh out concerns and competing entities.

3.2 ACTIONS TAKEN TO SATISFY THE PUBLIC AND FERC

- Stakeholder involvement must be a multi-step process within the company, requiring public relations, government affairs, and field research and survey permission.
- The efforts must be focused on the public and not on what's best for the pipeline company. Since stakeholders are more sophisticated today, it takes increased effort on the part of the company.
- Depending on the project, it may be better to start early with a preferred study "corridor" rather than a final line on the map.
- Companies should describe the project to the public along the corridor early in the process. They should use the media and have a clear message.
- Hold early "open house" style meetings to document issues and identify routing opportunities. Schedule ongoing meetings with agencies to discuss route planning and regulatory requirements.
- When dealing with landowner groups, information should be provided on power generation needs, pipelines, comparison of fuel sources, safety, the regulatory process, and FERC.
- Develop support materials such as brochures, videos and website information.
- Get FERC involved at the public meetings to inform stakeholders about the decision making and application process.

3.3 MEASURING SUCCESSFUL INVOLVEMENT

- A certain level of stakeholder/landowner controversy is unavoidable. The percentage of completed right-of-way surveys can be a good indicator and measure of controversy.
- The number and/or substance of phone calls or letters that FERC receives from stakeholders may be indicative of success.
- Industry must demonstrate broad involvement, and it must have the right answers on engineering, safety, project economics, etc.
- Industry should document involvement programs and use a “check off” list to ensure each stakeholder concern is addressed.

3.4 FERC’S GOALS FOR STAKEHOLDER INVOLVEMENT

- FERC wants all issues resolved before an application is submitted.

Stakeholder involvement reduces but does not eliminate controversy and conflict. Ultimately, FERC has to play some role in conflict resolution. Also, the public needs to know that the Natural Gas Act (NGA) authorizes FERC to rule on whether or not a proposed project is in the public interest. If so, then the use of eminent domain exists and can be utilized as necessary. With this knowledge, the individual landowners should not feel as threatened by that process.

3.5 WHAT INDUSTRY CAN DO

- Industry and stakeholders need to develop a clear plan on where FERC is needed and how they want FERC involved. It is important to provide FERC with “suggested approaches” to the involvement of stakeholders in the process.
- Industry desires to have FERC recognize the positive aspects of the pipeline industry.
- Industry should routinely share information on stakeholder experiences.
- Pre-application meetings with FERC would be beneficial to establishing the proper level of stakeholder involvement. The goal is to get buy-in to the project by identifying potentially contentious issues early.
- Stakeholder involvement activities and agency consultations should be better documented and perhaps be included in the resource reports. The key is to document what has been done, what the stakeholders want, and what the pipeline company is doing.
- Industry should do a better job on environmental documentation, e.g., integrate mitigation measures in EAs and EISs where possible.

3.6 WHAT FERC AND AGENCIES COULD DO

- FERC should exercise the role of the lead agency earlier in the process, become more proactive in explaining the process, and be prepared to get involved in resolving conflicts earlier.
- There should be a Memorandum of Understanding (MOU) signed between FERC and all federal agencies involved in the NEPA process for natural gas pipeline projects³. Agencies do not often take FERC or the applicant seriously until an application is filed. This suggests a need for better coordination between FERC and agencies.
- Federal agencies need to follow the NEPA process in the way it was intended. The process of scoping the issues should be simultaneous and not sequential. FERC can do a better job of educating stakeholders about the NEPA process and its requirements.
- Federal agencies should integrate the permitting processes to NEPA and FERC should incorporate the stakeholder process into NEPA.
- Again, the FERC should educate stakeholders early in the process that one result of the finding of “public convenience and necessity” under the NGA is the legal right of the federal government to grant the company the power of eminent domain.

Analysis

All participants in the Industry Workshop agreed that some level of stakeholder involvement is important to successfully site a pipeline project. They agreed that early involvement could help ensure a smoother process and can reduce controversy and problems. There was also agreement that controversy in any siting project is unavoidable and even the best stakeholder involvement programs cannot avoid all controversy.

Participants continue to refine their involvement processes and look to FERC to help them by taking the lead with agencies and other government stakeholders. Industry also sees FERC as a resource when dealing with landowners and other public stakeholders on issues such as the FERC process and eminent domain.

³ The other major federal compliance and permitting areas include the National Historic Preservation Act and ESA compliance, U.S. Army Corps of Engineers (USACOE) Section 404 permitting and NEPA compliance by all involved federal agencies, including the FERC, Bureau of Land Management (BLM), U.S. Forest Service (USFS), U.S. Department of Defense (DOD) and other agencies. A detailed discussion is contained in the INGAA Foundation Report, *Improving Implementation of the National Environmental Policy Act (NEPA)* 2000.

4.0

FERC/INDUSTRY DIALOGUE

4.0 FERC/INDUSTRY DIALOGUE

A joint FERC/Industry dialogue was held in November 2000 in Washington, DC. FERC and the natural gas pipeline industry discussed the earlier sessions and raised a number of suggestions for enhancing stakeholder involvement. Stakeholder involvement is essential to successfully site a pipeline although a one size fits all approach will not necessarily provide the needed level of participation. Each project is unique and stakeholder involvement must be tailored to fit the needs and circumstances of the situation. Companies, FERC and agencies must be committed to maximizing participation so that as many issues as possible are brought to light early in the process.

As a consequence of the November dialogue among the Interstate Natural Gas Association of America (INGAA), its members, and FERC staff, there was general agreement that continued informal and open discussions were useful to all parties. The discussion allowed the regulators and regulated industry representatives to better understand the needs and constraints of both sides. Identifying what actions were most needed and would most benefit the permitting process was discussed.

4.1 DIALOGUE

The following summary items should be interpreted as discussion points rather than consensus items or formal declarations of policy.

- FERC is considering the concept of conducting a generic determination of need. While FERC does not think it appropriate to comment on the need to bring gas to a specific market, it can envision a more generic, broad-based statement on need. FERC wants industry to work with FERC to provide ideas on how to improve gas pipeline permitting.
- FERC is concerned about the increased politicization of the permitting process.
- FERC wants to improve interactions with resource agencies, convey preferred practices, promote “tech transfer” within the industry, and share useful approaches.

4.2 AGENCY INVOLVEMENT

The issue of agency involvement prior to the applicant filing the application was addressed. The ideas generated include:

- Having some state agencies, for example the New York Department of Environmental Conservation, generally establish a pre-application review team, and attempt to use a team permitting approach.
- Providing detailed information for agencies in the pre-filing stage to give the agencies useful information to begin reviewing. This includes:
 - Identification of players;
 - Candid assessment of potential trouble spots; and
 - Description of options.
- Conducting initial outreach meetings at the front end of the process to raise the profile of the project and attract state agency attention.
- Having FERC assist by facilitating agency involvement and early conflict resolution.
- Having state agencies and political leaders adopt policies and statements that support the environmental benefits of natural gas.
- Having FERC assign a docket number before the application is filed to provide a single place for comments.
- Getting beyond the agency regional director level; having discussions with staff.
- Identifying ways to meet agency-funding constraints, where appropriate, e.g., developing funding MOUs.

4.3 STAKEHOLDER REPORTING

The issue of stakeholder reporting in the pre-filing stage of natural gas pipeline permitting was discussed. Ideas generated by the group include:

- Track comments in the environmental document and show how each comment was addressed.
- Document stakeholder support for decisions made each step of the way, e.g., settlement documents.
- Document aggressive stakeholder involvement.
- Create a record by documenting all concerns, questions and issues.
- Include transcripts of stakeholder meetings in the application.

4.4 OPTIONAL ROUTE SELECTION

The group discussed stakeholder route selection, and considered the following:

- When appropriate, conduct a study of geographically similar filings made over the past three years to understand the issues and potential stakeholders.
- Understand the positions of individuals and major players, recruit groups as advocates, and develop a regional consensus on the need for the project first.
- Separate general interests from site-specific interests. Identify those participants who oppose the entire project but in reality oppose a particular route.
- Engage community interests in a dialogue to generate support for the overall project.
- Create a community advisory group.
- In selected trouble spots, consider buying the land and giving the landowner an easement.
- Educate property owners on the value of landowner-negotiated settlements versus the results of contested proceedings. Settlements can be more beneficial.
- Train land agents to be more effective with stakeholders and in resolving conflicts.

The group discussed actions FERC can take to improve agency involvement during the pre-filing process:

- Be willing to dedicate FERC resources, to communicate and offer advice on potential projects, and to offer leadership early in the process.
- Act as an educational resource, e.g., explain the process.
- Explain the need for natural gas and facilities.

4.5 CONCURRENT FERC CERTIFICATE OUTREACHES

FERC discussed how the outreach meetings⁴ tie into a broad FERC effort to involve stakeholders earlier in the process. The FERC outreach meetings were held in Albany, New York, Chicago, Illinois, Tampa, Florida, Seattle, Washington and Portsmouth, New Hampshire. Outreach meetings were held in locations where there historically has been pipeline activity. Based on the meeting results, FERC has made initial recommendations to all participants for improving communications.

⁴ FERC held a series of public meetings for the purpose of exploring and enhancing strategies for constructive public participation in the earliest stages of natural gas facility planning. Interstate natural gas companies; federal, state and local agencies; landowners and non-governmental organizations have participated.

5.0 SUGGESTED IMPROVEMENTS

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Based on the interviews, the industry workshops, and the FERC/Industry dialogue, three suggested improvements are offered for consideration for major expansions, “greenfield,” or controversial projects. These would be implemented on a voluntary basis.

5.1 OPTIONAL FORUM FOR STAKEHOLDER DISCUSSION OF PROJECT NEED

Current Practice: FERC’s existing process for the overall review of a proposed gas pipeline project addresses many factors, including the determination of market need or customer support for the project and the environmental impacts of the project. Both of these processes are open to stakeholders; however, they are separate processes.

Problem: FERC already reviews the need for the project as a part of its certificate approval process; however, generally FERC does not hold public meetings to discuss “need”. Usually the only meetings stakeholders attend are the public scoping meetings that are part of the environmental review process. The landowners often take this opportunity to express their opinions about the overall need for the project, including system alternatives. The NEPA process is not intended to be the forum to determine project need. Its purpose is to determine the route with the least adverse environmental impact and adopt the most appropriate mitigation measures for a proposed project for which a federal decision is required. When landowners hope to use the NEPA review process to air concerns about the project “need”, they often express frustration when they learn that “need” is outside the scope of NEPA. Landowners do not necessarily know where and how to raise general “need” objections.

Suggested Improvement: As part of the process, FERC should conduct special public forums for stakeholders on the need for projects. These forums might be on a regional basis and include state agencies. They should address current and projected markets, system alternatives, and other economic and policy considerations. Interested parties and potentially affected landowners should be encouraged to participate in this forum. Special forums such as this should be an option, so as to protect the existing review process for project need. Having parties address need separate and apart from selecting a particular route may provide all interested persons with a forum to raise non-environmental issues.

Necessary Action by Industry: The industry should voluntarily participate in, or convene, forums on project need. It should provide clear information on new or expanded markets to be served; why existing systems are inadequate; why end users and shippers may not have firmed up their commitments; and how competitive projects differ. The pipeline company should identify potentially affected landowners and other stakeholders so they can be notified about the forum. It should develop and distribute educational materials -brochures, industry websites - on the need, safety, and benefits of natural gas.

Necessary Action by FERC: FERC should develop scoping meetings that include public forums on project need. The meetings should be conducted early in the process to enable stakeholders in the project area or in a region to participate. The procedures should make it convenient for potentially affected landowners and interested parties to attend.

5.2 IMPROVED PARTICIPATION OF AGENCIES DURING THE DEVELOPMENT OF THE PROJECT FILING

Current Practice: The applicant individually consults with federal and state agencies on its environmental data and permitting requirements and initiates environmental programs to satisfy those requirements. Through this existing outreach, industry attempts to identify the information needs of the agencies with respect to NEPA, and to provide that information in the resource reports.

Problem: The goal of this outreach and response by the applicant is very similar to the scoping process of NEPA. However, in some cases it is difficult to secure meaningful commitments from state and federal agencies during the pre-filing consultation period due to agency resource constraints. Some resource agencies wait until the application is filed before devoting significant resources to evaluate the proposed project. This slows down discovery of potential issues. The environmental review process becomes sequential in nature, compared to a simultaneous scoping of all environmental issues early in the NEPA process. Due to resource limitations, it may sometimes be difficult for FERC staff to participate at the optimum level to achieve meaningful participation by other agencies.

Suggested Improvement: When requested by the applicant, FERC could issue the NEPA NOI for the project as the application is being developed. This would allow formal scoping to occur during the pre-filing period. FERC and industry should host state and federal consultation workshops or develop pre-filing review teams to coordinate the different permitting processes. The workshops would be used to reach consensus on how the various agencies will proceed with permitting. They could also be used to discuss concerns, issues and full information needs. If needed, a third party environmental or conflict resolution contractor could be engaged during the pre-filing period to assist FERC in the consultations.

Necessary Action by Industry: The industry should continue to voluntarily reach out to state agencies and political leaders to encourage policies that recognize and support the benefits of natural gas. It should develop sufficient project information in advance of the workshops to allow agencies to conduct meaningful discussions. Industry should participate in workshops as a partner to help the agencies initiate and complete their environmental review. As appropriate, it should develop options for addressing agency resource constraints and be flexible in the use of third party environmental or conflict resolution contractors. If useful, pipelines should be open-minded to hiring conflict resolution contractors themselves.

Necessary Action by FERC and Agencies: When requested by the applicant, FERC should issue the NOI as the application is being developed. It should sponsor the workshops and actively work to secure agency involvement in pre-filing consultations. FERC should reach out to senior management in federal and state agencies to encourage policies that support meaningful pre-filing consultation and coordinated permitting. It should also take any action necessary to allow the use of third party environmental or conflict resolution contractors during the pre-filing period.

5.3 OPTIONAL COLLABORATIVE SELECTION PROCESS AND RATIONALE FOR THE PROPOSED ROUTE

Current Practice: In most cases, selecting the proposed route for a gas pipeline project is straightforward and met with general agreement. The applicant files a proposed route in Resource Report 1 with the required environmental information in the other Resource Reports so that the application is complete. Alternatives to the proposed route are presented in Resource Report 10. This includes both major route alternatives and smaller variations of the proposed route. Each alternative route in Resource Report 10 ideally displays similar environmental information as the proposed route. This allows alternatives to be compared.

Problem: The applicant has an incentive to select a proposed route early in the process, so that the pipeline can identify potentially impacted landowners and gather field environmental information. This information is expensive to accumulate. In most cases, this does not present a problem. However, because a pipeline must select a route in order to commence environmental reviews, some stakeholders believe that the project sponsor presents them with a “decide, announce, and defend” situation on the proposed route.

Suggested Improvement: The applicant could volunteer to enter into a modified collaborative process with stakeholders. Through this process parties could discuss the specifics of the location of the project, such as, potential market areas, broad corridors from the gas supplies to the markets, feasible routes within the corridors, and specific alignments within the routes. This option should not expand the overall timeframe or process. The option is intended to shift the priority from merely gathering complete data on one alignment to one of working with stakeholders during the siting process. This must be a voluntary, collaborative process, which includes binding commitments from all participants.

Necessary Action by Industry: The applicant may voluntarily develop and conduct an “open” process to develop the proposed route. This would include input from stakeholders and detailed rationales for accepting or rejecting alternative routes.

Necessary Action by FERC: A voluntary and open process takes a significant amount of time, but may result in less controversy over the proposed route. FERC should expedite the NEPA process so that the additional time taken with stakeholders does not expand the overall project schedule.