

# Subcommittee on Energy and Mineral Resources

Doug Lamborn, Chairman

Hearing Memo

May 14, 2015

**To:** Natural Resource Committee Members

**From:** Majority Committee Staff

**Hearing:** Legislative Hearing on H.R. 2295, the “*National Energy Security Corridors Act*”

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The subcommittee hearing will take place on **Wednesday, May 20<sup>th</sup> at 10:00 A.M. in Room 1334 Longworth House Office Building**. This hearing will focus on legislation to grant authority to the Secretary of the Interior to issue rights-of-way for natural gas pipelines across National Park System lands, as well as authority to establish National Energy Security Corridors on federal lands.

## **Summary of the Bill**

H.R. 2295 was introduced on May 13, 2015 by Rep. Tom MacArthur (R-NJ) with Rep. Cedric Richmond (D-LA) as an original cosponsor.

The bill provides the Secretary of the Interior with the authority to negotiate rights-of-way for natural gas pipelines on National Park System lands, which are currently exempt under the Mineral Leasing Act. The bill also provides the Secretary of the Interior with the authority to designate National Energy Security Corridors on federal lands for the purpose of issuing streamlined permits for rights-of-way on such corridors. Finally, the bill requires the Secretary of the Interior to notify appropriate Congressional committees when any Interior agency does not meet a Federal Energy Regulatory Commission-assigned deadline for federal authorizations on an inter-state pipeline project.

H.R. 2295 seeks to address obstacles created by the lack of current access from state and private lands across federal lands. These obstacles are constricting markets in the East Coast, where many American families are paying more than the national average to heat their homes with natural gas. The bill authorizes the Secretary of the Interior to issue rights-of-way across all federal lands, including lands managed by the National Park Service (NPS). Surging natural gas production has lowered prices for American consumers and increased our national security through less dependence on foreign sources of oil and natural gas.

The bill also seeks to responsibly plan for future needs by allowing the Secretary to solicit state and local input to designate National Energy Security Corridors on federal lands – and expedite rights of way across such corridors.

## **Sponsor/Cosponsor**

Sponsor: Rep. Tom MacArthur (R-NJ)

Original Cosponsor: Rep. Cedric Richmond (D-LA)

## **Invited Witnesses (in alphabetical order)**

*Mr. Gregory Buppert*, Senior Attorney  
Southern Environmental Law Center  
Charlottesville, VA

*Mr. Sean McGarvey*, President  
North America's Building Trades Unions  
Washington, DC

*Mr. Jim Moore*, Vice President of Commercial Development  
Williams Gas Pipelines  
Houston, TX

*Mr. Linwood Parker*  
Mayor, Town of Four Oaks  
Four Oaks, North Carolina

*Mr. Tim Spisak*  
Senior Advisor for Minerals and Realty Management  
Bureau of Land Management  
U.S. Department of the Interior  
Washington, DC

## **Background**

The shale gas revolution in the United States has fundamentally changed the energy dynamic in our country. Increased natural gas production on state and private lands has not only driven our nation to a new status as the global energy leader, but has also highlighted a significant need for midstream infrastructure investments to ensure that natural gas production is capable of reaching areas that are currently underserved.

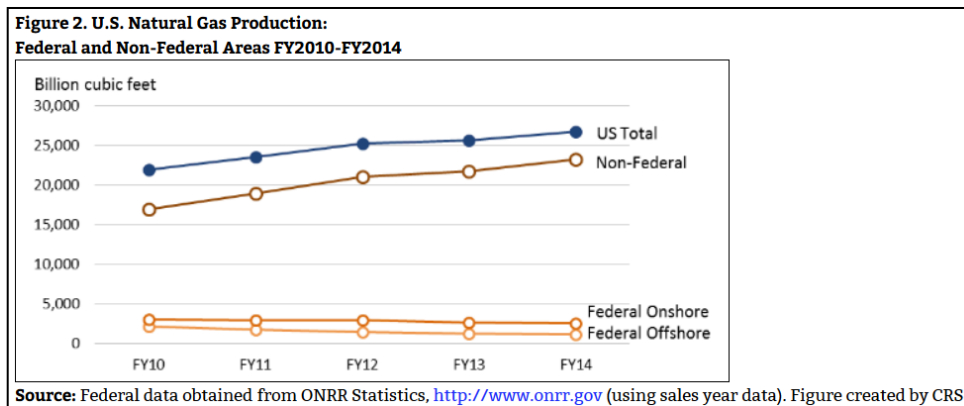
Unfortunately, construction of natural gas pipelines on federal lands has been the most constricted by this development. Currently, the Mineral Leasing Act provides authority for the Secretary of the Interior to issue rights-of-way for pipelines on federal lands; however, NPS lands are explicitly exempt. For this reason, a company is forced to seek Congressional authorization to obtain legal right of way approval for a natural gas pipeline on NPS lands. To date, five natural gas pipelines have received Congressional approval. These five separate bills have taken between eight and sixteen months to be enacted. This significantly prolongs the process.

In the coming decades, the construction of significant pipeline infrastructure will be required to meet new natural gas capacity in the United States. Undoubtedly, federal lands – including National Park Systems lands – will need to be accessed in order for upstream production to reach downstream consumers.

### *Increased Natural Gas Demand, Decreased Access to Federal Lands*

The U.S. shale gas revolution, driven by hydraulic fracturing and horizontal drilling in shale formations primarily on state and private lands, has helped to lead our nation to a renewed status as a global energy leader.<sup>1</sup> According to a recent Congressional Research Service report,<sup>2</sup> natural gas production on state and private lands surged between 2010 and 2014 – from 16.85 trillion cubic feet (Tcf) in 2010 to 23.2 Tcf in 2014—a 38 percent increase in just four years.

Meanwhile, over the same period, natural gas production on federal lands fell by 30 percent from 5.1 Tcf in 2010 to 3.5 Tcf in 2014. Total natural gas production on federal and non-federal lands in 2014 was over 25 Tcf, solidifying the United States as the largest producer of natural gas – ahead of Russia and Saudi Arabia. The Energy Information Administration (EIA) Annual Outlook for 2015 (AEO 2015) estimates that by 2017, the United States will transition to a net exporter of natural gas – with net exports ranging from 3.0 Tcf to 13.1 Tcf by 2040.<sup>3</sup>



This vast energy abundance has transformed energy consumption and energy prices<sup>4</sup> in the United States.

Coal currently leads as the predominant electricity energy source (39%). However, the Obama Administration’s most recent regulations aimed at cutting

carbon emissions of existing power plants in the United States<sup>5</sup> will require energy companies to look to natural gas in the coming decades for electricity generation. While today natural gas generates 27% of electricity in the United States, EIA projects natural gas to generate 42% of total generation by 2040<sup>6</sup>. Additionally, EIA projects industrial energy use to rise alongside the growth of our nation’s shale gas supply.

This projected increased use of natural gas necessitates significant infrastructure investments in the coming years to ensure that this prodigious resource is reaching areas that are currently underserved. The

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<sup>1</sup> <http://www.eia.gov/todayinenergy/detail.cfm?id=20692>  
<sup>2</sup> <http://www.crs.gov/pages/Reports.aspx?PRODCODE=R42432&Source=author>  
<sup>3</sup> <http://www.eia.gov/forecasts/aeo/>  
<sup>4</sup> <http://www.eia.gov/todayinenergy/detail.cfm?id=19751>  
<sup>5</sup> <http://www2.epa.gov/carbon-pollution-standards/clean-power-plan-proposed-rule>  
<sup>6</sup> AEO 2015

Interstate Natural Gas Association of America (INGAA) estimates significant capacity growth of 43 billion cubic feet per day (Bcf) between 2014 and 2035 – predominately in northeastern and southwestern states which will likely result in significant coal plant retirements and therefore will have increased gas-fired capacity.<sup>7</sup> INGAA estimates that over \$200 billion in capital expenditures will be dedicated to infrastructure expansion between 2014 and 2035.<sup>8</sup>

Under the Mineral Leasing Act (MLA), the U.S. Department of the Interior has the authority to issue permits and right-of-ways for the construction of natural gas pipelines across federal land. However, in the MLA the definition of “federal lands” explicitly exempts lands managed by the National Park System<sup>9</sup>. Separate statutes have been enacted to authorize the Secretary of the Interior to issue approval of rights-of-way for electrical and telephone lines, water pipes and pipelines, mining and timber facilities, and canals and ditches.

Because natural gas pipelines are not explicitly listed in the corresponding statutes, the Department of Interior’s conservative interpretation is that these statutes do not authorize the Department to issue permits and right-of-ways for natural gas pipelines across lands managed by the NPS. This is extremely troubling, given the NPS manages the National Trails System, including the Appalachian Trail, which is over 2,000 miles long (1,090 of which is on federal lands) and spans 17 states.

A report issued by the Department of Energy in March 2014 noted that: “In the eastern U.S., more than twenty federally protected national trails (some of which are thousands of miles long, and cross many states) pose a potential obstacle to the development of new or expanded electricity transmission capacity.”<sup>10</sup> While the report focuses on electricity transmission, it also notes that pipelines face the same obstacles.

As a result, each time a company seeks to expand, modify, or construct a natural gas pipeline across NPS lands, they are required to turn to Congress to pass a separate piece of legislation authorizing the Department of the Interior to issue a permit to that particular project. Since 1990, five natural gas pipelines have received such authorizations - which took between 8 months to 16 months to authorize. These are:

- Colonial National Historical Park located in Virginia (H.R. 4107; Public Law 101-573, enacted Nov. 15 1990) (9 months);
- Great Smoky Mountains National Park in Tennessee (H.R. 3380; Public Law 107-223, enacted Aug. 21, 2002) (9 months);
- Gateway National Recreation Area in New York (H.R. 2606; Public Law 112-197, enacted Nov. 27, 2012) (16 months);
- Glacier National Park in Montana (H.R. 4606; Public Law 112-268, enacted Jan. 12, 2013) (10 months);  
and

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<sup>7</sup> <http://www.ingaa.org/Foundation/Foundation-Reports/2035Report.aspx>; p. 12.

<sup>8</sup> <http://www.ingaa.org/Foundation/Foundation-Reports/2035Report.aspx>; p. 19.

<sup>9</sup> 30 U.S. Code §185(b)(1)

<sup>10</sup> <http://www.osti.gov/scitech/biblio/1130391>

- Denali National Park in Alaska (S. 157; Public Law 113-33, enacted Sep. 18, 2013) (8 months).

In order to avoid this extra bureaucracy, some projects have been constructed around NPS lands rather than taking the most expeditious route through the park land – which, in some instances, are less intrusive on the environment. This has resulted in private land being taken through eminent domain rather than being sited across federal land.

## **Section by Section**

### **Section 1: Short Title**

The Act may be cited as the “National Energy Security Corridors Act”.

### **Section 2: Designation of National Energy Security Corridors on Federal Lands**

This section changes the current definition of “federal lands” in the definitions section of the Mineral Leasing Act to provide the Secretary of the Interior with the authority to issue rights-of-way on National Park System lands for natural gas pipelines only.

This section also adds a paragraph that provides the Secretary of the Interior with the authority to designate National Energy Security Corridors on federal lands and to incorporate those corridors into agency land management plans.

Criteria for the designation of the corridors is also established – requiring that the Secretary employ multiple-use principles and seek input from other federal agencies as well as state, local and tribal governments, and the industries which are seeking to ultimately apply for right-of-way permits on designated corridors. Designation criteria are also provided to ensure the Secretary does not make corridor designations that would not be economically or topographically infeasible for use.

Procedures for authorizing the use of designated corridors for rights-of-way are defined – including a streamlined and predictable review process that ensures right-of-way application review and approval on Corridors within one (1) year of filing the application. This section also ensures a transparent process for the applicant that includes a clear timeline of milestones throughout the application process.

States’ input is also encouraged in this section by allowing a Governor of a state, in recognition of needs within that state, to request that the Secretary of the Interior designate a corridor on specified federal lands within that state.

The spatial distribution of federal lands, especially in the East Coast, is acknowledged and addressed in this section. In order to address this obstacle, which is described in detail in the August 2011 U.S. Department of

Energy report entitled “Energy Transport Corridors: The Potential Role of Federal Lands in States Identified by the Energy Policy Act of 2005, Section 368(b)<sup>11</sup>,” the legislation requires the Secretary to coordinate with other agencies in order to find areas that are suitable for corridor designation. The Secretary is encouraged to establish corridors across federal lands as a way to minimize impacts on private lands. The Secretary is also not limited on the number of corridor designations or dimensions.

The legislation makes clear that designating corridors is not considered a “major federal action” under the National Environmental Policy Act of 1969 (NEPA) because corridor designation does not cause any disturbance to the land and instead is essentially a planning tool for eventual right-of-way applications that will each require a full NEPA analysis under current law.

Because the Energy Policy Act of 2005 sought to establish energy corridors in East Coast states over a decade ago and those corridors were never established, the legislation requires the Secretary to establish 10 corridors within the 37 states within two years of enactment.

### **Section 3: Notification Requirement**

This section requires the Secretary of the Interior to notify appropriate authorizing committees in Congress in any instance when an agency or official in the Department of the Interior fails to comply with any schedule provided by the Federal Energy Regulatory Commission (FERC) to agencies at the Department of the Interior for completion of necessary authorizations that are required to approve an inter-state pipeline.

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<sup>11</sup> <http://www.eastcorridoreis.anl.gov/documents/docs/Section368bReport.pdf>