

**STATEMENT OF  
DONALD F. SANTA  
PRESIDENT AND CEO  
THE INTERSTATE NATURAL GAS ASSOCIATION OF AMERICA**

**BEFORE THE  
SUBCOMMITTEE ON ENERGY AND MINERAL RESOURCES  
COMMITTEE ON NATURAL RESOURCES  
U.S. HOUSE OF REPRESENTATIVES**

**REGARDING THE  
H.R. 1587, THE ENERGY INFRASTRUCTURE IMPROVEMENT ACT**

**JUNE 20, 2014**

Good morning Chairman Lamborn, Ranking Member Holt and members of the Subcommittee. My name is Donald F. Santa, and I am 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. 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.

Thank you for the opportunity to share INGAA's views on H.R. 1587, the "Energy Infrastructure Improvement Act" introduced by Rep. Tom Marino. This bill addresses a *process problem* rooted in statute that affects permitting for natural gas pipelines. Largely through an historical oversight, the current law governing lands administered by the National Park Service (NPS) authorizes the administrative review and approval of rights-of-way for certain enumerated types of infrastructure, but not rights-of-way for natural gas pipelines. Natural gas pipelines were not common when these statutes were enacted in the early 20<sup>th</sup> century. Consequently, when Congress enumerated the types of rights-of-way that could be approved by the NPS and/or the Secretary of the Interior (the Secretary), natural gas pipelines were not listed.<sup>1</sup> Electric facilities, communications facilities, mining facilities, and even telegraph lines and water flumes are listed in the existing statute, but not natural gas pipelines. The statute mentions "pipelines" only in the context of water transportation.

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<sup>1</sup> 16 U.S.C. Sec. 5 (1911) and 16 U.S.C. Sec. 79 (1901)

The result is this: While the NPS has the authority to approve certain types of rights-of-way, it cannot approve rights-of-way for natural gas pipelines absent the enactment of project-specific legislation by the Congress. In other words, current law puts Congress in the role of being a “permitting agency” for pipelines seeking authority to traverse NPS lands. This cumbersome process causes unnecessary delays, and in some cases, illogical outcomes. This framework needlessly consumes the time and resource of the Congress and compels the NPS and/or the Secretary, the operators of natural gas pipelines and all affected stakeholders to engage in duplicative processes in which both Congressional action and administrative approval are required to grant the same right of way. The NPS, and/or the Secretary, should have the authority to review and approve pipeline rights-of-way in the same manner as other types of rights-of-way, as long as such approval is not inconsistent or detrimental to the primary purposes of these lands. H.R. 1587 grants such authority, and represents a long-overdue amendment to the law. INGAA agrees with the intent behind Rep. Marino’s efforts, and therefore endorses H.R. 1587.

### **Current Law**

As mentioned, the statutes governing federal lands include sections authorizing the review and approval of rights-of-way across federal lands. These provisions, originally enacted in 1901 and 1911, authorize the Department of the Interior (DOI) to approve rights-of-way associated with specific types of infrastructure. For example, Title 16, Section 5, authorizes the head of the department with jurisdiction over the lands to approve rights-of-way for:

*electrical poles and lines for the transmission and distribution of electrical power, and for poles and lines for communication purposes, and for radio, television, and other forms of communication transmitting, relay, and receiving structures and facilities, to the extent of two hundred feet on each side of the center line of such lines and poles and not to exceed four hundred feet by four hundred feet for radio, television, and other forms of communication transmitting, relay, and receiving structures and facilities... .*

Also in Title 16, Section 79, the Secretary is authorized to approve rights-of-way across public lands for:

*electrical plants, poles, and lines for the generation and distribution of electrical power, and for telephone and telegraph purposes, and for canals, ditches, pipes and pipe lines, flumes, tunnels, or other water conduits, and for water plants, dams, and reservoirs used to promote irrigation or mining or quarrying, or the manufacturing or cutting of timber or lumber, or the supplying of water for domestic, public, or any other beneficial uses to the extent of the ground occupied by such canals, ditches, flumes, tunnels, reservoirs, or other water conduits or water plants, or electrical or other works permitted hereunder, and not to exceed fifty feet on each side of the marginal limits thereof, or not to exceed*

*fifty feet on each side of the center line of such pipes and pipe lines, electrical, telegraph, and telephone lines and poles, by any citizen, association, or corporation of the United States.*

Section 5 was amended in 1952 to add the references to radio, television and other communications facilities. Other than that, the law governing this area has remained largely unchanged for more than 100 years.<sup>2</sup>

The Mineral Leasing Act of 1920<sup>3</sup> (MLA) includes a provision granting either the Secretary or the appropriate agency head the authority to approve rights-of-way “through any Federal lands” for “the transportation of oil, natural gas, synthetic liquid or gaseous fuels, or any refined product produced therefrom. . . .” The MLA, however, defines “Federal lands” to mean “all lands owned by the United States except lands in the National Park System. . . .” For lands within the National Park System, the statute defers to the provisions in Title 16, which do not include natural gas pipelines among the enumerated forms of infrastructure.

### **Practice for Many Years**

Even with this apparent oversight, DOI assumed for decades that it possessed the authority to approve natural gas pipeline rights-of-way across NPS lands. It made this assumption based on the general spirit of the law. And based on this assumption, DOI granted natural gas pipeline rights-of-across these lands during the major build-out of the nation’s natural gas transmission system in the 1950s and 1960s. Pipelines were not sited on NPS lands haphazardly or carelessly. Instead, operators chose to seek such approvals from the NPS only when viable alternatives were unavailable, when the impact of the right-of-way was viewed as negligible, and/or when facilities within NPS lands (such as concessionaires) needed natural gas service.

This process changed in the late 1980s after a DOI legal analysis in connection with an application for a pipeline right-of-way across NPS lands concluded that the statute did not authorize such action. In denying the application, DOI stated that it lacked the authority under Title 16 to approve pipeline rights-of-way, other than those pipelines associated with water

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<sup>2</sup> The communications-related amendment is the only major amendment since original enactment. There have been some re-codification changes over the years, but nothing altering the substance of the statute in any major way.

<sup>3</sup> 30 U.S.C. Sec. 181 et seq.

transportation.<sup>4</sup> Since then, DOI has taken the position that any natural gas pipeline needing a right-of-way across NPS lands must first secure the enactment of specific authorizing legislation from Congress. Such legislation, however, does not grant the right-of-way sought by the pipeline operator. It only grants DOI the authority to approve the specific right-of-way *if it so chooses*.

In practice, pipeline operators seeking a NPS right-of-way now first seek to negotiate the terms and conditions for constructing the proposed pipeline (or altering an existing pipeline) with the NPS. If agreement is reached, the pipeline operator seeks Congressional authorization with the support of the NPS. Given the vagaries of the legislative process, this step can take several years.

### **Recent Examples**

Mr. Chairman, this Committee has dealt with several specific pipeline right-of-way bills in recent years. The most recent is the “Denali National Park Improvement Act” (P.L. 113-33). The President signed this legislation last September, after *four years of consideration in Congress*. In brief, the legislation allows, among other things, the NPS to approve a right-of-way through the Denali National Park for a future natural gas transmission line to serve consumers in south-central Alaska. The pipeline, if approved, would largely share an existing right-of-way with a highway through the park. This project is supported by the NPS.

Another example is the “New York City Natural Gas Supply Enhancement Act” (P.L. 112-197), which was reported by this committee, enacted by Congress and signed by the President in November 2012. This law addresses a proposed lateral pipeline from the existing Transco pipeline in New York Bay to serve increased natural gas demand in Queens and Brooklyn. The lateral pipeline will be only about three miles long, but must cross under the Gateway National Recreation Area in order to come ashore in Brooklyn. The Gateway National Recreation Area includes Jacob Riis Park and Floyd Bennett Field, New York City’s first airport. Congress approved the legislation after about 18 months of consideration. Again, the legislation did not approve the right-of-way permit; instead, it allowed DOI to consider the construction permit for possible approval. After an additional 19 months of review by DOI, the permit was approved just two weeks ago, and pipeline construction is now underway.

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<sup>4</sup> Since this decision, a number of bills have been enacted which allow the Secretary to authorize rights-of-way for existing natural gas pipelines on certain NPS lands. Examples include P.L. 107-223, P.L. 101-573, and P.L. 105-329.

A final example is the “Delaware Water Gap National Recreation Area Natural Gas Pipeline Enlargement Act” (P.L. 109-156), enacted in 2005. This bill dealt with the expansion of the existing Columbia Gas Transmission pipeline. The pipeline had been built in 1948, and subsequently, in 1965, Congress created the Delaware Water Gap National Recreation Area which was situated on top of about 3.5 miles of the pipeline right-of-way. Under pre-existing agreements, the NPS was empowered to approve future expansions of the pipeline, to meet customer needs, for all but two parcels of land that the pipeline traversed. These two parcels included about 850 feet of the 3.5 miles of pipeline right-of-way in the park. When Columbia needed to repair and expand the pipeline in the early 2000s, it had to petition the Congress to enact a statute authorizing amendment of the right-of-way in those two parcels. Two years were needed to obtain the statutory authority needed to modify the terms of the right-of-way so that Columbia could replace 850 feet of 14-inch-diameter pipeline with a safe and more reliable 20-inch-diameter pipeline.

### **Reason for Legislation**

This process begs the question: Why should Congress involve itself in a specific right-of-way permit application in the first place? This question is appropriate, because the current law does not reflect a decision by the Congress to establish this process for natural gas pipelines as matter of policy, but rather results from the fact that natural gas pipelines were not among common forms of infrastructure during the first decade of the last century. It would be more efficient to relieve the Congress of the obligation to review all applications for natural gas pipeline rights-of-way across NPS lands and to authorize the Secretary to fulfill this role without the need for case-specific statutory authority to grant a right-of-way if an application has merit. This is, in fact, how the myriad of other permits required for a new pipeline are processed now – by the agencies charged by Congress to be subject-matter experts and decision makers.<sup>5</sup>

One more point is worth mention. As "national park" status is extended to lands that were not previously so designated, especially in the eastern part of the country, we believe this problem will continue to arise, for both existing and proposed natural gas pipelines, until clear administrative authority is created.

### **Conclusion**

Mr. Chairman, thank you again for allowing INGAA to share its views on this matter. Given the need to expand our natural gas infrastructure to keep pace with demand growth, we need to ensure that permitting questions are handled in an efficient and effective manner. The severe

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<sup>5</sup> For example, the Bureau of Land Management, the U.S. Army Corps of Engineers, and the U.S. Fish and Wildlife Service.

winter that we just experienced amply demonstrates the need, and the importance, of making these decisions to benefit American consumers. We do not look lightly on the question of placing energy infrastructure on lands administered by the NPS. Where there is a public need to locate pipelines across these areas, though, or to expand existing pipelines in these areas, we need a better and more efficient process. We thank Rep. Marino for introducing his bill and starting Congress on the path toward creating a better process.