



Natural Gas Pipeline Permitting Reform Act – H.R. 161

Frequently Asked Questions

Q. Is H.R. 161 even needed? Didn't FERC testify that 90% of their interstate natural gas pipeline certificates are already issued within a 12-month period?

A. Across the U.S. there is a critical shortage of natural gas pipeline capacity, both in areas where it is being produced and where there is demand. In areas that have seen rapid growth in production such as North Dakota and Pennsylvania a lack of pipeline capacity is slowing development preventing natural gas from getting to markets where it is needed. Along the east coast, especially in the Northeast, a lack of pipeline capacity is causing prices that are far above the national average. Further, as coal-fired power plants are closed in the Northeast due to environmental regulations there is a growing demand for natural gas for electricity generation along with manufacturing and home heating. This is causing higher costs for consumers despite the abundance of natural gas we have in the U.S.

Pipeline operators have reported numerous delays in the permitting process. A December, 2012 study conducted by the INGAA Foundation found that delays of more than 90 days have risen 28 percent after EPACT's permitting reforms, while delays of 180 days or more have risen 20 percent. A February 2013 GAO report found the natural gas pipeline permitting process to be "complex." As natural gas becomes a more dominant force in electricity generation and manufacturing, it is critical that pipeline construction can take place through a streamlined and modernized permitting process.

It is important to note the details of FERC's testimony in the 113th Congress. It has been erroneously repeated that FERC testified that "90% of the permits are being done on time." This is NOT what FERC stated in their testimony. They stated that 90% of the certificates are being completed within 12 months. FERC is in control of the certificate approval process, but they are at the mercy of other agencies to process permit applications. **H.R. 161 is needed because FERC has no ability to enforce other agencies to process permits on schedule. This bill brings accountability to these agencies.**

Even though 90% of certificates are being processed by FERC in the 12 month period, this number doesn't tell the full story. Many, if not most, of the projects needing certificates are relatively small, some as simple as replacing existing equipment. What this number doesn't show is how larger, new pipeline projects are being processed. Saying the fact that 90% of the certificates are being processed by FERC in 12 months means there isn't a problem is akin to trying to measure the success rate of Congress passing bills into law when the vast majority of bills involve the renaming of post offices. Not all projects receiving certificates are the equal.

Q. Is there any precedent for Congress requiring a permit or application to go into effect absent agency action, such as in Section 2, paragraph 4 of H.R. 161?

A. This is not the first time we have had laws written that anticipated the need for certain permits or applications to be approved if an agency did not act. There are many examples of this:

- Clean Water Act (33 USC 129) dealing with state certification of projects. If the Administrator does not approve or disapprove such application within 45 days of receipt, the application **shall be deemed approved.**
- TSCA Section 5 dealing with new chemical approvals. If EPA does not take action on a pre-manufacturing notice, the manufacturer of the chemical can begin manufacturing the chemical. The company must submit a notice of commencement to EPA within 30 days, after which the chemical is **considered an existing chemical.**
- Pinelands National Reserve (16 USC 471i) dealing with approval of comprehensive forest management plans. The Secretary shall, within 90 days after the date the plan is submitted, approve or disapprove the plan. Should the Secretary fail to act on the proposed plan within 90 days, the plan **shall be regarded as approved.**
- Bank Services Company Act (12 USC 1865) regarding prior approval. In the event the Board or banking agency fails to act on an application within 90 days of the submission of a complete application, the application **shall be deemed approved.**

H.R. 161 follows in this tradition but actually allows for more leeway for agency input, allowing agencies to proffer terms and conditions consistent with the environmental document after the permit goes into effect for a period of 30 days. The idea that this provision is extreme or unprecedented simply is not supported by the facts and the precedent already established in other federal laws.

Q. Why is there a 90-day deadline for agency action after FERC issues the certificate? Is this an arbitrary deadline?

A. The 90-day deadline is pulled directly from existing FERC regulation. Under Section 313 of the Energy Policy Act of 2005, FERC is designated as the lead agency charged with reviewing interstate natural gas pipeline projects. Included under their lead agency status is the ability for FERC to enforce deadlines for other agencies involved in the review of permits associated with gas pipeline projects. FERC did this. In October, 2006, FERC issued a regulation imposing a 90-day deadline on those agencies to complete their reviews and decide on permits.

FERC acknowledged at the time that there were concerns that the 90-day deadline might be too short, and that the timeline should be doubled to 180 days. FERC responded, saying that “The Commission expects that project sponsors’ increasing use of the Commission’s

pre-filing consultation process...will eliminate such delayed authorization decisions.” H.R. 161 acknowledges this point and applies the legislation only to projects that go through this pre-filing process.

Q. FERC has 12 months to complete its review of a project, is this enough time to review the construction of a complex interstate natural gas pipeline?

A. H.R. 161 does not require projects to be reviewed within 12 months. This legislation, which only applies to projects that go through FERC’s extensive pre-filing process, establishes a process that allows for over 2 years of consideration. That includes:

- 6-9 months for the pre-filing process;
- 12 months for the FERC certificate;
- 90 days for the agencies to take final action on any permit necessary;
- 30 days for an extension in the event the agency is unable to complete the work; and
- 30 days after the permit goes into effect for agencies to add additional terms and conditions.

Q. Which organizations support H.R. 161?

A. The U.S. Chamber of Commerce
National Association of Manufacturers
Interstate Natural Gas Association of America
Edison Electric Institute
American Public Power Association
National Rural Electric Cooperative Association
American Gas Association
America’s Natural Gas Alliance
Gas Processors Association
The Electric Power Supply Association
Distribution Contractors Association
National Association of Royalty Owners
New England Ratepayers Association
Energy Infrastructure and Equipment Alliance
American Chemistry Council