Senate Committee on Energy and Natural Resources

Testimony of
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INTRODUCTION

Good morning Chairman Murkowski, Senator Cantwell and Members of the Committee. I am Curt Moffatt and serve as Vice President and General Counsel to Kinder Morgan, Inc. Thank you for the opportunity to testify today on this very important subject.

ABOUT KINDER MORGAN

Kinder Morgan owns or operates approximately 70,000 miles of natural gas pipelines constituting the largest natural gas network in North America. Our pipelines transport approximately 40 percent of the natural gas consumed in the U.S. and connect the major consuming markets to every important natural gas resource play in the U.S., including the Eagle Ford, Marcellus, Bakken, Utica, Uinta, Permian, Haynesville, Fayetteville and Barnett.

Development of the revolutionary shale plays across the United States has been an unrecognized "disruptive technology." It has unlocked trillions of cubic feet of natural gas which has fueled an increasing demand for natural gas and created a tremendous need for more energy infrastructure. As a result, we invest billions of dollars each year to operate and maintain our existing system and to evaluate, permit, expand existing assets and construct new pipelines. All of this has occurred while the cost of gas to consumers has been falling.

I joined Kinder Morgan in 2014. I have enjoyed a 40 year career as an attorney with a focus on natural gas regulation and environmental policy. I was fortunate to serve in my early career as a legal advisor to the last Chairman of the Federal Power Commission and the first Chairman of the

Federal Energy Regulatory Commission (hereinafter "FERC"). During this period, President Carter proposed and the Congress enacted legislation to create the Department of Energy and the National Energy Act, including the Natural Gas Policy Act of 1978 (hereinafter "NGPA"). It was an exciting time working on these legislative initiatives and their implementation. These important legislative achievements paved the way for the dynamic, competitive markets enjoyed today.

After government service, I practiced law in Washington and was a partner for twenty years at Van Ness Feldman. In addition to representation of the Kinder Morgan companies, I also served as counsel to numerous other interstate natural gas pipelines over thirty five years. Indeed, I have represented one of the Kinder Morgan pipelines, Natural Gas Pipeline Company of America, since 1979.

In addition to my legal work, I am Chairman of the Board of Visitors for the Nicholas School of the Environment at Duke University. I also am the Vice Chairman of the Board of the Caron Treatment Centers, a not for profit provider of treatment addiction disorders.

TAKE HOME MESSAGE

Chairman Murkowski, before I delve into the details of my testimony, let me state Kinder Morgan's "take home" message for the Committee. Our domestic natural gas resources are a natural treasure. They provide enormous benefits to the nation's economy and our citizens' way of life. To enjoy these benefits, the natural gas must be transported from the producing regions to the places where it is consumed. We need pipelines to do that. There simply is no other practical means to transport natural gas. Natural gas is essential to the U.S. economy and pipelines are essential to transport it**.**

THREE INITIAL OBSERVATIONS:

First, the Natural Gas Act of 1938 (hereinafter "NGA") with its structure of certificates of public convenience and necessity, federal eminent domain and comprehensive economic regulation, has resulted in a privately-owned and financed, integrated transportation and storage network that today powers our economy and is the envy of the world. Judicial decisions over the last 80 years have upheld the NGA and consistently affirmed the Congressional

intent to implement comprehensive regulation of the transportation and sale for resale of natural gas in interstate commerce.

Second, as some of us may recall, in the mid to late 1970s, the United States experienced severe natural gas shortages because of the disconnect between the commodity price-regulated interstate market and the commodity price-deregulated intrastate market. Schools and hospitals were closed because they could not be heated and manufacturing facilities were shut down due to the lack of natural gas. In response, the Congress enacted the NGPA. The NGPA was bi-partisan. It paved the way for the deregulation of the commodity price in both the intrastate and interstate markets and led to the integration of transportation and storage services utilizing both intrastate and interstate transportation systems. And it worked.

Third, just over a decade ago, with the passage of the Energy Policy Act of 2005 (hereinafter "EPAct 2005"), the Congress affirmed and refined the Federal Energy Regulatory Commission's (hereinafter "FERC" or "Commission") regulation of liquefied natural gas facilities under section 3 of the NGA. It also introduced the concept of a pre-filing process for LNG facilities, including the examination of a required pipeline interconnect to deliver natural gas to the facility. That process is available today to all major interstate pipeline certificate proceedings.

EPAct 2005 also directed that the Commission be the "lead agency" for the purposes of coordinating all federal authorizations needed by an interstate pipeline and for complying with the National Environmental Policy Act of 1969 (hereinafter "NEPA"). As the lead agency, FERC has the authority to establish a schedule for federal and state authorizations required under federal law. In addition, EPAct 2005 amended the NGA to allow a certificate applicant to file a civil action with the United States Court of Appeals for the District of Columbia Circuit ("D.C. Circuit") for review of an order or action of a federal or state agency to issue, condition, or deny any permit required under federal law. By requiring all other federal agencies to cooperate with the Commission and comply with deadlines set by the Commission, and by establishing a process for an applicant to appeal an agency's delay to the D.C. Circuit, the Congress reaffirmed the original intent of the NGA to govern the development of a national integrated interstate transportation system.

Reviewing this history, it is clear that the Commission and its predecessor agency have implemented effectively, and with consistent judicial approval,

the Congressional mandates in the NGA, the NGPA and EPAct 2005. Those mandates enable a privately funded, capital intensive, natural gas industry to deliver critical low-cost energy to the largest economy in the world and increasingly other world economies as well.

ROLE OF NATURAL GAS IN THE U.S. ECONOMY

In recent years, the United States has shifted from being dependent on imports for its energy supply to becoming one of the world's leading producers of oil and gas. This trend, which can continue if markets are permitted to function efficiently, is facilitating billions of dollars of investment in the U.S. manufacturing sector, creating thousands of high-paying U.S. jobs, and providing households and businesses with additional disposable income through lower energy costs. According to the Energy Information Administration, the city gate price of natural gas, (the place where long-haul pipelines deliver to local distribution companies), has fallen from approximately $8 per thousand cubic feet in 2007 to under $4 so far this year.

Today, many people think of natural gas primarily as a fuel for generating electricity due to its obvious economic and environmental advantages over other fossil fuels used for power generation. However, the power sector only accounts for approximately one third of natural gas consumption in the U.S. The remainder is consumed in the industrial, commercial, and residential sectors. Indeed, the natural gas pipeline network was constructed to serve these needs and, at one time, the use of natural gas for electric generation was discouraged.

In 2017, the industrial sector accounted for about 35% of U.S. natural gas consumption. Industrial facilities use natural gas as a fuel for heating; for combined heat and power systems; and as a process fuel or feedstock to produce chemicals, fertilizer, automobiles and many other products. The chemicals, food, metals, paper, minerals, wood products, and textiles industries provided 5.5 million jobs and almost $3.3 trillion of economic output in the U.S. in 2015. The chemicals industry alone employs 811,000 people in the U.S. and for every one job created in the chemicals sector, 6.8 jobs are created in other sectors.

Commercial users accounted for about 12% of U.S. natural gas consumption in 2017 to cook; heat buildings and water; operate refrigeration and cooling equipment; dry clothes; and provide outdoor lighting. There are more than 5.4 million commercial natural gas customers, which include schools, colleges and

universities; hospitals and health care providers; laboratories; hotels; warehouses and storage facilities; professional offices; government buildings; and various other kinds of commercial businesses. More than half of the commercial buildings in the U.S. use natural gas as an energy source, and, as a result of the recent growth in U.S. natural gas production, prices for commercial consumers of natural gas have fallen significantly since 2007.

Roughly half of the residential homes in the United States use natural gas for space heating, to heat water, to cook, and to dry clothes. In 2017, the residential sector used approximately 17% of all natural gas consumed in the U.S. Homeowners have seen their heating bills decline significantly in the last 10 years due to the increased availability of low priced natural gas.

Electricity generation accounted for approximately 34% of U.S. natural gas consumption in 2017, and one third of electricity consumed in the U.S. is supplied by natural gas power plants.

Madam Chair, I believe it is important to highlight these statistics. All too often the debate regarding the use of natural gas and the development of natural gas pipelines is framed exclusively around the use of natural gas to generate electricity and the resulting greenhouse gas emissions. Some object to the use of certain technologies to produce natural gas and thus argue that the pipeline infrastructure is harmful to the public interest. While largely beyond the Congressional mandates to the Commission under the NGA, these arguments are misguided and short-sighted when the entire story of the role of natural gas in the nation's economy is forthrightly considered. Perhaps more importantly, the use of natural gas for electricity generation has lowered GHG emissions from electric power generation by 28% since 2005 and is essential to an increased reliance on renewable generation.

As indicated above, since the shale revolution began, natural gas prices have fallen sharply with enormous benefits to industrial, commercial and, most importantly, residential consumers. Americans cannot benefit from our natural gas wealth, however, unless we are able to develop the infrastructure needed to transport it to consumers. Kinder Morgan currently has natural gas pipeline projects, representing potential investments of approximately $5 billion, in various stages of evaluation, permitting and construction. However, these are very challenging times for any company seeking to build a new pipeline or even expand and modernize an existing pipeline. Before we (or any other natural gas company) even think about starting the permitting process for a project, we undertake a comprehensive internal analysis to determine if

there is a need for a proposed project, if the benefits of the project outweigh the impacts, and whether the financial commitment is a sound investment. If we determine that a proposed project is worth pursuing, then, and only then, do we begin the formal development process.

CONGRESSIONAL RECOGNITION OF THE IMPORTANCE OF NATURAL GAS

Madam Chairman, the history of natural gas development in the United States is instructive to the Committee's current inquiry. Eighty years ago, Congress specifically recognized the contribution that natural gas could make to the nation's well-being when it enacted the NGA. Section 1 of that Act declares that "the business of transporting and selling natural gas for ultimate distribution to the public is affected with a public interest, and that Federal regulation in matters relating to the transportation of natural gas and the sale thereof in interstate and foreign commerce is necessary in the public interest."

In enacting the NGA, the Congress recognized that the locations where natural gas is produced frequently are long distances from where consumers of gas live and work; that the only means of transporting natural gas to those consumers is through pipelines that cross several states; and that a comprehensive federal regulatory framework is needed to ensure that the pipelines could be constructed and the gas delivered to consumers.

The Congress also recognized that the private sector is better suited to finance and construct this needed infrastructure than the government. Thus, Section 7 of the NGA provides that a certificate to construct and operate an interstate natural gas pipeline "shall be issued" to any qualified applicant who demonstrates that the project "...is or will be required by the present or future public convenience and necessity..."

Over the decades, the Commission, its predecessor agency, and the Courts have implemented and interpreted the NGA in a manner that has resulted in a nationwide natural gas transportation network that is the envy of the world.

As noted earlier, in the mid to late 1970s the U.S. experienced severe natural gas shortages. In response, the Congress enacted the NGPA. One of the pillars of the NGPA was to set in motion the deregulation of the natural gas industry, including deregulating the price of the commodity, thereby creating incentives for producers to explore for and develop new sources of natural gas. That deregulation, combined with U.S. technology and ingenuity, has resulted in our

current ability as a nation to produce trillions of cubic feet of natural gas from shale formations at historically low prices.

This vast resource, however, is of little value to us if we cannot transport it to the homes, businesses and factories where it is consumed. During the four decades since enactment of the NGPA, the FERC has done an outstanding job of guiding and authorizing the construction of a fully integrated, competitive and safe pipeline system to serve the transportation needs of natural gas producers and consumers.

Most importantly, this infrastructure development has been accomplished by the private sector with private financing. Government does not require that pipelines be built and taxpayer dollars have not and will not pay for the development of this critical infrastructure. Consumers that utilize the transportation services of the natural gas infrastructure will, over years of service, financially support the pipeline as market forces permit.

NATURAL GAS PIPELINE DEVELOPMENT AND PERMITTING PROCESS

Under Section 7 of the NGA the Commission regulates the siting, construction, and operation of interstate natural gas pipelines. Before a pipeline developer can construct a pipeline, it must receive a certificate of public convenience and necessity (hereinafter "certificate") from FERC. A certificate authorizes the pipeline owner to construct and operate the proposed pipeline facilities in accordance with numerous terms and conditions imposed by the Commission, including applicable environmental, health, and safety regulations. In addition, the certificate subjects the pipeline to: (1) comprehensive regulation of the rates the pipeline can charge its customers; and (2) terms of service provided to those customers.

The Committee should be aware that there are many projects that pipelines evaluate but for which an application is never filed with the FERC. These projects may fail for a host of reasons including market economics or the lack of an environmentally acceptable route.

FERC's evaluation of an application for a certificate is guided by its **1999 Statement of Policy**, which sets forth procedural steps and substantive factors. There are two basic components to this evaluation: (1) an economic balancing test; and (2) an evaluation of environmental impacts under NEPA.

Economic Balancing Test

In its economic balancing test, FERC measures the need for and benefits of the project against any adverse economic impacts. In effect, this is a sliding scale approach in which the greater the adverse effects, the greater the public benefits must be in order to balance those adverse impacts. If the benefits outweigh the adverse impacts, the project is deemed to be in the "public interest".

If the project is an expansion of an existing pipeline, the threshold step in this balancing test is to determine whether the project can support itself financially without relying on subsidies from current customers. By not allowing the pipeline developer to rely on subsidization from existing customers, FERC places the pipeline developer at risk for any pipeline capacity that is not sold. This creates a strong incentive for pipeline developers to not overbuild infrastructure that is not needed by the market.

In the next step, FERC evaluates whether the project applicant has eliminated or minimized adverse effects of the proposed project on the applicant's existing customers; existing pipelines and their customers in the same market; and affected landowners and communities. With respect to impact on existing customers and other pipelines, FERC begins from a pro-competitive position; it presumes that the benefits of access to new gas supplies likely will outweigh any negative impacts on existing competitors.

The economic balancing test incentivizes project applicants to eliminate or minimize any adverse impacts, including environmental impacts on land owners and communities. To a significant degree, adverse effects can be eliminated or minimized by carefully selecting the proposed right-of-way, locating the project in existing utility corridors, and negotiating right-of-way agreements with landowners. FERC balances any residual adverse effects against the need for and public benefits of the project. As a practical matter, pipelines make routing changes throughout the pre-filing and certification process to address landowner and environmental concerns.

The primary way applicants demonstrate need is through binding contracts from customers for capacity on the proposed pipeline. Pursuant to these contracts, commonly for 10 years or longer, customers commit to pay demand charges for capacity in the pipeline regardless of whether the capacity ultimately is used. Customers can be end users such as manufacturers and power plants; local gas distribution utilities who procure and then sell and deliver natural gas directly to consumers; producers who need to transport produced gas to trading hubs or directly to end users; or marketers who have

purchased gas available in the commodity market and need to transport it to their customers.

The Commission also identifies and evaluates other public benefits that point to the need for the project. Such benefits often include meeting unserved demand for natural gas, eliminating bottlenecks, providing access to new supplies, reducing costs to consumers, providing new interconnects that improve the reliability and resiliency of the pipeline network, increasing electric reliability, and advancing clean air objectives.

As the Committee heard at its FERC hearing in June, the Commission has initiated a reevaluation of its 1999 Policy Statement. As part of that review, one question the Commission is considering is whether to continue to rely upon contracts for capacity in the proposed pipeline as an indication of the required need for the project. Reliance upon such contracts has been a bedrock of the private financing of these capital intensive projects for the 80 years since the passage of the NGA. Originally, these contracts were in the form of contracts for gas supply which dedicated gas reserves for sale to the pipeline, and contracts for the pipeline to deliver the gas to regulated retail utilities. With the unbundling of the natural gas markets, pipelines no longer own the gas they transport. Now pipelines only execute contracts to provide transportation services to the customers that own the gas. Nevertheless, the Commission's inquiry is the same: Does the pipeline have binding agreements that demonstrate that customers will utilize its services?

Today, there are thousands of individual transportation and storage transactions pursuant to which gas is transported from the wellhead to market hubs and then downstream to the end user. All of these various types of contracts and services together contribute to robust, economically efficient, and liquid natural gas markets. Continued reliance upon contracts is the bedrock that supports the Nation's capital-intensive, privately financed natural gas infrastructure.

Another question raised is whether contracts with an affiliate of the pipeline developer are somehow a less reliable indicator of the need for the project. It is perfectly natural in our view that an entity that has invested millions of dollars in facilities for either the production or the consumption of natural gas also would be willing to execute a contract to transport the natural gas to market. Kinder Morgan welcomes partners into its projects. Given the significant development costs incurred to permit and construct a project, sharing the associated risk and reducing the capital outlay when faced with several years

of substantial expenditure before any return is realized is prudent. Because agreements with affiliates are a prudent, and often necessary, basis for developing a project, such agreements definitely are a valid indicator of project need.

While it is currently popular to question the economics of the affiliate relationship, many pipelines are joint ventures. It is not a question of an affiliate paying itself. The demand charges are paid to a separate corporate entity which has invested equity and debt to privately finance the development and operation of the pipeline. The shipper's affiliate is no different than the Kinder Morgan affiliate taking the development risk of the pipeline and making sound economic decisions. The costs are real, whether paid to an affiliate or a third party.

NEPA Analysis

FERC also undertakes a comprehensive analysis of the social and environmental impacts of the project under NEPA. For all major pipeline projects, the NEPA review results in an Environmental Impact Statement ("EIS"). It is important to recall that the NGA predates NEPA by about 30 years. NEPA is a procedural statute intended to inform a decision maker about the environmental consequences of a proposed action.

FERC is the "lead" agency in NEPA reviews of certificate applications by interstate pipelines, but coordinates closely with other federal agencies, tribes, and state and local governments (referred to as "cooperating agencies").

In the NEPA process, FERC staff works with the other cooperating agencies to perform a thorough independent review of anticipated impacts of the project on such resources as geology, soil, groundwater, surface water, wetlands, aquatic resources, vegetation, wildlife, special status species, cultural resources, land use, recreation, aesthetics, socioeconomics, air quality, climate change, noise, reliability and safety.

A key aspect of the NEPA analysis is consideration of alternatives to the project. These include a "no action" alternative, in which the project is not constructed; system alternatives, such as using existing, modified or other proposed facilities; design alternatives, such as different pipe diameters and electric versus gas-powered compressor stations; and route and siting alternatives. FERC staff also considers alternatives proposed by the cooperating agencies and by other stakeholders that comment during the NEPA process. Where need is established, FERC frequently includes multiple

conditions, route changes, and other requirements with which the project must comply in the order granting the certificate and authorizing the project.

Consistent with the two-part analysis under the Policy Statement, if FERC determines through the economic balancing test that there is not sufficient need for the project or through the NEPA analysis that the impacts of the project outweigh the benefits, it will dismiss the application. Most projects that are not fully supported will not reach this stage however, since development of a project and preparing the FERC application requires a significant investment, one that is only made for real projects. In rare cases where an applicant has not been able to show any need for the project in the form of contracts, the Commission will dismiss the application without reaching the environmental issues.

Process Is Critical

FERC's certificate determination only occurs after an extensive deliberative process of stakeholder engagement and outreach. There are two phases of this process. In the first phase the pipeline proponent begins the route selection process, consults with landowners and local and state governments, and prepares the extensive analyses needed to support the project. These activities will occur whether as part of the formal FERC-sponsored pre-filing process or informally.

Prior to filing an application for a certificate, the project proponent reaches out to and consults with landowners, state and local officials, other agencies, tribes and other stakeholders. The pipeline also prepares a series of draft "resource reports" upon which the NEPA review is based. In addition, during pre-filing, FERC staff will conduct site visits, review the draft resource reports and provide comments to the applicant on alternatives to the project, siting concerns, right-of-way modifications, and additional studies, surveys and mitigation measures that are needed. This process is iterative over many months and is conducted on the public record.

If the project applicant continues development of the project after the feedback and modifications recommended during the pre-filing process, it will initiate the second phase of the process by filing a formal application for a certificate. During the formal application phase, FERC staff prepares the required NEPA document and conducts the economic balancing test.

During the years of project development and review, environmental studies and reports are continually being developed to facilitate both the environmental and public review but also to minimize the impact of construction of the project. In

both the pre-filing and application phases, there are substantial opportunities for stakeholder engagement and input. It also is an iterative process through which modifications requested and recommended by FERC staff and stakeholders are studied and in many instances incorporated into the project.

The 1999 Statement of Policy is a market-driven policy that the Commission has employed to adapt to rapid changes in the natural gas market over the past two decades. FERC's flexible implementation of the Policy Statement has facilitated the development of the infrastructure needed to support competitive natural gas markets which, in turn, have provided substantial benefits to consumers. FERC's pipeline review process allows for public input at multiple stages and addresses those comments by imposing conditions designed to minimize environmental and landowner impacts. And its robust oversight during construction and operation ensures compliance with those conditions.[1]

LANDOWNER AND LOCAL ISSUES; THE USE OF FEDERAL EMINENT DOMAIN

An essential concern in the effective implementation of the NGA is the relationship between the pipeline applicant and the property owners and state and local political subdivisions impacted by the proposed infrastructure. The pipeline industry recognizes both the actual impact and the fear of hypothetical impacts of a proposed project on individual landowners. Moreover, applicants understand that addressing landowner concerns is a process encompassing many years from initial contact through reclamation and restoration of the right of way.

These relationships and the obligations that attend to them are of paramount importance to the applicants and numerous industry and associated construction partners. The Commission has a best practices guide for industry to follow. All companies have numerous training programs, tracking systems, internal audits and other tools to assure meaningful, responsive and respectful engagement. Individual companies and member trade associations work

[1] I ask that an Energy Law Journal article entitled *Considering The Public Convenience And Necessity In Pipeline Certificate Cases Under The Natural Gas Act*, that explains in detail the evolution of FERC's application of the public convenience and necessity standard, be entered into the record and considered part of my testimony.

diligently to update and improve processes, outreach and reduction of impacts where possible.

Any reasonable observer of FERC's oversight in this regard can review the resource reports and the hundreds of data requests and responses in each docket and conclude that the Commission and its cooperating state and federal agencies analyze and address all potential issues for every foot of the project. Commission orders issuing certificates contain numerous environmental conditions, some applicable to all projects and some specifically targeted to the individual project under review. There are a plethora of post certificate requirements, including environmental training and monitoring as well as reports on construction to the Commission. The Commission regularly sends environmental inspectors to ensure compliance with the terms of its orders.

The right of eminent domain is not controlled by the FERC. Congress granted that right in the NGA. The Commission properly tries to minimize its use; as does the industry. It is better to get along with landowners and negotiate a resolution than to have to battle it out in court. This authority is, in practice, used only as a last resort. Over the last ten years, Kinder Morgan has been able to secure consensual right-of-way contracts with 96% of the 4266 tracts needed for its projects. Nevertheless, the need for a right of federal eminent domain is another bedrock of the NGA, especially when some landowners "Just Say No" and are not interested in reaching an agreement regardless of the amount of compensation and conditions offered by the pipeline.

CURRENT CHALLENGES

While Kinder Morgan believes that the Commission has done a commendable job of implementing Congressional intent to promote and develop a national integrated natural gas pipeline system, we also believe that the job is not finished. To take full advantage of our abundant natural gas resources, we will need to continue to connect sources of supply with consumers in different locations via pipelines.

As the Committee is fully aware, this is not an easy task. Most applications for an NGA Section 7 certificate filed at FERC these days are opposed by environmental NGOs, as well as a limited number of impacted landowners and even some Governors. The reasons for this opposition vary.

As noted above, while pipelines frequently achieve voluntary right-of-way agreements with 90 – 95% of all landowners affected by a project, some landowners will not agree to a pipeline easement regardless of the terms and

compensation. Organized opposition is becoming more widespread. Many pipeline facilities were constructed years ago in rural areas. Yet today these same areas are populated suburbs whose residents are likely to oppose any modifications to these existing facilities.

Opposition by certain State governments and environmental NGOs, in contrast, often is driven by policy agendas and politics designed to discourage the production, transportation and consumption of natural gas. This often is referred to as the "keep it in the ground" agenda. This opposition is based primarily upon the premise that 100% the natural gas is going to be combusted to generate electricity. Typically, there is no recognition that two-thirds of all gas consumption is in the residential, industrial and commercial sectors. Nor is there any recognition of the significant savings homeowner and consumers have realized due to the abundant supplies of natural gas. Finally, even when the gas is going to be used for power generation, there is little acknowledgment of the greenhouse gas emission reductions gained by using natural gas instead of higher carbon content fuels or the role that gas generation plays in supporting renewable generation.

As discussed above, FERC, through application of its 1999 Policy Statement, works very hard to address legitimate concerns about the social, cultural and environmental impacts of pipeline construction. Nevertheless, FERC currently is reevaluating the Policy Statement and seeking recommendations on how the procedures and balancing embodied therein can be improved. Kinder Morgan will be filing detailed comments in response to the FERC Notice of Inquiry on the 1999 Policy Statement with specific recommendations for changes that hopefully will improve the certification process.

All decision making processes have room for improvement and we anticipate that FERC will identify and implement changes to the manner in which it implements the 1999 Policy Statement. Kinder Morgan supports changes that will make the certification process more efficient, transparent and less adversarial.

However, we will not support any changes by FERC that will undermine the basic intent and purpose of the NGA and the NGPA. Specifically, we believe there are two fundamental principles that must be maintained. The first is that it is FERC's mandate to ensure the continued development of a comprehensive integrated pipeline transportation system to ensure that the United States can enjoy the benefits of its enormous natural gas resources. The second is that the market place, not the government, should determine

when to construct components of this transportation system and that the private sector should continue to bear the risk of financing the infrastructure.

RELATED AGENCY PERMITTING PROCESSES

In addition to needing an NGA certificate from FERC, interstate natural gas pipelines also require certain permits and authorizations from the states in which they will be located. In recent years, there has been an increased effort by some state agencies to delay, impose conditions on, or deny necessary permits and authorizations for reasons that are not related to the law under which the permit or authorization is sought. For example, before a project can be constructed, Section 401 of the Clean Water Act requires an applicant to obtain from any state in which the project will be located a certification that the project will comply with state water quality standards. One state has refused to issue these certifications to natural gas pipelines, not because it has determined that the projects will violate state water quality standards, but because it is opposed to natural gas pipelines crossing the state.

The Commission has attempted to address unreasonable delays by issuing certificates conditioned on compliance with applicable state or local regulation, thus allowing the project to proceed with certain activities while it continues to pursue the needed state or local permit. However, despite the federal preemption aspects of the NGA, FERC's ability to address unreasonable conditions or denials is quite limited. Although the Congress attempted to address this in EPAct 2005 by adding Section 19(d) to the NGA, the results have been mixed. While the states do have a legitimate role to implement applicable state or federal requirements, the exercise of that authority must be consistent with the specific purpose of the law and the federal preemption embodied in the NGA.

CONCLUSION

The Congress demonstrated significant foresight eighty years ago when it enacted the NGA and laid the groundwork for the production, transportation and use of one of our nation's most valuable natural resources. But the jobs, convenience, economic and clean air benefits of that natural resource only can be realized if there is a transportation system to deliver the natural gas to the ultimate consumers. Natural gas pipelines provide that service. This Committee and the Congress should ensure that they can continue to do so.

Thank you for your attention and I look forward to your questions.