



DONALD F. SANTA
PRESIDENT & CEO

October 28, 2013

The Honorable Ed Whitfield
Chairman
Subcommittee on Energy and Power
Committee on Energy and Commerce
Washington, DC 20515

The Honorable Bobby Rush
Ranking Member
Subcommittee on Energy and Power
Committee on Energy and Commerce
Washington, DC 20515

Dear Chairman Whitfield and Ranking Member Rush,

The Interstate Natural Gas Association of America (INGAA) is writing to express its support for H.R. 3301, the North America Energy Infrastructure Act. INGAA represents interstate natural gas pipeline operators in the U.S. and Canada. Our 25 members operate about 200,000 miles of U.S. natural gas transmission pipeline and account for virtually all of the major natural gas pipeline systems in North America.

The United States is a partner with Canada and Mexico in the North American Free Trade Agreement. This agreement has served our nation well, as reflected in the robust and dynamic cross-border trade of natural gas. The U.S. has benefited from abundant Canadian supplies of natural gas over the past several decades, and we have exported modest volumes of U.S. natural gas to Mexico. The laws governing the approval of cross-border energy infrastructure should be updated to reflect the free trade arrangement we have shared with these nations since 1994. For this reason, INGAA supports H.R. 3301, and appreciates the efforts of Chairman Upton and Congressman Green in drafting this legislation.

The current process for the approval of cross-border natural gas pipelines is complex and needs reform. Three major approvals are required to complete a cross-border pipeline crossing:

- 1) Approval of the import/export transaction by the Department of Energy (DOE) under section 3 of the Natural Gas Act (NGA).
- 2) Approval of a natural gas import/export facility by the Federal Energy Regulatory Commission (FERC) under section 3 of the NGA, jointly with FERC's delegated authority under Executive Orders 10485 and 12038 to approve a Presidential permit for such facility. The NGA section 3 authorization and the Presidential permit are essentially reviewed together by FERC.
- 3) A certificate of public convenience and necessity authorizing construction of the pipeline issued by FERC, pursuant to section 7 of the NGA. Incidentally, since the FERC certificate is a "major Federal action" under the National Environmental Policy Act (NEPA), FERC is responsible for conducting the appropriate environmental analysis to meet NEPA requirements.

In addition to these approvals, a proposed pipeline also must obtain numerous environmental and land-use permits required for any such projects, including permits related to the Clean Water Act and the Clean Air Act.

Section 3 of the NGA creates a rebuttable presumption that the import/export of natural gas is in the public interest. Section 3(a) states that FERC (and by extension, DOE) “shall issue such order upon application, unless, after opportunity for hearing, it finds that the proposed exportation or importation will not be consistent with the public interest.” The burden of proof is placed upon those who assert that the import/export is not in the public interest.

Importantly, section 3(c) of the NGA makes specific reference to the approval of import and exports with free trade agreement nations, such as Canada and Mexico. Section 3(c) states that the import/export of natural gas to free trade agreement nations “shall be deemed to be consistent with the public interest, and applications for such importation or exportation shall be granted without modification or delay.” In other words, a determination of public interest, in these cases, is made by operation of law. A governmental entity need not make such a determination, since Congress already has spoken on the question.

For many years, FERC’s predecessor agency (the Federal Power Commission) had the exclusive authority to approve the import/export of natural gas. In 1953, President Eisenhower signed Executive Order 10485, which established a process for the executive branch approval such facilities. The order stated that the “(p)roper conduct of the foreign relations of the United States requires that executive permission be obtained for the construction and maintenance at the borders of the United States of facilities for the exportation or importation of electric energy and natural gas.” This executive authority was delegated to FERC and DOE in the late 1970s, with the enactment of the Department of Energy Organization Act of 1977 and President Carter’s Executive Order 12038.

H.R. 3301 would modernize approvals for natural gas pipeline projects crossing U.S. borders into either Canada or Mexico, such that three approvals would become two. If the bill were enacted, a proposed natural gas pipeline crossing the border with one of these nations would require:

- 1) The same certificate of public convenience and necessity issued by FERC under current law. This includes the associated NEPA analysis, and all environmental and land-use permits.
- 2) A separate FERC approval for both the NGA section 3 authorization and the authorization required under section 3 of H.R. 3301, which would replace the current Presidential permit requirement.

Section 4 of H.R. 3301 would remove the redundant requirement that DOE approve the import/export of natural gas to/from Canada and Mexico. This section of the legislation amends section 3(c) of the NGA, which already renders DOE’s review of the import/export of natural gas to a free trade agreement nation (such as Canada or Mexico) a largely irrelevant exercise.

The Department of Energy seems to agree that its specific approval of these transactions serves little purpose. In a statement before the Senate Energy and Natural Resources Committee in 2011, DOE Acting Assistant Secretary for Fossil Energy Christopher Smith stated:

Because applications under section 3(c) must be granted without modification or delay and are deemed to be in the public interest, DOE does not conduct a public interest analysis of those applications and cannot condition them by the insertion of terms which otherwise might be considered necessary or appropriate.

Thus, there seems little justification for a DOE process that is perfunctory at best. Pursuant to H.R. 3301, FERC “shall approve” an import/export application unless such approval is “not in the national security interests of the United States.” The guidance provided by the Natural Gas Act and by H.R. 3301, if enacted, provides FERC with clear standards for protecting legitimate national security concerns, while remaining consistent with the purposes of existing free trade agreements.

Some have alleged that section 4 of H.R. 3301 changes the approval process for liquefied natural gas (LNG) exports. This clearly is not the case, as is evidenced by the plain language of the bill itself. H.R. 3301 addresses the approval of *natural gas pipelines crossing the international borders with either Canada or Mexico.*

The United States has a free trade agreement with Canada and Mexico that has been in place for 20 years. Energy infrastructure between these three NAFTA signatories should be approved and constructed in a manner consistent with the fact that such a free trade agreement actually exists. H.R. 3301 accomplishes this objective.

Once again, INGAA thanks Chairman Upton and Congressman Green for introducing this legislation. We respectfully request that this letter be made part of the record for the hearing concerning H.R. 3301. INGAA would be happy to answer any questions the Subcommittee may have.

Respectfully,

A handwritten signature in blue ink, appearing to read "D. F. Santa".

Donald F. Santa
President and CEO

cc: Hon. Fred Upton
Hon. Gene Green