AGENCY SPEAK

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What is the primary mission of the Federal Energy Regulatory Commission (FERC)?

In the broadest sense, FERC regulates and oversees energy industries in the economic, environmental and safety interests of the American public. Specifically, in the Office of Energy Projects, we regulate hydroelectric licensing, administration, compliance and safety of non-federal dams. For pipeline projects, we must approve interstate natural gas pipeline facilities, Liquefied Natural Gas (LNG) terminals and associated pipelines and natural gas storage fields. As we get more involved in electric transmission, we will eventually approve interstate electric transmission projects that are in national interest corridors.

What are some of your immediate goals?

One of our immediate goals involves better coordination with other agencies. This is highlighted by our new scheduling authority, where we now set the schedule for issuing all federal authorizations. This occurs within 90 days after we issue our final National Environmental Policy Act (NEPA) document – whether it's a Final Environmental Impact Statement (FEIS) or a final Environmental Assessment (EA). If an agency does not issue its federal permits within that timeframe, then a company has an option of appealing directly to the DC Court of Appeals. This includes state agencies that are issuing federal permits like 401 Clean Water Act certificates, Clean Air Act permits or Coastal Zone Management permits, which are consistency determinations, on behalf of the federal law. All of those fall under this one umbrella of 90-day action. So, our challenge is to make sure our NEPA document is good enough for these agencies so they can act on time.

Which agencies do you typically partner with?

On pipeline projects, the agencies we work with most closely include the Bureau of Land Management (BLM), the Fish & Wildlife Service, and for the relatively few pipelines that can't avoid a national forest, the Forest Service. We also work closely with the U.S Army Corps of Engineers (USACE) on nearly every one of our projects. In June 2005, we negotiated a special interagency agreement with USACE regarding our joint permitting responsibilities – theirs under the Clean Water Act or Rivers and Harbors Act and ours under the Natural Gas Act.

On LNG projects, we have an excellent working relationship with the U.S. Coast Guard regarding tankers that approach LNG facilities, and we work closely with the Department of Transportation (DOT), which administers the safety standards for LNG terminals. We have our own Cryogenic Design and Safety Review process and work with the Coast Guard and DOT to make sure that our EIS covers all the relevant safety issues and to ensure that the project meets our safety standards. Our chairman has said that, if a project meets our safety standards, we'll approve it. And if the project doesn't meet our safety standards, then we'll deny it.

What types of issues typically arise with FERC projects?

With the number of players involved in a project, you're inevitably going to get different views. Some people will be supportive of the project and some people will be opposed to any construction in the area for any number of reasons. And yet, our responsibility is to determine the real impacts. We dissect it down into its essential components – what's being proposed, why it's being proposed – and we lay it out in a way that any layman can read and understand, and we give them a chance to comment. We also use the pre-filing process to give people an advanced opportunity to air their views and express their concerns so we can address them early on.

What is pre-filing and how is it beneficial?

We started designing the pre-filing process in 2000 to determine how to better communicate with our stakeholders – whether they're agencies or people. We traveled across the country, and following numerous meetings and conferences, the pre-filing process evolved. It was recognized by 10 federal agencies in an interagency agreement that we signed in May 2002, and ultimately became instituted in law by Congress. It is mandatory for LNG terminals to go through a minimum of six months of pre-filing.

It's the best way for a company to involve FERC and other agencies in their project planning. If we can inform the company of the kinds of issues they're going to face and get those issues resolved, that's beneficial for everyone.

By using the pre-filing process, we're able to eliminate or reduce the number of issues we get during the application phase. We have succeeded in reducing our average processing timeline for a major certificate project from 16 to 10 months by using this process.

Are pipelines or terminals considered dangerous?

All the big interstate pipelines in our country, including natural gas, have a very good safety record, as do LNG terminals. Even so, they have the potential to be hazardous if there's a leak or a fire. Congress paid a great deal of attention to that in the Pipeline Improvement Safety Act of 2002. The U.S. Department of Transportation Office of Pipeline Safety plays a vital and positive role in regulating the safety of our nation's pipelines. The industry in general is very responsive and responsible for keeping pipelines safe because no one wants there to be pipeline accidents – not me, not you and certainly not the company that owns the pipeline.

We perform a comprehensive engineering and safety review of applications for LNG terminals. Applicants create mitigation and safety plans, and we supplement those with detailed design and safety recommendations of our own in our environmental documents and make it available for people to comment. Under the Energy Policy Act of 2005 (EPAct of 2005), we must answer any safety issues that arise with any state that has a LNG terminal. They have an opportunity to provide us with a safety advisory report and then FERC must give a direct response to that report before it can approve an LNG terminal. As we go through this process, we receive a lot of letters from interested citizens, agencies, politicians and special interest groups. Over the years, we've worked on increasing our interaction with all stakeholders. Now, we'll even set up a special meeting with them to find out what their real concerns are. We do the same thing with local agencies and other federal agencies. We're very focused on improving the process by training our own people on how to communicate better and get out there proactively to identify what issues exist.

How do you address public perception of these projects?

If you listen to energy infrastructure stories in the news, it appears that nearly every project has a constituency that opposes it. And there may even be some constituencies that oppose all of them. Yet we all expect our lights to turn on and our gas burners to light, and along with that comes the need for infrastructure. So we try to balance that process and get the facts.

In the last 5-10 years, the public has become much more aware of local issues through the internet and the media. Our pre-filing process enables us to get right to the heart of any local environmental issue that might arise in a particular area before the project application is submitted. If we know what projects are in the works, we can better inform the public about them. The earlier people are informed about these projects and raise their concerns, the more likely we are to be able to address and resolve issues and concerns that can later cause delays. So our push has been focused on early project announcements and notification.

What changes have you seen in project permitting over the years?

Early on in the 70's, we were not allowed to mail notices to (or even ask for) a landowner's name or address, as that was considered burdensome. Instead, we did it through public notices and notices to agencies and mayors of towns and then the word would spread. It worked reasonably well, but eventually, we got approval to obtain landowner lists so we could mail our notices of intent during the scoping process, directly to the people affected. That was a big change and resulted in benefits for both the landowner and FERC.

Another major change that has helped streamline the process is, rather than negotiate a solution, we are allowed to put certain conditions in the certificate. For example, if you are going to build this pipe, you need to keep your right of way "x" feet wide or you need to do this river crossing by directional drill or some other specified condition. This has allowed us to use our professional experience to mitigate environmental impact and place important restrictions on projects. In the earlier years, we were not permitted to do that.

Which programs most directly affect the right of way professional?

The number one area that affects them is the pipeline right of way acquisition process for interstate natural gas pipeline rights of way. This includes compressor stations and appurtenent facilities, valves, pig launchers and natural gas storage fields. The right of way professional is often the first to face the landowner, and their behavior can set the tone for the entire project.

I believe that the second most important area will eventually grow into the interstate electric transmission line siting and approval process. This is where our professional staff and right of way professionals will intersect more in the future. The FERC has backstop siting authority for interstate electric transmission lines that haven't been able to get approved at the state level after a year of the application process. FERC will have siting authority for any of those projects that are in the national interest electric corridors. But those corridors have yet to be identified.

What types of permitting changes have you witnessed over the years?

I started working in the Commission in 1973, and from the beginning, I started hearing complaints. Whether it was from Capitol Hill customers or from the companies we work with, they complained that the process takes too long. Yet, we're expected to know all the details of any impact to the environment.

The focus is always on the regulatory process – how much time it takes to get a FERC certificate for a natural gas pipeline and various other federal or state authorizations. We've come a long way in getting the process to have more regulatory consistency. The EPAct of 2005 worked to clarify our jurisdiction over natural gas facilities and LNG terminals and also gave us specific responsibilities. These include putting regulations in place for the pre-filing process, which has been proven and certified by Congress as being successful, as well as permit scheduling responsibilities, where FERC is required to set the schedule for all agencies that issue federal permits. We work with the agencies to prepare our environmental documents, and effective as of December 26, 2006, FERC regulations require that, within 90 days of completing our FEIS or EA, all the other federal authorizations must be issued. That's the authority and responsibility that resulted from the EPAct of 2005.

Do most companies build adequate permitting time into their project schedules?

While we've been increasingly successful in recent years, we still have a few challenges. For example, a company might meet with us to introduce a large project in January and tell us that they need approval by June. In those instances, we're faced with explaining the reality of scheduling.

Fortunately, there are many companies who use a methodical teamwork approach within their organization. They take the time to identify all the issues up front, so their management and marketing team are aware of the steps required to get through the regulatory process. As result, their outlook is much more reasonable in terms of expectations for approval. The most informed group is the interstate pipeline companies, as we've been working with them for the longest period of time.

Those that present the biggest challenge and require the most education are the new entrants. For example, some of the companies we deal with are new in the business. Consequently, they may have business expectations that don't quite match up with the realities of completing a review under NEPA.

How would you describe the industry's need for qualified professionals?

We all have multiple jobs to do and it's something that we all need to deal with – finding the resources internally and externally to devote to each project. The need for staff is something that cuts across every aspect of what we do. It's not just having enough pipeline welders and other skilled workers – but it also includes the need for raw materials. Being able to order pipe and compressors and valves and LNG tankers goes hand in hand with having the crews and operators to staff them. Today, more people are becoming increasingly involved in seeding the right educational programs to make sure that the trained people are available when they're needed in the field to operate the pipelines and terminals.

How can right of way professionals help FERC achieve its goals?

When I talk to companies, I often make a pitch for company teamwork throughout the project planning phase. I want to ensure the environmental, engineering and marketing staff all work together during the project planning so that everyone can be realistic about their needs. Right of way professionals have a role in that too, especially once they start getting out on the ground and meeting people. There's a big need for coordination between the company planners and right of way agents who are going out and making those contacts so that everyone is properly trained

and educated about the company they represent. The agents need to know exactly what the company is proposing, why it's doing it and how they plan to operate fairly with people. Basically, the agent will need to understand the image the company wants to present. If you put effort into having a good image, then you'll have a good image.

One of the most important things is making sure that right of way professionals are trained in giving the landowners consistent information. It's important to remember that every landowner is a potential NIMBY, and so each one should be treated with careand respect.

What is a NIMBY – and how should they be handled?

A NIMBY (Not In My Backyard) is a term that's applied to landowners who are opposed to any project on their property. I always tell companies to try and imagine themselves in that person's shoes—where someone is building something across your front yard. Think about how you'd want them to deal with you. And if they come in and they're pushy or have an attitude, or even if you just perceive that they have an attitude, you're going to deal with them differently than when you're dealing with someone who is willing to work with you and shows some professionalism and respect. If someone wants to do something on my land, I want to know what they're going to do, how they're going to do it, how quickly and what I will get out of it. Most landowners just want better information, so if you do a good job of putting the information together, you have a better chance of not angering or scaring people.

To what degree has the topic of eminent domain (ED) affected landowners?

Right of way professionals need to understand their ED issues: meaning the eminent domain sensitivity. Specifically, the discussion of eminent domain with landowners is a very sensitive area, and it needs to be used carefully. In the past, eminent domain would sometimes be mentioned or threatened too early in the process. I know that our regulations require that the company present the issue of eminent domain in its brochures to landowners, but this can be done in appropriate ways. If a right of way professional brings up the subject of eminent domain too early, it's immediately perceived as a threatening gesture, which sets things off on the wrong foot and may compromise survey access/permission in the future.

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Of course, eminent domain has always been controversial, and even more so now that it has received so much media attention in light of the recent U.S. Supreme Court decision. I've seen some companies go out of their way to describe the use of eminent domain as a last resort. They do a better job of focusing on understanding the landowner's concerns and trying to negotiate with them beforehand.

What can right of way professionals do to communicate more effectively?

I encourage right of way professionals to become better practitioners of the pre-filing process and realize that they are representatives of the company that will eventually file an application with FERC. We try to convey to our companies that the land professionals in the field, even though they may work for someone else, are building the company's reputation. So training their land professionals to be effective communicators is vital.

The right of way professional needs to be knowledgeable and able to deliver accurate information – consistently. Landowners talk to each other, and if they hear different stories, then immediately there's a suspicion that they have been misinformed. We hear about situations like that with some frequency. I encourage companies to put things in writing or even create landowner information brochures. That way, it's not left up to the right of way professional to give a verbal explanation. People have a tendency to use different words, and those words can be interpreted differently.

When the rubber meets the road, it's the personal communication between a right of way professional and a landowner that will make all the difference.