March 26, 2012

Kimberly D Bose, Secretary
Federal Energy Regulatory Commission
888 1st Street, N.E., Rome 1A
Washington, DC 20426

Re: INGAA Comments Regarding Federal Energy Regulatory Commission Upland Erosion Control, Revegetation and Maintenance Plan ("Plan") and Wetland and Waterbody Construction and Mitigation Procedures ("Procedures") (Docket No. AD12 – 2 – 000)

Dear Ms Bose:

The Federal Energy Regulatory Commission ("FERC" or "The Commission") Office of Energy Projects is reviewing its Upland Erosion Control, Revegetation and Maintenance Plan ("Plan") and Wetland and Waterbody Construction and Mitigation Procedures ("Procedures"), last updated January 17, 2003, to determine if there are appropriate updates and improvements to be made at this time. The Interstate Natural Gas Association of America ("INGAA") appreciates the opportunity to comment in this docket and supports FERC's efforts to update these documents as necessary based on sound science, experience and stakeholder input.

INGAA is a nonprofit trade association representing virtually all interstate natural gas transmission pipeline companies operating in the United States (U.S.) and comparable provincial pipelines operating in Canada.

INGAA's United States members operate over 190,000 miles of pipeline and related facilities and account for over 80% of the natural gas transported and sold in interstate commerce in the United States.

The FERC Plan and Procedures ("Plan and Procedures") documents comprise construction best management practice standards that the FERC first introduced in 1994. The Commission last reviewed the Plan and Procedure documents in 2003 at which time INGAA worked with the Commission to provide extensive comment and feedback. The current Plan and Procedures are supported by peer-reviewed research and consider area-specific conditions and any significant changes also should be supported by similar research.

In a recent INGAA Foundation study,[1] natural gas consumption in the U.S. and Canada is projected to increase by an average of 1.6% per year through 2035. Total natural gas used across all sectors-electric generation, industrial, commercial and residential is projected to rise to about 110 Bcfd in 2035. U.S. and Canadian natural gas supplies are projected to grow from about 75 Bcfd in 2010 to about 113 Bcfd in 2035. New infrastructure will be required to move natural gas

[1] The INGAA Foundation, Inc. "North American Gas Midstream Infrastructure Through 2035: A Secure Energy Future." June 28, 2011. Executive Summary.

from regions where the production is expected to grow to areas where demand is expected to increase. New supplies entering the interstate pipeline system may require significant investments in added pipeline capacity to handle the projected increase in natural gas transportation. Based on INGAA's analysis, 43 Bcfd of incremental mainline capacity will be needed from 2010 to 2035. A reliable and predictable process for reviewing and authorizing pipeline construction will be critical to meeting this need. At the same time, it is recognized that it also will be critical to ensure that pipeline construction activities are conducted in a manner that minimizes environmental impacts. In the last decade, interstate pipeline companies have applied for and received FERC approval to construct over 16,000 miles of interstate pipelines, with total combined capacity exceeding 100 Bcfd. During this span, about 14,600 miles of expansion pipeline that added 76.4 Bcfd of capacity were constructed and placed in service. INGAA believes that the FERC Plan and Procedures were a useful tool in helping to meet that challenge.

The effectiveness of the current FERC Plan and Procedures is best demonstrated by the widespread adoption and implementation of the documents on pipeline construction activities conducted over the past decade. Indeed, most INGAA member companies have incorporated the FERC Plan and Procedures into their own company specifications and procedures or have developed construction compliance training programs based in large part on the best management practices contained in the documents. The FERC Plan and Procedures now are widely established and understood by pipeline owners/operators, as well as the construction contractors and environmental consultants that support the pipeline industry. Further, resource agencies across the country have accepted project implementation of the FERC Plan and Procedures as appropriate environmental impact minimization, mitigation, and restoration practices for the somewhat unique practice of interstate pipeline construction, which differs markedly from most forms of construction activities and even other forms of linear facilities construction.

As an example, the U.S. Environmental Protection Agency determined that implementation of the FERC Plan and Procedures by FERC-regulated interstate pipeline companies would effectively preclude the need for limitation and monitoring of stormwater discharges from pipeline construction sites. On December 1, 2009, the U.S. Environmental Protection Agency (EPA) published effluent limitations guidelines (ELGs) and new source performance standards (NSPS) to control the discharge of pollutants from construction sites (40 CFR Part 450). The intent of this rule is to significantly reduce the amount of sediment and other pollutants discharged from construction sites. Based on the unique regulatory circumstances of interstate natural gas pipeline construction projects, the EPA chose not to have the numeric limitation and monitoring requirements at 40 CFR 450.22(a) of this rule apply to the discharges associated with the construction of natural gas pipelines. This exemption applies specifically to all discharges associated with construction of interstate natural gas pipelines that are under the jurisdiction of the FERC. The EPA determined this was appropriate due to the comprehensive regulatory program that FERC requires and enforces for the construction of these projects. Most

notably, the FERC requires a variety of erosion and sediment controls be implemented during construction as specified in the FERC Plan and Procedures.

Perhaps the key advantage and benefit of the FERC Plan and Procedures is that, while providing a framework of general best management practices specifically adapted to pipeline construction activities, the documents also allow a performance-based approach to achieving environmental compliance. This approach recognizes that protection and impact minimization may be achieved and/or measured in multiple ways subject to project- and/or region-specific conditions and factors such as topography, climate, soils, land cover/use, landowner requests, and other applicable regulatory drivers or permits. In so doing, the FERC Plan and Procedures provide a general suite of best management practices that may be used to govern and guide pipeline construction activities across the range of environments commonly encountered across the U.S. At the same time, it is also recognized that the best management practices contained in the FERC Plan and Procedures will not be appropriate for every pipeline construction activity or every project location. In some instances, other measures may be employed in order to provide further assurances of protection and/or impact minimization to sensitive resources such as protected species habitats, high value or designated waterbodies, or other special use lands. In such instances, the FERC and the Plan and Procedures encourage and/or require consultations with appropriate resource agencies to identify, develop, and implement more protective best management practices.

For these reasons, INGAA requests that any modification or update of the FERC Plan and Procedures not support overly restrictive or prescriptive language, but rather retain the performance-based approach that has allowed for flexibility in identifying the most appropriate tools and metrics of resource protection during construction. At the same time, INGAA seeks an adequate level of specificity so as to avoid inconsistencies in interpretation. Accordingly, we urge the FERC to emphasize performance based measures that take into account the wide range of project scopes, locations, and affected resources and the need for corresponding mitigation measures.

Detailed Discussion

INGAA has identified the following recommendations for the Commission to consider as it prepares to update its Plan and Procedures. INGAA looks forward to further comments it may make on any formal notice of proposed changes to the Plan and Procedures documents that would be available for public comment sometime in early 2012. INGAA also welcomes the opportunity to work with the FERC and other stakeholders to cooperatively review and consider proposed changes prior to issuance of a formal notice.

The FERC Plan and Procedures represent a proven and successful structure for minimizing environmental impacts associated with typical natural gas pipeline construction projects. INGAA notes EPA's analysis (December 1, 2009, 74 FR 229, page 63006) wherein EPA recognized the "comprehensive regulatory program that FERC requires and enforces for the

construction of [interstate natural gas pipelines]." With respect specifically to the Plan and Procedures, EPA stated that "FERC requires a variety of erosion and sediment controls to be implemented during construction, some of which are more stringent than those contained in [EPA's construction and development rules]." INGAA therefore requests that any revisions to the Plan and Procedure be limited to minor improvements that will not impose unnecessary new restrictions or financial burden.

- FERC Plan section VII(A)(1) - Currently the Plan requires pipelines to undergo post construction monitoring and inspection for a minimum of two years (i.e., following the first and second growing seasons) to determine the success of revegetation. In our experience successful revegetation may occur in some regions well before the end of the second growing season. Once revegetation has been achieved, as specified in Section VII(A)(2) of the FERC Plan, pipeline operators should be allowed to discontinue follow-up inspections of disturbed areas. INGAA suggests modifying section VII (A)(1) as follows:

  "*Conduct follow-up inspections of all disturbed areas after the first and second growing seasons or until the required revegetation objectives have been met to determine the success of revegetation*".

- FERC Plan section VII(A)(2) - The standard for revegetation in restoration of cropland should be the same as that for non-agricultural areas. The intent of revegetation is to provide soil stability and avoid erosion that could negatively impact the environment, particularly surface water resources. Using crop yields as the benchmark for successful revegetation unnecessarily introduces a commodity and compensation component to the measure of environmental protection achievement. In addition, crop yields do not always directly correlate to the vigor of vegetative growth in a plant. Discussions concerning crop yields should be left to negotiations between the landowner and the project proponent, particularly if it relates to compensation for reduced crop yields when they occur. INGAA suggests modifying section VII (A)(2) as follows:

  "*Revegetation ~~in non-agricultural areas~~ shall be considered successful if upon visual survey the density and cover of non-nuisance vegetation are similar in density and cover to adjacent undisturbed lands*".

- FERC Plan section VII(A)(5) - Currently the Plan prohibits routine vegetation maintenance clearing between April 15 and August 1 of any given year. When the FERC Plan and Procedures first were introduced they primarily were intended to address the environmental concerns of new pipeline construction. Today, however, some operation and maintenance activities occur along existing pipelines at a level never anticipated on newer pipelines and seasonal mowing restrictions have created a significant challenge to management of these right-of-ways. Most notably, ongoing and future pipeline integrity management activities require access, periodic visual monitoring, and line of site marking

of all parts of an existing pipeline system in a relatively short amount of time. Seasonal restrictions on vegetative management primarily are designed to avoid potential conflict with nesting migratory bird species but such seasonal restrictions create an untenable situation when attempting to comply with Department of Transportation integrity-management programs particularly in regions where seasonal vegetative growth may quickly obscure pipeline markers or difficult working conditions may greatly limit the ability to conduct vegetative maintenance outside the specified time window. Moreover, in parts of the western U.S., the current restrictions limit clearing to times when either Winter snow is too deep to access/work on the right-of-way, or the Summer/Fall wildfire season, in which such work may be precluded or severely curtailed, especially on public lands.

INGAA urges the FERC to re-examine its policy on seasonal vegetative management restrictions, including whether this restriction should be eliminated. The FERC should consider implementation of some variance process or otherwise provide for flexibility that would allow operators to move forward with important pipeline safety and integrity related right-of-way maintenance activities if approved in writing by a Federal, State, or local land management agency for the portion of the project under its jurisdiction. INGAA also urges the FERC to consider this request for added flexibility in light of the recent federal court decision in the *United States v. Brigham Oil and Gas* (D.N.D., No. 4:11-po-005, 1/17/12). In that case, the court found that the Migratory Bird Treaty Act's prohibition on "taking" birds was intended to criminalize activities such as hunting and poaching of the birds, and does not apply to incidental deaths of birds stemming from legal commercial activities, which would presumably be inclusive of pipeline right-of-way maintenance activities for the purpose of compliance with federal rules and regulations.

- FERC Procedure section I(B)(1) – INGAA recommends that FERC define the phrase *"at the time of crossing"* to mean *"when equipment begins crossing the waterbody and when in-stream construction begins."* This recommendation is to ensure consistency in applying the criteria for construction compliance purposes.

  This will ensure the construction method used for crossing a stream channel will reflect actual on-site flow conditions encountered at the time of initial crossing by construction equipment. Some INGAA members have experienced inconsistencies in how this criterion has been applied. Water features are often provisionally classified into one of the FERC defined categories for permitting or planning purposes, but may fit into a different category at the time of in-stream work. Even during the period of construction, flow conditions may change a feature's categorization by the time in-stream work is initiated. For example, mini-crews that build stream crossings may not actually enter a stream until weeks after the mainline spread has constructed up to either side of the crossing, during which time the feature's classification may have changed.

The recommended clarification is consistent with what INGAA understands to be the intent of the Procedures, i.e. that companies, with a reasonable degree of conservatism, should be prepared for somewhat wetter-than-normal conditions, but also that projects should not be held to requirements meant for wetter conditions that have not materialized by the time in-stream work is ready to begin.

- FERC Procedures section I(B)(1) – This section of the Procedures defines three categories of waterbodies (minor, intermediate and major), and implies a fourth non-waterbody category, e.g. dry ephemeral stream beds. The classification of a given feature depends upon whether it has perceptible flow at the time of crossing, and the stream's width at water's edge at the time of crossing. The FERC definition can include some features that go beyond what the U.S. Army Corps of Engineers (USACE) considers potentially jurisdictional waters of the United States. INGAA members believe it appropriate that only flowing drainage features that are also identified as potentially jurisdictional waters of the U.S. during preconstruction planning, survey, and permitting efforts should be subject to the specialized construction methods identified in the Procedures. This approach would eliminate the need to apply costly and time-intensive waterbody crossing best management practices to features the USACE has determined non-jurisdictional, e.g. ditches, swales, and erosional features. Consequently, INGAA's suggested limitation will allow focus of resources on truly important waterbody resources during construction. INGAA recommends that the FERC consider modifying the definition of a waterbody as follows:

  "Waterbody' includes any natural or artificial stream, river, or drainage with perceptible flow at the time of crossing, and other permanent waterbodies such as ponds and lakes, and which also satisfy the requirements of the current Federal methodology for identifying and delineating waters of the U.S."

  This language will ensure a more consistent understanding of what constitutes a waterbody, and how to apply the Procedures in the field. Additionally, the language will also align the method of defining waterbodies with that of wetlands (Section I.B.2 of the Procedures), which also references current Federal methodology.

- Winter Construction – The FERC Plan and Procedures documents mainly address warm weather construction situations. For example, the only reference in the Plan to wintertime construction is found in section V(A)(1) which addresses restoration and requires a winterization plan if construction will continue into the Winter season.

  In today's paradigm, construction can be a year round activity and cold weather construction presents certain unique challenges and considerations. INGAA believes

there are benefits to including certain aspects of cold weather construction in the Plan and Procedures documents. Topics or best practices might include:

- Frozen waterbodies (to the bed) can be treated as dry crossings allowing for use of typical upland construction methods.
- If frozen wetland soils can maintain stable trench walls and support construction equipment without significant rutting or soil-mixing and maintain stable trench walls, then use typical upland construction techniques and widths.
- Erosion and sedimentation control procedures used for uplands can be applied to the frozen wetlands.
- Topsoil stripping and segregation will not occur during winter construction.
- Construction equipment bridges may include ice or snow fill where the crossed waterbody is frozen to the bed.

INGAA is pleased to provide this preliminary input on potential changes to the FERC Plan and Procedures documents and best management practices for pipeline construction. We would welcome the opportunity to meet with the Commission to further discus our comments and look forward to working with FERC in the future.

If you have any questions, please contact me at 202-216-5935 or lbeal@ingaa.org.

Sincerely,

Lisa S Beal

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