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**NATURAL GAS
Factors Affecting the Time It
Takes to Approve Construction
of Natural Gas Pipelines**

Statement of
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Before the
Subcommittee on Environment,
Energy, and Natural Resources
Committee on Government Operations
House of Representatives



Mr. Chairman and Members of the Subcommittee:

We are pleased to be here today to discuss the preliminary results of our review, conducted at this Subcommittee's request, of the Federal Energy Regulatory Commission's (FERC) certification or approval process for natural gas pipeline construction. Natural gas is an abundant domestic energy resource that can be substituted for imported oil, and is the most environmentally benign fossil fuel. My testimony today will describe (1) the time it takes FERC to process pipeline construction applications; (2) the factors affecting the time it takes to process the applications; (3) the potential impact of FERC's actions and proposed regulations, as well as currently proposed legislation, to expedite FERC's processing of natural gas pipeline construction applications; and (4) the need for improvements in FERC's management information system.

Overall, FERC and pipeline industry officials told us that the length of time FERC takes to approve pipeline construction is a problem. The median time for the 125 certificates or approved applications we reviewed was 331 days. Fifty-five, or more than 40 percent, took longer than 1 year, with 10 taking 2 or more years. In addition, as of March 4, 1991, of the 72 pending construction applications, 37 had been in process for over 1 year--many of these for over 2 years. Factors affecting the length of time it takes to process applications include: intervention, a legal form of participation in the process by competitors or other parties; projects involving multiple applicants seeking to build related pipelines or facilities; unresolved policy issues; incomplete applications; and environmental reviews.

Actions taken or proposed by FERC, as well as current legislative proposals, are designed to address many of these factors by streamlining FERC's approval process, or by providing industry unregulated options to avoid FERC's approval process. We

have not yet evaluated in detail how these proposals would address all the factors affecting processing time. However, we do have an observation on the proposals related to environmental reviews. FERC believes that it needs more authority to continue processing construction applications when other agencies do not review environmental assessments in a timely manner. Agencies such as the Environmental Protection Agency (EPA) and the National Park Service review FERC prepared environmental documents and provide comments on the adequacy of proposed actions to eliminate or mitigate possible environmental damage caused during pipeline construction. FERC has not been able to provide us with overall data showing how often, or the extent to which, other agencies' responses slow its approval process for pipeline construction. Rather than providing FERC with additional authority in the environmental review area, we believe a better approach would be for FERC to negotiate agreements with other federal agencies to better coordinate environmental reviews.

In addition, the information system FERC uses to manage its application process does not show whether FERC met its original milestones during the application review process. Improvements to this system would help FERC better manage its application review process and could help to reduce processing time. Before I address these issues in more detail, let me provide some background.

BACKGROUND

Traditionally, in order to construct interstate natural gas pipelines, companies have sought from FERC certificates of public convenience and necessity under section 7 of the Natural Gas Act of 1938. Under this authority, FERC issues a certificate that authorizes construction and includes approved rates--fees pipeline companies can charge their customers to recover costs and earn a profit--and conveys the right of eminent domain, which is often necessary to acquire the property on which pipelines are to be

built. Important considerations in FERC's decision to grant a "traditional" section 7(c) certificate include an analysis of proposed markets and supplies for natural gas; consumer protection issues, including rate impacts; and potential environmental or cultural resource damage from pipeline construction.

FERC's certification process offers an opportunity for competitors and other parties to voice their views and, depending on the complexity of the case, can include extensive oral hearings, detailed analysis of natural gas markets and supplies, and major environmental assessments. In regulating pipeline construction and rates, one of FERC's primary responsibilities is to ensure that customers are protected from potential monopolist practices by interstate pipeline companies.

Since 1985, companies have had two other options under which they can construct major pipelines. First, FERC implemented the "optional certificate," which permits applications to be filed without supply and market data, if the applicant accepts the risk of not recovering all its costs. This certificate provides for eminent domain. According to FERC Commissioners and industry officials, this option has not been used very often, however, because the implementing regulations were poorly written and not well understood by FERC staff and the industry. FERC approved its first optional certificate in 1988 and, as of February 28, 1991, had issued only nine.¹

Second, FERC issued regulations that allowed companies to construct pipelines under section 311 of the Natural Gas Policy Act (NGPA) of 1978. FERC does not issue certificates for or approve this construction activity; therefore, pipeline companies do not

¹The median processing time for these 9 certificates was 478 days, or about 150 days more than the median for "traditional" section 7 (c) certificates. These 9 certificates are included in the 125 processed applications that we reviewed.

receive approved rates or eminent domain rights. Nonetheless, according to industry officials, this option was used to serve new markets more quickly and avoid FERC's environmental review. An April 1990 court decision limited the occasions on which this option can be used.² No notification to FERC was required in the past for section 311 pipeline construction, although such notification is now required. In a special study, FERC identified 37 major pipelines that had been built under this authority.³

TIME REQUIRED TO PROCESS CERTIFICATES

Construction applications vary widely in scope and complexity. Applications can be for pipelines ranging from several hundred feet to several hundred miles long, compressor stations used to move the gas, other facilities such as metering stations to measure gas flows, or any combination of the three. Therefore, the time it takes FERC to review and process these applications also varies.

FERC approved 125 construction certificates between October 1, 1988, and February 28, 1991. Of these, 55 took longer than 1 year, 10 took longer than 2 years, and 2 took longer than 3 years. Furthermore, some construction projects, including the highly publicized Iroquois pipeline to serve customers in the Northeast, were proposed up to 4 years before FERC issued a certificate. As of March 4, 1991, 72 construction applications were pending at FERC, and 37 had been in process for a year or more--25 of these for more than 2 years.

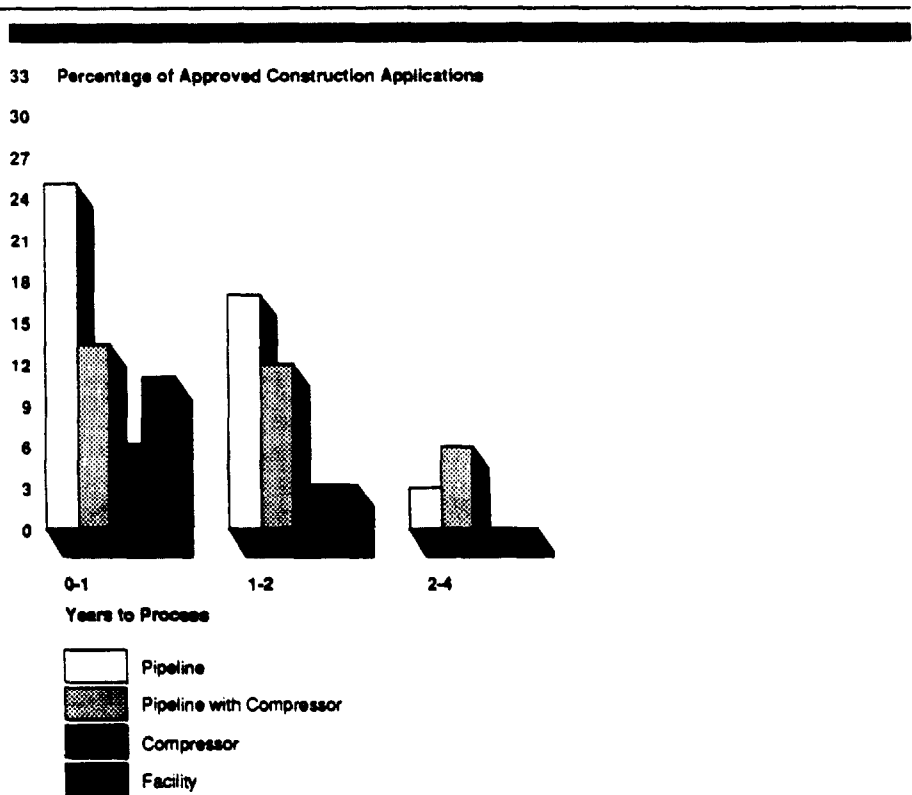
The median time taken to issue certificates was 331 days. However, it varied by about 100 days depending on facility type.

²Associated Gas Distributors v. FERC, 899 F. 2d 1250 (D.C. Cir. 1990).

³These pipelines are not included in our data base because they did not receive certificates.

The median time was 327 days for pipelines, 407 days for pipelines with compressors, 324 days for compressors alone, and 293 days for facilities such as metering stations. While recognizing that each application is different, FERC and industry officials believe that processing time could be improved, particularly for applications taking longer than 1 year. Further, they said that improvements to the processing time could prevent lost market opportunities. Figure 1 shows the percentage of construction applications, by type of facility, that FERC approved in under 1 year, under 2 years, and between 2 and 4 years. Attachment I shows how long FERC took to issue each type of certificate.

Figure 1: Time Required to Process Various Types of Construction Applications



Source: GAO analysis of FERC data.

FACTORS ASSOCIATED WITH PROCESSING TIME

FERC officials, including the Chairman and other Commissioners, and industry officials, said that several important factors affect processing times. Collectively, they include the following:

- The extent of intervention--a legal form of participation--in the process by competitors or other parties. Competitors can protest the application by raising issues during the proceeding, or filing a competing application, either to protect their legitimate interests or to thwart competition.⁴ According to Federal Trade Commission staff and others, interventions by competitors in FERC regulatory proceedings are often a means of subverting competition.⁵ Other parties such as environmental or other public interest groups can also raise objections that FERC, the applicant, or both must consider.

- Projects that involve more than one applicant or pipeline. Multiple-applicant pipeline projects are either jointly filed at FERC, or formed later by a consolidation of individual applications during FERC's review process. Such projects tend to increase the complexity and slow the process down. Some applications for relatively minor facilities, such as metering stations, have been delayed because they were part of a project involving other applications.

⁴In light of Ashbacker Radio v. F.C.C 326 U.S. 327 (1945), FERC considers competitive applications for the exclusive right to serve the same end-user or market in one hearing.

⁵Motion of Federal Trade Commission Staff For Leave to Intervene, July 30, 1987, in Docket No. CP87-205-000.

- Applications involving unresolved policy issues. An example of a policy issue is whether to allow a pipeline to bypass traditional local distributors and provide gas directly to major end-users. Some of this delay apparently occurs in FERC's Office of General Counsel, which considers the legal implications of policy issues related to an application. This office, in consultation with the Chairman, is responsible for determining when cases will be considered by FERC's Commissioners. According to FERC and industry officials, unresolved policy issues that delay construction approval stem from FERC's past tendency to address policy issues as they arise in individual applications, rather than on a more generic basis.

- Incomplete or amended applications. According to FERC officials, both of these situations can result in FERC having to send deficiency letters requesting additional information to applicants. For the period covered by our review, FERC issued one or more deficiency letters in 69 applications, or about 55 percent of the total processed. Industry officials counter that FERC's data requests are often excessive and redundant, and suggest that FERC impose a firm limit on the number and nature of these requests and act expeditiously after the data have been received.

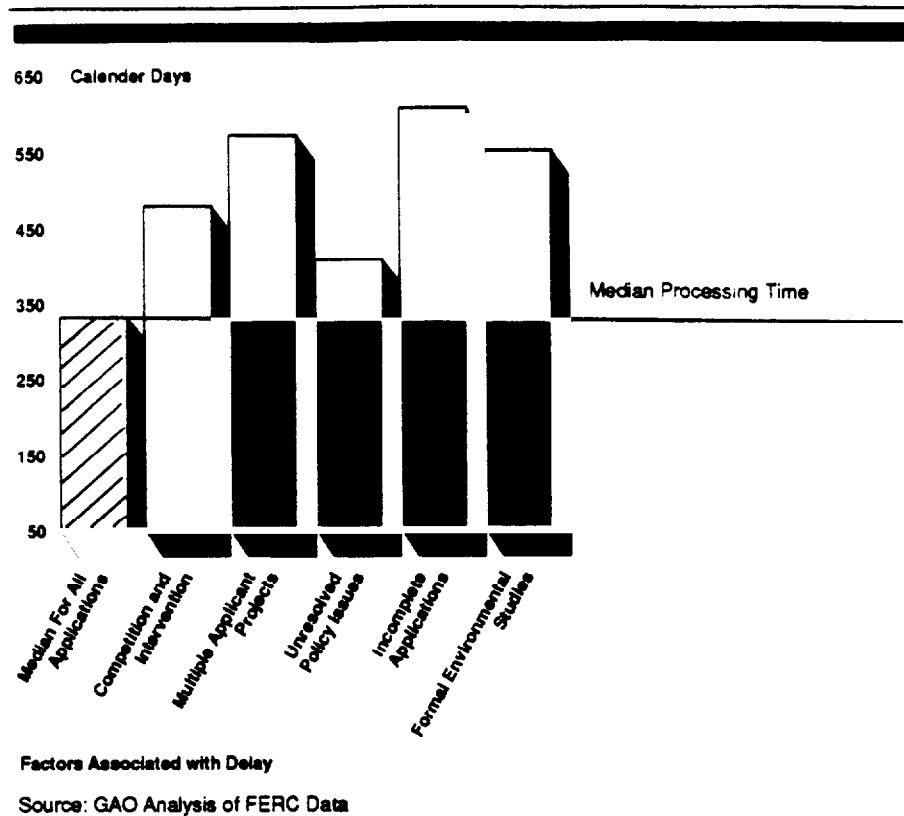
- Environmental reviews. There are three types: (1) environmental impact statements, the most comprehensive form of analysis; (2) formal or major environmental assessments, which are less detailed; and (3) informal or minor environmental assessments, which are not published for comment as are the other two types. FERC also excludes some facilities from environmental review. FERC's median time to complete its environmental reviews was 568 days for environmental impact statements, 242 days for formal environmental assessments, and 229 days for informal

environmental assessments. FERC took a median of 250 days to determine eligibility for exclusion in five cases. Attachment II shows the median times for FERC's environmental reviews.

FERC officials say that untimely responses from federal resource agencies on their review of environmental documents is a primary contributor to processing delays. However, during the period of our review, FERC prepared only 20 environmental documents--5 environmental impact statements and 15 major environmental assessments--that were published for comment by federal resource agencies and others. These documents applied, in some cases, to multiple-applicant projects, which included 36 applications, or about 29 percent of the total. FERC reviewed the remaining 89 applications on an informal basis without comment or excluded them from review altogether because they met certain criteria. Industry officials, on the other hand, told us that FERC often subjects responses from other resource agencies to needless additional review.

In addition to discussing factors that affect lengthy processing times with FERC and industry officials, we calculated the median time to issue the certificates we reviewed that involved one or more of the above factors. We found that when one or more of these factors was present FERC generally took longer to issue certificates, as shown in figure 2.

Figure 2: Processing Time Increased When Certain Factors Were Present (Compared with Median Processing Time)



Source: GAO analysis of FERC data.

Because in many cases more than one of the factors is involved in any given application, we are also analyzing our data to estimate the separate effect of each factor when the effects of other factors are held constant. Although the results are still preliminary, this analysis generally confirms that the above factors are important influences in increasing application processing time.

ACTIONS TO SPEED PIPELINE CERTIFICATION

FERC has already taken some action to expedite the certification and construction of natural gas pipelines. Further, FERC has proposed regulatory changes and several bills before the Congress also propose a number of mechanisms to streamline the certification process and speed pipeline construction. I will comment generally on actions taken or proposed and on their potential to speed up approval times and pipeline construction.

Actions Taken by FERC

FERC has taken a number of actions that have the potential for reducing the time it takes to process certificates or begin pipeline construction, including the following:

- Adopting an "open season" procedure, in which time limits are placed on filing numerous potentially competitive applications. This procedure allows FERC to receive and consider competing applications simultaneously, thus bringing more certainty to the process. FERC has so far used this process in two instances; one of these is still pending.

- Adopting a two-phased decision approach in which market, supply, and engineering questions are addressed and tentatively resolved in the first phase, and environmental issues are resolved by the end of the second phase. FERC and industry officials said that the phased approach could shorten the overall processing time and facilitate earlier construction because the applicant may be able to arrange financing and place equipment orders earlier, and consideration of the competitive issues is limited to phase one of the process.

- Shifting some requirements of the certificate process, such as obtaining state historic preservation clearances, until after the certificate is issued. While this has the effect of reducing the time it takes FERC to issue certificates, it does not necessarily enable the applicant to begin construction sooner.

- Requiring less market and supply data if the applicant accepts more of the risk of not recovering the cost of construction through FERC-approved rates charged to pipeline customers, thus reducing potentially extensive and time-consuming data requests.

Actions Proposed by FERC

FERC, in its August 2, 1990, proposed rule changes, which are still pending, also proposed a number of actions to streamline the certification process, including the following:

- Increasing the cost thresholds and expanding the type of pipeline facilities that could be certified with minimal FERC review. This change, if in effect for the period we reviewed, could potentially have applied to 12 applications, or about 10 percent of all the approved applications.

- Clarifying the information that should be contained in an application, which could improve quality and reduce delays caused by the need to request additional data.

- For some environmental concerns, adopting generic, rather than case-by-case designed environmental mitigation measures, such as erosion control or revegetation of construction areas, thus saving the time required to tailor these actions during the approval process.

Other FERC proposed rules could, however, delay pipeline construction by requiring FERC environmental review of certain previously exempt activities, including

- replacement of existing pipeline and related facilities potentially contaminated with toxic substances or located near residential areas and
- a 30-day notice for construction under section 311 of the NGPA, which could bring this construction under the definition of a major federal action and thus trigger major environmental reviews.

Legislative Proposals

Broadly speaking the legislative proposals before the Congress seek to facilitate faster pipeline construction by providing industry options to avoid or limit FERC's certification authority or by giving FERC additional authority in the environmental area.

One bill would modify FERC's optional certificate procedures, adopt criteria to expedite processing of potentially competitive section 7(c) applications, and allow FERC Commissioners to hold nonpublic meetings on general policy issues. Several bills include provisions that would either provide the industry with more freedom to build pipelines under section 311 of the NGPA, provide other noncertificate options, or limit FERC's review in cases of national priority. Provisions that would eliminate the need for FERC approval may entail environmental or consumer protection concerns that are beyond the scope of our current review.

Those options that eliminate or limit FERC's independent environmental reviews could lead to environmental or cultural resource damage, according to officials from EPA and the Advisory Council on Historic Preservation. FERC recently assessed a \$35.5

million civil penalty against one pipeline company for violations it committed when constructing pipeline under section 311 of the NGPA near Mobile Bay, Alabama, that caused substantial damage to cultural resources including ancient Indian artifacts.

Some of the bills would designate FERC as the lead agency for environmental reviews. FERC's Chairman told us that, along with this designation, FERC would like specific authorization to set deadlines for other agencies, such as the Department of Interior's U.S. Fish and Wildlife Service, or interested parties that respond to draft environmental reviews, and take any appropriate action when deadlines are missed. FERC can and does establish such deadlines now, and has continued to process certifications when agencies have failed to respond by established deadlines. However, FERC officials told us such authorization could limit its risk of subsequent litigation.

As we have already discussed, FERC has not been able to provide us with overall data on how often or the extent to which environmental review deadlines are missed. Further, an official from the Council on Environmental Quality told us that FERC already has the authority it seeks. We believe that a better approach to ensuring timely environmental reviews is to reach formal agreements with other agencies specifying how to resolve issues related to the review of environmental documents. In our 1980 report, we recommended that FERC reach such agreements with other federal resource agencies in the case of hydroelectric projects.⁶

During our review, officials from EPA and the National Trust for Historic Preservation informed us that such agreements could speed up the process leading to natural gas pipeline construction by identifying solutions to generic issues or problems that may

⁶Additional Management Improvements Are Needed to Speed Case Processing at the Federal Energy Regulatory Commission (GAO/EMD-80-54, July 15, 1980).

arise in reviewing environmental documents. FERC is negotiating a nationwide agreement on all cases in which the Advisory Council on Historic Preservation is involved. FERC has also recently entered into such agreements with several resource agencies on specific projects. However, it is too early to tell what impact such agreements will have on processing time.

Several bills include provisions allowing applicants or contractors paid by the applicant to prepare environmental reviews rather than have FERC prepare the reviews. The Council on Environmental Quality supports this approach. However, the Council and the pipeline industry are concerned that FERC staff, as they independently review contractor studies, will substantially rework contractor-prepared environmental documents, thus negating any reduction in processing time gained by contractor preparations. In addition, EPA officials cautioned against potential conflicts of interests involving such contractors who may, for example, have a financial or other interest in the proposed pipeline.

FERC'S MANAGEMENT INFORMATION SYSTEM

FERC's management information system--the Key Indicator Case Tracking System (KICTS)--and similar systems in the program offices, such as the office responsible for processing pipeline applications, were designed to track overall workload and monitor case specific milestones. However, KICTS does not enable FERC to effectively evaluate its application review process. Information management systems are not a panacea for timely, well reasoned regulatory decisions, nor, in themselves, will they decrease processing times. However, we believe an effective and well utilized data system is necessary for efficient management and would provide FERC with better information to assess whether changes are needed to its process.

In our July 1980 and June 1983 reports, we found deficiencies with FERC's management information system.⁷ We recommended that FERC improve its managerial accountability by developing a more reliable case-tracking system to monitor applications pending final FERC decision.

KICTS, adopted in 1987, is a step in the right direction, but it does not track milestone completion dates. In our current review, we found that KICTS reports the processing time spent in selected processing phases, including the technical office and Office of General Counsel, as well as the overall processing time. However, it does not retain certain critical information and is not updated promptly. For example, when FERC receives an application from a pipeline company it sets a target completion date within KICTS that is based on the applicant's needs and the complexity of the proposal. With this completion date in mind, FERC also sets target milestone dates for key phases of its review process. However, KICTS does not retain these target dates while the application is being processed nor after the certificate's issuance. This makes it difficult to assess how well FERC performs in meeting its own target dates. Attachment III is a page from FERC's KICTS report, which shows how actual completion dates (C) replace target dates (T), thus deleting the target dates from the system.

In addition, KICTS does not capture other key data, such as the timeliness of applicants' responses to FERC data requests or coordination with other federal resource agencies. This latter point is particularly important because, as I have explained, FERC maintains that untimely responses by other federal resource agencies cause delays in issuing certificates. While FERC cites

⁷GAO/EMD-80-54, July 15, 1980, and Federal Energy Regulatory Commission Has Expedited Case Processing; Additional Improvements Needed (GAO/RCED-83-51, June 10, 1983).

anecdotal evidence, it has not collected data to document the extent of this problem.

Moreover, we found that the program office data base systems, such as the one in the office responsible for the technical analysis of pipeline applications and the Office of General Counsel, have similar shortcomings or are not well utilized.

OBSERVATIONS

In summary, Mr. Chairman, I have discussed a number of factors affecting the time it takes to approve pipeline construction. FERC has taken and is proposing several actions to streamline its process. Also, several legislative proposals would make changes to streamline the process, and provide industry with unregulated options to construct natural gas pipelines.

We have not yet evaluated in detail how these proposals would address all the factors affecting FERC's processing of applications. However, we do have an observation on the proposals related to environmental reviews.

FERC maintains that a major cause of delay in approving pipelines is that other agencies do not review environmental documents in a timely manner and that these proposals, along with the authority to proceed without input from other agencies, would speed approvals. FERC has not adequately demonstrated the need for additional authority in conducting its environmental reviews because it does not collect data on the extent or frequency of the problem. In addition, less than 30 percent of all the applications we examined required agency comments. Thus, we continue to believe that reaching formal agreements with other agencies would help FERC to resolve coordination issues in reviewing environmental documents.

We also believe that FERC's management information system could be improved to better evaluate its performance in meeting established target dates or deadlines, or that of applicants or other agencies. We believe performance monitoring is fundamental to FERC's effective management of its system to approve natural gas pipeline construction.

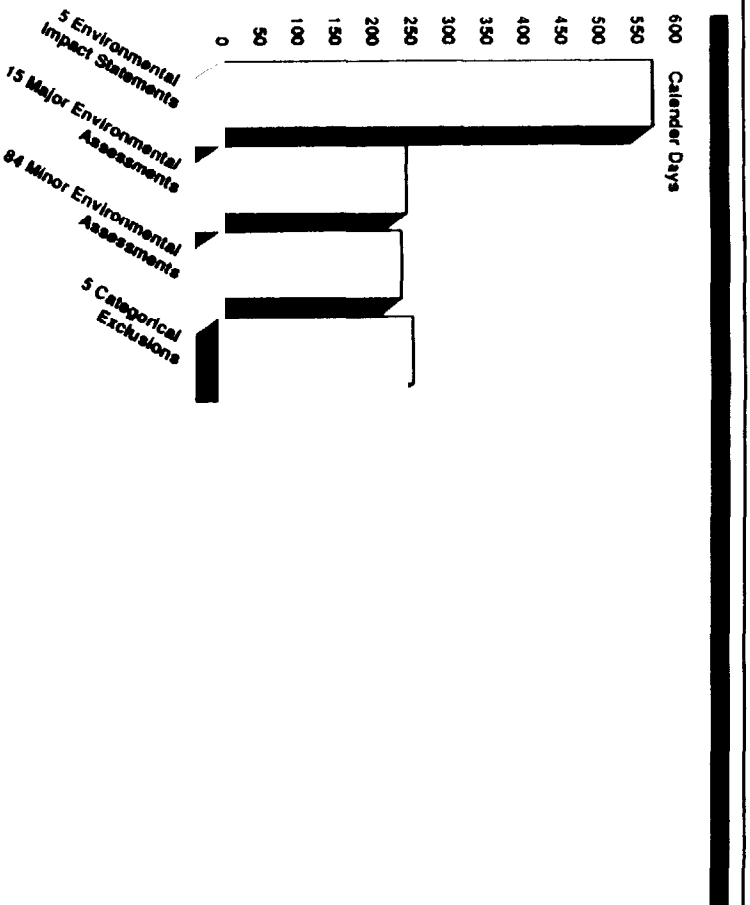
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This concludes my prepared statement. I will be pleased to respond to any questions you or members of the Subcommittee may have.

TIME REQUIRED TO PROCESS CERTIFICATES

| <u>Type of project</u> | <u>0-1 year</u> | <u>1-2 years</u> | <u>2 or more years</u> |
|--------------------------|------------------|------------------|------------------------|
| Pipeline | 31 | 21 | 4 |
| Pipeline with compressor | 17 | 15 | 7 |
| Compressor | 8 | 4 | 0 |
| Facilities | <u>14</u> | <u>4</u> | <u>0</u> |
| TOTAL | <u>70</u> | <u>44</u> | <u>11</u> |

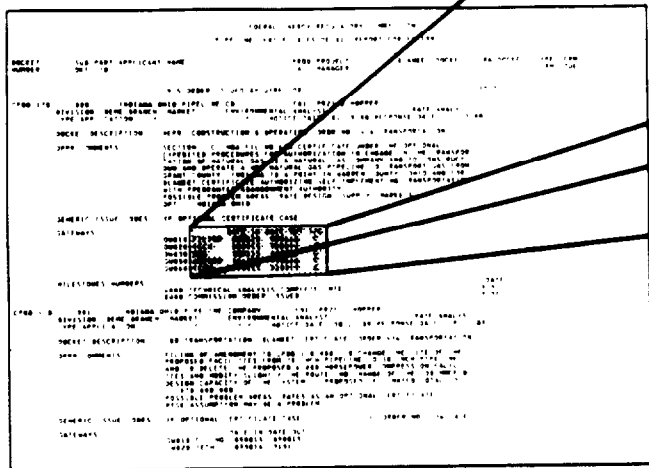
MEDIAN TIME FOR FERC ENVIRONMENTAL REVIEWS



Types of Environmental Reviews
The Total Number of Environmental Reviews Does Not Equal 125 Because Some EISs and Major EAs Considered Multiple Applications.

Source: GAO analysis of FERC data.

KICTS DOES NOT RETAIN TARGET DATES



| | DATE-IN | DATE-OUT | T/C |
|--------|---------|----------|-----|
| FILING | 880115 | 880115 | C |
| TECH | 880115 | 910117 | C |
| OGC | 880115 | 910116 | C |
| AGENDA | 901212 | 910116 | C |
| TERM | 910117 | 910117 | C |

Legend

T = Target Date

C = Completion Date