

## **Response to Request for Information – House AI and Energy Working Group**

May 12, 2025

Representative Julie Fedorchak  
U. S. House of Representatives  
1607 Longworth House Office Building  
Washington, DC 20515

Dear Representative Fedorchak:

The undersigned organizations are pleased to provide our views in response to your AI and Energy Working Group's recently circulated Request for Information. We represent companies and workers who build and provide equipment, materials, supplies and services to energy infrastructure development, including facilities essential to natural gas production, transportation and consumption. We comprise the vast industrial and labor supply chain that underpins American energy abundance, reliability and affordability.

We applaud and stand ready to support your critical work to develop legislative and policy recommendations to ensure that abundant power is available to support data centers critical to American AI dominance.

Long-term policy durability enshrined in law is critically essential to encourage large, long-term, multi-year investments by developers of energy infrastructure. Our comments below primarily address Pillar One of your Request for Information: American Energy Dominance and AI Energy Demands.

Thank you for considering our views. We look forward to working with and supporting the AI and Energy Working Group as it develops policy and legislative recommendations to enable the investments needed for American AI and Energy dominance. We also stand ready to mobilize business and worker stakeholder voices in support of legislative reforms to ensure energy is abundantly available to enable American AI dominance.

Sincerely,



Toby Mack, President & CEO



American Council of Engineering Companies  
Linda Bauer Darr, President & CEO



Associated Builders and Contractors  
Michael Bellaman, President & CEO



Associated Equipment Distributors  
Brian P. McGuire, President & CEO



Distribution Contractors Association  
Robert Darden, Executive Vice President



Domestic Energy Producers Alliance  
Jerry Simmons, President & CEO



Jeff Eshelman, President & CEO



M. Robert Weidner, III, President & CEO



National Stone, Sand & Gravel Association  
Michele Stanley, Interim CEO



Pennsylvania Utility Contractors Association



Pipe Line Contractors Association  
Elizabeth Worrell, Managing Director



David M. Fink, President

## **Response to Request for Information by the AI and Energy Working Group**

### **Permitting Reform Essential to American AI Dominance**

American energy dominance today is constrained by inadequate natural gas transmission capacity to enable greater levels and geographic diversity of production. Producers cannot produce more than the takeaway capacity of pipelines – which are now operating close to 100% of capacity.

The reason few new pipeline projects are being brought forward by midstream operators is the extreme time and cost uncertainty of new projects imposed by permitting barriers. No matter the potential economic opportunity, project sponsors are understandingly reluctant to undertake the high upfront costs of designing and engineering a new project or a capacity expansion to the point where permit applications can be submitted, when there is a high probability that the NEPA reviews and subsequent endless judicial challenges to the EIS/EA and other permit issuances will drag out project timelines and escalate construction costs beyond financial viability. This has occurred in numerous cases prominently including the cancelled Atlantic Coast Pipeline and PennEast Pipeline.

### **Clean Water Act Section 401 Permits**

Another area of permitting uncertainty that must be cured urgently and durably by legislation is ambiguity in Clean Water Act (CWA) Section 401 provisions as administered by the Environmental Protection Agency. Section 401 allows a state to take delegation of EPA's responsibility for environmental review of a project's impacts to water bodies during construction, and to issue permits if it finds that those impacts will be sufficiently mitigated.

In considering Section 401 permit applications, some states (New York is a prime example) have gamed this ambiguity by interpreting CWA language to deny construction permits based not on water quality considerations as intended by the Act, but rather on claimed cumulative environmental impacts of greenhouse gas emissions resulting from combustion of the pipeline's natural gas throughput, a factor not addressed by the CWA. Under the first Trump Administration EPA completed a rulemaking providing implementation guidelines that clarified that a factor other than water quality cannot be a criterion for issuing Section 401 permits. That reform was reversed by the subsequent Biden EPA. For permitting certainty, that clarification must be enshrined by legislating permanent changes to the CWA itself.

### **Natural Gas: The Primary Energy Source for AI Data Centers**

Over the critical next several years in the race for American AI dominance, natural gas power generation is projected to provide a high percentage of the enormous growth in electricity consumption driven by power needs of new AI data centers. Therefore, to ensure availability of natural gas, whether for increasing grid capacity or for "behind the meter" generation, we must have NEPA, CWA and judicial reforms that tighten the review process and limit both judicial and administrative challenges for new natural gas transmission projects.

## Judicial Reform

Most fossil energy, including natural gas for AI data center power generation, can be neither produced nor consumed if it cannot be transported by pipeline from point of production to point of consumption. Thus, reforms to the currently unworkable process for pipeline permitting are absolutely essential to powering AI dominance. One approach to judicial reform that we applaud is the formula embodied in the bill recently introduced by Senator Bill Cassidy (R-LA), which includes the following provisions:

- The legislation broadly defines "project" as any activity requiring a permit from any Federal agency with jurisdiction over any aspect of the project.
- An initial claim seeking judicial review of an issued permit must be filed within 120 days of the date of permit issuance.
- Subsequent action, such as seeking an injunction based on the initial claim, must be filed within 120 days of the initial claim.
- If the claimant fails to submit additional (subsequent) action by that deadline,
  - the initial claim is invalidated;
  - the claimant is barred from bringing additional claims;
  - the claimant cedes any right of action with respect to the initial claim.
- If a court determines that the Federal agency issuing the permit did not comply with the process required by applicable law, the default remedy is to remand the application to that agency for further action to cure the lack of compliance.
- No court shall vacate any project permit unless the project presents "imminent and substantial danger to human health or the environment for which no other remedy is available."
- The only individuals who have standing to challenge a permit in court are those who will personally suffer a "direct and tangible harm", defined as physical illness or bodily injury, or an uncompensated economic loss.
- If a permit is enjoined, remanded or vacated by a court, the project sponsor and the permitting agency must engage in a mediation overseen by the Federal Permitting Improvement Steering Council (FPISC), which is comprised of senior representatives from 13 federal agencies involved in infrastructure permitting (all of which are part of the Administration), with the requirement to:
  - address the reason(s) for remand or vacature, and
  - reauthorize the project.
- The remedy that results from the above FPISC process shall not be subject to judicial review or right of action by a project opponent.

- Permits must be reissued within 15 days of completion of the above FPISC process, if not the project sponsor may proceed with project development.
- Any judicial challenge to a permit must be filed in the court of jurisdiction where the project is physically located. If the project spans multiple court jurisdictions, the court of jurisdiction will be the one covering the geography where the greatest financial investment exists.
- To avoid bias, cases must be assigned to the court's judges at random.
- FPISC will maintain a publicly accessible database of claims that have not been adjudicated by the court within 90 days of assignment to a judge, in order to expose and remedy instances where a claim has not been reviewed in a timely manner.
- The provisions of this Act will apply retroactively to any permit applications made prior to enactment of the law.

### **Reform Embedded in the Budget Reconciliation Process**

We also favor a second broad, blanket approach that applies to both NEPA reviews and judicial reform to project permitting. It is embodied in the recently released House Committee on Natural Resources print of that Committee's component of the Budget Reconciliation Bill. This language adds a new Section 112 to NEPA, entitled "PROJECT SPONSOR OPT-IN FEES FOR ENVIRONMENTAL REVIEWS", that provides for the cognizant lead Federal administrative agency to charge the project sponsor a fee to cover the cost of an environmental review, the proceeds from which will be deposited into the Treasury as miscellaneous receipts.

The draft new Section provides that any environmental review for which a fee was paid is subject to this new NEPA language: "There shall be no administrative or judicial review of an environmental assessment or environmental impact statement for which a fee is paid under this section." This provision would also apply to Findings of No Significant Impact or Records of Decision regarding an EIS or EA.

It should be noted that the above provisions would apply not only to pipelines but also to other major projects subject to NEPA and/or the Clean Water Act. Significantly these include oil and gas production complexes, power transmission, roads and bridges, export facilities, petrochemical refineries, mines, and other infrastructure essential to American energy dominance, security, reliability and affordability.

Together these new policies enacted into law will unleash the very large private investments in the infrastructure essential to significant additions to generating and grid capacity needed to power American AI dominance.