

December 7, 2021

The Honorable Frank Pallone
Chairman
House Committee on Energy & Commerce
United States House of Representatives
Washington, DC 20515

The Honorable Cathy McMorris Rodgers
Ranking Member
House Committee on Energy & Commerce
United States House of Representatives
Washington, DC 20515

The Honorable Bobby Rush
Chairman
House Subcommittee on Energy
United States House of Representatives
Washington, DC 20515

The Honorable Fred Upton
Ranking Member
House Subcommittee on Energy
United States House of Representatives
Washington, DC 20515

Dear Chairman Pallone, Ranking Member Rodgers, Chairman Rush, and Ranking Member Upton:

The undersigned trade associations, representing nearly all aspects of energy pipeline operations that serve customers reliably across North America, write to share our perspective on pipeline reliability and specifically H.R. 6084, the Energy Product Reliability Act. We share the Committee's focus on ensuring that U.S. energy transportation is safe, reliable, and affordable. However, we are concerned that proposals to create a new, additional pipeline reliability regulator fail to reflect pipelines' proven reliability record and risk duplicating and conflicting with existing federal and state agency regulatory authorities and programs. H.R. 6084 will not enhance pipeline reliability—on the contrary, it risks impairing and complicating ongoing efforts to protect pipelines against cyber threats. Our organizations stand ready to work constructively with the Committee to identify productive opportunities to enhance existing federal agencies' regulatory and nonregulatory initiatives to promote the reliability of America's energy system.

Pipelines by their design are inherently reliable infrastructure, built underground in compliance with exacting safety regulations and engineering standards, and pipelines have a demonstrable history of performing well during emergencies. Indeed, when energy flows were disrupted after major events, such as hurricanes or winter cold snaps, the pipeline system remained in service. In most instances in which there was an inability to deliver energy to customers, the problem was not a pipeline issue but was primarily due to the unavailability of electricity for tanker truck terminals to pick up gasoline or diesel or the inability of generators to procure natural gas to put into the pipeline system. The interconnected pipeline networks in the U.S. also allow rerouting around outages and provide access to diverse sources of energy production and storage all across our country that can supply local regions.

In-depth analysis of pipeline performance confirms the reliability of our pipeline network. For example, in 2016, fewer than 100,000 natural gas customers nationally experienced disruptions,

while 8.1 million Americans experienced power outages.¹ Similarly, a 2017 INGAA survey of 51 interstate natural gas pipelines confirmed that over the ten-year period from 2006–2016, pipelines delivered 99.79% of contractual commitments to firm customers at the primary delivery points specified in their contract. During extreme weather events, pipelines have a verified record of *enabling* energy reliability—including reliable electricity generation—rather than hindering it. For example, the FERC-NERC joint investigation into Winter Storm Uri earlier this year concluded that natural gas pipelines “performed as expected . . . were not significantly affected by the cold weather and freezing conditions. . . . [and] were only minimally affected by power outages because most have gas-fired compressors, redundant compression, and backup power.”² With respect to petroleum pipelines, Congressional review of the winter propane shortage in the Upper Midwest in 2014 found more than enough pipeline capacity was available for propane distributors to prepare for the cold weather season by stocking up supplies in previous months, but distributors failed to do so when they had the opportunity.

The cybersecurity authority that H.R. 6084 would give to FERC and the proposed Energy Product Reliability Organization duplicates existing and forthcoming U.S. Transportation Security Administration (TSA) pipeline cybersecurity and physical security programs and requirements. In May, TSA issued pipeline cybersecurity Security Directive (SD) 01, under which pipeline operators: 1) began formally reporting cyber incidents to the federal government, 2) reviewed their cyber programs, and 3) established 24/7 points of contact for government communication. In July, TSA issued a second, more extensive directive, SD 02, requiring pipeline operators to: 1) implement dozens of specific mitigation measures to protect against ransomware attacks and other known threats to information technology and operational technology systems, 2) develop and implement cybersecurity contingency and response plans, and 3) undergo annual cybersecurity architecture design reviews. Furthermore, TSA has indicated that it will undertake a notice and comment rulemaking to develop a permanent regulatory program in light of the temporary nature of the SDs. Similarly, the U.S. Department of Transportation Pipeline and Hazardous Materials Safety Administration (PHMSA) is responsible for setting pipeline design, maintenance, operations, and emergency preparedness regulations, many of which are intertwined with reliability and would be duplicated by or in direct conflict with potential Energy Product Reliability Organization standards.

H.R. 6084 not only creates duplicative and conflicting federal oversight authority, but it also interferes with state regulation of intrastate pipelines. From the natural gas perspective, FERC does not have authority over intrastate natural gas transmission pipeline systems or the natural gas distribution pipeline systems that local distribution companies operate; that authority belongs to individual state public utility commissions and other relevant regulatory entities. H.R. 6084 would directly conflict with the current scope of the Natural Gas Act and, without justification,

¹ NATURAL GAS SYSTEMS: RELIABLE & RESILIENT, NATURAL GAS COUNCIL (2017), <http://naturalgascouncil.org/natural-gas-systems-reliable-resilient/>.

² THE FEBRUARY 2021 COLD WEATHER OUTAGES IN TEXAS AND THE SOUTH CENTRAL UNITED STATES, FERC & NERC (2021), <https://www.ferc.gov/news-events/news/final-report-february-2021-freeze-underscores-winterization-recommendations>.

completely upend how natural gas distribution and other intrastate pipelines are regulated nationwide. Potential conflicts with preexisting state jurisdiction over intrastate pipelines cannot be overemphasized.

In short, the new Energy Product Reliability Organization’s sweeping regulatory authority is redundant when considering the authority already possessed by TSA, PHMSA, FERC, or other Federal or State agencies. Congress should pursue targeted solutions to specific problems rather than create an expansive new regulator that potentially will interfere with reliability-focused efforts of existing agencies and the energy industry.

Simply duplicating the electric reliability organization framework and applying it to pipelines will not effectively promote pipeline reliability. There are substantial differences in operations, markets, and regulations between pipeline systems and the electric grid. Moreover, with respect to electric reliability, it is important to recognize that petroleum and petroleum product pipelines transport crude oil, refined petroleum products and natural gas liquids, and that regional electric generation and transmission systems do not depend on such products for reliable operation.

Lastly, we note two significant limitations of the energy product reliability organization proposal that would impede its effectiveness. First, permitting-related obstacles to developing, expanding, and modernizing pipeline infrastructure—both at the federal and state level—represent perhaps the most significant threat to pipeline reliability, but the energy product reliability organization would not be equipped to resolve these obstacles. Industry efforts to further improve the reliability of pipeline systems are hampered when federal and state regulators resist expanding and modernizing those systems. This is particularly true in regions of our country that have increased their use of natural gas, oil, and refined products without a commensurate increase in pipeline capacity.³ Second, no pipeline reliability standard can change pipelines’ obligations to serve customers in accordance with their federally- or state-regulated tariffs. It is those tariffs that determine which customers are prioritized for pipeline capacity during constrained periods, often based on pipeline customers’ own choices about the level of reliability for which they wish to contract.

Our organizations believe that all members of Congress, and all Americans, expect that energy pipelines should be reliable—as do we. We are committed to working with the Committee and stakeholders from other industries to identify targeted policies to promote pipeline reliability, but we are concerned that the energy product reliability organization concept misses that mark. Energy product reliability is a function of the energy industry as a whole, and singling out pipelines is not an effective solution. As the Committee considers future hearings to discuss pipeline reliability, we encourage you to seek input from the federal and state government

³ For example, ISO-New England has noted that the region is vulnerable to pipeline interruptions because there has been “tremendous growth in natural-gas-fired generating capacity . . . [b]ut the natural gas pipelines that deliver low-cost shale gas into the region have not been expanded at a commensurate pace.” *Natural Gas Infrastructure Constraints*, ISO-NEW ENGLAND, <https://www.iso-ne.com/about/what-we-do/in-depth/natural-gas-infrastructure-constraints> (last visited Nov. 30, 2021).

agencies noted above, pipeline operators, pipeline customers, and related stakeholders of the energy delivery network to understand and address the myriad of issues raised by H.R. 6084 or similar legislation.

Thank you for your consideration of these comments, and we look forward to working with the Committee to promote pipeline reliability.

Sincerely,

**American Fuel & Petrochemical
Manufacturers**

American Gas Association

American Petroleum Institute

American Public Gas Association

Association of Oil Pipe Lines

GPA Midstream Association

**Interstate Natural Gas Association of
America**

Natural Gas Supply Association