

# REPORT OF THE LEGISLATION AND REGULATORY REFORM COMMITTEE

## I. INTRODUCTION

During the 2002 calendar year, the House and Senate passed their respective, but widely different, versions of comprehensive energy legislation. While there was much promise, only a few items have actually become law. Legislative initiatives on the Alaska natural gas pipeline, the Arctic National Wildlife Refuge, federal and state electric transmission coordination, Public Utility Holding Co. Act (PUHCA), and Public Utility Regulatory Policy Act (PURPA) repeal, and hydro power licensing, to name only a few, did not move to completion. The following is a summary of significant new energy related laws.

## II. PIPELINE SAFETY IMPROVEMENT ACT OF 2002

On November 15, 2002, Congress passed H.R. 3609, the Pipeline Safety Improvement Act of 2002.<sup>1</sup> On December 17, 2002, the President signed the Pipeline Safety Improvement Act of 2002<sup>2</sup> (the Safety Act). The Safety Act amends existing pipeline safety statutes.<sup>3</sup> The Safety Act imposes additional safety compliance and inspection requirements on interstate natural gas or hazardous liquid (petroleum or petroleum products) pipeline facilities located in high population density areas. Certain Safety Act provisions also apply to gathering facilities in populated areas, intrastate pipelines, and local distribution companies. The Safety Act requires the Secretary of Transportation to issue regulations and standards addressing implementation of the programs, inspections, tests, deadlines, and criteria established by the Safety Act. Each of the additional requirements imposed by the Safety Act contain compliance deadlines.

The Safety Act requires certain pipeline operators to assess risks associated with pipelines in high population density areas; e.g., integrity assessments that must be completed pursuant to timelines set forth in the Safety Act; and to implement written integrity management programs for such facilities. The Safety Act contains whistleblower, civil penalty, operator qualification, one-call, and national pipeline mapping system provisions, as well as other provisions requiring inter-agency review and coordination on permitting, standardization, and land use issues.

The Office of Pipeline Safety (OPS), Research and Special Programs Administration (RSPA), and Department of Transportation (DOT), issued proposed regulations under the Safety Act that were published in the Federal

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1. Pipeline Safety Improvement Act of 2002, H.R. 3609, 107th Cong. (2d Sess. 2002).  
2. Pub. L. No. 107-355, 116 Stat. 2985 (codified as amended at 49 U.S.C. §§ 60101-60133).  
3. 49 U.S.C. §§ 60101-60133 (2003).

Register on January 28, 2003.<sup>4</sup>

### III. MARITIME TRANSPORTATION SECURITY ACT OF 2002

On November 25, 2002, the President signed the Maritime Transportation Security Act of 2002 (MTSA).<sup>5</sup> The primary purpose of this new law is to create a comprehensive port security program overseen by the Secretary of the Department of Homeland Security. However, the MTSA amends the Deepwater Port Act.<sup>6</sup> Prior to its amendment by the MTSA, the Deepwater Port Act only applied to deepwater ports for oil, which were expressly made common carriers and subject to open access requirements. The MTSA amended the Deepwater Port Act to expressly exempt natural gas deepwater ports from those requirements. Furthermore, the amendment to the Deepwater Ports Act makes it clear that the Federal Energy Regulatory Commission (FERC) has no jurisdiction over natural gas deepwater ports. The amendment clarifies that the Deepwater Ports Act applies to the licensing, siting, construction, or operation of a deepwater natural gas port, and to the transportation of gas through it.<sup>7</sup>

Because the Deepwater Ports Act only applies to deepwater ports, it has no bearing on the FERC's regulation of a FERC jurisdictional interstate pipeline connecting to a deepwater port. The MTSA does amend the Deepwater Port Act at 33 U.S.C. § 1520 to include natural gas pipelines and now reads: "[t]he Secretary [of Transportation], in cooperation with the secretary of the Interior, shall establish and enforce such standards and regulations as may be necessary to assure the safe construction and operation of oil or natural gas pipelines on the Outer Continental Shelf."<sup>8</sup>

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4. Notice of Proposed Rulemaking, Pipeline Safety: Pipeline Integrity Management in High Consequence Areas (Gas Transmission Pipelines), 68 Fed. Reg. 4278 (Mar. 19, 2003) (to be codified at 49 C.F.R. pt. 192).

5. Maritime Transportation Security Act of 2002, Pub. L. No. 107-295, 116 Stat. 2064 (codified as amended in scattered sections of 5, 14, 18, 33, 46, 49 U.S.C.).

6. 33 U.S.C. §§ 1501-1524 (2003).

7. *Id.*

8. 33 U.S.C. § 1520 (2003).

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