



The Committee on Energy and Commerce

Memorandum

September 30, 2013

TO: Members, Subcommittee on Energy and Power

FROM: Committee Majority Staff

RE: Hearing on H.R.____, the North American Energy Infrastructure Act

On Wednesday, October 2, 2013, at 10:00 a.m. in room 2123 of the Rayburn House Office Building, the Subcommittee on Energy and Power will hold a legislative hearing on H.R.____, the North American Energy Infrastructure Act, being proposed by Chairman Fred Upton and Rep. Gene Green.

I. WITNESSES

Panel I¹

Mr. Jeff C. Wright
Director, Office of Energy Projects
Federal Energy Regulatory Commission

Panel II

Mr. Mark Mills
Fellow
Manhattan Institute

Mr. David Mears
Commissioner
Department of Environmental Conservation
State of Vermont

Mr. Marty Cobenais
Pipeline and Heavy Haul Resistance Organizer
Indigenous Environmental Network

Mr. Jim Burpee
President and CEO
Canadian Electricity Association

Mr. John H. Kyles
Senior Attorney
Plains All American Pipeline, L.P.
On behalf of
the Association of Oil Pipe Lines

¹ The Department of Energy and the Department of Commerce were invited to testify but opted to send written testimony instead.

II. BACKGROUND

Oil and natural gas pipelines and electric transmission facilities that cross the national boundaries of the United States must receive approval from the Federal government, just as any border crossing facility (communication cables and railroads being other notable examples). The current approval process for oil and natural gas pipelines and electric transmission facilities are set forth in a series of Executive Orders created in an ad hoc fashion over multiple Presidential Administrations. Congress has authority to regulate foreign commerce that “is plainly enumerated by the Constitution” and can decide how the approval of cross border facilities is carried out.² Since Congress has yet to exercise its authority to regulate these projects by creating a regulatory approval scheme, it has been left to the President to authorize these approvals under the President’s inherent constitutional authority to conduct foreign affairs. Currently, one must apply for a Presidential Permit not only for a new project, but also for any existing project that has been previously approved that has undergone a change in ownership or modification.

Cross-Border Electric Transmission Facilities

The U.S. currently has over 40 cross-border electric transmission lines carrying power between the U.S. and Canada and the U.S. and Mexico.³ The majority of these interconnections are located at the northern border, which has facilitated enhanced system reliability, fuel diversity and efficiencies in system operation, particularly for the New England and Midwest regions. Each of these facilities has been issued a Presidential Permit and obtained an export authorization from the Secretary of Energy. There are 5 applications for Presidential Permits pending before the Department of Energy (DOE).⁴

Under the current process to construct and operate an international cross-border transmission facility, any person seeking to construct and operate such facilities must first obtain the following from the Secretary of Energy:

- 1) a Presidential Permit pursuant to Executive Order 10485 (September 3, 1954), as amended by Executive Order 12038 (February 3, 1978); and
- 2) an export authorization pursuant to section 202(e) of the Federal Power Act.⁵

Executive Order 12038 provides that, before a Presidential Permit may be issued, the action must be found to be consistent with the public interest. The two criteria used by DOE to determine if a proposed project is consistent with the public interest are:

- 1) the environmental impact of the project, consistent with the National Environmental Policy Act of 1969 (NEPA); and
- 2) the impact of the project on electric reliability.⁶

² CRS Report, “[Proposed Keystone XL Pipeline: Legal Issues](#)” (March 21, 2013).

³ CRS Memorandum, “[Presidential Permitting of Border Crossing Energy Facilities](#),” at Table 3 (Aug. 16, 2013).

⁴ DOE, Office of Electricity Delivery and Energy Reliability, “[Pending Applications](#).”

⁵ 16 U.S.C. § 824a(e).

With regard to export authorizations, DOE will grant the authorization unless it finds that the proposed transmission “would impair the sufficiency of electric supply within the United States or would impede or tend to impede the coordination in the public interest of facilities subject to the jurisdiction of the Commission.”⁷ DOE must also comply with NEPA before granting authorization to export electric energy.

Cross-Border Natural Gas Pipelines

The U.S. currently has a total of 50 operating cross-border natural gas pipelines between the U.S. and Canada (29) and the U.S. and Mexico (21).⁸ There are also two additional natural gas pipeline projects in Arizona and Texas that have Presidential Permit applications currently pending.

Under the current process to construct and operate an international cross-border natural gas pipeline, any person seeking to construct and operate such facilities must first obtain the following from the Federal Energy Regulatory Commission (FERC):

- 1) a Presidential Permit pursuant to Executive Order 10485 (September 3, 1954), as amended by Executive Order 12038 (February 3, 1978); and
- 2) an authorization under section 3 of the Natural Gas Act (NGA) for an import and export facility.⁹

Executive Order 12038 provides that, before a Presidential Permit may be issued, the action must be found to be consistent with the public interest. The criteria used for determining if an application is consistent with the public interest is the same criteria for approving applications for the siting, construction, and operation of import and export facilities under section 3 of the NGA.

Additionally, they must obtain from DOE an authorization to import or export natural gas under section 3 of the NGA for a nation with whom the U.S. has a free trade agreement (FTA).¹⁰ For applications to FTA countries such as Canada and Mexico, DOE is required to grant these requests “without modification or delay”.

Cross-Border Oil Pipelines

The U.S. currently has a total of 19 operating cross-border oil pipelines between the U.S. and Canada (17) and the U.S. and Mexico (2).¹¹ There are currently seven pending applications for Presidential Permits for either new or existing cross-border oil pipelines.¹²

⁶ In addition, concurrence is required from both the Secretary of Defense and the Secretary of State before a Presidential Permit can be issued.

⁷ 16 U.S.C. § 824a(e).

⁸ CRS Memorandum, “[Presidential Permitting of Border Crossing Energy Facilities](#),” at Table 1 (Aug. 16, 2013).

⁹ 15 USC § 717e.

¹⁰ 15 USC § 717b.

¹¹ CRS Memorandum, “[Presidential Permitting of Border Crossing Energy Facilities](#),” at Table 2 (Aug. 16, 2013).

Under the current process to construct and operate an international cross-border oil pipeline, any person seeking to construct and operate such facilities must first obtain a Presidential Permit pursuant to Executive Order 13337 from the Department of State. Under Executive Order 13337, the Secretary of State is to approve cross-border oil pipelines that have been determined would “serve the national interest.” Although the Department of State will not necessarily evaluate the same factors for each application for a Presidential Permit, its evaluation considers such things as the environmental impacts of the proposed project (associated closely with compliance with NEPA), stability of trading partners from whom the U.S. obtains crude oil, and the security of transport pathways for crude oil supplies to the U.S., and the economic benefits to the U.S.

III. SECTION-BY-SECTION

Section 1: Short Title

Section 1 provides the short title for the legislation, the “North American Energy Infrastructure Act.”

Section 2: Sense of Congress

Section 2 provides that it is the sense of Congress that the U.S. should establish a more uniform, transparent, and modern process for the construction and operation of oil or gas pipelines and electric transmission facilities for the import or export of oil, gas, or electricity to or from Canada and Mexico, in pursuit of a more secure and efficient North American energy market.

Section 3: Authorization of Certain Energy Infrastructure Projects That Cross the National Boundary of the United States

Section 3 creates a new approval process for oil and natural gas pipelines and electric transmission facilities that cross the national boundary of the U.S. between Canada or Mexico. Requests for approval for cross-border oil pipelines must be submitted to Secretary of Commerce, natural gas pipeline requests must be submitted to FERC, and electric transmission requests must be submitted to the Secretary of Energy. Within 120 days of being submitted, the requests must be approved unless it is found not to be in the national security interests of the U.S. The approval of these requests does not constitute a major Federal action for the purposes of NEPA. For electric transmission facilities, approval of requests is contingent upon the facilities being in compliance with the Electric Reliability Organization, Regional Transmission Organization and the Independent System operator determined to be appropriate by the Secretary of Energy. No other approvals are necessary under any current Executives Orders. This approval process does not apply to any oil or gas pipelines or electric transmission facilities operating across the national boundary at the date of enactment, has previously received a Presidential Permit, or that has previously been approved under this process. No future

¹² Department of State, Bureau of Energy Resources “[Pending Applications.](#)”

approvals are needed under this process for modifications or changes of ownership. All other Federal statutes apply to a project for which approval of construction or operation is sought under this process.

Section 4: No DOE Authorization Required for Importation or Exportation of Natural Gas Under Natural Gas Act

Section 4 repeals the requirement under section 3(c) of the NGA that approval is needed from DOE for the export or import of natural to or from the U.S., Canada and Mexico across the boundary of the U.S.

Section 5: Transmission of Electric Energy to Canada and Mexico

Section 5 repeals the requirement under section 202(e) of the Federal Power Act requiring an export authorization from the Department of Energy to transmit electric energy from the U.S. to a foreign country.

IV. ISSUES

The following issues will be examined at the hearing:

- How the current Presidential Permitting process affects energy development in the U.S. and across North America.
- How the proposed legislation will improve energy security and market efficiency in the U.S. and North America.
- How the proposed legislation will encourage investment and development of energy resources in the U.S. and North America.

V. STAFF CONTACTS

If you have any questions regarding this hearing, please contact Patrick Currier, Tom Hassenboehler, or Jason Knox at (202) 225-2927.