



The Committee on Energy and Commerce

Memorandum

October 25, 2013

TO: Members, Subcommittee on Energy and Power

FROM: Committee Majority Staff

RE: Hearing on H.R. 3301, the “North American Energy Infrastructure Act”

On Tuesday, October 29, 2013, at 10:00 a.m. in room 2123 of the Rayburn House Office Building, the Subcommittee on Energy and Power will hold a hearing on H.R. 3301, the “North American Energy Infrastructure Act,” introduced by Chairman Fred Upton (R-MI) and Rep. Gene Green (D-TX).

I. WITNESSES

Panel I¹

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

Panel II

Mr. Mark Mills
Senior Fellow
Manhattan Institute

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

Mr. Paul C. Blackburn
Attorney, Regulatory Consultant
Blackcreek Environmental Consulting

Mr. Jim Burpee
President and CEO
Canadian Electricity Association

Ms. Mary J. Hutzler
Distinguished Senior Fellow
Institute for Energy Research

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 in lieu of appearing before the Subcommittee.

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' authority to regulate foreign commerce "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, 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 for any existing project that previously has been approved and 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 have been issued a Presidential Permit and obtained an export authorization from the Secretary of Energy. Currently, 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 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, there must be a finding that the action is 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 also must comply with NEPA before authorizing the export of 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 2 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 obtain 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 is issued, there must be a finding that the action is consistent with the public interest. The criteria used for determining if an application is consistent with the public interest is identical to the criteria for approving applications for the siting, construction, and operation of import and export facilities under section 3 of the NGA.

Additionally, applicants 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 7 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 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 to “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: Finding

Section 2 includes a congressional finding 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 at 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 is contingent upon compliance with applicable Electric Reliability Organization, Regional Transmission Organization, and Independent System Operator policies and standards.

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 that: (1) are operating across the national boundary at the date of enactment; (2) have previously received a Presidential Permit; (3) have previously been approved under this process; or (4) have an

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

application pending on the date of enactment until the application is denied or until July 1, 2016. No future approvals are needed under this process for modifications or changes of ownership. All other Federal statutes, including environmental laws and permits, continue to apply to a project for which approval of construction or operation is sought under this process. Definitions are provided for the terms “natural gas,” “oil,” “Electric Reliability Organization,” “regional entity,” “Independent System Operator,” and “Regional Transmission Organization.”

Section 4: Importation or Exportation of Natural Gas to Canada and Mexico

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 gas to or from the U.S., Canada, or 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.

Section 6: Effective Date; Rulemaking Deadlines

Section 6 establishes a July 1, 2015 effective date for sections 3, 4, and 5. For the respective agencies responsible for carrying out the provisions in section 3, notices of proposed rulemaking are to be published in the Federal Register no later than 180 days after the date of enactment, and final rules are to be published in the Federal Register no later than 1 year after the date of enactment.

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.