

**Responses of Jim Burpee
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to Questions for the Record
House of Representatives Committee on Energy and Commerce
Subcommittee on Energy and Power
“H.R. 3301, the North American Energy Infrastructure Act” – October 29, 2013**

The Honorable Robert E. Latta

1. Your testimony emphasizes the importance of modernizing the permitting process to facilitate the siting and construction of cross-border transmission projects.

a. How would modernizing the permitting process facilitate such a development?

In order to make the investments needed to expand the physical linkages between the Canadian and U.S. segments of the grid and to maximize North America’s clean energy potential, the electricity sector requires increased regulatory certainty and efficiency.

A modernized permitting process would mitigate or eliminate the types of challenges which create uncertainty and risk from a planning perspective, cause the escalation of undue administrative costs and burdens for proponents, and – in more acute circumstances – potentially deter a project sponsor from proceeding with a permit application altogether.

A timely, predictable and streamlined permitting process is a fundamental component of a broader policy and regulatory environment which is conducive to enabling investment to flow into new and refurbished electricity infrastructure.

b. What recommendations do you have for modernizing the permitting process?

The Canadian Electricity Association (“CEA”) believes that lessons can be learned from actions taken by the Government of Canada to modernize the permitting process, such as the following:

- Updated administrative procedures governing the submittal of applications;
- Adjustments in review and permit requirements to reflect evolutions in electric power markets and reliability standards developed by the North American Electric Reliability Corporation (“NERC”);
- Consistent adoption of a “one project, one review” approach to environmental assessments, in which relevant provincial and federal authorities coordinate in preparing a single environmental review of a proposed international power line (“IPL”);

- Refined project review parameters, which focus the scope of a review on the potential adverse environmental impacts associated with the proposed project itself, not with upstream or downstream activity;
- Reduction of the administrative burden on permit holders applying for a permit amendment to effect an operational or physical change, or to transfer ownership of an IPL; and
- Establishment of fixed timelines for completing the review process, while retaining a rigorous standard for performance of environmental review.

Additionally, as stated in CEA's written testimony, CEA strongly believes that there are many efficiencies to be gained from the Department of Energy ("DOE") formally cooperating with its counterpart in Canada, the National Energy Board ("NEB"), to align the agencies' respective approaches to permitting IPLs. Such cooperation can assist DOE and NEB in taking a more coordinated approach to project reviews and in addressing mismatches and inconsistencies which currently exist between their respective processes.

c. Would you agree that H.R. 3301 takes an important step towards achieving such objectives?

CEA views the introduction of H.R. 3301 as an opportunity to examine how well the respective permitting processes in Canada and the U.S. for IPLs are working, and where there can be better synergies in the approaches utilized on either side of the border with the aim of deriving maximum efficiency, while protecting consumers and the environment.

CEA is pleased to see that the bill proposes the establishment of fixed timelines for permitting processes; modernization of procedures to avoid duplication of existing market and regulatory measures; and efficiencies in project reviews, including for routine proceedings such as transfers of ownership. While these principles underlying H.R. 3301 are commendable, CEA maintains that these changes should ensure a continued rigorous standard for performance of environmental reviews at some stage of the process.

In addition, CEA wishes to emphasize that many of its foregoing observations are applicable to DOE's process for authorizing the exportation of electricity to Canada.

2. You note in your testimony that electric utilities in both Canada and the U.S. are projecting large investment needs in grid-related infrastructure, correct?

Yes. According to a 2012 Conference Board of Canada report, *Shedding Light on the Economic Impact of Investing in Electricity Infrastructure*, upwards of C\$350 billion is needed to refurbish,

renew and replace electricity infrastructure in Canada over the next 20 years. This translates into an average annual investment requirement of C\$15 billion – the highest in the country’s history. In the U.S., the sector is also confronting the daunting task to fund record levels of capital expenditures. For example, we have observed that investor-owned utilities are projecting investment needs in the unprecedented range of US\$85 billion alone through 2013.

a. Would you agree that the permitting process for trans-boundary transmission lines can at times be overly burdensome, confusing and unnecessarily lengthy?

DOE has publicly stated that it requires approximately 6-18 months to issue a Presidential Permit. However, the recent record in Presidential Permit proceedings reveals a trend of delays and much longer timelines. For example, among the applications currently pending before DOE, the project that has been in the queue the longest has spent more than three-and-a-half years under review. Processing times for these applications have also suffered significant inconsistencies. Accordingly, it seems that there is a substantial mismatch between DOE’s targeted timelines for issuing Presidential Permits and the actual timelines which play out in practice.

Where the process appears particularly burdensome is with respect to routine proceedings involving existing IPLs, such as transfers of ownership and physical or operational changes. In 2010, for example, a CEA member filed a request to amend its Presidential Permit for purposes of a straightforward transfer of ownership. This took approximately two-and-a-half years to process and required an application filing over 60 pages in length. For the Canadian segment of the IPL, the corresponding proceeding was completed in less than seven months and required only a three-page application.

Such requirements in the Presidential Permit context result in an undue level of administrative burden and costs, and therefore stand to benefit from targeted modifications.

b. Would you agree that such problems could have a chilling effect on future investment in critical cross-border infrastructure?

On balance, CEA understands that the electricity sector’s experience with DOE’s Presidential Permit process has usually been satisfactory and has not encountered the kind of challenges more recently faced by other sectors in the energy industry.

CEA is not aware of any specific circumstances in which inconsistencies have jeopardized the viability of an IPL. However, as noted above, inconsistent timelines and systemic delays in the permitting process do inject uncertainty and risk, and can result in unnecessary escalation of administrative costs for proponents.

Perhaps more importantly, inconsistencies and delays leave customers unnecessarily deprived of the tangible benefits associated with IPL projects. These benefits can take the form of enhanced reliability, lower rates, construction and other jobs, opportunities to access other

supplies of power in the case of a contingency or emergency event, or delays in bringing online new sources of renewable energy from projects located in the United States.

It is worth noting that since the October 29, 2013 subcommittee hearing, another IPL project has been formally proposed – the New England Clean Power Link. On October 31, TDI New England announced plans to construct this US\$1.2 billion, 1,000 MW underwater and underground transmission line from the Canadian border to southern Vermont.

3. What steps has Canada taken to improve its permitting process for the siting and construction of energy infrastructure? What lessons has Canada learned from trying to streamline its permitting process and what recommendations would you offer to the United States as we seek to improve our energy infrastructure permitting process?

The Government of Canada – through its *Responsible Resource Development* plan – has sought to update permitting and review processes for major infrastructure projects, with a focus on establishing clear timelines, reducing duplication and regulatory burdens, strengthening environmental protection, and enhancing consultation with Aboriginal peoples.

Their regulatory modernization efforts have included such steps as consolidation of federal departments' responsibilities over environmental assessments ("EAs") and substitution or equivalency with provincial EAs provided they fulfill federal requirements; establishment of fixed beginning-to-end timelines for EAs, ranging from 12-24 months; establishment of legally-binding timelines for execution of permitting processes; and enhanced powers for federal authorities in order to conduct reviews in a timely and cost-effective manner. (The government's efforts have also included those actions outlined in the response to 1b. above).

Among other things, the reforms have increased flexibility for the federal and provincial governments to determine how best to leverage their respective levels of expertise in coordinating project reviews. It should be noted, though, that these reforms have not come at the expense of the quality of the rigorous environmental protection and stakeholder consultation requirements which have long been a hallmark of the federal regulatory regime in Canada.

Many of these reforms were undertaken subsequent to the establishment by the Government of Canada of a Major Projects Management Office ("MPMO") in 2007. MPMO's mandate is to coordinate regulatory review across relevant federal departments of all major natural resource projects. According to government reports, within its first five years, MPMO was able to shorten the average review time for projects from four years to 22 months. However, in order to most effectively modernize federal permitting and review processes and to maximize efficiencies therein, the Government of Canada recognized that targeted amendments to governing legislation and regulation were necessary. These amendments were enacted as part of omnibus federal budget legislation passed in Canada in 2012.