



May 11, 2015

TO: Members, Subcommittee on Energy and Power

FROM: Committee Majority Staff

RE: Hearing entitled “Discussion Drafts Addressing Hydropower Regulatory Modernization and FERC Process Coordination under the Natural Gas Act”

I. INTRODUCTION

On Wednesday, May 13, 2015, at 10:00 a.m. in 2123 Rayburn House Office Building, the Subcommittee on Energy and Power will hold a hearing entitled “Discussion Drafts Addressing Hydropower Regulatory Modernization and FERC Process Coordination under the Natural Gas Act.”

II. WITNESSES

Panel I

- **The Honorable Paul R. LePage**, Governor of Maine; and
- **Ann F. Miles**, Director, Office of Energy Projects, Federal Energy Regulatory Commission.

Panel II

- **Donald F. Santa**, President and CEO, Interstate Natural Gas Association of America;
- **Carolyn Elefant**, Member of the Board, The Pipeline Safety Coalition, and Principal, The Law Offices of Carolyn Elefant;
- **John Collins**, Managing Director of Business Development, Cube Hydro Partners;
- **Richard Roos-Collins**, General Counsel, The Hydropower Reform Coalition, and Principal, Water and Power Law Group, PC, on behalf of The Hydropower Reform Coalition;
- **Randy Livingston**, Vice President, Power Generation, Pacific Gas and Electric Company; and
- **John J. Suloway**, Board Member, National Hydropower Association.

III. BACKGROUND

A. Hydropower Regulatory Modernization

Hydropower is an essential component of an “all of the above” energy strategy for the United States. Hydropower resources, including pumped storage facilities, currently provide over 6 percent of all electricity generated in the United States, nearly 50 percent of all renewable electricity in the United States, and approximately 100,000 megawatts of electric capacity in the United States. Tremendous potential exists for new hydropower development, including facilities at existing infrastructure such as non-powered dams, new hydropower sites, and emerging technologies that improve the capture of energy along irrigation canals, municipal water supply conduits, and other linear infrastructure.

Despite the inherent benefits of hydropower – energy security, stability, and reliability; environmental protection and enhancement; and recreation – the outdated authorization processes under Part One of the Federal Power Act (FPA), together with overlapping and duplicative requirements under other Federal laws, disadvantage hydropower as a cost-competitive resource. One of the primary impediments to greater utilization of hydropower resources is the regulatory process, which has proven costly, time-consuming, and burdensome, even for small hydropower projects. The regulatory process to license and construct a hydropower facility remains considerably longer than the process for other energy resources. For example, the Integrated Licensing Process established specifically for hydropower projects is structured to be completed in 5 years, while the development timeline for wind and solar projects can be as short as 18 to 24 months.

Although centralized decision-making and administration of non-Federal hydropower has been the intent of the FPA since its original enactment 95 years ago, weakening of this core principle over time has resulted in increased consumer costs, reduced availability of renewable energy, capacity, and ancillary services provided by hydropower, and lost opportunities for new hydropower development. Despite the intentions of the Energy Policy Act of 2005 (EPA) to require better decision-making and promote efficiency in the licensing decisions of the Federal Energy Regulatory Commission (FERC), the Act has not accomplished its full purposes due to inefficient implementation and evasion of its requirements by Federal resource agencies.

B. FERC Process Coordination Under the Natural Gas Act

FERC is authorized under Section 7 of the Natural Gas Act (NGA) to evaluate whether the routes for proposed interstate natural gas pipeline projects should be approved. FERC conducts the environmental review of each proposed natural gas pipeline project as required under the National Environmental Policy Act (NEPA). Under EPA, FERC is designated as the lead agency for coordinating and reviewing natural gas pipeline project applications under NEPA and “all applicable [F]ederal authorizations.” As the lead agency, FERC often coordinates with a variety of Federal, State, and local agencies in the State or jurisdiction that is dependent upon where the interstate pipeline is being constructed.

Multiple permits often are required for a natural gas pipeline project, including permits under the Clean Water Act, Endangered Species Act, and Clean Air Act. Under current FERC regulations, Federal and State agencies participate in the development of the NEPA analysis for a pipeline project and then are required to complete their respective permit application reviews no later than 90 days after FERC issues its final environmental document, unless another schedule is established by Federal law.¹

Despite the increased authority given to FERC under EPA there is growing evidence that FERC lacks the ability to enforce agency decisional deadlines related to natural gas pipeline applications. A December 2012 study conducted by the INGAA Foundation found that delays of more than 90 days have risen 28 percent after EPA's permitting reforms, while delays of 180 days or more have risen 20 percent.² A February 2013 GAO report found the natural gas pipeline permitting process to be "complex."³ A chief cause of these growing delays is that there are no enforcement mechanisms or consequences if agencies do not complete permit application review within 90 days.

There is a critical need to build new natural gas pipelines and to improve upon the existing infrastructure across the country. The growth in U.S. natural gas production and the growth in market demand, especially in certain markets, is driving the need. In addition, more natural gas pipelines would provide greater regulatory certainty to areas that have a growing need for more natural gas resources.

IV. SECTION-BY-SECTION

A. Hydropower Regulatory Modernization

Sec. 1301. Administrative efficiency and transparency:

- Would establish that FERC has the exclusive authority to enforce and administer all license requirements.
- Would require FERC to minimize duplication of studies in license proceedings by requiring reliance on existing information. New studies would be authorized only when FERC determines that additional data or other information is necessary to support its licensing decisions and that the value of new data or other information outweighs the cost of producing it.
- Would provide that FERC's authority to manage shorelines and other lands at a licensed hydropower project for non-project recreation and other development is limited to the administration of site-specific license provisions, and only if FERC determines that State

¹ [18 C.F.R. § 157.22](#)

² INGAA Foundation, [Expedited Federal Authorization of Interstate Natural Gas Pipelines: Are Agencies Complying with EPA's?](#), December 21, 2012.

³ Government Accountability Office, [Interstate and Intrastate Natural Gas Permitting Processes Include Multiple Steps, and Time Frames Vary](#), February, 2013.

or local laws are inadequate to administer such provisions.

Sec. 1302. Promoting new hydropower infrastructure:

- Would exclude qualifying facilities of 5 MW or less from the licensing requirements of the FPA and would authorize FERC to issue exemptions for qualifying facilities of greater than 5 MW. To qualify under this section, a new hydropower facility must be located at an existing non-powered dam or similar infrastructure and must not, among other criteria, materially change operations of the existing non-powered dam or other infrastructure.

Sec. 1303. Promoting accountability, requiring balanced and efficient decision-making, and reducing duplicative oversight:

- Would shift from the secretary of the relevant resource agency to FERC the responsibility under FPA section 33 for evaluating whether a submitted alternative meets the statutory criteria for adoption in lieu of a mandatory condition submitted under FPA section 4(e) or 18, and would require secretaries submitting such mandatory conditions to demonstrate that they gave equal consideration to power and non-power values when developing the condition.
- With respect to trial-type hearings, this section would 1) consolidate all trial-type hearings on factual disputes related to mandatory conditions before FERC and establish the timeframes, burdens of proof, and other requirements for such hearings; 2) integrate into trial-type hearings disputed factual issues related to alternative mandatory conditions submitted by licensing participants; 3) provide for the submission of modified mandatory conditions (and modified alternative conditions) based on the results of the trial-type hearing; and 4) prohibit the filing of new mandatory conditions following the trial-type hearing.
- Would require resource agencies to coordinate the submission of all conditions related to fishways and Federal reservations through the secretary concerned and to make the alternative and trial-type hearing procedures available to all such conditions.
- Would clarify that 1) mandatory conditioning authority under FPA section 4(e) authorizes the Secretary concerned to impose license conditions that mitigate effects of the licensed hydropower project to the portion of the reservation occupied by the project and 2) fishway prescriptions under FPA section 18 apply to mitigate project effects to fish populations.

Sec. 1304. Promoting efficient and timely decision-making:

- Would direct FERC to establish a schedule for all required authorizations under Federal law to ensure Federal and State resource agencies cooperate in FERC's environmental review.

B. FERC Process Coordination under the Natural Gas Act

Sec. XXXX FERC process coordination:

- Would reinforce FERC's role as the lead agency for siting interstate natural gas pipelines. This section would require FERC to identify all agencies considering an aspect of an application and set the schedule for review, including a deadline for a final decision. Cooperating agencies would be required to carry out reviews concurrently and to identify any issues of concern that may delay or prevent meeting the schedule established by FERC. Under this section, FERC could allow an applicant to fund a third party contractor or FERC staff to assist in reviewing the application. This section also would require FERC to track, and make available to the public on its website, information related to the review of applications requiring multiple Federal authorizations.

V. ISSUES

The following issues may be examined at the hearing:

- The current process for licensing and relicensing hydropower projects and the permitting of interstate natural gas pipelines;
- Impediments to licensing and relicensing hydropower projects and permitting interstate natural gas pipelines;
- The role of State and other Federal agencies in the hydropower licensing and relicensing process and the natural gas pipeline permitting process;
- The need for increased natural gas pipeline capacity in the U.S.;
- The benefits of hydropower to an all-of-the-above energy strategy; and,
- The potential for new hydropower development, including from non-powered dams.

VI. STAFF CONTACTS

If you have any questions regarding this hearing, please contact Patrick Currier or Brandon Mooney of the Committee staff at (202) 225-2927.