

This is a preliminary, unedited transcript. The statements within may be inaccurate, incomplete, or misattributed to the speaker. A link to the final, official transcript will be posted on the Committee's website as soon as it is available.

1 {York Stenographic Services, Inc.}

2 RPTS BROWN

3 HIF133.030

4 DISCUSSION DRAFTS ADDRESSING HYDROPOWER REGULATORY

5 MODERNIZATION AND FERC PROCESS COORDINATION UNDER THE NATURAL

6 GAS ACT

7 WEDNESDAY, MAY 13, 2015

8 House of Representatives,

9 Subcommittee on Energy and Power

10 Committee on Energy and Commerce

11 Washington, D.C.

12       The Subcommittee met, pursuant to call, at 10:03 a.m.,  
13 in Room 2123 of the Rayburn House Office Building, Hon. Ed  
14 Whitfield [Chairman of the Subcommittee] presiding.

15       Members present: Representatives Whitfield, Olson,  
16 Barton, Shimkus, Pitts, Latta, Harper, McKinley, Griffith,  
17 Johnson, Long, Ellmers, Mullin, Hudson, Rush, McNerney,  
18 Tonko, Green, Sarbanes, Loeb sack, and Pallone (ex officio).

This is a preliminary, unedited transcript. The statements within may be inaccurate, incomplete, or misattributed to the speaker. A link to the final, official transcript will be posted on the Committee's website as soon as it is available.

19           Staff present: Nick Abraham, Legislative Associate,  
20 Energy and Power; Charlotte Baker, Deputy Communications  
21 Director; Will Batson, Legislative Clerk; Leighton Brown,  
22 Press Assistant; Allison Busbee, Policy Coordinator, Energy  
23 and Power; Patrick Currier, Counsel, Energy and Power; Tom  
24 Hassenboehler, Chief Counsel, Energy and Power; Ben  
25 Lieberman, Counsel, Energy and Power; Brandon Mooney,  
26 Professional Staff Member, Energy and Power; Chris Sarley,  
27 Policy Coordinator, Environment and Economy; Christine  
28 Brennan, Democratic Press Secretary; Jeff Carroll, Democratic  
29 Staff Director; Caitlin Haberman, Democratic Professional  
30 Staff Member; Rick Kessler, Democratic Senior Advisor and  
31 Staff Director, Energy and Environment; and John Marshall,  
32 Democratic Policy Coordinator.

This is a preliminary, unedited transcript. The statements within may be inaccurate, incomplete, or misattributed to the speaker. A link to the final, official transcript will be posted on the Committee's website as soon as it is available.

|

33           Mr. {Whitfield.} I would like to call the hearing to  
34 order this morning.

35           Today we are going to have another discussion on a  
36 discussion draft addressing hydropower regulatory  
37 modernization, and the FERC process coordination under the  
38 Natural Gas Act. As you know, we have had a series of  
39 meetings and hearings on drafts that we want to incorporate  
40 in an overall energy bill, and today, as I said, we are going  
41 to be focusing on hydroelectric power and natural gas. And  
42 our goal is to help unleash the potential of these affordable  
43 domestic energy sources by modernizing the applicable  
44 regulatory process at FERC.

45           If ever there were such a thing as a bipartisan energy  
46 source, it is certainly hydroelectric, and natural gas would  
47 be at the top of the list. So I look forward to working with  
48 all of my colleagues to minimize the red tape and maximize  
49 the benefits of these two sources for the sake of affordable  
50 energy, the environment, national security, job creation, and  
51 certainly economic growth.

52           Hydroelectric is a source of clean, reliable, and  
53 affordable power, yet the federal process for licensing new  
54 capacity or relicensing existing capacity is considerably

This is a preliminary, unedited transcript. The statements within may be inaccurate, incomplete, or misattributed to the speaker. A link to the final, official transcript will be posted on the Committee's website as soon as it is available.

55 more cumbersome than for other renewable sources. For  
56 example, I have been told that it is not unusual that these  
57 hydropower projects to obtain the permits sometimes takes on  
58 average maybe up to 5 years, and I know we are going to hear  
59 today about a process that has taken 15, 16 years. But at--  
60 on the other side of the coin, for wind and solar projects,  
61 the Administration is so focused on moving those that you can  
62 get permits in 18 months, and then also you get exemptions  
63 from the Migratory Bird Act and also the Eagle Protection  
64 Act. So there is a lot of favoritism in those areas.

65 So this discussion draft will establish FERC as the  
66 exclusive authority on hydroelectric licensing, and includes  
67 several provisions to eliminate redundant and unnecessary  
68 requirements, and put the review process on a reasonable  
69 schedule. It also encourages the creation of new  
70 hydroelectric power from existing non-powered dams by  
71 providing a licensing exemption for qualifying facilities.  
72 In all cases, all cases, the environmental and safety  
73 requirements for these facilities will be maintained. So we  
74 are not taking away any power from the agencies that have  
75 that responsibility.

76 A few weeks ago, we had a hearing and I talked about  
77 Dire Straits, they had a song, Money for Nothing, Chicks are

This is a preliminary, unedited transcript. The statements within may be inaccurate, incomplete, or misattributed to the speaker. A link to the final, official transcript will be posted on the Committee's website as soon as it is available.

78 Free. Today, we have the words of Woody Guthrie in his song,  
79 Roll on Columbia, and it goes like this, and up on the river  
80 is the Grand Coulee Dam, the mightiest thing ever built by  
81 man, to run these great factories and water the land, it is  
82 roll on, Columbia, roll on. So we want to help Woody Guthrie  
83 keep this water rolling, produce this hydropower. Now, he  
84 didn't talk about natural gas, but FERC is also involved in  
85 the approval process for interstate natural gas pipelines,  
86 and the problems are much the same as with hydroelectric  
87 power: a slow and unpredictable approval process that is out  
88 of touch with America's energy needs today. This is  
89 particularly true of natural gas, given the tremendous  
90 increases in domestic output over the last decade. So  
91 getting that gas to the power plants and factories and  
92 consumers that need it will require new pipelines as well as  
93 upgrades of existing pipelines. In fact, this was a major  
94 point in the Department of Energy's Quadrennial Energy  
95 Review. It was clear that a more streamlined permitting  
96 process will help to build these pipelines.

97 So that is our goal. We want an efficient, quick  
98 process, but we want to protect the environment and make sure  
99 that we provide adequate protections for safety and  
100 everything else. So that is what our hearing is about this

This is a preliminary, unedited transcript. The statements within may be inaccurate, incomplete, or misattributed to the speaker. A link to the final, official transcript will be posted on the Committee's website as soon as it is available.

101 morning.

102 I am really delighted, we have two panels of witnesses,  
103 and I will be introducing our first panel in just a minute.  
104 At this time, I would like to recognize Mr. Rush for his  
105 opening statement.

106 [The prepared statement of Mr. Whitfield follows:]

107 \*\*\*\*\* COMMITTEE INSERT \*\*\*\*\*

This is a preliminary, unedited transcript. The statements within may be inaccurate, incomplete, or misattributed to the speaker. A link to the final, official transcript will be posted on the Committee's website as soon as it is available.

|

108           Mr. {Rush.} I want to thank you, Mr. Chairman. Mr.  
109 Chairman, before I begin, I want to ask for unanimous consent  
110 that we hear you sing the Woody Guthrie song, you know.

111           Mr. {Whitfield.} Well, thank you. I will do that a  
112 little bit later.

113           Mr. {Rush.} I want to thank you for holding the  
114 hearing. Unfortunately, Mr. Chairman, we are once again  
115 holding a hearing on two unrelated issues that each deserve  
116 their own separate consideration in their own right. The  
117 FERC process coordination under the Natural Gas Act is an  
118 updated version of H.R. 161 and H.R. 1900, which the  
119 subcommittee has previously examined, and is an attempt to  
120 expedite the FERC process for permitting natural gas  
121 pipelines. The biggest concern I have, Mr. Chairman, is that  
122 I brought up--is one that I brought up in each of my previous  
123 attempts to modify this process, which is that this bill is  
124 simply a solution in search of a problem.

125           Mr. Chairman, FERC data shows that between 2009 and  
126 2015, over 100 million natural gas pipeline projects were  
127 approved, spanning over 3,700 miles in 35 states, and with a  
128 total capacity of over 45 million cubic feet per day.  
129 Additionally, Mr. Chairman, while the average time from

This is a preliminary, unedited transcript. The statements within may be inaccurate, incomplete, or misattributed to the speaker. A link to the final, official transcript will be posted on the Committee's website as soon as it is available.

130 filing to approval was under 10 months, an overwhelming 91  
131 percent of applications were decided within 12 months. Even  
132 the GAO has concluded that FERC's pipeline permitting process  
133 is both predictable and consistent, and pipelines are being  
134 built in a timely manner. In fact, Mr. Chairman, in  
135 testimony from stakeholders, ranging from the Interstate  
136 Natural Gas Association of America to Dominion Energy, this  
137 subcommittee has heard repeatedly that the current permitting  
138 process works well, and FERC has done a good job of deciding  
139 permits within a reasonable time period.

140         So, Mr. Chairman, the question remains, is there really  
141 a problem?

142         As far as the second and unrelated part of this hearing  
143 of dealing with the licenses of hydropower, I must say, Mr.  
144 Chairman, that this is the first time this subcommittee has  
145 even held an oversight hearing on this issue in at least the  
146 last 3 Congresses. Since I began as ranking member of this  
147 subcommittee in 2001, this is the first time we have even  
148 looked at this issue. And today's hearing does not have one  
149 single witness from any of the agencies who can testify on  
150 the impact that this draft legislation would have on any of  
151 our other natural resources that the citizens of this nation  
152 depend on in our waterways. Mr. Chairman, there is not one



This is a preliminary, unedited transcript. The statements within may be inaccurate, incomplete, or misattributed to the speaker. A link to the final, official transcript will be posted on the Committee's website as soon as it is available.

153 single representative from the Department of Interior, or  
154 commerce, or any of the state agencies who can testify on how  
155 this bill might impact our shorelines, our rivers, or our  
156 streams in regards to protecting the general public interest  
157 outside of the narrow consideration of providing hydropower.  
158 Mr. Chairman, there is not a single witness on either panel  
159 who can provide this subcommittee with expert testimony on  
160 how taking authority away from other agencies, and  
161 consolidating power and decision making authority solely  
162 within FERC might impact the public interest in matters  
163 regarding environmental protection, or families visiting a  
164 lake having a sufficient access to boat, fish, hike, or swim.

165 Mr. Chairman, before we make it easier for private  
166 companies to take control of the use of the waters belonging  
167 to the people in this great nation, we should at least hear  
168 from the experts within those agencies that are responsible  
169 for protecting those interests.

170 Thank you, Mr. Chairman. I will yield back my time.

171 [The prepared statement of Mr. Rush follows:]

172 \*\*\*\*\* COMMITTEE INSERT \*\*\*\*\*

This is a preliminary, unedited transcript. The statements within may be inaccurate, incomplete, or misattributed to the speaker. A link to the final, official transcript will be posted on the Committee's website as soon as it is available.

|

173           Mr. {Whitfield.} Gentleman yields back.

174           Mr. Upton is not here this morning. Is there anyone on  
175 our side of the aisle would like to make a statement? If  
176 not, then at this time I recognize the ranking member, Mr.  
177 Pallone, of New Jersey for 5 minutes.

178           Mr. {Pallone.} Thank you, Mr. Chairman. As I have said  
179 before, the reality of the energy picture in the United  
180 States is changing rapidly. As the committee of jurisdiction  
181 over national energy policy, it is eminently reasonable and  
182 appropriate for the committee to look closely at our new  
183 energy reality. So much has changed since the House last  
184 considered an energy bill, and it is our responsibility to  
185 carefully consider proposals to help us develop the energy  
186 policies of the future.

187           Two weeks ago, I expressed concern cramming two  
188 completely unrelated subjects into a single, two-panel  
189 hearing, and again, we are here examining two subjects;  
190 natural gas pipeline permitting and hydroelectric licensing,  
191 that are important and warrant not only separate legislative  
192 hearings, but they also should be proceeded by a thorough  
193 oversight. It has been years, and in the case of  
194 hydroelectric licensing, an entire decade since this

This is a preliminary, unedited transcript. The statements within may be inaccurate, incomplete, or misattributed to the speaker. A link to the final, official transcript will be posted on the Committee's website as soon as it is available.

195 committee has conducted oversight of either of the programs  
196 that these drafts aim to reconfigure. From my perspective,  
197 this committee should not be writing legislative solutions  
198 before members have a chance to examine the state of play, or  
199 even confirm that a problem actually exists.

200 While hydroelectric power can be an important source of  
201 no-emission base load generation, it also potentially poses  
202 major harm to fish and wildlife populations, water quality,  
203 and other important resources. Hydroelectric power depends  
204 on rivers for fuel, and those rivers belong to all Americans,  
205 not just those who sell or buy the power generated from it.

206 The Federal Power Act requires FERC to balance those  
207 competing interests in issuing a license because no one use  
208 of a river for power, drinking water, irrigation, recreation,  
209 or other use, should automatically take precedence. For  
210 instance, if a license might impact a protected resource such  
211 as a wild and scenic river, a national wildlife refuge, or a  
212 national park, then the appropriate federal agency  
213 responsible for that resource can put conditions on the  
214 license to ensure that the resource is protected.

215 Unfortunately, the draft proposal before us completely  
216 throws out decades of policy and case law in one fell swoop.  
217 There is nothing subtle about the draft's changes. It

This is a preliminary, unedited transcript. The statements within may be inaccurate, incomplete, or misattributed to the speaker. A link to the final, official transcript will be posted on the Committee's website as soon as it is available.

218 undermines the key provisions of current law that exist to  
219 conserve our natural resources and protected areas, and  
220 ensure a balanced approach to the use of our nation's rivers.  
221 This legislation only promising great--will only result in  
222 greater confusion, time-consuming litigation, and exacerbated  
223 and unnecessary delays of hydropower licenses. So I  
224 sincerely hope the majority will consider holding proper  
225 oversight hearings to inform members, and help facilitate  
226 constructive discussions on hydropower reform.

227         With regard to the other issue, the natural gas pipeline  
228 selling legislation, like the previous iterations of this  
229 bill. The draft is yet another solution in search of a  
230 problem. According to FERC, more than 91 percent of pipeline  
231 applications are reviewed within 1 year. I think that is  
232 pretty remarkable. And GAO concluded that the current FERC  
233 pipeline permitting process is predictable, consistent, and  
234 actually gets pipelines built. We have even heard pipeline  
235 companies testify that the process is generally very good.

236         So this legislation, in my opinion, is unnecessary and  
237 would disrupt the perfectly functioning permitting process.  
238 Instead, it imposes a laundry list of prescriptive,  
239 duplicative, and potentially harmful requirements on FERC and  
240 every agency involved in the permitting process. This would

This is a preliminary, unedited transcript. The statements within may be inaccurate, incomplete, or misattributed to the speaker. A link to the final, official transcript will be posted on the Committee's website as soon as it is available.

241 only slow down, rather than speed up the approval of  
242 interstate natural gas pipelines. The draft positions FERC  
243 as a policing agency charged with micromanaging other  
244 agencies in consideration of application, even determining  
245 the scope of their environmental review, and FERC doesn't  
246 have the expertise or resources to make those types of  
247 decisions. More problematic, the draft purports to address  
248 this resource issue by allowing applicants to provide extra  
249 funding for FERC staff or contractors to aid in the speedy  
250 review of pipeline applications. And this provision is  
251 troublesome and could lead to inappropriate relationships  
252 between applicants and FERC staff.

253       So, Mr. Chairman, I can't support either of the drafts  
254 before us today, and I urge the majority to rethink their  
255 proposals. Instead, I would like to work with you on energy  
256 legislation that benefits consumers as well as producers,  
257 promotes American jobs, protects our environment, and builds  
258 upon past successes to propel us into a better future.

259       I yield the balance of my time. Thank you, Mr.  
260 Chairman.

261       [The prepared statement of Mr. Pallone follows:]

262 \*\*\*\*\* COMMITTEE INSERT \*\*\*\*\*

This is a preliminary, unedited transcript. The statements within may be inaccurate, incomplete, or misattributed to the speaker. A link to the final, official transcript will be posted on the Committee's website as soon as it is available.

|

263           Mr. {Whitfield.} The gentleman yields back, and thank  
264 you very much for those statements. And that concludes the  
265 statements.

266           So as I said, we have two panel of witnesses, and on the  
267 first panel, we have the Honorable Paul R. LePage, who is the  
268 Governor of Maine. Governor, we appreciate your taking time  
269 to be with us today, and thank you for being willing to  
270 participate. In addition, we have Ann Miles, who is the  
271 Director of the Office of Energy Projects at FERC. Ms.  
272 Miles, thank you very much for joining us. And each one of  
273 you will be recognized for 5 minutes for your statement, and  
274 then we will open it up for questions.

275           So, Governor, I will begin with you, and we will--you  
276 are recognized for 5 minutes. And the little box on the  
277 table has the lights which--red would mean stop, but if you  
278 are in mid-sentence, you can go on and complete it. Thank  
279 you. And turn your microphone on also, thank you.

This is a preliminary, unedited transcript. The statements within may be inaccurate, incomplete, or misattributed to the speaker. A link to the final, official transcript will be posted on the Committee's website as soon as it is available.

|

280 ^STATEMENTS OF HON. PAUL R. LEPAGE, GOVERNOR OF MAINE; AND  
281 ANN F. MILES, DIRECTOR, OFFICE OF ENERGY PROJECTS, FEDERAL  
282 ENERGY REGULATORY COMMISSION

|

283 ^STATEMENT OF PAUL R. LEPAGE

284 } Governor {LePage.} Good morning, Chairman Whitfield,  
285 Ranking Member Rush, and members of the subcommittee. Thank  
286 you for the opportunity to testify today, and the efforts  
287 that this committee will take to modernize our federal  
288 permitting process for energy infrastructure.

289 Natural gas and hydropower can provide competitive and  
290 clean energy for our economy. We need infrastructure, we  
291 plead with you, from pipelines to transmission lines, to take  
292 advantage of these plentiful resources. The people of New  
293 England want these projects done, but bureaucracy is  
294 preventing timely action. Bureaucracy has hijacked  
295 democracy.

296 Natural gas. New England has transitioned to natural  
297 gas to generate electricity. We have gone from 15 percent to  
298 almost 50 percent in the last 15 years. Our infrastructure  
299 has simply not kept up. Our pipeline cannot transport enough

This is a preliminary, unedited transcript. The statements within may be inaccurate, incomplete, or misattributed to the speaker. A link to the final, official transcript will be posted on the Committee's website as soon as it is available.

300 gas from Pennsylvania. This has caused prices to spike from  
301 \$3 per million BTUs to \$20 per million BTUs; some of the  
302 highest prices in the world. This has dramatic consequences  
303 for New England. In Maine, we lost two major employers.  
304 Electric bills for residential customers have skyrocketed.  
305 The average electric price in our state is now 17.3 cents per  
306 kilowatt hour. In some areas, bills have increased by as  
307 much as 100 percent. We need a sense of urgency at the  
308 federal level to permit natural gas infrastructure. States  
309 must step up to prioritize these projects. Together, it can  
310 get done.

311 It makes no sense to me why it should take 3 to 5 years  
312 to build a pipeline. We built several hundred miles within  
313 our state in 18 months. The legislation before you today  
314 would help empowering FERC to make deadlines for other  
315 federal agencies. As far as I am concerned, Washington could  
316 use a lot more deadlines.

317 Hydropower. The committee's proposal regarding  
318 hydropower is encouraging. This country has ignored the  
319 benefits of hydropower. New England knows that hydropower is  
320 necessary to provide clean, predictable power. New England  
321 governors met last month to discuss infrastructure and  
322 transmission line to Canada. The committee must work to



This is a preliminary, unedited transcript. The statements within may be inaccurate, incomplete, or misattributed to the speaker. A link to the final, official transcript will be posted on the Committee's website as soon as it is available.

323 overhaul our cross-border permitting laws. Maine shares a  
324 huge border with Canada. I am concerned when cross-border  
325 permitting becomes politicized, like it has with the Keystone  
326 Pipeline. This is not how we should be doing business with  
327 our neighbors to the north; Canada.

328       The committee draft legislation would exempt existing  
329 non-powered dams from the Federal Power Act if it does not  
330 significantly alter the dam. This is very sensible. We  
331 should remove roadblocks for getting power out of existing  
332 dams. Maine has a potential of 70 megawatts of additional  
333 hydropower available for non-powered dams.

334       Gentlemen, overzealous activists are taking advantage of  
335 federal bureaucracy. I can give you a number of examples.  
336 They are blocking affordable energy for our citizens and our  
337 businesses. Congress must back our country. We must take it  
338 back from the bureaucracy of Federal Government. I often  
339 say, you have heard the saying, too big to fail, well, I say  
340 Washington is getting too big to work. Congress must act.

341       And I thank you for your time.

342       [The prepared statement of Governor LePage follows:]

343 \*\*\*\*\* INSERT A \*\*\*\*\*

This is a preliminary, unedited transcript. The statements within may be inaccurate, incomplete, or misattributed to the speaker. A link to the final, official transcript will be posted on the Committee's website as soon as it is available.

|

344           Mr. {Whitfield.} And, Governor, thank you very much for  
345 that statement.

346           And at this time, Ms. Miles, you are recognized for 5  
347 minutes of--for your opening statement.

This is a preliminary, unedited transcript. The statements within may be inaccurate, incomplete, or misattributed to the speaker. A link to the final, official transcript will be posted on the Committee's website as soon as it is available.

|

348 ^STATEMENT OF ANN F. MILES

349 } Ms. {Miles.} Thank you. Chairman Whitfield, Ranking  
350 Member Rush, and members of the subcommittee, my name is Ann  
351 Miles and I am the Director of the Office of Energy Projects  
352 at the Federal Energy Regulatory Commission.

353 The commission is responsible for siting infrastructure  
354 for nonfederal hydropower projects, interstate natural gas  
355 pipelines and storage facilities, and liquefied natural gas  
356 terminals. I appreciate the opportunity to appear before you  
357 to comment on the discussion drafts.

358 As a member of the commission's staff, the views I  
359 express in this testimony are my own, and not those of the  
360 commission or any individual commissioner.

361 I will first comment on the discussion draft addressing  
362 hydropower. It has the important goals of improving  
363 transparency, accountability, and timely decision-making.  
364 Because the hydro draft is extensive, I will only highlight a  
365 few sections in my oral testimony. In Section 1302 of the  
366 draft, which adds a new Section 34 to the Federal Power Act,  
367 or FPA, I support the development of procedures to lower the  
368 time, effort, and expense needed to develop hydropower

This is a preliminary, unedited transcript. The statements within may be inaccurate, incomplete, or misattributed to the speaker. A link to the final, official transcript will be posted on the Committee's website as soon as it is available.

369 projects at existing non-powered dams. However, it is not  
370 always the case that a small capacity project has only minor  
371 environmental impacts. Therefore, removing federal  
372 jurisdiction for qualifying facilities that are 5 megawatts  
373 or less could result in unintended consequences for  
374 environmental resources. I am also concerned about some of  
375 the specifics of the proposed new FPA Section 34, including,  
376 for example, the extent to which it could be read as  
377 elevating economic and operational concerns over other public  
378 interest considerations. In Section 1303, I do not support  
379 the amendment to Section 33 of the FPA to require the  
380 commission, rather than the secretaries, to determine whether  
381 a licensed applicant's alternative condition under Section  
382 4(e) or Section 18 of the FPA would protect the federal  
383 agency's reservation. Further, shifting oversight of the  
384 trial-type hearings required in the new Section 35 to the  
385 commission would not eliminate the substantial expense and  
386 time associated with such hearings, as I understand is the  
387 current situation. Instead, Congress may wish to consider  
388 eliminating them entirely, and allowing the commission to  
389 address disputes on the material facts of the proceeding  
390 earlier in the commission's licensing process. Finally, in  
391 Section 1304, I am supportive of the intent of the amendments

This is a preliminary, unedited transcript. The statements within may be inaccurate, incomplete, or misattributed to the speaker. A link to the final, official transcript will be posted on the Committee's website as soon as it is available.

392 to Section 308 and the new Section 313 to bring certainty and  
393 timeliness to the hydro-licensing process. However, without  
394 a method to enforce any established schedule, the goals may  
395 not be achieved.

396 I will now turn to comments on FERC process coordination  
397 under the Natural Gas Act, or NGA, which has the commendable  
398 goal of improving transparency and predictability for federal  
399 and state permitting agency actions by adding more  
400 coordination, reporting, issue resolution, and  
401 accountability. The Energy Policy Act of 2005 provided  
402 additional authorities and responsibilities to the commission  
403 in Section 15. The proposed legislation includes existing  
404 practices the commission added to its regulations in response  
405 to EPAct 2005. However, the proposed changes would move some  
406 of the activities to later in the process than is the case  
407 under current commission practice; thus, lessening  
408 efficiency.

409 There are two aspects of the draft that bear particular  
410 attention. First, in Section 15(c)(6), if an agency does not  
411 meet the 90 day or otherwise approved schedule, the federal  
412 agency head must notify Congress, which would provide some  
413 accountability. Second, in Section 15(e), I see value in  
414 requiring the commission to make available on its Web site

This is a preliminary, unedited transcript. The statements within may be inaccurate, incomplete, or misattributed to the speaker. A link to the final, official transcript will be posted on the Committee's website as soon as it is available.

415 the schedule established with other federal agencies, and the  
416 status of federal authorizations, because that information is  
417 now scattered in various filings. Overall, the current  
418 process for siting natural gas facilities is timely and  
419 efficient, and results in fair, thorough, and legally  
420 defensible documents. I am concerned that codifying the  
421 commission's practices too rigidly might have the unintended  
422 consequence of limiting the commission's ability to respond  
423 to the circumstances of specific cases, to changes in the  
424 natural gas industry, and to the nation's energy needs.

425 Finally, commission staff would be happy to provide  
426 technical assistance, and to work with other stakeholders to  
427 help refine both the hydropower and gas discussion drafts.

428 This concludes my remarks. I would be pleased to answer  
429 any questions you may have.

430 [The prepared statement of Ms. Miles follows:]

431 \*\*\*\*\* INSERT B \*\*\*\*\*

This is a preliminary, unedited transcript. The statements within may be inaccurate, incomplete, or misattributed to the speaker. A link to the final, official transcript will be posted on the Committee's website as soon as it is available.

|

432           Mr. {Whitfield.} Well, thank you, Ms. Miles. And thank  
433 both of you once again for coming and giving us your  
434 perspective on this discussion draft.

435           Governor, we have had a lot of hearings, obviously, on  
436 energy issues, and one of the recurrent themes that we hear  
437 about is that in the Northeast particularly, there are a lot  
438 of problems with electricity--adequate electricity supplies.  
439 I mean some of the nuclear plants are being closed. And one  
440 of the problems is, as you--this Administration particularly,  
441 is trying to transform the way energy is being produced in  
442 America, going more to renewables, less coal, and so forth,  
443 and when you push the country so quickly in one direction, it  
444 does create some capacity problems, and I think that is what  
445 you were referring to. And is this argument that we hear  
446 about the Northeast, that they really do have capacity  
447 problems, and the polar vortex, the impact of that, do you  
448 think it is a realistic problem or is it just something that  
449 is hyped too much?

450           Governor {LePage.} Well, let me put it this way. If  
451 you own a home in Montreal, a home in a major city, and you  
452 don't heat with electricity, you--an average home will cost  
453 you about \$34 a month in your electricity bill. If you do

This is a preliminary, unedited transcript. The statements within may be inaccurate, incomplete, or misattributed to the speaker. A link to the final, official transcript will be posted on the Committee's website as soon as it is available.

454 that in Maine, it is about \$90. If you heat in December,  
455 January, and February in Montreal, it will cost you about  
456 \$100 a month if you are using electricity. In Maine, you  
457 have to get a bank loan.

458         So, sir, it is a capacity issue, and it can be resolved  
459 with about a 40-mile transmission line to connect into Quebec  
460 Hydro and bring it right into Maine. Quebec Hydro right now  
461 has 48,000 megawatts for sale. 48,000 megawatts. Muskrat  
462 Falls in Lower Labrador is going to be coming on-line with  
463 another--in a couple of years with another 3,800 megawatts of  
464 hydro power. We don't need to build--to dam-up Maine,  
465 although I think the little--the few dams that are already in  
466 place, if you put a generator on, you could generate 70  
467 megawatts. But my point is very simply this, there is plenty  
468 of electricity, affordable energy, but we can't get to it.

469         Mr. {Whitfield.} And so what needs to be done to get to  
470 it?

471         Governor {LePage.} We need a transmission line in the  
472 western part of Maine, about 40 miles to go to the border,  
473 and the Canadians are waiting to hook on.

474         Mr. {Whitfield.} And is that a project that you have  
475 been very much involved in, and--

476         Governor {LePage.} It is a project that we have been



This is a preliminary, unedited transcript. The statements within may be inaccurate, incomplete, or misattributed to the speaker. A link to the final, official transcript will be posted on the Committee's website as soon as it is available.

477 developing. There are three states that are willing--well,  
478 two out of three New England states are willing to do  
479 transmission at this point is Vermont is willing to transmit  
480 power from Canada into New England, and Maine is willing to  
481 transport power from Quebec into New England. The problem is  
482 getting through the bureaucracy.

483 Mr. {Whitfield.} And how long have you all been working  
484 on this project?

485 Governor {LePage.} I am in my fifth year of being  
486 governor.

487 Mr. {Whitfield.} And was it started before you became  
488 governor?

489 Governor {LePage.} Yes. New Hampshire had started it  
490 before I even came in, and that has been at a standstill ever  
491 since.

492 Mr. {Whitfield.} Well, could you be even more specific  
493 on precisely what the impediment has been?

494 Governor {LePage.} It has been state and federal.

495 Mr. {Whitfield.} State and federal.

496 Governor {LePage.} Yeah, state and federal, meaning the  
497 State of New Hampshire, there has been a--they have been  
498 working with Hydro Quebec for years and years and years, and  
499 frankly, we don't know where it is going.

This is a preliminary, unedited transcript. The statements within may be inaccurate, incomplete, or misattributed to the speaker. A link to the final, official transcript will be posted on the Committee's website as soon as it is available.

500 Mr. {Whitfield.} But--

501 Governor {LePage.} I believe that--I do believe this,  
502 that by July or August, the Canadians are going to be looking  
503 elsewhere, looking to the other two states, and that is why  
504 it is very timely that I be here and say we need your help.

505 Mr. {Whitfield.} But you and your legal authorities  
506 have looked at this draft, and you do support this particular  
507 draft--

508 Governor {LePage.} Yes.

509 Mr. {Whitfield.} --that we have before you?

510 Governor {LePage.} Absolutely. We believe that it is  
511 very, very important. For instance, there are several  
512 projects being proposed to bring natural gas from, let's say,  
513 Pennsylvania to Dracut, Massachusetts. We have the  
514 infrastructure in the ground in Maine. We have put in  
515 several hundred million dollars' worth of pipeline in the  
516 roads of Maine, but we have empty pipes because we can't  
517 connect to the source. And so we need the resource to come  
518 to at least Massachusetts, and four of the New England states  
519 are working together to try to make that happen.

520 Mr. {Whitfield.} Um-hum. Yeah. Well, you know, we are  
521 not trying to upset the applecart with this discussion. We  
522 have heard from so many different interests that there are

This is a preliminary, unedited transcript. The statements within may be inaccurate, incomplete, or misattributed to the speaker. A link to the final, official transcript will be posted on the Committee's website as soon as it is available.

523 some significant problems. And, Ms. Miles, I appreciate your  
524 testimony. There are certain parts of this bill that you  
525 think are reasonable, and other parts that you are willing to  
526 work with us on. But, you know, it is not only FERC but we  
527 are talking about the Corps of Engineers, the Department of  
528 the Interior, Bureau of Land Management Fish and Wildlife  
529 Service, we have all these federal agencies that have a part  
530 in this, and if they drag their feet, there is really not a  
531 lot that can be done about it. So we look forward to working  
532 with you both and others in trying to simply have a more  
533 balanced approach to help solve some of these capacity  
534 problems that we face.

535 At this time, recognize the gentleman from Illinois, Mr.  
536 Rush, for 5 minutes.

537 Mr. {Rush.} I want to thank you, Mr. Chair--Mr.  
538 Chairman.

539 Director Miles, are there any instances of a natural gas  
540 permitting application being delayed because an applicant has  
541 not submitted all of the necessary information, and if so,  
542 how would this legislation expedite the process in those  
543 cases where agencies are not provided with timely and  
544 complete information necessary to perform congressionally  
545 mandated project reviews, and what recommendations would you

This is a preliminary, unedited transcript. The statements within may be inaccurate, incomplete, or misattributed to the speaker. A link to the final, official transcript will be posted on the Committee's website as soon as it is available.

546 make to help address this particular issue?

547           Ms. {Miles.}   Congressman Rush, I believe FERC has a  
548 very structured, efficient process for addressing natural gas  
549 pipeline projects. It consists of the first stage where the  
550 applicant will actually investigate whether there is a need  
551 in the area to transport gas, and then we encourage all of  
552 our applicants who are--with major pipelines to enter into  
553 what we call pre-filing. That was established quite a while  
554 ago, and we have found some more significant rules around  
555 that came in in 2005. Anyway, the--during that period of  
556 time, we work with all stakeholders who have an interest in  
557 the pipeline, we work with all agencies who have  
558 responsibilities for issuing for issuing permits, and the  
559 goal of that pre-filing is to figure out what the issues are  
560 and what information is needed for not only FERC staff, but  
561 the other agencies to address the--do their environmental  
562 reviews of siting such a pipeline. Most applicants are very  
563 accommodating and they are interested in providing us with  
564 the information that is required in all of our resource  
565 reports. If, per chance, we don't have it at the time the  
566 application is filed, then we will ask further for it.

567           Mr. {Rush.}   How would this legislation impact and  
568 expedite the process in those cases where agencies are not

This is a preliminary, unedited transcript. The statements within may be inaccurate, incomplete, or misattributed to the speaker. A link to the final, official transcript will be posted on the Committee's website as soon as it is available.

569 provided with timely and complete information which is  
570 necessary for you to perform your congressionally directed  
571 processes?

572         Ms. {Miles.} We are able to move forward with our  
573 environmental document. We--as long as we have the  
574 information we need. Should some agencies need something  
575 after us, they then will have an opportunity to get that  
576 before they issue their permits. As far as the legislation  
577 goes, the one thing that seems to be in the gas legislation  
578 is that the head of the agency would report to Congress if  
579 there is any delay.

580         Mr. {Rush.} Have you had any complaints--extraordinary  
581 complaints from applicants about the time that it takes you  
582 to approve these--an application?

583         Ms. {Miles.} We--as I said in my testimony, we are  
584 issuing the majority of our findings in the natural gas  
585 facilities with--about 92 percent within 1 year. There are a  
586 few more complex projects that are more contentious, where it  
587 may take slightly longer, and we do hear sometimes if it  
588 takes a bit longer than that.

589         Mr. {Rush.} Would you characterize the purpose of this  
590 hearing is to deal with the 8 percent that is not granted  
591 approval? It seems to me that, you know, you granted--if you

This is a preliminary, unedited transcript. The statements within may be inaccurate, incomplete, or misattributed to the speaker. A link to the final, official transcript will be posted on the Committee's website as soon as it is available.

592 granted 92 percent, then maybe we have--in this subcommittee  
593 maybe we have finally come up with the problem, and the  
594 purpose of this subcommittee is to find out what is happening  
595 with the 8 percent that are not approved and--because 92  
596 percent of all the applicants are approved within a timely  
597 manner, so maybe we are concerned about the 8 percent, Mr.  
598 Chairman.

599 But, Mr. Chairman, I yield back the balance of my time.

600 Mr. {Whitfield.} Gentleman yields back.

601 At this time, recognize the gentleman from Illinois, Mr.  
602 Shimkus, for 5 minutes.

603 Mr. {Shimkus.} Thank you very much.

604 Governor, welcome. I have been fortunate to be a member  
605 of the committee for a long time. And does New England still  
606 rely heavily on heating oil for--and I think that is part of  
607 this debate, isn't it?

608 Governor {LePage.} Yes, it is for us. Let me--in 2010,  
609 when I took office, roughly 80 percent of the homes in Maine  
610 were heated with heating oil. We have managed to get it down  
611 to about 62 percent this past winter. Most of it has been  
612 with heating pumps and pellets. In the rural areas, we can  
613 do pellets, heat pumps, that technology works pretty well,  
614 but in order to really make a difference, we really need

This is a preliminary, unedited transcript. The statements within may be inaccurate, incomplete, or misattributed to the speaker. A link to the final, official transcript will be posted on the Committee's website as soon as it is available.

615 natural gas to get into the infrastructure that we have in  
616 our state in order to be able to take the--while we call  
617 metropolitan areas or urban areas of Maine, you would call  
618 them--

619 Mr. {Shimkus.} My district.

620 Governor {LePage.} --very rural.

621 Mr. {Shimkus.} You would call them my district, so--

622 Governor {LePage.} Yeah, right.

623 Mr. {Shimkus.} I represent 33 counties in southern  
624 Illinois, the largest community being 33,000 people, but we  
625 are connected. Natural gas is our predominant heating  
626 ability in fuel. In New England, it is not, and in fact,  
627 from my colleagues here, we set up a--what is it called, a  
628 heating oil reserve, because of a crisis years ago, to make  
629 sure that there would be heating oil for New England--

630 Governor {LePage.} Right.

631 Mr. {Shimkus.} --which now we kind of manage. So I  
632 would hope just as a national policy that we would help move  
633 natural gas to New England.

634 Governor {LePage.} I would certainly encourage Congress  
635 to look at this. In 2014, the State of Maine paid a premium  
636 of \$2 billion, 1 million--1.3 million people paid a premium  
637 of \$2 billion because of spikes and the high cost of energy

This is a preliminary, unedited transcript. The statements within may be inaccurate, incomplete, or misattributed to the speaker. A link to the final, official transcript will be posted on the Committee's website as soon as it is available.

638 in the winter months. This past winter, while it was a  
639 severe winter, we got a break, we only paid a little over \$1  
640 billion premium. So--and Maine is not a wealthy state. The  
641 per capita income just broke \$41,000. So we are putting an  
642 inordinate amount of pressure on Maine families, and we could  
643 do so much better.

644 Mr. {Shimkus.} And I think in New England, there are  
645 some small hydro--I am talking about New England as a whole,  
646 as a region, and there--I am told there is some concern of  
647 the possible inability to relicense some small hydro in New  
648 England as a whole, which would increase the challenges,  
649 would it not?

650 Governor {LePage.} Absolutely. We have--like I said  
651 earlier, we have small dams that if we could put power on  
652 them, we could generate 70 megawatts, which is--doesn't sound  
653 like a lot in Washington, but in Maine, that is a lot of  
654 power.

655 Mr. {Shimkus.} Right. Ms. Miles, thank you for your  
656 testimony. I was talking to the staff, and we get--actually  
657 employ government employees here many, many times. I don't  
658 think I have sat through one that has been so specific and so  
659 precise on what you like and what you dislike. So I find  
660 that very refreshing, and I appreciate that.



This is a preliminary, unedited transcript. The statements within may be inaccurate, incomplete, or misattributed to the speaker. A link to the final, official transcript will be posted on the Committee's website as soon as it is available.

661           So I want to address one of the ones that you addressed.  
662 Your opposition to amending Section 33, I think that is on  
663 page 16 of the testimony. And the concern is, we have had  
664 Commissioner Moeller here a couple of times, where he  
665 specifically stated that this--what we are trying to address  
666 would be very, very helpful, which would seem to be  
667 contradictory to what you have stated. He--you know, he has  
668 quoted if Congress chooses to address the situation, changes  
669 in various statutes could require that resource agencies meet  
670 certain deadlines in their statutory role in reviewing such  
671 products. Another approach would be to provide the  
672 commission with the authority to rule on whether the  
673 conditions that resource agencies submit appropriately  
674 balance the benefits and costs that these projects provide.  
675 Again, this would require significant change in the various  
676 environmental laws for the relevant resources agencies. Can  
677 you comment on that?

678           Ms. {Miles.} Yes. I think there is a little bit of an  
679 innuendo. Shared decision-making is absolutely one of the  
680 biggest challenges for licensing hydropower projects. That  
681 is the way Congress established the statutes, and we have  
682 worked many years to try to, through regulation and through  
683 some statute, get us all working in the same direction and in

This is a preliminary, unedited transcript. The statements within may be inaccurate, incomplete, or misattributed to the speaker. A link to the final, official transcript will be posted on the Committee's website as soon as it is available.

684 a timely--obviously, we all would like a very efficient,  
685 timely, low-cost process for hydropower.

686 As I understood the Section 33 change, it is--it was a  
687 very specific part that was put in--into the regulations  
688 that--into the statute that allowed the agencies--allowed  
689 applicants to come up with an alternative, and then the  
690 agencies to address that through trial-type hearings and  
691 through alternative conditions. What I am trying to say is,  
692 I believe the agencies need to give us what their bottom line  
693 condition is that they believe is needed to protect their  
694 reservation. That is what their mandate is under their  
695 statute. If Congress were to choose to then, once the  
696 commission had all those, to say that it is the commission's  
697 responsibility to do a more balanced look across those, then  
698 I believe that--I can't speak for Commissioner Moeller, but I  
699 think that is a bit of a distinction.

700 Mr. {Whitfield.} The gentleman's time has expired. At  
701 this time, recognize the gentleman from California, Mr.  
702 McNerney, for 5 minutes.

703 Mr. {McNerney.} Well, thank you, Mr. Chairman. Thank  
704 you, Governor and Ms. Miles, for coming and testifying this  
705 morning.

706 You know, I think the intent of the bill sounds good;

This is a preliminary, unedited transcript. The statements within may be inaccurate, incomplete, or misattributed to the speaker. A link to the final, official transcript will be posted on the Committee's website as soon as it is available.

707 streamlining permitting so that we have things operating in  
708 parallel instead of in series. We want a--we want an  
709 efficient process, but I am not sure that we are heading down  
710 the right path in order to achieve that goal.

711       Regarding the pipeline question, my estimate is it might  
712 actually make things worse. For example, FERC data shows  
713 that the average time for filing to approval is under 10  
714 months, and the--FERC decides 91 percent of certificate  
715 applicants within 12 months. So are we actually going to  
716 make things better by enacting this kind of rule?

717       So, Ms. Miles, what, if any, are the potential benefits  
718 of simply mandating pre-filing, trying to bring federal  
719 agencies to the table sooner on every permit?

720       Ms. {Miles.} I believe in most cases, federal agencies  
721 are coming to the table early during pre-filing.

722       Mr. {McNerney.} Two thirds, approximately.

723       Ms. {Miles.} Pardon me?

724       Mr. {McNerney.} Two thirds.

725       Ms. {Miles.} I don't have a specific number on that. I  
726 could look into it. For liquefied natural gas facilities,  
727 pre-filing is mandated under the statute. It is not  
728 mandatory for pipeline and storage projects, however, we do  
729 meet with applicants before the pre-filing were to begin, and

This is a preliminary, unedited transcript. The statements within may be inaccurate, incomplete, or misattributed to the speaker. A link to the final, official transcript will be posted on the Committee's website as soon as it is available.

730 we recommend and many choose to use it because they find it a  
731 very valuable time to get everyone to the table early. We  
732 also work with those federal agencies to have them be  
733 cooperating agencies in our environmental document. So--

734 Mr. {McNerney.} So how long does the pre-filing stage  
735 last? How long does it typically--

736 Ms. {Miles.} It is mandated for 6 months for liquefied  
737 natural gas facilities. Some applicants choose longer. The  
738 real goal of pre-filing is that the time the application is  
739 filed--

740 Mr. {McNerney.} Right.

741 Ms. {Miles.} --all the information is available for  
742 FERC and other agencies who have permits to issue to be able  
743 to do their environmental documents and move toward issuing  
744 their permits. So some companies will choose to stay in pre-  
745 filing a little longer to make sure that we--that the  
746 information is going to be available.

747 Mr. {McNerney.} So pre-filing takes as long as the  
748 applicant wants it to take.

749 Ms. {Miles.} Yes.

750 Mr. {McNerney.} In your experience, what are some of  
751 the reasons other permitting agencies don't always respond in  
752 a timely manner?

This is a preliminary, unedited transcript. The statements within may be inaccurate, incomplete, or misattributed to the speaker. A link to the final, official transcript will be posted on the Committee's website as soon as it is available.

753           Ms. {Miles.} Are you speaking particularly about  
754 natural gas?

755           Mr. {McNerney.} Correct.

756           Ms. {Miles.} As I said, you know, the majority are  
757 responding in a timely manner--

758           Mr. {McNerney.} Um-hum.

759           Ms. {Miles.} --for gas.

760           Mr. {McNerney.} Well, it seems to me that a 90-day  
761 requirement is arbitrary because some projects are very  
762 complicated and some projects are very simple. Simply saying  
763 that we have to have everyone meet a 90-day--all the agencies  
764 meet a 90-day requirement may actually tie their hands and  
765 force them to say no on applicants where, if they actually  
766 would have had more time, they could have approved it. Is  
767 that an assessment--is that a correct assessment?

768           Ms. {Miles.} That could be. My understanding is that  
769 also it could be 90 days or a schedule that is negotiated  
770 with the other agency.

771           Mr. {McNerney.} So it might be more reasonable to have  
772 a negotiated timeline for every application, rather than just  
773 saying 90 days for every application.

774           Ms. {Miles.} It could be. The other thing that was a  
775 bit of concern is, we feel like using the pre-filing is very-

This is a preliminary, unedited transcript. The statements within may be inaccurate, incomplete, or misattributed to the speaker. A link to the final, official transcript will be posted on the Committee's website as soon as it is available.

776 -that is the place where it is important that a lot of steps  
777 and cooperation and agency identifications begin, and I would  
778 not want anything to move later in the process that could be  
779 a complication for us, and I have mentioned that in the  
780 testimony.

781 Mr. {McNerney.} So then to reiterate, I am going to  
782 just sum up by saying it might be beneficial to encourage  
783 more applicants to go through the pre-filing process, and  
784 then have a negotiated period instead of a 90-day strict  
785 requirement for federal agencies to respond.

786 Ms. {Miles.} Certainly go through the pre-filing  
787 process. You know, 90 days seems a reasonable time to me.

788 Mr. {McNerney.} Okay.

789 Ms. {Miles.} It could be negotiated in some particular  
790 instances.

791 Mr. {McNerney.} All right, thank you, Mr. Chairman. I  
792 yield back.

793 Mr. {Olson.} [Presiding] The gentleman yields back.

794 As fate would have it, the chairman has to run off for a  
795 little opportunity, so I am now--5 minutes for some  
796 questions.

797 And first of all, welcome. Good morning. Thanks for  
798 coming. Governor LePage, just when we talked earlier about

This is a preliminary, unedited transcript. The statements within may be inaccurate, incomplete, or misattributed to the speaker. A link to the final, official transcript will be posted on the Committee's website as soon as it is available.

799 Maine, and what I know about Maine is you have a lot of  
800 water, lots over very powerful water, because my brother  
801 surfs in York, Maine, every winter. Really cold, and  
802 apparently gets some--you know, some tubing, some really big  
803 waves, much bigger than Galveston, Texas. So I want to learn  
804 more about your issue of hydropower. I understand you have  
805 done a study on hydropower recently. Can you talk about  
806 those findings and what are some of the benefits of  
807 hydropower challenges that this bill may fix?

808 Governor {LePage.} Well, right now in Maine we have a  
809 number of small dams throughout the state. So that you get  
810 the picture of Maine, Maine is 35,000 square miles, 90  
811 percent is water and forest. So it gives you a sense that we  
812 have an awful lot of natural resources. And we are very  
813 proud of it and we take care of it, and one of the things  
814 that we do is we are very strong in tourism. We believe that  
815 we have the resources to be self-sufficient, and we could do  
816 it in a timely manner.

817 Now, I have heard some talk about liquid natural gas.  
818 I--when I was elected in 2010, there was a project for liquid  
819 natural gas to be in Maine, and what happened now it has been  
820 canceled. So the point is--what I am saying is, if we had--  
821 if we were able to energize a lot of these little dams that

This is a preliminary, unedited transcript. The statements within may be inaccurate, incomplete, or misattributed to the speaker. A link to the final, official transcript will be posted on the Committee's website as soon as it is available.

822 we have, we could generate 70 megawatts of power for the  
823 Maine people, and lower the costs that we are currently  
824 paying.

825 Mr. {Olson.} And how are we blocking that, sir? How is  
826 Washington, D.C., blocking your efforts to have those little  
827 smaller dams--

828 Governor {LePage.} Because they--because every  
829 application has to go through FERC.

830 Mr. {Olson.} Okay.

831 Governor {LePage.} Whether it is 2 megawatts, or 500  
832 kilowatt hours, it is just--has to go through. And earlier  
833 on in my career, of course, it is a long time ago, it took  
834 years to be able to get little dams, and now I hear--we don't  
835 even bother because it is just too costly.

836 Mr. {Olson.} And switching to pipelines, sir, some  
837 people think pipeline reform--we have the permitting process,  
838 is something just for big oil, those companies, and that is  
839 something they only have to worry about. My first question  
840 is simple on this issue. What do you worry about as the  
841 Governor of Maine with these pipeline issues not being  
842 approved as quickly as possible?

843 Governor {LePage.} Well, like I said, we lost two major  
844 employers. We lost one this past winter. And folks, let me



This is a preliminary, unedited transcript. The statements within may be inaccurate, incomplete, or misattributed to the speaker. A link to the final, official transcript will be posted on the Committee's website as soon as it is available.

845 tell you some reality here, 500 jobs in a paper company, and  
846 the premium on oil, the premium going from gas to oil in the  
847 winter months between November and May was \$20 million. They  
848 closed their doors. And now it is being dismantled. That is  
849 what I am pleading for you to do something because we need  
850 those jobs.

851 Now, I spoke to the chairman of Airbus a couple of years  
852 ago and this is what he told me. Governor, what is the cost  
853 of your energy? I said, we are the cheapest in New England.  
854 He said, well, how do you compare with Alabama? He says,  
855 Alabama is 4 cents. Folks, we--at the time, we were 14 1/2.  
856 Now we are up to 17. And he said, you may be a good governor  
857 but you are very naive on how much energy it takes to  
858 assemble a jet.

859 Mr. {Olson.} And we can fix that here in D.C. My  
860 questions, Ms. Miles, to you are, your testimony described  
861 how FERC acts on gas pipelines, but next panel, Mr. Santa,  
862 his testimony mentions that the GMO has analyzed the major  
863 pipelines, the approval process, they have found that FERC  
864 takes up to 2.5 years for a certificate. That averages 558  
865 days. Of course, that does include all the delays from other  
866 agencies being involved in this process. Can you talk about  
867 some of these delays on this larger pipeline project, and how

This is a preliminary, unedited transcript. The statements within may be inaccurate, incomplete, or misattributed to the speaker. A link to the final, official transcript will be posted on the Committee's website as soon as it is available.

868 FERC is addressing these long, long, long delays?

869 Ms. {Miles.} I haven't looked, actually, at the details  
870 of how the numbers were calculated for the GAO report. I do  
871 think that there are some projects that are very long and  
872 complex and more controversial, and they may take slightly  
873 longer to both gather the information that is necessary to do  
874 a solid evaluation of the potential effects of the project.  
875 I do think--I remain though very convinced that the majority  
876 of projects go through fairly quickly. It is a quite  
877 efficient process, and I think most have been extremely  
878 successful.

879 Mr. {Olson.} Well, I encourage you to read the report,  
880 ma'am, because it says you average 558 days for approval  
881 process, 2.5 years. That is unacceptable.

882 I yield back, or yield to the gentleman who is up here.

883 {Voice.} Mr. Green.

884 Mr. {Olson.} Mr. Green from Texas is recognized for 5  
885 minutes.

886 Mr. {Green.} Thank you, Mr. Chairman. And, Governor,  
887 thank you for being here, and also, Director Miles.

888 Director Miles, thank you for testifying, and I know  
889 FERC has a lot of on its plate and I think many of us believe  
890 the commission is doing as good a job as possible on natural

This is a preliminary, unedited transcript. The statements within may be inaccurate, incomplete, or misattributed to the speaker. A link to the final, official transcript will be posted on the Committee's website as soon as it is available.

891 gas space reviewing applications and issuing decisions.

892 Today, I would like to talk about the FERC process of

893 coordination for natural gas pipelines.

894 In your testimony, you seemed to encourage more  
895 accountability in the pre-file review process. First, when  
896 you write natural gas project applications, what do you mean?  
897 Are you including every application, or are you including LNG  
898 operation and maintenance, or just new construction, or are  
899 you using all of them? Is that--

900 Ms. {Miles.} All of them.

901 Mr. {Green.} --all applications?

902 Ms. {Miles.} Yes.

903 Mr. {Green.} Okay. In your testimony you said that  
904 FERC has--is able to act 92 percent on natural gas  
905 applications in a year. What percentage of new construction  
906 projects has FERC approved in less than a year? Do you know?

907 Ms. {Miles.} I do not know, but I would be glad to get  
908 back to you on that.

909 Mr. {Green.} Okay. I know for an LNG, it--import  
910 facility now, we used to try and export, but now we are big  
911 on importing. I know FERC just approved one for Corpus  
912 Christie--

913 Ms. {Miles.} Yes.

This is a preliminary, unedited transcript. The statements within may be inaccurate, incomplete, or misattributed to the speaker. A link to the final, official transcript will be posted on the Committee's website as soon as it is available.

914           Mr. {Green.} --just in the last few days, and I  
915 appreciate that, but I know it takes typically about 18  
916 months for an LNG import facility, and that is not even  
917 considering what the Department of Energy needs to do with  
918 the--although in the case of Corpus Christie, Department of  
919 Energy moved very quickly on it.

920           Can you explain what type of projects that are included  
921 in the other 8 percent of that 92 percent, and what makes  
922 these projects different?

923           Ms. {Miles.} I would think it is the larger projects  
924 that have more issues. It sometimes can be the need to  
925 gather further information--

926           Mr. {Green.} Okay.

927           Ms. {Miles.} --from the company so that we are clear  
928 that we understand exactly what the potential effects are and  
929 we can analyze that.

930           Mr. {Green.} And some of those issues, I know I have  
931 heard and it is--in earlier questions, are these issues with  
932 other federal agencies or issues with state-level agencies  
933 having to respond or not responding timely for FERC to FERC?

934           Ms. {Miles.} I would think most of those are actually  
935 FERC trying to gather the information that it needs. We are  
936 typically cooperating with other federal agencies and state

This is a preliminary, unedited transcript. The statements within may be inaccurate, incomplete, or misattributed to the speaker. A link to the final, official transcript will be posted on the Committee's website as soon as it is available.

937 agencies who have federal authorizations. They--we will also  
938 work with them to review our documents. In our opinion, that  
939 is the best way to be--to efficiently operate, is to have all  
940 federal agencies reviewing at the same time.

941         Mr. {Green.} Okay. Do you think that there ought to be  
942 some time limits on federal agencies, or if you have a  
943 problem sometimes in working with you, and I am talking about  
944 both the pre-review or the pre-filing review or during the  
945 process, do you think there needs to be some time limits on  
946 these other agencies responding to FERC's offer of--your  
947 offer to them? I know right now you can't tell an agency,  
948 Fish and Game or anyone else, what to do, but do you think  
949 there would be some good idea to have some time limits on  
950 them?

951         Ms. {Miles.} Do you mean for being a cooperating  
952 agency--

953         Mr. {Green.} Be cooperative.

954         Ms. {Miles.} --choosing to be a cooperating agency? I  
955 think it can't hurt.

956         Mr. {Green.} Okay. I know the staff invites these  
957 other agencies to participate in the NEPA process. What type  
958 of response time from the agencies after receiving this  
959 information, do you have that--

This is a preliminary, unedited transcript. The statements within may be inaccurate, incomplete, or misattributed to the speaker. A link to the final, official transcript will be posted on the Committee's website as soon as it is available.

960           Ms. {Miles.} I don't have that, but I would be glad to  
961 get back with you on that.

962           Mr. {Green.} And what if they just don't respond?

963           Ms. {Miles.} Well, at that point then they would not be  
964 a cooperating agency--

965           Mr. {Green.} Okay.

966           Ms. {Miles.} --with us.

967           Mr. {Green.} So could they hold up a permit from, say,  
968 for example, a transmission line from Canada, although I know  
969 that is a State Department issue, but they could hold up a  
970 pipeline coming across Massachusetts.

971           Ms. {Miles.} We can proceed without the federal agency  
972 being a part, and then they would need to do their  
973 responsibilities under their own volition. And it could  
974 occur after the certificate is issued.

975           Mr. {Green.} Okay, but until they participate, we are  
976 not going to get the natural gas to Maine.

977           Governor, I want to thank you for being here. I know  
978 the frustration, and believe me, you know, I am from Texas  
979 and I would love to send you some natural gas, but we do have  
980 some pipelines that go to the Northeast, but they have a lot  
981 of customers already. And I think the closest natural gas  
982 you will get is from my friends in Pennsylvania. But we

This is a preliminary, unedited transcript. The statements within may be inaccurate, incomplete, or misattributed to the speaker. A link to the final, official transcript will be posted on the Committee's website as soon as it is available.

983 would sure like to get there because again, you shouldn't  
984 have to have a paper mill shut down. I will have to admit, I  
985 had two paper mills over the last 30 years shut down in my  
986 district, and it wasn't because of the high price of  
987 electricity.

988 Governor {LePage.} I have had three since I have been  
989 Governor.

990 Mr. {Green.} Yeah. So, Mr. Chairman, I know I am out  
991 of time, but thank you.

992 Mr. {Whitfield.} At this time, recognize the gentleman  
993 from Pennsylvania, Mr. Pitts, for 5 minutes.

994 Mr. {Pitts.} Thank you, Mr. Chairman.

995 Director Miles, I come from a position on this committee  
996 as a member who is currently dealing with the issue of  
997 permitting a 42 inch natural gas pipeline currently in the  
998 application review stage, and my district in Pennsylvania is  
999 home to some of the most pristine farmland, conservation  
1000 space in the country, and my constituency has basically run  
1001 the gamut of issues relating to the proposed pipeline from  
1002 eminent domain to Indian burial grounds. One issue that  
1003 keeps coming up is that of pipeline safety. As noted in your  
1004 written testimony, FERC plays an inspection role during  
1005 pipeline construction, but the Department of Transportation

This is a preliminary, unedited transcript. The statements within may be inaccurate, incomplete, or misattributed to the speaker. A link to the final, official transcript will be posted on the Committee's website as soon as it is available.

1006 has jurisdiction to establish pipeline safety regs for  
1007 operating reliance. So my question is can you tell us about  
1008 the coordination you engage in with DOT to ensure that  
1009 pipelines will meet their regulations, and ensure that  
1010 nothing falls through the cracks as jurisdiction transitions  
1011 from FERC to another agency?

1012 Ms. {Miles.} Yeah, as you state, the Department of  
1013 Transportation sets the standards, and when we review the  
1014 applications we are checking to make sure that they meet  
1015 those, and any analysis that needs to be done, we will do  
1016 that, looking at volumes of flow and safety aspects of that.

1017 We do work with pipeline--with FINSA, regularly  
1018 coordinate with them on making sure we are clear on their  
1019 standards, and that they are addressed through our  
1020 evaluation.

1021 Mr. {Pitts.} One issue of concern to some of my  
1022 constituents is the independence of FERC. Some perceive FERC  
1023 as being captured by the industries it deals with,  
1024 rubberstamp, if you will, and they point to statistics that  
1025 reveal that virtually all of the applications that run the  
1026 entirety of the FERC process are approved. Can you please  
1027 speak to that concern?

1028 Ms. {Miles.} Well, I would say that many applications



This is a preliminary, unedited transcript. The statements within may be inaccurate, incomplete, or misattributed to the speaker. A link to the final, official transcript will be posted on the Committee's website as soon as it is available.

1029 that come before us that we are looking at during the pre-  
1030 filing period change dramatically through alternative routes,  
1031 alternative systems, before we get to the point where the  
1032 commission makes a decision on the appropriate project;  
1033 whether to go forward with it, and if so, what conditions to  
1034 include in it. So the commission takes into account and  
1035 listens very carefully to comments from the public, from  
1036 Indian tribes, from other state and federal agencies. Those  
1037 are taken into account in trying to work through, you know,  
1038 what is the appropriate--looking at all the--both engineering  
1039 and environmental consequences of a project.

1040       Mr. {Pitts.} Now, in your written testimony, you stated  
1041 that the discussion drafts addressing FERC process  
1042 coordination has commendable goals, improving transparency,  
1043 predictability of the agency actions, in particular. My  
1044 question is, might these transparency efforts in the bill  
1045 help alleviate concerns that FERC is a rubberstamp for the  
1046 industry?

1047       Ms. {Miles.} Any time--I believe we are quite  
1048 transparent already, but any time we could add something to  
1049 improve on that, we are most willing to. I think one of the  
1050 things that this bill does is to make available on a Web site  
1051 at the commission the established schedules and expected

This is a preliminary, unedited transcript. The statements within may be inaccurate, incomplete, or misattributed to the speaker. A link to the final, official transcript will be posted on the Committee's website as soon as it is available.

1052 completion dates, and that type of information that many may  
1053 be aware of.

1054       Mr. {Pitts.} Now, some outside groups have urged my  
1055 constituents to work outside the FERC process to oppose  
1056 pipeline construction, given their perception of FERC's  
1057 independence. And oftentimes, these groups advocate a turn  
1058 to politics. My question is, can you please tell me how my  
1059 constituents can best have their voices heard during  
1060 permitting process?

1061       Ms. {Miles.} Yes, I certainly would hope that they  
1062 would attend our scoping meetings. I would hope that they  
1063 would file written comments also so that we clearly  
1064 understand what their issues and concerns are. I would also  
1065 ask them to subscribe through our electronic system to the  
1066 project that they are concerned about, and they can keep up  
1067 with what is going on with it every day. I would ensure them  
1068 that commission staff is looking very carefully at everything  
1069 as we go through the analysis, and that the commission in the  
1070 end, when it makes its decision, will look at the entire  
1071 record that has been developed for that project.

1072       Mr. {Pitts.} Thank you. My time has expired.

1073       Mr. {Whitfield.} Gentleman's time has expired.

1074       At this time, recognize the gentleman from New Jersey,

This is a preliminary, unedited transcript. The statements within may be inaccurate, incomplete, or misattributed to the speaker. A link to the final, official transcript will be posted on the Committee's website as soon as it is available.

1075 Mr. Pallone, for 5 minutes.

1076 Mr. {Pallone.} Thank you, Mr. Chairman.

1077 My questions are of Ms. Miles. First, on the  
1078 hydropower. Does FERC have a statutory mandate to protect  
1079 water quality?

1080 Ms. {Miles.} We have--our mandate is to protect all  
1081 developmental and non-developmental resources, and that would  
1082 be--include the range of environmental resources of which  
1083 water quality is certainly one.

1084 Mr. {Pallone.} And how about statutory mandate to  
1085 protect access to public lands?

1086 Ms. {Miles.} We do have a responsibility to provide for  
1087 recreation and access at projects, as it is appropriate for  
1088 specific projects.

1089 Mr. {Pallone.} And what about a mandate to protect fish  
1090 and wildlife?

1091 Ms. {Miles.} Yes, that is also a part of or  
1092 comprehensive development and need to take into consideration  
1093 all environmental and non-environmental resources.

1094 Mr. {Pallone.} I mean my concern is that the discussion  
1095 draft appears to grant FERC near-exclusive statutory  
1096 authority to enforce state and federal mandates under the  
1097 Clean Water Act, the Endangered Species Act, and agency

This is a preliminary, unedited transcript. The statements within may be inaccurate, incomplete, or misattributed to the speaker. A link to the final, official transcript will be posted on the Committee's website as soon as it is available.

1098 Organic Acts, and even though you say you have some  
1099 authority, you know, my concern is that that is not your  
1100 primary authority.

1101 Is FERC seeking this authority at the expense of states  
1102 and the Departments of the Interior, Commerce, and  
1103 Agriculture respectively? I mean, obviously, they have  
1104 authority over these same things that I have asked about.  
1105 Are you actually seeking this authority at their expense? I  
1106 am only asking you the questions, not the Governor. I mean  
1107 are you initiating that? Are you asking for it?

1108 Ms. {Miles.} No.

1109 Mr. {Pallone.} Okay. Let me ask about--buried in the  
1110 language of the draft there is a two-word change to Section  
1111 4(c) of the Federal Power Act, and the words of the existing  
1112 statute, shall deem, are replaced by the single word,  
1113 determines. The context of this change is the mandatory  
1114 conditioning authority of the resource agency. You follow  
1115 what I am asking you? Is that--is this a significant change  
1116 from current law?

1117 Ms. {Miles.} I don't think I can--

1118 Mr. {Pallone.} Answer?

1119 Ms. {Miles.} --I quite follow the details of that. Are  
1120 you referring to the alternative conditions?

This is a preliminary, unedited transcript. The statements within may be inaccurate, incomplete, or misattributed to the speaker. A link to the final, official transcript will be posted on the Committee's website as soon as it is available.

1121 Mr. {Pallone.} The mandatory conditions, sorry.

1122 Ms. {Miles.} The mandatory conditions?

1123 Mr. {Pallone.} Yeah.

1124 Ms. {Miles.} I think I said earlier that my sense, and  
1125 I am speaking for myself, is that the agencies should  
1126 provide--they are the ones that were given by Congress the  
1127 responsibility to provide their mandatory condition for their  
1128 reservation, whether it is land under the federal land-  
1129 managing agency, or Section 18 under--for fishway  
1130 prescriptions.

1131 Mr. {Pallone.} But--

1132 Ms. {Miles.} I believe that is their responsibility.

1133 Mr. {Pallone.} But what would be the practical effect  
1134 of this change on the ability of the resource agencies to  
1135 protect and manage things under their jurisdiction? Can you  
1136 answer that from a practical point of view?

1137 Ms. {Miles.} I believe that the bill is very--the draft  
1138 discussion document is very complicated, and I am not sure  
1139 that I have digested exactly what the goal is and the intent  
1140 of each word. I am generally supportive of some aspects of  
1141 it, and I am certainly supportive of any ability to move  
1142 quicker and less costly in developing hydropower in this  
1143 country, and an efficient system. The actual meaning of each

This is a preliminary, unedited transcript. The statements within may be inaccurate, incomplete, or misattributed to the speaker. A link to the final, official transcript will be posted on the Committee's website as soon as it is available.

1144 word in the bill, I can't talk about today, but I would be  
1145 happy to discuss that further.

1146       Mr. {Pallone.} Okay. Let me just ask you a question  
1147 about the natural gas pipeline regulation. My colleagues  
1148 have said that we need the deadlines in this bill to hold  
1149 federal agencies accountable, and ensure that they don't just  
1150 sit on applications. You mentioned in your testimony that  
1151 since 2005, the commission has authorized nearly 10,500 miles  
1152 of interstate natural gas transmission pipelines, and GAO has  
1153 concluded that FERC's pipeline permitting is predictable and  
1154 consistent, and gets pipelines built. In your experience,  
1155 are there significant delays in the review of natural gas  
1156 pipeline applications at the commission?

1157       Ms. {Miles.} I think the majority of pipeline  
1158 applications are moving at a reasonable pace.

1159       Mr. {Pallone.} All right, so just the last thing, Mr.  
1160 Chairman. So of the small number of applications that take a  
1161 little longer to review, are these delays due to slow walking  
1162 on the part of FERC staff? I would assume that more complex  
1163 applications would and should take longer to review. So is--  
1164 what is the reason for those that are not--

1165       Ms. {Miles.} They tend to be more complex, more  
1166 controversial, probably the larger projects that require more

This is a preliminary, unedited transcript. The statements within may be inaccurate, incomplete, or misattributed to the speaker. A link to the final, official transcript will be posted on the Committee's website as soon as it is available.

1167 information-gathering.

1168 Mr. {Pallone.} Okay. Thank you. Thank you, Mr.  
1169 Chairman.

1170 Mr. {Whitfield.} Gentleman's time has expired.

1171 I know the Governor wanted to interject at one point.  
1172 Did you want to make a comment?

1173 Governor {LePage.} Yeah, a couple of points I wanted to  
1174 make. The general--as I understand, the draft of the bill is  
1175 for small, non-producing hydro facilities. It is not the  
1176 large project, it is the small, little dams that are not  
1177 being produced, you know, the less megawatt, maybe 3 to 4  
1178 megawatts, which is really not a--it is not a real problem in  
1179 our state. Believe me, there are so many that would just  
1180 jump at doing that opportunity, and I don't believe it has a  
1181 massive impact--any impact to the state--I mean to the  
1182 Federal Government. The only ones that are concerned about  
1183 it are the people here in Washington, not the people in  
1184 Maine. People in Maine see that as an--you know, an extra  
1185 few megawatts of power. So it--I don't see the impact. But  
1186 I will say this, to go to your point about do other agencies  
1187 have an impact, I will give you a real example. We have in  
1188 Maine the Canadian link. The Canadian link is called  
1189 Canadian link because it is primarily in the real northern

This is a preliminary, unedited transcript. The statements within may be inaccurate, incomplete, or misattributed to the speaker. A link to the final, official transcript will be posted on the Committee's website as soon as it is available.

1190 reaches of Quebec. The very southern border might cross over  
1191 into Maine because we have a little, you know, a top on the  
1192 State of Maine. It took 7 years, because in the United  
1193 States, it is an endangered species but it is not native to  
1194 the United States, but it took 7 years to get an incidental  
1195 taking permit, which was--we just got a year ago. My  
1196 predecessor put it in several years ago. And U.S. Fish and  
1197 Wildlife just sat on it for several years. And so my point  
1198 is, the importance of what we are trying to accomplish here  
1199 from--at least from the State of Maine, is very simply this.  
1200 You have rules. No problem. We have no problem with that.  
1201 Tell us what they are, give us a timetable, we get it done or  
1202 we don't get it done. But the danger is this. The reason  
1203 the link permit took so long is they gave us a set of things  
1204 to do. We did them. Then they gave us more things to do.  
1205 We did them. They gave us more things to do. We did them.  
1206 And it dragged on for 7 years. If that was tied to a hydro  
1207 project, it is done, or if it is tied to natural gas, it is  
1208 done, because no one, for these small projects that I am  
1209 talking about, 500 kilowatt hours up to a megawatt or 2  
1210 megawatts or 3 megawatts, are going to spend their resources,  
1211 the amount of money and time to permit such a small facility.  
1212 So we are talking about small, little dams in our state that



This is a preliminary, unedited transcript. The statements within may be inaccurate, incomplete, or misattributed to the speaker. A link to the final, official transcript will be posted on the Committee's website as soon as it is available.

1213 really are not--we are not talking the Boulder Dam here, we  
1214 are talking about little, tiny projects along little streams,  
1215 rivers that we can--that are already there, the dams are  
1216 already there, it is just a matter of putting generation on  
1217 it. So it is a totally different--we have gotten away from  
1218 what I think the whole purpose is.

1219 Mr. {Whitfield.} Well, thank you, Governor, for that  
1220 comment.

1221 At this time, recognize the gentleman from Mississippi,  
1222 Mr. Harper, for 5 minutes.

1223 Mr. {Harper.} Thank you, Mr. Chairman. And thanks to  
1224 both of you for being here.

1225 And, Governor, thank you for your insight, and we  
1226 certainly--it is not the first story we have heard about  
1227 difficulties. And, you know, it almost appears that the  
1228 delays are built in to keep others from trying to even go  
1229 through the process, to make it so time-sensitive and so  
1230 expensive that it is--people just decide it is not worth the  
1231 effort. Do you believe that?

1232 Governor {LePage.} That is exactly what I am talking  
1233 about. For these smaller, little projects, it is all about  
1234 you delay them until they get discouraged and they have spent  
1235 enough money.

This is a preliminary, unedited transcript. The statements within may be inaccurate, incomplete, or misattributed to the speaker. A link to the final, official transcript will be posted on the Committee's website as soon as it is available.

1236 Mr. {Harper.} Thank you very much.

1237 I--if I may ask you this, Ms. Miles. I am aware of four  
1238 pending hydropower projects at my State of Mississippi.  
1239 These proposed projects are below dams that already exist,  
1240 there would be no new dam or impoundment, and the projects  
1241 propose to make beneficial use of the water resources to  
1242 generate clean electricity. Generally, how long should it  
1243 take--excuse me, how long does it take for that process? In  
1244 general terms, how long should it take?

1245 Ms. {Miles.} The timeline for hydropower projects  
1246 varies dramatically. For small projects like what the  
1247 Governor may be talking about, where there aren't any  
1248 environmental resources that there is much concern about, we  
1249 have issued licenses in as short as 6 months from the time we  
1250 have a complete application. For a complicated project--

1251 Mr. {Harper.} Define complicated.

1252 Ms. {Miles.} Well, it would--where there are many  
1253 issues. There may be endangered species, it could be any  
1254 number of aspects of the environment--

1255 Mr. {Harper.} Okay.

1256 Ms. {Miles.} --that would be--and it would be a larger  
1257 project with more construction.

1258 Mr. {Harper.} Let's say--the examples I am using in

This is a preliminary, unedited transcript. The statements within may be inaccurate, incomplete, or misattributed to the speaker. A link to the final, official transcript will be posted on the Committee's website as soon as it is available.

1259 Mississippi, for instance, that there is no new dam or  
1260 impoundment, would that be--you would consider that a less  
1261 complicated situation, I am assuming?

1262       Ms. {Miles.} Yes, I would. And I don't know the  
1263 situation with your individual projects, but one of the  
1264 things that is going on is there is a DOE report that talks  
1265 about a large amount of hydropower potential in the U.S.,  
1266 that there are 80,000 dams, and there is only a very small  
1267 percentage of them that have hydropower on them. And it also  
1268 lists the top projects where you are going to get your best  
1269 bang for your buck, where they have the potential to have a,  
1270 you know, maybe a 30 or 40 megawatts of power added. Many of  
1271 those are Corps of Engineers or Bureau of Reclamation Dams,  
1272 and one thing that is in my testimony is perhaps a suggestion  
1273 for trying not to have duplicative federal agencies, is that  
1274 those agencies whose dams those are take on the  
1275 responsibility for siting the nonfederal projects at their  
1276 dams and remove FERC's--

1277       Mr. {Harper.} Okay. Well, you raised--

1278       Ms. {Miles.} --jurisdiction.

1279       Mr. {Harper.} You raised an interesting point there. I  
1280 know that certainly FERC employs a large number of fish  
1281 biologists and other scientists. Would it not be possible

This is a preliminary, unedited transcript. The statements within may be inaccurate, incomplete, or misattributed to the speaker. A link to the final, official transcript will be posted on the Committee's website as soon as it is available.

1282 for FERC to just adopt other agencies' environmental analysis  
1283 into the appropriate documents?

1284 Ms. {Miles.} With the hydropower projects, we are the  
1285 lead agency, so those other agencies would cooperate with us  
1286 or adopt our analysis.

1287 Mr. {Harper.} Certainly, but other cases, you would  
1288 defer to others, I would assume.

1289 Ms. {Miles.} We could.

1290 Mr. {Harper.} Okay. The Natural Gas Act grants FERC  
1291 authority to set deadlines for the various permits required  
1292 to construct the natural gas pipeline. When is a final  
1293 decision on a federal authorization due after the commission  
1294 issues its final environmental document?

1295 Ms. {Miles.} It--currently it is 90 days.

1296 Mr. {Harper.} Okay. How did FERC arrive at a 90-day  
1297 deadline?

1298 Ms. {Miles.} Gosh, was that in the statute? I can't  
1299 remember.

1300 Mr. {Harper.} If you know.

1301 Ms. {Miles.} I don't know for certain. I--

1302 Mr. {Harper.} Well, we would assume if you don't know,  
1303 probably no one--

1304 Ms. {Miles.} Well, others will know.

This is a preliminary, unedited transcript. The statements within may be inaccurate, incomplete, or misattributed to the speaker. A link to the final, official transcript will be posted on the Committee's website as soon as it is available.

1305 Mr. {Harper.} Okay.

1306 Ms. {Miles.} I believe it was in--I don't know if it  
1307 was in the statute or it was established through our  
1308 regulations.

1309 Mr. {Harper.} That is fine. Have there been specific  
1310 instances that you are aware of where other agencies were  
1311 aware of the deadline set by FERC and simply failed to  
1312 comply?

1313 Ms. {Miles.} There are times I am sure where they have  
1314 not.

1315 Mr. {Harper.} Do you know how long that some agencies  
1316 have failed to meet deadlines set by FERC?

1317 Ms. {Miles.} I do not.

1318 Mr. {Harper.} Could you obtain that information to us  
1319 if--

1320 Ms. {Miles.} I am not--

1321 Mr. {Harper.} --it is available?

1322 Ms. {Miles.} I am not certain. I will look into it.

1323 Mr. {Harper.} Okay, thank you very much. And my time  
1324 has expired. Thank you, Mr. Chairman.

1325 Mr. {Whitfield.} Thank you.

1326 At this time, recognize the gentleman from New York, Mr.  
1327 Tonko, for 5 minutes.

This is a preliminary, unedited transcript. The statements within may be inaccurate, incomplete, or misattributed to the speaker. A link to the final, official transcript will be posted on the Committee's website as soon as it is available.

1328           Mr. {Tonko.} Thank you, Mr. Chair.

1329           Ms. Miles, this bill provides that all other agencies  
1330 that participate in the pipeline review process must give  
1331 deference to the scope of environmental review that FERC  
1332 determines to be appropriate. In other words, the bill  
1333 before us would apparently have FERC tell other agencies what  
1334 to consider when writing and issuing their permits, as  
1335 required by federal law. That would require FERC to  
1336 duplicate the expertise of the EPA, the BLM, the Fish and  
1337 Wildlife Service, and the Army Corps of Engineers. That does  
1338 not sound feasible to me. So I ask, does FERC have the  
1339 necessary expertise to determine the appropriate scope of  
1340 environmental review for these coordinating agencies?

1341           Ms. {Miles.} We have a very technically adept staff,  
1342 however, for the other agencies with permitting  
1343 responsibilities, we discuss with them what the scope of the  
1344 analysis that they believe is necessary for them to issue  
1345 their permits would be, and try to accommodate that as much  
1346 as we can in our environmental documents.

1347           Mr. {Tonko.} So having those necessary bits of  
1348 expertise may not necessarily be in place as we speak?

1349           Ms. {Miles.} FERC's has a wide range of expertise. We  
1350 are 340 people. We are made up of scientists who cover all

This is a preliminary, unedited transcript. The statements within may be inaccurate, incomplete, or misattributed to the speaker. A link to the final, official transcript will be posted on the Committee's website as soon as it is available.

1351 the resource areas that come before us in analyzing projects,  
1352 as well as engineers who can do that analysis. So I feel  
1353 very comfortable with our technical expertise. I do believe  
1354 the other agencies have responsibilities under their  
1355 mandates, and what we do is to try to work with them,  
1356 understanding what each other's goals are.

1357 Mr. {Tonko.} And further, does FERC have the resources  
1358 to carry out the requirements of this provision?

1359 Ms. {Miles.} Currently, we have the resources we need  
1360 to do our work. If we are given significant extra  
1361 responsibilities, we would need to examine whether we do.

1362 Mr. {Tonko.} Thank you. And finally, as you mentioned  
1363 in your testimony, and I quote, ``The mission staff gives  
1364 deference to these agencies' opinion of the scope of  
1365 environmental review needed to satisfy their NEPA  
1366 obligations, as they are best equipped to determine what  
1367 information satisfies their statutory mandates.'' So the  
1368 language of this scoping provision would effectively reverse  
1369 the current coordinating practice at FERC, would it not?

1370 Ms. {Miles.} Yes, we do have some concern that it has  
1371 more of an oversight responsibility than is--than we have  
1372 right now with more of a cooperative relationship.

1373 Mr. {Tonko.} All right. And then would this provision

This is a preliminary, unedited transcript. The statements within may be inaccurate, incomplete, or misattributed to the speaker. A link to the final, official transcript will be posted on the Committee's website as soon as it is available.

1374 improve or expedite, in your opinion, the current pipeline  
1375 permitting process existing at FERC?

1376 Ms. {Miles.} My concern is, as I have said in my  
1377 testimony, is that it moves some aspects of what we do now  
1378 under our regulations, later in the process, and I don't  
1379 believe that is valuable. I believe it needs to be done  
1380 early in the process.

1381 Mr. {Tonko.} Um-hum.

1382 Ms. {Miles.} And there are a few other things.

1383 Mr. {Tonko.} Okay. There are a number of gas pipeline  
1384 projects underway in my home State of New York. Some of  
1385 these are multistate pipelines, some are expansion projects.  
1386 We use--consume a lot of gas in New York and in other states  
1387 in the Northeast, so I believe we need additional  
1388 infrastructure to ensure reliable service for gas customers.  
1389 Of course, as with any large infrastructure project, there is  
1390 opposition. Some absolute and firm, some can be satisfied  
1391 with alterations to a given project to address specific  
1392 concerns or problems. But that takes time. The public is  
1393 often less organized, and slower to the table than industry,  
1394 perhaps with less resources, and states and local communities  
1395 have concerns and want to participate. That, again, takes  
1396 time. My understanding is that most of these applications,



This is a preliminary, unedited transcript. The statements within may be inaccurate, incomplete, or misattributed to the speaker. A link to the final, official transcript will be posted on the Committee's website as soon as it is available.

1397 when they are complete, are approved within a year or 2. Is  
1398 that correct?

1399 Ms. {Miles.} Yes.

1400 Mr. {Tonko.} Okay. So, frankly, that seems to be very  
1401 reasonable. In fact, some of my constituents would probably  
1402 want more time for deliberation in this process. I am  
1403 concerned that shortening this process further could lead to  
1404 compromises in safety, in fewer environmental benefits, and  
1405 in more resistance to these projects by the public and local  
1406 communities. Is this process indeed too long?

1407 Ms. {Miles.} The current process, as I have said, is--  
1408 with--according to our statistics, we are doing the majority  
1409 of the projects within 1 year, which is--seems a reasonable  
1410 period of time.

1411 Mr. {Tonko.} And do we not need to provide sufficient  
1412 time for the public to weigh-in on projects that will operate  
1413 for what could be decades?

1414 Ms. {Miles.} Yes, it is very important, and it is built  
1415 into the process, that the public has adequate opportunity to  
1416 participate.

1417 Mr. {Tonko.} With that, I thank you very much. And my  
1418 time has--

1419 Mr. {Whitfield.} Time has expired. Thank you very

This is a preliminary, unedited transcript. The statements within may be inaccurate, incomplete, or misattributed to the speaker. A link to the final, official transcript will be posted on the Committee's website as soon as it is available.

1420 much.

1421 At this time, chair recognizes the gentleman from West  
1422 Virginia, Mr. McKinley, for 5 minutes.

1423 Mr. {McKinley.} Thank you, Mr. Chairman.

1424 I gather that the genesis of this legislation and this  
1425 hearing are all about grid reliability. We have had numbers  
1426 of meetings here and hearings about grid reliability, and  
1427 this is one way to do it, either hydro or gas, to be able to  
1428 expedite that. There is a study, I know, by--done by the  
1429 University of Minnesota that talks about the concern for grid  
1430 reliability because they say in the Midwest annually we have  
1431 about 92 minutes per year that we lose power, and you in the  
1432 Northeast and in New England the average is 214 minutes are  
1433 lost annually, as compared to Japan, Japan only has 4 minutes  
1434 a year in grid reliability. So my concern is, with a lot of  
1435 these regulations that are being imposed on us, is that  
1436 things like the EIA has come out and said that if we continue  
1437 on with this, we are going to lose 25 percent of our coal-  
1438 fired generating capacity within the next couple of years.  
1439 We have--the PJM came out with a report in 2014 that said  
1440 after the polar vortex, that we came within 500 megawatts for  
1441 5 minutes; 700 megawatts for an hour, that we came that close  
1442 to having a massive power shortage in America. And that

This is a preliminary, unedited transcript. The statements within may be inaccurate, incomplete, or misattributed to the speaker. A link to the final, official transcript will be posted on the Committee's website as soon as it is available.

1443 compliments what FERC's Commissioner Moeller came out and he  
1444 said that we had better be concerned about this because we  
1445 are going to have more blackouts, brown--rolling brownouts in  
1446 the Midwest by 2017 if we don't do something.

1447         So my question to you, Ms. Miles, is--and thank you--you  
1448 have been with the FERC now for 30 years. I understand you  
1449 joined in 1985, so you have seen quite a change perhaps  
1450 within the group. Do you think that there is a real grasp of  
1451 this situation of where we could be faced with brownouts? Do  
1452 you think--was Moeller correct that should be concerned about  
1453 this by the next 2 years, if we continue with these  
1454 regulations that we are going to have shortages?

1455         Ms. {Miles.} I can't speak to reliability issues. That  
1456 is not a part of my purview. I can speak to the issues that  
1457 are here on the bills that are before us today, and that my  
1458 office does which--with making sure that we do the best we  
1459 can under the statutes that we have to provide a process that  
1460 is as efficient and provides opportunity for everyone to  
1461 comment and to address the issues.

1462         Mr. {McKinley.} Do you think--but under your purview,  
1463 do you have--are you concerned about brownouts?

1464         Ms. {Miles.} As I said, that is not a part of my  
1465 responsibility.

This is a preliminary, unedited transcript. The statements within may be inaccurate, incomplete, or misattributed to the speaker. A link to the final, official transcript will be posted on the Committee's website as soon as it is available.

1466 Mr. {McKinley.} So you have no opinion at all on  
1467 whether or not brownouts could occur in this country?

1468 Ms. {Miles.} I am--my responsibility--

1469 Mr. {McKinley.} Okay, that--I guess that is a--it may  
1470 or may not be under your control, but I am--our concern is we  
1471 are building back on this grid reliability that we have had  
1472 so many hearings about. This is a positive aspect coming out  
1473 of this legislation that we are going to be able to provide  
1474 more. If coal is going to be diminished in its use, at least  
1475 we ought to be able to come back with hydro and gas. And  
1476 when we have had roundtable meetings back in northern West  
1477 Virginia, that is the biggest concern we hear from the  
1478 drillers. They can't get their gas to market. So I am  
1479 hoping that this legislation can be advanced and--so that we  
1480 can get the power to the Northeast, we can get the power to  
1481 the east coast so we can have LNG. So I am very concerned  
1482 that there--that FERC seems to be perhaps slowing things down  
1483 a little bit. And I just want to be sure, because that is  
1484 what you were saying, you don't know anything about  
1485 brownouts, but you--unfortunately, I hope that you can go  
1486 back and ask some other members of FERC what these--if I have  
1487 misunderstood something, but I think we are facing some real  
1488 concerns in this country if we don't get legislation like

This is a preliminary, unedited transcript. The statements within may be inaccurate, incomplete, or misattributed to the speaker. A link to the final, official transcript will be posted on the Committee's website as soon as it is available.

1489 this adopted so that we can avoid the brownouts and hurt--and  
1490 help our industry.

1491 Ms. {Miles.} I want to make clear that I believe that  
1492 a--good parts of these legislation that are going to--toward  
1493 the intent of making sure that the FERC process is efficient  
1494 and timely are important.

1495 Mr. {McKinley.} Sounds like a great answer in  
1496 Washington, doesn't it?

1497 I yield back the time.

1498 Mr. {Whitfield.} Gentleman yields back.

1499 At this time, recognize the gentleman from Maryland, Mr.  
1500 Sarbanes, for 5--

1501 Mr. {Sarbanes.} Thank you, Mr. Chairman. Thanks to the  
1502 panel.

1503 So I mean I think your last answer was actually a pretty  
1504 good one in terms of the desire to have things move  
1505 efficiently and timely, and I don't begrudge my colleagues'  
1506 aspiration for all of this process to happen more quickly.  
1507 The problem is that if you put some of these fixed timelines  
1508 in place, not only is there the issue that Congressman Tonko  
1509 mentioned, which is where maybe FERC is being asked or  
1510 compelled to substitute its expertise for that of other  
1511 agencies in some instances, but if there is a timeline being

This is a preliminary, unedited transcript. The statements within may be inaccurate, incomplete, or misattributed to the speaker. A link to the final, official transcript will be posted on the Committee's website as soon as it is available.

1512 put in place, it can have a--that is a process thing, but it  
1513 can have an impact on the substantive issues that need to be  
1514 addressed. Most of the conversation here has related to the  
1515 relationship between the--between FERC and other federal  
1516 agencies in terms of trying to get whatever review they are  
1517 undertaking as part of a project done in a timely way, and  
1518 the goal here is to give FERC the ability to kind of ride  
1519 heard over that process and kind of corral the other agencies  
1520 into a more expedited time frame. But as I understand it,  
1521 Ms. Miles, it also has implications for state-level reviews  
1522 and permits that would be issued as well, is that correct?

1523 Ms. {Miles.} Yes, there are several federal  
1524 authorizations that are carried out by state agencies, like  
1525 the water quality certification under the Clean Water Act.

1526 Mr. {Sarbanes.} Right, and my concern is that, you  
1527 know, states are doing their best in a lot of these instances  
1528 where they have been given responsibility on the  
1529 environmental front, certainly, to make sure that these  
1530 projects are being done in a way that don't negatively impact  
1531 the environment there in the state. And that capacity is  
1532 being pulled away from them if there is some kind of a  
1533 requirement that the whole process be finished within a  
1534 certain period of time. And what I don't quite understand is

This is a preliminary, unedited transcript. The statements within may be inaccurate, incomplete, or misattributed to the speaker. A link to the final, official transcript will be posted on the Committee's website as soon as it is available.

1535 oftentimes, our colleagues on the other side are complaining  
1536 about when the Federal Government gets in the way of the  
1537 states being able to carry out things at the state level that  
1538 they think are important to them, but in--the effect of this  
1539 statute or bill, if it were to be passed, would actually  
1540 supplant a lot of the states' ability to fulfill its  
1541 obligations to its own residents to make sure things are  
1542 being put in place.

1543       Specifically, there is a project in Maryland right now,  
1544 the Conowingo Dam, where certification from FERC has been  
1545 forthcoming, but there is still some review that the Maryland  
1546 Department of the Environment needs to do to make sure that  
1547 the water quality standards are being met, and the ultimate  
1548 relicensing is conditioned upon that permit being issued.  
1549 And Exelon Corporation, which owns the Conowingo Dam, has  
1550 undertaken to do a study. They have agreed to do that. That  
1551 process is moving forward. If we had the kind of regime that  
1552 is contemplated by this statute in place, there could be the  
1553 potential situation where, because Maryland wasn't moving  
1554 fast enough to adhere to some time frame that was being  
1555 imposed upon them by FERC, Exelon would have the opportunity  
1556 to come in and sue as a result of them meeting--failing to  
1557 meet that timeline. And then you are undermining the

This is a preliminary, unedited transcript. The statements within may be inaccurate, incomplete, or misattributed to the speaker. A link to the final, official transcript will be posted on the Committee's website as soon as it is available.

1558 concerns of Maryland residents in terms of the environment.  
1559 So I just wanted to point out that it has significant  
1560 implications for the kind of state-level review that is  
1561 important to conduct.

1562         And, Governor LePage, I thank you for your testimony. I  
1563 understand the frustration, if you are looking at like a  
1564 small dam and you just want to get generation put on top of  
1565 it, as you said, and the process seems to go on and on  
1566 forever. But I think the agency--Ms. Miles spoke to the fact  
1567 that projects that are less complex can be handled in a more  
1568 expedited way. We can maybe look at how to help with that  
1569 dimension of things without imposing across the board this  
1570 kind of time restriction, which could either have the effect  
1571 of the agency saying, you know what, we can't get done in  
1572 time so we will just say no, which wouldn't be good as a  
1573 result, or issuing some kind of permit without really there  
1574 being a good basis for it, and then there be consequences  
1575 down the line. So I think we have to be very careful about  
1576 that.

1577         Governor {LePage.} Well, there are 2 things about that.  
1578 Number 1 is, on the pipeline we are talking 1 thing, which  
1579 are usually much larger. Give you an example of what we are  
1580 talking about, these little dams. Take a farmer who is



This is a preliminary, unedited transcript. The statements within may be inaccurate, incomplete, or misattributed to the speaker. A link to the final, official transcript will be posted on the Committee's website as soon as it is available.

1581 farming 100 acres of potatoes, and he has a little pond, he  
1582 has a little dam on his property to have pond for irrigation,  
1583 he could put a little generator on that and use the power  
1584 from the dam to--for his irrigation. FERC has to be involved  
1585 in that. That power is going to be used on the farm. It is  
1586 like a little windmill on your farm. That is all we are  
1587 asking about. Don't believe FERC should be involved in that.  
1588 There is 50--and I will also say one other thing. I can't  
1589 speak for the other 49 states, but I guarantee you in the  
1590 State of Maine, we will beat the Federal Government every  
1591 time in getting permits.

1592 Mr. {Whitfield.} Okay. At this time, recognize the  
1593 gentleman from Texas, Mr. Barton, for 5 minutes.

1594 Mr. {Barton.} I just want to say amen to the Governor  
1595 of Maine. Move to Texas. We like your attitude.

1596 Mr. Chairman, I am going to concentrate on the section  
1597 of the proposed draft that deals with the Natural Gas Act.

1598 Back in 2005, we passed a major energy bill called the  
1599 Energy Policy Act of 2005, and in that, we gave the agency,  
1600 the Federal Energy Regulatory Commission, additional  
1601 authority to review pipeline applications. With all due  
1602 respect, it doesn't look to me like the agency is using that  
1603 authority. If we are going to shut down all these coal

This is a preliminary, unedited transcript. The statements within may be inaccurate, incomplete, or misattributed to the speaker. A link to the final, official transcript will be posted on the Committee's website as soon as it is available.

1604 plants, Mr. Chairman, we are going to have to replace them at  
1605 some point in time with some other kind of plant, and in most  
1606 cases, that is--it could be a solar plant, it could be wind,  
1607 but in a lot of cases it is going to be natural gas. So to  
1608 get the gas to the plant, we are going to have to have more  
1609 pipelines.

1610         The good news is that we have lots of natural gas to  
1611 send, to use in electricity generation. The bad news is we  
1612 have to get those pipelines built to get it there.

1613         So my first question to the gentlelady from the FERC,  
1614 does your agency really want to be the lead agency, because  
1615 it doesn't look to me like you do?

1616         Ms. {Miles.} I believe that we are--have taken the role  
1617 of lead agency. We have established regulations to carry out  
1618 what was in EPAct 2005, that the commission is the lead  
1619 agency and it does establish the schedule. Whether--and we  
1620 do have a consolidated record. Whether the applicant chooses  
1621 to take anyone to court, that is really their decision and  
1622 not FERC's decision.

1623         Mr. {Barton.} Well, but the proposed draft takes what  
1624 we did in 2005 and gives the FERC some additional enforcement  
1625 authority, which you don't appear--not you personally, but  
1626 your agency doesn't appear to want. Would you rather we took

This is a preliminary, unedited transcript. The statements within may be inaccurate, incomplete, or misattributed to the speaker. A link to the final, official transcript will be posted on the Committee's website as soon as it is available.

1627 all that away and give it to the Department of Energy, or the  
1628 Department--

1629 Ms. {Miles.} I don't--

1630 Mr. {Barton.} --of Commerce? I mean you are either  
1631 going to be the lead agency or you are not, and my preference  
1632 would have FERC be the lead agency. Number 1, you are  
1633 smaller, the staff of the FERC tends to be more results-  
1634 oriented, I think is a fair way to say it, so there are a lot  
1635 of reasons to give you additional authority, but you have to  
1636 want to use it, there has to be a culture at the FERC that  
1637 you don't mind--if you are going to be the lead, that means  
1638 you are actually going to lead. You know, sometimes you can  
1639 collaborate, sometimes you can consult, but every now and  
1640 then you have to say this is the way it is going to be, let's  
1641 get it done. So I am serious when I--you know, the draft as  
1642 it is currently structured gives additional enforcement and  
1643 enhanced authority to the FERC. Is that something that the  
1644 agency is comfortable with, or would you rather we not and we  
1645 give to some other--make you the non-lead agency? It is a  
1646 fair question.

1647 Ms. {Miles.} The overall question, I think we are very  
1648 well positioned to be the lead agency. I think there are  
1649 some aspects of the discussion draft that we would like to

This is a preliminary, unedited transcript. The statements within may be inaccurate, incomplete, or misattributed to the speaker. A link to the final, official transcript will be posted on the Committee's website as soon as it is available.

1650 have conversations about. There are aspects that I think are  
1651 very good. One of the main reasons--situations is, is there  
1652 accountability for--or enforcement if someone does not comply  
1653 with this. In this bill, you do have the aspect, which I  
1654 have not seen before, of having the heads of other agencies,  
1655 who many not have complied with the schedule, report to  
1656 Congress. That is a measure of accountability that has--

1657 Mr. {Barton.} Well--

1658 Ms. {Miles.} --some potential.

1659 Mr. {Barton.} --my time is about to expire, Mr.  
1660 Chairman, but, you know, I support the discussion draft's  
1661 increased authority for the FERC if the FERC will use it, and  
1662 if we can get assurances that it is something they are  
1663 comfortable with. And I understand, when you are an  
1664 independent agency and you don't have a lot of people, it is  
1665 difficult to deal with some of these other federal agencies  
1666 that are much larger and have more staff, much more  
1667 bureaucratic, but the good news is if you are the lead agency  
1668 and you will use that authority, the Congress will back you  
1669 up, and will get more pipelines built and will get more  
1670 energy produced, and will create a better economy. So there  
1671 is an endgame that is a positive, if your agency will use the  
1672 additional authority.

This is a preliminary, unedited transcript. The statements within may be inaccurate, incomplete, or misattributed to the speaker. A link to the final, official transcript will be posted on the Committee's website as soon as it is available.

1673           And with that, Mr. Chairman, I yield back.

1674           Mr. {Whitfield.} Gentleman's time has expired.

1675           At this time, recognize the gentleman from Virginia, Mr.  
1676 Griffith, for 5 minutes.

1677           Mr. {Griffith.} Thank you, Mr. Chairman.

1678           Governor, I know you have to get power, and that is a  
1679 problem for a lot of states as we press forward. I will  
1680 assure you that we can ship you all the coal from southwest  
1681 Virginia that the Federal Government will allow you to use.  
1682 And Ohio. Can't leave out my good friend, Mr. Johnson. And  
1683 West Virginia, and for my colleague who spoke earlier.

1684           That being said, we have, in my opinion, unreasonable  
1685 regulations on the use of coal, unreasonable timetable on a  
1686 number of the new regulations coming into effect. And so the  
1687 natural gas companies, I understand why they are doing it.  
1688 They are proposing all kinds of pipelines be built, not just  
1689 in your area, but they have a number that are coming through  
1690 western Virginia. And so, Ms. Miles, that raises a lot of  
1691 questions that I have for you this morning.

1692           The pre-filing review phase is not mandatory for natural  
1693 gas pipelines. Should it be?

1694           Ms. {Miles.} That--you are correct, and that is  
1695 something that we actually have wondered about ourselves. I

This is a preliminary, unedited transcript. The statements within may be inaccurate, incomplete, or misattributed to the speaker. A link to the final, official transcript will be posted on the Committee's website as soon as it is available.

1696 think that there are any number of small pipelines that it is  
1697 not necessary to have it, so should the Congress decide that  
1698 is a place they want to go, we would need to have the ability  
1699 to have the smaller projects not involved in it because that  
1700 would slow it down for projects--

1701 Mr. {Griffith.} Perhaps--

1702 Ms. {Miles.} --that don't need it.

1703 Mr. {Griffith.} Perhaps you can make a suggestion and  
1704 that can be incorporated into this draft in that regard. As  
1705 a part of that, you are holding scoping meetings. In my  
1706 district, as well as in others in western Virginia, it has  
1707 come to our attention that--and I know it is a longer section  
1708 of pipeline, but the greater population is perhaps in the  
1709 Roanoke and New River Valleys, and FERC only had two for the  
1710 Mountain Valley Pipeline--two public hearings or scoping  
1711 meetings in the Roanoke and New River Valleys, had four in  
1712 West Virginia. The Roanoke Board of County Supervisors has  
1713 requested an additional one. And I would say to you that  
1714 Congressman Goodlatte and myself have submitted a letter  
1715 requesting that you all hold another scoping meeting in  
1716 regard to the Mountain Valley Pipeline, and would appreciate  
1717 if you would look into that.

1718 As you know, I represent from Roanoke, all the way

This is a preliminary, unedited transcript. The statements within may be inaccurate, incomplete, or misattributed to the speaker. A link to the final, official transcript will be posted on the Committee's website as soon as it is available.

1719 through the west of southwestern Virginia, the Allegheny  
1720 Islands, and Southside. Congressman Goodlatte represents  
1721 that area from Roanoke north, including Mary Baldwin, where I  
1722 understand that you are an alumni.

1723 Ms. {Miles.} Yes.

1724 Mr. {Griffith.} And--but it is concerning. One of the  
1725 pipelines actually goes through Augusta County. And so we  
1726 have 2 that are currently on the drawing board, I think a  
1727 third is about to be there. There may be a fourth. This  
1728 morning in the Roanoke Times, the--there is an op-ed piece by  
1729 Rupert Cutler, and he indicates that as a part of your  
1730 commission, that preparation of a single regional  
1731 environmental impact statement, incorporating all of the  
1732 pipelines in the region, should be done. Are you all doing  
1733 that with these various pipelines, because it is of concern  
1734 to the region because not only do you have the typical  
1735 problems, but you have the Blue Ridge Parkway, the  
1736 Appalachian Trail, a number of national parks that have to--  
1737 national forestlands that have to be crossed by these various  
1738 pipelines?

1739 Ms. {Miles.} I am not prepared to discuss particular  
1740 projects this morning, but we certainly will take all  
1741 comments into consideration when we make decisions about

This is a preliminary, unedited transcript. The statements within may be inaccurate, incomplete, or misattributed to the speaker. A link to the final, official transcript will be posted on the Committee's website as soon as it is available.

1742 them.

1743           Mr. {Griffith.} Is Mr. Cutler, a former member of the  
1744 Roanoke City Council and an environmentalist, is he correct  
1745 that it is a part of your charge though to prepare a single  
1746 rational environmental impact statement incorporating all of  
1747 the regional pipelines?

1748           Ms. {Miles.} Our responsibility is to analyze all the  
1749 pipelines, and we are not--it is not defined how we do it,  
1750 but under the National Environmental Policy Act, we need to  
1751 analyze the issues, give everyone the opportunity to comment  
1752 on them, display that so the public can comment on it before  
1753 making any decision.

1754           Mr. {Griffith.} he also asserts that you all have to  
1755 look at the marketplace, and with all of the different  
1756 pipelines being proposed now in an attempt to figure out a  
1757 way that by 2020, we have to start replacing coal if the  
1758 Clean Power Plan continues to go forward as expected, are you  
1759 all looking at whether or not we have pipelines stepping over  
1760 each other, and that we will have a greater capacity than is  
1761 necessary? Is that part of your charge, and I am going to  
1762 ask for a yes-or-no answer on that, is it just part of your  
1763 charge? Because I am running out of time?

1764           Ms. {Miles.} Yes, we look--we need to look at whether



This is a preliminary, unedited transcript. The statements within may be inaccurate, incomplete, or misattributed to the speaker. A link to the final, official transcript will be posted on the Committee's website as soon as it is available.

1765 there are shippers that have been--have signed up for the  
1766 capacity to move that--

1767 Mr. {Griffith.} Okay.

1768 Ms. {Miles.} --transportation.

1769 Mr. {Griffith.} And then one of the concerns I have is,  
1770 we have had a lot of people upset by these various pipelines,  
1771 and particularly in the Mountain Valley Pipeline. It started  
1772 off coming through Montgomery and Floyd and Henry in my  
1773 district, and part of Robert Hurt's district in Franklin  
1774 County. Now it is looking like it is going to go through  
1775 Craig and Roanoke Counties, and then go through Franklin and  
1776 Henry. A lot of folks have been distressed because it looks  
1777 like they just put a line on the page. Can you encourage the  
1778 companies to do a little more preplanning, and not have such  
1779 large shifts? We are not talking about just within a small  
1780 border, we are talking about, you know, completely different  
1781 counties being involved, different Board of Supervisors,  
1782 different folks who have to be involved. Could you please  
1783 encourage that as they move forward, they try to figure out  
1784 exactly where they want to go? Or when I say exactly, I mean  
1785 within a reasonable corridor--

1786 Ms. {Miles.} Um-hum.

1787 Mr. {Griffith.} --before they start putting a lot of

This is a preliminary, unedited transcript. The statements within may be inaccurate, incomplete, or misattributed to the speaker. A link to the final, official transcript will be posted on the Committee's website as soon as it is available.

1788 folks in distress whose land may be taken under eminent  
1789 domain.

1790 Ms. {Miles.} That is a part of the pre-filing process  
1791 is to work through with the companies where they are, and to  
1792 work with the public and their thoughts and understanding of  
1793 where is the appropriate siting.

1794 Mr. {Griffith.} Okay. I appreciate it very much.  
1795 I yield back.

1796 Mr. {Whitfield.} At this time, chair recognizes the  
1797 gentleman from Ohio, Mr. Johnson, for 5 minutes.

1798 Mr. {Johnson.} Thank you, Mr. Chairman. I appreciate  
1799 it, and thank our panel for being with us here this morning  
1800 as well.

1801 Director Miles, one of the concerns that you raise on  
1802 page 17 of your testimony regarding the trial type hearing  
1803 and the provisions under the discussion drafts to move all of  
1804 these to FERC administrative law judges has to do with  
1805 administrative costs, but isn't it true that FERC recovers  
1806 all of its administrative costs for the hydro program from  
1807 licensees under annual charges required by the Federal Power  
1808 Act?

1809 Ms. {Miles.} Yes, that is true.

1810 Mr. {Johnson.} Okay. All right. And, Director Miles,

This is a preliminary, unedited transcript. The statements within may be inaccurate, incomplete, or misattributed to the speaker. A link to the final, official transcript will be posted on the Committee's website as soon as it is available.

1811 I represent eastern and southeastern Ohio which, as you well  
1812 know, we have been blessed with the Utica and Marcellus Shale  
1813 in that part of the state, which hold an abundance of natural  
1814 gas reserves. One concern that I hear routinely from the  
1815 folks who are employing my constituents to produce this  
1816 resource, and recover this resource, is that if we don't have  
1817 adequate pipeline to get the natural gas to the market, these  
1818 jobs are very much in jeopardy.

1819 In your testimony, you note that the draft pipeline  
1820 reform legislation has unintended consequences that could  
1821 slow down the process. So my question to you--things like  
1822 moving some activities to later in the process. So my  
1823 question to you is, would you be in favor of moving those  
1824 things closer up so that they can be expedited?

1825 Ms. {Miles.} I would like to look at what that would  
1826 look like, and have the opportunity to comment on it.

1827 Mr. {Johnson.} Okay, and are there other changes that  
1828 you think the committee could make to the legislation to  
1829 speed up the process so that the permitting can get done  
1830 quicker, and we can make sure we save these jobs for those  
1831 hard-working people?

1832 Ms. {Miles.} I don't have anything else to suggest  
1833 right now. I do have some concern that we want to maintain

This is a preliminary, unedited transcript. The statements within may be inaccurate, incomplete, or misattributed to the speaker. A link to the final, official transcript will be posted on the Committee's website as soon as it is available.

1834 some ability for flexibility, and not get too strict so that  
1835 we can't work a little differently with projects that are  
1836 smaller and may go even quicker than this.

1837 Mr. {Johnson.} Um-hum.

1838 Ms. {Miles.} So, you know, if you do too much on the  
1839 outside end to try--we want to make sure we are not messing  
1840 up the ones that are moving through really quickly, so--

1841 Mr. {Johnson.} Sure. Well, I know--you may have heard  
1842 recently in our region of the state, our region of the  
1843 nation, the Appalachia region of the nation, that, as many  
1844 times often at the back of everybody's mind in Washington,  
1845 D.C., we have had it announced that a projected cracker plant  
1846 coming into eastern Ohio. Thousands and thousands of  
1847 construction jobs, and thousand permanent jobs, multibillion  
1848 dollar, 5-year project. It is a game changer when you are  
1849 talking about manufacturing coming back to our region and  
1850 those kinds of things. So the pipeline, to get that gas to  
1851 these processing plants, and then to send that raw material  
1852 to manufacturers, it is critically important to the economic  
1853 viability of our region. So I appreciate that you would  
1854 consider those things.

1855 Let me ask you one other. Your testimony states that  
1856 since the EPA Act of 2005, the commission has been able to

This is a preliminary, unedited transcript. The statements within may be inaccurate, incomplete, or misattributed to the speaker. A link to the final, official transcript will be posted on the Committee's website as soon as it is available.

1857 act on 92 percent of natural gas project applications in less  
1858 than 1 year after the application is filed. What do you mean  
1859 by act? How many of these actually received all of the  
1860 required federal authorizations, and how long did that take?

1861 Ms. {Miles.} What I mean by act is that the commission  
1862 has acted.

1863 Mr. {Johnson.} But have they approved them--

1864 Ms. {Miles.} Many--

1865 Mr. {Johnson.} --have they gotten all the way through  
1866 the process?

1867 Ms. {Miles.} They have completed the process at the  
1868 commission. Some orders that are issued may require an  
1869 authorization from another federal agency. Those usually  
1870 come through fairly timely.

1871 Mr. {Johnson.} But you have done your part of it--

1872 Mr. {Whitfield.} Excuse me just one minute.

1873 Ms. {Miles.} We did our part, yes.

1874 Mr. {Johnson.} Okay.

1875 Mr. {Whitfield.} Excuse me one minute. When you say--  
1876 are you talking about--that the FERC application has been  
1877 granted, or--

1878 Ms. {Miles.} Yes. The--

1879 Mr. {Whitfield.} --the certificate has been--

This is a preliminary, unedited transcript. The statements within may be inaccurate, incomplete, or misattributed to the speaker. A link to the final, official transcript will be posted on the Committee's website as soon as it is available.

1880           Ms. {Miles.} --commission has authorized it and  
1881 included in it the conditions that--

1882           Mr. {Whitfield.} Okay. Thank you.

1883           Ms. {Miles.} --the company needs to apply.

1884           Mr. {Johnson.} Thanks for that clarification, Mr.  
1885 Chairman, and I yield back.

1886           Mr. {Whitfield.} At this time, recognize the gentleman  
1887 from Oklahoma, Mr. Mullin, for 5 minutes.

1888           Mr. {Mullin.} Thank you, Mr. Chairman. And I  
1889 appreciate the witnesses for being here.

1890           And, Ms. Miles, I must say, we have a lot of directors,  
1891 secretaries that come in here, and a lot of times their  
1892 demeanor is, in my opinion, almost despicable, and I want to  
1893 commend you on how you are handling yourself today. I think  
1894 all of us will say that we are wanting to work with you, we  
1895 are wanting to work with the Governor, we are wanting to get  
1896 issues resolved, but we are having a hard time understanding  
1897 where FERC is going. And I understand you control, you know,  
1898 a small piece of that pie, but we all are having problems. I  
1899 mean one of the most common complaints I have in my district,  
1900 I represent the eastern part of Oklahoma, the entire eastern  
1901 side of Oklahoma, and we have many lakes and several of them  
1902 are controlled by FERC, and it seems like FERC is growing in

This is a preliminary, unedited transcript. The statements within may be inaccurate, incomplete, or misattributed to the speaker. A link to the final, official transcript will be posted on the Committee's website as soon as it is available.

1903 their influence in our state. In particular on the  
1904 shorelines. And, Ms. Miles, you mentioned on page 13 of  
1905 your--in your testimony that the Federal Power Act  
1906 determines--or determined that matters related to shoreline  
1907 use, such as recreational flood control and environmental  
1908 protection, are sometimes more of a local concern and, thus,  
1909 should be resolved by an entity that is required to consider  
1910 the overall public interest. Could expand on that comment a  
1911 little bit more?

1912 Ms. {Miles.} Yes. Congress established the regime in  
1913 the Federal Power Act that, in exchange for the use of the  
1914 public waters of the United States, that licensees need to  
1915 satisfy public interests, and the public interest might be  
1916 recreation, it might be the environmental values of the area.

1917 Mr. {Mullin.} But what I am trying to get to, are you  
1918 saying that that should actually be determined by FERC, it  
1919 shouldn't be determined by the state?

1920 Ms. {Miles.} That is the regime that was established by  
1921 Congress. The commission only has responsibility over the  
1922 lands that are owned or controlled by the licensee. It does  
1923 not have any responsibility over lands that are under private  
1924 control. So the shoreline management plans that you are  
1925 referring to would only cover that licensee-owned portion of

This is a preliminary, unedited transcript. The statements within may be inaccurate, incomplete, or misattributed to the speaker. A link to the final, official transcript will be posted on the Committee's website as soon as it is available.

1926 the project.

1927           Mr. {Mullin.} Completely agree with that, but I  
1928 represent an area called Grand Lake which is very similar to  
1929 the Lake of the Ozarks, and also--and Missouri, obviously,  
1930 and there was a--an issue going on in--it was either Lake of  
1931 the Ozarks or Table Rock Lake, I think it was Lake of the  
1932 Ozarks, where, basically, FERC has come up onto the  
1933 shorelines and was redrawing the boundary. And last year, I  
1934 sat in the chairman's office and we asked FERC about this,  
1935 and they basically described the situation saying that, well,  
1936 we are using different boundaries now because, back then we  
1937 used basically the stick surveying mark, and now we are using  
1938 GPS, and the old boundaries basically aren't acceptable  
1939 anymore. And so FERC is injecting themselves on telling  
1940 people how big their house can be on the shoreline, which  
1941 they own, telling people how many boat slips they can have,  
1942 and telling them that the existing structures that was built  
1943 inside the boundaries are no longer acceptable and have to be  
1944 torn down. And it threw a whole big mess on the shorelines  
1945 that now we are having the same issue in Grand Lake. And I  
1946 thinking, well, FERC doesn't even have the ability to control  
1947 what they have. I mean we are talking about pipelines, we  
1948 are talking about infrastructure, we are talking about things



This is a preliminary, unedited transcript. The statements within may be inaccurate, incomplete, or misattributed to the speaker. A link to the final, official transcript will be posted on the Committee's website as soon as it is available.

1949 that you already have and you can't control it, and now you  
1950 are inserting yourself farther onto the shorelines. And the  
1951 way I am understanding it is that you are in agreement with  
1952 that, that you should be inserting yourself farther in the--  
1953 onto the shorelines, when actually, the states would be more  
1954 capable of controlling that. Wouldn't you agree with that?

1955 Ms. {Miles.} I can't speak to the individual project  
1956 that you are raising.

1957 Mr. {Mullin.} I understand you can't speak to it, but  
1958 if I am understanding it that you are saying that FERC should  
1959 probably take control of that area, but what I am saying is  
1960 don't you agree that maybe the state should? I mean you  
1961 can't handle what you are getting to right now. You can't--  
1962 you don't have the manpower or the capability to build--even  
1963 do something that is as simple as permit gas lines.

1964 Ms. {Miles.} What I am saying is that Congress  
1965 basically authorized the regime that the license includes the  
1966 land that is necessary for project purposes, which includes  
1967 the generation of electricity as well as the protection of  
1968 other--both developmental and non-development or  
1969 environmental resources.

1970 Mr. {Mullin.} So how can I help you get this off your  
1971 plate then? What would you like to see Congress do with this

This is a preliminary, unedited transcript. The statements within may be inaccurate, incomplete, or misattributed to the speaker. A link to the final, official transcript will be posted on the Committee's website as soon as it is available.

1972 regime, as you are referring to, because we refer to the FERC  
1973 a lot as the regime too, and so how do I help you get rid of  
1974 this regime that you are talking about?

1975 Ms. {Miles.} If Congress wants to change the balance,  
1976 then we certainly would be--

1977 Mr. {Mullin.} Would you be supportive of it?

1978 Ms. {Miles.} I would need to see what it looked like.

1979 Mr. {Mullin.} Okay, thank you.

1980 Mr. Chairman, I yield back.

1981 Mr. {Whitfield.} Gentleman yields back.

1982 And that concludes the questions for the first panel.

1983 Once again, Governor, thank you for being here. Ms. Miles,  
1984 thank you for being here. We look forward to working with  
1985 both of you as we continue our efforts to develop an energy  
1986 package. And thank you again for your time, and we will be  
1987 in touch.

1988 At this time, I would like to call up the second panel.  
1989 On the second panel today, we have 6 witnesses. And what--I  
1990 am not going to introduce everybody immediately, but I will  
1991 introduce you as you are recognized to give your opening  
1992 statement. And so if you all, when you get time, would have  
1993 a seat. I want to thank all of you for joining us today,  
1994 and we appreciate also your patience.

This is a preliminary, unedited transcript. The statements within may be inaccurate, incomplete, or misattributed to the speaker. A link to the final, official transcript will be posted on the Committee's website as soon as it is available.

1995           And our first witness this morning will be Mr. Donald  
1996 Santa on the second panel. He is the President and CEO of  
1997 the Interstate Natural Gas Association of America. Mr.  
1998 Santa, thanks again for being with us. And each one of you  
1999 will be given 5 minutes for your opening statement, and then  
2000 we will open it up for questions.  
2001           So, Mr. Santa, you are recognized for 5 minutes.

This is a preliminary, unedited transcript. The statements within may be inaccurate, incomplete, or misattributed to the speaker. A link to the final, official transcript will be posted on the Committee's website as soon as it is available.

|

2002 ^STATEMENTS OF DONALD F. SANTA, PRESIDENT AND CEO, INTERSTATE  
2003 NATURAL GAS ASSOCIATION OF AMERICA; CAROLYN ELEFANT, MEMBER  
2004 OF THE BOARD, THE PIPELINE SAFETY COALITION, PRINCIPAL, THE  
2005 LAW OFFICES OF CAROLYN ELEFANT; JOHN COLLINS, MANAGING  
2006 DIRECTOR OF BUSINESS DEVELOPMENT, CUBE HYDRO PARTNERS;  
2007 RICHARD ROOS-COLLINS, GENERAL COUNSEL, THE HYDROPOWER REFORM  
2008 COALITION; RANDY LIVINGSTON, VICE PRESIDENT, POWER  
2009 GENERATION, PACIFIC GAS AND ELECTRIC COMPANY; AND JOHN J.  
2010 SULOWAY, BOARD MEMBER, NATIONAL HYDROPOWER ASSOCIATION,  
2011 PRINCIPAL, WATER AND POWER LAW GROUP, PC (ON BEHALF OF THE  
2012 HYDROPOWER REFORM COALITION)

|

2013 ^STATEMENT OF DONALD F. SANTA

2014 } Mr. {Santa.} Good morning, Chairman Whitfield, Ranking  
2015 Member Rush, and members of the subcommittee. My name is  
2016 Donald Santa, and I am the President and CEO of the  
2017 Interstate Natural Gas Association of America, or INGAA.  
2018 INGAA represents interstate natural gas transmission pipeline  
2019 operators in the U.S. and Canada. Our 24 members operate the  
2020 vast majority of the interstate natural gas transmission  
2021 network, which is the natural gas industry analogue to the

This is a preliminary, unedited transcript. The statements within may be inaccurate, incomplete, or misattributed to the speaker. A link to the final, official transcript will be posted on the Committee's website as soon as it is available.

2022 interstate highway system.

2023           The approval and permitting process for interstate  
2024 natural gas pipelines has become increasingly challenging.  
2025 While this has been a good, albeit complex process, there  
2026 have been some trends in the wrong direction. What was once  
2027 orderly and predictable is now increasingly protracted and  
2028 contentious. Most energy experts agree that we will need  
2029 more gas pipeline infrastructure to connect the new gas  
2030 supply--supplies of natural gas made available by the shale  
2031 revolution, and to support increased demand for gas from  
2032 manufacturing and petrochemical sectors, electric generators,  
2033 and other end-users. We need a process that balances  
2034 thorough environmental review and active public involvement  
2035 with orderly, predictable, and timely approval and permitting  
2036 of necessary energy infrastructure.

2037           If enacted, the draft bill before the subcommittee today  
2038 would modestly improve the permitting process by introducing  
2039 additional transparency and accountability for federal and  
2040 state permitting agencies. We support these steps, but  
2041 continue to urge Congress to create real consequences for  
2042 agencies that fail to meet reasonable deadlines. Entities  
2043 proposing to construct or expand or modify an interstate  
2044 natural gas pipeline must seek a certificate of public

This is a preliminary, unedited transcript. The statements within may be inaccurate, incomplete, or misattributed to the speaker. A link to the final, official transcript will be posted on the Committee's website as soon as it is available.

2045 convenience and necessity from the Federal Energy Regulatory  
2046 Commission. While the Natural Gas Act provides FERC with  
2047 exclusive authority to authorize the construction and  
2048 operation of interstate natural gas pipelines, a variety of  
2049 other permits and authorizations are necessary in order to  
2050 construct and operate such a pipeline. And I think as  
2051 evidenced by Mr. Johnson's question a few minutes ago, while  
2052 a lot of the dialogue this morning has been about the  
2053 timeliness of FERC's action under the Natural Gas Act, the  
2054 focus of the draft bill really is the timeliness of these  
2055 other permits and authorizations that are necessary before a  
2056 pipeline can be constructed.

2057       The Energy Policy Act of 2005 provided FERC with new  
2058 authority to oversee the pipeline permitting process. First,  
2059 Section 313 of EPAct 2005 clarified that FERC is the lead  
2060 agency under the National Environmental Policy Act for  
2061 interstate natural gas infrastructure projects. Second, this  
2062 section empowered FERC to establish for all federal  
2063 authorizations--to establish a schedule for all other federal  
2064 authorizations. In other words, all federal and state  
2065 permits required under federal law. Section 313 stated that  
2066 other federal and state permitting agencies ``shall cooperate  
2067 with the commission and comply with the deadlines established

This is a preliminary, unedited transcript. The statements within may be inaccurate, incomplete, or misattributed to the speaker. A link to the final, official transcript will be posted on the Committee's website as soon as it is available.

2068 by the commission.' ' The draft legislation would codify the  
2069 FERC rule that established a deadline 90 days after the  
2070 completing of FERC's NEPA review for all agencies acting  
2071 under federal authority to make their final permitting  
2072 decisions.

2073       The beginning of the 90-day permitting deadline would  
2074 not be the first time a permitting agency would have seen an  
2075 application from a pipeline developer. By the time FERC  
2076 completes its NEPA review, it reasonably can be expected that  
2077 the pipeline project developer will have been engaged in a  
2078 dialogue with the various permitting agencies for 12 to 18  
2079 months, or perhaps even longer. Consequently, permitting  
2080 agencies will have had ample time to review a proposed  
2081 project, suggest changes and modifications, and render a  
2082 final decision.

2083       Although EPO Act 2005 authorized FERC to establish a  
2084 deadline for permitting agencies, it did not create a  
2085 mechanism for FERC to enforce such deadlines. Instead, a  
2086 pipeline project developer may challenge a permitting  
2087 agency's tardiness or inaction in federal court. Doing so,  
2088 however, is both time-consuming and risky, and this option  
2089 seldom has been exercised. The lack of permitting schedule  
2090 enforceability has become the Achilles' heel in the pipeline

This is a preliminary, unedited transcript. The statements within may be inaccurate, incomplete, or misattributed to the speaker. A link to the final, official transcript will be posted on the Committee's website as soon as it is available.

2091 approval and permitting process. Agencies are free to ignore  
2092 FERC's deadline in what is currently a consequence-free  
2093 environment.

2094       Why is the timely approval of pipeline permits  
2095 important? Pipeline infrastructure is necessary--is a  
2096 necessary predicate for fully realizing the benefits of  
2097 America's natural gas abundance. Abundant natural gas  
2098 spurred by shale development already has had a profound  
2099 effect on the United States' economy.

2100       We hope that Congress will ensure that there are  
2101 consequences associated with pipeline permitting delays so  
2102 that this critical energy infrastructure can be constructed  
2103 on a timely basis. Transparency is certainly important, yet  
2104 it needs to go hand-in-hand with clear accountability for  
2105 agency inaction or delay.

2106       Thank you for the opportunity to testify today.

2107       [The prepared statement of Mr. Santa follows:]

2108 \*\*\*\*\* INSERT C \*\*\*\*\*



This is a preliminary, unedited transcript. The statements within may be inaccurate, incomplete, or misattributed to the speaker. A link to the final, official transcript will be posted on the Committee's website as soon as it is available.

|

2109           Mr. {Whitfield.} Mr. Santa, thank you very much for  
2110 that opening statement.

2111           Our next witness is Ms. Carolyn Elefant, who is a Member  
2112 of the Board of the Pipeline Safety Coalition, and Principal  
2113 of the Law Offices of Carolyn Elefant. So thank you for  
2114 being with us, and you are recognized for 5 minutes.

This is a preliminary, unedited transcript. The statements within may be inaccurate, incomplete, or misattributed to the speaker. A link to the final, official transcript will be posted on the Committee's website as soon as it is available.

|

2115 ^STATEMENT OF CAROLYN ELEFANT

2116 } Ms. {Elefant.} Thank you, Chairman Whitfield. Is--  
2117 thank you, Chairman Whitfield, and good afternoon to you and  
2118 to Ranking Member Rush, and the members of the subcommittee.

2119 As you mentioned, my name is Carolyn Elefant. I am on  
2120 the Board of the Pipeline Safety Coalition, which is a  
2121 nonprofit organization that serves as a clearinghouse for  
2122 factual and objective information to increase public  
2123 awareness about pipelines, and also to promote environmental  
2124 and public safety. In addition, in my capacity as an  
2125 attorney, I represent landowners, conservation trusts,  
2126 community governments, and other entities that are directly  
2127 impacted by pipeline infrastructure.

2128 My testimony today will highlight two of the coalition's  
2129 concerns regarding the draft legislation, which essentially  
2130 requires federal and state agencies with permitting  
2131 authorities over pipelines to adhere to deadlines established  
2132 by FERC.

2133 First, the coalition believes that the legislation is  
2134 unnecessary. There is little evidence to suggest that it is  
2135 actually the state and federal permitting agencies that are

This is a preliminary, unedited transcript. The statements within may be inaccurate, incomplete, or misattributed to the speaker. A link to the final, official transcript will be posted on the Committee's website as soon as it is available.

2136 responsible for delays in development of pipeline  
2137 infrastructure. And to the extent that they are, companies  
2138 already have a mechanism in place to enforce those deadlines,  
2139 which is through bringing suit in federal court; a mechanism  
2140 that has only been used twice since it was enacted 10 years  
2141 ago in the Energy Policy Act.

2142         Second, the coalition's greater concern is that the  
2143 proposed legislation's approach to expediting the permitting  
2144 process, such as requiring federal and state permitting  
2145 agencies to confine the scope of their environmental review  
2146 to those issues identified by FERC, would subordinate the  
2147 regulatory mandates of FERC's sister federal agencies, as  
2148 well as state agencies implementing delegated federal  
2149 authority under statutes like the Clean Water Act, the Clean  
2150 Air Act, and the Coastal Zone Management Act.

2151         So the first issue I wanted to discuss as to why this  
2152 legislation isn't necessary relates to the delays, and from  
2153 our perspective it is not clear that these state and federal  
2154 permits are holding up the process. The way the INGAA has  
2155 defined delay in its 2012 report that it commissioned is a  
2156 situation where a state or federal permit is filed--is not  
2157 completed within 90 days after FERC completes its  
2158 environmental review. But there are many reasons for why

This is a preliminary, unedited transcript. The statements within may be inaccurate, incomplete, or misattributed to the speaker. A link to the final, official transcript will be posted on the Committee's website as soon as it is available.

2159 this can happen. And first of all, the processes are not  
2160 always properly aligned. So a company may not initiate the  
2161 state permitting process until several months after it  
2162 started the FERC certificate process, and that can lead to a  
2163 misalignment at the end. In addition, state agencies also  
2164 have--the statutes provide them with a year, in some  
2165 instances, to act on a permit. So if you start the process  
2166 late, it is going to run over at the end.

2167       The second issue related to delay is that many times a  
2168 delay may occur because there is a change in the root, or a  
2169 different alternative is proposed down the line. And there  
2170 are instances where a company knows about this initially, but  
2171 rather than trying to accommodate and negotiate that issue,  
2172 they will hedge their bets and figure that if they ignore it,  
2173 it will go away. And it comes back to bite them at the end  
2174 of the process. I have been involved in at least 2  
2175 proceedings where issues raised by state agencies early on in  
2176 pre-filing were ignored for years later, and when it finally  
2177 came time to issue the permit, and it appeared that the state  
2178 permit wasn't going to issue, those issues had to be dealt  
2179 with and it created some delay.

2180       And last, as I mentioned, to the extent that there is  
2181 delay, there is a mechanism that Congress put in place 10

This is a preliminary, unedited transcript. The statements within may be inaccurate, incomplete, or misattributed to the speaker. A link to the final, official transcript will be posted on the Committee's website as soon as it is available.

2182 years ago; the ability to bring suit in District Court. I  
2183 would respectfully disagree with my colleague, Mr. Santa, as  
2184 to the difficulty of this. It has been used twice. I was  
2185 involved, representing interveners in one of those  
2186 proceedings. It is extremely expedited, it is about 3  
2187 months, and the company in this particular situation received  
2188 relief very quickly. And even with this expedited schedule,  
2189 I, representing a group of landowners, was still able to  
2190 participate. So that is an option that is highly  
2191 underutilized, and suggests to me that perhaps companies  
2192 don't believe that they have enough of a case to be able to  
2193 bring to court to show delay. And so they are not using this  
2194 provision because it isn't as necessary as has been  
2195 suggested.

2196 As I mentioned before, really from our perspective, the  
2197 most troubling aspect of the legislation is it seeks to  
2198 eliminate delay really be eliminating differing perspectives.  
2199 For example, the--one of the provisions that has been  
2200 discussed is that, when making a decision with respect to  
2201 federal authorization, the federal and state agencies shall  
2202 defer to FERC's scope of the environmental issues. And this  
2203 is very troubling because state agencies and federal  
2204 permitting agencies have different mandates. They evaluate

This is a preliminary, unedited transcript. The statements within may be inaccurate, incomplete, or misattributed to the speaker. A link to the final, official transcript will be posted on the Committee's website as soon as it is available.

2205 different things in the environmental process. And you will  
2206 sometimes see that they may be identifying issues that FERC  
2207 considers not relevant to the certificate process. And that  
2208 makes sense, but these are different mandates. So we don't  
2209 see that there is any justification to compel a federal or  
2210 federally backed agency to subordinate its regulatory  
2211 mandates to the goals of the Natural Gas Act, and indeed, we  
2212 can't think of any other federal industry or federally  
2213 regulated industry that has been granted a similar trump  
2214 card.

2215 So those are some of the concerns that we have, and I  
2216 look forward to participating in the rest of this hearing.  
2217 Thank you.

2218 [The prepared statement of Ms. Elefant follows:]

2219 \*\*\*\*\* INSERT D \*\*\*\*\*

This is a preliminary, unedited transcript. The statements within may be inaccurate, incomplete, or misattributed to the speaker. A link to the final, official transcript will be posted on the Committee's website as soon as it is available.

|

2220           Mr. {Whitfield.} All right, thank you very much, Ms.

2221   Elefant.

2222           At this time, our next witness is Mr. John Collins, who

2223   is the Managing Director of Business Development at Cube

2224   Hydro Partners. You are recognized for 5 minutes, Mr.

2225   Collins.

This is a preliminary, unedited transcript. The statements within may be inaccurate, incomplete, or misattributed to the speaker. A link to the final, official transcript will be posted on the Committee's website as soon as it is available.

|

2226 ^STATEMENT OF JOHN COLLINS

2227 } Mr. {Collins.} Good morning, Chairman Whitfield,  
2228 Ranking Member Rush, and distinguished members of the  
2229 subcommittee. My name is John Collins, and I am the Managing  
2230 Director of Business Development for Cube Hydro Partners, a  
2231 small, women-led business that owns and operates  
2232 hydroelectric plants in several states. The company also  
2233 engages in new hydropower development through the building of  
2234 new plants at existing dams. I have over 25 years of  
2235 experience in the energy industry, including previous  
2236 experience in the development of over 3,500 megawatts of  
2237 merchant power natural gas-fired plants during my career at  
2238 Constellation Energy. I spent over 22 years with  
2239 Constellation Energy Group in various leadership positions,  
2240 including Chief Risk Officer, Chief Financial Officer, and  
2241 Senior Vice President of Integration. I am pleased to have  
2242 the opportunity to appear before you this morning to discuss  
2243 the importance of modernizing and improving the hydropower  
2244 licensing and relicensing process to make it more efficient  
2245 and transparent, while supporting environmental protections.  
2246 Cube Hydro's current portfolio of hydrogenation assets



This is a preliminary, unedited transcript. The statements within may be inaccurate, incomplete, or misattributed to the speaker. A link to the final, official transcript will be posted on the Committee's website as soon as it is available.

2247 consist of 13 plants that comprise over 106 megawatts. The  
2248 company is committed to developing, owning, and operating  
2249 hydropower facilities across the United States. We are  
2250 actively pursuing the potential development of new projects  
2251 on existing dams.

2252       The National Hydropower Association and the Oakridge  
2253 National Laboratories cite the potential to retrofit more  
2254 than 54,000 dams in the United States, bringing more than  
2255 1,200 megawatts of new renewable energy onto the grid, while  
2256 creating hundreds of thousands of new jobs, and mitigating 40  
2257 million tons of greenhouse gas emissions annually. These  
2258 opportunities are tremendous. However, the length, expense,  
2259 and uncertainty of the hydro licensing approval process  
2260 significantly disadvantages development. Licensing can  
2261 extend for nearly a decade, and such a long, protracted, and  
2262 uncertain regulatory process hampers investment by increasing  
2263 regulatory risks, financial risks, and implementation risks,  
2264 thus, driving up the cost of new hydropower at existing dams.  
2265 The time and energy to secure the licenses and permits  
2266 contributed to development costs that can be between 25 and  
2267 30 percent of the overall cost of the project.

2268       Cube Hydro experienced these regulatory challenges  
2269 firsthand while developing its 6 megawatt Mahoning Creek

This is a preliminary, unedited transcript. The statements within may be inaccurate, incomplete, or misattributed to the speaker. A link to the final, official transcript will be posted on the Committee's website as soon as it is available.

2270 Hydroelectric Project in western Pennsylvania. The overall  
2271 regulatory process for the project spanned almost 10 years,  
2272 causing significant difficulties in obtaining financing, and  
2273 securing a long-term power purchase agreement. Although the  
2274 end result is and continues to be a success story, the  
2275 development process was a significant challenge.

2276 To facilitate hydropower development, the regulatory  
2277 process should be streamlined to eliminate redundancies and  
2278 provide developers and investors with added certainty.  
2279 Removing duplication in the process, and placing a single  
2280 agency in charge of managing the entire approval process is  
2281 needed. Such accountability is an essential attribute of  
2282 efficient management and good government. The implementation  
2283 of a streamlined regulatory process also needs to look to  
2284 standardize the requirements associated with issuing a  
2285 license to eliminate any competing requirements. We are  
2286 particularly supportive of the provisions that will minimize  
2287 duplications of studies and license proceedings, simplify the  
2288 regulatory process for smaller projects, authorize new  
2289 studies only when the FERC determines that additional data is  
2290 necessary, weigh the cost-benefit analysis of licensing  
2291 requirements, implement a use-it-or-lose-it provision for  
2292 submitting a pre-application document within 3 years, as

This is a preliminary, unedited transcript. The statements within may be inaccurate, incomplete, or misattributed to the speaker. A link to the final, official transcript will be posted on the Committee's website as soon as it is available.

2293 opposed to the current system which allows up to 8 years  
2294 without developing the project. The end result is the  
2295 establishment and enforcement of project timelines. These  
2296 and other initiatives would help to simplify licensing  
2297 requirements, and facilitate hydropower project development  
2298 and relicensing. We believe that hydropower is, and should  
2299 remain, an important component of and environmentally  
2300 sustainable U.S. energy policy. Providing the ability to  
2301 invest private capital to upgrade, modernize, and stabilize  
2302 this resource is critical to maintaining and growing the  
2303 currently installed base, which is the largest of any  
2304 renewable resource in the United States. Hydropower is  
2305 clean, renewable base load energy that helps to stabilize our  
2306 electric grid. Federal policies should be adopted to  
2307 encourage the development of this vast resource. Cube Hydro  
2308 believes the draft legislative proposals under consideration  
2309 by the subcommittee today are a reasoned and responsible  
2310 modernization of federal licensing legislation to allow for  
2311 increased development of this important resource.

2312 I thank the subcommittee for this opportunity to testify  
2313 on hydropower's role in meeting our nation's energy and  
2314 economic objectives, and look forward to answering your  
2315 questions.

This is a preliminary, unedited transcript. The statements within may be inaccurate, incomplete, or misattributed to the speaker. A link to the final, official transcript will be posted on the Committee's website as soon as it is available.

2316 [The prepared statement of Mr. Collins follows:]

2317 \*\*\*\*\* INSERT E \*\*\*\*\*

This is a preliminary, unedited transcript. The statements within may be inaccurate, incomplete, or misattributed to the speaker. A link to the final, official transcript will be posted on the Committee's website as soon as it is available.

|

2318           Mr. {Whitfield.} Well, thank you, Mr. Collins.

2319           And our next witness is Mr. Richard Roos-Collins, who is

2320 General Counsel for the Hydropower Reform Coalition, and

2321 Principal in the Water and Power Law Group, and he is

2322 testifying on behalf of the Hydropower Reform Coalition. So

2323 you are recognized for 5 minutes, Mr. Collins.

This is a preliminary, unedited transcript. The statements within may be inaccurate, incomplete, or misattributed to the speaker. A link to the final, official transcript will be posted on the Committee's website as soon as it is available.

|

2324 ^STATEMENT OF RICHARD ROOS-COLLINS

2325 } Mr. {Roos-Collins.} Thank you, and good afternoon, Mr.  
2326 Chairman, ranking minority member--members. My name is  
2327 Richard Roos-Collins. I appear on behalf of the Hydropower  
2328 Reform Coalition.

2329 Our conservation groups represent two million people who  
2330 fish, boat, and hike on the lands and waters of these  
2331 hydropower projects. Since 1992, our coalition has reached  
2332 170 settlement agreements with licensees, including Pacific  
2333 Gas and Electric, and also New York Power Authority. We  
2334 worked with the National Hydropower Association and other  
2335 stakeholders to negotiate the 2005 integrated licensing  
2336 process which FERC uses, and the 2013 Hydropower Regulatory  
2337 Efficiency Act.

2338 We support the goal of expedited licensing consistent  
2339 with the quality of the license. We do not support specific  
2340 mechanisms in the discussion draft that would undercut  
2341 cooperation between FERC and other agencies.

2342 Under the draft, FERC would control the schedule for the  
2343 work of other agencies, determine facts relevant to fishways  
2344 and federal reservations, and exclusively administer a

This is a preliminary, unedited transcript. The statements within may be inaccurate, incomplete, or misattributed to the speaker. A link to the final, official transcript will be posted on the Committee's website as soon as it is available.

2345 license once issued. This would disrupt the cooperative  
2346 approach that has succeeded under the Federal Power Act since  
2347 1935. Section 10(a) of that Act requires that each license  
2348 must be best adapted to a comprehensive plan for power, flood  
2349 control, water support, fish, and recreation. This mandate  
2350 is achieved through cooperation. FERC determines overall how  
2351 to advance the public interest, and it issues the license.  
2352 Other agencies write specific articles for fishways, federal  
2353 reservations, and water quality. FERC and those other  
2354 agencies work hard to manage the tradeoffs between competing  
2355 uses of waters, looking out two generations. In the modern  
2356 era, licenses have increased power capacity by 4 percent,  
2357 relative to the original licenses, and are providing billions  
2358 of dollars of regional economic benefits associated with non-  
2359 power uses. At one project alone, recreation, including  
2360 family recreation, will produce more than \$330 million in  
2361 such benefits over the next 30 years.

2362 Now, let me turn to time. A licensing process is  
2363 expected to take 5 years or less. Why that period? The  
2364 license is based on the studies conducted to evaluate how  
2365 best to manage trade-offs over two generations. Should  
2366 licensings end on time? Yes. And, in fact, most do. Are  
2367 some licensings delayed today? Yes. Roughly 1/4. Do delays

This is a preliminary, unedited transcript. The statements within may be inaccurate, incomplete, or misattributed to the speaker. A link to the final, official transcript will be posted on the Committee's website as soon as it is available.

2368 occur merely because agencies, other than FERC, write license  
2369 articles? No.

2370 Let me give an example. Under the 2005 Energy Policy  
2371 Act, the federal agency that prescribes a fishway must  
2372 provide a trial on disputed issues. These trials have  
2373 consistently ended on time; 6 months or less. The assigned  
2374 judges did this by knocking heads. Section 1303 of the  
2375 discussion draft would move these trials to FERC. Would that  
2376 save time? No. It would just transfer the authority to  
2377 resolve those triable issues.

2378 We support commonsense mechanisms that save time and  
2379 money by improving coordination between FERC and other  
2380 agencies. Cut red tape? Yes. So let me make four  
2381 suggestions.

2382 First, there should be a joint environmental document in  
2383 each licensing. Today, there tend to be several. That is  
2384 because FERC requires an agency cooperating in FERC's own  
2385 document to forego the right to be a party. Faced with that  
2386 catch 22, states tend to prepare their own documents for  
2387 their water quality certifications. Half of the delayed  
2388 licensings are in California, and that is largely why.

2389 Second, a joint study plan should provide the  
2390 information necessary for all license articles.



This is a preliminary, unedited transcript. The statements within may be inaccurate, incomplete, or misattributed to the speaker. A link to the final, official transcript will be posted on the Committee's website as soon as it is available.

2391           Third, there should be a comprehensive schedule, and an  
2392 agency dragging its feet should be subject to a judicial  
2393 mandate.

2394           And lastly, we support the procedure used by former FERC  
2395 Chair, Pat wood, in the early 2000s. He held an annual  
2396 hearing solely to address delayed licensings. He grilled his  
2397 staff and parties alike to isolate and fix causes for delay.  
2398 The backlog shrank very quickly.

2399           We are committed to work with this committee, industry,  
2400 agencies, and other stakeholders to develop reforms that  
2401 expedite licensings consistent with the public interest in  
2402 enhancing power and other beneficial uses of our nation's  
2403 waters.

2404           Thank you for the opportunity to testify. I look  
2405 forward to your questions.

2406           [The prepared statement of Mr. Roos-Collins follows:]

2407           \*\*\*\*\* INSERT F \*\*\*\*\*

This is a preliminary, unedited transcript. The statements within may be inaccurate, incomplete, or misattributed to the speaker. A link to the final, official transcript will be posted on the Committee's website as soon as it is available.

|

2408           Mr. {Whitfield.} Thank you, Mr. Roos-Collins.

2409           And our next witness is Mr. Randy Livingston, who is

2410 Vice President of Power Generation, at Pacific Gas and

2411 Electric. And you are recognized for 5 minutes.

This is a preliminary, unedited transcript. The statements within may be inaccurate, incomplete, or misattributed to the speaker. A link to the final, official transcript will be posted on the Committee's website as soon as it is available.

|

2412 ^STATEMENT OF RANDY LIVINGSTON

2413 } Mr. {Livingston.} Good morning, and thank you.

2414 PG&E is one of the nation's largest combined electric  
2415 and natural gas utilities, with more than 22,000 employees  
2416 serving 16 million Californians. We are also the owner and  
2417 operator of America's largest investor-owned hydro system.  
2418 With 26 FERC licenses, we are regularly in the process of  
2419 relicensing, and in fact, today, we have seven projects in  
2420 one phase or another of relicensing.

2421 Our system generates 3,900 megawatts of safe, clean,  
2422 reliable, and affordable power for millions of Californians.  
2423 It has been crucial in integrating other renewable energy  
2424 sources. In addition, it provides water supply, recreation,  
2425 flood control, taxes, and other benefits. Hydropower is an  
2426 invaluable resource. It is one that our country can and  
2427 should do more to capitalize on.

2428 We appreciate all the efforts done to date by past  
2429 Congresses to advance hydroelectric generation. We believe  
2430 this Congress has taken a very important step with the  
2431 release of the discussion draft on hydropower regulatory  
2432 modernization, and by holding today's hearing.

This is a preliminary, unedited transcript. The statements within may be inaccurate, incomplete, or misattributed to the speaker. A link to the final, official transcript will be posted on the Committee's website as soon as it is available.

2433           PG&E believes it is critical for hydroelectric power  
2434 generators to be able to move through the relicensing  
2435 processes more efficiently, more affordably, so we can  
2436 implement the environmental protections, community  
2437 improvements, and facility upgrades more quickly than we can  
2438 today.

2439           We believe the discussion draft accomplishes this fairly  
2440 and effectively, while maintaining important environmental  
2441 protections and community interests. In particular, it does  
2442 this by clarifying FERC's exclusive authority to balance  
2443 beneficial uses, and to enforce, amend, or otherwise  
2444 administer all aspects of a FERC license. It improves the  
2445 licensing process by allowing FERC to establish standards and  
2446 deadlines for federal authorizations, it clarifies the scope  
2447 of federal agencies' authority under Sections 4(e) and 18 of  
2448 the Federal Power Act, and required those agencies to explain  
2449 the effects of their conditions or prescription on other  
2450 recognized benefits, such as energy production, flood  
2451 control, and water supply. And it allows the licensee to  
2452 seek a review of federal authorization or delay an issuance  
2453 in the Federal Court of Appeals.

2454           We believe the commonsense and basic reforms can make  
2455 hydropower more efficient, while keeping in place the

This is a preliminary, unedited transcript. The statements within may be inaccurate, incomplete, or misattributed to the speaker. A link to the final, official transcript will be posted on the Committee's website as soon as it is available.

2456 environmental protections and other benefits that we all  
2457 agree are critical.

2458         PG&E places a priority on using collaborative process to  
2459 relicense a facility, as both understanding and incorporating  
2460 the interests of stakeholders is critical. However, as it  
2461 stands today, the current process is complex, protracted,  
2462 leading to higher costs and delayed implementation of  
2463 improvements and upgrades. To put this into perspective,  
2464 PG&E's recent experiences, even for a medium-sized license,  
2465 it consistently takes over 7 years to renew an existing  
2466 license for an existing facility, and often well over 10  
2467 years. The cost just to complete the process for the  
2468 continued operation of a facility can run over \$50 million,  
2469 and implementing the requirements of the new license can run  
2470 into \$100 million. All of these are costs that are  
2471 ultimately born by the energy consumer.

2472         Relicensing process involves numerous federal and state  
2473 agencies, and stakeholders with interests that may not always  
2474 align. Therefore, we believe the process should be improved  
2475 to focus on the following. Ensure environmental protections  
2476 and preserve hydropower, achieve the multiple benefits of  
2477 relicensing sooner, reduce cost, improve predictability, and  
2478 enhance the collaborative process to be results and solution-

This is a preliminary, unedited transcript. The statements within may be inaccurate, incomplete, or misattributed to the speaker. A link to the final, official transcript will be posted on the Committee's website as soon as it is available.

2479 oriented, and avoid conflicting license conditions.

2480       We would recommend a number of very specific  
2481 improvements to address these license--these licensing  
2482 matters, including improving coordination between federal and  
2483 state environmental reviews, including an enforced discipline  
2484 schedule for all parties involved, better defining the extent  
2485 of authorities by federal agencies, improving federal and  
2486 state agency coordination and transparency, and finally, by  
2487 establishing a process for a single challenge opportunity  
2488 before FERC to resolve issues or conflicting license  
2489 restrictions. For example, in California, we are working to  
2490 help our State Water Board environmental review follow a  
2491 parallel path with the federal reviews, including relying on  
2492 the same data and studies. To date, even though our State  
2493 Water Board participates in relicensing, this process has  
2494 generally been sequential and separate, at times resulting in  
2495 conflicting license conditions. Today, it is up to the  
2496 licensee to try and resolve those. As such, conditions have  
2497 sometimes extended to private lands where there is no clear  
2498 nexus to the project.

2499       The discussion draft being debated here would accomplish  
2500 many of these objectives. Given the focus of this committee  
2501 on crafting and advancing energy policy for the 21st century,

This is a preliminary, unedited transcript. The statements within may be inaccurate, incomplete, or misattributed to the speaker. A link to the final, official transcript will be posted on the Committee's website as soon as it is available.

2502 you and your colleagues have an important opportunity to  
2503 bring meaningful change to the hydropower relicensing  
2504 process, and to assure that it is consistent with needs and  
2505 opportunities today and many years ahead.

2506 PG&E looks forward to working with you.

2507 [The prepared statement of Mr. Livingston follows:]

2508 \*\*\*\*\* INSERT G \*\*\*\*\*

This is a preliminary, unedited transcript. The statements within may be inaccurate, incomplete, or misattributed to the speaker. A link to the final, official transcript will be posted on the Committee's website as soon as it is available.

|

2509           Mr. {Whitfield.} Thanks, Mr. Livingston.

2510           And our next witness is John Suloway, who is Board

2511 Member of the National Hydropower Association, and you are

2512 recognized for 5 minutes.



This is a preliminary, unedited transcript. The statements within may be inaccurate, incomplete, or misattributed to the speaker. A link to the final, official transcript will be posted on the Committee's website as soon as it is available.

|

2513 ^STATEMENT OF JOHN J. SULOWAY

2514 } Mr. {Suloway.} Good afternoon, Mr. Chairman, Ranking  
2515 Member Rush, members of the subcommittee. My name is John  
2516 Suloway. I appear today on behalf of the National Hydropower  
2517 Association. I am on the Board of Directors, serve as  
2518 Secretary of the Executive Committee, and I was President of  
2519 NHA about 10 years ago.

2520 NHA appreciates and commends the work this committee and  
2521 Chairman Upton, and also the discussion drafts proposed by  
2522 Representative Kathy McMorris Rodgers. I am honored to be  
2523 here today to discuss this issue, particularly with the focus  
2524 on hydropower regulatory modernization.

2525 Let me tell you a little bit about myself. I grew up in  
2526 the electric utility industry. I have focused my entire  
2527 career on project development, licensing, and environmental  
2528 research. Most of that time was with the New York Power  
2529 Authority. I retired from NYPA at the end of the year as the  
2530 Vice President of Project Development Licensing. I loved my  
2531 job, I loved the power authority, and I particularly loved  
2532 working in hydropower.

2533 As you can tell from my written testimony, NYPA is one

This is a preliminary, unedited transcript. The statements within may be inaccurate, incomplete, or misattributed to the speaker. A link to the final, official transcript will be posted on the Committee's website as soon as it is available.

2534 of the leading producers of electricity in the State of New  
2535 York, and we have one of the largest hydropower systems in  
2536 the entire country. My job and my group focused on project  
2537 development and licensing of both generation and transmission  
2538 projects. We worked a great deal on hydropower, but also I  
2539 developed combined cycle plants and simple cycle turbine  
2540 projects that burn natural gas, and also high voltage  
2541 transmission lines.

2542 In my testimony, I am trying to convey four basic  
2543 points. Number one, hydropower is a great technology. It  
2544 has a proven track record of being a dependable and cost-  
2545 effective source of generation. Also, in today's world where  
2546 the norm is change, hydropower is a crucial tool for  
2547 maintaining the reliability of the changing electrical grid,  
2548 while helping to address climate change. These  
2549 characteristics made hydropower very attractive for economic  
2550 development. There is a significant potential for increased  
2551 hydropower capacity which is not being realized.

2552 Point two, the development of more hydropower should be  
2553 a key component of America's energy portfolio. We have  
2554 thousands of megawatts that can be developed at existing dams  
2555 that are not being developed, in part because the hydropower  
2556 licensing process is protracted, costly, and risky. And us

This is a preliminary, unedited transcript. The statements within may be inaccurate, incomplete, or misattributed to the speaker. A link to the final, official transcript will be posted on the Committee's website as soon as it is available.

2557 folks in the electrical utility industry tend to be risk-  
2558 adverse.

2559       Point three, we, and I mean the big we here, industry,  
2560 regulators, nongovernmental organizations, and Members of  
2561 Congress, we have been working since the 1990s to improve the  
2562 hydropower licensing process. We have made progress. There  
2563 have been improvements in the licensing and administration of  
2564 hydropower, but additional work needs to be done to make the  
2565 more--the process more efficient so a significant portion of  
2566 that undeveloped capacity can be developed.

2567       My fourth point. The goals and objectives expressed in  
2568 the discussion draft bills would help to make hydropower more  
2569 attractive to developers and investors, while ensuring  
2570 careful consideration of environmental values and the  
2571 protection of natural resources. Protecting the environment  
2572 and natural resources is important, and is a commitment that  
2573 the hydropower industry takes seriously.

2574       In conclusion, you know, I have made a career of  
2575 navigating these archaic processes. And that being said, I  
2576 have come to an--the conclusion that we have a very important  
2577 opportunity here that we should not miss. Like I mentioned  
2578 before, incremental changes in the FERC process have improved  
2579 the process, and as part of making those changes, we have

This is a preliminary, unedited transcript. The statements within may be inaccurate, incomplete, or misattributed to the speaker. A link to the final, official transcript will be posted on the Committee's website as soon as it is available.

2580 created relationships, we have created friendships, and we  
2581 can build on that communication improvements as we move  
2582 forward. But when you stand back and you look at the  
2583 fundamental question that is in front of us, why shouldn't we  
2584 be able to license a hydropower project for the same amount  
2585 of time and the same amount of money as it does for a  
2586 combined cycle plant that is burning natural gas? And when  
2587 you look that question in the face, you know we have more  
2588 work to do.

2589         So thank you for providing me this opportunity to  
2590 testify on behalf of hydropower's role in meeting our  
2591 nation's environmental, energy, and economic objectives, and  
2592 I look forward to answering your questions.

2593         [The prepared statement of Mr. Suloway follows:]

2594 \*\*\*\*\* INSERT H \*\*\*\*\*

This is a preliminary, unedited transcript. The statements within may be inaccurate, incomplete, or misattributed to the speaker. A link to the final, official transcript will be posted on the Committee's website as soon as it is available.

|

2595           Mr. {Whitfield.} Well, thank you, Mr. Suloway. And  
2596 thank all of you for your testimony.

2597           And at this time, I will recognize myself for 5 minutes  
2598 of questions.

2599           It is obvious to everyone that the two subject matters  
2600 we are looking at is natural gas pipelines, and we are  
2601 looking at hydropower. And, Mr. Roos-Collins, I think I know  
2602 where everybody stands on this draft. You focused on  
2603 hydropower. You indicated--are you--did you say that you  
2604 believe that there are some problems at FERC relating to  
2605 licensing and relicensing of hydropower that need to be  
2606 addressed, or I know that you are opposed to this particular  
2607 draft, but are there some areas that you do think needs to be  
2608 addressed?

2609           Mr. {Roos-Collins.} Yes, Mr. Chairman.

2610           Mr. {Whitfield.} Okay. Thank you. I just wanted to  
2611 clarify that.

2612           And, Mr. Livingston, would you say that from your  
2613 perspective at PG&E, is licensing more of an issue or is  
2614 relicensing more of an issue?

2615           Mr. {Livingston.} Well, for us it is relicensing. I  
2616 think as we look at our portfolio, we are going through a

This is a preliminary, unedited transcript. The statements within may be inaccurate, incomplete, or misattributed to the speaker. A link to the final, official transcript will be posted on the Committee's website as soon as it is available.

2617 significant period of relicensing and, you know, are  
2618 regularly involved in it. The licensing is a critical issue  
2619 for development of the new resources on, for instance, you  
2620 know, non-power dams--

2621 Mr. {Whitfield.} Right.

2622 Mr. {Livingston.} --and for the licensing potential for  
2623 pump storage development to help integrate other--

2624 Mr. {Whitfield.} Right. Now, you said you had seven  
2625 active relicensing projects right now, I believe, and I think  
2626 your testimony talked about the cost would be \$20 to \$50  
2627 million. And I think you mentioned \$100 million. What was  
2628 that about?

2629 Mr. {Livingston.} That is about license implementation  
2630 costs. So not only do you have the cost to get the new  
2631 license, then you have to comply with all the new terms.

2632 Mr. {Whitfield.} And my understanding, I am not an  
2633 expert, but my understanding, the relicensing is almost as  
2634 cumbersome as the licensing process, is that correct?

2635 Mr. {Livingston.} Yeah, it is the same.

2636 Mr. {Whitfield.} It is the same, okay. Okay.

2637 And, Mr. Santa--well, back to you, Mr. Livingston.

2638 Would you--I have heard about one relicensing project that  
2639 you all have been involved in that has gone on for a number

This is a preliminary, unedited transcript. The statements within may be inaccurate, incomplete, or misattributed to the speaker. A link to the final, official transcript will be posted on the Committee's website as soon as it is available.

2640 of years. I don't know specifically the information about  
2641 it, but could you give us a recent example of a challenging  
2642 and cumbersome hydropower licensing proceeding that you are  
2643 going through that is--has been particularly frustrating?

2644 Mr. {Livingston.} Well, we--I think just our most  
2645 recent work is on our Desalba-Centerville Project. It is a  
2646 26 megawatt project. Lots of important resource issues there  
2647 to work through. That process is currently in its eleventh  
2648 year. We are well over \$26 million, well over \$1 million per  
2649 megawatt, to go into relicensing. And we are--just got a  
2650 water quality certificate--a proposed water quality  
2651 certificate that has competing license conditions with  
2652 everything that we have been talking about, you know, for the  
2653 previous 11 years. And we are going to have to work to--now  
2654 to resolve those before a final license can be--

2655 Mr. {Whitfield.} So is it this primarily a federal  
2656 issue or a state issue, or--

2657 Mr. {Livingston.} It is combined. You know, the State  
2658 Water Board is working under the Clean Water Act.

2659 Mr. {Whitfield.} Okay.

2660 Mr. {Livingston.} The concept that I think many of us  
2661 are trying to work through is how we can make the same set of  
2662 studies, the same--

This is a preliminary, unedited transcript. The statements within may be inaccurate, incomplete, or misattributed to the speaker. A link to the final, official transcript will be posted on the Committee's website as soon as it is available.

2663 Mr. {Whitfield.} Right.

2664 Mr. {Livingston.} --time frame, and the same process  
2665 all come together at the end so, you know--

2666 Mr. {Whitfield.} And how many years have you been  
2667 involved in this project?

2668 Mr. {Livingston.} It started its relicensing 11 years  
2669 ago.

2670 Mr. {Whitfield.} Eleven years ago. And it is still not  
2671 resolved.

2672 Mr. {Livingston.} It is still not resolved.

2673 Mr. {Whitfield.} Okay.

2674 Mr. Santa, Mrs. Elefant had mentioned in her testimony  
2675 that one--from her perspective, there is really no need for  
2676 change, and she specifically said if you have a problem, you  
2677 can file this lawsuit. I am assuming that you don't view  
2678 that as a practical solution because of cost, I am assuming.

2679 Mr. {Santa.} No, we don't view that as a practical  
2680 solution, Chairman Whitfield. For example, the--Ms. Elefant  
2681 mentioned two instances in 10 years that someone had availed  
2682 themselves of that; one of which was resolved reasonably  
2683 quickly, but the other one involved multiple years, two trips  
2684 to the U.S. Court of Appeals for the Second Circuit, and  
2685 ultimately, the project applicant ended up walking away from



This is a preliminary, unedited transcript. The statements within may be inaccurate, incomplete, or misattributed to the speaker. A link to the final, official transcript will be posted on the Committee's website as soon as it is available.

2686 the project after investing years and significant resources  
2687 in trying to develop that project.

2688 I think it is important to remember here that the  
2689 current law would compel the applicant to sue the very agency  
2690 from which it is trying to get the permit. Is that going to  
2691 incline that agency to be more cooperative? Not to mention  
2692 that same applicant may have other applications on other  
2693 projects pending before that same agency.

2694 Mr. {Whitfield.} You know, you had mentioned this GAO  
2695 report, and--I believe it was in your testimony, but it  
2696 basically said that the average length of time on one of  
2697 these pipeline certificates is like 5 years, I believe.

2698 Mr. {Santa.} It was 558 days.

2699 Mr. {Whitfield.} 558. The 5 years, I guess, was the  
2700 pre-filing and the other agency permits and so forth.

2701 Mr. {Santa.} Yes, sir. Yeah, I think it was if you  
2702 took into account the time from project inception, the pre-  
2703 filing process--

2704 Mr. {Whitfield.} Right.

2705 Mr. {Santa.} --the FERC process, the other permits--

2706 Mr. {Whitfield.} Right.

2707 Mr. {Santa.} --and construction, the 5-year period is--

2708 Mr. {Whitfield.} Yeah.

This is a preliminary, unedited transcript. The statements within may be inaccurate, incomplete, or misattributed to the speaker. A link to the final, official transcript will be posted on the Committee's website as soon as it is available.

2709 Mr. {Santa.} --a reasonable estimate.

2710 Mr. {Whitfield.} Yeah. And I point that out just  
2711 because it does appear that there is an issue here. I mean  
2712 some people are indicating that they don't think there is an  
2713 issue, and that is why we have these hearings to hear all  
2714 sides.

2715 So my time has expired. At this time, recognize the  
2716 gentleman from Illinois for 5 minutes.

2717 Mr. {Rush.} Thank you, Mr. Chairman.

2718 Ms. Elefant, as a former FERC lawyer, do you believe  
2719 that requiring other agencies to defer to FERC on the scope  
2720 of environmental review would help expedite the natural gas  
2721 permitting process and leading to fewer or more lawsuits, and  
2722 are FERC's staff equipped to determine the scope of  
2723 environmental review over and above the experts in other  
2724 agencies with jurisdiction over these issues?

2725 Ms. {Elefant.} I don't think that it would expedite  
2726 anything. The problem is when you are looking at the scope  
2727 of environmental review, it relates to what the agency's  
2728 mandate is. So, for example, I have seen cases where FERC  
2729 has determined, for example, that it will not consider  
2730 cumulative impacts related to fracking because that is  
2731 something that FERC has determined is not causally connected

This is a preliminary, unedited transcript. The statements within may be inaccurate, incomplete, or misattributed to the speaker. A link to the final, official transcript will be posted on the Committee's website as soon as it is available.

2732 to pipeline certification. And that is a decision that has  
2733 been affirmed by the Second Circuit. There are other state  
2734 or federal agencies for which this issue of fracking is more  
2735 closely related to their mandate, so they might consider that  
2736 within the scope of the issues they address when they are  
2737 granting a permit. Unless you change the underlying  
2738 regulatory mandate of those related state and federal  
2739 agencies, that is the only way you can eliminate  
2740 consideration of those issues. They look at different  
2741 issues, that is why they are different agencies and they have  
2742 different mandates.

2743 Mr. {Rush.} Um-hum.

2744 Mr. Roos-Collins, I know that you are not an agency  
2745 expert on how this bill would impact commercially mandated  
2746 environmental protection laws, but I don't see anybody else  
2747 on the panel who is an agency expert either, nor did I see  
2748 anyone on the previous panel who is an agency expert, but I  
2749 just want to get your opinion, if I could. How would this  
2750 bill impact issues relevant to the commerce--Department of  
2751 Commerce, Department of the Interior, and the Agriculture--  
2752 Department of Agriculture who are the very agencies that are  
2753 responsible for protecting water quality, America's fishways,  
2754 federal reservations, and other of our nation's natural

This is a preliminary, unedited transcript. The statements within may be inaccurate, incomplete, or misattributed to the speaker. A link to the final, official transcript will be posted on the Committee's website as soon as it is available.

2755 resources? Can you give me an opinion on that?

2756 Mr. {Roos-Collins.} I do. The discussion draft would  
2757 transfer much of the authority to FERC. And I will leave  
2758 aside pre-licensing, which is what our testimony has  
2759 addressed. Let me briefly mention post-licensing. The  
2760 opening page of the discussion draft provides that FERC will  
2761 have exclusive authority to administer a license--

2762 Mr. {Rush.} Um-hum.

2763 Mr. {Roos-Collins.} --which is to say that it will have  
2764 exclusive authority to administer those terms of a license  
2765 that derive from a water quality certification. That is  
2766 trouble, in terms of actually protecting the beneficial uses  
2767 of our waters. And to be clear, Ranking Minority Member, I  
2768 believe that FERC is a very capable federal agency.

2769 Mr. {Rush.} Um-hum.

2770 Mr. {Roos-Collins.} I respect Ms. Miles and her staff.  
2771 They are competent. This is not about competency; it is  
2772 about on-the-ground knowledge. In a typical proceeding, FERC  
2773 staff will visit the project a few days. By contrast, the  
2774 staff for the State Water Agency, or for the Fish and  
2775 Wildlife Service and NIPS, or the National--the Forest  
2776 Service, will have walked those grounds dozens, if not  
2777 hundreds of times. That on-the-ground knowledge is what

This is a preliminary, unedited transcript. The statements within may be inaccurate, incomplete, or misattributed to the speaker. A link to the final, official transcript will be posted on the Committee's website as soon as it is available.

2778 Congress respected in the 1935 Federal Power Act, which  
2779 delegated to them limited authorities to use that knowledge  
2780 to protect certain resources.

2781         Mr. {Rush.} Well, it seems to me as though, Mr. Roos-  
2782 Collins, that we are at a position that the question--when  
2783 shifting the responsibility for holding trial-type hearings  
2784 on any disputed issue of material fact from the secretaries  
2785 of the same departments, Interior, Agriculture, or Commerce,  
2786 to FERC, would that, in your opinion, do anything to expedite  
2787 or will it be akin to a rat running around a maze, no way  
2788 out, in terms of the permitting process, would this help us  
2789 at all expedite?

2790         Mr. {Roos-Collins.} My opinion is that it would not  
2791 expedite, and it--indeed, it could delay.

2792         And if I might give one brief example. The National  
2793 Marine Fishery Services uses administrative law judges  
2794 assigned from the Coast Guard. Those judges conduct a trial  
2795 as though they were onboard a ship. At a pretrial  
2796 conference, they once looked at the attorneys and they said,  
2797 you have pending motions, if you argue those motions I will  
2798 cut you off, and if I cut you off I will probably rule  
2799 against you. You want to argue on the motions? And, of  
2800 course, all of the parties said no. Well, that pretrial

This is a preliminary, unedited transcript. The statements within may be inaccurate, incomplete, or misattributed to the speaker. A link to the final, official transcript will be posted on the Committee's website as soon as it is available.

2801 conference was over in 15 minutes.

2802           My experience with the judges assigned by Interior and  
2803 Commerce and Agriculture is that they are tough and fair, and  
2804 as a result, I don't think moving this to FERC would expedite  
2805 decisions.

2806           Mr. {Rush.} Mr. Chairman, I yield back.

2807           Mr. {Whitfield.} At this time, recognize the gentleman  
2808 from Virginia, Mr. Griffith, for 5 minutes.

2809           Mr. {Griffith.} Thank you, Mr. Chairman. Appreciate  
2810 it.

2811           Mr. Santa, I believe you may have heard my questions in  
2812 the prior--with the prior panel, and so you know that I am  
2813 concerned about placement of gas pipelines, but I want to  
2814 talk to you about the need for gas pipelines because that is  
2815 the driving force behind all of this, particularly in those  
2816 areas that have been relied on coal to produce their  
2817 electricity. With the myriad of different regulations that  
2818 the EPA has proposed, many of those power generating  
2819 companies, the electric company as we know it back home, are  
2820 having to turn to natural gas, isn't that true?

2821           Mr. {Santa.} Yes, sir, that is true.

2822           Mr. {Griffith.} And as a result of that, and looking  
2823 forward at the impact of the closing of many coal-fired power

This is a preliminary, unedited transcript. The statements within may be inaccurate, incomplete, or misattributed to the speaker. A link to the final, official transcript will be posted on the Committee's website as soon as it is available.

2824 electric generation units, many of those, particularly in the  
2825 Southeast and the East, are looking at using natural gas  
2826 instead, isn't that also true?

2827 Mr. {Santa.} That is correct, sir.

2828 Mr. {Griffith.} And as a result of that, there are some  
2829 serious concerns across the industry that if the natural gas  
2830 pipelines are not built in a quick manner, or brought to bear  
2831 fairly soon, we will have a problem with either rolling  
2832 brownouts or possibly even blackouts in many parts of the  
2833 East and Southwest, is that not also true?

2834 Mr. {Santa.} Many parties have expressed that in  
2835 connection with the Clean Power Plan. We are confident that  
2836 gas and gas pipelines ultimately can meet that need, but  
2837 INGAA too, in our comments on the Clean Power Plan and at the  
2838 FERC technical conferences noted the timing issues in terms  
2839 of the time needed to develop infrastructure versus the  
2840 compliance deadlines.

2841 Mr. {Griffith.} And, of course, it is one of the  
2842 reasons why I support legislation that would cut the Clean  
2843 Power Plan off until the litigation is over because it is  
2844 going to create huge problems for electric generation  
2845 companies across the United States, but particularly in the  
2846 Southeast and the East. And I have serious questions about

This is a preliminary, unedited transcript. The statements within may be inaccurate, incomplete, or misattributed to the speaker. A link to the final, official transcript will be posted on the Committee's website as soon as it is available.

2847 the legality of their--the EPA's interpretation--I should say  
2848 their new interpretation, not their original interpretation  
2849 of Section 111(d). And so that is one of the big drivers and  
2850 the reason that right now there are as many as four, I know  
2851 of at least two, a third that I have heard about, and a  
2852 fourth that has been indicated in an article today, looking  
2853 at power--or gas pipelines in my region, and that is what is  
2854 driving all of this, isn't that what you would indicate to  
2855 us?

2856 Mr. {Santa.} It is a significant driver. There is also  
2857 industrial demand that is part of the demand for those  
2858 pipelines.

2859 Mr. {Griffith.} Well, the--and the natural gas  
2860 pipeline--the national--the natural gas price being low is a  
2861 factor to be considered in that, and that is what is driving  
2862 that new manufacturing demand as well, isn't it?

2863 Mr. {Santa.} That is correct, sir, yes.

2864 Mr. {Griffith.} And so if we are going to have more  
2865 good-paying jobs, if we are going to have electricity in our  
2866 homes, whether I agree with the EPA's regulations or not, we  
2867 are going to need natural gas pipelines, isn't that correct?

2868 Mr. {Santa.} Yes, sir.

2869 Mr. {Griffith.} Now, that being said, how can we do



This is a preliminary, unedited transcript. The statements within may be inaccurate, incomplete, or misattributed to the speaker. A link to the final, official transcript will be posted on the Committee's website as soon as it is available.

2870 this in a better fashion because--and I would submit one of  
2871 those would be to give, you know, a better timeline on the  
2872 EPA regulations, if they are found legal, which I don't think  
2873 they will be, but what can we do to do a better job, because  
2874 the decision on the ground suddenly has folks in their yard  
2875 trying to figure out where they are going to place a  
2876 pipeline, and one month it is in one county, and the next  
2877 month it is in another county. And it has really got a lot  
2878 of folks, I think, legitimately upset that they are about to  
2879 lose their family farm or their home, or their area of  
2880 concern, you know, nearby them. And how can we allay those  
2881 fears for the general public?

2882       Mr. {Santa.} You know, you are right that this does  
2883 acutely affect landowners, it affects their major investment,  
2884 their home, their farm, their property. It also is  
2885 occasioned by the fact that we have prolific gas supplies in  
2886 places that, at least in recent history, haven't been  
2887 prolific supply areas, and so it has created the demand for  
2888 more pipelines to get that to the market. I think that  
2889 overall, the FERC does a very good job with its process. I  
2890 know that INGAA and its member companies are committed to  
2891 this because, beyond going through the construction and  
2892 siting process, these landowners will be our neighbors for

This is a preliminary, unedited transcript. The statements within may be inaccurate, incomplete, or misattributed to the speaker. A link to the final, official transcript will be posted on the Committee's website as soon as it is available.

2893 years. I think that the legislation today is intended to try  
2894 to make that process more efficient and yet still respect the  
2895 rights of landowners and environmental concerns, and also as  
2896 part of the Administrations' Quadrennial Energy Review, the  
2897 first installment focused on infrastructure, they focused on  
2898 improving the permitting process.

2899 Mr. {Griffith.} And I am assuming that my district is--  
2900 or my region, I should say, is not alone in having a number  
2901 of proposals being made because we are going to have to move  
2902 a lot of gas around the country. And of course, we had the  
2903 Governor of Maine in here, requesting that we facilitate that  
2904 somehow to get the gas to them, or to allow them to hook-up  
2905 to electricity either at the hydro side or from Canada.

2906 Ms. Elefant, do you think FERC is equipped to take a  
2907 look at the big picture and decide if they need to have two,  
2908 three, or four pipelines passing through the western part of  
2909 Virginia?

2910 Ms. {Elefant.} I think at some point somebody has to  
2911 take a look at the big picture. The Natural Gas Act,  
2912 although it is not imbued with the same public interest  
2913 standard as the Federal Power Act governing hydro, does issue  
2914 certificates for public necessity and convenience. If you  
2915 look at the history of the Act in some of the older cases,

This is a preliminary, unedited transcript. The statements within may be inaccurate, incomplete, or misattributed to the speaker. A link to the final, official transcript will be posted on the Committee's website as soon as it is available.

2916 FERC or the Federal Power Commission played a larger role,  
2917 and they would look to see if there was a need for three or  
2918 four pipelines, and try to make a--take a programmatic view  
2919 of what the public need was. In addition to development of  
2920 multiple pipelines, there are other ways to increase  
2921 efficiencies of existing pipelines to capture additional  
2922 natural gas. FERC, in fact, just last month, implemented a  
2923 policy which would incentivize existing pipeline developers  
2924 to address leaks in the pipeline. And there was a study  
2925 shown recently in the Boston area that if you could capture  
2926 all that leakage, you could increase the pipeline capacity by  
2927 almost 30 percent. So I think that in addition to looking at  
2928 just building more, we need to take a more robust approach  
2929 and also look at some creative solutions, for example, making  
2930 pipelines safer and addressing leaks, which is really a win-  
2931 win for everybody, including the pipeline, which gets  
2932 incentive payments to do that.

2933 Mr. {Griffith.} My time is up. I yield back, Mr.  
2934 Chairman.

2935 Mr. {Whitfield.} Gentleman's time is up.

2936 At this time, recognize the gentleman from California,  
2937 Mr. McNerney, for 5 minutes.

2938 Mr. {McNerney.} Thank you, Mr. Chairman. And I want to

This is a preliminary, unedited transcript. The statements within may be inaccurate, incomplete, or misattributed to the speaker. A link to the final, official transcript will be posted on the Committee's website as soon as it is available.

2939 welcome Mr. Livingston here to the committee this morning--  
2940 this afternoon, now.

2941 PG&E has done a lot of creative things with respect to  
2942 the grid, and it has taken a lot of steps in terms of  
2943 pipeline safety and leakage, so I want to make sure you get  
2944 credit for that.

2945 Are there particular federal agencies that are having  
2946 trouble coming to the table on the hydro issue in a timely  
2947 manner?

2948 Mr. {Livingston.} I think each of the agencies, you  
2949 know, they have very dedicated folks and they are doing their  
2950 best, but in a lot of cases, what we are looking at is  
2951 agencies that have single or a few resource focus. Right?  
2952 So if you are working in the water area or around land, or in  
2953 other issues on fish, the same thing with some of the other  
2954 stakeholders in this who might be interested in recreation or  
2955 fishing, and it is really all of that coming together. What  
2956 one agency versus another one would do as far as a  
2957 prescription is--might interfere with what--another one. So  
2958 the real point is trying to come together in a way that there  
2959 is one set--there is a decision-maker, there is one set of  
2960 decisions. So it is not one particular agency, it is when we  
2961 have sequential decision-making going on and, you know,

This is a preliminary, unedited transcript. The statements within may be inaccurate, incomplete, or misattributed to the speaker. A link to the final, official transcript will be posted on the Committee's website as soon as it is available.

2962 having an agency that can balance the beneficial uses--all  
2963 the beneficial uses, and right now the only federal agency in  
2964 the hydrospace that does--that has that in statute is FERC.

2965 Mr. {McNerney.} Are problems with regard to timing and  
2966 responsiveness exacerbated by the drought in California now?

2967 Mr. {Livingston.} Sure. I think, you know,  
2968 particularly since we are in the fourth year of drought,  
2969 there--and with the Governor making sure that we are taking  
2970 decisive action on that. There is a lot of focus on trying  
2971 to deal with the issues associated with water supply in the  
2972 state, and many of the same folks and many of the same  
2973 agencies are devoting their focus, rightly so, to that, and  
2974 that does recently have an impact on--

2975 Mr. {McNerney.} Okay.

2976 Mr. {Livingston.} --agency timing and so on.

2977 Mr. {McNerney.} Mr. Santa, you indicated in your  
2978 testimony that a number of reasons for potential delays to  
2979 permits, including lack of agency resources, which I am sort  
2980 of getting from Mr. Livingston as well, cooperation with FERC  
2981 and applications being deemed incomplete. Could you talk a  
2982 little bit about the cooperation with FERC? I am not sure  
2983 what that means.

2984 Mr. {Santa.} I think that I would have to go back and

This is a preliminary, unedited transcript. The statements within may be inaccurate, incomplete, or misattributed to the speaker. A link to the final, official transcript will be posted on the Committee's website as soon as it is available.

2985 look specifically at the report, but I think it gets to the  
2986 issue of--and a lot of what is attempted to be addressed in  
2987 the discussion draft, of other permitting agencies being  
2988 involved early in the process with the FERC in working  
2989 cooperatively. For example, there have been some instances  
2990 where agencies will not begin their process until some other  
2991 action has been taken. So rather than things occurring  
2992 concurrently, they may occur sequentially. That adds to the  
2993 time.

2994 Mr. {McNerney.} Um-hum.

2995 Mr. {Santa.} I think it was trying to address things  
2996 like that.

2997 Mr. {McNerney.} Okay. Thank you. Do you think there  
2998 is a chance that if this law or this bill were passed and  
2999 enacted into law, that it would make delays longer or give  
3000 rejections of applications because the agency didn't have  
3001 time to complete the study?

3002 Mr. {Santa.} Well, two things. I mean number one, you  
3003 know, Ms. Miles, I think, had some good comments on the draft  
3004 where she noted that there were parts of it that could be  
3005 interpreted to inhibit FERC's ability to try to resolve some  
3006 of these things earlier in the process, rather than later.  
3007 And I would certainly commend the subcommittee to take a look

This is a preliminary, unedited transcript. The statements within may be inaccurate, incomplete, or misattributed to the speaker. A link to the final, official transcript will be posted on the Committee's website as soon as it is available.

3008 at that and see if that could be addressed.

3009           The issue of whether it might lead to rejections as the  
3010 way for the agency to act, that is actually something that we  
3011 talked about last year at a hearing in conjunction with Mr.  
3012 Pompeo's legislation. I know that concern was expressed.  
3013 And I think on behalf of INGAA's members, we made the point  
3014 that, quite frankly, we would prefer the definite answer,  
3015 even if it is a negative answer, to be engaged in a  
3016 protracted process of waiting for an answer.

3017           Mr. {McNerney.} Well, I think what you have indicated  
3018 is there have been increases in federal authorization that  
3019 failed to meet the 90-day deadline. Do you think that is  
3020 because there are more applicants, because there are more  
3021 projects being approved, because there is more capacity being  
3022 approved in the process?

3023           Mr. {Santa.} That is a good question. I don't know.  
3024 The one thing I would say is that the study that we pointed  
3025 to in our testimony was released in, I believe, 2012, so it  
3026 dealt with projects that were 2012 and earlier. That was  
3027 before really the wave of projects and infrastructure we have  
3028 seen proposed in response to the shale revolution and all of  
3029 the new supply coming to the market. So I am not sure that  
3030 those delays really had to do with the volume of work--number

This is a preliminary, unedited transcript. The statements within may be inaccurate, incomplete, or misattributed to the speaker. A link to the final, official transcript will be posted on the Committee's website as soon as it is available.

3031 of projects being proposed to the agencies, but that is a  
3032 good question.

3033 Mr. {McNerney.} Okay. Thank you, Mr. Chairman. I  
3034 yield back.

3035 Mr. {Whitfield.} Gentleman's time has expired.

3036 I have a couple of other questions I would like to ask,  
3037 and if any of you all want to ask any others, fine. But, Mr.  
3038 Collins, one--Mr. John Collins, one question I want to ask  
3039 you is, do you think hydropower is disadvantaged by this  
3040 current regulatory process?

3041 Mr. {Collins.} Yes, I do. I believe that the time it  
3042 takes to license and the expense of licensing new hydropower  
3043 or relicensing hydropower puts it at a distinct disadvantage  
3044 relative to other renewable technologies.

3045 Mr. {Whitfield.} Yeah, I mean I mentioned in my opening  
3046 statement that there are certain renewables like wind and  
3047 solar that get precedence, that get preferential treatment,  
3048 and are even exempted in some--from some federal laws. But  
3049 okay, I just wanted to clarify that.

3050 And then, Mr. Suloway, and maybe Mr. Roos-Collins might  
3051 want to comment on this as well, but you stated that other  
3052 federal resource agencies have the authority to impose  
3053 mandatory environmental conditions on the FERC license, and



This is a preliminary, unedited transcript. The statements within may be inaccurate, incomplete, or misattributed to the speaker. A link to the final, official transcript will be posted on the Committee's website as soon as it is available.

3054 that that seems to contribute to delay and additional cost.

3055 Am I reading something into your statement, or is that

3056 accurate what I have said that you believe?

3057 Mr. {Suloway.} No, there--they do employ mandatory

3058 conditions that do increase the cost of owning a FERC

3059 license. That--

3060 Mr. {Whitfield.} Okay.

3061 Mr. {Suloway.} That is a fact.

3062 Mr. {Whitfield.} Do you want to make a comment on that,

3063 Mr. Collins--Roos-Collins? I mean you don't have to, I was

3064 just--

3065 Mr. {Roos-Collins.} Mr. Chairman, yes, the license

3066 articles required by other federal agencies have increased

3067 cost in terms of implementation. The question that we ask

3068 is, are the benefits worth the cost? And so to take New York

3069 Power Authority's St. Lawrence FDR Project as a for instance,

3070 the federal and state agencies alike use these very

3071 authorities through settlement. I dare say that the result

3072 for the power authority may have been more expensive than

3073 what would have happened if FERC had exclusive authority.

3074 Mr. {Whitfield.} Right.

3075 Mr. {Roos-Collins.} I think it is also fair to say that

3076 the benefits--

This is a preliminary, unedited transcript. The statements within may be inaccurate, incomplete, or misattributed to the speaker. A link to the final, official transcript will be posted on the Committee's website as soon as it is available.

3077 Mr. {Whitfield.} Um-hum. Yeah.

3078 Mr. {Roos-Collins.} --were significant.

3079 Mr. {Whitfield.} Yeah, well, I think that is important  
3080 because sometimes there are additional costs, but maybe the  
3081 benefits outweigh that. But also let me ask this question.  
3082 Do these mandatory conditioning authority of other federal  
3083 resource agencies frustrate FERC's ability to balance or  
3084 modify the public interest? Do any of you have a thought on  
3085 that?

3086 Mr. {Livingston.} I don't think anyone disputes the  
3087 rights of a federal agency to prescribe what happens on its  
3088 land. I think part of the question goes how far does that  
3089 authority go? Should it apply to neighboring lands, should  
3090 it apply to private lands, should it apply to lands that are  
3091 far away and have no clear nexus? So I think it is really  
3092 getting down to the--having Congress define the extent of  
3093 where that authority goes and how it is used, rather than any  
3094 recognition that, you know, they don't have the right to  
3095 prescribe how their--how somebody who is a guest on their  
3096 land should treat the land. And I think we all agree with  
3097 that. It is just--

3098 Mr. {Whitfield.} Okay.

3099 Mr. {Livingston.} --a matter of extent and where.

This is a preliminary, unedited transcript. The statements within may be inaccurate, incomplete, or misattributed to the speaker. A link to the final, official transcript will be posted on the Committee's website as soon as it is available.

3100 Mr. {Whitfield.} Okay. Well, thank you.

3101 Do--Mr. Green. Mr. Green is recognized for 5 minutes.

3102 Mr. {Green.} Thank you, Mr. Chairman. I apologize.

3103 Typically, on a Wednesday up here, there are so many issues  
3104 going on and so many hearings.

3105 Ms. Elefant, you mentioned in your testimony that you  
3106 are not aware of any federal agency that allows a trump card.  
3107 In the LNG export permitting process, FERC requires the bulk  
3108 of the NEPA analysis with nothing but a concurrence from the  
3109 DOE. Why is deference to FERC not acceptable?

3110 Ms. {Elefant.} Well, I think that the provision with  
3111 deference to DOE is--doesn't necessarily have to do with the  
3112 resource review. The LNG review authority still expressly  
3113 preserves the power of states to issue permits under the  
3114 Clean Water Act, the Clean Air Act, and the Coastal Zone  
3115 Management Act, and so I think that that statutes have such  
3116 unique relationship to protecting those resources and having  
3117 sort of an established procedure that deferring to FERC could  
3118 encroach on the policies that were intended to be protected  
3119 by those other laws.

3120 Mr. {Green.} Well, what we are trying to do is get more  
3121 coordination between the federal agencies, but you mentioned  
3122 also that you are concerned about public participation.

This is a preliminary, unedited transcript. The statements within may be inaccurate, incomplete, or misattributed to the speaker. A link to the final, official transcript will be posted on the Committee's website as soon as it is available.

3123 Would a 30-day notice and comment period regarding issue  
3124 resolution alleviate some of those concerns?

3125       Ms. {Elefant.} I think that that--the provision related  
3126 to issue resolution, I have said I didn't think that  
3127 something like that was necessary because there are multiple  
3128 opportunities for issues to currently be resolved. For  
3129 example, in one case that I have that I think would be  
3130 accurately characterized as a delay case, the state agency  
3131 and the Corps of Engineers, very early in the pre-filing  
3132 process and again in the application process, expressed some  
3133 concerns and reservations about where the project was going  
3134 to go, and also asked for additional information on certain  
3135 resources. And there were--it seemed to me that there were  
3136 many opportunities to resolve those along the way rather than  
3137 have it be done in this pressured 30-day period, like the  
3138 statute prescribes. I mean there are still opportunities for  
3139 the agencies to cooperate, and that does happen from time to  
3140 time.

3141       Mr. {Green.} Well, and I know the pre-filing work, I  
3142 don't know if we have exhausted the success of that, but that  
3143 is a goal to do it, to get, you know, the Corps and different  
3144 agencies together so the applicant will know what the problem  
3145 is and can deal with that early on, and so that is out goal,

This is a preliminary, unedited transcript. The statements within may be inaccurate, incomplete, or misattributed to the speaker. A link to the final, official transcript will be posted on the Committee's website as soon as it is available.

3146 I guess.

3147 Mr. Santa, in your testimony, you state that challenging  
3148 a permitting agency's tardiness or inaction is time-consuming  
3149 and risky. Where do most companies focus on their  
3150 challenges? Is it a state agency or a federal agency?

3151 Mr. {Santa.} It varies because in some instances, it is  
3152 a state agency acting pursuant to delegated federal  
3153 authority.

3154 Mr. {Green.} Yeah.

3155 Mr. {Santa.} For example, I think in, you know, both of  
3156 the cases that the--where pipelines have availed themselves  
3157 of the judicial review provisions, they have been challenging  
3158 state agency actions.

3159 Mr. {Green.} Do you--what state would that be?

3160 Mr. {Santa.} I believe one of them was Connecticut, and  
3161 I believe the other one was Maryland.

3162 Ms. {Elefant.} Maryland was a delay case.

3163 Mr. {Green.} Okay. So it depends on the area, I guess.

3164 Mr. {Santa.} That is correct, yes.

3165 Mr. {Green.} I was wondering if that was a problem with  
3166 Texas. Okay. Would arbitration better serve that approval  
3167 process?

3168 Mr. {Santa.} I really don't know. That is an

This is a preliminary, unedited transcript. The statements within may be inaccurate, incomplete, or misattributed to the speaker. A link to the final, official transcript will be posted on the Committee's website as soon as it is available.

3169 interesting question, Mr. Green, as to whether or not that  
3170 would be something that might work. I think that the, you  
3171 know, provisions that are in the draft now in terms of a  
3172 dispute resolution process, I think are intended to kind of  
3173 go in the direction of how do we resolve these disputes. I  
3174 have not, you know, heard of arbitration being suggested  
3175 before in the context of a permitting agency, an applicant,  
3176 and the other stakeholders.

3177 Mr. {Green.} Right. That would get you to a decision  
3178 though.

3179 Mr. {Santa.} That is correct.

3180 Mr. {Green.} And that is the problem.

3181 Mr. {Santa.} Yes.

3182 Mr. {Green.} You know, the time frame keeps getting  
3183 extended because the decision is not there.

3184 Mr. {Santa.} Yes.

3185 Mr. {Green.} The--isn't that the role though for the  
3186 pre-filing review is to try and get that information out  
3187 before during the pre-filing?

3188 Mr. {Santa.} I think that is the goal of the pre-filing  
3189 is to try to get these issues on the table early to begin to  
3190 resolve them, and also to deal with them in a context before  
3191 you have got a FERC application, in which case the ex parte

This is a preliminary, unedited transcript. The statements within may be inaccurate, incomplete, or misattributed to the speaker. A link to the final, official transcript will be posted on the Committee's website as soon as it is available.

3192 rules and various things come to attach that tend to make it  
3193 more cumbersome and more difficult to resolve. So yes.

3194 Mr. {Green.} Okay. Well, Mr. Chairman, I have run out  
3195 of time, but I appreciate it. But I also know that, you  
3196 know, in the--because obviously, where I come from, the LNG  
3197 exporting permits are an issue, and it is not necessarily  
3198 FERC, it is also DOE. And I said it earlier, you know, the  
3199 Corpus Christie permitting for both FERC but also with DOE  
3200 was very quick, and--comparatively, but obviously, we have a  
3201 whole bunch more in line because most of those permits will  
3202 probably come from Louisiana and Texas instead of the east or  
3203 west coast.

3204 Thank you, Mr. Chairman.

3205 Mr. {Whitfield.} You are welcome.

3206 Recognize Mr. Rush.

3207 Mr. {Rush.} Mr. Chairman. Thank you, Mr. Chairman.  
3208 Mr. Chairman, the Ranking Member Pallone asked this question  
3209 of the previous panel, and I want to ask Mr. Roos-Collins the  
3210 same question.

3211 Mr. Roos-Collins, buried in the language of the draft is  
3212 a two-word change to Section 4(e) of the Federal Power Act.  
3213 The words on the existing statute ``shall deem'' are replaced  
3214 by the single word ``determines''. The context of this

This is a preliminary, unedited transcript. The statements within may be inaccurate, incomplete, or misattributed to the speaker. A link to the final, official transcript will be posted on the Committee's website as soon as it is available.

3215 change is mandatory conditioning authority of the resource  
3216 agencies.

3217 I have three questions. Is this a significant change  
3218 from current law? What would be the practical effect of this  
3219 change on the ability of resource agencies to protect and  
3220 manage things under their jurisdiction? And lastly, will  
3221 this change result in more or less litigation, in your  
3222 opinion?

3223 Mr. {Roos-Collins.} In my opinion, the change in those  
3224 two words is not significant, and here is why. I think the  
3225 intent of the discussion draft is to change from a verb,  
3226 deem, that has lots of discretion to determine, which sounds  
3227 like it must be more rational and based in the record. That  
3228 is what these agencies already must do. There is a case  
3229 called Bangor Hydro, decided by the D.C. Circuit in 1996,  
3230 that expressly held that a federal agency cannot have a field  
3231 of dreams justification for a condition; it must have a  
3232 rational basis and state a specific goal. And so with  
3233 respect to those two words, what I see is an intent to  
3234 recognize the holding of that case, and similar cases that  
3235 followed.

3236 Mr. {Rush.} Thank you. Mr. Chairman, thank you so  
3237 much.



This is a preliminary, unedited transcript. The statements within may be inaccurate, incomplete, or misattributed to the speaker. A link to the final, official transcript will be posted on the Committee's website as soon as it is available.

3238           Mr. {Whitfield.} Well, that concludes the questions,  
3239 and concludes the hearing. And once again, I want to thank  
3240 all of you for taking your time and coming and share your  
3241 views and experiences with us. We look forward to working  
3242 with all of you as we move forward trying to develop an  
3243 overall energy package.

3244           And we will keep the record open for 10 days. And I  
3245 would like to ask unanimous consent that the following  
3246 statements and letters be submitted for the record. A letter  
3247 from the Edison Electric Institute in support of the  
3248 hydropower regulatory modernization discussion draft, and  
3249 second, a statement from the American Public Power  
3250 Association in support of the--of both the natural gas  
3251 pipeline permitting reform and hydropower regulatory  
3252 modernization discussion drafts.

3253           {Voice.} Without objection.

3254           Mr. {Whitfield.} Without objection, so entered.

3255           [The information follows:]

3256 \*\*\*\*\* COMMITTEE INSERT \*\*\*\*\*

This is a preliminary, unedited transcript. The statements within may be inaccurate, incomplete, or misattributed to the speaker. A link to the final, official transcript will be posted on the Committee's website as soon as it is available.

|

3257           Mr. {Whitfield.}   And thank you all once again.

3258           And that will conclude today's hearing.

3259           [Whereupon, at 1:08 p.m., the Subcommittee was

3260 adjourned.]