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6 LEGISLATION ADDRESSING PIPELINE AND

7 HYDROPOWER INFRASTRUCTURE MODERNIZATION

8 WEDNESDAY, MAY 3, 2017

9 House of Representatives

10 Subcommittee on Energy

11 Committee on Energy and Commerce

12 Washington, D.C.

13

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16 The subcommittee met, pursuant to call, at 10:00 a.m., in
17 Room 2123 Rayburn House Office Building, Hon. Pete Olson [vice
18 chairman of the subcommittee] presiding.

19 Members present: Representatives Olson, Barton, Murphy,
20 Latta, Harper, McKinley, Kinzinger, Griffith, Johnson, Long,
21 Bucshon, Flores, Mullin, Hudson, Cramer, Walberg, Rush, McNerney,
22 Peters, Green, Castor, Welch, Tonko, Loebssack, Schrader, Kennedy,

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23 and Pallone (ex officio).

24 Staff present: Grace Appelbe, Legislative Clerk,
25 Energy/Environment; Ray Baum, Staff Director; Mike Bloomquist,
26 Deputy Staff Director; Zachary Dareshori, Staff Assistant; Wyatt
27 Ellertson, Research Associate, Energy/Environment; Adam Fromm,
28 Director of Outreach and Coalitions; Tom Hassenboehler, Chief
29 Counsel, Energy/Environment; A.T. Johnston, Senior Policy
30 Advisor, Energy; Ben Lieberman, Senior Counsel, Energy; Alex
31 Miller, Video Production Aide and Press Assistant; Brandon
32 Mooney, Deputy Chief Energy Advisor; Dan Schneider, Press
33 Secretary; Sam Spector, Policy Coordinator, Oversight and
34 Investigations; Madeline Vey, Policy Coordinator, Digital
35 Commerce and Consumer Protection; Jeff Carroll, Minority Staff
36 Director; David Cwiertny, Minority Energy/Environment Fellow;
37 Jean Fruci, Minority Energy and Environment Policy Advisor;
38 Caitlin Haberman, Minority Professional Staff Member; Rick
39 Kessler, Minority Senior Advisor and Staff Director, Energy and
40 Environment; Alexander Ratner, Minority Policy Analyst; Andrew
41 Souvall, Minority Director of Communications, Outreach and Member
42 Services; Tuley Wright, Minority Energy and Environment Policy
43 Advisor; and C.J. Young, Minority Press Secretary.

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44 Mr. Olson. The Subcommittee on Energy will now come to order.
45 The chair now recognizes itself for 5 minutes for an opening
46 statement. Welcome, everyone. Today the subcommittee will
47 begin to review bills to modernize pipeline and hydropower
48 infrastructure. We have ten bills before us. Some have already
49 been introduced while others are in discussion forum, but we
50 already have an extensive record on these issues that these bills
51 address.

52 We begin in this Congress by picking up where we left off
53 last year with hearings on the challenges we face to expand hydro
54 and pipeline infrastructure. We have heard from job creators,
55 contractors, labor, tribal interests, consumers, and private
56 citizens. Then we will hear from the Federal Energy Regulatory
57 Commission, otherwise known as FERC, the lead agency for these
58 reviews.

59 As we move forward, we will continue to work with the states
60 and other federal agencies that have a role to ensure that we
61 balance the need to modernize our infrastructure with the
62 important safety, environmental, and consumer protections. We
63 will also hear from stakeholders, both industry and citizen
64 groups. I look forward to their input.

65 I suspect many of these witnesses will tell us what we have

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66 heard for a while now; getting these projects done has become an
67 incredibly difficult process. These projects need to be reviewed
68 and they need to be safe, but once we have done our due diligence
69 foot dragging is malpractice. We need to fix this and get it
70 right. Together these ten bills represent the beginning of an
71 effort to modernize our energy infrastructure, improve access to
72 affordable and reliable energy, and lower prices for consumers.
73 I want to thank the witnesses for appearing today before us and
74 look forward to their testimony.

75 I now yield to the Ranking Member Mr. Rush from Illinois.

76 Mr. Rush. Good morning. Thank you, Mr. Chairman.

77 Mr. Chairman, before I begin I just want to make a point.
78 I am really concerned about Chairman Upton and our friend
79 Representative Long. I understand that he is over at the White
80 House and I just wonder is he okay? Shall we have a moment of
81 prayer for him or a moment of silence?

82 Mr. Olson. He is doing just fine. He is okay.

83 Mr. Rush. Well, I want to thank you, Mr. Chairman, for
84 holding today's hearing on expediting the permitting process for
85 natural gas pipelines and hydropower projects. Mr. Chairman, the
86 legislation before us streamlining natural gas pipelines appears
87 to suffer and to offer a solution in search of a problem. FERC

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88 data shows that between 2009 to 2015 over 100 million natural gas
89 pipeline projects were approved spanning over 3,700 miles in 35
90 states for a total capacity of over 45 billion cubic feet per day,
91 and an overwhelming 91 percent, Mr. Chairman, of applications were
92 decided within 12 months.

93 More importantly, Mr. Chairman, without a quorum at FERC no
94 new projects will get approved, so rather than proposing changes
95 to a process that already works we should be reaching out to the
96 administration and urging them to submit candidates for the
97 Commission as well as for the other departments that are under
98 our jurisdiction that are still waiting to fill important
99 vacancies.

100 Mr. Chairman, there may be some areas where we might be able
101 to find bipartisan support and compromise such as streamlining
102 the licensing process for hydropower infrastructure. However,
103 Mr. Chairman, and as the April 27th letter submitted to you and
104 Chairman Walden from myself, Ranking Member Pallone, and other
105 colleagues indicated, it is critical for the subcommittee to hear
106 from other important stakeholders who will be directly impacted
107 by these changes including the states, resource agencies, and
108 Native American tribes.

109 Mr. Chairman, I also have concerns with the cross-border bill

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110 which would shift the burden of proof to opponents of a project
111 to show that the project is not in the public interest. This bill
112 also limits the scope of review for large transnational pipelines
113 to only a tiny section of a project that physically crosses the
114 border no matter how many communities, states, and properties a
115 pipeline might actually traverse.

116 Mr. Chairman, as the recent Oroville Dam failure
117 demonstrated, expediency must not trump safety. Public comment
118 and engagement must continue to play a vital part of any permitting
119 process. So Mr. Chairman, before moving forward on these bills,
120 many which would make it easier for private companies to take
121 control of the use of waters belonging to the people of the United
122 States, it is vital that we hear from witnesses who can provide
123 expert testimony on how taking authority away from other agencies
124 and consolidating power and decision making authority solely
125 within the FERC might impact the public interest.

126 Mr. Chairman, I want to thank you and I yield back the balance
127 of my time. Mr. McNerney, I want to --

128 Mr. McNerney. I thank the gentleman for yielding. While
129 there are a number of bills under discussion today, I am going
130 to focus my remarks on hydropower. We know that worldwide
131 hydropower generates about six percent of electricity and about

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132 half of the renewable energy generation. Hydropower generation
133 does not produce carbon emissions. As a nation we must move away
134 from harmful fossil fuels and continue to bolster our renewable
135 and clean energy generation sources if we are to combat and
136 mitigate the effects of climate change.

137 We also know that FERC will manage approximately 500
138 hydropower projects by 2030 that represent about 18,000 megawatts
139 of generation. The current process clearly needs improvement,
140 so what is it that needs to be done -- the accountability of all
141 stakeholders, timely decisions and the sharing of information,
142 protection of our nation's waterways, habitat, and environment.

143 Now the Federal Power Act has worked okay in many ways over
144 the last 90 years, but I have heard from stakeholders over the
145 entire spectrum that the process could be better. I have heard
146 from FERC, from the resource agencies, from applicants, from
147 tribes, from states, from NGOs and others. I believe that we can
148 find common ground, but we need to work on a bipartisan basis to
149 enact real solutions. If one side or the other imposes its will
150 on the other, the solutions won't work. I yield back.

151 Mr. Olson. The gentleman yields back. The chair calls upon
152 the gentleman from North Carolina, Mr. Hudson, for 3 minutes.

153 Mr. Hudson. Thank you, Mr. Olson. I would like to thank

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154 Chairman Upton and Ranking Member Rush for holding today's hearing
155 on improving America's hydropower systems. This issue resonates
156 strongly with me because North Carolina has a rich history of
157 hydropower. Our Catawba River was among the first rivers to be
158 developed for hydropower. In North Carolina alone it generates
159 enough electricity to power 350,000 homes each year.

160 This low-risk, high-reward technology could provide
161 significant benefits, yet the potential remains uncaptured in
162 part because of a prohibitive permitting process. I am pleased
163 to continue working with my colleagues, Congresswoman DeGette,
164 on promoting the Small Conduit Hydropower Facilities Act to build
165 on this committee's successful legislative efforts and reduce the
166 total review process time for small scale hydropower by 75
167 percent, from 60 days down to 15 days. Reducing regulatory
168 burdens is a common sense way to increase our supply of clean and
169 affordable electricity.

170 Thank you again, Mr. Chairman, for including our legislation
171 on today's agenda. I look forward to working with you to advance
172 this initiative through the committee, and I yield back.

173 Mr. Olson. The gentleman yields back. The chair now, in
174 the spirit of bipartisanship, calls on anyone from the Democrat
175 side for a 3-minute statement like Mr. Hudson.

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176 Oh, I didn't see Mr. Pallone. I am sorry. 5 minutes for
177 the ranking member of the full committee, Mr. Pallone.

178 Mr. Pallone. Thank you. Thank you, Mr. Chairman, for
179 holding the hearing on the ten bills addressing hydropower and
180 pipeline infrastructure. Hydroelectric power is among the most
181 mature generating technologies. It provides virtually
182 carbon-free base load energy at low cost to our manufacturing
183 sector and to residential and commercial consumers and
184 hydroelectric power is an important asset we need to maintain.
185 At the same time, it has major impacts on fish and wildlife
186 populations, water quality, water supply management, and other
187 important physical and cultural resources if poorly operated or
188 cited.

189 While hydroelectric power licenses depend on rivers for free
190 fuel, those rivers belong to all Americans not just those who sell
191 or buy the power generated from it. Hydroelectric licenses have
192 fixed conditions that generally remain unchanged during the 30
193 to 50 years that they are in force. Licenses also benefit from
194 unlimited automatic annual extensions after their license has
195 expired if a new license has not been issued and as a result, the
196 impacts of these hydropower dams often go unaddressed for more
197 than half a century.

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198 For those facilities first licensed before enactment of the
199 National Environmental Policy Act, the Clean Water Act, and the
200 Endangered Species Act in the 1970s, the licensing process
201 certainly can be quite rigorous. Sometimes the necessity of
202 addressing these complex issues also makes the process time
203 consuming and expensive as new license conditions will require
204 significant upgrades to old facilities to bring them in line with
205 modern environmental laws and regulations.

206 So Mr. Chairman, we want to work with you on hydroelectric
207 licensing reform with the goal of expediting the process while
208 maintaining the fundamental principles of balance in the process
209 and this would allow us to maximize the benefits of hydroelectric
210 power and expand it where it is most appropriate to do so.

211 Our hydro hearing in March was one of the most constructive
212 we had and that was very encouraging. It was also incomplete
213 because we did not hear from the other stakeholders who were
214 central to relicensing. We didn't hear from federal resource
215 agencies, states, and tribes, and this is something members on
216 our side feel strongly about, which is why we wrote to you.

217 And you, Mr. Chairman and Chairman Walden, last week we wrote
218 to you requesting a hearing because we understand more fully the
219 challenges facing the hydropower industry and the rivers the

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220 industry relies upon before we update our policies, but we also
221 gain a more thorough appreciation of the impacts of hydroelectric
222 generation on others who use the rivers -- tribes, fishermen,
223 farmers, boaters, and many more -- to ensure their interests are
224 treated fairly in the process. So I just wanted to turn my
225 attention to the two non-hydro bills before us today. First, we
226 have a discussion draft that amends the Natural Gas Act and
227 resembles similar legislation we saw last Congress as well as
228 proposals in prior years. The purported goal of the draft is to
229 enhance agency coordination and speed up FERC's review of natural
230 gas pipelines.

231 While I think we could all support the idea of making
232 permitting more efficient generally, this bill like its
233 predecessors remains a solution in search of a problem. The fact
234 is that in the last 3 years FERC has approved more pipelines each
235 year than the one preceding it, with roughly 90 percent of pipeline
236 projects being certificated within 1 year.

237 And I will admit that since President Trump took office, the
238 number of approvals has taken a dive, but that has nothing to do
239 with the permitting process. Instead, approvals are down because
240 FERC has lacked a quorum for 3 months and the President has yet
241 to nominate anyone to any of the three open slots. To make matters

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242 worse, FERC will soon have only one commissioner when Commissioner
243 Honorable's term expires at the end of June. What that means in
244 terms of natural gas projects is that FERC has not approved a gas
245 pipeline project since February 3rd.

246 So if the goal of my colleagues on the other side of the aisle
247 is truly to speed up the FERC approval of gas pipelines, perhaps
248 they should pick up the phone and ask President Trump to nominate
249 at least a couple of new FERC commissioners so they can begin to
250 consider applications for these projects once again. Until then,
251 I find any conversation about needing legislation to expedite
252 pipeline approvals at FERC untimely.

253 The Cross-border Energy discussion draft also looks very
254 similar to legislation we debated at length last Congress. This
255 proposal eliminates the current presidential permitting process
256 for energy projects that cross the U.S. border substituting it
257 with a weaker environmental review process that in effect
258 rubber-stamps applications.

259 With President Trump already approving the Keystone XL
260 pipeline and signaling support for new pipelines and other energy
261 projects around the country, it is unclear to me why Republicans
262 feel it is necessary to strip the President of his approval
263 authority. Do my colleagues on the other side of the aisle

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264 honestly not have confidence in President Trump to make rational
265 decisions on major energy projects? While I certainly have many
266 concerns and would certainly not fault my Republican friends for
267 any trepidation on their part, I still believe that this authority
268 should continue to rest with the President of the United States
269 regardless of whether his name is Obama or Trump.

270 So I want to thank our witnesses for coming today,
271 particularly Ms. Danis who is from New Jersey and is here
272 representing, among others, the New Jersey Conservation
273 Foundation. Thank you, Mr. Chairman.

274 Mr. Olson. The gentleman yields back. We now conclude with
275 member opening statements. The chair would like to remind all
276 members that pursuant to the committee rules, all members' opening
277 statements will be made part of the record, and I want to thank
278 our witnesses for being here today and taking your time to testify
279 before the subcommittee.

280 Today's hearing will consist of two panels. Each panel of
281 witnesses will have the opportunity to give an opening statement
282 followed by a round of questions from the members. Once we
283 conclude the first panel we will take a few minutes to set up the
284 second panel.

285 Our first witness panel for today's hearing includes Mr.

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286 Terry Turpin. Mr. Turpin is director of Office of Energy Projects
287 at FERC; and Mr. John Katz, Mr. Katz is a deputy associate general
288 counsel for the Office of General Counsel at FERC as well. We
289 appreciate you being here today. We will begin by recognizing
290 you, Mr. Turpin, for 5 minutes to give an opening statement.

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291 STATEMENTS OF TERRY TURPIN, DIRECTOR, OFFICE OF ENERGY PROJECTS,
292 FEDERAL ENERGY REGULATORY COMMISSION; AND, JOHN KATZ, DEPUTY
293 ASSOCIATE GENERAL COUNSEL, OFFICE OF THE GENERAL COUNSEL, FEDERAL
294 ENERGY REGULATORY COMMISSION

295

296 STATEMENT OF TERRY TURPIN

297 Mr. Turpin. Thank you. Good morning, Vice Chairman Olson,
298 Ranking Member Rush, and members of the subcommittee. My name
299 is Terry Turpin and I am director of the Office of Energy Projects
300 at the Federal Energy Regulatory Commission. The Office is
301 responsible for taking a lead role in carrying out the
302 Commission's duties in siting infrastructure projects including
303 non-federal hydropower projects, interstate natural gas
304 facilities, and liquefied natural gas terminals. Thank you for
305 the opportunity to appear before you to discuss drafts of the
306 Promoting Interagency Coordination for Review of Natural Gas
307 Pipelines Act and the Promoting Cross-Border Energy
308 Infrastructure Act.

309 As a member of the Commission's staff, the views I express
310 in my testimony are my own and not necessarily those of the
311 Commission or any individual commissioner.

312 The Commission is responsible under Section 7 of the Natural

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313 Gas Act for authorizing the construction of interstate natural
314 gas facilities, and under Section 3 of the Natural Gas Act for
315 authorizing the construction of import/export facilities. The
316 Commission acts as the lead agency for the purpose of coordinating
317 all applicable federal authorizations and as the lead agency for
318 complying with the National Environmental Policy Act.

319 The environmental review is carried out through a process
320 that allows cooperation from numerous stakeholders including
321 federal, state and local agencies, Native Americans, and the
322 public. In order to maximize the engagement between the
323 applicant and these various stakeholders, the Commission has
324 developed its pre-filing review process.

325 The Commission's current approach allows for a systematic
326 and collaborative process and has resulted in substantial
327 additions to the nation's natural gas infrastructure. Since
328 2000, the Commission has authorized nearly 18,000 miles of
329 interstate natural gas pipeline totaling more than 159 billion
330 cubic feet per day of transportation capacity, over one trillion
331 cubic feet of interstate natural gas storage, and 23 facility
332 sites for the import or export of LNG.

333 Over the past 10 years, the Commission has also issued 15
334 authorizations related to natural gas border crossing facilities.

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335 These results have been facilitated through the environmental
336 analysis under the National Environmental Policy Act, which I
337 believe has been improved through the Commission's approach
338 through the pre-filing review phase of the project.

339 Regarding the discussion drafts, I note that many of the
340 comments of previous office directors have been incorporated on
341 similar past proposals and have been incorporated into these
342 versions. As I explain in my testimony, the discussion draft on
343 interagency coordination would alter the Natural Gas Act to
344 include many of the existing practices the Commission currently
345 uses successfully in its review process.

346 The discussion draft addressing cross-border energy
347 infrastructure would add oil pipeline border crossings to the
348 Commission's jurisdiction and would remove requirements for
349 presidential permits for both oil and natural gas border
350 crossings. Staff already has substantial expertise in analyzing
351 natural gas pipeline border crossings and this could be extended
352 to oil crossings under the final rules the Commission would be
353 required to issue.

354 This concludes my remarks on the discussion drafts
355 addressing interagency coordination and cross-border
356 infrastructure. Commission staff would be happy to provide

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357 technical assistance as you move forward with your consideration
358 of this legislation. I would be pleased to answer any questions
359 you may have. Thank you.

360 [The prepared statement of Mr. Turpin follows:]
361

362 *****INSERT 1*****

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363 Mr. Olson. Mr. Turpin, thank you very much.

364 The chair now calls upon Mr. Katz. You are recognized now
365 for 5 minutes for an opening statement.

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366 STATEMENT OF JOHN KATZ

367

368 Mr. Katz. Thank you Mr. Chairman, Ranking Member Rush,
369 members of the committee, it is a pleasure to be here before you
370 today, and thank you for the invitation to testify. My name is
371 John Katz. I am a member of the staff of the Federal Energy
372 Regulatory Commission, and as such my comments represent my own
373 opinions and not necessarily those of the
374 Commission or of any individual commissioner. I am going to focus
375 on the bills that involve hydro aspects.

376 The Commission regulates over 1,600 hydro projects which
377 involve more than 2,500 dams. The projection of these hydro
378 projects is some 56 gigawatts which is over half of the hydro
379 capacity of the United States. The United States does a little
380 bit better than the figure Mr. McNerney quoted for the world, hydro
381 is eight percent of U.S. capacity.

382 Hydro is a renewable resource. It affects many other
383 resources including irrigation, flood control, water supply, fish
384 and wildlife, and recreation, and these are matters that Congress
385 has asked the Commission to balance when it issues licenses. The
386 key thing in getting a hydro project licensed quickly is probably
387 site selection. This is a matter within the control of the

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388 developers, so good development is what is going to carry the day
389 not the government, not the other interested parties.

390 The community needs to be involved. Stakeholder
391 involvement is very key. Issues need to be identified early and
392 developers need to work with the community and the stakeholders
393 to try and resolve matters so that things can be done in quick
394 manner. A good example of this is the 400-megawatt Gordon Butte
395 Project. It is a pumped storage project in Montana. That
396 project was licensed in 14 months and the developer of the project
397 recently appeared at a workshop at the Commission.

398 And while on the one hand he was very complimentary of the
399 efforts of Commission staff, he said that the key to getting it
400 done in time was that the Commission had essentially turned him
401 loose to allow him to develop a process that worked for him and
402 his stakeholders, and that is something that the Commission does
403 on a regular basis.

404 The Commission does its best to be efficient and effective.
405 Since 2003, the Commission has issued 82 original licenses, and
406 of those about 25 percent have been licensed in 2 years or less
407 with about a 1.4-year median processing time at the Commission.

408 Congress has done a lot to help the Commission in carrying
409 out its job. In the 2013 Hydropower Regulatory Efficiency Act,

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410 Congress provided that certain qualifying conduit projects could
411 be completely exempt from Commission regulation. The Commission
412 has approved or signed off on 83 of those projects since then.

413 Congress also allowed the Commission to consider small
414 projects at an increased level. They used to be limited to five
415 megawatts and Congress increased that to ten megawatts. There
416 have been seven such projects filed since the passage of that act.
417 Finally, Congress allowed the Commission to extend the time of
418 preliminary permits which are what an applicant gets to study a
419 project, and the Commission has approved 57 extensions or permits
420 since that time. Commission staff supports the goals of the
421 legislation before you to the extent that they improve efficiency,
422 enable the development of new infrastructure, support balanced
423 decision making, and reduce duplicative oversight. We are
424 concerned only to the extent that additional bureaucracy would
425 add to the process. Commission staff and other agencies are not
426 in my experience looking to do additional processes or things that
427 will slow down development, but rather want to pare back these
428 processes to the extent we possibly can.

429 Finally, I want to note that there are several bills that
430 provide extensions of the commencement of construction deadlines
431 for certain projects and those bills are all consistent with

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432 Commission policy. Thank you very much and I would be happy to
433 answer any questions you may have.

434 [The prepared statement of Mr. Katz follows:]

435 *****~~INSERT~~ 2*****

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436 Mr. Olson. Thank you, Mr. Katz, for your testimony, and we
437 will now move to the question and answer session of the hearing.
438 I will begin the questioning by recognizing myself for 5 minutes.
439 Again, welcome, Mr. Turpin and Mr. Katz from Texas 22.

440 I am very concerned about the lack of a quorum at FERC and
441 the negative impact it could have on pending pipeline projects.
442 The Administration and the Senate have to make this a priority.
443 My question is how is the Commission handling the workload? What
444 types of actions have been delegated to staff which requires
445 sign-off from the Commissioners? Mr. Turpin?

446 Mr. Turpin. Thank you. The workload in a large part for
447 the things that are delegated, such as the need for reviews and
448 the processing of applications, continues unabated. Staff is
449 working as hard as it ever has even when there was the quorum.
450 Issues, there are issues related to gas projects where the offices
451 don't have a lot of delegated authority and staff is preparing
452 those drafts for consideration when there is a quorum.

453 And on the hydro side, there is a bit more delegated authority
454 and there are more orders and decisions that can be made on
455 uncontested cases.

456 Mr. Olson. Thank you, sir. Another question for you, sir,
457 Mr. Turpin. A few years ago, GAO analyzed major pipeline

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458 projects. They found that you can take up to 2.5 years for a FERC
459 certificate. It averaged 568 days. Actually that is about the
460 study in the hearing last Congress.

461 So if you haven't read the study, the report, recently, I
462 would like to know even if you haven't, what are the biggest
463 sources of friction there are for pipeline approval, and number
464 two, what have you all changed in recent years to make this process
465 faster?

466 Mr. Turpin. I haven't read that study. In looking back at
467 the data for all issuances for the Commission since 2009, on
468 average it is 88 percent of the projects get issued within 1 year.
469 Of course that encompasses a lot of the projects that are very
470 small in scope and therefore move faster. The larger and more
471 complex a project the more time it tends to take just as a function
472 of the higher number of stakeholders that are engaged and the more
473 complex issues that are raised.

474 In terms of what are the points of friction, in general really
475 it is the development of the information. As Mr. Katz alluded
476 to with hydro, a site selection on that is a major determining
477 factor and it is the same for pipelines. The route selection is
478 a very large factor and which is why the Commission developed the
479 pre-filing process. It allows the applicants to come in and

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480 engage the stakeholders well before they have sort of finalized
481 the route to get input on where the best route may be that addresses
482 all the issues. And that allows them then, once they do file the
483 application, to move forward.

484 But it is the development of that information along the route
485 as well as the information related to the construction and design
486 of the facilities that usually are the stumbling block for the
487 regulating agencies.

488 Mr. Olson. Thank you. Mr. Katz, I am not going to leave
489 you out of the questioning. What are the opportunities to expand
490 the nation's hydropower capacities, specifically what is the
491 greatest impediment to installing power generators on non-power
492 dams?

493 Mr. Katz. I think there are significant opportunities and
494 I think as you alluded to the greatest opportunities or at least
495 the simplest opportunities are adding capacity to non-power dams
496 including government dams, those operated by the Bureau of
497 Reclamation and the Army Corps of Engineers. I think that the
498 greatest impediment to that are failures to obtain consensus among
499 the various stakeholders where people are comfortable.

500 And for example, we have recently licensed a project in
501 Pennsylvania where everybody was very comfortable with the

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502 project, they felt it was good for the environment and good for
503 the energy distribution in the area and that was able to go through
504 very quickly. Where you have stakeholders who are not
505 comfortable and raise issues, whether it is state agencies,
506 federal agencies, or other entities, that can slow down the
507 process radically.

508 Mr. Olson. Further question, what types of technologies are
509 being developed to improve safety, efficiency, and lessen the
510 environmental impact of hydropower and what can Congress do to
511 help further innovation?

512 Mr. Katz. I am not an engineer so I am not expert in the
513 types, but I know there are --

514 Mr. Olson. Me neither.

515 Mr. Katz. Mr. Turpin knows more about engineering generally
516 than I do, but I think Mr. Leahey and perhaps some of the witnesses
517 who come later may be able to give you more detail. But I know
518 that there is development ongoing, some of which has been funded
519 by the Department of Energy to help develop fish-friendly turbines
520 and other types.

521 There is one new project that is using what is called the
522 Archimedes' screw technology which is brand new. Folks have been
523 looking into wave and tidal energy projects. These are all new,

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524 promising technologies that can continue to be explored.

525 Mr. Olson. Thank you. My time has expired and I now I call
526 upon the ranking member of the subcommittee, Mr. Rush, for 5
527 minutes.

528 Mr. Rush. I want to thank you, Mr. Chairman. To Mr. Turpin,
529 a recurring theme in all of these bills is that the environmental
530 protection concerns are given a backseat in order to expedite
531 applications for both natural gas pipelines and hydropower
532 licenses. In your opinion, does FERC staff have the necessary
533 expertise to determine the scope of environmental review needed
534 to satisfy NEPA obligations for natural gas permits?

535 Mr. Turpin. Thank you. Thank you, sir. I think for the
536 purposes of determining the Commission's NEPA obligations, yes.
537 Commission staff is well versed in that. We have a large staff
538 in the Office of Energy Projects that are archeologists,
539 engineers, biologists, environmental protection specialists, and
540 with that staff we can very well do that job for the FERC's needs.

541 However, the NEPA, you know, even though NEPA applies to all
542 federal agencies, being a process-based statute is the process
543 we all have to comply with, but different agencies with other
544 jurisdictions might have different obligations or jurisdictional
545 coverage and FERC staff is not versed in those statutes for other

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546 agencies.

547 Mr. Rush. In regards to hydropower licensing does FERC have
548 any statutory mandate to protect water quality, wildlife, or
549 access to public lands as in the case for some of the other agencies
550 that are made subordinate to FERC with this bill?

551 Mr. Katz. The Commission has the obligation under the Part
552 1 of the Federal Power Act to consider all aspects of the public
553 interest. Did I answer your question, sir?

554 Mr. Rush. No, you didn't.

555 Mr. Katz. I am sorry.

556 Mr. Rush. Do you have any statutory mandates?

557 Mr. Katz. Yes, we do. The Federal Power Act requires the
558 Commission to consider all aspects of the public interest.

559 Mr. Rush. All right.

560 Mr. Turpin, in your opinion, does FERC currently work
561 effectively with the other agencies throughout the natural gas
562 application process and would altering FERC's role from one of
563 collaboration with other agencies to, quote, policeman, end of
564 quote, role of overseeing and monitoring other agencies'
565 congressionally mandated duties to improve coordination and would
566 this result in faster application decisions?

567 Mr. Turpin. As noted in my testimony, the FERC pre-filing

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568 process is collaborative. We engage a lot of agencies. It is
569 the whole point of the approach and I think we are very effective
570 at doing that. Most agencies are very willing to participate and
571 to engage with staff, but they have their own resource
572 constraints, they have their own statutes they have to meet, and
573 it is those that drive their needs more so than the Commission's
574 schedule that is put out.

575 Mr. Rush. Well, an extension of that question is are there
576 ever instances of a natural gas permitting application being
577 delayed because an applicant has not submitted all of the
578 necessary information, and if so, how would this legislation help
579 expedite the process in those cases where agencies are not
580 provided with timely and complete information necessary to
581 perform congressionally mandated project reviews? And if you
582 have any recommendations I would like to hear them in order to
583 address this issue.

584 Mr. Turpin. The best thing in terms of generating the
585 information is the early engagement of all the stakeholders. The
586 earlier agencies can get involved and define what information
587 needs they might need for their mandates the better, because that
588 gives the applicant enough time to go out and find that info,
589 develop those studies.

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590 So, you know, the pre-filing process allows that. The
591 legislation encourages that same early engagement and I think that
592 is the best path forward for trying to address those issues.

593 Mr. Rush. Thank you, Mr. Chairman. I yield back.

594 Mr. Olson. The gentleman yields back. The chair now calls
595 upon the gentleman from Ohio, Mr. Latta, for 5 minutes.

596 Mr. Latta. Well, thanks, Mr. Chairman, and thank you very
597 much to our witnesses for appearing before us today. Mr.
598 Katz, if I could ask maybe a follow-up from your earlier statement.

599 You had mentioned that there was a project out in Montana, a hydro
600 project, and there is also because of the area of where it was
601 and with the selection of the site that I believe that you said
602 that the individual said that they were turned loose to get this
603 project done. How often does that happen that folks out
604 there can actually do something like that? And when they say get
605 turned loose, how fast can that happen in the permitting and
606 everything else to get a project done?

607 Mr. Katz. Sure. It is hard to give an exact time because
608 it really depends on what information is provided and what the
609 issues are. What I meant by that was the Commission has three
610 licensing processes. Two of them, the integrated licensing
611 process and the traditional license process, have fairly specific

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612 timeframes and details of things you have to do.

613 There is another process called the alternative licensing
614 process which allows the stakeholders to essentially set up their
615 own licensing process the way they want to do it, and the
616 Commission is always open to allowing people to do that if that
617 is something that they can agree upon it. In this instance, the
618 developer was very forward-looking and positive and took the reins
619 in his own hands and got a lot done very quickly.

620 Mr. Latta. So how often can somebody do that alternatively?
621 Is that a very frequent, infrequent?

622 Mr. Katz. It is less frequent than the other two processes,
623 but it is always available. I think it is a question of what the
624 parties think will work best. For example, the traditional
625 process tends to work best for smaller projects because it sets
626 forth more exact deadlines but has less of the collaborative, sort
627 of going out there and meeting and doing a lot of stakeholder
628 involvement, so it can be less expensive and easier for smaller
629 projects and those by developers with less funding.

630 The alternative process, however, can be shaped in any way
631 that the stakeholders think is appropriate provided that they give
632 the Commission a complete record at the end of the day. And in
633 the Gordon Butte case that is exactly what they did.

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634 Mr. Latta. Okay. Let me follow up with you again, Mr. Katz.
635 How did the permitting timelines for hydropower compare to other
636 types of renewable energy developments such as wind and solar
637 projects?

638 Mr. Katz. I think they are significantly longer.

639 Mr. Latta. Do you believe that the permitting process could
640 be improved to level that playing field, and how?

641 Mr. Katz. Absolutely.

642 Mr. Latta. Okay. And how would that be permitted, how
643 would we level that playing field?

644 Mr. Katz. I don't have exact prescriptions. I think some
645 of the things in the legislation before us would go a ways towards
646 doing that. Whatever we can do to reduce duplication to get
647 everyone on the same page at the same time will help. What tends
648 to slow things down are if one agency is not finished at the same
649 time another agency is or if it feels it needs to do additional
650 environmental work or other things so that then things are not
651 sequential, or things are sequential -- I am sorry -- rather than
652 being done at the same time to the extent that it can be one process
653 that is run in an orderly and efficient manner that will cut down
654 the time.

655 Mr. Latta. Would you say there is a lot of duplication in

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656 the federal process then between agencies who have that
657 duplication?

658 Mr. Katz. There is some, yes.

659 Mr. Latta. Let me ask also, not to pick on you, Mr. Katz,
660 when there are disputes about a potential condition, the licensing
661 stakeholders are entitled to a trial-type hearings on the facts
662 and the evidence. It is clear that the current process under the
663 Federal Power Act has not worked as it has been intended. It
664 requires so much time, money, and staff resources it is rarely
665 used if ever. How many types of these trial-type hearings have
666 been conducted to your knowledge?

667 Mr. Katz. Again Mr. Leahey may know exactly, I suspect he
668 does. To my knowledge it is in the area of five or six. It is
669 not a lot. Those are not conducted before the Commission. To
670 this point they have been conducted before administrative law
671 judges designated by the agencies that impose the mandatory
672 conditions that are the subject of the hearing, so the Commission
673 doesn't have detailed knowledge about them.

674 Mr. Latta. When you say five or six, is that five or six
675 a year or five or six over time?

676 Mr. Katz. I think total. Again I hesitate to look over at
677 Mr. Leahey. He will know the number, but it is not a large number.

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678 Mr. Latta. Okay. And then, the Commission is responsible
679 for assessing whether it would be responsible include conditions
680 in the project license. Shouldn't the Commission take the lead
681 with these trial-type hearings?

682 Mr. Katz. It is possible. The bottom line though is that
683 those conditions are mandatory and the Commission has no authority
684 to not include them in the license. So the question whether the
685 trial-type hearings do anything that the Commission can act upon
686 at the end of the day, because as long as they are mandatory whether
687 the trial is at the Commission or not it doesn't change the result.

688 Mr. Latta. Thank you very much. And Mr. Chairman, my time
689 has expired and I yield back.

690 Mr. Olson. The gentleman yields back. The chair now calls
691 upon the gentleman from California, Mr. McNERNEY, for 5 minutes.

692 Mr. McNERNEY. I thank the chairman. Mr. Katz, California
693 and FERC entered into an Memorandum of Understanding regarding
694 hydropower. Can you point to any significant benefits that have
695 resulted from this MOU as it relates to hydropower licensing and
696 relicensing?

697 Mr. Katz. I think that the efforts there were made to sort
698 of process things in a sequential time. I know California has
699 had budgetary difficulties so that the state agencies have not

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700 had the resources that they would like to be able to devote to
701 all of the hydropower projects. And the sense, I think, of the
702 MOU was to get things done in an orderly and sequential fashion.
703 I think it has done some good in that regard.

704 Mr. McNerney. So it is mostly to benefit the state
705 processes?

706 Mr. Katz. Yes, I think so. I mean, it also, I believe the
707 MOU called upon to the extent possible for the environmental
708 reviews of the state and the Commission to be sequential. I am
709 sorry, I keep saying sequential -- to be done at the same time
710 and California did not have to do extra work at the end of the
711 day, but ultimately that is a call for the state to make.

712 Mr. McNerney. Okay. You did use the word sequential
713 before, but you meant concurrent?

714 Mr. Katz. Exactly, in this instance, yes. Concurrent
715 reviews are always more efficient than sequential reviews.

716 Mr. McNerney. So FERC currently attempts to complete
717 studies on a concurrent basis. The Hydropower Modernization Act
718 draft language more or less requires concurrent studies prior to,
719 or concurrent with preparation of the FERC environmental
720 requirements from the NEPA. Is this a good approach, or what is
721 the best approach we can take to get concurrent studies?

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722 Mr. Katz. I think it is a reasonable approach. The bottom
723 line is, however, that both as to state agencies and other federal
724 agencies, they have their statutory mandates which they need to
725 satisfy and there is nothing in the current Federal Power Act or
726 in the draft legislation that would preclude those agencies from
727 taking the time they need and from performing additional reviews
728 if that is what they feel they need to satisfy their statutory
729 mandates.

730 Mr. Mc너ney. So you feel that concurrent requirements
731 aren't going to throw environmental protections aside or blunt
732 them to some degree?

733 Mr. Katz. I did not see anything in the idea of concurrent
734 reviews that would undercut environmental protection.

735 Mr. Mc너ney. Well, what are the areas of improvement under
736 the integrated licensing process?

737 Mr. Katz. I am sorry. Could you ask the question again?

738 Mr. Mc너ney. What are areas of improvement under the ILP?

739 Mr. Katz. There is probably a variety of improvements. I
740 think mainly they involve on the ground aspects rather than
741 necessarily regulatory or statutory changes. I think getting
742 people on the same page and getting them to reach agreement on
743 what sort of studies need to be done and what the work is that

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744 is necessary to develop a full understanding of a hydro project
745 is key. And in some instances folks reach that agreement and
746 proceed very quickly and other instances they greatly disagree
747 and I am not sure that there is really much that can be done by
748 statute or regulation to force people who have different statutory
749 authorities to agree.

750 Mr. McNERNEY. Okay. How often do the licensees have to
751 utilize the FPA's authority for automatic year to year license
752 extensions?

753 Mr. KATZ. It is not a question of something that a licensee
754 can use. What the statute provides is that if a license expires
755 and the Commission has not yet been able to issue a new license
756 then what is called an annual license is automatically issued,
757 and I can't give you a percentage. I would be glad to get that
758 information back if you want it, but it is not unusual.

759 Mr. McNERNEY. Moving on, I have heard from a lot of
760 stakeholders who say that agencies can improve with information
761 sharing. Could you describe the information sharing process as
762 it relates to the study process?

763 Mr. KATZ. Sure. I mean the Commission believes in a very
764 transparent and an open process. There is no secret information
765 on hydro projects. As studies are done they are filed with the

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766 Commission. They are available to all stakeholders. Often
767 there are study review meetings under the ILP, for example, where
768 everybody sits down and goes over the study, discusses its merits,
769 its demerits, whether there is further information done. So
770 transparency is an absolute key to the hydro licensing process.

771 Mr. McNerney. Well, could there be any value to having
772 stakeholders support a person to person type manager dedicated
773 to particular bases throughout the country to facilitate the
774 processes?

775 Mr. Katz. I am not certain about that. I would have to know
776 more about the proposal.

777 Mr. McNerney. Okay, all right. My time has expired, Mr.
778 Chairman. I will yield back.

779 Mr. Olson. The gentleman yields back. The chair now calls
780 upon the gentleman from Pennsylvania, Dr. Murphy, for 5 minutes.

781 Mr. Murphy. Thank you, Mr. Chairman.

782 Mr. Turpin, the Natural Gas Act requires a Commission review
783 whether a proposed interstate pipeline is necessary or desirable
784 in the public interest. It also requires the Commission to set
785 rates charged for interstate pipeline service to be just and
786 reasonable. So let me ask another area here, does the Commission
787 take into account jobs and economic impact as it reviews the public

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788 interest?

789 Mr. Turpin. Well, the criteria that the Commission
790 considers and it is a decision by the five, or when there is five
791 sitting commissioners, are laid out in the 1999 certificate policy
792 statement. My office is really focused on generating the
793 environmental impacts associated with construction of a project
794 and in gathering the data from the application that the applicants
795 put forward on --

796 Mr. Murphy. Are jobs considered all at impact upon
797 employment?

798 Mr. Turpin. I can't say what each individual commissioner
799 considers.

800 Mr. Murphy. What about you?

801 Mr. Turpin. I don't have a say in that. I generate the
802 information and I pass -- the NEPA document is not a decisional
803 document.

804 Mr. Murphy. But in terms of the information generated you
805 don't put down impact upon jobs, employment, those things?

806 Mr. Turpin. In the NEPA document there are socioeconomic
807 analyses that looks at construction jobs, looks at impacts to the
808 area for lodging, traffic, for those localized impacts.

809 Mr. Murphy. Okay, thank you. How often has the Commission

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810 used its authority under Section 5 of the Natural Gas Act to review
811 the rates and require prospective changes when the rates are no
812 longer just and reasonable?

813 Mr. Katz. The Commission does not often do that. The
814 Commission has in recent years proposed to look at a couple of
815 pipelines under Section 5, but it is not something that occurs
816 very often.

817 Mr. Murphy. Why is that?

818 Mr. Katz. I think the Commission has not seen instances
819 where pipelines appear to be charging excessive rates. Certainly
820 if people complain about it and come before the Commission and
821 say you need to look at this pipeline rate because it is excessive
822 that is something Commission staff would look at. As I said that
823 is not Terry and my area of expertise, but I am not aware that
824 it occurs very often.

825 Mr. Murphy. Are you aware in your areas of expertise looking
826 at any of the things of impact, economic impact and employment
827 issues too?

828 Mr. Katz. If you are asking me, yes. Terry said yes, the
829 Commission looks at all the information that is provided to it.
830 In a case of if information is concerning increased employment,
831 yes, the Commission would have that information before it to

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832 consider.

833 Mr. Murphy. If it is there, you are saying?

834 Mr. Katz. Yes. I mean the Commission is not in the best
835 position to determine how many people a pipeline company is going
836 to hire. The company is in the best position to know that and
837 if it provides that type of information to the Commission then
838 it is in the record for Commission consideration.

839 Mr. Murphy. But that is not something you necessarily
840 request. If they provide it you have it, if they don't you don't?

841 Mr. Katz. I am not aware of the Commission's specifically
842 requesting that.

843 Mr. Murphy. So what I am concerned about here is of course
844 that these are jobs, they are good paying jobs where people are
845 building pipelines whether they are the engineers, the operating
846 engineers, the welders, whatever that might be, those are pretty
847 valuable jobs that have initial impact upon employment longer
848 term, I would say, than its maintenance of the pipeline, but the
849 same thing for hydroelectric power too. I mean, we look at
850 those things as important to make sure we are reviewing those.
851 Well, it is something I believe we should be looking at as well
852 and hope we can get to that future. Mr. Chairman, I will hold
853 off on other questions for now and wait for the next panel. Thank

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854 you. I yield back.

855 Mr. Olson. The gentleman yields back. The chair now calls
856 upon the gentleman from California, Mr. Peters, for 5 minutes.

857 Mr. Peters. Thank you, Mr. Chairman. Thank you very much
858 for being here. You know, as someone who -- one of the reasons
859 I ran for Congress was to deal with climate change, and I am excited
860 to be on this committee. I am new to it.

861 I don't understand why more people on our side of the aisle aren't
862 flipping out about how long it is taking to do hydro. It is one
863 base load that is carbon-free and I just, I am interested in
864 understanding kind of what the obstacles are. Let me say
865 that one thing that I thought was interesting about your response
866 to the chairman about what the obstacles are, Mr. Katz, is that
867 you talked about stakeholders not environmental issues and that
868 the obstacle was getting stakeholders to agree. In my mind as
869 a former environmental attorney that is an extremely subjective
870 kind of standard to try to reach. It is something that can vary
871 greatly depending on the group of people you get in the room and
872 it is also something that has got to scare the heck out of investors
873 who are looking for some sort of certainty at the end of the day.

874 I am not going to be able to -- I am just really interested
875 in working the problem, and again I am not going to be able to

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876 do that in my 3 minutes and 49 seconds with you. But I just would
877 say that it seems to me that maybe we could identify some more
878 objective criteria so that we protect rivers, we protect fish and
879 wildlife, but in a way that is more objective and I think that
880 would help us. Just instinctively it seems to me that that would
881 help us save some time.

882 One thing you did say about in reaction to some of the
883 materials before us is that you are concerned that some of it would
884 add bureaucracy. And I would like to know now what in here would
885 actually add to the bureaucracy? What is your concern that might
886 actually slow us down?

887 Mr. Katz. Sure. And let me say in addition in response to
888 your initial comments that I think it is difficult to have
889 objective environmental criteria since every hydro site is
890 different, but I agree with you that being as objective as you
891 can is a good goal. And one of the things in the hydro area is
892 that there is what we tend to call shared decision making. So
893 this is not a matter where the Commission gets a hydro proposal,
894 it reviews it, it approves it or doesn't approve it and it is done.

895 There are instances where other federal agencies have the
896 right to impose mandatory conditions; the states have the right
897 to impose mandatory conditions under the Clean Water Act, so those

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898 are the things when I talk about the stakeholders. The
899 stakeholders include those agencies that have a right to
900 participate in the proceeding and to affect the ultimate
901 licensing, and it is really necessary to get them on the same page
902 to be effective.

903 Now in terms of the specifics of the act, I would be glad
904 to work with you and your staff on those in the future. Some of
905 the things, for example one of the things that struck Commission
906 staff in looking at these was for the provisions regarding
907 amendments. And the provisions there seemed to require for all
908 amendments that there be a schedule established and perhaps a
909 Memorandum of Understanding undergone, and it has been Commission
910 staff's experience that 87 percent of amendments are approved
911 within 6 months because they are usually minor matters.

912 So while the provisions regarding the process might very well
913 be very useful for larger what we call capacity amendments where
914 someone is greatly increasing the capacity of a project, they
915 would not necessarily be helpful in terms of the smaller work.
916 So it is those sorts of things where everything is not
917 one-size-fits-all, and we would want to be sure that whatever
918 processes are created will be applied to those proceedings in
919 which it makes them quicker, but would not be applied to those

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920 proceedings in which it would slow them down.

921 Mr. Peters. Let me just ask one other specific question.

922 Is there a way we could speed up the relicensing of existing
923 facilities that may be wearing out? Is there some reason why that
924 takes as long as it does?

925 Mr. Katz. I honestly don't have a magic answer. I don't
926 know that anyone else does or it would have been done long since.
927 I know Congress -- all of the stakeholders have been concerned
928 about this for years. I think part of the problem is just the
929 statutory structure where you need to do a thorough environmental
930 review and then there are a number of authorities that have the
931 right to impose conditions.

932 It is very hard to do a set process. For example, under the
933 Clean Water Act the Commission can't issue a license unless it
934 has gotten either a waiver of certification or a certification
935 from the states. And there are some instances where the
936 Commission has been completely done its work on a project and has
937 been sitting for more than a decade waiting for a state to act
938 under the Clean Water Act and there is just flatly nothing the
939 Commission can do about that.

940 Mr. Peters. Great. I understand.

941 Mr. Katz. Congress could change that if it wanted.

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942 Mr. Peters. I was going to say fortunately we are talking
943 about statutory authority right here in this room, so you are
944 probably talking to the right people. And I appreciate the
945 constraints that the Commission has and your answers have been
946 very helpful to me.

947 Mr. Chairman, thanks for the hearing and I yield back.

948 Mr. Olson. The gentleman yields back. The chair now calls
949 upon the gentleman from Mississippi, Mr. Harper, for 5 minutes.

950 Mr. Harper. Thank you, Mr. Chairman, and thanks to you both
951 being here and look forward to additional info on this very
952 important issue. Mr. Katz, if I can ask you a couple of questions.
953 You know the ownership and regulatory environment for hydro is
954 very complex. Where do you see the greatest opportunities for
955 streamlining the process to improve that transparency and
956 efficiency?

957 Mr. Katz. Again, I think that the greatest opportunities
958 are making all decision making as concurrent as possible. Any
959 time you get into sequential decision making it slows things down,
960 often radically slow.

961 Mr. Harper. Okay, can you identify a place or places where
962 you see the greatest amount of duplicative or unnecessary work,
963 something that comes to mind?

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964 Mr. Katz. I can't say as sort of an across the board matter,
965 but some states and some agencies in some cases decide that they
966 need to do their own environmental review in addition to what the
967 Commission does and that can take time. Also some of those
968 entities do not time their decision making so that it syncs up
969 with when the Commission is ready to act and those matters can
970 radically delay --

971 Mr. Harper. So would it help, Mr. Katz, to have FERC act
972 as a lead agency to maybe issue a schedule and enforce deadlines?

973 Mr. Katz. The devil is in the details. I mean, the
974 Commission always is the lead agency and the Commission's
975 regulations and in giving cases specific orders do set schedules.
976 It is the enforcing the schedules that is hard. And that is kind
977 of a two-edged sword, because on the one hand the Commission might
978 like to be able to say you will hand in your state authorization
979 by date X; at the same time states have sovereignty and to the
980 extent that they are told they need to do something by a certain
981 time, if they feel not ready they could always deny certification
982 or load up on very burdensome conditions because they felt they
983 didn't have the time necessary to do their job. So it is a real
984 difficult chicken and egg problem.

985 Mr. Harper. And do you wind up with a lot of conflict in

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986 those situations where that happens on a regular occasion?

987 Mr. Katz. I don't know if it is open conflict. It is more
988 like the Cold War. I know again, I hate to keep referring to Mr.
989 Leahay, but I think he will tell you that there are licensees that
990 are very frustrated because they have done all that they can and
991 in many instances are satisfied that the Commission has done all
992 it can, but projects are not ready to go forward because other
993 entities are not ready to act.

994 Mr. Harper. And those other entities would be state
995 entities?

996 Mr. Katz. Some state entities, sometimes it is other
997 federal agencies.

998 Mr. Harper. Okay, which if we were trying to decide between
999 the two would it be primarily more responsibility on state
1000 agencies or other federal agencies that you see just in
1001 generalities?

1002 Mr. Katz. That is hard to say. I would suspect that Clean
1003 Water Act certifications are the greatest incidents of delay, but
1004 Endangered Species Act consultation also delays a number of
1005 projects.

1006 Mr. Harper. You know, almost everybody would agree that you
1007 know, hydropower, it is clean, renewable, abundant, and I believe

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1008 affordable. What many people don't realize is that it does also
1009 improve the reliability of the electric grid. How does hydro help
1010 integrate intermittent renewables like wind and solar?

1011 Mr. Katz. Hydro can play a very significant role in doing
1012 that because hydro has what is called black start capacity, so
1013 you can have the hydro sitting there and it turns on instantly
1014 as soon as you let the water flow and turn the turbines. So when
1015 you are pairing it with something like wind, which is
1016 intermittent, it can play a major role in balancing the grid.

1017 Mr. Harper. Well, how about when there is an outage? Does
1018 hydro do the same to bring the grid back on line?

1019 Mr. Katz. Yes, it can serve in that capacity as well.

1020 Mr. Harper. All right. And how does hydro compare to other
1021 energy sources in terms of its environmental impact?

1022 Mr. Katz. That is a subjective matter. But as a general
1023 matter it is carbon neutral so it does not have air quality
1024 impacts. There are those who are concerned about the impacts on
1025 aquatic resources, but with proper management and proper
1026 conditioning hydro can be a very benign resource.

1027 Mr. Harper. So what would you say, Mr. Katz, what the
1028 greatest impediment to attracting capital to invest in new
1029 hydropower projects what would that be?

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1030 Mr. Katz. Again that is not my area of expertise so much
1031 as it is the industry, but I would say uncertainty in the time
1032 the licensing process takes.

1033 Mr. Harper. Okay, great. With that I will yield back, Mr.
1034 Chairman.

1035 Mr. Olson. The gentleman yields back. The chair now calls
1036 upon the gentleman from Texas, Mr. Green, for 5 minutes.

1037 Mr. Green. Thank you, Mr. Chairman and Ranking Member. I
1038 want to thank our witnesses for being here.

1039 Mr. Turpin, it is clear from today's hearing that FERC has
1040 a whole lot on your plate and currently, pipelines, LNG
1041 permitting, hydropower, electric reliability all fall under FERC.
1042 In addition, there are many in the House who would like to expand
1043 FERC's permitting authorities to include oil pipelines. In your
1044 position as the director of the Office of Energy Projects most
1045 of these fall within your office.

1046 Mr. Turpin, if FERC receives a request for a natural gas
1047 pipeline permit within the United States, could you please
1048 describe the review process to receive a certificate of public
1049 necessity?

1050 Mr. Turpin. Sure. For a line of any length, if it is
1051 especially complex or a large scope, we would encourage the

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1052 applicant to follow the pre-filing process. It is voluntary for
1053 pipelines. During that process, the Commission staff would try
1054 to engage the other agencies and stakeholders.

1055 Mr. Green. What other agencies is it on the federal level?

1056 Mr. Turpin. Any agencies issuing a federal permit whether
1057 that is a federal agency or a state agency, I think, on federally
1058 delegated authority. We would also reach out to state and local
1059 agencies to bring them into the process as well. The idea is to
1060 get as many folks under the tent at the beginning of the process
1061 when the applicant is still trying to design the route rather than
1062 wait, and by that have the greatest influence on easy changes to
1063 accommodate all the issues rather than wait until the applicant
1064 spends a significant amount of time and money in coming up with
1065 a project that then is harder to change.

1066 So that process at a minimum can take 6 months, but it really
1067 is set by the applicant. As long as they want to stay in
1068 pre-filing they can, and during that pre-filing process staff
1069 would engage in its environmental scoping processes and would be
1070 seeking comment from the public and any interested stakeholder
1071 about what environmental issues need to be addressed in looking
1072 at the project.

1073 Those issues are to be addressed by the applicant in 13

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1074 resource reports that must be filed with the Commission. Each
1075 of the reports covers a different resource area such as water
1076 quality or --

1077 Mr. Green. But FERC is responsible for doing the National
1078 Environmental Policy Act enforcement; is that correct, NEPA?

1079 Mr. Turpin. We are the lead agency for constructing the NEPA
1080 document. Yes, sir.

1081 Mr. Green. Okay. What about when it crosses a U.S. border
1082 -- Mexico, Canada?

1083 Mr. Turpin. It is the same. Pre-filing likely would not
1084 be used in those cases because they are usually smaller scope
1085 projects.

1086 Mr. Green. Does FERC coordinate with the Department of
1087 State or Department of Defense when issuing a cross-border natural
1088 gas pipeline?

1089 Mr. Turpin. Currently, yes. The Commission reaches out to
1090 both of those agencies to get their concurrence that there is not
1091 a national security interest.

1092 Mr. Green. If FERC were granted the authority to permit oil
1093 pipelines would the Commission follow similar procedures?

1094 Mr. Turpin. I think that would be determined by the
1095 Commission. They will have to set the policies that my office

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1096 would follow. We do have the existing program that we do for
1097 natural gas, so, you know, a good guess is that it would parallel
1098 that but again that would be set by the Commission.

1099 Mr. Green. Does the Office of Energy Projects possess the
1100 resources to handle that additional responsibility and activity,
1101 and do you anticipate additional needs if you permitted oil
1102 pipelines?

1103 Mr. Turpin. We do have the expertise. We do have the staff.
1104 There haven't been a tremendous amount of those border crossings.
1105 As I said in my testimony, I think over the last 10 years we have
1106 done 15. I had staff look at potentially how many oil crossings
1107 there might be. I think we found there is somewhere in the
1108 neighborhood of 20 to 30 existing ones. So I don't think it is
1109 a tremendous workload. I think we would have to have some
1110 additional expertise for the unique aspects that are different
1111 from natural gas lines.

1112 Mr. Green. Oftentimes that oil pipeline is in the same
1113 easement that a natural gas pipeline or some other product.

1114 Mr. Katz, connected action has been legally defined as an
1115 action that is interdependent parts of a larger action. Mr. Katz,
1116 under NEPA regulations FERC is required to review connected
1117 actions of a pipeline project; is that correct?

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1118 Mr. Katz. That is correct.

1119 Mr. Green. If a cross-border pipeline project cannot
1120 proceed without a certificate of crossing as described in the
1121 legislation would FERC consider this a connected action?

1122 Mr. Katz. Connected to what, sir?

1123 Mr. Green. If a cross-border pipeline project cannot
1124 proceed without a certificate of crossing as described in this
1125 legislation we are considering, would FERC consider this a
1126 connected action?

1127 Mr. Katz. It could be a connected action to the remainder
1128 of the oil pipeline, yes.

1129 Mr. Green. Is FERC required to consider the cumulative
1130 impacts of a pipeline project?

1131 Mr. Katz. Yes, it is, of all projects it reviews.

1132 Mr. Green. Okay. I am out of time, and thank you, Mr.
1133 Chairman. But obviously coming from Texas we are trying to sell
1134 as much natural gas as we can to northern Mexico and I know there
1135 are processes now that are in place, but again crossing the
1136 international borders presents other issues and that is what this
1137 legislation is about. Thank you, Mr. Chairman.

1138 Mr. Olson. The gentleman's time has expired. The chair now
1139 calls upon the gentleman from West Virginia, Mr. McKinley, for

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1140 5 minutes.

1141 Mr. McKinley. Thank you very much, Mr. Chairman, for
1142 scheduling this meeting.

1143 Mr. Katz, if I could go quickly with you because I want to
1144 spend more time with Mr. Turpin, but do you think, in your opinion,
1145 with the H.R. 446, 447, and 2122 that we are going to be talking
1146 about today for the construction of hydroelectric projects in
1147 Virginia and West Virginia, do you think the Commission has any
1148 problem with getting additional flexibility so that it doesn't
1149 take an act of Congress?

1150 Mr. Katz. No. One of the bills before you indeed would give
1151 the Commission the authority to extend the commencement of
1152 construction deadline and I think I indicated in my testimony that
1153 Commission staff supports that concept.

1154 Mr. McKinley. Thank you.

1155 Mr. Turpin, I want to take a larger view, maybe perhaps take
1156 it from 30,000 feet on this issue of permitting because I know
1157 from the testimony and what we have read that FERC has a
1158 responsibility to coordinate these projects in the timeline, but
1159 the agencies often break from the mold and so it drags out.

1160 I am trying to understand if we are moving in the right
1161 direction with this, because if we look back over it now, over

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1162 time we have developed now there are 15 different permits have
1163 to be achieved to build a pipeline from ten different agencies
1164 and the timeline for each of those agencies can be as long as 2
1165 years or longer if they should so choose to do that.

1166 But we are talking just of those we have the FERC transporter,
1167 the FERC certificate of public convenience, the Pipeline and
1168 Hazardous Materials Safety Administration permit, NEPA, an EPA
1169 permit, the Army Corps dredge permit, the Section 10 permit, the
1170 right of way permit for the Army Corps, the federal levy right
1171 of way permit, the Fish and Wildlife incidental take permit, the
1172 Fish and Wildlife right of way, the Bureau of Land Management right
1173 of way, the Bureau of Indian Affairs right of way, the U.S. Forest
1174 Service public use permit, the U.S. Department of Agriculture
1175 easement, the Bureau of Land Reclamation, all of these I guess
1176 what I am wondering, are we really better off for having these
1177 permits? Because we look back at the track record when they built
1178 Hoover Dam, the permitting was less than 2 years to accomplish
1179 and I wonder whether or not did we cause havoc to the people in
1180 Colorado and along the Colorado River by building the Hoover Dam?

1181 The Alaska Pipeline now have been 9 years trying to get a
1182 permit, because in addition to these 15 permits we have seen
1183 politics come into play with this. The Trans-Alaska Pipeline as

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1184 controversial as that might be it took less than 1 year to get
1185 the permit and now we have the advantages that occurred.

1186 So I am saying with all this progress or process of additional
1187 paperwork, are we better off for it? Can you tell me from FERC
1188 that this is -- we have improved the system by delaying projects
1189 for 10, 15 years to do this? Think what I just said about the
1190 Hoover Dam. The permit was less than 2 years, but for 10 years
1191 we are trying to build a low-head dam in West Virginia and we can't
1192 get the permit, after 10 years. Who is right? Were the people
1193 back in the '40s and '50s and '60s and '70s, were they smarter
1194 than we are? That is to you, Mr. Turpin.

1195 Mr. Turpin. Thanks. I think a lot of that depends on the
1196 perspective. I mean all these agencies, all those permits, many
1197 of which you read are actually crossing of federal lands and that
1198 is the easement that the pipeline company must get, all have come
1199 about through congressional action. I think it is whatever, you
1200 know, Congress directs these agencies on what they need to execute
1201 and we execute on what we are told to do.

1202 Mr. McKinley. So in your opinion, Mr. Turpin, are we moving
1203 in the right -- I am sorry to keep -- are we moving in the right
1204 direction by adding delays, because you know from construction
1205 -- I spent 50 years in the private sector -- delays cost money.

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1206 The time value of money when you start something that maybe takes
1207 \$10 million, even they are saying the licensing process for a new
1208 hydropower development project can last over a decade and would
1209 cost over tens of millions of dollars.

1210 Are we better off for doing it that way or should we rely
1211 on the courts to see that they are upheld and let the construction
1212 begin? Because if we are truly after construction and we are
1213 trying to get jobs for people, wouldn't it be better to put them
1214 to work or to use paperwork? Who is benefiting from this, the
1215 unelected bureaucrats in Washington?

1216 Mr. Turpin. It sort of doesn't feel like a benefit to us.
1217 I think the answer is that it depends on what Congress determines
1218 is in the public interest. I mean the bureaucrats have to execute
1219 the laws that are passed.

1220 Mr. McKinley. Thank you very much. I yield back my time.

1221 Mr. Olson. The gentleman yields back. The chair now calls
1222 upon the star center fielder of the Congressional Women's Softball
1223 Team, Ms. Castor, for 5 minutes.

1224 Ms. Castor. That is right, the third week in June, the
1225 Congressional Women's Softball game against the evil women of the
1226 Press Corps. Mark it down on your calendars.

1227 Thank you, Mr. Chairman, for calling the hearing today. One

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1228 of the bills before us today aims to expedite FERC review of
1229 natural gas pipelines. Roughly 90 percent of FERC natural gas
1230 pipeline projects receive their certificate within 1 year, but
1231 nevertheless I do understand that it is important to promote
1232 efficiency in all government review processes. But this is
1233 why just a year and a half ago the Congress passed an important
1234 part of the FAST Act, and I had to go back and remind myself of
1235 all this and I encourage my colleagues to do the same. The FAST
1236 Act set up a new entity, the Federal Permitting Improvement
1237 Steering Council, FPISC, to bring federal agencies together
1238 including many that have been mentioned today -- the Army Corps
1239 of Engineers, the Bureau of Land Management, Fish and Wildlife
1240 -- to improve timeliness, predictability, and transparency of
1241 federal environmental review and authorization projects for major
1242 infrastructure projects which includes interstate natural gas
1243 pipelines. The Council spent 2016 getting off the ground and
1244 is now overseeing permitting for 32 major infrastructure projects
1245 including seven interstate natural gas pipeline projects. These
1246 projects will benefit from enhanced coordination including
1247 establishment of a lead agency for the project, the establishment
1248 of recommended performance schedules and project review timelines
1249 and greater transparency at all levels. In fact, the Business

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1250 Roundtable just wrote a letter recently to the White House to say
1251 can we move forward with getting FPISC off and moving; I think
1252 it is still waiting for another appointment.

1253 So it is a bit confounding why we are here discussing an
1254 entirely new scheme for review of natural gas pipelines when we
1255 recently sent up an entirely new entity to do just that. And at
1256 a minimum we should have FPISC here to testify about their progress
1257 and I would respectfully request that we do that in a future
1258 hearing.

1259 So Mr. Turpin, in your testimony you state that FERC has
1260 undertaken significant efforts to implement its responsibilities
1261 under the FAST Act. Can you elaborate a bit on your efforts?

1262 Mr. Turpin. Sure. When the FAST Act, I think within 6
1263 months of its passage all the subject agencies had to post existing
1264 projects. For FERC I think we had the most significant number
1265 of projects that went up on the dashboard. And most of the efforts
1266 were at that point those projects had been through the FERC
1267 pre-filing process, had already had a lot of the coordination and
1268 FERC was the lead agency for those.

1269 So a lot of that effort was at going back to document the
1270 things we had already done and put up coordinated project plans
1271 not as sort of a prospective plan but as a historical, you know,

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1272 acknowledgment of the things that the agency has already been
1273 through. We found that it did take a lot of time to coordinate
1274 the various agencies' data, some agencies would be unwilling to
1275 commit to schedules, and it does take quite a bit to kind of ride
1276 herd on the data that has to get posted. So that is the bulk of
1277 the work that we did in trying to set up.

1278 Ms. Castor. So do you think it will help now when you have
1279 this interagency coordination when everyone is sitting at the
1280 table and maybe some agencies can look at others and say why aren't
1281 you adhering to the schedule and timeline?

1282 Mr. Turpin. And that is essentially what I think we have
1283 tried to do through the pre-filing process as well. I mean, as
1284 the lead agency we try to bring those folks to the table and try
1285 to get them the information they need so that they can advise us
1286 of the schedule they need.

1287 Ms. Castor. And you also state that some of the provisions
1288 in the discussion draft would duplicate efforts. How so?

1289 Mr. Turpin. That is predominantly the tracking of
1290 everyone's project schedules. I mean that is what happens on the
1291 FPISC dashboard and then it would be a duplicate effort at the
1292 Commission.

1293 Ms. Castor. Well, it is clear we need to hear more from FPISC

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1294 to understand what it has achieved in the year-plus that it has
1295 been in operation already and I fear that we are simply setting
1296 up a duplicative process with this proposal, so I have serious
1297 concerns with the discussion draft today. I think we need to have
1298 FPISC here. And remember, this is only a year and a half old and
1299 it was the Congress' intention to promote greater efficiency by
1300 bringing that interagency group together. I yield back my time.

1301 Mr. Olson. The gentlelady yields back. The chair calls
1302 upon the gentleman from Virginia, Mr. Griffith, for 5 minutes.

1303 Mr. Griffith. Thank you very much, Mr. Chairman. I do
1304 appreciate it and I appreciate the witnesses being here.

1305 Mr. Katz, I was pleased to read in your testimony and then
1306 to hear in one of the earlier questions that you all are fine with
1307 H.R. 446 related to the Gathright Dam and H.R. 447 related to the
1308 Flannagan Dam and I appreciate that very much. Thank you. I am
1309 also interested in, you know, not only electric generation but
1310 making sure that we have jobs in my district. One of the great
1311 concerns in the coalfields has been is that production has been
1312 down and folks have said you all need to reinvent yourselves. We
1313 think coal has a long future, but at the same time we want to make
1314 sure that we are looking for new ways.

1315 A couple of my friends in the Virginia General Assembly got

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1316 a bill passed this last year. I had mentioned in a previous
1317 hearing that there were some folks interested in doing some things
1318 related to pump storage projects and what they are trying to
1319 encourage with the Virginia language is to see if they can't entice
1320 somebody into putting a pump storage facility inside an exhausted
1321 or abandoned coal mine making it a closed loop system.

1322 And I appreciate your written testimony on those issues as
1323 well. One of the questions that you raised and I would like for
1324 you just to do some explaining for me, is you felt like there was
1325 because of the add-ons or, and I am probably using the wrong
1326 language, but the additional energy items like solar or wind to
1327 help pump the water up that there was a problem in the draft
1328 language that we have floating around, at least the way I
1329 interpreted it, with municipals, maybe adding on non-municipals.
1330 Could you explain that to me?

1331 Mr. Katz. Sure. It is kind of a historical artifact, but
1332 years ago back in the '80s there were instances before the
1333 Commission -- well, I should --

1334 Mr. Griffith. Way back in the '80s.

1335 Mr. Katz. Yeah, when I was a youngster. I guess I should
1336 drop back five yards. I mean the Federal Power Act, in the Federal
1337 Power Act Congress provided that a municipality would get a

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1338 preference over a private entity in obtaining a preliminary permit
1339 or a license. So if they, all things being equal if a city applies
1340 and a private company applies, the city wins.

1341 And at some point in the '80s, the Commission discovered that
1342 municipalities were applying and saying I am a muni, give me
1343 preference, but then as soon as they got the license or the permit
1344 or even during the process they would turn around and sell it to
1345 another private entity, not the one that was trying to compete
1346 with them but somebody else. And so the Commission decided that
1347 was not fair competition and it was not appropriate to put private
1348 entities at a disadvantage.

1349 So the concern that I expressed with regard to that portion
1350 of the bill was it would appear to allow a municipality to
1351 outcompete a private entity in the first instance, and then do
1352 what the Commission has hitherto precluded agencies from doing,
1353 turn around and sell it to a different private entity so that the
1354 private entity that was trying to develop the project, and indeed
1355 it might have been the entity that was out there in the field first,
1356 would be placed at a disadvantage. That is something for Congress
1357 to consider.

1358 Mr. Griffith. Okay, and I appreciate that. And so it is
1359 not really a concern over this closed loop pump storage, but a

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1360 concern that that and then perhaps the solar, the wind might be
1361 transferred as you just described; is that correct?

1362 Mr. Katz. Yes. It is not specific to closed loop, it is
1363 just that is, I believe, the only one of the bills in which that
1364 language appears so that is why I raised it in the context. But
1365 no, it is not something that is in the nature of closed loop pump
1366 storage projects.

1367 Mr. Griffith. And otherwise in regard to the draft language
1368 on closed loop hydro pump storage you all feel fairly comfortable
1369 that we are headed in the right direction on that?

1370 Mr. Katz. I think it has a lot to commend it. Again we would
1371 be happy to work with committee staff just to make sure that there
1372 are no duplicative areas or things put into the statute that make
1373 things take longer or are repetitive other agency actions.

1374 Mr. Griffith. Because as some of the other witnesses on both
1375 sides of the aisle have pointed out, you know, when you are using
1376 hydro that is a very clean source of energy. In the case of using
1377 a captive water source inside of an abandoned mine, you really
1378 don't have a whole lot of problems as long as initially it is
1379 structurally sound of course. But we believe that we have a
1380 number of those sites in southwest Virginia, maybe some in my
1381 friend Mr. McKinley's district over in West Virginia as well.

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1382 But we believe that this is one way that we can continue our
1383 region's longstanding history working in energy and at the same
1384 times create jobs in a field and an area where jobs have
1385 disappeared as a result of some downturns in the economy and some
1386 regulations that we are going to try to work on.

1387 Mr. Katz. Yes, if I may, I will say --

1388 Mr. Griffith. Yes, please.

1389 Mr. Katz. -- the Commission approved a project of that type
1390 in California, the Eagle Crest Pump Storage Project, of which is
1391 using an abandoned mine and is currently under development, so
1392 those kinds of things can indeed make sense.

1393 Mr. Griffith. All right, I appreciate it very much and I
1394 see my time is gone. I yield back.

1395 Mr. Olson. The gentleman yields back. The chair calls upon
1396 the gentleman from New York, Mr. Tonko, for 5 minutes.

1397 Mr. Tonko. Thank you, Mr. Chair. Mr. Turpin, welcome. I
1398 have a few questions concerning the interagency coordination
1399 discussion draft. Do you believe that aerial or remote surveys
1400 have limitations?

1401 Mr. Turpin. At this time, I do. I think, you know, the
1402 Commission and its staff has had a long history of accepting remote
1403 data in terms of looking at the initial environmental impacts,

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1404 but then they need to be truthed up, you know, after an
1405 authorization before construction can start. There just simply
1406 are limitations. You can't always count on that to get the
1407 species counts. There are certain kinds of wetlands that aren't
1408 able to be delineated aerially.

1409 Mr. Tonko. Thank you. And can aerial survey data be
1410 unreliable regarding the presence of endangered species, historic
1411 properties such as archeological sites and characterization of
1412 wetlands?

1413 Mr. Turpin. Yes.

1414 Mr. Tonko. Okay. Does the draft before us include any
1415 standards or methodology requirements that must be met in order
1416 for an agency to be required to consider data from remote surveys?

1417 Mr. Turpin. No. I did not see anything about minimum
1418 standards.

1419 Mr. Tonko. Okay, thank you. And so there would be no
1420 quality control requirements that might consider the degree of
1421 accuracy, of scale, of elevation, of vegetation strata and
1422 density, soil profiles, or many other factors that could vary
1423 widely depending on the geographic region and methodology
1424 deployed in that survey?

1425 Mr. Turpin. Again, I saw nothing of that in the bill and

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1426 I took that to mean that that would be left up to the individual
1427 agencies.

1428 Mr. Tonko. Does this discussion draft require applicants
1429 to attempt to conduct ground surveying before using remote
1430 surveying?

1431 Mr. Turpin. Not that I read, sir.

1432 Mr. Tonko. And in which case applicants would not be
1433 required to make a good faith attempt to gain access to perhaps
1434 private property owners' land and in so doing help to make an
1435 important stakeholder aware that this project is being developed
1436 potentially through their property. There may be streamlining
1437 we can consider in the application process, but I really do believe
1438 that any attempts to skirt the rights of landowners especially
1439 when the outcome is less than perfect data would be a step in the
1440 wrong direction. Is that a concern that I should have?

1441 Mr. Turpin. I think the Commission's stance in the past has
1442 been that the best course of action is to get the best available
1443 data for the NEPA analysis. And the Commission has encouraged
1444 the pipeline companies to go out and actually seek, you know,
1445 pipeline right of way access to develop that data. But if it can't
1446 be achieved, then Commission staff has relied on remote and aerial
1447 data.

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1448 Mr. Tonko. I would also recommend that the committee
1449 receive more feedback on this provision from other federal and
1450 state agencies to understand how inadequate data might affect
1451 their review process and the associated regulatory requirements.

1452 Mr. Turpin, in your testimony you state the Commission's
1453 current review processes are thorough, efficient, and have
1454 resulted in the timely approval of the facilities necessary for
1455 natural gas pipelines. Generally speaking, how long does it
1456 typically take for a pipeline permitting process or permitting
1457 application to go through FERC's process?

1458 Mr. Turpin. It can vary pretty widely, so there is not a
1459 really great typical time. As I mentioned earlier, for the full
1460 spectrum of projects filed at the Commission for pipelines 88
1461 percent of them are issued within 1 year and that does go from
1462 very small projects. Usually, once you begin to increase the
1463 length of the line and the complexity of the project, the time
1464 does tend to stretch out because there are simply more
1465 stakeholders engaged, more issues to consider, and more agencies
1466 to have at the table.

1467 Mr. Tonko. But in general within a year?

1468 Mr. Turpin. Eighty eight percent within a year. Yes, sir.

1469 Mr. Tonko. Which seems to be, you know, given the importance

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1470 of the review seems to be a fairly expedited process done
1471 thoroughly. So with that Mr. Chair, I will yield back.

1472 Mr. Olson. The gentleman yields back. The chair calls upon
1473 the gentleman from Ohio, Mr. Johnson, for 5 minutes.

1474 Mr. Johnson. Thank you, Mr. Chairman. And gentlemen,
1475 thank you for joining our panel this morning.

1476 Mr. Katz, this committee received testimony some time back
1477 from a developer that had difficulty with a project on an existing
1478 non-powered dam under the Army Corps of Engineers' jurisdiction.
1479 Apparently, they had to perform two separate NEPA analyses, one
1480 for the FERC license and a separate analysis triggered by the Clean
1481 Water Act for the Army Corps. I understand that you have an MOU
1482 with the Army Corps, but what could FERC do to prevent this type
1483 of duplicative application of NEPA in the future?

1484 Mr. Katz. Well, sorry to give this answer, but ultimately
1485 there is not anything we can do, we don't control the Corps. But
1486 as you noted we have --

1487 Mr. Johnson. Your MOU doesn't address that, that kind of
1488 collaboration?

1489 Mr. Katz. Yes, the MOU does. The MOU seeks to have the
1490 Corps and the Commission act concurrently to the extent possible
1491 and that is as far as we have gone. But as a legal matter we have

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1492 no authority over the Corps, so if the Corps decides it needs to
1493 do more environmental work we can't prevent that.

1494 We also have a number of instances in which we have issued
1495 licenses for projects at Corps dams and the Corps decides it needs
1496 to take a certain amount of time whether it is to review the
1497 physical characteristics of the dam or to issue permits such as
1498 the ones that you refer to and the Commission does not have any
1499 authority to do anything about that.

1500 Mr. Johnson. Do you have a personal opinion as to the waste
1501 and the duplication of having both the Army Corps and FERC
1502 requiring NEPA studies on the same project?

1503 Mr. Katz. My opinion is that agencies do need the studies
1504 they need in order to carry out their statutory mandates, but I
1505 don't think there should be duplicative studies and ideally they
1506 would be done concurrently so that there is as little use of time
1507 as possible.

1508 Mr. Johnson. Now you would think that if you did one you
1509 could use the same application for both agencies and do it one
1510 time. I mean, I am a plowboy so common sense kind of reigns --

1511 Mr. Katz. Yes. That would be hoped. And often the Corps
1512 is a cooperating agency with the FERC when FERC does its NEPA
1513 document and then the Commission can do its best to make sure that

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1514 everything is in the NEPA document that the Corps might need.

1515 Mr. Johnson. All right. I understand that one important
1516 project parameter left unresolved until very late in the
1517 permitting process is the water quality standard, which as you
1518 know determines the amount of water that will ultimately be
1519 available to pass through the turbines in a dam, a power dam.
1520 Currently, the Corps may prescribe different water quality
1521 standards from the FERC and the state standards, beginning in some
1522 cases in the 6th or 7th year of the federal permitting process.
1523 This can cause significant problems from both a commercial and
1524 a planning perspective. Would you care to comment on this
1525 issue? Is that part and parcel of the same kind of deal we are
1526 dealing with, with the NEPA analyses?

1527 Mr. Katz. It may be to some extent. I think that those
1528 issues only arise where a project is located at a Corps dam. The
1529 Corps can't prescribe water quality standards if it is at a
1530 non-Corps dam. But yeah, if a project is at a Corps dam, the Corps
1531 essentially has the ability to require the licensee to do whatever
1532 it is that the Corps sees fit to do.

1533 Mr. Johnson. Having the ability is one thing, but this is
1534 another example of duplication and in my opinion it appears to
1535 be government waste and wasting the time of the businesses and

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1536 those that are trying to get these projects done; would you agree?

1537 Mr. Katz. It can be. Our experience is that different
1538 Corps districts behave different ways. Some Corps districts are
1539 very welcoming to hydro and try and do everything they can to
1540 promote hydro being built at Corps dam. Other districts don't
1541 seem to favor hydro at their dams.

1542 Mr. Johnson. That is kind of -- I appreciate that comment.
1543 Different Corps districts behave in different ways. Wouldn't it
1544 be great if they all were kind of talking to one another and doing
1545 things the same way?

1546 Mr. Katz. Yes, I think it would. I mean, one of the things
1547 FERC is lucky about is that we are a small agency, so if the
1548 chairman wants to know what I am up to she can walk down the hall
1549 and look me in the eye as opposed to I am located out in, you know,
1550 some far region of the country. And I think it is harder for folks
1551 in Corps headquarters to control all their aspects.

1552 Mr. Johnson. Okay. Lastly, for how many licenses issued
1553 or pending before the Commission has the FERC and the Army Corps
1554 MOU been employed to unify the NEPA review process, and how many
1555 of those instances has the Corps used a FERC generated NEPA review
1556 when approving a project? So has there been any crossover that
1557 you can recall where one agency used a NEPA from the other?

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1558 Mr. Katz. There certainly have been in the past prior to
1559 the MOU. The MOU is fairly recent so I am not certain whether
1560 it has come into play in any cases where we have actually issued
1561 licenses.

1562 Mr. Johnson. Can you provide us with the language around
1563 the NEPA analyses that is in the MOU? I would like to see that.
1564 I would like to see how much discussion actually went into it.
1565 Mr. Chairman, I yield back.

1566 Mr. Katz. Yes, I would be happy to do that and we also can
1567 let you know if there are any instances in which the MOU has been
1568 applied.

1569 Mr. Johnson. Thank you very much.

1570 Mr. Walberg. [Presiding.] Thank you. The gentleman's
1571 time has expired. I now recognize the gentleman from Oregon, Mr.
1572 Schrader.

1573 Mr. Schrader. Thank you very much, Mr. Chairman. I
1574 appreciate that.

1575 I guess, Mr. Turpin, Mr. Katz and others have talked about
1576 the concurrent review process. Do you have any, see any problems
1577 particularly with accelerating a more concurrent review process
1578 by all the different agencies?

1579 Mr. Turpin. No. Concurrent reviews are what is desired.

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1580 I think the rub becomes if the information needed by those other
1581 agencies can be developed at the same time as we are doing our
1582 review.

1583 Mr. Schrader. That would hopefully be established whatever
1584 process would be set up to begin with. The states would be an
1585 outlier though as I understand. They are not subject to any
1586 federal regulatory authority in terms of when they get their act
1587 together and decide to approve something?

1588 Mr. Turpin. The states that are acting under, it is their
1589 own authority would be preempted by the federal permits, but the
1590 state agencies acting on federally delegated authority for
1591 federal permits carry the same weight as the feds.

1592 Mr. Schrader. So that is something we will have to figure
1593 out going forward it looks like.

1594 Mr. Katz, do you agree that the bill dealing with
1595 cross-border approvals, the new cross-border approval process
1596 that is being suggested combines the permit process to just the
1597 segment on the border and doesn't allow any discussion of the
1598 entire project?

1599 Mr. Katz. I am not certain that it does that. The
1600 Commission would have to do whatever NEPA review is appropriate,
1601 and I don't think that the bill precludes the Commission from

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1602 looking at other impacts.

1603 Mr. Schrader. Okay, okay. That would be my read of the bill
1604 actually, also. While the bill says there is no cross-border
1605 review for modifications of an existing cross-border facility,
1606 with regard to cross-border authority are there other agencies
1607 or regulatory authorities and permitting processes that someone
1608 trying to modify a facility would need to abide by?

1609 Mr. Katz. I am not aware of any. I defer to Mr. Turpin.
1610 DOE, if there is a change in the commodity level DOE might have
1611 to approve it, but again I defer to Mr. Turpin for a further
1612 discussion.

1613 Mr. Turpin. It is going to depend on what equipment is
1614 needed for that modification. If it is a compressor station for
1615 the case of a natural gas pipeline it will have to comply with
1616 the Clean Air Act. I don't know enough about pump stations for
1617 liquid lines because we don't currently deal with those.

1618 Mr. Schrader. What about an expansion of the footprint of
1619 the facility?

1620 Mr. Turpin. That again it would depend on what exactly the
1621 equipment is being installed as to if there would be federal
1622 oversight or not.

1623 Mr. Schrader. Okay, but not any additional land being taken

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1624 into the facility would not be an issue then. It is just the type
1625 of equipment that would be there?

1626 Mr. Turpin. I mean current, it is usually the installation
1627 of additional features and increasing the footprint that drive
1628 most of the environmental issues.

1629 Mr. Schrader. Okay. Then there is a 30-day approval, you
1630 know, deadline for export-import of natural gas cross-border. Do
1631 you see that hampering public input or the ability to get the
1632 permitting process done, the approval process?

1633 Mr. Turpin. As I read the bill the 30 days was applicable
1634 to the DOE commodity determination and so I don't think that would
1635 affect the FERC process.

1636 Mr. Schrader. All right, very good.

1637 Mr. Katz, in the legislation about promoting hydro
1638 development in existing non-powered dams I am not that familiar
1639 with some of the current regulatory framework. It is being
1640 proposed to switch to that which is necessary to protect public
1641 safety or reasonable economic feasibility and prevent damage to
1642 fish and wildlife. How is that language different than what the
1643 current regulatory authority is?

1644 Mr. Katz. The language is different to the extent that it
1645 could be read to preclude the Commission's considering some other

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1646 resources that it now considers like flood control, irrigation,
1647 recreation, historic preservation. The standard is also
1648 different. The standard as I read the bill was that measures had
1649 to be economic and essential for fish and wildlife and that is
1650 a higher bar than currently exists.

1651 Mr. Schrader. Okay, very, very good. And with that I will
1652 yield back, Mr. Chairman. Thank you.

1653 Mr. Walberg. I thank the gentleman and I recognize the
1654 gentleman from Texas, Mr. Barton.

1655 Mr. Barton. Thank you. We have out in the audience, Mr.
1656 Chairman, Andy Black. Andy Black is a former personal staffer
1657 of mine and a former staffer of the committee and also former
1658 senior official over at FERC, and he just lost his dad and I think
1659 just got back from the funeral yesterday. So half of the
1660 committee and me personally we are with you in your time of sorrow.
1661 I never met your father, but I heard nothing but great things about
1662 him. So, and we look forward to your testimony on the next panel.

1663 Mr. Chairman, I just have a couple of questions. Under
1664 current law we handle permitting for oil pipelines domestically
1665 and gas pipelines differently. Is there any real reason to do
1666 that other than that is the way we have always done it?

1667 Mr. Katz. I am not sure if that was addressed to me, but

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1668 no, not particularly. I mean, the same thing is true with
1669 electric power lines. Congress sets up whatever scheme of
1670 regulation it sees fit to do.

1671 Mr. Barton. So it is just kind of the way it happened, but
1672 if we are going to do a pipeline reform bill is there any reason
1673 we couldn't use the same regulatory authority and permitting
1674 process for oil and gas pipelines?

1675 Mr. Katz. No, Congress has the authority to do that if it
1676 wishes.

1677 Mr. Barton. Good. In the Energy Policy Act back in 2005,
1678 we tried to give your agency, the FERC, the authority to oversee
1679 the various other agencies it had to do all the various pipelines
1680 that Mr. McKinley was talking about earlier. That doesn't seem
1681 to have worked too well, the delays have gone up not down. What
1682 went wrong and what do we do to fix it? Do we need more incentives
1683 or do we need more penalties or do we just need better people at
1684 the FERC? What is going on? You don't think the latter is the
1685 case.

1686 Mr. Katz. I would never want to say that our commissioners
1687 -- the staff is less than perfect, but the commissioners are
1688 perfect. I don't know that there is anything that Congress did
1689 wrong in the bill. I think that what has happened since then,

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1690 and I will defer to Mr. Turpin if he wants to speak to it, is that
1691 there has been an increasing emphasis on public interest in the
1692 pipelines and opposition to pipelines, concerns about
1693 environmental effects, you know, the type of production methods
1694 that are used, so that back in the day pipeline regulation approval
1695 was a fairly sleepy part of the Commission's business.

1696 Now it is something that a lot of people are interested in
1697 and very vocal about and I think that is more what is taking more
1698 time than anything that Congress is responsible for having done.

1699 Mr. Barton. Turpin?

1700 Mr. Turpin. I would agree. I would also say staff is pretty
1701 good too. But I think that is a large part of it is the increased
1702 public interest, I mean from a very wide audience in the U.S. And
1703 as with the current approach, fundamentally the Commission can
1704 engage these agencies. The Commission staff can do the work, but
1705 all these agencies have to comply with their own congressionally
1706 directed mandates and it is that sort of not that I think ends
1707 up, we all end up tripping over.

1708 Mr. Barton. Well, I am not the chairman of the committee,
1709 I am the vice chairman, but I think we are going to do a pipeline
1710 permitting reform bill and we would really like your agency's
1711 input. I think it is good to have more public input. I don't

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1712 think that is a bad thing, I think that is a good thing.

1713 But having said that you still need, once you get that input
1714 you need to make a decision. You need to live within the
1715 guidelines. You need to live within the deadlines. If our
1716 deadlines are too strict maybe we need to expand them a little
1717 bit.

1718 But we are going to need a lot more energy infrastructure
1719 in the next 20 to 30 years and pipelines are going to be a big
1720 part of that. And so if we didn't quite get it right 10 or 15
1721 years ago in the Energy Policy Act of 2005, let's get it right
1722 this time in the Energy Infrastructure Review Act of 2017 or 2018.
1723 With that Mr. Chairman, I yield back.

1724 Mr. Walberg. I thank the gentleman and I recognize the
1725 gentleman from Indiana, Mr. Bucshon.

1726 Mr. Bucshon. Thank you, Mr. Chairman.

1727 Mr. Katz, in my district and nearby there are multiple dams
1728 that currently don't produce hydropower but potentially could,
1729 as you are aware. In 2013, Congress directed FERC to investigate
1730 the feasibility of a 2-year licensing process and develop criteria
1731 for non-powered dams and closed loop pump storage.

1732 I guess you had a pretty good experience at the Kentucky Lock
1733 and Dam project, and what elements of a 2-year pilot program should

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1734 Congress make permanent based on FERC's experience with the 2-year
1735 pilot?

1736 Mr. Katz. I don't want to get ahead of the Commission staff
1737 because we are right now compiling a report that Congress directed
1738 us to do in the 2013 statute.

1739 Mr. Bucshon. Okay, so we have to wait for the report.

1740 Mr. Katz. Yes. As I said earlier though, even in the
1741 absence of any kind of regulatory or statutory changes, some 25
1742 percent of the original licenses that the Commission worked on
1743 in the last 13 years or so have been permitted in 2 years or less,
1744 so it can happen.

1745 Mr. Bucshon. Understood. And for these two type of
1746 projects, would these type of projects raise the same
1747 environmental and wildlife issues as traditional hydro or --

1748 Mr. Katz. The same issues get considered, but they are
1749 generally considerably less in scope because the existing dam has
1750 already had a certain impact.

1751 Mr. Bucshon. So it might have an impact on the timeline then
1752 if it was easier because of that?

1753 Mr. Katz. Such projects tend to be easier, not as an
1754 absolute rule but they tend to be easier.

1755 Mr. Bucshon. Would the draft legislation relating to

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1756 non-powered dams and pump storage in any way alter the FERC's
1757 environmental analysis under NEPA?

1758 Mr. Katz. I believe I answered an earlier question.

1759 Mr. Bucshon. Probably did.

1760 Mr. Katz. It looks as though it would in that it only calls
1761 out fish and wildlife resources and doesn't call out flood
1762 control, irrigation --

1763 Mr. Bucshon. Okay, that is what --

1764 Mr. Katz. -- water supply and other things, and also it
1765 seems to set a higher standard for the conditions that would be
1766 imposed, a higher bar.

1767 Mr. Bucshon. How about the Clean Water Act or the Clean Air
1768 Act, any differences there on these type of projects?

1769 Mr. Katz. Clean Air Act issues are almost never implicated
1770 in hydro projects. The Clean Water Act, the legislation does call
1771 --

1772 Mr. Bucshon. Does the draft legislation have any impact on
1773 that?

1774 Mr. Katz. I don't think it would, but it is conceivable.
1775 We would have to study that.

1776 Mr. Bucshon. Okay. I yield back, Mr. Chairman.

1777 Mr. Walberg. I thank the gentleman and I recognize the

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1778 gentleman from Texas, Mr. Flores.

1779 Mr. Flores. Thank you, Mr. Chairman. Mr. Chairman, thank
1780 you for holding today's hearing. America's shale energy
1781 revolution has dramatically improved our energy security here at
1782 home. The U.S. is now one of the top producers of oil and gas
1783 in the world, yet there are still existing infrastructure
1784 challenges to deliver those resources to consumers. Modernizing
1785 our infrastructure to efficiently and safely bring energy
1786 resources to consumers helps to create jobs and brings lower
1787 energy prices for hardworking American families.

1788 So with that I would like to get into my questions. Some
1789 of these were partially asked by Mr. Rush, Mr. Green, and Ms.
1790 Castor. Mr. Turpin, I understand that the Commission does what
1791 it can to encourage the participation of other permitting agencies
1792 today to identify issues and work to resolve them.

1793 Unfortunately, at times the other federal agencies have chosen
1794 to not take the responsibility seriously. They may simply choose
1795 to just not act on a permit. In your experience, why do some
1796 agencies choose to go that route to not work with you?

1797 Mr. Turpin. I think it is from a global perspective of
1798 agencies working with us it is fairly rare for somebody to refuse
1799 to participate in the FERC pre-filing process or in coordination

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1800 with staff. Whether they choose to be, you know, a cooperating
1801 agency under NEPA is a different question. They have their own
1802 interests to protect in terms if they want to be an intervener
1803 in the FERC process later. I think in large part the rubs come
1804 down to them having different criteria for the data they need to
1805 do their permit as well as their own resource constraints. We
1806 are a sole purpose agency. We look at this infrastructure.
1807 Other agencies have multiple mandates and they have to balance
1808 their needs as best they can.

1809 Mr. Flores. When you look at the legislation that places
1810 the mandate on the agencies to carry out their obligation
1811 concurrently in accordance with the schedule established by the
1812 Commission, do you think that legislation goes far enough or
1813 should we try to go farther to compel coordination and timely
1814 coordination?

1815 Mr. Turpin. I think that is a difficult question. Trying
1816 to compel the timely coordination requires -- well, the language
1817 always has in it the caveat of unless otherwise mandated in other
1818 laws or unless an agency can't meet its other obligations, and
1819 it has been in all the versions I have seen. And so that is sort
1820 of the Gordian knot, and having the Commission in charge of all
1821 of those mandates for these other agencies seems a bit inefficient

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1822 from our perspective.

1823 Mr. Flores. Are you aware of strategies by pipeline
1824 opponents like the Sierra Club and others to block access through
1825 land for route surveys?

1826 Mr. Turpin. I have heard of landowners blocking access, you
1827 know, not granting survey access to pipeline companies, but not
1828 NGOs or any kind of other organization.

1829 Mr. Flores. Okay. To the extent they do though I mean it
1830 is pretty obvious, but can you tell the committee what impact that
1831 has on you doing your job?

1832 Mr. Turpin. As I said earlier, the Commission staff prefers
1833 to have the best information, you know, from the ground data in
1834 the ground surveys in the application, but without it we can move
1835 to desktop data, we can move to remote data, and we can move forward
1836 with our analysis that does have to be truthed up later before
1837 construction. And so sometimes there are potential implications
1838 that certain protected features won't be discovered until after
1839 the application and then the applicant has to do an expensive
1840 re-route or some lengthy adjustment.

1841 Mr. Flores. Okay. The permitting dashboard in the draft
1842 legislation would consolidate the information from your agency
1843 as well as the coordinating agencies into a simple, easy to use

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1844 and easy to access website. You admit it would improve
1845 transparency, but you also say in your testimony that it would
1846 burden staff resources and time. How do we balance the need for
1847 transparency with scarce government resources?

1848 Mr. Turpin. Good question. I am still trying to figure
1849 that one out in my role here. I think that is always the rub.
1850 We don't have a lot of excess staff sitting around with a lot of
1851 excess capacity. You know, we are all technical specialists and
1852 we try to use everybody to their full capacity. So adding on,
1853 sort of riding herd on these other agencies just does dilute that
1854 effort, so I mean we can do it.

1855 Mr. Flores. And with respect to this permitting dashboard,
1856 again coming, stand out of the weeds, if the FERC didn't collect
1857 this information who would or should or could? I mean, you are
1858 the lead agency for permitting pipelines; aren't you the logical
1859 owner for this project?

1860 Mr. Turpin. Yes, we are. And as the current process we have
1861 it is the applicant that is going out and filing for these permits
1862 and engaging those agencies that is responsible for collecting
1863 that data and reporting it into the record.

1864 Mr. Flores. Okay. Mr. Chairman, I yield back.

1865 Mr. Walberg. I thank the gentleman. I now recognize the

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1866 gentleman from North Dakota, Mr. Cramer.

1867 Mr. Cramer. Thank you, Mr. Chairman. Thanks to the
1868 witnesses. I want to hone in a little bit on some statements that
1869 were made earlier and see if we can't find some common ground,
1870 because I appreciate what Mr. McNerney said earlier about, you
1871 know, we will never solve this if one side imposes its will on
1872 the other. I agree.

1873 I think Ms. Castor makes a relevant point admonishing us to
1874 see how the FPISC process works. We do have some pretty
1875 successful pilots and I think they could be even more successful
1876 if the interagency collaboration was more, I guess cooperated by
1877 more agencies on federal lands where we have seen some permitting
1878 activity actually create efficiencies by actually co-locating
1879 some agencies even in field offices. But what I am wondering
1880 about on the interagency issue here is can we find ways or even
1881 substantiate that interagency collaboration and cooperation can
1882 accomplish two goals. One, to streamline the permitting process
1883 so that those of us who want to see the process shortened can be
1884 satisfied as well as find synergies, not just efficiencies but
1885 synergies among the agencies where there is even greater
1886 environmental oversight and scrutiny in that short of timeframe
1887 so that there doesn't have to be a loser but rather two winning

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1888 sides?

1889 Is that too much to hope for or can that be substantiated?

1890 And I would ask either or both of you for your experiences.

1891 Mr. Katz. No, I would say that what you say makes a lot of

1892 sense and indeed is a viable and very positive goal.

1893 Mr. Cramer. Do we have any experiences where that can be

1894 demonstrated or --

1895 Mr. Katz. The Commission participated a kind of ex-officio

1896 because it wasn't any of our projects in the interagency task force

1897 that you talked about, which I think primarily related to getting

1898 transmission lines on federal lands permitted. And our

1899 impression watching it a little bit from afar was that the agencies

1900 did a very good job of working together and doing things

1901 concurrently and trying to solve everybody's problems at once.

1902 And in some projects that come before the Commission that

1903 happens and things go very well. Other times it doesn't. I guess

1904 the question of getting it to be consistent and to be the rule

1905 rather than exception is perhaps the difficult thing.

1906 Mr. Cramer. And perhaps that is more a matter of the will

1907 than it is policy. However, Mr. Turpin, I don't know if you have

1908 anything to add to that but is there a way to incent that within

1909 the agencies? In other words, I think the natural tendency is

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1910 to slow-walk things if you are just the bureaucracy doing your
1911 things sequentially, right, and you have 90 days, generally it
1912 takes 90 days. If you hadn't noticed, Congress usually extends
1913 their deadlines so that we can take longer.

1914 So what I am wondering is, is there a way to properly incent
1915 that behavior that we seek in an actual streamlining process
1916 without violating the integrity of oversight and scrutiny?

1917 Mr. Turpin. I think it comes back to sort of setting the
1918 priorities for the agencies. I mean they are given multiple
1919 mandates. Again we are a single-focus agency so it is easy for
1920 us to stay on the track. Other folks who have very widely
1921 different missions to carry out have to do that balancing act and
1922 so having that priority set for them would go a long way.

1923 Mr. Cramer. I do wonder sometimes if we couldn't harmonize
1924 some of that again while maintaining the integrity, but that is
1925 beyond obviously your agency's responsibility and scope.

1926 Since I have time, with regard to the presidential permits
1927 in cross-border on the oil side, which is the difference maker,
1928 right, from natural gas on international pipelines, this national
1929 interest determination which is what the President ultimately has
1930 to make on a, where a presidential permit is determined, if I
1931 understood I think your answer to a previous question, you, while

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1932 consulting the national security in Homeland Security and other
1933 agencies, State Department, you are in essence not neglecting the
1934 national interest especially on the security side in your process
1935 with gas pipelines; would that be accurate?

1936 And I don't know whether the determination or the standard
1937 for the permit is the same, but it seems that the considerations
1938 are the same. Is that fair?

1939 Mr. Turpin. Yeah. I mean with a natural gas process, you
1940 know, under NGA Section 3 we do the environmental review, we look
1941 at the facility's installation, and under the executive orders
1942 for the presidential process we reach out to State and Defense
1943 to get their concurrence on impacts that areas that they oversee.

1944 Mr. Cramer. Thank you for your work and for your testimony.
1945 I yield back.

1946 Mr. Walberg. I thank the gentleman. I recognize myself now
1947 for 5 minutes of questioning. Mr. Katz and Mr. Turpin, thank you
1948 for being here. Mr. Katz, the discussion draft would designate
1949 hydropower as renewable energy under the Energy Policy Act of
1950 2005. How has hydropower development been adversely affected by
1951 the fact that it is not always considered renewable?

1952 Mr. Katz. That is one, again, that I would more have to defer
1953 to the second panel who deal with it on a day-to-day basis. But

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1954 certainly there are government programs, tax credits, other
1955 things that have not been available to the hydro industry when
1956 it is not considered to be a renewable resource.

1957 Mr. Walberg. Seems to make sense, so I guess we will wait
1958 for that second panel. Let me ask you, as you know the small
1959 conduit hydropower plays an important role in our nation's energy
1960 mix. It is a great option to add renewable generation to existing
1961 infrastructure, it is installed almost anywhere even in remote
1962 places. The Hydropower Regulatory Efficiency Act of 2013 created
1963 a streamlined process for qualifying conduit facilities. What
1964 has been your experience since then?

1965 Mr. Katz. Our experience has been that that process has gone
1966 very smoothly. We have almost never had any comments when someone
1967 proposed to have a qualifying project, so it has gone very quickly.
1968 In terms of the new legislation which would cut the comment period
1969 back to 15 days, Commission staff supports that.

1970 Indeed, we are not certain why it might be limited to projects
1971 of two megawatts as opposed to the five megawatt projects that
1972 are already covered by the act, and indeed I will go further to
1973 say the Commission staff has previously testified to Congress that
1974 it very well would be appropriate to exempt all conduit projects
1975 from Commission regulation given that the conduits themselves are

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1976 subject to whatever appropriate environmental regulation goes on
1977 when a conduit is built and that they very rarely, if ever, have
1978 additional environmental impact.

1979 Mr. Walberg. So you would be supportive of Congress
1980 shortening the time period at the very least?

1981 Mr. Katz. We see no downside to that.

1982 Mr. Walberg. Okay, okay. Let me ask this question and both
1983 could respond. How does the current FERC process hinder
1984 hydropower projects upgrades such as those that would increase
1985 deficiency capacity and output of existing plans?

1986 Mr. Katz. I think it can vary from project to project.
1987 Again if you have a fairly simple project that stakeholders are
1988 comfortable with and doesn't have significant environmental
1989 impacts it can go forward very quickly. If it is a major project
1990 that brings into play the Endangered Species Act, the Clean Water
1991 Act and other regulations that can significantly delay
1992 consideration of that amendment.

1993 Mr. Walberg. Okay, thank you. I yield back my time and now
1994 recognize the gentleman from Oklahoma, Mr. Mullin.

1995 Mr. Mullin. Thank you, Mr. Chairman. And first of all, I
1996 want to thank my colleague across the aisle, Gene Green, for
1997 working with me on this issue and working together with us on so

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95

1998 many different issues. We have worked together in the past and
1999 I look forward to doing it again.

2000 Mr. Turpin, as you know the process for reviewing
2001 cross-border infrastructure is established through a series of
2002 executive orders, and I think you know where I am going with my
2003 questioning here. In fact, Congress has never weighed in and
2004 there are no current laws on the books. The draft legislation
2005 before us today would be the first to establish a uniform and
2006 transparent process in authorizing cross-border energy
2007 infrastructure. Would the draft legislation change the
2008 Commission's existing process for reviewing cross-border gas
2009 pipelines?

2010 Mr. Turpin. I do not believe it would.

2011 Mr. Mullin. Would you have any concerns with that? When
2012 I say you don't believe it would I just want to clarify that.

2013 Mr. Turpin. Well, let me add to that. I don't believe it
2014 would change the review of the facilities, you know, the
2015 environmental review that we do, the current reviews that we do
2016 under the Natural Gas Act. Under the bill of course we would not
2017 be reaching out and coordinating with State and Defense.

2018 Mr. Mullin. So it would basically be you would follow the
2019 same process kind of like what Mr. Cramer was saying?

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96

2020 Mr. Turpin. Right.

2021 Mr. Mullin. Does the Commission have the technical capacity
2022 to take on the new responsibility?

2023 Mr. Turpin. In terms of adding oil pipelines, I mean
2024 pipelines to a large extent are pipelines.

2025 Mr. Mullin. Agreed.

2026 Mr. Turpin. There will be some uniqueness to the product
2027 in it that we haven't had to deal with before, but we can get that
2028 expertise.

2029 Mr. Mullin. Uniqueness by?

2030 Mr. Turpin. Natural gas, I mean as a siting matter transport
2031 of oil is something we have not had to look at. So there will
2032 be considerations for spills, considerations for that sort of
2033 thing.

2034 Mr. Mullin. Would FERC treat oil pipelines like gas
2035 pipelines with respect to identification for the jurisdiction
2036 purposes?

2037 Mr. Turpin. I don't know. That would have to be set, the
2038 policy for that would have to be set by the Commission, which is
2039 I think what would be done in that year-long rulemaking, and then
2040 Commission staff would act on whatever policy the Commission comes
2041 up with.

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2042 Mr. Mullin. Do you have a problem with the timeframe to
2043 which we put forth with approving the permit?

2044 Mr. Turpin. As I read it, it is 120 days after the final
2045 NEPA document and that is not an issue.

2046 Mr. Mullin. Not an issue. Would the draft legislation have
2047 any effect on the NEPA or a shortcut to the Commission's
2048 environmental review in any way?

2049 Mr. Turpin. I do not believe so.

2050 Mr. Mullin. Okay, real quick that was all I had. I just
2051 wanted to clarify some concerns that we have heard about this.
2052 So Mr. Turpin, appreciate it and Mr. Chairman, I yield back.

2053 Mr. Walberg. I thank the gentleman and I recognize the
2054 gentleman from Missouri. Welcome back, Mr. Long.

2055 Mr. Long. Thank you, Mr. Chairman. And Mr. Turpin, the
2056 Promoting Interagency Coordination for Review of Natural Gas
2057 Pipelines discussion draft requires early outreach to permitting
2058 agencies. How does this help FERC and other agencies coordinate
2059 to make sure their input and concerns are addressed?

2060 Mr. Turpin. I think it allows the applicant to get out to
2061 those agencies at the earliest possible time before they have
2062 developed the routes, before they develop the projects so that
2063 the agencies can identify what data needs they have, can influence

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2064 what the applicant does in the design to mitigate any impacts,
2065 and give the applicant the most notice on what sort of studies
2066 might be needed for when the applications are filed.

2067 Mr. Long. Okay. Can you discuss the ways that we could
2068 reduce the uncertainty in the review schedule to make sure the
2069 reviews are completed in a timely manner?

2070 Mr. Turpin. I think the largest, single most crucial factor
2071 in doing that is developing the data needed by all the different
2072 agencies for their mandates.

2073 Mr. Long. Okay.

2074 Mr. Katz, you mentioned in the next 15 years almost half of
2075 licensed projects will begin the relicensing process. How can
2076 we make sure that the relicensing projects are completed in a
2077 timely manner?

2078 Mr. Katz. It is a difficult ask given that there are
2079 statutory mandates that allow other agencies to in effect set the
2080 timeframe. I think that some of the efficiencies that are being
2081 proposed in the current act will help.

2082 Mr. Long. Say that again, you think that what?

2083 Mr. Katz. I think that some of the measures provided in the
2084 acts before us will introduce efficiency and help the Commission
2085 move ahead to do things in as timely a manner as possible. And

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2086 I think the Commission staff and the Commission itself will be
2087 committed to getting those licenses done as quickly as possible,
2088 but we don't have complete control given the exercise of authority
2089 under federal law by state and other federal agencies.

2090 Mr. Long. All right. Currently FERC can grant an extension
2091 of just 2 years from the commencement of the project construction.
2092 Could you expand on how the discussion draft gives FERC
2093 flexibility on cases that require additional time to begin
2094 construction?

2095 Mr. Katz. Yes, the discussion draft would allow the
2096 Commission to extend the commencement of construction deadline
2097 for several additional years and that might help certain projects
2098 that are having trouble sort of dotting there is and crossing their
2099 Ts before they get started. So it would be a help to some
2100 projects.

2101 Mr. Long. Okay. And Mr. Chairman, that is all I have and
2102 I yield back.

2103 Mr. Olson. [Presiding.] The gentleman yields back.

2104 Seeing there are no further members wishing to ask questions
2105 for the first panel, I would like to thank both you Mr. Turpin
2106 and you Mr. Katz for being our witnesses today. This will
2107 conclude our first panel and we will now take a few minutes to

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2108 set up for the second panel.

2109 [Whereupon, at 12:04 p.m., the subcommittee recessed, to
2110 reconvene at 12:06 p.m., the same day.]

2111 Mr. Olson. Welcome back and thank you for your patience and
2112 for taking your time to be here today. We now move into our second
2113 panel for today's hearing. We will follow the same format as the
2114 first panel. Each witness will be given 5 minutes for an opening
2115 statement followed by a round of questions from our members.

2116 For the second panel we have the following witnesses: Mr.
2117 Jeffrey Soth, he is a legislative director and political director
2118 at the International Union of Operating Engineers; Mr. Jeffrey
2119 Leahey, the deputy executive director of the National Hydropower
2120 Association; Mr. William Robert Irvin, president and CEO of
2121 American Rivers; Ms. Jennifer Danis, the senior staff attorney
2122 at the Eastern Environmental Law Center; Mr. Donald Santa,
2123 president and CEO of the Interstate Natural Gas Association of
2124 America; and Mr. Andrew Black, president and CEO of Association
2125 of Oil Pipe Lines.

2126 We appreciate you all being here today. We will begin this
2127 panel with Mr. Soth, and you are now recognized for 5 minutes to
2128 give an opening statement.

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2129 STATEMENTS OF JEFFREY SOTH, LEGISLATIVE AND POLITICAL DIRECTOR,
2130 INTERNATIONAL UNION OF OPERATING ENGINEERS; JEFFREY LEAHEY,
2131 DEPUTY EXECUTIVE DIRECTOR, NATIONAL HYDROPOWER ASSOCIATION; BOB
2132 IRVIN, PRESIDENT AND CEO, AMERICAN RIVERS; JENNIFER DANIS, SENIOR
2133 STAFF ATTORNEY, EASTERN ENVIRONMENTAL LAW CENTER; DONALD SANTA,
2134 PRESIDENT AND CEO, INTERSTATE NATURAL GAS ASSOCIATION OF AMERICA;
2135 AND, ANDY BLACK, PRESIDENT AND CEO, ASSOCIATION OF OIL PIPE LINES.

2136

2137 STATEMENT OF JEFFREY SOTH

2138 Mr. Soth. Thank you, Vice Chairman Olson, Ranking Member
2139 Rush, members of the subcommittee, it is an honor to join you at
2140 your first legislative hearing to the 115th Congress. My name
2141 is Jeffrey Soth. I am legislative and political director of the
2142 International Union of Operating Engineers. The Union
2143 represents almost 400,000 men and women in the United States and
2144 Canada. In short, we build and maintain the cranes, bulldozers,
2145 and backhoes that build North America.

2146 Members of the Operating Engineers are some of the most
2147 highly skilled, highly trained construction craft workers in the
2148 world. We deliver training at over 86 facilities in the United
2149 States where we employ 550 instructors. The IUOE and its
2150 employers invest over \$128 million annually in local

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2151 apprenticeship and training programs, and I want to point out
2152 here, at no cost to the public. That is exclusively, privately
2153 financed.

2154 In addition to the training of local unions, the IUOE
2155 conducts specialized national training in coordination with the
2156 Pipe Line Contractors Association in the pipeline sector. We
2157 invest over 5 million annually in that work to ensure the safe
2158 installation and construction techniques in the pipeline industry
2159 making it the safest in the world. The pipeline training program
2160 has historically been delivered at locations around the country
2161 where there is a large project or regional demand for pipeline
2162 training.

2163 What I am pleased to share with the committee that the IUOE
2164 is building a new home for its pipeline training in Crosby, Texas.
2165 In spring 2018, the IUOE will open our international training and
2166 education center, \$150 million training center in the heart of
2167 the Gulf Coast. I have attached a rendering of the facility and
2168 a site plan of the project where you can see just how much of that
2169 property is dedicated to pipeline training. And again this
2170 facility is being built at no cost to the public. There are no
2171 public resources, no taxpayer dollars whatsoever associated with
2172 the \$150 million investment.

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2173 Let me turn now to employment and wages in the construction
2174 sector and in the pipeline industry in particular. The
2175 construction industry has the highest unemployment rate of any
2176 industry sector at 8.4 percent. Employment in the oil and gas
2177 pipeline sector of the construction industry is near a 5-year low.
2178 Please see the chart attached to my testimony.

2179 As you can tell from it, we are down about 20 percent of total
2180 jobs in the sector since the summer of 2015. I should point out
2181 that these are good, family sustaining jobs. Production and
2182 nonsupervisory workers make over \$30 an hour in the pipeline
2183 industry, and compare that to \$21.90 in all private sector
2184 payrolls.

2185 After that description and background of the IUOE's role in
2186 training and our look at labor market information, let me turn
2187 to the legislation before the committee and two pieces of
2188 legislation in particular related to pipelines. Regulatory
2189 uncertainty and procedural delays during environmental review are
2190 hindering the growth of these good jobs and the other benefits
2191 that go along with this domestic energy production. Congress
2192 needs to update and streamline the permitting and regulatory
2193 framework to ensure that the domestic oil and gas industry
2194 flourishes in a safe and predictable way. To put it simply, it

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2195 is time to modernize the federal code for energy infrastructure.

2196 That is why they IUOE supports the Cross-border Energy
2197 Infrastructure Act and the Promoting Interagency Coordination for
2198 Review of Natural Gas Pipelines Act. The cross-border
2199 legislation in particular takes the important step of codifying
2200 the process to permit a project that crosses the border. Now that
2201 there is not a controversial project under consideration it is
2202 the right time to make this move away from the ambiguity of an
2203 executive order.

2204 Frankly, it is time to legislate regarding cross-border
2205 permits. The State Department's inspector general described the
2206 problem in a special report in February of 2012 when it reviewed
2207 the Keystone XL permit process. It determined that the limited
2208 expertise and experience of State Department officials with
2209 respect to NEPA and environmental reviews frustrated and delayed
2210 the permitting process for KXL, perhaps even leading to a need
2211 for a whole supplemental EIS and adding 11 months to that process.

2212 It is time to place responsibility for cross-border permits
2213 in an experienced environmental agency like FERC. The
2214 interagency coordination bill makes important reforms to natural
2215 gas pipeline permitting. The bill will give FERC additional
2216 tools to identify potential issues that can hinder state and

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2217 federal agencies from conducting timely reviews. It is
2218 an important evolution from the simple 12-month limit legislation
2219 that has been considered in past Congresses and it is time to more
2220 closely address, that this legislation more closely addresses the
2221 real problems associated with permitting delays. The IUOE
2222 encourages you to pass these two pieces of legislation and we look
2223 forward to working with the committee to enact them in this 115th
2224 Congress. And thank you, Vice Chairman Olson, for the
2225 opportunity. It was a pleasure to join you today.

2226 [The prepared statement of Mr. Soth follows:]

2227

2228 *****~~3~~*****

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2229 Mr. Olson. Thank you, Mr. Soth.

2230 The chair now calls upon Mr. Leahey for 5 minutes for an
2231 opening statement.

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2232 STATEMENT OF JEFFREY LEAHEY

2233

2234 Mr. Leahey. Vice Chairman Olson, Ranking Member Rush, and
2235 members of the subcommittee, thank you. I am pleased to be here
2236 to discuss the importance of hydro to the electric system, its
2237 untapped growth potential, the challenges that impede growth, and
2238 bills before the subcommittee today. Hydro provides six to
2239 seven percent of all electricity generation and nearly half of
2240 all renewable generation, making hydro the largest provider of
2241 renewable electricity. Another 42 pump storage plants make up
2242 almost all, 97 percent, of energy storage. This system
2243 contributes to cleaner air and provides other benefits, including
2244 river management for fish and habitat protection, flood control,
2245 drought management, water supply, irrigation and more.

2246 Hydro also provides many grid benefits: base load power,
2247 peaking generation, load following, reliability. With the
2248 growing need for these services, hydro has increased capacity by
2249 nearly two gigawatts since 2005.

2250 Hydro infrastructure also brings many economic benefits.
2251 The industry employs a work force of almost 150,000 and access
2252 to low-cost, clean, reliable power attracts many high tech firms
2253 and manufacturers. But hydro can do even more. The myth is that

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2254 hydro is tapped out. But that is not the case and I direct the
2255 subcommittee to the 2016 Department of Energy Hydropower Vision
2256 Report. This report with input from industry, environmental
2257 groups, and state and federal agencies outlines 50 gigawatts of
2258 growth potential by 2050. Let me highlight two prime
2259 examples, pump storage and building on existing infrastructure
2260 non-powered dams and conduits, the focus of three of the bills
2261 today. Pump storage can rapidly shift, store, and reuse energy
2262 until there is corresponding system demand while facilitating the
2263 integration of variable generation. As more intermittent and
2264 renewable generation is added to the grid and other base load
2265 generation is lost, the need for pump storage is increasing
2266 particularly in the West.

2267 Of the 80,000 U.S. dams, only three percent generate
2268 electricity highlighting the potential in the non-powered dam
2269 sector. Many of these opportunities are located in regions some
2270 may considered unexpected such as the Southeast and Rust Belt
2271 states. Conduit opportunities are also available across the
2272 country where power generating equipment can be added to tunnels,
2273 canals, and pipes. However, projects are not being deployed due
2274 to the uncertain, duplicative, and lengthy overall regulatory
2275 process.

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2276 NHA member company, Missouri River Energy Services, reports
2277 that their new project at a Corps of Engineers dam in Iowa will
2278 come on line in 2018, having started the development process in
2279 2005, 13 years ago. I cannot overstate how crucial it is to enact
2280 process reforms immediately. The nation could access huge
2281 amounts of reliable low-cost power without sacrificing other
2282 values. Existing project owners are also expressing concerns.
2283 With well over 400 projects up for relicensing by 2030, NHA is
2284 already hearing from owners particularly in the Northeast that
2285 the time and cost for licensing may render projects uneconomic
2286 and result in license surrenders. Congress must address the
2287 challenges both asset owners and developers face. Over
2288 the last 5 years, this subcommittee has developed an extensive
2289 record on the problems experienced by industry. The message has
2290 been clear and consistent. Licensing takes years to complete,
2291 requires substantial up-front costs, and contains too much
2292 uncertainty and risk, all of which for a developer creates a
2293 significant barrier to securing financing or capital and for a
2294 utility makes it difficult to justify project economics.

2295 Turning to the bills before the subcommittee today, NHA
2296 strongly supports policies to address inefficiencies and improve
2297 the coordination in the project approval process which we believe

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2298 will promote the hydropower resource while also protecting
2299 environmental values. I have included specific comments on all
2300 of the bills in my written statement and ask permission to include
2301 for the record additional letters of support that are submitted
2302 following this hearing. Focusing on the Hydropower
2303 Regulatory Modernization Act, it incorporates bipartisan
2304 proposals that NHA supports and which were included in legislation
2305 in last Congress. It is a crucial first step to address the
2306 barriers to developing hydropower's untapped potential and the
2307 problems experienced in relicensing.

2308 Empowering FERC as the lead agency to coordinate the
2309 schedule, requiring FERC and agencies to coordinate, facilitating
2310 concurrent decision making, early identification of issues, and
2311 elevating disputes to leadership are improvements that should
2312 increase transparency and accountability and eliminate delays.
2313 However, NHA also believes improvements to the bill are needed
2314 as the language appears to rescind important provisions under
2315 current law. This includes the requirement for agencies to give
2316 equal consideration to developmental and nondevelopmental values
2317 when crafting mandatory conditions, and the opportunity for
2318 discovery and cross examination as part of the trial-type hearings
2319 process. These received bipartisan support when adopted and were

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2320 backed by industry and stakeholders alike. Finally, NHA
2321 believes continued work through last year on some of these
2322 provisions resulted in new language that provides further clarity
2323 and direction and should be adopted. And we believe this hearing
2324 creates an opportunity for further dialogue on issues documented
2325 in the record but for which solutions were not advanced. And with
2326 that I will conclude my testimony and I look forward to answering
2327 your questions.

2328 [The prepared statement of Mr. Leahay follows:]

2329

2330 *****~~INSERT 4*****~~

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2331 Mr. Olson. Thank you, Mr. Leahey.

2332 The chair now calls upon Mr. Irvin for a 5-minute opening
2333 statement.

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2334 STATEMENT OF BOB IRVIN

2335

2336 Mr. Irvin. Vice Chairman Olson, Ranking Member Rush,
2337 members of the subcommittee, thank you for the opportunity to
2338 testify today on the hydropower bills being considered by this
2339 committee. My name is William Robert Irvin. I am president and
2340 CEO of American Rivers, a national conservation organization that
2341 works to protect wild rivers, restore damaged rivers, and conserve
2342 clean water for people and nature. I also served as a member of
2343 the senior peer review group for the Department of Energy's Hydro
2344 Vision Report which was issued last year.

2345 Let me begin by stating very clearly that while we are
2346 pro-rivers, American Rivers is not anti-hydropower. Hydropower
2347 is and will remain a key part of our nation's energy portfolio.
2348 Our staff has participated in hundreds of FERC proceedings
2349 resulting in the generation of thousands of megawatts of
2350 electricity and improved environmental performance at those
2351 generating facilities. In addition, we have supported
2352 legislation to incentivize sustainable hydropower projects.

2353 American Rivers also recognizes that when cited and operated
2354 responsibly, hydropower can be beneficial as a low-carbon,
2355 renewable energy source. It is certainly better for the climate

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2356 than burning fossil fuels, but it is not carbon-free due to the
2357 methane emissions from reservoirs. Nevertheless, when sited and
2358 operated irresponsibly, hydropower can do great harm to rivers
2359 and the wildlife and communities that depend on them.

2360 By changing the flow of rivers, hydropower dams have harmed
2361 fish, mussels, and other aquatic species, and pushed some to the
2362 brink of extinction. Hydropower can have toxic effects on water
2363 quality. Hydropower dams can de-water stretches of river and
2364 have in the past been built with callous disregard of Native
2365 American sacred sites and ancestral lands. To prevent these
2366 harmful impacts, we have laws in place to protect endangered
2367 species and clean water and to give states, tribes, and federal
2368 resource agencies a meaningful seat at the hydropower licensing
2369 table.

2370 Accordingly, in evaluating any proposed changes to the
2371 hydropower licensing process, American Rivers, and indeed the
2372 larger environmental community, will vigorously oppose any effort
2373 to limit the application of the Endangered Species Act or the Clean
2374 Water Act to hydropower dams to infringe upon state water law and
2375 state authority to manage water rights, to limit the protections
2376 afforded to Native Americans and the Native American tribes in
2377 hydropower licensing, to limit the ability of the United States

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2378 to protect federally managed fisheries and taxpayer-owned public
2379 lands, or to limit the authority of state agencies to protect fish,
2380 wildlife, and other natural resources within their state.

2381 Regrettably, as I have described in my written testimony,
2382 the draft bills before the subcommittee fail these tests. At the
2383 heart of each of these bills is the flawed principle that FERC
2384 should be elevated above other federal, state, and tribal agencies
2385 in the licensing process and be able to limit federal, state, and
2386 tribal authorities over rivers.

2387 Giving FERC the power to decide questions of fisheries
2388 biology makes as much sense as giving the National Marine
2389 Fisheries Service the authority to decide interstate electricity
2390 tariff cases. Giving FERC the authority to decide questions of
2391 Native American treaty rights makes as much sense as giving the
2392 Bureau of Indian Affairs the final say over reliability standards
2393 for interstate, high voltage transmission. And giving FERC the
2394 final say over matters of state water law upends the prior
2395 appropriation doctrine in the West and challenges riparian water
2396 law that goes back to colonial times in the East.

2397 The draft bills before you will not improve licensing or
2398 promote environmental protection. Instead, these bills will
2399 lead to legal gridlock and environmental degradation. I hope

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2400 that rather than rushing these bills forward, the committee will
2401 instead work with stakeholders, including American Rivers, to
2402 develop legislation to facilitate responsible hydropower
2403 development while protecting healthy rivers, wildlife, and
2404 communities.

2405 In my written testimony I provided some common sense
2406 approaches to improving the licensing process without harming the
2407 environment. If the committee chooses to convene a stakeholder
2408 process to develop licensing reform that maintains protection of
2409 rivers, I can assure you that American Rivers will roll up our
2410 sleeves and get to work with all the interested parties.

2411 Thank you for the opportunity to testify today and I look
2412 forward to answering any questions you may have.

2413 [The prepared statement of Mr. Irvin follows:]

2414

2415 *****~~INSERT 5~~*****

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2416 Mr. Olson. Thank you, Mr. Irvin.

2417 And the chair now recognizes for 5 minutes Ms. Danis for an
2418 opening statement.

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2419 STATEMENT OF JENNIFER DANIS

2420

2421 Ms. Danis. I want to thank the committee for the opportunity
2422 to testify. My name is Jennifer Danis and I am a senior staff
2423 attorney with the Eastern Environmental Law Center representing
2424 New Jersey Conservation Foundation and Stony Brook-Millstone
2425 Watershed Association.

2426 The proposed changes contained in the Interagency
2427 Coordination Act are unnecessary and would upset the careful
2428 balance of cooperative federalism that exists under the Clean
2429 Water Act, the Clean Air Act, and the Coastal Zone Management Act.
2430 The changes would inappropriately expand FERC's natural gas
2431 authority, attempt to undermine states' rights, and undermine the
2432 important role that other federal and state agencies play in
2433 protecting natural resources for the public. As we have
2434 already heard this morning, the proposed changes are a solution
2435 in search of a problem because FERC approves over 90 percent of
2436 projects within 1 year. FERC administers applications for both
2437 Section 3 and Section 7 approvals on a case by case basis subject
2438 to the statutory standards of the Natural Gas Act, operating under
2439 no larger federal energy program. These approvals are major
2440 federal actions under NEPA and as such FERC is required to consider

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2441 their environmental impacts.

2442 Yet FERC uses an extraordinarily narrow approach of its
2443 regulatory role under NEPA. For example, FERC has expressed its
2444 view that it is not FERC's duty to assess project purpose and need
2445 beyond accepting the applicant's stated project goal. This
2446 approach limits FERC's need for review excluding real analysis
2447 of alternatives. FERC will only consider alternatives to natural
2448 gas transmission pipelines that are other natural gas
2449 transmission pipelines.

2450 Similarly, FERC takes an extremely narrow approach to
2451 environmental impact assessments. FERC's assessment of
2452 environmental impacts routinely finds that a project's
2453 environmental impacts will not be significant so long as other
2454 federal agencies of state agencies acting pursuant to federal law
2455 separately assess the project's environmental harm under
2456 substantive statutes such as the Clean Water Act, the Clean Air
2457 Act, and the Coastal Zone Management Act.

2458 FERC considers authorizations on a case by case basis not
2459 subject to any federal energy program or regional planning. As
2460 such, FERC's ad hoc authorizations demand robust, ancillary
2461 federal authorizations by agencies operating subject to
2462 comprehensive plans to protect our water and air for future

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2463 generations. For FERC projects, the comprehensive environmental
2464 impacts analyses required by NEPA are consistently performed by
2465 those other federal and state agencies in their independent review
2466 under substantive environmental laws.

2467 Although the proposed bill is entitled Promoting Agency
2468 Coordination for Review of Natural Gas Pipelines, the essence of
2469 the proposed changes would generate not resolve conflict between
2470 and among federal and state agencies currently responsible for
2471 evaluating the actual impacts of Section 3 and Section 7 projects.
2472 In fact, the proposed amendments threaten to abrogate state and
2473 federal powers and duties under those laws.

2474 Congress carefully allocated cooperative and specific roles
2475 for the states and for the relevant federal agencies when enacting
2476 those substantive laws. They all explicitly recognize the
2477 critical role that the states play in protecting water and air
2478 quality. In fact, a key legislative purpose of the Clean Water
2479 Act was to uphold the primary responsibility for controlling water
2480 pollution that rests with the states.

2481 From its inception, the 401 Certification requirement was
2482 a mechanism to explicitly protect states' ability to regulate
2483 water quality standards and pollution control ensuring their
2484 ability to enforce more stringent standards than federal ones.

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2485 Under the Clean Air Act and Coastal Zone Management Act, the state
2486 may also designate standards more protective but not less than
2487 federal ones. These NGA amendments would create overt clashes
2488 with existing federal statutes designed to protect water and air
2489 and to preserve the states' role in that process. For example,
2490 the proposed amendments attempting to allow FERC to define the
2491 scope of environmental review for the states or agencies acting
2492 pursuant to Clean Water Act authority would clearly run afoul of
2493 the Clean Water Act's goals.

2494 The Clean Water Act is a model of cooperative federalism.
2495 There is no need for Congress to disturb this careful balance.
2496 Of the hundreds of energy infrastructure projects authorized by
2497 FERC, there have been only three. A tiny percentage that states
2498 have determined cannot be constructed in accordance with
2499 controlling water quality standards. Industry cries of abusing
2500 reserved and primary powers by the states to protect water quality
2501 must stem from a mistaken belief that any certification denials
2502 constitute an abuse of authority.

2503 I see my time is coming to a close. I am happy to answer
2504 any questions. Thank you for the opportunity to testify.

2505 [The prepared statement of Ms. Danis follows:]
2506

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2507

*******INSERT 6*******

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2508 Mr. Olson. Thank you, Ms. Danis.

2509 The chair now calls upon Mr. Santa for 5 minutes to give an
2510 opening statement.

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2511 STATEMENT OF DONALD SANTA

2512

2513 Mr. Santa. Good afternoon, Vice Chairman Olson, Ranking
2514 Member Rush, and the members of the subcommittee. My name is
2515 Donald Santa and I am the president and CEO of the Interstate
2516 Natural Gas Association of America, or INGAA. Our members
2517 transport the vast majority of the natural gas consumed in the
2518 United States through a network of approximately 200,000 miles
2519 of interstate transmission pipelines.

2520 These transmission pipelines are analogous to the interstate
2521 highway system. In other words, they are large capacity
2522 transportation systems spanning multiple states or regions.

2523 Thank you for the opportunity to share INGAA's perspective on the
2524 discussion draft of legislation to improve agency coordination
2525 during the review of federally regulated natural gas pipeline
2526 projects.

2527 While the Federal Energy Regulatory Commission has exclusive
2528 authority to grant the certificate required to construct an
2529 interstate natural gas pipeline, various federal and state
2530 agencies are responsible for granting other environmental and
2531 land use permits and approvals that must be obtained before a
2532 pipeline company may commence construction. This is not the

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2533 first time that INGAA has testified before this subcommittee on
2534 the need to improve the natural gas pipeline permitting process.

2535 The need for action is even greater today because the
2536 pipeline review and permitting process has only become more
2537 protracted and more challenging. Federal permitting agencies
2538 are taking longer and in some cases are electing not to initiate
2539 reviews until FERC has completed its review of a proposed pipeline
2540 project. These disjointed, sequential reviews cause delay and
2541 in some cases create the need for supplemental environmental
2542 analysis. This is unnecessary and avoidable.

2543 Regulations implementing the National Environmental Policy
2544 Act provide for designating a lead agency to coordinate the review
2545 of a proposed major federal action. The lead agency in turn
2546 identifies and works with cooperating agencies to develop a single
2547 environmental document for the project. Congress, as part of the
2548 Energy Policy Act of 2005, designated FERC as the lead agency for
2549 natural gas pipeline projects subject to the Commission's
2550 jurisdiction.

2551 EPAct 2005 also provided a framework for FERC to coordinate
2552 the various permitting reviews connected with a natural gas
2553 pipeline project and to set a deadline for other agencies to
2554 complete their work. Notwithstanding the congressional intent

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2555 expressed in EPAct 2005, it has been a challenge to get federal
2556 and state agencies to work cooperatively and constructively
2557 within this framework. The recent experience of an INGAA member
2558 company illustrates the point.

2559 The company has proposed a pipeline that would intersect the
2560 Blue Ridge Parkway and the Appalachian National Scenic Trail in
2561 Virginia. The company proposed a nearly one-mile, horizontal
2562 drill under a mountain so that the pipeline would cause no surface
2563 disturbances, no tree clearing, and no interference with public
2564 access to the Parkway or Trail. The Park Service responded with
2565 indifference to the pipeline operator's efforts to minimize the
2566 impact of its project. The Park Service took 14 months to review
2567 a 22-page application to survey the area. Once permission was
2568 granted, the survey work was completed in a single afternoon.

2569 The survey, however, is only an initial step. The Park
2570 Service has yet to complete its extensive review of the pipeline
2571 operator's application for a permit to drill beneath the Parkway
2572 and Trail. We clearly need better agency engagement and decision
2573 making than that demonstrated by the Park Service in this example.

2574 These kinds of permitting delays are becoming much more
2575 frequent and are not confined to the Park Service. Because there
2576 is no direct accountability for this lack of engagement, agencies

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2577 with limited resources are free to either ignore or to delay their
2578 response to requests to participate in the review of a proposed
2579 pipeline project. Let me be clear that INGAA is not seeking
2580 diminution of the substantive requirements connected with permits
2581 that must be obtained to construct interstate natural gas
2582 pipeline. INGAA simply seeks greater certainty regarding the
2583 schedule for reviewing and acting upon applications for such
2584 permits and better coordination among the agencies responsible
2585 for issuing permits.

2586 We appreciate the committee's leadership in drafting
2587 legislation to address this need. INGAA encourages the committee
2588 to provide even greater structure in detailed guidance so that
2589 there is no misunderstanding about congressional intent for the
2590 pipeline permitting process. Legislation to achieve this result
2591 is not unprecedented or outside the mainstream. The process
2592 created by Congress in highway authorization legislation offers
2593 a model. INGAA encourages you to be bold.

2594 INGAA's written testimony includes specific recommendations
2595 for strengthening and refining the language of the draft bill to
2596 achieve its stated goals. We want to work with you in
2597 strengthening this bill and make it more effective in coordinating
2598 the necessary permitting reviews. Thank you for the opportunity

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2599 to testify today.

2600 [The prepared statement of Mr. Santa follows:]

2601

2602 *******INSERT 7*******

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2603 Mr. Olson. Thank you, Mr. Santa.

2604 The chair now calls upon Mr. Black for a 5-minute opening
2605 statement.

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2606 STATEMENT OF ANDY BLACK

2607

2608 Mr. Black. Thank you, Mr. Chairman. And if you will
2609 permit, I would like to thank Mr. Barton for his nice comments
2610 on the sudden passing of my dad Bill Black in Houston last week.
2611 Dad admired what he did on committee and the floor. Dad would
2612 laugh and have me thank the Congress for entertainment over the
2613 years, and then he would tell me to get back to work, so I will.

2614 I am Andy Black with the Association of Oil Pipe Lines. AOPL
2615 represents owners and operators of liquid pipelines transporting
2616 crude oil, refined products like gasoline and diesel, and natural
2617 gas liquids such as propane and ethane to American workers and
2618 consumers. The presidential permit process for cross-border
2619 energy pipelines needs reform. The poster child for presidential
2620 permit cross-border abuse is well known. The Keystone XL delay
2621 from 2008 to 2015 under the previous administration was
2622 inexcusable. No permit review process of any kind should take
2623 that long.

2624 While delay of the Keystone XL pipeline project garnered
2625 widespread public attention, there were many other applications
2626 stuck at the State Department also facing multiyear delays. Many
2627 of those projects were simple changes of ownership filings with

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2628 no impact on the pipelines' operations or border crossing status.
2629 Ironically, the Keystone XL NEPA environmental impact statement
2630 conducted by the previous administration found that building the
2631 pipeline would do more to protect the environment and avoid
2632 greenhouse gas emissions than any alternative including rejecting
2633 the pipeline.

2634 According to U.S. government statistics, more than 99.999
2635 percent of petroleum products shipped by pipeline reach their
2636 destination safely. The State Department review found the
2637 alternatives to not building KXL and forcing that crude oil onto
2638 other modes of transportation would result in 2.6 times more crude
2639 oil released and 832 times more releases per year. The State
2640 Department study also found the project would provide tens of
2641 thousands of U.S. jobs in construction, manufacturing, trade,
2642 finance, insurance, professional services, health services, food
2643 accommodations, and more, with more than \$2 billion in worker
2644 payroll.

2645 Good paying jobs are the benefit of every pipeline project.
2646 Whenever a major project is proposed across our international
2647 borders or just within the U.S., thousands of jobs with millions
2648 of dollars in worker payroll can follow and increase tax revenues
2649 to governments. And consumers across the country also benefit

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2650 from the downward pressure on gasoline and diesel prices that new
2651 crude oil supplies bring. As pipeline operators, we know the
2652 ultimate reasons for delay and rejection of the Keystone XL
2653 pipeline had little to do with the superior safety, minimal
2654 environmental impact, new jobs or consumer benefits of pipelines.
2655 Larger forces were at work highjacking this project for their own
2656 political gain. Unfortunately, Keystone XL wasn't the only
2657 victim of a dysfunctional process.

2658 Under the last administration we saw review of the simplest
2659 pipeline permits with the least amount of environmental impact
2660 grind to a halt. A prime example are the several pipelines that
2661 run from Canada to Michigan delivering liquid petroleum gases such
2662 as propane and butane for industrial uses in manufacturing
2663 chemicals, plastics, and similar products, supporting good paying
2664 jobs in Michigan and beyond.

2665 For years, a liquid pipeline operator had presidential
2666 permit applications pending for pipelines crossing that border.
2667 Under current State Department guidelines, even a change in
2668 ownership of the pipeline triggered a need to apply for a new
2669 permit. For more than 5 years, the State Department considered
2670 whether to issue a permit for something almost as simple as a name
2671 change.

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2672 There were no operational changes of the pipeline, no change
2673 in materials or any physical or environmental impacts, just many
2674 years of review, document requests, and delays. We believe the
2675 career staff at the State Department faithfully executed their
2676 duties under executive authority. However, the current system
2677 with no statutory standards or limits still left the process
2678 vulnerable to manipulation by senior political officials.

2679 With no obligations under federal law to reach a timely
2680 decision, limit the scope of review to the border crossing, or
2681 avoid wasteful reviews of projects with little or no environmental
2682 impact, the current process is ripe for abuse. The current
2683 administration has returned to the original intent of the
2684 presidential permit process, but without reform a future
2685 administration could return to the abuses of the past.

2686 Liquid pipeline operators support reforming the
2687 cross-border approval process and look forward to working with
2688 the committee. Keys to meaningful reforms are the discussion
2689 drafts provisions to, 1) provide a statutory time limit for permit
2690 reviews after any applicable environmental reviews are complete;
2691 2) presume approval unless the pipeline is found not in the public
2692 interest, reflecting the benefit of reducing dependence on
2693 overseas energy suppliers; 3) limit the border crossing permit

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2694 scope of review to border crossing issues and impacts, and 4)
2695 exempt modifications to existing cross-border facilities because
2696 they have no impact on the environment at the border crossing.
2697 A reformed border crossing approval process will ensure that
2698 American workers and consumers who want access to lower costing
2699 energy supplies are not penalized by political manipulation.
2700 Thank you.

2701 [The prepared statement of Mr. Black follows:]

2702

2703 *******INSERT 8*******

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2704 Mr. Olson. Thank you, Mr. Black, and thank you to all of
2705 you for your testimony. We will begin the question and answer
2706 portion of this hearing, and I will begin my questioning with the
2707 5-minute rounds of questions.

2708 The first question is for you, Mr. Black. And also before
2709 questions I want to echo the concerns and prayers from Vice
2710 Chairman Barton about losing your father, Bill, this past week.
2711 As the voice of over 850,000 fellow Texans, your family has our
2712 thoughts and prayers in their hearts.

2713 Mr. Black, those 850,000 Texans I work for, my bosses called
2714 constituents, get why oil pipelines are important. But if I am
2715 the average American, why should I care about whether cross-border
2716 pipelines are approved in a timely way? What would you say to
2717 those people?

2718 Mr. Black. Most Americans want lower energy prices and
2719 available supplies of gasoline, diesel fuel, propane. We have
2720 got great supplies in Canada to take advantage of and Keystone
2721 XL and all of the state approvals along the process, they just
2722 needed Washington to approve that small border crossing. If that
2723 border crossing had been approved on a timely basis, today
2724 Americans in your district and elsewhere would be reaping those
2725 benefits, but they are not.

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2726 Mr. Olson. Now is 850,000 barrels correct per day,
2727 somewhere in that ballpark, being refined there in South Texas,
2728 Port of Houston, Port of Beaumont, Port Arthur; is that correct?

2729 Mr. Black. Absolutely, supporting thousands of refinery
2730 worker jobs.

2731 Mr. Olson. Thank you.

2732 The next questions are for you, Mr. Soth and Mr. Santa.
2733 First to Mr. Soth, Crosby, Texas is not my district, but as a Texan
2734 I say welcome, howdy. But as you know, pipelines are delayed,
2735 companies large and small face uncertainty. Not just the
2736 pipeline owners but the suppliers too. There are the shippers
2737 trying to move their products as well. These delays hurt those
2738 in the construction industry by looking for some predictable work.
2739 Can you talk about how red tape and uncertainty hurts your members
2740 and the ripple effect beyond the pipe?

2741 Mr. Soth. Yeah, as Mr. Black mentioned those are jobs
2742 related to Keystone XL that just simply did not occur. Operating
2743 Engineers probably have the most labor intensity of any union on
2744 a pipeline job, and my written testimony mentioned those other
2745 unions engaged in the process whether that is the Laborers'
2746 International Union of North America, the Plumbers and
2747 Pipefitters Union, as well as the Teamsters, and those are good

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2748 jobs that just won't occur. On Keystone XL, the remaining segment
2749 of it on both sides of the border close to 3,000 operating engineer
2750 jobs alone associated with that. And again those are great jobs.

2751 For us in right-to-work communities like South Dakota that
2752 have comparatively low wages where our members would earn over
2753 \$35 an hour on the check, that is before the extensive investments
2754 in pensions, health care for workers' families, as well as
2755 training investments that are made there. That is the way we
2756 finance the Pipeline Training Fund in association with the Pipe
2757 Line Contractors Association. That is 75 cents an hour out of
2758 every hour worked on a pipeline job that an operating engineer
2759 would contribute into that fund for the future of the work force
2760 and to ensure that the workers have the skill necessary to make
2761 that industry and that specific pipeline as safe as can be.

2762 Mr. Olson. Thank you. Mr. Santa, how does red tape and
2763 uncertainty hurt your members?

2764 Mr. Santa. Mr. Olson, it leads to capital investment being
2765 parked on the sidelines. For example, we took a look at the
2766 projects that are being held up by the lack of a quorum at the
2767 FERC and our back-of-the-envelope calculation was that there were
2768 about \$14 billion worth of pipeline projects that had been
2769 sidelined because of that.

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2770 The delays also have a multiplier effect because, for
2771 example, in some cases certain activities can occur only in
2772 certain months of the year due to environmental considerations,
2773 like tree clearing. So if one misses that window for tree
2774 clearing, maybe the certificate comes 2 months late, but tree
2775 clearing can't occur for another 6 months. It also affects, as
2776 Mr. Soth said, all of those pipeline contractors and workers who
2777 are on the sideline. And finally, there is an effect on
2778 consumers in terms of more gas pipeline projects bring
2779 competitively priced gas that brings down home heating bills,
2780 electricity bills because gas is being used so much for electric
2781 generation, and also all of the inputs that natural gas is used
2782 within manufacturing processes that provide jobs and make the
2783 United States competitive.

2784 Mr. Olson. One quick question out of curiosity. You
2785 mentioned a pipeline in Virginia that is going to be put a thousand
2786 feet under the ground, is that correct, or a mile underground?

2787 Mr. Santa. The horizontal length of the drilling that will
2788 go beneath the mountain is going to be approximately one mile.

2789 Mr. Olson. One mile. Keystone is 50 feet, correct? How
2790 much does that cost going down one mile as opposed going 50 feet
2791 down which is very safe?

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2792 Mr. Santa. I do not have that figure, but I do know that
2793 it adds considerably to the cost of the project. But the intent
2794 there was to minimize the environmental impact of it and create
2795 a path that would enable the project to get built.

2796 Mr. Olson. In Texas we say that is a whole lot of money.
2797 And my time has expired. I yield to the Ranking Member Mr. Rush
2798 for 5 minutes.

2799 Mr. Rush. I want to thank you, Mr. Chairman.

2800 Mr. Black, I want to also join and extend my condolences to
2801 you and your family on behalf of your father. I know that it is
2802 -- I admire your courage to come here in the midst of your mourning
2803 and your grieving to appear before this committee. I have a
2804 recently departed wife and so I know what it means and I know how
2805 you feel. So thank you.

2806 I have a question, Mr. Chairman, for both Ms. Danis and Mr.
2807 Irvin. In your professional opinion, do you believe that
2808 requiring other agencies to defer to FERC on the scope of
2809 environmental review would help expedite the natural gas
2810 permitting and hydropower licensing process leading to fewer or
2811 more licenses; and the second part of the question is, are FERC
2812 staff equipped to determine the scope of environmental review over
2813 and above the experts in other agencies with jurisdiction over

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2814 these same issues?

2815 Ms. Danis. We heard testimony earlier this morning from
2816 FERC itself that FERC is not versed in other agencies' review
2817 obligations under their substantive environmental statutes. So
2818 allowing a non-environmental agency or requiring a
2819 non-environmental agency to define the scope of review for other
2820 sister federal agencies or states' agencies acting under
2821 delegated federal authority would inevitably generate more
2822 conflict, more litigation, and end up in really a morass of
2823 permitting difficulties as the agencies' responsible for
2824 implementing comprehensive environmental review programs, such
2825 as the Clean Water Act or the Clean Air Act, are required to report
2826 to FERC or to explain to FERC why they must require in-depth
2827 inquiries of their own that exceed those that FERC would require
2828 or look at under the Natural Gas Act.

2829 Mr. Irvin. As I said in my statement, Mr. Rush, giving FERC
2830 primacy over other federal resource agencies, over state
2831 agencies, and over tribes in these issues would only lead to
2832 additional litigation and environmental degradation. The
2833 federal resource agencies have the expertise on things like the
2834 Endangered Species Act, tribes' certainly very important concerns
2835 that they want to uphold whether it be with regard to fish and

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2836 wildlife resources or things like sacred and ancestral sites, and
2837 the states have great expertise and authority in evaluating water
2838 quality certification under the Clean Water Act.

2839 There is also a well-established body of law under the
2840 Federal Power Act that deals with this interaction among the
2841 various agencies. And the courts have been very clear that the
2842 resource agencies, the federal resource agencies and the states
2843 have the authority to enforce the Clean Water Act and the
2844 Endangered Species Act and that FERC needs to defer to those
2845 agencies in doing that. If as these bills would do, you upset
2846 that well established body of law you have got to figure out how
2847 is it going to work going forward which invariably will lead to
2848 additional litigation.

2849 Mr. Rush. I want to ask Mr. Soth. I come from a district
2850 that has very high unemployment, and notwithstanding these
2851 matters that we are discussing now in terms of the pipeline, how
2852 do you foresee in your training programs, how do you deal with
2853 the question of diversity in your training programs, because my
2854 experience as a member of the city council in Chicago is that we
2855 have always had problems diversifying so many unions, trade
2856 unions, in Chicago. So how do you see this going forward, the
2857 issue of diversity in your training and your employees?

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2858 Mr. Soth. Apprenticeship, Congressman, is really one of the
2859 key methods by which we bring new entrants into the industry, and
2860 it is a key method to increase the diversity of the union. Within
2861 our apprenticeship programs at the IUOE, 23 percent of apprentices
2862 are people of color. We have eight percent of women in our
2863 construction. Eight percent of apprentices are women in our
2864 construction programs.

2865 And that is an objective for our leadership to pursue
2866 diversity and, really, apprenticeship is that primary method and
2867 tool by which we increase our numbers of people of color and women
2868 in the trade.

2869 Mr. Olson. The gentleman's time has expired. The chair
2870 calls upon the gentleman from Virginia, Mr. Griffith, for 5
2871 minutes.

2872 Mr. Griffith. Thank you very much, Mr. Chairman, I do
2873 appreciate it.

2874 And Mr. Santa, you may be aware of this, but I am going to
2875 use you for a minute as an example. I am always talking about
2876 my district which is the 9th congressional district of Virginia
2877 and that sometimes the policies of the previous administration
2878 related to coal didn't take into account that every mountain is
2879 different.

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2880 In relation to the pipeline that you are referencing, it is
2881 a perfect example of why you have to look at every mountain a little
2882 bit differently, because not only does it affect the Appalachian
2883 Trail and the Blue Ridge Parkway as you mentioned, and you
2884 mentioned it reduced the environmental risk, for those who don't
2885 know and I am sure you do know, but that was all about a salamander
2886 that lives on one mountain in Virginia. And the mountains in
2887 Virginia, the Appalachians in Virginia have lots of those kinds
2888 of things that happen, a salamander that might only live in one
2889 or two mountain areas. The same is true for our mineral
2890 deposits, and sometimes one mountain will have lots of gas in the
2891 coal mine and the next mountain won't have any gas at all and they
2892 can be very close together. So you gave me a perfect example to
2893 explain to folks what I have been talking about for years. You
2894 have got to look at every mountain a little bit differently, which
2895 is why we ought to leave the Clean Water Act and allow the states
2896 to make a lot of these determinations because every mountain is
2897 different, every river is different.

2898 And that brings me to rivers, Mr. Irvin. You indicated, and
2899 I am not going to ask you to give me a dissertation today. But
2900 if you could send me the information on how you think that the
2901 bill or one of the bills that we are talking about today impacts

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2902 riparian rights in the East I would greatly appreciate it.
2903
2904 Because it is of interest to me because we were talking earlier
2905 today and a couple of us got together down here and they were
2906 talking about how the rivers belong to everybody except there are
2907 exceptions.

2907 Because in my district there is a part of the river that the
2908 king gave the entire river not just a piece of it, not just the
2909 water, the whole river, and as a result of that there are people
2910 who can actually keep other folks from floating down the river
2911 because they own that surface right there, so it is very
2912 interesting. But if you could forward that to me I would greatly
2913 appreciate it.

2914 Mr. Irvin. We will be happy to do that, Congressman. And
2915 each state has the responsibility for water rights and water law
2916 in their states and it varies from state to state with a big
2917 difference between the West and the East.

2918 Mr. Griffith. Yes, sir.

2919 Mr. Irvin. That is why changing the law to give FERC
2920 authority or primacy over states when they are seeking to protect
2921 their rivers and waters is so problematic.

2922 Mr. Griffith. And not only do we have kings' grants in
2923 Virginia, but obviously the eastern law is based on the English

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2924 common law and the western law is based on the European continental
2925 methods or models.

2926 Mr. Griffith. Mr. Leahey, now with the subject I was really
2927 supposed to talk about in my questions, but I do find that your
2928 testimony, and sometimes when you get late in a hearing you think
2929 maybe it is not making any difference. We are paying attention.
2930 But the closed loop hydropower, my region is very interested in
2931 this because we believe it is a way that we can bring life back
2932 to some, obviously you aren't going to have hundreds or thousands,
2933 but a couple of abandoned coal mines in our area. So I would ask
2934 you to discuss what you believe might be some of the possibilities
2935 for using that kind of technology or that kind of a system in our
2936 abandoned mines.

2937 Mr. Leahey. Sure, absolutely. And as FERC testified
2938 earlier today, they have already approved one project that has
2939 a very similar configuration, a different type of mine than a coal
2940 mine. We have seen a growing list of proposed projects across
2941 the United States for both open loop and closed loop pump storage
2942 in the type of arrangement that you are talking about, so we see
2943 that there is great potential for these types of projects.

2944 One thing that I would like to say with regards to the
2945 modernization bill is that we do not read that bill to repeal any

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2946 of the authorities of the states, the tribes, or the agencies.
2947 They still have those responsibilities and NHA believes those are
2948 appropriate responsibilities under those laws. What we believe
2949 the bill tries to do is get FERC in charge of putting together
2950 the coordination of the schedule. And as others have
2951 talked about on this panel and as I said in my testimony, when
2952 you have projects that are going not just 2 years, 4 years, 6 years,
2953 but 8, 10, 12, or 14 years from concept to construction and
2954 operation that is almost a death knell for those projects.

2955 Mr. Griffith. And I appreciate that. And I will take a look
2956 at that language very carefully after having reviewed Mr. Irvin's
2957 information, because I am very interested in property rights and
2958 the historical rights of the various states. Likewise on the
2959 SHORE Act, which you all have not taken a position on.

2960 One of the reasons that I really like that act it was
2961 introduced previously by my colleague Robert Hurt. He decided
2962 to retire, and since I am affected by it too I picked up the
2963 language that has previously been approved by the House. But one
2964 of the reasons I am so interested in it is I did some property
2965 right cases on the lake one time and they don't have all the power
2966 that -- they didn't acquire as much as they thought they acquired
2967 when they did the deeds back in the 1950s and they are, I think,

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2968 stepping on some property rights, so I will be looking at that
2969 too.

2970 Mr. Leahey. Well, and Congressman, we would be happy to work
2971 with you on that bill going forward. Like I said in my testimony,
2972 we just want to be sure that the safe operation of the project
2973 is, and our members are able to continue to do that.

2974 Mr. Griffith. And I think we can have both interests secured
2975 in the end, but I appreciate it very much. And with that Mr.
2976 Chairman, I yield back.

2977 Mr. Olson. The gentleman yields back. The chair now calls
2978 upon the gentleman from California, Mr. Peters, for 5 minutes.

2979 Mr. Peters. Thank you, Mr. Chairman. First, I want to
2980 start by acknowledging my Duke classmate. It is traditional for
2981 you to talk about Duke Basketball with Mr. Santa. We skipped over
2982 that part, but I think we will leave it to another time.

2983 I have some questions about hydro. I want to ask Mr. Leahey,
2984 you know, there has been concern about whether there is a patchwork
2985 of state regulations that talk about whether hydropower counts
2986 as renewable. The draft legislation that we are considering
2987 today attempts to take that on. Are you satisfied that this draft
2988 clarifies that so that all hydro is considered renewable?

2989 Mr. Leahey. I believe there is a sense of Congress in the

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2990 provision that would say that all hydro is renewable and then it
2991 would go back and amend the EPAct of 2005 definition to include
2992 all hydro as renewable. I think that is very important. And to
2993 the extent that other statutes and regulations parry off of that
2994 definition, then I think that will create, it will do what it is
2995 intended to do which is to make hydro renewable. If there are
2996 other statutes or regulations which have their own definitions
2997 then I am not sure, we may have to do some more.

2998 Mr. Peters. And you just mentioned that there is in your
2999 written testimony there is discussion of the avoided greenhouse
3000 gas emissions from hydro. Mr. Irvin made a comment about methane.
3001 Have you tried to quantify exactly how much greenhouse gas we avoid
3002 by using hydro?

3003 Mr. Leahay. There is research that is being done by the
3004 Department of Energy and internationally. I would note that the
3005 International Panel on Climate Change has not regulated in this
3006 area or made recommendations in this area because of the fact that
3007 the science is not there yet. In addition, there is this issue
3008 with regards to net emissions of reservoirs. There is some of
3009 this degassing that happens naturally, and we would also point
3010 out that reservoirs are multi-use, right, so a project is not --
3011 any emissions, if there are any, should not be ascribed to the

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3012 hydro generation when it is also potentially being used for water
3013 supply for cities or for irrigation for farms.

3014 Mr. Peters. Okay, and any research that you had on that if
3015 you could forward it to us would be great. It is my understanding
3016 that about 40 percent of the U.S. Army Corps' hydropower fleet
3017 is 50 years old or older and increasingly that the Army Corps is
3018 engaging in public-private partnerships to finance many of its
3019 projects. Do you see an opportunity for that in the hydropower
3020 realm?

3021 Mr. Leahey. It is probably the largest opportunity, near
3022 term opportunity that we have. Of the projects that have been
3023 identified by the Department of Energy, 80 of the top 100 projects
3024 are on Army Corps of Engineers' dams.

3025 Mr. Peters. Do you see that the law authorizes today those
3026 partnerships, public-private partnerships, to finance those
3027 improvements?

3028 Mr. Leahey. Most of the financing, in my understanding most
3029 of the financing that is being done is being done by the private
3030 entity and then coming on to the Corps facility. There might be
3031 some opportunities for additional public-private partnerships
3032 with the Corps directly.

3033 Mr. Peters. Yeah, I just want to make sure. Does the law

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3034 authorize this for the hydro facilities? Do you think it does?

3035 Mr. Leahay. I would have to get back to you on that one.

3036 I know that there are some differences between what the Corps can

3037 do with --

3038 Mr. Peters. Apparently there is some concern within the
3039 Army Corps that it doesn't, and if you think it needs to be changed
3040 we would appreciate knowing that.

3041 Mr. Leahay. I think there are some changes that are needed.

3042 I would just need to get back to you on what those specifics are.

3043 Mr. Peters. Thank you.

3044 And then I ask Mr. Irvin. I just think we argue a lot about
3045 process. And I don't want to give an misimpression about my
3046 interest in hydro, I want resources to be protected, but I see
3047 a concern in the amount of time it takes. So with my minute left,
3048 do you have ideas about how we could reduce the time it takes to
3049 get these permits and these hydro facilities operating and still
3050 protect resources? Is there a way we can reduce the amount of
3051 time?

3052 Mr. Irvin. Certainly. We have laid out several of these
3053 in my written testimony, Mr. Peters. They include things like
3054 presumptive inclusion in the FERC study of plans of studies
3055 requested by federal, state, and tribal agencies, do that up

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3056 front. Promoting memoranda of understanding between FERC, the
3057 tribes, and the states to improve the coordination, again do that
3058 up front.

3059 There is a need to increase appropriations to the agencies.
3060 I know that that isn't always a popular topic, but the fact is
3061 that they need more money and staff in order to do a better job.
3062 And we also can have improved coordination between FERC and the
3063 Army Corps of Engineers on these various projects.

3064 Mr. Peters. Yeah. And I would just say I would hope we can
3065 have more conversation about this. A lot of this is not really
3066 changing the process. I think it is adding more to the process
3067 and it provides -- I think it is still difficult for me to
3068 understand in an objective way what improving coordination means
3069 and how we force that from this room.

3070 So I will look forward to more conversation about it and hope
3071 that we can come up with a way that advances this interest that
3072 I have in reducing greenhouse gases, but also protecting rivers
3073 which is what we all want. And Mr. Chairman, thank you for the
3074 time.

3075 Mr. Olson. The gentleman's time has expired. The chair
3076 would like to inform the gentleman and Mr. Santa that my wife is
3077 a 1985 Duke graduate, so the NCAA basketball tournament was a very,

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3078 dark, dark time in the Olson house.

3079 The chair now calls upon the gentleman from Missouri, Mr.

3080 Long, for 5 minutes.

3081 Mr. Long. Thank you, Mr. Chairman. I am glad I came to this
3082 hearing today because I didn't even know they played basketball
3083 at Duke.

3084 [Laughter.]

3085 Mr. Long. Mr. Santa, you mentioned in your testimony that
3086 the pipeline review process is disjointed. I didn't know if that
3087 was meant as a pun or not, but that being said could you discuss
3088 why the process is disjointed and do you believe that the
3089 discussion draft adequately addresses this issue to encourage a
3090 more coordinated review process?

3091 Mr. Santa. Thank you for the question, Mr. Long. As Vice
3092 Chairman Barton observed earlier, I mean the discussion draft is
3093 trying to get at what the Congress and this committee was very
3094 influential and it did in the Energy Policy Act of 2005, in finding
3095 a way to affect that congressional intent.

3096 I think that the process is somewhat disjointed because as
3097 was noted by Mr. Turpin earlier there are other federal and state
3098 agencies that have got multiple mandates, and for them at times
3099 issuing these permits that are essential to construct pipeline

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3100 infrastructure may not be a high priority. They may not have the
3101 resources to do it. And as I noted in my testimony, there are
3102 times when there is quite a bit of unreasonable delay that affects
3103 the ability to construct these projects on a timely basis.

3104 I do think that the discussion draft would improve the
3105 process. In our testimony we offer some examples for ways that
3106 it can be strengthened, so we think the committee is headed in
3107 the right direction with the discussion draft and look forward
3108 to working with the committee on perfecting it.

3109 Mr. Long. And the current regulations provide for
3110 establishing deadlines for final permitting determinations.
3111 Could you discuss how effective this current process is?

3112 Mr. Santa. It unfortunately has not been very effective.
3113 One of the problems is that notwithstanding that being part of
3114 the 2005 law, there wasn't really anything put in there for
3115 effective enforcement in it. The only recourse was for the
3116 pipeline applicant to take that permitting agency to court. That
3117 is awfully difficult because effectively you are suing the agency
3118 from whom you are trying to get the permit, and also the standard
3119 of review applied by federal courts of appeal tends to be pretty
3120 permissive and highly deferential to the agencies. And so in the
3121 limited instances where pipelines have chosen to litigate under

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3122 that provision it has not been very satisfying.

3123 Mr. Long. Do you believe the discussion draft that it
3124 provides accountability for failure to meet the deadlines?

3125 Mr. Santa. I believe that it does to the extent that it
3126 requires those agencies that have not met the deadlines to report
3127 to the Congress. It provides a process for attempting to resolve
3128 it within the administration and also requires them to specify
3129 a plan for what they can do to complete their work.

3130 It is a challenge, because as has been noted by the witnesses
3131 on the committee those other agencies are acting pursuant to their
3132 particular legal mandates. We respect that but we are also
3133 looking for a process that will give us more predictability and
3134 more timeliness in terms of obtaining permits that are needed.

3135 Mr. Long. Okay, thank you. And with that Mr. Chairman, I
3136 yield back.

3137 Mr. Olson. The gentleman yields back and the chair reminds
3138 the gentleman the last time Duke played Missouri in the tournament
3139 was March 17th of 2001 in the East Regional Final, Duke 94 Missouri
3140 81.

3141 Mr. Long. I didn't know they played basketball in Missouri.

3142 [Laughter.]

3143 Mr. Olson. Seeing that there are no further members wishing

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3144 to ask questions for the second panel -- oh, I am sorry. I am
3145 sorry, Paul. I apologize. The chair now calls upon the
3146 gentleman from New York, Mr. Paul Tonko, for as much time as he
3147 wants.

3148 Mr. Tonko. Rescued by the buzzer. Thank you, Mr. Chairman.

3149 Ms. Danis, as you know, the Interagency Coordination
3150 discussion draft would allow remote surveying data to be
3151 considered by agencies. Can you explain how aerial data may be
3152 insufficient?

3153 Ms. Danis. Aerial data, as we heard testimony earlier this
3154 morning, provides an extremely limited view of what is on the
3155 ground. It cannot be accurate with respect to wetlands
3156 delineation. It cannot be accurate with respect to endangered
3157 species, vernal ponds, seeps, vegetation, other things that
3158 require detailed onsite surveys.

3159 In the provision in the amendments for aerial survey data,
3160 requiring ancillary federal authorizations to consider those data
3161 simply decreases efficiency because it in essence asks, for
3162 example, states under 401 Certification to consider an
3163 application based on guesswork the first time, and then to go back
3164 and to reconsider that same application once they can make a true
3165 determination of what the onsite environmental impacts would be.

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3166 It is a very inefficient way of approaching it.

3167 And one way to increase efficiency and reduce delay in the
3168 permitting processes would be to require the applicants to come
3169 to the table with completed applications. First, when they
3170 approach FERC and to not put FERC in the position of routinely
3171 asking for deficiency, submitting deficiency notices, asking for
3172 additional environmental data, but to come to the table from the
3173 outset with a well-conceived plan supported by data.

3174 Mr. Tonko. Thank you. And in addition to perhaps not
3175 providing the sort of accuracy we need, do you also see that
3176 requiring agencies would be ultimately caused to spend more time
3177 perhaps and more resources in reviewing applications because of
3178 the concerns you just mentioned?

3179 Ms. Danis. It would, because each agency under their
3180 enabling statutes retains the authority to determine when they
3181 have sufficient and verified data to make that assessment. This
3182 would inevitably increase those agencies' resource expenditure
3183 to consider applications that are substantially incomplete from
3184 an environmental groundtruthing perspective.

3185 Mr. Tonko. Thank you.

3186 And Mr. Irvin, in the licensing study improvement section,
3187 I believe it is page 19 of the Hydropower Policy Modernization

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3188 discussion draft, we would place the onus on agencies rather than
3189 applicants to prove that a study is not duplicative. How might
3190 that undermine an agency's ability to get the information that
3191 agency needs especially when dealing with a potentially short
3192 timetable?

3193 Mr. Irvin. Well, agencies are of course stretched thin for
3194 all of the work that they have to do and anytime you put the burden
3195 of proof on the agency to basically to disprove something you are
3196 adding to that burden and you are making it much more difficult
3197 for them to carry out their responsibilities. And what we are
3198 talking about here is a licensing process where a private entity
3199 wants to do something to make money at it and it seems fair to
3200 require that going through that licensing process they bear the
3201 burden of making the case for why they are entitled to a license.

3202 Mr. Tonko. Would there be any reason that the burden of
3203 proof should not fall on the applicant when asked to meet study
3204 requests by agencies?

3205 Mr. Irvin. Not that I can think of.

3206 Mr. Tonko. Okay, thank you. And Mr. Irvin, again, at least
3207 in some cases delays in hydropower application and evaluation seem
3208 to be primarily caused by failure to provide all of information
3209 necessary for federal and state agencies to do their jobs. How

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3210 important is it to get this information and include all interested
3211 stakeholders early on in the process?

3212 Mr. Irvin. It is absolutely crucial. If you pick the right
3213 site and you get the information lined up, the statistics show
3214 that the process through FERC is actually fairly expeditious, a
3215 couple of years to get a license. What often happens is that an
3216 applicant will choose to go through the traditional licensing
3217 process which takes longer. And also it sometimes is actually
3218 in the interest, particularly in a license renewal situation, for
3219 the applicant to have the process take longer, because what
3220 happens then is that each year they get a 1-year extension of their
3221 existing license they don't have to undertake any of the
3222 environmental mitigation that would be required once they get a
3223 new license, and so continuing the process for a long time actually
3224 may be in the interest of the applicant.

3225 That is obviously not a preferred outcome. We want to get
3226 through these processes. We want to get the new requirements in
3227 place. We want the applicant to get their license expeditiously.
3228 We can do that through the existing processes. We don't have to
3229 weaken existing environmental law in order to achieve that.

3230 Mr. Tonko. Thank you.

3231 Mr. Chair, is there an opportunity for one more, quick

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3232 question?

3233 Mr. Olson. Yes, sir, absolutely.

3234 Mr. Tonko. Thank you.

3235 Mr. Irvin and Ms. Danis, though you provided testimony on
3236 completely different subjects, your statements were remarkably
3237 similar in that they both focused much of their time on the
3238 relationship between the legislation before us and the Clean Water
3239 Act and how that legislation would undermine it. Specifically,
3240 you both focused on how the bills would harm states' rights under
3241 Section 401 of the Clean Water Act as well as water rights
3242 generally.

3243 So my question to each of you is it seems to me that these
3244 bills are in a large measure attempts to make significant changes
3245 to Section 401 of the Clean Water Act and to a somewhat lesser
3246 degree in Section 7 of the Endangered Species Act. Would you
3247 agree with that assessment?

3248 Mr. Irvin. Absolutely. That is one of the primary problems
3249 of these bills is that it undermines both the Endangered Species
3250 Act and the Clean Water Act, and in particular for the Clean Water
3251 Act the state authority to decide what qualifies for a water
3252 quality certification.

3253 Mr. Tonko. Thank you, and Ms. Danis?

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3254 Ms. Danis. I agree with what Mr. Irvin just said, and
3255 additionally it is really important that those comprehensive and
3256 well thought out national policies that are embodied in the Clean
3257 Water Act and the Clean Air Act are not scuttled for the purposes
3258 of consideration of private applicants' projects on a case by case
3259 basis, but really affect the Natural Gas Act goals of balancing
3260 those interests.

3261 Mr. Tonko. Thank you very much.

3262 With that Mr. Chair, I yield back.

3263 Mr. Olson. Thank you, Mr. Tonko. We saved the best for
3264 last. Now seeing there are no further members wishing to ask
3265 questions for the second panel, I would like to thank our
3266 witnesses, Mr. Soth, Mr. Leahay, Mr. Irvin, Ms. Danis, Mr. Santa,
3267 and Mr. Black for being here today.

3268 As we conclude I would like to remind everybody here --

3269 Mr. Rush. Mr. Chairman?

3270 Mr. Olson. Yes, sir.

3271 Mr. Rush. Mr. Chairman, I began this hearing with some very
3272 serious concerns about the status of our chairman, Fred Upton.
3273 Have you heard, is he all right?

3274 Mr. Olson. Chairman Fred Upton is fine. He is doing well.
3275 He has been working on the healthcare bill. God bless Fred Upton.

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3276 As we conclude I would like to remind everybody here that
3277 my Houston Rockets are looking to go two games to zero up against
3278 the San Antonio Spurs. Tipoff is at 9:30 p.m., so take a nap.

3279 I would also like to ask unanimous consent to submit the
3280 following documents for the record: a letter from the Edison
3281 Electric Institute; a letter from the Modesto Irrigation District
3282 and Turlock Irrigation District of California; a letter from the
3283 Southern California Public Power Authority; a letter from the
3284 Public Utility District No. 1 of Chelan County, Washington -- I
3285 hope I pronounced that right; a letter from the Jordan
3286 Hydroelectric Limited Partnership; a letter from the County of
3287 Pulaski, Virginia; a letter from the NECA, the National Electrical
3288 Contractors Association; a letter form Public Utility District
3289 No. 1 of Okanogan County, Washington; a letter from the American
3290 Public Power Association; a letter from the National Electrical
3291 Contractors Association; testimony of Kevin Colburn on behalf of
3292 the American Whitewater; a series of letters collected by the
3293 Hydropower Reform Coalition; a letter from the Western Governors'
3294 Association; a letter from Mayor Linda Dahlmeier of Oroville,
3295 California; a letter from the Hydropower Reform Coalition; and
3296 finally, the FAST-41 Federal Permitting Improvement Steering
3297 Council Fiscal Year 2016 Annual Report to Congress.

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3298 That is it. I would ask unanimous consent they be submitted
3299 for the record. Without objection, so ordered. All members,
3300 that they have 10 business days to submit additional questions
3301 for the record. I ask witnesses to submit their response in 10
3302 business days of receipt of those questions. Without objection,
3303 this committee is adjourned.

3304 [Whereupon, at 1:15 p.m., the subcommittee was adjourned.]

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