

Testimony of
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Committee on Energy and Commerce
Subcommittee on Energy
United States House of Representatives

“Assuring Abundant, Reliable American Energy to Power Innovation”

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Chairman Latta, Ranking Member Castor, and Members of the Subcommittee:

My name is Terry Turpin and I am the Director of the Office of Energy Projects at the Federal Energy Regulatory Commission (Commission). The Office is responsible for carrying out the Commission's responsibilities in siting infrastructure projects, including: (1) licensing, administration, and ongoing safety review of non-federal hydropower projects; (2) authorization of interstate natural gas pipelines and storage facilities; and (3) authorization of liquefied natural gas (LNG) terminals.

I appreciate the opportunity to appear before you to discuss current legislative efforts regarding federal infrastructure permitting and the Commission's processes in conducting environmental reviews required under the National Environmental Policy Act (NEPA). As a member of the Commission's staff, the views I express in this testimony are my own, and not necessarily those of the Commission or of any individual Commissioner.

Under the Natural Gas Act (NGA) and the Federal Power Act (FPA), the Commission acts as the lead agency for the purposes of complying with NEPA. These statutory responsibilities align with the themes of the proposed legislation that is the subject of today's hearing. My colleague David Morenoff, the Commission's Acting General Counsel, is addressing the subset of those bills related to the reliability and affordability of electric power. I am addressing the subset of those bills related to infrastructure permitting.

Consistent with its role as lead agency, the Commission has developed processes to engage Indian Tribes, state and federal agencies, and other stakeholders to provide them the opportunity to identify significant issues regarding proposed infrastructure. These

processes include coordination with other agencies regarding federal reviews and authorizations required by the Endangered Species Act, National Historic Preservation Act, Clean Water Act, Clean Air Act, Coastal Zone Management Act, as well as other statutes. The Commission's practices allow for a systematic, efficient, and collaborative process, which has resulted in substantial additions to the nation's energy infrastructure.

I. The Commission's Natural Gas Program

The Commission is responsible under section 7 of the NGA for authorizing the construction and operation of interstate natural gas pipeline and storage facilities and under section 3 of the NGA for the construction and operation of facilities necessary to either import or export natural gas by pipeline or by sea as LNG. Authorizations for the import or export, from or to a foreign country, of the commodity of natural gas, including LNG, are issued by the Department of Energy.

As part of its responsibilities, the Commission conducts a review, both non-environmental and environmental, of proposed facilities. The non-environmental review focuses on the project's engineering design, market demand, costs, rates, and consistency with the Commission's regulations and policies. For the environmental review, the Commission acts as the lead agency for the purposes of coordinating all applicable federal authorizations and NEPA compliance. Congress, through amendments to the NGA in the Energy Policy Act of 2005, instructed each federal and state agency considering an aspect of an application for federal authorization to work with the Commission and to comply with the deadlines established by the Commission, unless a schedule is otherwise established by federal law.

The Commission recognizes several distinct phases in the review process for interstate natural gas facilities under sections 3 and 7 of the NGA:

- *Project Preparation*: the project sponsor identifies customers and markets, defines a proposed project, and identifies potentially relevant federal and state agencies in the project area with permitting requirements, prior to formally engaging Commission staff;
- *Pre-Filing Review*: Commission staff begins working on the environmental review and engages with stakeholders, including agencies, with the goal of identifying and resolving issues before the filing of an application; and
- *Application Review*: the project sponsor files an application with the Commission under NGA section 7 for interstate pipeline and storage facilities, and under NGA section 3 for import or export facilities. Commission staff completes and issues the environmental document, analyzes the non-environmental aspects of projects related to the Commission's public interest determination, and prepares a draft order for Commission consideration.

Within the parameters of our governing statutes, the Commission's current processes are thorough and have resulted in the timely approval of necessary interstate natural gas pipeline and storage facilities as well as natural gas import or export facilities. These processes ensure legally durable Commission decision-making and orders. Since 2015, the Commission has authorized over 8,100 miles of interstate natural gas pipeline totaling more than 132 billion cubic feet per day of transportation capacity and over 180 billion cubic feet

of interstate storage capacity. Over that same period, the Commission has issued 44 orders authorizing LNG facility construction, expansions, or capacity uprates. The Commission has also issued 23 NGA section 3 authorizations and Presidential Permits for border crossing facilities over the last ten years.

II. The Commission's Hydropower Program

The Commission regulates over 1,600 non-federal hydropower projects at over 2,500 dams pursuant to Part I of the FPA. These projects represent about 57 gigawatts of hydropower capacity, which is more than half of all the hydropower capacity in the United States. Together, federal and non-federal hydropower capacity total about six percent of U.S. electric generation capacity.

Under the FPA, non-federal hydropower projects must be licensed by the Commission if they: (1) are located on a navigable waterway; (2) occupy federal land; (3) use surplus water or water power from a federal dam; or (4) are located on non-navigable waters over which Congress has jurisdiction under the Commerce Clause, involve post-1935 construction, and affect interstate or foreign commerce. In administering this responsibility, the Commission has developed processes that take into consideration the views, recommendations, and conditions provided by federal and state agencies and other stakeholders while also meeting its own statutory obligation to license projects that are best adapted for improving or developing a waterway.

In all FPA hydropower proceedings, the Commission serves as the lead agency for preparation of the documentation required under NEPA and sets schedules for those

proceedings. Since 2015, the Commission has issued 175 hydropower licenses and exemptions¹ authorizing approximately 11 gigawatts of generation capacity.

III. Promoting Interagency Coordination for Review of Natural Gas Pipelines Act

Many of the provisions in the draft legislation are consistent with the Commission's existing practices for coordinating with other agencies on project reviews. These practices reflect Commission staff's implementation efforts under existing statutes, including the Energy Policy Act of 2005, Title 41 of the Fixing America's Surface Transportation Act, and the amendments to NEPA from the Fiscal Responsibility Act. For example, the draft language requires several approaches already used by the Commission, including: early outreach to permitting agencies to ensure identification and potential resolution of issues; preparation of a single NEPA document for all federal authorization decisions; constructing the NEPA document so that it can be adopted by other permitting agencies to the extent possible; and using third-party contractors to assist with environmental review.

The draft legislation would require all agencies issuing a Federal permit to conduct their reviews concurrently, and in conjunction with, the Commission's review, and to issue their permit within 90 days of the Commission's final environmental document. This deadline matches that set by the Commission in response to the Energy Policy Act of 2005. The Commission's experience as lead agency, and as a member of the Permitting Council established under Title 41 of the Fixing America's Surface Transportation Act, has shown that agencies often have different information needs and dependencies that must be met

¹ Exemptions are a simpler form of license whereby projects are not subject to parts of the FPA including sections 4(e), 10(a), and 18 and the license does not convey eminent domain authority.

prior to issuing a decision and often have different durations during which a permit remains valid. Information that an agency deems necessary for its authorization decision may not be available until after the Commission's environmental review is complete and the Commission has issued an order. In addition, some authorizations are required by statute to expire after a set time.

As a result, project sponsors generally do not file applications for all federal authorizations concurrently. Rather, sponsors strategically choose when to file applications with different agencies so they can ensure both that the information needed for the agency decision will be available and that any permit received does not expire before construction can be completed. While the discussion draft requires each agency to provide notice to the project sponsor on whether the respective application is complete, or list what data needs remain, project sponsors will still likely intentionally sequence their application filings. This is often more pronounced for large-scope and complex projects that require more permits and longer construction timelines.

IV. Promoting Cross-Border Energy Infrastructure Act

The discussion draft addressing cross-border energy infrastructure requires the Commission to issue a certificate of crossing for any border-crossing facility engaged in the import or export of oil or natural gas, unless the facility is determined as not being in the public interest of the United States. This certificate is to be issued no later than 120 days after completion of the environmental assessment or impact statement required under NEPA.

The draft also states that no Presidential Permit would be needed for oil or natural gas pipeline facilities crossing any border. Further, the discussion draft states that no certificate of crossing or Presidential Permit would be needed for: reversals of flow direction; changes in ownership or flow volume; or the addition or removal of interconnections, pumps or compressor stations for oil or natural gas pipelines currently operating or already possessing a Presidential Permit or a certificate of crossing.

Commission staff is well-versed in evaluating natural gas pipeline infrastructure, including border crossings. However, the Commission may need to develop additional staff, resources, and expertise on issues related to oil pipelines as it will be a new sector of infrastructure for which the Commission currently has no siting jurisdiction.

V. H.R. 1949, Unlocking Our Domestic LNG Potential Act

The bill seeks to alter the existing bifurcated review process for NGA section 3 authorizations to import or export natural gas. Under the current statute, the import or export of natural gas is subject to review and authorization by the Secretary of Energy.² The Secretary of Energy, however, has delegated to the Commission the authority to approve or disapprove the location, construction, and operation of natural gas import and export facilities.³

As I interpret it, this bill would remove the need for an authorization regarding the commodity as the legislation deems such export or import to be consistent with the public

² 15 U.S.C. § 717b(a). The regulatory functions of NGA section 3 were transferred to the Secretary of Energy in 1977 pursuant to section 301(b) of the Department of Energy Organization Act, *Pub. L. No. 95-91*, 42 U.S.C. § 7101 *et seq.*

³ The most recent delegation is in DOE Delegation Order No, 00-004.00A, effective May 16, 2006.

interest. However, the changes to the NGA would leave intact the Commission's responsibilities in reviewing natural gas import and export facilities.

An earlier version of this bill was passed by the House. Since then, the Supreme Court, in *Loper Bright Enterprises v. Raimondo*, overturned Chevron deference, which required courts to defer to permissible agency interpretations of the statutes those agencies administer. Therefore, while I believe Commission staff understand the intent of the proposed statutory language, I note that a court would no longer defer to the Commission's interpretation. A minor textual change to the proposed language could help reduce the uncertainty in the language.

VI. Hydropower Relicensing Transparency Act

The discussion draft would require the Commission to annually submit a report to Congress on the status of each ongoing relicensing proceeding active in the three years prior to the report. The FPA currently requires each existing licensee to notify the Commission whether it intends seek a new license at least five years before expiration of the existing license. The FPA also already requires the licensee to file the new license application at least two years before expiration of the term of the existing license

Based on the license terms of existing projects, the number of projects that will begin the relicensing process will be quite high between now and 2035. During this period, over 400 projects, representing about 40 percent of the Commission's current licensed projects and about 15 percent of licensed capacity under Commission jurisdiction, will begin the pre-filing consultation stages of the relicensing process. The annual report

process established by the discussion draft would provide Congress insight into the progress of each project and the interactions of all involved agencies.

VII. Conclusion

Thank you for the invitation to testify before the Committee on this legislation. Commission staff remains committed to working with Congress and with all federal agencies to ensure the most effective processing of energy infrastructure matters before the Commission and would be happy to provide technical assistance as you move forward. I would be happy to answer any questions you may have.