U.S. HOUSE OF REPRESENTATIVES
COMMITTEE ON ENERGY AND COMMERCE

May 1, 2017

TO: Members, Subcommittee on Energy

FROM: Committee Majority Staff

RE: Hearing entitled "Legislation Addressing Pipeline and Hydropower Infrastructure Modernization"

I. INTRODUCTION

The Subcommittee on Energy will hold a hearing on Wednesday, May 3, 2017, at 10:00 a.m. in 2123 Rayburn House Office Building. The hearing is entitled "Legislation Addressing Pipeline and Hydropower Infrastructure Modernization."

II. WITNESSES

Panel I

- **Terry Turpin**, Director, Office of Energy Projects, Federal Energy Regulatory Commission; and
- **John Katz**, Deputy Associate General Counsel, Office of the General Counsel, Federal Energy Regulatory Commission.

Panel II

- **Jeffrey Leahey**, Deputy Executive Director, National Hydropower Association;
- **Donald Santa**, President and CEO, Interstate Natural Gas Association of America;
- **Andy Black**, President and CEO, Association of Oil Pipe Lines;
- **Jeffrey Soth**, Legislative and Political Director, International Union of Operating Engineers;
- **Bob Irvin**, President and CEO, American Rivers; and,
- **Jennifer Danis**, Senior Staff Attorney, Eastern Environmental Law Center.

III. BACKGROUND

A. Hydropower

Hydropower is an essential component of an "all of the above" energy strategy for the United States. In 2015, hydropower accounted for about 6 percent of total U.S. electricity generation and 46 percent of electricity generation from renewables.[1] There is tremendous opportunity to expand hydropower production. Less than 3 percent of the dams in the U.S. – approximately 2,200 dams – produce electricity. A recent report by the Department of Energy (DOE) found that U.S. hydropower production could grow by almost 50 percent from current levels by 2050 from a combination of upgrading existing hydropower facilities, adding generation capacity to existing non-powered dams and canals, and developing new hydropower facilities.[2]

The Federal Energy Regulatory Commission (FERC) exercises jurisdiction over non-Federal hydropower projects. FERC is authorized under Part I of the Federal Power Act (FPA) to review applications for the construction of hydropower projects and oversee their operation and safety. Licensing new hydropower facilities and relicensing existing facilities requires extensive consultation with multiple Federal, State, and local government entities to balance a wide range of issues, including potential impacts on environmental and wildlife resources, recreation, aesthetics, cultural resources, and land use. Testimony before the Subcommittee has shown that the duration, complexity, and regulatory uncertainty of the licensing process creates significant challenges and has the potential to delay or prevent investments that would expand hydropower production.[3] Upgrading the performance of existing dams and utilizing current non-powered dams, canals, and conduits would enable investments, which would overcome aging of the dam and improve overall safety.[4] The licensing process for a new hydropower development project can last over a decade and costs tens of millions of dollars. Significant opportunities exist to remove regulatory impediments and encourage the growth of renewable hydropower generation.

B. Cross-Border Pipelines and Electric Transmission Facilities

Trade of oil, gas, and electricity among the United States, Canada, and Mexico has resulted in one large, integrated North American market. According to the Congressional Research Service (CRS), the value of energy trade between the United States and its North American neighbors exceeded $140 billion in 2015, with $100 billion in U.S. energy imports and over $40 billion in exports.[5] The expansion of cross-border energy transportation infrastructure

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1 *U.S. Energy Information Administration, Hydropower Explained*.
2 *U.S. Department of Energy, Hydropower Vision (2016).* DOE found that U.S. hydropower could grow from 101 gigawatts (GW) of combined generating and storage capacity to nearly 150 GW by 2050, with more than 50 percent of this growth realized by 2030.
3 See hearing entitled *"Modernizing Energy Infrastructure: Challenges and Opportunities to Expanding Hydropower Generation"* held on March 15, 2017.
4 *Testimony of the American Society of Civil Engineers* before the Subcommittee on Energy, March 15, 2017.
5 Congressional Research Service. Cross-Border Energy Trade in North America: Present and Potential. January 30, 2017.

– pipelines for oil and natural gas and transmission lines for electricity – is required to enable increased energy trade. A number of new projects are currently under construction or proposed to further expand cross-border capacity, but face considerable Federal regulatory uncertainty.

Congress has not asserted its authority to establish procedures for permitting cross-border energy infrastructure. In the absence of a statutorily directed process, agencies have made decisions regarding cross-border energy infrastructure within the context of their interpretation of a series of Executive Orders dating back to the 1950's. Under these Orders, the Secretary of State has the authority to issue Presidential permits for cross-border liquids pipelines, FERC for cross-border natural gas pipelines, and the DOE for cross-border electric transmission facilities.[6]

In recent years, largely within the context of the Obama Administration's consideration of the Presidential Permit application for the Keystone XL pipeline project, Congress has acted on multiple occasions to influence the process for reviewing cross-border energy infrastructure.[7] Legislative proposals have imposed deadlines on a national interest determination, transferred permit authorities to other Federal agencies, established coordinated procedures explicitly defining the scope of Federal agency reviews, and defined criteria for determining whether a proposal meets the national or public interest.

C. Interstate Natural Gas Pipelines

Section 7 of the Natural Gas Act (NGA) authorizes FERC to evaluate and grant approval for interstate natural gas pipelines. FERC conducts the environmental review of each proposed natural gas pipeline project as required under the National Environmental Policy Act (NEPA). Under the Energy Policy Act of 2005 (EPAct), FERC is designated as the lead agency for coordinating necessary environmental reviews and associated Federal authorizations. As the lead agency, FERC often coordinates with a variety of Federal, State and local governments and Indian tribes to balance a wide range of issues, including potential impacts on environmental and wildlife resources, land-use, and property rights.

Multiple permits are often required for a natural gas pipeline project, including permits under the Clean Water Act, Endangered Species Act, and Clean Air Act. Under current FERC regulations, Federal and State agencies participate in the development of the NEPA analysis for a pipeline project and then are required to complete their respective permit application reviews no later than 90 days after FERC issues its final environmental document, unless another schedule is established by Federal law.[8]

Despite the increased authority given to FERC under EPAct, there is growing evidence that pipeline infrastructure approvals are being delayed unnecessarily due to a lack of coordination or insufficient action among agencies involved in the permitting process. A December 2012 study conducted by the INGAA Foundation found that since the enactment of

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6 The State Department makes permitting decisions based on directives in Executive Order 11423 (E.O.), as amended by E.O. 13337. FERC and DOE make permitting decisions in accordance with E.O. 10485, as amended by E.O. 12038.
7 See e.g. H.R. 3301 (113th) and H.R. 8 (114th)
8 18 C.F.R. § 157.22

EPAct's permitting reforms, the occurrence of Federal authorization delays exceeding 90 days has risen from 8 percent to 28 percent, while delays exceeding 180 days have risen from 3 percent to 20 percent.[9] A February 2013 GAO report discussed the complexities of interstate pipeline permitting and described the various groups of stakeholders and permitting steps.[10] Testimony before the Subcommittee has shown that the lack of coordination among Federal and State regulators is having a negative impact on infrastructure modernization, job creation, and economic growth.[11]

IV. SUMMARY OF LEGISLATION

A. H.R. ____, Hydropower Policy Modernization Act of 2017

Section 2 of the legislation modifies the definition of renewable energy under the EPAct to include hydropower and provides FERC with discretion to extend the period of preliminary permits and extends time limits for construction of hydropower facilities. Section 2 also requires FERC to consider project-related investments that resulted in new development, construction, capacity, efficiency improvements, or environmental measures in determining the term of license

Section 3 designates FERC as the lead agency for the purposes of coordinating all applicable Federal authorizations and establishes coordinated procedures for the licensing of hydropower projects. The section also establishes procedures for trial-type hearings conducted by an Administrative Law Judge to resolve disputes relating to conditions and fishway prescriptions under Part I of the FPA. In addition, the section facilitates the timely and efficient completion of license proceedings by minimizing duplication of studies and establishing a program to compile a comprehensive collection of studies and data on a regional or basin-wide scale.

B. H.R. ____, Promoting Hydropower Development at Existing Non-Powered Dams Act

The legislation promotes hydropower development at existing non-powered dams by providing FERC with the discretion to grant exemptions from license requirements for qualifying facilities.

C. H.R. ____, Promoting Closed Loop Pumped Storage Hydropower Act

The legislation promotes closed-loop pumped storage hydropower development by limiting FERC's authority to only impose licensing conditions that are necessary to protect

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9 INGAA Foundation, *Expedited Federal Authorization of Interstate Natural Gas Pipelines: Are Agencies Complying with EPAct?*, December 21, 2012.
10 Government Accountability Office, *Interstate and Intrastate Natural Gas Permitting Processes Include Multiple Steps, and Time Frames Vary*, February 2013.
11 See hearing entitled "*Modernizing Energy and Electricity Delivery Systems: Challenges and Opportunities to Promote Infrastructure Improvement and Expansion*" held on February 15, 2017.

public safety; or are reasonable, economically feasible, and essential to protect fish and wildlife resources

D. H.R. ___, Promoting Small Conduit Hydropower Facilities Act of 2017

The legislation promotes the development of small conduit hydropower facilities with a capacity of 2 megawatts or less by requiring FERC to make a determination as to whether the facility meets qualifying small conduit facility criteria no later than 15 days after receipt of a notice of intent to construct

E. H.R. 1538, Supporting Home Owners Rights Enforcement Act

H.R. 1538, introduced by Rep. Griffith (VA), requires FERC to give equal consideration to minimizing infringement on the useful exercise and enjoyment of property rights held by non-licensees when considering hydropower licenses.

F. H.R. 446, To extend the deadline for commencement of construction of a hydroelectric project

H.R. 446, introduced by Rep. Griffith (VA), authorizes FERC to extend the time period during which the licensee is required to commence the construction of project 12737 (Gathright Hydroelectric Project) for up to 3 consecutive 2-year periods.

G. H.R. 447, To extend the deadline for commencement of construction of a hydroelectric project

H.R. 447, introduced by Rep. Griffith (VA), authorizes FERC to extend the time period during which the licensee is required to commence the construction of project 12740 (Flannagan Hydro Project) for up to 3 consecutive 2-year periods.

H. H.R. 2122, To reinstate and extend the deadline for commencement of construction of a hydroelectric project

H.R. 2122, introduced by Rep. McKinley (WV), authorizes FERC to extend the time period during which the licensee is required to commence the construction of project 12715 (Jennings Randolph Hydroelectric Project) for up to 3 consecutive 2-year periods.

I. H.R. ____, Promoting Interagency Coordination for Review of Natural Gas Pipelines Act

The legislation reinforces FERC's role as the lead agency for siting interstate natural gas pipelines by directing FERC to identify and invite all agencies considering an aspect of an application, to establish a schedule for concurrent reviews, and to impose deadlines for final decisions.

J. H.R. ____, Promoting Cross-Border Energy Infrastructure Act

The legislation replaces the Presidential Permit process, established through Executive Order, with a uniform and transparent process to authorize the construction, connection, operation, and maintenance of international border-crossing facilities for the import and export of oil and natural gas and the transmission of electricity.

V. ISSUES

The following issues may be examined at the hearing:

- Provisions of the legislation;
- FERC's authorities to grant or deny authorization for hydropower projects, interstate natural gas pipelines, and border crossing facilities;
- The role of States and Federal agencies in the review of hydropower and pipeline infrastructure proposals;
- The potential to increase hydropower generation capacity, including through the development of existing non-powered dams, closed-loop pumped storage, and small conduit facilities;
- The potential to increase natural gas pipeline capacity in the U.S.; and,
- The potential to increase cross-border energy trade with Canada and Mexico.

VI. STAFF CONTACTS

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