

DISSENTING VIEWS

on

H.R. 2910, the Promoting Interagency Coordination for Review of Natural Gas Pipelines Act

H.R. 2910, introduced on June 15, 2017 by Rep. Bill Flores (R-TX), is almost entirely different from the draft legislation that was the subject of the May 3, 2017 legislative hearing on this subject. Proponents argue the purpose of the bill is to streamline the Federal Energy Regulatory Commission (FERC) process for approving natural gas pipelines by increasing transparency, predictability, accountability, and timeliness. However, these concerns are already being addressed by the Federal Permitting Improvement Steering Council (FPISC), established in 2015 through Title 41 of the Fixing America's Surface Transportation (FAST) Act.¹ This council is currently overseeing and coordinating the permitting process for 32 major infrastructure projects, including seven interstate natural gas pipelines.

The siting of natural gas pipelines is often controversial and requires detailed regulatory scrutiny by FERC. At the legislative hearing, FERC's Director of the Office of Energy Projects, Terry L. Turpin, noted that "on average it is 88 percent of the projects get issued within one year" and the single greatest factor in slowing down an application was the license applicant failing to provide FERC and other agencies with "timely and complete information necessary to perform Congressionally-mandated project reviews."²

H.R. 2910 does not address any of the concerns raised by FERC at the legislative hearing. Instead, H.R. 2910 indirectly attempts to rewrite key aspects of sections 3, 7 and 15 of the Natural Gas Act (NGA). Among other things, the bill would require FERC to establish a schedule with deadlines for submission of information from other federal or state agencies, local governments or Indian tribes for a natural gas pipeline or liquefied natural gas project requiring FERC approval. Concurrent reviews by these federal or state agencies would be required, based on the scope of environmental review determined by FERC, to provide the Commission with timely information for the purpose of complying with the National Environmental Policy Act of 1969 (NEPA) and other environmental statutes such as the Clean Water Act (referred to as "federal authorizations"). FERC would be allowed to pursue remedies or implementation plans if a federal or state agency failed to meet the schedule established by FERC under this section.

Other agencies conducting environmental reviews for relevant projects would be further constrained since H.R. 2910 only provides for an agency to be designated as a "participating" agency, not a cooperating agency. Mr. Turpin noted that

some of the proposed NGA modifications would alter the Commission's role from one of collaboration with its fellow agencies to...monitoring other agency execution of their Congressionally-mandated duties. I am concerned that

¹ P.L. 114-94.

² House Committee on Energy and Commerce, transcript not published, *Hearing on "Legislation Addressing Pipeline and Hydropower Infrastructure Modernization,"* Testimony of Terry Turpin, Director, Office of Energy Projects, Federal Energy Regulatory Commission, 115th Cong. (May 3, 2017).

this...could lead to unproductive tension between the agencies involved in the review process.³

H.R. 2910 also goes further to define a status for certain agencies called “non-designation,” which prohibits such agencies from being able to “request or conduct a NEPA review that is supplemental to the project-related review conducted by the Commission...” The bill prohibits FERC from considering any comments or other information provided by a non-designated agency or including its comments or supplemental information in the record.

Furthermore, the bill introduces a number of new terms into federal law. Some of these terms appear to be duplicative and unnecessary, while others are a cause for great concern. Most significantly, language introduced in H.R. 2910 requires agencies responsible for federal authorizations to deem applications “sufficiently complete” to begin consideration, regardless of whether the application is complete enough to fulfil its statutory obligations.

Finally, H.R. 2910 would require federal and state agencies to accept aerial survey data, and provides that such agencies may grant conditional approvals based on that data, conditioned further on data verification via subsequent onsite inspection. This provision allows companies working to build natural gas pipelines the ability to circumvent property owners’ rights when surveying land. In a number of cases, companies have not obtained the requisite permits to survey the land they are seeking to access, and this language appears designed to allow them to sidestep that aspect of the application process. At the legislative hearing on the bill, the Subcommittee received testimony from a private landowner from Pennsylvania who described the abuses of eminent domain authority by a company planning to build a natural gas pipeline through her family farm.⁴

During the Full Committee Markup of H.R. 2910, Democrats offered several amendments to the bill to address their concerns. Ranking Member Bobby Rush (D-IL) offered an amendment to amend the bill so that pipeline applicants cannot use eminent domain unless FERC makes an additional finding that the project and taking of private property would be in the public interest. Rep. Kathy Castor (D-FL) offered an amendment that would have added a new section that would stop the bill from taking effect until the Director of the Office of Management and Budget publishes a determination that the requirements of the bill would not be duplicative of other Federal streamlining efforts (e.g., FPISC) and will not result in wasteful government spending. Lastly, Ranking Member Frank Pallone, Jr. (D-NJ) offered an amendment that would prohibit the use of federal eminent domain for pipeline projects after the date of enactment of the bill. All three amendments failed on recorded votes.

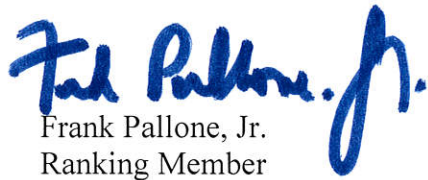
H.R. 2910 short circuits the process for considering natural gas project applications at the expense of private property owners, state and tribal rights, and the environment. The bill is unnecessary, not only because infrastructure permitting streamlining is already occurring at


³ *Id.*

⁴ House Committee on Energy and Commerce, transcript not published, *Hearing on "Legislation Addressing Pipeline and Hydropower Infrastructure Modernization,"* Testimony of Kim Kann, 115th Cong. (May 3, 2017).

FPISC, but also because 88 percent of these projects are being certificated within one year. At best, it is a solution in search of a problem; at worst, it is an assault on private property rights and the environment in the name of corporate profit and expediency.

For the reasons stated above, we dissent from the views contained in the Committee's report.


Frank Pallone, Jr.
Ranking Member


Bobby L. Rush
Ranking Member
Subcommittee on Energy
