

Testimony of

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**Committee on Energy and Commerce
Subcommittee on Energy and Power
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“Hearing on Legislation Addressing Pipeline and Infrastructure Modernization”

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Chairman Upton, Ranking Member Rush, 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. The Office is responsible for taking a lead role in carrying out the Commission's responsibilities in siting infrastructure projects including: (1) licensing, administration, and safety 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 drafts of the "Promoting Interagency Coordination for Review of Natural Gas Pipelines Act" and the "Promoting Cross-Border Energy Infrastructure Act." 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.

I. Background

The Commission is responsible under section 7 of the Natural Gas Act (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 the import or export of 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 both a non-environmental and an environmental review of the 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. Under the NGA, the Commission acts as the lead agency for the purposes of coordinating all applicable federal authorizations and for the purposes of complying with the National Environmental Policy Act (NEPA). Congress has 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. Commission staff establishes a publicly noticed schedule for all decisions or actions taken by other federal agencies and/or state agencies delegated with federal authority. This includes federal authorizations issued by both federal and state agencies under the Endangered Species Act, National Historic Preservation Act, Clean Water Act, Clean Air Act, Coastal Zone Management Act, and other statutes.

The environmental review, pursuant to NEPA, is carried out through a process that allows cooperation from: numerous federal, state, and local agencies; Indian tribes; and with the input of other interested parties. The Commission employs several distinct phases in the review process for interstate natural gas facilities under the jurisdiction of 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;
- 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 public interest determination, and prepares an order for Commission consideration; and
- Post-Authorization Compliance: Commission staff works with the project sponsor and stakeholders, including agencies, to ensure compliance with conditions to the FERC approval during construction.

The Commission's current review processes are thorough, efficient, and have resulted in the timely approval of the facilities necessary for interstate natural gas pipelines as well as border crossings for the import or export of natural gas. Since 2000, the Commission has authorized: nearly 18,000 miles of interstate natural gas transmission pipeline totaling more than 159 billion cubic feet per day of transportation capacity; over one trillion cubic feet of interstate storage capacity; and 23 facility sites for the import and

export of LNG. Over the past ten years, the Commission has also issued 15 NGA section 3 authorizations and Presidential Permits for border crossing facilities.

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

Commission staff is committed to the timely review of proposed interstate natural gas facilities. The Commission's current approach process allows for a systematic, efficient, and collaborative process, and has resulted in substantial additions to the nation's natural gas infrastructure. These results have been facilitated by a thorough environmental analysis under NEPA, which I believe has been improved through the Commission's approach in Pre-filing Review and Application Review.

The discussion draft would alter the NGA to include many of the existing practices the Commission has successfully used during the Pre-Filing Review, Application Review, and Post-Authorization Compliance phases. The draft language requires early outreach to permitting agencies to ensure identification and potential resolution of issues. This outreach would ensure that agencies with responsibility for permits, opinions, or other approvals required under federal law are aware of the proposed project at the earliest possible time, while also requiring the project sponsor to account for the various application processes in developing the project schedule. This also would allow those agencies to have input into the development of the project and identification of potential of project issues, when their advice is most valuable. I believe this statutory revision would formalize existing Commission practice and would encourage agency participation.

The discussion draft would also allow the use of third-party contractors in assisting with environmental review. This practice is already a feature of Pre-Filing Review and Application Review for the Commission. Accordingly, I see value in formalizing existing Commission staff practice, and I fully support third-party contractor use in permitting evaluations for other agencies that may be overburdened or understaffed. This may also aid with early input, engagement, and cooperation by agencies that do not have the resources to commit to participation while a project is still in a conceptual phase.

However, some of the proposed NGA modifications would alter the Commission's role from one of collaboration with its fellow agencies to an oversight role, monitoring other agency execution of their Congressionally-mandated duties. I am concerned that this will require the use of Commission resources that could be better spent analyzing the proposed projects and could lead to unproductive tension between the agencies involved in the review process.

Lastly, the Commission has undertaken significant efforts to implement its responsibilities under Title 41 of the Fixing America's Surface Transportation Act (FAST-41), enacted in December 2015. FAST-41 provides for enhanced coordination efforts with permitting agencies, and the development of publicly available permitting timetables for each federal permit. Because the discussion draft would cover all Commission jurisdictional natural gas projects, not just those the larger and complex projects that volunteer for coverage under FAST-41, I recommend that the Commission not be required to maintain duplicate efforts under both statutes.

I will now offer comments on the specific sections of the discussion draft.

A. NGA Section 15(c)(2)

The proposed changes to NGA section 15(c)(2) would not alter the current authorities and responsibilities of the Commission as the lead federal agency for coordinating all applicable federal authorizations and for the purpose of NEPA compliance. However, the proposed changes do reflect the Commission's efforts to implement the Energy Policy Act of 2005 through the establishment of a 90-day authorization deadline.

Staff's experience has shown that agencies often have different timing requirements related to the information needed for their decisions, which results in differing review periods. Information that an agency considers vital to its determination may not be available until after the FERC environmental review is complete and the Commission has issued an order.

Providing agencies with timely and complete information necessary to perform Congressionally-mandated project reviews is the single most crucial step in ensuring process accountability and efficiency. This information encompasses not only environmental data for the project area, but also information about project design and construction. This is the responsibility of the project sponsor and is often outside of the control of permitting agencies. Commission staff and other agencies often struggle to receive complete information. During the Pre-Filing Process, project design has often not progressed enough to provide sufficient information for Commission staff or agencies to provide guidance on anticipated issues.

After receipt of an application, Commission staff routinely needs to issue requests for additional information to assess stakeholder and environmental concerns that are inadequately addressed in the project sponsor's application. These information requests most commonly seek information regarding alternative routes, mitigation measures to reduce impacts, and clarifications on inconsistently reported data. Once Commission staff has received complete information to address these issues, it can develop a schedule for completion of the NEPA document. I recommend that any statutory revision setting a deadline for the issuance of federal permits be based on the project sponsor providing complete information, related to both environmental data and project design and construction.

B. NGA Section 15(c)(4)

The proposed text of NGA section 15(c)(4) would require permitting agencies to give deference to the Commission's opinion on what matters need to be addressed in the NEPA review. To the extent possible, Commission staff constructs the NEPA document so that it can be adopted by all cooperating agencies. During coordination activities, Commission staff considers these agencies' opinion of the scope of environmental review needed to satisfy their NEPA obligations, as they are best equipped to determine what information satisfies their statutory mandates. However, each agency must decide independently if it has sufficient information to act, and I am not certain how efficient it would be for FERC to try to make that determination for other agencies.

C. NGA Section 15(c)(5)

Section 15(c)(5) requires that agencies provide Congress and the Commission notification of the reasons why a schedule cannot be met, and an implementation plan to complete the proceeding. Having to report to Congress on an agency's failure to meet the schedule and provide an implementation plan would provide accountability; however it could also have the unintended consequence of agencies providing stricter permitting conditions than would have been the case if they had more time. Further, it is not clear what value would be gained by also requiring that this information be provided to the Commission, as the Commission will not be in a position to review or alter the agency plans regarding policies or resources.

D. NGA Section 15(d)

As discussed above, providing agencies with timely and complete information necessary to perform Congressionally-mandated project reviews is the single most crucial step in reducing uncertainty in a review schedule. Proposed changes in new NGA section 15(d) would allow agencies to accept aerial or remotely gathered data, to be later field verified, for conditional approval of a federal authorization.

Aerial or remote surveys can be a useful tool for developing project routes and making initial determinations of resources that may be affected by a proposed project. Currently, Commission staff accepts remote survey data where ground access is not available during the Pre-Filing and Application Review processes. However, most project applications include ground surveys for a significant portion of the right-of-way.

I do have some practical concerns with the use of remote data for pipeline projects. Some resources are either difficult or impossible to assess remotely. For example, remote surveys would have little value for identifying below-surface cultural resources such as archaeological sites (which constitute the majority of cultural resources identified in FERC proceedings). National Wetland Inventory maps, which are based on remote sensing, are useful for identifying some types of wetlands, but are less accurate for other types, such as forested wetlands. Confirming the presence of federally listed plant and animal species often requires field surveys.

Waiting to verify large amounts of remote data until late in the project development process, or after issuance of an authorization, could pose difficulties in some cases. For example, if it was not discovered until the pre-construction stage that a project might affect sensitive resources, such as those I just described, a project sponsor could be required at a late stage to amend its approved route or to conduct additional mitigation, which could delay construction and add additional unanticipated expense.

E. NGA Section 15(f)

New NGA section 15(f) would require that the Commission track and make publicly available the schedule and status of any federal authorization. In particular, this would require the Commission to create a public tracking system on its website for every federal permit required for each project. As previously discussed, the Commission publicly issues a notice of schedule alerting all stakeholders, including federal and state agencies acting pursuant to delegated federal authority, of the date the final environmental document. Similarly, the project sponsor is already required to disclose the status of any required

federal permits. Specifically, the Commission's regulations require all applications to include: each federal authorization the project will require; the agency responsible for that authorization; and the requested issuance date of that authorization. In addition, the Commission's regulations require the project sponsor to indicate the date it submitted the federal authorization request. In cases where the permit request has not been made, the project sponsor must provide an explanation for the delay and provide a date by which it intends to make the required submission. If a project is approved, the applicant must again provide updates to the Commission on the status of both applications for and receipt of federal authorizations.

Placing the Commission in a position of more direct oversight over other agencies through the tracking of their actions in permitting, reviews, and other actions will impose additional administrative requirements on the Commission that will divert resources away from our own duties in application processing. This is particularly true for the majority of section 7 projects, which are smaller in scope and can be completed in short timeframes.

Through efforts in implementation of FAST-41 for large and complex projects over the past year, Commission staff have been required to perform additional work to gather and post the permitting information from other agencies. While expanding these tracking and website posting requirements to all Commission jurisdictional natural gas project applications may improve transparency, I am concerned that it may also result in a significant burden on Commission staff resources and time.

III. 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 is 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. Within one year of the passing of this act, the Commission must issue final rules revising its regulations regarding cross-border oil and natural gas pipelines.

As I previously indicated, Commission staff is well versed in evaluating natural gas pipeline infrastructure, including border crossings. 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. As we have seen with natural gas pipeline border crossings, I would expect that it will not be the oil border-crossings themselves that would be the subject of significant public concern. Under NEPA, the Commission would need to coordinate with other agencies in the

evaluation of both oil border-crossing pipelines and the associated indirect or cumulative impacts for any needed additional pipeline extending to receipt or delivery points.

Regarding section 2(e) of the discussion draft, the definition of a modification includes: reversal of flow direction, change in ownership, change in flow volume, and addition or removal of an interconnection. In my experience, the majority of these modifications are unlikely to result in adverse impacts to the environment. However, allowing a change in flow volume without any notification or authorization from any federal agency could limit the ability to track the volumes of gas and oil entering or leaving the country. The discussion draft's definition of a modification also includes the addition of pumping or compressor stations. The Commission has found that these types of facilities often result in some adverse impacts on the environment and are routinely the subject of public concern.

IV. Conclusion

This concludes my remarks on the discussion drafts addressing Interagency Coordination for Review of Natural Gas Pipelines and Cross-Border Energy Infrastructure. Commission staff would be happy to provide technical assistance as you move forward with your consideration of this legislation. I would be pleased to answer any questions you may have.