

ONE HUNDRED FOURTEENTH CONGRESS
Congress of the United States
House of Representatives
COMMITTEE ON ENERGY AND COMMERCE
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MEMORANDUM

May 31, 2015

To: Subcommittee on Energy and Power Democratic Members and Staff

Fr: Committee on Energy and Commerce Democratic Staff

Re: Hearing on “Quadrennial Energy Review and Related Discussion Drafts”

On Tuesday, June 2, 2015 at 10:00 a.m. in room 2123 of the Rayburn House Office Building, the Subcommittee on Energy and Power will hold a legislative hearing on the “Quadrennial Energy Review and Related Discussion Drafts.” The Secretary of Energy is expected to testify on the recently released Quadrennial Energy Review (QER), which is summarized in the attached supplemental memo. The hearing will also cover the majority’s discussion draft on “Energy Diplomacy,” which was released on May 19, 2015.¹ The discussion draft contains newly added provisions in addition to a number of provisions that the committee has previously considered. A summary and analysis of the legislative draft is below.

I. ENERGY DIPLOMACY

A. Section 3101. Sense of Congress

Section 3101 contains findings regarding America’s “energy abundance” and the desirability of promoting “greater stability and affordability of energy supplies for its allies and trading partners through a more integrated, secure and competitive North American energy system.”

B. Section 3102. North American Energy Diplomacy

1. Summary

¹ House Committee on Energy and Commerce, *Committee Releases Energy Diplomacy Draft* (May 19, 2015) (online at energycommerce.house.gov/press-release/committee-releases-energy-diplomacy-draft).

Section 3102 creates an interagency task force established by the Secretary of Energy to “coordinate the consideration of energy related decision-making and improve planning and coordination with Canada and Mexico, including with regard to North America energy flows.”

The task force is to consist of the Secretary of Energy, the Secretary of State, the Secretary of Defense, the Secretary of Commerce, the Chairman of the Federal Energy Regulatory Commission (FERC) and the Director of the Office of Management and Budget (OMB).

Within a year of enactment, the task force is to prepare a plan that “identifies uniform or coordinated procedures and criteria to ensure that federal regulations or agency actions that significantly affect the supply, distribution or use of energy are evaluated with respect to their potential impact” on: 1) consumers, 2) energy supply diversity and resilience, 3) competitive energy markets, 4) trade balance, 5) national security, and 6) energy security of the U.S. and its allies.

The plan is to include an implementation strategy that “identifies and ensures that the procedures and criteria” are “evaluated consistently when making energy regulatory decisions,” and “weighed appropriately and balanced with environmental considerations required by federal law.”

Within one year, the task force must also develop and send to Congress a “recommended framework to improve planning and coordination with Canada and Mexico to enhance energy integration, strengthen North American energy security, and promote efficiencies in the exploration, production storage, supply marketing, pricing and regulation of North American energy resources.”

2. Analysis

Section 3102 sets up an interagency task force to evaluate North American energy flows. Noticeably missing from the task force membership are representatives from the Council on Environmental Quality, Department of Interior, Department of Transportation and the Environmental Protection Agency (EPA), among others who may have a stake in such a task force.

Further, the framework for interagency policy coordination, also to be developed by the task force, utilizes energy and economic criteria and parameters. The provision requires that the factors identified for review be “evaluated consistently across federal agencies when making decisions” and “weighed appropriately and balanced with environmental considerations.”

Injecting new, and limiting prior considerations to cover energy use solely, regardless of the type of rules at issue, is potentially problematic. Besides, the discussion draft’s review process is very similar to the process that OMB already conducts for interagency review of regulatory proposals, including EPA rules. It is unclear how this modified interagency framework, which lacks all relevant stakeholders, or how these added decisional factors

pertaining to such broad rules categories – particularly when applied to areas of EPA decision-making under the Clean Air Act that are based solely on consideration of public health – would actually improve the existing review process and any resulting decisions.

C. Section 3103. International Energy Diplomacy

Within one year of enactment, the Department of Energy (DOE) and the Department of State are to convene at least four forums to promote U.S. energy security and that of its allies. There are to be two Trans-Atlantic and two Trans-Pacific energy forums. Foreign governments, independent experts, and industry representatives are to be invited to the forums.

II. AUTHORIZATION OF CROSS-BORDER INFRASTRUCTURE PROJECTS

Section 3104 of the discussion draft is the latest iteration of a legislative proposal that would fundamentally alter the approval process for energy infrastructure projects crossing the U.S. border with Mexico or Canada. On June 24, 2014, the House passed H.R. 3301, the “North American Energy Infrastructure Act,” by a roll call vote of 238-173.² For further background information on the Committee’s consideration of H.R. 3301, please see these [memos](#) from the related legislative hearing and markups held during the 113th Congress.

A. Summary

Section 3104 establishes a new permitting process for applicants seeking to construct, connect, operate, or maintain a cross-border segment of a liquid or natural gas pipeline or electric transmission facility for the purpose of importing or exporting liquids, natural gas, or electricity from Canada or Mexico. This replaces the existing requirement that an entire trans-boundary project, not just a segment, obtain a presidential permit.

Subsection (b) eliminates the current requirement to obtain a presidential permit for transboundary liquid or natural gas pipelines and electric transmission lines. The section instead requires that such projects obtain approval under a new process established in subsection (c).

Under the new process, the relevant official must issue a “certificate of crossing” for a cross-border segment of a project within 120 days of final action under the National Environmental Policy Act (NEPA), unless the official finds that the project “is not in the public interest of the United States.” The relevant officials are the Secretary of State for liquid pipelines, FERC for natural gas pipelines, and the Secretary of Energy for electric transmission lines. No certificate of crossing is required for modifications to existing projects, unless the “modification would result in a significant impact at the national boundary.” Under this section, modifications include a change in ownership, volume expansion, downstream or upstream interconnection, or adjustments to maintain flow (such as an increase or decrease in the number of pump or compressor stations).

² U.S. House of Representatives, Roll Call Vote on Agreeing to H.R. 3301 (Jun. 24, 2014) (238 yeas, 173 nays) (online at clerk.house.gov/evs/2014/roll354.xml).

Subsection (c) also temporarily excludes from the new permitting process any cross-border segment with permit approval pending on January 20, 2017. This exclusion ends when the application is approved, denied or withdrawn. The new approval process doesn't apply to TransCanada's May 4, 2012 application for the Keystone XL tar sands pipeline.

Subsection (d) amends section 3 of the Natural Gas Act to require DOE to grant authorization for the export or import of natural gas to or from Canada or Mexico, within 30 days. Subsection (e) repeals section 202(e) of the Federal Power Act, which requires approval from DOE for the transmission of electricity from the U.S. to another country.

Subsection (f) sets an effective date of January 20, 2017, for subsections (b) through (e). The responsible agencies are required to promulgate implementing regulations for the new approval process within one year of enactment of the bill (with proposed regulations issued within 180 days).

B. Analysis

Section 3104 substantially alters the process for federal approval of liquid and natural gas pipelines and electric transmission lines that cross the U.S. border with Canada or Mexico in favor of developers of such projects. To that end, several provisions in section 3104 raise significant concerns.

The new approval process created under subsection (c) establishes a rebuttable presumption of approval, tipping the scale in favor of the project. Instead of requiring an agency to affirmatively find that a project is in the public interest, it shifts the burden of proof to opponents of the project to show that it is not in the public interest. Further a "cross-border segment" is defined as the portion of the project "that is located at the national boundary." This language limits the scope of review for federal approval to just a sliver of a much larger project—only that portion that physically crosses the border—and makes it more difficult for an agency to deny the application as contrary to the public interest.

This section exempts modifications to existing cross-border pipelines from any requirement for federal review or approval unless such modifications would result in a "significant impact at the national boundary." As a result, controversial modifications to existing cross-border pipelines or transmission lines would not require federal approval and would not be subject to any environmental review under NEPA. Many modifications, as defined by this bill, could have environmental impacts just as significant as those resulting from an entirely new project.

Section 3104 does exempt the Keystone XL tar sands pipeline – as described in the May 4, 2012 application – from the new approval process established by the bill. However, there is nothing in this section that prevents TransCanada from withdrawing their application, only to reapply with a slightly modified application under the new weaker process. Further, any other controversial cross-border project pending on January 20, 2017, is only prevented from

reapplying under the new approval process until their application is “approved, denied or withdrawn.”

The provisions of subsection (d) alter the current approval process for liquefied natural gas (LNG) exports to Canada and Mexico. Currently, these applications are relatively simple filings, and approvals can include conditions, such as prohibitions against simply using Canada or Mexico as a pass-through before shipping the gas to another country. This section would require DOE to grant these applications within 30 days, but provides no mechanism for a deadline extension. As with other sections of this discussion draft, if DOE is faced with rigid deadlines it cannot meet, the result will likely be unnecessary application denials rather than expedited approvals.

III. STRATEGIC PETROLEUM RESERVE MISSION READINESS PLAN

Section 3105 of the discussion draft requires the Secretary of Energy to conduct a long-range strategic review of the Strategic Petroleum Reserve (SPR) and develop and send to Congress a plan no later than 180 days after the bill is enacted. The plan must include an analysis and implementation schedule that includes near-term and long-term roles of the SPR in regard to US energy security, as well as economic goals and objectives.

The plan must describe existing legal authorities governing the policies, configuration, and capabilities of the SPR, as well as performance capabilities. Additionally, the plan must provide recommendations regarding capacity, location, and composition of petroleum products, storage and distributional capabilities; and estimates of the resources required to attain and maintain the SPR’s long-term sustainability and operational effectiveness.

On April 30, 2015, the Subcommittee on Energy and Power held a legislative hearing on legislative language identical to section 3105.³ For further background information on the SPR, please see the [memo](#) from the previous hearing

IV. AUTHORIZATION TO EXPORT NATURAL GAS

Section 3106 of the discussion draft is identical to H.R. 351, the “LNG Permitting Certainty and Transparency Act,” which the House passed on January 28, 2015, by a roll call vote of 277-133.⁴ For further background information, please see the committee’s [legislation page](#) for H.R. 351, and the hearing and markup [memos](#) on H.R. 6 held during the 113th Congress.

³ House Committee on Energy and Commerce, Subcommittee on Energy and Power, *Hearing on the Strategic Petroleum Reserve Discussion Draft and Title IV Energy Efficiency*, 114th Cong. (Apr. 30, 2015) (online at democrats.energycommerce.house.gov/index.php?q=hearing/hearing-on-strategic-petroleum-reserve-discussion-draft-and-title-iv-energy-efficiency-subco).

⁴ U.S. House of Representatives, Roll Call Vote on Agreeing to H.R. 351 (Jan. 28, 2015) (277 yeas, 133 nays) (online at clerk.house.gov/evs/2015/roll050.xml).

A. Summary

Subsection (a) requires DOE to issue a decision on any pending or future application for authorization to export natural gas under section 3 of the Natural Gas Act within 30 days of the later of (1) the conclusion of the environmental review required by NEPA or (2) the date of enactment of the bill.

Subsection (c) provides that the United States Court of Appeals for the circuit in which the export facility will be located shall have exclusive jurisdiction over any civil action for the review of (1) a DOE decision on an export application or (2) DOE's failure to issue a decision. If the Court finds that DOE has failed to issue a decision by the deadline established by the bill, the Court is directed to order DOE to issue a decision within 30 days. Section 3106 provides for expedited consideration of such civil actions.

Subsection (d) amends the Natural Gas Act to direct DOE, as a condition of approval of any authorization to export LNG, to require the applicant to publicly disclose the specific destinations of any such exports.

B. Analysis

As a result of low domestic natural gas prices in the United States, companies have filed more than 40 applications with DOE to export LNG. In May 2011, DOE granted the first authorization for LNG exports from the Sabine Pass project in Louisiana. To date, DOE has granted final authorizations for LNG exports to non-Free Trade Agreement (FTA) countries on six applications, and conditional authorizations on three applications.⁵ The approved applications authorize the export of 12.66 billion cubic feet per day of LNG to non-FTA countries,⁶ and the pending applications collectively seek an additional 29.29 billion cubic feet per day of LNG.

DOE is required to grant an application to export natural gas to a country without a free trade agreement with the United States unless it finds that the proposed export is not consistent with the public interest.⁷ DOE evaluates a range of factors when performing a public interest review of a non-FTA application, including economic impacts, international considerations, U.S.

⁵ U.S. Department of Energy, *Long Term Applications Received by DOE/FE to Export Domestically Produced LNG from Lower-48 States* (May 13, 2015) (online at energy.gov/sites/prod/files/2015/05/f22/Summary%20of%20LNG%20Export%20Applications.pdf).

⁶ DOE has granted final export authorization for 8.61 billion cubic feet per day of LNG, and conditional authorization for 4.05 billion cubic feet per day of LNG.

⁷ For export to the 20 countries with a FTA with the United States, the Natural Gas Act requires DOE to deem such applications consistent with the public interest and grant them without modification or delay.

energy security, and environmental considerations. FERC is responsible for issuing permits for specific LNG export facilities. DOE relies on FERC's environmental review to inform the DOE process. DOE prioritizes the review of applications for which FERC has completed the necessary environmental review, and according to DOE "the last application...that came out of FERC, we turned it around in one day."⁸

Section 3106 mandates that DOE issue final decisions on the pending LNG export applications in 30 days. This will disrupt the functioning approval process for pending and future LNG export applications by arbitrarily limiting the time that DOE has to review the applications. When faced with these time limits, DOE will do one of two things: 1) DOE will approve projects without an adequate public interest review, or 2) DOE will deny applications when time constraints prevent it from creating an adequate record.

Section 3106 will not accelerate the actual export of LNG. According to DOE, "there are zero applications sitting in front of us for a decision right now."⁹ And, because this section does not affect FERC's separate permitting process for export terminals, the truncated DOE process will not speed up the export of LNG. Further, the first LNG export terminal in the U.S. (Sabine Pass) is expected to begin partial operations in late 2015; other approved export terminals are not expected to begin operations until 2017 or 2018.

The bill's supporters argue that this legislation is needed to support U.S. allies in Europe faced with Russian aggression in Ukraine. When the U.S. begins exporting significant quantities of LNG three or four years from now, however, the LNG will likely be sent to Asia, where natural gas prices are higher than in Europe.¹⁰ Moreover, Ukraine does not have any facilities to import or re-gasify LNG.

⁸ House Committee on Energy and Commerce, Subcommittee on Energy and Power, Statement of Christopher Smith, Assistant Secretary for Fossil Energy, U.S. Department of Energy, *Hearing on the Strategic Petroleum Reserve Discussion Draft and Title IV Energy Efficiency*, 114th Cong. (Apr. 30, 2015) (online at democrats.energycommerce.house.gov/index.php?q=hearing/hearing-on-strategic-petroleum-reserve-discussion-draft-and-title-iv-energy-efficiency-subco).

⁹ House Committee on Energy and Commerce, Subcommittee on Energy and Power, Statement of Christopher Smith, Assistant Secretary for Fossil Energy, U.S. Department of Energy, *Hearing on the Strategic Petroleum Reserve Discussion Draft and Title IV Energy Efficiency*, 114th Cong. (Apr. 30, 2015) (online at democrats.energycommerce.house.gov/index.php?q=hearing/hearing-on-strategic-petroleum-reserve-discussion-draft-and-title-iv-energy-efficiency-subco).

¹⁰ Based on long-term supply contracts that have already been executed, it is anticipated that exports from these projects will be shipped primarily to locations in Asia, including Japan, China, South Korea, and India.

V. WITNESSES

The following witnesses have been invited to testify:

Panel One:

The Honorable Ernest Moniz
Secretary
U.S. Department of Energy

Panel Two:

Rudolf Dolzer
Advisory Board Member, Association of International Petroleum Negotiators
Professor of International Law, University of Bonn

Jason Grumet
President
Bipartisan Policy Center

The Honorable Scott Martin
Commissioner
Lancaster County, PA

Gerald Keeps
Vice President, Upstream Research and Consulting
IHS

Alison Cassady
Director of Domestic Energy Policy
Center for American Progress

Emily Hammond
Professor of Law
George Washington University Law School