

115TH CONGRESS
1ST SESSION

S. 1844

To provide for coordination by the Federal Energy Regulatory Commission of the process for reviewing certain natural gas projects under the jurisdiction of the Commission, and for other purposes.

IN THE SENATE OF THE UNITED STATES

SEPTEMBER 19, 2017

Mr. INHOFE (for himself and Mr. KING) introduced the following bill; which was read twice and referred to the Committee on Energy and Natural Resources

A BILL

To provide for coordination by the Federal Energy Regulatory Commission of the process for reviewing certain natural gas projects under the jurisdiction of the Commission, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Coordinating Inter-
5 agency Review of Natural Gas Infrastructure Act of
6 2017”.

7 **SEC. 2. FERC PROCESS COORDINATION.**

8 (a) **DEFINITIONS.**—In this section:

1 (1) AGENCY.—The term “agency” means any
2 Federal, State, or other governmental entity with
3 authority to implement an agency action.

4 (2) AGENCY ACTION.—

5 (A) IN GENERAL.—The term “agency ac-
6 tion” means any action required to be carried
7 out by an agency under Federal law with re-
8 spect to a project.

9 (B) INCLUSIONS.—The term “agency ac-
10 tion” includes the provision, and any deter-
11 mination relating to the provision, of any per-
12 mit, special use authorization, certification,
13 opinion, consultation, or approval required
14 under Federal law with respect to an applica-
15 tion for—

16 (i) authorization under section 3(e) of
17 the Natural Gas Act (15 U.S.C. 717b(e));
18 or

19 (ii) a certificate of public convenience
20 and necessity under section 7 of that Act
21 (15 U.S.C. 717f).

22 (3) COMMISSION.—The term “Commission”
23 means the Federal Energy Regulatory Commission.

24 (4) FEDERAL AUTHORIZATION.—

1 (A) IN GENERAL.—The term “Federal au-
2 thorization” means any authorization required
3 under Federal law with respect to an applica-
4 tion for—

5 (i) authorization under section 3(e) of
6 the Natural Gas Act (15 U.S.C. 717b(e));

7 or

8 (ii) a certificate of public convenience
9 and necessity under section 7 of that Act
10 (15 U.S.C. 717f).

11 (B) INCLUSIONS.—The term “Federal au-
12 thorization” includes any permit, special use
13 authorization, certification, opinion, consulta-
14 tion, or approval required under Federal law
15 with respect to an application described in sub-
16 paragraph (A).

17 (5) LEAD AGENCY.—The term “lead agency”
18 means the Commission.

19 (6) NEPA REVIEW.—The term “NEPA review”
20 means an environmental impact statement or similar
21 analysis required under the National Environmental
22 Policy Act of 1969 (42 U.S.C. 4321 et seq.).

23 (7) PROJECT.—The term “project” means a
24 natural gas project subject to the jurisdiction of the

1 Commission that requires one or more Federal au-
2 thorizations.

3 (8) READY FOR PROCESSING.—The term
4 “ready for processing”, with respect to an applica-
5 tion for Federal authorization, means that the appli-
6 cation is sufficiently complete for the purpose of
7 commencing a review of the application for any
8 agency action.

9 (b) RESPONSIBILITIES OF AGENCIES IN PROJECT
10 NEPA REVIEWS.—

11 (1) IN GENERAL.—In carrying out any NEPA
12 review of a project, the lead agency shall—

13 (A) to the maximum extent practicable and
14 in accordance with the authority of the lead
15 agency under section 15 of the Natural Gas Act
16 (15 U.S.C. 717n), facilitate the expeditious res-
17 olution of the NEPA review; and

18 (B) ensure that the NEPA review is com-
19 pleted in accordance with—

20 (i) this section; and

21 (ii) applicable Federal law.

22 (2) DESIGNATION OF PARTICIPATING AGEN-
23 CIES.—

24 (A) INVITATIONS AND REQUESTS.—

1 (i) IN GENERAL.—As early as prac-
2 ticable in the NEPA review process for a
3 project, the lead agency shall—

4 (I) identify any other agencies
5 with jurisdiction over any Federal au-
6 thorizations that may be related to
7 the NEPA review; and

8 (II) invite such agencies to be-
9 come participating agencies.

10 (ii) DEADLINE.—An invitation under
11 clause (i)(II) shall establish a deadline for
12 a response to the invitation, to be sub-
13 mitted to the lead agency, which may be
14 extended by the lead agency for good
15 cause.

16 (iii) REQUESTS.—Any agency with ju-
17 risdiction over a Federal authorization re-
18 lating to the NEPA review process for a
19 project may submit a request to become a
20 participating agency, regardless of whether
21 the lead agency invited the agency to be-
22 come a participating agency under clause
23 (i), subject to the condition that such a re-
24 quest shall be timely submitted.

1 (B) DESIGNATION.—The lead agency shall
2 designate as a participating agency—

3 (i) each agency invited under subpara-
4 graph (A)(i)(II), unless the invited agency
5 informs the lead agency, in writing, by the
6 deadline specified in the invitation, that
7 the invited agency—

8 (I) has no jurisdiction or author-
9 ity with respect to the applicable
10 project;

11 (II) has no expertise or informa-
12 tion relevant to the NEPA review of
13 the project; or

14 (III) does not intend to submit
15 comments for the record in the NEPA
16 review; and

17 (ii) each agency that submits a re-
18 quest under subparagraph (A)(iii) to be-
19 come a participating agency.

20 (C) CONSULTATION BY LEAD AGENCY.—As
21 soon as practicable after commencing a NEPA
22 review of a project, the lead agency shall coordi-
23 nate with the participating agencies to ensure
24 that the information developed during the
25 NEPA review is also usable by the participating

1 agencies in carrying out the obligations of the
2 participating agencies with respect to each Fed-
3 eral authorization for the project.

4 (3) RESPONSIBILITIES OF PARTICIPATING
5 AGENCIES.—

6 (A) EFFECT OF DESIGNATION.—Designa-
7 tion as a participating agency for a project
8 under paragraph (2)(B) does not indicate that
9 the participating agency—

10 (i) supports a proposed Federal au-
11 thorization for the project; or

12 (ii) has any jurisdiction over, or spe-
13 cial expertise with respect to evaluation of,
14 the Federal authorization for the project.

15 (B) EFFECT OF NONDESIGNATION.—

16 (i) IN GENERAL.—The lead agency
17 shall not, with respect to an agency that is
18 not designated as a participating agency
19 for a project under paragraph (2)(B) with
20 respect to an application for one or more
21 Federal authorizations—

22 (I) take into consideration any
23 agency action, comments, or other in-
24 formation submitted by the agency; or

1 (II) include any such comments
2 or other information in the record of
3 the NEPA review.

4 (ii) SUPPLEMENTAL NEPA REVIEW
5 REQUESTS.—An agency that is not des-
6 ignated a participating agency for a project
7 under paragraph (2)(B) may not request
8 or develop a supplemental NEPA review of
9 the project, unless the agency—

10 (I) demonstrates that such a re-
11 view is necessary for the agency to
12 carry out an obligation of the agency
13 with respect to a Federal authoriza-
14 tion for the project; and

15 (II) requires information that
16 could not have been obtained during
17 the NEPA review carried out by the
18 lead agency for the project.

19 (c) CONCURRENT AGENCY ACTION REVIEWS.—

20 (1) APPLICATIONS.—

21 (A) IN GENERAL.—In accordance with the
22 schedule established by the lead agency under
23 section 15(c) of the Natural Gas Act (15
24 U.S.C. 717n(c)), each agency conducting any

1 agency action for a Federal authorization for a
2 project shall—

3 (i) not later than 45 days after the
4 date on which the application is received
5 by the agency, provide to the applicant a
6 notice describing whether the application is
7 ready for processing; and

8 (ii) if the agency determines that an
9 application is not ready for processing, in-
10 clude in the notice described in clause (i)
11 a comprehensive description of the infor-
12 mation required to be submitted for the
13 application to be ready for processing.

14 (B) REVISED APPLICATIONS.—If an appli-
15 cant submits a revised application for Federal
16 authorization for a project after receiving a no-
17 tification under subparagraph (A) that the ini-
18 tial application was not ready for processing,
19 the agency receiving the revised application
20 shall, not later than 30 days after the date on
21 which the revised application is received—

22 (i) determine whether the revised ap-
23 plication—

24 (I) provided all information in-
25 cluded in the comprehensive descrip-

1 tion described in subparagraph
2 (A)(ii); and
3 (II) is ready for processing; and
4 (ii) if the agency determines that the
5 revised application is not ready for proc-
6 essing, provide to the applicant a notice
7 describing the information included in the
8 comprehensive description under subpara-
9 graph (A)(ii) that the applicant did not in-
10 clude in the revised application.

11 (C) SUPPLEMENTATION.—An agency con-
12 sidering an aspect of an application for a Fed-
13 eral authorization may require the applicant to
14 supplement the application with such additional
15 information as the agency determines to be nec-
16 essary to complete the review of the application,
17 regardless of whether the agency has deter-
18 mined under subparagraph (A) or (B) that an
19 application is ready for processing.

20 (2) CONCURRENT REVIEWS.—Each agency car-
21 rying out an agency action for a Federal authoriza-
22 tion (other than a NEPA review) shall—

23 (A) unless doing so would impair the abil-
24 ity of the agency to conduct an analysis that
25 could not otherwise be developed during the

1 NEPA review carried out by the lead agency for
2 the project, to the maximum extent authorized
3 by law, conduct the agency action—

4 (i) concurrently and in conjunction
5 with the NEPA review; and

6 (ii) in accordance with the applicable
7 schedule established by the lead agency;

8 (B) submit to the lead agency progress re-
9 ports not less frequently than once every 90
10 days; and

11 (C) formulate and implement a plan for
12 administrative, policy, and procedural mecha-
13 nisms to enable the agency to ensure completion
14 of the agency action for the Federal authoriza-
15 tion in accordance with an applicable schedule
16 established by the Commission under section
17 15(c)(1) of the Natural Gas Act (15 U.S.C.
18 717n(c)(1)).

19 (d) MODIFICATIONS TO, AND FAILURES TO MEET,
20 DEADLINES.—

21 (1) IN GENERAL.—In any case in which an
22 agency (including the lead agency) modifies or fails
23 to meet a deadline required with respect to an agen-
24 cy action for a Federal authorization for a project
25 under the applicable schedule established by the

1 Commission under section 15(c)(1) of the Natural
2 Gas Act (15 U.S.C. 717n(c)(1)), the head of the
3 agency (including, in the case of a failure by a State
4 agency, the head of the appropriate Federal agency)
5 shall, by not later than 15 days after the applicable
6 deadline, provide a notice of the modification or fail-
7 ure to—

8 (A) the appropriate committees of Con-
9 gress;

10 (B) the lead agency (if applicable);

11 (C) the Director of the Office of Manage-
12 ment and Budget; and

13 (D) the developer of the project.

14 (2) INCLUSION.—A notice under paragraph (1)
15 shall include an implementation plan to ensure com-
16 pletion of the relevant agency action for the Federal
17 authorization.

18 (3) REQUIREMENT OF COMMISSION.—The Com-
19 mission shall provide to each affected agency a no-
20 tice describing any change in a schedule established
21 for a project under section 15(c)(1) of the Natural
22 Gas Act (15 U.S.C. 717n(c)(1)).

23 (e) ADVANCED SURVEYS.—

24 (1) IN GENERAL.—In any case in which an
25 agency action for a Federal authorization requires

1 the applicant to submit any environmental data for
2 purposes of filing or submitting an application, the
3 agency shall consider any such data gathered by aer-
4 ial or other remote means.

5 (2) **CONDITIONAL APPROVAL.**—An agency may
6 grant a conditional approval for Federal authoriza-
7 tion, subject to the condition that any data described
8 in paragraph (1) shall be verified by a subsequent,
9 onsite inspection.

10 (f) **ACCOUNTABILITY, TRANSPARENCY, AND EFFI-**
11 **CIENCY.**—

12 (1) **IN GENERAL.**—With respect to an applica-
13 tion for Federal authorization that requires more
14 than 1 Federal authorization, the Commission, in
15 consultation with each agency conducting an agency
16 action for a Federal authorization, shall monitor and
17 record information relating to the agency actions re-
18 quired to complete the Federal authorizations, in-
19 cluding—

20 (A) any applicable schedule established by
21 the Commission under section 15(c)(1) of the
22 Natural Gas Act (15 U.S.C. 717n(c)(1));

23 (B)(i) a list of all agency actions required
24 by each applicable agency to obtain a final deci-
25 sion regarding the Federal authorization;

1 (ii) the expected completion date for each
2 such agency action; and

3 (iii) a point of contact at each agency re-
4 sponsible for each such agency action; and

5 (C) in any case in which an agency action
6 is pending as of the deadline applicable to the
7 agency action under the schedule described in
8 subparagraph (A), a brief explanation of the
9 reasons for the delay.

10 (2) PUBLICATION.—The Commission shall pub-
11 lish on the website of the Commission the informa-
12 tion recorded under paragraph (1), except to the ex-
13 tent that the information is otherwise made publicly
14 available on a permitting-related dashboard or equiv-
15 alent website.

16 (g) SAVINGS CLAUSE.—Nothing in this section—

17 (1) supersedes, amends, or modifies any provi-
18 sion of—

19 (A) the National Environmental Policy Act
20 of 1969 (42 U.S.C. 4321 et seq.); or

21 (B) any other Federal law; or

22 (2) affects the responsibility of any Federal of-
23 ficer or employee to comply with or enforce such a
24 provision.

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