

116TH CONGRESS  
2D SESSION

# H. R. 7401

To provide for Federal and State agency coordination in the approval of certain authorizations under the Natural Gas Act, and for other purposes.

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IN THE HOUSE OF REPRESENTATIVES

JUNE 29, 2020

Mr. FLORES introduced the following bill; which was referred to the Committee on Energy and Commerce

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## A BILL

To provide for Federal and State agency coordination in the approval of certain authorizations under the Natural Gas Act, 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 “Promoting Interagency  
5 Coordination for Review of Natural Gas Pipelines Act”.

6 **SEC. 2. EXPANDING ACCESS TO CLEAN ENERGY.**

7 (a) DEFINITIONS.—In this section:

8 (1) COMMISSION.—The term “Commission”  
9 means the Federal Energy Regulatory Commission.

1           (2) FEDERAL AUTHORIZATION.—The term  
2           “Federal authorization” has the meaning given that  
3           term in section 15(a) of the Natural Gas Act (15  
4           U.S.C. 717n(a)).

5           (3) NEPA REVIEW.—The term “NEPA review”  
6           means the process of reviewing a proposed Federal  
7           action under section 102 of the National Environ-  
8           mental Policy Act of 1969 (42 U.S.C. 4332).

9           (4) PROJECT-RELATED NEPA REVIEW.—The  
10          term “project-related NEPA review” means any  
11          NEPA review required to be conducted with respect  
12          to the issuance of an authorization under section 3  
13          of the Natural Gas Act or a certificate of public con-  
14          venience and necessity under section 7 of such Act.

15          (b) COMMISSION NEPA REVIEW RESPONSIBIL-  
16          ITIES.—In acting as the lead agency under section  
17          15(b)(1) of the Natural Gas Act for the purposes of com-  
18          plying with the National Environmental Policy Act of  
19          1969 (42 U.S.C. 4321 et seq.) with respect to an author-  
20          ization under section 3 of the Natural Gas Act or a certifi-  
21          cate of public convenience and necessity under section 7  
22          of such Act, the Commission shall, in accordance with this  
23          section and other applicable Federal law—

24                  (1) be the only lead agency;

1           (2) coordinate as early as practicable with each  
2           agency designated as a participating agency under  
3           subsection (d)(3) to ensure that the Commission de-  
4           velops information in conducting its project-related  
5           NEPA review that is usable by the participating  
6           agency in considering an aspect of an application for  
7           a Federal authorization for which the agency is re-  
8           sponsible; and

9           (3) take such actions as are necessary and  
10          proper to facilitate the expeditious resolution of its  
11          project-related NEPA review.

12          (c) DEFERENCE TO COMMISSION.—In making a deci-  
13          sion with respect to a Federal authorization required with  
14          respect to an application for authorization under section  
15          3 of the Natural Gas Act or a certificate of public conven-  
16          ience and necessity under section 7 of such Act, each agen-  
17          cy shall give deference, to the maximum extent authorized  
18          by law, to the scope of the project-related NEPA review  
19          that the Commission determines to be appropriate.

20          (d) PARTICIPATING AGENCIES.—

21                 (1) IDENTIFICATION.—The Commission shall  
22                 identify, as early as practicable after it is notified by  
23                 a person applying for an authorization under section  
24                 3 of the Natural Gas Act or a certificate of public  
25                 convenience and necessity under section 7 of such

1 Act, any Federal or State agency, local government,  
2 or Indian Tribe that may issue a Federal authoriza-  
3 tion or is required by Federal law to consult with  
4 the Commission in conjunction with the issuance of  
5 a Federal authorization required for such authoriza-  
6 tion or certificate.

7 (2) INVITATION.—

8 (A) IN GENERAL.—The Commission shall  
9 invite any agency identified under paragraph  
10 (1) to participate in the review process for the  
11 applicable Federal authorization.

12 (B) DEADLINE.—An invitation issued  
13 under subparagraph (A) shall establish a dead-  
14 line by which a response to the invitation shall  
15 be submitted to the Commission, which may be  
16 extended by the Commission for good cause.

17 (3) DESIGNATION AS PARTICIPATING AGEN-  
18 CIES.—The Commission shall designate an agency  
19 identified under paragraph (1) as a participating  
20 agency with respect to an application for authoriza-  
21 tion under section 3 of the Natural Gas Act or a  
22 certificate of public convenience and necessity under  
23 section 7 of such Act unless the agency informs the  
24 Commission, in writing, by the deadline established  
25 pursuant to paragraph (2)(B), that the agency—

1 (A) has no jurisdiction or authority with  
2 respect to the applicable Federal authorization;

3 (B) has no special expertise or information  
4 relevant to any project-related NEPA review; or

5 (C) does not intend to submit comments  
6 for the record for the project-related NEPA re-  
7 view conducted by the Commission.

8 (4) EFFECT OF NON-DESIGNATION.—

9 (A) EFFECT ON AGENCY.—Any agency  
10 that is not designated as a participating agency  
11 under paragraph (3) with respect to an applica-  
12 tion for an authorization under section 3 of the  
13 Natural Gas Act or a certificate of public con-  
14 venience and necessity under section 7 of such  
15 Act may not request or conduct a NEPA review  
16 that is supplemental to the project-related  
17 NEPA review conducted by the Commission,  
18 unless the agency—

19 (i) demonstrates that such review is  
20 legally necessary for the agency to carry  
21 out responsibilities in considering an as-  
22 pect of an application for a Federal au-  
23 thorization; and

24 (ii) requires information that could  
25 not have been obtained during the project-

1 related NEPA review conducted by the  
2 Commission.

3 (B) COMMENTS; RECORD.—The Commis-  
4 sion shall not, with respect to an agency that is  
5 not designated as a participating agency under  
6 paragraph (3) with respect to an application for  
7 an authorization under section 3 of the Natural  
8 Gas Act or a certificate of public convenience  
9 and necessity under section 7 of such Act—

10 (i) consider any comments or other in-  
11 formation submitted by such agency for  
12 the project-related NEPA review conducted  
13 by the Commission; or

14 (ii) include any such comments or  
15 other information in the record for such  
16 project-related NEPA review.

17 (e) SCHEDULE.—

18 (1) DEADLINE FOR FEDERAL AUTHORIZA-  
19 TIONS.—A deadline for a Federal authorization re-  
20 quired with respect to an application for authoriza-  
21 tion under section 3 of the Natural Gas Act or a  
22 certificate of public convenience and necessity under  
23 section 7 of such Act set by the Commission under  
24 section 15(c)(1) of such Act shall be not later than  
25 90 days after the Commission completes its project-

1 related NEPA review, unless an applicable schedule  
2 is otherwise established by Federal law.

3 (2) CONCURRENT REVIEWS.—Each Federal and  
4 State agency—

5 (A) that may consider an application for a  
6 Federal authorization required with respect to  
7 an application for authorization under section 3  
8 of the Natural Gas Act or a certificate of public  
9 convenience and necessity under section 7 of  
10 such Act shall formulate and implement a plan  
11 for administrative, policy, and procedural mech-  
12 anisms to enable the agency to ensure comple-  
13 tion of Federal authorizations in compliance  
14 with schedules established by the Commission  
15 under section 15(c)(1) of such Act; and

16 (B) in considering an aspect of an applica-  
17 tion for a Federal authorization required with  
18 respect to an application for authorization  
19 under section 3 of the Natural Gas Act or a  
20 certificate of public convenience and necessity  
21 under section 7 of such Act, shall—

22 (i) formulate and implement a plan to  
23 enable the agency to comply with the  
24 schedule established by the Commission  
25 under section 15(c)(1) of such Act;

1           (ii) carry out the obligations of that  
2           agency under applicable law concurrently,  
3           and in conjunction with, the project-related  
4           NEPA review conducted by the Commis-  
5           sion, and in compliance with the schedule  
6           established by the Commission under sec-  
7           tion 15(c)(1) of such Act, unless the agen-  
8           cy notifies the Commission in writing that  
9           doing so would impair the ability of the  
10          agency to conduct needed analysis or oth-  
11          erwise carry out such obligations;

12          (iii) transmit to the Commission a  
13          statement—

14               (I) acknowledging receipt of the  
15               schedule established by the Commis-  
16               sion under section 15(c)(1) of the  
17               Natural Gas Act; and

18               (II) setting forth the plan formu-  
19               lated under clause (i) of this subpara-  
20               graph;

21          (iv) not later than 30 days after the  
22          agency receives such application for a Fed-  
23          eral authorization, transmit to the appli-  
24          cant a notice—



1 (I) indicating whether such appli-  
2 cation is ready for processing; and

3 (II) if such application is not  
4 ready for processing, that includes a  
5 comprehensive description of the in-  
6 formation needed for the agency to  
7 determine that the application is  
8 ready for processing;

9 (v) determine that such application  
10 for a Federal authorization is ready for  
11 processing for purposes of clause (iv) if  
12 such application is sufficiently complete for  
13 the purposes of commencing consideration,  
14 regardless of whether supplemental infor-  
15 mation is necessary to enable the agency to  
16 complete the consideration required by law  
17 with respect to such application; and

18 (vi) not less often than once every 90  
19 days, transmit to the Commission a report  
20 describing the progress made in consid-  
21 ering such application for a Federal au-  
22 thorization.

23 (3) FAILURE TO MEET DEADLINE.—If a Fed-  
24 eral or State agency, including the Commission, fails  
25 to meet a deadline for a Federal authorization set

1       forth in the schedule established by the Commission  
2       under section 15(c)(1) of the Natural Gas Act, not  
3       later than 5 days after such deadline, the head of  
4       the relevant Federal agency (including, in the case  
5       of a failure by a State agency, the Federal agency  
6       overseeing the delegated authority) shall notify Con-  
7       gress and the Commission of such failure and set  
8       forth a recommended implementation plan to ensure  
9       completion of the action to which such deadline ap-  
10      plied. Not later than 5 days after such notification,  
11      the Commission shall either accept the Federal  
12      agency's recommended implementation plan, or if  
13      the Commission does not accept the Federal agen-  
14      cy's recommendation, establish a revised schedule for  
15      completion of the action and notify the head of the  
16      relevant Federal agency.

17      (f) CONSIDERATION OF APPLICATIONS FOR FEDERAL  
18      AUTHORIZATION.—

19           (1) ISSUE IDENTIFICATION AND RESOLU-  
20      TION.—

21           (A) IDENTIFICATION.—Federal and State  
22      agencies that may consider an aspect of an ap-  
23      plication for a Federal authorization shall iden-  
24      tify, as early as possible, any issues of concern  
25      that may delay or prevent an agency from

1 working with the Commission to resolve such  
2 issues and granting such authorization.

3 (B) ISSUE RESOLUTION.—The Commission  
4 may forward any issue of concern identified  
5 under subparagraph (A) to the heads of the rel-  
6 evant agencies (including, in the case of an  
7 issue of concern that is a failure by a State  
8 agency, the Federal agency overseeing the dele-  
9 gated authority, if applicable) for resolution.

10 (2) REMOTE SURVEYS.—If a Federal or State  
11 agency considering an aspect of an application for a  
12 Federal authorization requires the person applying  
13 for such authorization to submit data, the agency  
14 shall consider any such data gathered by aerial or  
15 other remote means that the person submits. Such  
16 aerial or remote survey data shall be considered  
17 where property access is not permitted or available  
18 and therefore onsite inspection is not possible at the  
19 time of the application review. The agency may  
20 grant a conditional approval for the Federal author-  
21 ization based in part on data gathered by aerial or  
22 remote means, and if appropriate and necessary for  
23 compliance with the agency’s mandate, conditioned  
24 on the verification of such data by subsequent onsite  
25 inspection.

1           (3) APPLICATION PROCESSING.—The Commis-  
2           sion, and Federal and State agencies, may allow a  
3           person applying for a Federal authorization to fund  
4           a third-party contractor to assist in reviewing the  
5           application for such authorization.

6           (g) ACCOUNTABILITY, TRANSPARENCY, EFFI-  
7           CIENCY.—For an application for an authorization under  
8           section 3 of the Natural Gas Act or a certificate of public  
9           convenience and necessity under section 7 of such Act that  
10          requires multiple Federal authorizations, the Commission,  
11          with input from any Federal or State agency considering  
12          an aspect of the application, shall track and make avail-  
13          able to the public on the Commission’s website information  
14          related to the actions required to complete the Federal au-  
15          thorizations. Such information shall include the following:

16                (1) The schedule established by the Commission  
17                under section 15(c)(1) of the Natural Gas Act.

18                (2) A list of all the actions required by each ap-  
19                plicable agency to complete permitting, reviews, and  
20                other actions necessary to obtain a final decision on  
21                the application.

22                (3) The expected completion date for each such  
23                action.

24                (4) A point of contact at the agency responsible  
25                for each such action.

- 1           (5) In the event that an action is still pending
- 2           as of the expected date of completion, a brief expla-
- 3           nation of the reasons for the delay.

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