

NATURAL GAS PIPELINE PERMITTING REFORM ACT

NOVEMBER 18, 2013.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. UPTON, from the Committee on Energy and Commerce, submitted the following

R E P O R T

together with

DISSENTING VIEWS

[To accompany H.R. 1900]

[Including cost estimate of the Congressional Budget Office]

The Committee on Energy and Commerce, to whom was referred the bill (H.R. 1900) to provide for the timely consideration of all licenses, permits, and approvals required under Federal law with respect to the siting, construction, expansion, or operation of any natural gas pipeline projects, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

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The amendment is as follows:

Strike all after the enacting clause and insert the following:

**SECTION 1. SHORT TITLE.**

This Act may be cited as the “Natural Gas Pipeline Permitting Reform Act”.

**SEC. 2. REGULATORY APPROVAL OF NATURAL GAS PIPELINE PROJECTS.**

Section 7 of the Natural Gas Act (15 U.S.C. 717f) is amended by adding at the end the following new subsection:

“(i)(1) The Commission shall approve or deny an application for a certificate of public convenience and necessity for a prefiled project not later than 12 months after receiving a complete application that is ready to be processed, as defined by the Commission by regulation.

“(2) The agency responsible for issuing any license, permit, or approval required under Federal law in connection with a prefiled project for which a certificate of public convenience and necessity is sought under this Act shall approve or deny the issuance of the license, permit, or approval not later than 90 days after the Commission issues its final environmental document relating to the project.

“(3) The Commission may extend the time period under paragraph (2) by 30 days if an agency demonstrates that it cannot otherwise complete the process required to approve or deny the license, permit, or approval, and therefor will be compelled to deny the license, permit, or approval. In granting an extension under this paragraph, the Commission may offer technical assistance to the agency as necessary to address conditions preventing the completion of the review of the application for the license, permit, or approval.

“(4) If an agency described in paragraph (2) does not approve or deny the issuance of the license, permit, or approval within the time period specified under paragraph (2) or (3), as applicable, such license, permit, or approval shall take effect upon the expiration of 30 days after the end of such period. The Commission shall incorporate into the terms of such license, permit, or approval any conditions proffered by the agency described in paragraph (2) that the Commission does not find are inconsistent with the final environmental document.

“(5) For purposes of this subsection, the term ‘prefiled project’ means a project for the siting, construction, expansion, or operation of a natural gas pipeline with respect to which a prefiling docket number has been assigned by the Commission pursuant to a prefiling process established by the Commission for the purpose of facilitating the formal application process for obtaining a certificate of public convenience and necessity.”.

PURPOSE AND SUMMARY

H.R. 1900, Natural Gas Pipeline Permitting Reform Act, was introduced by Representative Mike Pompeo (together with Representatives Matheson, Olson, Gardner, and Johnson of Ohio) on May 9, 2013. The legislation will help address the critical need to build new natural gas pipelines and improve upon the existing pipeline infrastructure by creating greater regulatory certainty in the permitting process. The legislation would require that the Federal Energy Regulatory Commission (FERC) approve or deny a requested pipeline certificate no later than 12 months after receiving a complete application that is ready to be processed and has engaged in the pre-filing process. It also would codify FERC’s requirements that all relevant agencies approve or deny a permit application within 90 days after FERC’s notice of completion of the final environmental document with the possibility of a 30-day extension for certain situations. Finally, it would require that a permit shall go into effect if an agency fails to issue a response within the scheduled timeframes, with an allowance for the agency to submit conditions to be incorporated into the permit if they are consistent with the final environmental document.

## BACKGROUND AND NEED FOR LEGISLATION

Over the course of the 112th Congress and the first session of the 113th Congress, the Subcommittee on Energy and Power has held over a dozen hearings that have touched on both the growth in production and demand of natural gas in the United States that has occurred in recent years.<sup>1</sup> The growth in domestic production has made the United States the top producer of natural gas and petroleum in the world.<sup>2</sup> This transformation in the domestic energy landscape is a result of new extraction techniques developed by the energy industry and the access afforded by non-Federal lands that are enriched with an abundance of resources. The growth in natural gas production is happening in a number of States, including Texas, Pennsylvania, Colorado, and North Dakota.

The growth in domestic production also has led to an increase in demand for natural gas across the country. This increase has led to a critical need to build new infrastructure to move natural gas from areas where it is being produced to areas of high demand. The growth in natural gas production has helped to create growth in the manufacturing sector and has created international demand for LNG exports, especially to our allies and trading partners across the globe. The biggest growth in demand has been and will continue to be in our nation's electric generation sector, where low natural gas prices and a suite of new environmental regulations are forcing more coal-fired generating units into retirement and preventing the construction of new units. According to the Energy Information Administration (EIA), the share of natural gas in the generation mix has increased from 25 percent in 2011 to 30 percent in 2012 and will continue as more coal-fired generating units are retired.<sup>3</sup> During a hearing before the Subcommittee on Energy and Power on natural gas and electric coordination challenges, several witnesses testified that there is an acute need for bringing new capacity to markets that need it, such as in Northeast States and in the Midwest.<sup>4</sup> In addition, more natural gas pipelines would have the added benefit of providing greater regulatory certainty to areas that have a growing need for more natural gas resources. It is important that we have a regulatory system in place that will meet the growing need to allow pipeline infrastructure to transport natural gas from where it is produced to where it is needed.

The FERC is authorized under section 7 of the Natural Gas Act (NGA) to evaluate whether the routes for proposed interstate natural gas pipeline projects should be approved. FERC conducts the environmental review of each proposed natural gas pipeline project as required under the National Environmental Policy Act (NEPA). Under the Energy Policy Act of 2005 (EPA 2005), FERC is designated as the lead agency for coordinating and reviewing natural gas pipeline project applications under NEPA and "all applicable

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<sup>1</sup>A list of all Subcommittee on Energy and Power hearings can be found at <http://energycommerce.house.gov/hearings>.

<sup>2</sup>U.S. Energy Information Administration, *U.S. expected to be largest producer of petroleum and natural gas hydrocarbons* in 2013, October 4, 2013.

<sup>3</sup>North American Electric Reliability Corporation, "2012 Long-Term Reliability Assessment," (Nov. 2012) (finding that over 70,000 megawatts of fossil-fuel fired generating capacity will retire over the next 10 years, 90% of which will retire over the next 5 years).

<sup>4</sup>Subcommittee on Energy and Power hearing on American Energy Security and Innovation: The Role of Regulators and Grid Operators in Meeting Natural Gas and Electric Coordination Challenges, March 19, 2013.

federal authorizations.” As the lead agency, FERC often must coordinate with a variety of Federal, State, and local agencies where the natural gas pipeline is to be constructed.

Under Federal law, multiple permits are often required for constructing and operating a natural gas pipeline. This includes permits under the Clean Water Act, Endangered Species Act, and the Federal Land Policy and Management Act. Under current FERC regulations, Federal and State agencies participate in the development of the NEPA analysis for a pipeline project and then are required to complete their respective permit application reviews no later than 90 days after FERC issues its final environmental document, unless another schedule is established by Federal law.

Despite the increased authority given to FERC under EPOA 2005, there is growing evidence that FERC lacks the ability to enforce agency decisional deadlines related to natural gas pipeline applications. A December 2012 study conducted by the INGAA Foundation found that delays of more than 90 days have risen 28 percent after EPOA 2005’s permitting reforms, while delays of 180 days or more have risen 20 percent.<sup>5</sup> A February 2013 GAO report found the natural gas pipeline permitting process to be “complex.”<sup>6</sup> A chief cause of these growing delays is that there are no enforcement mechanisms or consequences if agencies do not complete a permit application review within 90 days. Not only does this delay prohibit the construction of new natural gas pipelines, it puts the welfare and safety of the public at risk by delaying needed improvements on existing pipelines. The Subcommittee on Energy and Power received testimony about an instance where a pipeline operator encountered a delay of over a year to replace a deteriorating portion of an existing gas pipeline because of a delay from the Army Corps of Engineers that extended 9 months beyond the FERC deadline to approve a necessary permit.<sup>7</sup> This delay also increased the cost of the project, which would ultimately impact consumers.

FERC Commissioner Philip Moeller commented on the ability of FERC to hold agencies accountable at a hearing before the Subcommittee on Energy and Power. He stated, and Commissioner Cheryl LaFleur agreed, that “agencies typically don’t have the accountability to come back with an answer” regarding necessary permits even with FERC setting deadlines.<sup>8</sup> Commissioner Moeller went on to say that “if you created some timeline of accountability, I think [the agencies] would be a lot more responsive.” This timeline and accountability is what H.R. 1900 seeks to accomplish.

In the event an agency fails to act on a completed permit application within the scheduled timeframe, the completed application shall go into effect, with the allowance for an agency to submit conditions to be incorporated if the conditions are consistent with the final environmental document. It builds on the precedent set in law in the EPOA 2005 by creating a reasonable and clear timeline for

<sup>5</sup> INGAA Foundation, *Expedited Federal Authorization of Interstate Natural Gas Pipelines: Are Agencies Complying with EPOA?*, December 21, 2012.

<sup>6</sup> Government Accountability Office, *Interstate and Intrastate Natural Gas Permitting Processes Include Multiple Steps, and Time Frames Vary*, February, 2013.

<sup>7</sup> Testimony by Donald F. Santa, President and CEO of INGAA, before the Subcommittee on Energy and Power, *H.R. 1900, the Natural Gas Pipeline Permitting Reform Act*, July 9, 2013.

<sup>8</sup> Subcommittee on Energy and Power hearing on American Energy Security and Innovation: The Role of Regulators and Grid Operators in Meeting Natural Gas and Electric Coordination Challenges, March 19, 2013.

agencies that will not start until after the completion of the NEPA environmental review. Therefore, it is important to note that the Federal or State agencies subjected to this timeline will have been in consultation with FERC and the project developer for 12 to 18 months, and sometimes longer.

To respond to concerns raised about this legislation creating timelines for authorizations or approvals from potentially unknowing agencies, an amendment was adopted at the Committee markup which modified the bill to ensure that the triggering mechanism for this timeline is limited to those projects that participate in FERC's pre-filing process. The FERC pre-filing process is a multi-month process where an applicant studies potential site locations, identifies stakeholders, and begins the work on NEPA compliance. FERC must formally approve the pre-filing process and begin a project review in order to resolve many issues before an application is formally filed with FERC.

H.R. 1900 builds upon the bipartisan EAct 2005 precedent that set FERC as lead agency under the NEPA, while creating a regulatory process that is responsive to the needs and demands of the growing application of natural gas to new and emerging sectors within the United States.

#### HEARINGS

The Subcommittee on Energy and Power held a hearing on H.R. 1900, Natural Gas Pipeline Permitting Reform Act, on July 9, 2013. The Subcommittee received testimony from:

- The Honorable Philip D. Moeller, Commissioner, Federal Energy Regulatory Commission;
- Mr. David Markarian, Vice President, Governmental Affairs, NextEra Energy, Inc.;
- Ms. Maya K. van Rossum, The Delaware Riverkeeper, Delaware Riverkeeper Network;
- Mr. Rick Kessler, President, Board of Directors, Pipeline Safety Trust;
- E. Alex Paris III; and
- Donald F. Santa, Jr., President and CEO, INGA.

#### COMMITTEE CONSIDERATION

On July 9 and 10, 2013, the Subcommittee on Energy and Power met in open markup session and approved H.R. 1900 for full Committee consideration, without amendment, by a roll call vote of 17 yeas and 9 nays. On July 16 and 17, 2013, the Committee on Energy and Commerce met in open markup session and ordered H.R. 1900 favorably reported to the House, as amended, by a roll call vote of 28 yeas and 14 nays.

#### COMMITTEE VOTES

Clause 3(b) of rule XIII of the Rules of the House of Representatives requires the Committee to list the record votes on the motion to report legislation and amendments thereto. A motion by Mr. Upton to order H.R. 1900 favorably reported to the House, as amended, was agreed to by a roll call vote of 28 yeas and 14 nays. The following reflects the recorded votes taken during the Committee consideration:

**COMMITTEE ON ENERGY AND COMMERCE -- 113TH CONGRESS  
ROLL CALL VOTE # 29**

**BILL: H.R. 1900**, the "Natural Gas Pipeline Permitting Reform Act"

**AMENDMENT:** An amendment offered by Mr. Rush, No. 2, to strike a provision providing that if an agency does not approve or deny the issuance of a license, permit, or approval required within the time period specified, such license, permit, or approval shall take effect upon expiration of 30 days after the end of such period , and providing that the Commission shall incorporate into the terms of such license, permit, or approval any conditions proffered by the agency that the Commission does not find are inconsistent with the final environmental document.

**DISPOSITION: NOT AGREED TO**, by a roll call vote of 17 yeas and 27 nays

REPRESENTATIVE	YEAS	NAYS	PRESENT	REPRESENTATIVE	YEAS	NAYS	PRESENT
Mr. Upton		X		Mr. Waxman	X		
Mr. Hall		X		Mr. Dingell	X		
Mr. Barton		X		Mr. Pallone	X		
Mr. Whitfield		X		Mr. Rush	X		
Mr. Shimkus		X		Ms. Eshoo	X		
Mr. Pitts		X		Mr. Engel	X		
Mr. Walden		X		Mr. Green	X		
Mr. Terry		X		Ms. DeGette			
Mr. Rogers		X		Mrs. Capps	X		
Mr. Murphy		X		Mr. Doyle			
Mr. Burgess				Ms. Schakowsky	X		
Mrs. Blackburn		X		Mr. Matheson		X	
Mr. Gingrey				Mr. Butterfield	X		
Mr. Scalise				Mr. Barrow	X		
Mr. Latta		X		Ms. Matsui			
Mrs. McMorris Rodgers		X		Ms. Christensen	X		
Mr. Harper		X		Ms. Castor			
Mr. Lance		X		Mr. Sarbanes	X		
Mr. Cassidy		X		Mr. McNerney	X		
Mr. Guthrie		X		Mr. Braley	X		
Mr. Olson		X		Mr. Welch			
Mr. McKinley		X		Mr. Lujan	X		
Mr. Gardner		X		Mr. Tonko	X		
Mr. Pompeo		X		Vacancy			
Mr. Kinzinger		X					
Mr. Griffith		X					
Mr. Bilirakis							
Mr. Johnson		X					
Mr. Long		X					
Mrs. Ellmers		X					

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**COMMITTEE ON ENERGY AND COMMERCE -- 113TH CONGRESS  
ROLL CALL VOTE # 30**

**BILL:** H.R. 1900, the "Natural Gas Pipeline Permitting Reform Act"

**AMENDMENT:** A motion by Mr. Upton to order H.R. 1900 favorably reported to the House, as amended.  
(Final Passage)

**DISPOSITION:** **AGREED TO**, by a roll call vote of 28 yeas and 14 nays

REPRESENTATIVE	YEAS	NAYS	PRESENT	REPRESENTATIVE	YEAS	NAYS	PRESENT
Mr. Upton	X			Mr. Waxman		X	
Mr. Hall	X			Mr. Dingell		X	
Mr. Barton	X			Mr. Pallone		X	
Mr. Whitfield	X			Mr. Rush			
Mr. Shimkus	X			Ms. Eshoo		X	
Mr. Pitts	X			Mr. Engel		X	
Mr. Walden	X			Mr. Green		X	
Mr. Terry	X			Ms. DeGette			
Mr. Rogers	X			Mrs. Capps		X	
Mr. Murphy	X			Mr. Doyle			
Mr. Burgess				Ms. Schakowsky		X	
Mrs. Blackburn				Mr. Matheson	X		
Mr. Gingrey				Mr. Butterfield		X	
Mr. Scalise				Mr. Barrow	X		
Mr. Latta	X			Ms. Matsui			
Mrs. McMorris Rodgers	X			Ms. Christensen		X	
Mr. Harper	X			Ms. Castor			
Mr. Lance	X			Mr. Sarbanes		X	
Mr. Cassidy	X			Mr. McNerney			
Mr. Guthrie	X			Mr. Braley		X	
Mr. Olson	X			Mr. Welch			
Mr. McKinley	X			Mr. Lujan		X	
Mr. Gardner	X			Mr. Tonko		X	
Mr. Pompeo	X			Vacancy			
Mr. Kinzinger	X						
Mr. Griffith	X						
Mr. Bilirakis	X						
Mr. Johnson	X						
Mr. Long	X						
Mrs. Ellmers	X						

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## COMMITTEE OVERSIGHT FINDINGS

Pursuant to clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the Committee held hearings and made findings that are reflected in this report.

## STATEMENT OF GENERAL PERFORMANCE GOALS AND OBJECTIVES

H.R. 1900 would provide greater certainty to and help expedite the federal review process for natural gas pipeline permit applications.

## NEW BUDGET AUTHORITY, ENTITLEMENT AUTHORITY, AND TAX EXPENDITURES

In compliance with clause 3(c)(2) of rule XIII of the Rules of the House of Representatives, the Committee finds that H.R. 1900, would result in no new or increased budget authority, entitlement authority, or tax expenditures or revenues.

## EARMARK, LIMITED TAX BENEFITS, AND LIMITED TARIFF BENEFITS

In compliance with clause 9(e), 9(f), and 9(g) of rule XXI of the Rules of the House of Representatives, the Committee finds that H.R. 1900 contains no earmarks, limited tax benefits, or limited tariff benefits.

## COMMITTEE COST ESTIMATE

The Committee adopts as its own the cost estimate prepared by the Director of the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974.

## CONGRESSIONAL BUDGET OFFICE ESTIMATE

Pursuant to clause 3(c)(3) of rule XIII of the Rules of the House of Representatives, the following is the cost estimate provided by the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974:

AUGUST 2, 2013.

Hon. FRED UPTON,  
*Chairman, Committee on Energy and Commerce,*  
*House of Representatives, Washington, DC.*

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 1900, the Natural Gas Pipeline Permitting Reform Act.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Megan Carroll.

Sincerely,

DOUGLAS W. ELMENDORF.

Enclosure.

*H.R. 1900—Natural Gas Pipeline Permitting Reform Act*

Under section 7 of the Natural Gas Act, the Federal Energy Regulatory Commission (FERC) reviews applications to construct and operate interstate natural gas pipelines. Decisions pertaining to such applications depend on regulatory activities carried out by a



variety of other federal agencies, as well as state and local governments pursuant to various other laws. H.R. 1900 would amend the Natural Gas Act to require FERC and other affected agencies to complete regulatory activities and reviews within timeframes specified in the bill.

Based on information from FERC and other federal agencies that regulate aspects of interstate natural gas pipelines, CBO estimates that implementing H.R. 1900 would have no significant impact on the federal budget. The bill would not affect the scope of federal agencies' responsibilities in overseeing such pipelines, and CBO expects that meeting the timeframes specified in the bill would not require a significant change in the level of discretionary funding provided to affected agencies to meet their regulatory functions.

Enacting H.R. 1900 would not affect direct spending or revenues; therefore, pay-as-you-go procedures do not apply. H.R. 1900 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act.

The CBO staff contact for this estimate is Megan Carroll. The estimate was approved by Peter H. Fontaine, Assistant Director for Budget Analysis.

#### FEDERAL MANDATES STATEMENT

The Committee adopts as its own the estimate of Federal mandates prepared by the Director of the Congressional Budget Office pursuant to section 423 of the Unfunded Mandates Reform Act.

#### DUPLICATION OF FEDERAL PROGRAMS

No provision of H.R. 1900 establishes or reauthorizes a program of the Federal Government known to be duplicative of another Federal program, a program that was included in any report from the Government Accountability Office to Congress pursuant to section 21 of Public Law 111-139, or a program related to a program identified in the most recent Catalog of Federal Domestic Assistance.

#### DISCLOSURE OF DIRECTED RULE MAKINGS

The Committee estimates that enacting H.R. 1900 specifically directs to be completed 0 rule makings within the meaning of 5 U.S.C. 551.

#### ADVISORY COMMITTEE STATEMENT

No advisory committees within the meaning of section 5(b) of the Federal Advisory Committee Act were created by this legislation.

#### APPLICABILITY TO LEGISLATIVE BRANCH

The Committee finds that the legislation does not relate to the terms and conditions of employment or access to public services or accommodations within the meaning of section 102(b)(3) of the Congressional Accountability Act.

## SECTION-BY-SECTION ANALYSIS OF THE LEGISLATION

*Section 1—Short Title*

Section 1 provides the short title of the “Natural Gas Pipeline Permitting Reform Act.”

*Section 2—Regulatory Approval of Natural Gas Pipeline Projects*

Section 2 of the legislation amends section 7 of the NGA by adding two new subsections, (i) and (j).

New subsection (i) directs the FERC to approve or deny an application for a certificate of public convenience and necessity for the siting, construction, expansion, or operation of any prefilled natural gas pipeline project not later than 12 months after receiving a complete application that is ready to be processed.

New subsection (j)(1) requires any agency responsible for issuing any license, permit, or approval required under Federal law in connection with the project for which a certificate of public convenience and necessity is sought under the NGA to approve or deny the issuance of the license, permit, or approval within 90 days after FERC issues its final environmental document relating to the project.

New subsection (j)(2) provides that an agency may request FERC to extend the time period under paragraph (j)(1) by 30 days. FERC is required to grant the extension if the agency demonstrates it is necessary because of unforeseen circumstances beyond the agency’s control.

New subsection (j)(3) provides that if an agency does not approve or deny the issuance of the license, permit, or approval within the 90 day time period (or 120 days if a 30 day extension is granted), such license, permit, or approval shall go into effect.

New subsection (j)(4) provides that if an agency does not approve or deny the issuance of the license, permit, or approval within the time period specified under (j)(2) or (j)(3), such license, permit, or approval shall take effect upon the expiration of 30 days after the end of such period. FERC shall incorporate into the license, permit, or approval any conditions proffered by the agency that FERC does not find are inconsistent with the final environmental document.

New subsection (j)(5) defines the term “prefiled project” to mean a project for the siting, construction, expansion, or operation of a natural gas pipeline with respect to which a prefiling docket number has been assigned by FERC for the purpose of facilitating the formal application process for obtaining a certificate of public convenience and necessity.

## CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (new matter is printed in italic and existing law in which no change is proposed is shown in roman):

NATURAL GAS ACT

\* \* \* \* \*

EXTENSION OF FACILITIES; ABANDONMENT OF SERVICE

SEC. 7. (a) \* \* \*

\* \* \* \* \*

(i)(1) The Commission shall approve or deny an application for a certificate of public convenience and necessity for a prefiled project not later than 12 months after receiving a complete application that is ready to be processed, as defined by the Commission by regulation.

(2) The agency responsible for issuing any license, permit, or approval required under Federal law in connection with a prefiled project for which a certificate of public convenience and necessity is sought under this Act shall approve or deny the issuance of the license, permit, or approval not later than 90 days after the Commission issues its final environmental document relating to the project.

(3) The Commission may extend the time period under paragraph (2) by 30 days if an agency demonstrates that it cannot otherwise complete the process required to approve or deny the license, permit, or approval, and therefor will be compelled to deny the license, permit, or approval. In granting an extension under this paragraph, the Commission may offer technical assistance to the agency as necessary to address conditions preventing the completion of the review of the application for the license, permit, or approval.

(4) If an agency described in paragraph (2) does not approve or deny the issuance of the license, permit, or approval within the time period specified under paragraph (2) or (3), as applicable, such license, permit, or approval shall take effect upon the expiration of 30 days after the end of such period. The Commission shall incorporate into the terms of such license, permit, or approval any conditions proffered by the agency described in paragraph (2) that the Commission does not find are inconsistent with the final environmental document.

(5) For purposes of this subsection, the term "prefiled project" means a project for the siting, construction, expansion, or operation of a natural gas pipeline with respect to which a prefiling docket number has been assigned by the Commission pursuant to a prefiling process established by the Commission for the purpose of facilitating the formal application process for obtaining a certificate of public convenience and necessity.

\* \* \* \* \*

## DISSENTING VIEWS

### I. SUMMARY

Although it is the stated goal of H.R. 1900 to provide for “the timely consideration” of applications for natural gas pipeline projects, the legislative record clearly demonstrates that H.R. 1900 would disrupt the Federal Energy Regulatory Commission’s (FERC or the Commission) existing permitting process, which gets natural gas pipelines permitted in a timely manner. This bill would establish arbitrary and rigid deadlines for FERC and other agencies to issue permits. When faced with these time limits, one of two things will happen. Either agencies will rush to approve permits that do not adequately protect public health, safety, and the environment, or they will deny permits when the time limits prevent them from completing legally mandated pipeline reviews. No one benefits from rushed permitting and unnecessary project denials, not even the pipeline companies.

Under this bill, important environmental permits automatically go into effect if an agency does not approve or deny them by the arbitrary deadline established in the bill. The bill also attempts to transform FERC into a super-permitting agency that would issue other agency’s permits if the deadlines are not met. These unworkable provisions would have serious environmental, safety, and public health consequences. They could result in permits being issued that are inconsistent with the requirements of the nation’s environmental laws.

### II. THE EXISTING PERMITTING PROCESS

Under section 7 of the Natural Gas Act, the Federal Energy Regulatory Commission reviews applications for the siting, construction, and operation of interstate natural gas pipelines. A pipeline company cannot construct or operate an interstate natural gas pipeline without a FERC-issued “certificate of public convenience and necessity.” An applicant is required to demonstrate that construction of the pipeline is needed and in the public interest. The certificate establishes the terms and conditions for constructing and operating a pipeline, including those related to location, engineering, rates, and environmental mitigation. Section 7 grants the right of eminent domain to a pipeline company that is issued a certificate of public convenience and necessity by FERC.

The permitting process typically begins with the pre-filing phase. In 2002, FERC established a pre-filing phase to expedite the certificate application process by engaging stakeholders in the identification and resolution of stakeholder concerns prior to the filing of a formal application with FERC. This is a voluntary phase that is used by about two-thirds of applicants for major interstate pipeline projects. During this phase, FERC contacts agencies that will be in-

volved in preparing the environmental analysis of the project so that the scope of the environmental analysis can be defined and public outreach can begin.

Once pre-filing activities are complete, or if the applicant chose to skip the pre-filing phase, the applicant submits an application for a certificate. During the application phase, the environmental analysis (either an Environmental Impact Statement or an Environmental Assessment) is prepared by FERC with the assistance of the cooperating agencies that have jurisdiction over aspects of the permitting. FERC also conducts non-environmental review and analysis to address engineering, tariff (rates and terms and conditions), policy, and accounting issues. FERC may place conditions on a certificate, such as obtaining all necessary federal and state permits and authorizations.

Depending on the details of a project, a number of agencies are responsible for evaluating permit applications under different statutes and participating in the environmental review process. For example, the Army Corps of Engineers has authority to issue wetlands permits under section 404 of the Clean Water Act and authorizations affecting navigable waters under the Rivers and Harbors Act of 1899. The Fish and Wildlife Service is generally responsible for administering the Endangered Species Act, while the Bureau of Land Management is primarily responsible for issuing right-of-way permits for natural gas pipelines that cross federal lands. State environmental agencies have delegated authorities under the Clean Water Act and Clean Air Act for water quality certifications, water pollution discharge permits, and air emissions permits.

Section 313 of the Energy Policy Act of 2005 amended the Natural Gas Act to designate FERC as the lead agency in preparing the environmental analysis and require FERC to establish a schedule for all necessary federal permits and authorizations. FERC established regulatory deadlines in 2006. Under the regulation, federal and state agencies are required to make final decisions on requests for federal authorizations no later than 90 days after FERC issues its final environmental document “unless a schedule is otherwise established by federal law.”<sup>1</sup> Section 313 provided the remedy of a petition to the U.S. Court of Appeals for the DC Circuit for an alleged failure of an agency to issue, condition, or deny a permit within the established deadlines

### III. SECTION-BY-SECTION ANALYSIS OF H.R. 1900

As amended during markup, H.R. 1900 amends section 7 of the Natural Gas Act to add a new subsection. The new subsection (i)(1) requires FERC to approve or deny an application for a certificate of public convenience and necessity for a pre-filed project within 12 months after receiving a complete application.

The new subsection (i)(2) applies to any federal or state agency responsible for issuing any license, permit, or approval required under federal law in connection with the siting, construction, expansion, or operation of any pre-filed interstate natural gas pipeline for which a certificate is sought. The provision requires any

<sup>1</sup> 18 C.F.R. § 157.22.

such agency to approve or deny the issuance of the license, permit, or approval not later than 90 days after FERC issues its final environmental document for the pipeline project. FERC may extend the deadline by 30 days if an agency demonstrates that it cannot otherwise complete the process required to approve or deny the license, permit, or approval, and therefore will be compelled to deny the license, permit, or approval. Under the new subsection (i)(4), if an agency does not approve or deny the issuance of the license, permit, or approval within the deadline, it automatically goes into effect after 30 days. FERC is directed to incorporate into the terms of such license, permit, or approval any conditions submitted by an agency that missed the deadline that FERC does not find are inconsistent with the final environmental document.

#### IV. POTENTIAL IMPACTS OF H.R. 1900

The bill will disrupt the functioning permitting process for interstate natural gas pipelines by arbitrarily limiting the time that FERC and other agencies have to review pipeline applications. The result will be rushed permitting and unnecessary project denials. The bill also creates an unworkable process in which FERC will act as a super-permitting agency, writing and issuing the permits of other agencies.

##### *A. The Bill attempts to solve a problem that does not exist*

H.R. 1900 aims to solve a problem that does not exist. The Government Accountability Office (GAO) has concluded that FERC's pipeline permitting is predictable and consistent and gets pipelines built.<sup>2</sup>

FERC data shows that, from 2009 to 2012, the Commission approved 69 major natural gas pipeline projects, spanning over 3,000 miles in 30 states and with a total capacity of nearly 30 billion cubic feet per day.<sup>3</sup> The average time from filing to approval was under nine and a half months. According to Commissioner Moeller's testimony, FERC decides 90% of certificate applications within 12 months.<sup>4</sup>

The pipeline companies agree that the process is working well. The Interstate Natural Gas Association of America has testified that more than 12,000 miles of new interstate pipeline capacity was placed into service between January 2003 and March 2013.<sup>5</sup> When the Chief Executive Officer of Dominion Energy testified on behalf of the pipeline companies in May 2013, he told the Subcommittee on Energy and Power that "the industry can add new pipeline capacity in a timely, market-responsive manner."<sup>6</sup> He also testified that: "The interstate natural gas pipeline sector enjoys a

<sup>2</sup>U.S. Government Accountability Office, *Pipeline Permitting: Interstate and Intrastate Natural Gas Permitting Processes Include Multiple Steps, and Time Frames Vary* (Feb. 15, 2013) (GAO-13-221).

<sup>3</sup>Federal Energy Regulatory Commission, *Approved Major Pipeline Projects (2009-Present)* (online at [www.ferc.gov/industries/gas/indus-act/pipelines/approved-projects.asp](http://www.ferc.gov/industries/gas/indus-act/pipelines/approved-projects.asp)).

<sup>4</sup>House Committee on Energy and Commerce, Subcommittee on Energy and Power, Testimony of Philip D. Moeller, Commissioner, Federal Energy Regulatory Commission, *Hearing on H.R. 1900*, 113th Cong. (Jul. 9, 2013).

<sup>5</sup>House Committee on Energy and Commerce, Subcommittee on Energy and Power, Testimony of Gary Sypolt, on behalf of the Interstate Natural Gas Association of America, *Hearing on Grid Reliability Challenges in a Shifting Energy Resource Landscape*, 113th Cong. (May 9, 2013).

<sup>6</sup>*Id.*

favorable legal and regulatory framework for the approval of new infrastructure.” His conclusion was that “the natural gas model works.” At the July 2013 hearing on H.R. 1900, the pipeline trade association testified that the FERC permitting process “is generally very good.”<sup>7</sup>

At the Subcommittee on Energy and Power markup, Rep. Dingell offered an amendment to replace the bill’s problematic provisions with a directive to GAO to examine FERC’s permitting process with a specific focus on delays. Under the amendment, GAO would have determined if the process is actually experiencing delays and identified potential solutions to any such problems. It would have allowed the Committee to get the facts and fully understand the permitting process before making changes that could have serious unintended consequences. The Dingell amendment was defeated by voice vote.

At the full committee markup of the bill, Rep. Waxman and Rep. McNerney offered amendments to address real problems related to interstate natural gas pipelines. Under the Waxman amendment, the clock would not start running on the 12-month permitting deadline unless the pipeline operator demonstrated that it would not charge its customers for natural gas that leaks from the pipeline. Under the McNerney amendment, the clock would not start running unless the application included sufficient information to demonstrate that the pipeline project would utilize available designs, systems, and practices to minimize climate-warming methane emissions to the extent practicable. Neither amendment was adopted.

*B. The Bill Rushes the Permitting Process, Short-Circuiting Environmental Review and Leading to Unnecessary Permit Denials*

Although 90% of pipeline applications are approved in less than 12 months, there are complex pipeline projects for which FERC likely will not be able to issue a certificate of public convenience and necessity within 12 months. The time required to issue a certificate is highly variable and depends on the complexity of the project, the length of the proposed pipeline, the proposed path of the pipeline, and the degree of public concern, among other factors. Completing an environmental impact statement for a complex pipeline project in less than 12 months may not be feasible in every case.

However, under this bill, the same rigid deadline applies to every pipeline project. It applies to a straightforward 30-mile pipeline far from population centers that crosses no rivers—and a complex, 500-mile pipeline that goes through a major population center and crosses a dozen rivers.

A 12-month deadline for all applications could result in a truncated or inadequate environmental analysis, which could adversely impact FERC decision making and potentially expose a FERC-issued certificate to litigation risk. At the July 9, 2013, Energy and Power Subcommittee hearing on H.R. 1900, the President of the Pipeline Safety Trust noted that pipeline routing decisions affect

<sup>7</sup>House Committee on Energy and Commerce, Subcommittee on Energy and Power, Testimony of Donald F. Santa, President and Chief Executive Officer, Interstate Natural Gas Association of America, *Hearing on H.R. 1900*, 113th Cong. (Jul. 9, 2013).

public safety and argued that an abbreviated review process would “absolutely” put more people at risk.<sup>8</sup> Moreover, when FERC approves a pipeline, it grants the power of eminent domain, which allows a pipeline company to take property from landowners who do not want to sell. The power of eminent domain should not be conferred without FERC taking the time it needs for thorough analysis and thoughtful decision-making.

If FERC cannot finish the analysis necessary to produce a complete certificate by the deadline that adequately addresses all of the environmental, engineering, tariff, and accounting issues presented by a pipeline application, FERC may be required to dismiss the application. In other words, requiring FERC to either approve or deny an application in 12 months may result in FERC denying applications that would have been granted if the Commission had adequate time to consider the application. This bill, aimed at speeding up FERC permitting, could end up having the opposite effect.

At the July 9, 2013, subcommittee hearing, the career Director of FERC’s Office of Energy Projects confirmed that the 12-month time limit may actually lead to more pipeline delays, contrary to the sponsors’ stated purpose. The nonpartisan staff witness testified, “I do not believe [H.R. 1900] would effectively cause pipelines to be permitted faster than they are now” and that if FERC must deny applications that cannot be properly reviewed in 12 months, “quite possibly . . . it could take longer for certain projects” to be approved because applicants will be forced to re-file and start over.<sup>9</sup>

Similarly, the 90- or 120-day deadline for federal and state agencies to approve or deny applications for all other permits or approvals required by federal law may lead to either pipeline permit denials or legally dubious permits that do not adequately protect public health, safety, and the environment. Agencies are required to comply with their statutory responsibilities under the Clean Water Act, Clean Air Act, Endangered Species Act, Rivers and Harbors Act, National Historic Preservation Act, Coastal Zone Management Act, Mineral Leasing Act, and other statutes. Agencies that cannot complete the legally-required analysis necessary to issue a permit or authorization within 90 or 120 days of the completion of the FERC environmental document may have no choice but to deny the application in order to comply with federal law and avoid adverse impacts to health, safety, and the environment.

The Army Corps of Engineers, Environmental Protection Agency (EPA), Bureau of Land Management (BLM), and Fish and Wildlife Service have all raised concerns about the deadline. The Army Corps of Engineers stated: “If the Corps is bound to a specific time-frame and doesn’t have the information needed, the Corps would be forced to deny applications because of the lack of information to demonstrate compliance with Corps regulations.”<sup>10</sup> According to

<sup>8</sup>House Committee on Energy and Commerce, Subcommittee on Energy and Power, Testimony of Rick Kessler, President, Pipeline Safety Trust, *Hearing on H.R. 1900*, 113th Cong. (Jul. 9, 2013).

<sup>9</sup>House Committee on Energy and Commerce, Subcommittee on Energy and Power, Testimony of Jeff Wright, Director of the Office of Energy Projects, Federal Energy Regulatory Commission, *Hearing on H.R. 1900*, 113th Cong. (Jul. 9, 2013).

<sup>10</sup>U.S. Army Corps of Engineers, *Technical Analysis: HR 1900* (Jul. 1, 2013).



EPA, “an arbitrary 90 (or 120)-day deadline for completing these complex reviews would increase the likelihood that environmentally harmful discharges may occur.”<sup>11</sup> BLM stated: “Unduly short timeframes could cause the BLM to deny pipeline right-of-way applications rather than allow approval to automatically take effect as provided in H.R. 1900.”<sup>12</sup>

The bill acknowledges that forcing agencies to approve or deny permits in 90 days could result in agencies simply denying the permits. The bill explicitly provides agencies an additional 30 days if they would otherwise be forced to deny a permit. However, that potential extension does not solve the problem for permits that require longer than 120 days to complete. Permits can be detailed documents with terms and conditions to protect public health and the environment. It can take time to work out these details for complex projects in appropriate and legally defensible ways

Applying the inflexible permitting deadlines only to projects that have gone through FERC’s pre-filing process will not ameliorate the impacts of these arbitrary deadlines. The larger, more complex projects are generally the ones that already go through the pre-filing process. Thus, the bill’s rigid deadlines apply to the projects that will have the hardest time meeting those deadlines.

The bill’s 90- or 120-day deadline even applies to permits for which an application has not even been filed. The deadline applies to all permits that will be needed for a project. But under the bill, the clock begins to run when FERC’s environmental document is complete regardless of whether a pipeline company has actually submitted a particular permit application. The provision is clearly unworkable in such circumstances.

### *C. The Bill Provides for the Automatic Issuance of Permits*

The bill provides for licenses, permits, and approvals to automatically go into effect if an agency does not approve or deny them by the arbitrary 90- or 120-day deadline established in the bill. This permitting provision broadly applies to the Clean Air Act, Clean Water Act, Endangered Species Act, Coastal Zone Management Act, rights-of-way through federal lands, and other statutes. This unworkable provision would have serious environmental consequences. It could result in permits being issued that are inconsistent with the requirements of the nation’s environmental laws.

Automatically granting important licenses and permits without any agency determination that statutory requirements have been met creates a significant risk that pipelines will have unmitigated adverse environmental, health, or cultural impacts. The provision also may increase the likelihood that an agency that cannot complete the permitting process by the deadline will deny the license or permit rather than have it automatically go into effect.

The Committee received technical comments from some of the agencies whose permitting processes would be affected by this provision. The agencies responsible for implementing these laws raised major concerns about the automatic issuance of permits. The Army Corps of Engineers stated: “This legislation could allow certain ac-

<sup>11</sup> U.S. Environmental Protection Agency, *Technical Assistance on H.R. 1900—“Natural Gas Pipeline Permitting Act”* (Jul. 8, 2013).

<sup>12</sup> Bureau of Land Management, *H.R. 1900 White Paper* (Jul. 9, 2013).

tivities to proceed despite potential adverse and significant impacts to aquatic resources and without appropriate compensatory mitigation.”<sup>13</sup> According to EPA, the bill “would severely limit states’ ability to ensure that discharges comply with water quality standards” and “could potentially result in sources receiving an inadequate permit or a permit that does not assure compliance with the Clean Air Act.”<sup>14</sup> The Fish and Wildlife Service stated that the bill is in “direct conflict” with the National Wildlife Refuge statute and that “automatic approval of an eagle permit contravenes the Bald and Golden Eagle Protection Act.”<sup>15</sup>

Automatically issuing permits without an agency confirming that the legal requirements are met also increases the risk of litigation and undermine the public’s acceptance of interstate natural gas pipelines going through their communities.

Moreover, it is unclear how a license or permit that has not yet been written could simply go into effect. These permits are not yes or no decisions. They often are detailed documents that include emissions limits, technology or operating requirements, and conditions to ensure the environment is protected. At the hearing on the bill, witnesses were asked what it would mean for a permit that might not even be written to automatically take effect if a deadline is missed. No one could explain how this provision could be implemented.

At the full committee markup, Rep. Rush offered an amendment to strike the automatic permitting provision. The amendment would have ensured that permits are not issued without the responsible agencies confirming that they meet the underlying statutory requirements. The Rush amendment was defeated by a vote of 17 to 27.

#### *D. The Bill Requires FERC to Issue Other Agencies’ Permits*

In an attempt to cobble together a solution to the problem of how unwritten permits could automatically take effect, the bill requires FERC to act as a “super-permitting” agency. The bill charges FERC with incorporating conditions offered by the other agencies into the automatically-issued permits. Apparently, FERC is supposed to write and issue the permits itself if a responsible agency misses the arbitrary deadline established in the bill. FERC decides whether or not to include conditions submitted by the agencies with expertise, the agencies Congress empowered to issue the permits in the first place.

Under this bill, FERC would be issuing BLM rights-of-way through federal lands. FERC would be figuring out water discharge limits and determining which technologies should be employed to reduce air pollution emissions. FERC would be issuing permits to protect wetlands and even bald eagles. These are functions that FERC does not have the expertise or resources to carry out. Attempting to transform FERC into a super-permitting agency would be a mistake.

<sup>13</sup>U.S. Army Corps of Engineers, *Technical Analysis: HR 1900* (Jul. 1, 2013).

<sup>14</sup>U.S. Environmental Protection Agency, *Technical Assistance on H.R. 1900—“Natural Gas Pipeline Permitting Act”* (Jul. 8, 2013).

<sup>15</sup>U.S. Fish and Wildlife Service, *H.R. 1900 White Paper* (Jul. 9, 2013).

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

HENRY A. WAXMAN,  
*Ranking Member.*  
BOBBY L. RUSH,  
*Ranking Member,*  
*Subcommittee on Energy*  
*and Power.*

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