

PROMOTING CROSS-BORDER ENERGY INFRASTRUCTURE
ACT

JULY 17, 2017.—Committed to the Committee of the Whole House on the State of
the Union and ordered to be printed

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

R E P O R T

together with

DISSENTING VIEWS

[To accompany H.R. 2883]

[Including cost estimate of the Congressional Budget Office]

The Committee on Energy and Commerce, to whom was referred the bill (H.R. 2883) to establish a more uniform, transparent, and modern process to authorize the construction, connection, operation, and maintenance of international border-crossing facilities for the import and export of oil and natural gas and the transmission of electricity, 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 “Promoting Cross-Border Energy Infrastructure Act”.

SEC. 2. APPROVAL FOR BORDER-CROSSING FACILITIES.

(a) **AUTHORIZATION OF CERTAIN ENERGY INFRASTRUCTURE PROJECTS AT AN INTERNATIONAL BOUNDARY OF THE UNITED STATES.—**

(1) **AUTHORIZATION.—**Except as provided in paragraph (3) and subsection (e), no person may construct, connect, operate, or maintain a border-crossing facility for the import or export of oil or natural gas, or the transmission of electricity, across an international border of the United States without obtaining a certificate of crossing for the border-crossing facility under this subsection.

(2) **CERTIFICATE OF CROSSING.—**

(A) **REQUIREMENT.—**Not later than 120 days after final action is taken, by the relevant official or agency identified under subparagraph (B), under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) with respect to a border-crossing facility for which a person requests a certificate of crossing under this subsection, the relevant official or agency, in consultation with appropriate Federal agencies, shall issue a certificate of crossing for the border-crossing facility unless the relevant official or agency finds that the construction, connection, operation, or maintenance of the border-crossing facility is not in the public interest of the United States.

(B) **RELEVANT OFFICIAL OR AGENCY.—**The relevant official or agency referred to in subparagraph (A) is—

- (i) the Federal Energy Regulatory Commission with respect to border-crossing facilities consisting of oil or natural gas pipelines; and
- (ii) the Secretary of Energy with respect to border-crossing facilities consisting of electric transmission facilities.

(C) **ADDITIONAL REQUIREMENT FOR ELECTRIC TRANSMISSION FACILITIES.—**In the case of a request for a certificate of crossing for a border-crossing facility consisting of an electric transmission facility, the Secretary of Energy shall require, as a condition of issuing the certificate of crossing under subparagraph (A), that the border-crossing facility be constructed, connected, operated, or maintained consistent with all applicable policies and standards of—

- (i) the Electric Reliability Organization and the applicable regional entity; and
- (ii) any Regional Transmission Organization or Independent System Operator with operational or functional control over the border-crossing facility.

(3) **EXCLUSIONS.—**This subsection shall not apply to any construction, connection, operation, or maintenance of a border-crossing facility for the import or export of oil or natural gas, or the transmission of electricity—

(A) if the border-crossing facility is operating for such import, export, or transmission as of the date of enactment of this Act;

(B) if a permit described in subsection (d) for the construction, connection, operation, or maintenance has been issued; or

(C) if an application for a permit described in subsection (d) for the construction, connection, operation, or maintenance is pending on the date of enactment of this Act, until the earlier of—

- (i) the date on which such application is denied; or
- (ii) two years after the date of enactment of this Act, if such a permit has not been issued by such date.

(4) **EFFECT OF OTHER LAWS.—**

(A) **APPLICATION TO PROJECTS.—**Nothing in this subsection or subsection (e) shall affect the application of any other Federal statute to a project for which a certificate of crossing for a border-crossing facility is requested under this subsection.

(B) **NATURAL GAS ACT.—**Nothing in this subsection or subsection (e) shall affect the requirement to obtain approval or authorization under sections

3 and 7 of the Natural Gas Act for the siting, construction, or operation of any facility to import or export natural gas.

(C) OIL PIPELINES.—Nothing in this subsection or subsection (e) shall affect the authority of the Federal Energy Regulatory Commission with respect to oil pipelines under section 60502 of title 49, United States Code.

(b) IMPORTATION OR EXPORTATION OF NATURAL GAS TO CANADA AND MEXICO.—Section 3(c) of the Natural Gas Act (15 U.S.C. 717b(c)) is amended by adding at the end the following: “In the case of an application for the importation of natural gas from, or the exportation of natural gas to, Canada or Mexico, the Commission shall grant the application not later than 30 days after the date on which the Commission receives the complete application.”

(c) TRANSMISSION OF ELECTRIC ENERGY TO CANADA AND MEXICO.—

(1) REPEAL OF REQUIREMENT TO SECURE ORDER.—Section 202(e) of the Federal Power Act (16 U.S.C. 824a(e)) is repealed.

(2) CONFORMING AMENDMENTS.—

(A) STATE REGULATIONS.—Section 202(f) of the Federal Power Act (16 U.S.C. 824a(f)) is amended by striking “insofar as such State regulation does not conflict with the exercise of the Commission’s powers under or relating to subsection 202(e)”.

(B) SEASONAL DIVERSITY ELECTRICITY EXCHANGE.—Section 602(b) of the Public Utility Regulatory Policies Act of 1978 (16 U.S.C. 824a–4(b)) is amended by striking “the Commission has conducted hearings and made the findings required under section 202(e) of the Federal Power Act” and all that follows through the period at the end and inserting “the Secretary has conducted hearings and finds that the proposed transmission facilities would not impair the sufficiency of electric supply within the United States or would not impede or tend to impede the coordination in the public interest of facilities subject to the jurisdiction of the Secretary.”

(d) NO PRESIDENTIAL PERMIT REQUIRED.—No Presidential permit (or similar permit) required under Executive Order No. 13337 (3 U.S.C. 301 note), Executive Order No. 11423 (3 U.S.C. 301 note), section 301 of title 3, United States Code, Executive Order No. 12038, Executive Order No. 10485, or any other Executive order shall be necessary for the construction, connection, operation, or maintenance of an oil or natural gas pipeline or electric transmission facility, or any border-crossing facility thereof.

(e) MODIFICATIONS TO EXISTING PROJECTS.—No certificate of crossing under subsection (a), or permit described in subsection (d), shall be required for a modification to—

(1) an oil or natural gas pipeline or electric transmission facility that is operating for the import or export of oil or natural gas or the transmission of electricity as of the date of enactment of this Act;

(2) an oil or natural gas pipeline or electric transmission facility for which a permit described in subsection (d) has been issued; or

(3) a border-crossing facility for which a certificate of crossing has previously been issued under subsection (a).

(f) EFFECTIVE DATE; RULEMAKING DEADLINES.—

(1) EFFECTIVE DATE.—Subsections (a) through (e), and the amendments made by such subsections, shall take effect on the date that is 1 year after the date of enactment of this Act.

(2) RULEMAKING DEADLINES.—Each relevant official or agency described in subsection (a)(2)(B) shall—

(A) not later than 180 days after the date of enactment of this Act, publish in the Federal Register notice of a proposed rulemaking to carry out the applicable requirements of subsection (a); and

(B) not later than 1 year after the date of enactment of this Act, publish in the Federal Register a final rule to carry out the applicable requirements of subsection (a).

(g) DEFINITIONS.—In this section—

(1) the term “border-crossing facility” means the portion of an oil or natural gas pipeline or electric transmission facility that is located at an international boundary of the United States;

(2) the term “modification” includes a reversal of flow direction, change in ownership, change in flow volume, addition or removal of an interconnection, or an adjustment to maintain flow (such as a reduction or increase in the number of pump or compressor stations);

(3) the term “natural gas” has the meaning given that term in section 2 of the Natural Gas Act (15 U.S.C. 717a);

(4) the term “oil” means petroleum or a petroleum product;

(5) the terms “Electric Reliability Organization” and “regional entity” have the meanings given those terms in section 215 of the Federal Power Act (16 U.S.C. 824o); and

(6) the terms “Independent System Operator” and “Regional Transmission Organization” have the meanings given those terms in section 3 of the Federal Power Act (16 U.S.C. 796).

PURPOSE AND SUMMARY

H.R. 2883, the “Promoting Cross-Border Energy Infrastructure Act,” was introduced by Rep. Mullin (R–OK) and Rep. Gene Green (D–TX) on June 12, 2017. H.R. 2883 would establish coordinated procedures to authorize the construction, connection, operation, and maintenance of international border-crossing facilities for the import and export of oil and natural gas and the transmission of electricity. The legislation would replace the requirements established under Executive Order that persons obtain a Presidential Permit before constructing an oil and gas pipeline or electric transmission facility that crosses the U.S. border between Canada or Mexico.

BACKGROUND AND NEED FOR LEGISLATION

Trade of oil, gas, and electricity among the United States, Canada, and Mexico has resulted in one large, integrated North American market. According to the Congressional Research Service (CRS), the value of energy trade between the United States and its North American neighbors exceeded \$140 billion in 2015, with \$100 billion in U.S. energy imports and over \$40 billion in exports.¹ The expansion of cross-border energy transportation infrastructure—pipelines for oil and natural gas and transmission lines for electricity—is necessary to enable increased energy trade. A number of new projects are currently under construction or proposed to further expand cross-border capacity, but they face considerable Federal regulatory uncertainty.

Congress has not asserted its authority to establish procedures for permitting cross-border energy infrastructure. In the absence of a statutorily directed process, agencies have made decisions regarding cross-border energy infrastructure within the context of their interpretation of a series of Executive Orders dating back to the 1950’s. Under these Orders, the Secretary of State has the authority to issue Presidential permits for cross-border liquids pipelines, the Federal Energy Regulatory Commission (FERC) for cross-border natural gas pipelines, and the Department of Energy (DOE) for cross-border electric transmission facilities.²

Cross-border electric transmission facilities

The U.S. currently has over 40 cross-border electric transmission lines between the U.S. and Canada and the U.S. and Mexico. These interconnections—the majority of which are located at the Canadian border—have improved reliability, fuel diversity, and efficiencies in system operations, particularly for the New England and Midwest regions. Over the last decade, the U.S. has experienced a marked trend of growing net electricity imports from both

¹Congressional Research Service. Cross-Border Energy Trade in North America: Present and Potential. January 30, 2017.

²The State Department makes permitting decisions based on directives in Executive Order 11423 (E.O.), as amended by E.O. 13337. FERC and DOE make permitting decisions in accordance with E.O. 10485, as amended by E.O. 12038.

Canada and Mexico, although Canada is by far the greater trading partner. Future cross-border electricity trade will be a function of both the development of future generation capacity and the availability of cross-border transmission infrastructure to move electric power. Under current law, applications for new transmission projects will be required to obtain a Presidential Permit and an export authorization from the Secretary of Energy. There are currently four pending export authorization applications and eight pending Presidential Permit applications before DOE.³

Cross-border natural gas pipelines

There are over 50 operating cross-border natural gas pipelines between the U.S. and Canada and the U.S. and Mexico.⁴ Over the last five years, natural gas pipeline capacity between the U.S. and Mexico has grown significantly, and it is projected to double through 2018, based on four new projects currently under construction and two in the planning stage.⁵

Under the current process to construct and operate a cross-border natural gas pipeline, any person seeking to construct and operate such facilities must obtain two separate authorizations from FERC for the facility and an authorization from DOE to import or export natural gas. FERC authorization under section 3 of the NGA is necessary for siting, construction, or operation of facilities to import or export natural gas. In addition, pursuant to Executive Order 10485 (September 3, 1954), as amended by Executive Order 12038 (February 3, 1978), a Presidential Permit also must be obtained for the cross-border portion of the pipeline. Any person seeking to import or export natural gas must also obtain a separate authorization from DOE under section 3 of the NGA.⁶ For imports and exports to countries with which the U.S. has a Free Trade Agreement, such as Canada and Mexico, DOE is required to grant requests “without modification or delay.”

Executive Order 12038 provides that, before a Presidential Permit is issued, there must be a finding that the action is consistent with the public interest. The criteria used for determining if an application is consistent with the public interest is identical to the criteria for approving applications for the siting, construction, and operation of import and export facilities under section 3 of the NGA.

For “border facilities” subject to Presidential Permit and NGA section 3 review, discretion is given to FERC on a project-by-project basis to determine the exact scope of the project review, and therefore the exact parameters of the Presidential Permit and section 3 application. FERC looks for a physical feature on a project, such as a valve or meter on the interior side of the U.S. border, as an end-point for what may be considered to lie within the Commission’s jurisdiction and therefore subject to its review procedures. From the physical feature, the border crossing facilities would be construed to extend to either the U.S./Canada or U.S./Mexico border.

³ DOE, Office of Electricity Delivery and Energy Reliability, “*Pending Applications*.”

⁴ CRS Memorandum, “*Presidential Permitting of Border Crossing Energy Facilities*,” at Table 1 (Aug. 16, 2013).

⁵ U.S. Energy Information Administration, “New U.S. Border-Crossing Pipelines Bring Shale Gas to More Regions in Mexico,” December 1, 2016.

⁶ 15 USC § 717b.

Cross-border oil pipelines

The U.S. currently has 20 operating cross-border oil pipelines between the U.S. and Canada and the U.S. and Mexico. Pipelines dominate crude movements between Canada and the U.S., while no crude oil pipeline capacity currently exists or is proposed between the U.S. and Mexico. There are currently three pending applications for Presidential Permits for either new or existing cross-border oil pipelines between the U.S. and Canada.⁷

Under the current process to construct and operate an international cross-border oil pipeline, any person seeking to construct and operate such facilities must obtain a Presidential Permit pursuant to Executive Order 13337 from the Department of State. Under Executive Order 13337, the Secretary of State is to approve cross-border oil pipelines that have been determined to “serve the national interest.” Although the Department of State will not necessarily evaluate the same factors for each application for a Presidential Permit, its evaluation considers such things as the environmental impacts of the proposed project (associated closely with compliance with NEPA), stability of trading partners from whom the U.S. obtains crude oil, and the security of transport pathways for crude oil supplies to the U.S., and the economic benefits to the U.S.

Need for statutory authority for cross-border permitting

The Committee finds that cross-border permitting authority should be explicitly granted by statute, as opposed to the current framework created entirely by the Executive Branch. The Committee is concerned by the inconsistent, ad hoc manner in which Presidential Permit authority has been exercised among the agencies to which it has been delegated by Executive Order. This issue came into particular focus in the context of the State Department’s review of the Keystone XL pipeline proposal, which originally applied for a Presidential Permit in 2008 and did not receive approval until 2017.

The Committee finds that the statutorily directed process for cross-border permitting embodied by H.R. 2883 would lead to more objective and timely decisions, which in turn would create jobs, strengthen our nation’s energy security, and support affordable and reliable energy for Americans.

H.R. 2883 would replace the Presidential Permit requirement with a more transparent, efficient, and effective review process. The legislation would require persons seeking to construct, connect, operate, or maintain a border-crossing facility for the import or export of oil or natural gas, or the transmission of electricity, to obtain a Certificate of Crossing. The term “border-crossing facility,” and thus what may be considered jurisdictional for the purposes of the Certificate of Crossing review, means the portion of the pipeline or transmission facility that is located at an international boundary. This description is consistent with FERC’s established procedures for review of Presidential Permit and NGA section 3 applications. Under the legislation, the relevant official would issue the certificate of crossing unless it is found that the construction, connection, operation, or maintenance of border facilities com-

⁷Department of State, Bureau of Energy Resources “*Pending Applications.*”

prising the cross-border segment is not in the public interest of the United States. Consistent with FERC's existing procedures for review of cross-border gas pipelines, the cross-border segment of the border crossing facility would be identified as the segment spanning from the international boundary to a physical feature within close proximity, such as a valve or meter. The legislation would have no effect on the requirement to obtain approval or authorization under sections 3 and 7 of the NGA or the authorities of FERC with respect to the siting of oil pipelines upstream or downstream of a border crossing facility. The legislation would also have no effect on any other Federal statute that would apply to a project for which a Certificate of Crossing is required, including any requirements of the National Environmental Policy Act.

COMMITTEE ACTION

On May 3, 2017, the Subcommittee on Energy held a hearing on discussion draft entitled "Promoting Cross-Border Energy Infrastructure Act." The Subcommittee received testimony from:

- Terry Turpin, Director, Office of Energy Projects, Federal Energy Regulatory Commission;
- John Katz, Deputy Associate General Counsel, Office of the General Counsel, Federal Energy Regulatory Commission;
- Jeffrey Leahey, Deputy Executive Director, National Hydropower Association;
- Donald Santa, President and CEO, Interstate Natural Gas Association of America;
- Andy Black, President and CEO, Association of Oil Pipe Lines;
- Jeffrey Soth, Legislative and Political Director, International Union of Operating Engineers;
- Bob Irvin, President and CEO, American Rivers; and,
- Jennifer Danis, Senior Staff Attorney, Eastern Environmental Law Center.

On June 22, 2017, the Subcommittee on Energy met in open markup session and forwarded H.R. 2883, without amendment, to the full Committee by a record vote of 18 yeas and 12 nays. On June 28, 2017, the full Committee on Energy and Commerce met in open markup session and ordered H.R. 2883, as amended, favorably reported to the House by a record vote of 31 yeas and 20 nays.

COMMITTEE VOTES

Clause 3(b) of rule XIII requires the Committee to list the record votes on the motion to report legislation and amendments thereto. The following reflects the record votes taken during the Committee consideration:

COMMITTEE ON ENERGY AND COMMERCE -- 115TH CONGRESS
ROLL CALL VOTE # 35

(B)

BILL: H.R. 2883, Promoting Cross-Border Energy Infrastructure Act

AMENDMENT: An amendment offered by Mr. Rush, No. 1, to provide that not later than 120 days after final action is taken, by the relevant official or agency, under the National Environmental Policy Act of 1969 with respect to a border-crossing facility for which a person requests a certificate of crossing, the relevant official or agency, in consultation with appropriate Federal agencies, shall issue a certificate of crossing for the border-crossing facility if the relevant official or agency finds that the construction, connection, operation, or maintenance of the border-crossing facility is in the public interest of the United States.

DISPOSITION: NOT AGREED TO, by a roll call vote of 19 yeas and 31 nays.

REPRESENTATIVE	YEAS	NAYS	PRESENT	REPRESENTATIVE	YEAS	NAYS	PRESENT
Mr. Walden		X		Mr. Pallone	X		
Mr. Barton		X		Mr. Rush	X		
Mr. Upton		X		Ms. Eshoo	X		
Mr. Shimkus		X		Mr. Engel	X		
Mr. Murphy		X		Mr. Green		X	
Mr. Burgess		X		Ms. DeGette	X		
Mrs. Blackburn		X		Mr. Doyle	X		
Mr. Scalise				Ms. Schakowsky	X		
Mr. Latta		X		Mr. Butterfield			
Mrs. McMorris Rodgers		X		Ms. Matsui	X		
Mr. Harper		X		Ms. Castor	X		
Mr. Lance		X		Mr. Sarbanes	X		
Mr. Guthrie		X		Mr. McNerney	X		
Mr. Olson		X		Mr. Welch	X		
Mr. McKinley		X		Mr. Lujan	X		
Mr. Kinzinger		X		Mr. Tonko	X		
Mr. Griffith		X		Ms. Clarke			
Mr. Bilirakis		X		Mr. Loeb sack	X		
Mr. Johnson		X		Mr. Schrader		X	
Mr. Long				Mr. Kennedy	X		
Mr. Bucshon		X		Mr. Cardenas			
Mr. Flores		X		Mr. Ruiz	X		
Mrs. Brooks		X		Mr. Peters	X		
Mr. Mullin		X		Ms. Dingell	X		
Mr. Hudson		X					
Mr. Collins		X					
Mr. Cramer		X					
Mr. Walberg		X					
Mrs. Walters		X					
Mr. Costello		X					
Mr. Carter		X					

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COMMITTEE ON ENERGY AND COMMERCE -- 115TH CONGRESS
ROLL CALL VOTE # 36

C

BILL: H.R. 2883, Promoting Cross-Border Energy Infrastructure Act

AMENDMENT: An amendment offered by Mr. Pallone, No. 2, to provide that in the case of a request for a certificate of crossing for a border-crossing facility consisting of an electric transmission facility, the Secretary of Energy shall require, as a condition of issuing a specified certificate of crossing, that the border-crossing facility be constructed, connected, operated, or maintained consistent with all applicable policies and standards of any Electric Reliability Organization and the applicable regional entity; and any Regional Transmission Organization or Independent System Operator with operational or functional control over the border-crossing facility, and to provide that the term "border-crossing facility" means an oil or natural gas pipeline or electric transmission facility, a portion of which is located at an international boundary of the United States.

DISPOSITION: NOT AGREED TO, by a roll call vote of 21 yeas and 31 nays.

REPRESENTATIVE	YEAS	NAYS	PRESENT	REPRESENTATIVE	YEAS	NAYS	PRESENT
Mr. Walden		X		Mr. Pallone	X		
Mr. Barton		X		Mr. Rush	X		
Mr. Upton		X		Ms. Eshoo	X		
Mr. Shimkus		X		Mr. Engel	X		
Mr. Murphy		X		Mr. Green		X	
Mr. Burgess		X		Ms. DeGette	X		
Mrs. Blackburn		X		Mr. Doyle	X		
Mr. Scalise				Ms. Schakowsky	X		
Mr. Latta		X		Mr. Butterfield	X		
Mrs. McMorris Rodgers		X		Ms. Matsui	X		
Mr. Harper		X		Ms. Castor	X		
Mr. Lance		X		Mr. Sarbanes	X		
Mr. Guthrie		X		Mr. McNerney	X		
Mr. Olson		X		Mr. Welch	X		
Mr. McKinley		X		Mr. Lujan	X		
Mr. Kinzinger		X		Mr. Tonko	X		
Mr. Griffith		X		Ms. Clarke	X		
Mr. Bilirakis		X		Mr. Loeb sack	X		
Mr. Johnson		X		Mr. Schrader		X	
Mr. Long				Mr. Kennedy	X		
Mr. Bucshon		X		Mr. Cardenas			
Mr. Flores		X		Mr. Ruiz	X		
Mrs. Brooks		X		Mr. Peters	X		
Mr. Mullin		X		Ms. Dingell	X		
Mr. Hudson		X					
Mr. Collins		X					
Mr. Cramer		X					
Mr. Walberg		X					
Mrs. Walters		X					
Mr. Costello		X					
Mr. Carter		X					

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COMMITTEE ON ENERGY AND COMMERCE -- 115TH CONGRESS
ROLL CALL VOTE # 37

BILL: H.R. 2883, Promoting Cross-Border Energy Infrastructure Act

AMENDMENT: A motion offered by Mr. Walden to order H.R. 2883 favorably reported to the House, as amended. (Final Passage)

DISPOSITION: AGREED TO, by a roll call vote of 31 yeas and 20 nays.

REPRESENTATIVE	YEAS	NAYS	PRESENT	REPRESENTATIVE	YEAS	NAYS	PRESENT
Mr. Walden	X			Mr. Pallone		X	
Mr. Barton	X			Mr. Rush		X	
Mr. Upton	X			Ms. Eshoo		X	
Mr. Shimkus	X			Mr. Engel		X	
Mr. Murphy	X			Mr. Green	X		
Mr. Burgess	X			Ms. DeGette		X	
Mrs. Blackburn	X			Mr. Doyle		X	
Mr. Scalise				Ms. Schakowsky		X	
Mr. Latta	X			Mr. Butterfield		X	
Mrs. McMorris Rodgers	X			Ms. Matsui		X	
Mr. Harper	X			Ms. Castor		X	
Mr. Lance	X			Mr. Sarbanes		X	
Mr. Guthrie	X			Mr. McNerney		X	
Mr. Olson	X			Mr. Welch		X	
Mr. McKinley	X			Mr. Lujan		X	
Mr. Kinzinger	X			Mr. Tonko		X	
Mr. Griffith	X			Ms. Clarke			
Mr. Bilirakis	X			Mr. Loeb sack		X	
Mr. Johnson	X			Mr. Schrader	X		
Mr. Long				Mr. Kennedy		X	
Mr. Bucshon	X			Mr. Cardenas			
Mr. Flores	X			Mr. Ruiz		X	
Mrs. Brooks	X			Mr. Peters		X	
Mr. Mullin	X			Ms. Dingell		X	
Mr. Hudson	X						
Mr. Collins	X						
Mr. Cramer	X						
Mr. Walberg	X						
Mrs. Walters	X						
Mr. Costello	X						
Mr. Carter	X						

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OVERSIGHT FINDINGS AND RECOMMENDATIONS

Pursuant to clause 2(b)(1) of rule X and clause 3(c)(1) of rule XIII, the Committee held a hearing and made findings that are reflected in this report.

NEW BUDGET AUTHORITY, ENTITLEMENT AUTHORITY, AND TAX EXPENDITURES

Pursuant to clause 3(c)(2) of rule XIII, the Committee finds that H.R. 2883 would result in no new or increased budget authority, entitlement authority, or tax expenditures or revenues.

CONGRESSIONAL BUDGET OFFICE ESTIMATE

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

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, July 14, 2017.

Hon. GREG WALDEN,
*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. 2883, the Promoting Cross-Border Energy Infrastructure Act.

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

Sincerely,

MARK P. HADLEY
(For Keith Hall, Director).

Enclosure.

H.R. 2883—Promoting Cross-Border Energy Infrastructure Act

H.R. 2883 would make changes to permitting requirements for oil and natural gas pipelines and electric transmission facilities that cross international borders. In particular, the bill would eliminate the existing requirement that sponsors of such infrastructure obtain a Presidential permit. Instead, H.R. 2883 would require those sponsors to obtain a certificate of crossing. Under the bill, the Federal Energy Regulatory Commission (FERC) would issue those certificates for oil and natural gas pipelines; the Secretary of Energy would issue them for electric transmission facilities. The change in permitting requirements would apply to new projects and modifications of certain existing projects as specified by the bill.

CBO estimates that implementing H.R. 2883 would have no significant net effect on the federal budget. Relative to current law, we expect that any changes to administrative costs incurred by the Department of Energy would not exceed \$500,000 in any year; such spending would be subject to the availability of appropriated funds. Further, because FERC recovers 100 percent of its costs through user fees, any change in that agency's costs (which are controlled through annual appropriation acts) would be offset by an equal

change in fees that the commission charges, resulting in no net change in federal spending.

Enacting H.R. 2883 would not affect direct spending or revenues; therefore, pay-as-you-go procedures do not apply. CBO estimates that enacting H.R. 2883 would not increase net direct spending or on-budget deficits in any of the four consecutive 10-year periods beginning in 2028.

H.R. 2883 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandate Reform Act and would impose no costs on state, local, or tribal governments.

The CBO staff contact for this estimate is Megan Carroll. The estimate was approved by H. Samuel Papenfuss, Deputy 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.

STATEMENT OF GENERAL PERFORMANCE GOALS AND OBJECTIVES

Pursuant to clause 3(c)(4) of rule XIII, the general performance goal or objective of this legislation is to establish coordinated procedures to authorize the construction, connection, operation, and maintenance of international border-crossing facilities for the import and export of oil and natural gas and the transmission of electricity.

DUPLICATION OF FEDERAL PROGRAMS

Pursuant to clause 3(c)(5) of rule XIII, no provision of H.R. 2883 is known to be duplicative of another Federal program, including any program that was included in a report to Congress pursuant to section 21 of Public Law 111-139 or the most recent Catalog of Federal Domestic Assistance.

COMMITTEE COST ESTIMATE

Pursuant to clause 3(d)(1) of rule XIII, 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.

EARMARK, LIMITED TAX BENEFITS, AND LIMITED TARIFF BENEFITS

Pursuant to clause 9(e), 9(f), and 9(g) of rule XXI, the Committee finds that H.R. 2883 contains no earmarks, limited tax benefits, or limited tariff benefits.

DISCLOSURE OF DIRECTED RULE MAKINGS

Pursuant to section 3(i) of H. Res. 5, the Committee finds that H.R. 2883 contains no directed rule makings.

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

This section provides the short title of “Promoting Cross-Border Energy Infrastructure Act.”

Section 2. Approval for border-crossing facilities

Section 2(a)(1) provides that no person may construct, connect, operate, or maintain a border-crossing facility for the import or export of oil or natural gas, or the transmission of electricity, across an international border of the United States without obtaining a certificate of crossing.

Section 2(a)(2) instructs relevant officials or agencies, in consultation with appropriate Federal agencies, to issue a certificate of crossing for a border-crossing facility within 120 days after final action is taken, unless the relevant official or agency finds that the construction, connection, operation, or maintenance of the border-crossing facility is not in the public interest of the United States. The relevant official or agency with respect to border-crossing facilities consisting of oil or natural gas pipelines is the Federal Energy Regulatory Commission. The relevant official or agency with respect to electric transmission facilities is the Secretary of Energy. This section also provides additional requirements for electric transmission facilities.

Section 2(a)(3) instructs that subsection (a) shall not apply to border-crossing facilities that are in operation on the date of enactment of this Act if a permit as described in subsection (d) has been issued, or if a permit as described in subsection (d) is pending and meets certain requirements.

Section 2(a)(4) specifies that nothing in subsection (a) or subsection (e) shall affect the application of any other Federal statute to a project for which a certificate of crossing for a border-crossing facility is requested; the requirement to obtain approval or authorization under sections 3 and 7 of the NGA or the authority of the FERC with respect to oil pipelines under section 60502 of title 49, United States Code.

Section 2(b) amends section 3(c) of the NGA directing FERC to grant an application for the importation of natural gas from, or exportation of natural gas to, Canada and Mexico not later than 30 days after the date on which the Commission receives the complete application.

Section 2(c) repeals section 202(e) of the Federal Power Act, eliminating the requirement to secure an order from FERC to transmit electric energy from the United States to a foreign country. This section also contains conforming amendments related to State regulations and seasonal diversity electricity exchange.

Section 2(d) specifies that no Presidential Permit or any other Executive Order shall be necessary for the construction, connection,

operation, or maintenance of an oil or natural gas pipeline or electric transmission facility, or any border-crossing facility.

Section 2(e) directs that no certificate of crossing under subsection (a) or permit described in subsection (d) shall be required for a modification to an oil or natural gas pipeline or electric transmission facility that is operating for the import or export of energy as of the date of enactment of this Act. Additionally, a certificate of crossing or a permit shall not be required for a modification to an oil or natural gas pipeline or electric transmission facility for which a permit described in subsection (d) has been issued, or for which a certificate of crossing has previously been issued under subsection (a).

Section 2(f) specifies that subsections (a) through (c) shall take effect on the date that is one year after the date of enactment of this Act. Each relevant official or agency shall publish in the Federal Register a notice of a proposed rulemaking to carry out the requirements of subsection (a) within 180 days after the date of enactment of this Act. Not later than one year after the date of enactment, the relevant officials or agencies shall publish a final rule in the Federal Register.

Section 2(g) provides definitions for terms used throughout this section.

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 (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italics, and existing law in which no change is proposed is shown in roman):

NATURAL GAS ACT

* * * * *

EXPORTATION OR IMPORTATION OF NATURAL GAS; LNG TERMINALS

SEC. 3. (a) After six months from the date on which this act takes effect no person shall export any natural gas from the United States to a foreign country or import any natural gas from a foreign country without first having secured an order of the Commission authorizing it to do so. The Commission shall issue such order upon application, unless, after opportunity for hearing, it finds that the proposed exportation or importation will not be consistent with the public interest. The Commission may by its order grant such application, in whole or in part, with such modification and upon such terms and conditions as the Commission may find necessary or appropriate, and may from time to time, after opportunity for hearing, and for good cause shown, make such supplemental order in the premises as it may find necessary or appropriate.

(b) With respect to natural gas which is imported into the United States from a nation with which there is in effect a free trade agreement requiring national treatment for trade in natural gas, and with respect to liquefied natural gas—

(1) the importation of such natural gas shall be treated as a “first sale” within the meaning of section 2(21) of the Natural Gas Policy Act of 1978; and

(2) the Commission shall not, on the basis of national origin, treat any such imported natural gas on an unjust, unreasonable, unduly discriminatory, or preferential basis.

(c) For purposes of subsection (a), the importation of the natural gas referred to in subsection (b), or the exportation of natural gas to a nation with which there is in effect a free trade agreement requiring national treatment for trade in natural gas, shall be deemed to be consistent with the public interest, and applications for such importation or exportation shall be granted without modification or delay. *In the case of an application for the importation of natural gas from, or the exportation of natural gas to, Canada or Mexico, the Commission shall grant the application not later than 30 days after the date on which the Commission receives the complete application.*

(d) Except as specifically provided in this Act, nothing in this Act affects the rights of States under—

(1) the Coastal Zone Management Act of 1972 (16 U.S.C. 1451 et seq.);

(2) the Clean Air Act (42 U.S.C. 7401 et seq.); or

(3) the Federal Water Pollution Control Act (33 U.S.C. 1251 et seq.).

(e)(1) The Commission shall have the exclusive authority to approve or deny an application for the siting, construction, expansion, or operation of an LNG terminal. Except as specifically provided in this Act, nothing in this Act is intended to affect otherwise applicable law related to any Federal agency’s authorities or responsibilities related to LNG terminals.

(2) Upon the filing of any application to site, construct, expand, or operate an LNG terminal, the Commission shall—

(A) set the matter for hearing;

(B) give reasonable notice of the hearing to all interested persons, including the State commission of the State in which the LNG terminal is located and, if not the same, the Governor-appointed State agency described in section 3A;

(C) decide the matter in accordance with this subsection; and

(D) issue or deny the appropriate order accordingly.

(3)(A) Except as provided in subparagraph (B), the Commission may approve an application described in paragraph (2), in whole or part, with such modifications and upon such terms and conditions as the Commission find necessary or appropriate.

(B) Before January 1, 2015, the Commission shall not—

(i) deny an application solely on the basis that the applicant proposes to use the LNG terminal exclusively or partially for gas that the applicant or an affiliate of the applicant will supply to the facility; or

(ii) condition an order on—

(I) a requirement that the LNG terminal offer service to customers other than the applicant, or any affiliate of the applicant, securing the order;

(II) any regulation of the rates, charges, terms, or conditions of service of the LNG terminal; or

(III) a requirement to file with the Commission schedules or contracts related to the rates, charges, terms, or conditions of service of the LNG terminal.

(C) Subparagraph (B) shall cease to have effect on January 1, 2030.

(4) An order issued for an LNG terminal that also offers service to customers on an open access basis shall not result in subsidization of expansion capacity by existing customers, degradation of service to existing customers, or undue discrimination against existing customers as to their terms or conditions of service at the facility, as all of those terms are defined by the Commission.

(f)(1) In this subsection, the term “military installation”—

(A) means a base, camp, post, range, station, yard, center, or homeport facility for any ship or other activity under the jurisdiction of the Department of Defense, including any leased facility, that is located within a State, the District of Columbia, or any territory of the United States; and

(B) does not include any facility used primarily for civil works, rivers and harbors projects, or flood control projects, as determined by the Secretary of Defense.

(2) The Commission shall enter into a memorandum of understanding with the Secretary of Defense for the purpose of ensuring that the Commission coordinate and consult with the Secretary of Defense on the siting, construction, expansion, or operation of liquefied natural gas facilities that may affect an active military installation.

(3) The Commission shall obtain the concurrence of the Secretary of Defense before authorizing the siting, construction, expansion, or operation of liquefied natural gas facilities affecting the training or activities of an active military installation.

* * * * *

FEDERAL POWER ACT

* * * * *

**PART II—REGULATION OF ELECTRIC UTILITY COMPANIES
ENGAGED IN INTERSTATE COMMERCE**

* * * * *

**INTERCONNECTION AND COORDINATION OF FACILITIES; EMERGENCIES;
TRANSMISSION TO FOREIGN COUNTRIES**

SEC. 202. (a) For the purpose of assuring an abundant supply of electric energy throughout the United States with the greatest possible economy and with regard to the proper utilization and conservation of natural resources, the Commission is empowered and directed to divide the country into regional districts for the voluntary interconnection and coordination of facilities for the generation, transmission, and sale of electric energy, and it may at any time thereafter, upon its own motion or upon application, make such modifications thereof as in its judgment will promote the public interest. Each such district shall embrace an area which, in the judgment of the Commission, can economically be served by such

interconnected and coordinated electric facilities. It shall be the duty of the Commission to promote and encourage such interconnection and coordination within each such district and between such districts. Before establishing any such district and fixing or modifying the boundaries thereof the Commission shall give notice to the State commission of each State situated wholly or in part within such district, and shall afford each such State commission reasonable opportunity to present its views and recommendations, and shall receive and consider such views and recommendations.

(b) Whenever the Commission, upon application of any State commission or of any person engaged in the transmission or sale of electric energy, and after notice to each State commission and public utility affected and after opportunity for hearing, finds such action necessary or appropriate in the public interest it may by order direct a public utility (if the Commission finds that no undue burden will be placed upon such public utility thereby) to establish physical connection of its transmission facilities with the facilities of one or more other persons engaged in the transmission or sale of electric energy, to sell energy to or exchange energy with such persons: *Provided*, That the Commission shall have no authority to compel the enlargement of generating facilities for such purposes, nor to compel such public utility to sell or exchange energy when to do so would impair its ability to render adequate service to its customers. The Commission may prescribe the terms and conditions of the arrangement to be made between the persons affected by any such order, including the apportionment of cost between them and the compensation or reimbursement reasonably due to any of them.

(c)(1) During the continuance of any war in which the United States is engaged, or whenever the Commission determines that an emergency exists by reason of a sudden increase in the demand for electric energy, or a shortage of electric energy or of facilities for the generation or transmission of electric energy, or of fuel or water for generating facilities, or other causes, the Commission shall have authority, either upon its own motion or upon complaint, with or without notice, hearing, or report, to require by order such temporary connections of facilities and such generation, delivery, interchange, or transmission of electric energy as in its judgment will best meet the emergency and serve the public interest. If the parties affected by such order fail to agree upon the terms of any arrangement between them in carrying out such order, the Commission, after hearing held either before or after such order takes effect, may prescribe by supplemental order such terms as it finds to be just and reasonable, including the compensation or reimbursement which should be paid to or by any such party.

(2) With respect to an order issued under this subsection that may result in a conflict with a requirement of any Federal, State, or local environmental law or regulation, the Commission shall ensure that such order requires generation, delivery, interchange, or transmission of electric energy only during hours necessary to meet the emergency and serve the public interest, and, to the maximum extent practicable, is consistent with any applicable Federal, State, or local environmental law or regulation and minimizes any adverse environmental impacts.

(3) To the extent any omission or action taken by a party, that is necessary to comply with an order issued under this subsection, including any omission or action taken to voluntarily comply with such order, results in noncompliance with, or causes such party to not comply with, any Federal, State, or local environmental law or regulation, such omission or action shall not be considered a violation of such environmental law or regulation, or subject such party to any requirement, civil or criminal liability, or a citizen suit under such environmental law or regulation.

(4)(A) An order issued under this subsection that may result in a conflict with a requirement of any Federal, State, or local environmental law or regulation shall expire not later than 90 days after it is issued. The Commission may renew or reissue such order pursuant to paragraphs (1) and (2) for subsequent periods, not to exceed 90 days for each period, as the Commission determines necessary to meet the emergency and serve the public interest.

(B) In renewing or reissuing an order under subparagraph (A), the Commission shall consult with the primary Federal agency with expertise in the environmental interest protected by such law or regulation, and shall include in any such renewed or reissued order such conditions as such Federal agency determines necessary to minimize any adverse environmental impacts to the extent practicable. The conditions, if any, submitted by such Federal agency shall be made available to the public. The Commission may exclude such a condition from the renewed or reissued order if it determines that such condition would prevent the order from adequately addressing the emergency necessitating such order and provides in the order, or otherwise makes publicly available, an explanation of such determination.

(5) If an order issued under this subsection is subsequently stayed, modified, or set aside by a court pursuant to section 313 or any other provision of law, any omission or action previously taken by a party that was necessary to comply with the order while the order was in effect, including any omission or action taken to voluntarily comply with the order, shall remain subject to paragraph (3).

(d) During the continuance of any emergency requiring immediate action, any person or municipality engaged in the transmission or sale of electric energy and not otherwise subject to the jurisdiction of the Commission may make such temporary connections with any public utility subject to the jurisdiction of the Commission or may construct such temporary facilities for the transmission of electric energy in interstate commerce as may be necessary or appropriate to meet such emergency, and shall not become subject to the jurisdiction of the Commission by reason of such temporary connection or temporary construction: *Provided*, That such temporary connection shall be discontinued or such temporary construction removed or otherwise disposed of upon the termination of such emergency: *Provided further*, That upon approval of the Commission permanent connections for emergency use only may be made hereunder.

[(e) After six months from the date on which this Part takes effect, no person shall transmit any electric energy from the United States to a foreign country without first having secured an order of the Commission authorizing it to do so. The Commission shall

issue such order upon application unless, after opportunity for hearing, it finds that the proposed transmission would impair the sufficiency of electric supply within the United States or would impede or tend to impede the coordination in the public interest of facilities subject to the jurisdiction of the Commission. The Commission may by its order grant such application in whole or in part, with such modifications and upon such terms and conditions as the Commission may find necessary or appropriate, and may from time to time, after opportunity for hearing and for good cause shown, make such supplemental orders in the premises as it may find necessary or appropriate.】

(f) The ownership or operation of facilities for the transmission or sale at wholesale of electric energy which is (a) generated within a State and transmitted from that State across an international boundary and not thereafter transmitted into any other State, or (b) generated in a foreign country and transmitted across an international boundary into a State and not thereafter transmitted into any other State, shall not make a person a public utility subject to regulation as such under other provisions of this part. The State within which any such facilities are located may regulate any such transaction 【insofar as such State regulation does not conflict with the exercise of the Commission’s powers under or relating to subsection 202(e)】.

(g) In order to insure continuity of service to customers of public utilities, the Commission shall require by rule, each public utility to—

- (1) report promptly to the Commission and any appropriate State regulatory authorities any anticipated shortage of electric energy or capacity which would affect such utility’s capability of serving its wholesale customers,
- (2) submit to the Commission, and to any appropriate State regulatory authority, and periodically revise, contingency plans respecting—
 - (A) shortages of electric energy or capacity, and
 - (B) circumstances which may result in such shortages,
 and
- (3) accommodate any such shortages or circumstances in a manner which shall—
 - (A) give due consideration to the public health, safety, and welfare, and
 - (B) provide that all persons served directly or indirectly by such public utility will be treated, without undue prejudice or disadvantage.

* * * * *

PUBLIC UTILITY REGULATORY POLICIES ACT OF 1978

* * * * *

TITLE VI—MISCELLANEOUS PROVISIONS

* * * * *

SEC. 602. SEASONAL DIVERSITY ELECTRICITY EXCHANGE.

(a) **AUTHORITY.**—The Secretary may acquire rights-of-way by purchase, including eminent domain, through North Dakota, South Dakota, and Nebraska for transmission facilities for the seasonal diversity exchange of electric power to and from Canada if he determines—

(1) after opportunity for public hearing—

(A) that the exchange is in the public interest and would further the purposes referred to in section 101 (1) and (2) of this Act and that the acquisition of such rights-of-way and the construction and operation of such transmission facilities for such purposes is otherwise in the public interest,

(B) that a permit has been issued in accordance with subsection (b) for such construction, operation, maintenance, and connection of the facilities at the border for the transmission of electric energy between the United States and Canada as is necessary for such exchange of electric power, and

(C) that each affected State has approved the portion of the transmission route located in each State in accordance with applicable State law, or if there is no such applicable State law in such State, the Governor has approved such portion; and

(2) after consultation with the Secretary of the Interior and the heads of other affected Federal agencies, that the Secretary of the Interior and the heads of such, other agencies concur in writing in the location of such portion of the transmission facilities as crosses Federal land under the jurisdiction of such Secretary or such other Federal agency, as the case may be.

The Secretary shall provide to any State such cooperation and technical assistance as the State may request and as he determines appropriate in the selection of a transmission route. If the transmission route approved by any State does not appear to be feasible and in the public interest, the Secretary shall encourage such State to review such route and to develop a route that is feasible and in the public interest. Any exercise by the Secretary of the power of eminent domain under this section shall be in accordance with other applicable provisions of Federal law. The Secretary shall provide public notice of his intention to acquire any right-of-way before exercising such power of eminent domain with respect to such right-of-way.

(b) **PERMIT.**—Notwithstanding any transfer of functions under the first sentence of section 301(b) of the Department of Energy Organization Act, no permit referred to in subsection (a)(1)(B) may be issued unless [the Commission has conducted hearings and made the findings required under section 202(e) of the Federal Power Act and under the applicable execution order respecting the construction, operation, maintenance, or connection at the borders of the United States of facilities for the transmission of electric energy between the United States and a foreign country. Any finding of the Commission under an applicable executive order referred to in this subsection shall be treated for purposes of judicial review as an order issued under section 202(e) of the Federal Power Act.] *the Secretary has conducted hearings and finds that the proposed*

transmission facilities would not impair the sufficiency of electric supply within the United States or would not impede or tend to impede the coordination in the public interest of facilities subject to the jurisdiction of the Secretary.

(c) **TIMELY ACQUISITION BY OTHER MEANS.**—The Secretary may not acquire any rights-of-day under this section unless he determines that the holder or holders of a permit referred to in subsection (a)(1)(B) are unable to acquire such rights-of-way under State condemnation authority, or after reasonable opportunity for negotiation, without unreasonably delaying construction, taking into consideration the impact of such delay on completion of the facilities in a timely fashion.

(d) **PAYMENTS BY PERMITTEES.**—(1) The property interest acquired by the Secretary under this section (whether by eminent domain or other purchase) shall be transferred by the Secretary to the holder of a permit referred to in subsection (b) if such holder has made payment to the Secretary of the entire costs of the acquisition of such property interest, including administrative costs. The Secretary may accept, and expend, for purposes of such acquisition, amounts from any such person before acquiring a property interest to be transferred to such person under this section.

(2) If no payment is made by a permit holder under paragraph (1), within a reasonable time, the Secretary shall offer such rights-of-way to the original owner for reacquisition at the original price paid by the Secretary. If such original owner refuses to reacquire such property after a reasonable period, the Secretary shall dispose of such property in accordance with applicable provisions of law governing disposal of property of the United States.

(e) **FEDERAL LAW GOVERNING FEDERAL LANDS.**—This section shall not affect any Federal law governing Federal lands.

(f) **REPORTS.**—The Secretary shall report annually to the Congress on the actions, if any, taken pursuant to this section.

* * * * *

ROB BISHOP OF UTAH
CHAIRMAN

EXCHANGE OF LETTERS WITH ADDITIONAL COMMITTEES OF
REFERRAL

U.S. House of Representatives

Committee on Natural Resources

Washington, DC 20515

July 13, 2017

The Honorable Greg Walden
Chairman
Committee on Energy and Commerce
2125 Rayburn House Office Building
Washington, D.C. 20515

Dear Mr. Chairman:

I write concerning H.R. 2883, the Promoting Cross-Border Energy Infrastructure Act. The bill, as ordered reported, contains provisions within the Rule X jurisdiction of the Natural Resources Committee.

In the interest of permitting you to proceed expeditiously to floor consideration of this very important bill, I waive this committee's right to a sequential referral. I do so with the understanding that the Natural Resources Committee does not waive any future jurisdictional claim over the subject matter contained in the bill that fall within its Rule X jurisdiction. I also request that you support my request to name members of the Natural Resources Committee to any conference committee to consider such provisions. Finally, please place this letter into the committee report on H.R. 2883 and into the Congressional Record during consideration of the measure on the House floor.

Thank you for the cooperative spirit in which you and your staff have worked regarding this matter and others between our respective committees.

Sincerely,



Rob Bishop
Chairman

GREG WALDEN, OREGON
CHAIRMAN

FRANK PALLONE, JR., NEW JERSEY
RANKING MEMBER

ONE HUNDRED FIFTEENTH CONGRESS
Congress of the United States
House of Representatives
COMMITTEE ON ENERGY AND COMMERCE
2125 RAYBURN HOUSE OFFICE BUILDING
WASHINGTON, DC 20515-6115

Majority (225) 225-2927
Minority (225) 225-3641

July 14, 2017

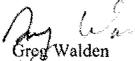
The Honorable Rob Bishop
Chairman
Committee on Natural Resources
1324 Longworth House Office Building
Washington, DC 20515

Dear Chairman Bishop:

Thank you for your letter concerning H.R. 2883, Promoting Cross-Border Energy Infrastructure Act. As you noted, the bill, as ordered reported, contains provisions within the Rule X jurisdiction of the Natural Resources Committee.

I appreciate your willingness to forgo action on the bill so that it can proceed expeditiously to floor consideration. I agree that the Natural Resources Committee does not waive any future jurisdictional claim over the subject matter contained in the bill that fall within its Rule X jurisdiction. I will support your request to name members of the Natural Resources Committee to any conference committee to consider such provisions. Finally, I will place this letter into the committee report on H.R. 2883 and into the Congressional Record during consideration of the measure on the House floor.

Sincerely,


Greg Walden
Chairman

GREG WALDEN, OREGON
CHAIRMAN

FRANK PALLONE, JR., NEW JERSEY
RANKING MEMBER

ONE HUNDRED FIFTEENTH CONGRESS
Congress of the United States
House of Representatives
COMMITTEE ON ENERGY AND COMMERCE
2125 RAYBURN HOUSE OFFICE BUILDING
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Majority (202) 225-2027
Minority (202) 225-2641

July 14, 2017

The Honorable Bill Shuster
Chairman
Committee on Transportation and Infrastructure
2165 Rayburn House Office Building
Washington, DC 20515

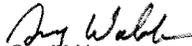
Dear Chairman Shuster:

Thank you for your letter concerning H.R. 2883, Promoting Cross-Border Energy Infrastructure Act, on which the Committee on Transportation and Infrastructure received an additional referral.

I appreciate your willingness to allow the Committee on Transportation and Infrastructure to be discharged from consideration of H.R. 2883 in order to expedite floor consideration. I agree that this discharge does not affect the Committee's jurisdiction over the subject matter of the bill. Further, should a conference on the bill be necessary, I agree that the Committee on Transportation and Infrastructure should be appropriately represented on the conference committee.

I will place a copy of your letter and this response into the *Congressional Record* during consideration of the measure on the House floor.

Sincerely,


Greg Walden
Chairman

GREG WALDEN, OREGON
CHAIRMAN

FRANK PALLONE, JR., NEW JERSEY
RANKING MEMBER

ONE HUNDRED FIFTEENTH CONGRESS
Congress of the United States
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July 14, 2017

The Honorable Bill Shuster
Chairman
Committee on Transportation and Infrastructure
2165 Rayburn House Office Building
Washington, DC 20515

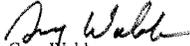
Dear Chairman Shuster:

Thank you for your letter concerning H.R. 2883, Promoting Cross-Border Energy Infrastructure Act, on which the Committee on Transportation and Infrastructure received an additional referral.

I appreciate your willingness to allow the Committee on Transportation and Infrastructure to be discharged from consideration of H.R. 2883 in order to expedite floor consideration. I agree that this discharge does not affect the Committee's jurisdiction over the subject matter of the bill. Further, should a conference on the bill be necessary, I agree that the Committee on Transportation and Infrastructure should be appropriately represented on the conference committee.

I will place a copy of your letter and this response into the *Congressional Record* during consideration of the measure on the House floor.

Sincerely,


Greg Walden
Chairman



**Committee on Transportation and Infrastructure
U.S. House of Representatives**

Washington, DC 20515

Bill Shuster
Chairman

Peter A. DeFazio
Ranking Member

July 17, 2017

Matthew M. Sturges, Staff Director

Katherine W. Dedrick, Democratic Staff Director

The Honorable Greg Walden
Chairman
Committee on Energy and Commerce
2125 Rayburn House Office Building
Washington, DC 20515

Dear Chairman Walden:

I write concerning H.R. 2883, the *Promoting Cross-Border Energy Infrastructure Act*, on which the Committee on Transportation and Infrastructure received an additional referral.

In order to expedite floor consideration, I agree to allow the Committee on Transportation and Infrastructure to be discharged from consideration of H.R. 2883. I agree to do so with the understanding that this discharge does not affect the Committee's jurisdiction over the subject matter of the bill. Further, should a conference on the bill be necessary, I expect the Committee on Transportation and Infrastructure to be represented on the conference committee.

Please place a copy of this letter and your response acknowledging our jurisdictional interest into the *Congressional Record* during consideration of the measure on the House floor.

Sincerely,

A handwritten signature in black ink that reads "Bill Shuster".

Bill Shuster
Chairman

cc: The Honorable Paul D. Ryan
The Honorable Peter A. DeFazio
The Honorable Frank Pallone, Jr.
Mr. Thomas J. Wickham, Jr., Parliamentarian

DISSENTING VIEWS

H.R. 2883 would substantially weaken the process for federal approval of oil and natural gas pipelines and electric transmission lines that cross the U.S. border with Canada or Mexico. The new process established by the bill effectively exempts such projects from environmental and safety review under the National Environmental Policy Act (NEPA) by narrowing NEPA applicability to just the sliver of the project actually crossing the border. The process created by the bill also tips the scales too far in favor of promoters of controversial projects by establishing a rebuttable presumption that said projects are to be approved. H.R. 2883 would allow a project that is found not to be in the public interest under the current permitting process to reapply under the new weaker process. The bill would exempt all modifications to existing cross-border pipelines, including major expansions of pipelines, from any requirement for federal review or approval.

The effect of these changes will allow large and long-lived cross-border energy projects to be approved with no understanding or consideration of their environmental impacts. In fact, such projects could even be exempted from any permitting requirement at all. The public, including communities and landowners directly affected by the projects, would have scarce to absolutely no information and be left without any opportunity to object or request mitigating action, except to the extent some limited recourse can be located and pursued through state law.

CURRENT PERMITTING PROCESS FOR TRANSBOUNDARY ENERGY PROJECTS

Proposed oil pipelines, natural gas pipelines, and electric transmission lines that cross the U.S. boundary with Mexico or Canada must obtain presidential permits pursuant to executive orders.¹ Additional statutory requirements apply to trans-boundary, natural gas pipelines and electric transmission lines, as well as to exports of natural gas and electricity.

Oil Pipelines

The President has delegated authority to permit cross-border oil pipeline projects to the State Department, which is required to make an affirmative finding that a project is in the national interest.² Prior to making the national interest determination, NEPA requires the State Department to prepare, with notice and public

¹The executive branch authority to issue presidential permits for cross-border energy project derives from the President's constitutional authority to conduct foreign affairs. See Congressional Research Service, *Presidential Permits for Border Crossing Energy Facilities* (Mar. 15, 2017) (R43261).

²Exec. Order No. 11423, 33 Fed. Reg. 11741 (Aug. 16, 1968); Exec. Order No. 13337, 69 Fed. Reg. 25299 (Apr. 30, 2004).

comment, an environmental impact statement on a project and evaluate alternatives that would avoid or minimize adverse environmental effects.³

Natural Gas Pipelines and Exports

The Federal Energy Regulatory Commission (FERC) is authorized to issue a presidential permit if it finds a natural gas pipeline project “to be consistent with the public interest” and receives favorable recommendations from the Secretary of State and Secretary of Defense.⁴ FERC may set conditions on a permit to protect the public interest. A cross-border natural gas pipeline must also obtain FERC approval under section 3 of the Natural Gas Act (NGA), as well as favorable recommendations by the State and Defense Departments. FERC must grant an application unless it finds that the proposed export will not be consistent with the public interest. Under FERC’s regulations, an applicant applies for the Natural Gas Act approval and the presidential permit simultaneously in a single application package. One environmental review is performed for the entire submission.

An entity seeking to export natural gas as a commodity through a pipeline or as liquefied natural gas (LNG) must obtain approval from the Department of Energy (DOE). For export to Canada, Mexico and other countries with a free trade agreement, the NGA requires DOE to deem such applications consistent with the public interest and grant them without modification or delay.

Electric Transmission Lines and Electricity Exports

DOE is authorized to issue a presidential permit if it finds the electric transmission line project “to be consistent with the public interest” and receives favorable recommendations from the Secretary of State and Secretary of Defense.⁵ DOE makes the public interest determination “by evaluating the electric reliability impacts, the potential environmental impacts, and any other factors that DOE may also consider relevant to the public interest.”⁶ An environmental analysis is required to comply with NEPA. DOE may set conditions on a permit to protect the public interest. Additionally, under section 202(e) of the Federal Power Act (FPA), the transmission of electricity from the U.S. to another country requires approval from DOE. DOE is required to approve an application unless it finds that the proposed transmission of electricity would “impair the sufficiency of electric supply within the United States or would impede or tend to impede the coordination in the public interest of [electric] facilities.”⁷ DOE may set conditions on the approval.

ANALYSIS

The new approval process established in section 2(a)(2) of the legislation requires the relevant official to issue a “certificate of cross-

³ National Environmental Policy Act of 1969, Pub. L. No. 94-83.

⁴ Exec. Order No. 10485, 18 Fed. Reg. 5397 (Sept. 3, 1953).

⁵ Exec. Order No. 10485, 18 Fed. Reg. 5397 (Sept. 3, 1953).

⁶ U.S. Department of Energy, *Interpretative Guidance on the Requirements of 10 C.F.R. §205.322* (Jun. 2, 2011).

⁷ Federal Power Act § 202(e); 16 U.S.C. 824 a(e).

ing” for a border-crossing facility within 120 days of final action under NEPA, unless the official finds that the project “is not in the public interest of the United States.” This language replaces the existing federal approval process that requires a presidential permit for the entire trans-boundary project, not just a segment. The relevant officials are FERC for oil and natural gas pipelines, and the Secretary of Energy for electric transmission lines. Moving the responsibility for approval of oil pipelines to FERC could lead to delays since FERC currently has no authority or experience with the siting of oil pipelines.

Unlike the existing process, this provision 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 “border-crossing facility” is defined as the portion of the project “that is located at an international boundary of the United States.” These trans-boundary projects are multi-billion dollar infrastructure investments that can stretch hundreds of miles and last for decades. Before making decisions about whether to approve such projects, federal agencies should be required to carefully consider their potential impacts on the environment and on communities along their routes. However, this language limits the scope of review for federal approval to just a sliver of a much larger project and makes it extremely difficult—if not impossible—for an agency to prove an application as contrary to the public interest.

Section 2(a)(3) temporarily excludes from the new permitting process any cross-border project with permit approval pending on the date of enactment. This exclusion ends when the application is denied, or two years later for any application still pending. This provision would give controversial projects incentive to simply wait until the exclusion expires, and would give any project denied a presidential permit a second bite at the apple under the new, rubber-stamp process.

Subsection (b) amends section 3 of the Natural Gas Act to require DOE to grant authorization for the export or import of LNG to or from Canada or Mexico, within 30 days. Currently, companies wishing to export LNG to Canada or Mexico must obtain federal approval before doing so. 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 provision sets a deadline for DOE to grant authorization, but provides no mechanism for a deadline extension. If DOE is faced with rigid deadlines it cannot meet, the result will likely be unnecessary application denials rather than expedited approvals.

Subsection (c) of the bill repeals FPA section 202(e), which requires approval from DOE for the transmission of electricity from the U.S. to another country. This could significantly disrupt electricity and transmission markets by undermining FERC’s ability to ensure non-discriminatory open access to the transmission grid. Owners of trans-boundary transmission lines could demand discriminatory charges when providing service across the U.S. border with Canada or Mexico, or deny access altogether.

Subsection (e) says that no certificate of crossing or presidential permit is required for modifications to existing projects. Under this subsection, 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). Many modifications, as defined by this bill, could have impacts just as significant as those resulting from an entirely new project. But, as a result of this language, controversial modifications to existing cross-border pipelines or transmission lines would not require federal approval and would not be subject to any environmental review.

The provisions of H.R. 2883 raise significant concerns, so during Full Committee markup, Full Committee Ranking Member Pallone and Energy Subcommittee Ranking Member Rush offered amendments to address two of the major issues with the bill. The Pallone amendment removed the limitation on NEPA review to only the border-crossing facility, and the Rush amendment removed the presumption of approval language. Neither of these amendments were adopted.

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

FRANK PALLONE, JR.,
Ranking Member.

BOBBY L. RUSH,
Ranking Member,
Subcommittee on Energy.

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