

PROMOTING CROSS-BORDER ENERGY INFRASTRUCTURE
 ACT

MARCH 23, 2023.—Committed to the Committee of the Whole House on the State
 of the Union and ordered to be printed

Mrs. RODGERS of Washington, from the Committee on Energy and
 Commerce, submitted the following

R E P O R T

together with

MINORITY VIEWS

[To accompany H.R. 1058]

The Committee on Energy and Commerce, to whom was referred the bill (H.R. 1058) 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, reports favorably thereon with an amendment and recommends that the bill as amended do pass.

CONTENTS

| | Page |
|---|------|
| Purpose and Summary | 4 |
| Background and Need for Legislation | 4 |
| Committee Action | 7 |
| Committee Votes | 8 |
| Oversight Findings and Recommendations | 12 |
| New Budget Authority, Entitlement Authority, and Tax Expenditures | 12 |
| Congressional Budget Office Estimate | 12 |
| Federal Mandates Statement | 12 |
| Statement of General Performance Goals and Objectives | 12 |
| Duplication of Federal Programs | 12 |
| Related Committee and Subcommittee Hearings | 12 |
| Committee Cost Estimate | 13 |
| Earmark, Limited Tax Benefits, and Limited Tariff Benefits | 13 |
| Advisory Committee Statement | 13 |
| Applicability to Legislative Branch | 13 |
| Section-by-Section Analysis of the Legislation | 14 |

| | |
|---|----|
| Changes in Existing Law Made by the Bill, as Reported | 15 |
| Minority Views | 16 |

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. STRENGTHENING NORTH AMERICAN ENERGY SECURITY.

(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 Presidential permit (or similar permit) for the construction, connection, operation, or maintenance has been issued pursuant to any provision of law or Executive order; or

(C) if an application for a Presidential permit (or similar permit) 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 of enactment.

(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) shall be required pursuant to any provision of law or Executive order 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 Presidential permit (or similar permit), 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 Presidential permit (or similar permit) has been issued pursuant to any provision of law or Executive order; or
 - (3) a border-crossing facility for which a certificate of crossing has previously been issued under subsection (a).
- (f) PROHIBITION ON REVOCATION OF PRESIDENTIAL PERMITS.—Notwithstanding any other provision of law, the President may not revoke a Presidential permit (or similar permit) issued pursuant to Executive Order No. 13337 (3 U.S.C. 301 note), Executive Order No. 11423 (3 U.S.C. 301 note), Executive Order No. 12038 (43 Fed. Reg. 4957), Executive Order No. 10485 (18 Fed. Reg. 5397), or any other Executive order for the construction, connection, operation, or maintenance of an oil or natural gas pipeline or electric transmission facility, or any border-crossing facility thereof, unless such revocation is authorized by an Act of Congress.
- (g) 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).
- (h) DEFINITIONS.—In this section:
- (1) BORDER-CROSSING FACILITY.—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) MODIFICATION.—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) NATURAL GAS.—The term “natural gas” has the meaning given that term in section 2 of the Natural Gas Act (15 U.S.C. 717a).

(4) OIL.—The term “oil” means petroleum or a petroleum product.

(5) ELECTRIC RELIABILITY ORGANIZATION; REGIONAL ENTITY.—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).

(6) INDEPENDENT SYSTEM OPERATOR; REGIONAL TRANSMISSION ORGANIZATION.—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. 1058, the “Promoting Cross-border Energy Infrastructure Act,” was introduced by Rep. Armstrong (R-ND) on February 17, 2023. H.R. 1058 would 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. H.R. 1058 would replace the existing Presidential Permit process that has been established through Executive Order with a statutorily directed process. Under the legislation, the Federal Energy Regulatory Commission (FERC) would be authorized to review applications for cross-border oil and natural gas pipelines, and the Department of Energy (DOE) would be authorized to review applications for cross-border electric transmission facilities.

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 interpretations 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 FERC for cross-border natural gas pipelines, and the DOE for cross-border electric transmission facilities.²

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 Cana-

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.

dian border—have improved reliability, fuel diversity, and efficiencies in system operations, particularly for the New England, New York, and Midwest regions. Over the last decade, the U.S. has experienced growing net electricity imports from both 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 three pending export authorization applications and nine pending Presidential Permit applications before DOE.³

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. According to the Energy Information Administration (EIA), U.S. natural gas pipeline exports to Mexico in the summer of 2021 increased by 44% compared to the previous five-year monthly average.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 Natural Gas Act (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 endpoint for what may be considered to lie within the Commission’s jurisdiction and, therefore, subject to its review procedures. From the

³ DOE, Grid Deployment Office, “Pending Applications.”

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

⁵ <https://www.eia.gov/todayinenergy/detail.php?id=48836>

⁶ 15 United States Code Sec. 717b.

physical feature, the border crossing facilities would be construed to extend to either the U.S./Canada or the U.S./Mexico border.

Crude oil trade between the U.S. and Canada is significant. In 2019, crude oil imports to the U.S. from Canada averaged 3.8 million b/d, while the U.S. exported roughly 459,000 b/d to Canada.⁷ In 2021, the U.S. imported over 212 million barrels of crude oil from Mexico and exported over 1.6 million b/d of refined petroleum products.⁸

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 the National Environmental Policy Act (NEPA)), the stability of trading partners from whom the U.S. obtains crude oil, the security of transport pathways for crude oil supplies to the U.S., and the economic benefits to the U.S.

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, and subsequently had its Presidential Permit revoked by President Biden in January 2021. The Committee also finds that removing the Presidential Permit authority from the executive branch will grant increased regulatory certainty to cross-border facilities that have already been issued a Presidential Permit.

The Committee finds that the statutorily directed process for cross-border permitting embodied by H.R. 1058 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. 1058 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 ap-

⁷ <https://www.eia.gov/todayinenergy/detail.php?id=43995>.

⁸ <https://www.trade.gov/country-commercial-guides/mexico-oil-and-gas>.

plications. 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 comprising 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 NEPA.

COMMITTEE ACTION

On January 31, 2023, the Committee on Energy and Commerce held a full committee hearing on "American Energy Expansion: Strengthening Economic, Environmental, and National Security." The Committee received testimony from:

- The Honorable Paul Dabbar, Former Under Secretary of Energy; Distinguished Visiting Fellow, Center on Global Energy Policy, Columbia University; CEO, Bohr Quantum Technology; and
- Mr. Robert McNally, President, Rapidan Energy Group; and
- Ms. Donna Jackson, Director of Membership Development, National Center for Public Policy Research, Project 21; and
- Dr. Ana Unruh Cohen, Former Majority Staff Director, U.S. House Select Committee on the Climate Crisis.

On February 7, 2023, the Subcommittees on Energy, Climate, and Grid Security and Environment, Manufacturing, and Critical Materials held a legislative hearing on 17 pieces of legislation, including H.R. 1058. The Subcommittees received testimony from:

- The Honorable Mark Menezes, Former United States Deputy Secretary of Energy, Principal at Global Sustainable Energy Advisors, LLC, and Adjunct Professor, Georgetown Law School; and
- The Honorable Bernard McNamee, former Commissioner at the Federal Energy Regulatory Commission, Partner at McGuire Woods; and
- Jeffrey Eshelman, President and CEO, Independent Petroleum Association of America; and
- Katie Sweeney, Executive Vice President and COO, National Mining Association; and
- Raul Garcia, Legislative Director for Healthy Communities, Earthjustice; and
- Tyson Slocum, Director of the Energy Program, Public Citizen.

On February 28, 2023, the Subcommittee on Energy, Climate, and Grid Security met in open markup session and forwarded H.R. 1058, as amended, to the full Committee by a recorded vote of 17 yeas and 10 nays. On March 9, 2023, the full Committee on Energy

and Commerce met in open markup session and ordered H.R. 1058 favorably reported to the House by a recorded vote of 28 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
118TH CONGRESS
ROLL CALL VOTE # 9**

BILL: H.R. 1058, Promoting Cross-border Energy Infrastructure Act

AMENDMENT: An amendment offered by Rep. Castor, No. 1

DISPOSITION: **NOT AGREED TO**, by a roll call vote of 20 yeas and 29 nays.

| REPRESENTATIVE | YEAS | NAYS | PRESENT | REPRESENTATIVE | YEAS | NAYS | PRESENT |
|-------------------|------|------|---------|----------------------|------|------|---------|
| Rep. Rodgers | | X | | Rep. Pallone | X | | |
| Rep. Burgess | | X | | Rep. Eshoo | X | | |
| Rep. Latta | | X | | Rep. DeGette | X | | |
| Rep. Guthrie | | X | | Rep. Schakowsky | X | | |
| Rep. Griffith | | X | | Rep. Matsui | X | | |
| Rep. Bilirakis | | X | | Rep. Castor | X | | |
| Rep. Johnson | | X | | Rep. Sarbanes | X | | |
| Rep. Bucshon | | X | | Rep. Tonko | X | | |
| Rep. Hudson | | X | | Rep. Clarke | X | | |
| Rep. Walberg | | X | | Rep. Cárdenas | X | | |
| Rep. Carter | | X | | Rep. Ruiz | X | | |
| Rep. Duncan | | X | | Rep. Peters | X | | |
| Rep. Palmer | | X | | Rep. Dingell | X | | |
| Rep. Dunn | | X | | Rep. Veasey | X | | |
| Rep. Curtis | | X | | Rep. Kuster | | | |
| Rep. Lesko | | X | | Rep. Kelly | X | | |
| Rep. Pence | | X | | Rep. Barragán | X | | |
| Rep. Crenshaw | | X | | Rep. Blunt Rochester | X | | |
| Rep. Joyce | | X | | Rep. Soto | X | | |
| Rep. Armstrong | | X | | Rep. Craig | X | | |
| Rep. Weber | | X | | Rep. Schrier | | | |
| Rep. Allen | | X | | Rep. Trahan | | | |
| Rep. Balderson | | X | | Rep. Fletcher | X | | |
| Rep. Fulcher | | X | | | | | |
| Rep. Pfluger | | X | | | | | |
| Rep. Harshbarger | | X | | | | | |
| Rep. Miller-Meeks | | X | | | | | |
| Rep. Cammack | | X | | | | | |
| Rep. Obernolte | | X | | | | | |
| | | | | | | | |
| | | | | | | | |
| | | | | | | | |

03/09/2023

COMMITTEE ON ENERGY AND COMMERCE
 118TH CONGRESS
 ROLL CALL VOTE # 10

BILL: H.R. 1058, Promoting Cross-border Energy Infrastructure Act

AMENDMENT: An amendment offered by Rep. Veasey, No. 2

DISPOSITION: NOT AGREED TO, by a roll call vote of 20 yeas and 27 nays.

| REPRESENTATIVE | YEAS | NAYS | PRESENT | REPRESENTATIVE | YEAS | NAYS | PRESENT |
|-------------------|------|------|---------|----------------------|------|------|---------|
| Rep. Rodgers | | X | | Rep. Pallone | X | | |
| Rep. Burgess | | X | | Rep. Eshoo | X | | |
| Rep. Latta | | X | | Rep. DeGette | X | | |
| Rep. Guthrie | | X | | Rep. Schakowsky | X | | |
| Rep. Griffith | | X | | Rep. Matsui | X | | |
| Rep. Bilirakis | | X | | Rep. Castor | X | | |
| Rep. Johnson | | X | | Rep. Sarbanes | X | | |
| Rep. Bucshon | | X | | Rep. Tonko | X | | |
| Rep. Hudson | | X | | Rep. Clarke | X | | |
| Rep. Walberg | | X | | Rep. Cárdenas | X | | |
| Rep. Carter | | X | | Rep. Ruiz | X | | |
| Rep. Duncan | | X | | Rep. Peters | X | | |
| Rep. Palmer | | X | | Rep. Dingell | X | | |
| Rep. Dunn | | X | | Rep. Veasey | X | | |
| Rep. Curtis | | X | | Rep. Kuster | | | |
| Rep. Lesko | | X | | Rep. Kelly | X | | |
| Rep. Pence | | X | | Rep. Barragán | X | | |
| Rep. Crenshaw | | X | | Rep. Blunt Rochester | X | | |
| Rep. Joyce | | X | | Rep. Soto | X | | |
| Rep. Armstrong | | X | | Rep. Craig | X | | |
| Rep. Weber | | | | Rep. Schrier | | | |
| Rep. Allen | | X | | Rep. Trahan | | | |
| Rep. Balderson | | X | | Rep. Fletcher | X | | |
| Rep. Fulcher | | X | | | | | |
| Rep. Pfluger | | X | | | | | |
| Rep. Harshbarger | | X | | | | | |
| Rep. Miller-Meeks | | | | | | | |
| Rep. Cammack | | X | | | | | |
| Rep. Obermolte | | X | | | | | |
| | | | | | | | |
| | | | | | | | |
| | | | | | | | |

**COMMITTEE ON ENERGY AND COMMERCE
118TH CONGRESS
ROLL CALL VOTE # 11**

BILL: H.R. 1058, Promoting Cross-border Energy Infrastructure Act

AMENDMENT: A motion by Mrs. Rodgers to order H.R. 1058 favorably reported to the House, as amended (Final Passage).

DISPOSITION: **AGREED TO**, by a roll call vote of 28 yeas and 20 nays.

| REPRESENTATIVE | YEAS | NAYS | PRESENT | REPRESENTATIVE | YEAS | NAYS | PRESENT |
|-------------------|------|------|---------|----------------------|------|------|---------|
| Rep. Rodgers | X | | | Rep. Pallone | | X | |
| Rep. Burgess | X | | | Rep. Eshoo | | X | |
| Rep. Latta | X | | | Rep. DeGette | | X | |
| Rep. Guthrie | X | | | Rep. Schakowsky | | X | |
| Rep. Griffith | X | | | Rep. Matsui | | X | |
| Rep. Bilirakis | X | | | Rep. Castor | | X | |
| Rep. Johnson | X | | | Rep. Sarbanes | | X | |
| Rep. Bucshon | | | | Rep. Tonko | | X | |
| Rep. Hudson | X | | | Rep. Clarke | | X | |
| Rep. Walberg | X | | | Rep. Cárdenas | | X | |
| Rep. Carter | X | | | Rep. Ruiz | | X | |
| Rep. Duncan | X | | | Rep. Peters | | X | |
| Rep. Palmer | X | | | Rep. Dingell | | X | |
| Rep. Dunn | X | | | Rep. Veasey | | X | |
| Rep. Curtis | X | | | Rep. Kuster | | | |
| Rep. Lesko | X | | | Rep. Kelly | | X | |
| Rep. Pence | X | | | Rep. Barragán | | X | |
| Rep. Crenshaw | X | | | Rep. Blunt Rochester | | X | |
| Rep. Joyce | X | | | Rep. Soto | | X | |
| Rep. Armstrong | X | | | Rep. Craig | | X | |
| Rep. Weber | X | | | Rep. Schrier | | | |
| Rep. Allen | X | | | Rep. Trahan | | | |
| Rep. Balderson | X | | | Rep. Fletcher | | X | |
| Rep. Fulcher | X | | | | | | |
| Rep. Pfluger | X | | | | | | |
| Rep. Harshbarger | X | | | | | | |
| Rep. Miller-Meeks | X | | | | | | |
| Rep. Cammack | X | | | | | | |
| Rep. Obernolte | X | | | | | | |
| | | | | | | | |
| | | | | | | | |
| | | | | | | | |

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. 1058 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, at the time this report was filed, the cost estimate prepared by the Director of the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974 was not available.

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. 1058 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.

RELATED COMMITTEE AND SUBCOMMITTEE HEARINGS

Pursuant to clause 3(c)(6) of rule XIII, (1) the following hearings were used to develop or consider H.R. 1058:

On January 31, 2023, the Committee on Energy and Commerce held an oversight hearing entitled, “American Energy Expansion: Strengthening Economic, Environmental, and National Security.” The Committee received testimony from:

- The Honorable Paul Dabbar, Former Under Secretary of Energy, Department of Energy;
- Robert McNalley, President, Rapidan Energy Group, LLC;
- Donna Jackson, Director of Membership Development—National Center for Public Policy Research, Project 21; and
- Ana Unruh Cohen, Former Majority Staff Director, U.S. House Select Committee on the Climate Crisis.

On February 16, 2023, the Subcommittee on Energy, Climate, and Grid Security held a field hearing in Midland, Texas, entitled, “American Energy Expansion: Improving Local Economies and Communities” Way of Life.” The Committee received testimony from:

- The Honorable Lori Blong, Mayor of Midland, Texas, and President of Octane Energy;
- Adrian Carrasco, Chairman Midland Hispanic Chamber of Commerce, and President of Premier Energy Services;
- Steven Pruet, President and CEO, Elevation Resources, and Chairman of the Board for Independent Petroleum Association of America; and
- Dr. Michael Zavada, Professor of Biology and Geosciences, and Chair, Department of Geosciences at The University of Texas—Permian Basin.

(2) The following related hearing was held:

On February 7, 2023, the Subcommittees on Energy, Climate, and Grid Security and Environment, Manufacturing, and Critical Materials held a joint hearing entitled, “Unleashing American Energy, Lowering Energy Costs, and Strengthening Supply Chains,” on 17 pieces of legislation, including H.R. 1058. The Subcommittees received testimony from:

- The Honorable Mark Menezes, Former United States Deputy Secretary of Energy, Department of Energy;
- The Honorable Bernard McNamee, Former Commissioner, Federal Energy Regulatory Commission;
- Jeffrey Eshelman, II, President and Chief Executive Officer, Independent Petroleum Association of America;
- Katie Sweeney, Executive Vice President and Chief Operating Officer, National Mining Association;
- Raul Garcia, Legislative Director for Healthy Communities, Earthjustice; and
- Tyson Slocum, Director of the Energy Program, Public Citizen.

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. At the time this report was filed, the estimate was not available.

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. 1058 contains no earmarks, limited tax benefits, or limited tariff benefits.

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 the President may not revoke a Presidential permit issued pursuant to a relevant Executive Order for the construction, connection, operation, or maintenance of an oil or natural gas pipeline or electric transmission facility unless such revocation is authorized by Congress.

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

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

With respect to the requirement of clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, this section was not made available to the Committee in time for the filing of this report.

MINORITY VIEWS

H.R. 1058 would substantially weaken the Federal review and authorization process for cross-border crude oil, petroleum product, and natural gas pipelines and electricity transmission lines. The new process established by the bill effectively exempts cross-border crude oil and petroleum product pipelines from environmental reviews under the National Environmental Policy Act (NEPA) by narrowing the scope of Federal authorization to just the portion of the project crossing the border—although the bill is unclear as to the actual scope of its application. The new process created by the bill also creates a presumption that cross-border energy infrastructure projects are in the public interest, but forces the Department of Energy (DOE) and the Federal Energy Regulatory Commission (FERC) to weigh in on matters of foreign diplomacy and national security and does not specify the agencies that DOE or FERC must consult with before making a decision on national interest.

The cumulative impact of these changes would be to allow cross-border energy projects to be approved with less environmental and public interest scrutiny than domestic energy projects. Citizens and other interested parties would be left with few avenues to request information or mitigating actions.

Currently, proposed crude oil, petroleum product, and natural gas pipelines and electricity transmission lines that cross international borders must obtain a Presidential permit to do so.¹ A series of executive orders have delegated the powers to the Department of State (DOS) for crude oil and petroleum product pipelines^{2, 3, 4}, DOE for electricity transmission lines⁵, and FERC for natural gas pipelines.^{6, 7} Executive Order 13867 restructured the process for granting Presidential permits for crude oil and petroleum product pipelines and requires that DOS issue a recommendation to the President with regards to if issuing the permit would or would not serve the foreign policy interests of the United States, but provides that “any decision to issue, deny, or amend a permit under this section shall be made solely by the President”.⁸ The executive order delegating power to DOE and FERC for cross-border electricity transmission lines and natural gas pipelines explicitly allows those agencies to issue Presidential permits.

The current process for crude oil and petroleum product pipelines requires that DOS evaluate the pipeline in its entirety when deter-

¹ Congressional Research Service, *Presidential Permits for Border Crossing Energy Facilities* (Aug. 1, 2017) (R43261).

² Exec. Order No. 11423, 33 Fed. Reg. 11741 (Aug. 16, 1968).

³ Exec. Order No. 13337, 69 Fed. Reg. 25299 (May 5, 2004).

⁴ Exec. Order No. 13867, 84 Fed. Reg. 15491 (Apr. 15, 2019).

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

⁶ Id.

⁷ Department of Energy, *Delegation Order No. S1-DEL-FERC-2006 to the Federal Energy Regulatory Commission* (May 16, 2006).

⁸ Exec. Order No. 13867, 84 Fed. Reg. 15491 (Apr. 15, 2019).

mining if a proposed pipeline serves the foreign policy interests of the United States.⁹ This determination about the entirety of the pipeline triggers an environmental review under NEPA—and, as the decision covers the entire pipeline (or at least its portion within the United States), so must the environmental review. H.R. 1058 would gut that requirement as it restricts DOE’s review of the pipeline to just the portion crossing the international border—meaning that the agency’s environmental review would be constrained to just the infinitesimal sliver of the pipeline crossing the border. As oil pipelines do not need to seek siting authority from any Federal agency, this would rob the Federal government of the only chance it has to conduct a comprehensive environmental review of a cross-border crude oil or petroleum product pipeline.

A major flaw of the bill’s is the fact that it circumvents the process that is currently in place for DOS and the Department of Defense (DOD) to weigh in on the national security and foreign policy implications of cross-border energy infrastructure. Executive Order 10485 requires that DOE or FERC obtain favorable recommendations from both DOS and DOD for a cross-border project before issuing a Presidential permit, and if the agencies cannot come to agreement on whether or not a permit should be issued, the decision is passed up to the President.¹⁰ While section 2(a)(2)(A) of H.R. 1058 requires that the relevant official or agency consult with “the appropriate Federal agencies,” it neither defines which Federal agencies are appropriate nor requires that the relevant official or agency heed the conclusions of the appropriate Federal agencies, potentially setting up a situation in which DOE or FERC could approve a project over the foreign policy or national security objections of DOS or DOD, requiring DOE and FERC to become arbiters of foreign policy in addition to their jurisdictions over energy policy.

Additionally, section 2(g)(1) of H.R. 1058 is troublingly vague—it is unclear if the term “border-crossing facility” consists of just the infinitesimal sliver of the pipeline that physically straddles the border between the United States and a foreign country, a span of dozens, hundreds, or thousands of feet around that sliver, or the entirety of the pipeline. What the definition is has major implications for environmental reviews, as discussed above, and for FERC in general: currently the commission has no experience in siting oil pipelines, and the bill provides no resources for the commission to hire staff to site cross-border oil pipelines. In its report, the majority claims that “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.” However, there is no statutory language requiring this within the text of H.R. 1058.

The majority also claims in its report that “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 NEPA.” Unfortunately, the only concrete piece of evidence indicates that statement may not be the case. When nearly identical legislation was considered on the House floor

⁹Id.

¹⁰Exec. Order No. 10485, 18 Fed. Reg. 5397 (Sept. 3, 1953).

during the first session of the 115th Congress, then-Rep. Gene Green (D-TX) offered an amendment clarifying that nothing in the bill affected the scope of reviews required pursuant to NEPA.¹¹ The amendment was accepted by voice vote. However, when the bill was re-introduced this Congress, the text of the bill was effectively identical to the version that had been engrossed by the House in the 115th Congress¹², except that the language relating to Rep. Green’s amendment had been removed. An identical amendment by Rep. Veasey was defeated on a recorded vote in Full Committee markup, suggesting that the majority’s understanding is that the bill, as written, does affect the scope of environmental reviews under NEPA.

The bill is also contradictory and contains conflicting deadlines. Section 2(a)(2)(A) of the bill requires that the relevant official or agency grant a certificate within 120 days after the agency takes a final action under NEPA (unless that relevant official or agency finds that the facility is not in the public interest of the United States). However, section 2(b) amends the Natural Gas Act (NGA) to require that FERC grant an application to export natural gas to Canada or Mexico within 30 days of receipt of the application—making no mention of the time required to conduct an environmental review.

H.R. 1058 also guts the power of the Federal government to put conditions on the export of electricity. Section 202(e) of the Federal Power Act (FPA) requires FERC to grant the export of electricity as long as such export does not impair the domestic electricity supply of the United States, but allows the Commission to add terms and conditions it deems appropriate on to the application. Section 2(c)(1) of H.R. 1058 repeals section 202(e) of the FPA and, under section 2(a)(2)(C) of the bill, the only condition DOE is allowed to impose upon a cross-border electricity line is that it conform with the policies and standards of electricity reliability entities and any relevant Independent System Operator or Regional Transmission Organization. The removal of the 202(e) conditioning authority could undermine FERC’s mandate to ensure non-discriminatory open access to the national grid, as operators of cross-border transmission facilities could demand market participants pay them discriminatory or onerous tariffs.

Sections 2(e) and 2(h)(2) effectively create an unlimited right to expand existing cross-border facilities without having to go through the already abbreviated process the bill creates. Specifically, the fact that a “change in flow volume” through a pipeline is defined as a modification that does not require an additional certificate (and, by extension, does not require an environmental review) is particularly egregious, as the environmental, foreign policy, and national security impacts of a drastic increase in volume of energy flowing through a cross-border facility could dwarf the original impacts of the facility with zero Federal oversight.

Sections 2(a)(3)(C) and 2(f) (which was added as an amendment by Rep. Tim Walberg (R-MI) at Subcommittee markup) of H.R. 1058 create a double standard, allowing projects that have been de-

¹¹ Congressional Record, H6019 (July 19, 2017).

¹² H.R. 2883, 115th Cong. (2017).

nied a Presidential permit or kept waiting for two years a second run at an authorization while prohibiting the President from revoking permits that were previously issued.

On February 7, 2023, at a joint legislative hearing of the Subcommittees on Energy, Climate, and Grid Security and Environment, Manufacturing, and Critical Materials, the Subcommittees heard testimony from Mr. Tyson Slocum, who testified that H.R. 1058 would allow natural gas companies to dodge the requirements of section 3 of the Natural Gas Act, and more easily export natural gas to Mexico, where it would then be re-exported abroad through an LNG terminal. He also testified that increased LNG exports increased domestic natural gas prices, meaning that H.R. 1058 would be likely to increase the prices that American consumers pay for natural gas.¹³

During the Subcommittee and Full Committee markups of H.R. 1058, Democrats offered several amendments to the bill to address their concerns. At the Subcommittee markup, the Ranking Member of the Subcommittee on Energy, Climate, and Grid Security, Rep. Diana DeGette (D-CO) offered an amendment that would have flipped the presumption of public interest, and required DOE and FERC to only grant certificates if the agencies believed that a cross-border project was in the public interest. At the Full Committee markup, Rep. Kathy Castor (D-FL) offered an amendment that would have prevented the bill from taking effect until DOE certified that it would not increase crude oil, petroleum product, natural gas, or electricity prices. Rep. Marc Veasey (D-TX) also offered an amendment that affirmed that the bill did not affect the scope of any environmental review required under NEPA—identical to the amendment accepted by the full House on the floor in 2017. All three amendments failed on a recorded vote.

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

FRANK PALLONE, Jr.,

Ranking Member, Committee on Energy and Commerce.



¹³House Committee on Energy and Commerce, Testimony of Tyson Slocum, Director of the Energy Program, Public Citizen, Hearing on Unleashing American Energy, Lowering Energy Costs, and Strengthening Supply Chains, 118th Cong. (Feb. 7, 2023).