

116TH CONGRESS
2D SESSION

S. 4673

To amend the Natural Gas Act to require the Federal Energy Regulatory Commission to consider certain factors in issuing certificates of public convenience and necessity under that Act, to modify the requirements for the right to exercise eminent domain in construction of pipelines under that Act, to provide that the right of eminent domain may not be exercised under that Act for projects for the exportation of natural gas, and for other purposes.

IN THE SENATE OF THE UNITED STATES

SEPTEMBER 23, 2020

Mr. WYDEN (for himself and Mr. MERKLEY) introduced the following bill; which was read twice and referred to the Committee on Commerce, Science, and Transportation

A BILL

To amend the Natural Gas Act to require the Federal Energy Regulatory Commission to consider certain factors in issuing certificates of public convenience and necessity under that Act, to modify the requirements for the right to exercise eminent domain in construction of pipelines under that Act, to provide that the right of eminent domain may not be exercised under that Act for projects for the exportation of natural gas, and for other purposes.

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

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “Reaffirming Property
3 Rights Through Natural Gas Act Modernization Act”.

4 **SEC. 2. NO PRESUMPTION OF PUBLIC INTEREST.**

5 Section 3 of the Natural Gas Act (15 U.S.C. 717b)
6 is amended by adding at the end the following:

7 “(g) NO PRESUMPTION OF PUBLIC INTEREST.—In
8 determining whether a proposed exportation of natural gas
9 is consistent with the public interest under subsection (a),
10 the Commission, and any other Federal agency that may
11 be involved in the determination, shall not make a pre-
12 sumption that the exportation is consistent with the public
13 interest.”.

14 **SEC. 3. BALANCING CONSIDERATIONS OF PUBLIC NECES-**
15 **SITY.**

16 Section 7(e) of the Natural Gas Act (15 U.S.C.
17 717f(e)) is amended—

18 (1) in the second sentence, by striking “The
19 Commission” and inserting the following:

20 “(2) TERMS AND CONDITIONS.—The Commis-
21 sion”;

22 (2) by striking “(e) Except” and inserting the
23 following:

24 “(e) PROCEDURE.—

25 “(1) IN GENERAL.—Except”; and

26 (3) by adding at the end the following:

1 “(3) FACTORS FOR CONSIDERATION.—In deter-
2 mining whether a proposed project is or will be re-
3 quired by the present or future public convenience
4 and necessity under paragraph (1), the Commission
5 shall make findings of fact, based on the evidence in
6 the record before the Commission, regarding, at a
7 minimum—

8 “(A) the private property rights of any im-
9 pacted landowners, including viable alternatives
10 to eminent domain proceedings;

11 “(B) whether the benefits of the project
12 accrue substantially to the public at large, rath-
13 er than to the applicant or a limited private in-
14 terest;

15 “(C) the practicability of alternatives and
16 substitutes to the project, including whether
17 there exists available capacity of—

18 “(i) natural gas in a similar project;

19 or

20 “(ii) a substitute to natural gas;

21 “(D) any wildlife and ecological impacts of
22 the project, including impacts recognized in the
23 States and local jurisdictions in which the
24 project is proposed to be located;

1 “(E) the net noxious chemical and green-
 2 house gas emissions that the project would emit
 3 or offset during the course of the construction
 4 and service life of the project; and

5 “(F) the extent to which the project in-
 6 creases environmental and health burdens to
 7 low-income communities and communities of
 8 color.”.

9 **SEC. 4. NOTICE TO LANDOWNERS.**

10 (a) INITIAL NOTICE TO AFFECTED LANDOWNERS.—
 11 Section 7(d) of the Natural Gas Act (15 U.S.C. 717f(d))
 12 is amended—

13 (1) by striking “(d) Application for certificates”
 14 and inserting the following:

15 “(d) APPLICATIONS.—

16 “(1) IN GENERAL.—An application for a certifi-
 17 cate of public convenience and necessity under this
 18 section”; and

19 (2) by adding at the end the following:

20 “(2) REQUIREMENTS FOR NOTICE.—

21 “(A) IN GENERAL.—Before serving a no-
 22 tice described in paragraph (1), the applicant
 23 shall submit the notice to the Commission for
 24 review and approval.

1 “(B) APPROVAL.—The Commission shall
 2 only approve a notice under subparagraph (A)
 3 if the notice satisfies all applicable requirements
 4 of this section.

5 “(C) INSTRUCTIONS FOR MOTIONS TO IN-
 6 Tervene.—A notice described in paragraph (1)
 7 shall include complete instructions regarding
 8 the method by which a notice recipient can
 9 move to intervene, through electronic or paper
 10 filing, in the application process, including—

11 “(i) a clear statement of the required
 12 contents of such a motion to intervene;

13 “(ii) a separate, bolded section in-
 14 forming notice recipients that the notice
 15 recipients must intervene in the application
 16 process to preserve the right to judicial re-
 17 view; and

18 “(iii) the deadline for moving to inter-
 19 vene, which shall be not later than the date
 20 that is 60 days after the date on which the
 21 notice recipient is confirmed to have re-
 22 ceived the notice.

23 “(D) REQUIREMENT.—The applicant shall
 24 submit to the Commission, together with the
 25 notice under subparagraph (A), a list of all per-

sons to whom the applicant is required to serve
the notice, including—

“(i) the address of each such person;
and

“(ii) after receipt of the notice by
each such person, confirmation of receipt
of the notice.

“(E) DISCLOSURE.—On request by any
person, not later than 15 days after the date of
receipt of the request, the Commission shall dis-
close to that person the list submitted under
subparagraph (D).”.

(b) SUBSEQUENT NOTICE TO AFFECTED LAND-
OWNERS.—Section 7(e) of the Natural Gas Act (15 U.S.C.
717f(e)) (as amended by section 3) is amended by adding
at the end the following:

“(4) REHEARING NOTICE REQUIREMENT.—

“(A) IN GENERAL.—Not later than 15
days after the date on which a certificate of
public convenience and necessity is issued under
paragraph (1), the holder of the certificate of
public convenience and necessity shall serve to
all persons that received notice under sub-
section (d) an actual notice of the decision of

1 the Commission to issue the certificate of public
2 convenience and necessity.

3 “(B) CONTENTS.—A notice under sub-
4 paragraph (A) shall include complete instruc-
5 tions regarding the method by which a notice
6 recipient can petition for a rehearing of the de-
7 cision of the Commission to issue the certificate
8 of public convenience and necessity, including—

9 “(i) the required contents of a petition
10 for rehearing;

11 “(ii) a separate, bolded section in-
12 forming notice recipients that the notice
13 recipients must petition for a rehearing on
14 an issue covered by the certificate to pre-
15 serve the right to judicial review on that
16 issue; and

17 “(iii) information regarding the re-
18 quirements for rehearing and judicial re-
19 view under subsections (a) and (b) of sec-
20 tion 19 that apply to the petition for re-
21 hearing, including a specific reference to
22 any relevant deadlines applicable to the pe-
23 tition.”.

1 **SEC. 5. REQUIREMENTS FOR EXERCISE OF EMINENT DO-**
 2 **MAIN.**

3 (a) IN GENERAL.—Section 7(h) of the Natural Gas
 4 Act (15 U.S.C. 717f(h)) is amended—

5 (1) in the second sentence—

6 (A) by striking “where the property is situ-
 7 ated: *Provided*, That the” and inserting “in
 8 which the property is situated, subject to the
 9 condition that the”; and

10 (B) by striking “The practice” and insert-
 11 ing the following:

12 “(2) PRACTICE AND PROCEDURE.—The prac-
 13 tice”;

14 (2) by striking “(h) When any holder” and in-
 15 serting the following:

16 “(h) EMINENT DOMAIN.—

17 “(1) IN GENERAL.—Except as provided in para-
 18 graph (4), in any case in which a holder”; and

19 (3) by adding at the end the following:

20 “(3) REQUIREMENTS.—

21 “(A) IN GENERAL.—Subject to subpara-
 22 graph (B), a holder of a certificate of public
 23 convenience and necessity may not exercise the
 24 right of eminent domain for a project under
 25 this subsection until the latest of, as applica-
 26 ble—

1 “(i) the date on which the holder has
 2 received all required certifications and au-
 3 thorizations for the project from any Fed-
 4 eral agencies (other than the Commission)
 5 or State administrative agencies acting
 6 pursuant to Federal law;

7 “(ii) the date on which the applicant
 8 serves each notice in accordance with sub-
 9 section (e)(4); and

10 “(iii) the date on which each timely
 11 motion to intervene relating to the certifi-
 12 cate under subsection (d)(2)(C) has been
 13 acted on by the Commission.

14 “(B) EFFECT OF VACATED OR RESCINDED
 15 CERTIFICATION OR AUTHORIZATION.—If a cer-
 16 tification or authorization for a project from
 17 any Federal agency (other than the Commis-
 18 sion) or State administrative agency acting pur-
 19 suant to Federal law is rescinded or vacated—

20 “(i) the holder of a certificate of pub-
 21 lic convenience and necessity for the
 22 project may not exercise the right of emi-
 23 nent domain for the project under this
 24 subsection; and

1 “(ii) if land has already been acquired
 2 by the exercise of the right of eminent do-
 3 main under this subsection, construction of
 4 the project on that land shall be prohib-
 5 ited.”.

6 (b) LIMITATION ON USE OF EMINENT DOMAIN FOR
 7 EXPORTS.—Section 7(h) of the Natural Gas Act (15
 8 U.S.C. 717f(h)) (as amended by subsection (a)) is amend-
 9 ed by adding at the end the following:

10 “(4) LIMITATION ON USE OF EMINENT DOMAIN
 11 FOR EXPORTS.—A holder of a certificate of public
 12 convenience and necessity may not exercise the right
 13 of eminent domain under this subsection if the
 14 project covered by the certificate is a project to be
 15 constructed substantially for the purpose of trans-
 16 porting natural gas to an LNG terminal for export
 17 from the United States to a foreign country.”.

18 **SEC. 6. REQUIREMENT TO EXECUTE PROJECT ONLY FOR**
 19 **CERTAIN PURPOSES.**

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

22 “(i) REQUIREMENT TO EXECUTE PROJECT ONLY
 23 FOR CERTAIN PURPOSES.—The holder of a certificate of
 24 public convenience and necessity shall execute the project

1 covered by the certificate only for the purposes that
2 were—

3 “(1) expressly described in the application for
4 the certificate; and

5 “(2) communicated to—

6 “(A) the Commission;

7 “(B) the persons that received a notice of
8 the application for the certificate under sub-
9 section (d); and

10 “(C) the public.”.

11 **SEC. 7. CONDITIONS UNDER WHICH CERTIFICATE OF PUB-**
12 **LIC CONVENIENCE AND NECESSITY MAY BE**
13 **RESCINDED.**

14 Section 7 of the Natural Gas Act (15 U.S.C. 717f)
15 (as amended by section 6) is amended by adding at the
16 end the following:

17 “(j) CONDITIONS UNDER WHICH CERTIFICATE MAY
18 BE RESCINDED.—

19 “(1) IN GENERAL.—A certificate of public con-
20 venience and necessity shall be rescinded on a deter-
21 mination by the Commission, or on a determination
22 after a rehearing, that—

23 “(A) the scope of the project covered by
24 the certificate has changed materially;

1 “(B) the rationale of public convenience
2 and necessity by which the Commission issued
3 the certificate has changed; or

4 “(C) the applicant has failed to begin sub-
5 stantial construction on the project covered by
6 the certificate, such that the observed delay is
7 not consistent with a prior finding of public
8 convenience and necessity.

9 “(2) FAILURE TO INITIATE SUBSTANTIAL CON-
10 STRUCTION.—If the holder of a certificate of public
11 convenience and necessity fails to initiate substantial
12 construction of the project covered by the certificate
13 by the date specified by the certificate, the certifi-
14 cate shall be rescinded on that date.

15 “(3) REAPPLICATION.—The holder of a certifi-
16 cate of public convenience and necessity rescinded
17 under paragraph (1) or (2) may reapply for the cer-
18 tificate in accordance with the applicable require-
19 ments of this Act.

20 “(4) REQUIREMENT.—Any certificate of public
21 convenience and necessity that is issued by the Com-
22 mission shall include the condition that title in and
23 to any property that was acquired under subsection
24 (h)(1) by the exercise of the right of eminent domain
25 pursuant to a certificate of public convenience and

1 necessity that was rescinded under paragraph (1) or
 2 (2) shall immediately revert to the prior property
 3 owner.”.

4 **SEC. 8. REQUIREMENTS FOR ACQUISITION OF PROPERTY.**

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

8 “(k) REQUIREMENTS FOR ACQUISITION OF PROP-
 9 ERTY.—

10 “(1) APPRAISAL.—

11 “(A) IN GENERAL.—A holder of a certifi-
 12 cate of public convenience and necessity seeking
 13 to acquire property for the project covered by
 14 the certificate by just compensation or the exer-
 15 cise of the right of eminent domain under sub-
 16 section (h)(1) shall, prior to making an offer of
 17 just compensation or exercising that right, ap-
 18 praise the property in accordance with—

19 “(i) the Uniform Appraisal Standards
 20 for Federal Land Acquisitions; and

21 “(ii) the Uniform Standards of Pro-
 22 fessional Appraisal Practice.

23 “(B) OPPORTUNITY TO ACCOMPANY AP-
 24 PRAISER DURING INSPECTION.—The owner of
 25 any property subject to an appraisal under sub-

1 paragraph (A), or the designated representative
2 of the owner, shall be given an opportunity to
3 accompany the appraiser during the inspection
4 by the appraiser of the property.

5 “(2) JUST COMPENSATION.—A holder of a cer-
6 tificate of public convenience and necessity seeking
7 to acquire property for the project covered by the
8 certificate by just compensation shall make the offer
9 of just compensation—

10 “(A) in writing; and

11 “(B) in an amount that—

12 “(i) is not less than the fair market
13 value of the property, as defined by the ap-
14 praiser; and

15 “(ii) includes just compensation for
16 any damages that would result to the re-
17 maining property of the owner.

18 “(3) SURRENDER OF PROPERTY.—The owner of
19 property to be acquired by a holder of a certificate
20 of public convenience and necessity shall not be re-
21 quired to surrender possession of the property be-
22 fore, as applicable—

23 “(A) the holder pays the agreed purchase
24 price; or

1 “(B) if the property is acquired through a
 2 proceeding under which the holder exercised the
 3 right of eminent domain under subsection
 4 (h)(1), the owner receives the compensation
 5 awarded by the court in that proceeding.”.

6 **SEC. 9. APPEAL RIGHTS TO FEDERAL ENERGY REGU-**
 7 **LATORY COMMISSION.**

8 (a) IN GENERAL.—Section 19(a) of the Natural Gas
 9 Act (15 U.S.C. 717r(a)) is amended—

10 (1) in the first sentence, by striking “(a) Any
 11 person, State, municipality, or State commission ag-
 12 grieved by an order issued by the Commission in a
 13 proceeding under this act to which such person,
 14 State, municipality, or State commission is a party
 15 may apply” and inserting the following:

16 “(a) REHEARING.—

17 “(1) PETITIONS FOR REHEARING.—

18 “(A) IN GENERAL.—Any person, State,
 19 municipality, or State commission that is ag-
 20 grieved by an order issued by the Commission
 21 in a proceeding under this Act to which the per-
 22 son, State, municipality, or State commission is
 23 a party may petition”;

24 (2) by striking the second sentence and insert-
 25 ing the following:

1 “(B) LIMITATION.—No proceeding to re-
 2 view an order of the Commission shall be
 3 brought by a person unless the person has sub-
 4 mitted to the Commission a petition for rehear-
 5 ing regarding the order in accordance with this
 6 paragraph.

7 “(C) CONTENTS.—A petition for rehearing
 8 under this paragraph shall describe specifically
 9 the one or more grounds on which the petition
 10 is based.”;

11 (3) in the third sentence, by striking “Upon
 12 such application” and inserting the following:

13 “(2) ACTION BY COMMISSION.—

14 “(A) IN GENERAL.—On receipt of a peti-
 15 tion under paragraph (1),”;

16 (4) by striking the fourth and fifth sentences
 17 and inserting the following:

18 “(B) EFFECT OF FAILURE TO ACT.—In
 19 any case in which the Commission fails to issue
 20 a final agency action that is reviewable under
 21 subsection (b) with respect to a petition for re-
 22 hearing by the date that is 60 days after the
 23 date on which the petition is filed, the petition
 24 shall be deemed to be denied.”; and

1 (5) in the sixth sentence, by striking “Until the
2 record in a proceeding shall have been” and insert-
3 ing the following:

4 “(C) DEADLINE FOR ACTION.—Until the
5 date on which the record relating to a pro-
6 ceeding is”.

7 (b) STAY OF COMMISSION ORDER.—Section 19(c) of
8 the Natural Gas Act (15 U.S.C. 717r(c)) is amended—

9 (1) in the second sentence, by striking “The
10 commencement” and inserting the following:

11 “(4) EFFECT OF COMMENCEMENT OF PRO-
12 CEEDINGS.—The commencement”;

13 (2) in the first sentence, by striking “(c) The
14 filing of an application” and inserting the following:

15 “(c) STAY OF COMMISSION ORDER.—

16 “(1) IN GENERAL.—The filing of a petition”;

17 (3) in paragraph (1) (as so designated)—

18 (A) by striking “not, unless specifically or-
19 dered by the Commission,”; and

20 (B) by inserting “during the period in
21 which the Commission is considering the peti-
22 tion for rehearing” before the period at the end;
23 and

24 (4) by inserting after paragraph (1) (as so des-
25 ignated) the following:

1 “(2) EFFECT OF GRANT OF REHEARING.—

2 “(A) IN GENERAL.—If the Commission
3 grants a rehearing on the merits of an order of
4 the Commission pursuant to a petition for re-
5 hearing, the order shall be deemed to be
6 nonfinal for purposes of section 7(h).

7 “(B) EMINENT DOMAIN.—With respect to
8 an order of the Commission that is deemed to
9 be nonfinal under subparagraph (A), beginning
10 on the date on which the rehearing proceedings
11 commence under subsection (b) with respect to
12 the order and ending on the date on which the
13 applicable court issues a final judgment and de-
14 cree under that subsection with respect to the
15 order—

16 “(i) no district or State court shall
17 have jurisdiction over eminent domain pro-
18 ceedings under section 7(h) that are com-
19 menced pursuant to that order; and

20 “(ii) the holder of a certificate of pub-
21 lic convenience and necessity issued pursu-
22 ant to the order may not exercise the right
23 of eminent domain under section 7(h).

24 “(3) EFFECT OF DENIAL OF REHEARING.—If
25 the Commission denies a petition for rehearing or

1 fails to act on the petition for rehearing by the dead-
2 line described in subsection (a)(2)(B), the order that
3 is the subject of the petition shall be deemed to be
4 final for all purposes.”.

5 (c) TECHNICAL AMENDMENTS.—Section 19(b) of the
6 Natural Gas Act (15 U.S.C. 717r(b)) is amended—

7 (1) by striking “application” each place it ap-
8 pears and inserting “petition”; and

9 (2) by striking “such petition” each place it ap-
10 pears and inserting “the written petition praying
11 that the order of the Commission be modified or set
12 aside in whole or in part”.

○