

PROMOTING INTERAGENCY COORDINATION FOR REVIEW
OF NATURAL GAS PIPELINES 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. 2910]

[Including cost estimate of the Congressional Budget Office]

The Committee on Energy and Commerce, to whom was referred the bill (H.R. 2910) to provide for Federal and State agency coordination in the approval of certain authorizations under the Natural Gas Act, and for other purposes, having considered the same, report favorably thereon without amendment and recommend that the bill do pass.

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PURPOSE AND SUMMARY

H.R. 2910, the “Promoting Interagency Coordination for Review of Natural Gas Pipelines Act,” was introduced by Representative Flores (R-TX) on June 15, 2017. The legislation would help address the critical need to expand and modernize the nation’s natural gas pipeline infrastructure by promoting more timely and efficient reviews.

BACKGROUND AND NEED FOR LEGISLATION

The Federal Energy Regulatory Commission (FERC) is the principal Federal agency involved in the review of interstate natural gas pipelines. FERC has exclusive authority under section 7 of the Natural Gas Act (NGA) to review and grant the certificate of public convenience and necessity required to construct a new or expanded interstate natural gas pipeline. FERC conducts the environmental review of each proposed natural gas pipeline project as required under the National Environmental Policy Act (NEPA). Under the Energy Policy Act of 2005 (EPAAct), FERC is designated as the lead agency for coordinating necessary environmental reviews and associated Federal authorizations. As the lead agency, FERC often coordinates with a variety of Federal, State, and local governments and Indian tribes to balance a wide range of issues, including potential impacts on environmental and wildlife resources, land-use, and property rights.

Multiple permits are often required for a natural gas pipeline project, including permits under the Clean Water Act, Endangered Species Act, and Clean Air Act. Under current FERC regulations, Federal and State agencies participate in the development of the NEPA analysis for a pipeline project and then are required to complete their respective permit application reviews no later than 90 days after FERC issues its final environmental document, unless another schedule is established by Federal law.¹

Despite the increased authority given to FERC under EPAAct, there is growing evidence that pipeline infrastructure approvals are being delayed unnecessarily due to a lack of coordination or insufficient action among agencies involved in the permitting process. A December 2012 study conducted by the INGAA Foundation found that since the enactment of EPAAct’s permitting reforms, the occurrence of Federal authorization delays exceeding 90 days has risen from 8 percent to 28 percent, while delays exceeding 180 days have risen from 3 percent to 20 percent.² A February 2013 GAO report discussed the complexities of interstate pipeline permitting and described the various groups of stakeholders and permitting steps.³ While FERC has established a pre-filing phase to facilitate and expedite the review, some agencies and States do not fully participate in the process, leading to delays. Testimony before the Subcommittee on Energy has shown that the lack of coordination

¹ 18 C.F.R. § 157.22

² INGAA Foundation, *Expedited Federal Authorization of Interstate Natural Gas Pipelines: Are Agencies Complying with EPAAct?*, December 21, 2012.

³ Government Accountability Office, *Interstate and Intrastate Natural Gas Permitting Processes Include Multiple Steps, and Time Frames Vary*, February 2013.

among Federal and State regulators is having a negative impact on infrastructure modernization, job creation, and economic growth.⁴

H.R. 2910 would improve the permitting process by strengthening the lead agency role of FERC and further defining the process for participating Federal and State agencies. The intent of these provisions is to involve stakeholders sooner so that they can be involved in the setting of the schedule and identify issues of concern earlier in the process. The legislation would require agencies that may consider an aspect of an application to participate in the review process and comply with the schedules established by FERC. The legislation requires that agencies conduct their respective reviews concurrently, and in conjunction with, the project-related review conducted by FERC in compliance with NEPA. In considering an aspect of an application, Federal and State agencies may accept remote aerial survey data and use that data to grant conditional approvals, conditioned on the onsite inspection. Remote aerial surveys are a widely accepted, proven method of collecting environmental data, and allowing their use will lead to better, more informed decisions. H.R. 2910 would increase public accountability, transparency, and efficiency by requiring FERC to publish the schedule, a list of all actions required by each applicable agency, and the status of all pending actions.

COMMITTEE ACTION

On May 3, 2017, the Subcommittee on Energy held a legislative hearing on discussion draft entitled “Promoting Interagency Coordination for Review of Natural Gas Pipelines 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. 2910, without amendment, to the full Committee by a record vote of 17 yeas and 14 nays. On June 28, 2017, the full Committee on Energy and Commerce met in open markup session and ordered H.R. 2910, without amendment, favorably reported to the House by a record vote of 30 yeas and 23 nays.

⁴ See hearing entitled “*Modernizing Energy and Electricity Delivery Systems: Challenges and Opportunities to Promote Infrastructure Improvement and Expansion*” held on February 15, 2017.

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 # 41**

BILL: H.R. 2910, Promoting Interagency Coordination for Review of Natural Gas Pipelines Act

AMENDMENT: An amendment offered by Ms. Castor, No. 1, to provide that section 2 of the Act shall not take effect until the Director of the Office of Management and Budget publishes a determination that the requirements of such section will not be duplicative of other Federal efforts to improve the timeliness, predictability, and transparency of the Federal environmental review and authorization process; and will not result in wasteful government spending.

DISPOSITION: NOT AGREED TO, by a roll call vote of 22 yeas and 29 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			
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	X		
Mr. Flores		X		Mr. Ruiz	X		
Mrs. Brooks		X		Mr. Peters			
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					

06/28/2017

**COMMITTEE ON ENERGY AND COMMERCE -- 115TH CONGRESS
ROLL CALL VOTE # 42**

BILL: H.R. 2910, Promoting Interagency Coordination for Review of Natural Gas Pipelines Act

AMENDMENT: An amendment offered by Mr. Rush, No. 2, to provide that subsection (h) of section 7 of the Natural Gas Act shall not apply to any holder of a certificate of public convenience and necessity issued under such section after the date of enactment of this Act unless the Federal Energy Regulatory Commission makes a finding that the application of such subsection to such holder is in the public interest.

DISPOSITION: NOT AGREED TO, by a roll call vote of 24 yeas and 29 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	X		
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					

06/28/2017

**COMMITTEE ON ENERGY AND COMMERCE – 115TH CONGRESS
ROLL CALL VOTE # 43**

BILL: H.R. 2910, Promoting Interagency Coordination for Review of Natural Gas Pipelines Act

AMENDMENT: An amendment offered by Mr. Pallone, No. 3, to provide that no holder of a certificate of public convenience and necessity referred to in section 2 that is issued after the date of enactment of this Act may exercise the right of eminent domain to acquire any right-of-way, land, or other property in relation to any pipe line with respect to which such certificate is issued.

DISPOSITION: NOT AGREED TO, by a roll call vote of 24 yeas and 29 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	X		
Mr. Johnson		X		Mr. Schrader	X		
Mr. Long				Mr. Kennedy	X		
Mr. Bucshon		X		Mr. Cardenas	X		
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					

06/28/2017

**COMMITTEE ON ENERGY AND COMMERCE -- 115TH CONGRESS
ROLL CALL VOTE # 44**

BILL: H.R. 2910, Promoting Interagency Coordination for Review of Natural Gas Pipelines Act

AMENDMENT: A motion by Mr. Walden to order H.R. 2910 favorably reported to the House, without amendment. (Final Passage)

DISPOSITION: AGREED TO, by a roll call vote of 30 yeas and 23 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		X	
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						

06/28/2017

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. 2910 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. 2910, the Promoting Interagency Coordination for Review of Natural Gas Pipelines 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).

Enclosure.

H.R. 2910—Promoting Interagency Coordination for Review of Natural Gas Pipelines Act

Under the Natural Gas Act, the Federal Energy Regulatory Commission (FERC) is the lead federal agency involved in approving and regulating interstate pipelines that carry natural gas. Such projects are subject to a variety of federal and nonfederal permits and authorizations related to a range of issues, particularly environmental matters. Under current law, FERC coordinates those efforts and is ultimately responsible for granting the certificate of public convenience and necessity required to construct or expand interstate natural gas pipelines.

H.R. 2910 would specify timeframes and procedures for FERC and other affected agencies to follow in conducting environmental reviews related to natural gas pipelines. Based on information from FERC and other federal agencies that regulate aspects of interstate natural gas pipelines, CBO estimates that implementing the bill would have no significant net effect on the federal budget. The bill would not affect the scope of federal agencies' responsibilities in overseeing such pipelines, and CBO expects that meeting the timeframes specified in the bill would not require a significant change in the level of discretionary funding provided to those agencies. 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. 2910 would not affect direct spending or revenues; therefore, pay-as-you-go procedures do not apply. CBO estimates that enacting H.R. 2910 would not increase net direct spending or on-budget deficits in any of the four consecutive 10-year periods beginning in 2028.

H.R. 2910 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates 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 promote more timely and efficient reviews of pipeline certificate applications.

DUPLICATION OF FEDERAL PROGRAMS

Pursuant to clause 3(c)(5) of rule XIII, no provision of H.R. 2910 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. 2910 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. 2910 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, the “Promoting Interagency Coordination for Review of Natural Gas Pipelines Act.”

Section 2. FERC process coordination for natural gas pipeline projects

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

Section 2(b) designates FERC as the only lead agency for the purposes of complying with the National Environmental Policy Act for an authorization under section 3 of the NGA or a certificate of public convenience and necessity under section 7 of the NGA. This section requires FERC to coordinate as early as practicable with each agency designated as a participating agency under subsection (d)(3) and to take such actions as necessary and proper to facilitate the expeditious resolution of its project-related NEPA review.

Section 2(c) directs each agency to give deference, to the maximum extent authorized by law, to the scope of the project-related NEPA review that FERC determines to be appropriate, when making a decision with respect to a Federal authorization under section 3 of the NGA or a certificate of public convenience and necessity under section 7 of the NGA.

Section 2(d)(1) requires FERC to identify as early as practicable, after it is notified by a person applying for an authorization under section 3 of the NGA or a certificate of public convenience and necessity under section 7 of the NGA, any Federal or State agency, local government, or Indian Tribe that may issue a Federal authorization or is required by Federal law to consult with FERC on the issuance of a Federal authorization.

Section 2(d)(2) requires FERC to invite the identified agencies to participate in the review process for the applicable Federal authorization. The invitation shall establish a deadline for when the agency must submit a response to FERC. FERC may extend the deadline for good cause.

Section 2(d)(3) requires FERC to designate identified agencies as participating agencies with respect to an application for authorization under section 3 of the NGA or a certificate of public convenience and necessity under section 7 of the NGA, unless the agency informs FERC, in writing, that the agency does not have jurisdiction over the application, has no special expertise relevant to the NEPA review, and does not intend to submit comments for the record for the NEPA review conducted by FERC.

Section 2(d)(4) provides that any agency not designated as a participating agency may not request or conduct a NEPA review that is supplemental to FERC’s project-related NEPA review, unless the agency (1) demonstrates that such review is legally necessary or (2) requires information that could not have been obtained during

FERC's project-related NEPA review. Additionally, it directs FERC not to consider any comments or other information submitted by an agency that is not designated as a participating agency for FERC's project-related NEPA review and not to include any comments in the record for the Commission's NEPA review from an agency that is not designated as a participating agency.

Section 2(e)(1) directs the Commission not to establish a deadline for a Federal authorization exceeding 90 days after the Commission completes its project-related NEPA review.

Section 2(e)(2) directs each Federal and State agency considering a Federal authorization for an application or an aspect of an application under section 3 of the NGA or a certificate of public convenience and necessity under section 7 of NGA to formulate and implement a plan to ensure completion of Federal authorizations in compliance with schedules established by FERC. When considering an aspect of an application for a Federal authorization, each Federal and State agency shall carry out the obligations of that agency under applicable law concurrently with FERC's project-related NEPA review, and in compliance with FERC's established schedule, unless the agency notifies FERC in writing that doing so would impair the ability of the agency to conduct needed analysis or otherwise carry out the agency's obligations. Each Federal and State agency considering an aspect of a Federal authorization shall transmit to FERC a statement acknowledging receipt of the schedule established by FERC. The statement shall also contain the plan formulated to ensure completion of the Federal authorizations in compliance with FERC's schedule. Not later than 30 days after the agency receives an application for a Federal authorization under section 3 of the NGA or a certificate of public convenience and necessity under section 7 the NGA, a Federal or State agency shall transmit to the applicant a notice indicating whether the application is ready for processing. If the application is not ready for processing, the agency shall provide a comprehensive description to the applicant of the information needed for the agency to determine that the application is ready for processing. Each Federal and State agency shall transmit to FERC a report once every 90 days describing the progress made in considering an application.

Section 2(e)(3) specifies that if a Federal or State agency fails to meet a deadline for a Federal authorization set forth in FERC's schedule, the head of the relevant Federal agency shall notify Congress and FERC of such failure and set forth a recommended implementation plan to ensure completion of the action.

Section 2(f)(1) directs Federal and State agencies considering an aspect of an application for a Federal authorization to identify any issues of concern that may delay or prevent an agency from working with FERC to resolve the identified issues and grant the authorization. FERC may forward any identified issue of concern to the heads of relevant agencies for resolution.

Section 2(f)(2) instructs Federal or State agencies considering an aspect of an application for a Federal authorization to consider any data gathered by aerial or other remote means submitted by the applicant. The agency may grant a conditional approval for the Federal authorization based on data gathered by aerial or remote means, conditioned on the verification of such data by subsequent onsite inspection.

Section 2(f)(3) specifies that FERC, and Federal and State agencies, may allow a person applying for a Federal authorization to fund a third-party contractor to assist in reviewing an application.

Section 2(g) directs FERC, with input from any Federal or State agency considering an aspect of an application, to track and make available to the public on the Commission's website information related to the actions required to complete a Federal authorization.

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 14, 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. 2910, the Promoting Interagency Coordination for Review of Natural Gas Pipelines 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. 2910 and into the Congressional Record during consideration of the measure on the House floor.

Thank you again for the very 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 (212) 225-2597
Minority (212) 225-3941

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. 2910, Promoting Interagency Coordination for Review of Natural Gas Pipelines Act. As you noted, the bill, as ordered reported, may contain provisions within the Rule X jurisdiction of the Natural Resources Committee.

I appreciate your willingness waive the Committee's right to request a sequential referral 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. 2910 and into the Congressional Record during consideration of the measure on the House floor.

Sincerely,


Greg Walden
Chairman

DISSENTING VIEWS

H.R. 2910, introduced on June 15, 2017 by Rep. Bill Flores (R-TX), is almost entirely different from the draft legislation that was the subject of the May 3, 2017 legislative hearing on this subject. Proponents argue the purpose of the bill is to streamline the Federal Energy Regulatory Commission (FERC) process for approving natural gas pipelines by increasing transparency, predictability, accountability, and timeliness. However, these concerns are already being addressed by the Federal Permitting Improvement Steering Council (FPISC), established in 2015 through Title 41 of the Fixing America's Surface Transportation (FAST) Act.¹ This council is currently overseeing and coordinating the permitting process for 32 major infrastructure projects, including seven interstate natural gas pipelines.

The siting of natural gas pipelines is often controversial and requires detailed regulatory scrutiny by FERC. At the legislative hearing, FERC's Director of the Office of Energy Projects, Terry L. Turpin, noted that "on average it is 88 percent of the projects get issued within one year" and the single greatest factor in slowing down an application was the license applicant failing to provide FERC and other agencies with "timely and complete information necessary to perform Congressionally-mandated project reviews."²

H.R. 2910 does not address any of the concerns raised by FERC at the legislative hearing. Instead, H.R. 2910 indirectly attempts to rewrite key aspects of sections 3, 7 and 15 of the Natural Gas Act (NGA). Among other things, the bill would require FERC to establish a schedule with deadlines for submission of information from other federal or state agencies, local governments or Indian tribes for a natural gas pipeline or liquefied natural gas project requiring FERC approval. Concurrent reviews by these federal or state agencies would be required, based on the scope of environmental review determined by FERC, to provide the Commission with timely information for the purpose of complying with the National Environmental Policy Act of 1969 (NEPA) and other environmental statutes such as the Clean Water Act (referred to as "federal authorizations"). FERC would be allowed to pursue remedies or implementation plans if a federal or state agency failed to meet the schedule established by FERC under this section.

Other agencies conducting environmental reviews for relevant projects would be further constrained since H.R. 2910 only provides for an agency to be designated as a "participating" agency, not a cooperating agency. Mr. Turpin noted that some of the proposed

¹P.L. 114-94.

²House Committee on Energy and Commerce, transcript not published, *Hearing on "Legislation Addressing Pipeline and Hydropower Infrastructure Modernization,"* Testimony of Terry Turpin, Director, Office of Energy Projects, Federal Energy Regulatory Commission, 115th Cong. (May 3, 2017).

NGA modifications would alter the Commission's role from one of collaboration with its fellow agencies to . . . monitoring other agency execution of their Congressionally-mandated duties. I am concerned that this . . . could lead to unproductive tension between the agencies involved in the review process.³

H.R. 2910 also goes further to define a status for certain agencies called "non-designation," which prohibits such agencies from being able to "request or conduct a NEPA review that is supplemental to the project-related review conducted by the Commission. . . ." The bill prohibits FERC from considering any comments or other information provided by a non-designated agency or including its comments or supplemental information in the record.

Furthermore, the bill introduces a number of new terms into federal law. Some of these terms appear to be duplicative and unnecessary, while others are a cause for great concern. Most significantly, language introduced in H.R. 2910 requires agencies responsible for federal authorizations to deem applications "sufficiently complete" to begin consideration, regardless of whether the application is complete enough to fulfil its statutory obligations.

Finally, H.R. 2910 would require federal and state agencies to accept aerial survey data, and provides that such agencies may grant conditional approvals based on that data, conditioned further on data verification via subsequent onsite inspection. This provision allows companies working to build natural gas pipelines the ability to circumvent property owners' rights when surveying land. In a number of cases, companies have not obtained the requisite permits to survey the land they are seeking to access, and this language appears designed to allow them to sidestep that aspect of the application process. At the legislative hearing on the bill, the Subcommittee received testimony from a private landowner from Pennsylvania who described the abuses of eminent domain authority by a company planning to build a natural gas pipeline through her family farm.⁴

During the Full Committee Markup of H.R. 2910, Democrats offered several amendments to the bill to address their concerns. Ranking Member Bobby Rush (D-IL) offered an amendment to amend the bill so that pipeline applicants cannot use eminent domain unless FERC makes an additional finding that the project and taking of private property would be in the public interest. Rep. Kathy Castor (D-FL) offered an amendment that would have added a new section that would stop the bill from taking effect until the Director of the Office of Management and Budget publishes a determination that the requirements of the bill would not be duplicative of other Federal streamlining efforts (e.g., FPISC) and will not result in wasteful government spending. Lastly, Ranking Member Frank Pallone, Jr. (D-NJ) offered an amendment that would prohibit the use of federal eminent domain for pipeline projects after the date of enactment of the bill. All three amendments failed on recorded votes.

³*Id.*

⁴House Committee on Energy and Commerce, transcript not published, *Hearing on "Legislation Addressing Pipeline and Hydropower Infrastructure Modernization,"* Testimony of Kim Kann, 115th Cong. (May 3, 2017).

H.R. 2910 short circuits the process for considering natural gas project applications at the expense of private property owners, state and tribal rights, and the environment. The bill is unnecessary, not only because infrastructure permitting streamlining is already occurring at FPISC, but also because 88 percent of these projects are being certificated within one year. At best, it is a solution in search of a problem; at worst, it is an assault on private property rights and the environment in the name of corporate profit and expediency.

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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