

118TH CONGRESS <i>1st Session</i>	HOUSE OF REPRESENTATIVES	REPORT 118-
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PROMOTING INTERAGENCY COORDINATION FOR REVIEW
OF NATURAL GAS PIPELINES ACT

MARCH --, 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

VIEWS

[To accompany H.R. 1115]

[Including cost estimate of the Congressional Budget Office]

The Committee on Energy and Commerce, to whom was referred the bill (H.R. 1115) 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, reports favorably thereon with an amendment and recommends that the bill as amended do pass.

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 Interagency Coordination for Review of Natural Gas Pipelines Act”.

SEC. 2. FERC PROCESS COORDINATION FOR NATURAL GAS PIPELINE PROJECTS.

(a) DEFINITIONS.—In this section:

(1) COMMISSION.—The term “Commission” means the Federal Energy Regulatory Commission.

(2) FEDERAL AUTHORIZATION.—The term “Federal authorization” has the meaning given that term in section 15(a) of the Natural Gas Act (15 U.S.C. 717n(a)).

(3) NEPA REVIEW.—The term “NEPA review” means the process of reviewing a proposed Federal action under section 102 of the National Environmental Policy Act of 1969 (42 U.S.C. 4332).

(4) PROJECT-RELATED NEPA REVIEW.—The term “project-related NEPA review” means any NEPA review required to be conducted with respect to the issuance

of an authorization under section 3 of the Natural Gas Act or a certificate of public convenience and necessity under section 7 of such Act.

(b) COMMISSION NEPA REVIEW RESPONSIBILITIES.—In acting as the lead agency under section 15(b)(1) of the Natural Gas Act for the purposes of complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) with respect to an authorization under section 3 of the Natural Gas Act or a certificate of public convenience and necessity under section 7 of such Act, the Commission shall, in accordance with this section and other applicable Federal law—

(1) be the only lead agency;

(2) coordinate as early as practicable with each agency designated as a participating agency under subsection (d)(3) to ensure that the Commission develops information in conducting its project-related NEPA review that is usable by the participating agency in considering an aspect of an application for a Federal authorization for which the agency is responsible; and

(3) take such actions as are necessary and proper to facilitate the expeditious resolution of its project-related NEPA review.

(c) DEFERENCE TO COMMISSION.—In making a decision with respect to a Federal authorization required with respect to an application for authorization under section 3 of the Natural Gas Act or a certificate of public convenience and necessity under section 7 of such Act, each agency shall give deference, to the maximum extent authorized by law, to the scope of the project-related NEPA review that the Commission determines to be appropriate.

(d) PARTICIPATING AGENCIES.—

(1) IDENTIFICATION.—The Commission shall identify, not later than 30 days after the Commission receives an application for an authorization under section 3 of the Natural Gas Act or a certificate of public convenience and necessity under section 7 of such Act, 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 the Commission in conjunction with the issuance of a Federal authorization required for such authorization or certificate.

(2) INVITATION.—

(A) IN GENERAL.—Not later than 45 days after the Commission receives an application for an authorization under section 3 of the Natural Gas Act or a certificate of public convenience and necessity under section 7 of such Act, the Commission shall invite any agency identified under paragraph (1) to participate in the review process for the applicable Federal authorization.

(B) DEADLINE.—An invitation issued under subparagraph (A) shall establish a deadline by which a response to the invitation shall be submitted to the Commission, which may be extended by the Commission for good cause.

(3) DESIGNATION AS PARTICIPATING AGENCIES.—Not later than 60 days after the Commission receives an application for an authorization under section 3 of the Natural Gas Act or a certificate of public convenience and necessity under section 7 of such Act, the Commission shall designate an agency identified under paragraph (1) as a participating agency with respect to an application for authorization under section 3 of the Natural Gas Act or a certificate of public convenience and necessity under section 7 of such Act unless the agency informs the Commission, in writing, by the deadline established pursuant to paragraph (2)(B), that the agency—

(A) has no jurisdiction or authority with respect to the applicable Federal authorization;

(B) has no special expertise or information relevant to any project-related NEPA review; or

(C) does not intend to submit comments for the record for the project-related NEPA review conducted by the Commission.

(4) EFFECT OF NON-DESIGNATION.—

(A) EFFECT ON AGENCY.—Any agency that is not designated as a participating agency under paragraph (3) with respect to an application for an authorization under section 3 of the Natural Gas Act or a certificate of public convenience and necessity under section 7 of such Act may not request or conduct a NEPA review that is supplemental to the project-related NEPA review conducted by the Commission, unless the agency—

(i) demonstrates that such review is legally necessary for the agency to carry out responsibilities in considering an aspect of an application for a Federal authorization; and

(ii) requires information that could not have been obtained during the project-related NEPA review conducted by the Commission.

(B) COMMENTS; RECORD.—The Commission shall not, with respect to an agency that is not designated as a participating agency under paragraph (3) with respect to an application for an authorization under section 3 of the Natural Gas Act or a certificate of public convenience and necessity under section 7 of such Act—

(i) consider any comments or other information submitted by such agency for the project-related NEPA review conducted by the Commission; or

(ii) include any such comments or other information in the record for such project-related NEPA review.

(e) WATER QUALITY IMPACTS.—

(1) IN GENERAL.—Notwithstanding section 401 of the Federal Water Pollution Control Act (33 U.S.C. 1341), an applicant for a Federal authorization shall not be required to provide a certification under such section with respect to the Federal authorization.

(2) COORDINATION.—With respect to any NEPA review for a Federal authorization to conduct an activity that will directly result in a discharge into the navigable waters (within the meaning of the Federal Water Pollution Control Act), the Commission shall identify as an agency under subsection (d)(1) the State in which the discharge originates or will originate, or, if appropriate, the interstate water pollution control agency having jurisdiction over the navigable waters at the point where the discharge originates or will originate.

(3) PROPOSED CONDITIONS.—A State or interstate agency designated as a participating agency pursuant to paragraph (2) may propose to the Commission terms or conditions for inclusion in an authorization under section 3 of the Natural Gas Act or a certificate of public convenience and necessity under section 7 of such Act that the State or interstate agency determines are necessary to ensure that any activity described in paragraph (2) conducted pursuant to such authorization or certification will comply with the applicable provisions of sections 301, 302, 303, 306, and 307 of the Federal Water Pollution Control Act.

(4) COMMISSION CONSIDERATION OF CONDITIONS.—The Commission may include a term or condition in an authorization under section 3 of the Natural Gas Act or a certificate of public convenience and necessity under section 7 of such Act proposed by a State or interstate agency under paragraph (3) only if the Commission finds that the term or condition is necessary to ensure that any activity described in paragraph (2) conducted pursuant to such authorization or certification will comply with the applicable provisions of sections 301, 302, 303, 306, and 307 of the Federal Water Pollution Control Act.

(f) SCHEDULE.—

(1) DEADLINE FOR FEDERAL AUTHORIZATIONS.—A deadline for a Federal authorization required with respect to an application for authorization under section 3 of the Natural Gas Act or a certificate of public convenience and necessity under section 7 of such Act set by the Commission under section 15(c)(1) of such Act shall be not later than 90 days after the Commission completes its project-related NEPA review, unless an applicable schedule is otherwise established by Federal law.

(2) CONCURRENT REVIEWS.—Each Federal and State agency—

(A) that may consider an application for a Federal authorization required with respect to an application for authorization under section 3 of the Natural Gas Act or a certificate of public convenience and necessity under section 7 of such Act shall formulate and implement a plan for administrative, policy, and procedural mechanisms to enable the agency to ensure completion of Federal authorizations in compliance with schedules established by the Commission under section 15(c)(1) of such Act; and

(B) in considering an aspect of an application for a Federal authorization required with respect to an application for authorization under section 3 of the Natural Gas Act or a certificate of public convenience and necessity under section 7 of such Act, shall—

(i) formulate and implement a plan to enable the agency to comply with the schedule established by the Commission under section 15(c)(1) of such Act;

(ii) carry out the obligations of that agency under applicable law concurrently, and in conjunction with, the project-related NEPA review conducted by the Commission, and in compliance with the schedule established by the Commission under section 15(c)(1) of such Act, unless the agency notifies the Commission in writing that doing so would im-

pair the ability of the agency to conduct needed analysis or otherwise carry out such obligations;

(iii) transmit to the Commission a statement—

(I) acknowledging receipt of the schedule established by the Commission under section 15(c)(1) of the Natural Gas Act; and

(II) setting forth the plan formulated under clause (i) of this subparagraph;

(iv) not later than 30 days after the agency receives such application for a Federal authorization, transmit to the applicant a notice—

(I) indicating whether such application is ready for processing; and

(II) if such application is not ready for processing, that includes a comprehensive description of the information needed for the agency to determine that the application is ready for processing;

(v) determine that such application for a Federal authorization is ready for processing for purposes of clause (iv) if such application is sufficiently complete for the purposes of commencing consideration, regardless of whether supplemental information is necessary to enable the agency to complete the consideration required by law with respect to such application; and

(vi) not less often than once every 90 days, transmit to the Commission a report describing the progress made in considering such application for a Federal authorization.

(3) FAILURE TO MEET DEADLINE.—If a Federal or State agency, including the Commission, fails to meet a deadline for a Federal authorization set forth in the schedule established by the Commission under section 15(c)(1) of the Natural Gas Act, not later than 5 days after such deadline, the head of the relevant Federal agency (including, in the case of a failure by a State agency, the Federal agency overseeing the delegated authority) shall notify Congress and the Commission of such failure and set forth a recommended implementation plan to ensure completion of the action to which such deadline applied.

(g) CONSIDERATION OF APPLICATIONS FOR FEDERAL AUTHORIZATION.—

(1) ISSUE IDENTIFICATION AND RESOLUTION.—

(A) IDENTIFICATION.—Federal and State agencies that may consider an aspect of an application for a Federal authorization shall identify, as early as possible, any issues of concern that may delay or prevent an agency from working with the Commission to resolve such issues and granting such authorization.

(B) ISSUE RESOLUTION.—The Commission may forward any issue of concern identified under subparagraph (A) to the heads of the relevant agencies (including, in the case of an issue of concern that is a failure by a State agency, the Federal agency overseeing the delegated authority, if applicable) for resolution.

(2) REMOTE SURVEYS.—If a Federal or State agency considering an aspect of an application for a Federal authorization requires the person applying for such authorization to submit data, the agency shall consider any such data gathered by aerial or other remote means that the person submits. 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.

(3) APPLICATION PROCESSING.—The Commission, and Federal and State agencies, may allow a person applying for a Federal authorization to fund a third-party contractor to assist in reviewing the application for such authorization.

(h) ACCOUNTABILITY, TRANSPARENCY, EFFICIENCY.—For an application for an authorization under section 3 of the Natural Gas Act or a certificate of public convenience and necessity under section 7 of such Act that requires multiple Federal authorizations, the Commission, with input from any Federal or State agency considering an aspect of the application, shall track and make available to the public on the Commission's website information related to the actions required to complete the Federal authorizations. Such information shall include the following:

(1) The schedule established by the Commission under section 15(c)(1) of the Natural Gas Act.

(2) A list of all the actions required by each applicable agency to complete permitting, reviews, and other actions necessary to obtain a final decision on the application.

(3) The expected completion date for each such action.

(4) A point of contact at the agency responsible for each such action.

(5) In the event that an action is still pending as of the expected date of completion, a brief explanation of the reasons for the delay.

SEC. 3. PIPELINE SECURITY.

In considering an application for an authorization under section 3 of the Natural Gas Act or a certificate of public convenience and necessity under section 7 of such Act, the Federal Energy Regulatory Commission shall consult with the Administrator of the Transportation Security Administration regarding the applicant's compliance with security guidance and best practice recommendations of the Administration regarding pipeline infrastructure security, pipeline cybersecurity, pipeline personnel security, and other pipeline security measures.

**H.R. 1115, PROMOTING INTERAGENCY COORDINATION FOR
REVIEW OF NATURAL GAS PIPELINES ACT**

COVER PAGE/AMENDMENT

[Attachment—Insert Cover Page/Amendment]

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PURPOSE AND SUMMARY

H.R. 1115, the “Promoting Interagency Coordination for Review of Natural Gas Pipelines Act,” was introduced by Representative Burgess (R-TX) on February 21, 2023. 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 (EPAct), 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 (CWA), Endangered Species Act (ESA), and Clean Air Act (CAA). Under current FERC regulations, Federal and State agencies participate in the development of the NEPA analysis for a pipeline project and then are required to complete their respective permit application reviews no later than 90 days after FERC issues its final environmental document, unless another schedule is established by Federal law.

Despite the increased authority given to FERC under EPAct, 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. It has also become apparent that inadequate infrastructure to transport natural gas has negatively affected electric grid reliability and electric rates, especially in New England states, as natural gas-fired power plants have had difficulty accessing the fuel they need to maintain operations. Furthermore, the lack of pipeline capacity in the Northeast, especially during times of high demand in winter months, has resulted in the region becoming dangerously dependent on liquefied natural gas (LNG) imports, including from Russia.

There are numerous large natural gas pipelines that would have carried billions of cubic feet of natural gas per day and served tens of millions of customers that have been cancelled in recent years due to permitting challenges and delays.¹ While FERC is partly responsible, some States, such as New York, have weaponized their Federally delegated responsibilities under CWA Section 401 to veto pipeline construction projects for reasons unrelated to water quality.

¹ E.g., Atlantic Coast Pipeline, Constitution Pipeline, Northeast Supply Direct, and Penn East Pipeline.

H.R. 1115 would improve the permitting process for natural gas pipelines 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. 1115 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. The legislation also contains a provision that would improve the water quality review by shifting the responsibility from the States to FERC. Under H.R. 1115, an applicant for a Federal authorization for an interstate pipeline would not be required to obtain a CWA Sec. 401 certification from a State. Instead, FERC would incorporate the water quality certification into its NEPA review, with necessary terms or conditions proposed by the States participating in the review process.

COMMITTEE ACTION

On January 31, 2023, the House Committee on Energy and Commerce held a full committee oversight 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. 1115. 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. 1115, as amended, to the full Committee by a record vote of 13 yeas and 8 nays. On March 9, 2023, the full Committee on Energy and Commerce met in open markup session and ordered H.R. 1115, as amended, favorably reported to the House by a record vote of 27 yeas and 23 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:

[Attachments—Insert Votes]

OVERSIGHT FINDINGS AND RECOMMENDATIONS

Pursuant to clause 2(b)(1) of rule X and clause 3(c)(1) of rule XIII, the Committee held hearings 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. 1115 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 increase American energy production and restore energy leadership by helping to address the critical need to expand and modernize the nation's natural gas pipeline infrastructure by promoting more timely and efficient reviews.

DUPLICATION OF FEDERAL PROGRAMS

Pursuant to clause 3(c)(5) of rule XIII, no provision of H.R. 1115 is known to be duplicative of another Federal program, including any program that was included in a report to Congress pursuant to

COMMITTEE ON ENERGY AND COMMERCE
118TH CONGRESS
ROLL CALL VOTE # 17

BILL: H.R. 1115, the Promoting Interagency Coordination for Review of Natural Gas Pipelines Act

AMENDMENT: An amendment offered by Mr. Duncan, No. 1

DISPOSITION: AGREED TO, by a roll call vote of 26 yeas and 21 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				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			
Rep. Dunn	X			Rep. Veasey		X	
Rep. Curtis	X			Rep. Kuster		X	
Rep. Lesko	X			Rep. Kelly		X	
Rep. Pence	X			Rep. Barragán		X	
Rep. Crenshaw				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							
Rep. Pfluger	X						
Rep. Harshbarger	X						
Rep. Miller-Meeks	X						
Rep. Cammack	X						
Rep. Obernolte	X						

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COMMITTEE ON ENERGY AND COMMERCE
118TH CONGRESS
ROLL CALL VOTE # 18

BILL: H.R. 1115, the Promoting Interagency Coordination for Review of Natural Gas Pipelines Act

AMENDMENT: An amendment offered by Ms. DeGette, No. 2

DISPOSITION: **NOT AGREED TO**, by a roll call vote of 21 yeas and 26 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				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			
Rep. Dunn		X		Rep. Veasey	X		
Rep. Curtis		X		Rep. Kuster	X		
Rep. Lesko		X		Rep. Kelly	X		
Rep. Pence		X		Rep. Barragán	X		
Rep. Crenshaw				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	X		
Rep. Balderson		X		Rep. Fletcher			
Rep. Fulcher		X					
Rep. Pfluger		X					
Rep. Harshbarger		X					
Rep. Miller-Meeks		X					
Rep. Cammack		X					
Rep. Obernolte		X					

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COMMITTEE ON ENERGY AND COMMERCE
118TH CONGRESS
ROLL CALL VOTE # 19

BILL: H.R. 1115, the Promoting Interagency Coordination for Review of Natural Gas Pipelines Act

AMENDMENT: An amendment offered by Mr. Pallone, No. 3

DISPOSITION: NOT AGREED TO, by a roll call vote of 22 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				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	X		
Rep. Lesko		X		Rep. Kelly	X		
Rep. Pence		X		Rep. Barragán	X		
Rep. Crenshaw				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	X		
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					

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COMMITTEE ON ENERGY AND COMMERCE
118TH CONGRESS
ROLL CALL VOTE # 20

BILL: H.R. 1115, Promoting Interagency Coordination for Review of Natural Gas Pipelines Act

AMENDMENT: An amendment offered by Rep. Castor, No. 4.

DISPOSITION: **NOT AGREED TO**, by a roll call vote of 22 yeas to 28 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				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	X		
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	X		
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					

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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. 1115:

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 Pruett, 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. 1121. 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. 1115 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, 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 NEPA 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) provides that an applicant for a Federal authorization under the NGA shall not be required to provide a certification under Section 401 of the Federal Water Pollution Control Act.

Section 2(e)(2) requires FERC to coordinate its NEPA review as necessary with States where a potential discharge into navigable waters may occur.

Section 2(e)(3) allows for States to propose conditions to FERC to protect water resources.

Section 2(e)(4) allows for FERC to include terms or conditions proposed by a State.

Section 2(f)(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(f)(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(g)(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(g)(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(g)(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(h) 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.

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

[Attachment--Views]

Minority Views for H.R. 1115, the “Promoting Interagency Coordination for Review of Natural Gas Pipelines Act”

H.R. 1115 would substantially weaken the environmental review process required under the National Environmental Policy Act (NEPA) for pipeline authorizations required under sections 3 and 7 of the Natural Gas Act (NGA). Furthermore, an amendment adopted on a recorded vote by the Full Committee at markup would further violate bedrock environmental statutes by effectively negating the framework and application of the Federal Water Pollution Control Act (commonly known as the Clean Water Act) as it applies to pipeline authorizations.

The siting and authorization of natural gas pipelines is often controversial, and any legislation proposing significant alterations to that process, such as H.R. 1115, would benefit substantially from an opportunity for experts from agencies that currently hold jurisdiction over that process to weigh in. Unfortunately, the Committee did not receive any testimony from the Federal Energy Regulatory Commission (FERC) on this bill. When the Committee last considered nearly identical legislation in 2017, FERC’s Director of the Office of Energy Projects, Mr. Terry Turpin, testified that he was “...concerned that this [bill] will require the use of Commission resources that could be better spent analyzing the proposed projects and could lead to unproductive tension between the agencies in the review process”.¹ Turpin also testified that FERC had significant responsibilities to track and report progress for large and complex pipelines projects under Title XLI of the Fixing America’s Surface Transportation Act (FAST-41), and that the bill required significant duplication of those efforts.² Given that Turpin testified just six months after the enactment of FAST-41, the Committee could have benefited from his updated opinion after six years of FAST-41 implementation of how and if provisions under section 2(g) of the Committee Print of H.R. 1115 are duplicative of efforts currently carried out by the Federal Permitting Improvement Steering Council (FPISC) or would unnecessarily drain FERC’s resources. Unfortunately, the Committee was not given that opportunity.

More broadly, H.R. 1115 is a solution in search of a problem. Turpin testified six years ago that between 2009-2016, 88 percent of pipeline projects applying for section 7 authorization received certificates within one year.³ Then-FERC Chairman Richard Glick indicated in an appearance before the Senate Committee on Energy and Natural Resources in 2021 that “...the time the commission was taking to approve certificate applications was comparable to that in previous years”.⁴ FERC is approving natural gas pipelines under current statutes at its normal, efficient pace.

While H.R. 1115 is unlikely to speed up the pipeline authorization process, it would gut the environmental review process for natural gas pipeline authorizations. Section 2(d) requires FERC to invite certain agencies to become “participating agencies” for a specific authorization application, and all Federal, State, local, and Tribal agencies not invited to become such an agency are automatically labeled “non-designated agencies.” These “non-designated agencies”

¹House Committee on Energy and Commerce, Testimony of Terry Turpin, Director, Office of Energy Projects, Federal Energy Regulatory Commission, *Hearing on Legislation Pipeline and Infrastructure Modernization*, 115th Congress. (May 3, 2017).

²*Id.*

³*Id.*

⁴Congressional Research Service, *Interstate Natural Gas Pipeline Siting: FERC Policy and Issues for Congress* (June 9, 2022) (R45239).

Minority Views for H.R. 1115, the “Promoting Interagency Coordination for Review of Natural Gas Pipelines Act”

are barred from participating in the environmental review process and FERC is barred from considering or even accepting into the record their comments. Effectively, H.R. 1115 gives FERC the power to render certain agencies more powerless than an outside intervenor in the environmental review process, even if an agency has legal obligations under other statutes to comment on the environmental review. This eviscerates the ability of Federal, State, local, and Tribal agencies to properly communicate the environmental impacts of proposed authorizations.

Section (e)(1) of H.R. 1115 also requires Federal agencies to make decisions for authorizations required for a natural gas pipeline within 90 days of FERC issuing an environmental review. This can leave Federal agencies between a rock and a hard place – they can either violate their obligations under bedrock environmental statutes to thoroughly consider and evaluate the application of a proposed pipeline, or they can violate this new obligation to adhere to FERC’s timeline. This would potentially have consequences unforeseen by the majority – agencies may simply determine that the easiest way forward without violating environmental statutes or the provisions within H.R. 1115 is to deny more authorizations for natural gas projects as they will not have the requisite time to thoroughly vet projects.

Finally, section 2(f)(2) of H.R. 1115 requires Federal and State agencies to accept data gathered by remote means, and grant a conditional approval for Federal authorization based on that remote data. In Turpin’s response to questions during the 2017 hearing, he noted that remote data sometimes did not discover certain features that are eligible for protection under environmental statutes, requiring the applicant to conduct an expensive re-route of the project.⁵ Furthermore, witness Jennifer Danis, in the same hearing, in a response to a question by Rep. Paul Tonko (D-NY), responded that “Aerial data... provides an extremely limited view of what is on the ground. It cannot be accurate with respect to wetlands delineation. It cannot be accurate with respect to endangered species, vernal ponds, seeps, vegetation, other things that require detailed onsite surveys. In the provision in the amendments for aerial survey data, requiring ancillary federal authorizations to consider those data simply decreases efficiency because it in essence asks, for example, states under 401 certification to consider an application based on guesswork the first time, and then to go back and to reconsider that same application once they can make a true determination of what the onsite environmental impacts would be.”⁶ This provision in the bill allows natural gas pipeline developers to sidestep engagement with impacted landowners until far later in the process, denying landowners an opportunity to engage with the process from the very beginning.

During the Subcommittee and Full Committee markups of H.R. 1115, Democrats offered several amendments to the bill to address their concerns. At the Subcommittee markup, Rep. Paul Tonko offered an amendment that would have struck the portion of the bill limiting the authority of non-designated agencies. At the Full Committee markup, Ranking Member of the Subcommittee on Energy, Climate, and Grid Security Rep. Diana DeGette (D-CO) offered an

⁵See note 1.

⁶House Committee on Energy and Commerce, Testimony of Jennifer Danis, Senior Staff Attorney, Eastern Environmental Law Center, On behalf of Columbia University, the New Jersey Conservation Foundation, and the Stony-Brook Millstone Watershed Association, *Hearing on Legislation Pipeline and Infrastructure Modernization*, 115th Cong. (May 3, 2017).

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amendment that would have required any company seeking to utilize section 7(h) of the NGA’s eminent domain authority to obtain a finding from FERC that their usage of eminent domain is in the public interest. Ranking Member of the Full Committee, Rep. Frank Pallone Jr. (D-NJ) offered an amendment that would have struck the provision discussed above relating to remote surveys. Finally, Rep. Kathy Castor (D-FL) offered an amendment that would have prevented the bill from taking effect until FERC certified that the bill was necessary to efficiently and effectively authorize pipelines pursuant to section 7 of the NGA, that section 2(g) of the bill was not duplicative of other requirements (such as FAST-41), and that the bill would not result in unnecessary Federal spending. All four amendments failed on a recorded vote, though Ranking Member DeGette’s amendment won bipartisan support.

At the Full Committee markup of H.R. 1115, Energy, Climate, and Grid Security Chairman Rep. Jeff Duncan (R-SC) offered an amendment that drastically altered the application of the Federal Water Pollution Control Act to authorizations to natural gas pipelines. The amendment guts the current power and discretion granted to states under the current law, and instead asks FERC, an energy regulator, to become an environmental regulatory agency by picking which conditions filed by state environmental regulators it wants natural gas pipelines to abide by.

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

A handwritten signature in blue ink that reads "Frank Pallone, Jr." in a cursive script.

Frank Pallone, Jr.
Ranking Member
Committee on Energy and Commerce