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HOUSE OF REPRESENTATIVES

REPT. 113–482
Part 1

NORTH AMERICAN ENERGY INFRASTRUCTURE ACT

JUNE 19, 2014.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

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

R E P O R T

together with

DISSENTING VIEWS

[To accompany H.R. 3301]

[Including cost estimate of the Congressional Budget Office]

The Committee on Energy and Commerce, to whom was referred the bill (H.R. 3301) to require approval for the construction, connection, operation, or maintenance of oil or natural gas pipelines or electric transmission facilities at the national boundary of the United States for the import or export of oil, natural gas, or electricity to or from Canada or Mexico, and for other purposes, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

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The amendment is as follows:

Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the "North American Energy Infrastructure Act".

SEC. 2. FINDING.

Congress finds that the United States should establish a more uniform, transparent, and modern process for the construction, connection, operation, and maintenance of oil and natural gas pipelines and electric transmission facilities for the import and export of oil and natural gas and the transmission of electricity to and from Canada and Mexico, in pursuit of a more secure and efficient North American energy market.

SEC. 3. AUTHORIZATION OF CERTAIN ENERGY INFRASTRUCTURE PROJECTS AT THE NATIONAL BOUNDARY OF THE UNITED STATES.

(a) AUTHORIZATION.—Except as provided in subsection (c) and section 7, no person may construct, connect, operate, or maintain a cross-border segment of an oil pipeline or electric transmission facility for the import or export of oil or the transmission of electricity to or from Canada or Mexico without obtaining a certificate of crossing for the construction, connection, operation, or maintenance of the cross-border segment under this section.

(b) CERTIFICATE OF CROSSING.—

(1) REQUIREMENT.—Not later than 120 days after final action is taken under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) with respect to a cross-border segment for which a request is received under this section, the relevant official identified under paragraph (2), in consultation with appropriate Federal agencies, shall issue a certificate of crossing for the cross-border segment unless the relevant official finds that the construction, connection, operation, or maintenance of the cross-border segment is not in the public interest of the United States.

(2) RELEVANT OFFICIAL.—The relevant official referred to in paragraph (1) is—

(A) the Secretary of State with respect to oil pipelines; and

(B) the Secretary of Energy with respect to electric transmission facilities.

(3) ADDITIONAL REQUIREMENT FOR ELECTRIC TRANSMISSION FACILITIES.—In the case of a request for a certificate of crossing for the construction, connection, operation, or maintenance of a cross-border segment of an electric transmission facility, the Secretary of Energy shall require, as a condition of issuing the certificate of crossing for the request under paragraph (1), that the cross-border segment of the electric transmission facility be constructed, connected, operated, or maintained consistent with all applicable policies and standards of—

(A) the Electric Reliability Organization and the applicable regional entity; and

(B) any Regional Transmission Organization or Independent System Operator with operational or functional control over the cross-border segment of the electric transmission facility.

(c) EXCLUSIONS.—This section shall not apply to any construction, connection, operation, or maintenance of a cross-border segment of an oil pipeline or electric transmission facility for the import or export of oil or the transmission of electricity to or from Canada or Mexico—

(1) if the cross-border segment is operating for such import, export, or transmission as of the date of enactment of this Act;

(2) if a permit described in section 6 for such construction, connection, operation, or maintenance has been issued;

(3) if a certificate of crossing for such construction, connection, operation, or maintenance has previously been issued under this section; or

(4) if an application for a permit described in section 6 for such construction, connection, operation, or maintenance is pending on the date of enactment of this Act, until the earlier of—

(A) the date on which such application is denied; or

(B) July 1, 2016.

(d) EFFECT OF OTHER LAWS.—

(1) APPLICATION TO PROJECTS.—Nothing in this section or section 7 shall affect the application of any other Federal statute to a project for which a certifi-

cate of crossing for the construction, connection, operation, or maintenance of a cross-border segment is sought under this section.

(2) NATURAL GAS ACT.—Nothing in this section or section 7 shall affect the requirement to obtain approval or authorization under sections 3 and 7 of the Natural Gas Act for the siting, construction, or operation of any facility to import or export natural gas.

(3) ENERGY POLICY AND CONSERVATION ACT.—Nothing in this section or section 7 shall affect the authority of the President under section 103(a) of the Energy Policy and Conservation Act.

SEC. 4. IMPORTATION OR EXPORTATION OF NATURAL GAS TO CANADA AND MEXICO.

Section 3(c) of the Natural Gas Act (15 U.S.C. 717b(c)) is amended by adding at the end the following: "No order is required under subsection (a) to authorize the export or import of any natural gas to or from Canada or Mexico.".

SEC. 5. TRANSMISSION OF ELECTRIC ENERGY TO CANADA AND MEXICO.

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

(b) CONFORMING AMENDMENTS.—

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

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

SEC. 6. NO PRESIDENTIAL PERMIT REQUIRED.

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

SEC. 7. MODIFICATIONS TO EXISTING PROJECTS.

No certificate of crossing under section 3, or permit described in section 6, shall be required for a modification to the construction, connection, operation, or maintenance of an oil or natural gas pipeline or electric transmission facility—

(1) that is operating for the import or export of oil or natural gas or the transmission of electricity to or from Canada or Mexico as of the date of enactment of the Act;

(2) for which a permit described in section 6 for such construction, connection, operation, or maintenance has been issued; or

(3) for which a certificate of crossing for the cross-border segment of the pipeline or facility has previously been issued under section 3.

SEC. 8. EFFECTIVE DATE; RULEMAKING DEADLINES.

(a) EFFECTIVE DATE.—Sections 3 through 7, and the amendments made by such sections, shall take effect on July 1, 2015.

(b) RULEMAKING DEADLINES.—Each relevant official described in section 3(b)(2) shall—

(1) not later than 180 days after the date of enactment of this Act, publish in the Federal Register notice of a proposed rulemaking to carry out the applicable requirements of section 3; and

(2) not later than 1 year after the date of enactment of this Act, publish in the Federal Register a final rule to carry out the applicable requirements of section 3.

SEC. 9. DEFINITIONS.

In this Act—

(1) the term "cross-border segment" means the portion of an oil or natural gas pipeline or electric transmission facility that is located at the national boundary of the United States with either Canada or Mexico;

(2) the term "modification" includes a reversal of flow direction, change in ownership, volume expansion, downstream or upstream interconnection, or adjustment to maintain flow (such as a reduction or increase in the number of pump or compressor stations);

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

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

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

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

PURPOSE AND SUMMARY

H.R. 3301, the "North American Energy Infrastructure Act," was introduced by Rep. Upton (R–MI) and Rep. Green (D–TX) on October 22, 2013. H.R. 3301 would eliminate the need for oil and gas pipelines and electric transmission lines that cross the U.S. border to Canada or Mexico to obtain a Presidential Permit. The legislation replaces the system of Executive Orders that pertain to approvals for cross-border oil and natural gas pipelines and transmission lines. Developers of oil pipelines and transmission lines will now have to obtain a "certificate of crossing" for cross-border projects. Cross-border natural gas pipelines would still have to receive section 3 approvals under the Natural Gas Act (NGA).

BACKGROUND AND NEED FOR LEGISLATION

The three largest countries in North America, the United States, Canada, and Mexico, are undergoing an energy transformation that is not only reshaping policies and long-held beliefs in their own respective countries, but also around the globe. As Secretary of State John Kerry recently stated, "Today, it's clear, the world's new energy map is no longer centered in the Middle East, but in the Western Hemisphere."[1] Oil and gas production in the U.S. and Canada has surged rapidly in less than a decade. Mexico is implementing new reforms to energy policies that would allow for the nation's vast energy potential to be tapped. As fast as energy production has grown in North America over the past decade, production may grow even faster in the decade to come.

The ability of the U.S., Canada, and Mexico to allow for greater trade and utilization of energy resources is key. In order for the U.S. to fully benefit from the energy renaissance that is underway in North America there must be a recognition that cross-border energy projects are in the best interest of our nation and should be encouraged, not discouraged by regulatory roadblocks. Recognizing the commitments and the benefits that are part of the North American Free Trade Agreement (NAFTA), Congress must act to reassure both the private industry here at home and in Canada and Mexico that a modern, transparent, and predictable regulatory process for approving cross-border oil and natural gas pipelines and transmission lines is a priority.

Oil and natural gas pipelines and electric transmission facilities that cross the national boundaries of the United States must receive approval from the Federal government, similar to other types

[1] *Statement* before the Council of the America's, May 7, 2014.

of border crossing facilities (*e.g.,* communication cables, bridges, border entry facilities, and railroads). The current approval process for oil and natural gas pipelines and electric transmission facilities are set forth in a series of Executive Orders created in an ad hoc fashion over multiple Presidential administrations. Congress' authority to regulate foreign commerce "is plainly enumerated by the Constitution," and can decide how the approval of cross border facilities is carried out.[2] Since Congress has yet to exercise its authority to regulate these projects, it has been left to the President to authorize these approvals under the President's inherent constitutional authority to conduct foreign affairs. Currently, one must apply for a Presidential Permit, not only for a new project, but for any existing project that previously has been approved and undergone a change in ownership or modification.

CROSS-BORDER ELECTRIC TRANSMISSION LINES

The U.S. currently has over 40 cross-border electric transmission lines carrying power between the U.S. and Canada and the U.S. and Mexico.[3] The majority of these interconnections are located at the northern border, which has facilitated enhanced system reliability, fuel diversity, and efficiencies in system operation, particularly for the New England and Midwest regions.[4] Each of these facilities has been issued a Presidential Permit and obtained an export authorization from the Secretary of Energy. There are 5 applications for Presidential Permits pending before the Department of Energy (DOE).[5]

Under the current process to construct and operate an international cross-border transmission facility, any person seeking to construct and operate such facilities must first obtain the following from the Secretary of Energy:

(1) a Presidential Permit pursuant to Executive Order 10485 (September 3, 1954), as amended by Executive Order 12038 (February 3, 1978); and

(2) an export authorization pursuant to section 202(e) of the Federal Power Act.[6]

Executive Order 12038 provides that, before a Presidential Permit may be issued, the action must be found to be consistent with the public interest. The two criteria used by DOE to determine if a proposed project is consistent with the public interest are:

(1) the environmental impact of the project, consistent with the National Environmental Policy Act of 1969 (NEPA); and

(2) the impact of the project on electric reliability.[7]

With regard to export authorizations, DOE will grant the authorization unless it finds that the proposed transmission "would impair the sufficiency of electric supply within the United States or

[2] CRS Report, "*Proposed Keystone XL Pipeline: Legal Issues,*" March 21, 2013.

[3] CRS Memorandum, "*Presidential Permitting of Border Crossing Energy Facilities,*" at Table 3 (Aug. 16, 2013).

[4] The U.S. and Canadian transmission systems are physically interconnected at over 35 points with linkages stretching across the border from the Pacific Northwest to New England. Canada is currently the United States' largest foreign supplier of electricity, with exports to the U.S. typically representing anywhere from 5–10% of Canada's total production. In 2012, electricity exports from Canada totaled 57,864,640 megawatt-hours.

[5] DOE, Office of Electricity Delivery and Energy Reliability, "*Pending Applications.*"

[6] 16 U.S.C. § 824a(e).

[7] In addition, concurrence is required from both the Secretary of Defense and the Secretary of State before a Presidential Permit can be issued.

would impede or tend to impede the coordination in the public interest of facilities subject to the jurisdiction of the Commission."[8] DOE must also comply with NEPA before granting authorization to export electric energy.

With respect to evaluating cross-border electric transmission facilities, the Department of Energy's regulations specifically provide that the construction of transmission lines less than 10 miles (or less than 20 miles if within an existing right of way) are eligible for a categorical exclusion (CE) under NEPA.[9] DOE has utilized the CE designation in approving numerous cross-border projects.[10] For transmission facilities outside the 10 or 20 mile threshold, DOE often reaches a conclusion of "Finding of No Significant Impact" (FONSI) given the limited scope of the project review at the national boundary.[11]

CROSS-BORDER NATURAL GAS PIPELINES

The U.S. currently has 50 operating cross-border natural gas pipelines between the U.S. and Canada (29) and the U.S. and Mexico (21).[12] There are 2 additional natural gas pipeline projects in Arizona and Texas that have Presidential Permit applications currently pending.

Under the current process to construct and operate an international cross-border natural gas pipeline, any person seeking to construct and operate such facilities must obtain from the Federal Energy Regulatory Commission (FERC):

(1) a Presidential Permit pursuant to Executive Order 10485 (September 3, 1954), as amended by Executive Order 12038 (February 3, 1978), and

(2) an authorization under section 3 of the NGA for a cross-border import and export facility.[13] Section 3 applications are sometimes filed in conjunction with section 7 applications, which are for interstate natural gas pipelines.[14]

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

For "border facilities" subject to Presidential Permit and NGA section 3 review, discretion is given to FERC on a project-by-project

[8] 16 U.S.C. § 824a(e).

[9] 10 C.F.R. § 1021.410 (Appendix B4.12).

[10] *See, e.g.,* ITC Transmission, "*Presidential Permit,*" Order No. PP–230–4 (Feb. 24, 2012) (DOE issuance of Presidential Permit with CE for electric transmission line and related facilities crossing U.S.-Canadian border); AEP Texas Central Company, "*Presidential Permit,*" Order No. PP–317 (Jan. 22, 2007) (DOE issuance of Presidential Permit with CE for electric transmission line crossing U.S.-Mexico border); Detroit Edison Company, "*Presidential Permit,*" Order No. PP–221 (April 27, 2000) (DOE issuance of Presidential Permit with CE for electric transmission line crossing U.S.-Canadian border).

[11] *See, e.g.,* Sharyland Utilities, L.P., "*Presidential Permit,*" Order No. PP–285 (Jan. 21, 2005) (DOE issuance of Presidential Permit with FONSI for electric transmission line crossing U.S.-Mexico border); Northern States Power Company, "*Presidential Permit,*" Order No. PP–231 (Feb. 6, 2002) (DOE issuance of Presidential Permit with FONSI for electric transmission line crossing U.S.-Canadian border).

[12] CRS Memorandum, "*Presidential Permitting of Border Crossing Energy Facilities,*" at Table 1 (Aug. 16, 2013).

[13] 15 U.S.C. § 717e.

[14] 15 U.S.C. § 717f.

basis to determine the exact scope of the project review, and therefore the exact parameters of the Presidential Permit and section 3 application. FERC looks for a physical feature on a project, such as a valve or meter on the interior side of the U.S. border, as an endpoint for what may be considered to lie within the Commission's jurisdiction and therefore subject to its review procedures. From the physical feature, the border crossing facilities would be construed to extend to either the U.S./Canada or U.S/Mexico border.[15] In reviewing recent FERC Orders issuing a Presidential Permit and granting section 3 authorization, the segment of the project deemed jurisdictional ranged from just less than three miles in length to another project that was 703 feet.[16]

Additionally, applicants must obtain from DOE an authorization to import or export natural gas under section 3 of the NGA for a nation with whom the U.S. has a free trade agreement (FTA).[17] For applications to FTA countries, such as Canada and Mexico, DOE is required to grant these requests "without modification or delay."

CROSS-BORDER OIL PIPELINES

The U.S. currently has 19 operating cross-border oil pipelines between the U.S. and Canada (17) and the U.S. and Mexico (2).[18] There are currently 7 pending applications for Presidential Permits for either new or existing cross-border oil pipelines.[19]

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

The current processes established by Executive Order create a number of problems. First and foremost, a lack of statutory guidance allows for a shifting standard of how projects are to be approved, the manner in which they are approved, and which agency or official makes the final decision on the approval for both new projects and existing projects. A lack of certainty creates a chilling effect on private investment for these projects. Also, given the constructs of the Executive Orders and the ultimate determination of the projects being left to the President, it is highly unlikely that

[15] Discussions with FERC staff, May 2, 2014.

[16] *See e.g.,* Bakken Hunter, (approved April 24, 2014), Houston Pipe Line (approved March 20, 201), and NET Mexico (approved November 8, 2013).

[17] 15 USC § 717b.

[18] CRS Memorandum, *"Presidential Permitting of Border Crossing Energy Facilities,"* at Table 2 (Aug. 16, 2013).

[19] Department of State, Bureau of Energy Resources *"Pending Applications."*

a decision by the President can be challenged in court.[20] This all puts cross-border oil pipeline projects at a distinct disadvantage to comparable projects that do not have to receive Presidential Permit approvals.

H.R. 3301 would eliminate the need for oil and gas pipelines and electric transmission lines that cross the U.S. border to Canada or Mexico to obtain a Presidential Permit. The legislation replaces the system of Executive Orders that pertain to approvals for cross-border oil and natural gas pipelines and transmission lines. Developers of oil pipelines and transmission lines would now be required to obtain a "certificate of crossing" for the cross-border segment of projects that cross the international boundary of the U.S. The definition of the cross-border segment, and thus what may be considered jurisdictional for the purposes of the certificate of crossing review, would be consistent with FERC's established procedures for review of NGA section 3 applications.[21] The relevant official would issue the certificate of crossing unless it is found that the construction, connection, operation, or maintenance of border facilities comprising the cross-border segment is not in the public interest of the United States. Consistent with FERC's procedures, the cross-border segment would be identified as the segment spanning from the international boundary to a physical feature within close proximity, such as a valve or meter. Cross-border natural gas pipelines still would be required to receive section 3 approvals under the NGA. These projects also still would have to comply with all applicable federal, State, and local siting and environmental laws necessary for constructing and operating these projects.

HEARINGS

The Subcommittee on Energy and Power held a hearing on H.R. 3301, North American Energy Infrastructure Act, on October 29, 2013. The Subcommittee received testimony from:

- Mr. Jeff C. Wright, Director, Office of Energy Projects, Federal Energy Regulatory Commission;
- Mr. Mark Mills, Senior Fellow, Manhattan Institute;
- Mr. David Mears, Commissioner, Department of Environmental Conservation, State of Vermont;
- Mr. Paul C. Blackburn, Attorney, Regulatory Consultant, Blackcreek Environmental Consulting;
- Mr. Jim Burpee, President and CEO, Canadian Electricity Association;
- Ms. Mary J. Hutzler, Distinguished Senior Fellow, Institute of Energy Research; and,
- Mr. John H. Kyles, Senior Attorney, Plains All American Pipeline, L.P., on behalf of the Association of Oil Pipe Lines.

COMMITTEE CONSIDERATION

On November 19 and 20, 2013, the Subcommittee on Energy and Power met in open markup session and forwarded H.R. 3301, as amended, to the full Committee by a roll call vote of 19 yeas and

[20] See *"Keystone XL: Reviewability of Transboundary Permits in the United States,"* Kathy Parker, Colorado Journal of Environmental Law and Policy, 2013.

[21] *See e.g.,* Bakken Hunter, (approved April 24, 2014), Houston Pipe Line (approved March 20, 201), and NET Mexico (approved November 8, 2013).

10 nays. On May 7 and 8, 2014, the Committee on Energy and Commerce met in open markup session and ordered H.R. 3301 favorable reported to the House, as amended, by a roll call vote of 31 yeas and 19 nays.

COMMITTEE VOTES

Clause 3(b) of rule XIII of the Rules of the House of Representatives requires the Committee to list the record votes on the motion to report legislation and amendments thereto. A motion by Mr. Upton to order H.R. 3301 favorably reported to the House, as amended, was agreed to by a roll call vote of 31 ayes and 19 nays. The following reflects the recorded votes taken during the Committee consideration:

COMMITTEE ON ENERGY AND COMMERCE -- 113TH CONGRESS
ROLL CALL VOTE # 38

BILL: H.R. 3301, the "North American Energy Infrastructure Act"

AMENDMENT: An amendment offered by Mr. Waxman, No. 4, to provide that the authorization that no person may construct, connect, operate, or maintain a cross-border segment of an oil pipeline or electric transmission facility for the import or export of oil or electricity to or from Canada or Mexico without obtaining a certificate of crossing for the construction, connection, operation, or maintenance of the cross-border segment shall not apply to any construction, connection, operation, or maintenance of a cross-border segment of an oil pipeline or electric transmission facility for the import or export of oil or electricity to or from Canada or Mexico if an application for a permit for such construction, connection, operation, or maintenance, or for a substantially similar project, is pending on the date of enactment of this Act.

DISPOSITION: NOT AGREED TO, by a roll call vote of 16 yeas and 27 nays

REPRESENTATIVE	YEAS	NAYS	PRESENT	REPRESENTATIVE	YEAS	NAYS	PRESENT
Mr. Upton		X		Mr. Waxman	X		
Mr. Hall		X		Mr. Dingell	X		
Mr. Barton		X		Mr. Pallone	X		
Mr. Whitfield				Mr. Rush			
Mr. Shimkus		X		Ms. Eshoo	X		
Mr. Pitts		X		Mr. Engel			
Mr. Walden		X		Mr. Green		X	
Mr. Terry		X		Ms. DeGette	X		
Mr. Rogers				Mrs. Capps	X		
Mr. Murphy		X		Mr. Doyle	X		
Mr. Burgess				Ms. Schakowsky			
Mrs. Blackburn				Mr. Matheson			
Mr. Gingrey		X		Mr. Butterfield			
Mr. Scalise		X		Mr. Barrow		X	
Mr. Latta		X		Ms. Matsui	X		
Mrs. McMorris Rodgers		X		Ms. Christensen			
Mr. Harper		X		Ms. Castor	X		
Mr. Lance		X		Mr. Sarbanes	X		
Mr. Cassidy				Mr. McNerney	X		
Mr. Guthrie		X		Mr. Braley	X		
Mr. Olson		X		Mr. Welch	X		
Mr. McKinley		X		Mr. Lujan	X		
Mr. Gardner		X		Mr. Tonko	X		
Mr. Pompeo		X		Mr. Yarmuth	X		
Mr. Kinzinger		X					
Mr. Griffith		X					
Mr. Bilirakis		X					
Mr. Johnson		X					
Mr. Long		X					
Mrs. Ellmers		X					

05/08/2014

COMMITTEE ON ENERGY AND COMMERCE -- 113TH CONGRESS
ROLL CALL VOTE # 39

BILL: H.R. 3301, the "North American Energy Infrastructure Act"

AMENDMENT: An amendment offered by Mr. Dingell, No. 5, to provide that no person may construct, connect, operate, or maintain an oil pipeline or electric transmission facility for the import or export of oil or electricity to or from Canada or Mexico without obtaining approval of the construction, connection, operation, or maintenance of the pipeline or facility.

DISPOSITION: NOT AGREED TO, by a roll call vote of 21 yeas and 29 nays

REPRESENTATIVE	YEAS	NAYS	PRESENT	REPRESENTATIVE	YEAS	NAYS	PRESENT
Mr. Upton		X		Mr. Waxman	X		
Mr. Hall		X		Mr. Dingell	X		
Mr. Barton		X		Mr. Pallone	X		
Mr. Whitfield				Mr. Rush			
Mr. Shimkus		X		Ms. Eshoo	X		
Mr. Pitts		X		Mr. Engel	X		
Mr. Walden		X		Mr. Green		X	
Mr. Terry		X		Ms. DeGette	X		
Mr. Rogers				Mrs. Capps	X		
Mr. Murphy		X		Mr. Doyle	X		
Mr. Burgess		X		Ms. Schakowsky	X		
Mrs. Blackburn		X		Mr. Matheson	X		
Mr. Gingrey		X		Mr. Butterfield	X		
Mr. Scalise		X		Mr. Barrow	X		
Mr. Latta		X		Ms. Matsui	X		
Mrs. McMorris Rodgers		X		Ms. Christensen			
Mr. Harper		X		Ms. Castor	X		
Mr. Lance		X		Mr. Sarbanes	X		
Mr. Cassidy		X		Mr. McNerney	X		
Mr. Guthrie		X		Mr. Braley	X		
Mr. Olson		X		Mr. Welch	X		
Mr. McKinley		X		Mr. Lujan	X		
Mr. Gardner		X		Mr. Tonko	X		
Mr. Pompeo		X		Mr. Yarmuth	X		
Mr. Kinzinger		X					
Mr. Griffith		X					
Mr. Bilirakis		X					
Mr. Johnson		X					
Mr. Long		X					
Mrs. Ellmers		X					

05/08/2014

COMMITTEE ON ENERGY AND COMMERCE -- 113TH CONGRESS
ROLL CALL VOTE # 40

BILL: H.R. 3301, the "North American Energy Infrastructure Act"

AMENDMENT: A motion by Mr. Upton to order H.R. 3301 favorably reported to the House, as amended. (Final Passage)

DISPOSITION: AGREED TO, by a roll call vote of 31 yeas and 19 nays

REPRESENTATIVE	YEAS	NAYS	PRESENT	REPRESENTATIVE	YEAS	NAYS	PRESENT
Mr. Upton	X			Mr. Waxman		X	
Mr. Hall	X			Mr. Dingell		X	
Mr. Barton	X			Mr. Pallone		X	
Mr. Whitfield				Mr. Rush			
Mr. Shimkus	X			Ms. Eshoo		X	
Mr. Pitts	X			Mr. Engel		X	
Mr. Walden	X			Mr. Green	X		
Mr. Terry	X			Ms. DeGette		X	
Mr. Rogers				Mrs. Capps		X	
Mr. Murphy	X			Mr. Doyle		X	
Mr. Burgess	X			Ms. Schakowsky		X	
Mrs. Blackburn	X			Mr. Matheson	X		
Mr. Gingrey	X			Mr. Butterfield		X	
Mr. Scalise	X			Mr. Barrow	X		
Mr. Latta	X			Ms. Matsui		X	
Mrs. McMorris Rodgers	X			Ms. Christensen			
Mr. Harper	X			Ms. Castor		X	
Mr. Lance	X			Mr. Sarbanes		X	
Mr. Cassidy	X			Mr. McNerney		X	
Mr. Guthrie	X			Mr. Braley		X	
Mr. Olson	X			Mr. Welch		X	
Mr. McKinley	X			Mr. Lujan		X	
Mr. Gardner	X			Mr. Tonko		X	
Mr. Pompeo	X			Mr. Yarmuth		X	
Mr. Kinzinger	X						
Mr. Griffith	X						
Mr. Bilirakis	X						
Mr. Johnson	X						
Mr. Long	X						
Mrs. Ellmers	X						

05/08/2014

COMMITTEE OVERSIGHT FINDINGS

Pursuant to clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the Committee made findings that are reflected in this report.

STATEMENT OF GENERAL PERFORMANCE GOALS AND OBJECTIVES

H.R. 3301 would eliminate the need for oil and gas pipelines and electric transmission lines that cross the U.S. border to Canada or Mexico to obtain a Presidential Permit. The legislation replaces the system of Executive Orders that pertain to approvals for cross-border oil and natural gas pipelines and transmission lines. Developers of oil pipelines and transmission lines will now have to obtain a "certificate of crossing" for cross-border projects. Cross-border natural gas pipelines would still have to receive section 3 approvals under the Natural Gas Act.

NEW BUDGET AUTHORITY, ENTITLEMENT AUTHORITY, AND TAX EXPENDITURES

In compliance with clause 3(c)(2) of rule XIII of the Rules of the House of Representatives, the Committee finds that H.R. 3301 would result in no new or increased budget authority, entitlement authority, or tax expenditures or revenues.

EARMARK, LIMITED TAX BENEFITS, AND LIMITED TARIFF BENEFITS

In compliance with clause 9(e), 9(f), and 9(g) of rule XXI of the Rules of the House of Representatives, the Committee finds that H.R. 3301 contains no earmarks, limited tax benefits, or limited tariff benefits.

COMMITTEE COST ESTIMATE

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.

CONGRESSIONAL BUDGET OFFICE ESTIMATE

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

MAY 29, 2014.

Hon. FRED UPTON,
Chairman, Committee on Energy and Commerce,
U.S. House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 3301, the North American Energy Infrastructure Act.

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

Sincerely,

DOUGLAS W. ELMENDORF.

Enclosure.

H.R. 3301—North American Energy Infrastructure Act

H.R. 3301 would make changes to permitting requirements for pipelines and other energy infrastructure at international borders. In particular, the bill would eliminate the existing requirement on sponsors of such infrastructure to obtain a Presidential permit. Instead, H.R. 3301 would require sponsors of oil pipelines and electric transmission projects that cross international borders to obtain a certificate of crossing from either the Secretary of State or the Secretary of Energy. Under H.R. 3301, sponsors of natural gas pipelines would not be required to obtain a certificate of crossing.

CBO estimates that implementing H.R. 3301 would have no significant net effect on the federal budget. Relative to current law, we expect that any changes to administrative costs incurred by agencies responsible for regulating energy infrastructure would not exceed $500,000 in any year, assuming the availability of appropriated funds. Enacting H.R. 3301 would not affect direct spending or revenues; therefore, pay-as-you-go procedures do not apply.

H.R. 3301 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 Theresa Gullo, 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.

DUPLICATION OF FEDERAL PROGRAMS

No provision of H.R. 3301 establishes or reauthorizes a program of the Federal Government known to be duplicative of another Federal program, a program that was included in any report from the Government Accountability Office to Congress pursuant to section 21 of Public Law 111–139, or a program related to a program identified in the most recent Catalog of Federal Domestic Assistance.

DISCLOSURE OF DIRECTED RULE MAKINGS

The Committee estimates that enacting H.R. 3301 specifically directs no rule makings within the meaning of 5 U.S.C. 551 to be completed.

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

Section 1 provides the short title for the legislation, the "North American Energy Infrastructure Act."

Section 2. Finding

Section 2 includes a congressional finding that the U.S. should establish a more uniform, transparent, and modern process for the construction and operation of oil or gas pipelines and electric transmission facilities for the import or export of oil, gas, or electricity to or from Canada and Mexico, in pursuit of a more secure and efficient North American energy market.

Section 3. Authorization of certain energy infrastructure projects at the national boundary of the United States

Section 3(a) creates a new approval process for oil pipelines and electric transmission facilities that cross the national boundary of the U.S. between Canada or Mexico. Specifically, no person may construct, connect, operate, or maintain a cross-border segment of an oil pipeline or electric transmission facility for the import or export of oil or the transmission of electricity to or from Canada or Mexico without obtaining a "certificate of crossing."

Section 3(b)(1) provides that, within 120 days after final action under the National Environmental Policy Act, the relevant agency is required to issue a certificate of crossing for the cross-border segment unless the relevant agency finds that the construction of the cross-border segment is not in the public interest of the U.S.

Section 3(b)(2) establishes that the Secretary of State will be responsible for the issuance of a certificate of crossing for oil pipelines and the Department of Energy for electric transmission facilities.

Section 3(b)(3) provides that for electric transmission facilities, approval is contingent upon compliance with applicable Electric Reliability Organization, Regional Transmission Organization, and Independent System Operator policies and standards.

Section 3(c) provides that no other approvals are necessary under any current Executives Orders. This approval process does not apply to any oil or gas pipelines or electric transmission facilities that (1) are operating across the national boundary at the date of enactment; (2) have previously received a Presidential Permit; (3) have previously been approved under this process; or (4) have an application pending on the date of enactment until the application is denied or until July 1, 2016. No future approvals are needed under this process for modifications or changes of ownership. The restriction in section 3(c)(4) shall apply equally to a pending Presidential Permit application that is withdrawn and then subsequently re-submitted for the same project (or a substantially similar project) for purposes of being covered under the Act.

Section 3(d) provides that all other Federal statutes, including environmental laws and permits, sections 3 and 7 of the Natural Gas Act, and section 103(a) of the Energy Policy and Conservation Act, are not affected.

Section 4. Importation or exportation of natural gas to Canada and Mexico

Section 4 repeals the requirement under section 3(c) of the NGA that approval is needed from DOE for the export or import of natural gas to or from the U.S., Canada, or Mexico across the boundary of the U.S.

Section 5. Transmission of electric energy to Canada and Mexico

Section 5 repeals the requirement under section 202(e) of the Federal Power Act requiring an export authorization from DOE to transmit electric energy from the U.S. to a foreign country.

Section 6. No Presidential Permit required

Section 6 provides that no Presidential Permit (or similar permit) required under various Executive Orders shall be necessary for the construction, connection, operation, or maintenance of an oil or natural gas pipeline or electric transmission facility.

Section 7. Modifications to existing projects

Section 7 provides that neither a certificate of crossing under section 3 nor a Presidential Permit described in section 6 are required for a "modification" to the construction, connection, operation, or maintenance of an oil or natural gas pipeline or electric transmission facility.

Section 8. Effective date; rulemaking deadlines

Section 6 establishes a July 1, 2015 effective date for sections 3 through 7. For the respective agencies responsible for carrying out the provisions in section 3, notices of proposed rulemaking are to be published in the Federal Register no later than 180 days after the date of enactment, and final rules are to be published in the Federal Register no later than 1 year after the date of enactment.

Section 9. Definitions

Section 9 sets forth definitions for the following terms: cross-border segment, modification, natural gas, oil, Electric Reliability Organization, and Independent System Operator, and Regional Transmission Organization.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

NATURAL GAS ACT

* * * * * * *

EXPORTATION OR IMPORTATION OF NATURAL GAS; LNG TERMINALS

SEC. 3. (a) * * *

* * * * * * *

(c) For purposes of subsection (a), the importation of the natural gas referred to in subsection (b), or the exportation of natural gas to a nation with which there is in effect a free trade agreement requiring national treatment for trade in natural gas, shall be deemed to be consistent with the public interest, and applications for such importation or exportation shall be granted without modification or delay. *No order is required under subsection (a) to authorize the export or import of any natural gas to or from Canada or Mexico.*

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FEDERAL POWER ACT

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

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

SEC. 202. (a) * * *

* * * * * * *

[(e) After six months from the date on which this Part takes effect, no person shall transmit any electric energy from the United States to a foreign country without first having secured an order of the Commission authorizing it to do so. The Commission shall issue such order upon application unless, after opportunity for hearing, it finds that the proposed transmission would impair the sufficiency of electric supply within the United States or would impede or tend to impede the coordination in the public interest of facilities subject to the jurisdiction of the Commission. The Commission may by its order grant such application in whole or in part, with such modifications and upon such terms and conditions as the Commission may find necessary or appropriate, and may from time to time, after opportunity for hearing and for good cause shown, make such supplemental orders in the premises as it may find necessary or appropriate.**]**

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

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PUBLIC UTILITY REGULATORY POLICIES ACT OF 1978

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TITLE VI—MISCELLANEOUS PROVISIONS

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SEC. 602. SEASONAL DIVERSITY ELECTRICITY EXCHANGE.

(a) * * *

(b) PERMIT.—Notwithstanding any transfer of functions under the first sentence of section 301(b) of the Department of Energy Organization Act, no permit referred to in subsection (a)(1)(B) may be issued unless **[**the Commission has conducted hearings and made the findings required under section 202(e) of the Federal Power Act and under the applicable execution order respecting the construction, operation, maintenance, or connection at the borders of the United States of facilities for the transmission of electric energy between the United States and a foreign country. Any finding of the Commission under an applicable executive order referred to in this subsection shall be treated for purposes of judicial review as an order issued under section 202(e) of the Federal Power Act.**]** *the Secretary has conducted hearings and finds that the proposed transmission facilities would not impair the sufficiency of electric supply within the United States or would not impede or tend to impede the coordination in the public interest of facilities subject to the jurisdiction of the Secretary.*

* * * * * * *

MINORITY, ADDITIONAL, OR DISSENTING VIEWS

H.R. 3301 would substantially weaken the process for federal approval of oil and natural gas pipelines and electric transmission lines that cross the U.S. border with Canada or Mexico. The new process established by the bill effectively exempts such projects from environmental and safety review under the National Environmental Policy Act (NEPA) by narrowing NEPA applicability to just the sliver of the project actually crossing the border. The process created by the bill also tips the scale in favor of approving controversial projects by establishing a rebuttable presumption of approval. H.R. 3301 would allow a project that is found not to be in the public interest under the current permitting process to reapply under the new weaker process, thereby reviving the Keystone XL tar sands pipeline if the Administration disapproves the pending application. The bill would exempt all modifications to existing cross-border pipelines, including major expansions of pipelines, from any requirement for federal review or approval. In addition, the bill allows for unlimited exports of liquefied natural gas (LNG) to any destination in the world as long as the LNG first goes through Canada or Mexico.

The effect of these changes would be allow large and long-lived cross-border energy projects to be approved with no understanding or consideration of their environmental impacts or to be exempted from any permitting requirement at all. The public, including communities and landowners directly affected by the projects, would have little or no information and no opportunity to object or request mitigating action, except to the extent provided under limited state laws in some states.

II. CURRENT PERMITTING PROCESS FOR TRANSBOUNDARY ENERGY PROJECTS

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

A. Oil Pipelines

In order to construct and operate an oil pipeline that crosses the U.S. boundary with Canada or Mexico, an applicant must obtain a presidential permit. The President has delegated the authority to permit cross-border oil pipeline projects to the State Department

[1] The executive branch authority to issue presidential permits for cross-border energy project derives from the President's constitutional authority to conduct foreign affairs. See Congressional Research Service, *Presidential Permits for Border Crossing Energy Facilities* (Oct. 29, 2013) (R43261).

pursuant to Executive Orders 11423 and 13337, which require an affirmative finding that a project is in the national interest.[2] Prior to making the national interest determination, NEPA requires the State Department to prepare, with notice and public comment, an environmental impact statement that assesses impacts on the environment that would result from a project and evaluates alternatives that would avoid or minimize adverse environmental effects.[3] Executive Order 13337 recognizes that these complex decisions involve matters within the expertise of multiple federal agencies, and it provides specified federal agencies 90 days to comment on the application.[4]

B. Natural gas pipelines and exports

In order to construct and operate a natural gas pipeline that crosses the U.S. boundary with Canada or Mexico, an applicant must obtain a presidential permit from the Federal Energy Regulatory Commission (FERC). Under Executive Order 10485, FERC is authorized to issue a presidential permit if it finds the project "to be consistent with the public interest" and receives favorable recommendations from the Secretary of State and Secretary of Defense.[5] FERC may set conditions on a permit to protect the public interest.

A cross-border natural gas pipeline must also obtain FERC approval under section 3 of the Natural Gas Act. FERC is required to grant an application unless it finds that the proposed export will not be consistent with the public interest. Under FERC's regulations, an applicant applies for the Natural Gas Act approval and the presidential permit simultaneously in a single application package. One environmental review is performed for the entire submission.

An entity seeking to export natural gas as a commodity through a pipeline or as liquefied natural gas must obtain approval from the Department of Energy (DOE). Under section 3 of the Natural Gas Act, DOE is required to grant an application to export natural gas to a country without a free trade agreement with the United States unless it finds that the proposed export will not be consistent with the public interest. For export to countries with a free trade agreement (including Canada and Mexico), the Natural Gas Act requires DOE to deem such applications consistent with the public interest and grant them without modification or delay.

C. Electric transmission lines and electricity exports

A presidential permit is required in order to construct and operate an electric transmission line that crosses the U.S. boundary with Canada or Mexico. Under Executive Order 10485, DOE is authorized to issue a presidential permit if it finds the project "to be consistent with the public interest" and receives favorable recommendations from the Secretary of State and Secretary of De-

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

[3] National Environmental Policy Act of 1969, Pub. L. No. 94–83; U.S. Department of State, *Draft Environmental Impact Statement for the Keystone XL Oil Pipeline Project*, at 1–1 (Apr. 16, 2010) (online at keystonepipeline-xl.state.gov/documents/organization/182325.pdf).

[4] Exec. Order No. 13337, § 1(c), 69 Fed. Reg. 25299 (Apr. 30, 2004).

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

fense.[6] DOE makes the public interest determination "by evaluating the electric reliability impacts, the potential environmental impacts, and any other factors that DOE may also consider relevant to the public interest."[7] An environmental analysis is required to comply with NEPA. DOE may set conditions on a permit to protect the public interest.

Under section 202(e) of the Federal Power Act, the transmission of electricity from the U.S. to another country requires approval from DOE. DOE is required to approve an application unless it finds that the proposed transmission of electricity would "impair the sufficiency of electric supply within the United States or would impede or tend to impede the coordination in the public interest of [electric] facilities."[8] DOE may set conditions on the approval.

III. SECTION-BY-SECTION ANALYSIS OF H.R. 3301

Several sections in H.R. 3301 raise significant concerns. During full Committee markup, Chairman Fred Upton (R–MI) and Rep. Gene Green (D–TX) offered an amendment that substantially changed the language of the introduced bill but failed to address many of the concerns that had been raised by the minority. The committee accepted the amendment by a voice vote.

A. Section 3

Section 3 of the bill, as amended, establishes a new permitting process for applicants seeking to construct, connect, operate, or maintain a cross-border segment of an oil pipeline or electric transmission facility for the purpose of importing or exporting oil or electricity from Canada or Mexico. This replaces the existing requirement that an entire trans-boundary project, not just a segment, obtain a presidential permit.

Under the new process, the responsible federal agency—the Department of Energy for electric transmission lines and the Department of State for oil pipelines—must issue a "certificate of crossing" for the cross-border segment of an oil pipeline or electric transmission facility within 120 days of final action under NEPA, unless the agency finds that the segment "is not in the public interest of the United States." Unlike the existing process, this provision establishes a rebuttable presumption of approval, tipping the scale in favor of the project. Instead of requiring an agency to affirmatively find that a project is in the public interest, it shifts the burden of proof to opponents of the project to show that it is not in the public interest.

A "cross-border segment" is defined as the portion of the project "that is located at the national boundary." This language limits the requirement for federal approval to just a sliver of a much larger project—only that portion that physically crosses the border—and makes it more difficult for an agency to deny the application as contrary to the public interest.

Section 3 temporarily excludes from the new permitting process any project with permit approval pending on the date of enactment.

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[6] *Id.*

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

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

The exclusion ends when a pending project is denied, or, for any still-pending project, on July 1, 2016. Pending projects would become subject to the new permitting process when the exclusion ends, and any project that is denied a presidential permit before July 1, 2016, would be able to reapply under the new process.

This has significant implications for the Keystone XL tar sands pipeline and other projects with pending applications for presidential permits. If a decision to issue a presidential permit for Keystone XL has not been made by July 1, 2016, the pipeline would then proceed under the new process, and it likely would be approved by November 1, 2016. If President Obama finds that the Keystone XL pipeline is not in the public interest and denies the presidential permit, then under this bill, TransCanada could reapply under the new weaker process.

At the full Committee markup of H.R. 3301, Ranking Member Henry Waxman offered an amendment to keep projects with pending permit applications under the existing process. In introducing the amendment, Ranking Member Waxman noted that the bill's supporters assert that H.R. 3301 is not intended to fast-track approval of the Keystone XL pipeline. He explained that his amendment would ensure that the bill's text reflects those assurances. The amendment was defeated by a vote of 16–27.

Section 3 also effectively exempts cross-border projects from meaningful environmental review under NEPA by dramatically narrowing the focus of that review. Under the bill, the approval process, and hence the NEPA review, applies only to "a cross-border segment" of a much larger project. These trans-boundary pipelines and transmission lines are multi-billion dollar infrastructure investments that can stretch hundreds of miles and last for decades. Before making decisions about whether to approve such projects, federal agencies should be required to carefully consider their potential impacts on the environment and on communities along their routes. Cross-border projects pass through private property and sensitive lands and over important aquifers. They transport hazardous substances that, if spilled or ignited, can cause serious damage. They also have implications for climate change. Tar sands pipeline projects, such as Keystone XL, would facilitate more rapid expansion of the tar sands, the dirtiest source of crude available with respect to carbon pollution. Yet, despite NEPA, almost none of these impacts would be documented or considered under H.R. 3301's narrow definition of the project to be approved.

During full Committee markup of H.R. 3301, Rep. John Dingell (D–MI) offered an amendment to ensure that the complete length of cross-border projects would be subject to full environmental review under NEPA. The amendment was defeated by a vote of 21–29.

B. Section 4

Section 4 of the bill amends section 3 of the Natural Gas Act to eliminate the requirement to obtain DOE authorization for the export or import of natural gas to or from Canada or Mexico.

This significantly alters the current approval process for LNG exports. Under current law, if a company seeks to export natural gas, it must first obtain approval from the Department of Energy. For

countries without a free trade agreement with the United States, DOE examines whether the proposed export is in the public interest. For countries with a free trade agreement with the United States, including Canada and Mexico, DOE is required to deem export applications consistent with the public interest and grant them without delay. DOE testified that these applications are relatively simple filings, with DOE quickly responding within two to four weeks of a request.[9] These approvals can include conditions, such as prohibitions against simply using Canada or Mexico as a pass-through before shipping the gas to another country.

The bill amends current law to completely exempt a company exporting natural gas to Canada or Mexico from any approval at all. This unnecessary change could have significant consequences. Under the bill, DOE would no longer be able to include any conditions on the approvals. As a result, this bill allows unrestricted exports of LNG to Canada or Mexico, and from there it could then be re-exported to any other country. These unlimited LNG exports through Canada and Mexico would no longer be subject to any DOE approval, review, or conditions. There would be no public interest determination or analysis of impacts on domestic natural gas prices or American consumers and manufacturers.

During full Committee markup of H.R. 3301, Rep. Jerry McNerney (D–CA) offered an amendment to strike section 4 of the bill. The amendment was defeated by a voice vote.

C. Section 5

Section 5 of the bill repeals section 202(e) of the Federal Power Act, which requires approval from DOE for the transmission of electricity from the U.S. to another country. According to the Federal Energy Regulatory Commission, the repeal of section 202(e) could have serious unintended consequences. The career Director of FERC's Office of Energy Projects testified that "repeal could have an unintended potentially adverse effect on the Commission's ability to ensure non-discriminatory open access transmission service over the U.S. electric transmission grid."[10] Owners of transmission lines between the U.S. and Canada or Mexico "thus could discriminate in providing service, or even deny service outright." Mr. Wright explained: "Foreign generators could be denied access to United States markets, or required to pay discriminatory changes to access those markets, and U.S. generators could be denied access to foreign markets, or be required to pay discriminatory charges to access those markets." Thus, the bill could significantly disrupt electricity and transmission markets by undermining the basic rules governing those markets.

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[9] House Committee on Energy and Commerce, Subcommittee on Energy and Power, Testimony of Michael Knotek, Deputy Under Secretary for Science and Energy, U.S. Department of Energy, *Hearing on H.R. 3301, the "North American Energy Infrastructure Act,"* 113th Cong. (Oct. 29, 2013).

[10] House Committee on Energy and Commerce, Subcommittee on Energy and Power, Testimony of Jeff C. Wright, Director, Office of Energy Projects, Federal Energy Regulatory Commission, *Hearing on H.R. 3301, the "North American Energy Infrastructure Act,"* 113th Cong. (Oct. 29, 2013).

D. Section 6

Section 6 of the bill eliminates the current requirement to obtain a presidential permit for the construction, connection, operation, or maintenance of an oil or natural gas pipeline or electric transmission facility, or any cross-border segment thereof. Instead, those wishing to construct, connect, operate, or maintain a cross-border segment of an oil pipeline or electric transmission facility must obtain approval under the new process described in section 3.

Applicants for cross-boundary natural gas pipelines do not have to obtain approval under the new process but still must obtain approval from FERC under sections 3 and 7 of the Natural Gas Act. As a result, eliminating the presidential permit requirement for trans-boundary natural gas pipelines would not accelerate the permitting of such projects. Under existing law, the FERC approval process proceeds simultaneously with the presidential permitting process, which generally takes less time than the statutory approval. At the October 29, 2013, Energy and Power Subcommittee hearing on H.R. 3301, the career Director of FERC's Office of Energy Projects testified that the bill "would not speed up the process" for natural gas pipelines.[11]

E. Section 7

Section 7 of the bill provides that applicants do not have to obtain a certificate of crossing under section 3 or a presidential permit for pipeline or transmission line "modifications." Section 9 of the bill defines "modifications" to include "reversal of flow direction, change in ownership, volume expansion, downstream or upstream interconnection, or adjustment to maintain flow (such as a reduction or increase in the number of pump or compressor stations." This exemption applies to modifications of any cross-border energy facility that is operating as of the date of enactment or that has received a presidential permit under the existing process or a certificate of crossing under the new process.

As a result, controversial modifications to existing cross-border pipelines or transmission lines would not require federal approval and would not be subject to any environmental review under NEPA.

Many modifications, as defined by this bill, could have environmental impacts just as significant as those resulting from an entirely new project. For example, Enbridge has submitted an application to the State Department to amend its presidential permit to allow the expansion of the Alberta Clipper tar sands pipeline from 450,000 barrels per day (bpd) to 880,000 bpd.[12] The pipeline runs from Hardisty, Alberta to a border crossing in North Dakota, and continues for 327 miles through North Dakota and Minnesota to Superior, Wisconsin. The Alberta Clipper expansion project is highly controversial due to concerns about increased dependence on tar sands crude and local impacts, including spills. This expansion also

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[11] *Id.*

[12] Enbridge Energy, *Application of Enbridge Energy, Limited Partnership for an amendment to the August 3, 2009 Presidential Permit for Line 67 to increase the operational capacity of pipeline facilities at the international boundary between Canada and the United States* (Dec. 21, 2012) (online at www.state.gov/documents/organization/202645.pdf).

would significantly increase the carbon pollution associated with the pipeline.

Pipeline reversals also carry substantial environmental risks that should be evaluated before approval. For example, the 600,000 bpd Portland-Montreal pipeline currently carries light sweet crude from Maine to Montreal, but it is widely expected that the pipeline will soon apply for authorization for a reversal.[13] Reversal of this pipeline would complete a project to bring tar sands crude from Canada through New Hampshire and Vermont to Portland, Maine, where it would be loaded onto tankers for further transport. The Portland-Montreal pipeline reversal is highly controversial due to concerns about increased dependence on tar sands crude and local impacts, including the impact of a spill on local economies that are dependent on tourism linked to outdoor recreation. The Governors of New Hampshire and Vermont have written to the State Department to request a thorough environmental review, and 42 towns and municipalities have passed resolutions opposing the project.[14]

During full Committee markup of H.R. 3301, Rep. Peter Welch (D–VT) offered an amendment to limit the permit exemption for modifications to only "minor modifications," such as a change in ownership. Rep. Welch withdrew the amendment after Chairman Upton committed to working with Rep. Welch to try to address his concerns.

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

HENRY A. WAXMAN.
BOBBY L. RUSH.

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[13] *See, e.g., Pipeline plan to send crude from Montreal to Maine raises ire in New*µ*England*, Financial Post (May 22, 2013); Natural Resources Defense Council, *Going in Reverse: The Tar Sands Oil Threat to Central Canada and New England* (Jul. 3, 2013) (online at www.nrdc.org/energy/going-in-reverse.asp).

[14] State of New Hampshire, *Governor Hassan Calls on Federal Government to Protect NH from Potentially Dangerous Tar Sands Oil Pipeline* (Apr. 22, 2013) (online at www.governor.nh.gov/media/news/2013/pr–2013–04–22–tar-sands.htm); State of Vermont, *Gov. Shumlin Calls for New Federal Review of Proposed Tar Sands Pipeline Route* (Jun. 20, 2013) (online at governor.vermont.gov/blog-gov-shumlin-urges-sec-john-kerry-pipeline-review); National Wildlife Federation, *Vermont Towns Protect Wildlife and Vote No' on Tar Sands* (Mar. 6, 2014) (online at blog.nwf.org/2014/03/vermont-towns-protect-wildlife-and-vote-no-on-tar-sands/).