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Interstate Natural Gas Pipeline Siting: FERC Policy and Issues for Congress

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Summary

Growth in U.S. shale gas production has driven the development of natural gas pipelines from producing regions to consuming markets, typically in different states. If long-term growth trends in U.S. shale gas continue, the need for new pipelines could be substantial. One recent analysis by the pipeline industry projected over 30 billion cubic feet per day of new pipeline capacity would be needed through 2025. This new infrastructure could amount to several thousand miles of additional interstate pipeline and on the order of $40 billion in capital investment.

Under the Natural Gas Act, companies seeking to build interstate natural gas pipelines must first obtain certificates of public convenience and necessity from the Federal Energy Regulatory Commission (FERC). The commission's regulatory process for certificate applications consists of pre-filing, certificate application, application review (including environmental and other agency review), authorization, and post-certificate proceedings. Several aspects of FERC's review practices are of interest to policymakers because they have been the subject of FERC dissent, debate in Congress, or litigation. Key challenges to FERC certification involve environmental impact assessment, evaluating project need, review timing, relations with other agencies, changes in industry structure, export issues, environmental justice, and public participation in review.

The Bush, Obama, Trump, and Biden Administrations issued a series of executive orders intended to change federal permitting of infrastructure, specifically including energy infrastructure. Exactly how all of these orders have affected, or may affect, federal review of natural gas pipeline siting is not clear. For example, in 2018, FERC signed a memorandum of understanding with other federal agencies to meet the goals in President Trump's E.O. 13807 "of reducing the time to two years for each agency to complete all environmental reviews and authorization decisions for major infrastructure projects." However, President Biden revoked this executive order.

Pipeline expansion has prompted numerous congressional hearings and legislative proposals regarding the federal role in pipeline siting. At least seven related bills have been introduced in the 117th Congress, including the Promoting Interagency Coordination for Review of Natural Gas Pipelines Act (H.R. 1616), the Safe and Accountable Federal Energy Review for Pipelines Act of 2021 (H.R. 2115), the CLEAN Future Act (H.R. 1512), the Environmental Justice Mapping and Data Collection Act of 2021 (H.R. 516), the Ending Natural Gas Companies' Seizure of Land for Export Profits Act (S. 655), and the Landowner Fairness Act (S. 641), and H.R. 2889.

On February 18, 2021, FERC published a Notice of Inquiry (NOI) to reconsider its policies and procedures for the certification of interstate natural gas pipelines. The 2021 NOI reopens a policy inquiry originally initiated in 2018. The commission's 2021 inquiry solicits additional information and stakeholder perspectives about five aspects of certificate application review: determination of project need, eminent domain and landowner interests, environmental impacts, efficiency of the commission's review process, and consideration of effects on environmental justice communities. FERC's inquiry was opened for public comments through May 26, 2021. The commission has not stated any official timetable for completing this proceeding.

FERC's NOI covers key congressional concerns as well as issues arising in certificate review proceedings and litigation. Therefore, while FERC's policy review does not guarantee any changes to the gas pipeline certification status quo, it may provide valuable information and context for congressional oversight. If Congress disagrees with FERC's future policy choices based on the findings of its NOI, those findings presumably would provide a basis and policy context for subsequent legislative proposals. FERC's policy options are limited to those aspects of gas pipeline regulation which fall directly within the commission's statutory authority under the Natural Gas Act or within its discretion under other federal statutes.

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Introduction

On February 18, 2021, the Federal Energy Regulatory Commission (FERC) published a Notice of Inquiry (NOI) to reconsider its policies and procedures for the certification (permitting) of interstate natural gas pipelines.[1] The 2021 NOI solicits new information and additional stakeholder perspectives regarding the commission's review of its pipeline certification policies, which was originally initiated in 2018.[2] This policy review included a 2018 public comment period, but the commission took no further action.[3] The 2021 NOI effectively reopens the 2018 proceeding under a new FERC chairman and three (of five) new commissioners.

Expansion of the U.S. natural gas pipeline network has been an ongoing focus of Congress, prompting numerous hearings and legislative proposals over the last decade regarding the federal role in interstate natural gas pipeline siting. Several related bills have been introduced in the 117th Congress through May 2021, including the Promoting Interagency Coordination for Review of Natural Gas Pipelines Act (H.R. 1616), the Safe and Accountable Federal Energy Review for Pipelines Act of 2021 (H.R. 2115), the CLEAN Future Act (H.R. 1512), the Environmental Justice Mapping and Data Collection Act of 2021 (H.R. 516), the Ending Natural Gas Companies' Seizure of Land for Export Profits Act (S. 655), the Landowner Fairness Act (S. 641), and a bill to amend the Natural Gas Act with respect to actions for eminent domain by holders of certificates of public convenience and necessity, and for other purposes (H.R. 2889).

FERC's NOI is in the continuation a series of legislative proposals, executive orders, court rulings, and commission orders which address the federal regulation of gas pipeline permitting. FERC's inquiry provides both advocates and opponents of gas pipeline development a new opportunity to express their views about how the commission considers such projects. It may also identify issues of focus for future congressional oversight and legislation. Given that the United States is the world's largest producer of natural gas,[4] policy changes by FERC affecting natural gas infrastructure could have significant implications for U.S. natural gas resource development, prices, and associated environmental and social impacts. Therefore, they are the subject of scrutiny within Congress and among a wide range of stakeholders.[5]

This report provides an overview of the federal certification process for interstate natural gas pipelines and recent policy issues which have been the subject of debate, legislation, and litigation. It reviews recent executive orders intended to influence federal approval of natural gas pipeline projects. The report summarizes legislation proposed in the 117th Congress (and prior Congresses in the **Appendix**) directed at the federal review of interstate natural gas pipeline certificate applications. It also summarizes FERC's inquiry regarding of its policy statement for natural gas pipeline certification, which serves as the basis of its review of pipeline certificate applications. The report concludes with a discussion of policy issues for Congress.

[1] Federal Energy Regulatory Commission (FERC), Certification of New Interstate Natural Gas Facilities, Notice of Inquiry, Docket No. PL18-1-000, February 18, 2021. (Hereinafter, FERC 2021 NOI.)

[2] FERC, *Certification of New Interstate Natural Gas Facilities*, Notice of Inquiry, Docket No. PL18-1-000, April 19, 2018. (Hereinafter, FERC 2018 NOI.)

[3] Richard Glick, FERC Chairman, letter to the Honorable Joe Manchin III, United States Senate, May 21, 2021.

[4] BP, *Statistical Review of World Energy 2020*, 2020, p. 34.

[5] See, for example, U.S. Senator John Hoeven et al., letter to the Honorable Richard Glick, Chairman, et al., FERC, April 29, 2021. "The Commission's Policy Statement is critical to the advancement of important natural gas infrastructure projects."

A Growing Gas Pipeline Network

The United States' supply of natural gas has grown substantially due to technological advancements, such as horizontal drilling and hydraulic fracturing, which have increased producers' ability to extract natural gas from shale formations. Shale gas is now the dominant source of U.S. natural gas supply.[6] The continued growth in U.S. shale gas production to meet growing demand in key consuming sectors has been driving the expansion of natural gas pipeline infrastructure at the local level (to gather and process the gas) and at the national level to transport natural gas from producing regions to consuming markets, typically in other states. Over 300,000 miles of high-capacity transmission pipeline already transport natural gas across the United States (**Figure 1**).[7] However, even considering a reduction in demand following the global COVID-19 pandemic, if long-term growth trends in U.S. shale gas production and demand continue, the need for new pipelines could still be substantial. One recent analysis by the INGAA Foundation, a pipeline industry research organization, concluded

> As the impacts of COVID-19 diminish over time, the drivers of new infrastructure return.... [A]lmost 33 billion cubic feet (BCF) per day of capacity is expected to be placed into service through major gas pipeline projects from 2020 through 2025.[8]

This new infrastructure could amount to several thousand miles of additional interstate pipeline and on the order of $40 billion in additional capital investment.[9]

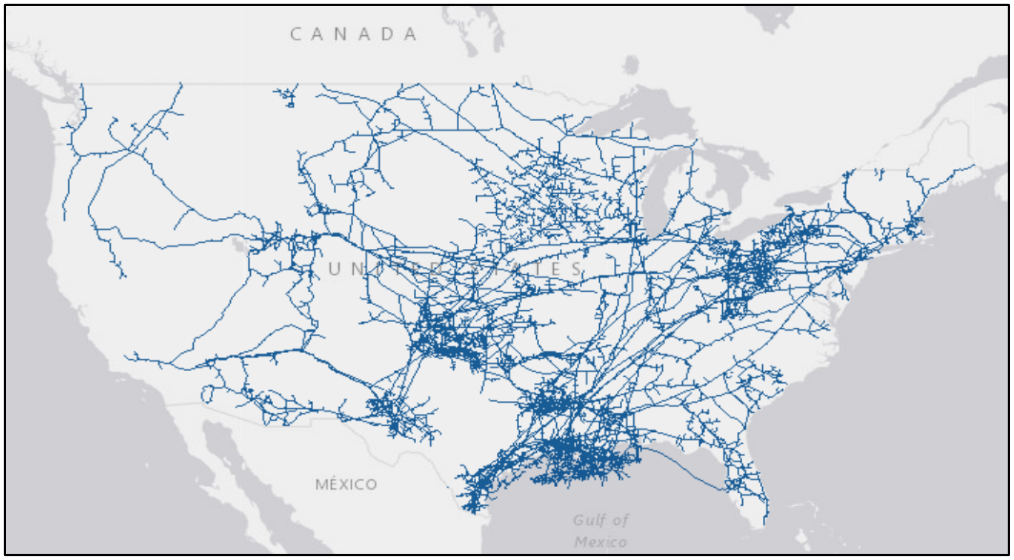
[6] U.S. Energy Information Administration, *Annual Energy Outlook 2021*, "U.S. Dry Natural Gas Production by Type," February 3, 2021, https://www.eia.gov/outlooks/aeo/pdf/03%20AEO2021%20Natural%20gas.pdf.

[7] Pipeline and Hazardous Materials Safety Administration, "Annual Report Mileage for Natural Gas Transmission and Gathering Systems," web page, March 1, 2021, https://www.phmsa.dot.gov/data-and-statistics/pipeline/annual-report-mileage-natural-gas-transmission-gathering-systems.

[8] INGAA Foundation, North American Midstream Infrastructure—A Near Term Update Through 2025, December 2020, p. 55. The INGAA Foundation is affiliated with the Interstate Natural Gas Association of America (INGAA), the interstate gas pipeline industry trade association.

[9] Ibid, and INGAA Foundation, "North American Midstream Infrastructure Through 2035: Significant Development Continues," June 18, 2018, p. 48. The mileage and capital investment values are CRS estimates based on data in the INGAA Foundation reports.

Figure 1. U.S. Interstate Natural Gas Pipeline System

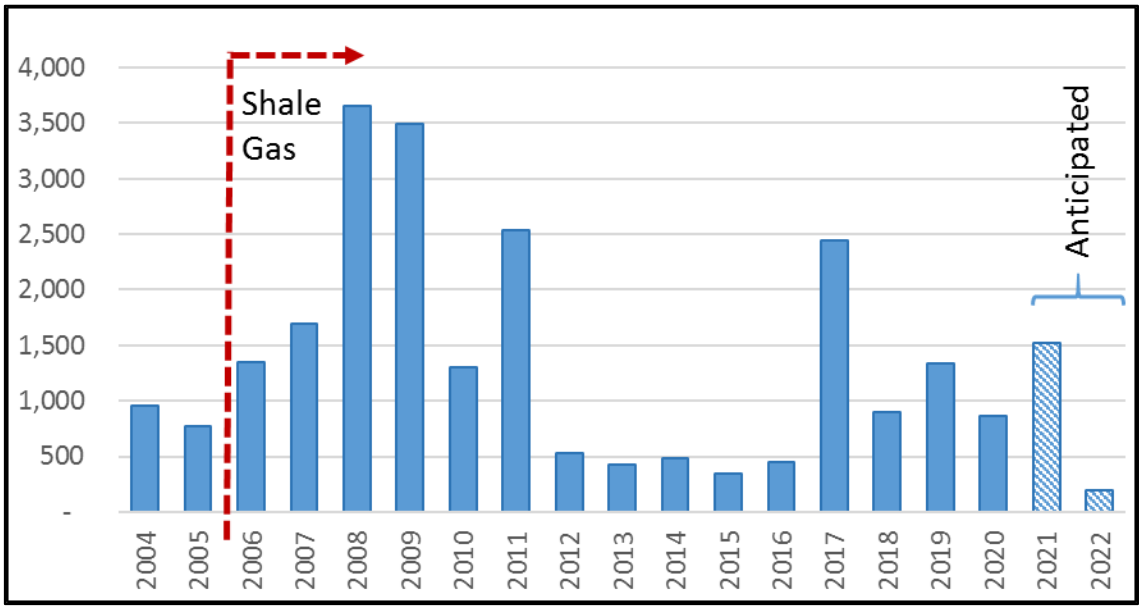


Source: U.S. Energy Information Administration. "U.S. Energy Mapping System," online maps, accessed March 18, 2021, https://www.eia.gov/state/maps.php.

Figure 2 shows annual additions to natural gas transmission pipeline mileage in the United States since 2004. As the figure indicates, federal and state agencies have approved significant additions to the pipeline system over these years, especially after the onset of the shale gas expansion in 2006-2008. Pipeline construction slowed for a five-year period through 2016 as newly added capacity absorbed new shale gas supplies, but construction increased again from 2017 to 2020. Altogether, over 23,500 miles of newly constructed gas transmission pipeline have begun service since 2004. Additional gas pipeline capacity has also become available through conversion of pipelines carrying other commodities or flow reversal of existing natural gas pipelines. Over 1,500 miles of pipeline have been permitted or are under construction with startup anticipated in 2021, although anticipated additions fall sharply in 2022.

Figure 2. U.S. Natural Gas Transmission Pipeline Mileage Additions

(Miles)



Source: Energy Information Administration (EIA), "U.S. Natural Gas Pipeline Projects," online spreadsheet, January 28, 2021, https://www.eia.gov/naturalgas/data.cfm#pipelines.

Notes: Excludes reversal and conversion projects as well as gathering and distribution lines. Anticipated projects in 2021 and 2022 include approved projects and projects under construction but excludes projects "on hold." Includes some state-regulated (intrastate) pipelines. EIA figures are based on the agency's analysis of regulatory filings and industry reports.

FERC Pipeline Certification Process

Under Section 7(c) of the Natural Gas Act of 1938 (NGA), FERC is authorized to issue certificates of "public convenience and necessity" for "the construction or extension of any facilities … for the transportation in interstate commerce of natural gas" (15 U.S.C. §717f(c)). Therefore, companies seeking to build interstate natural gas pipelines must first obtain certificates of public convenience and necessity from FERC.[10] The commission's regulatory process for the review of certificate applications consists of several principal steps, explained below, which may vary somewhat depending upon whether or not a pipeline developer opts to enter into a voluntary pre-filing process before formally applying for a pipeline certificate.

Application Pre-Filing

Prior to applying to FERC for a pipeline certificate, developers may file a request to use the commission's pre-filing procedures (18 C.F.R. §157.21). The commission established the pre-filing process to encourage the industry to engage early in project development with the relevant public and government agencies. The expectation is that the pre-filing will improve a developer's proposal and avoid problems during the review of a subsequent FERC certificate application. However, while FERC encourages pre-filing, it is not required to apply for a pipeline certificate.

[10] FERC must also approve the abandonment of gas facility use and services. The commission does not have similar siting authority over oil pipelines, nor over natural gas pipelines located entirely within a state's borders not involved in interstate commerce. Siting of oil and *intra*state natural gas pipelines is, instead, variously regulated by the states.

The pre-filing process involves a set of specific activities by the developer—typically studying potential project sites, identifying stakeholders, and holding an open house to discuss the project. Through this process, a developer notifies all stakeholders—including tribal, state, local, and other federal agencies, and potentially affected property owners—about a proposed project so that the developer and commission staff can provide public forums to hear stakeholder concerns. The pipeline developer may then incorporate proposed environmental mitigation measures into the project design, taking into account stakeholder input. Concurrent with the developer's activities, FERC staff participate in public forums and take steps necessary to ensure FERC compliance with the National Environmental Policy Act (NEPA, discussed below). For example, FERC consults with interested stakeholders, including relevant government agencies, and also holds public scoping meetings and site visits in the proposed project area.[11] At the conclusion of pre-filing, the developer prepares a final application and submits it to FERC.

Certificate Application and FERC Review

Whether pre-filing or not, a pipeline developer must formally apply to FERC for a certificate of public convenience and necessity. Among other requirements, the application must contain a description of the proposed pipeline, route maps, construction plans, schedules, and a list of other statutory and regulatory requirements, such as permits needed from other agencies. The application must also include environmental reports analyzing route alternatives—to avoid or minimize environmental damage—and studies of potential environmental impacts (on water, plants, and wildlife), cultural resources, socioeconomics, soils, geology, aesthetic resources, and land use.[12] Upon receiving an application, the commission issues a public Notice of Application in the *Federal Register* and begins the application review process.

Any person seeking to become a party to FERC's proceeding must file a motion to intervene pursuant to the commission's rules (18 C.F.R. §385.214). Intervenors receive the certificate applicant's filings and other FERC documents related to the case, as well as materials filed by other interested parties.[13] Only intervenors have the right to file briefs, attend hearings, and appeal the commission's decision regarding the certificate. They may also challenge final commission actions in the U.S. Circuit Courts of Appeal.

FERC currently exercises its NGA Section 7(c) pipeline certification authority in accordance with its own regulations and the guidance of its 1999 *Policy Statement on Certification of New Interstate Natural Gas Pipeline Facilities*.[14] The statement lays out FERC's "policy for determining whether there is a need for a specific project and whether, on balance, the project will serve the public interest."[15] It also outlines a "flexible balancing process" within which the commission considers market support; economic, operational, and competitive benefits; and

[11] For a flowchart of steps taken by both FERC and certificate applicants, see FERC, "EIS Pre-Filing Environmental Review Process," web page, June 25, 2020, https://www.ferc.gov/resources/processes/flow/process-eis.

[12] During the review process, FERC, or any intervenor or public commenter, may suggest additional siting alternatives and modifications to reduce impacts on buildings, fences, crops, water supplies, soil, vegetation, wildlife, air quality, noise, safety, landowner interests, etc. Commission staff also consider whether a proposed pipeline can be placed near or within the right-of-way of an existing pipeline, power line, highway, or railroad. See FERC, *An Interstate Natural Gas Facility on My Land?*, August 2015, p. 8.

[13] Intervenors are also obligated to mail copies of *their own* filings to all other parties to the proceeding.

[14] 18 C.F.R. Part 157.

[15] FERC, Certification of New Interstate Natural Gas Pipeline Facilities: Statement of Policy, 88 FERC ¶ 61,227, Docket No. -000, September 15, 1999.

environmental impact, among other considerations.[16] Economic factors FERC examines include a project's potential impact on pipeline competition, the possibility of overbuilding, subsidization by existing customers, acquiring rights-of-way (including the use of eminent domain), and other considerations.[17] FERC may also take into account safety issues, but generally defers to the Department of Transportation, which regulates pipeline safety.[18] Of the factors above, environmental review typically has comprised the bulk of FERC's certificate application review.

Environmental Review Under NEPA

Before FERC can issue a final decision on an application, the agency must identify and consider the environmental impacts of the proposed project in accordance with NEPA (42 U.S.C. §4321 et seq.). NEPA requires federal agencies to "take a hard look at environmental consequences" of their proposed actions (e.g., granting a certificate), consider alternatives, and publicly disseminate such information before taking final action.[19] Although an agency must consider these impacts, it need not elevate these environmental concerns above others. Under NEPA, federal agencies must prepare an environmental impact statement (EIS) for federal actions "significantly affecting the quality of the human environment."[20]

NEPA also established the Council on Environmental Quality (CEQ), which issues regulations and guidance detailing how federal agencies must implement NEPA.[21] CEQ's guidance has included, for example, guidance on consideration of greenhouse gas emissions and the effects of climate change (discussed below). In its regulations, CEQ has directed each federal agency to adopt and supplement the CEQ regulations as necessary to include procedures relevant to that agency's authority and ensure that the procedures implementing NEPA are integrated into the agency's broader decisionmaking process. Accordingly, FERC has promulgated its own regulations implementing NEPA at 18 C.F.R. §380.

The CEQ regulations focus primarily on requirements applicable to the preparation of an EIS, but recognize that documenting compliance with NEPA may involve other procedures. If an agency is uncertain whether a proposal would have significant impacts, it may prepare an environmental assessment (EA) to determine if an EIS is necessary or a finding of no significant impact (FONSI) may be issued. Also, each federal agency is required to identify categories of actions they are authorized to undertake that have been found to have no significant effect on the

[16] 88 FERC ¶ 61,227, p. 14.

[17] 88 FERC ¶ 61,227 and orders clarifying policy, 90 FERC ¶ 61,128 and 92 FERC ¶ 61,094, 2000 as summarized in Caroyln Elefant, "Knowing and Protecting Your Rights When an Interstate Gas Pipeline Comes to Your Community," white paper, Law Offices of Carolyn Elefant, Washington, DC, May 17, 2010, https://lawofficesofcarolynelefant.com/wp-content/uploads/2010/06/FINALTAGguide.pdf.

[18] Pipeline safety regulations are covered in Title 49 of the *Code of Federal Regulations*. In granting pipeline certificates, FERC requires that developers comply with DOT pipeline safety standards for design, construction, operation, and maintenance.

[19] *Robertson v. Methow Valley Citizens Council*, 490 U.S. 332, 350 (1989).

[20] NEPA §102(2)(C); 42 U.S.C. §4332(2)(C). Of note, *federal actions* subject to NEPA are defined to include actions that require federal agency approvals via a permit or other regulatory approval (40 C.F.R. §1508.18). For more NEPA information, see CRS Report RL33152, *The National Environmental Policy Act (NEPA): Background and Implementation*, by Linda Luther.

[21] Council on Environmental Quality, "Regulations for Implementing the Procedural Provisions of the National Environmental Policy Act," in 40 C.F.R. Parts 1500-1508 (43 *Federal Register* 55990, November 28, 1978).

environment. Such actions are categorically excluded from the need to prepare an EIS or EA and are, hence, broadly referred to as "categorical exclusions" (CEs or CATEXs).[22]

CEQ requires agencies to determine whether a proposal has significant impacts by identifying and analyzing its direct, indirect, and cumulative effects, defined as follows:

- **Direct effects**—caused by the project that occur at the same time and place;[23]
- **Indirect effects**—caused by the action that are later in time or farther removed in distance but still reasonably foreseeable;[24] and
- **Cumulative effects**—those that result from the incremental impacts of the action when added to other past, present, or reasonably foreseeable future actions regardless of what agency (federal or nonfederal) or person undertakes that other action.[25]

The Energy Policy Act of 2005 (P.L. 109-58, EPAct) designates FERC as the "lead agency" for coordinating NEPA compliance and "all applicable Federal authorizations" in reviewing pipeline certificate applications (§313(b)). As the lead agency, FERC is required to obtain input from other "cooperating" agencies with statutory jurisdiction or special expertise regarding any environmental impact associated with the project (40 C.F.R. §1508.5). Cooperating agencies for a pipeline project often include the Environmental Protection Agency; the Department of Transportation's Pipeline and Hazardous Materials Safety Administration; the Department of the Interior's Bureau of Land Management (BLM), Fish and Wildlife Service, and National Park Service; and the U.S. Army Corps of Engineers (the Corps), among others.

After FERC staff complete their environmental analysis and cooperating agency consultations, the commission issues a draft EIS with initial recommendations for approval or denial of the certificate. Issuance of the draft EIS also begins a public comment period of at least 45 days, during which FERC is to hold public meetings in the proposed project area.[26] After the conclusion of the comment period, FERC reviews the comments and revises its draft EIS in response. FERC then issues a final EIS with final recommendations for approval or denial of the certificate. Under NEPA, a record of decision—in this context a FERC order—cannot be issued until at least 30 days after FERC publishes a notice of availability of the final EIS (40 C.F.R. §1506.10(b)(2)). However, there is no additional opportunity for public comment. When the 30-day period is over, the commission may issue an order approving or denying the certificate.

Certificate Authorities

If FERC grants a pipeline certificate, the commission's order states the terms and conditions of the approval, including the authorized pipeline route and any construction or environmental mitigation measures required for the project. For example, a construction condition might require that the pipeline be buried at a specific depth under a particular river crossing, or that construction be limited during a certain time of year to avoid impacts on wildlife. A FERC certificate confers on the developer the authority to exercise the government's eminent domain authority if certain

[22] Each agency's regulations implementing NEPA are required to provide for "extraordinary circumstances" in which a normally excluded action may have significant environmental effect (40 C.F.R. §1508.4).

[23] 40 C.F.R. §1508.8(a).

[24] 40 C.F.R. §1508.8(b). In the definition of effects (at 40 C.F.R. §1508), it is noted that the words *effects* and *impacts* are synonymous, as they are used in the CEQ regulations.

[25] 40 C.F.R. §1508.7.

[26] FERC usually establishes a 45-day comment period, the minimum required under 40 C.F.R. §1506.10(c). In some cases involving very large projects or complex environmental issues, FERC has established longer periods.

conditions are met (15 U.S.C. §717f(h)). Also, federal law preempts any state or local law that duplicates or obstructs that federal law (e.g., siting or zoning) relevant to the project. In this way, a FERC certificate provides a developer with the authority to secure the necessary rights-of-way to lay the pipeline if the developer cannot secure them from landowners through negotiation.

Although a FERC certificate authorizes a pipeline under the Natural Gas Act, it does not preempt other federal laws that also may apply—such as the Endangered Species Act or the National Historic Preservation Act. Any requirements under other federal statutes must still be met. These requirements may include, for example, securing federal authorizations for water crossings from the Corps, permission to cross federal lands from the BLM, and other federal approvals.[27] Pipeline developers also may need to secure approvals from state agencies under delegated federal authorities, such as Section 401 water quality certifications under the Clean Water Act (33 C.F.R. §330.4). A developer must secure all these approvals before proceeding with construction.

Post-Certificate Proceedings

Once FERC issues an order granting or denying a pipeline certificate, parties to the proceeding (e.g., the developer or intervenors) who object to the order for any reason may formally request a rehearing so that the commission can reconsider its decision. A party to the proceeding must file a request for rehearing within 30 days after issuance of the final order—a statutory deadline which the commission cannot waive or extend (15 U.S.C. §717(r)). Upon receiving a rehearing request, FERC has 30 days to rule on it or the request is deemed denied, in either case allowing a party involved to appeal FERC's ruling in federal court.[28] The commission, by its own order, may not authorize pipeline construction to proceed until the earlier of either the date that a qualifying rehearing request is no longer pending before the Commission or 90 days after the date that a qualifying rehearing request may be deemed denied.[29] If a pipeline certificate is approved after rehearing, the pipeline project may proceed even if additional court challenges have been filed. Once the developer has provided FERC with any outstanding information or taken other actions to satisfy the terms and conditions of the certificate order FERC can issue a Notice to Proceed with Construction Activities and construction can begin. The pipeline developer must then file weekly status reports with the commission documenting project inspection and certificate compliance until construction is completed.

Gas Pipeline Siting Challenges

Over the last decade, proposals for new interstate natural gas pipelines have become increasingly controversial. Many certificate applications have been subjected to heavy public scrutiny, and some have faced significant delays in review, as well as protracted litigation. A May 2018 report by the Department of Energy Inspector General stated that "nothing came to our attention to indicate that FERC had not generally performed the natural gas certification process in

[27] For details about Corps approvals, see CRS Report R44880, *Oil and Natural Gas Pipelines: Role of the U.S. Army Corps of Engineers*, by Nicole T. Carter et al.

[28] This 30-day deadline was affirmed in a June 30, 2020, judgment by the United States Court of Appeals for the District of Columbia Circuit in, a case which challenged FERC's prior use of "tolling" orders to delay ruling on the merits of certificate rehearing requests. Allegheny Defense Project v. FERC, 964 F. 3d 1 (D.C. Circuit Court of Appeals, 2020).

[29] 171 FERC ¶ 61,201 and 175 FERC ¶ 61,098. The limit on construction authorization applies "only when a request for rehearing raises issues reflecting opposition to project construction, operation, or need."

accordance with applicable laws, regulations, policies, and procedures."[30] Nonetheless, aspects of FERC's current practices remain a focus of attention among policymakers because they have been the subject of FERC dissent, debate in Congress, or litigation in federal court.

Identifying Indirect Environmental Impacts

As noted above, FERC is obligated under NEPA to consider the direct and indirect environmental impacts of certificate proposals. Direct effects often are relatively easy to identify. In the context of a pipeline project, a direct effect would be associated with the pipeline itself, such as forest impacts from clearing rights-of-way, or water quality impacts from construction across waterways and wetlands. However, identifying the indirect effects of a proposed gas pipeline has presented challenges and, in some cases, has been controversial. Some stakeholders assert that the indirect "upstream" impacts of a proposed pipeline should include impacts associated with the production of natural gas, such as fugitive methane emissions from gas wells and gas gathering pipelines. They also assert that the indirect "downstream" impacts should include the environmental effects of using natural gas, such as carbon dioxide emissions from natural gas combustion.[31]

In the past, FERC limited its review of certain upstream or downstream impacts, claiming that they were not reasonably foreseeable. However, in February 2017, a FERC commissioner argued that FERC should analyze the upstream environmental effects of increased natural gas production and should be "open to analyzing the downstream impacts of the use of natural gas."[32] In a related legal challenge to a pipeline (Sabal Trail) in Florida for which the effects of natural gas use *could* be identified, the court ruled that FERC must "either quantify and consider the project's downstream carbon emissions or explain in more detail why it cannot do so."[33]

In FERC's 2018 order responding to the Sabal Trail ruling, the majority of commissioners concluded that, although its supplemental EIS quantified downstream greenhouse gas emissions associated with the pipeline, there was "no way to determine the significance" of those emissions.[34] However, two commissioners raised objections to the majority's conclusion, arguing that the significance of the downstream greenhouse gas emissions could—and should—be quantified.[35] In an unrelated FERC order involving a pipeline in New York, the majority stated that they were "unable to find based on the record that the potential increase in greenhouse gas emissions associated with production, non-project transport, and non-project combustion are causally related" to the commission's certification of the project, and that "providing a broad analysis based on generalized assumptions rather than reasonably specific information does not meaningfully inform the Commission's project-specific review."[36] The two commissioners dissented from this conclusion as well, one arguing that "the mere fact that the record does not contain specific information regarding the greenhouse gas emissions associated with increased

[30] U.S. Department of Energy, Office of Inspector General, *The Federal Energy Regulatory Commission's Natural Gas Certification Process*, Audit Report, DOE-OIG-18-33, May 2018, p. 1. The report did identify four areas for improvement: process transparency, public access to FERC records, tracking stakeholder comments, and data integrity.

[31] See, for example, Sierra Club, "FERC Further Abdicates Its Obligations in Favor of More Pollution," press release, May 18, 2018.

[32] FERC, *Order Granting Abandonment and Issuing Certificates*, 158 FERC ¶ 61,145, Docket Nos. CP15-115-000 and CP-15-115-001, Commissioner Bay, Separate Statement, February 3, 2017, p. 5.

[33] Sierra Club, *et al.* vs. FERC, 857 F.3d 1357, 1375 (D.C. Cir. 2017).

[34] FERC, Order on Remand Reinstating Certificate and Abandonment Authorization, 162 FERC ¶ 61,233, Docket Nos. CP14-554-002, CP15-16-003, and CP15-17-002, March 14, 2018, p. 25.

[35] Ibid., "LaFLEUR, Commissioner, dissenting in part," p. 2, and "GLICK, Commissioner, dissenting," p. 5.

[36] FERC, *Order Denying Rehearing*, Docket No. CP14-497-001, 163 FERC ¶ 61,128, May 18, 2018.

production or consumption from a particular natural gas pipeline cannot excuse the Commission from considering those effects under NEPA."[37]

Litigation related to FERC's environmental reviews has continued—as has disagreement among commissioners about the proper scope of environmental impacts for pipelines under FERC's jurisdiction. For example, in a 2019 legal challenge involving FERC's approval of a new natural gas pipeline compressor station, while upholding FERC's approval, the court nonetheless was critical of FERC's examination of both upstream and downstream greenhouse gas emissions associated with the project.[38] In a 2020 FERC order approving another gas pipeline project, concurring and dissenting opinions by two commissioners, respectively, expanded upon their prior support for, or rejection of, FERC's treatment of greenhouse gas emissions in environmental reviews.[39] In March 2021, FERC announced that it had "for the first time assessed the significance of a proposed natural gas pipeline project's greenhouse gas emissions and their contribution to climate change."[40] The associated certificate order (approving Northern Natural Gas Company pipeline facilities) states

> In previous orders, the Commission has concluded that it was unable to assess the significance of a project's greenhouse gas (GHG) emissions or those emissions' contribution to climate change. Upon reconsideration, we no longer believe that to be the case. Accordingly ... we assess the significance of the project's GHG emissions and their contribution to climate change. Based on the record in this proceeding, we conclude that those impacts are not significant.[41]

However, adopting this approach was not unanimous. While concurring with the approval of the pipeline project, two commissioners dissented (in part) with respect to the greenhouse gas assessment on legal grounds or because they believed that FERC's change in approach was premature.[42]

Evaluating Project Need

FERC's review of a certificate application requires the commission to evaluate the public benefit from the proposed project. Benefits the commission may consider include meeting unserved demand, eliminating pipeline bottlenecks, accessing new gas supplies, lowering consumer costs, providing greater reliability, and increasing competition, among others. A principal component of this evaluation is demonstrated market need for the pipeline in the form of contracts with future customers for its capacity. As FERC's current policy states,

> a new pipeline project must show market support through contractual commitments for at least 25 percent of the capacity for the application to be processed by the Commission. An applicant showing 10-year firm commitments for all of its capacity, and/or that revenues will exceed costs is eligible to receive a traditional certificate of public convenience and necessity.[43]

[37] Ibid., "GLICK, Commissioner, dissenting in part," p. 7.

[38] Birckhead vs. FERC, 925 F. 3d 510 (D.C. Cir. 2019).

[39] 172 FERC ¶ 61,039.

[40] FERC, "FERC Reaches Compromise on Greenhouse Gas Significance," press release, March 18, 2021.

[41] 174 FERC ¶ 61,189, p. 11.

[42] Ibid.

[43] 88 FERC ¶ 61,227, p. 14.

Some stakeholders have questioned FERC's reliance on contracts from future customers (known as "precedent agreements") to prove market need, particularly when those contracts involve companies affiliated with the pipeline developer. The commission considered this concern in 1999 but established no special provisions for developer affiliates. FERC "gives equal weight to contracts between an applicant and its affiliates and an applicant and unrelated third parties and does not look behind the contracts to determine whether the customer commitments represent genuine growth in market demand."[44] Nonetheless, in January 2018 one FERC commissioner dissented from the approval of a certificate because over three-quarters of the pipeline's capacity under precedent agreements was associated with affiliates, and was therefore "insufficient to carry the developer's burden to show that the pipeline is needed."[45]

In remarks at a February 13, 2018, meeting of state utility regulators, the FERC chairman stated that the commission would "have to take a look at" whether recent precedent agreements, and particularly affiliate agreements, represent "valid, arm's length" demonstrations of pipeline capacity demand.[46] However, an April 2020 order denying a request for certificate rehearing reaffirmed the commission's reliance upon precedent agreements, asserting that such agreements "are significant evidence of demand for a project," and that FERC is not required to assess project benefits "by looking beyond the market need reflected by the applicant's precedent agreements with shippers."[47]

Also related to the issue of market need, some stakeholders have objected to FERC's project-by-project approach to evaluating applications—especially for multiple pipelines proposed in one region.[48] Some in Congress have called on FERC to adopt a more overarching approach to pipeline development, collectively considering existing capacity and multiple projects together rather evaluating them independently.[49] However, FERC has maintained that it "does not engage in regional planning exercises that would result in the selection of one project over another."[50] Nonetheless, in October 2017 one FERC commissioner dissented from the approval of two pipelines through Virginia on the grounds that both projects might not be needed due to geographic proximity.[51]

Timing and Relations with Other Agencies

There are no statutory time limits within which FERC must complete its own certificate review process or issue an order. However, EPAct authorizes FERC to establish a schedule for all federal

[44] 88 FERC ¶ 61,227, p. 15.

[45] FERC, "Statement of Commissioner Richard Glick on the PennEast Project," Docket No. CP15-558-000, January 19, 2018, https://www.ferc.gov/media/statements-speeches/glick/2018/01-19-18-glick.pdf.

[46] Kevin McIntyre, FERC Chairman, remarks before the National Association of Regulatory Utility Commissioners, February 13, 2018, https://www.facebook.com/NARUCToday/videos/2025186407497968/?rc=p.

[47] 171 FERC ¶ 61,049, pp. 5-6.

[48] FERC, *Roanoke County's Motion to Intervene and Identification of Issues*, Docket Nos. CP16-10-000 and CP16-13-000, November 24, 2015, p. 6.

[49] See, for example, U.S. Representative Bonnie Watson Coleman, "Watson Coleman, Malinowski Introduce Bill to Ensure Full Reviews of Proposed Pipelines," press release, March 31, 2021; and Duncan Adams, "Senators Hope to Compel FERC to Broaden Analysis of Pipeline Projects," *The Roanoke Times*, February 4, 2016.

[50] Tamara Young-Allen, FERC, as quoted in: "Feds Reject Consolidated Review of Pipeline Projects," *Associated Press*, December 10, 2015.

[51] FERC, "Statement of Commissioner Cheryl A. LaFleur on Order Issuing Certificates and Granting Abandonment Authority," Docket No. CP16-10-000, October 13, 2017, https://www.ferc.gov/media/statements-speeches/lafleur/2017/10-13-17-lafleur.pdf.

authorizations and creates a cause of action "if a Federal or State administrative agency" fails to comply with that schedule (§313(b)). As discussed above, natural gas pipelines typically require permits from federal and state agencies in addition to FERC. Since 2002, FERC and nine other federal agencies have operated under an interagency agreement on early coordination required for review of interstate natural gas pipeline certificate applications.[52] Under this agreement, when FERC receives a certificate application, the agencies commit to early involvement, proactive participation, sharing of data, informal communication, and resolving disputes. FERC has promulgated regulations under the EPAct authority requiring certificate-related final decisions from federal agencies or state agencies (acting under delegated federal authority) no later than 90 days after the commission issues its final environmental document, unless another schedule is established by federal law (18 C.F.R §157.22).

Congress included the schedule provisions in EPAct to address concerns that some interstate gas pipeline approvals were being unduly delayed by a lack of coordination or insufficient action among agencies involved in the certification process.[53] Notwithstanding the directives above, pipeline developers have asserted that cooperating federal agencies have not always coordinated effectively with FERC in its review of certificate applications and have not always complied with FERC's deadlines.[54] For example, a 2012 study by the INGAA Foundation concluded that, despite the schedule provisions in EPAct intended to expedite the review of FERC certificate applications for gas pipelines, "the time required to secure regulatory approvals for such projects is increasing."[55] Likewise, some in Congress have argued that gas pipeline reviews have been "delayed unnecessarily due to a lack of coordination or insufficient action among agencies involved."[56] Subsequent debate in congressional hearings about the timing of FERC's certificate reviews indicated both criticism of and support for FERC's process.[57] In the 116th Congress, there was relatively less focus on the duration of FERC's permit reviews compared to other aspects of FERC's certification process, but the length of permit review, and project delays due to subsequent challenges to FERC reviews, remain a key interest among developers and in Congress.[58]

FERC staff have stated that the commission seeks to complete review of certificate applications within 18 to 24 months of filing.[59] A review of certificate approvals for larger pipeline projects over the last decade indicates that FERC has generally, but not always, met a 24-month review

[52] FERC et al., "Interagency Agreement on Early Coordination of Required Environmental and Historic Preservation Reviews Conducted in Conjunction with the Issuance of Authorizations to Construct and Operate Interstate Natural Gas Pipelines Certificated by the Federal Energy Regulatory Commission," May 2002; See also 42 U.S.C. §15928(b).

[53] Senate Committee on Environment and Public Works, Oversight Hearing to Review the Permitting of Energy Projects, S. Hrg. 109-856, May 25, 2005.

[54] See, for example, Interstate Natural Gas Association of America, "INGAA Comments on United States Army Corps of Engineers; Subgroup of the Department of Defense Regulatory Reform Task Force, Review of Existing Rules," 82 Fed. Reg. 33,470 (July 20, 2017); Docket ID No. COE-2017-0004," October 18, 2017, p. 3, http://www.ingaa.org/File.aspx?id=33450.

[55] INGAA Foundation, *Expedited Federal Authorization of Interstate Natural Gas Pipelines: Are Agencies Complying with EPAct?*, Washington, DC, December 21, 2012, p. 2.

[56] House Committee on Energy and Commerce, Subcommittee on Energy, majority staff memorandum RE: Hearing entitled "Legislation Addressing Pipeline and Hydropower Infrastructure Modernization," May 1, 2017, p. 3, http://docs.house.gov/meetings/IF/IF03/20170503/105916/HHRG-115-IF03-20170503-SD020.pdf.

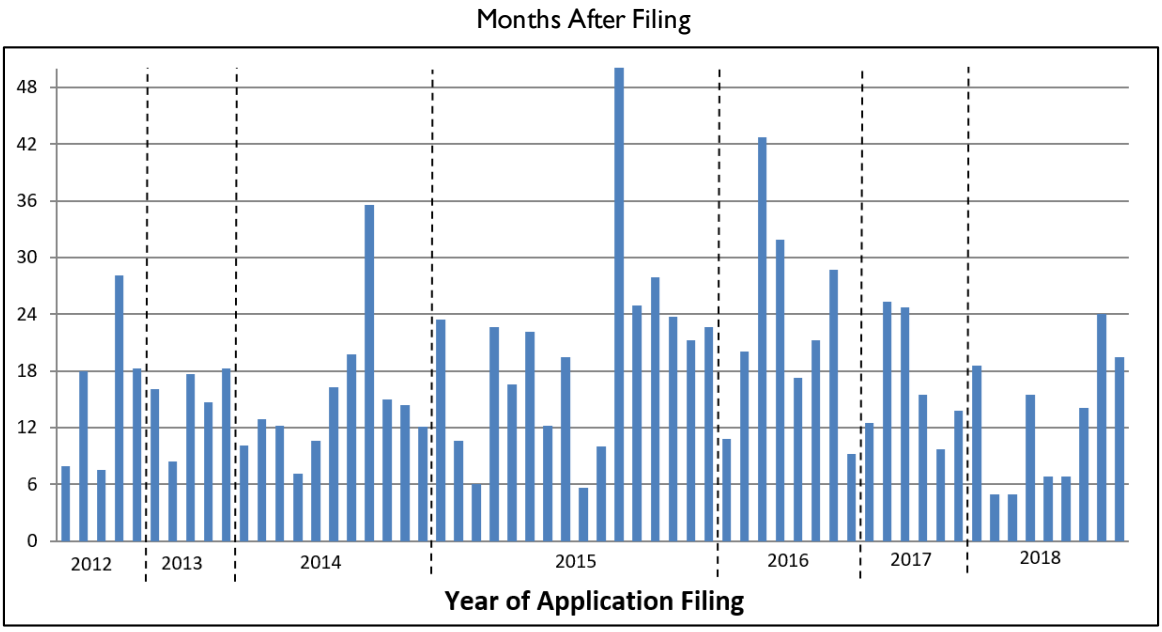
[57] See, for example, debate in the House Energy and Commerce Committee, Energy Subcommittee hearing on Oversight of the Federal Energy Regulatory Commission and the FY2019 Budget, April 17, 2018.

[58] U.S. Senator John Hoeven et al., April 29, 2021.

[59] FERC, Office of Congressional Affairs, personal communication, May 30, 2018.

deadline. **Figure 3** shows the time from a developer's filing of a pipeline certificate application to its certification by the commission for new pipeline construction projects exceeding 20 miles in length. As the figure shows, of the 60 pipeline projects included, 10 projects were approved more than 24 months after filing. In addition, FERC's docket records show one additional application filed in 2019 and approved in 2020, as well as two pending applications (for 20+ mile pipelines) filed in 2020.[60] The figure does not include the time elapsed during pre-filing, which may vary for different projects and also may take months. For example, the Mountain Valley Pipeline project applied for FERC's approval to pre-file approximately 12 months before filing a certificate application.[61]

Figure 3. Review Time for FERC Certificate, Pipelines over 20 Miles Long



Source: CRS analysis; FERC, "Approved Major Pipeline Projects (1997-Present)," data as of January 2021, https://www.ferc.gov/industries-data/natural-gas/approved-major-pipeline-projects-1997-present.

Notes: Figure includes only approved projects. Excludes pipeline projects under 20 miles in length, certificates for natural gas compressor stations, requests for abandonment, and other approval orders. Applications are shown in chronological order, but spacing does not correspond to specific dates of filing.

Whether FERC's record of certificate application review demonstrates process efficiency is open to debate because major pipeline projects are complex and unique. The review periods in **Figure 3** are highly varied and do not necessarily show any clear trend. Attempting to quantify or evaluate FERC's recent certificate review timing is complicated by the lack of a quorum of FERC commissioners (required for certificate decisions) for six months in 2017. Furthermore, application review time may also include time taken by developers responding to questions or providing supplemental information or analysis requested by regulators, which may be outside the control of the commission.

[60] FERC, "Major Pipeline Projects Pending," website, data as of March 2021, https://www.ferc.gov/industries-data/natural-gas/major-pipeline-projects-pending.

[61] FERC, Order Issuing Certificates and Granting Abandonment Authority, Docket Nos. CP16-10-000 and CP-13-000, 161 FERC ¶ 61,043, October 13, 2017.

FERC also has faced challenges in its relations with state agencies exercising delegated federal permitting authority, particularly for water quality permits under Section 401 of the Clean Water Act. For example, FERC was involved in litigation for issuing a pipeline's Section 401 water quality permits—which were initially denied by a New York state agency—on the grounds of excessive delay by the state.[62] However, FERC declined to challenge New York's denial of water quality permits for a different pipeline project because the state made its decision within its one-year statutory deadline.[63] Both projects had been granted FERC certificates but still needed the state permits before beginning construction.

Changes in the Natural Gas Industry Structure

Over the last 20 years, there have been fundamental changes in the structure of the U.S. natural gas sector. Most significant among these are widespread use of hydraulic fracturing, new gas production regions (e.g., the Marcellus formation underlying parts of Pennsylvania and other states), increasingly interconnected natural gas infrastructure in more populated areas, and greater dependence on natural gas to fuel power plants. These changes, in turn, have introduced new considerations in pipeline permit review, including new concerns about greenhouse gas emissions, potential groundwater and seismic risks, pipeline safety, energy infrastructure security, and changing contractual relationships with pipeline customers. For example, with the shift away from coal to natural gas for power generation, regulators and operators have expressed new concerns about the potential linkage between the availability of natural gas and the reliability of electricity supply in markets with constrained infrastructure.[64] Some stakeholders have asserted that FERC should change or expand the nature of its certificate reviews to better account for these new considerations.[65]

Pipeline Infrastructure for Export

The rapid growth in U.S. natural gas production has led to increased exports of pipeline gas to Canada and Mexico and of liquefied natural gas to overseas buyers. Some communities affected by pipeline development have questioned whether FERC appropriately applies the "public convenience and necessity" standard under the Natural Gas Act to pipeline projects which would serve export markets.[66] FERC has asserted that considerations regarding the domestic versus foreign destination of natural gas are solely under the jurisdiction of the Department of Energy, which has statutory authority to approve the export of the natural gas commodity.[67] Nonetheless, some analysts have questioned whether FERC may evaluate pipelines proposed to facilitate natural gas exports differently from those proposed to supply domestic markets.[68]

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[62] Colby Hamilton, "New York Loses Federal Appeal Over Millennium Gas Line Project," *New York Law Journal*, March 12, 2018.

[63] FERC, Order on Petition for Declaratory Order, Docket No. CP18-5-000, 162 FERC ¶ 61,014, January 11, 2018.

[64] North American Electric Reliability Corporation (NERC), *Special Reliability Assessment: Potential Bulk Power System Impacts Due to Severe Disruptions on the Natural Gas System*, November 2017.

[65] See, for example, Susan Tierney, "Natural Gas Pipeline Certification: Policy Considerations for a Changing Industry," Analysis Group, Inc., November 6, 2017, p. 15, http://www.analysisgroup.com/uploadedfiles/content/insights/publishing/ag_ferc_natural_gas_pipeline_certification.pdf.

[66] John Dizard, "Trump's Plan for Energy Dominance Meets Resistance," *Financial Times*, February 24, 2018.

[67] 158 FERC ¶ 61,145, p. 10.

[68] L.M. Sixel, "FERC May Rethink Pipeline Permits When LNG Is Headed Overseas," *Houston Chronicle*, updated February 19, 2018, https://www.chron.com/business/energy/article/FERC-may-rethink-pipeline-permits-when-LNG-is-

In litigation involving a pipeline project proposed partly for exports, a September 2019 court decision remanded to FERC "for further explanation of why … it is lawful to credit precedent agreements with foreign shippers serving foreign customers toward a finding that an interstate pipeline is required by the public convenience and necessity."[69] In its response to the court, the Commission provided additional justification for using export precedent agreements as appropriate evidence of market demand.[70] However, some legal analysts continue to question FERC's certification of infrastructure developed partly or primarily to serve export markets.[71]

Environmental Justice[72]

Environmental justice, which involves concerns of disproportionate risks to health and safety across communities with differing demographics (e.g., race, national origin, or income), has become an important factor in natural gas pipeline siting.[73] For example, the siting of a natural gas compressor station for the proposed Atlantic Coast Pipeline in Union Hill, VA—a predominately African-American community—became the subject of litigation on environmental justice grounds.[74] Since 1997, the President's Council on Environmental Quality has provided guidance for taking into account environmental justice in NEPA reviews.[75] In 2020, FERC officials reportedly stated that the commission "takes environmental justice concerns very seriously," and that the agency's environmental reviews under properly analyze "socioeconomic issues such as environmental justice."[76] Nonetheless, some on the commission and other stakeholders have criticized FERC's consideration of environmental justice issues in its pipeline certification process.[77] On February 11, 2021, the FERC chairman announced plans to create a new senior-level staff position "charged with working with the experts in all FERC program offices to integrate environmental justice and equity matters into Commission decisions."[78]

Public Participation

Some in Congress have expressed concern about the ability of landowners and other members of the public to understand and participate effectively in FERC's pipeline certification process.[79]

12619700.php.

[69] City of Oberlin v. FERC, 937 F. 3d (D.C. Cir. 2019)

[70] 172 FERC ¶ 61,199, pp. 7-13,

[71] See, for example, Alexandra B. Klass, "The Public Use Clause in an Age of U.S. Natural Gas Exports," *Stanford Law Review Online*, April 15, 2020.

[72] For further discussion, see CRS Legal Sidebar LSB10590, *Addressing Environmental Justice Through NEPA*, by Nina M. Hart and Linda Tsang.

[73] For further discussion of the concept of environmental justice, see CRS In Focus IF10529, *Role of the U.S. Environmental Protection Agency in Environmental Justice*, by David M. Bearden and Angela C. Jones.

[74] *Friends of Buckingham v. State Air Pollution Control Board*, 19-1152 (U.S. Court of Appeals, 4th Cir. 2020).

[75] Council on Environmental Quality, *Environmental Justice Guidance Under the National Environmental Policy Act*, December 10, 1997. This guidance was issued consistent with Executive Order 12898, "Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations," 59 *Federal Register* 7629, February 16, 1994.

[76] Arianna Skibell and Niina H. Farah, "FERC Faces Environmental Justice Reckoning," *E&E News*, July 31, 2020.

[77] See, for example, FERC, "Commissioner Richard Glick Dissent Regarding the Rio Grande LNG Terminal and Rio Bravo Pipeline Projects," press release, January 23, 2020.

[78] FERC, "FERC Chairman Acts to Ensure Prominent FERC Role for Environmental Justice," press release, February 11, 2021.

[79] See, for example, U.S. Senator Jeanne Shaheen, "Shaheen Reintroduces Legislation to Boost Public Participation in

Specific issues have included landowner notification, understanding of property rights, securing intervenor status, and providing input and comments to FERC during project scoping and review of permit applications, including NEPA review. In 1978, Congress amended the Federal Power Act (Section 319) authorizing FERC to establish an Office of Public Participation to "coordinate assistance to the public with respect to authorities exercised by the Commission," and "also coordinate assistance available to persons intervening or participating or proposing to intervene or participate in proceedings before the Commission" (16 U.S.C. § 825q–1). However, funds were not subsequently appropriated for this office and FERC did not establish it. In the past, FERC has asserted that office was unnecessary, stating in a 2007 proceeding that "even if funding were available, the public interest is adequately represented … by the Commission, its staff and state agencies," but various public advocates and Members of Congress have disagreed with this assertion.[80] Likewise, the FERC chairman remarked in April 2021, "the people who can afford the high-priced Washington, DC, law firms that participate in our proceedings, they're adequately represented, but a lot of other people aren't—their voices aren't heard."[81]

In the joint House-Senate Appropriations Committee Report accompanying the Consolidated Appropriations Act, 2021 (P.L. 116-260) Congress again addressed the Office of Public Participation. The committee directed FERC to submit a report by June 25, 2021, detailing how the commission will establish and operate the Office of Public Participation, including an organizational structure and budget, beginning in FY2022 and funded through annual charges and filing fees as authorized by the Federal Power Act and the Omnibus Budget Reconciliation Act of 1986.[82] In accordance with this requirement, FERC announced it would convene a commissioner-led workshop "as part of an effort to establish the Office of Public Participation" on April 16, 2021.[83] The details of FERC's report, and how its plans may affect the commission's review of interstate natural gas pipeline certificate applications, remain to be seen.

Recent Executive Orders

The development of energy pipelines has been a focus of the last four presidents. The Bush, Obama, Trump, and Biden Administrations issued a series of executive orders directed at the federal permitting of infrastructure projects, specifically including energy infrastructure. A number of these orders have been applicable to interstate natural gas pipelines under FERC's jurisdiction. Exactly how these orders have affected, or may affect, federal review of interstate natural gas pipeline siting is not entirely clear, however, due to the complexity of the certification process and permit obligations under related statutory requirements (e.g., NEPA).

Executive Order 13212

President George W. Bush issued E.O. 13212 on May 18, 2001. Focusing specifically on "energy-related projects," the order directs federal agencies to "expedite their review of permits or take

Approval of Energy Projects and Rates," press release, May 15, 2019.

[80] 121 FERC ¶ 61,184.

[81] Richard Glick, FERC Chairman, online video, FERC offical facebook page, April 13, 2021, https://www.facebook.com/watch/?v=264040458557354.

[82] "Explanatory Statement Submitted by Mrs. Lowey, Chairwoman of the House Committee on Appropriations, Regarding the House Amendment to the Senate Amendment to, Consolidated Appropriations Act, 2021," *Congressional Record*, daily edition, vol. 166 (December 21, 2020), p. H8378.

[83] FERC, "The Office of Public Participation; Notice of Workshop and Request for Panelists," 86 *Federal Register* 11764, February 26, 2021.

other actions as necessary to accelerate the completion of such projects, while maintaining safety, public health, and environmental protections."[84] In the context of natural gas pipelines, the principal outcome of this order was the 2002 interagency agreement on early coordination of pipeline certificate review, which remains in force. In 2005, FERC also signed a memorandum of understanding with the Corps expanding upon this agreement "to further streamline respective regulatory processes" consistent with the executive order.[85]

Executive Order 13604

President Obama issued E.O. 13604 on March 22, 2012, "to significantly reduce the aggregate time required to make decisions in the permitting and review of infrastructure projects by the Federal Government, while improving environmental and community outcomes."[86] Among other requirements, the order called for federal agencies to select "infrastructure projects of national or regional significance" to track on the online Federal Infrastructure Projects Dashboard (§2(c)).

In the context of this executive order, the Administration cited as a best practice for "pre-application/application improvements" FERC's certificate pre-filing process, which was already in place at the time.[87] A May 17, 2013, Presidential Memorandum expanded upon the order, directing the Steering Committee on Federal Infrastructure Permitting and Review Process Improvement established by E.O. 13604 "to modernize Federal infrastructure review and permitting regulations, policies, and procedures to significantly reduce the aggregate time required by the Federal Government to make decisions in the review and permitting of infrastructure projects," including pipelines.[88] However, it is not clear to what extent, if any, the executive order and memorandum may have led to changes to aspects of FERC certification for pipelines. None of the three pipelines from this period presumably identified as being "of national or regional significance" (because they are listed on the federal permitting dashboard) were natural gas pipelines.[89]

Executive Order 13766

Issued by President Trump on January 24, 2017, the order was intended "to streamline and expedite, in a manner consistent with law, environmental reviews and approvals for all infrastructure projects, especially projects that are a high priority for the Nation, such as …

[84] Executive Order 13212, "Actions to Expedite Energy-Related Projects," May 18, 2001.

[85] Department of the Army, "Memorandum of Understanding between the Army Corps of Engineers and the Federal Energy Regulatory Commission for Interstate Natural Gas Pipeline Projects," July 11, 2005, https://www.ferc.gov/legal/mou/mou-30.pdf.

[86] Executive Order 13604, "Improving Performance of Federal Permitting and Review of Infrastructure Projects," March 22, 2012. In a memorandum released the same day, the President called on federal agencies to "coordinate and expedite their reviews, consultations, and other processes as necessary to expedite decisions related to domestic pipeline infrastructure projects," but this directive was limited to a "domestic pipeline system for the transportation of crude oil." See The White House, "Presidential Memorandum—Expediting Review of Pipeline Projects from Cushing, Oklahoma, to Port Arthur, Texas, and Other Domestic Pipeline Infrastructure Projects," March 22, 2012.

[87] The White House, *Implementing Executive Order 13604 on Improving Performance of Federal Permitting and Review of Infrastructure Projects*, June 2012, p. 26.

[88] The White House, "Modernizing Federal Infrastructure Review and Permitting Regulations, Policies, and Procedures," Presidential memorandum, May 17, 2013.

[89] Federal Permitting Improvement Steering Council, "Permitting Dashboard," online database, May 21, 2018, https://www.permits.performance.gov/projects. The three listed projects were oil pipelines and are currently categorized as "legacy" projects.

pipelines."[90] Among other provisions, the order permitted governors, federal department and agency heads, or the FERC chairman to request "high priority" status for a project with respect to "expedited procedures and deadlines for completion of environmental reviews and approvals" (§3). CRS has identified no interstate natural gas pipelines which were classified as high priority under this order.

Executive Order 13777

Issued by President Trump on February 24, 2017, the order was intended "to lower regulatory burdens on the American people by implementing and enforcing regulatory reform."[91] The order required agencies to evaluate existing regulations and identify regulations for repeal, replacement, or modification. Targeted regulations included those that, among other considerations, eliminated jobs (or inhibited job creation); were outdated, unnecessary, or ineffective; or imposed costs that exceeded benefits. In response to the order, FERC "established a regulatory reform task force to perform a thorough review of the Commission's regulations, policies, and processes, and to identify opportunities to reduce regulatory burdens."[92] The commission also issued its April 19, 2018, NOI regarding its pipeline certification policies.

Executive Order 13783

Issued by President Trump on March 28, 2017, the order generally aimed to establish a policy to promote domestic energy development and use, and ensure affordable and reliable electricity. To accomplish these broad goals, the order directed executive agencies to review their existing regulations and "appropriately suspend, revise, or rescind those that unduly burden" domestic energy production or use, "with particular attention to oil, natural gas, coal, and nuclear energy resources." The order also rescinded guidance intended to help federal agencies determine how and when to assess climate change effects and costs in rulemakings and environmental reviews. As directed by the order, the CEQ withdrew its 2016 guidance, *Consideration of Greenhouse Gas Emissions and the Effects of Climate Change in National Environmental Policy Act Reviews*. On June 26, 2019, CEQ published draft NEPA guidance on consideration of greenhouse gas emissions intended to replace the 2016 guidance.[93]

Being an independent agency, FERC was not subject to the executive order. Nonetheless, on November 1, 2017, the commission voluntarily submitted a report reviewing FERC actions pursuant to the order, which, among other things, encompassed the commission's regulations, guidance documents, and policies related to pipeline certification and environmental review under NEPA.[94] The report concluded that "the majority of agency actions relating to the siting and construction of interstate natural gas transportation … do not materially burden the transportation

[90] Executive Order 13766, "Expediting Environmental Reviews and Approvals for High Priority Infrastructure Projects," January 24, 2017.

[91] Executive Order 13777, "Enforcing the Regulatory Reform Agenda," February 24, 2017.

[92] FERC, "Federal Energy Regulatory Commission One Federal Decision Implementation Plan," July 9, 2018, p. 3.

[93] Council on Environmental Quality, "Draft National Environmental Policy Act Guidance on Consideration of Greenhouse Gas Emissions," 84 *Federal Register* 30097-30099, June 26, 2019.

[94] FERC, "Final Report: Review of Federal Energy Regulatory Commission Agency Actions Pursuant to Executive Order 13783, Promoting Energy Independence and Economic Growth," 82 *Federal Register* 50517-50523, November 1, 2017.

or delivery of domestically produced natural gas," and that there was "no need for the Commission to consider any revision to this regulation."[95]

Executive Order 13807

Issued by President Trump on August 15, 2017, the order was intended "to ensure that the Federal environmental review and permitting process for infrastructure projects is coordinated, predictable, and transparent." The explicit goal of the order was to complete federal environmental reviews and permitting decisions for major projects within two years of application (§2(h)).[96] A key component of E.O. 13807 was a "One Federal Decision" framework, whereby each "major" infrastructure project had one lead federal agency responsible for the overall permit process and issuing one Record of Decision, incorporating individual decisions from cooperating or participating agencies (§5(b)).

On April 9, 2018, the FERC chairman signed a memorandum of understanding (MOU) with other federal agencies to implement E.O. 13807.[97] Under the MOU, the agencies agree to "undertake to meet the goal set forth in E.O. 13807 of reducing the time to two years for each agency to complete all environmental reviews and authorization decisions for major infrastructure projects" through implementation of One Federal Decision, communication, concurrent reviews, adherence to a review timetable, and commitment to agency-specific and collective review process enhancements (§V). FERC already was the lead agency for pipeline certificate environmental review and had statutory authority to set a review timetable under EPAct, so it appears the impact of the MOU may have been primarily from cooperating agency coordination and setting the two-year goal. However, it is an open question how it has affected FERC's ongoing review of pipeline certificate applications. Nonetheless, FERC stated at the time that it was "committed to carrying out the goals of Executive Order 13807 to improve the efficiency, timing, and overall predictability of the certification process."[98]

Executive Order 13868

Issued by President Trump on April 10, 2019, the order stated that "outdated federal guidance and regulations regarding Section 401" of the Clean Water Act are "causing confusion and uncertainty and are hindering the development of energy infrastructure."[99] Among other things, the order directed the Environmental Protection Agency (EPA) to review and issue new guidance to supersede the existing Section 401 guidance and to revise the agency's existing Section 401 implementing regulations. The order instructed EPA to focus on the need to promote timely federal-state cooperation, the appropriate scope of water quality reviews, the types of conditions that may be appropriate to include in a certification, expectations for review times for different types of certification requests, and the nature and scope of information states may need to act on a certification request. EPA subsequently issued revised Section 401 guidance and, in July 2020, a

[95] Ibid. p. 50521.

[96] Executive Order 1387, "Establishing Discipline and Accountability in the Environmental Review and Permitting Process for Infrastructure Projects," August 15, 2017.

[97] The White House, "Memorandum of Understanding Implementing One Federal Decision Under Executive Order 13807," April 9, 2018, https://www.whitehouse.gov/wp-content/uploads/2018/04/MOU-One-Federal-Decision-m-18-13-Part-2.pdf.

[98] Federal Energy Regulatory Commission (FERC), *Certification of New Interstate Natural Gas Facilities*, Notice of Inquiry, Docket No. PL18-1-000, April 19, 2018, p. 22.

[99] Executive Order 13868, "Promoting Energy Infrastructure and Economic Growth," April 10, 2019.

final water quality certification rule which replaced the prior implementing regulations.[100] Although not directed at FERC, the EPA's guidance and rulemaking was intended, in part, to facilitate the state permitting of interstate natural gas pipelines also under FERC's NGA jurisdiction.

Executive Orders 13990, 13992, and 14008

Issued by President Biden on January 20, 2021, E.O. 13990 asserts a policy to, among other things, "hold polluters accountable, including those who disproportionately harm communities of color and low-income communities; to reduce greenhouse gas emissions; to bolster resilience to the impacts of climate change; … and to prioritize … environmental justice."[101] The order directs all executive departments and agencies to review and address the promulgation of regulations and other actions during the last four years that conflict with these objectives, "and to immediately commence work to confront the climate crisis."[102] This order also revokes Executive Orders 13766, 13783, 13807, and 13868.

On January 25, 2021, President Biden also issued E.O. 13992, which "revokes harmful policies and directives that threaten to frustrate the Federal Government's ability to confront … problems" including the COVID-19 pandemic, economic recovery, racial justice, and climate change.[103] The order revokes Executive Order 13777.

On January 27, 2021, President Biden issued E.O. 14008, which asserts an Administration policy "to organize and deploy the full capacity of its agencies to combat the climate crisis to implement a Government-wide approach that reduces climate pollution in every sector of the economy" and "delivers environmental justice," among other objectives.[104] Although FERC, being an independent agency, is not directly subject to these executive orders, the commission stated in March 2021 that "there have been a series of recent administrative changes," specifically E.O. 13990 and E.O. 14008, "and we continue to evaluate their impact on our review process."[105]

Legislative Proposals

Over the last 20 years, Congress has acted frequently to oversee FERC's certification of interstate natural gas pipelines through hearings and correspondence with the commission.[106] Members of Congress also have proposed legislation to change FERC's review of gas pipeline certificate applications, either specifically or as one category among a broader range of infrastructure projects. Proposals also have sought to change FERC's regulations with respect to certificates it has issued to pipeline developers.

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[100] Environmental Protection Agency. "Clean Water Act Section 401 Certification Rule," 85 *Federal Register* 42210-42287, July 13, 2020

[101] Executive Order 13990, "Protecting Public Health and the Environment and Restoring Science to Tackle the Climate Crisis," January 20, 2021.

[102] Ibid.

[103] Executive Order 13992, "Revocation of Certain Executive Orders Concerning Federal Regulation," January 25, 2021.

[104] Executive Order 14008, "Tackling the Climate Crisis at Home and Abroad," January 27, 2021.

[105] FERC, *East Lateral XPress Project*, Environmental Assessment, Docket No. CP20-527-000, March 2021, p. 72.

[106] See, for example, U.S Representative Stephen F. Lynch, and U.S. Senators Elizabeth Warren and Edward Markey, letter to the Honorable Richard Glick, Chairman, FERC, February 19, 2021, https://lynch.house.gov/index.cfm?a=Files.Serve&File_id=CDF3115A-C4E0-4B4C-9C4F-EC87566542ED.

Proposals in Prior Congresses

In the 111th-116th Congresses, bills which were *not* enacted sought to increase FERC public hearings, limit eminent domain authority, expand the scope of FERC's environmental review, require regional review of multiple projects, and impose specific deadlines on FERC and cooperating agencies, among other measures. Title 41 of the Fixing America's Surface Transportation Act (P.L. 114-94; FAST-41), which became law on December 4, 2015, revised the process for federal approval of a range of major infrastructure projects by establishing best practices, requiring coordination of federal agency review of projects, and shortening the period for challenges to final decisions for issuing project permits. Infrastructure projects covered by the act are those requiring environmental review under NEPA and requiring investment exceeding $200 million (§41001).[107] As of April 2021, the permitting dashboard listed four natural gas pipeline projects (two completed) covered under FAST-41 with FERC as the lead agency.[108] A summary table of the relevant legislative proposals in the 111th-116th Congresses is provided in the **Appendix**.

Legislative Proposals in the 117th Congress

Some Members of Congress have introduced legislative proposals in the 117th Congress involving FERC's certification authority or review process. **Table 1** summarizes the key provisions in these bills related to natural gas pipeline certification. As the table shows, the proposals variously would require FERC to collectively review multiple pipelines proposed in the same region, hold more public meetings, restrict the use of eminent domain, and more broadly consider greenhouse gas emissions. Some would require environmental monitoring of completed pipelines and mandate greater cooperation and transparency of permit review by federal agencies.

Table 1. Current Legislative Proposals Involving FERC Certification of Pipelines
(117th Congress)

Bill Title	Bill Number	Key FERC Provisions
Landowner Fairness Act	S. 641	Would require FERC to consider certain factors in pipeline permitting, would modify eminent domain requirements, and would prohibit using NGA eminent domain for a pipeline built for exports.
Ending Natural Gas Companies' Seizure of Land for Export Profits Act	S. 655	Would prohibit the use of eminent domain by a FERC permit holder for a pipeline to be built substantially for exports.
Environmental Justice Mapping and Data Collection Act of 2021	H.R. 516	Would establish an interagency Environmental Justice Mapping Committee, including FERC, to create a tool to identify environmental justice communities.

[107] The Office of Management and Budget (OMB) and Council on Environmental Quality (CEQ) jointly issued guidance for agencies to comply with FAST-41. See OMB and CEQ, "Guidance to Federal Agencies Regarding the Environmental Review and Authorization Process for Infrastructure Projects," memorandum, January 13, 2017.

[108] Federal Permitting Improvement Steering Council, "Federal Infrastructure Permitting Dashboard," online database, April 30, 2021, accessible at https://www.permits.performance.gov/projects.

Bill Title	Bill Number	Key FERC Provisions
CLEAN Future Act	H.R. 1512	Would revise and fund FERC's Office of Public Participation to represent the interests of the public in NGA-related proceedings. Would prohibit pipeline companies from using NGA eminent domain authority until they have all necessary federal and state permits and comply with environmental permit conditions. Would also prohibit using eminent domain for natural gas pipelines to be built for import or export.
Promoting Interagency Coordination for Review of Natural Gas Pipelines Act	H.R. 1616	Would expand FERC's authority to act as the lead agency for coordinating all federal authorizations and NEPA environmental reviews with respect to a natural gas pipeline project. Also would require consultation with the Transportation Security Administration regarding pipeline security.
Safe and Accountable Federal Energy Review for Pipelines Act of 2021	H.R. 2115	Would require FERC to conduct an evidentiary hearing and/or cumulative review of major energy infrastructure projects planned throughout a region. Would require FERC to consider the existence of other regional pipelines or underutilized pipeline capacity in permit application reviews. Would require FERC to monitor environmental impacts of all approved and constructed projects for five years.
To amend the Natural Gas Act with respect to actions for eminent domain by holders of certificates of public convenience and necessity, and for other purposes.	H.R. 2889	Would prevent pipeline companies from using NGA eminent domain authority until they have all necessary federal and state permits for construction and operation.

Sources: http://www.congress.gov, CRS analysis.

Notes: FERC= Federal Energy Regulatory Commission, NEPA = National Environmental Policy Act, NGA = Natural Gas Act.

FERC's Policy Review

As discussed earlier, FERC's review of pipeline certificate applications is guided by its *Policy Statement on Certification of New Interstate Natural Gas Pipeline Facilities* issued in 1999. On December 21, 2017, the FERC chairman announced that the commission would undertake a review of its permitting policies and procedures for interstate natural gas pipelines. Accordingly, on April 19, 2018, the commission issued a Notice of Inquiry "to examine its policies in light of changes in the natural gas industry and increased stakeholder interest in how it reviews natural gas pipeline proposals."[109] More specifically, the commission's notice posed "a range of questions that reflected concerns raised in numerous public comments, court proceedings and other forums," and sought input on "potential changes to both the existing Policy Statement and the structure and scope of the Commission's environmental analysis" as well as "feedback on the transparency, timing, and predictability of its certification process."[110]

[109] FERC, "Commission Initiates Notice of Inquiry into Pipeline Certificate Policy Statement," press release, R-18-16, April 19, 2018.

[110] Ibid.

According to its notice, FERC's inquiry focused on four general aspects of its certificate application review, with specific questions posed under each aspect

- relying on precedent agreements to demonstrate project need,
- eminent domain and landowner interests,
- evaluating project alternatives and environmental effects, and
- the efficiency and effectiveness of FERC's certificate processes.[111]

FERC's inquiry was opened for public comments through July 25, 2018.[112] However, according to the NOI, the commission intended to make no decisions on possible further action related to its inquiry until it had reviewed the comments filed; the commission did not state any timetable for completing this review.[113] (FERC issued its 1999 policy statement over 13 months after publishing a Notice of Inquiry for that proceeding.[114]) Through 2020, the commission took no further action related to the NOI.

Reopening the Policy Review

On January 21, 2021 President Biden appointed a new FERC chairman (elevating a commissioner who joined FERC in 2017).[115] The appointment followed the November 30, 2020, Senate confirmation of two new commissioners, restoring FERC to its full statutory complement of five commissioners.[116] On February 18, 2021, under its new chairman, FERC announced that it had "reopened" its review of the 1999 policy statement and published a new NOI "asking for new information and additional perspectives that would assist the Commission in moving forward with its review … looking to build upon the record already established."[117] In the announcement, the FERC chairman stated "it's important to recognize that many changes have occurred since our initial inquiry three years ago." At an industry event, the FERC chairman subsequently stated "we have … reinvigorated a proceeding that was begun many years ago," noting that "our whole process has come under some criticism—I've been critical of some aspects of it."[118]

The 2021 NOI reaffirms the commission's interest in the four general aspects of its certificate application review covered in its 2018 NOI, some with modification. It also poses new questions on an additional issue area examining FERC's "identification and addressing of any disproportionately high and adverse human health or environmental effects of its programs, policies, and activities on environmental justice communities and the mitigation of those adverse

[111] FERC 2018 NOI, pp. 45-46.

[112] FERC, "Certification of New Interstate Natural Gas Facilities," 83 *Federal Register* 24780, May 30, 2018. The comment period was extended 30 days from an original closing date of June 25, 2018.

[113] FERC 2018 NOI, p. 4.

[114] FERC, "Regulation of Interstate Natural Gas Transportation Services," Notice of Inquiry, 63 *Federal Register* 42974, 84 FERC ¶ 61,087, July 29, 1998.

[115] FERC, "President Biden Names Glick Chairman of FERC," press release, January 21, 2021.

[116] FERC, "Senate Votes to Confirm Christie, Clements to Commission," press release, November 30, 2020.

[117] FERC, "FERC Revisits Review of Policy Statement on Interstate Natural Gas Pipeline Proposals," press release, February 18, 2021.

[118] Richard Glick, FERC Chairman, remarks at the Women's Council on Energy and the Environment, Virtual Executive Series, April 29, 2021, video available at https://youtu.be/NT0jnNl6tpw.

impacts and burdens."[119] The NOI solicits new information and stakeholder perspectives related to the following five aspects of review, again, with specific questions posed under each aspect:

- potential adjustments to determination of need,
- eminent domain and landowner interests,
- consideration of environmental impacts,
- efficiency of the commission's review process, and
- consideration of effects on environmental justice communities.[120]

The initial deadline for comments in the NOI was April 26, 2021, but it was subsequently extended to May 26, 2021.[121] The commission has established no deadline for taking further actions with respect to the ROI, although the chairman has stated "I suspect we'll be able to act …, hopefully soon on this gas pipeline certificate proceeding."[122] Any FERC pipeline certification activities or decisions in the meantime would be made in accordance with the 1999 policy statement. Moreover, the FERC Chairman has stated that "the Commission will not wait to act on Certificate applications while we consider options for improving the process."[123] Because FERC's policy statement is only a guidance document, not a regulation or statute, the commission has considerable discretion regarding if, when, and how it will apply any policy changes to pending certificate applications.[124]

Policy Issues for Congress

Congress has been interested in the development of natural gas pipelines for decades, with a particular focus on siting and environmental impacts in recent years. Some in Congress generally see such pipeline development as positive, primarily due to its perceived economic benefits in terms of construction employment, lower natural gas prices, and environmental benefits relative to burning more carbon-intensive fossil fuels (i.e., coal). Others generally view gas pipeline development more critically, primarily due to environmental concerns from greenhouse gas emissions. Still others are focused primarily on the local effects of gas pipeline development related to public safety, the impacts on lands, the acquisition of private property through eminent domain, and impacts on environmental justice communities. Pipeline proponents would rather see more and faster pipeline development, whereas opponents would rather see less—preferring instead a greater policy emphasis on energy alternatives, such as renewable electricity generation, they view as more environmentally or socially benign.

Because FERC has the statutory authority to approve or deny certificates for interstate natural gas pipelines, the policy views above have led to persistent congressional scrutiny of FERC's pipeline certification process and decisions. Concerns about gas pipelines have motivated repeated attempts at congressional intervention. In total, over 40 bills have been introduced since the 111th Congress (seven in the current Congress alone) which would affect various aspects of FERC's review of pipeline certificate applications. Of these, only the FAST Act (which seems to have

[119] FERC 2021 NOI, p. 4.

[120] FERC 2021 NOI.

[121] FERC, "Notice Extending Time for Comments," Docket No. PL18-1-000, March 31, 2021.

[122] Richard Glick, April 29, 2021.

[123] Richard Glick, May 21, 2021.

[124] U.S. Court of Appeals for the District of Columbia, *Consolidated Edison Company of New York, Inc., et al., v. Federal Energy Regulatory Commission*, No. 01-1345, January 17, 2003, https://www.cadc.uscourts.gov/internet/opinions.nsf/4B1331E528B23FC485256F82005F46BE/$file/01-1345a.txt.

applied to only a few of FERC's gas pipeline reviews) and the Consolidated Appropriations Act, 2021 became law. Therefore, absent any other statutory changes, Congress must rely on FERC to address policy concerns on its own volition in response to congressional oversight, federal court decisions, and public input.

FERC's recent Notice of Inquiry covers a number of the key congressional concerns raised either in oversight hearings or bill provisions in the 117th Congress. Examples include eminent domain authority (H.R. 2115), environmental justice (H.R. 516), and determining market need (S. 1314). Therefore, while FERC's policy review does not guarantee any changes to the gas pipeline certification status quo, it may provide valuable information and context for congressional oversight. If Congress disagrees with FERC's future policy choices based on the findings of its NOI, those findings presumably would provide an informed basis and clear policy context for subsequent legislative proposals.

Although recent executive and agency actions, including FERC's agreements with other agencies and its NOI, may lead to changes in FERC policies or process, they are limited to those aspects of gas pipeline regulation which fall directly within the commission's statutory authority under the Natural Gas Act or within its discretion under other federal statutes. This is a significant limitation because much of FERC's pipeline certificate review is environmental review in compliance with NEPA. While the bills identified in this report, and FERC's policy review, could change how FERC interprets or fulfills its obligations under NEPA, they would not amend NEPA itself. Likewise, they would not amend other federal statutes, such as the Clean Water Act or the Clean Air Act, which also may have a bearing on gas pipeline siting approval.

Appendix. Past FERC Permit Legislative Proposals

Table A-1. Past Legislative Proposals to Change FERC Certification of Pipelines

(111th through 116th Congresses)

Congress	Bill Title	Bill Number	Last Major Action	Key FERC Provisions
111th	To require [FERC] to hold at least one public hearing before issuance of a permit affecting public or private land use in a locality	S. 32 H.R. 1922	Referred to Subcommittee Referred to Committee	Would have required FERC to hold a public hearing in each county and locality affected by a pipeline proposal. Also would have required additional public hearings, if requested, for issues not addressed in an initial hearing.
112th	Reaffirming Constitutional Property Rights Act	H.R. 3913	Referred to Subcommittee	Would have prohibited eminent domain for pipelines to be constructed for transporting natural gas to an LNG terminal for export.
113th 113th	American Energy Solutions for Lower Costs and More American Jobs Act American Renaissance in Manufacturing Act	H.R. 2 H.R. 5360	Passed in House Introduced	Would have imposed on FERC a 12-month deadline to approve or deny pipeline permit applications after pre-filing. Would have required 90-day permit review for pre-filed pipeline projects by other federal agencies involved; if a permit were not approved or denied by this deadline, approval would have taken effect.
114th	North American Energy Security and Infrastructure Act of 2016	S. 2012	House/Senate Conference Held	Would have required FERC to identify and notify agencies participating in certificate review; federal permit decisions within 90 days of FERC completing NEPA review; and concurrent review by cooperating agencies of non-NEPA actions. Would have required greater transparency in review scheduling, status, and reporting of delays.
114th	Fixing America's Surface Transportation (FAST) Act	H.R. 22	Became P.L. 114-94	Title 41 requires greater agency coordination and oversight of federal review for infrastructure projects (e.g., pipelines) subject to NEPA and requiring investment over $200 million. Establishes a Federal Permitting Improvement Steering Council—including FERC—to oversee, facilitate, and recommend schedules and best practices for federal permitting. Requires greater transparency in review scheduling, status, and reporting of delays.
114th	Natural Gas Pipeline Permitting Reform Act	H.R. 161	Passed in House	Would have imposed on FERC a 12-month deadline to approve or deny pipeline permit applications after pre-filing. Would have required 90-day permit review for pre-filed pipeline projects by other federal agencies involved; if a permit were not approved or denied by this deadline, approval would have taken effect.

Congress	Bill Title	Bill Number	Last Major Action	Key FERC Provisions
114th	Safer Pipelines Act of 2016	H.R. 5630	Referred to Committee	If a proposed pipeline expansion were challenged, would have required a FERC evidentiary hearing on the need for expansion or a cumulative review of energy projects planned in the region. For new pipelines, would have required FERC to consider under NEPA the cumulative impacts of other pipeline projects in the same state or within 100 miles.
115th	Timely Review of Infrastructure Act	S. 8	Referred to Committee	Would have authorized FERC to raise staff pay so as to carry out its functions in a timely, efficient, and effective manner.
115th	Timely Review of Infrastructure Act	H.R. 6552	Referred to Subcommittee	
115th	Public Engagement at FERC Act	S. 1240	Referred to Committee	Would have revised and expanded FERC's Office of Public Participation to represent the interests of the public in proceedings on rates, service, and infrastructure siting.
115th	Public Engagement at FERC Act	H.R. 2656	Referred to Subommittee	
115th	Pipeline Fairness and Transparency Act	S. 1314	Referred to Subcommittee	Would have required FERC to prepare a supplemental EIS for an application if FERC makes a substantial change or in case of new environmental circumstances or information. Also would have required environmental impact mitigation plans; public meetings in project counties; and review of cumulative visual impacts on national scenic trails. S. 1314 P.L. 99-3 H.R. 133 also would have required multiple pipelines proposed within 100 miles of each other to be evaluated as one project under NEPA.
115th	Pipeline Fairness and Transparency Act	H.R. 2893	Referred to Committee	
115th	Independent Agency Regulatory Analysis Act of 2017	S. 1448	Referred to Committee	Would have authorized the President to require an independent regulatory agency to comply with analysis requirements applicable to other federal agencies, and assess costs and benefits of economically significant rules and alternatives.
115th	Promoting Interagency Coordination for Review of Natural Gas Pipelines Act	H.R. 2910	Passed in House	
115th	Energy and Natural Resources Act of 2017	S. 1460	Committee Hearings Held	Would have required FERC to identify and notify agencies participating in review. Would have required federal permit decisions within 90 days of FERC completing NEPA and concurrent review by cooperating agencies of non-NEPA actions. Would have required greater transparency in review scheduling, status, and reporting of delays.

Congress	Bill Title	Bill Number	Last Major Action	Key FERC Provisions
115th	Rebuild America Now Act	S. 1756	Committee Hearings Held	Would have imposed on FERC a one-year deadline to approve or deny pipeline permit applications after pre-filing. Would have required 90-day permit review for pre-filed pipeline projects by other federal agencies involved; if a permit were not approved or denied by this deadline, approval would take effect. Would have allowed aerial survey data to satisfy pipeline permit preliminary requirements.
115th	Safer Pipelines Act of 2017	H.R. 2649	Referred to Subcommittee	If a proposed pipeline expansion were challenged, would have required FERC to assign the application to an administrative law judge to conduct an evidentiary hearing on the need for the expansion and report the findings. Would have required FERC to cumulatively review major energy projects planned in the region. For new interstate pipelines, would have required FERC to consider under NEPA the cumulative impacts of other projects in the same state or within 100 miles.
115th	To require [FERC] to consider greenhouse gas emissions related to natural gas pipelines, and for other purposes	H.R. 3241	Referred to Committee	Would have required FERC environmental reviews under NEPA to consider greenhouse gas emissions from pipeline construction and operation, and the production, transportation, and combustion of the natural gas to be transported through the pipeline.
115th	Natural Gas Pipeline Public Health Protection Act of 2017	H.R. 4381	Referred to Committee	Would have suspended construction of FERC-certificated natural gas facilities until remediation of air quality violations.
115th	No title	H.Amdt. 204 to H.R. 2910	Not agreed to	Would have excluded from provisions in H.R. 2910 pipelines on lands managed for conservation or recreation.
115th	No title	H.Amdt. 206 to H.R. 2910	Not agreed to	Would have required FERC to supplement an environmental impact statement under NEPA for a pipeline project if there is a substantial change in the proposed action or significant new circumstances or information.
116th	Timely Review of Infrastructure Act	S. 607	Reported by Committee	Would have authorized FERC to raise staff pay so as to carry out its functions in a timely, efficient, and effective manner.
116th	Independent Agency Regulatory Analysis Act	S. 869	Referred to Committee	Would have authorized the President to require an independent regulatory agency to comply with analysis requirements applicable to other federal agencies, and assess costs and benefits of economically significant rules and alternatives.
116th	Public Engagement at FERC Act	S. 1477	Referred to Committee	Would have revised and expanded FERC's Office of Public Participation to represent

Congress	Bill Title	Bill Number	Last Major Action	Key FERC Provisions
116th	Public Engagement at FERC Act	H.R. 3240	Referred to Subcommittee	the interests of the public in proceedings on rates, service, and infrastructure siting.
116th	Federal Permitting Reform and Jobs Act	S. 1976	Referred to Committee	Would have required FERC to report to Congress recommendations on ways to reconcile FERC permitting regulations with requirements under the FAST Act.
116th	Federal Permitting Reform and Jobs Act	H.R. 3671	Reported by Subcommittee	
116th	Pipeline Fairness, Transparency, and Responsible Development Act of 2020	S. 4502	Referred to Committee	Would have amended the NGA to address landowner notice, eminent domain, and environmental review for interstate natural gas pipelines, as well as their impacts on national scenic trails. Also would have set a 45-day deadline on FERC permit rehearing decisions.
116th	Reaffirming Property Rights Through Natural Gas Act Modernization Act	S. 4673	Referred to Committee	Would have required FERC to consider certain factors in issuing pipeline permits and would modify eminent domain requirements pipeline construction.
116th	Consolidated Appropriations Act, 2021	H.R. 133	Became P.L. 116-260	Committee report directs FERC to submit a report detailing how it will establish and operate the Office of Public Participation, including an organizational structure and budget, beginning in FY2022.
116th	Pipeline Fairness and Transparency Act	H.R. 173	Referred to Subcommittee	Would have amended the NGA to address eminent domain and environmental review for interstate natural gas pipelines, as well as their impacts on national scenic trails.
116th	Reaffirming Constitutional Property Rights Act	H.R. 2198	Referred to Subcommittee	Would have prohibited the use of eminent domain by a FERC permit holder for a pipeline supplying an LNG export facility.
116th	Promoting Interagency Coordination for Review of Natural Gas Pipelines Act	H.R. 3983	Referred to Committee	Would have required that federal, state, and local agencies involved in environmental review defer to FERC's approved scope for NEPA review. Would have required FERC permit decisions within 90 days of completing NEPA review. Would require concurrent review by cooperating agencies. H.R. 3983 also would have required consultation with the Transportation Security Administration regarding pipeline security
116th	Promoting Interagency Coordination for Review of Natural Gas Pipelines Act	H.R. 7401	Referred to Subcommittee	
116th	To require [FERC] to consider greenhouse gas emissions related to natural gas pipelines, and for other purposes	H.R. 4657	Referred to Subcommittee	Would have required FERC environmental reviews under NEPA to consider greenhouse gas emissions from pipeline construction and operation, and the production, transportation, and combustion of the natural gas to be transported through the pipeline.

116th	Fairness for Landowners Facing Eminent Domain Act	H.R. 5454	Referred to Subcommittee	Would have prohibited or suspended the use of eminent domain under a FERC pipeline permit under certain circumstances. Would have prohibited the use of eminent domain attached to any facility that imports or exports natural gas.
116th	Scenic Trail Viewshed Protection Act	H.R. 7878	Referred to Committee	Would have allowed FERC to permit pipelines crossing or impacting the view from a national scenic trail only under certain conditions.

Source: Sources: http://www.congress.gov, CRS analysis.

Notes: FERC= Federal Energy Regulatory Commission, LNG= liquefied natural gas, NEPA = National Environmental Policy Act, NGA = Natural Gas Act.

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