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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 is driving the expansion of natural gas pipeline infrastructure to transport natural gas from producing regions to consuming markets, typically in other states. If the growth in U.S. shale gas continues as projected, the need for new pipelines could be substantial. One recent industry analysis projected the need for approximately 26,000 miles of new natural gas pipeline between 2018 and 2035; total capital expenditure for these projects could range from $154 billion to $190 billion.

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 the review of certificate applications consists of application pre-filing, certificate application, application review (including environmental and other agency review), authorization, and post-certificate proceedings. Several aspects of FERC's certificate review practices have been the focus of attention among policymakers because they have been the subject of FERC dissent, debate in Congress, or litigation in federal court. Key challenges to FERC certification involve the assessment of environmental impacts, evaluating project need, review timing, relations with other agencies, changes in industry structure, and issues related to export.

The Bush, Obama, and Trump Administrations issued a series of executive orders intended to facilitate the 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. However, on April 9, 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."

Expansion of the pipeline network has prompted Congressional hearings and legislative proposals over the last decade regarding the federal role in pipeline siting. At least nine related bills have been introduced in the 115th Congress, including the Promoting Interagency Coordination for Review of Natural Gas Pipelines Act (H.R. 2910), which passed in the House in 2017, and provisions in the Energy and Natural Resources Act of 2017 (S. 1460), pending in the Senate.

On April 19, 2018, FERC issued a Notice of Inquiry (NOI) "to examine its policies ... in how it reviews natural gas pipeline proposals." The commission's inquiry focuses on four general aspects of its certificate application review: relying on contracts from future customers 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. FERC's inquiry was opened for public comments through July 25, 2018. The commission has not stated any timetable for completing this proceeding.

FERC's NOI covers key congressional concerns raised either in hearings or bill provisions in the 115th Congress, as well as issues arising in certificate 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. Furthermore, although recent executive and agency actions, including FERC's agreement with other agencies and its NOI, may lead to changes in FERC policies or process, FERC is 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 April 19, 2018, the Federal Energy Regulatory Commission (FERC, or the commission) initiated a proceeding to review its policies and procedures for the certification (permitting) of interstate natural gas pipelines.[1] Rapid expansion of the U.S. natural gas pipeline network to accommodate new supplies of domestic shale gas has been a focus of Congress, prompting hearings and legislative proposals over the last decade regarding the federal role in pipeline siting. Nine related bills have been introduced in the 115th Congress, including the Promoting Interagency Coordination for Review of Natural Gas Pipelines Act (H.R. 2910), which passed in the House in July 2017, and provisions in the Energy and Natural Resources Act of 2017 (S. 1460).

FERC's review of its permitting policies is the most recent development in an ongoing series of legislative proposals, executive orders, court rulings, and commission orders which address the federal role in gas pipeline permitting. FERC's review 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,[2] policy changes by FERC affecting natural gas infrastructure could have significant implications for U.S. natural gas resource development, prices, and associated environmental impacts. Therefore, they would likely be subject to scrutiny within Congress and among a wide range of stakeholders.

This report provides an overview of the federal certification process for interstate natural gas pipelines and current policy challenges which have been the subject of debate and litigation. It reviews recent executive orders intended to facilitate or expedite federal approval of natural gas pipeline projects. The report summarizes legislation proposed since the 111th Congress intended to change the federal review of interstate natural gas pipeline certificate applications. It also summarizes FERC's examination 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.

A Growing Gas Pipeline Network

The United States' supply of natural gas is growing due to technological improvements, such as horizontal drilling and hydraulic fracturing, which have increased producers' ability to extract natural gas from shale formations. Shale gas is projected to become the dominant source of the U.S. natural gas supply by 2030.[3] The growth in U.S. shale gas production is 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**).[4] However, if the growth in U.S. shale

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

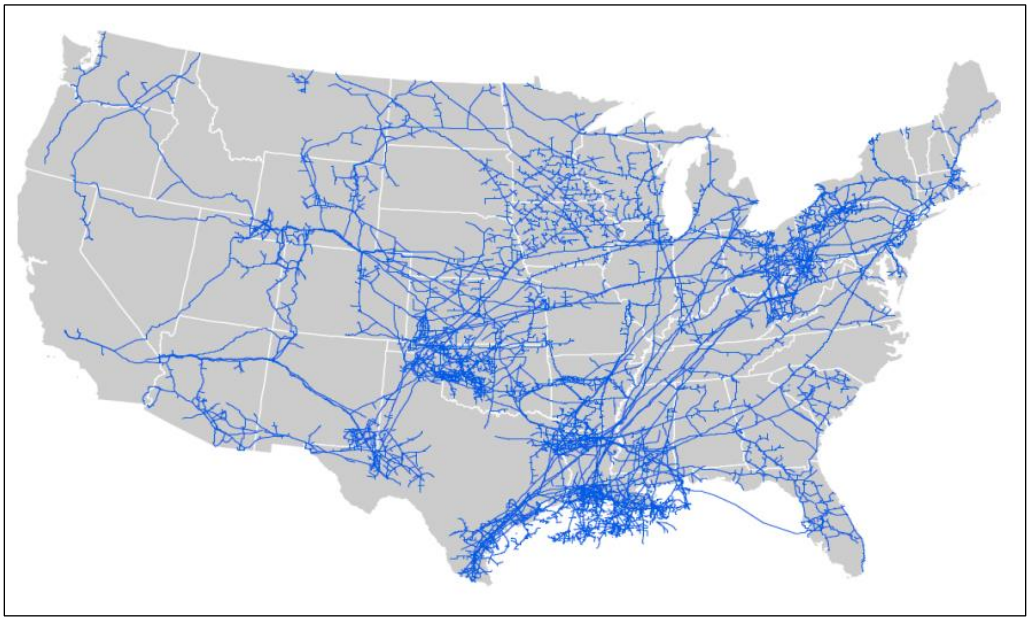
[2] Energy Information Administration, *International Energy Statistics*, "Dry Natural Gas Production 2015," online database, https://www.eia.gov/beta/international/rankings/#?prodact=26-1&iso=USA&pid=26&aid=1&tl_id=1-A&tl_type=a&cy=2015.

[3] U.S. Energy Information Administration, *Annual Energy Outlook 2018*, February 6, 2018, p. 66, https://www.eia.gov/outlooks/aeo/pdf/AEO2018.pdf.

[4] Pipeline and Hazardous Materials Safety Administration, "Annual Report Mileage for Natural Gas Transmission and

gas continues as projected, the need for new pipelines could be substantial. One recent analysis by the INGAA Foundation, a pipeline industry research organization, projected the need for approximately 26,000 miles (1,400 miles annually) of new natural gas transmission pipeline between 2018 and 2035; total capital expenditure for these projects could range from $154 billion to $190 billion.[5]

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



Source: CRS, using data from the U.S. Energy Information Administration (April 2018), and Esri Data and Maps 2017.

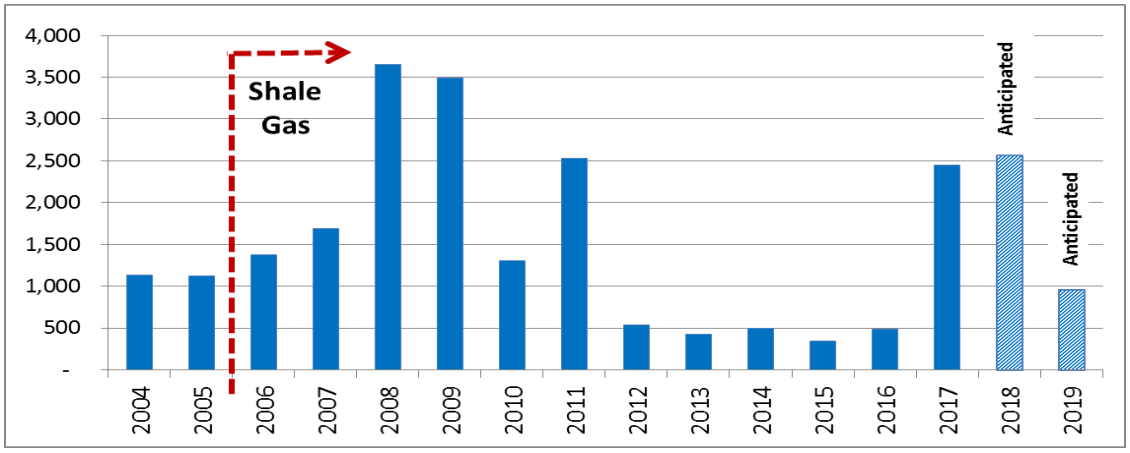
Figure 2 shows annual additions to natural gas transmission pipeline mileage in the United States since 2004. As the figure indicates, federal and state agencies have approved significant additions to the pipeline system over the last 15 years, especially after the onset of the shale gas expansion in 2006-2008. Pipeline construction slowed for a five-year period through 2016 as newly added capacity absorbed new shale gas supplies, but construction has since increased. Altogether, over 24,000 miles of gas transmission pipeline have been constructed since 2004 or are anticipated for construction. Additional gas pipeline capacity has also become available through conversion of pipelines carrying other commodities or flow reversal of existing natural gas pipelines.

Gathering Systems," web page, April 9, 2018, https://www.phmsa.dot.gov/data-and-statistics/pipeline/annual-report-mileage-natural-gas-transmission-gathering-systems.

[5] INGAA Foundation, "North American Midstream Infrastructure Through 2035: Significant Development Continues," June 18, 2018, p. 48. The INGAA Foundation is affiliated with the Interstate Natural Gas Association of America (INGAA), the interstate gas pipeline industry trade association.

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

(Miles)



Source: Energy Information Administration (EIA), "U.S. Natural Gas Pipeline Projects," online spreadsheet, February 9, 2018, https://www.eia.gov/naturalgas/data.cfm#pipelines.

Notes: Excludes reversal and conversion projects as well as gathering and distribution lines. Includes some state-regulated (intrastate) pipelines. Figures are based on EIA analysis of regulatory filings and industry reports. Data for 2018 and 2019 are for construction anticipated by EIA.

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.[6] 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.

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

[6] 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.

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.[7] 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.[8] 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.[9] 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*.[10] 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."[11] It also outlines a "flexible balancing process" within which the commission considers market support; economic, operational, and competitive benefits; and environmental impact, among other considerations.[12] 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.[13] FERC may also take into account safety issues, but generally defers to the

[7] For a flowchart of steps taken by both FERC and certificate applicants, see: FERC, "EIS Pre-Filing Environmental Review Process," web page, May 9, 2018, https://www.ferc.gov/resources/processes/flow/process-eis.asp.

[8] 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.

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

[10] 18 C.F.R. Part 157.

[11] FERC, *Certification of New Interstate Natural Gas Pipeline Facilities: Statement of Policy*, 88 FERC ¶ 61,227, Docket No. PL99-3-000, September 15, 1999.

[12] 88 FERC ¶ 61,227, p. 14.

[13] 88 FERC ¶ 61,227 and orders clarifying policy, 90 FERC ¶ 61,128 and 92 FERC ¶ 61,094, 2000 as summarized in

Department of Transportation, which regulates pipeline safety.[14] Of the factors above, environmental review typically comprises 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 consider the potential environmental impacts of actions it may approve (e.g., granting a certificate) and to inform the public about them before making a final decision. NEPA requires federal agencies to provide an environmental impact statement (EIS) for federal actions "significantly affecting the quality of the human environment."[15]

The Council on Environmental Quality (CEQ) promulgated regulations implementing NEPA that are broadly applicable to all federal agencies.[16] In those regulations, CEQ 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. FERC subsequently did so when it promulgated its own regulations implementing NEPA (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 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).[17]

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;[18]
- **Indirect effects**—caused by the action that are later in time or farther removed in distance but still reasonably foreseeable;[19] and

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.

[14] 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.

[15] 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.

[16] 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).

[17] 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).

[18] 40 C.F.R. §1508.8(a).

[19] 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.

- **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.[20]

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.[21] 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 is to state 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 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.[22] Pipeline developers also may need to secure approvals from state agencies under delegated

[20] 40 C.F.R. §1508.7.

[21] 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.

[22] 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.

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)). There is no time limit for FERC to consider or conclude a rehearing. If a pipeline certificate is approved after rehearing, the pipeline project may proceed even if additional challenges have been filed in federal court. Once the developer has provided FERC with any outstanding information or taken other actions to satisfy the terms and conditions of the certificate order, including an implementation plan, 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 accordance with applicable laws, regulations, policies, and procedures."[23] 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.[24]

To date, FERC has limited its review of certain upstream or downstream impacts, claiming that they are not reasonably foreseeable. However, in February 2017, a FERC commissioner argued

[23] 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.

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

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."[25] Likewise, in a recent 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."[26]

In FERC's 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.[27] 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.[28] 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."[29] 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 production or consumption from a particular natural gas pipeline cannot excuse the Commission from considering those effects under NEPA."[30]

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.[31]

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

[25] 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.

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

[27] 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.

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

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

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

[31] 88 FERC ¶ 61,227, p. 14.

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."[32] However, 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."[33] 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.[34]

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.[35] Some in Congress reportedly have called on FERC to adopt a more overarching approach to pipeline development, collectively considering multiple projects together rather evaluating them independently.[36] However, FERC maintains that it "does not engage in regional planning exercises that would result in the selection of one project over another."[37] 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.[38]

Timing and Relations with Other Agencies

There are no statutory time limits within which FERC must complete its own certificate review process, issue an order, or complete a rehearing. However, EPAct authorizes FERC to establish a schedule for all federal 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.[39] 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

[32] 88 FERC ¶ 61,227, p. 15.

[33] 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.

[34] 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.

[35] 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.

[36] Duncan Adams, "Senators Hope to Compel FERC to Broaden Analysis of Pipeline Projects," *The Roanoke Times*, February 4, 2016.

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

[38] 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.

[39] 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).

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.[40] 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.[41] 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."[42] Likewise, some in Congress have argued that gas pipeline reviews still "are being delayed unnecessarily due to a lack of coordination or insufficient action among agencies involved."[43] Recent debate in congressional hearings about the timing of FERC's certificate reviews indicates both criticism of and support for FERC's process.[44]

FERC staff state that the commission seeks to complete its review of certificate applications within 18 to 24 months of filing.[45] A review of certificate approvals for larger pipeline projects over the last several years indicates that FERC has generally, but not always, met a 24-month review 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 43 pipeline projects included, 4 projects were approved more than 24 months after filing. In addition, FERC's docket records show two pending applications (for 20+ mile pipelines) filed late in 2016 and two more filed in 2015.[46] 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.[47]

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

[41] 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.

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

[43] 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.

[44] 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.

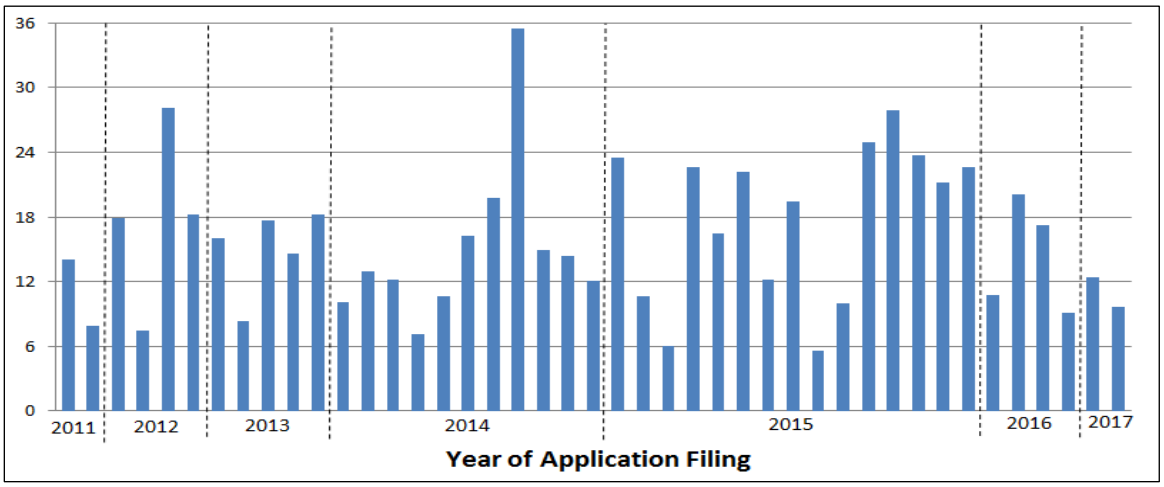
[45] FERC, Office of Congressional Affairs, personal communication, May 30, 2018.

[46] FERC, "Major Pipeline Projects Pending (Onshore)," website, data as of April 2018, https://www.ferc.gov/industries/gas/indus-act/pipelines/pending-projects.asp.

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

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

Months After Filing



Source: CRS analysis; FERC, "Approved Major Pipeline Projects (2009-Present)," data as of May 1, 2018, https://www.ferc.gov/industries/gas/indus-act/pipelines/approved-projects.asp.

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.

FERC also has faced challenges in its relations with state agencies exercising delegated federal permitting authority, particularly under the Clean Water Act. For example, FERC has been involved in litigation for issuing a pipeline's water quality permits—which were initially denied by a New York state agency—on the grounds of excessive delay by the state.[48] 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.[49] 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, 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

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

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

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.[50] Some stakeholders have asserted that FERC should change or expand the nature of its certificate reviews to better account for these new considerations.[51]

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 overseas markets.[52] 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.[53] Nonetheless, some analysts have questioned whether FERC may evaluate pipelines proposed primarily to facilitate natural gas exports differently from those proposed to supply domestic markets.[54]

Recent Executive Orders

The development of pipelines has been a focus of the last three presidents. The Bush, Obama, and Trump Administrations issued a series of executive orders intended to facilitate or expedite the federal permitting of infrastructure projects, specifically including energy infrastructure. Exactly how all of these orders have affected, or may affect, federal review of interstate natural gas pipeline siting under FERC's jurisdiction 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 other actions as necessary to accelerate the completion of such projects, while maintaining safety, public health, and environmental protections."[55] 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

[50] 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.

[51] 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.

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

[53] 158 FERC ¶ 61,145, p. 10.

[54] 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-12619700.php.

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

understanding with the Corps expanding upon this agreement "to further streamline respective regulatory processes" consistent with the executive order.[56]

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."[57] 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.[58] 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.[59] 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.[60]

Executive Order 13766

Issued by President Trump on January 24, 2017, the order is 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 ... pipelines."[61] Among other provisions, the order permits governors, federal department and agency heads, or the FERC chairman to request "high priority" status for a project with respect to "expedited procedures and

[56] 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.

[57] 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.

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

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

[60] 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.

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

deadlines for completion of environmental reviews and approvals" (§3). According to FERC staff, no interstate natural gas pipelines have been classified as high priority under this order.[62]

Executive Order 13807

Issued by President Trump on August 15, 2017, the order is 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 is to complete federal environmental reviews and permitting decisions for major projects within two years of application (§2(h)).[63] A key component of E.O. 13807 is a "One Federal Decision" framework, whereby each "major" infrastructure project has 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.[64] 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 is the lead agency for pipeline certificate environmental review and has statutory authority to set a review timetable under EPAct, so it appears the impact of the executive order may be primarily from cooperating agency coordination and setting the two-year goal. However, because this MOU has only recently been agreed to, it remains to be seen how it will affect FERC's ongoing review of pipeline certificate applications. Nonetheless, FERC has stated that it "is committed to carrying out the goals of Executive Order 13807 to improve the efficiency, timing, and overall predictability of the certification process."[65]

Recent 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.[66] Members of Congress also have proposed legislation to change FERC's review of gas pipeline certificate applications, specifically, or as one category among a broader range of infrastructure projects.

[62] FERC, Office of Congressional Affairs, email to CRS, May 22, 2018.

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

[64] 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.

[65] 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.

[66] See, for example, U.S. Senator Tim Kaine, letter to The Honorable Kevin McIntyre, Chairman, Federal Energy Regulatory Commission, January 5, 2018, https://www.scribd.com/document/368500513/Kaine-Calls-For-FERC-Rehearing-On-Mountain-Valley-And-Atlantic-Coast-Pipelines.

Table 1. Past Legislative Proposals to Change FERC Certification of Pipelines
(111th through 114th Congresses)

Congress	Bill Title	Bill Number	Last Major Action	Key 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	H.R. 1922 S. 32	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	American Energy Solutions for Lower Costs and More American Jobs Act	H.R. 2	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.
113th	American Renaissance in Manufacturing Act	H.R. 5360	Introduced	
114th	Natural Gas Pipeline Permitting Reform Act	H.R. 161	Passed in House	
114th	Safer Pipelines Act of 2016	H.R. 5630	Referred to Committee	If a proposed pipeline expansion were challenged, would have required FERC to have an evidentiary hearing on the need for expansion or a cumulative review of energy projects planned throughout 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.
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.

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

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

Table 1 summarizes the key provisions of legislative proposals affecting FERC's pipeline certification in the 111th-114th Congresses. As the table shows, bills which were not enacted sought to increase FERC public hearings, limit eminent domain authority, require regional review of multiple projects, or impose specific deadlines on FERC and cooperating agencies. Title 41 of the Fixing America's Surface Transportation Act (P.L. 114-94; FAST-41), which became law on December 4, 2015, revises 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).[67] As of June 2018, the permitting dashboard listed four natural gas pipeline projects (one completed) covered under FAST-41 with FERC as the lead agency.[68]

Some Members of Congress have introduced legislative proposals in the 115th Congress to change FERC's certification authority or review process. **Table 2** summarizes the key provisions in these bills related to natural gas pipeline certification. As the table shows, the proposals which remain under committee consideration variously would require FERC to collectively review multiple pipelines proposed in the same region, prepare supplemental EISs, hold more public meetings, and more broadly consider greenhouse gas emissions. Some would impose deadlines for permit review and mandate greater cooperation and transparency of permit review by federal agencies.

The Promoting Interagency Coordination for Review of Natural Gas Pipelines Act (H.R. 2910), which passed in the House on July 19, 2017, would require federal, state, and local agencies involved in environmental review for a proposed pipeline to defer to FERC's approved scope for NEPA review. H.R. 2910 would also require FERC to make a decision on a natural gas pipeline certificate application within 90 days of completing NEPA review and would require concurrent review by cooperating federal agencies.

Table 2. Current Legislative Proposals to Change FERC Pipeline Certification
(115th Congress)

Bill Title	Bill Number	Last Major Action	Key Provisions
Safer Pipelines Act of 2017	H.R. 2649	Referred to Subcommittee	If a proposed pipeline expansion is challenged, would require 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 require FERC to cumulatively review major energy projects planned in the region. For new interstate pipelines, would require FERC to consider under NEPA the cumulative impacts of other projects in the same state or within 100 miles.

[67] 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.

[68] Federal Permitting Improvement Steering Council, May 21, 2018.

Bill Title	Bill Number	Last Major Action	Key Provisions
Pipeline Fairness and Transparency Act	H.R. 2893	Referred to Subcommittee	Would require FERC to prepare a supplemental EIS for an application if FERC makes a substantial change or in case of new environmental circumstances or information. Would require environmental impact mitigation plans. Would require public meetings in counties where a project is located after each draft EIS, final EIS, and any supplemental EIS. Would require review of cumulative visual impacts on national scenic trails of nearby pipeline proposals.
	S. 1314	Referred to Committee	Same as H.R. 2893 but would also require multiple new pipelines proposed within 100 miles of each other to be evaluated as a single project for NEPA purposes.
Promoting Interagency Coordination for Review of Natural Gas Pipelines Act	H.R. 2910	Passed in House; Referred to Senate Committee	Would require that federal, state, and local agencies involved in environmental review defer to FERC's approved scope for NEPA review. Would require FERC permit decisions within 90 days of completing NEPA review. Would require concurrent review by cooperating agencies.
To require [FERC] to consider greenhouse gas emissions related to natural gas pipelines, and for other purposes	H.R. 3241	Referred to Committee	Would require FERC environmental review under NEPA to consider greenhouse gas emissions directly associated with the pipeline, and with the production, transportation, and combustion of natural gas to be transported through it.
Natural Gas Pipeline Public Health Protection Act of 2017	H.R. 4381	Referred to Subcommittee	Would suspend FERC-permitted pipeline activities until any violations relating to air quality are remediated.
Rebuild America Now Act	S. 1756	Referred to Committee	Would impose on FERC a one-year deadline to approve or deny pipeline permit applications after pre-filing. Would require 90-day permit review for pre-filed pipeline projects by other federal agencies involved; if a permit is not approved or denied by this deadline, approval would take effect. Would allow the use of aerial survey data to satisfy pipeline permit preliminary requirements.
Energy and Natural Resources Act of 2017	S. 1460	Committee Hearings Held	Would require FERC to identify and notify agencies participating in review. Would require federal permit decisions within 90 days of FERC completing NEPA and concurrent review by cooperating agencies of non-NEPA actions. Would require greater transparency in review scheduling, status, and reporting of delays.
Coordinating Interagency Review of Natural Gas Infrastructure Act of 2017	S. 1844	Referred to Committee	Would require FERC to designate and invite agencies participating in NEPA review. Would require concurrent review by cooperating agencies of non-NEPA actions. Would require greater transparency in review scheduling, status, and reporting of delays.

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

Notes: FERC= Federal Energy Regulatory Commission, NEPA = National Environmental Policy Act, EIS = Environmental Impact Statement.

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 newly appointed 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 (NOI) "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."[69] More specifically, the commission's notice "poses a range of questions that reflect concerns raised in numerous public comments, court proceedings and other forums," and seeks 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."[70]

According to its notice, FERC's inquiry focuses 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.[71]

FERC's inquiry was opened for public comments through July 25, 2018.[72] However, according to the NOI, the commission will make no decisions on possible further action related to its inquiry until it has reviewed the comments filed; the commission has not stated any timetable for completing this review.[73] (FERC issued its 1999 policy statement over 13 months after publishing a Notice of Inquiry for that proceeding, but the duration of its current review could be different.[74]) Any FERC pipeline certification activities or decisions in the meantime are to be made in accordance with the 1999 policy statement. 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.[75]

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

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

[70] Ibid.

[71] FERC NOI, pp. 45-46.

[72] 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.

[73] FERC NOI, p. 4.

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

[75] 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.

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 and possible risks to groundwater. Still others are focused primarily on the local effects of gas pipeline development related to public safety, the impacts on lands, and the acquisition of private property through eminent domain. 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, at least 18 bills have been introduced since the 111th Congress (9 in the current Congress alone) which would affect various aspects of FERC's review of pipeline certificate applications. Of these, only the FAST Act became law, and it seems to have applied to only a few of FERC's gas pipeline reviews. 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 115th Congress. Examples include broader examination of greenhouse gas impacts (H.R. 3241), efficiency of application review (S. 1460), 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 agreement 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.

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